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# Alternatives for the Americas

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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 March 2002, the Secretariat was transferred to the Brazil Network for a Peoples Integration (REBRIP). In addition to RMALC and REBRIP, members of the HSA Coordinating Committee include:

- Common Frontiers / Canada
- Réseau Québécois sur l'Intégration Continentale (RQIC) / Québec
- Alliance for Responsible Trade / United States
- Congreso Latinoamericano de Organizaciones Campesinas (CLOC)
- Organización Regional Interamericana de Trabajadores (ORIT)
- Alianza Chilena por un Comercio Justo y Responsable (ACJR)
- Jubileo Sur
- Capítulo Perú de la Alianza Social Continental
- Women's Committee of the HSA
- Capítulo Ecuador de la ASC y del Foro Social Mundial

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In preparing this fourth 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 (HSA) 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, indigenous people or women, have been working for years to oppose the implementation of so-called 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 dominant integration model based on the proposals described herein.

The Hemispheric Social Alliance rejects the extension of the North American Free Trade Agreement (NAFTA) to the rest of the hemisphere, as well as any accords based on the neoliberal model. 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, and because of that we must deliberate, propose and struggle for a different model.

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. At the same time, local markets have been flooded with subsidized agricultural products from the North, leading them to bankruptcy. 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. In recent years 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 cities in the hemisphere to seek work. But what many find is unemployment and poverty and a life in the "informal economy," since a great deal of domestic manufacturing has been eliminated by the penetration of transnational corporations and rules that block 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 and labor rights, and racist hysteria promoted by right-wing politicians and their constituencies.

The substitution of subsistence farming with agriculture export production has also had serious impacts on local environments and standards of living. It threatens biodiversity and water and soil quality and neither benefits nor respects farmers' or consumers' interests and rights.

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 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. Argentina is the latest nation to undergo a devastating economic crisis caused in part by the privatization and deregulation of financial markets permitting massive capital flight.

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 United States and Canada, the governments are abandoning public housing subsidies 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 United States and Canada, the reduction in fiscal deficits 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. Speculators, transnational corporations and those in their service proclaim the wonders of the market. Those sectors, however, never let their rhetorical commitment to free trade limit their demands for special protections for their own particular interests, as evidenced by the recent debate on Trade Promotion Authority in the U.S. Congress, as well as the dramatic increase in agricultural subsidies to corporate agriculture. 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.

This struggle against the neoliberal model, as expressed in the struggle against free-trade agreements, has been going on for some time. It began with the fight against NAFTA's approval and advocacy efforts to change the characteristics of the Mercosur. A turning point was reached in Belo Horizonte, Brazil in 1997, when the ORIT unions and their Brazilian affiliate, the CUT, convened a meeting of union leaders from the Americas to which they invited the national multisectoral networks that had been working on the issue. Other civil-society networks were also meeting in the city at that time to discuss the same issues. We ended up working together and decided to join forces to initiate the formation of a great hemispheric social alliance that would involve all sectors of the population affected by this model. The decision was made to convene the First Summit of the Peoples of the Americas the following year. Various committees were established for that purpose, among them an international committee that prepared a draft on alternatives that became the first version of the document presented here.

It was a time of momentous decisions and meetings by hundreds of organizations from many sectors. It is important, however, to highlight the role of multisectoral coalitions in some countries that had been working together for years in a spirit of unity and consensus to defeat free trade agreements. Their experience and years of unified struggle were vital in the development of the nature and forms of struggle that came to define for the Hemispheric Social Alliance. These include to Common Frontiers (Canada), the Quebec Network on Hemispheric Integration, the Alliance for Responsible Trade (United States) and the Mexican Action Network on Free Trade -- which were already organized as a trinational network -- as well as the Chilean Alliance for Just and Responsible Trade (formerly the Chilean Network for a Peoples' Initiative). These multisectoral networks, together with the soon-to-be formed Brazilian Network for a Peoples' Integration, as well as the hemispheric coordinators of the labor sector (ORIT) and the peasant sector (CLOC), formed the initial nucleus that began the formation of the Hemispheric Social Alliance and its Alternative proposals.

The first Peoples' Summit, held in Santiago, Chile, in April 1998 parallel to the second official Summit of heads of state of the Americas, highlighted the fact that there is a growing movement of resistance. This has emerged even more forcefully during the enormous mobilizations that led to the failure of the WTO meeting in Seattle in 1999 and at virtually every gathering of official policymakers since then. This global effort against neoliberal globalization also takes on the unified spirit of mobilization and the search for alternatives that characterized the meetings convened by the Zapatistas in the Chiapas jungle. This enormous, unified 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 popular movements throughout Mexico, Central and South America is an attempt to limit our nations' demands.

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 did not end with the negation of the neo-liberal rules; it was the beginning of a dialogue on alternatives. Earlier versions of this document were based on those talks. Our proposals have been enriched by continuous discussions at numerous seminars and meetings during the development of the Hemispheric Social Alliance. Those talks continued at the Second

Peoples' Summit in Quebec, Canada in 2001, where more than 3,000 representatives of civil-society groups from throughout the hemisphere met to challenge the FTAA and to promote alternatives.

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. *Alternatives for the Americas* is an integrated proposal for an alternative vision of equitable and sustainable development for our societies. We firmly believe that the mere incorporation of one or more aspects or chapters from this document into the FTAA or similar accords would not resolve the fundamental problems of free trade.

The aspiration to build a more egalitarian and respectful society throughout the hemisphere transcends national boundaries and has a long historical tradition in the Americas. It goes 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 current trade negotiations (investment, finance, intellectual property rights, agriculture, market access, services, and dispute resolution), as well as issues that are of extreme social importance but which governments have ignored (human rights, sustainability, environment, labor, immigration, the role of the state, and gender). They should be considered as a complete package of proposals for positive economic integration.

**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 sustainability and environmental protection. They should also have the power to channel investment to environmentally sustainable activities, reject privatization of natural resources, eliminate policies that subsidize or encourage the use of fossil fuel energy, and use the precautionary principle in setting public policies. Natural resources must be used to serve people's basic needs, not simply as an object of market transactions.

**Sustainability:** A regional model for sustainable and democratic development requires the incorporation of the principle and objective of sustainability in all of the subjects addressed. These issues should be negotiated with the objective of resolving – with the support of national policies – our region's grave social problems, including inequality, unemployment, and environmental degradation. The agreements must commit the member countries to comply with international treaties and conventions designed to protect the environment, minorities, workers' rights, women's rights and other social conquests. They should also provide practical measures designed to make those agreements effective at a national level.

**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.

**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.

**Education:** Education is not a commodity; it is a universal and fundamental social right that should be ensured through publicly funded services and should be the responsibility of the State. It should be excluded from agreements on the liberalization of services. Public education should be free and fully accessible in all areas and throughout people's lifetimes.

**Communications:** The right to communications is the right to produce and send, as well as to receive information. Communications should be considered a public good and should be preserved and regulated for society's social and cultural benefit. Communications and mass media should be guided by ethical principles inspired by a culture of life and humanity.

**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. Highly indebted countries should have their debts reduced in order to avoid crises in their balance of payments, pressures to exploit natural resources unsustainably and the other negative economic, social and environmental consequences that result from efforts to service debts that have already been paid. World Bank and IMF structural adjustment programs must be abandoned, and those 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:** Countries should assume the responsibility to ensure that their populations have food. Governments should have the right to protect or exclude staple foods from trade agreements. There should be a democratization of decisionmaking on agricultural, fishery and environmental policies, and especially land reform policy, that fully involves small-scale farmers. No element of any international integration agreement should limit the ability of the nation state to promote and consolidate that process.

**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. Government must have sovereign rights to provide subsidies and fiscal incentives

to productive services that reflect legitimate social interests.

**Services:** Basic services such as education, health care, energy, water and other utilities should be available to all people throughout the hemisphere. In order to reach this goal, those public services should not be privatized or left to the forces of so-called market rules. 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 free market approach to globalization is the only, much less the best, form of economic integration. The dynamics of the world economy are a reality that must be taken into account in any effort to develop a national development plan if the programs proposed are to be viable and sustainable. We refuse, however, to permit the world economy to define, with our governments' consent, the future of our countries and our peoples. We must democratically construct sustainable national development plans in our countries and, starting from that point, insert ourselves into the world economy.

This dominant free market approach (embodied in the North American Free Trade Agreement, 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. 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. 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 at the national as well as international levels.

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.

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 tools 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 that controls our lives. We do not accept the inevitability of a model of globalization that excludes more than half 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. Behind the neoliberal economic measures lies not just a political and economic strategy but an unacceptable underlying conception of the human being and a culture that must be eliminated.

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 decision making on trade and investment must be introduced. International agreements should be ratified by citizens through direct consultations, for example, through plebiscites or national referendum.

The democratization of debates and decision making is a necessary precondition, but is not sufficient in itself for the development of new just and sustainable rules on investment, environment, and labor that takes citizens' interests into account. Democracy by itself does not ensure social welfare; clear and viable economic and social proposals must be developed based on consensus and public support. In addition, democracy must not be reduced to an electoral issue. The democratisation of decision making on fundamental economic and social issues is imperative. Citizens must not only approve economic and social policies, but also participate in their formulation, implementation, and evaluation. They must be able to change or modify these policies when appropriate. In order to achieve this objective it may be necessary to implement special initiatives to ensure that marginalized or oppressed groups, among them women, have access to these debates.

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 that agreements on economic integration 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 that is currently being conducted under the pretext of fighting arms and drug trafficking and drug production.

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

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, systematic discrimination against women or other groups, 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 social 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 imbalances 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 increasing 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, people of color and indigenous peoples have had to shoulder a disproportionate share of the economic and social decline caused by neo-liberal policy. Cuts in public-sector services and jobs, together with the reduction in stable jobs and democratic structures, have hit women harder than men and girls harder than boys. In times of scarcity, the decisions made by families and society tend to favor men, whether consciously or not. Moreover, women's responsibilities increase, since they are traditionally responsible for care of the family, when family members lose access to jobs or programs funded by the state. This is one more burden added to the other forms of discrimination women confront on the economic, legal, social and political spheres in the hemisphere. Discrimination must be ended by implementing new strategies and economic models to reverse the impacts of current policies. Countries must respect international agreements designed to achieve equity. At the same time there should be social programs and the intensification of international cooperation toward this end.

### 4. Sustainability

- a) The decision to work for sustainable and democratic regional integration requires the incorporation of those principles and objectives into all of the issues that comprise an agreement on integration: trade; investment; services, etc. Those issues must be negotiated with the specific objective of resolving, with the support of national policies, our region's serious social problems: inequality; unemployment; environmental degradation; poverty and many other issues.
- b) Any integration agreement should commit the member countries to comply with international treaties and conventions designed to protect the environment, minorities, workers' rights and other social conquests. It should also provide practical means for the implementation of measures at the regional level. Consequently, nothing in such agreements should contradict those global treaties or conventions.
- c) The contents of these agreements, especially on matters related to trade, investment and financial and technological assistance, should include mechanisms that prioritize

domestic production of goods and services necessary for the population's basic needs. Instead of stimulating the production of superfluous consumer goods produced by large transnational corporations or of monocrop exports, they should protect production oriented primarily to the domestic market, whether industrial, craft, or from family-farms. In this regard, the preservation of cultural patterns of local consumption should be the object of special attention and protection.

- d) In order to achieve sustainability, there must be progressive reductions in exports of goods intensive in natural resources and energy, whose production degrades the environment in the Americas, especially among its poorest populations.

## 4. HUMAN RIGHTS

### Background

In virtue of international law and, in particular, the Charter of the United Nations, Charter of the Organization of American States, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), American Declaration of the Rights and Duties of Man, American Convention on Human Rights, and the Protocol of San Salvador, states are required to respect, protect, and promote the exercise and fulfillment of all universal and indivisible human rights. In order to fulfill this obligation, states must demand and ensure that other social and economic players within their jurisdictions, including transnational corporations, also respect human rights.

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 benefit 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. In fact, many governments have put much more emphasis on negotiating trade agreements than protecting human rights. For example, the Committee which is charged with overseeing state compliance with the International Covenant on Economic, Social and Cultural Rights (which has been ratified by 145 nations) is composed of 18 part-time experts and two staff persons. The World Trade Organization, on the other hand, with roughly an equivalent membership, has over 500 employees and much greater resources.

These practices ignore the fact that, according to international law, governments have the fundamental obligation to respect and ensure the exercise of human rights by all persons in their jurisdictions and to demand that other actors, including transnational corporations, uphold basic human rights. 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 neo-liberal approach is incompatible with human rights and has exacerbated the marginalisation of broad sectors of the hemisphere's population. In this context, four basic points must be considered:

1. All members of the United Nations have pledged to uphold the rights enumerated in the Universal Declaration of Human Rights. In addition, many states have ratified the ICCPR, the American Convention on Human Rights, the Protocol of San Salvador, the ICESCR and other legally binding documents that obligate states parties to respect, protect and promote civil and political, as well as economic, social and cultural rights. When negotiating bilateral or multilateral agreements on trade or investment, states must be mindful of their pre-existing human-rights obligations under international law. Currently, there are no reports of any government actually establishing a process designed to identify inconsistencies between their human-rights and their trade obligations, either domestically or internationally. According to the United Nations Charter, Article 55, universal respect for human rights is a

central purpose of the United Nations. The UN Charter also states that in the event of a conflict between the Charter and any other international law, the obligations under the Charter shall prevail (Art. 103).

2. States parties to the above-enumerated binding agreements, as well as others barring discrimination, must guarantee equal rights for all people under their jurisdiction, without distinction of any kind, such as sex, ethnicity, nationality, language, religious beliefs, political convictions, economic or social conditions. States must combat impunity in cases of human rights violations, including cases of discrimination. In particular, states must adopt measures necessary to give effect to the rights recognized in the instruments to which they are party. For example, in many cases, states are obligated to ensure the effectiveness of policies that provide for the rights of women, workers, children, the elderly, migrants and their families, the displaced, the disabled, indigenous peoples, and those of African descent, among others. States must recognize the rights of indigenous peoples and approve instruments that guarantee the full use of said rights.
3. States parties to the ICESCR and other international instruments setting forth economic, social and cultural rights must take measures to progressively realize the right to work, basic labor rights, the rights to social security, to an adequate standard of living (including food and housing), and the rights to health, education and culture.
4. 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 imply the strengthening of opportunities and capacities so that all persons can enjoy them.
2. Human rights are based on human dignity and are the birthright of all human beings. They are therefore universal. They include civil, political, economic, social and cultural rights. Sometimes one category of rights is privileged in favor of another category and there are long-standing debates regarding the relative importance of different rights in the international community. However, in 1993 at the World Conference on Human Rights, the world's governments agreed that human rights are indivisible, inter-related, inter-dependent and universal. This means that one category of human rights cannot be neglected so that attention be paid to another. Furthermore, the Conference agreed that the realization of human rights is the first obligations of governments.
3. Economic, social and cultural rights are necessary preconditions for any possibility of effective, egalitarian and non-discriminatory civil and political rights. In order to guarantee the functioning of just societies and to legitimize their own existence, governments should take steps, to the maximum extent of their available resources, to achieve progressively the full realization of all economic and social rights of the people in their territory. 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.

4. Governments have the primary obligation to respect, protect and promote human rights. Although other actors are not directly regulated by international law, nevertheless, there is an international consensus that they 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. Effective remedies should be provided to victims of such violations.
5. All countries in the hemisphere that have not already done so should sign and ratify or, in the cases of treaties or declarations no longer subject to ratification, endorse the following international and regional human rights instruments and ensure that the human rights set forth therein 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 Law of Treaties (1980)
- 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
- 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 Criminal Court
- Vienna Declaration and Programme of Action (1993)
- United Nations Declaration on the Right to Development
- Conventions related to the core labor rights identified in the International Labor Organization's (ILO) Declaration on Fundamental Principles and Rights at Work – freedom of association and collective bargaining, the elimination of all forms of forced or compulsory labor, non-discrimination in respect of employment and occupation, and the effective abolition of child labor -- as well as the U.N. Conventions on the Protection of the Rights of All Migrant Workers and Members of Their Families and ILO Convention 169, Indigenous and Tribal Peoples' Convention.

#### **Regional Instruments**

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

The recognition of the rights derived from existing obligations and the ratification of other accords is 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 measures to eradicate "ethnic cleansing" and combat the 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 drafting of a Declaration and the establishment and ratification of a universal convention 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 the primacy of human rights as the guiding principle.
5. The hemisphere's governments should guarantee that neutral and objective administration of justice on the part of judicial organizations becomes the necessary and essential basis 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. Negotiations on any trade and integration agreement must meet the requirements of democracy and transparency. Negotiations or agreements that do not respect these rules must not continue.

Citizens and civil-society organizations representing them must have full access to information on intergovernmental negotiations and to the means and opportunities required to express their opinion on the content and possible ratification of such agreements.

Governments must provide the resources needed to ensure that there will be participation on the part of citizens. National parliaments must conduct proper public consultations on such agreements and take the consultation results into consideration before expressing an opinion on the agreements.

### **Strengthening and Reform of the Inter-American System of Human Rights**

The bodies of the Inter-American system for the protection of human rights should carefully monitor

the consistency of trade agreements with the respect of human rights.

The executive nature of the decisions made by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights should be reaffirmed. States should comply with the decisions made by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights. States should also adopt the national legal and other measures required to ensure implementation of all decisions emanating from the bodies of the inter-American system for the protection of human rights.

The Inter-American Commission on Human Rights should review periodically the impact of regional economic integration on human rights. States should ask the Inter-American Court of Human Rights for an advisory opinion on the compatibility between any proposed trade or integration agreement and the human rights principles set forth in the regional conventions.

Any conflict-resolution mechanism in a trade or integration agreement should take into account international and regional standards of human rights protection, as well as the jurisprudence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights in the process of resolving conflicts arising out of alleged violations of human rights principles set forth in those agreements.

In its annual report to the General Assembly of the OAS, the Inter-American Commission should include a standing chapter on measures and action to ensure compliance of all trade and integration agreements with Inter-American and universal instruments for the protection of human rights. In preparing this chapter, the Inter-American Commission shall take into account the contributions of civil society.

**In addition, the following steps should be taken:**

1. 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, for 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.
2. Ensure the direct participation of victims or their representatives in all stages of the proceedings at the Inter-American system through the establishment and adequate financing of a Fund for Human Rights Victims.
3. Governments should 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.
4. Make NGOs and other social organizations' formal consultative status at the OAS more effective, establishing formal mechanisms and spaces for consultation.
5. Adopt effective measures to protect human rights defenders.
6. Ensure that the election of members of the Commission and judges on the Inter-American Court meet criteria of independence, suitability and competence through a public and transparent process.

7. Promote further engagement of the Inter-American System with the development of economic, social and cultural rights.
8. Reaffirm the exercise of freedom of expression, eliminating any form of criminalization of public debate.
9. 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.

## 5. ENVIRONMENT AND NATURAL RESOURCES

### Background

The liberalization of trade and investment through the free trade agreements signed to date, especially the North American Free Trade Agreement, has had severe social and environmental impacts on peoples and workers. The peoples of the Americas aspire to an international economy based on different principles that prioritize the environment.

From an environmental perspective, the problems with classic trade and investment policy are that they: "externalize" (do not account for) environmental and social costs; they foster more intense energy use, especially of fossil fuels; and they lead to 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. Therefore, we believe that an accord that is respectful of the environment cannot be achieved through the addition of environmental clauses to the dominant logic of trade agreements. In reality, an environmental perspective would bring profound changes in economic strategy as such and therefore also lead to new thinking about the rules that govern the world economy. Experience has demonstrated that true development that incorporates an environmental perspective is incompatible with leaving the economy to market forces.

Environmental degradation has also had a disproportionate effect on people living in poverty, especially women, as they tend to live with the impact of polluted habitats and resources in places where there is little political will to improve those conditions. Supporters of neoliberal policies tend to view some dimensions of sustainability (such as food security, the protection and use 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) as obstacles to international trade. Governments for the most part have rejected these ideals, yielding instead to international market pressures.

Trade and financial liberalization stimulate and favor the entry of large transnational corporations into our countries, companies that are dedicated, in general, to export activities based on the intensive utilization of natural resources and energy. Those activities are often stimulated by the use of public resources. This means that state resources, which should be directed to social investments, end up facilitating even more exports and consumption of natural resources by the wealthiest sectors of society, with prices therefore remaining artificially low in the international market. This is, therefore, a mechanism that stimulates both concentration of wealth and environmental degradation.

### Guiding Principles

1. Any international negotiation or agreement on trade and investment should establish the preeminence of environmental agreements over trade and investment accords. 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. The 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. Countries have the legitimate right to impose social, labor and environmental performance requirements on domestic or foreign investment. The imposition of these requirements is a fundamental tool for ensuring that investments serve each country's social objectives.
4. International trade agreements and nation states should establish plans to gradually internalize the environmental and social costs arising from unsustainable production and consumption. The over-consumption of natural resources by the richest strata of the population is directly linked to the inability of the poorest sectors to access the essential resources needed to achieve decent standards of living. Over-consumption should therefore be combated with high taxes on superfluous consumption and other measures along these lines.
5. The environmental costs of trade should be shared according to the importance of the goods and services being traded, starting from the principle that the parties may have different responsibilities for achieving common goals of sustainability.
6. 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 or territory.
7. Governments should establish strict timelines to end international trade in products that harm the environment. During the transition period, punitive tariffs should be imposed to discourage trade in such products and avoid their use.
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 site of consumption.
9. Environmental regulations should be governed by the precautionary principle (i.e., the principle that, when in doubt, the most environmentally cautious course of action should be taken), rather than risk assessment (which applies economic cost-benefit analysis to environmental resources).
10. National legislation should be adjusted to prevent international companies from benefiting from mechanisms by which social and environmental costs fail to be incorporated into the prices of their products.
11. Trade liberalization must not hinder countries' capacity to channel foreign investment toward those sectors that strengthen sustainable development.
12. Trade and investment liberalization must not hinder regulations and controls on companies and investors to ensure compliance with a country's sustainable development objectives. Countries should maintain their sovereignty in regard to restrictions on those investments that could aggravate social and environmental problems and their disproportionate impacts

on the most vulnerable sectors of society, such as women and indigenous peoples.

13. Foreign companies and investors should be held to the highest environmental standards, and be required to share technologies that favor environmental protection and create jobs.
14. Fair trade practices and alternatives to the generation of pollutants that are environmentally acceptable should receive adequate budgets and investment for research, development and implementation.

## 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 acquire 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 of the free trade model on the region's forests 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 who inhabit forests or those who 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. 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. Prioritize forest conservation as a key objective of integration processes. Trade and investment agreements therefore 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. Require that the design and implementation of territorial regulations that contribute to linking agrarian and forest policies incorporate the needs and priorities of local populations through the promotion of their active participation in decision-making.
4. Institute the design of suitable indicators that are objective and neutral to measure the impact of economic integration processes on this and other natural resources.

5. Eliminate 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. Promote the certification of sustainable forest products, as well as incentives for 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 exchange of the resources generated by biodiversity has historically been of benefit to many peoples, although those benefits have been distributed less equitably over the last few 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 due to pressure 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.

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. There are also more indirect processes that lead to very negative impacts. 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 principles and objectives guiding any international agreement or regulation should serve to:

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 rules on life forms and the knowledge associated with them, along the lines defined in the chapter on intellectual property rights.

3. Recognize and protect the collective rights of local communities in the conservation, growth and cultivation of biodiversity, within the broader framework of defending indigenous and rural peoples' rights to land and resources and to continue their cultures and practice their forms of government. This implies the primacy of collective and community rights (which in many communities is the historic knowledge transmitted by women) over the provisions of any trade agreement or intellectual property instrument.
4. Explicitly recognize the superior status of ILO Convention 169 over any agreement on trade, investment or intellectual property in order to ensure the inalienable right of peoples and traditional black and indigenous communities to full autonomy in decisions over their traditional habitats, natural resources, and the biodiversity associated with them, and the use and management of same, according to their cultural systems and traditional rights.
5. Based on ILO Convention 169, 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 the 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 for 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, prevent those projects from being 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 prevent privatization and unleashes processes of alienation and competition within and among communities or between communities and governments.
9. Any agreement on these issues should recognize and compensate communities that create and conserve biodiversity for the historical and current 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 genetically modified 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. Access to those sources should be democratic and equitable.

In order to carry out this vision, it is clear that nation-states and local communities must control the development of energy sources and other natural resources. Unfortunately, the draft text of the FTAA includes various proposals similar to those in NAFTA that would make these controls difficult or impossible.

Specifically, the draft FTAA text includes measures that limit the use of export taxes, export quotas or minimum prices. In addition, it opens the door to one of the most dangerous articles in NAFTA, which requires countries to continue to export non-renewable natural resources even during periods of national scarcity. The chapter on competition policy includes provisions that would prohibit the establishment of “non-production” or other restrictions on the supply or demand of goods and services.

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. Eliminate direct and indirect subsidies for energy-intensive industrial activities such as the aluminum, steel and paper industries.
4. Develop a legislative and institutional basis for the promotion of sustainable energy production. This entails support for research and dissemination on clean energy.
5. 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.
6. Respect the right of communities in areas affected by energy production, especially indigenous communities.
7. 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. They should also consider the irreparable damage caused by displacement of local populations, as in the case of the construction of large dams.
8. Establish agreements that regulate the deposit and transport of energy products (such as oil and gas) in order to prevent risks and accidents. Promote international cooperation in cases

of accidents, requiring those responsible to assume the social and environmental costs associated with those accidents.

9. 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 inefficient public policies designed to control 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. Instead, it has generated greater demand for the use of resources such as water and energy.

Therefore, the governments of the Americas should:

1. Guarantee that mining projects are approved in advance by the communities that will be affected, especially when those projects would have an impact on other production or soil use. The land rights of indigenous communities must be respected.
2. Accept 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 export production 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 that results from insecticide use 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 exposed to them (especially the indigenous population, women and children), as well as 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 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 agrottoxics 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 residues from chlorinated insecticides used in the region.

### **Toxic substances and residues, solid and dangerous waste products**

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. Transnational corporations seek to homogenize consumer needs, centralize production at the cost of employment and the environment, and encourage waste production and generation in order to augment profits.

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 on 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 and prevent reductions in control levels of trade in waste and so-called recyclables, and trade in dangerous substances and materials. In particular, prevent 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.

## 6. SUSTAINABILITY

### Background

In the official documents related to the FTAA negotiations the expression “sustainable development” is limited to formal declarations by ministers and heads of states following their meetings or summits.

Just as “free trade” dangerously appropriates the concept of “freedom”, the concepts of development and sustainability take on very different meanings depending on who is using them.

The promoters of free trade defend their positions based on the general theory that liberalization will result in international specialization of production based on free competition among producers, leading to benefits for all, with reductions in production costs and, consequently, prices to consumers. This would lead, therefore, to a general increase in production and consumption, i.e., economic growth. This consumption, as it generates more wealth, would also lead to new cycles of growth and expansion of trade. The virtuous circle of trade would therefore close with economic growth, reductions in poverty and environmental protection.

The promoters of free trade, in spite of their frequent appropriation of the term “sustainable development”, hold out the promise of unlimited growth of production and consumption, as if it were possible that all inhabitants of the planet could have access to the already unsustainable patterns of consumption that occur in developed countries.

Meanwhile, the consequences of growing trade liberalization and international financial flows produce very different effects from those predicted by the neoliberal doctrine. International specialization of production has made the terms of trade less and less favorable for developing countries. Free circulation of capital, whether speculative or not, worsens many countries' balance of payments. The indiscriminate withdrawal of mechanisms to protect industrial production worsens this scenario even further, generating unemployment and needs for additional imports. The case of Mexico under NAFTA demonstrates the unsustainability of this model, as official data acknowledge that the cost of environmental deterioration and degradation is equivalent to 10% of GDP every year under NAFTA. Beyond that, the promised economic growth has not materialized, as average GDP per capita grew just 0.94% a year.

Pressured both by foreign debt and by the international financial institutions' policy conditions, these countries have had to adopt measures that, while dealing with the short-term external account problems, compromise their populations' quality of life over the long term:

1. The increasing inflow of speculative capital is a source of financial instability and imposes heavy future commitments;
2. The unrestricted entry of direct foreign investment, in addition to increasing future profit remittances, undermines countries' sovereign ability to determine the productive structure that best suits them -- initiatives capable of generating jobs and profits, of dealing with the population's basic needs, and generating the least environmental impacts. On the contrary, monoculture exports take the place of family farms; export industries (iron, aluminum, cellulose) receive incentives, thus taking the place of production of textiles, clothing, etc.

3. Increasing exports of raw materials and commodities, both agricultural and industrial, are intensive in natural resources and energy consumption, leading to increases in environmental degradation.

The historical tendency toward falling prices for primary export commodities, linked to the increasing need to import industrial goods, as well as growing capital remittances for interest payments, profit remittances, royalties, etc., only increase the gap between rich and poor countries.

Therefore a growing segment of the population in Latin America finds it impossible -- due to insufficient income -- to obtain the basic natural resources needed for decent living standards. At the same time, the richer countries, who benefit from profits on investments and the fall in the prices of primary goods, adopt patterns of consumption that are increasingly unsustainable.

As it is based on this logic of unlimited growth in production and consumption by the most favored sectors of the population, the FTAA plan goes against the path of sustainability with social justice that we want. The addition of new countries to an agreement that restricts the freedom to adopt autonomous economic, social, and environmental policies implies the loss of sovereignty to implement sustainable development plans at the national and regional levels.

Our analysis leads us to conclude that, at least in name of the precautionary principle, we should take a firm position against the FTAA in the form it is now being presented. As we see it, that agreement will lead us away from a plan for sustainable and democratic development that deals with the totality of our societies' real needs, something that is not surprising, since none of the member countries have any plan that would point in this direction.

The achievement of sustainable regional integration that promotes the welfare of the majority of the population would require regulatory mechanisms. Regulations that put the integration processes, and within them trade agreements, at the service of social interests and sustainability should be constructed with broad participation by civil society. Organized social actors, not markets, should be the protagonists in the definition of the course of integration and the development of countries. Moreover, integration based on equity both among countries and within them would require democratic institutions capable of ensuring transparency and civil-society participation.

This institutional structure should contribute to the development of mechanisms for cooperation among countries that should replace the practice of sanctions that characterizes trade negotiations. Social control, regulation, democratic institutions, and cooperation, therefore, should be the pillars for the constitution of a process of democratic and sustainable integration.

## Guiding principles

1. The Americas do not need free trade; we need fair trade, regulation of investment and conscious consumption patterns that support our national development plans. Our interests lie in economic, social and cultural integration that truly benefits the peoples of the Americas, not in plans based on trade frameworks that up to now have been directed by corporations and applied by governments. Our proposal would not leave integration to market forces; integration would be regulated and would prioritize participatory democracy, sustainable development, social justice and cultural diversity.
2. Trade and international finance should be tools by which production and consumption are linked. Approaching the issue of sustainability in its broadest sense, therefore, presupposes questioning the model of development.

3. The concept of sustainability, in turn, is not static, as it is built within the context of social relations and their interaction with nature. It is not simply a matter of sustainability of resources and the environment, but above all of social forms of utilization of resources and the environment. The appropriation of nature, as it occurs today, is the cause of the current situation in which social inequalities and environmental degradation are simultaneously deepened.
4. The definition of development should not be based on traditional indicators, such as growth in GDP, that are clearly incapable of and not designed to deal with the issue of distribution.
5. Civil society, in its broadest sense, must participate in the definition its own sustainable and democratic plan, as this is a political definition from which the forms of appropriation of political power, income, wealth, and natural, social and cultural resources are structured.
6. A model constructed along these lines should take into account that productive, commercial and financial systems must be subordinated to the preservation of the material base that sustains society, including natural resource and energy. It should not be led by those who proclaim that the free market economy will itself resolve the problems that it is creating. This alternative model would not reject the development and use of “cleaner” production techniques, but neither would it consider these sufficient to resolve the grave environmental problems we face today.
7. The issue of sustainability goes far beyond conditions in developed countries. It focuses on the reduction of natural resource and energy consumption by high-income groups. In order to confront social, economic and environmental challenges – as well as the preservation of our culture – it is necessary to first define what should be produced, for whom and with what objectives.
8. Trade and investment liberalization and export promotion and the attraction of investment at any cost will be the engines of this sustainable economic model. Trade and international relations are held up as tools to resolve our populations’ true problems. Instead of being “free”, trade and investment should be highly regulated as a function of those objectives.
9. At the international level, it is impossible to achieve global goals of sustainability without the logic of competitiveness being substituted for one of cooperation.

## Specific Objectives

1. A regional model of sustainable and democratic development must incorporate those principles and objective in all of the issues involved in an agreement on integration: trade; investment; services; and others. Such issues should be negotiated with the specific objective of resolving -- with the support of national policies -- our region’s grave social problems: inequality; unemployment; environmental degradation; and many others.
2. Any agreement on integration must commit the member countries to comply with international treaties and conventions designed to protect the environment, minorities, workers’ rights and other social conquests. It should also provide practical means for the implementation of measures that would make those agreements effective at a national level. Therefore, no provision included in those agreements could contradict the global treaties and conventions.

3. The provisions in these agreements, especially those related to trade, investment, and financial and technological cooperation, should include mechanisms designed to favor domestic production of those goods and services necessary to provide for the population's basic needs. Instead of stimulating production of luxury consumer goods produced by transnational corporations or monocrop agriculture, they should protect production that is primarily oriented to the domestic market, whether industrial, craft, or family-farm production.
4. In this regard, the preservation of each culture's particular consumption patterns should be the object of special attention and protection. More than any other measure in the current economic model, the recovery of traditional cultural values could constitute the best remedy against contemporary societies' unchecked consumerism.
5. In order to achieve sustainability, there must be provisions that lead to the progressive reduction of exports of goods that are intensive in natural resources and energy, as the production of those goods degrades the environment in Latin America, especially for its poorest populations.
6. To invest in our entire populations' quality of life means to invest, at the same time, in the creation of solid and stable domestic markets. This kind of process will clearly not be led by market forces. On the contrary, the trade and investment liberalization envisioned in the FTAA would entail even greater difficulties in this area. The activities most capable of generating domestic dynamism, of inducing and protecting domestic development, must be identified, while also providing for exports of excess production from each country.
7. The capacity to generate high quality and abundant jobs and incomes is a fundamental factor. Sectors and production methods that are not only profitable, but also capable of generating stable jobs and protecting the environment must be stimulated and protected in each of the countries involved.
8. With the objective of dampening superfluous consumption of goods that are intensive in natural resources, mechanisms should be established to impede the deterioration of prices of raw materials in international markets. Fiscal incentives for the re-use and recycling of those materials could be a useful tool. In addition, trade in those goods should be subject to additional taxes.
9. Integration agreements should provide for the implementation of measures designed to prevent predatory competition by member countries to gain markets. Those actions invariably lead to deterioration in prices and stimulation of superfluous consumption by the richest sectors.
10. Technical and scientific cooperation programs should be established that permit less developed countries to gain access to production technologies that are less harmful to the environment.
11. Regional programs should be developed to stimulate changes in those countries and sectors with unsustainable consumption patterns, reducing the consumption of superfluous goods through measures such as those described in article 7 above. This reduction should not only favor the global reduction of environmental damage resulting from that consumption but also ensure that underprivileged sectors have access to the resources they need for decent living standards.

12. An agreement on integration in the Americas constitutes an excellent opportunity for the establishment of joint management of common environmental resources. Such an agreement could provide mechanisms that, with the participation of local civil societies, would establish the rational preservation and utilization of watersheds, assist recovery in air quality and reversion of climate change, and permit integrated transportation systems that are more compatible with environmental protection.

## 7. 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 programs, 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 Programs (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 self esteem. It limits their opportunities for employment, income and training, as well as limiting their opportunities in public life, their status in society, their social development and their ability to exercise their human rights.

In fact, IMF/World Bank SAPs depend upon women’s unpaid labor to cushion the impact of the adjustment policies. Some governments have cut domestic spending in order to continue payments on their foreign debt. These cuts, largely in social spending, have led women to increase their workloads to compensate for 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.

A direct consequence of SAPs has been the transfer of responsibility for the development, provision and maintenance of human capacities to the private, individual, or family realm. This includes the care of children and elders, feeding families, and caring for the sick. This has occurred under very unfavorable and painful conditions, involving the loss of rights that women had previously won, increases in poverty and increasing difficulties in obtaining income.

Transferring responsibility for these needs to the private sphere, along with the fact that society has not overcome the sexual division of productive and reproductive work, means once again that women are affected by these policies more than men. As the satisfaction of basic human needs becomes more difficult, the work of caring increases, and the persons charged with doing that work

become even poorer, which explains the feminization of poverty.

As it is not possible to hide the increase in poverty generated by the neoliberal policies, programs have been designed to alleviate those conditions. Those programs are targeted to those living in extreme poverty, often in a clientelistic and paternalistic manner. Solidarity programs within low-income sectors are promoted in order to reduce the costs of these government programs. Once again, women are called on to “participate” in these community-health, basic-nutrition, food-kitchen, early-childhood-education, community-daycare, and shelter programs. This appeal is made based on their “natural qualities as mothers”. In those cases, the use of volunteer labor to benefit the community is not extended to the wealthier sectors of the population, but is really a subsidy by poor people to other poor people.

The functionality and, in some cases, relative success of many of these targeted poverty alleviation programs is based on an increase in women’s work at the family or community level, the cost of which is invisible to the designers and implementers of those policies precisely because it is unpaid work. The supposed increase in the efficiency of the neoliberal model is translated, in practice, into a displacement of the costs of the paid economy to the unpaid economy. Women’s capacity to develop family and social networks with other women to satisfy their common needs is exploited.

In spite of their importance in carrying out the government’s targeted social programs, women’s work in the community has not been the subject of either economic or social compensation, thus constituting a functional subsidy for the reduction of public spending. If women did not make this contribution, the economic costs of production and the risks of social conflicts and instability would increase. In some cases, the government has attempted to justify this fact by conferring on its programs a participatory character, oriented to including community agents in the implementation of, but not the decisions on, its policies.

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 can offer new employment opportunities, but they also bring 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 the vast majority of the workforce although in some high-tech factories women are being dismissed and replaced by male workers. In the United 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 that 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 and communities. 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 decision making on trade policy 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.
4. Trade agreements should not supercede international norms, covenants, and agreements that 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 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. If this evaluation is not completed by that date, the trade negotiations should cease until the information is collected. No trade agreement should be ratified without resolving the problems identified in the gender impact assessment. 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 the implementation of a trade agreement 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 a trade agreement affect governments' ability to create sound budgetary policies for the well being of their nation? How would it affect national laws of member countries to set standards and protect health, education, environment, labor rights, women's rights, and food safety? How would trade agreements 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. Establish compensatory schemes, including retraining and capacity development, 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.

## 8. 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. Any hemispheric agreement 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, which 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 all ILO members are bound by the ILO Declaration on Fundamental Principles and Rights at Work, which covers the eight core conventions.

Some of the current trade agreements in the hemisphere have 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' Declaration on Social and Labor issues. 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. Eight 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 favorable 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 behavior 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 ensure respect for and improvements in 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 on any economic-financial agreement among our countries 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 universal 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 – led in the Americas by ORIT (Inter-American Regional Workers' Organization) and other union forces -- has promoted the inclusion in international trade agreements of a "Workers' Rights Clause" that would force employers and governments to confront the frequent and repeated violation of fundamental workers' rights. During the negotiation of NAFTA and its parallel agreement on labor, these unions and civil-society networks in North America rejected the limited nature of that agreement, particularly due to the fact that it did not contain an effective mechanism to guarantee respect for and promotion of basic rights or the possibility of sanctions when that was not the case. Since then, these groups have come to agree that it is not enough to add a labor or social clause to a bad agreement. These groups, together with other sectors of civil society, have advanced numerous proposals to radically reorient the nature and orientation of what was being negotiated in each of the substantive chapters of NAFTA. The years of experience under NAFTA and its parallel agreement on labor issues, as well as the Mercosur Declaration on Social and Labor Issues, have affirmed this evaluation and have taught that the problem was not just the limited nature of the workers' rights clauses in such accords, but rather in the very orientation of the free-trade agreements. Therefore, the Hemispheric Social Alliance, the labor movement and other sectors of society have taken one more step toward integrating the workers' rights clause within a global proposal that refuses to ratify the market as the supreme law, and moreover, they seek to develop a compliance mechanism that truly makes the workers' rights clause effective.

Effective safeguards for fundamental worker rights will not be ensured without substantial changes in the dominant orientation of globalization. Free trade and the elevation of purely mercantilistic criteria above all others are incompatible with the protection of not only labor but also human rights considered integrally: economic and social; environmental; cultural and peoples' rights, including the

right to development. But, at the same time, a new logic for the world economy and the agreements that regulate it also requires an explicit and agreed upon mechanism to ensure respect for and promotion of basic labor and social rights.

Our proposed clause for any economic, financial or trade agreement in the Americas could result in the application of sanctions that could result in the loss of privileges accorded by the trade agreement if fundamental workers' rights are not respected and the national agencies and ILO recommendations and assistance have not changed that situation.

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, namely:

- Conventions 29 and 105 on the abolition of forced labor;
- Convention 87 on freedom of association and protection of union rights and Convention 98 on the right to organize and bargain collectively, 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
- Convention 138 and 182, on the minimum age of employment and the elimination of child labor.

The 1998 ILO Declaration binds all member countries, whether or not they have ratified the eight conventions on which it is based. However, 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 ILO workers rights conventions described above be included in any economic-financial or trade agreement in the hemisphere and that compliance changes from being a moral and voluntary obligation to an obligation subject to enforcement mechanisms that could result in sanctions. This means 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 nothing else in the economic-financial agreements in the hemisphere weakens the ability of nation-states to enforce worker rights and that it is accompanied by monitoring and effective international enforcement mechanisms. This monitoring and enforcement mechanism should imply gradual steps that would result in sanctions in extreme cases.

- a) We propose that the monitoring function be delegated to the ILO, whose expertise in the field of monitoring the application of international labor standards is universally recognized.

The ILO would, as a first step, be used to receive and investigate complaints under the worker rights clause in the Americas. However, the current ILO complaints procedures are not efficient, in that they are not able to rapidly receive and process these complaints. They must be improved to achieve greater agility and efficacy. Unions and other non-governmental organizations should be able to present a complaint and request a swift review process by the ILO when fundamental rights contained in the core conventions are

violated. The second step would be for the ILO to promptly carry out an investigation to verify if the conventions have been violated or not. In cases where the conventions are confirmed to have been violated, the ILO would, at a third stage, formulate recommendations to the country to assist it in complying with the conventions that have not been respected.

In those cases in which the procedure described above does not achieve the expected results and the violations are serious and repeated, we believe that a mechanism should be established to apply sanctions. Any sanctions mechanism should operate in a public and open manner, with suitable representation of workers. The mechanism should only enter into force when its intervention is expressly requested by organizations representing the workers whose rights have been violated, and when other opportunities for the violating government or company to accept technical and financial assistance to remedy the problem have not been successful. Affected workers should also have the right to participate in decisions on the size, nature and duration of any sanction authorized by that mechanism. It should provide for the possibility of directly sanctioning companies, not only governments, and the sanctions applied should correspond to the gravity of the violations and last until the violations cease.

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. For this reason it is important that any agreement on trade and investment include mechanisms to allow national economies to adjust to the impacts of increased competition through the creation of high quality jobs, with special allocations for women.

These mechanisms should consist of:

- nationally administered funds, paid into by employers, and in the case of underdeveloped countries, by international funds, 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**

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, and in most cases do not cover the growing number of informal-sector workers. This has the effect of penalizing all retired workers, but especially women, who participate in lower proportions in the jobs covered by social security.

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 (whether they were formal sector workers or not) that in no case should be less than what is need to cover minimum living standards as defined internationally. 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.

Over and above the inclusion of a workers' rights clause and appropriate adjustment mechanisms, we believe that any economic integration process among our countries must include mechanisms for improving basic labor standards and social programs so that the agreement contributes to improvements in 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, but internationally defined minimum living standards should be covered by each country's minimum wage.

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 making them obligatory, and, over the medium term, 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.

## 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. Any 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 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.

Furthermore, the effects of free trade on women are disturbing. In the Americas, women often work in poorly paid jobs, with appalling working conditions (impossible schedules, mandatory overtime, bonus work, production quotas that are sky-high, deficient health and safety conditions, lay-offs without notice, among others). Inside the *maquiladoras* (assembly plants), women's most basic rights are ignored. They are subjected to pregnancy tests and sexual harassment, and often fired when found to be pregnant. Miserable working conditions, job insecurity and unemployment have forced many women to find work in the informal sector. As most women are responsible for educating their children, for providing care to family members (sick or aging people) and for domestic work, the reduction in the State's role in social policy, combined with the degradation of public services, has greatly impeded the achievement of a balance between work and family. Together, these factors have produced a generalized impoverishment of women and a noticeable deterioration of their living conditions. (Please see chapter on Gender for additional detail).

Any international agreement should acknowledge the needs of women, notably by giving official recognition to the core convention of the ILO on equal pay for work of equal value and also the convention on the prevention of discrimination in the workplace (Conventions 100 and 111). Any hemispheric agreement should also require participating governments to implement social programs (such as daycare, flexible work schedule, strict limits on overtime) that improve the work-family balance or that enable women to undertake waged work if they wish 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.)

## 9. 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 isolated phenomena: 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 21<sup>st</sup> century, and may be one of the most important factors in global change. World population growth and the increasing gap between rich and poor countries encourage poor citizens to emigrate, legally or not, hoping to better their living standards and those of their families. Political conflicts also produce refugee flows. Taken together, these factors lead to increasing movements of people from south to north and east to west.

Without question, the problem of immigration is a global problem. Despite the fact that there are currently 150 million migrants on a planet with a population of over five billion people, 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 on 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.

These migratory flows also have important economic impacts. According to the International Organization on Migration (IOM), in 1980 foreign workers sent US\$67 billion annually to their various places of origin. The International Monetary Fund reported that in 1997, remittances sent by foreign workers reached US\$77 billion. For some national economies, these remittances can be as important to the Gross Domestic Product as exports. In El Salvador, for example, remittances exceed the total value of exports. In the Dominican Republic they are equivalent to more than half of exports, and even in Mexico (with some US\$10 billion annually), remittances are first in net foreign exchange, although there is trade deficit, and in recent years they have been higher than income from tourism. It is estimated that Latin America receives some US\$25 billion yearly in remittances. Statistically, this work force is second only to petroleum in importance within the global market. In Mexico, for example, remittances are just 20 percent lower than petroleum exports.

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 global immigrants each year. 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 the service industry).

Understanding U.S. immigration policy is important in the FTAA context because the United States is attempting to regionalize and globalize this policy. For example, U.S. policies against organized crime (which includes issues related to undocumented immigration), as well as policies against

terrorism, both of which were strengthened by new measures implemented in the wake of the terrorist attacks in New York and Washington, DC on 11 September 2001, have been globalized and contribute to the military manifestations of U.S. hegemony. The incorporation of new functions to be carried out by the U.S. government's Immigration and Naturalization Service (INS) and the Border Patrol as part of the new Department of Homeland Security (which is set to begin on 1 January 2003), and the establishment of "Smart Borders" among the United States, Canada and Mexico, which will create a "Security Perimeter" in North America (creating a "United States Fortress" similar to the "European Union Fortress"), are all intended not just to limit migrant's mobility but also citizens' individual liberties. Flows of undocumented workers, however, will continue to arrive at this country in spite of those measures, as they have done over the past decade in spite of such programs as "prevention by dissuasion" (metal fences, electronic sensors, more guards, etc. in the so-called "Operation Hold the Line" in El Paso, Texas in 1993, Operation Gatekeeper in San Diego in 1994, Operation Safeguard in Arizona in 1997, and Operation Rio Grande in MacAllen, Texas in 1997). According to recent analyses by experts, the number of undocumented immigrants in the United States has increased to higher levels than those that existed in the period before the passage of the Immigration Reform and Control Act in 1986 (also called the Simpson-Rodino Law).

For some time the United States has 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 criminalized undocumented immigrants, and to some degree even legal migrants) and against terrorism were approved by the U.S. Congress in September and April 1996 respectively. These laws 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 five cities: Panamá (1997); Ottawa (1998); San Salvador (1999); Washington, D.C. (2000); and San José, Costa Rica (2001).
- the Second Summit of the Americas, held in April 1998 in Santiago, Chile, where, with the exception of Cuba, the heads of every government in the Western Hemisphere incorporated immigration into the Summit's Declaration and Action Plan, placing strong emphasis on the sovereign right of each nation 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 the two 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 biggest collaborator. Along with the U.S. government, Mexico has declared that NAFTA, by itself, will solve the Mexican emigration problem in the long term. In fact, this position was tactically accepted before the NAFTA negotiations began, as a result of 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). 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 that contribute 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 that cause emigration from the sending countries. The Ascenio Commission, as it is still known, presented recommendations in 1990 that, according to the Commission's 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 trade between the emigrant-source countries and the United States would solve the problem. This created the basis for eliminating the immigration issue from economic and trade agreements in the Western Hemisphere. As a result, workers from emigration-source countries are left to feel the consequences of U.S. policies, instituted either unilaterally or in cooperation with other governments, to regulate and control immigration flows.

Starting in February 2001, the U.S. and Mexican governments agreed to negotiate a new migration policy (which was temporarily interrupted by the September 11 attacks). The Mexican government proposed that, in exchange for increased legal avenues for Mexicans to work in the United States (a guest worker program, an increased number of permanent visas, greater protections for undocumented workers, and a still undefined system to “regularize” the three and one half million undocumented Mexican workers), Mexico was prepared to establish strict controls, including the use of the military, to limit migratory flows from the south so that they not arrive at the U.S.-Mexico border. These measures are intended to regulate the North American labor market utilizing cheap Mexican labor as a comparative advantage at the regional level (Canada, the United States and Mexico, in the latter case mainly through the maquiladora industry). It is also designed to regulate the Central American labor market utilizing the cheap labor force in southern and southeastern Mexico and Central America, which would principally be employed in maquiladora industries and other large productive projects in the so-called Plan Puebla Panama (PPP). This Plan is a neoliberal strategy to exploit natural resources and energy, as well as the region's cheap labor, and to construct a bridge between North and South America to facilitate the creation of the FTAA.

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 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, governments agreed to work toward 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 text of the March 1991 Treaty of Asunción, a common market was supposed to go into effect in January 1995, which would entail 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 governments ratified the original timeframes, but 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.

In the 1990s, the migration process increased in these two blocs due to the economic crises that affected them and that have deepened in South America, particularly in Argentina. Countries that have traditionally received immigrants (Argentina, Brazil and Venezuela) now both receive and send them. There are more than two million Brazilians living abroad, of which half are in the United States and some 300,000 in Japan. Those migrants currently send two billion dollars a year to their communities. Thousands of Argentines are migrating to the United States, and those that have Spanish or Italian roots are migrating to Europe. According to the Peruvian government, there are more than two million Peruvians abroad, of which 75 percent are undocumented. Between 250 and 300 thousand Peruvians a year currently migrate to Argentina, Chile, Japan, Italy, Spain and the United States. The situation in Ecuador is similar; more than 290,000 Ecuadorians have left their country in 2000 and 2001, headed for Europe and the United States. There are 300,000 Ecuadorians in Spain, half of whom are undocumented.

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

As we have seen, the issue of labor migration has been either completely absent in the subregional integration efforts in the Americas, or it has been dealt with on paper agreements without developing concrete actions for 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 some developed countries, where increasingly restrictive legal measures – in many cases racist and discriminatory -- are being established for foreigners.

U.S. national immigration policies, while 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, immigrants’ rights organizations throughout the world are taking important steps to confront the international dimensions of immigration, developing diverse mechanisms to defend immigrants’ full rights. These include the Canadian Open the Borders Network, the U.S. National Network for Immigrant and Refugee Rights, Enlaces Regionales (which includes U.S., Mexican and Central American members), and the Mesoamerican Social Forum against Plan Puebla Panama. In the rest of the hemisphere, the South American Network to Defend Migrants, Refugees and Displaced Peoples was created during the First South American Civil Society Meeting on Migration, held in Quito, Ecuador on 14 to 16 August 2002.

## Guiding Principles

It is important to examine the immigration issue within the framework of hemispheric regionalization, as the developed countries’ national immigration policies have tended to be applied unilaterally and extraterritorially throughout the hemisphere.

1. While it is not now possible to achieve the creation of a hemispheric “open doors” migration policy, that goal should remain on the horizon in the medium and long term in the process of hemispheric integration.
2. Any agreement in the Americas should ensure respect for migrants’ human and labor rights regardless of their migration status and should incorporate actions among a broad range of actors (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, as well as humanitarian considerations for refugees.
3. Migration policies should not criminalize migrants but rather confront internationally the causes of their expulsion from their countries of origin, establishing international assistance to promote just and sustainable development.

## Specific Objectives

1. Any agreement on trade and investment in the Americas should include the issue of migration. There is an impressive array of problems linked to immigration, as well as diverse situations among the countries of the Western Hemisphere. In some cases, it would be viable and worthwhile to institute an “open doors” policy, while in others it would not. The framework for hemispheric negotiations should therefore promote binational or subregional pacts among those countries or zones with significant migratory flows. These agreements should harmonize labor rights and social security systems, making the scope of coverage international and ensuring migrants’ human and labor rights, regardless of their migration status.

2. Support regional economic development in areas that are large exporters of labor. Support to those areas should be designed to promote sustainable development with appropriate technology and to contribute to environmental recovery and better utilization of renewable and non-renewable resources. Agreements on trade and integration should include international subsidies to finance those programs. This should include support for improved channeling of money sent by immigrant workers, combined with public and private resources, to improve infrastructure and productive projects in those communities and regions that have been large exporters of workers seeking employment.
3. All countries in the Americas, and of the world in general, should 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.
4. All countries in the hemisphere should sign and/or ratify the 1949 ILO Convention 97 on Migrant Workers (revised) and/or the 1975 Convention 143 on Migrant Workers (Complimentary Dispositions), as well as the application of the two recommendations with which these instruments are implemented, i.e., the 1949 revised Recommendation on Migrant Workers (number 86) and the 1975 Recommendation on Migrant Workers (Number 151).
5. Migrant workers, regardless of their migration status, should enjoy the same labor rights and conditions as those of citizens in the receiving country. Employers who take advantage of a worker’s migration status to exploit him or her under conditions and/or wages lower than legal levels should be severely sanctioned.
6. 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.
7. Prohibit the application of extra-territorial immigration policies as exemplified by the pre-inspection stations that the United States plans to install in international airports across the Western Hemisphere (stations which already exist in Canada).
8. The measures described above imply for some countries (not limited to, but especially for the United States as the premier receiver of immigrants from the hemisphere) the following:
  - a) the modification of immigration, anti-terrorism and other laws (nearly all of which were approved in 1996) that criminalize the migrant labor force, limiting its access to services and submitting it to greater exploitation, discrimination and violence;
  - b) the repeal of “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 authorization to work in the United States from those newly hired;
  - c) the immediate legalization (through a proclamation of Amnesty) of undocumented workers within their borders;
  - d) the demilitarization of borders (such as the U.S.-Mexico border) that have been reinforced under the pretext of preventing the entry of terrorists and reducing the flows of undocumented workers and drugs; and

- e) the implementation of measure to limit the use of force by migration agents, border patrols and other military and political bodies.
- 9. Renegotiate NAFTA to include a social agenda that gives priority to resolution of 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) and any other treaty among countries of the hemisphere.
- 10. Implement within the necessary steps within the Mercosur and the Andean Pact to eliminate the obstacles that still exist to the implementation of mechanisms to promote free labor mobility.
- 11. Create bi- or multilateral commissions to address violence on the borders of the countries involved, with effective participation by non-governmental human rights organizations as competent investigative authorities.

## 10. THE ROLE OF THE STATE

### Background

The role of the state, in its broadest sense, is to look after the common good of its people. The democratic state should be a tool for society to use to address the economic and social problems the market cannot solve. The discussion should not be posed in terms of a polarization between the state and the market. 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.

There is no historic experience demonstrating that the market alone can achieve general economic equilibria, much less sustainability and social justice. 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 welfare. Opening up economies to the dynamics of the global economy does not necessarily mean leaving them to the whims of international markets. There is no such thing as the free market, because of the large corporations that dominate and drive the market. Opening markets actually means letting these corporations drive and dominate the market to suit their own interests.

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. When financial capital is prioritized, the real economy is often neglected or negatively affected, diminishing its capacity to generate employment or to contribute to the population's well being.

The dominant discourse discredits the 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 four 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; and 4) privatization is used to lower wages and benefits for organized workers, as the sale usually results in the replacement of collective agreements by more "flexible" working conditions entailing fewer rights, less negotiating power, and lower benefits. In Argentina, for example, the number of employees in such public services as telephone, postal airlines, sanitation, electricity, rail transport and gas distribution was just under 250,000 in 1989. By 1999, after privatization, just 75,000 persons work in those industries.

We propose the establishment of a new, fully democratic state. As such, governments should ensure, by all means, the participation of its citizens, especially women and impoverished people, at the local, regional, national and international levels. Participatory democracy, which is concomitant to access to information and public education, should be understood as the most important aspect of a healthy society. This new state should be economically and socially accountable to its citizens and must radically challenge corruption at every level. It should be a state with a qualitatively new role within the economy, which should assume its irreplaceable responsibility in ensuring human rights, including the right to development, economic, cultural and social rights and those of indigenous peoples. 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 fulfill. Society, not only governments, should make decisions relating to industries in the public realm.

This would not be a traditional protectionist state, but rather a state that is 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 operating within our economies and due to the weight and mobility of footloose capital. The necessary supranational regulations should not serve to increase the already excessive power of transnational corporations but instead should ensure nations' capacity to uphold the rights of their citizens and to ensure that corporations play a positive role in national development. This point is developed in the chapter on foreign investment, particularly in the discussion on dispute resolution between investors and the state.

This new and strategic role for the state in the economic and social spheres requires comprehensive fiscal reform capable of generating sufficient resources to ensure a social security net for all and to avoid fiscal deficits so large that they impede development. Such fiscal reform should focus both on production and on redistribution of wealth.

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.

## Guiding Principles:

### 1. Economic and Social Responsibilities of the State

- a) The first and foremost role of the state should be to look after the common good. As such, the state must promote participatory democracy, facilitating debate and establishing permanent consultation mechanisms with respect to domestic and international policies.
- b) **Sovereignty.** The state must be the guarantor of national sovereignty. National sovereignty should not be understood as autarchy, isolationism or as a pretext for disguised violations of universal human rights. Sovereignty continues to be a right of nations and the basis for legal

equality of states within the universe of nations.

Sovereignty does not prevent the establishment of international regulations as long as they are democratically arrived at with the explicit consensus of the citizens of each country. Sovereignty resides with the people, who may decide democratically to submit themselves to supranational regulations or laws that they consider appropriate for their welfare and to safeguard their rights.

Any binding international agreement should be submitted for ratification of popular sovereignty and must not annul the rights of peoples to their sovereignty or diminish states' obligations to preserve and strengthen that sovereignty.

- c) **Culture.** The international human rights system includes cultural rights. It is an obligation of states to guarantee those rights.

International agreements on cultural issues should favor exchange among and enrichment of diverse cultures, but culture should not be treated as just another commodity, ruled by the law of maximizing profits. The right to one's own culture is essentially the right to diversity, and free trade in a highly unequal cultural industry tends to put an end to that diversity. Nations should preserve their ability to strengthen and promote cultural diversity. Culture is also an element of a country's sovereignty and social cohesion. This does not imply isolationism or hostility to other cultures, but rather valuing one's own culture and the right to be different.

Therefore, in the chapter on services, we have proposed that cultural services be subject to regulations that favor exchange and enrichment while preserving the ability of the state to strengthen their own national cultures.

Nation-states arise and develop on the basis of national identity and culture. However, historically this has implied the negation of the multiple cultures in many of our countries. The right to one's own culture should be guaranteed by the state, not just in dealing with the imposition of foreign cultures but also within each country. The state should ensure the conservation and development of the diverse cultures that exist within its territory.

- d) **National Security.** National security should not be understood as state security, that is, security for established powers, but rather as public security, i.e., the security of a country's citizens. The state's obligation is to ensure the security of its population, not to defend itself as the established power. International agreements should establish international cooperation to defend citizens and to ensure their rights, including their right to a safe and peaceful life.

International agreements on security issues should be oriented to ensuring peace, overcoming poverty and strengthening participatory democracy. Toward that end, a true multilateral system for the peaceful resolution of conflicts should be established, putting an end to the undemocratic veto power in the United Nations' Security Council and restructuring the Council so that it addresses the issues of security of all nations in a transparent, fair and participatory manner. No hemispheric agreement should establish or strengthen military alliances intended to preserve, extend or consolidate hegemonies or to strengthen the political and military dominion of the United States.

- e) It is the state's responsibility to lead a consensual economic strategy and enact related social policies that strengthen citizens' welfare. The state should spare no effort to promote the creation of well-paid jobs, which are the best vehicle for achieving that well being and combating poverty.

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 by the volume of exports but by qualitative indicators, which implies promoting the integration of productive national linkages so that exports foster economic growth and therefore generate high-quality jobs, both within the sector and in sectors connected to exports. 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.

The state has the inescapable responsibility to create conditions that favor competition among domestic companies in the international as well as internal markets. Competition punishes corporations with low levels of productivity, but it does not necessarily increase productivity. 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.

- f) The social role of the state requires it to provide public security and services and to promote everyone's well being. This implies specific policies directed at the most vulnerable sectors. This should involved legislation that establishes rights instead of discretionary policies or favoritism. The state's central objective should be just and sustainable development for all, while not excluding emergency or compensatory assistance for specific groups.
- g) **Education.** States should fully take up their responsibilities for financing education. Education, much more than a good or service is a right, which should not depend on the ability to pay. Education is also a fundamental element in the formation of culture and national identity so that each nation should exercise, without undue foreign interference, complete sovereignty on issues of education. Therefore education should be excluded from agreements on the liberalization of trade in services, including in the Free Trade Area of the Americas.

We have developed a special chapter on education as an example of our proposals on the treatment of services associated with fundamental rights.

- h) **Health.** As with education, access to health and medications is a fundamental right, which should not depend on the ability to pay. It should be considered the responsibility of the state to provide high quality health care to all within a reasonable geographical distance of any local community. Therefore health care systems should not be included in any agreement on the liberalization of trade in services.

As such, subcontracting of health care services, a symptom of the state's withdrawal of its social responsibility toward universal access to health care, should not be allowed.

Specific international funds should be set aside for health care, 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 address women's specific needs and be designed to ensure women's access to such services. Elderly people should as well be guaranteed access to health care 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.

The state should reserve the right to produce generic medicines for use by the public health-care system. Pharmaceutical companies should understand that their profits cannot be generated through the violation of people's right to health care, nor should they experiment with drugs whose safety has not been sufficiently demonstrated.

- i) **The Right to Housing.** As with education and health care, the right to have a place to live should be guaranteed by the state as a basic human right. A true agreement for hemispheric development should contribute to this goal. Toward that end, we have proposed a tax on speculative transactions, which could provide international funding sufficient for states to guarantee this right.

## 2. Criteria for Economic Regulations:

Regulations should:

- a) be clear and explicit and designed to prevent bias on the part of officials whose job it is to apply them;
- b) be decided democratically;
- c) be simple and easy to apply;
- d) be kept to the minimum needed to achieve their objectives; and
- e) 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:

- a) the exploitation of natural resources;
- b) financial and monetary policy, especially the management of its payment system and short-term investment;

- c) basic food production and/or agricultural production by small family farms; and
- d) 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.

- 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, including the provision of services to poor or marginalized sectors.

### **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 certain criteria, as follows.

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.

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.

## 11. EDUCATION

### Background

At the Second Summit of the Americas, in Santiago, Chile in 1998, the heads of state endorsed an action plan on the measures that should be carried out to ensure increased access to education and success in school, the elimination of illiteracy and a drastic reduction in inequality. We appreciate the inclusion of this issue, as public education should be at the center of the people's development and that of their communities, but we observe that the investments actually made in education do not even fulfill the commitments agreed to at the Summit, which themselves are insufficient to resolve existing problems. We also disagree with the general orientation of the action plan.

There are nearly 50 million illiterate people in our hemisphere, the majority of whom are women. The vast majority of the indigenous population does not have access to education that respects their language and culture. Many millions of children live in poverty and misery and must work under inhumane conditions to survive. In Latin America and the Caribbean, one child in 20 does not go to school and 35 percent do not pass the fifth year of primary school. These inequalities persist and are even increasing in spite of the growth in access to education in some countries, since that growth has often not been accompanied by the needed improvements in the quality of education.

Over the past few years, neoliberal policies have had dramatic impacts on education. In many places, the application of a mercantilist model has led to greater explicit or disguised privatization. The privatization of education has not always been explicit in the sense of canceling public education; many times it has been carried out indirectly by not increasing the supply of public education, so that, in fact, many people are compelled to seek private education or do without it. On the other hand, education has become stripped of its fundamental premises, so that such words as "clients, products, competition, and yield" become key words in a dangerous plan for the future of public education.

The ministers of education in the Americas already work within a framework of hemispheric integration. They are developing Pan-American indicators on education, tools to measure the quality of education, and mechanisms to recognize competencies in order to favor mobility throughout the hemisphere of teachers and specialized workers. There are also numerous pressures by certain groups and countries to treat education as a commodity that would then be included in agreements on the liberalization of services such as the FTAA and the WTO.

We believe that it is both possible and necessary to act in a better and different manner, and that a change of course is imperative.

### Guiding Principles

1. Education is not a commodity; it is a right. It is a universal and fundamental social right of persons and peoples that should be ensured through publicly funded services and should be the responsibility of the State. It should not be made to depend on the monetary capacity to pay for it. This right includes not only basic education but also professional or technical training.

Education is also a fundamental element in the formation of culture and national identity. Therefore every nation should have, without foreign interference, complete sovereignty on

matters related to education.

These considerations lead us to conclude that education should be excluded from agreements on the liberalization of trade in services, at both the hemispheric and global levels.

2. Public education should be free and fully accessible in all areas and throughout people's lifetimes. Adults' right to education should be guaranteed, whether offered in schools or in popular organizations. The creation of a culture of education throughout a person's lifetime should multiply the opportunities for learning in their lives and work.
3. International financial assistance should be provided to ensure the right to education for all of the population in developing countries and to radically reduce the educational deficit in many parts of the hemisphere. It is therefore imperative that richer countries and international organizations cancel many countries' illegitimate foreign debts, end structural adjustment policies, increase unconditional development assistance and adopt a tax on financial transactions.
4. Any agreement on education should ensure respect for and make binding all declarations, pacts and agreements that have been signed on these issues, particularly the United Nations Agreement on the Rights of the Child, above all that which refers to the elimination of child labor.
5. Higher education should respect academic freedom and institutional autonomy and ensure that research serves the development of society and is not subordinated to the needs and impositions of private firms.
6. All educational systems should ensure that teachers and other education personnel receive salaries and working conditions that allow them to dedicate themselves to high quality education for all. They should also receive solid initial training and additional opportunities to keep their knowledge and skills up to date.
7. Education should contribute to the formation of free and critical persons, active and committed citizens, respectful of diversity and human rights, open to the world and concerned about the planet's future and about sustainable development. It should be a tool for social justice that promotes equality among women and men, whatever their ethnic origin.
8. Special attention should be devoted to teaching in rural areas and respect for rural peoples' culture. In addition, disabled students or those with learning difficulties, street children, working or itinerant children and children who were victims of war should have access to special services to ensure their education.
9. Autonomous nations and indigenous peoples should have control over their educational institutions in order to ensure respect for and development of their language, culture and heritage.
10. Schools and classrooms should respect health and safety standards that ensure adequate protection of staff and students and offer quality services.
11. The utilization of new information and communications technologies for educational purposes should respond to the needs and priorities of local communities and not to

commercial interests.

12. The management of educational institutions should be based on the participation of staff, students and the community as a whole. Education staff should have access to solid initial training and continuing education, as well as good working conditions.

## Specific Objectives

1. Ensure quality education for all peoples throughout their lifetimes. Toward that end, governments should ensure adequate and fair funding for public education, equivalent to at least 8 percent of GDP.
2. Respect all declarations, pacts and conventions signed by governments, particularly the United Nations Convention on the Rights of the Child, above all those related to the elimination of child labor.
3. Ensure equal and free access to all levels of education, including higher education.
4. Provide a three-year investment plan based on precise objectives for literacy, school attendance, increases in access and academic success and on objectives for the reduction of inequalities, with special attention on the situation of girls and women.
5. Improve services to the youngest children, particularly health services, educational day-care centers, and making preschools for children 4 and 5 years old both compulsory and free of charge.
6. Implement all necessary measures to teach children and undereducated adults to read and write, in close collaboration with educational organizations and unions.
7. Ensure that educational reforms respond to peoples' needs and those of disadvantaged sectors and that they are agreed to with the participation of unions and the people most affected by the proposed change.

## 12. COMMUNICATIONS

### Background

Communications is an increasingly critical strategic issue in the struggle to democratize society. It is one of the fastest growing sectors of the economy and a pillar of globalization. Information has become an important input in production, and communication is central to political, social and cultural processes. In the late nineties with the blossoming of the technological revolution, two major trends have emerged. On the one hand, the communications sector has seen a concentration and monopolization of ownership, which has resulted in the commodification of information, knowledge and culture under the control of very few transnational media giants. On the other hand, and despite the first, the community and independent media sector has continued to grow, as evidenced by the Forum on Communications at the Second Peoples' Summit of the Americas, April 17-18, 2001. While the second trend is premised on the rights of all people to have access to mass media as producers as well as receivers of information, it is in fact available to only a small percentage of the world's population.

In the realm of social communication, a profound contradiction has thus been established between the interests of those conglomerates that control world communication according to their mercantilist criteria and citizens' right to free access to information that is independent and from diverse and varied sources. This contradiction has been heightened with each trade agreement such as the North American Free Trade Agreement (NAFTA) and the pending Free Trade Area of the Americas (FTAA), which has been negotiated between governments without the participation and consideration of civil society.

The market model treats people as consumers, not as citizens who bear shared responsibility for decision-making. Conglomerate control of world communications has prevented the great majority, especially excluded social groups, from expressing themselves publicly and making their needs and demands known, which is an indispensable condition for democratic participation. The freedom of journalists to practice their profession in accordance with a criterion of public service is also undermined. Consequently, a fundamental human right, the right to communicate, has been severely constrained. Media rights concepts such as freedom of opinion, freedom of expression, freedom of the press, and the right to information are precursors to the Right to Communicate. The Right to Communicate is at the heart of the struggle for social change and is considered a building block for democracy.

The Right to Communicate is the right to produce or send information not just sit on the receiving end of the transmission. The subtext is that ordinary citizens should have access to communications technologies in order to interpret their world to their local publics with the premise of working for social and cultural benefit. It also implies the need for a public debate on the future of the "information society" and for citizen participation in decision-making regarding all spheres of communication, as expressed in the phrase: "communication for democracy, democracy in communication".

Under the prevailing tendencies, as expressed in free-trade agreements, the WTO and the draft text of the FTAA, virtually everything generated by human activity, would be subject to the rules on the liberalization of services, investment, intellectual-property rights and market access, including broadcasting and other areas of communication. Listed below are some striking implications of the draft FTAA text for communications.

1. Public broadcasting and other publicly delivered cultural programs would not qualify for exemption from rules contained in other chapters of the draft agreement.
2. The draft agreement designates that ``special and differential treatment`` be applied to encourage or increase the participation of smaller and/or less developed economies through the adoption of provisions to strengthen access to technology on a commercial basis. This would improve their access to distribution channels and information networks, and liberalize market access in sectors of export interest to them.

However, this call for special treatment is contradicted by the services chapter which states that "Each Party shall ensure that the service supplier of any other Party is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions".

This kind of undifferentiated treatment paves the way to a non-democratic communications infrastructure and heightens the tendency towards cultural imperialism and/or homogenization of the social and cultural landscape. The argument for technological abundance and economic growth within a broadly defined telecommunications system does not allow for the social and cultural orientation of the broadcast media.

For example, new digital broadcast systems are leading to the reallocation of broadcast frequencies and new approaches to regulation which risk further marginalization of communication services run by and for citizens, communities and social organizations. In many instances these sectors are not even being considered.

And while convergence between telecommunications, computing and broadcasting is increasing the number of potential users, the telecommunications development gap supports the division of the world into those who have and those who do not have access to electronic information.

Focusing solely on access to technology on a commercial basis and allowing corporations non-restricted access to public telecommunications systems threatens the survival of community and independent media.

3. In the draft FTAA agreement, there are no stated restrictions that prevent countries from regulating "to achieve legitimate domestic political objectives", and national policy regulations may be pursued provided they don't impede the implementation of the rules in the services chapter. Although this seems to offer some sovereignty protection, it is not enough as it leaves the door wide open to interpretation: who will decide what is legitimate, and how, and to what extent will the trade rules themselves act as barriers to domestic regulation?
4. The proposed FTAA agreement poses a serious threat to local and community media in the Americas. Governments will be discouraged from protecting community broadcasting especially with their own national public broadcasting at stake. Under this agreement community broadcasters are not seen as distinct from private and corporately owned broadcasters. They would be expected to compete on the same basis, so that community media policies, legislation and regulations would all be difficult to implement and enforce.

## Guiding Principles

1. The Right to Communicate is a universal human right which serves and underpins all other human rights and which must be preserved and extended in the context of the new challenges of globalization.
2. The right to diverse and varied information is a precondition for democratic participation, and communication should therefore be considered first and foremost as a public service. People must be seen as producers and contributors of information and not be defined solely as consumers.
3. The market economy is not the only model for shaping the communications infrastructure and monopolies threaten diversity and independence of the media.
4. The airwaves are a public trust and should be preserved for the social and cultural benefit of society. Similarly, cyberspace should remain a public domain and be regulated to ensure the Right to Communicate for all, and not held to solely to the logic of the market, with its tendency to private monopolies by large corporations.
5. Communications and mass media should be guided by ethical principles inspired by a culture of life and humanity. They should promote and disseminate the values of justice, solidarity, equity, liberty, responsibility, honesty, truth, respect, tolerance and honor. The role of public service in the media implies freedom to assume a critical position on persons and institutions in power and to stimulate reason, analysis and debate.
6. Respect for pluralism, cultural, language and gender diversity should be reflected through all the media as a fundamental factor for building a democratic society and should be supported through legislative, administrative, and financial measures. Special care should be given to correcting existing inequities for women, indigenous peoples, ethnic minorities, migrants, refugees and other marginalized populations. The development of local cultures should be ensured and promoted through communications and the media.  
  
A free Internet is as important as a free press. As in the case of the press, no content that is published electronically should be subject to state censorship. At the same time, as in the case of other media, the publication of content that can incite violence and hatred should be subject to challenge.
7. The communications media should play a central role in the generation of a new citizenship that permits conscious decisionmaking by citizens on their rights and obligations to society and the planet.
8. Democratic access to new communication technologies should be guaranteed, including affordable connectivity, the means of finding adequate and diverse information sources in appropriate languages, and access to the means of dissemination, particularly for organized groups and communities.
9. Access to the means of communication must be supported by education and training to assist a critical understanding of the media and to enable people to develop their media and communication skills.

## Specific Objectives

Since communication is one of the central factors in the globalization process, and at the same time one of the areas where the total dominance of the market is expressed most strongly (for it is here that the direct threat to the existence of a diverse and varied world is expressed), it is essential that the struggle against this monopolizing concentration, and in favor of the democratization of communication, become one of the main focuses of social struggle.

1. The Right to Communicate should be recognized as a human right by civil society, as well as by governments and international bodies. In particular, this right should be recognized constitutionally, and be properly legislated and enforced through appropriate regulation and policies.
2. Public broadcasting should be recognized as a government service to be exempted from the trade agreement along with other government services.
3. Community and independent media sectors should be recognized internationally as:
  - a) an essential form of public-service broadcasting and a vital contributor to media pluralism and freedom of expression and information;
  - b) supporting cultural diversity by providing access to communications media for countries' diverse ethnic and cultural groups;
  - c) a service for social benefit that should be developed to support democratic culture and not solely commercial markets. In particular, it should promote the development of alternative media (popular, community, citizens', educational, developmental), whose objectives are guided by citizen education and formal education, under more favorable conditions than those enjoyed by exclusively commercial media;
4. All members of civil society should have just and equitable access to all communications media including the Internet.
5. Nothing in international trade agreements can be interpreted in a way that limits the freedom, independence and diversity of the press and the freedom to hold and express opinions.
6. National and international regulatory and decision-making bodies in the field of communications should be transparent and incorporate democratic citizen participation and co-responsibility in governance of international communication systems, in particular the Internet.

More specifically, below is a partial list of specific areas of action that should be supported by social and cultural actors, as well as political and economic institutions to endorse and implement those actions. These actions should also be reflected in any international agreement on trade and investment.

### Areas of Action

1. The creation of public (citizens') media, autonomous with respect to the state and economic and political powers, financed according to the principle of "economic solidarity", meaning a new global system of socio-economic regulation based on shared ethics, and under the

- control of civil society.
2. The sovereignty of states to regulate matters related to the communications sector (process and content) should be clearly and explicitly guaranteed within any international economic agreements.
  3. A stipulation of support by governments, corporations and international institutions for the development of the Right to Communicate including:
    - a) regulation of telecommunications that favors of the development of South-South communications infrastructure;
    - b) a percentage of public funds for development projects should be dedicated to the enhancement of local communications capacity;
    - c) measures to ensure governments respect the right to free and unhindered communications, such as revisions of national communications legislation to permit broad exercise of freedom of the press and freedom of expression, ensuring the participation of all sectors of society in the media and their property;
    - d) international financial institutions to dedicate a percentage of loans and bonds to support community based forms of communications;
    - e) considering communications media as part of the global commons, corporations should pay for the use of this public space. Funds should be used to ensure sustainable community and independent media;
    - f) that universal access be the standard for all new technologies and that access be maintained for mature technologies. This includes giving people the necessary training in order to create their own content free from the constraints of the market and guaranteeing affordability;
    - g) improve the quality of human resources in the communications infrastructure; and
    - h) legal guarantees that individuals and institutions are free to communicate via the Internet without the threat of surveillance and interception.
  4. Agreement to the establishment of standards, norms and measures at national, regional and world levels, to enable and assist the development of independent community media services including:
    - a) rules to prevent concentration of media ownership and the take-over of community broadcasting services by commercial companies;
    - b) reservation for community broadcasters of a portion of any new digital spectra, that is, the new digital technologies characterized by the convergence of information and communications technologies;
    - c) support for the development of digital systems which are appropriate to the needs of community broadcasting services;
    - d) require that the development of telecommunications consider countries' socioeconomic and geographic characteristics and incorporate populations that are currently excluded

- form the benefits of that technology;
- e) preservation of existing analog frequencies used by community broadcasters until such time as a digital replacement is available;
  - f) allocation of part of the broadcast spectrum for self-regulated use by microbroadcasters;
  - g) the of transparent mechanisms by the International Telecommunications Union (ITU) to ensure that frequency planning, technical standards for telecommunications and radio, and development resources give a high priority to the needs of civil society;
  - h) ensure the participation of representative civil society organizations in the agencies responsible for global and national decisionmaking on communications, such as the ITU and local telecommunications agencies;
  - i) legal and regulatory frameworks that govern the Internet should be integrated with frameworks governing other media to ensure compatibility and to secure the rights of citizens and organizations to have access to all forms of information and communication technologies (e.g. through community media); and
  - j) policy and regulations governing public access and dissemination of public information should discourage the use of proprietary software and systems. Incentives should be given to develop open-source software.
5. The community media sector should:
- a) track transnational corporations (TNCs) and launch international activist efforts to raise consciousness about and develop strategies to halt the increasing control TNCs have on our communications future;
  - b) advocate for national and international measures to ensure that new information and communication technologies provide affordable access to citizens and communities to establish new community media services;
  - c) develop community media program exchanges and to build solidarity and support for community struggles for human rights and social justice;
  - d) promote and support the training of journalists, broadcasters, engineers, media and communication workers and professionals, especially those working in rural and marginal urban areas; and
  - e) educate civil society organizations, governments and regulators, and the general public on the policy issues of regulation, the importance of a sustainable and pluralist media environment, and the benefits of community media and production.
4. Civil society should:
- a) re-appropriate the terms of discussion in formulating communications policy and regulations;
  - b) call for an ongoing public discussion and debate regarding the new problems concomitant to new technologies including rights of privacy, intellectual property, and a transparent decision making process within corporations and governments;

- c) promote the struggle against the monopolization of communications media and systems, as a central focus of the struggle against neoliberalism; and
  - d) recognize the importance of opening a public debate on the impact and consequences of monopoly concentration in the communications sector, both in the initiatives proposed or supported by civil society, and in those areas of intervention on a regional or international level (World Trade Organization, World Bank, G8, etc);
7. The establishment by the community media sector of local, national, regional and worldwide coalitions to work together through official and alternative communications forums as platforms for exchange, in order to promote communication rights and to implement the measures called for in this Chapter.

## 13. 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 favorably" than domestic firms. They would liberate nearly every regulation on the free circulation of capital, including fly-by-night capital. They prohibit performance requirements and contain mechanisms that permit corporations to sue governments over measures that undermine their profits. 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 favor 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 counter with 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, pollutes the environment, or when the jobs it creates are in enclaves disconnected from the national economy. It is also negative when large flows of fly-by-night capital exit, thus destabilizing economies, or when it results in speculation against national currencies.
2. Regulations must be democratically determined by governments in consultation with their people. However, a minimum level of basic regulations should be agreed to 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.

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 freedom of association, collective bargaining, child labor, forced labor and workplace discrimination; the United Nations Convention for the Elimination of All Forms of Discrimination Against Women; 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. 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.
5. 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), 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 any hemispheric agreement, 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, the failed MAI and the draft text of the FTAA would 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 freedom of association, 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 and others listed in the chapter on environment and natural resources;
7. achieve the transfer of appropriate technology;
8. 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;
9. license technology for others to use when justified for social or humanitarian purposes, as in the case of compulsory licensing of generic medicines;
  10. provide incentives for the reinvestment of profits;
  11. require local permission for the exploitation of natural resources, such as fish or forestry products, for purposes of ecological conservation;
  12. 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;
  13. 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;
  14. 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.

### **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.

The draft text of the FTAA includes, although it is still within brackets, the same "investor-state" mechanism as that in NAFTA.

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. Methanex, a Canadian firm, is suing the U.S. government for US\$970 million because the state of California ordered a ban on the chemical MTBE in order to prevent pollution.

The Mexican government has been ordered to pay US\$16.7 million in damages to Metalclad, a U.S. firm, because the municipality of Guadalucazar in the state of San Luis Potosi refused to grant a permit for a hazardous waste disposal facility. Local water reserves have been contaminated and the governor had declared the site an ecological zone.

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 demonstrate 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.

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 should 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.

## 14. 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 and investment liberalization policies and economic strategies that favor the export sector, and to abandon efforts to strengthen the domestic market.

The foreign debt burden 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."

Between 1980 and 1999, underdeveloped countries paid US\$1.9 trillion more in debt service than they received in new loans. In 1999, Latin America and Caribbean countries had a total foreign debt burden of US\$792 billion, three times as high as in 1982 despite having made US\$1.1 trillion 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 or obstruct development. Structural Adjustment Programs (SAPs) involve a high 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, or have been compelled to promote, measures designed to allow investors to take any kind of capital in or out of member countries in any amount at any time. At the international level, these measures are intended to legalize and lock in the financial liberalization conditions attached to the SAPs. These efforts have included the failed Multilateral Agreement on Investment (MAI) and proposals for changing the Articles of Agreement of the International Monetary Fund to give it

jurisdiction over capital account liberalization. The most advanced case to date, which is law in the North American region, is NAFTA's investment chapter. All of these measures serve to impede national controls over financial capital. Despite the criticisms and negative results (as demonstrated in the successive crises in Mexico, Asia, Brazil and now Argentina) of this total liberalization of capital flows, the draft FTAA chapter on investment goes even beyond NAFTA in obstructing governments' ability to utilize controls on capital movements to promote financial stability. The draft text of the FTAA broadens the prohibitions and extends them to more kinds of capital transfers than that found in NAFTA.

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 foreign 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:
  - a) debts which cannot be serviced without placing an unsustainable burden on impoverished people;
  - b) debts contracted for fraudulent purposes;
  - c) debts from loans wasted on projects that never benefited the people; and
  - d) debts which grew due to the compounding of interest rates after Northern countries unilaterally raised interest rates.
5. The foreign debt should be brought before the International Court at The Hague, through the United Nations General Assembly, in order to determine which debt is legitimate and which is not.
6. A neutral international Arbitration Panel or Tribunal should be established under the United Nations to determine which debts should be canceled on the basis of the principles and objectives described above. 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 would 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 would have the right to initiate proceedings on debt to be canceled. Debtor and creditor nations would appoint an equal number of judges to arbitration panels. Debtor nations would make such appointments on the basis of broad consultation with all sectors of society.
7. 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.
8. 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 such as 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.

9. 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, 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.
10. 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, ensure that investments are long-term, and prevent 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.
11. 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.
12. Central banks and other national regulatory bodies should be strengthened to ensure 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 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.
13. 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.
14. No international agreement should diminish the capacity of states to establish monetary and financial policies for the development and well-being of their peoples.
15. Independent nations should resist the call for dollarization, as this involves an unacceptable loss of sovereignty and leads to the imposition of severe austerity measures.

## 15. 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, instead of society's more creative individuals.

Of special concern are the TRIPs rules that privatize, accommodate and monopolize products derived from biodiversity. Under these provisions, corporations have the right to patent products, processes and organic material such as medicines, biotechnology and seeds. These rights raise new ethical, economic and social issues because they affect the self-determination of individuals, groups and peoples, as well as their ability to meet basic human needs.

Traditionally, knowledge of biodiversity has been treated as the common property of local communities. In the FTAA and other trade negotiations, there has been a push for rules that go beyond those agreed to in the WTO, which we could call "TRIPs-plus". These rules 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. Life forms and biological and genetic materials should be excluded from patentability. This would especially exclude patents on biological and genetic processes related to research on human reproduction, as well as research and marketing of embryos and human clones.
2. 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.
3. National governments have the right to invoke compulsory licensing, parallel importing and public non-commercial use provisions intended to ensure access to essential medicines, as well as to protect biodiversity, indigenous knowledge that of 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.
4. 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.

5. International agreements 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.
6. 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.
7. 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, among other things, the following issues:
  - a) **Human rights.** A United Nations Subcommittee on Human Rights has declared that “there are apparent conflicts” between TRIPS and human rights, specifically the right to food, the right to health, and the right to self-determination.” Sovereign nations and intergovernmental institutions should demand that human rights have priority over trade laws, including those involving intellectual property.
  - b) **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: increasingly 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 into monopolies 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.
  - c) **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-up 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.
  - d) **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. It is also possible, as has been observed in North American universities, that given the possibility of gaining a future patent, researchers stop sharing their results, reducing the pace of current

discoveries. Countries should assess the potential implications of strengthened intellectual property rights on local innovation, particularly in the informal sector.

- e) **The implementation of other international agreements, including the Convention on Biological Diversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR).** Governments should ensure that any intellectual property rules are based on 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 any hemispheric agreement that would exacerbate concerns about the potential for IPRs to undermine the CBD’s objectives. The ITPGR proposes the guideline that patents should not be authorized if they have the effect of limiting access to genetic resources for food and agriculture, specifically that they should not be authorized for “their parts or components, in the form received from the Multilateral System.” Therefore, countries supported in the ITPGR should be careful not to create conflicts with this restriction on intellectual property rights according to this international treaty.

## 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 and the planet’s ecosystem.

There are six different bracketed proposals in the draft text of the FTAA on what can be patented. None of them would prohibit patents on all life forms, although four options would definitively exclude patents on plant varieties and species, animal species and races, including explicit reference to genetic processes or to material that can replicate itself. These options also clarify the definition of an invention and include other important exceptions. However, these options do permit patents on genetically modified organisms, incorporating various aspects of the text of paragraph 27.3(b) of the TRIPS that states that a government can deny patents on plants and animals that are not microorganisms, and on fundamental biological processes to produce plants and animals that are not microorganisms. But paragraph 27.3(b) of TRIPS is itself subject to a debate within the WTO and subject to change. Currently, various governments grant patents on life forms under this article.

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.

Compliance with this objective would require resistance to three U.S. proposals found in the draft FTAA text that would give greater protection to pharmaceutical companies than TRIPS itself and that would violate the text and the spirit of the Doha Ministerial Declaration on TRIPS and Public Health:

- a) While the Doha Declaration would permit the use of compulsory licenses in order to introduce competition in the market under any circumstances, the U.S. proposal in the FTAA would limit their use “only for public non-commercial ends or in situations of a declared national emergency or other situations of extreme urgency.”
  - b) The United States proposes the prolongation of patents beyond the 20 years granted under TRIPS in order to compensate patent holders for delays in granting a patent.
  - c) The United States proposes that information relative to the safety and effectiveness of a pharmaceutical or agricultural product be the exclusive property of the patent holder for five years. It will therefore be much more difficult for generic producers to produce copies because they will have to replicate all of the tests performed by the patent holder instead of demonstrating the “bioequivalency” of their product.
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.

While various proposals in the FTAA recognize the value of traditional knowledge and the obligation to treat indigenous peoples equitably, none of them reflects the more important provisions in the Draft Declaration such as indigenous peoples’ sovereignty and their right to deny access to their resources and knowledge. On the contrary, all of the options listed in the FTAA text require that governments establish some system of intellectual property for genetic resources and traditional knowledge.

5. Protect the rights and livelihoods of farmers to store, use and sell seed grains, as well as 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 an international obligation under any agreement in the Americas.
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 superceded 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.
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. Ensure recognition of the collective character of this knowledge, and because of that, the collective right to decide on the access and use of that knowledge. 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.

## 16. AGRICULTURE

### Background

The pursuit of trade and investment liberalization within the dominant form of globalization and FTAA process will certainly cause serious social and economic problems for rural peoples engaged in agriculture and fishing. Based on painful experiences in Mexico, Canada and the United States resulting from NAFTA, the probable consequences of an FTAA accord include the abandonment of lands, acceleration of migration from rural to urban areas and to the United States, with subsequent pressures on local governments to provide basic services. This will also result in the growth of poverty and increased marginalization in both urban and rural areas. The international grain and commodity trading companies pushing for the FTAA are eager to increase their own access to large quantities of under-priced grains, which they then use to depress global market prices through the strategic “dumping” of grains at prices far below farmers’ cost of production. This market manipulation undermines the ability of small-scale producers worldwide to compete against imports in their domestic markets. In many countries, huge vertically-integrated transnational corporations are building mega-barns for mass industrial style production of hogs, dairy and other livestock. This production, which is geared to export, is displacing local farmers and threatening rural environments and communities. Furthermore, in several countries, large corporations are pressing for the sale or lease of agricultural land to be converted into forestry plantations, resulting in the displacement of subsistence farmers from their lands and the permanent loss of the means of feeding their families.

Like NAFTA, the FTAA would make a country’s food security increasingly uncertain and dependent on volatile international market prices. In many countries, such trade liberalization policies have gone hand in hand with increases in government spending for military and paramilitary forces, which then confront the mass movements that have emerged to regain land and the means to a decent and dignified livelihood. NAFTA and FTAA are also designed to break down barriers to the wide dissemination and cultivation of patented genetically modified food crops and pharmaceutical products which have the long-term potential of disenfranchising farmers and healers of their resources, unbalancing natural ecosystems, and destroying the genetic diversity of crops upon which farmers depend now and into the indefinite future.

In light of these threats, the principle of food sovereignty must be respected in any trade agreement. We therefore reject the liberalization of agricultural markets along the lines of NAFTA and under the parameters of the World Trade Organization (WTO). Agriculture and traditional fishing are activities which fulfill a series of essential functions for the stability and security of nations: the preservation of the cultural riches and multi-ethnicity of societies; the preservation of biodiversity; the creation of dignified employment and self-sustainable communities (in agriculture, fishing and related economic activities); the maintenance of rural populations; guarantees for basic food security; and contributions to sustainable development with economic, social and political stability. In short, agriculture, fishing and biodiversity should not be treated as mere commodities, but rather as elements of a complex social, environmental and cultural pattern which should therefore not be opened indiscriminately to trade liberalization. Only then can agriculture fulfill its complex social role and contribute to the achievement of a just and peaceful existence for all.

Therefore, as a response to the deleterious impacts of so-called “hemispheric integration” by means of trade liberalization, countries should be allowed and encouraged to develop their own sovereign long-term rural development strategies and policies and to prohibit the cross-border dumping of commodities by transnational corporations. The principle of food sovereignty implies the ability of

nation states to protect their farmers and fishers from predatory trade regimes and economic exploitation and ensure food security and a decent rural life and livelihood.

## Guiding Principles

1. Countries should assume the responsibility to ensure food security for their population which gives maximum benefits to domestic producers and local markets before seeking imports and/or promoting export. In international trade agreements, they should have the right to protect or exclude staple foods (such as corn, wheat, beans, potatoes and fish, among others) which form the basic diet of their people from trade agreements.
2. Agrarian reform is needed throughout the hemisphere. This must legitimize the property and territorial rights of small producers and landless rural workers, whether individual or collective, of both men and women, and respect the traditional rights of indigenous peoples to collectively live off their lands with territorial integrity. The concentration of agricultural lands in fewer and fewer hands must be reversed and a concerted effort made to maintain and, in many cases, to restore ethnic diversity in production systems.
3. The use of patents to control agricultural seeds and healing herbs and plants must be prohibited under trade accords. Not only has the patenting process become an exercise in blatant theft by industrial agents, but the patenting of life forms has no moral, ecological or historical basis. Respect must be given to the agrarian peoples who through generations have developed the crop varieties in use around the world today. If anything, benefits accruing from the marketing of crop seeds, fish products and medicines should go primarily to the peoples who, together with their ancestors over generations, have bred these crop seeds, protected fish populations or protected and studied the effects of these medicinal plants.
4. Agricultural workers are frequently submitted to abuses and injustices. The labor movement and peasant organizations of the hemisphere demand that any international agreement must work toward guaranteeing the following rights:
  - a. The protection of trade union freedoms that allow for the establishment of unions in the rural areas or among fisherfolk.
  - b. The promotion of standards that allow the negotiation of wages and other working conditions, through an efficient system of collective bargaining.
  - c. The recognition of working women's needs, taking into consideration the obligations of child care, nursing and education.
  - d. Guarantees of specific health and safety standards linked, for instance, to the effects of chemicals on farm workers.
5. Sustainable development and the protection of the environment can best be promoted by a process of democratization of national agricultural, fishery and environmental policies. Agrarian reform that fosters economic justice and dignity for farmers and fisherfolk is a vital element in protecting the fertility of the land in the future. Farmers, both men and women, need to participate directly in the development of such policies. Civil society is already developing self-governance forms, both in the rural and urban areas, which need to be respected as the basis for the strengthening of democracy in the countries of the Americas. No element of any

international integration agreement should limit the capacity of nation states to promote and consolidate this process.

### Specific Objectives:

1. Any international agreement should consider the ability of a nation or region to feed its people as a priority, not the generation of exports, as well as avoiding excessive dependence on imports. Food security and rural sustainability can only have meaning when a country is able to supply a significant portion of its own food needs without abusing its land, its maritime ecosystems or its producers. In cases where a country cannot feed itself adequately by the cultivation of its own land or sustainable fishing in its own waters, there may be cause to import. Likewise, if a country's farmers are sustainably producing a surplus beyond domestic needs there may be justifiable reasons to produce and export goods with value added. International agreements should not limit the ability of nation states to internally define these policies.
2. Governments should respond to the need and wish of many small producers to diversify into agroforestry. Incentives and easy licensing of small commercial tree planting and processing activities in the rural sector should be put into effect. However, policies and forest-management practices regulating tree cutting should be agreed upon only with the democratic participation of indigenous and peasant movements and organizations.
3. Government policies should not pursue the destruction of small producers by means of supporting or foreclosing on unjust indebtedness that result from factors beyond their control or excessive interest. Governments should instead support small producers through policies of low-interest credit, together with providing technical assistance and subsidized inputs if possible. At the very least, governments should not tax the inputs small farmers need, such as seeds and fertilizers. No element of any international trade and investment agreement should limit the ability of national governments to implement these supports.
4. Farmers should be able to earn a fair price for their production for the national as well as international marketplace. Farmers must not be forced to depend on income support from taxpayers, which is neither politically nor economically in the United States or most other countries in the world. The current U.S. policy, which was further expanded in the 2002 Farm Bill, is devastating to farmers in the United States and around the world since it eliminates price floors and leaves farmers no choice but to plant field crops fencerow to fencerow, cultivating all of their land without leaving any part of the soil to rest. This allows corporate agribusinesses/transnational corporations to purchase commodities at prices far below their cost of production, and export them around the world, further depressing world market prices through unfair competition. It also fuels the expansion of factory livestock operations, as they are able to purchase grain for feeding at prices far below the cost of production.

In those cases in which taxpayer financed subsidies are politically and economically viable, they should not benefit industrial interests in over-produced commodity crops, which are primarily produced for export and serve to further increase the concentration of land ownership and the degradation of the soil through monocultural systems. Subsidies should be based on the social and economic needs of

the majority of a country's producers. For example, the top 10% of U.S. producers receive two-thirds of the subsidies.

In addition, in the overproducing countries some form of supply management program, including an effective system of global food reserves together with price guarantees on basic staple commodities, may both be necessary to reign in overproduction and reverse the bankruptcy of the farming economy. International agreements should both safeguard the ability of national governments to grant subsidies justified by social concerns, food security and environmental equilibrium and at the same time prevent excessive benefits through an indirect taxpayer subsidy to large companies, which lead to unfair trade when the goods they produce are exported.

5. International agreements should not require that sanitary and phytosanitary standards be met through specific technologies, such as irradiation and the use of genetically modified seeds, nor should it exclude the ability of countries to label their products based on how or where it was produced. In the case of a kind of export agriculture that does not threaten a country's food security, small and medium sized independent producers, consumers and all other interested parties must be involved in designing and implementing sanitary and phytosanitary standards that ensure high quality produce, protect the environment, and guarantee consumers access to safe food that is both healthy and nutritious. When legitimate demands for certain standards, justified for consumers' health, cannot be met by small-scale farmers, governments, with international support when needed, should provide the means within a reasonable time period for them to meet those standards. Small-scale organic agriculture is the healthiest and most sustainable form of agriculture and organic producers should be supported by government policies toward that end.

## 17. MARKET ACCESS AND RULES OF ORIGIN

### Background

The promoters of free trade have long asserted that increased market access will inevitably lead to increased growth and prosperity for the participating countries. In the final declaration of the Miami Summit of the Americas, the heads of state asserted that, "[A] key to prosperity is trade without barriers...Eliminating impediments to market access for goods and services among our countries will foster our economic growth." The reality is that the issue of market access is much more complex than that simple formula. The Mexican experience under NAFTA clearly demonstrates that trade liberalization can have devastating impacts on local producers. The fact that Mexican exports increased at the same time that wages fell and poverty increased also calls into question the assertion that increased market access will automatically translate into increased prosperity for any of the parties involved.

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. While expanded trade can contribute to economic growth, 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. Smaller economies must be allowed to continue to maintain trade barriers on strategic sectors. 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 28 November 1979 (L/4903) establish the legal and socio-economic bases for demanding equitable (not equal) treatment. Equal treatment among unequal parties leads to inequality.
2. A development strategy should be multifaceted and must not treat the external market as the only engine of economic growth and prosperity. Domestic markets must be appropriately valued for their role in generating a "virtuous cycle" that raises the population's standard of living and increases social and economic well being. By linking economic development to social well being, 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.

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, while market forces will tend to eliminate uncompetitive 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.

4. 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, while recognizing legitimate restrictions to protect public health and the environment.
5. The goal of negotiations should be to establish clear and fair rules for permanent and predictable access to markets that benefits consumers, creates jobs and well-being for the population, strengthens productive capacity and protects the environment.

## Specific Objectives

### 1. 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 stable access to Northern markets considered key to Southern countries' development. 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. Priority should be given to reducing trade barriers that irrationally differentiate between goods in their primary form and those that have been transformed.

There should be concrete proposals that would lead to changes in local structures, to stimulate access to essential goods or to establish measures to encourage trade in goods of special interest to developing countries. Trade agreements 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 that allows developing countries to open fewer sectors, liberate fewer kinds of transactions, and progressively increase access to their markets according to their particular level of development.

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:

- a) Producers and society in general should agree on a transparent and participatory process for establishing a timetable and choosing products to be subject to lower duties and the degree of protection of domestic production necessary to support social interests.
- b) Internal timetables for trade liberalization and tariff reduction, when deemed appropriate for sovereign national interests, 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.
- c) 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.
- d) The right to impose clear, transparent and agreed-upon performance requirements in conjunction with programs of tariff reduction must be preserved.

## 2. Non-Tariff Barriers and Standards

- a) 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 pressure 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.

- b) 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.

## 3. Customs Procedures

- a) 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.
- b) 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 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.

## 18. SERVICES

### Background

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. Various bilateral or regional negotiations have begun since then, designed to deepen the liberalization of this sector, particularly in the FTAA. The structure of the FTAA negotiation is similar to that of the GATS, but the FTAA is intended to go beyond that agreement (and beyond NAFTA), above all in issues related the manner in which services are liberalized.

Services have undergone tremendous transformation in recent decades, but this does not mean that they have lost their basic characteristics, justifying their treatment as mere commodities. 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.

Of those services, financial activities and public services have come to play an increasingly important role in the liberalization and globalization of our economies. The Latin American experience with the liberalization of financial services dramatically demonstrates that liberalization and increases in financial flows – especially speculative flows – can generate enormous monetary and financial turbulence, which have become the cause of many economic crises. In addition, transnational corporations in the public-service sector have taken advantage of privatization to appropriate state-owned enterprises, thus managing the supply of basic services according to the logic of profits and marketing. Moreover, many investments in such sensitive sectors as energy, transportation, water, tourism and toxic waste disposal, have been made without consideration of their environmental impacts.

Hemispheric trade in services is growing rapidly, but the majority of exports come from industrialized countries. A similar phenomenon is occurring with flows of direct foreign investment in service activities, which have grown over the last few years. It is hardly surprising, therefore, that the vast majority of Latin American countries are “net” importers of services. Caribbean nations are the exception. Those countries are true service economies, due mainly to tourism and financial services. These differences in trade and investment flows reflect the differing capacities for service production that exist between the hemisphere’s most developed countries and those that are further behind.

Furthermore, while services are important to Latin American economies – comprising nearly 60 percent of Gross Domestic Product (GDP) – they reflect, above all, the increase in informal or precarious services, which is the refuge of a significant portion of the population that has become marginalized from productive activities.

Services are extremely important, not only because they are inputs for the production of goods and other services but also because they satisfy consumers’ needs, many of them essential for peoples’

lives. Unfortunately, multilateral and hemispheric (FTAA) negotiations on the service sector tend to treat services more as industrial *inputs* rather than as vital *products* that satisfy the needs of a given population. Given their importance, the imposition of compulsory, global and irreversible rules that threaten democracy and service regulations is unacceptable.

## Guiding Principles

1. Negotiations for any integration agreement must 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 (e.g., education, health and welfare). Therefore, the standards that regulate trade in services cannot be the same as those applied to goods.
2. Nation states must assume the responsibility to guarantee the provision of basic services and public utilities to their populations as a whole and therefore must commit to achieving legitimate regulatory objectives, including consumer protection and universal access to services. Any international anti-monopoly regulations on services should take into account that governments, when required by the public good, must preserve their ability to maintain publicly owned companies as the exclusive providers of vital services to the population.
3. Any service negotiations should be conducted with a broad perspective that includes national interests and those of citizens, as well as relevant policies on foreign investment, intellectual property rights, and other issues. In other words, the provision of services cannot be left either to the market or to a policy based on a perspective of efficient resource allocation.
4. A true integration agreement should take into account the large differences among countries in terms of the size and level of development of their service sectors. Special and differential treatment is absolutely necessary and should not be limited to setting longer phase-in periods for agreements.
5. Financial activities have continued to dominate the globalization of services. Any negotiations process should include the development of an adequate regulatory structure for financial flows—especially those of speculative capital. (see Finance Chapter for more details)
6. Any integration agreement should be based on unlimited respect for national sovereignty and democracy. The “national treatment” and “market access” principles that have been included in services negotiations are unacceptable, as they are only intended to secure open access for foreign companies to local services, restricting or prohibiting government policies that appear to interfere with the market.
7. Transparency in all negotiations is essential. The FTAA negotiations, as well as negotiations for other bilateral or regional accords, 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 citizens/consumers to access to basic services must be guaranteed by nation states. In cases of free trade negotiations or agreements that would undermine that access, services should be excluded.
2. The rights of all governments to exclude certain essential services from negotiations or to introduce temporary safeguard measures on some services must be recognized.
3. National competition policies and laws should be reformed and strengthened in order to control the manner in which companies are acquired and merge, as well as to control anti-competitive practices and unfair trade in services. These regulations to prevent anti-competitive practices should be compatible with nation states' rights to serve as the exclusive provider of essential services when required in the public interest.
4. National and hemispheric regulations on financial flows, especially speculative flows, must be improved or established.
5. Nation states must protect citizens' and consumers' rights. Consumer protection laws should be applied to all service sectors. These laws should take precedence over any trade agreement.
6. Governments should promote effective and participatory regulations, based on the concept of public service, to orient and control services companies, whether state-owned or private.

## 19. ENFORCEMENT AND DISPUTE RESOLUTION

*This version of this chapter reflects significant advances in talks held within the Hemispheric Social Alliance, but it is an issue that requires further discussions to deepen and enrich our positions, which will continue to be carried out over the next few months.*

### 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 civil-society meetings held in Belo Horizonte, Brazil in 1997 and continued to the present in a process of consensus building to reach agreement on 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 an emerging consensus, and also the recognition of the need for further work in these areas. 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.

### Guiding Principles

Four bedrock principles have emerged in the discussion of enforcement provisions.

1. Social standards should not be grafted onto a trade agreement as a parallel or side agreement. To be clear about the conceptual change that we are promoting, whatever social standards that are to be addressed must form the core of any future trade agreements. Improving social standards should be the paramount goal of trade and other

commercial exchanges, not an eventual side effect.

2. 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.
3. 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 separately from the question of who is responsible for the active violation of rights.
4. 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.

These principles stand in stark contrast to the dispute resolution proposals in the draft FTAA text. Rather than seeking to address the broad range of issues implicit in economic integration, the FTAA would include remedies only for commercial disputes. The process proposed in the new accord, like that in NAFTA, would be undemocratic and secretive. Not only are affected parties from civil society not provided standing in these disputes, the FTAA would not even require that the deliberations or decisions around trade disputes be made public.

## **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 affected 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.
5. The report developed as a result of this 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 addressed. In cases involving labor rights, that body would be convened by the International Labor Organization (ILO), as described in the chapter in this document on labor rights. Such international bodies on relevant issues, particularly those linked to the United Nations, should be used as a source for neutral experts whenever possible. In cases where no appropriate UN body exists, the intergovernmental authority that oversees the particular trade agreement would have the authority to convene a panel of experts to conduct the initial assessment with a mandate consistent with the objectives discussed above.
6. The resulting report should serve as an initial assessment, with a specific timetable for commitments for each country involved to cure any failure to comply with the social standards 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 Committee on Economic, Social and Cultural Rights solicits reports and hold hearings every five years on compliance by countries that have signed the International Covenant on Economic, Social and Cultural Rights. This committee has solicited parallel reports from civil society within the countries under review. 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. Countries should continue to receive benefits under the relevant trade agreement as long as the compliance effort remains on the schedule provided by the action plan. Monitoring of compliance will be conducted by the same groups that prepared the initial assessments of compliance with heavy reliance on civil society monitors.

### **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.

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. This monitoring should be carried out by independent local organizations that are certified to be qualified to conduct the company audits. The monitors must not have any financial relationship with the companies being audited.

### **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 in those cases where 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. The tribunals convened to adjudicate disputes relating to enforcement should include a balance of experts in the area of the rights disputes, as well as representatives of the affected sectors. The ILO's tripartite committee, with representatives of government, business and labor, provides one example of how this might be accomplished. 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. 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.
4. 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 should be limited to withholding benefits under any trade agreement until compliance is achieved.

### **Key Issues for Further Discussion**

The issues of enforcement and compliance are difficult and controversial, as they involve very real differences in power among the actors involved, both among governments and between corporate actors and people affected by their actions. This chapter, as the others in this document, is a work in progress that will continue to evolve to reflect the contributions and deliberations of civil-society organizations and social movements throughout the Americas.