

FTAA Fails to Gain Support from Citizens and Governments Across the Region

By Karen Hansen-Kuhn | November 12, 2003

Trade ministers from the Americas are meeting in Miami November 20-21 to discuss plans to complete—or drastically scale back the scope of—the negotiations of the Free Trade Area of the Americas (FTAA). The FTAA is an ambitious undertaking intended to link every country in the Western Hemisphere (except Cuba) through a free-trade agreement covering a broad array of issues. Proponents claim that the accord would serve to increase trade and economic growth among the participating countries, leading to increased prosperity and strengthened democracy throughout the region. A large and growing number of civil-society organizations and some of the region's governments, on the other hand, are deeply concerned that the proposed accord would have a devastating impact on farmers, working people and the environment, and would consolidate the power of transnational corporations to move in and out of countries at will, with no responsibilities to the communities in which they operate.

The concept of an FTAA was first raised in 1990, when then-President George H. Bush called for a hemispheric accord stretching from “Anchorage to Tierra del Fuego.” The first step in that plan was the negotiation of the North American Free Trade Agreement (NAFTA), which began shortly after Bush's announcement, and concluded in 1993. NAFTA is significant on a number of levels. It is the first such regional agreement among countries at such vastly different levels of development, and it includes no measures to reduce those asymmetries. It broke new ground with far-reaching provisions on investment, services, intellectual-property rights and agriculture. NAFTA's rules on many issues go beyond those established in the World Trade Organization (WTO) agreements. They have been used as the basis for advancing similar positions in other talks, including a series of bilateral agreements reached by Mexico with countries in the region, as well as in the failed Multilateral Agreement on Investment.

When, at the first Summit of the Americas in Miami in December 1994, President Bill Clinton proposed the establishment of an FTAA by the year 2005, he held out Mexico as the model of economic reform and NAFTA as

Key Points

- *The Free Trade Area of the Americas (FTAA) would link every country in the hemisphere (except Cuba) through an accord modeled on NAFTA.*
- *Nine negotiating groups, covering a broad range of key economic issues, have been working to complete the FTAA by 2005.*
- *There is strong and growing opposition to the FTAA among civil-society organizations and some governments in the region.*

the model trade agreement. Just 10 days later, however, the Mexican peso experienced a massive devaluation. Stunned observers watched as billions of foreign-investment dollars flowed out of the country. That, coupled with the austerity and adjustment conditions attached to the bailout package financed by the U.S. Treasury and the International Monetary Fund (IMF)—particularly the requirement that interest rates be maintained at very high levels led to further devaluation, and sent the Mexican economy into a deep depression.

That crisis, along with increasing evidence of job losses in all three NAFTA countries, dampened congressional enthusiasm in the United States for free-trade agreements for several years. Congress refused to grant fast-track authority in 1998, and proponents were forced to withdraw the measure in 1999. After it was finally approved in 2002, the Bush Administration pushed to accelerate trade talks on several fronts, including the FTAA.

Formal negotiations for the FTAA began in 1998, with the work divided among nine negotiating groups focused on: agriculture; market access; subsidies and countervailing duties; investment; intellectual-property rights; services; government procurement; competition policy; and dispute resolution. The negotiating groups produced two drafts of the FTAA, published in July 2001 and November 2002. While the publication of those draft texts was groundbreaking, and as a result of demands by civil society, they have been difficult to interpret. Nearly every provision in these texts has been heavily “bracketed”, indicating competing proposals on a given issue. Many of the provisions, however, have been lifted nearly verbatim



from NAFTA, which is clearly serving as the model for the FTAA. Negotiations are set to conclude in early 2005 so that the resulting agreement could be implemented by the end of that year.

There is currently very little consensus among the participating countries about either the timing or the scope of the FTAA. The United States, along with 12 other nations (those with which the United States either already has or is negotiating bilateral trade deals), is pushing for the completion of an “ambitious” and far-reaching accord on schedule for implementation by 2005. The countries of the Mercosur, the South American common market led by Brazil and Argentina, on the other hand, are advocating a “possible” FTAA, with drastically scaled-back goals. Venezuela and many Caribbean countries have also expressed misgivings about the timing of the negotiations and their scope.

Problems with Current U.S. Policy

In June 2003, the Bush administration described its key trade-policy objectives for the coming year in a report to Congress, stating that “the United States will advance bold market access proposals for manufactured and consumer goods, agriculture, services, government procurement and investment” in the FTAA negotiations. The administration has also made clear its plans to advance its trade agenda not only through the FTAA, but also through sub-regional trade agreements. It intends to complete CAFTA negotiations by December 2003, and then allow the Dominican Republic to join CAFTA with only minimal changes in the terms.

One of the purposes of CAFTA is to increase pressure on other negotiating partners in the hemisphere. The United States Trade Representative (USTR) fact sheet on CAFTA states, “Agreement between the United States and Central America on free trade would promote greater convergence of positions at the FTAA negotiating table. Together with NAFTA and the U.S.-Chile Free Trade Agreement (FTA), an agreement with Central America would improve the likelihood of forging common views on a wide range of topics.” CAFTA, therefore, serves a double purpose: to advance U.S. negotiating objectives on a piecemeal basis, and to increase pressure on recalcitrant negotiating partners to complete the FTAA, or risk being excluded from a possible opening of markets.

The U.S.-Chile FTA was completed in March 2003, but its formal signing was held up for several months after Chile’s government refused to support the U.S. position

Key Problems

- *The Bush administration plans to advance its trade agenda not only through the FTAA, but also through sub-regional accords such as the U.S.-Central America Free Trade Agreement (CAFTA).*
- *Proposals for an “investor-state” clause in the FTAA would give investors the power to challenge national and local laws.*
- *Brazil and Argentina have proposed an FTAA “lite” that would relegate investment and other key issues on the U.S. agenda to the limbo of the WTO.*

on the Iraq War at the United Nations. In fact, U.S. Trade Representative Robert Zoellick said in May that the U.S. government expects “cooperation—or better—on foreign policy and security issues” from its potential partners in trade agreements.

Prominent among the U.S. proposals for an “ambitious” FTAA is the controversial investor-state provision contained in both NAFTA and the failed Multilateral Agreement on Investment (MAI), as well as in a series of bilateral investment agreements negotiated by the U.S. government. That clause, which grants corporations legal status formerly reserved for nation-states, represents a significant expansion of investors’ abilities to use trade agreements to challenge local laws. When this sweeping procedural right to challenge governmental regulatory actions is coupled with the broad and vaguely worded investor protections in Chapter 11 of NAFTA, virtually all government regulations become potential targets. In the past, investment agreements or national laws have provided for compensation in cases where governments take control of investors’ assets in the public interest. Under the MAI/NAFTA approach, that right is broadened to include measures tantamount to expropriation, which investors have used to demand compensation for potential lost profits arising from regulatory changes. These challenges are adjudicated by dispute-resolution panels meeting in secret, without input from citizen groups.

In 1998, the Canadian government was forced to rescind its ban on MMT, a gasoline additive believed to cause nerve damage, after a challenge was brought under the investor-state provision of NAFTA by the U.S.-based Ethyl Corporation. Currently, the Canadian corporation Methanex is suing the U.S. government for \$970 million because of a California executive order banning the use of MTBE, another gasoline additive associated with serious health and environmental risks. The inclusion of such a provision in the FTAA could effectively provide corpora-

tions with a de facto veto power over local laws and regulations throughout the hemisphere.

As with NAFTA, the U.S. Trade Representative's (USTR) proposals would result in greater rights for investors, without establishing any corresponding responsibilities. The USTR's position is that investors should have the right to move funds into and out of countries without delay, meaning that provisions such as capital controls and performance requirements to ensure that investments promote development goals would be illegal under an FTAA. In fact, the U.S.-Chile agreement forced Chile to abandon its successful capital controls in favor of an "emergency" program that would kick in only once a crisis is already underway.

There was considerable debate in the U.S. Congress on the investor-state clause during the last fast-track debate. The resulting legislation requires USTR to increase the transparency of the adjudication process, and to narrow the scope of potential challenges. The U.S.-Chile FTA includes some minor modifications of the NAFTA investor-state language, but the extension of that clause throughout the Americas remains a priority for both USTR and the U.S. business community.

This commitment to extend the NAFTA terms sharply contrasts with the proposal for an "FTAA lite," first advanced by Brazil in June 2003. This proposal, supported by Argentina and, to a lesser extent, Uruguay and Paraguay, would remove investment, services, intellectual-property rights and government procurement from the FTAA negotiations, relegating them instead to the WTO deliberations.

The U.S. government has vigorously opposed the "FTAA lite" approach, attempting in the press to isolate Brazil, and insisting that it will negotiate with "can do" countries. In late October, the Brazilian government posed an alternative approach, including the on-schedule completion of negotiations on certain issues, and the extension of negotiations on controversial issues into some indefinite future. Venezuela and many Caribbean countries have also proposed extending the deadline for the FTAA's completion.

Toward a New Foreign Policy

It is entirely possible that the outcome of the Miami FTAA ministerial meeting will be similar to that of the failed Cancun WTO ministerial, with the participating governments unable to reach a consensus about the direction of the trade talks. Governmental concerns are

growing in response to the widespread opposition voiced by citizens' groups throughout the hemisphere. This opposition has intensified since the Quebec Peoples Summit in 2001 (held parallel to the official Summit of the Americas), when the Hemispheric Social Alliance (HSA), a broad coalition of labor, environmental, family-farm, women's and other civil-society organizations, announced an ambitious plan to convene a "peoples' consultation" on the FTAA.

The peoples' consultation began in September 2002, and involves a variety of public-education campaigns on the FTAA, along with opportunities for citizens to register their opinions on the proposed accord. The first such campaign was carried out in Brazil, where more than 10 million people voted against the FTAA. It is no coincidence that the new Lula Administration, elected just after that vote, continues to listen closely to voices of opposition in that country. Similar campaigns are being carried out in the U.S., Mexico, Argentina, Ecuador and Peru, among other countries. The hemispheric campaign culminates at the November civil-society mobilizations in Miami.

This campaign, and civil-society opposition to the FTAA in general, is based on careful analysis of the actual contents of the agreement. There are "national treatment" provisions in nearly every chapter of the FTAA that require countries to treat foreign investors (or goods) at least as well as domestic companies, despite the fact that foreign companies often enjoy much greater access to financial resources, market information and expertise. There is no mention in the FTAA text of the differential impact of trade on women, or how the resulting problems might be addressed. There are no proposals to ensure that low wages and poor working conditions do not serve as a country's primary "competitive advantage," or to provide funds needed to raise standards internationally or to cancel illegitimate foreign debts. Current FTAA proposals on agriculture and market access

Key Goals

- *Citizens' groups in the hemisphere have implemented a massive public-education campaign to educate people about the FTAA and to register their opinions.*
- *Investment and other trade policies should balance investors' needs for clear rules with the requirements of each country's development strategy.*
- *The FTAA and other accords modeled on NAFTA should be rejected so as to open space for meaningful talks on just and sustainable development.*

would likely result in a flood of foreign goods into local markets with devastating consequences for local producers.

Along with its critiques of the FTAA, the HSA has prepared Alternatives for the Americas, a comprehensive proposal for a different kind of trade agreement. The document includes chapters both on the issues under negotiation in the FTAA, and on other relevant social issues that must be included in any agreement if it is to achieve just and sustainable development. The HSA insists, for example, that language regulating investments be changed to balance investors' needs for clear rules with the development objectives of national economies. Governments should retain the right to impose performance requirements on foreign investors and be allowed to protect small- and medium-scale producers and other key economic sectors in order to promote national development priorities. Each country's right to maintain food and nutritional security (for example, by excluding basic grains from trade-liberalization measures) should also be guaranteed. Likewise, governments must be free to regulate without having to compensate foreign investors for "economic harms."

Despite prolonged attempts by the HSA and many other civil-society groups to influence the official negotiations, and despite their success in educating the public and affecting public opinion, none of these proposals are reflected in the FTAA. It is therefore unreasonable to expect to transform the FTAA at this late date. The FTAA negotiations, along with those of CAFTA and other bilateral accords designed along the lines of NAFTA, should be scrapped. Only then could a new process begin, one designed with the active participation of affected sectors to achieve just and sustainable development.

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SOURCES FOR MORE INFORMATION

Organizations

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Publications

Alliance for Responsible Trade, *America's Plan for the Americas: A Critical Analysis of the U.S. Negotiating Positions on the FTAA*, February 2001.

Hemispheric Social Alliance, *The FTAA Unveiled, A Citizens' Critique of the November 2002 Draft Text of the Free Trade Area of the Americas*. January 2003.

Websites

AFL-CIO Toolkit on the FTAA
<http://www.aflcio.org/issuespolitics/globaleconomy/ftaamain.cfm>

Official FTAA site
<http://www.ftaa-alca.org/>

Peoples' Consultation on the FTAA
<http://www.peoplesconsultation.org/>

United States Trade Representative
<http://www.ustr.gov/>

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