

Democracy or Dominance In the Americas?



**The FTAA
vs
Public
Services**

Public Services International is a world-wide union federation that represents 20 million workers in 520 unions in 144 countries around the world. PSI is headquartered ten minutes from Geneva, on the French border.

- *Has a global network of women activists, a democratic women's structure and supported the World Women March 2000;*
- *Employs a full time research staff, has an extensive database on transnational companies (TNCs) and coordinates campaigns against the negative impact of privatization;*
- *Employs a full time staff dedicated to equity issues including issues relevant to women;*
- *Undertakes an extensive representation program to a wide range of international institutions such as the World Trade Organization (WTO), the International Monetary Fund (IMF) and the World Bank;*
- *Has four regional offices: for Asia Pacific, Africa and Arab Countries, Inter Americas and Europe. There are project staff in 20 countries around the world and extensive capacity building programs.*
- *Operates in six major languages for meetings and publications: English, French, German, Japanese, Spanish and Swedish;*
- *Works closely with the International Confederation of Free Trade Unions as well as professional bodies such as the International Council of Nurses and the International Federation of Social Workers.*

For more information on the global campaign for socially just trade and investment agreements contact PSI or go to:

www.icftu.org The *International Confederation of Free Trade Unions* website includes information on the World Trade Organization and the campaign for worker's rights.

www.art-us.org The website of the *Alliance for Responsible Trade* represents a national coalition of U.S. based trade unions, NGOs, womens, church, and student organizations working on social justice and international trade.

www.asc-hsa.org The Spanish language website of the *Hemispheric Social Alliance* is a forum for social movements of the Americas working to change hemispheric integration policies and to promote social justice.

www.ftaa-alca.org The official *Free Trade Area of the Americas* website.

www.americasnet.net Website of the *Summit of the Americas Center* at Florida International University in Miami.

www.ichrdd.ca The website of the Canadian NGO, *Rights and Democracy*, which has published "A Human Rights Framework for Trade in the Americas," available in English, Spanish, and French.

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Foreword

The governments of 34 countries of the Americas are negotiating a Free Trade Area of the Americas to advance integration and NAFTA-style free trade in the hemisphere. Unions call this process undemocratic because it excludes input from civil society as well as elected representatives and lawmakers from throughout the Americas. The FTAA will deeply affect almost every aspect of our societies and could become law before a serious public review takes place in anyone's Parliament. Trade unions, environmental groups, human rights advocates, women's organizations, farmers, and faith organizations say we don't need another unfair free trade agreement.

FTAA rules will cover trade in services and direct foreign investment in public services. Though trade in services is still dwarfed by trade in goods in the global economy, trade in services is growing more quickly than trade in goods. At the same time, the low wages and benefits of service sector jobs and efforts to further deregulate, privatize, and contract out services have been of great concern to trade unions and our allies. This report provides an explanation of proposed FTAA rules and offers examples of their potential impact on domestic laws and regulations. More research is needed to understand the links between the FTAA negotiations and the daily lives of members of PSI affiliates in the service industry, and to mobilize members and allies to make their voices heard.

This report has been written for PSI by Matthew Sanger. It has been produced as part of the hemispheric campaign for fair trade and worker's rights mounted by the International Confederation of Free Trade Unions/ Inter-American Workers Organization and the Hemispheric Social Alliance.

Cam Duncan
PSI Regional Secretary



Democracy or Dominance in the Americas?

The FTAA vs Public Services

The future of public services in the Americas will be shaped in very important ways by the negotiations to complete a Free Trade Area of the Americas (FTAA) by 2005.

The scope of these negotiations is immense. They include reductions in tariffs for manufactured goods and natural resource products; protections for investors and for intellectual property rights; and rules concerning government procurement and supports for agricultural producers. The FTAA negotiations also include talks on services which touch on virtually every sphere of human activity—from giving birth to being buried; from maintaining local water and sewerage systems to speculating on global financial markets; from teaching elementary school students to advanced scientific research and development.

Government leaders first endorsed the idea of a hemispheric trade deal in 1994 when they met at the First Summit of the Americas in Miami. The FTAA negotiations were officially launched at the Second Summit, held in Santiago Chile in 1998. At the Third Summit of the Americas, held in Quebec City (April 20-22 2001), the leaders reaffirmed their commitment to completing the FTAA by 2005. To reach this goal, negotiations have entered a second, more intense phase. A draft agreement is expected for the next meeting of trade ministers, scheduled for late 2002.

(34 nations of the Americas participate in the FTAA negotiations and the Summit of the Americas. Cuba has been excluded from all the Summits and is not participating in the FTAA negotiations.)

These negotiations are unfolding against a backdrop of intense public debate over the economic and political consequences of globalisation. Citizens of many countries of Latin America and the Caribbean are opposing the cut-backs and privatisation of public services prescribed by the World Bank and other international financial institutions following the financial crises of the 1990s. And, alarmed by the effects of the North American Free Trade Agree-

ment (NAFTA), many citizens of Canada, the United States and Mexico are resisting their governments' efforts to further extend the neo-liberal trade agenda.

A key issue at stake in the FTAA negotiations is the extent to which the countries of Latin America and the Caribbean adopt the NAFTA model of economic integration in return for easier access to the US market. The NAFTA model restricts public policies and favors deregulation and privatisation of many publicly provided services. Adopting this model could short-circuit public debate by preventing national governments from rebuilding the public services decimated by the Structural Adjustment Programs imposed on the countries of Latin America and the Caribbean.

But the FTAA negotiations go beyond simply extending the NAFTA model south. The Canadian and US governments have proposed new rules which would push the neo-liberal trade agenda even further in a number of key areas. In particular, the negotiations on trade in services could lead to rules that are even more restrictive of government policy than are the current NAFTA and WTO agreements. These services negotiations—which overlap with negotiations on investment, government procurement and other key areas—could have enormous consequences for public services throughout the Americas.

This pamphlet is a guide to the FTAA negotiations affecting public services:

- **Part 1** briefly surveys the economic and social disparities in the Americas, and discusses how the reform of public services is linked to the dynamics of globalization in the hemisphere. It argues that the constraints imposed by the NAFTA/WTO model of economic integration restrict the flexibility which all nations—and particularly the nations of Latin America and the Caribbean—require to adapt social and economic policies to the needs and priorities of their citizens.

- **Part 2 sketches the background to the FTAA negotiations affecting public services.** It describes the evolution of the NAFTA and WTO services trade negotiations, in which giant multinational corporations have been instrumental. It then describes the main features of the NAFTA and WTO services trade rules, and discusses the potential for the Mercosur trade bloc and the proposed South American Free Trade Area to establish an alternative approach.
- **Part 3 examines the key issues for public services in the FTAA negotiations,** focussing on the negotia-

tions on trade in services. This provides readers with a guide for assessing the implications of the negotiations, as they unfold, for education, health care, water and other public services.

- **Part 4 discusses the strategic choices available to opponents of the FTAA and proposes specific steps to safeguard public services** in any future trade agreements in the Americas. It sets out “bottom line” recommendations which activists and trade unions can use in working to change the position of their governments, and to build alliances across the hemisphere.

Box 1

Overview of the FTAA Negotiations

Summit of the Americas: leaders of 34 nations who meet every four years. Launched FTAA negotiations in 1994 and expect to endorse a completed text in 2005.

Ministers of Trade of the Hemisphere: meet every 18 months, including in Buenos Aires in early April 2001, to oversee the negotiations and resolve difficult political issues. Next meeting scheduled for late 2002, in Ecuador.

Trade Negotiations Committee (TNC): vice-ministers of trade who are responsible for the organization and overall progress of the negotiations. Meets approximately every six months.

Nine Negotiating Groups of senior officials who meet regularly and report to the TNC:

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

Non-Negotiating Groups:

- **Committee of Government Representatives on the Participation of Civil Society:** mandated to convey views of civil society to the FTAA trade ministers, but regarded as ineffective by most sectors of civil society.
- **Consultative Committee on Smaller Economies:** mandated to address differences in level of development and size of economies in the hemisphere, but its work appears limited to providing technical assistance for the implementation of trade obligations.
- **Joint Government-Private Sector Committee of Experts on Electronic Commerce:** conducts research and advises the trade ministers on e-commerce issues; a number of powerful corporations are represented on this influential committee.
- **Tripartite Committee:** staff of the Inter-American Development Bank (IDB), Organization of American States (OAS) and United Nations Economic Commission for Latin America and the Caribbean (ECLAC), who provide analytical and technical support for the negotiations.

Public Services in the Americas: future indefinite

1

Every day virtually every citizen and worker across the Americas uses and provides the services that are the subject of secret negotiations in the FTAA.

How these services are financed and provided is a matter of intense public debate in many countries of the Americas. Yet legislators and the public are unable to scrutinize the positions their national governments are taking in the secretive FTAA negotiations. And, because they could pre-empt public debate on issues of vital national interest, the substance of the proposed trade rules is as undemocratic as is the negotiating process.

Debates over the reform of public services are intimately linked with the dynamics of globalisation in the Americas, in particular how other nations respond to the immense political and economic power of the United States and its commercial interests. Locking in one-size-fits-all liberalization policies would betray a long history of resistance to US intervention in the domestic affairs of other nations of the Americas. It would also impede the efforts of citizens to build fairer societies by using public measures to develop their national economies and to provide more equitable access to vital services, such as health, education, water and sanitation.

Economic disparities

Like nowhere else on the globe, the Americas are dominated by a single nation.

As Box 3 shows, the giant United States economy is bigger and more diversified than the combined economies of all other nations in the hemisphere. It is over four times the size of all the Latin American and Caribbean economies combined. Brazil, the world's eighth largest economy, dominates South America but its economic output is less than one-sixteenth that of the US. At the other end of the scale are the tiny island nations of Grenada, Dominica, St Kitts and Nevis—whose economies are oriented to a few export industries, primarily tourism, making them particularly vulnerable to external forces.

Disparities in living standards cross-cut the differences in national economic power. Average per capita incomes in the US and Canada are over five times the average income in the rest of the Americas. Within Latin America and the Caribbean there are large disparities, with relatively high levels of over US\$6,000 in Argentina, Uruguay and some of the smallest island nations including Barbados. The poorest nations of the hemisphere are Nicaragua and Haiti whose average incomes—US\$459.20

Box 2

Every day, as citizens and workers, we use and provide the vital services targeted in the FTAA negotiations.

- Water, sewers, and electricity systems supply our homes—although these basic services are out of reach for too many.
- Roads and public transport bring food and other goods into our communities, and enable us to work and provide for our families and communities.
- We depend on health clinics and hospitals, schools and colleges to raise our children to be healthy, productive citizens.
- Vulnerable members of our societies—including the aged, disabled and destitute—rely on social supports to meet their daily needs.
- With newspapers, telephone, radio, television, and computers we communicate with our fellow citizens, and with others worldwide.
- Our work increasingly involves providing or using information and communication services, whether they are for human needs or for business operations.

Economic and Social Disparities in the Americas: Basic Indicators, 1999

	GDP \$US 000	GDP Per Capita \$US	External Debt % of GDP	Health Spending % of GDP	Infant Mortality per 1,000 live births	Life Expectancy
United States	8,700,000	30,600		13.9	7.0	76.5
Canada	612,000	19,320		9.2	5.2	79.0
Mexico	475,000	4,996	38.0	4.8	31.0	72.5
Brazil	523,000	3,116	29.7	7.6	42.0	67.1
Latin America and Caribbean	1,994,000	4,097	37.7	5.8	35.5	69.8
Central America	53,346	1,645	44.4	5.7	36	69.7
Andean Area	166,587	2,619	43.4	5.6	35	69.7
Southern Cone	379,153	6,298		8.9	22.0	73.3

sources: Inter-American Development Bank, Pan-American Health Organization, Canadian Institute for Health Information

and US\$523.60 respectively—are less than one-fiftieth the average level of earnings in the United States.

There is also great variation in economic disparities within nations. Despite its vast national wealth, income is very unequally distributed in the United States. Market earnings in Canada are almost as polarized as in the US, but its more robust social programs make for a more equitable distribution of total earnings. After taxes, the richest 10 percent of Canadian families with children receive just over 7 times the income of the poorest 10 percent. The disparities are much greater in Brazil, where the richest urban households receive over 40 times the income of the poorest urban households; and where over one-fifth of rural households cannot meet their daily food needs. Of all Latin American countries, income is most evenly distributed in Uruguay, where the richest urban households receive less than 7 times the income of the poorest.

Social disparities

These economic disparities are matched by unequal access to basic services, with tragic consequences for human health and well-being.

In Haiti, where health spending per capita is lowest, 59 out of every 1,000 newborns die before their first birthday—almost 12 times the infant mortality rate in Canada. In Bolivia 55 out of every 1,000 infants die within their first year—almost 8 times the US infant mortality rate.

Infant mortality rates are lower in Argentina than in Mexico, where public health spending amounts to just over half the amount Argentina spends per capita. Uruguay has the lowest infant mortality rate in Latin America—less than one-third the rate in Brazil, where health spending is \$100 less per capita.

The same pattern is evident in education. Illiteracy rates are highest in the poorest countries, which also spend the least on education. In Haiti and Guatemala, almost half the population over 15 years old is considered illiterate. Argentina spends more on education than does Mexico, and has one-third the rate of illiteracy. Uruguay, which spends more than Brazil on its schools, has one-seventh the rate of illiteracy.

There are also great disparities in access to drinking water and sanitation. According to the Pan American Health Organization, only 26% of Haitians have access to sewage systems and fewer than 40% have ready access to drinking water. In Costa Rica and Bahamas, as well as the USA and Canada, there is near-universal access to these basic services.

Opposition to the neo-liberal agenda

State initiatives to reorganize public services in the Americas have followed a standard formula which is at odds with the enormous differences in national resources and needs.

Since the debt crises of 1980s, much of Latin America and the Caribbean has been subjected to Structural Adjustment Programs which require governments to pursue market liberalization policies. These include: cuts in public spending; privatization of health, education and other services; and less stringent regulation of private suppliers of those services. Similar policies were implemented by provincial, state and national governments when the US and Canada declared war on their national debt in the early 1990s.

National telephone companies have been privatized throughout Latin America, beginning with Chile in 1988 and followed by Mexico, Argentina, Venezuela and Peru. In most cases, ownership and effective control has passed to American and European based telecommunications giants, including GTE, ATT, France Telecom, and Telefonica de España. The new private operations have expanded rapidly, with the assistance of an investor-friendly regulatory climate, and reduced protections for workers in this sector.

Private health care corporations have also found a bonanza in Latin America, with recent reforms of health and social security systems. Health systems have been decentralized and privatized in Colombia, Argentina, Chile, Brazil, Ecuador and other countries. These reforms have created lucrative opportunities for US- and Latin-American based Managed Care Organisations—such as the Exxel

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Group and Columbia Health Care—which have taken over delivery of many health services and gained access to revenues from large public and employer-based health and social security funds. While generating profits for their investors, these operations have in many cases reduced access to health services and increased the strain on the remaining public hospitals and clinics.

In Canada, some provincial governments—which are responsible for the delivery of health services—have pursued a similar agenda. New legislation in Alberta allows commercial hospitals to receive public funding. Ontario has opened home care services to commercial providers—a change that has diverted public funding from patient care to increased administration costs and profits, and led to deteriorated working conditions for home care providers.

Popular resistance to the neo-liberal agenda is growing, as citizens of the Americas protest against the constraints imposed by international trade agreements and by the international financial institutions.



- An unprecedented convergence of US trade unionists, environmentalists and other popular movements staged the demonstrations in Seattle that helped to derail the Millenium round of WTO negotiations.
- Mass demonstrations in Ecuador and Argentina, triggered by financial crises, have included demands to restore public services targeted for cuts by IMF loan packages.
- A major strike in Bolivia was provoked, in part, by opposition to the privatization of water delivery system in Cochabamba.
- In Mexico the Zapatista National Liberation Front—which began its struggle on the day NAFTA took effect—has galvanized resistance to corporate power. Its remarkable “Zapatour” coalesced demands for greater democracy, most significantly Indigenous peoples rights, so effectively that the President and Congress made unprecedented concessions in their ongoing negotiations with the ZNLF.

- The Federation of Canadian Municipalities has voiced concern about trade agreements that restrict the ability to provide local services. And numerous cities—including Santa Cruz, California and the Canadian cities of Vancouver, Kamloops, Yellowknife and Regina—have passed resolutions declaring their opposition to trade negotiations that impinge on areas of local jurisdiction.

This growing popular opposition underlines the need for national governments to retain the flexibility to adapt social and economic development policies to the needs and priorities of their citizens. As detailed in the next section, the proposed model for the FTAA would instead obstruct governments from pursuing legitimate policy options for addressing the diverse needs and capacities of their nations. While leaders at the Quebec summit made a show of their commitment to democratic forms of government, they have endorsed a model of trade agreement that restricts the ability of citizens to exercise democratic control over their economies and social systems.

Servicing Corporate Interests: background to the FTAA services negotiations

2

2.1 Trade in Services: new frontier of the neo-liberal agenda

Services are the uncharted territory of international trade negotiations—where negotiators are intent on imposing and extending the principles developed for trade in goods. If the ambitions of trade negotiators and their corporate mentors are realized, trade rules will reach into almost all areas of domestic policy.

Trade liberalization is commonly understood to be about reducing tariffs and other “at-the-border” impediments to the flow of goods across national borders. Since the Uruguay Round, however, multilateral trade negotiations have increasingly focused on reducing so-called “non-tariff barriers” to trade, which potentially include many “behind-the-border” government measures which arguably limit access by foreign producers and providers to its national market, or their competitive opportunities once they are established in the country.

Building on the concept of “non-tariff barriers” to trade, the North American Free Trade Agreement (NAFTA), which was concluded in 1992, was the first major trade agreement to include rules on trade in services. These rules, along with new chapters on investment and intellectual property, extended trade rules into areas of national policy and regulation previously considered beyond the reach of trade negotiators.

In many respects, these NAFTA provisions influenced the outcome of the Uruguay Round negotiations, which concluded in 1994 with the establishment of the World Trade Organization. All 140 member countries of the WTO must commit to the “single undertaking” which, as well as the agreement on trade in goods (GATT) includes agreements on services (known as the General Agreement on Trade in Services, or GATS), intellectual property (TRIPS), technical barriers to trade (TBT), investment (TRIMS) and numerous other agreements.

The GATS is an extremely ambitious agreement that advances the neo-liberal trade agenda in a number of im-

portant ways. It establishes a comprehensive framework for services trade rules, which in principle apply to all services and to all government measures. While governments were permitted to shield certain services and government measures in the first round of GATS negotiations, it commits members to successive rounds of liberalization and to negotiate new rules that intrude even further into areas of domestic policy.

The GATS has the following “architecture” (technical terms are explained in the following section):

- General rules which apply immediately to all services and to all government measures. These rules include, Most-Favored-Nation treatments, restrictions on monopolies and requirements for transparency. (These are “top-down” features of the GATS.)
- Specific commitments to National Treatment and Market Access, which apply only to those services listed by countries in their schedules to the agreement. (These are “bottom-up” features of the GATS.)
- Sectoral annexes which set out rules for certain sectors, most importantly financial services and telecommunications.
- An overarching commitment to “progressive liberalization” through successive rounds of negotiations to extend the coverage of existing GATS rules; and through further negotiations to elaborate rules on subsidies and domestic regulations, which are currently covered by the GATS, and to establish rules on government procurement, which is currently exempted from the GATS. (These negotiations include additional “top-down” features.)

The GATS negotiations mandated by this framework agreement have been underway in Geneva since February 2000 and are expected to conclude by the end of 2002. Further GATS negotiations would also be included in a new comprehensive round of WTO negotiations, which could be launched at the WTO ministerial conference in November 2001.

Major transnational corporations were instrumental in the NAFTA and WTO services negotiations. The lobbying efforts of US-based multinationals were led by American Express, Citigroup, Chubb, UPS, FedEx, Enron, and New York Life.

David Hartridge, the Director of the WTO's Trade in Services Division, has specifically credited the completion of the GATS to pressure from American Express and CitiCorp.¹

These and other corporations—notably insurance firms—continue to drive the services trade agenda, working independently through various sector-specific organizations, and through the European Services Forum and the Coalition of Services Industries, which is based in the US.

In 1999, multinationals led by Chubb and Citigroup held a World Services Congress in Atlanta Georgia. This high-level meeting—which, as well as corporate executives, included representatives of the WTO, World Bank and other multilateral organizations, and senior trade negotiators and government representatives from Canada, the US and Europe—has clearly influenced the current GATS negotiating agenda, as much through the 100 research papers commissioned for the Congress, as through the formal deliberations and informal networking. A follow-up World Services Congress—sponsored by the Hong Kong Coalition of Services Industries—is scheduled for September 2001 in Hong Kong.

Corporate involvement in the FTAA has been institutionalized through the Americas Business Forum that meets in parallel with the meetings of the Ministers of Trade of the Hemisphere. The VI Americas Business Forum was held in Buenos Aires in early April of 2001, coinciding with the meeting of trade ministers. As with previous meetings of trade ministers, the agenda included formal consideration of the priorities presented by the business leaders.

Corporate sponsorship of the Quebec City Summit was strongly criticized in Canada by human rights organizations and others who object to businesses buying access to government leaders at a gathering in which citizens were excluded by a fenced-off fortress and an enormous police presence. The Americas Business Forum is a slightly less audacious violation of democratic process, but will likely have more lasting influence over the direction of the FTAA negotiations.

2.2 Twin Models: GATS and the NAFTA services chapter

The GATS and the NAFTA services chapter are twin beacons guiding the FTAA negotiators as they negotiate new rules for services trade in the Americas. They share the same fundamental principles but are different in some important respects.

In principle the GATS and NAFTA services rules apply to all services, whether they are provided by a public agency, a non-profit organization, or a commercial corporation. Both agreements apply to any government measure, including legislation, regulations, policies, administrative practices and even unwritten conventions. In addition, the GATS specifically applies to public subsidies.

Non-discrimination

Both agreements apply the established trade principles that prohibit governments from discriminating between domestic and foreign services or service providers.

- The **National Treatment** principle means government measures must apply the same treatment to foreign and domestic services and service providers. It prohibits public measures from discriminating on the basis of nationality of ownership or location of head office.
- The **Most Favored Nation** principle means *all* foreign services or service providers are entitled to the best level of treatment a government extends to any one foreign service or service provider. This prohibits preferential arrangements for services or providers from individual countries or groups of countries.

Market access and domestic regulations

In addition to prohibiting discriminatory measures, the GATS and NAFTA both include rules concerning certain government measures which affect services and which may be implemented for objectives which are completely unrelated to trade policy. They include an absolute prohibition of so-called “quantitative restrictions”, whether or not they discriminate between domestic and foreign services or service providers. Examples of these prohibited measures include:

- Regulations which require courier or transportation companies to provide a minimum level of service in rural areas as a condition of access to lucrative urban markets.
- Telecommunications legislation which limits foreign ownership of broadcasters, telephone companies and internet providers.
- Environmental protections that limit the number of tour operators active in environmentally sensitive areas.
- Legislation which allows only non-profit organizations or co-operatives to provide a specific service, such as child care or other social services.

Both agreements also affect other forms of non-discriminatory domestic regulation which affect services without involving so-called “quantitative measures.” NAFTA includes rules respecting the licensing and certification of professionals (Article 1210). GATS applies to a far broader, and as yet undefined range of domestic regulations which

include “qualification requirements and procedures, technical standards and licensing requirements” (Article VI). (These are further discussed in section 3.)

Dispute settlement

NAFTA and the GATS both include procedures for effectively enforcing their rules. When governments are not able to resolve trade disputes through consultations, they are heard by an appointed trade panel. Trade panels, which meet in private, issue legally-enforceable rulings which can include a requirement to reverse a public policy measure. Governments that refuse to conform to a trade panel ruling can provide compensation in the form of trade concessions to the complainant government. If they refuse to do this, the complainant government can retaliate with trade sanctions against exports of the other country, which are usually chosen to have as much political impact as possible.

In addition to the above procedure, in which only national governments participate, the NAFTA investment chapter includes a procedure that permits private investors and corporations to directly challenge national government measures. In this case, trade tribunals can award monetary compensation when they determine that a government is “tantamount to expropriation” of an investment. The most controversial NAFTA cases have used this investor-state procedure.

Imperative for further liberalization

As far-reaching as the NAFTA and GATS rules already are, powerful interests are pushing to extend them further. Multinational health insurers and managed care operations have been joined by other corporations seeking to advance their commercial interests by influencing the GATS negotiations. United Parcel Service, for instance, aims to expand the already rapid growth of its express courier services by restricting the operations of national postal systems. Making strategic use of international trade agreements, UPS has initiated a NAFTA chapter 11 challenge against Canada Post and has also convinced Canada’s GATS negotiators to support fast-track negotiations on rules for express mail.²

The FTAA negotiations provide an opportunity to further extend the reach of the services trade rules pioneered in NAFTA and the GATS. There is a specific requirement in the GATS that any new regional agreement must be at least as trade-liberalizing as the rules WTO members are already committed to under the GATS. In order to be in compliance with the GATS, therefore, the FTAA must at least match the liberalization rules of the GATS (Article V). Without the option of rolling back liberalization, the only incentive for concluding services rules in the FTAA services agreement must be to achieve further liberalization.

Box 4

Trade vs the Public Interest: NAFTA chapter 11 disputes

Ethyl: In settlement of a NAFTA challenge by Ethyl corporation, the Canadian government repealed a ban on the gasoline additive MMT. It also paid the company US\$13 million, and issued a statement saying that MMT has no known health effects even though manganese—a major ingredient of the additive—is a known carcinogen.

S.D. Myers: Canada lost a dispute initiated by a hazardous waste disposal company, which claimed US\$30 million for losses it allegedly incurred as a result of a Canadian ban on exports of PCBs in the mid 1990s — even though allowing PCB exports would have brought Canada into conflict with its commitments in the Basel Convention on the Transboundary Movement of Hazardous Wastes and with U.S. legislation banning PCB imports.

Metalclad: Mexico was ordered to pay \$US 16 million in damages to a US-based hazardous waste disposal company because Guadalupe, a small municipality in the state of San Luis Potosi, denied the company a permit to establish a hazardous waste site on land already seriously contaminated by toxic wastes. The Mexican government has resorted to Canadian courts in an effort to have this decision set aside.

Methanex: A Canadian-based company is suing the US government for US\$970 million in losses due to a California state order to phase out the use of MTBE, a methanol-based gasoline additive which has contaminated groundwater from leaks in underground storage tanks.

UPS: The US-based courier is seeking \$230 million in damages from the Canadian government, claiming that Canada’s national postal system is being used to support its courier business and is preventing UPS from competing for more of Canada’s courier business.

The imperative to further extend the reach of the FTAA services rules is also fueled by the dynamic of national strategies, in which the big players approach each negotiation of a trade agreement as an opportunity to not only advance their commercial interests, but also to strengthen their hand in negotiations of other trade agreements.

2.3 A southern alternative?

To varying degrees, the trade policies of all other countries in the hemisphere are preoccupied with responding to the power of US economic interests. Latin American and Caribbean countries have formed regional trade blocs that are intended, in part, to increase their collective leverage in negotiations with the US and with the US-dominated international financial institutions.

The most influential of these trade blocs is the Mercosur group, which integrates the Southern Cone countries of Argentina, Uruguay and Paraguay (Chile and Bolivia are 'associate' members) with the much larger Brazilian economy. Because it is far less dependent on trade with the US, the Mercosur group is better able to resist pressure from US-based commercial interests than are other regional blocs. While 85% of Mexican exports go north, the Mercosur group trades primarily with Europe and sends only 17% of its exports to the US.

With a large and diverse economy, Brazil has taken a relatively independent position in the FTAA negotiations. Its bitter trade disputes with the US, Europe and Canada over intellectual property rights and support for aerospace and defence manufacturers have complicated the FTAA negotiations. Most significantly, opposition from Brazil effectively scuttled a bid by Chile and the US to complete the FTAA by the end of 2002 instead of the current deadline of 2005.

While resisting accelerated hemispheric integration, Brazil has championed faster integration of the Latin American economies. In September 2000 the Mercosur nations agreed to join with the Andean Community to create a 10-nation South American Free Trade Agreement by January 2002. This initiative would increase the leverage of Brazil and its trading partners in both the FTAA and WTO negotiations.

The Brazilian stance has encouraged some observers to see Mercosur as a potential alternative model for economic integration in the Americas. Although they initially opposed Mercosur when it was negotiated in 1991, the central union organizations of the Southern Cone subsequently considered that it provided an opportunity for an integrated and more balanced economic development strategy for the four countries, and could strengthen their hand in relations with the international financial institutions.

The hope that Mercosur could provide a model of a more democratic form of integration was also encouraged by the inclusion in the Mercosur process of negotiations on social and labor rights, and a consultative forum on economic and social policy. Among other things, these processes have resulted in the Mercosur Social and Labor Declaration in 1998, and the creation of a body to monitor employment and labor market conditions.

Actual developments in Mercosur, however, have fallen short of the early aspirations. With an increasing orientation toward neo-liberal domestic policies in Brazil and Argentina, driven in part by financial crises, Mercosur has increasingly given priority to satisfying commercial interests over building the social and political mechanisms required to develop the region on a more equitable basis. There is uncertainty whether, even if Brazil and its partners achieve the ambitious goal of completing a South American Free Trade Area by 2002, it will establish a model of integration that is substantively different from the NAFTA/FTAA approach.

Brazil and Mercosur are undoubtedly the primary pole of opposition to the FTAA agenda championed by Canada and the US. Whether they are able to assert a more balanced model of integration will depend largely on the effectiveness of domestic opposition to the neo-liberal trade agenda in Brazil and other countries of Latin America and the Caribbean. This dynamic reinforces the need for northern legislators and popular sector organizations to better understand the position of their counterparts in the south, and to build a common basis for cooperation in opposition to the FTAA agenda.

Box 5

Trade Blocs of Latin America and the Caribbean

Mercosur: Argentina, Brazil, Paraguay and Uruguay.

Andean Community: Bolivia, Colombia, Ecuador, Peru, Venezuela.

Central American Common Market: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua.

CARICOM: Bahamas, Barbados, Belize, Guyana, Jamaica, Suriname, Trinidad and Tobago.

Public Services in the FTAA: an activists' guide to the key issues

3

While the 34 FTAA countries are already agreed on the broad outlines of the FTAA provisions affecting services, there are remaining differences in a number of key areas with important implications for public services. This section examines the negotiating issues most significant for public services and public employees.

3.1 Scope: all measures by all levels of government

Governments have already agreed that the FTAA services rules should be comprehensive—meaning they should apply to all government measures and to all service sectors. Within these general terms, however, there are important differences between governments about how the trade rules apply to sub-national levels of government, and whether they should apply to subsidies as well as other kinds of government measures. Negotiations on these issues will have important consequences for health care, education, water, waste disposal and other services which are provided primarily by local, state and provincial governments.

In defining the scope of the services agreement, FTAA negotiators have followed the GATS and NAFTA which both apply to all levels of government including local government. The FTAA negotiators have agreed that the “services agreement should apply to all measures affecting trade in services taken by governmental authorities at all levels of government.” They also stipulate that it should apply, like the GATS, to non-governmental bodies with powers delegated by government—a category that includes health authorities, school boards, and state enterprises in many countries.³

(Like the GATS and NAFTA, the FTAA proposals apply equally to measures affecting publicly and privately provided services. At the same time, governments have said they will protect public services by recognizing the “right to regulate services” and by negotiating exemptions specific to each country. These proposed protections, which are unlikely to be effective, are discussed in a later section.)

Coverage of sub-national levels of government is a delicate issue in the negotiations because in many federations, including Canada, the national government has no constitutional authority to enforce its trade commitments in areas of provincial or state jurisdiction. The Negotiating Group appears to be addressing this complication by leaving open the possibility of “establishing specific provisions concerning sub-national measures.” The United States has reiterated this possibility, without publicly indicating what specific provisions it would support.⁴

Given the strong commitment FTAA negotiators have already made to comprehensive rules that apply to all levels of government, it is unlikely any specific provisions for sub-national measures would be substantively different from those for national government measures. The specific provisions would more likely address the obligation of national governments to ensure compliance at the sub-national level. In this regard, both the GATS and NAFTA unambiguously require national governments to enforce their trade obligations at the sub-national level. Article 105 of NAFTA requires national governments to “ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement...by state and provincial governments.” This obligation was key to the NAFTA tribunal ruling against Mexico in the *Metalclad* case (see box 4).

The other important issue in defining the scope of the services rules concerns the meaning of the term “measures”. The phrasing used by the FTAA negotiators suggests that they favor applying the services rules to any government measure affecting trade in services. This would follow the GATS agreement that defines “measures” as “any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form.” (Article XXVIII(a)). While subsidies are covered by the GATS, the FTAA negotiations include separate talks on subsidies, which are aimed at reducing the range of subsidies that are currently permitted by the WTO. These targeted subsidies include support for commercial research by domestic universities and

research establishments; regional economic development grants; and assistance for commercial operations to convert to more stringent environmental standards.⁵

3.2 Coverage: all service sectors

The Negotiating Group on Services has already agreed that the agreement “should have, in principle, universal coverage of all service sectors.” Governments are not agreed, however, on how this would be accomplished in the FTAA (see the section on approach of the negotiations).

Another important difference concerns how the FTAA rules apply to the service operations of foreign investors, such as private hospitals and labs set up by transnational healthcare corporations or water and waste management operations set up by transnational utilities.

Under the GATS, these operations are recognized as one of four “modes of supply” in which services are traded (see box 6). They are treated as a form of trade in services—called “commercial presence”—even though the provision of the service does not involve an exchange across national borders. This expansive definition of trade in services effectively establishes rights for investors in the WTO agreement on services.

Under NAFTA, on the other hand, services provided by foreign investors are covered by the investment chapter while the other three possible “modes of supply” are defined as different forms of “cross-border trade in services” which are covered by the services chapter.⁶

The US has indicated that it favors the NAFTA approach in which investment by a service supplier is covered by the investment rules, not the services rules. This is significant because an FTAA investment chapter will very likely include a version of the investor-state dispute process that exists in the NAFTA as well as in numerous bilateral investment agreements. As discussed in section 2.2, this controversial provision has been responsible for the most intrusive NAFTA trade disputes (see box 4).

The US position on the scope and coverage of the FTAA combines the most forceful aspects of both NAFTA and the GATS. The services rules would apply to all levels of government, including local governments. And transnational services corporations would have the ability to use an investor-state process to directly challenge measures by any level of government.

Another consequence of the expansive definition of services is the doctrine of “modal neutrality”, which has been established by WTO trade tribunals. This means that government measures must not distinguish between like services and service providers on the basis of the mode in which a particular service is supplied. For instance, a government cannot set education regulations which distinguish between a course provided by internet (cross-border supply) and the same kind of course provided in a classroom of a commercial college (commercial presence). If adopted in the FTAA, this principle would give northern-based commercial services providers much greater access to southern markets, particularly in health, education, insurance and other services which are capable of being provided remotely as well as in person.

3.3 Exclusion for public services

The protection for public services contemplated by FTAA negotiators falls far short of the public assurances given by Canada and other national governments.

The Negotiating Group on Services has agreed that “Governments maintain the right to regulate services.” This is qualified, however, with the contradictory proviso that this right should be consistent with FTAA rules. A right to shield public services from the FTAA rules does not mean much if it must be exercised consistently with those rules.

Canada’s summary of its FTAA negotiating position states that it “will ensure that it preserves the right to adopt or maintain regulations, administrative practices or other measures in sectors such as health, public education, social services and culture.”⁷ It will almost certainly adopt a similar approach as in NAFTA, in which the Canadian reservation for such measures is compromised by the qualification that such measures are shielded from the trade rules only to the extent that they are a “social service established or maintained for a public purpose” (Annex II-C-9). While these terms remain undefined, the US asserts that the NAFTA obligations would apply in all cases in which there is a mix of public and private funding or service delivery. No NAFTA complaint has been successfully defended on the basis of this or other exemptions for public services.

In contrast to the Canadian position, the US proposes adopting the GATS exclusion for “services supplied in the exercise of governmental authority.”⁸ As in the GATS, the US proposes that this exclusion be narrowly defined to shield only those services which are “supplied neither on a commercial basis nor in competition with one or more service suppliers.” Because the scope of this provision is untested in the GATS and its key terms are undefined, it does not effectively protect services such as health and education, which in most countries of the Americas are mixed systems, financed and provided either privately or through a combination of public and private sources.

...transnational services corporations would have the ability to use an investor-state process to directly challenge measures by any level of government.

What Is Trade in Services?

The GATS negotiations established an expansive definition of trade in services, which appears designed to import protections for investors into the services agreement. In this definition, trade in services consists of four “modes of supply” which extend far beyond the common understanding of trade as an exchange across national borders.

1. **Cross-border supply**, which includes any service provided from the territory of one country into the territory of another country. Examples include mail and mail-order services, telecommunications, internet, e-commerce businesses and financial services, including health insurance. The provision of health and education services through the internet is a rapidly growing form of cross-border trade.
2. **Consumption abroad**, in which the service consumer (not the service) crosses national boundaries. Examples include tourism, students studying abroad and individuals seeking medical treatment in another country.
3. **Commercial presence**, which includes all foreign direct investment related to services. Examples include health care corporations which set up private laboratories, clinics or hospitals in another country; and transnational water and waste management companies. (In NAFTA this mode of supply is covered in the separate investment chapter.)
4. **Presence of natural persons**, in which an individual travels to another country to provide a service on a temporary basis. This applies most commonly to company managers, technicians, professionals and consultants whose work involves working abroad.

How Significant Is It?

As well as defying common notions of trade, the GATS definition makes it virtually impossible to accurately measure the value of trade in services. The WTO estimates that cross-border trade in services amounted to US\$1,350 billion in 1999, or about 20% of total cross-border trade. An earlier attempt to measure total trade in services attributed 41% of the total to cross-border trade, 38% to commercial presence, 20% to consumption abroad, and 1% to presence of natural persons.¹

¹ Data on services trade is from: WTO Trade in Services Division, GATS - Fact and Fiction, March 2001; and Guy Karsenty, “Assessing Trade in Services by mode of supply”, in GATS2000: new directions in services trade liberalization, Washington DC: Brookings, 2000

In response to critics, the US adds that it is “not seeking nor would we agree to use the FTAA negotiations to promote privatization” of healthcare, education and other social services. This assurance means little, however, to governments that have been required by the international financial institutions to defund and privatize public services as a condition of receiving debt relief packages. The FTAA model advocated by the US, Canada and other nations would entrench these structural adjustment policies by exposing any government that attempts to reverse them to trade sanctions.

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3.4 Approach of the negotiations

While it has agreed in principle that all service sectors should be covered by the FTAA, the Negotiating Group on Services has not agreed on the approach negotiations should take in reaching this objective. Negotiators are considering various approaches, including the “top-down” approach of NAFTA and the hybrid approach of the GATS, which combines elements of both of “top-down” and “bottom-up” approaches.

The US proposes that the FTAA negotiations follow the NAFTA top-down approach in which all the services rules apply to all service sectors other than those specifically exempted by a particular country. This is the approach favored by proponents of the strongest possible degree of market liberalization, as it requires governments to explicitly list any services and government measures which are shielded from the trade rules. These lists provide clear targets for future negotiations aimed at reducing the number of exceptions and non-conforming measures. The top-down approach also has the advantage, for proponents of more rapid liberalization, that new services are automatically covered by national treatment and other trade rules.

Other nations favor a bottom-up approach, in which trade rules apply only to those services and measures which countries specify. This approach is likely to result in a less rapid pace of liberalization. It also avoids the practical difficulty of requiring governments to provide, within a limited period, an exhaustive inventory of all measures and services that it seeks to safeguard. This practical consideration is especially significant for smaller jurisdictions, such as the Caribbean nations and smaller Latin American nations.

The GATS, in fact, combines elements of both bottom-up and top-down approaches. Its most forceful provisions—primarily the National Treatment principle and the rules prohibiting quantitative restrictions (which the GATS calls Market Access rules)—apply only to those services which are listed in each country’s schedule of specific commitments. Governments negotiate these commitments by submitting requests for commitments in areas in which they want access to the markets of other countries, and by making offers of commitments to provide access to their own markets. While National Treatment and Market Access apply only to these specific commitments, the GATS includes a number of general rules—including the Most-Favored-Nation principle—which apply to all services and service providers.

While the choice between top-down, bottom-up and hybrid approaches is important, a number of related issues will also influence the pace of market liberalization resulting from the negotiations. The most important of these is the use of negotiating targets and formulas to accelerate the sectoral coverage of services. Advocates of this approach suggest that targets could be based on the number of sectors in which countries make commitments, the proportion of commitments which are bound (i.e. apply to all future as well as existing government measures), and reductions in the number of non-conforming measures which are exempted from the various trade rules. While this approach would nominally permit governments to determine which particular service sectors they commit to cover, it would force them to expand coverage to a prescribed level and would further reduce the already limited negotiating leverage of smaller nations.

Supporters of public services should advocate a bottom-up negotiating approach, and should oppose efforts to graft on top-down features such as negotiating targets and formulas.

3.5 “Market Access” and Domestic Regulations

Among the most intrusive items on the FTAA agenda are negotiations concerning non-discriminatory measures which place limits on the level of service or number of service providers, and those concerning other domestic regulatory measures. Both these proposals aim to restrict non-discriminatory measures. For example, a government requirement that it would only give licenses to serve lucrative, high-traffic urban areas, to courier or bus companies that agreed to minimum service requirements for remote or rural regions is one type of quantitative restriction that could be prohibited under these rules.

The Negotiating Group on Services has stated that, “MFN and national treatment are insufficient by themselves to ensure effective market access for service suppliers. Therefore, the development of additional disciplines to address measures that restrict the ability of service providers to access markets should be examined.”

Whereas market access for goods is determined largely by tariffs and other border measures, **market access** for services is affected by a wide range of so-called “quantitative restrictions”, many of which have been developed with policy objectives completely unrelated to trade considerations. They are considered barriers to trade in services

Supporters of public services should advocate a bottom-up negotiating approach, and should oppose efforts to graft on top-down features such as negotiating targets and formulas.

even when they do not differentiate between domestic and foreign services or service providers. They include limits on the number of providers of a particular service (e.g. the number of health care providers licensed to operate in a certain region), or on the total value of services provided (e.g. a cap on the total amount health care providers can bill to a public insurance scheme). These kinds of restrictions are essential in publicly funded services such as the Canadian health care system. “Quantitative restrictions” also include restrictions on the type of legal entity permitted to provide a service. These may be used in closely regulated services, such as child care or social services, in which there are considerable public subsidies and accountability is a public priority.

The US proposes a wholesale removal of non-discriminatory quantitative restrictions. This proposal far exceeds both the NAFTA provisions—which simply requires governments to list and someday negotiate the removal of quantitative restrictions—and even the GATS, which prohibits quantitative restrictions only in service sectors where governments have made specific commitments. Taken together with the US proposal for a top-down negotiation, its proposal to remove quantitative restrictions would apply to all services other than those which a country specifically exempts.

FTAA negotiators are also actively considering measures which could greatly restrict many other forms of domestic regulation. Recognizing that services are generally more highly regulated than goods, advocates of market liberalization view domestic regulations as one of the most significant barriers to trade in services. Rather than recognizing the legitimate need for governments to modify and adapt regulations to support access to services, consumer protection, and policy objectives, they call for more intrusive restrictions on the right to regulate.

The US has signalled that the issue of domestic regulation is a priority in the FTAA negotiations. It proposes requirements for governments to provide advance notification of all new regulations. The resulting administrative burden on governments would not only deter regulatory activity, it would also generate convenient lists of targets for future negotiations and trade challenges.

Given the requirement that the FTAA at least match the liberalization commitments of the GATS, any provisions on domestic regulations must incorporate the rules already established in the GATS. These rules require governments to ensure that any domestic regulations affecting services in which they have made specific commitments meet the following criteria: they must be based on objective and transparent criteria; they are “not more burdensome than necessary to ensure the quality of the service”; and in the case of licensing procedures, they do not restrict the supply of a service.⁹

The US also proposes negotiating additional rules concerning **domestic regulations**. These negotiations would likely parallel the far-reaching GATS negotiations on domestic regulations. In one of its most controversial provisions, the GATS commits governments to negotiate rules to ensure that “qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services”. The scope of such rules would be very broad. Technical standards could include regulations setting standards for water quality and forest management, or restrictions on the use of agricultural pesticides. Examples of licensing requirements include operating permits for health clinics, telephone companies and broadcasters. Qualification requirements and procedures could include degree-granting authority for universities, as well as the regulatory authority of professional bodies.

As well as incorporating the GATS criteria, FTAA rules for domestic regulations could include additional provisions that would further entrench market liberalization. Canada may use the FTAA negotiations to pursue its GATS objectives in this area. In its GATS proposal on “regulatory transparency and predictability,” Canada proposes a sweeping range of restrictions on domestic regulations, including requiring governments to demonstrate that a problem or risk exists, that the regulations are the best remedy, that the benefits of regulations outweigh the costs, and that no unnecessary burden is imposed on the economy. These criteria would give trade tribunals enormous and unprecedented discretion to overturn domestic regulations with little or no direct relationship to international trade.

The emphasis FTAA negotiators give to rules on market access and domestic regulations demonstrates that their real objectives have little to do with the plain understanding of “free trade.” Negotiations on these rules are designed to lock-in deregulation by weakening the regulatory authority of government and public agencies, and by enhancing the power of commercial interests to prevail when there is a conflict with public interest regulation.

Negotiations...are designed to lock-in deregulation by weakening the regulatory authority of government and public agencies, and by enhancing the power of commercial interests to prevail when there is a conflict with public interest regulation.

3.6 Government Procurement

A separate negotiating group is responsible for developing FTAA rules on government procurement of goods and services.

Both Canada and the US are proposing that the FTAA prohibit governments from using “offsets”, which require suppliers to source goods and service locally, to license technology or to meet a specified level of investment. Offsets and other local preferences have been used to increase the local development benefits of public purchasing.

The US interest in gaining access to public procurement budgets of Latin American countries is counter-balanced by its own interest in maintaining certain preferential procurement policies that have strong domestic support.

The US and Canadian proposals are consistent with restrictions on public procurement in NAFTA and the WTO. The NAFTA rules, however, apply only to federal government procurement. While the GATS does not apply to procurement, both Canada and the US have signed the optional WTO Agreement on Government Procurement. In Canada this Agreement applies only to federal government purchasing. It is not clear whether or not the FTAA procurement rules would apply to all levels of government.

Expanded FTAA restrictions on government procurement would further reduce the ability of national and sub-national governments to use public procurement to promote economic development and to provide preferences for minorities, women, and the disabled.

They could also prevent governments from using public procurement to promote human rights, fair wages or responsible environmental practices. Under pressure from a growing citizen’s movement, universities and municipal governments in the US and Canada have applied selective purchasing policies which, for example, ban clothing produced in sweatshops and prohibit contracts with suppliers who invest in countries with repressive governments. Some US municipalities have also passed “living wage” policies which require suppliers to pay their employees wages above a certain level. These criteria are typically prohibited by trade agreements, which require that all suppliers be evaluated on strictly commercial criteria. Business lobbyists used the threat of trade sanctions to convince Massachusetts legislators to withdraw a law to prohibit any contracts with suppliers who invest or have other relations with the oppressive military regime in Burma.

Similar restrictions in the FTAA would show that, despite the rhetorical commitment in Summit declarations to supporting democracy in the Americas, government leaders will continue to give precedence to the interests of global commerce.

FTAA restrictions on government procurement would further reduce the ability of national and sub-national governments to use public procurement to promote economic development.

3.7 Safeguards for Labor and Environment

While government leaders publicly pledged that economic integration in the Americas will raise living standards and promote sustainable development, their trade positions include no indication of any real commitment on these issues.

Prime Minister Chretien has suggested that Canada would support provisions similar to the NAFTA side agreements on labor and the environment. These agreements are not an integral part of NAFTA and cannot be enforced.

Under the Clinton administration, the US reportedly proposed forming an FTAA study group on labor issues. Other nations instead agreed only to some declaratory language and a process for consulting civil society groups.

On environmental issues, both Canada and the US have opposed incorporating the precautionary principle into trade agreements. The Clinton administration supported integrating environmental concerns into the work of the nine FTAA negotiating groups.

The Bush Administration has indicated that it will retreat from even these weak initiatives. This is most evident in Congressional negotiations to implement the US-Jordan Free Trade Agreement, negotiated by the Clinton Administration. The new Administration strongly opposes the labor and environmental provisions included in the US-Jordan FTA, and is determined that these not become a precedent for future trade agreements.¹⁰

Many developing countries are wary of provisions on labor and the environment, which they suspect could be used to unfairly exclude their export products. Therefore, without strong backing from the new US administration it is extremely unlikely that any safeguards in these areas will be seriously negotiated in the FTAA.

Without the prospect of real progress on these issues in the FTAA negotiations, the need for dialogue among popular sector organizations in North America, Latin America and the Caribbean is even greater. Activists and trade unions need to work together to develop viable and equitable ways of ensuring that, as the economies of the Americas are integrated, the rights of workers are enhanced and the integrity of the natural environment is sustained.

The Bottom Line: what we can do to safeguard public services

4

Given the enormous imbalance created by the US economic dominance of the hemisphere, it is difficult to imagine that nations opposed to the dominant model of economic integration can secure any significant gains in the FTAA negotiations. Improving access to the US market while minimizing the domestic costs of liberalization appears to be the main priority of most Latin American and Caribbean countries. This is particularly true regarding services, in which the largest commercial opportunities are for large Canadian and US corporations seeking access to Brazil and other Latin American economies.

This assessment suggests that, despite the present shortcomings of the Mercosur pact, it offers the best opportunity to develop a more equitable and democratic approach to economic integration. Opponents of the FTAA should lend critical support to the goal of achieving a South American Free Trade Area before the conclusion of the FTAA negotiations. By enhancing the ability of Brazil and its trading partners to counterbalance US economic interests, a SAFTA could improve the prospects for turning back the neo-liberal agenda in hemispheric and multilateral trade negotiations.

But in supporting the SAFTA project, opponents of the FTAA must insist that it be based on a more equitable foundation for economic integration. It would make little difference for individual citizens and their communities if SAFTA simply applied the doctrine of market liberalization at the regional level instead of at the hemispheric level. If, on the other hand, SAFTA succeeds in developing an alternative model of economic integration it could benefit public services in North America as well as in Latin America and the Caribbean by favorably influencing the outcome of hemispheric and global trade negotiations.

It is important also to intervene directly in the FTAA negotiations as they proceed. The Hemispheric Social Alliance, a grouping of labor and popular organizations from throughout the Americas, has developed a comprehensive set of alternatives. These proposals are a promising basis for collaboration to replace the current approach with a more equitable and sustainable model for hemispheric integration.

Activists throughout the hemisphere should focus on both fronts: support the aspirations for a more democratic form of economic integration in South America; and demand that their national governments seek fundamental changes to the approach of the FTAA negotiations.

The following recommendations should be advanced as bottom line criteria for ensuring the integrity of public services in any new trade agreement in the Americas, whether at the regional or hemispheric level:



Recommendations for a new trade agreement in the Americas

- It should include a general exclusion for health, education, social services and all other services provided for a public purpose, as defined by national governments and their legislatures. It is important that this exclusion be self-defining to accommodate the diverse ways in which public services are financed and delivered in the Americas.
- Trade rules should concern only discriminatory measures, i.e. those which differentiate between domestic and foreign services and service providers. Restrictions on non-discriminatory regulations and other measures intrude into areas of domestic policy which are properly beyond the scope of trade negotiations. A new trade deal should not include rules on market access or domestic regulations.
- National Treatment and Most-Favored-Nation principles must be circumscribed to accommodate legitimate reasons for governments to discriminate between domestic and foreign services and service providers. These include ensuring the privacy and confidentiality of health records; assisting disadvantaged groups and regions; securing local benefits when publicly owned resources are developed; supporting cultural expression; and protecting public health.
- Coverage of service sectors should be negotiated using the request-offer approach in which trade rules apply only to those services which governments specifically commit. This bottom-up approach permits governments to assess the implications for each sector, and avoids the undue burden of requiring governments to prepare a comprehensive inventory of all measures and sectors which should be safeguarded. Governments should reject any efforts to establish targets or formulas for extending coverage of the trade rules.
- Rights for foreign investors should be kept out of trade agreements. Foreign owned services operations (the “commercial presence” category in the GATS agreement) should not be considered a form of trade in services. And the FTAA negotiations on investment should be scrapped.
- In particular, governments should strongly oppose inclusion of an investor-state dispute mechanism in a new trade deal. The NAFTA investor-state mechanism has led to numerous compensation claims that pose serious challenges to governments’ ability to regulate for the public good.
- Governments should retain the flexibility to use government procurement for local economic development, and to promote public priorities, including respect for human rights, fair wages, and responsible environmental practices.
- Trade agreements should permit governments to promote investment towards environmentally sustainable economic activities, and to adapt market mechanisms to require that they internalize the social and environmental costs of unsustainable production and consumption.
- Trade agreements should include provisions that guarantee the basic rights of working men and women, assist workers to adjust to changes caused by economic integration, and promote the improvement of working and living conditions for workers and their families.
- National governments should commit to full consultation with their legislatures and citizens, and with sub-national governments and legislatures, before ratifying a new trade agreement.

In advancing these positions, it is vital that we build stronger connections between activists from the northern and southern halves of the Americas. By enhancing our mutual understanding of the challenges of economic integration, we can advance the work of building a viable alternative to the neo-liberal model.

Notes

- 1 Hartridge, David. "What the General Agreement on Trade in Services (GATS) Can Do," in *Opening Markets for Banking Worldwide: the WTO General Agreement on Trade in Services*, proceedings of a conference held in London on January 8 1997.
- 2 Scott Sinclair, *The GATS and Canadian Postal Services*, Canadian Centre for Policy Alternatives, March 2001
- 3 FTAA—Negotiating Group on Services: *Report to the Trade Negotiations Committee*, [FTAA.ngsv/01] October 7, 1999.
- 4 The US released a public summary of its FTAA negotiating positions on January 17 2001. It is available from the USTR web site: www.ustr.gov/regions/whemisphere/ftaa.html.
- 5 In addition to including subsidies in the definition of measures covered by the GATS rules, GATS article XV commits WTO members to negotiate specific rules on subsidies and to provide information about all subsidies related to trade in services. The rules developed for services subsidies in these negotiations would parallel those in the WTO Agreement on Subsidies and Countervailing Measures (SCM), which concern subsidies for goods.
- 6 NAFTA article 1213.2.
- 7 Canada's public summary of its FTAA negotiating position on services was released in February 2001. This document and summaries of Canada's FTAA proposals in other areas are available on the DFAIT web site: www.dfait-maeci.gc.ca/tna-nac/.
- 8 This exclusion, which is found in GATS article I.3(c), is the subject of much disagreement between critics and proponents of the GATS.
- 9 GATS articles VI.4, VI.5.
- 10 *Inside US Trade*, "Democrats Turn Up Pressure On Administration On Jordan FTA," 30 March 2001.



What exactly are we asking for?

- **Democratization** of the FTAA negotiations
- **Active involvement** of civil society in the negotiations
- **Inclusion** of workers' rights in the negotiations
- **Exclusion of health, education, social and other public services** from the FTAA
- **Respect** for all human rights
- **Investment rules** to be excluded from the FTAA
- **Trade agreement** serving labor, social and environmental rights
- **FTAA texts** to be published



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