

North American Churches Consultation on Globalization Discussion Paper

Part One: Canadian Church Statements on Trade Agreements

The Canadian churches have a long history of concern for the social and ecological consequences of international trade agreements. Canadian church councils and church leaders have set out ethical principles that constitute a firm policy base for evaluating agreements – whether the Free Trade Area of the Americas (FTAA), agreements under the World Trade Organization (WTO) or other bilateral or plurilateral agreements.

Protecting Canada's social programs from erosion under trade agreements has been a longstanding concern of the Canadian churches. For example, in 1987 the 113th General Assembly of the Presbyterian Church in Canada urged the government of Canada *“to state unequivocally that social programs such as universal health care, social security, unemployment insurance and welfare are not negotiable in any trade talks with the United States Government.”*

In its report to the General Assembly, the International Affairs Committee of the Presbyterian Church linked the defence of social programs to the prophetic mission of the church: *“Canada has a responsibility to maintain and improve our own social programmes and an opportunity to be prophetic in the biblical sense. Calling the nations, and particularly our southern neighbour, to do justice and not to ‘sell the needy for a pair of shoes’ (Amos 2: 6).”*

The Fourth Biennial Convention of the Evangelical Lutheran Church in Canada in 1993 reaffirmed *“continued reservations concerning the North American Free Trade Agreement (NAFTA) and called upon the Federal Government not to proceed to implement the agreement until environmental protection can be secured, access to indigenous knowledge and the benefits of bio-diversity for local communities can be safeguarded and just labour and social standards can be assured.”*

During the debate on the Canada-US Free Trade Agreement, Archbishop Michael Peers, Primate of the Anglican Church of Canada, enunciated the following four principles for evaluating a trade agreement:

- *Economic plans must not affect the most vulnerable members of our Canadian society, nor of our global family, in a negative way.*
- *Economic or social agreements should not be undertaken if they limit society's members from making future decisions on behalf of the common good.*
- *Economic agreements should not be undertaken which reduce our ability as a society to be good stewards of our environment.*
- *Ordinary citizens must be allowed opportunity to understand what is at stake and to take part in a meaningful way in decisions of major importance.*

The United Church of Canada passed resolutions at its 30th, 31st, 32nd and 37th General Councils (1984, 1986, 1988 and 2000) all of which are rooted in concern for the poor and the marginalized and care of the natural environment. A particular concern of the United Church has been to protect *“public programs, such as medicare [and] hospital*

insurance” (31stGC) and “Canada’s democratic ability to use capital and resources for worthy national purposes and our ability to use our democratic and economic institutions to more adequately care for each other as Canadians.” (32ndGC)

The 37th General Council in 2000 reflected our experience to date with economic integration agreements and asserted that *“international trade agreements often ignore the rights and welfare of poor people, the need for nations to be able to act in their people’s best interest, and the need for ecological sustainability.”* The 37th General Council also commended the *Alternatives for the Americas* statement prepared by the Hemispheric Social Alliance as a basis for advocacy concerning government trade policies with respect to democracy and participation; sovereignty and social welfare; reduction of inequalities and sustainability.

Canada’s Roman Catholic Bishops have spoken out frequently on trade agreements, asserting: *“The primary purpose of an economy should be the common good, namely, to equitably serve the basic needs of all people in a given society. ‘All other rights whatsoever, including those of property and free commerce, must be subordinated to this principle’”* (citing the words of Pope Paul VI in On the Development of Peoples, #22). In the same encyclical, Paul VI went on to say: *“The rule of free trade, taken by itself, is no longer able to govern international relations. Its advantages are certainly evident when the parties involved are not affected by any excessive inequalities of economic power. ... But the situation is no longer the same when economic conditions differ too widely from country to country: prices which are ‘freely’ set in the market can produce unfair results”* (#58).

On the occasion of the Third Summit of the Americas in Quebec City in April 2001, Canadian church leaders issued a statement which articulated a theological basis for addressing international trade and investment agreements: *“The God who gives life calls us to share in responsibility for all of life. Our linked continents were created to be a true home for communities of life, interconnected and mutually supportive. This purpose of the Creator should be echoed in every human law and policy. Trade in goods and services can be a life-sustaining dimension of human sharing or it can exacerbate inequalities if it is carried out on unequal terms.”*

At the time, the 12 Canadian church leaders wrote to the Prime Minister and other heads of state and government urging them *“to create not simply a trade agreement, but a framework for a more neighbourly economy”* that would achieve six goals:

- (1) Conform any new agreements to the human rights standards in UN covenants.*
- (2) Protect and promote the inherent rights of Aboriginal peoples in the Americas.*
- (3) Cancel paralysing national debts.*
- (4) Enhance food security and the security of agricultural communities.*
- (5) Preserve the integrity of publicly funded health and education services.*
- (6) Prevent patents, or trade-related intellectual property rights, from blocking access to public goods like life-saving medicines.*

The church leaders letter also called for *“genuine transparency and for public participation to be restored to your negotiations.”*

It should be noted that some progress has occurred with respect to the issue of transparency of the FTAA negotiations. Drafts of the FTAA negotiating texts were made available to the public in July 2001, November 2002 and November 2003. In each case,

however, the texts were heavily bracketed to indicate competing and often contradictory proposals on issues. Since the countries proposing specific texts are not identified, it is difficult to interpret the significance of many items. Furthermore, while useful to researchers, these complex texts are not easy for the general public to understand.

In another small concession, a “mailbox” was established for civil society to make suggestions concerning FTAA outcomes and some meetings were held between negotiators and selected civil society organizations. There is no guarantee that civil society proposals are taken seriously – unlike the recommendations of the Americas Business Forum which meets prior to every Trade Ministers meeting and has direct access to the negotiators.

Prior to the Quebec Summit, the Inter-Church Committee for Human Rights in Latin America (ICCHRLA) and the Ecumenical Coalition for Economic Justice (ECEJ) called for government leaders to support a 10-point justice agenda for the Americas, titled “Putting People Before Profits,” that would:

- (1) *Ensure human rights take precedence over commercial interests.*
- (2) *Give priority to eradicating poverty, generating high quality jobs and economic stability.*
- (3) *Protect the environment.*
- (4) *Protect human health.*
- (5) *Ensure food security.*
- (6) *Uphold the right to access to essential social services for all citizens.*
- (7) *Give special and differential treatment to small and less developed countries.*
- (8) *Release countries from intolerable and unjust debt burdens.*
- (9) *Give governments the right to control their development.*
- (10) *Give citizens broad-based access to the process.*

ICCHRLA also coordinated a church leaders’ delegation to Mexico and the US-Mexico border region to witness first hand the harsh impacts of NAFTA policies on *campesinos*, indigenous peoples, women and *maquiladora* workers. Upon their return, delegation members participated in meetings with Canadian and Mexican government officials and went to Quebec City.

The very active and public participation of the Canadian churches in activities during the 2001 Third Summit of the Americas in Quebec City demonstrated both the commitment and concern of the churches to pressing issues that affect citizens across the Americas as well as demonstrating the important public role that the churches play in the broader context.

Part Two: New Areas of Concern for the Churches

By early 2003, Canadian churches, in their ongoing attention to trade negotiations, had identified four emerging areas of concern:

- the call for “deep integration” between Canada and the United States, particularly in areas such as immigration and refugee policy, border security, monetary policy, national defence and foreign policy;
- the uncertain future of the FTAA in light of parallel negotiations taking place in different fora such as the WTO and other inter-related bilateral and plurilateral talks. The question of “what will be negotiated where” has become a key factor affecting whether certain issues will be resolved quickly or put off for future negotiations. Moreover, the inter-relationships and parallel negotiations are being used strategically by key players like the US and Canadian governments to pursue their own interests, often at the expense of the global South;
- the specific content of investment agreements, particularly the precedents set by NAFTA’s Chapter 11 investor-state mechanism with its prohibition of performance requirements. The way in which Chapter 11-type clauses are included in future agreements will determine whether developing countries are able to forge their own paths to development or become even more subservient to the interests of private foreign investors;
- since September 11, 2001, the US administration’s military and economic strategy have become inextricably entwined. It would be helpful in our analysis to explore the links between increased militarization in the Americas and the FTAA.

A. Deep Integration with the US

Deep integration would involve the harmonization of cross-border policies that would result in even closer integration of Canada and the US. Under discussion are such measures as a customs union (common external tariffs); a monetary union, that is the adoption of the US dollar by Canada (or creation of a common North American currency); common immigration and refugee policies based on US policy; and closer military ties. These proposals, advocated by elite Canadian groups (such as the Canadian Council of Chief Executives) and policy institutes (such as the C.D. Howe Institute) for the most part exclude Mexico from the debate.

Proponents argue in favour of deep integration on three grounds:

- new border measures instituted by the United States after the September 11, 2001, attacks on New York and Washington jeopardize Canada-US trade because special preferential access is not assured.
- due to changes in the Canadian economy following the 1989 Canada-US Free Trade Agreement (CUFTA) and the 1994 North American Free Trade Agreement (NAFTA), Canada cannot afford to lose its access to the US market. Measured as a share of total output of goods and services, Canada’s trade with the US (exports plus imports) doubled from 31% of GDP in 1989 to 59% in 2000. The perception is that Canada is wholly dependent upon the US and must do nothing to jeopardize that economic advantage.
- the negotiation of a deep integration agreement with the US would deal with an important issue left unresolved by CUFTA and NAFTA, namely Canadian exemption from US anti-dumping and countervailing duty measures. When the CUFTA was under negotiation, Prime Minister Mulroney said, *“Our highest priority is to have an agreement that ends the threat to Canadian industry from US*

protectionists who harass and restrict our exports through the misuse of trade remedy laws." Mulroney promised not to sign an agreement unless Canada won exemption from US anti-dumping and countervailing duty laws. When it became evident that Canada would not win such an exemption, Canada's negotiators advised Mulroney to walk away from the CUFTA. Instead he sent his chief of staff, Derek Burney, to Washington for last minute talks. These talks achieved, not an exemption, but a review mechanism that says the US is still free to use (or even amend) its contingency protection laws but a CUFTA, and now a NAFTA, panel can review whether these laws have been properly applied.

Proponents of deep integration now argue for a "grand bargain" that would finally win the Canadian exemption that eluded Mulroney in return for a number of new concessions from Canada. That vision has been articulated by Thomas D'Aquino, President and CEO of the Canadian Council of Chief Executives, who says the Canada-US border would be transformed into a *"shared checkpoint within the Canada-United States economic space" through which Canadians could pass by holding "a shared North American identity document."*

In order to win such a deal, Canada would be under pressure to harmonize its immigration and refugee policies with those of the US. In fact Canada has already changed some refugee and internal security policies. The Immigration and Refugee Protection Act passed in June 2002 makes it more difficult for refugees to enter Canada than was the case in the 1970s and 1980s when many Latin Americans fleeing persecution under military dictatorships found refuge in Canada. In December 2002, the Canadian government signed a "Safe Third Country" agreement with the US as a way of stemming the flow of refugees into Canada. Once this agreement is in force, most refugee claimants attempting to enter Canada from the US, or the US from Canada, will be turned away at the border without any opportunity to explain either why they feel they are persecuted or why they feel that the other country is not a safe haven.

In December 2001, the Canadian parliament enacted Bill C-36 which creates new police powers, including detention without charge and enables the federal government to list individuals or organizations as "terrorist groups", forbidding contribution to their charitable organs or dealing in their property. The bill encourages citizens to inform on one another and to answer questions in open-ended investigative hearings. According to Canadian Civil Liberties Association Chief Counsel, Alan Borovoy, the government has gained a *"plethora of powers and a paucity of safeguards."*

Deep integration advocate Wendy Dobson advocates for an overall strategic framework that includes a 10-year programme of integrating natural resource regimes in Canada and the US. Canada is already obliged under CUFTA and NAFTA to give the US access to Canadian energy supplies even if continued exports cause shortages within Canada. Dobson argues that giving more energy security to the US should become a model for other natural resources, including water, regardless of any economic or environmental costs.

Not all proponents of deep integration argue that Canada should move immediately to a monetary union with the United States. However, some influential proponents such as Queen's University economist Thomas Courchene, claim that Canada no longer has a national economy but a series of North-South economies tied to US regions. If governments don't adopt a common currency, companies will probably adopt the

greenback anyway. From 1995 to 1998, the share of US dollar deposits as a percentage of total deposits in Canadian banks rose from 27% to 52%.

Clearly, deep integration is strongly advocated by Canadian economic and social elites. The context of post-September 11, 2001, has given more impetus to those voices despite the evidence that these policies threaten national social, cultural, environmental and economic sovereignty.

B. The Future of the FTAA after Cancun and Miami

In the current conjuncture, it is practically impossible to address one set of trade negotiations without reference to other parallel talks. We are witnessing a very fluid period in which the same topics are discussed in different fora, often by the same negotiators. Indeed the question of where certain issues will be resolved is itself a major subject for negotiations.

It is not a coincidence that the official deadlines for completing both the FTAA and the World Trade Organization's Doha agenda were set for the same date – January 1, 2005. However, new deadlines will probably be set in light of the failure of the September 2003 WTO Ministerial Conference in Cancun and the ambiguous outcome of the November 2003 Miami FTAA Ministers' meeting (described below).

For some time, the United States firmly insisted that it would not negotiate reductions to its annual US\$20 billion domestic agricultural subsidies within the FTAA. This refusal constituted a major issue for Latin American and Caribbean countries whose rural populations are adversely affected by these subsidies (see Part Three below on the effects on Mexico's rural population). The US insisted the issue of domestic agricultural subsidies be resolved only within the WTO where the European Union and Japan are also involved. It should be noted, however, that this doesn't stop the US from negotiating chapters on agriculture at the bilateral or plurilateral level with weaker, smaller economies, such as those of Central America, when such talks help advance policies that are advantageous to agri-business.

Brazil, the largest economy in South America and co-chair of the FTAA talks, has long insisted that it should not be obliged to make concessions in areas such as investment, intellectual property laws and government procurement in the face of US unwillingness to negotiate on agricultural subsidies and anti-dumping measures that keep Brazilian steel out of US markets. One of the chief goals of the US and Canadian negotiators, however, has been to persuade countries, like Brazil that have used investment policies and patent laws favouring their own national industries, to amend those laws in favour of foreign investors. This stand-off between Brazil and the US kept the FTAA negotiations from advancing, and even threatened a total breakdown.

Brazil proposed a "three track" approach, referred to by commentators as "FTAA lite":

- the FTAA agreement itself would have a limited scope;
- the issue of access to the US market for goods, and to a limited degree for services, would be handled in separate talks between the four Mercosur countries – Brazil, Argentina, Paraguay and Uruguay – and the US (the "four plus one" proposal);
- the most sensitive issues for Brazil (including investment, government procurement, and intellectual property rights) and for the US (anti-dumping measures and internal agricultural subsidies) would be handled within the WTO.

For a long time this Brazilian proposal was dismissed as a non-starter by the US, in large part because this approach was opposed by major US business lobbies, including the National Association of Manufacturers, the Chamber of Commerce and the pharmaceutical manufacturers. These powerful groups still want the US to negotiate a "comprehensive", "meaningful" FTAA that incorporates, and in some respects exceeds, the "high standards" set by NAFTA, especially in the areas of investment, services, government procurement and intellectual property rights.

The stalemate between the US and Brazil over the scope of the FTAA continued until the eve of the Eighth FTAA Trade Ministers' Conference in Miami on November 20, 2003. During the week prior to the Miami conference, the US made a tactical shift, saying it would accept a more flexible FTAA. The motivation for this shift was clearly to avoid the embarrassment of a breakdown of the Miami meeting similar to what had occurred two months earlier at the WTO conference in Cancun. The US determination not to allow another major Trade Minister's meeting held on US soil to fail, as did the 1999 WTO conference in Seattle, was no doubt due to the potential political fallout of a highly publicized failure during an election year, especially in the key state of Florida where the President's brother is also the Governor.

The essential compromise which Brazil and the US brought into the Miami Ministerial meeting, and ratified there, involves a two-tier agreement. All 34 countries would be obliged to accept certain core commitments. In other, more controversial, areas some countries (or groups of countries like Mercosur) could opt out. Thus the most far reaching commitments would be taken on a plurilateral basis binding some, but not all, of the 34 countries to more extensive obligations. The Miami communiqué only says "*Ministers recognize that countries may assume different levels of commitment.*" This vague language leaves undefined what will be the basic minimum commitments that all 34 countries would undertake and which sectors will involve plurilateral agreements. The Miami communiqué allows countries that opt out of one sector to still send observers to the negotiations and to opt in at any time should they choose to do so in order to win gains in other sectors.

A popular image adopted by several commentators depicts the FTAA train leaving Miami with nine boxcars in tow, representing the nine areas under negotiation – market access, agriculture, government procurement, investment, competition policy, intellectual property rights, services, dispute settlement and subsidies, antidumping and countervailing duties. Some commentators maintain that these boxcars are still virtually empty as no agreements have yet been reached on any of the topics. Negotiations will resume in February of 2004.

An examination of the FTAA negotiating texts, also released at the time of the Miami meeting, reveals that these boxcars actually contain the same dangerous cargo as before, albeit still wrapped up in parentheses signalling a lack of agreement among negotiators. To cite just three examples, the draft FTAA text contains the following provisions:

- a "proportional sharing clause" like the one in NAFTA, accepted by Canada but not by Mexico, requiring Canada to continue exporting non-renewable resources like petroleum and natural gas to the US even in times of domestic emergencies and even if these exports cause domestic shortages;

- new restrictions on the ability of nations to license the production of less costly generic medicines, effectively contradicting both the spirit and the letter of the Doha Declaration on Trade Related Intellectual Property Rights and Public Health (see Part Three, 6);
- reiteration of the investor-state dispute settlement mechanism that allows private corporations to sue national governments for redress for measures such as environmental protection laws deemed to be prejudicial to their businesses (see Part Two, C).

We can expect that all of the bracketed proposals in the draft text will be on the table for both the plurilateral and bilateral talks. In one-on-one negotiations with smaller, weaker countries the US can extract concessions more quickly.

During the negotiations in Miami, Canada and Chile led a vigorous campaign insisting that all FTAA members must make the same degree of commitment. The Canadian government negotiators seemed to feel that Canada had paid dearly for access to the US market by changing its investment and patent laws and therefore other countries should not win similar access without having to change their investment and intellectual property laws. Since Canada by itself does not have the clout to persuade Brazil to change its laws in the interest of Canadian companies, Canada wants a comprehensive FTAA. Canada backed down and accepted the Miami communiqué's call for flexibility only after a bilateral meeting with the deputy U.S. Trade Representative.

A crucial, but unspecified, implication of the new approach to FTAA talks is that countries that do opt out of commitments in some areas will be offered less access than others to the coveted US market. Brazil insists that the language in the Miami declaration on reaching a "*comprehensive and balanced FTAA*" only means that there will be balanced agreements within specific sectors (e.g., agreeing on mutual market access for goods without cross-sectoral trade-offs in other areas like investment). But the US clearly intends to offer less market access to countries that do not agree to change their domestic investment or patent laws, for example, along the lines demanded by US-based corporations.

Another implication of this new approach to bargaining is that, unlike Brazil or Argentina, smaller, weaker nations that have little to offer in the way of access to their markets will be forced to sign on to investment and intellectual property codes that will be prejudicial to their long-term development, national sovereignty and sustainability in order to get short-term access to the US market.

The Cancun WTO conference

The Cancun WTO conference set the stage for what happened in Miami, not just because it ended in failure, but also because it marked the emergence of a new negotiating group called the "Group of 20." It quickly became known as the "G-20 Plus" as other countries joined during the Cancun meeting. Brazil had taken the initiative to form this group, along with India, China and South Africa, primarily to address agriculture issues within the WTO.

The original G-20 was heavily Latin American and Asian in its composition: Argentina, Brazil, Bolivia, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, India, Mexico, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand and Venezuela. This group, representing more than half the world's population and

about two-thirds of its farmers, was later joined by Egypt, Nigeria and Indonesia. El Salvador left the group during the Cancun conference under pressure from the US.

It is important to note that, despite many reports to the contrary, the G-20 Plus was not responsible for the failure of the Cancun conference. When the conference broke down, the G-20 Plus with its heavy Latin American representation was still at the table and willing to talk about the agriculture issues even though the negotiating text tabled in Cancun was heavily biased in favour of US and European Union interests. What raised the ire of the US Trade Representative was the fact that the G-20 Plus presented a "*massive list of required changes*" to the negotiating text. From the perspective of the G-20 Plus nations, they were only playing by the rules by responding to the US-EU proposals point by point with a high degree of technical competence.

The actual breakdown of the Cancun Ministerial was due to the insistence of Northern countries, particularly the EU, Canada and Japan (with Canada's Trade Minister Pierre Pettigrew playing a significant role as the appointed "facilitator"¹), on pushing negotiations on investment, competition, transparency in government procurement and trade facilitation. These were the four "Singapore issues", so named because they were first floated at a WTO conference in Singapore. During the Cancun meeting, groups representing some 90 developing countries mostly from Africa, the Caribbean and the Pacific, including the least developed nations, reiterated their well-known opposition to launching negotiations on the Singapore issues. Yet the next day the conference chair submitted a text based on Pettigrew's recommendations that called for moving forward immediately on investment, government procurement and trade facilitation and eventually on competition.

On the whole, Latin American countries were *not* among those who thwarted the desire of the European Union, Japan and Canada to start negotiations on the four Singapore issues and thus were not responsible for the failure of the Cancun meeting. Yet, immediately after Cancun, powerful US voices, including the National Association of Manufacturers, the Chair of the Senate Finance Committee and the US Trade Representative, Robert Zoellick, spoke vociferously of the need for the US to pursue more bilateral deals with pliant partners and to punish those who opposed its interests at Cancun. Ominously US spokespeople aimed their rhetorical guns not so much at the African, Caribbean and least developed countries whose refusal to give in on the Singapore issues led the Conference chair to call proceedings to a halt. Instead the US Trade Representative and powerful members of Congress, such as Senators Grassley and Baucus, accused the G-20 Plus of responsibility for the failure of the Cancun meeting.

¹ In his role as facilitator, Trade Minister Pettigrew was charged with working out a deal on whether or not to start negotiations on the Singapore issues. This appointment caused consternation among Southern country delegations because Pettigrew was known as a strong advocate of NAFTA-type investment agreements including the very problematic investor-state dispute settlement provisions and prohibitions on performance requirements. Canada had previously co-sponsored a proposal within the WTO to initiate investment talks at Cancun. That proposal illustrates the "divide and conquer" strategy that Pettigrew tried to employ in Cancun. Canada persuaded Costa Rica and South Korea to co-sponsor the proposal instead of putting it forward in the name of the European Union and Japan who are among the most fervent proponents of investment talks within the WTO. This divide and conquer strategy was articulated in a memo dated August 7, 2002, from the Department of Foreign Affairs and International Trade addressed to the cabinet outlining Canada's negotiating position at the WTO. The memo states that Canada will "*need to work closely with like-minded countries and to isolate hard-line opponents ...*."

During the two months between the Cancun and the Miami meetings, the US worked systematically to persuade first Guatemala and then Costa Rica to abandon the G-20 Plus lest they jeopardize their membership in the Central America Free Trade Agreement then under negotiation with the US. Subsequently Colombia, Ecuador and Peru also left after being offered bilateral trade deals with the US.

The bilateral 'free trade' option

At the Miami Ministerial meeting itself, the US further pursued its quest to isolate Brazil by offering an early start on negotiating bilateral free trade agreements with Colombia, Peru and Panama and eventual talks with Ecuador and Bolivia. The remaining Andean country, Venezuela, a stronger opponent of the FTAA than Brazil, was pointedly not offered a seat at the table. While Colombia and Peru are to be rewarded with an early start to negotiations, Bolivia and Ecuador (where popular and indigenous peoples' movements have overthrown governments leading to new regimes) would have to wait.

The Bush administration has made the conduct of several sets of simultaneous negotiations a central element in its trade and foreign policies. The prospect of having to deal with simultaneous negotiations on the same topics is not new – NAFTA was negotiated simultaneously with the Uruguay Round under the GATT leading to the formation of the WTO. This approach to trade negotiations was specifically mentioned in President George W. Bush's September 2002 *National Security Strategy* document where he rhetorically elevates free trade to the status of a moral principle: "*The concept of 'free trade' arose as a moral principle even before it became a pillar of economics. If you can make something that others value, you should be able to sell it to them. ... This is real freedom, the freedom for a person - or a nation - to make a living.*"

The actual situation is more complex than this rhetoric would suggest. The Bush Administration has practiced protectionism at home through anti-dumping measures against steel imports, tariff protection for politically sensitive constituencies like Florida citrus growers and enhanced subsidies for big farmers and agri-business (amounting to some US\$170 billion over 10 years under the latest Farm Bill).

In his *National Security Strategy* document, President Bush called for a variety of multilateral and bilateral initiatives. Two weeks later Robert Zoellick, the US Trade Representative, elaborated on the administration's trade policies: "*Our idea is to negotiate a series of trade agreements that will be mutually reinforcing in that success in one will lead to progress towards others. By negotiating on several fronts at the same time we will be able to create a 'competitive liberalization' within a network in which the USA will occupy the centre.*"² Competitive liberalization can also be seen as an insurance policy or a back-up plan ensuring that US interests are fulfilled.

When multilateralism doesn't work, the Bush administration uses bilateralism. It has concluded bilateral FTAs with Jordan, Chile and Singapore to complement an earlier agreement with Israel and of course NAFTA. The US is now negotiating other deals with Morocco, Bahrain, Australia, the Southern African Customs Union, Central America (Guatemala, Honduras, El Salvador, Nicaragua and Costa Rica), and the Dominican Republic. Shortly after the invasion of Iraq, Bush announced his intention to negotiate a Middle East Free Trade Agreement. As noted above during the Miami FTAA Ministerial

² Retranslated from *Le Devoir*, 15 mai 2003.

meeting, the Bush Administration reaffirmed its intention to start new talks with Colombia, Panama and Peru and eventually with Ecuador and Bolivia.

Essentially the “competitive liberalization” approach puts the US at the centre of a “hub and spoke” arrangement that gives some countries some preferential access to the US market for some goods while at the same time setting precedents that the US would like to see eventually written into multilateral agreements. For example, the US-Chile and US-Singapore bilateral agreements both established new intellectual property rights that go beyond the WTO TRIPS (Trade-Related Intellectual Property Rights) and new constraints on states in preventing the use of capital controls to contain flows of hot money.

Professor Jagdish Bhagwati of Columbia University views this as a particularly dangerous development since capital controls have proven useful in preventing and containing financial crises. Bhagwati argues that attempts to gain privileged access to the US market through bilateral deals will prove illusionary since WTO agreements will eventually supersede today's US offers of market access as trade barriers are slowly dismantled worldwide while the prohibitions on capital controls and the TRIPS plus measures will remain in force.

Post-Miami prospects

The new flexibility called for by the Miami declaration means there will be a core FTAA agreement governing market access for goods and chapters in all nine areas under negotiation that all countries will sign. However, currently not every member country will have to make the same level of commitments under each of these nine chapters as some issues can now be negotiated on a plurilateral basis. With the US already having signed comprehensive agreements with Canada, Mexico and Chile and nearly completed negotiations with five Central American countries, as well as undertaken talks with the Dominican Republic, Panama, Colombia, Peru and soon Ecuador and Bolivia, only Venezuela, the four Mercosur states and the smaller Caribbean states are left out of far reaching pacts with the US.

To persuade Caribbean countries to participate in the FTAA, small countries have been promised special financial incentives, in part to compensate them for the loss of tariff revenues. Reports from the Miami ministerial indicate that the Caribbean countries were forced into accepting a watered-down version of a Hemispheric Cooperation Fund that replaced the original demand for a stand-alone compensatory fund with one where donors will make loans through multilateral development banks with conditions tied to adjustment performance.

With bilateral deals covering Central America and most of South America, and special financial incentives offered to the Caribbean, it is clear that Venezuela and the four Mercosur countries have been deliberately isolated. But the manoeuvring doesn't stop there. Before the Miami Ministerial meeting ended, US Trade Representative Robert Zoellick was attempting to further isolate Brazil and fracture Mercosur's unity. At Miami, Zoellick overtly emphasized different interests among Mercosur countries, pointing out how Argentina has already signed a bilateral investment treaty with the US while Brazil has not. The implication is that since Argentina is already bound by bilateral investment rules that are not unlike Chapter 11 of NAFTA, it has little to lose and much to gain by abandoning solidarity with Brazil and signing on to a comprehensive FTAA.

The Hemispheric Social Alliance representing civil society organizations throughout the Americas points out: "*This 'agreement' in Miami may in fact turn out to be more dangerous than the original FTAA formulation. This Declaration maintains the original time frames and its antidemocratic character, and puts forward a 'flexible' structure for the negotiations, shifting them to a bilateral level, particularly where there are areas lacking common agreement. This shift towards bilateralism puts many countries at a greater disadvantage in their direct negotiations with the US. In addition, all issues remain on the table.*"

The FTAA negotiations will proceed in less publicized meetings of the negotiating committee scheduled for Puebla, Panama City and Port of Spain during 2004. It remains to be seen how the many sets of bilateral negotiations will proceed and what dangerous cargoes will be unloaded from the nine boxcars on the train out of Miami.

C. Investment Issues: Investor-State Disputes Under NAFTA

The experience with investor-state disputes under NAFTA's Chapter 11, on which the FTAA investment chapter is modeled, is that foreign investors have gained the ability to sue Canada, the US or Mexico for compensation and overturn measures designed to protect human health and the natural environment.³

Three cases illustrate the threats investor-state provisions pose to good stewardship of the natural environment:

- A Canadian government ban on MMT, a toxic gasoline additive, was withdrawn after its maker, US-based Ethyl Corp., sued the Canadian government for US\$201 million under NAFTA. Fearing a huge payout, the Canadian government, in an out-of-court settlement, paid the company US\$13 million in compensation, reversed its ban and formally apologized to Ethyl.
- A Canadian government ban on the export of PCBs, in compliance with its international environmental obligations, was overturned after S.D. Myers Co. successfully sued the Canadian government, arguing that the ban deprived it of profits from its PCB disposal and recycling operations. A NAFTA Tribunal awarded the company US\$5 million in damages.
- Metalclad, a US company, purchased a Mexican waste disposal company whose dump had already contaminated local water supply in village of Guadalcazar, San Luis Potosi. The State Governor declared a special ecological zone to shut down the dump. Metalclad sued and a NAFTA tribunal ordered Mexico to pay US\$15.6 million in compensation to Metalclad.

Chapter 11 investor-state mechanisms demonstrate how these agreements are a threat to Canadians and Canadian sovereignty and indeed to citizens all across the Americas. As shown in the following table, of the 28 cases filed under Chapter 11 eight have been against the Canadian government while 10 cases have been filed against each of the US and Mexico with claims totalling US\$17.3 billion.

³ This issue is explained in more depth in "Trading Away the Future" prepared by the Social Affairs Commission of the Canadian Conference of Catholic Bishops. The booklet prepared for the January 2002 Conference on Humanizing the Global Economy is available in English, French and Spanish from the CCCB.

Here is a summary of the status of 28 known investor-state cases under NAFTA:

Country sued	Number of Cases	Total damages claimed	As of Oct. 2003
Canada	8	US\$924 million	1 settled out of court; 3 decided against Canada; 3 pending; 1 withdrawn.
USA	10	US\$15.9 billion ⁴	2 dismissed; 8 pending.
Mexico	10	US\$473 million	2 decided against Mexico; 1 dismissed; 7 pending.
Totals	28	US\$ 17.3 billion	

Currently, there are three cases pending in Canada that threaten our well-being in different ways: one threatens Canada's natural resources (Sunbelt vs. B.C. ban on exporting bulk freshwater); another its Canada's public services (UPS vs. Canadian Postal Services), and the third threatens Canada's environmental regulations that protect human and environmental health (Crompton vs. pesticide ban).

For many, Chapter 11 has become a type of supranational constitution. Decisions handed down in these secretive and unaccountable tribunals are superseding municipal, provincial and national laws designed to protect our human and environmental health and universal access to services. In many ways these types of investment clauses prevent our government from acting in our best interests and they threaten our national sovereignty. Despite a strong public opposition to investor-state mechanisms, our government has repeatedly ignored citizen concerns and refused to remove Chapter 11 from NAFTA and all other trade and investment agreements.

D. US Military and Trade Policy

The *National Security Strategy* document released by the White House in September of 2002 defines and guides US foreign policy. It confirms that the US administration is willing to abandon multilateralism in favour of unilateral actions that are pre-emptive in nature and protect the US interests at all costs. This document explicitly links these political and military interests with economic interests and the pursuit of free trade.

In his *National Security Strategy*, President Bush states: "*We will actively work to bring the hope of democracy, development, free markets and free trade to every corner of the world.*" Throughout the document, political and economic freedom are defined as one pursuit. US Trade Representative Zoellick makes direct links by claiming that "*trade also serves our security interests in the campaign against terrorism by helping to tackle the global challenges of poverty and privation*" (contrary to abundant evidence that free

⁴ The high figure for claims against the US is mostly due to a single case - Baird versus the USA. A Canadian investor is challenging US rules on the disposal of nuclear waste and claiming US\$13 billion in damages.

trade agreements often exacerbate rather than alleviate poverty). The means through which the administration is achieving its multi-goal strategy include negotiating the FTAA and bilateral trade deals while supporting increased militarization in Latin America.

There has been a visible increase of US troops in the region combined with proposals for many more US military bases and expanded training of Latin American troops. The context of militarization and the need for such militarization in order to successfully implement further economic liberalization in Latin America merits further exploration.⁵

Another symbol of the link between the "war on terror" and achieving free trade in the Americas was the inclusion in the bill authorizing some US\$87 billion of new spending in Iraq and Afghanistan of a clause authorizing US\$8.5 million to pay for augmented police presence at the November 20, 2003, Trade Ministers meeting in Miami. The police intimidation of non-violent protestors in Miami, which included arbitrary arrests and mistreatment of detainees, constituted a violation of fundamental rights of free speech and freedom of assembly. A massive police presence was used to keep peaceful protestors from following a previously agreed parade route past the hotel where the trade ministers were meeting.

⁵ For further analysis of militarization, see "Free Trade & Rising Militarism: The American Empire Tightens its Grip on Latin America" *Global Economic Justice Report* Vol. 2, No. 4 Toronto: KAIROS Canadian Ecumenical Justice Initiatives, November 2003.

Part Three: The Churches Urge the Creation of a ‘Neighbourly’ Economy

The material below is organized under six sub-headings corresponding to the six goals articulated in the Canadian Church leaders’ letter to heads of state and government prior to the 2001 Quebec Summit.

(1) Conform any new agreements to the human rights standards in UN covenants.

There is a consistent gap in official policy between human rights, aid, debt, and trade policies. A more holistic approach could lead to an integrated policy platform that corrects the practice of “de-linking” trade and respect for human rights.

In the hierarchy of norms in international law, human rights are supposed to prevail over conflicting provisions of other treaties, including trade agreements. The UN Committee on Economic, Social and Cultural Rights states that trade liberalization “must be understood as a means, not an end. The end which trade liberalization must serve is the objective of human well-being to which the international human rights instruments give legal expression.”

In practice, however, commercial interests usually take precedence over respect for human rights. When the United Nations Sub-commission on Human Rights commissioned a report on the World Trade Organization, the authors found that the WTO has been a “*nightmare*” for human rights. The report states: “*For certain sectors of humanity – particularly the developing countries of the South – the WTO is a veritable nightmare. ... The assumptions on which the rules of the WTO are based are grossly unfair and even prejudiced. Those rules reflect an agenda that serves only to promote dominant corporatist interests that already monopolize the arena of international trade.*”

Draft FTAA texts indicate that the approach being taken will be “WTO-plus.” That is to say, this regional deal could end up be a never-ending “*nightmare*” for Southern nations.

Economic policies should be placed at the service of human beings if people are to rise out of poverty. Canada’s economic relations – of which trade and investment are key mechanisms – must therefore be placed at the service of human beings and their communities, rather than the reverse. The test of any economic agreement is the degree to which it meets the needs of all citizens, guaranteeing their well-being, dignity and essential human rights, including – among other important rights – the right to adequate nutrition and housing, education, health care, fair and safe working conditions and a healthy environment.

Trade and investment agreements violate human rights on two indivisible levels: civil and political rights and economic, social, and cultural rights.

Civil and political rights

In Mexico, one of the key effects of NAFTA has been changes in communal land holding laws and the removal of subsidies for small corn producers. This has had disastrous consequences on the livelihoods of Mexico’s indigenous and *campesino* majority. Indeed, NAFTA has been declared a death sentence for Mexico’s indigenous population and was a determining factor of the uprising in the Chiapas region. Since that time, the

Mexican State has conducted a “low-intensity” war in Southern Mexico. Las Abejas, an indigenous faith-based community that works non-violently for social change has been particularly hard hit. Between four and five thousand members of Las Abejas have been internally displaced. On December 22, 1997, 45 people were massacred in the Acteal Community while praying at a peace vigil. Community member Antonio Guitierrez Pérez states: *“This is our stepping stone to scream louder, to speak with force, to think clearer, to unite us. They killed their bodies, but were not able to kill their souls.”*

Economic, social and cultural rights

The UN Economic, Social and Cultural Rights Covenant recognizes the right to an adequate standard of living. So far trade and investment agreements, like other liberalization policies before them, have yielded new jobs but the nature of the work is vastly different. In Canada there has been a significant shift away from formal, unionized, steady work to informal, temporary, non-unionized work for less pay. Moreover, it is usually women who hold these unstable, low-quality jobs. A study on labour market conditions in Canada under NAFTA found that *“part-time workers – overwhelmingly women – earn just two-thirds the wages of equivalent full-time workers and less than 20% receive benefits from their employers.”*

The story has been the same in the South with debt payment policies pushing the growth of Free Trade Zones in the Maquila Sector. The predominately female workforce employed by *maquila* factories – where consumer products like clothing are sewn together on assembly lines – is expected to work long hours for little pay, with no job security, forced overtime, a high risk of health problems due to unsafe working conditions, and the real possibility of sexual harassment, verbal and sometimes physical abuse.

As a Nicaraguan *maquila* worker stated at the 1999 Trade Ministerial Civil Society events in Toronto: *“In 1991, the doors opened to multi-national corporations. They were the oxygen tanks that would save the country, bringing us dignified work. But for them, a woman is simply a robot, not a human being.”* The FTAA and bilateral free trade agreements that the US and Canada are currently negotiating with Central America will only serve to further cement unregulated, unstable, temporary work that puts very little back into the local economy.

We believe that international human rights law arising out of United Nations instruments, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, as well as human rights instruments of the Inter-American System (OAS), have primacy over all other conventional international law, including that found in trade and investment agreements. In the event of conflict between these legal regimes, human rights law must prevail.

(2) Protect and promote the inherent rights of Aboriginal peoples in the Americas.

Recently the Canadian government proposed a new First Nations Governance Act (FNGA). The FNGA proposed change to the legal status of First Nations to corporate entities, making them comparable to municipalities and ascribing them delegated power. In other words, the Act treats self-determination and self-government as involving only some limited powers that might be granted to First Nations by the federal government.

Yet First Nations here and globally see self-determination and self-government as inherent rights. Indeed, the recognition of the inherent right of self-determination is an emerging norm in international law. Instead, the federal government is proposing legislation that is designed to end or contain Aboriginal governments and to promote the federal government's own narrow view of First Nations self-government.

Needless to say, if the FNGA were passed and no explicit, specific and binding exemptions for Aboriginal peoples' self-government were incorporated into free trade and investment agreements, the door would be open permanently to vast natural resource extraction and severe violation of indigenous peoples' rights. For centuries indigenous peoples the world over have made their homes on resource-rich lands while tending to their surrounding fragile eco-systems. All across the Americas, there are attempts to impose these types of laws and regulations on communities while completely excluding and marginalizing them from the process – or trying to manipulate them into participating in the exploitation.

In November 2002, during a meeting of Trade Ministers negotiating the FTAA in Quito, Ecuador, Leonidas Iza, the president of CONAIE (the Ecuadorian indigenous federation) delivered an eloquent testimony of how indigenous people view the FTAA as part of a broader set of neo-liberal policies: *"We are suffering from poverty, illiteracy and poor health. It is hard for you, who were born in golden cradles to identify with us, but for a minute, walk on our shoes. The neo-liberal project you propose is marred by inequality, benefiting a small elite, while the rest of us are left with nothing - dollarization and poverty. You harbour our corrupt politicians. Open markets have meant that cheap imports abound but I still have to buy milk at \$1.80 a litre. I am certain you don't know how much you pay for milk, but this is more than any one of my people can afford. Thirty-five years of oil and gas development in our land and what have we seen from that? No benefits, just you savaging our natural resources. When we complain, we risk being called terrorists by the US but remember we are not threatening just telling you that we are hungry and tired and things have got to change."*

Rodney Bobiwash, a member of the Nishnawbe Aski Nation from northern Ontario, calls the intellectual property provisions of trade agreements part of the final stages of the colonization of the indigenous peoples of the Americas. In particular Bobiwash insists on the right for indigenous peoples to guard *"our traditional knowledge [and thus] deny the right of pharmaceutical companies to monopolize the benefit of the medicines given us [by the Creator] for the healing of all humankind."*

Bobiwash observes: *"Every time [a global seed company like] Monsanto takes a seed [from indigenous communities] they deny 1000 generations of agricultural history."* He adds, *"Genetic researchers collect the genetic information of Original Peoples ... [They] offer back the most minute portion of what they have stolen. We call for an international moratorium on bio-prospecting and genetic piracy until there are sufficient protections for our full and informed participation in all aspects of this endeavour ... The theft of our cultural property, our sacred knowledge is the theft of our identity and autonomy."*

The ecumenical church leaders 2001 delegation to Mexico reported on their encounters with indigenous communities: *"In the southern mountain region of the state of Chihuahua, known as the Sierra Tarahumara, our delegation visited indigenous communities where we heard how privatization of state Forestry Services and the lifting of controls over logging – policies implemented in the lead up to the signing of the North*

American Free Trade Agreement – have coincided with the arrival of transnational forestry companies and intensive, largely unregulated logging. This has resulted in the denuding of forests that once provided edible plants, medicinal herbs and a livelihood to the Tepahuane, Raramuri and Huichol indigenous peoples, along with growing desertification, depletion of soils and shrinking of agricultural harvests. Meanwhile, we were told that NAFTA has enabled cheap wood imports to enter Mexico ... driving down the price that indigenous communities can obtain for the timber resources on their land, contributing to growing poverty as well as pressure to cut down more and more trees in order to make a living ...

“In the community of Baborigame, we heard how 48% of children die before the age of five from preventable diseases that result from poverty-induced chronic malnutrition. We personally witnessed the desperation of a mother whose baby would have died, had the Carmelite sisters, who run a small dispensary, not taken him to the nearest hospital, three hours away. The Carmelite sisters also told us that the situation is worsening; indigenous people who once ate corn and beans, now often can only afford to eat a soup of ground corn and lately they have witnessed a new cause of death, previously unheard of in indigenous communities: suicides due to sheer hopelessness.”

(3) Cancel paralysing national debts.

Structural Adjustment Programs and economic reforms imposed on Southern countries by the International Monetary Fund and World Bank have had disastrous consequences on the health and well-being of women who constitute the majority of the world's population. These policies have included the privatization of services like health care, water, education and telecommunications. They have also included a severe reduction in the ability of governments to deliver services. Yet there is no sign that such policies have helped to alleviate Southern country debt or address poverty and development. As of the end of 2001, the countries of Latin America and the Caribbean had a total external debt burden of US\$787 billion, three times as high as in 1982. This tripling of external debt occurred despite the fact that these countries made US\$1.4 trillion in debt payments between 1982 and 2001. Moreover, these policies have laid the groundwork for giving transnational corporations further access to privatized services and natural resources through FTAA and WTO agreements.

The United Nations states that 70% of the world's poor population are women and that they continue to have limited access to education, services and land. They continue to be thought of as secondary wage earners and continue to be paid less than men for doing the same work. Finally they continue to be expected to do the majority of “reproductive” work – the invisible double day of caring for the health and well being of their families and tending to the household needs.

In addition, many families have been displaced and have migrated to the cities in search of work and food, with brutal impacts on indigenous women and children. The International Peoples Tribunal on Debt held in Porto Alegre, 2002 heard testimony from Ecuadorian indigenous leader Blanca Chancoso who spoke of the impact of debt on indigenous peoples – the destruction of the culture and the way of life, the loss of the land, and vast ecological destruction. Furthermore, the Jury heard, *“If we add up all of the gold that they took from us, the silver that they plundered, the land that even their companies continue to occupy – it will be clear that we have already paid off the debt. It is they who owe us.”*

Governments and government institutions have been severely weakened by decades of Structural Adjustment Policies. Free trade agreements – bilateral, regional and global – will serve only to further weaken peoples and nations. Immediate cancellation of illegitimate debts is necessary in order to begin to address the wide disparities between poor and rich countries.

(4) Enhance food security and the security of agricultural communities.

The UN Economic, Social and Cultural Rights Covenant recognizes the right to an adequate standard of living that includes adequate food and the fundamental right of everyone to be free from hunger.

Making the links in urban centres

The clearest example of the downward harmonization of Canadian social policy due to participating in NAFTA is the impact on the unemployment insurance program. This program was cut by both Conservative and Liberal governments to conform with the lower standards prevailing in the US. Whereas in 1989, 87% of the unemployed in Canada qualified for insurance (compared to 52% in the US), by 2001 only 39% of unemployed Canadians could collect Employment Insurance.

Moreover more women lost employment insurance protection than men as they more frequently work part-time and enter and leave the workforce more often due to childcare responsibilities. A recent Canadian Labour Congress study found that the EI Program pays insurance to just one-third of working women who lose their jobs. Laws like these are directly linked to rising poverty rates in Canada and directly affect people's – usually women's – ability to ensure their families survival and access to food, clothing, and shelter.

Canadian farmers experience under CUFTA and NAFTA

Canadian farmers' experience of free trade clearly demonstrates how increased trade does not necessarily translate into increased prosperity. In a review of Canadian farm experience since the approval of the bilateral CUFTA in 1988, the National Farmers Union notes that agri-food exports have almost tripled but net farm income adjusted for inflation is down 24%. Over the same period, farm debt doubled with the result that interest payments on that debt are almost as high as net farm income. In other words, the banks make nearly as much money off of farming as the families who do all the hard work.

Some 16% of Canadian farmers have been forced off the land. There were 2,400 fewer jobs in the agri-food processing industry in 2002 than in 1988. The number of independent hog farmers has declined by 66% while corporate production has increased. Between 1988 and 2002, the farmgate price for hogs rose by just 2% and the wages paid to workers in packing plants went up just 3%, while the price of pork chops in the grocery store rose by 39%. Farmer-owned co-ops, once dominant in the grain trade and in dairy processing, have been taken over or marginalized.

If the agriculture text tabled at Cancun for negotiations were to be adopted unchanged it would result in wiping out many more Canadian farmers who produce supply managed commodities for the domestic market without distorting international trade.

The National Farmers Union concludes that free trade agreements “*may increase trade but, much more importantly, they dramatically alter the relative size and market power of the players in the agri-food production chain. ... Free trade helps Cargill and Monsanto, not farmers.*”

Mexico and food sovereignty

What Canadian church leaders witnessed in the Ecumenical Church Leaders 2001 delegation to Mexico speaks for itself: “*In rural communities in the state of Chihuahua, we witnessed the terrible human impact on small farmers of policies that have consciously neglected and excluded them.*”

“Since the implementation of policies that were entrenched in NAFTA, communities where families once made a living from farming basic grains for local markets and their own consumption have found it increasingly difficult to survive. As a result, men of working age are forced to abandon their farms and migrate north in search of temporary jobs. Many of them work illegally in the United States, having been unable to obtain a work visa. As a result, they are paid exploitative wages and denied the rights and benefits accorded to others.”

“The suffering caused by these realities was evident in our conversations with inhabitants of the communities we visited. ‘We have become half men because we are no longer able to provide for our families. We can no longer be husbands to our wives, or fathers to our children,’ we were told by small farmers who must leave their communities in search of work for four to five months at a time. This means the women, as they told us, ‘are left to assume the roles of both women and men’, taking on a triple work load of caring for their homes and families, looking after their farms, and often seeking paid work in order to feed their children.”

Migrant workers rights

There are approximately 3.5 million undocumented Mexican workers in the United States. Many work as farm labourers under harsh conditions without any guarantee that they will not be deported summarily by the Immigration and Naturalization Service. Prior to the September 11, 2001, attacks on New York and Washington, Mexico and the US were negotiating an agreement involving increased legal rights for migrant labourers (a guest worker program, more permanent visas and rights for migrants) in return for a promise of strict controls, including the use of the Mexican army, to limit arrivals from Southern Mexico and Central America. Recently, these talks resumed in a new climate where vigilante groups operate along the border to intercept undocumented migrants combined with pressure to militarize the US Southern border in the name of preventing the entry of terrorists and illegal drugs.

Genuine human security demands just treatment for migrant workers, including the right to social security, health care and education for their children as well as equal pay, equal working conditions and equal trade union rights as the nationals of the host country. In the short term, the legal status of undocumented workers in the United States and Canada should be regularized through an amnesty; in the long term, the root causes of out-migration must be addressed through programs of sustainable rural development throughout the Americas. All countries should ratify and adhere to the International Convention on the Protection of the Rights of All Migrant Workers and their Families as approved by the United Nations General Assembly in December 1990.

(5) Preserve the integrity of publicly funded health and education services.

International trade agreements cover important aspects of Canada's public health care system. Although Annex II to NAFTA supposedly provides an exemption for Medicare and other social services, its safeguards are of uncertain and limited value. The NAFTA safeguards cover only services "established or maintained for a public purpose." Many trade lawyers believe that this vague language does not protect Canada's health care system where private practitioners work within a publicly administered system. Moreover the reservation provides no protection whatsoever from investors claiming compensation for measures "tantamount to expropriation" under NAFTA's investor-state mechanism. If a US insurance firm or homecare supplier wants to sue Canada for losses, or even potential losses, incurred due to the expansion of public health insurance to cover new services, they are free to do so.

The Romanow Commission on the Future of Health Care affirms that under the terms of trade agreements, "*Once there is a significant foreign presence engaged in for-profit delivery of health care services, any attempt to restrict its access to the market in the future may result in relatively high compensation claims.*" The Commission calls on Canada to guarantee that trade agreements do not prevent us from being able to respond to citizen's needs and extend Medicare into new areas such as home care and pharmacare. Despite the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Canada's public health care system is not protected under NAFTA.

British Columbia Premier Gordon Campbell, Alberta Premier Ralph Klein and Ontario Premier Mike Harris made drastic cuts to Canada's treasured and valued health care system. By dramatically cutting services and inducing a public crisis, the premiers have opened the door to privatizing public services. Moreover agreements like NAFTA, the General Agreement on Trade in Services (GATS) under the WTO and the FTAA serve to facilitate foreign corporate expansion in one the few areas left to public trust – namely health care.

A KAIROS local network member from British Columbia told of how her father was rushed to the hospital with a severe back injury only to be put on a stretcher and wheeled to a cement shower stall where he stayed for one week. When the nurses needed to use the shower stall, her father was wheeled out until they were done. His family were given rubber boots so they wouldn't injure themselves in the wet room. When the nurses used the big industrial bathtub, they didn't even bother wheeling out her father – a retiree and prominent community leader. There were no bathroom facilities so he had to be wheeled down a long hallway to a public washroom. In a final humiliation, in order to reach the nurses' bell, a urine bottle was tied to a string. Food services in B.C. hospitals have already been privatized so daily the food was prepared in a town hours away and shipped to the hospital. Her father reported being served mouldy grapes and rancid soup.

The nurses relied heavily on the family – his wife and daughter – to fill the gaps. In most countries across the Americas, women continue to bear the major responsibility for their family's health. As governments privatize what were once public services they make assumptions that women will invisibly assume all shortfalls. Free-market policies rely on the social and economic position of women in society in order to be successful. If women were not the family caregivers, did not work a double day and did not tend to the sick, policies such as these would have collapsed long ago. Given current realities, women's

paid and unpaid work and the values that are attributed to them in the neo-liberal context, women can only be stretched so far – their abilities are not infinite.

Universal public education threatened

Free trade agreements have increased pressure to treat education as a commodity that can be bought and sold rather than as a universal right. This is particularly true of attempts to include “educational services” within the Services chapters. As with health care, the social services exemptions written into existing agreements like NAFTA are not adequate as long as private schools co-exist alongside public institutions and the owners of the former can make claims for “non-discriminatory” treatment when public funds are allocated.

At the Second Summit of the Americas in Santiago, Chile, in 1998, the heads of state and of governments endorsed an action plan aimed at increasing access to education, ending illiteracy and reducing inequality in educational opportunities. Yet nearly 50 million people in the hemisphere, the majority of them women, remain illiterate. Most indigenous peoples do not have access to education that respects their languages and cultures.

Only public education can overcome these deficiencies. Yet the neo-liberal policies embodied in trade agreements lead to either explicit or disguised privatization. As with health care, under-funded public programs lead parents with the means to pay for private schools to seek them out, further eroding political support for high quality public education funded through the tax system.

(6) Prevent patents, or trade-related intellectual property rights, from blocking access to public goods like life-saving medicines.

The Romanow report on health care in Canada cites the following data indicating how escalating pharmaceutical prices are posing a challenge for Canada’s health care system: *“In 1980, \$1.3 billion was spent on prescription drugs in Canada, about 5.8% of total spending on health care in the country. ...By 2001, the percentage had doubled to 12% and the total amount of money spent on prescription drugs had climbed dramatically to \$12.3 billion. There is every reason to believe that the use of prescription drugs will become even more widespread in the future and that the cost will continue to rise.”*

If the US proposals contained in the FTAA were adopted, they would make it even harder to reinstate the licensing of less expensive generic medicines in Canada. The US proposals could also imperil programs like the one in Brazil that provides free medicines to all citizens afflicted with HIV/AIDS. This program has cut in half the number of deaths from AIDS and lowered the rate of new HIV infections. Close to 116,000 people have benefited. The Brazilian program works because the government buys and distributes generic medications. In the US, the annual cost of antiretroviral medicines, per person, is between US\$10,000 and US\$15,000. According to Doctors Without Borders, the same treatments, when produced by generic drug producers, cost around US\$300 a year.

Countries like Brazil that have the capacity to produce generic medicines have been denied the right to sell these drugs to countries with smaller, weaker economies. This problem was to have been solved through WTO TRIPS Council negotiations. But the deal announced in Geneva on August 30, 2003, in the run-up to the Cancun conference,

has been called a "3,200 word maze of red tape" putting many hurdles in the way of procuring inexpensive medicines for low-income countries.

US proposals in the FTAA go farther in contradicting both the spirit and the letter of the Doha Ministerial Declaration on TRIPS and Public Health signed in Qatar in November 2001 by 142 Trade Ministers from WTO member countries. That declaration established the principle that *public health should have priority over commercial interests*. However recent bilateral agreements signed by the US have proven even more restrictive on the use of and access to generic medicines.

The US proposals in the FTAA draft try to restrict the use of compulsory licenses to "*public non-commercial purposes or in situations of a declared national emergency or other situations of extreme urgency.*" If these proposals were accepted they would restrict the sales of generic medicines to government agencies, disallowing direct sales by generic producers to the public as a means of lowering prices.

US proposals in the FTAA would also extend some pharmaceutical patents beyond 20 years by compensating patent holders for delays in winning regulatory approvals (something that the 20-year period already takes into account). The US proposals would also ask national agencies, whose role is to guarantee drug safety, to watch for patent violations and protect information on safety held by patent owners. This would make it more costly for generic producers to gain licenses since they would have to duplicate costly tests rather than just show the bioequivalency of their products.

The impact of intellectual property rights on women

Recently Myriad Genetics, INC., a US company, patented on two genes that signal when a woman might develop hereditary breast cancer. Afraid of legal threats, the government of British Columbia stopped running tests. Knowing that the only recourse B.C. patients have is to pay out of pocket, Myriad now wants US\$3,500 for the blood test – three times more than what it had charged the province.

In Guatemala, WTO-TRIPS was used to thwart a law designed to protect infant health. Guatemala had banned claims on packaging that equated infant formula with healthy robust babies. Gerber Products persuaded the US State Department to threaten a WTO challenge, arguing that Gerber had an "intellectual property right" under WTO TRIPS agreement. The Guatemalan government revised its laws and allowed the labelling, clearly violating international UNICEF guidelines, while WTO advocates praised them as a model. This case demonstrates the weakness of governments and government legislation, as well as international standards and guidelines, to confront agreements with the WTO. These are ways in which trade is trumping human rights.

Part Four: Church Participation in Actions for Justice

Northern churches should listen to appeals coming from our sisters and brothers in Southern churches for strengthened solidarity and collaboration.

The Latin American Council of Churches (CLAI) has developed a Faith and Economy Project to address economic globalization. At a consultation convoked by CLAI in Buenos Aires in April and May 2003, the Latin American churches declared that we live in "*an apocalyptic moment of history in which a veil is being drawn back from shrouding an empire that puts the market in place of God.*" They ask the churches of the US, Canada and Europe to reflect together with them on the challenges to our faith posed by a type of globalization that brings more conflicts than solutions.

CLAI points specifically to the challenges posed by wealth and poverty and the huge burden of fraudulent external debt. The Latin American churches challenge us to reject the external debt as immoral and impossible to pay. They paint a stark choice between models of integration based on human rights, care for creation and respect for the rights of indigenous peoples and the neo-liberal model embodied in the FTAA and the accompanying militarization of the continent.

Recently Catholic Bishops from all Mercosur member and associate countries (Brazil, Argentina, Uruguay, Paraguay, Bolivia and Chile) met to express their concerns with the FTAA. The bishops warned that the FTAA would have "*grave consequences*" due to "*the excessive disproportion of the competitive capacities of the countries*" involved. They warn that it would lead to a concentration of economic power in a few hands. "*Rather than integration, this could involve neo-colonialism,*" they caution, adding that indigenous and rural communities were particularly at risk of being displaced from their lands. They conclude: "*A true process of integration in the Americas should be based on a continent-wide policy that takes into account human rights and the principles of sovereignty, justice, solidarity and respect for the cultural identities of nations.*"

Mobilizing for justice

Since 1999 a broad-based group of organizations including grassroots, faith-based organizations, trade unions, anti-poverty organizations, indigenous, women, peasants, and other civil society members have come together as the Hemispheric Social Alliance (HSA). Since that time, the HSA has monitored closely the FTAA negotiations and the impacts of NAFTA on Canada, the US and Mexico.⁶

HSA members from the South and the North have worked together on creating an alternative platform for just trade relations in the hemisphere. Entitled, *Alternatives for the Americas*, this document proposes a vision for the Americas that is based on the primacy of human rights and just and sustainable development policies. As one of the founding members of the Hemispheric Social Alliance, KAIROS urges the churches, other sectors of civil society and governments to study closely the proposals found in this document available at www.asc-hsa.org

⁶ An HSA study entitled *Lessons from NAFTA: The High Cost of "Free Trade"* was published in English by the Canadian Centre for Policy Alternatives in November of 2003 and is available from KAIROS by e-mail orders@kairoscanada.org. The Spanish version of the study *Lecciones del TLCAN: El Alto Costo del "Libre" Comercio* is available from the Mexican Action Network on Free Trade rmalc@laneta.apc.org

One role for the churches is to assert that various models of economic relations are indeed possible and point to visionary documents and citizens' declarations that proclaim "*Another Americas is Possible.*" Without necessarily having to endorse every one of its recommendations, the churches can point to the *Alternatives for the Americas* as an expression of a different vision which the document explains in the following terms: "*The difference between the dominant neo-liberal approach and the alternative vision 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."

During the Miami Trade Ministers meeting in November 2003, the Hemispheric Social Alliance marked a milestone in its continent-wide "*No to the FTAA*" campaign. Representatives of its member organizations announced the results to date of various national campaigns. In Brazil, the churches played a significant role in organizing a citizens' plebiscite on the FTAA in 2002. Over 9.8 million Brazilians voted in the unofficial popular referendum with 98% rejecting the FTAA. After referendum results were known, Bishop Demitirio Valentini of Sao Paulo declared, "*We say no to the FTAA. It is an imposition on us that will not lead to free trade but to monopoly for foreign products.*"

Since then, the Brazilian Campaign has organized a petition demanding that there be an official government sanctioned referendum on whether Brazil should participate in FTAA negotiations. At the same time, the petition demands an external audit of Brazil's debt to assess its legitimacy and the closing down of the Alcântara army base that has been used by US Troops. On September 16, 2003, the Brazilian no-FTAA campaign handed over more than two million signatures to federal authorities re-iterating these three demands.

Similarly in Argentina more than 2.5 million ballots were collected over seven days with the overwhelming majority voting "No" to joining the FTAA, payment of the external debt and allowing foreign troops to operate on Argentine territory. As in Brazil, the Argentine campaign is seeking an official plebiscite on the FTAA.

In Canada, KAIROS, along with several church denominations, has been working on the campaign with our partners in the Common Frontiers coalition that brings together a broad cross-section of Canadian society. The Canadian campaign has highlighted important issues concerning how trade and investment agreements threaten our rights to health services. The Canadian petition and card campaign calls on our government to:

- STOP negotiations of the proposed FTAA, and all trade agreements that put profits before public well being;
- LOOK at the economic instability and the social and environmental damage caused by economic and trade liberalization;

- LISTEN to Canadians – to us – as we demand that universal Medicare and environmental protections be preserved; and
- LISTEN to citizens across the Americas who reject the FTAA and demand respect for human rights and national sovereignty.

As of the end of November 2003, the Canadian campaign had collected 63,265 signatures, including thousands gathered by KAIROS and other church groups.

There are already wonderful expressions of alternatives in churches across Canada in the fair trade movement. Parish after parish has committed itself to using only fair trade coffee and tea. Many have developed direct partnerships with suppliers.

Another opportunity for the Canadian churches to demonstrate solidarity with the peoples of the Americas will be through the dissemination and building of political support for “*A Charter for Fair and Just Trade in the Service of Our Global Neighbours*” to be launched in January of 2004.

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