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Alternatives for the Americas

DISCUSSION DRAFT #3

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What is the Hemispheric Social Alliance?

The HSA is a network of labor organizations and citizens coalitions representing more than 45 million people from throughout the Americas. It was created to facilitate information exchange and joint strategies and actions towards building an alternative, democratic model of development that benefits our peoples. The HSA is an open space for organizations and movements interested in changing the policies of hemispheric integration and promoting social justice in the Americas.

The initiative to create the HSA came out of a May 1997 meeting held parallel to the FTAA Trade Ministerial in Belo Horizonte, Brazil. In April 1999, the Alliance was formally constituted, and a Secretariat was established at the Mexican Action Network on Free Trade (RMALC) in Mexico City. In addition to RMALC, members of the HSA Coordinating Committee include:

- Common Frontiers / Canada
- Iniciativa Civil para la Integración Centroamericana (ICIC)
- Réseau Québécois sur l'Intégration Continentale (RQIC) / Québec
- Alliance for Responsible Trade / United States
- Congreso Latinoamericano de Organizaciones Campesinas (CLOC)
- Red Brasileña para la Integración de los Pueblos (REBRIP)
- Organización Regional Interamericana de Trabajadores (ORIT)

For more information on HSA member organizations, objectives, and activities, contact:

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In preparing this version of Alternatives for the Americas, international teams were set up to coordinate input around each chapter. The participants in those teams circulated drafts by email and met in various countries to discuss their respective proposals. The following individuals were the coordinators of their respective teams:

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1. INTRODUCTION

The Hemispheric Social Alliance brings together a broad range of organizations from throughout the Americas united by the conviction that any form of economic integration among our nations must serve first and foremost to promote equitable and sustainable development for all of our peoples. The members of the HSA, whether labor unions or environmentalists, family farmers or scholars, have been working for years to oppose the implementation of neoliberal policies in our respective countries. In addition to our shared critique of the negative impacts of that model, we are united by our conviction that we must move forward with both feet, combining protest with proposal, developing a common vision about what an alternative form of integration might look like. This document expresses our determination to construct an alternative to the Free Trade Area of the Americas (FTAA) based on the proposals described herein.

The Hemispheric Social Alliance does not support the extension of the North American Free Trade Agreement (NAFTA) or any accords based on the neoliberal model throughout the hemisphere. We will oppose any agreement drafted along those lines. At the same time, we see the defeat of free-trade agreements as only the first step. We refuse to accept a status quo that continues to marginalize vast sectors of our populations and to degrade our environments. Driving our collective work on alternatives is the sense that the neo-liberal economic model has been a disaster for most of the peoples of the hemisphere.

Peasants whose labor once fed their nations and themselves are forced to export risky "cash crops" to bring in foreign currency and to provide the well-to-do in the North with meat and fresh produce throughout the year. This has resulted in hunger for many and reduced food quality for others, and has driven hundreds of thousands of small farmers from their lands.

This growing export dependency has added to the plight of landless peasants, particularly in countries where the ownership of the bulk of agricultural land is concentrated in a small number of hands. In Brazil, for example, despite decades-long promises of land reform, one percent of land owners control 44 percent of the lands. Over the past decade private militias and police have killed several hundred landless peasants participating in peaceful occupations of idle or underused lands belonging to wealthy landowners.

With the decline of subsistence agriculture, young women and indigenous peoples have often been forced into our hemisphere's export processing zones, particularly in Mexico and Central America. Paid less than a living wage, they are forced to live in squalor and often subjected to sexual harassment. Long working hours strain their family ties and limit their educational opportunities.

Peasants forced to abandon their lands sometimes come to the cities of our hemisphere to seek work. But what many find is unemployment and poverty and a life in the "informal economy," as much domestic manufacturing has been eliminated by the penetration of transnational corporations and rules that prohibit efforts to strengthen the domestic economy.

Other displaced peasants come north and are met by the militarization of the U.S. border with Mexico, new laws that violate their civil rights, and racist hysteria promoted by right-wing politicians and their constituencies.

Neo-liberal rules to deregulate capital markets, combined with new telecommunications technologies, have opened our nations to the vagaries of hot money. Speculators pull their

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money in and out of our nations at will, leaving misery in their wake as usurious interest rates and currency devaluations slash the buying power of our wages and drastically reduce opportunities for livable wage work.

U.S. and Canadian workers have felt the pain of the elimination of hundreds of thousands of living wage manufacturing jobs. Many have been unable to find comparable work and their sons and daughters are facing the prospect of either no work at all or jobs that are temporary or part time with pay below what it takes to live a decent life in these countries.

In the U.S. and Canada, the governments are destroying publicly subsidized housing and housing programs as the ranks of the homeless soar. This has had a disproportionate effect on women, especially poor women. Public funds for basic subsistence living - food, clothing and medical care - programs won by workers' struggles of the past, are being eliminated, and people are told to find non-existent jobs. Meanwhile in both the U.S. and Canada, the call to balance budgets is further straining workers and the poor as programs in health care, education and public transportation are privatized, eliminated or seriously cut back.

Throughout the hemisphere, there is a stratum of society that is doing very well by neo-liberal policies. The speculators, the transnational corporations and those in their service proclaim the wonders of the market. But for most of us, the past 25 years have meant declining living standards and in many cases abject poverty.

Neoliberalism entails the imposition of a set of rules that govern not only the economy but also the social fabric of our societies. The issue for us, therefore, is not one of free trade vs. protection or integration vs. isolation, but whose rules will prevail and who will benefit from those rules.

The first Peoples' Summit, held in Santiago, Chile, in April 1998 parallel to the official Summit of the Americas, brought to the light of day the fact that there is a rising movement of resistance. This has emerged even more forcefully at the failed WTO meeting in Seattle and at virtually every gathering of official policymakers since then. This movement is one of people telling those political leaders, financial speculators and the transnational corporations who promote neoliberal policies that their agenda is unacceptable. It is a movement of people demanding their very humanity. They do so by stating that nutritious food, a comfortable place to live, a clean and healthy environment, health care and education are human rights. And they declare that respect for the rights of workers, women, indigenous peoples, black peoples and Latinos living in the United States and Canada must be central to any process of integration.

Supporters of neoliberalism are attempting to counter the resistance of the peoples of the Americas in a number of ways. In the United States, corporate giants have launched a massive propaganda campaign to "educate" the public on the benefits of free trade. In many countries, an extreme response has been to utilize the nation state as an instrument of terror against its own peoples. Under the guise of a "war on drugs", counter-insurgency efforts such as the Plan Colombia have become a plague in our hemisphere. Furthermore, the suppression of the popular movements throughout Mexico, Central and South America attempts to limit the demands of the peoples of our nations.

History teaches many things. One lesson can be found in the words of the great African-American emancipator, Frederick Douglass,

"If there is no struggle, there is no progress...Power concedes nothing without a demand; it never has and it never will...Find out just what any people will quietly submit to and you have found the exact measure of injustice and wrong."

Another lesson of history is that no amount of oppression can stop people from declaring their own humanity and acting on that declaration.

The first Peoples Summit created a space for the peoples of the Americas to tell those political leaders, financial speculators and the transnational corporations who promote neoliberalism that their agenda is unacceptable. This is a movement of the peoples of the Americas demanding their very humanity. They do so by stating that nutritious food, a comfortable place to live, a clean and healthy environment, health care and education are human rights. And they declare that respect for the rights of workers, women, indigenous peoples, black peoples, and Latinos living in the U.S. and Canada must be central to any process of integration.

The first Peoples' Summit did not stop with the negation of the neo-liberal rules; it began a dialogue about alternatives. An earlier version of this document was based on those talks. It has continued to enrich our discussions and the very formation of the Hemispheric Social Alliance. This new version of "Alternatives for the Americas" is the product of that continuing dialogue and is thus rooted in the aspirations of the peoples of our hemisphere to live and develop as full human beings. These aspirations to build a more egalitarian and respectful society throughout the hemisphere transcend national boundaries and have a long historical tradition in the Americas. They go back at least as far as the struggles to create free and independent countries in the American hemisphere. Almost two centuries ago Simón Bolívar, who led the movement to liberate a large part of South America from colonialism, declared:

"I wish, more than anything else, to witness the creation in America of the greatest nation in the world, not so much because of its immense territory or wealth, but rather because of its freedom and glory."

"Alternatives for the Americas" is not solely an economic doctrine, but is rather an approach to social integration through which the ideas, talents and wealth of all of our peoples can be shared to our mutual benefit. It is a living document that will be altered and expanded as we exercise our rights to continue the debate and discussion.

2. SUMMARY

This document addresses the major topics on the official agenda of the FTAA negotiators (investment, finance, intellectual property rights, agriculture, market access, services, and dispute resolution), as well as topics that are of extreme social importance but which governments have ignored (human rights, environment, labor, immigration, the role of the state, and gender).

General Principles: Trade and investment should not be ends in themselves, but rather the instruments for achieving just and sustainable development. Citizens must have the right to participate in the formulation, implementation, and evaluation of hemispheric social and economic policies. Central goals of these policies should be to promote economic sovereignty, social welfare, and reduced inequality at all levels.

Human Rights: A common human rights agenda should form the overall framework for all hemispheric policies, and include mechanisms and institutions to ensure full implementation and enforcement. This agenda should promote the broadest definition of human rights, covering civil, political, economic, social, cultural, and environmental rights, gender equity, and rights relating to indigenous peoples and communities.

Environment: Governments should subordinate trade and investment to policies that prioritize sustainable development and environmental protection. They should also have the power to channel investment towards environmentally sustainable activities, reject privatization of natural resources, eliminate policies that subsidize or encourage fossil fuel energy, and use the precautionary principle in setting public policies.

Labor: Hemispheric policies should guarantee the basic rights of working men and women, create a fund to provide compensation to workers and communities suffering job losses, and promote the improvement of working and living standards of workers and their families.

Immigration: Governments should adhere to international conventions on migrants' rights; ensure labor rights for all workers—regardless of immigration status—and severely penalize employers that violate these rights; grant amnesty to all undocumented workers within their borders; demilitarize border zones; and support international subsidies for areas that are major exporters of labor.

Role of the State: Hemispheric policies should not undermine the ability of the nation state to meet its citizens' social and economic needs. Nation states should have the right to maintain public sector corporations and procurement policies that support national development goals. The goal of national regulations on the private sector should be to ensure that economic activities promote fair and sustainable development.

Investment: Investment should generate high-quality jobs, sustainable production, and economic stability. Governments should have the right to screen out investments that make no net contribution to development, especially speculative capital flows. Citizens groups and all levels of government should have the right to sue investors that violate investment rules. The NAFTA mechanism that allows investors to sue governments directly should be abolished and banned from other agreements.

Finance: 100% of all debts of low-income countries and the illegitimate debts of middle-income countries should be canceled. The structural adjustment programs of the World Bank and IMF must be abandoned, and these institutions either fundamentally restructured or

replaced. Countries should be allowed to impose controls on capital flows and a multilateral mechanism should be developed to regulate speculative activity. Governments should have the power to establish their own monetary and financial policies and resist dollarization.

Intellectual Property: Governments should have the power to establish intellectual property rules that reflect their specific social, cultural and economic contexts. This should include the right to provisions to guarantee access to essential drugs and protect biodiversity, indigenous knowledge, and traditional and farming communities. All life forms should be excluded from patentability.

Agriculture: To ensure food security, countries should have the right to protect or exclude staple foods from trade agreements. Hemispheric policies should support upward harmonization of financial assistance for agriculture (as a percentage of GDP), strengthened protections for agricultural laborers, and traditional rights of indigenous peoples to live off ancestral lands.

Market Access: Developing countries should work with developed countries to implement special policies to address the inequalities between our countries. The current dominant principle of “national treatment,” which requires governments to treat foreign investors and products no less favorably than domestic ones, severely restricts national development planning. Governments should be allowed to pursue policies to strengthen domestic demand rather than relying entirely on external markets. Measures are necessary to ensure that nontariff barriers reflect legitimate social interests.

Gender: International conventions on women’s rights should be central to all hemispheric policies. Women should have greater opportunities to participate in policy-making. Governments should also establish national laws to ensure affordable child care; address workplace sexual harassment; and implement the UN 20/20 initiative to allocate 20 percent of budgets to social programs. Women should have equal access to credit, education and other resources.

Services: Basic services such as education, health care, water and other utilities should be available to all people throughout the hemisphere. Countries should promote national development interests and prioritize environmental and other social concerns above the goal of efficient resource allocation. Governments must also develop and maintain the technical and institutional capacity to effectively regulate services.

Enforcement and Dispute Resolution: If the proposed policies are to be meaningful, they must be accompanied by dispute resolution and enforcement mechanisms that are focused on reducing inequalities and based on fair and democratic processes. These should be designed to create sufficient incentives to encourage compliance so that enforcement actions can be avoided. This would involve an assessment of compliance in each country, action plans to address obstacles to compliance, and, as a last resort, the withholding of trade agreement benefits for corporate violators and/or governments with a record of pervasive non-enforcement.

3. GENERAL PRINCIPLES

Background

No country can nor should remain isolated from the global economy. This does not mean, however, that the current “neo-liberal” or free market approach to globalization is the only, much less the best, form of economic integration.

This dominant free market approach (embodied in the North American Free Trade Agreement, large multinational corporations’ negotiating agenda for the Free Trade Area of the Americas, the World Trade Organization, and the failed Multilateral Agreement on Investment) argues that the global market on its own will allocate and develop the best possibilities for each country. Thus, free trade does not simply involve opening ourselves to global trade; it also entails renouncing our role as active subjects in determining our future, and instead allowing the market to decide the future for us. According to this view, it is unnecessary for us to envision the kind of nation we want to be or could be. We only need to eliminate all obstacles to global trade, and the market itself will take on the task of offering us the best of all possible worlds.

The difference between this dominant approach and the alternative vision presented in this document lies not in whether we accept the opening of our economies to trade. The two fundamental differences are the following: 1) whether to have a national plan we can fight for or let the market determine the plan, and 2) whether capital, especially speculative capital, should be subject to international regulation. The recent trend has been to allow all capital, even speculative capital, free rein, and let the world follow capital’s interests. We argue that history has demonstrated that the market on its own does not generate development, let alone social justice. In contrast, we propose a world economy regulated at the national and supra-national levels in the interest of peace, democracy, sustainable development and economic stability.

Our position in this regard is very clear: we cannot remain on the sidelines but must claim our role as valid stakeholders in the globalization dialogue. We must refuse to accept the current neo-liberal form of globalization as irreversible. We must not only reduce its negative consequences, but put forward a positive alternative.

We must find ways to take creative advantage of globalization and not passively submit to it. As citizens of the Americas, we refuse to be ruled by the law of supply and demand and claim our role as individuals rather than simple commodities governed by the laws of the market.

Free trade has produced only social and economic exclusion. This has resulted in the creation of a social stratum of citizens devalued by the current economic system and the society that supports it. Exclusion renders people unable to enter or re-enter the economic circuit. The inability to reintegrate leads to a process of social “disqualification” and the loss of active citizenship. Anyone who has felt the negative effects of the transition to free trade, has become chronically unemployed or whose job is precarious, lives and knows this exclusion.

We are not opposed to the establishment of rules for regional or international trade and investment. Nor does our criticism of the dominant, externally imposed form of globalization imply a wish to return to the past, to close our economies and establish protectionist barriers,

or to press for isolationist trade policies. But the current rules have not helped our countries overcome, nor even reduce, our economic problems. We propose alternative rules to regulate the global and hemispheric economies that are based on a different economic logic: that trade and investment should not be ends in themselves, but rather the instruments for achieving just and sustainable development. Our proposal also promotes a social logic that includes areas such as labor, human rights, the environment, and minorities--that is, previously excluded issues and people.

While our critique and proposal have a technical basis, they also spring from an ethical imperative. We refuse to accept the market as a god which controls our lives. We do not accept the inevitability of a model of globalization which excludes half or more of the world's population from the benefits of development. We do not accept that environmental degradation is the inevitable and necessary evil accompanying growth. We will not easily come to the position that economic measures applied in recent years throughout the Americas are the only way to set an economy on the right path.

A profound ethical imperative pushes us to propose our own model of society, one supported by the many men and women united in hope for a more just and humane society for themselves and future generations.

Guiding Principles

1. Democracy and Participation

Debates, decision making, and framework building in matters of economic integration have mostly been dominated by financial, corporate, and political elites. Greater democratization in trade and investment decision making must be introduced. International agreements should be ratified by citizens through direct consultation, for example, through plebiscite or national referendum.

The democratization of debates and decision making is a necessary precondition, but not sufficient in itself for the development of new just and sustainable rules on investment, environment, and labor. Citizens must not only approve economic and social policies, but also participate in their formulation, implementation, and evaluation. Furthermore, they must be able to change or modify these policy directions.

Global corporations have grown so large that they can no longer be effectively controlled by our governments. We need new instruments to reassert public control and citizen sovereignty over these firms.

The political stability needed for sustainable development requires agreements on economic integration to include mechanisms to ensure democratic security. Stability should be based on democratic participation and not on coercion. Any agreement should promote democracy in the Americas, without being interventionist in internal affairs. Democratic and non-coercive security entails civilian monitoring (accountable to citizens) of the forces of law and order. Civilian control is required, for example, to halt the arms race and the militarization of broad areas of the Americas which is currently being conducted under the pretext of fighting arms and drug trafficking and drug production.

International democratization requires the reform of United Nations institutions, including the Security Council, as well as international banking and trade institutions. The reforms must be based on consultation in every country and should be oriented to serving humankind's objectives: sustainable development and democracy and peace based on justice and respect

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for human dignity. Such institutions should not continue to be the tools of large multinational corporations and nuclear powers. The democratization of the world and inter-American system must also stop the exclusion of countries for ideological or political reasons, as is currently the case with Cuba.

All integration agreements must ensure that the defence and promotion of human rights, taken in the broadest sense, is also globalized. That is, not only civil and political rights and individual protections should be included, but also the collective rights of peoples and their communities: economic, social, cultural, and environmental. Special attention should be given to the rights of indigenous communities and peoples, and mechanisms put in place to eliminate all forms of discrimination and the oppression of women.

2. Sovereignty and social welfare

The rules flowing from agreements should preserve the power of individual countries to set high standards of living, valuing dignified work, the creation of enough good jobs, healthy communities, and a clean environment within their borders. There should be no limitations on the sovereignty of states, provinces or localities.

In today's world, economic sovereignty, stability and social welfare require making productive economic activities a priority, while discouraging speculative investment and regulating the free flow of footloose capital. Corporate interests should not undermine the economic sovereignty of our countries.

Economic integration should represent a commitment to improve the quality of life for all. Our countries should not be promoted on the basis of low wages, lack of social protections or lax enforcement. National competitiveness cannot be rooted in the deterioration of standard of living and/or the environment. Equalization of standards should be achieved through upward harmonization. Trade and integration accords, as well as domestic economic policies, should include social objectives, time tables, indicators of social impact and corrective remedies.

National governments must protect local efforts aimed at achieving viable, economically sustainable and food self-sufficient communities, both urban and rural.

Giving priority to welfare in international agreements means reducing military budgets and allocating resources to people's education and health. Money saved through military reductions in powerful nations should be channelled toward an international war on poverty.

Combating drug production, trafficking and consumption should be an element of integration accords. Rather than taking a purely military approach, however, this should be achieved through mass educational campaigns, the elimination of the poverty driving this lucrative business, fighting against corruption and the involvement in the drug trade of high-level authorities, and other measures aimed at the root causes of the problem. International agreements must preserve the sovereignty of nation states over domestic matters and in the application of their own laws. They should not allow for the presence of armed troops or foreign police forces within the borders of a sovereign nation.

3. Reduce inequalities

A main objective of any agreement should be the reduction of inequalities within and among nations, between women and men, and among races.

A) Among nations: The rush toward the integration of highly unequal economies without social protections is creating a climate in which large corporations can reduce the standard of living and wages in all regions of the world. The new rules should include mechanisms to reduce imbalance among nations through raising living standards in the poorest countries. This would not only be a step toward meeting the demands for justice and equity in these countries. It would also reduce the power of corporations to take advantage of such inequalities to weaken standards and wages everywhere by threatening to move production to areas where labor costs and environmental protections are lower.

B) Within nations: Inequalities and extreme poverty have been on the increase for more than a decade in the Americas. The new rules should reduce these inequalities, encouraging redistribution of income, land and natural resources.

C) Between women and men and among races: Women as well as certain racial and ethnic groups have had to shoulder a disproportionate share of the economic and social decline caused by neo-liberal policy. Discrimination must be ended by implementing new strategies and economic models, along with social programs and the intensification of international cooperation toward this end. Moreover, efforts to reduce inequalities should not mean giving up countries' rich diversity or accepting a homogenized globalization. On the contrary, it implies taking this diversity into account and strengthening it.

4. Sustainability

Along with the war on poverty, sustainability and protection of the environment are the fundamental challenges for any economic strategy or integration agreement. Trade agreements should give priority to the quality of development, which implies establishing social and environmental limits to growth. Sustainability and the welfare of the population should take precedence over short-term profits.

The new rules on integration should allow for more democratic control of land and natural resources and genuine respect for indigenous rights and land. Rich countries and major corporations have accumulated an ecological debt and occupy an "ecological footprint" far greater than their population and territory warrants. New agreements should allocate the costs of transition towards a sustainable model based on principles which recognize common concerns and different responsibilities. A truly sustainable alternative agreement would also include a comprehensive restructuring of incentives and rules designed to ensure that industrial production reflects its true, long-term costs.

Finally, efforts to promote sustainability should go beyond the natural world to include social sustainability, including the protection of child and family welfare and minority rights. This requires the creation of effective sanctions against policies which attract investment through promises of low wages, super-exploitation of women, or a free hand in exploiting natural resources in areas where the population is under the control of local elites.

4. HUMAN RIGHTS

Background

Over the past century, there has been an evolutionary process of defining human rights that has led to agreements as well as differences, depending on the historical moment as well as regional and global dynamics. As a result, there are now international conventions and declarations that have established legal mechanisms to ensure that all people enjoy civil and political; economic, social and cultural; as well as environmental rights and those of peoples and communities.

Nevertheless, governments continue to either ignore prior commitments to the international community on human rights or they treat these commitments separately from economic matters. In some extreme cases, they have pushed for collective, social and labor rights to be excluded from constitutional protection. Frequently, free trade negotiations end up modifying domestic social pacts, making the weakest social partners bear the brunt of concessions made to transnational corporations. These strategies have put human and social rights in jeopardy and have led to the deterioration of protections as well as the weakening of domestic and international enforcement mechanisms.

These practices ignore the fact that, according to international law, the primary obligation of governments, and of the other actors in the international scene—such as the international financial institutions and transnational corporations—is to respect and ensure the exercise of these rights by all persons. Human rights must not be an element tacked on to negotiations, but rather the legal and normative framework for international economic relations. Trade relations should be seen as a means and not as an end for development, since the primary obligation of any government is to achieve its citizens' well being.

The current neoliberal approach to globalization has exacerbated the marginalization of broad sectors of the hemisphere's population. In this context, three basic points must be considered:

1. Democracy is closely linked to human rights. States and authorities can only be considered legitimate if they enforce, promote and guarantee these fundamental rights, broadly defined.
2. Without equity in their standards, policies and administrative practices, governments lose their legitimacy and the capacity to govern their peoples.
3. Human rights must never be sacrificed to a model of development that threatens human dignity.

We must strengthen the efforts made by the peoples of the Americas to build a common vision and action plan on human rights. This common agenda must govern any economic, financial and trade agreement in the hemisphere and include mechanisms to ensure full implementation and enforcement. It will not gain strength without the common aspiration of all our peoples to make agreements and existing human rights mechanisms effective in regional and international settings.

Guiding Principles

1. The individual is the subject of all rights and liberties, and human rights implies the strengthening of opportunities and capacities so that all persons can enjoy them.
2. Economic, social and cultural rights are necessary preconditions for any possibility of effective, egalitarian and non-discriminatory civil and political rights. They set the minimum that governments should cover on economic and social matters in order to guarantee the functioning of just societies and to legitimize their own existence. Reducing the government's role in ensuring the enjoyment of civil and political rights without considering the full exercise of economic, social and cultural rights would bring intolerable discrimination that favors those sectors that have already benefited from the unequal distribution of wealth and therefore reproduce social inequalities.
3. Governments have the primary obligation to respect, protect and promote human rights. Nevertheless, other actors have the duty to respect such rights and be responsible for them. When faced with violations (by action or omission) perpetrated by such actors as transnational corporations and/or multilateral institutions, governments and the international community should adopt, individually or through international cooperation, effective measures to prevent, raise objections to, or sanction violations of those rights anywhere.
4. Just as they have done regarding the Universal Declaration of Human Rights, all countries in the hemisphere who are part of the United Nations and have not already done so, should sign and ratify the following international and regional human rights instruments, ensuring that they are included in the content of any hemispheric, bilateral or multilateral agreement negotiated and signed:

International Instruments:

- International Covenant on Civil and Political Rights
- Optional Protocol of the International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights, including support for the creation of an Additional Protocol.
- The Vienna Convention on the Right of Treaties between States and International Organizations (1969)
- International Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of the Child
- International Convention on the Elimination of All Forms of Racial Discrimination
- International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention for the Prevention and Sanction of the crime of Genocide
- Statute of the International Penal Court
- Vienna Declaration and Programme of Action (1993)
- United Nations Declaration on the Right to Development
- Conventions related to the Core Conventions of the International Labor Organisation (ILO), including the Elimination of Forced Work, Union Rights and Collective Bargaining, Equality and Non-discrimination, the Eradication of Child Labor, as well as Conventions related to the Rights of Migrant Workers and their Families and Convention 169 on the Rights of Indigenous Communities and Peoples.

Regional Instruments

- American Convention on Human Rights

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- Additional Protocol to the American Convention on Economic, Social and Cultural Rights, the "San Salvador Protocol"
- Interamerican Convention on the Forced Disappearance of Persons
- Interamerican Convention to Prevent, Sanction and Eradicate Violence against Women
- Interamerican Convention to Prevent and Sanction Torture

The recognition of the rights derived from existing obligations and the ratification of pending accords are only the first step toward the full implementation of human rights. This will bring into effect the Right to Development as a universal and inalienable right and as an integral part of fundamental human rights as declared by the General Assembly of the UN in 1986.

1. The Declaration on the Right to Development constitutes an essential framework for the full exercise of human rights, covering and integrating the other rights. Therefore, as long as the process of globalization continues to deny governments the necessary autonomy to develop their countries, it will not be possible to combat the social injustices that already exist and are increasing in our hemisphere. If globalization is to have a positive result for the Americas, it must start from the recognition that we are all citizens of the same planet, and that we are endowed with human dignity, which is the source of all of our rights.
2. Governments should prohibit all forms of discrimination based on gender, sexual orientation, race, ethnicity, religion, membership in any social or cultural group, nationality, or political views. They should establish effective domestic and international measures to eradicate "ethnic cleansing" which includes physical extermination or marginalization of and attacks on any social groups that experience discrimination within society, including gays and lesbians, persons with HIV/AIDS, street children, black people, prostitutes, and indigenous communities.
3. The region's governments should support the establishment and ratification of a Universal Declaration and Conventions on Indigenous Rights before the conclusion of the Decade of Indigenous Peoples (2004), to which would be added a Permanent Indigenous Forum as part of the United Nations.
4. All trade, economic and financial agreements should include, at minimum, a "democracy clause" guaranteeing the full functioning of a state of law and democratic institutions with unlimited protection of broadly defined human rights. The countries of the Americas, however, should also proceed toward the adoption, as soon as possible, of an Americas Social Charter directed to ensure the commitment of all of the hemisphere's governments to human rights, including our peoples' right to development.
5. The hemisphere's governments should guarantee that neutral and objective administration of justice on the part of judicial organizations is considered necessary and essential for our countries' and the region's governability. They should recognize that impunity and influence-peddling are currently fundamental obstacles that must be overcome in order to consolidate a truly democratic culture and values system.
6. Treaties should effectively guarantee the participation of civil society in the design, adoption, implementation and monitoring of these treaties, clearly defining transparent mechanisms for participation and responsibilities of the different actors in the process.

Strengthening and Reform of the Interamerican System of Human Rights through the following:

1. increase the effectiveness of public scrutiny of human rights.
2. strengthen the Commission and the Inter-American Court on Human Rights with the allocation of economic resources that they both require for their effective functioning and to hold permanent sessions, the enforcement of its decisions and collaboration in the processes it carries out, as well as for making precautionary and provisional measures more effective through the recognition of its jurisdiction by all countries in the hemisphere.
3. ensure the direct participation of victims or their representatives in all stages of hearings before the Interamerican Court and transparency in its criteria and proceedings.
4. establish an independent, international body to protect foreign migrants and domestic displaced persons. The governments should also establish domestic regulations, in accordance with the relevant international instruments, to ensure effective implementation of the right to asylum and/or refugee status, while guaranteeing that these mechanisms are not used to grant impunity to those responsible for human rights violations.
5. make NGOs and other social organizations' formal participation status at the OAS more effective, recognizing their consultative status.
6. adopt effective measures to protect human rights defenders.
7. implement the recommendations issued in early 2000 by the Ad Hoc Group on the Evaluation of the Interamerican System for the Protection of Human Rights, taking into account the contributions made by civil-society organizations, in order to achieve effective protection of victims of violations and to strengthen the work of popular education and defense of human rights in general.
8. ensure that the election of members of the Commission and judges on the Interamerican Court meet criteria of independence, suitability and competence through a public and transparent process.
9. reaffirm the exercise of freedom of expression, eliminating any form of criminalization of public debate.
10. promote transparency in public administration, adopting legislation and measures to implement the right to information.

In order to implement these international commitments, all parties should ratify the principles of cooperation and coordination among international, regional and national human rights protection instruments.

Specific Objectives

1. Ensure the promotion, enforcement and enforceability of human rights, defined broadly and inseparably (the right to gender equity, civil and political, economic, social, cultural, environmental rights and those relating to peoples and communities) within national borders and in the international sphere, as part of integration and globalization processes.

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2. Expand the number of recognized rights universally to all citizens of the Americas.
3. Ensure the right to communication, research and access to information and opinions, taking into account groups that currently and historically have less access. Establish the obligation of member states to repeal all official censorship measures.
4. Ensure the right of all individuals affected by violations of their human rights to have access to simple, rapid and effective legal services that lead to restitution, compensation, rehabilitation, satisfaction, and the guarantee that the offending acts will not be repeated, according to basic guiding principles of the rights of victims of human rights violations and the international humanitarian right to reparation (UN document E/CN.4/1997/104). Affected individuals should also have the right to their choice of mechanism to achieve the most timely and effective response.
5. Ensure the implementation of the decisions issued by the various agencies of the Universal and Regional Human Rights Protection System; collaborate in processes that handle and allocate sufficient economic resources for that systems' functioning. The member governments of the OAS are collective guarantors of said compliance, so they should ensure the objectives of investigations, sanctions for responsible parties, reparations for victims, and the adoption of measures so that the offending acts will not be repeated.
6. Initiate human rights and gender equity awareness training programs for civilian authorities responsible for the armed forces and law enforcement. Incorporate human rights into the curriculum of formal and informal education from pre-kindergarten through higher education.

5. ENVIRONMENT

Background

Liberalization of investment and the opening of trade through the free trade agreements signed to date, especially the North American Free Trade Agreement, have had severe social and environmental impacts on peoples and workers. The peoples of the Americas aspire to an international economy based on different principles—an economy that makes sustainability a priority.

The problem with classic trade and investment policy from an environmental perspective is that it "externalizes" (does not account for) environmental and social costs, while fostering more intense energy use, especially of fossil fuels, over-exploitation of natural resources, and damage to biodiversity, all of which erode the underlying basis of the economy and society. Such policies intensify the expropriation of genetic resources, the destruction of natural ecosystems, environmental degradation in agricultural and urban areas, environmental deregulation, and the violation of the individual and collective civil rights of generations present and future.

Environmental degradation has also had a disproportionate effect on people living in poverty, especially women, as these groups tend to live with the impact of contaminated habitats and resources in places where there is less political will to improve conditions. Supporters of these policies view components of sustainable development as limitations to trade (e.g., food security, the protection of collective wisdom about and use of biodiversity, the sustainable use of ecosystems and the existence of fair and equitable ways of sharing the benefits of natural resources). Governments for the most part have rejected these ideals, yielding instead to international market pressures.

Environmental concerns cut across all topics. Therefore the points set out below are taken up more concretely or complemented in other chapters, such as those on energy and intellectual property rights.

Guiding Principles

1. Any international negotiation or agreement on trade and investment should establish the preeminence of environmental agreements signed by the governments of the Americas, i.e., provisions in environmental accords should take precedence over trade and investment agreements. Environment and sustainability should not be limited to a single area of economic-financial accords, but rather be addressed as an overarching dimension and perspective throughout any such agreements.
2. Quality of development should be a key priority. Governments should establish social and environmental limits to growth on the basis of environmental sustainability and social equity.
3. International trade agreements and nation states should establish plans to gradually internalize environmental and social costs arising from unsustainable production and consumption. If this leads to higher prices, governments should conduct awareness-

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- raising campaigns to encourage high-income consumers to purchase goods produced in a sustainable way.
4. The environmental costs of transition to trade and investment practices that are fair and environmentally sustainable should be dealt with equitably, acknowledging that the parties to an agreement may have different responsibilities for achieving common goals.
 5. Governments should recognize that there is an existing ecological debt among nations. This has resulted from richer nations occupying an "exaggerated environmental space," meaning that they utilize and exploit a share of the world's natural resources that is disproportionate to their population and territory.
 6. Governments should establish strict timelines to end international trading of products that harm the environment. During the transition period, tariffs should be imposed to discourage trade in such products and prevent their use.
 7. Environmental regulations should be governed by the precautionary principle (i.e., the principle that, when in doubt, we should take the most environmentally cautious course of action), rather than risk assessment (which applies economic cost-benefit analysis to environmental resources).
 8. Trade should be accompanied by incentives for the conservation of soil and natural resources and to reduce and move toward the elimination of chemicals that damage the environment. It should encourage sustainable development and production close to the place/site of consumption.
 9. Social and ecological dumping should be rejected.
 10. Trade liberalization must not hinder countries' capacity to channel foreign investment toward those sectors in which sustainable development can be strengthened.
 11. Trade and investment liberalization must not hinder the regulation and control of companies and investors to ensure compliance with a country's sustainable development objectives.
 12. Foreign companies and investors should be held to the highest environmental standards, and obliged to share technologies that preserve the environment and create jobs.
 13. Countries should maintain their sovereignty over the right to restrict investment that aggravates social or environmental problems and their disproportionate impact on the most vulnerable sectors of society, such as women and indigenous peoples.

Specific Objectives

Forests

The forests of the Americas are the home of numerous indigenous peoples and other traditional communities that obtain from them the means of their physical subsistence, while at the same time ensuring their cultural survival. In addition, many other peoples and rural inhabitants living in areas near forests obtain from them numerous goods and services that ensure their livelihoods. Forests are also repositories of most of the current land-based biodiversity in the hemisphere, and also fulfill essential environmental functions, as much in the local as global realms. Therefore, the risks that the free trade model imply for forests of the region and for those who depend on them must be carefully evaluated.

The experience and results of trade agreements in this hemisphere, especially NAFTA, as well as neoliberal policies in general, show that the standards of protection for forests have been weakened. Indiscriminate logging has seriously harmed the peoples that inhabit the forests or those that depend on forests. Moreover, employment has been lost in the forest sector and the exploitation of native forests without improvements to inefficient and destructive forest extraction systems has accelerated. Industrial forest plantations cannot be considered to be forests, since they lack the majority of their characteristic values and in general contribute to processes of deforestation.

Therefore, any international agreement in the Americas should:

1. Consider forests as varied and complex ecosystems, so that their use should respect the balance of biotic and abiotic factors. In the Americas, forests are the home of many peoples – especially indigenous peoples – and therefore their territorial, social and cultural rights, their ways of life and civilization and the use of their natural resources should be ensured.
2. Forest conservation should be a priority objective of integration processes, and therefore trade and investment agreements should be subordinated to international environmental agreements and to national laws and policies on conservation of biodiversity and forests, including the environmental services that they provide.
3. The design and implementation of territorial regulations that contribute to linking agrarian policies with forest policies, must incorporate the needs and priorities of local populations through the promotion of their active participation in decision-making.
4. The design of suitable indicators that are objective and neutral to measure the impact of economic integration processes on this and other natural resources should be established.
5. The elimination of environmental and agricultural subsidies that favor the indiscriminate use of forests. Instead, subsidies should be created for sustainable technologies and practices, especially with native species. It is imperative to remove subsidies for plantations and large-scale monoculture. Likewise, the substitution of native forests by plantations should be avoided, and species in danger of extinction should be protected.
6. The certification of sustainable forest products should be promoted, as well as incentives to production and trade in recycled forest products. Local certification processes under socio-environmental criteria should be favored.

Biodiversity and Intellectual Property

Conservation of biodiversity has been the responsibility of thousands of communities that use and cultivate resources for subsistence rather than for profit. There is a direct relationship between cultural, natural and agricultural diversity; they support each other. The international

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exchange of the resources of biodiversity has historically been of benefit to many peoples, although benefits have been distributed less equitably over the last decades. Conservation, research and development of genetic resources ex-situ in public and private scientific centers, combined with intellectual property systems, has institutionalized the looting and monopolization of genetic resources.

The hemisphere currently faces enormous threats to its biodiversity from international trade liberalization treaties and the actions of multinational corporations, supported by national or regional legislation that covers their activities.

These threats are, among other things, contributing to the plunder and overexploitation of resources, genetic and cultural erosion, the disappearance of species of flora and fauna and traditional agricultural varieties, the disruption of ecosystems, biological contamination with genetically modified organisms, multiple economic, social and cultural impacts on peasant, indigenous and other local populations with traditional lifestyles who have been displaced by force or by the destruction of their livelihoods. There must be a rejection of intellectual property claims over life-forms and associated knowledge.

In recent years some processes that result in increasingly negative impacts on natural as well as cultural diversity have intensified. Megaprojects of natural resource exploitation, including the energy and transportation infrastructure that go with them, have a direct negative physical impact. These are, notably, the accentuation of the privatization process starting with intellectual property laws, the introduction of genetically modified organisms, the looting and privatization of genetic resources and knowledge through “biopiracy,” and the privatization – formal or de facto – of natural protected areas, depriving traditional populations of them and/or expelling them.

Taking these situations into account, the workplan of civil-society networks should include:

1. Reject the processes of privatization in all areas, particularly those related to natural resources and natural protected areas or those of great biological and ecosystemic interest, as well as the direct and indirect processes of privatization of education and research.
2. Reject and fight against intellectual property systems on lifeforms and the knowledge associated with them.
3. Recognize and protect collective rights of local communities in conservation, breeding and cultivation of biodiversity, within the broader framework of defending indigenous and campesino rights to land and resources and to continue their cultures and practice their forms of government. This requires collective rights to community property (which in many communities is the historic knowledge transmitted by women) to take precedence over the provisions of any trade treaty or intellectual property instrument.
4. Based on ILO Convention 169, ensure the inalienable right of peoples and traditional black and indigenous communities to full autonomy in decisions over their traditional habitats and the biodiversity associated with them, and the use and management of same, according to their cultural systems and traditional rights.
5. Establish and/or affirm the right of local communities to prior consultation and to veto projects of exploitation or deprivation/privatization of resources, infrastructure or industrial projects that local communities consider to threaten their economic, social and cultural lifestyles.

6. Affirm that local and ethnic autonomy should not mean that communities can sell or privatize public or collective resources of nations or states, even when they are located within their territories.
7. Guarantee free circulation of knowledge and access to genetic resources, particularly for research in the service of the needs of local communities and residents, as well as to public research centers.
8. Consequently, reject the implementation of so-called “bioprospecting” projects (i.e., prospecting for genetic resources for commercial application) since in practice they are biopiracy projects that make possible the appropriation of those resources and the traditional knowledge associated with them, so that they can be patented by agroindustry and pharmaceutical multinationals. Likewise, reject that those projects are legitimized through laws on access to genetic resources that have only served to legalize this process of privatization of resources and to restrict the use of goods that have always been public, collective and subject to free exchange. Denounce and reject the so-called “benefit sharing” mechanism, which is to say, the payment of some minimal percentage of the profits obtained by companies when they commercialize those resources, which does not avoid the process of privatization and unleashes processes of alienation and competition within and among communities or between communities and governments.
9. Recognize and compensate communities that create and conserve biodiversity for the historical ecological debt owed them because of profits made by others through genetic resources and associated knowledge. This implies, among other things, recognition (and repatriation, when appropriate) by the countries that have appropriated genetic resources present in their gene banks, zoos and herbariums.
10. Reject the development, introduction and consumption of crops and other transgenic organisms, since they imply a grave risk of biological contamination and of displacement of local varieties and species, with environmental, health and social impacts, among other things, due to the loss of control of seeds by peasants and farmers.

Sustainable energy sources

Sustainable energy development is predicated on respect for the right of communities, energy savings, and the fight against excessive energy consumption. Energy sources should be renewable, clean and low-impact, and equitable, democratic access to them must be ensured.

Energy integration should be a process that allows for the growth of potential and for cooperation among different countries, under equitable conditions that reflect each nation's economic, social and cultural characteristics.

Therefore, the following are proposed:

1. Redirect investment, loans and subsidies toward clean-energy projects and energy efficiency based on equity of access and national priorities, including sustainable transport; giving precedence to public over private, and democratic access to energy for residential, craft, business and industrial use.
2. Eliminate direct and indirect subsidies for fossil-fuel energy.
3. Develop a legislative and institutional base for the promotion of sustainable energy production. This entails support for clean energy research and dissemination

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capacity.

4. Declare a moratorium on coal, natural gas and oil exploration in new areas as part of the transition to clean, renewable and low-environmental-impact energy sources.
5. Respect the right of communities in areas affected by energy production, especially indigenous communities.
6. Enforce the use of environmental impact studies for all energy-related projects. These studies should analyze forms of energy use reduction and should consider options that are clean, decentralized and of low impact.
7. Ensure citizen participation in decision-making on energy projects, particularly by affected communities, respecting their right to reject those projects that could have negative impacts for them.

Mining

Mining in the Americas has involved many decades of heavy metal pollution and the destruction of land and sea habitats, as well as threats to the health and safety of mine workers and their families, who often live near hazardous work-sites and suffer effects to their physical and reproductive health due to contact with such contamination. These conditions are present throughout the hemisphere and reflect the inability of the public sector to control effectively the environmental impact of this activity, as well as clearly predatory corporate behavior.

The accelerated expansion of mining carried out by international companies has not been accompanied by stronger controls, regulations or safeguards for human or environmental health. Rather, it has generated a demand for greater use of resources such as water and energy.

Therefore, the governments of the Americas must ensure the following:

1. The development of mining must be approved in advance by the communities that will be affected, especially when it would have an impact on other production or soil use. The land rights of indigenous communities must be respected.
2. Implement and enforce the highest health and safety standards for workers and environmental protection as conditions for mining development.
3. Declare a moratorium on mining exploration and development in ecologically and culturally significant areas.
4. Establish priorities and incentives in mining aimed at reducing consumption and increasing the efficiency of mineral processing.
5. Revisit the recommendations presented by non-governmental groups at the Sustainable Development Summit held in Santa Cruz in December 1996.

Insecticides

The intensive use of chemical insecticides on monoculture agricultural production for export creates serious public health problems, such as: frequent poisoning resulting from the use of

extremely and highly toxic insecticides; the generation of chronic health problems such as birth defects, cancer, alterations of hormone systems, reproductive problems and effects on neurological systems. Children, women of reproductive age and indigenous migratory workers are the sectors that are at greatest risk.

Similarly, the intensive use of chemical insecticides threatens the biodiversity of agroecosystems and the region's environment due to the destruction of microflora and microfauna in the soil, the effects on beneficial insects, birds and other species of wildlife; the impacts of aerial spraying, contamination of subterranean water, leaching of contaminants from irrigation channels to rivers, lagoons and seas; in addition to causing resistance in insects, fungi and weeds.

The models of regulation and control of the pollution resulting from the use of insecticides in the region have been ineffective due to the lack of enforcement of laws and standards, deficient monitoring and the lack of recognition of the public access to information on the use of insecticides and their impact on environmental and food quality.

Therefore, the governments of the Americas must:

1. Harmonize standards and regulations relative to the registration, labeling and use of insecticides in order to raise the level of protection of workers (especially the indigenous population, women and children exposed to them), consumers and the environment.
2. Reorient investment, loans and subsidies for the development of agroecological technologies to control pests that permit the elimination of the use of chemical insecticides with the greatest acute toxicity (Classification Ia and Ib of the World Health Organization) and those with chronic health effects on the population.
3. Recognize the rights of agricultural workers, communities and consumers to information on the site, use, volume and type of chemical insecticide used. This would permit active citizen participation in the design of programs to reduce and eliminate agrotoxics and to participate in oversight of environmental quality and trade in insecticides prohibited in the region.
4. Sign, ratify and effectively enforce prior informed consent (PIC) on trade in insecticides and especially dangerous formulations, as established in the Rotterdam Convention.
5. Develop national plans for the elimination of insecticides that cause destruction of the ozone layer and those that because of their persistence, bioaccumulation, toxicity and transport over long distances are included in the International Convention on Persistent Organic Contaminant and of the remains of chlorinated insecticides used in the region.

Toxic substances and dangerous residues

The generation of dangerous waste products creates a serious problem of environmental contamination and public health that threatens the sustainability of the Americas. In spite of that, industry has promoted a paradigm of evaluation and risk management of toxic substances rather than the prevention of exposure to them, and favored technologies to treat dangerous wastes at the end of the production process instead of proposing changes and evaluating alternatives to the intensive use of toxic chemical substances and dangerous materials.

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Neoliberal policies of indiscriminate trade liberalization and incentives for foreign investment promote self-regulation of industry and lead to lower levels of control of trade in dangerous substances and materials, the relocation of polluting industries in the region, and the export of dirty technologies for the treatment of dangerous waste products. In the case of NAFTA, protections are also provided for foreign investors through compensatory measures that allow them to claim damages worth millions of dollars if they are affected by conservation or public health protection measures, alleging discriminatory or expropriation practices.

Therefore we demand that the governments of the Americas:

1. Incorporate the precautionary principle in the design and implementation of public policies of industrial development, environmental protection and public health in order to reduce the generation of dangerous waste products from productive processes through greater efficiency and better use of raw materials and supplies, substitution of especially dangerous materials and substances and the redesign of technological processes and products.
2. Harmonize procedures for national registration and inventory of emissions and transfer of pollutants so that they include the highest standards of protection, are obligatory, and recognize citizens' right to full access to information that permits the identification of volume, type of pollutant and the local emission sources.
3. Reorient investment, loans and subsidies to stimulate cooperation, technical assistance and financial projects that promote clean forms of production and treatment technologies that do not generate new pollutants.
4. Stop the transfer of dirty technologies for the treatment of dangerous waste products from developed countries. In particular, impede the expansion of incineration for the treatment of dangerous waste, hospital waste products, municipal waste products or their use as fuel in cement ovens.
5. Ratify the amendment to the Basel Convention that prohibits the export of dangerous waste products from OECD countries to non-OECD countries and establish mechanisms of monitoring and public vigilance.
6. Sign and ratify the Convention on Persistent Organic Contaminants and implement national plans for elimination with full citizen participation.

7. LABOR

Background

Working people in the Americas believe that a just trading system is one that recognizes that basic labor standards and other measures for improving the welfare of working people cannot be left exclusively to markets. The future hemispheric accord must include provisions that guarantee basic worker rights, that ensure proper assistance for adjustment as markets are opened up, and that promote the improvement of working and living standards of workers and their families.

For a century, trade unions and other progressive forces have been campaigning at community, national and international levels for recognition of the need to respect and apply international labor standards. This recognition was one of the forces, together with the profound upheavals of 1917 in Russia and in the following months in a series of other European countries, that led to the creation in 1919 of the International Labor Organization (ILO). That institution that survives to this day as a UN agency that has the specific mandate of defining and monitoring international labor standards. All 35 countries of the Americas are members of the ILO and have ratified ILO conventions. Current trade pacts within the hemisphere have, in many cases, adopted specific agreements stating that fundamental principles regarding labor conditions should be respected within all member countries and that the agreements should contribute to a general improvement of the living standards of workers. Such is the case, for example, with the NAFTA side-agreement on labor, officially called the North American Agreement on Labor Cooperation (NAALC) and with the Mercosur's Protocol on Social and Labor Questions (Protocolo Socio-Laboral).

It is not our intention to provide detailed analysis of these agreements, which have distinctly different scopes, legal implications and mechanisms for application. However, not even the most optimistic analyst of the impact of trade agreements such as NAFTA and the MERCOSUR would claim that these agreements have contributed to a general improvement of working conditions in member countries. On the contrary, the introduction of these agreements has led to greater instability of jobs and insecurity in the workplace. This has been the case most dramatically in Mexico since NAFTA came into effect in 1994. Six years after the introduction of NAFTA, Mexican real wages were lower than prior to the agreement, despite the fact that worker productivity was substantially higher. The specific provisions on labor standards, such as NAFTA's NAALC, tend to be strong on principles but weak on any specific mechanisms that can have a favourable impact on working people.

Moreover, it is a recognized fact that even the most basic labor standards agreed upon at the ILO are regularly flouted by employers throughout most countries of the Americas, more often than not in attempting to obtain a competitive advantage over other employers. Governments often turn a blind eye to these violations, believing that such behaviour ensures that foreign investment will keep coming their way. For example, much of the recent growth of industrial employment in Mexico, Central America and the Caribbean has taken place in maquiladora or export processing zones that openly feature restrictions on the right to organize and other violations of labor rights in order to guarantee a supply of low-cost labor. This takes place in spite of the fact that all countries of the hemisphere are members of the ILO, thus endorsing in principle the respect of fundamental labor rights. Unless concrete steps are taken to advance labor rights, economic liberalization fostered through free trade agreements will continue to drive down labor standards and job security throughout the hemisphere.

Guiding Principles

1. Working people and their organizations have the right to participate in decision-making at the national and international level regarding the hemispheric integration process in order to ensure that this process contributes to improving the living standards of workers.
2. The commitment to apply and respect basic workers' rights should be included in any hemispheric agreement as an obligatory requirement for membership in the accord. An appropriate and effective enforcement mechanism should also be included.
3. An appropriate adjustment mechanism must be included to ensure that those workers who find their jobs rendered redundant by the opening-up of markets are provided with the opportunities to find other employment, through measures such as infrastructure development, specific job-creation schemes and skills retraining.
4. The hemispheric accord must include mechanisms to promote and improve the living standards of workers through legal norms and social programs in countries participating in the accord. As a basic principle, these mechanisms should strive to establish basic social programs in countries where they do not presently exist and to raise standards towards the highest standards existing in member countries.

Specific Objectives

1. Workers' Rights Clause

Since the early 1990s, the international labor movement has promoted the inclusion in international trade agreements of a "Workers' Rights Clause," which would force employers and governments to confront the frequent and repeated violation of fundamental workers' rights. Within the Americas, the Inter-American Regional Organization of Workers (ORIT), which represents a large majority of unionized workers in the Americas, has proposed the creation of a working group on labor and social issues as part of the FTAA negotiating structures which would have the mandate to ensure that fundamental labor rights are fully respected within the new free trade area. Trade unions of the Americas would have direct participation in this working group.

Our proposed clause in the hemispheric accord for the Americas could result in certain producers losing the privileges accorded by the trade agreement, i.e. tariff-free access to foreign markets included in the free-trade zone, if fundamental workers' rights are not respected. The fundamental rights were defined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and are covered by eight core conventions of the ILO (among the total of 183 that have been adopted between 1919 and 2000), namely:

- Conventions 29 and 105 on the abolition of forced labor;
- Conventions 87 and 98 on the rights to freedom of association, to collective bargaining, and to trade-union action, including the right to elect trade union representatives without employer or government interference, and the right to strike;

- Conventions 100 and 111 on equal pay for work of equal value, and on the prevention of discrimination in the workplace; and
- Conventions 138 and 182 on the minimum working age and the elimination of child labor.

All countries of the Americas have ratified one or more of these "core conventions" of the ILO. Moreover, virtually all governments of the countries of the Americas have stated that they respect and strive to apply the principles contained in these conventions, even when they have not yet ratified them formally. Despite these assurances, the rights to freedom of association and collective bargaining are routinely violated by a vast number of countries in the hemisphere, and child labor is endemic in several countries, as is workplace discrimination against women and specific racial or ethnic groups.

For these reasons, we propose that the eight fundamental workers' rights conventions of the ILO as described above be included in a hemispheric agreement, meaning that employers and governments would be obliged to respect these conventions as a condition of access to the benefits of the agreement.

2. Monitoring and Enforcement

Naturally, such a workers' rights provision would be effective only to the extent that it were accompanied by an effective monitoring and enforcement mechanism. We propose that the monitoring function, as well as that of making recommendations regarding the application of specific enforcement measures, be delegated to the ILO, whose expertise in the field of monitoring the application of international labor standards is universally recognized.

The complaints-based procedure that the ILO currently uses for keeping track of the respect for the freedom of association conventions would be used for the Americas' workers' rights clause. That is to say, unions or other non-governmental organizations could initiate an examination procedure by the ILO by lodging a complaint to the latter when fundamental rights contained in the core conventions are violated.

The ILO would, at a first stage, carry out an investigation to verify whether or not the conventions have in fact been violated. In cases where the conventions are confirmed to have been violated, the ILO would, at a second stage, formulate recommendations to the country to assist it in complying with the conventions which have not been respected. Only if this second stage were unsuccessful would the enforcement mechanism be applied, which is to say that the direct perpetrator of the violations would be deprived of specific benefits of the accord, i.e. through trade sanctions. It should be noted that current trade agreements such as NAFTA already provide for the application of similar penalties when property rights provisions are deemed to have been violated.

To the extent that the perpetrator of the violation was a specific company, any specific sanctions would be directly targeted at that company. For example, if an auto-parts manufacturer in Country A were found to have violated the rights of freedom of association of its work-force, the exports coming from that particular manufacturer in Country A would no longer benefit from tariff-free access to all other countries party to the accord. Regular customs duties would be applied, in accordance with WTO agreements, as if the particular export came from outside of the Americas' free trade area.

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More generalized sanctions—i.e. sanctions which would apply to all exports from a particular country—would only be administered if the country's government were shown to be an active and repeated accomplice in the violation of fundamental workers' rights in that country. If both countries and companies were obligated to respect and apply fundamental workers' rights, this would help to establish and generalize workplace practices throughout the Americas, in which:

- the most extreme forms of labor exploitation would be eliminated;
- workers could, without suffering threats to their jobs and their physical well-being, strive to improve their wages and working conditions; and
- workers and employers could resolve their differences through peaceful means.

3. Mechanisms for Adjustment and Job Creation

The elimination of tariff barriers and other forms of protection will inevitably lead to the elimination of certain people's livelihoods in industries unable to meet the challenges of increased competition. If hemispheric free trade does contribute to greater economic efficiency and thus a general improvement of economic welfare, as its proponents claim it will, there should be no hesitation in assuring that the "losers" are compensated. Failure to do so could entail the marginalization of vast numbers of workers and agricultural producers through the process of hemispheric integration.

For this reason it is important that the future hemispheric agreement include mechanisms for allowing national economies to adjust to the impacts of economic integration through the creation of high quality jobs, with special allocations for women.

These mechanisms should consist of:

- nationally administered funds, paid into by employers, to compensate those facing job losses resulting from restructuring;
- skills training programs;
- infrastructure development; and
- incentives for job creation.

Compensatory financing would obviously be necessary in order to take account of the unequal levels of development and capacities to adjust of different national economies and, as well, particular regions within countries. Specific funds would be provided for adjustment programs targeted to assist those women and men working in industries or living in areas that suffer job losses through economic integration.

The European Union (EU) has established precedence for such financial support by providing structural development aid to the lower-income countries in the EU and also to specific geographic regions within higher-income member countries that have suffered from a decrease in protection or otherwise have not been able to reap the benefits of the integrated market. In a similar fashion, a structural development fund should be created as part and parcel of the agreement for the Americas to provide financial support for worker training, infrastructure development and job creation in lower-income countries and in designated regions within countries.

Such a fund could be financed either through levies paid by countries on a scale which varies with the per capita income level (as is the case in the EU), or through a specific financing mechanism such as a Tobin Tax (i.e., a tax on international financial

transactions) applied in the Americas.

4. Basic Labor Standards and Social Programs

Over and above the inclusion of a workers' rights clause and appropriate adjustment mechanisms, we believe that the hemispheric agreement must include mechanisms for improving basic labor standards and social programs so that the agreement contributes to a betterment of working and living conditions for working people and a more equalized distribution of income within countries. Given the vastly different levels of development between countries of the Americas, we do not envisage developing anything like a common minimum wage throughout the hemisphere. However, it would certainly be within the scope of the agreement to establish guidelines—for example, in relation to defined levels of subsistence, in setting minimum wages in the national context.

Guidelines could also be established in the area of hours of work, rules on overtime pay, rest periods and vacations. As a first step, there would be a process for meeting minimum ILO standards in these areas and, subsequently, harmonizing upwards in order to move towards the highest existing standards within the hemisphere. A more rapid process of harmonization would be put in place regarding the definition of hemispheric norms for the prevention of workplace accidents and work-related disease, based on the highest existing standards in the Americas. These processes would be established with the full participation not only of governments but also of representative trade union and employers' organizations.

There currently exist enormous differences between the countries of the Americas in the area of social and income-support programs, although there is a general tendency throughout the hemisphere for a serious deterioration of these programs as a result of government cutbacks. Even Canada, which used to pride itself on according a level of social protection that put it in the same league as Western European countries, currently has fallen behind all member countries of the EU in terms of income maintenance for unemployed men and women.

In other countries, universal state pension schemes are being privatized or otherwise eroded, leading to greater inequality of income for retired workers, especially women. If economic integration of the Americas is to contribute to a generalized improvement of living standards in the hemisphere, the rapid erosion of social protection that has taken place over the past decade obviously has to be reversed. Specific targets for basic income-support programs should therefore be included in the agreement, including unemployment insurance, compensation for injured workers, and pensions for retired workers. Similar targets for basic social programs such as health care, education and childcare would also be established. In addition, financing through the hemispheric agreement must be provided to countries that, because of low per capita income levels, do not have the means to finance such schemes entirely on their own. A financing mechanism, perhaps modelled on the EU's social fund, could provide the necessary financial support.

5. Protection Against Job Instability and Discrimination

Hemispheric economic integration can be expected to make capital even more mobile than it already is and, subsequently, lead to greater employment instability. The hemispheric agreement should provide for protection of workers against increasing job instability, especially with respect to employers who may seek to avoid their obligations to their employees by transferring their production to another country. All employers would be required to adhere to nationally administered funds ensuring the payment of all due wages

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and other indemnities employees are entitled to in case of job termination. Basic hemispheric standards regarding advance notice of layoffs and protection for part-time and sub-contracted labor would also be put in place.

The agreement should acknowledge the needs of women in waged and unwaged work, taking into consideration the unequal responsibility assigned to most women for child-rearing, care for family members, and domestic labor, and the lack of value accorded to that work. It should support programs to ensure that childcare is affordable, accessible, and of high quality, so that women who undertake waged work, whether inside or outside the home, are able to do so. Governments must periodically analyse the impact of trade liberalization on women and track the impact of trade agreements and policies on the formal, informal and unwaged sectors, through sex-desegregated data gathering.

Any future hemispheric agreement must recognize the dramatic growth of the informal sector and develop mechanisms to extend minimum labor rights and standards to workers in this sector. The latter would include ratification, implementation and enforcement, by governments of the Americas, of ILO Conventions 177 on home work and 175 on part-time work. Finally, the agreement must ensure access to labor rights for migrant workers wherever they are working. (Please see chapter on Immigration for additional detail.)

7. IMMIGRATION

Background

In the contemporary world, large-scale movements of people are a function of the accelerated process of global integration. These migrations are not an isolated phenomenon: in nearly all cases, movements of goods and capital give rise to movements of people. Global cultural exchange, facilitated by improved transportation and the proliferation of print and electronic media, has also led to immigration. International migration has grown in volume and significance since 1945, particularly since the mid-1980s. Immigration will likely continue to grow in the 21st century, and may be one of the most important factors in global change.

Without question, the problem of immigration is a global problem. Despite the fact that there are currently 125 million migrants on a planet with a population of some five billion, the impact of immigration is much larger than its relatively small numbers might suggest. Immigration can have considerable consequences for economic and social relations in the area of origin. For emigrants, the choice of destination country is closely tied to employment opportunities, which are most often concentrated in industrial and urban areas. The impact upon the receiving community is also considerable. Immigration, therefore, affects not only the emigrant, but also the sending and receiving societies as a whole. In fact, there are few people in today's industrialized or developing countries who have not experienced personally the effects of immigration. For example, approximately 20 to 30 million of the 80 million immigrants, as calculated in 1990 by the International Organization on Migration (IOM), were foreign workers who sent US\$67 billion annually to their various places of origin. Statistically, this work force is second only to petroleum in importance within the global market.

Although many countries in the hemisphere are dealing with immigration-related issues, U.S. immigration policy has attracted the most attention, even though the United States is the destination of only about one percent of immigrants each year. This suggests that the true motivation behind U.S. efforts to regulate the flow of people across its borders is primarily the desire to reconstruct the country by determining who may belong to it and who may not. In particular, U.S. policy is designed to attract more skilled immigrants (currently, the majority of those who attempt to immigrate to the United States are "unskilled") and to supply a large, inexpensive, and strictly controlled work force for certain U.S. industries (particularly agribusiness growers, canneries and packaging plants, certain manufacturers such as clothing, and also the service industry). Transnational businesses in these industries are also known for exploiting workers in countries with high levels of emigration.

Understanding U.S. immigration policy is important in the FTAA context because the United States is now attempting to regionalize and globalize these policies. For example, the globalization of U.S. policies against organized crime (which address the question of undocumented immigration) and terrorism both contribute to the economic and military manifestations of U.S. hegemony. At the behest of the United States, leaders of the seven most industrialized countries of the world, the G7, plus Russia (a group which some analysts have dubbed the G8), pledged at the Denver (Colorado) Summit both to combat "illegal" immigration through their borders, and to engage in a technological and informational exchange of intelligence to further ward off this phenomenon.

The United States, Germany, Italy, and France are the members of this group that have the largest immigration "problems," while Canada, Japan, the United Kingdom, and Russia have not

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seen such a heavy impact. The Denver statement was the first time in 23 years of G7 history (to which Russia has been added) that such a document has included any such references related to undocumented immigration, and although nuanced, it still represents a step toward a global agreement on the subject. In the 1991 summit, the leaders of this group referred to immigration in only very general terms. The declaration explained that “(international) migration has made and may make a valuable contribution to social and economic development (and)...there exists a growing fear of migratory pressures all across the globe, caused by a variety of social, economic, and political factors.”

Previously, the United States had already pushed certain strategies to regulate immigration (particularly of the undocumented kind) in its immediate geographic realm, principally through the following three initiatives:

- new U.S. laws against “illegal” immigration (which criminalize undocumented as well as legal immigrants) and also against terrorism, approved by the U.S. Congress in September and April 1996 respectively. These were designed as a means of accomplishing the de facto regionalization of U.S. policies. For example, they called for the establishment of “pre-inspection stations” in the 10 airports that receive flights from countries that export the largest number of inadmissible foreigners to the United States.
- the regional immigration conference held in the city of Puebla, Mexico in March 1996, where the 10 countries comprising Central and North America (soon to be joined by other nations of the Caribbean and South America as well as certain international institutions) agreed to take measures principally to control the flow of undocumented extra-regional immigrants. These measures were designed to combat the “criminal trafficking organizations” responsible for such migrations. Subsequent meetings on this issue have been held in four cities: Panamá (1997), Ottawa, Canada (1998), San Salvador, El Salvador (1999) and Washington, D.C., United States (2000).
- the Second Summit of the Americas, held in April 1998 in Santiago, Chile, where, with the exception of Cuba, heads of every government and state of the Western Hemisphere incorporated immigration into the Summit’s Declaration and Action Plan, placing strong emphasis on the sovereign right of each state to form and apply its own judicial code and policy concerning immigration, and to establish limited bilateral or multilateral accords. These accords and policies, however, are constrained by the measures taken by the various mechanisms mentioned in previous points.

Thus, in the process of transnationalizing the neoliberal economic model, the elite technocrats who support this model and unjustly hold tremendous power are in league with local officials who have agreed to impose similar immigration measures. In these affairs, the Mexican government has thus far been the largest collaborator. Along with the U.S. government, Mexico has declared that NAFTA alone will solve the Mexican emigration problem in the long term. In fact, this position was tactically accepted before the commencement of the negotiation of NAFTA, due to the conclusions of the International Commission for the Study of Migration and Cooperative Economic Development, created by the U.S. government in 1986 in the wake of the Immigration Reform and Control Act (IRCA-86). Also known as the Simpson-Rodino Law, this was the greatest effort since 1965 to establish economic mechanisms to regulate immigration to the United States.

Between 1988 and 1990, the Commission held a series of public hearings and investigations by specialists from the United States, Mexico, Central America, and the Caribbean, focusing on forming responses to two major issues: a) the conditions which contributed to unauthorized emigration of persons from Western Hemisphere countries to the United States;

and b) economic development initiatives that could be taken cooperatively to alleviate the pressures which cause emigration from the sending countries. The Ascenio Commission, as it is also known, presented recommendations in 1990 that, according to the Commission president, were well received on the part of the involved governments. The conclusions declare that:

- “1. Despite other important factors, the search for economic opportunity is the principal motivation of the majority of unauthorized migration to the United States.*
- 2. While economic growth leading to the creation of jobs is the ultimate solution to reduce the rate of migration, the process of economic development itself will stimulate short and mid-term emigration, thus creating expectations and facilitating the migratory capacity of people. Development and the availability of new and better jobs in the country, however, is the only manner in which migratory pressures may be reduced over time.”*

The Commission was convinced that extensive commerce between the emigrant-source countries and the U.S. work force would solve the problem. This created the basis for eliminating the immigration issue from economic and commercial treaties in the Western Hemisphere. As a result, workers from emigration-source countries, are left to feel the consequences of U.S. policies, instituted unilaterally or in cooperation with other governments, to regulate and control immigration flows.

However, the processes of regional integration and economic globalization lead to the immigration of workers in the form of a global labor market, a true industrial reserve army which may be recruited in a selective manner and from any part of the world. At the same time, this trend also contributes to the regionalization and globalization of the struggle to defend the full rights of migrant workers. In fact, regional organizations are currently both in existence and under formation in our hemisphere that are responding to the regionalization of immigration controls by working to initiate various mechanisms to champion the full rights of immigrants.

The fact that migrant workers have successfully been left out of NAFTA, under the assumption that free trade itself will permit the long-term generation of employment and improvement in living conditions of potential migrants, keeping them in their country of origin, has been the basis for the implementation of those policies. The U.S. government, while it is not obligated to negotiate any specific immigration treaties or accords with Mexico or any other nation, has enjoyed the freedom to seek the regulation of immigration flows into its territory, beginning formally with Mexico and Central America, but extending to the rest of the hemisphere through the creation of the FTAA.

This strategy, if implemented, would end the incipient efforts of some countries that have attempted to form regional blocs permitting the free movement of goods and labor. The Andean Pact, which was formalized in 1969 among Venezuela, Colombia, Ecuador, Peru, Bolivia and Chile, and reactivated in 1989, was the first to explicitly include direct treatment of this issue. Two conventions have attempted to find common ground on immigration: 1) the Simón Rodríguez Convention, signed in 1973; and 2) the Andean Migration Statute, created as part of the efforts to strengthen this regional group in the Cartagena Agreements Commission of 1977.

The first agreement was intended to create a joint instrument that would serve as a guide to define corresponding labor and social policies in the Andean region. The principal goal was to seek means to provide social security and other benefits for migrant workers in the subregion. Although the convention was dealt with on a ministerial level to ensure compliance, it was never implemented in practice.

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The second agreement was presented as an effort to implement the principles postulated in the first accord. This came about as the result of efforts by employment agencies that worked to help migrants find jobs. Unfortunately, these provisions benefited skilled workers, who did not represent the majority of the immigration flow. In October 1992, in a meeting of the Governing Board of the Cartagena Agreement held in Bogota, Colombia, it was agreed to advance the design of concrete legal measures and joint actions to give new momentum to the treatment of international labor immigration issues on a regional level. This agreement, however, has still produced no concrete results.

The other case in which immigration has been included is the Mercosur, made up of Argentina, Brazil, Uruguay and Paraguay. According to the March 1991 letter of the Treaty of Asunción, a common market was supposed to go into effect in January 1995, which would mean the free circulation of goods, services, capital and labor under a common external tariff. However, in January 1994, one year before the end of the transition period, the competing governments ratified the original timeframes, but now only to achieve a customs union, rather than a common market. Even this objective seemed ambitious at the time, in light of the change in the international context that occurred in 1994, especially for Argentina, given the fall in capital markets.

With the plan to form the FTAA already underway, the conditions for the insertion of Latin American countries are likely to be similar to the conditions imposed on Mexico when it entered NAFTA. The United States likely wants to impose on the FTAA the model followed under NAFTA in which, as previously mentioned, labor immigration was not included under the assumption that it will be free trade that solves the immigration problem over the long term.

As we have seen, the question of labor immigration has been completely absent in the subregional integration efforts in the Americas, or it has been dealt with on paper agreements without developing concrete actions for its implementation (as in the Andean Pact and Mercosur); and it will be included only in a very limited and tangential manner in the FTAA. Meanwhile, domestic and international migration flows continue to grow throughout the hemisphere, but under increasingly difficult circumstances for workers, especially those who seek to insert themselves into labor markets in the United States and Europe, where increasingly restrictive, racist, and discriminatory legal measures are being established for foreigners.

U.S. national immigration policies, while they have been designed to “control” immigration, are insufficient even on the regional level to confront the rapid transnational economic changes that lead to the displacement of populations and to international migration due to economic pressures and social and ethnic conflicts. Recognizing this, immigrant rights organizations throughout the world are taking important steps to confront the international dimensions of immigration.

Guiding Principles

It is important to examine the immigration issue within the framework of hemispheric regionalization, the national immigration policies that may soon be extended throughout the hemisphere, as well as the struggles and demands of various political organizations. We believe that in order to develop a viable strategy for citizen groups and organizations of the Americas to address worker immigration in the current economic and political context, at least three issues should be recognized:

1. The fact that goals to promote an “open-door” immigration policy in this hemisphere to

date have not been possible to achieve.

2. The need to articulate actions among a broad range of forces (including governments, churches, educational institutions, and intellectuals) to limit the discretionary application of immigration policies, thus promoting respect for basic rights and adherence to minimal diplomatic norms.
3. The need to establish priorities and unite forces focusing on viable areas of influence.

Within this perspective, certain priority issues must be developed in both their argumentation and in their proposals for implementation, which would raise these demands on a hemispheric level.

Specific Objectives

1. Demand that countries of the Americas, and of the world in general, adhere to the International Convention on the Protection of the Rights of All Migrant Workers and their Families, which was approved by the United Nations General Assembly in December 1990, through its signing and/or ratification. A similar instrument should be created for the Americas, in order to establish a “floor” of demands and a legal framework for reference.
2. Sign and/or ratify the ILO Convention on Migrant Workers (revised), 1949 (Number 97) and/or the Convention on Migrant Workers (Complimentary Dispositions), 1975 (Number 143); as well as the application of the two recommendations with which these instruments are completed, i.e, the Recommendation on Migrant Workers (revised), 1949 (number 86) and the Recommendation on Migrant Workers, 1975 (Number 151).
3. Promote national humanitarian legislation concerning immigration, and include in these debates organizations of migrants themselves, the social and political organizations advocating migrant rights, as well as intellectuals and academic experts in the field. Oversight boards should be created to monitor the application of these laws.
4. Fight against the application of extra-territorial immigration policies as exemplified by the pre-inspection stations which the United States plans to install in international airports across the Western Hemisphere (stations which are already in existence in Canada).
5. Coordinate lobbying in congresses, social organizations, and American communications media in order to promote public support for integral labor solutions concerning immigration.
6. Demand that NAFTA be renegotiated to include a social agenda that places a priority on resolving the immigration issue. This should also occur in the cases of the treaties signed by Mexico with Nicaragua, Costa Rica, and the countries of the “Northern Triangle” (Guatemala, El Salvador and Honduras).
7. Demand that governments of the countries which approved the creation of the FTAA by 2005 in the December 1994 Summit of the Americas engage in negotiations to include a immigration dimension within labor accords as part of a broader social agenda.

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8. Demand that members of Mercosur and the Andean Pact (regional integration accords that address immigration) take steps to eliminate the roadblocks that still exist to the implementation of mechanisms promoting the free movement of labor.
9. Demand the creation of bi- or multi-lateral commissions to address violence on the border(s) of the countries concerned, with effective participation of non-governmental human rights organizations as competent investigative authorities.
10. Demand the demilitarization of borders, (such as the U.S.-Mexico border) which have been reinforced under the pretext of reducing flows of undocumented workers and drugs.
11. Demand measures to limit the use of force on the part of immigration agents, border patrols, and other political and military officials.
12. Demand that the U.S. government modify immigration, anti-terrorism, and other laws (mostly passed in 1996) that criminalize the migrant labor force, reducing their access to services and subjecting them to greater exploitation, discrimination and violence.
13. Demand that the United States and other countries issue a proclamation of amnesty toward all undocumented workers within their borders.
14. Demand that governmental authorities abolish “employer sanctions” such as those adopted in the 1986 U.S. Immigration Control and Reform Act (The Simpson-Rodino Law), which prohibits employers from hiring undocumented workers and requires the verification of work authorization for those newly hired to seek work in the United States.
15. Support the regional economic development of areas that are major exporters of labor through a policy of growing investments, public as well as private. The support of such zones should be designed to promote sustainable development with appropriate technology and contribute to the recuperation of the environment and the improved utilization of renewable as well as non-renewable resources. Trade and investment accords should include international subsidies to fund such programs. Support improved channeling of immigrant workers’ remittances, combined with public and private resources to improve the infrastructure and productive projects in the communities and regions that have been major exporters of workers seeking jobs.
16. Migrant workers, regardless of their immigration status, should enjoy the same workers rights and conditions enjoyed by the citizens of the receiving country. Employers who take advantage of a worker’s immigration status to exploit him or her under conditions and wages that are below legal standards should be severely sanctioned.
17. There is tremendous diversity in the immigration-related problems and situations among countries of the Western Hemisphere. In some cases, it is viable and convenient to institute an “open-door” policy, while in others it is not. The framework of hemispheric negotiations, therefore, shall promote bi-national or sub-regional immigration pacts between or among those countries or zones with significant immigration flows. These agreements should harmonize labor rights and social security systems upward, while making the scope of coverage international.

18. Hemispheric and regional networks of nongovernmental, social and political organizations should be established to defend the rights of migrant workers.

6. THE ROLE OF THE STATE

Background

The role of the state in leading hemispheric economic integration is irreplaceable if this process is to promote social justice, equity among regions and social groups, and sustainability. The democratic state should be a tool for society to use to address the economic and social problems the market cannot solve. Hence, this discussion should not be framed in terms of a polarization between state and market.

Historical experience shows that the state is necessary to deal with the flux of the market. Furthermore the economy is broader than the market, encompassing all production (not just what is traded), and requires the involvement of the state to establish adequate conditions for stable, sustainable growth and social well-being. Opening up economies internationally does not necessarily mean they have to be left to the vagaries of international markets. There is no such thing as the free market, because of the large corporations which dominate and drive the market. Opening markets actually means letting these corporations drive and dominate the market to suit their own interests. Historically, there is no evidence that the market can achieve general equilibrium within the economy, let alone sustainability and social justice.

The key is for nations to open themselves to the world based on their own plans for fair and sustainable development led by democratic governments, rather than leaving the future of such development to market forces. Economies that are open are all the more reliant on regulation at the national and international levels and require a state strong enough to promote and enforce them.

Under the prevailing dominant economic model, state intervention in the economy is reduced, except in the promotion of the export sector and finance capital. By favoring exports, workers and most of the population cease to be seen as valued consumers since their impoverishment no longer affects the top strata of capital.

The dominant discourse demonizes government and assumes that the market does everything better. Adjustment programs imposed by the World Bank and the IMF increase this pressure, leading to a growing trend toward privatization. Governments see privatization as a short-term remedy for financial crisis and unbalanced budgets. It can also be a mechanism for the illegal transfer of wealth or favoritism toward certain economic interests.

There are three problems inherent in privatization: 1) it reduces the state's ability to lead the process of sustainable and fair development; 2) over the long term, government revenues fall, which normally results in reductions in public spending; and 3) serious injustices are created in public services, with a disproportionate burden of such cuts affecting women and people who are poor. Privatization is also used to lower wages and benefits for organized workers, as the sale of services usually results in the replacement of collective agreements by more "flexible" working conditions entailing fewer rights, less negotiating power, and lower benefits.

We propose a fully democratic state, economically and socially accountable to its citizens, which radically challenges corruption at every level; a state with a qualitatively new role within the economy. We are not proposing an oversized state burdened by huge, inefficient enterprises. The number and size of public corporations is less important than the role they fulfil. Society, not only governments, should make decisions relating to industries in the public

realm.

The goal should not be traditional protectionism, but building a state accountable to society that can implement a democratically established national development plan. This may involve the protection of certain sectors considered strategic within a country's plan, but more importantly, it means promoting forward-looking development. Regulation does not imply inhibiting private initiative. On the contrary, it means establishing clear rules balancing rights and obligations, and ensuring that both national and international capital promote a country's fair and sustainable development.

This renewed role for the state implies international regulations which must be determined democratically and through consultation with citizens. Sovereignty belongs to the people, who may decide to submit to international regulations if it is in the collective interest. International regulations are becoming increasingly necessary in the face of the supra-national power of certain corporations which operate within our economies and the weight and mobility of footloose capital.

This new and strategic role for the state in the economic and social spheres requires integrated fiscal reform favoring economic activity and redistribution, coupled with the ability to raise revenue at a level which avoids deficits so large that they impede development.

Nothing in an international agreement should constitute a renunciation or reduction of the state's ability to meet the economic and social demands of its citizens. This principle must take precedence if the state's capacity to meet these demands is diminished by such agreements.

1. Guiding Principles:

Economic and Social Responsibilities of the State

- A. The first role of the state is to facilitate debate and establish permanent consultation mechanisms with respect to domestic and international policies.
- B. It is the state's responsibility to lead a consensual economic strategy and enact related social policies which strengthen the well-being of citizens. The state should spare no effort to promote the creation of well-paid jobs, which are the best vehicle for achieving that well-being.

Participation in the global economy entails a strong export sector, but this should not be pursued to the neglect of the domestic market. The strength of the export market should be measured not in the volume of exports but in the sector's ability to generate high-quality jobs and foster economic growth. The focus on strengthening the domestic market would mean that citizens would be viewed as valued consumers. Thus, raising standards of living would become an economic necessity for market expansion rather than merely a social justice issue.

Competition punishes corporations with low levels of productivity, but it does not necessarily increase productivity. The state has the inescapable responsibility to create conditions which favor competition among domestic companies in the international as well as internal markets. To achieve this, the promotion of technological research and development as well as education is indispensable to each country's viability. An explicit industrial policy must be established which includes building infrastructure, access to credit, education and research for the promotion of appropriate technology and integration of productive linkages.

- C. The social role of the state is a democratic requirement of society and cannot be evaded. However, the economic role cannot be separated from the social role. There is no better social policy than an economic policy that favors the well-being of all men, women, and children. However, even the best political policies must be supplemented by social policies, since the market always generates inequities.

The social role of the state entails public services, public security and the well-being of all. This requires specific policies aimed at each of the most vulnerable sectors of the population. These policies should be translated into laws which create rights, not policies of patronage or favoritism. The state's core aim should be just and sustainable development for all, while not excluding emergency or compensatory aid for particular groups.

- D. Education. States should fully take up their responsibilities for financing education, for sharing resources equitably, and for the establishment of a common basic curriculum. However, decentralization necessary for the autonomy of educational programs in specific communities should not lead states to abandon their responsibility for the cost of education and the equitable distribution of resources. Access to education is a right which should not be subject to the ability to pay.

Improving the quality of education and access to it requires new sources of funding. Part of tax revenues accruing from international financial transactions should be allocated to increased investment in education in countries with the smallest budgets (see Investment Chapter).

In all countries of the Americas, education should favor a holistic approach. Educational systems should therefore do a better job of balancing utilitarian visions of education to meet the market's needs and humanistic approaches that allow individuals to participate actively and fully in the societies in which they live.

Priority should be given to literacy and basic education for all. Access to secondary and post-secondary education should be improved to allow all societies of the Americas to participate fully in the "globalization of knowledge" without this resulting in a homogenization of this knowledge.

The use of new technologies should favor the access to knowledge and allow for the circulation of the diverse forms of knowledge in all cultural communities. New technologies such as computers should be used in schools, but not as a substitute for teachers. New information and communication technologies must not be converted into yet more tools of exclusion and discrimination.

Any education action plan must contain measures directed toward improving the living standards for children and youth within the family. Especially important are education and mass campaigns to help children avoid drugs. Financial, psycho-social, and public health service supports are necessary. Adult education must not be neglected.

- E. Health. As with education, access to health is a fundamental right which should not be subject to the ability to pay. It should be considered the responsibility of the state to provide high quality health care to all. Specific international funds should be set aside for this purpose, including a portion of revenues accruing from speculative financial transactions in the international sphere (see Investment Chapter).

Access to health care services should be universal and not limited to those with jobs in the formal sector, since in most countries in the Americas, the majority of people experience unemployment, often turning to precarious employment in the informal sector. Health services should include those specially related to women and be designed with concern for women's access to such services.

Access to public health care services for indigenous communities and peoples should be guaranteed. At the same time, they should be based on the development and increased availability of traditional medicine and the age-old knowledge held in these communities, often by women.

Social security systems (including pensions) should be under the state's jurisdiction, and the savings funds used to finance them should be managed by the state and invested in high-priority national development projects. The funds should not be used as speculative capital, which would only serve to concentrate social wealth in a few hands.

2. Criteria for Economic Regulations:

- be clear and explicit and designed to prevent bias on the part of officials whose job it is to apply them.
- be decided democratically.
- be simple and easy to apply.
- be kept to the minimum needed to achieve their objectives.
- preserve the sovereignty of provinces, regions or states to make their own regulations within their areas of competence as long as they act for the good of their communities and not to perpetuate individual privilege, or gender- or race-based discrimination.

Areas for Special Regulation

Each country may establish special regulations for sectors it deems to be especially important for its national development such as the following:

- The exploitation of natural resources.
- Financial and monetary policy, especially the management of its payment system and short-term investment.
- Basic food production and/or agricultural production by small family farms.
- Strategic sectors linked to national sovereignty or national economic stability.

The intention should not be to protect or block certain sectors from foreign investment or external trade but to recognize those sectors that need special regulation.

3. Public Sector Corporations

Corporations known as "state-owned enterprises" in fact belong to society and are only administered by the state. These public sector corporations are not established for personal profit, but are vehicles for healthy economic development, safeguards of sovereignty, and instruments of social and environmental justice.

Nevertheless, states should ensure that public sector corporations are sound and efficient. Corruption should be avoided by legislative and societal checks. Their preservation, creation or privatization should be decided by legislatures representing the popular will. In the case of strategic enterprises, laws should require broad and direct consultation with the public.

General provisions

- A. Some public sector corporations may exercise exclusive management, production, transportation or sales rights over specific goods and services where national laws so provide.
- B. Public sector corporations should not be treated as monopolies or subject to anti-monopoly laws.
- C. The administration and evaluation of public sector corporations should not be based solely on considerations of price and quality but also on their achievement of the specific objectives for which they were created.

4. Government Procurement and Public Works Contracts

Government purchasing and public works contracts have a significant influence in some productive sectors. They are carried out with taxpayers' money and should therefore continue to be instruments of economic policy for national development. They should accordingly be subject to the following criteria:

Government procurement of goods and services should be subject to open and transparent competition to avoid corrupt practices in their allocation, with specific exceptions discussed below.

Criteria for competition need not be based exclusively on price and quality, but may also include the following:

- A. National content for the good or service involving some degree of integration into the domestic productive economy.
- B. Kinds of technology used and their environmental effects.
- C. Transfer of technology.
- D. Number of jobs created and wages paid.
- E. Special safeguards to support medium, small and micro domestic enterprises.
- F. Prohibition against conditions requiring the letting of a contract for purchase or a public project to a particular supplier or contractor.

Countries may establish lists of high-priority suppliers whose development they consider strategic for reasons of national development (such as the development of appropriate technology, spin-off effects on other economic sectors or the number of jobs they generate or on the achievement of gender or racial equity) and give them priority over foreign suppliers.

To ensure that the priority given to nationals does not protect inefficiencies or place an excessive burden on public resources, suppliers should be required to offer bids within a certain percentage of competing foreign bids, comply with other criteria of the tendering process, and receive privileged status for a limited time. These preferential terms will be negotiated in conjunction with the supports necessary to bring the domestic suppliers up to the international competitive standard within a set timeframe.

Government procurement should also be used to protect and benefit groups affected by

discrimination and marginalization, such as certain ethnic groups, cooperatives or producers in particularly depressed regions or those with high levels of extreme poverty.

Disputes over government procurement should be based explicitly on the above criteria, and be dealt with first by mechanisms within a country, and proceed only to international arbitration after recourse to national processes has been exhausted.

9. FOREIGN INVESTMENT

Background

The former Director General of the World Trade Organization (WTO), Renato Ruggiero, has compared the negotiation of international investment agreements to "writing a constitution of a single world economy." Indeed, the investment rules written into the North American Free Trade Agreement (NAFTA) and the failed Multilateral Agreement on Investment (MAI) are similar to constitutions that determine what governments can and cannot do.

Both NAFTA and the draft MAI build on the principle of "national treatment," which requires treating foreign investors "no less favourably" than domestic firms. Although negotiations on the MAI have ended within the OECD, corporate executives participating in the Business Forum of the Americas have explicitly suggested that "a Hemispheric investment agreement draw upon the principles of the MAI." Proponents of the MAI also want to incorporate its measures into any revision of the Trade-Related Investment Measures (TRIMs) and General Agreement on Trade in Services (GATS) codes within the WTO.

All of these investment agreements are biased in favour of maximizing the ability of transnational investors to move freely around the globe with minimum interference from national governments or international regulatory bodies. As Roberto Bissio of the Third World Institute in Montevideo has written: "What is at stake is a struggle between the ambition of transnational corporations to be free of state controls and the capacity of ... citizens and the governments we elect to decide on our own destinies."

In this chapter, we counterpose an investment code based on principles that are fundamentally different than those in the MAI and NAFTA.

Guiding Principles

1. Foreign investment is welcome in our countries, provided that it adheres to regulations that enforce the economic and social rights of citizens and environmental sustainability. Foreign direct investment (FDI) can play a positive role when it is invested in productive rather than speculative activities, when it transfers appropriate technology and when it facilitates access to markets and creates employment consistent with democratically determined national development plans. It can also have negative effects when it absorbs local savings, disrupts local industries and leads to excessive capital outflows or when the jobs it creates are in enclaves disconnected from the national economy.
2. Regulations must be democratically determined by governments in consultation with their people.
3. In the event of a conflict, internationally recognized human, labor and environmental rights must take precedence over investors' rights. At a minimum, the signatories must ratify the following international treaties and agreements: the Universal Declaration of Human Rights; International Labor Organization conventions concerning trade union freedom, collective bargaining, child labor, forced labor and workplace discrimination; the United Nations Convention for the Elimination of All Forms of Discrimination Against Women, and the Covenant on Economic, Social and Cultural Rights; the San Salvador

Protocol; and international environmental agreements, including the Montreal Protocol on Substances that Deplete the Ozone Layer; the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal; and the Kyoto agreements on greenhouse gas emissions.

4. Regulations must be agreed upon multilaterally so as to prevent unfair competition between countries. Competition that results in a lowering of standards in a race to the bottom is by definition unfair. For example, if a government were to lower its standards or refuse to enforce minimum labor and environmental laws in order to attract foreign investment, it would be guilty of unfair competition.
5. International agreements on investment regulation must take into account the asymmetries of power and different levels of development that exist between countries. Agreements should involve non-reciprocal concessions by the more powerful partners and recognition of asymmetries and differences. This is particularly important for small economies and island states which need special and differential treatment.
6. Agreements must also respect the diversity of political jurisdictions (e.g., states, provinces, municipalities and Aboriginal governments) that exist within some countries.

Specific Objectives

Investment regulation should not mean imposing excessive controls on investors or establishing protections for inefficient industries. Rather, it should involve orienting investment and creating conditions to enable investment to serve national development goals while obtaining reasonable returns.

Governments should have the power to:

1. implement viable national development policies appropriate to their peoples' goals, while remaining open to the world economy;
2. encourage productive investments that increase links between the local and the national economy and screen out investments that make no net contribution to development, especially speculative or very short-term portfolio investments that lead to rapid capital outflows, creating instability and economic crises;
3. make foreign investment play an active role in the creation of macroeconomic conditions for development;
4. protect small, local, family and community enterprises from unfair foreign competition and require corporations to give preference to small producers, women, indigenous communities and other traditionally marginalized groups when extending contracts or credit in the case of financial corporations;
5. require that corporations respect the ancestral intellectual property rights of indigenous peoples and farming communities;
6. control the rate of exploitation of natural resources to prevent over-production;
7. allow for legal measures that preserve public or state ownership in some sectors (e.g., petroleum), exclusive national ownership in other sectors (e.g., broadcasting),

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and obligatory national participation in the ownership of other sectors (e.g., finance); and

8. establish a separate set of rules for investment in culture within the FTAA, since cultural products are both trade commodities and instruments of social communication. These rules would require acceptance of government provisions such as subsidies, foreign investment restrictions, and content requirements to foster an ongoing domestic cultural presence and preserve linguistic diversity.

Performance Requirements

Performance requirements need not be protectionist measures. Rather, they should be a means through which host countries share the benefits of corporate investment. The prohibitions on performance requirements in NAFTA and the failed MAI prevent national and local communities from implementing economic development policies that utilize investment for the benefit of ordinary people. Prohibitions on performance requirements go beyond national treatment in that they deprive governments of important policy tools even if they are applied equally to domestic and to foreign investors. Thus they are *absolute* and not just *relative* prohibitions.

Governments should have the power to impose performance requirements on investors such as are necessary to accomplish the following goals:

1. integrate foreign investment into local development plans by requiring investors to achieve a given percentage of national, regional or local content and requiring enterprises to purchase inputs locally (this would prevent foreign enterprises from becoming enclaves that only appropriate natural resources and exploit workers);
2. give preference to hiring local personnel;
3. achieve a minimum level of local equity participation in an investment;
4. respect labor standards that are at least as high, but never lower, than those set by International Labor Organization conventions on trade union freedom, collective bargaining, child labor, forced labor and workplace discrimination against women and minority groups;
5. implement the United Nations Convention to Eliminate All Forms of Discrimination Against Women;
6. fulfill international environmental treaties such as the Montreal protocol on ozone depletion or the Kyoto agreements on greenhouse gas emissions;
7. achieve the transfer of appropriate technology;
8. avoid the destabilizing effect of simultaneous and massive withdrawals of fly-by-night portfolio capital by requiring that portfolio investments or investments in the financial market remain in place for a minimum period; one way to achieve this goal is to require that a portion of portfolio investments (e.g., 20-to-30%) be deposited for a time (e.g., one year) with the central bank;
9. give adequate notice to local communities of intent to shut down or move; and provide adequate compensation to the local community, in conformity with minimum labor standards and payment for any environmental clean-up; in addition, governments

should have the right to freeze the assets of a corporation until it adequately indemnifies workers and communities affected by the withdrawal of an investment, violation of a collective agreement or environmental damage;

10. limit the amount of assets that can be repatriated in a given year and the kind of financial investment that can be transferred through such measures as taxation of financial transfers;
11. license technology for others to use when justified for social or humanitarian purposes, as in the case of compulsory licensing of generic medicines;
12. provide incentives for the reinvestment of profits;
13. require local permission for the exploitation of natural resources, such as fish or forestry products, for purposes of ecological conservation; and
14. contribute to workers' pension funds, health and unemployment insurance benefits, and pay their fair share of taxes to support economic (e.g., roads) and social (e.g., education) infrastructure.

Expropriation and Investor-State Disputes

Corporations have taken advantage of NAFTA's ill-defined references to "indirect" expropriation and NAFTA's investor-state dispute settlement process (Articles 1115-1138) to challenge significant government policies affecting vital areas of concern. Corporations have alleged that measures which fall under the normal regulatory sphere of government action, especially in the area of protection for the environment and human health, constitute measures "tantamount to expropriation" of their assets because they allegedly reduce their anticipated profits.

Ethyl Corporation has successfully used NAFTA to revoke a Canadian ban on a gasoline additive, MMT, a known nerve toxin. A US-based corporation, S.D. Myers Inc., which treats transformers containing toxic PCBs, has also sued the Canadian government for losses incurred due to a ban on export of wastes contaminated with toxic PCBs. Sun Belt Water Inc., based in California, has also sued Canada over the refusal of a permit to export bulk water from British Columbia. Methanex, a Canadian firm, is suing the U.S. government over a California measure to prevent water contamination. The Mexican government has been ordered to pay damages to a U.S. firm for refusal to grant a permit for a hazardous waste disposal facility.

In some cases corporations have used NAFTA to seek to reverse the results of domestic court proceedings and to circumvent normal commercial civil litigation.

Collectively, these suits show a wide range of challenges to government regulatory powers. They are particularly disturbing because of their implications for the ability of governments to safeguard human health and the environment. They also pose an enormous challenge to the democratic process by enabling corporations to veto national regulatory processes. These cases have a chilling effect on the willingness of governments at all levels, federal, provincial or state, and local to enact new regulatory measures lest they be challenged under NAFTA.

We oppose investor-state dispute settlement mechanisms in the FTAA and in all other trade agreements. The existing investor-state mechanisms must be removed from NAFTA..

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We oppose incorporating a broad definition of investment and inclusion of “measures tantamount to expropriation” or “equivalent to expropriation” in international investment and trade agreements. We particularly object to the inclusion of cultural funding in the definition of investment.

The expropriation of corporate assets to serve vital community needs should be permitted.

Compensation for expropriated resources shall be determined by national law with due regard to the value of the initial foreign investment; the valuation of properties for tax purposes and the amount of wealth taken out of the country during the duration of the investment. Investors should have the right of appeal to national courts in cases where they deem compensation to be inadequate. Appeal to international tribunals, however, should occur only after all national procedures have been exhausted.

Dispute Resolution

Disputes should be adjudicated first under the national laws and tribunals of the host country where citizens affected by decisions have opportunities for participation. Citizen groups, indigenous peoples, local community development organizations, and all levels of government should have the right to sue investors for violations of this investment code. All judicial and quasi-judicial procedures, such as arbitration, shall be fully transparent and open to public observation. Intervenor funding shall be made available to groups such as indigenous communities and environmental groups to enable their participation in legal proceedings.

10. INTERNATIONAL FINANCE

Background

The international financial system must be reformed. We cannot go on lurching from crisis to crisis with ever larger bailouts that benefit the rich at the expense of the poor.

Trade and finance are closely interrelated. Countries often borrow abroad to finance their trade deficits, leading to higher external debts. Moreover structural adjustment conditions attached to loans from the International Monetary Fund and the World Bank often compel governments to adopt trade liberalization and export-oriented policies.

The burden of external debt must be lifted, as it continues to cause a perverse transfer of wealth from impoverished peoples to their creditors. As the Buenos Aires Declaration of the Latin American and Caribbean Jubilee movement states “Resolving the foreign debt problem entails seeking historic reparations that countries of the North owe to the peoples of the South as a consequence of the looting and devastation that they have carried out over 500 years.”

Over the years 1980 through 1999, less developed countries paid US\$1.9 trillion more in debt service than they received in new loans. In 1999, the countries of Latin America and the Caribbean had a total external debt burden of US\$792 billion, three times as high as in 1982 despite having made US\$1.1 billion in debt payments between 1982 and 1999.

As the Tegucigalpa Declaration launching the Latin American and Caribbean Jubilee 2000 Platform proclaims “The debt is illegitimate because, in large measure, it was contracted by dictatorships, governments not elected by the people, as well as by governments which were formally democratic, but corrupt. Most of the money was not used to benefit the people who are now being required to pay it back. The debt is also illegitimate because it swelled as a result of interest rates and negotiating conditions imposed by creditor governments and banks.”

These debt payments, and the structural adjustment conditions imposed by creditors, exacerbate inequalities among nations and distort development. Structural Adjustment Programs (SAPs) involve an unacceptable degree of intervention into sovereign states as they are imposed without opportunities for participation or evaluation by civil society. Moreover, the austerity imposed by SAPs falls disproportionately on the poor, especially women, who have increased their hours of work at home and outside the home to compensate for the loss of public services. Studies show women bear most of the burden of unemployment and underemployment as well as the extra burden of caring for elderly and infirm family members. SAPs often involve the inappropriate privatization of enterprises and services that should remain in the public realm. Furthermore, they also tend to undermine the ability of governments to regulate the flow of money and of goods in a manner that serves peoples’ needs and ecological sustainability.

The rise in financial speculation at the expense of investment in production threatens the well-being of working people everywhere, North and South. And yet in many arenas, governments have promoted measures designed to allow investors to take any kind of capital in or out of member countries in any amount at any time. These include the failed Multilateral Agreement on Investment (MAI), proposals for changing the articles of agreement of the International Monetary Fund to give it jurisdiction over capital account liberalization, and

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NAFTA's investment rules, which make permanent the common SAP condition of barring national controls over finance capital. We can only expect that FTAA negotiators will pursue similar objectives.

Our vision of international financial regulation has a different logic.

Guiding Principles

1. The international financial system should ensure stability and allocate capital for productive purposes.
2. National and international measures must be taken to minimize the disruptive consequences of speculation and fly-by-night capital flows.
3. International financial institutions must promote sustainable economic and social development instead of austerity and structural adjustment policies that impoverish peoples and erode health care, education and the environment.
4. External debts contracted by repressive military dictatorships are illegitimate, "odious debts" that should be written off. People should not be responsible for paying back loans contracted for fraudulent purposes or loans wasted on projects that never benefited them.
5. The remaining debt for many nations is still so high that it renders sustainable development impossible. Unsustainable external debts that accumulated due to high interest rates must be renegotiated and partially written off, with the remainder payable over longer terms at low interest rates.

Specific Objectives

1. Every agreement between countries at different levels of development must include compensatory financing to allow for achieving the competitiveness that integration implies, and to fund social programs. This approach has been followed within the European Union, where the richer countries have funneled development aid into Spain, Portugal, Greece, and Ireland to lift up their living standards closer to the level of other EU nations. In the Western Hemisphere, the most effective way to level the playing field would be through substantial debt reduction.
2. At a minimum the bilateral and multilateral debts of the low-income countries identified by the international Jubilee debt cancellation movement should be annulled immediately. In Latin America and the Caribbean, this would involve the annulment of 100% of the bilateral and multilateral debts owed by Bolivia, Guyana, Honduras, Nicaragua, Haiti, Jamaica and Peru.
3. Each nation should conduct an audit into the origin and legitimacy of its external debt and of the whole process of indebtedness so as to ascertain in accounting and legal terms whether there is still debt to be paid and from whom it should be collected. These audits will serve to raise awareness of the illegitimate character of much of the debt and collect information that can be taken to the International Court of Justice, as the Brazilian Jubilee movement suggests, or to an international arbitration Panel or Tribunal as discussed below. The audit should use local tribunals with the participation of civil society organizations in order to ensure transparency and access to

information for all citizens.

4. On the basis of these audits, the illegitimate debts of middle-income countries, which are owed predominantly to private creditors, must be cancelled. In this regard, illegitimate debts include:
 - Debts which cannot be serviced without placing a burden on impoverished people;
 - Debts contracted for fraudulent purposes;
 - Debts from loans wasted on projects that never benefited the people; and
 - Debts which grew due to the compounding of interest rates after Northern countries unilaterally raised interest rates.
5. A neutral international Arbitration Panel or Tribunal should be established under the United Nations to adjudicate debt cancellation. Such a tribunal should not be placed under the auspices of the IMF, since the IMF is itself a creditor and subject to manipulation by its most powerful members. The tribunal will build on precedents set by national insolvency codes, including Chapter Nine of the U.S. bankruptcy law whereby municipalities may have their debts written down or canceled without sacrificing spending on health, safety and welfare services. Any debtor country will have the right to initiate proceedings. Debtor and creditor nations will appoint an equal number of judges to arbitration panels. Debtor nations will make such appointments on the basis of broad consultation with all sectors of society.
6. In as much as the International Monetary Fund and World Bank have failed to oversee the international financial system in a manner that supports sustainable and productive development, they should either be fundamentally restructured or new institutions put in their place.
7. Orthodox structural adjustment conditions demanded by the World Bank and the IMF should be abandoned, as they have manifestly failed to resolve the debt crisis and have caused enormous hardship for the poorest sectors of the population. Instead, countries should adopt economic development policies like those proposed by the UN Economic Commission for Africa in its African Alternative Framework to Structural Adjustment Programs for Socio-Economic Recovery and Transformation. All sectors of civil society should be consulted in designing policies to promote equitable development rather than just macroeconomic stability.
8. New ways of regulating speculative capital should be agreed upon multilaterally to avoid instability and vulnerability for national economies and for the international financial system. For example, a tax on foreign exchange transactions, as proposed by James Tobin, a prominent monetary economist and Nobel Laureate, should be instituted to slow down currency speculation and enable national governments to exercise more control over their monetary policies. The revenues from a Tobin tax (conservatively estimated at about US\$200 billion a year from a 0.1% tax) should be administered by an independent United Nations agency with provision for civil society involvement in determining how these revenues will be used for social and economic development.
9. On the national level, authorities must have the ability to regulate flows of "hot" money into and out of their countries. There is a consensus on the need to give priority to direct and productive investments, assure that investments are long-term, and prevent

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instability that can cause their rapid flight. Such measures should include taxes on speculative profits, laws requiring portfolio investments to remain within the country for a minimum period, and incentives for direct and productive investments.

10. Any agreement in the Americas must include provisions to allow governments to channel foreign investment into productive purposes instead of speculation. The North American Free Trade Agreement must be amended to this end. Any other agreement for the Americas or under the World Trade Organization, where they may attempt to integrate the worst aspects of the failed Multilateral Agreement on Investment, must also share this orientation.
11. Central banks and other national regulatory bodies should be strengthened to assure that they are not subordinate to national and international banking oligopolies. Central banks and monetary authorities should be free from the short-term electoral interests of parties or groups. Therefore, they must have a certain autonomy from the executive branch of government. However, in no way should these financial institutions be completely autonomous bodies free from social control through democratically elected legislatures.
12. Central banks and national monetary authorities must take concerted international action to lower interest rates, stimulate demand for goods and services, and channel investment into production instead of speculation. International cooperation is also necessary to combat money laundering.
13. No international agreement should diminish the capacity of states to establish monetary and financial policies for the development and well-being of their peoples.
14. Independent nations should resist the call for dollarisation, as this involves an unacceptable loss of sovereignty and leads to the imposition of severe austerity measures.

11. INTELLECTUAL PROPERTY RIGHTS

Background

Intellectual property rights (IPR) are theoretically intended to balance the interests of inventors, artists and other creators of socially useful products with those of society at large. However, the recent wave of trade agreements generally favors commercial activity over the public interest. Moreover, the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which has become the standard for intellectual property rights provisions, is biased towards protecting and compensating private institutions, rather than society's more creative individuals.

Of special concern are the TRIPs rules that privatize, commodify and monopolize products derived from biodiversity. Under these provisions, corporations have the right to patent products, processes and organic material, i.e., biotechnology. These rights raise new ethical, economic and social issues because they affect the self-determination of individuals, groups and peoples. Traditionally, knowledge of biodiversity was treated as common property of local communities. In the FTAA and other trade negotiations, there has been a push for "TRIPs-plus" rules that even more rigorously facilitate private monopoly rights, despite the efforts of several regional groups to establish principles defending sovereignty and community rights to traditional knowledge and biological diversity.

Guiding Principles

1. Each country should remain free to establish rules for the protection and enforcement of intellectual property rights that reflect their specific social, cultural, economic and environmental contexts. Developing countries should remain free to develop intellectual property systems that reflect their level of development.
2. National governments have the right to invoke safeguards for compulsory licensing, parallel importing and public non-commercial use provisions to guarantee access to essential drugs, as well as to protect biodiversity, indigenous knowledge, and traditional and farming communities. These safeguards are necessary to protect the basic human rights to life, food and health guaranteed in the Universal Declaration of Human Rights.
3. No trade or investment agreement should be allowed to supercede national laws requiring foreign investors to transfer appropriate technology to the host country. Any such agreements should facilitate the transfer of technology on fair and most favorable terms in order to reduce the enormous gap in technical and scientific knowledge, and the gap in benefits derived thereof, between nations—a provision explicitly stated (albeit ignored) in the WTO TRIPs Agreement.
4. International understandings affirming these principles and establishing appropriate enforcement mechanisms should be negotiated through bodies such as the Conference of Parties to the Convention on Biological Diversity (CBD), the World Intellectual Property Organization (WIPO), the World Health Organization (WHO), and the United Nations Conference on Trade and Development (UNCTAD) and not through trade agreements.

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5. In no case should trade sanctions force countries to adopt measures that subordinate the interests of the national population to those of transnational corporations or to their national subsidiaries. The International Court of Justice should review possible conflicts between international trade agreements and international human rights, health and environmental law and policy to ensure that an appropriate balance between private and public interests is achieved globally.
6. Any proposed rules on the protection and enforcement of intellectual property rights should be subjected to a detailed, forward-looking assessment that examines the potential effect of any proposed rules on, inter alia, the following issues:
 - a. **Market competition in sectors covered by strengthened intellectual property rules.** In many key markets for developing countries, particularly in agriculture and medical biotechnology, current rules are leading to reduced competition. Examples include: overly broad patent claims (e.g., over new crop varieties and pharmaceuticals), the acquisition and strategic use of patent portfolios to prevent competition by similar but non-infringing products, and continued blurring of the lines between invention and discovery. This consolidation of key industries has serious implications for social welfare, including access to food, health, and nutrition for citizens in both developed and developing countries. This suggests that before countries agree to rules, they should consider the relationship between strengthened intellectual property rights, competition in these industries, and the economic and developmental interests of developing countries.
 - b. **Investment in countries at different levels of development.** The assessment should examine how strengthened intellectual property protections might affect the level and nature of investment in participating countries. In particular, attention should be given to the potential for strengthened intellectual property rights to: 1) undermine the opportunity for investment in follow-on research by permitting patents on fundamental research processes; 2) limit the extent to which local companies can invest in adapting existing technology to local conditions; and 3) otherwise limit access to fundamental products and processes.
 - c. **Innovation in different sectors, including in the informal sector.** Innovation exists in many countries with little or no enforceable intellectual property rights protection, illustrating that the existence of intellectual property rights is at best only one factor contributing to technological innovation and economic development. Countries should assess the potential implications of strengthened intellectual property rights on local innovation, particularly in the informal sector.
 - d. **The implementation of other international agreements, including the Convention on Biological Diversity (CBD).** Governments should ensure that any intellectual property rules are supportive of the CBD. In particular, governments should bear in mind Article 16.5 which calls on “Parties to co-operate, subject to national legislation and international law, to ensure that IPRs are supportive of and do not run counter to the CBD’s objectives.” Particularly in light of their submissions to the WTO’s Council on TRIPs regarding the relationship between TRIPs and the CBD, developing countries should be careful not to adopt rules in the FTAA that would exacerbate concerns about the potential for IPRs to undermine the CBD’s objectives.

Specific Objectives

1. Exclude from patentability all life forms, including plant and animal species, microorganisms, biological and genetic material and processes and combinations thereof, including that derived from the human body. Specifically, exclude the

patentability of biological and genetic processes related to research on human reproduction and human-animal cross-genetics as well as the manipulation, research and marketing of human embryos and clones. This would establish strong linkages between patenting systems, bioethics and biological rights, and law. It is important to emphasize that bioethical principles should be at the center of any patent systems, since they influence the limits and determine the scope and meaning of protection of the human species.

2. Require the holders of pharmaceutical patents to accept compulsory licenses for producers of generic medicines. (Compulsory licensing does not abolish patent rights but it does oblige patent holders to allow others the right to produce copies in return for payment of royalties. Generic medicines typically sell at lower prices than brand name pharmaceuticals.)
3. Assert the primacy of international agreements on human rights, human health, food security and biodiversity over TRIPs and other trade agreements in international law.
4. Support the Draft Declaration on the Rights of Indigenous Peoples and other agreements defending indigenous peoples' a priori rights in the face of genetic research that uses their traditional knowledge and biological resources (including human tissue, blood or DNA samples, or their craft designs and techniques) or stores them in databases without their knowledge and consent. Defend women's and men's rights to information and autonomy regarding research that utilizes organic components of reproductive systems and prohibit any kind of marketing of parts or components of the human reproductive system.
5. Protect the rights and livelihoods of farmers and communities (and especially indigenous peoples) that act as the guardians of biodiversity. Support calls by local communities for a moratorium on bio-prospecting and encourage the development of national legislation to subordinate the terms of any bio-prospecting contracts to conditions preferred by local communities.
6. Support internationally-recognized farmers' rights to save, use and sell farm-saved seed and the patent-free free exchange of germplasm held in the public domain, as presently being negotiated in the International Undertaking on Plant Genetic Resources for Food and Agriculture. Support the adoption of this International Undertaking as a protocol under the Convention on Biological Diversity.
7. Support the negotiation of strict liability rules and traceability-and-labeling requirements under the Cartagena Protocol on Biosafety, enforced with criminal, civil, and/or trade sanctions for the illegal transboundary movement of genetically engineered organisms.
8. Intellectual property-related contracts that prohibit the saving of seed or allow the burning of crops as punishment for violating the terms of such contracts should be superseded by "ordre public"—an international law term allowing governments to take measures for the general public benefit and public health considerations relating to food security.
9. Complement intellectual property rules with new mechanisms and dedicated funding to promote the transfer of technology on fair and most favorable terms to developing countries, including through the processes established in existing multilateral and regional agreements.

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10. Ensure that the Convention on Biological Diversity's provisions on benefit sharing (including Article 15); preservation of and respect for the knowledge; innovations and practices of local and indigenous communities (including Article 8(j)); and transfer of technology (including Article 16) are given primacy over intellectual property rules. National measures to implement these provisions should not be subject to challenge under rules for the enforcement and protection of intellectual property rights included in trade agreements.
11. Ensure that copyright laws protect artists, writers, musicians, crafts producers, and other cultural workers and not just publishers and the motion picture and recording industries as occurs under NAFTA's Article 1705. Such protections would be of special value to indigenous and female crafts producers.

12. AGRICULTURE

Background

The pursuance of trade and investment liberalization within the FTAA process is likely to cause serious social and economic problems for the agricultural sector. Likely consequences include the acceleration of migration from rural to urban areas and the growth of poverty zones and increased marginalization both within cities and within rural regions, creating more pressure on local governments for basic services. In several countries, large corporations are pressing for the sale of agricultural land to be converted into forestry plantations, resulting in a decrease in agricultural employment and the loss of basic agricultural capital. These phenomena would make our countries' food security increasingly dependent on volatile international market prices.

In light of these threats, agriculture should be given special treatment in trade and investment liberalization agreements, rather than being considered an economic sector like any other. Agriculture is a sector which fulfills a series of essential functions for the stability and security of nations: to preserve the cultural riches and multi-ethnicity of societies, to preserve bio-diversity, to generate employment and self-sustainability (as much in agriculture as in related economic activities), to maintain the population of rural areas, to ensure basic food security and to contribute to a sustainable development with more economic, social and political stability.

Therefore, to respond to the impacts of hemispheric integration, the development of a long-term rural development strategy and the adoption of an integrated agricultural policy within the FTAA are urgently needed.

Guiding Principles

1. Countries should assume the responsibility to ensure food security. In the negotiation of international trade agreements, they should have the right to protect or exclude foods, such as corn, which form the basic diet of their people.
2. Almost everywhere in the Americas, agricultural markets are open to increased national and global economic exchange, resulting in an even further concentration of land ownership in the hands of a small number of persons or companies. This opening is one of the main causes of migration to large urban centers. An agrarian reform is needed that legitimizes property rights of small producers and landless rural workers. In particular the traditional rights of indigenous peoples to live off their ancestral lands must be respected.
3. Governments should address the particular environmental and economic issues associated with the agroforestry sector. While recognizing the different levels of development among the nations of the Americas, governments should establish the necessary incentives to allow for secure and sustained advancement towards sustainable agroforestry development.
4. Countries should work to strengthen the organization of its rural sector to ensure that this population is duly represented, both in its relations with the state and with the

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market. For example, small-scale farmers and their organizations, who have been previously excluded, should be allowed to play an active role in trade negotiations. This ongoing process of modernization of the rural sector must take into consideration the most vulnerable sectors of the society and safeguards should be adopted to protect cultural minorities social groups who do not have the means to adequately and efficiently integrate into the market.

5. In order for integration to take place in a state of equal conditions, an efficient state which defines policies and generates options that guarantee equity and transparency, is necessary. Support for family enterprises and co-operatives engaged in processing commodities produced by small-scale farmers is a part of this challenge. Governments should also recognize that small-scale farming requires special policies concerning land conservation, appropriate technology (including biotechnology), agricultural research, credit and subsidies.
6. In addition to the large differences in levels of agricultural development that exist among the continent's diverse countries, there are huge differences in the amount of subsidies and other assistance that governments give to agriculture. Therefore, any trade liberalization agreement for agriculture must include concrete measures for the upward harmonization of financial assistance for agriculture with the eventual goal of spending similar amounts expressed as a percentage of GDP.
7. The insertion of a country in the global economy requires the modernization of its agricultural productive capacity, management skills, distribution and commercialization networks, technological innovation and scientific research, and the handling of information.
8. Laws and regulations designed to guarantee sanitary and phytosanitary standards to ensure high quality produce and protection for consumers and the environment should be arrived at through wide consultation with citizens. These standards need to take into account the diversity of different countries' national capacity and establish realistic schedules for their upward harmonization.
9. Agricultural workers are frequently submitted to abuses and injustices. The main demands of the labor movement as well as of the *campesino* organizations of the hemisphere are the following:
 - a) Guarantee the protection of trade union freedoms that allow for the constitution of a union structure in the rural sector.
 - b) The promotion of norms that allow the negotiation of wages and other working conditions, through an efficient system of collective bargaining.
 - c) The recognition of the working woman's needs, taking into consideration the obligations of child bearing, child rearing and child education.
 - d) The consideration of specific health and safety standards linked, for instance, to the effects of chemicals on *campesino* workers.
10. Sustainable development and the protection of the environment can only be promoted through the best use possible of natural resources and through a proper monitoring of productive activities, especially of those activities that have a significant impact. In this regard, the pursuance of agrarian reform is indispensable, since it can only foster a better development and bring dignity to the inhabitant. This is why the demand in favor

of agrarian reform in Latin America and in the Caribbean should receive the broadest support.

13. MARKET ACCESS AND RULES OF ORIGIN

Background

The goal of the recent wave of free trade agreements has been the reciprocal lifting of trade barriers among nations, regardless of the countries' level of development or particular national interests. The dominant principle of these deals has been the concept of "national treatment," which means that governments should be required to treat foreign investors, investments, and products the same as their national counterparts. This chapter, while not criticizing international trade, argues that trade liberalization should not be an end in itself for which everything else must be sacrificed. Instead, market access for foreign products and investments should be evaluated and defined within the framework of national development plans.

Guiding Principles

The complex process of reconciling national development plans with international trade rules should take the following matters into account:

1. The differing levels of development among countries are a justification for allowing non-reciprocal and preferential treatment in market access. Articles 2, 4, 17 and 18 of the United Nations Charter of Economic Rights and Duties of States (1974) and the Enabling Clause of the Tokyo Round of November 28, 1979 (L/4903) establish the legal and socio-economic bases for demanding equitable (not equal) treatment. Equal treatment among unequals leads to inequality.
2. A development strategy should be multifaceted and must not treat the external market as the only influence over demand. Domestic markets must be appropriately valued for their role in generating a "virtuous cycle" of raising the population's standard of living and increasing economic growth. By linking economic development to per capita consumption, standard of living for the majority inevitably rises. Fighting poverty and the pursuit of social justice cease to be just ethical demands; they become levers for development.
3. When countries support strong domestic demand and economic activities that are not dependent solely on external markets, they are able to approach trade negotiations from a position of strength rather than appeasement.
4. Permanent and predictable access to foreign markets is important for advancing growth of productive capacity and securing a healthy balance of payments. That is, necessary imports are financed through a strong and competitive export sector. However, market action only works to eliminate non-competitive producers; trade liberalization does not itself create a strong and competitive productive capacity. Development and competitiveness require concrete policies with clear objectives, goals and instruments. States have a responsibility to meet this challenge. Agreements must not impair the ability of states to set policy for the promotion and even the protection of certain strategic industries to achieve just and sustainable national development.

5. At the present time, the fundamental obstacles to access to developed countries' markets are not tariff barriers but so-called "technical barriers to trade." Trade negotiations should address this issue.
6. The goal of negotiations should be to establish clear and fair rules for permanent and predictable access to markets which benefits consumers, creates jobs and well-being for the population, strengthens productive capacity and protects the environment.

Specific Objectives

Tariffs

Special, differential or preferential treatment for developing countries is vital to address the inequalities between countries in our hemisphere. Unfortunately, these issues appear to have been excluded from discussion of market access rules in the FTAA process. This is in spite of the fact that governments have supported this concept in numerous multilateral forums. For example, the GATT has allowed some degree of special and differential treatment since 1964 and heads of state at the IX Iberoamerican Summit committed to promote these criteria. Recently, the Declaration and Action Plan for the tenth session of UNCTAD, held February 12-19, 2000 in Bangkok, Thailand, dedicated an entire section to special and differential treatment. Paragraph 60 of the Bangkok Action Plan states:

"The basic principles of special and differential treatment (SDT) for developing countries are fully established and recognized in the various decisions of the United Nations General Assembly, UNCTAD and the WTO. Modernization and operationalization of special and differential treatment, in particular in terms of maintaining and expanding export opportunities for developing countries, may be needed to adapt it to changing international trading conditions and to make special and differential treatment a better instrument for development...Developing countries should be enabled to make full use of the SDT provisions."

The Bangkok Action Plan also calls for the provision of technical assistance and development financing to ensure that developing countries can take advantage of new trading opportunities created by improved market access.

National treatment is justified as a guarantee of non-discriminatory treatment. However, in a situation of economic relations among unequal parties, where equality is the exception, it is unfair to speak of discrimination. In reality, this approach imposes severe restrictions on industrial policies and economic development measures. NAFTA made these constraints more severe by extending national treatment obligations beyond trade in goods to also cover services, investment and intellectual property rights.

A better approach would be to establish criteria to ensure equivalent access and special, differential and preferential treatment in order to address inequalities. Therefore, we must support the demands of developing countries to adopt a rational strategy that leads to concessions from the North to the South. This is especially urgent given the persistent lack of will to apply special and differential treatment and the intent to ignore the issues and sectors of interest to developing countries. The FTAA negotiations should produce results that are consistent with the commitment made by industrialized countries in multilateral forums, reflecting treatment that consists in:

"granting high priority to the reduction and suppression of obstacles that restrict trade...including customs duties and other restrictions that entail an unreasonable

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differentiation between goods in their primary form and after they have been transformed, (...) to refrain from establishing or increasing customs duties or non-tariff barriers to imports, (...) to actively consider the adoption of other measures with the goal of broadening the possibilities of increases in imports from the less developed parties."

These other measures could include:

"concrete proposals that would tend to promote changes in local structures, to stimulate the consumption of particular goods, or to establish measures to encourage trade," in goods of special interest to developing countries. The FTAA should express the commitment of industrialized countries to push their businesses and institutions to grant incentives designed to promote technology transfer to less advanced countries so that they can establish a solid and viable technological base, as well as offering "appropriate flexibility so that different developing countries open fewer sectors, liberate fewer kinds of transactions, and progressively increase access to their markets according to their particular level of development."

The governments of the Americas have the opportunity to pass from the declarative to the normative in regards to the application of special and preferential treatment.

Fair treatment should not be provided solely among nations: it should also be given within each country. Preferential treatment should be directed to support micro, small and medium-scale businesses, particularly social and community businesses, as well as small-scale agricultural production. Beyond the privileges and profits that some transnational corporations and investors might obtain, it is unfair to submit productive and business sectors, above all micro, small and medium-scale businesses, to raw competition that will undoubtedly cause enormous destruction to all of those who lack, as a result of structural adjustment policies, any kind of minimal support. Consequently, we believe that:

1. Producers and society in general should agree on a transparent and widely participatory process for establishing a timetable and choosing products to be subject to lower duties.
2. Internal timetables for trade liberalization and tariff reduction should be accompanied by coordinated programs to ensure that national industries become competitive during the transition. These programs should include access to consultants and training, technological research and development and long-term credit. Sectoral programs should be accompanied by a national development plan including commitments from the state to create the macro-economic conditions that enhance competitiveness. For developing countries, trade liberalization without an industrial policy is suicidal.
3. An even-handed tariff policy must be implemented to ensure linkage between productive sectors so that no sector is disadvantaged. This could occur if tariffs on an end product were eliminated without a corresponding reduction of duties on imports of its intermediate inputs.
4. The right to impose clear, transparent and agreed-upon performance requirements in conjunction with programs of tariff reduction must be preserved.

Non-Tariff Barriers and Standards

1. Non-tariff barriers increasingly take the form of standards of various kinds: quality standards, processing standards, fulfillment of phyto-sanitary specifications (relating to the absence of agents of infection or disease in plants), certificates of origin, organic product standards (e.g. certification of production without toxics or chemical

fertilizers), environmental standards, and labor standards, including minimum wage, prohibition of child and forced labor.

These standards, necessary to ensure that such matters as quality, health and environmental protection and workers' rights are taken into account, have also been used as hidden obstacles to the free flow of trade from developing to developed countries. They are imposed unilaterally, and may reflect the interests of corporations and their lobbyists to get governments to impose protectionist sanctions on foreign goods and/or services. The challenge then is to eliminate bias and arbitrariness from the imposition of such standards to ensure they reflect legitimate interests and are not hidden protectionist measures to benefit specific companies.

2. Laws, regulations, guidelines and standards for guaranteeing the quality of goods and services for consumer and environmental protection should be arrived at through broad public consultation. They should take into account the range of conditions prevailing in different countries and include realistic timetables. They should be written into wide-ranging agreements on scientific and technical cooperation and industrial development. These agreements, reinforced by adequate resources and specific sectoral accords, should raise standards by international consensus, especially for developing countries and for socially owned enterprises (such as cooperatives) and micro, small, and medium enterprises.

These provisions should require multinational corporations to meet the highest standards to prevent the sale of products banned in that company's own country in countries with lower standards or lax enforcement. Only through broad and democratic processes of consultation and negotiation can consumer interests for high standards health and environmental protections be met and unilateral, illegal and covert protectionist measures avoided.

Customs Procedures

1. Customs procedures should be harmonized while they are modernized to reduce bureaucracy and simplify procedures. Assistance should be given to the social sector and micro, small and medium producers and entrepreneurs who engage in foreign trade.
2. Customs valuation procedures should be linked to and integrated with those used for evaluating dumping and subsidy cases, the suppression of fraud, information gathering systems and dispute resolution mechanisms.

Rules of Origin

Rules of origin are the criteria by which products come to be considered to be originating in a given place, which then affects their treatment in cross-border exchange under free trade agreements. The trend in such agreements is to establish regional rules of origin specifying a percentage of components or inputs to be included in order to qualify for designation of origin.

While we do not exclude additional regional or sub-regional content requirements within the hemisphere, our view is that countries should be able to establish national content rules if the country feels that national economic development requires such designation. This demand or principle complements other proposals in the chapter on investment regarding the requirement for foreign companies to source a percentage of inputs in the country of production.

Countries may deem that, without national content rules, trade liberalization only benefits intra-firm integration and leads to the disintegration of national productive linkages. Lacking

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incentives to purchase production inputs within the country of production, large export companies revert to imports, which eliminates spin-off economic growth, despite increasing production. The neo-liberal model assumes that the export sector is the engine of economic growth. In practice, this "engine" becomes disconnected from the rest of the train. Rules of origin that only require regional content transform the productive apparatus of many Southern countries into maquiladoras or export processing zones.

14. GENDER

Background

The process of globalization, financial integration, freer trade, and investment has profoundly transformed the lives of women in the Americas. Globalization policies have been preceded by national adjustment proposals, the privatization of state enterprises, the restructuring of the employment policies from secure employment to flexible, temporary work, the relaxation of labor laws, the relaxation of tariffs and quotas which leads to the opening of markets (which tend to benefit Northern companies and bring “free” trade to countries of the South.) The World Bank (WB) and the International Monetary Fund (IMF) have created an unjust packet of neoliberal policies called Structural Adjustment Policies (SAPs) that they have imposed as a model on poor nations.

Women in the Americas (both North and South) have seen their wages decline and their workloads double because of trade liberalization. Women are not only affected by global trade rules but are affecting the process of global trade by the ways in which they participate: as workers, producers, and consumers. The ways in which they participate are affected by class, race, ethnicity, sexual orientation, age, ability, religion and other aspects of identity as well as by nation and gender. Yet, in many ways, globalization and freer trade have exacerbated existing gender inequalities and deepened asymmetrical power relations between men and women in the Americas.

Trade rules are based on traditional neo-liberal economic theories and macro-economic policies that are gender-blind and fail to take into account women’s unpaid household work or unequal access to resources such as credit, land, education, and health services. The United Nations estimates that the global value of women’s unpaid work is equal to \$11 trillion dollars a year. This unpaid work—maintaining a household, caring for children and the elderly, and building community ties—is extraordinarily valuable. The fact that women’s contributions are unrecognized in the market/formal sector leads to their being over-worked. Failure to recognize the economic and social contributions of women’s unpaid work affects women’s opportunities in public life, their status in society, their social development and their ability to exercise their human rights.

IMF/WB SAPs depend upon women’s unpaid labor to cushion the impact of these adjustment policies. Governments have cut their domestic expenditures in order to pay off their loans. These cuts, largely in social spending, have led women to increase their workloads to respond to increasing prices of household goods and declining domestic food production. For example, women spend more time shopping for cheaper items, cultivating home gardens to supplement purchased goods, or walk rather than take public transport. Classical economic theories also assume that women’s labor is “flexible,” positing that women can be hired when the economy expands and dismissed when the economy contracts. This is because of an assumption that women are secondary wage-earners whose income supplements a household budget rather than supports it.

In the labor force, global trade rules offer both new opportunities and new problems for women. Much of the success of export-oriented growth is due to the large influx of women workers. Yet studies have shown that the transition to market economies is associated with a rise in occupational and sectoral segregation by sex. In Export Processing Zones (EPZs), women workers represent approximately 90 percent of the workforce although in some high-tech factories women are being dismissed and replaced by male workers. In the United

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States, 55 percent of temporary workers are women and 70 percent of all part-time workers are women.

Export-led growth strategies promoted in trade agreements in the Western Hemisphere employ a largely female workforce in low-paying, tedious, and precarious jobs. Women workers in the EPZs assemble garments, electronics, and other items for export abroad. Women work as many as 50 – 80 hours a week and earn just 56 – 77 cents an hour. These wages are often below the national minimum wage and are far below what a worker needs to provide food, electricity, and shelter for a family. Despite national economic growth in Mexico and El Salvador, wages have fallen for women workers in the EPZs.

These jobs often lack basic social protections and fail to uphold basic labor rights. Union organizing and women maquila workers who organize fellow workers are often barred in EPZs. Moreover, women workers in many factories have reported physical abuse, sexual harassment and violence, as well as mandatory pregnancy testing as a condition for employment. Yet because of the large pool of available low-waged labor, employers' have a great deal of power—any demands that women workers make could cost them their jobs.

Women also comprise the majority of workers in the lower levels of the service sector and are heavily concentrated in clerical, sales, financial, and service jobs that are regarded as “female” occupations. These jobs are considered less desirable than “male” jobs and pay lower wages.

Although women are entering the formal labor market in record numbers, they still face gender-based discrimination on many levels. On a basic level, too many women are concentrated in low-paying, low-skilled jobs that mirror tasks performed at home (cleaning, sewing, cooking, etc.). Regardless of what types of jobs women hold, they earn on average 75 percent of what men earn for comparable work around the world. The gap between men and women's wages varies widely. For example, men earn 25 percent more in the United States, 47 percent more in Brazil, 30 percent more in Chile, and 3 percent more in Costa Rica. Studies have shown that gendered wage differences remain even when men and women are similar in age, education, and years of work.

Many women, unable to afford child-care or failing to gain secure work in the formal sector, turn to the informal sector. In this sector, women can combine work and child-care although the work is poorly paid and tenuous. Workers in the informal markets range from street vendors to micro-entrepreneurs to crafts producers. Women vendors and crafts producers are vulnerable to global and national economic changes. Higher costs for materials and/or the influx of cheap imports as a result of new trade rules have decimated many women's craft sales.

Trade liberalization has also led to increased out-sourcing of work, where women will work out of their homes for a company and are paid a certain amount for each piece they complete. This type of work blurs the lines between formal and informal labor. These “home-based workers” are often paid less than EPZ workers and are not protected by national labor laws.

In rural areas as well, trade liberalization often strains women's ability to care for their families. Transnational corporations tend to promote one type of crop for export. This strategy of export promotion can destabilize the family farm, reduce the number of plants a family can grow for its own consumption, and cause men to emigrate from the rural areas to cities or other countries to find new jobs. While men move in search of jobs, women are left in the countryside to care for their families, work the farm, and maintain the household.

Women are also under-represented in decision-making structures that ratify multilateral trade

policies. In Latin America and the Caribbean, women legislators comprise 9 percent of the seats in parliament (UNDP, 1999). In the United States, women comprise 12 percent and in Canada 23 percent of the seats in parliament. The dearth of women in decision-making positions severely limits their ability to influence the trade agreements which will have a large impact on their lives. In the WTO Dispute Settlement Body, only 12 (7.5 percent) are women.

Sustainable trade policies must reflect women's needs and concerns. Even World Bank studies show that rectifying gender inequities leads to economic growth, reduces market inefficiencies, and results in greater macroeconomic growth. Moreover, investing in women's welfare also positively impacts the lives of their families. Numerous studies have shown that as women's earnings increase, they invest a greater proportion of their earnings than men do into improving their children's nutrition, education, and general welfare. By investing in women today, we also invest in the next generation.

Gender concerns cut across all topics. Therefore, the points set out below are taken up more concretely or complemented in other chapters, such as those on human rights and labor rights.

Guiding Principles

1. Structures and processes must be developed by trade negotiators to ensure women and representatives of women's organizations from all levels of society are included and engaged in trade debate. Women should be included in trade delegations and on dispute-resolution panels. Civil society groups, including women's groups, must be able to have their concerns reflected in the trade debate.
2. Women are affected differently by trade policies. The needs and concerns of all women, from various classes, ethnicities, races, geographical backgrounds, ages, sexual orientations, abilities and religions must be incorporated into the trade debate to ensure equitable trading policies leading to sustainable development. Therefore, it is important to guarantee access to a plurality of women's groups, including women's caucuses in labor unions, women's labor unions, and other grassroots organizations.
3. Political space to develop and propose alternatives to the current global trading model needs to be developed. Alternatives that reflect broader priorities than the market should be part of an on-going dialogue between trade negotiators, civil society organizations, and citizens about the goals and rules for global trade. For example, an official FTAA working group that examines how trade will affect women, social development, and human rights should be formed. This consultative group should rectify negative impacts of trade for women and relate to and inform all other FTAA Working Groups.
4. Trade agreements should not supercede international norms, covenants, and agreements which many countries have signed (such as the UN Convention to Eliminate All Forms of Discrimination Against Women (CEDAW), the UN Platform for Action from the U.N. Fourth Conference on Women, and the UN Declaration of Human Rights). Should there be a conflict between trade language and international treaties, then the international covenants should trump trade negotiations.
5. Women's myriad economic and social roles as well as women's cultural roles and women's paid and unpaid work need to be recognized.
6. Trade and investment should result in upwards harmonization for women and should

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be evaluated on a micro and macro level to assess the shifting balance of power and resources. This can result in increased benefits for all persons, including women and other previously underrepresented persons.

7. The positive benefits (externalities) of women's work caring for the household and children and elders should be factored into national GDP accounts or in "shadow" accounts.

Specific Objectives

Governments should:

1. Implement the UN 20/20 Initiative. The 20/20 Initiative requires each developing country to allocate 20 percent of its domestic budget, and every donor country to allocate 20 percent of its foreign aid to a country's social development programs including health care, education, access to safe water, basic sanitation, and basic reproductive health for all people.
2. Undertake a gender impact assessment of trade policy on women. Collect data disaggregated between males and females to form a statistical baseline for future analyses by 2003. This assessment should be widely disseminated so that its findings and recommendations can be incorporated into trade rules under negotiation. Additionally, a social assessment with a strong gender component should be conducted every 2-5 years after 2005 as national capacity allows.

The assessment should answer the following questions:

- How would accession to the FTAA affect women's employment, earnings, and opportunities for promotion in industrial production? In home-based production? In agriculture? In the service sector? In micro-enterprise ventures? How would it affect indigenous women? Women of different ethnic or racial backgrounds?
 - How would intellectual property rights regulations affect traditional medicinal practices, which are often carried out by women?
 - How would government cuts in expenditures, which often are concentrated in health, food security, and education programs, affect women's labor force participation? Time-allocation (workload)? Overall social development? How would the FTAA affect governments' ability to create sound budgetary policies for the well being of their nation? How would the FTAA affect national laws of member countries to set standards and protect health, education, environment, labor rights, women's rights, and food safety? How would the FTAA affect the international agreements in the areas of human rights, women's rights, environment, labor rights, and economic and social rights?
3. Integrate gender concerns, particularly the platform from Beijing and human rights treaties into all negotiations around and agreements on, investment and trade. In particular, include the Beijing Platform in Trade and Investment, which recognizes the economic, social, and cultural roles of women, especially regarding safeguards, intellectual property rights, economic authorship, and both paid and unpaid work. Gender should not be limited to one section of the negotiations, but rather, should be addressed as an overarching theme throughout investment and trade negotiations.

4. Government negotiators should develop and implement formal mechanisms for dialogue with women's groups about the impact of trade on women's lives and to accept their proposals for changes to agreements.
5. Establish policies and programs that ensure that child-care is affordable, accessible, and safe so that women with children who have to work outside of the home will be able to do so.
6. Develop and enforce laws, policies, and programs to remedy sexual harassment in the workplace. Foreign investors should be held accountable to domestic laws on sexual harassment, sex and pregnancy discrimination, job and/or wage discrimination, and other labor issues. Foreign investors should comply with international human rights standards.
7. Develop and enforce policies and laws that assure that women enjoy the full protection of civil, labor, reproductive, sexual, and human rights.
8. Increase communication and collaboration among women's bureaus, trade bureaus, labor bureaus, community groups, and other relevant parties when drafting trade agreements.
9. There should be concerted efforts to ensure that women benefit from some of the positive effects of globalization, such as the ability to communicate through the Internet, email, and other methods. It is imperative that women have increased access to computers, technology, and training.

Trade agreements and governments should:

1. Provide technical and development assistance that promotes education, technological training, capacity building, and skills development for women, particularly women who are displaced, or lose their livelihoods as a result of trade liberalization. Funds should be allocated to education, health, and labor programs that specifically have a gender component in a systematic and planned way.
2. Provide technical aid and development assistance to ensure that women have equal access to resources such as credit, technological training, as well as assets such as land.
3. Provide an analysis and assessment of how trade liberalization might affect women working in the informal sector.
4. Trade agreements should include mechanisms that protect small businesses from the influx of cheap imports.
5. Compensatory schemes, including retraining and capacity development should be included to support displaced workers.
6. Require foreign investors to comply with international codes of conduct and human rights standards and establish effective monitoring and enforcement of multi-national corporations that includes broad civil society participation.

15. SERVICES

Background

One of the most significant developments over the last decade has been the progressive liberalization of services, in terms of trade and investment. This liberalization has been strongly facilitated by multilateral and regional agreements. In 1994, services were incorporated for the first time into a multilateral accord with the creation of the General Agreement on Trade in Services (GATS) in the Uruguay Round of the GATT. Now World Trade Organization (WTO) members are engaged in mandatory negotiations to expand the depth and breadth of GATS.

Meanwhile, the FTAA negotiations are proceeding in tandem, with the intent of furthering the liberalization of services beyond what is included in NAFTA and GATS. The purpose of the FTAA negotiations appears to be: to open up all service markets to international competition, including public services such as sanitation, health and education; to lock in privatization which has already been mandated for indebted countries through the IMF and World Bank's structural adjustment programs; to curtail domestic regulations which might in any way interfere with such open markets; and to impose irreversible global regulations that benefit transnational corporations. Since the FTAA negotiations are still in their initial phase, there is the possibility to make alternative proposals.

The initial push for multilateral negotiations on services came as a result of the expansion and predominance of services in developed countries (through the emergence of services as an important economic activity) and the internationalization of key services activities (financial, telecommunications, data processing, etc.) promoted by transnational corporations and banks.

In many developing countries, the service sector has also acquired growing importance. In Latin America, services represent around 60 percent of regional gross domestic product (GDP). Services increased almost one percentage point between 1990 and 1997, while manufacturing decreased by about the same amount. However, this "de-industrialisation" of the region's economies is not just a result of increased service activity as such, but also of a process of growing marginalisation of a significant percentage of the population that has been pushed out of productive activities and into informal or precarious service activity.

Services are of tremendous importance, not only as inputs in the production of other goods and services, but also as products which satisfy the needs of consumers directly. The WTO has identified 160 service sectors in the following categories:

- transport and distribution services, such as airlines and wholesale trade;
- consumer services, such as hotels and fast food chains;
- public services, such as sanitation, health, and education;
- repair services, such as auto repair garages;
- financial services, such as those offered by banks and insurance companies; and
- public utility services, such as electrical, telecommunications, water, and gas services.

Financial activities have continued to dominate the internationalization and liberalization of services. The United States and Canada have promoted greater liberalization of financial services, arguing that by opening capital markets, the region's developing countries will benefit from improved access to capital and resource allocation. As experience has

dramatically demonstrated, however, increased financial flows—especially of speculative capital—have generated monetary and currency instability in the region.

Services made up approximately 25 percent of world exports of goods and services between 1995 and 1997, according to conservative estimates of the International Monetary Fund. However, the majority of exports stem from industrialized countries. The Western Hemisphere represents some 24 percent of total world exports of services, of which the United States alone contributes 16 percent. The ten principal service exporters in the Americas account for 95 percent of the hemisphere's total service exports.

While the hemisphere's largest economies (United States, Canada, Mexico, Brazil, Argentina and Chile) make up the biggest share in terms of the absolute value of trade of services, trade in services as a percentage of GDP is even more important for the smaller economies in Central America and the Caribbean.

Foreign direct investment in services is also becoming increasingly important throughout the region. Many investments made in such sensitive sectors as energy, transport, water, tourism and waste disposal do not take into account the environmental impacts of those activities. Moreover, as profit-driven transnational businesses increasingly take over state-owned entities, the cost of services tends to rise, creating hardship for the most vulnerable sectors of the population.

Since many services meet essential human needs such as health care, it is critically important that nations are able to ensure that such services are available for all people. Unfortunately, multilateral negotiations concerning the service sector tend to treat services as investments rather than as vital products that satisfy the needs of a given population. Negotiations which have begun under the FTAA should avoid this pitfall and instead protect people's basic right to essential services.

Guiding Principles

1. Negotiations shall take into account that the majority of basic services are either public goods or are characterized by naturally monopolistic tendencies. Furthermore, many services are bound to the cultural identity, national security, or political cohesion of a given country.
2. Individual countries shall assume the responsibility to guarantee their populations, in their entirety, the provision of basic services and public utilities. These countries shall, therefore, agree to carry out legitimate regulatory objectives, including consumer protection and universal access to services.
3. Service negotiations shall be held with a broad perspective that includes national interests and those of consumers and other citizens' groups, as well as relevant policies on foreign investment, intellectual property rights, and other issues. In other words, the liberalization and commercialization of services cannot be examined exclusively from a perspective of efficient resource allocation.
4. It is of vital importance that any provisional service accords are implemented flexibly and gradually. Their rapid implementation could spell the ruin of local businesses struggling for market position without the resources and experiences necessary to compete with global enterprises. If these firms are forced out of business, local consumers and the national economy could both be affected.

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5. FTAA negotiators shall make it a priority to develop an adequate regulatory structure for financial services to address problems arising from increasing financial flows—especially those of speculative capital—and the monetary and currency instability that they generate. (see Finance Chapter for more details)
6. Disciplines on environmental laws and market access requirements in some service sectors—energy, transport, water, tourism and waste disposal—could result in serious environmental problems. The FTAA must ensure that services are used to protect the environment and not to harm it.
7. The democratic process must prevail over the “market access” principle. Due to pressure from the more powerful countries of the Western Hemisphere, it is clear that the crux of negotiations lies in the expansion of specific governmental commitments on national treatment and market access. The “market access” principle expands the frontiers of free trade not only by opening local service markets to foreign businesses, but also by restricting or prohibiting governmental policies which seemingly interfere with the market. This principle causes foreign trade rules to invade the field of domestic policies.
8. Transparency in all negotiations is essential. The FTAA negotiations are taking place behind closed doors, under corporate pressure, and beyond the reach of the media and public scrutiny despite the fact that this adversely affects the vast majority of the inhabitants of the hemisphere.

Specific Objectives

1. The right of residents/consumers to access to affordable basic services shall be guaranteed by the FTAA member countries.
2. Governments shall be permitted to introduce temporary safeguard measures in their service sectors. Liberalization of services shall in no way restrict access of the poorest consumers to basic services such as education, health care, water and other utilities.
3. Governments should strengthen their national competition policies with the intent of controlling the manner in which companies are acquired and merged. In addition, such laws shall control anti-competitive practices and unfair trade in services. The FTAA should harmonize such laws, but under the condition that they place priority on maximizing consumer benefits and promoting national development goals.
4. Countries shall be permitted to liberalize their services in accordance with their national development priorities.
5. National and hemispheric regulations on financial services must be improved or established if any eventual agreement on services is to serve as an effective tool for economic development.
6. The governments shall protect the rights of residents and consumers by developing the technical and institutional capacity to regulate the activities of privatized services. Regulatory codes and implementation procedures shall be established prior to the commencement of any privatization process.

7. The GATS proposals presented by the Dominican Republic, El Salvador, and Honduras to recognize the special characteristics of tourism (which should be stipulated in an annex on tourism) should be supported and extended to the FTAA.

16. ENFORCEMENT AND DISPUTE RESOLUTION

Background

The progressive principles proposed in this document present a comprehensive vision for just and sustainable development leading to a society founded on respect for human rights and recognition of the need to live in harmony with the environment. The vision presented stands in stark contrast to the reality of the social conditions created by the neoliberal model of development, with its focus on macroeconomic indicators as a proxy for quality of life.

There are many challenges on the road to implementing the vision we share for a better economic system. The preceding chapters of this document represent the accomplishment of one of the major tasks – reaching agreement on the substantive social standards among the many diverse groups from the many countries and cultures represented. These discussions began formally at the People’s Summit in Belo Horizonte, Brazil in 1997 and continued to the present in a process of consensus building to reach agreement on the standards. To make these standards meaningful, it is necessary to take the next major step and develop effective mechanisms for enforcement.

We must acknowledge at the outset the particular challenge of developing agreement on an enforcement process. It is relatively easy to reach agreement on a concept of substantive rights. In the abstract, people from widely divergent economic and cultural backgrounds can agree, for example, that all workers should be paid a living wage. But adding the issue of enforcement to the mix raises the important question of “enforcement at whose expense?” During the numerous group discussions that led to the creation of this document, it was the issue of enforcement that brought out sentiments of nationalism, regional factions, and concerns about protectionism. The proposal for a living wage in the context of an enforcement process can variously be interpreted to be a plan to force low-wage countries to lose their comparative advantage of cheap labor, a protectionist ploy by high wage countries to curb job losses to low wage countries, or an unrealistic economic theory that will destroy “natural” wage differentials set by the free market.

To make progress on the enforcement issue required a particularly careful process of consensus building. The proposals herein reflect that consensus, and also illustrate graphically the areas where further work is needed. Thus, this proposal is not a detailed regulation ready to be implemented. Rather, it creates a framework of general principles that must be refined and adapted to a specific context. The assumption is that the enforcement provisions would be included in a future trade agreement, along with the proposed substantive standards.

Overarching Principles

There were four bedrock principles that emerged in the discussion of enforcement provisions. There was an especially strong position of the participants in the various discussions that it would not be acceptable to graft the social standards onto a trade agreement as a parallel or side agreement. In order to make clear the conceptual shift we are advocating, whatever social standards that are to be addressed must form the core of any future trade agreements.¹ Improving social standards should be the paramount goal of trade and other

¹ The ambitious list of social standards addressed in this overall document will be extremely difficult to introduce whole cloth into any future trade agreement. While this remains our overall objective, the enforcement mechanism is

commercial exchanges, not an eventual side effect. Second, affirmative enforcement of the standards should be viewed as an unusual and extreme occurrence. The system should create sufficient incentives to encourage compliance so that outside enforcement can be avoided. The norm should be that national processes will be used to uphold the fundamental rights protected by the social standard. Third, if there is a specific violation of a social standard, the primary emphasis on enforcement should shift from government entities to the companies that are failing to comply with the laws. Governments are implicated if they have failed to adequately enforce their own laws, which is a distinct problem that can be dealt with separate from the question of who is responsible for the active violation of rights. Finally, in cases where an enforcement process must be initiated, the process must be public and transparent. This is to ensure that the enforcement process is not misused.

Components of the Enforcement Mechanism

A. Preliminary Assessment of Compliance With the Social Standard

Guiding Principles

Objective information must be gathered to determine whether a specific country is in compliance with the social standard. The purpose of this assessment is not to assess penalties, but to make an appraisal of what would be needed in the way of resources, law reform and other changes to bring each country into compliance.

Specific Objectives

1. Objective measures for each of the dimensions of the social standard must be developed. For example, with respect to labor rights, International Labor Organization (ILO) Conventions and Recommendations define the basic rights with some precision. Further, national laws enacted to implement the specific labor rights exist in most countries. The more difficult task will be to find objective measures of the other, less developed aspects of the social standard.
2. The information gathering must be transparent and involve the civil society partners who have an interest in a specific aspect of the social standard. For example, a report on environmental compliance should include input from communities that have been adversely effected by pollution.
3. In many cases there will not be a representative group that can speak for a specific community. A positive by-product of this process will be to encourage the development of representational bodies to speak for various sectors of society. The development of these groups will be facilitated by the prospect that their voices are important and will have an impact.
4. Respect for the rule of law and the democratic process will be facilitated by a transparent process that begins to make the existing power structure accountable to those segments of society that have been affected by the status quo. Simply initiating a “truth-telling” process can be a cathartic experience that is the first step to positive change.

drafted to be applicable to whatever package of social standards are included in the regulatory scheme.

Alternatives for the Americas

Key Issues to be Addressed:

1. What should be the composition of the body that ultimately produces the compliance report? There is consensus that the reporting process must involve neutral experts as well as civil society partners from sectors in a specific country that have an interest in the issues to be assessed. With respect to some of the social standards, such as labor rights, there is a body that is recognized internationally as having expertise, the International Labor Organization. It would seem logical to use such bodies as a source for neutral experts where they exist and if they are willing to participate. Otherwise, the intergovernmental authority that oversees the particular trade agreement must have the authority to convene a panel of experts to conduct the initial assessment with a mandate consistent with the objectives discussed above.
2. What is the impact of the report? Should it only be a baseline for determining the level of compliance or should it also serve as an initial indication of qualification to participate in a particular trade agreement? If the former, it is likely that a more honest assessment can be developed. A middle ground may be that the report serves as an initial assessment and that each country will get a specific period of time to cure any failure to comply with the social standards that is identified in the assessment.

B. Development of a Specific Action Plan to Achieve Compliance With the Social Standard

Guiding Principles

As a result of the audit process, a specific action plan will be developed that is designed to bring the subject country into compliance with the social standards within a specific time frame. This approach must emphasize that the goal is to encourage compliance and harmonize upward the social conditions in a given country.

Specific Objectives

1. The fear of being held hostage to an outside standard must be dealt with by a clear demonstration that the goal is to work with a specific country to achieve compliance using a reasonable plan designed to reflect the country's unique situation. There are many precedents for such a report. For example, the World Bank prepares a Country Assistance Strategy for beneficiary countries, which purports to offer a comprehensive economic plan. Our approach would be to make preparation of the report a transparent process with wide participation from social sectors to achieve consensus and coordination.
2. The plan should identify specific national laws that need to be better enforced and propose areas where new laws would be necessary. This is a major element in a culture of clear, transparent processes. There will be no mystery of what is needed to comply, which should help to eradicate the fear that the enforcement process will be misused for improper purposes.
3. Most important, the action plan will include projected total costs to bring the country into compliance and propose funding sources, including foreign assistance, debt reduction and tariff incentives to finance the compliance effort.
4. Ongoing, objective monitoring must be provided to assess compliance with the specific timetables set by the action plan. This is crucial to begin the process with a clear

understanding that this is a serious effort to bring concrete improvement in compliance with the social standards. It also attempts to preclude the need for specific enforcement actions after the time for compliance has passed by making clear that enforcement is not the goal; compliance is. The monitoring will also assess whether there needs to be changes in the action plan due to any significant change in circumstances.

Key Issues to be Addressed:

1. Should the countries be provided the benefits of whatever trade agreement is the context for the social standards prior to achieving the results of the action plan? The consensus seems to be that each country should be provisionally provided the benefits as long as the compliance effort remains on the schedule provided by the action plan.
2. How can current foreign assistance programs be coordinated with achieving compliance with the social standards? It seems that the ostensible objective of foreign assistance to developing countries is “development.” This goal would be well served if each country began a serious, coordinated effort to comply with the social standards. Thus, the challenge is how best to harness all of the current, often misused foreign assistance, to be used in the overall effort to achieve real sustainable development.
3. Who will conduct the monitoring? Perhaps the same group that prepared the assessment or a subset of that group with heavy reliance on civil society partners who have access to information on current conditions within the country.

C. Integrating Companies Into the Compliance Process

Guiding Principles:

A significant aspect of the enforcement process is getting private parties, particularly multinational companies, to comply with the social standards. Many of the social standards depend upon private compliance with national laws, but multinational companies often exercise undue influence at a national level based on implicit threats to relocate to avoid regulation. While a key part of achieving compliance at the national level is to have better enforcement of national laws, this process should be supplemented by creating a legal obligation for companies to comply with the social standards within the area of a trade agreement to remove the incentive to play one country off another.

Specific Objectives:

1. As an initial step, social audits should be conducted of companies that are operating in two or more countries within the area of the trade agreement. This will identify key problem areas and also increase public awareness of violations.
2. In order for a company that exports within the area of the trade agreement to obtain the tariff benefits of the trade agreement, the company must make a specific, legally binding commitment to observe the social standards.
3. Ongoing monitoring must be done to keep information current and to verify whether the companies are honoring their commitment to comply with the social standards.

Key Issues to be Addressed:

Alternatives for the Americas

1. Who will be responsible for monitoring the companies? A related question is what body will oversee the process to ensure a uniform, coordinated approach? Using the same panel that conducts the assessment of country compliance makes sense from an efficiency standpoint, but it might be too costly. Perhaps there could be a list of local organizations that are certified to be qualified to conduct the company audits.
2. This approach will work well for multinational firms. Should purely local companies be brought into the process or should they be governed solely by national laws?

D. Penalties for Failing to Comply with the Social Standards.

Guiding Principles

A critical aspect of the process of enforcement and the imposition of penalties for non-compliance is to institute a democratic and open process that yields predictable and consistent results. Use of the enforcement mechanism should be rare if the rest of the steps to facilitate compliance are utilized.

Specific Objectives

1. Initial enforcement should normally utilize national laws and processes, which will be improved through following the assessment and implementation of the action plan. National processes need not be exhausted if there is no applicable national social standard, there is a demonstration that national processes will result in undue delay and irreparable harm, or there is a record of pervasive non-enforcement of the specific right at issue.
2. The trade agreement must provide for some tribunal to resolve disputes. There should also be provisions to make enforcement proceedings fully transparent with a written public record of all proceedings and open hearings. There also needs to be a clear appeals process. Also this agreement must give standing to all stakeholders for participation in the process. Governments (including local governments), labor organizations, NGOs and all persons negatively impacted by a rights violation should have standing to bring complaints.
3. Penalties for non-compliance should be available to be imposed on governments and/or private entities that caused the violation, as appropriate to the situation. Prior to the imposition of any proceedings to impose a penalty, adequate notice should be given to provide opportunity for response and/or compliance. The penalties should focus on correcting the violation and withholding benefits under any trade agreement until compliance is achieved.

Key Issues to be Addressed:

1. What form of tribunal should be created to adjudicate disputes relating to enforcement? At least part of the tribunal should be composed of experts in the area of the rights in dispute. The tribunal should be empowered to issue binding orders to achieve compliance with the substantive social standards agreement to by the country and/or private entity that is the subject of the complaint.
2. To preserve national sovereignty and to encourage better enforcement of national laws, the process must integrate national enforcement mechanisms such that use of

the tribunal would be unusual. How to deal with situations when national processes are inadequate is the real challenge.

3. How much power should the tribunal created by the trade agreement have? There should be appropriate caution about creating a super-national body. Tailoring the available remedies to be limited to withholding benefits of the trade agreement should be an acceptable compromise. If countries and/or companies want the benefits of the trade agreement, they should be subject to loss of those benefits for failing to meet the conditions.

**This document is available in
Spanish at the following web site:**

www.asc-hsa.org
