

Free Trade Deals: What You Don't See May Be What You Get

OVER 200,000 PEOPLE — health care professionals, students, workers, vendors, even patients — took to the streets of San Salvador last October 23, effectively shutting down the capital city. The people had joined forces with the doctors who had gone on strike to demand that El Salvador's president, Francisco Flores, sign a legislative decree outlawing the privatization of health care.

The sheer size of the march — one of the largest ever held in the country — vividly demonstrates the increasing resistance to an agenda of privatization that seeks to commodify essential social services like health care. The very same day, thousands of campesino farmers blocked several roads leading to the city and one to the airport to protest privatization, bilateral free trade agreements and the proposed Free Trade Area of the Americas. (CISPES Update 10/23/02)

This was not the first time that the Salvadoran government had attempted to privatize health services or dismantle public sector unions representing health care workers. Supported by the Inter-American Development Bank, it directed its efforts at the social security hospitals that follow a plan (similar to Canada's Medicare) which is financed through contributions by the government, companies and workers. All unionized labourers, teachers, public employees and workers in large companies participate in this system.

In the spring of 2000, unionized hospital workers were attacked by police and army units after they seized 10 hospitals



October 23, 2002 march against health care privatization in El Salvador.

to defend their jobs. A few days later, with the support of 20,000 people at a rally, the strikers were victorious. Early in 2002, Salvadoran Riot Police, at the request of the public health administration, raided the headquarters of the Social Security Hospital Workers union (STISSS), claiming that the building was unsafe for occupation. Most saw this, however, as a clear attempt to intimidate union leadership. (CISPES Update 1/24/02)

Last September 16, STISSS and SIMETRIS (the Social Security Doctors Union) went out on strike in a bid to stop privatization. In addition to receiving support from a broad range of social groups, the strikers garnered support from the Colegio Médico — the Doctors' Association of El Salvador — which includes physicians from social security, public and private sector hospitals.

STISSS and SIMETRIS workers recognized that it is not

only social security hospitals that are at risk. If successful, their privatization would pry open the door to further commodification of the entire system, leaving the majority of Salvadorans with no access to health care. It would also further burden women as the primary caregivers who would be forced to assume health care responsibilities for seniors and children. In Canada, many of us share the same concerns around the privatization of our health care through free trade and investment rules. (See insert FTAA: *It's Hazardous to Your Health.*)

A month into the strike, 30 Salvadoran health care profes-

sionals, including the president of the Colegio Médico, received telephone death threats from a group calling itself the Extermination Command. These threats had to be taken seriously since death squads and paramilitaries have been responsible for the systematic murder, torture and disappearance of perceived government opponents during years of armed conflict. (SJC UA#1000 10/17/02)

On October 16, President Flores sent to Congress a number of bills entitled "Health by Objectives" which were designed to create a new privatized health system. Despite threats, more and more people supported the demand that the public health sector be maintained. The massive mobilizations of October 23 culminated in an impressive victory. President Flores was forced to sign the Congressional "State Decree Guaranteeing Health and Social Security" outlawing not only the privatization of public services but also the contracting out of services to private firms. The Decree states: "The Republic's inhabitants' health is a public good. The State and the citizens are obliged to see to its conservation and restoration." (Red Sinti Techan - El Salvador)

Despite this significant victory, Salvadoran doctors have yet to be re-instated and people are still protesting in the streets.

The actions by the Salvadoran people must be seen in the context of growing resistance throughout the Americas not only to the privatization of essential public services such as health care, but also to trade and investment agreements now under negotiation that would give foreign investors access to public services. (CISPES #100 Oct./Nov. 2002) The potential market created by the privatization of services is enormous.

These deals, which include bilateral trade agreements and trade investment treaties, so-called development initiatives like Plan Puebla Panama, and the Free Trade Area of the Americas, claim they will bring economic prosperity to Central America. In this report, we will examine the free trade integration model in light of the claim that it is the "new path for development" and thus the solution to Central America's socio-economic crisis. In order to assess potential impacts for the region, we will closely examine the Canadian trade agenda on key issues currently being negotiated in a variety of bilateral and regional trade deals. This analysis brings to the forefront how people in the region are resisting this latest manifestation of a corporate-driven globalization. But first, a brief glimpse at the region.

I. An Economic Snapshot of Central America

CENTRAL AMERICA IS A REGION THAT HAS BEEN devastated by distorted development, war, overwhelming external debt burdens, and natural disasters. From colonial times, economic activity has been geared to exporting agricultural goods, notably coffee and bananas. This agro-export capitalist model has proven to be economically, socially and ecologically unsustainable. World market prices for these commodities continue to fall in relation to the cost of imports. Efforts to make up the shortfall through foreign borrowing

have led to high per capita indebtedness and a dependence on loans from the International Monetary Fund and the World Bank that come with stiff structural adjustment conditions.

The low wages and underemployment for seasonal workers involved in the harvest of agro-export crops have caused widespread poverty and exacerbated social tensions that are a root cause of armed struggles. Moreover, the ecological devastation brought on by monocrop plantations and the displacement of *campesinos*, who are then forced to eke out a living cultivating hillsides, has depleted the soil and accelerated deforestation. The agro-export model has also limited the development of the region's manufacturing and industrial sectors.

The small Central American countries have made several efforts to unite together as an economic bloc. The Central America Common Market (CACM) was formed in 1960 to strengthen industrial development by promoting free trade among member countries and creating common external tariffs. This model of import-substitution industrialization eventually deteriorated due to political disagreements. But in the '90s, CACM was resurrected in some fashion to become the System of Central American Integration (SICA). Since then, Central America, with a combined GDP of US\$50 billion and exports valued at US\$13 billion, has been trying to negotiate as an economic bloc in order to compete on the global market. (*Voces del Sur* 06/02)

Economic hardship contributed to civil wars in the region. With US government support, military dictatorships committed countless acts of oppression and repression including tort-

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ture, disappearances, and assassination of innocent civilians. The end of armed conflict and the signing of peace accords in the 1990s did little to close the vast disparity between the rich and the poor. There has been no substantive reallocation of wealth or land even though the peace accords in El Salvador and Guatemala led to some efforts to redistribute wealth within those societies.

At the same time, increasing external debt servicing obligations exacerbated the rich-poor gap. In Central America, as in most of the Global South, a greater priority has been accorded debt payments over health, education, and other social services. This has vastly increased the severity of the effects of major natural disasters such as Hurricane Mitch that swept through the region in 1998, hitting Nicaragua and Honduras the hardest. Over 70% of the crops in Honduras were destroyed and mudslides in Nicaragua — directly due to deforestation linked to the agro-export model — took countless lives. In all, over 11,000 died and much of the infrastructure was destroyed.

Today Central America continues in the throes of crises. In addition to problems associated with the agro-export model, the *maquila* industry, consisting of foreign-owned sweatshops in which predominantly women workers sew garments or assemble items from imported components, has steadily grown over the years. Generally, *maquila* jobs are irregular, low paying, with few protections or benefits, and little opportunity to unionize. Since nearly all the inputs are imported and there is no commitment to purchase local products, nor any obligation to pay taxes, these jobs contribute little to the domestic economy and have virtually no multiplier effect on the broader regional economy.

In 2002, all Central American countries scored a lower ranking than the previous year on quality of life indicators in the annual United Nations Human Development Report (see Chart 1). The 2001 report of the Economic Commission for Latin America and the Caribbean (ECLAC) states that total poverty and unemployment rates in the Latin American region are the highest in two decades. Fully 44% continue to live in poverty while the gap between rich and poor widens. “The Central American countries also saw their growth rates



slacken, as external problems were exacerbated by a widespread drought that caused heavy losses in agriculture and by low prices for these nations’ traditional export products.” (ECLAC, 2002: 23)

The overall economic outlook for Central America is bleak. A collapse of coffee commodity markets has directly affected thousands of indigenous and campesino labourers. Drought has created famine conditions, with 700,000 Central Americans facing starvation and nearly one million more suffering from serious food shortages. (Edelman, 3/22/02) Approximately half the population of El Salvador, Honduras, and Nicaragua earn less than US\$2 per day.

The proponents of free trade, market liberalization and deregulation are seeking to take advantage of this desolate situation by promising prosperity through bilateral trade deals, regional agreements and grandiose development schemes. (see box)

CHART 1
UNDP Human Development Index

	2001	2002
Costa Rica	41	43
Guatemala	108	120
El Salvador	95	104
Honduras	107	116
Nicaragua	106	118

Rankings are out of 190 countries
UNDP Human Development Report 2002

Mega-development ‘to the rescue’ in Central America?

Plan Puebla Panama is a development plan that includes building super highways, a common electricity grid, dry canals to connect ports by a high-speed rail system, the construction of 25 hydroelectric dams and over 70 *maquila* factories across all of Central America and into Southern Mexico.

Plan Puebla Panama (PPP) was first discussed by the Zedillo administration in Mexico (1994-2000). Now, in the context of a wider free trade agenda, Mexican President Vicente Fox is taking the lead in resurrecting this mega-development plan which promises to bring “development” and “prosperity” to the Chiapas region of Mexico, as well as being touted as the answer to Central America’s development woes.

The Inter-American Development Bank (IDB), the principal financial backer of El Salvador’s health care ‘reform,’ is also the main financial supporter of the PPP. The IDB has offered a line of credit of four to six billion dollars to participating governments. Officially, Plan Puebla Panama has eight goals:

- sustainable development;
- human development;
- mitigation of natural disasters;
- tourism;
- facilitating small and medium-sized businesses;
- integration of transportation systems;
- integration of electrical infrastructure; and
- telecommunications.

Despite the first three goals of the Plan, the development agenda is clear: 85% of the project focuses on infrastructure development while a mere 15% is geared to health and social concerns. Closer scrutiny reveals the overarching goals of

- further developing the *maquila* industry to compensate for the agricultural sector’s downfall,
- increasing infrastructure development to facilitate the transportation of goods, and
- expanding private control of natural resources (J. Treat, 24/7/02).

The proposed construction of more *maquilas* continues to focus development in the region on export-oriented industries. Rather than taking a people-centred approach, much of the mega-development plan is geared towards facilitating export industries through electricity grids, hydroelectric dams, and super-highways. Though new jobs will undoubtedly be generated, historically the

“success” of *maquilas* has been due to their reliance on a predominantly female labour force whose low wages are unjustly rationalized as ‘supplementary’ income. The region’s global ‘competitive’ edge thus becomes a cheap female labour force.

Many of the projects involve building on the Mesoamerican Biological Corridor — a protected area of land where some of the world’s largest bio-diverse and fragile eco-systems exist. Transnational corporations have estimated that 1.4 billion barrels of crude oil are located directly below the Mesoamerican Biological Corridor. In addition to the anticipated destruction of these precious systems, countless indigenous and campesino communities could be dislocated from land that they have lived on for hundreds of years.

Despite listing “Information, Consultation and Participation” in Plan Puebla Panama, affected community members, indigenous groups, campesinos, ecologists, activists and others have not been consulted in any significant fashion. The IDB, however, in its pursuit of public-private partnerships for the Plan has sponsored Expo Fairs geared toward private enterprises interested in investing in PPP projects. At the very time that civil society was expressing its concerns about key aspects of the project — including the lack of transparent and accessible information, increased militarization in affected communities, the absence of environmental impact assessments and of respect for indigenous communities — 780 businesses attended IDB’s Expo Fair, bidding on “investment opportunities.”

A groundswell of cross-border resistance has emerged to counter Plan Puebla Panama. At the local level, there are specific struggles like that of the Guatemalan communities living along the Usumacinta River who have joined together to resist plans to build five hydroelectric dams. At the regional level, there have been several large gatherings: in Tapachula, Mexico (May 2001); in Quetzaltenango, Guatemala (November 2001); and in Managua, Nicaragua (July 2002). At these gatherings, not only has this proposed development plan been called into question, the resistance movement is making links between it and current negotiations of bilateral free trade agreements and, in the broader context, the proposed Free Trade Area of the Americas.

Rather than a development project designed for the good of the region itself, Plan Puebla Panama is seen as a corporate-driven, export-oriented model that lays the groundwork and infrastructure for trade and investment agreements which will serve to facilitate corporate expansion and foreign investment in Central America.

II. Trade and Investment Back Room Deals

Many Agreements: One Economic Model

The Free Trade Area of the Americas (FTAA) is an overarching trade integration agreement that proposes to open up borders to facilitate the free flow of capital and goods among the countries of the Americas — 34 in all, excluding Cuba. In many respects, the draft FTAA agreement replicates, or even goes beyond, the North American Free Trade Agreement (NAFTA) which was implemented by Canada, the US, and Mexico in 1994.

Like NAFTA, the FTAA is designed to expand on agreements established under the World Trade Organization (WTO), many of which are subject to ongoing change. Concurrent negotiations are presently underway to expand the GATS (General Agreement on Trade and Services) and the Agreement on Agriculture. A third WTO pact on TRIPS (Trade-Related Intellectual Property Rights) may also be revised as a result of ongoing consultations taking place in Geneva.

Besides negotiating the FTAA, both Canada and the US have been pursuing simultaneously bilateral free trade agreements (FTAs) and Bilateral Investment Treaties (BITs), also known as Foreign Investment Protection Agreements (FIPAs). Both countries are actively pursuing bilateral deals with countries in Central America.

Northern supporters of these agreements claim that they will 'level the playing field' between countries of the North and South by freeing up access to Northern markets for Southern goods. They also claim that these agreements will bring economic prosperity and development to the South via the 'Washington Consensus' model of free markets and small governments. Integral to this formula is the privatization of social services like health care.

Regardless of such claims, the most fundamental question to any economic agreement is this: Does it enhance the well-being, dignity and essential human rights of all citizens, including the right to adequate nutrition and housing, education, fair and safe working conditions, a healthy environment and health care?

Although there are a myriad of agreements, deals, pacts, and talks going on, Canadians tend to hear only about the large-scale agreements like the FTAA. There has been some media attention to the FTAA, but little is known of the bilateral trade and investment pacts that are being aggressively pursued by both the US and Canada. These bilateral agreements are becoming an insurance policy against the potential failure of the FTAA. Both governments have publicly stated that if the FTAA negotiations were to fail, there would be no cause for concern since the FTAA agenda is assured through bilateral means.

The Canadian government is a strong advocate of these trade and investment deals. Canada recently implemented a bilateral Free Trade Agreement with Costa Rica (CCRFTA) and is currently negotiating another FTA with the CA4 (the

Central American Four being Guatemala, Nicaragua, El Salvador, and Honduras). Canada also has different types of 'understandings' and bilateral investment treaties in the region. Recently, Canada expressed interest in negotiating more regional free trade agreements citing the Andean Community and the Dominican Republic.

In order to understand how these deals are inter-connected and their implications for the people of Central America, Part Two of this report examines key areas under negotiation: investor-state mechanisms, market access, agriculture, and the impact of these agreements on democracy and sovereignty.

In March 1998, the government of Canada signed the Memorandum of Understanding on Trade and Investment (MOUTI) with the governments of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. Though not itself a binding trade or investment deal, the MOUTI amounts to a *political commitment* by Central American governments both to complete negotiations for bilateral investment and protection agreements with Canada (FIPAs) and subsequently to participate in the broader FTAA process.

Any trade and investment deal emerging from the undertakings of the MOUTI or other such initiatives can be expected to feature (a) investor-state mechanisms, (b) market access, and (c) agriculture; and all three will have significant implications for democracy and the national sovereignty of the Central American countries.

Investor-State Mechanisms: Can Central America Count on Canada as an Ally?

Most Canadians are aware that NAFTA contains clauses that permit foreign private corporations to sue governments for compensation when they deem a federal, provincial or municipal law a threat to present or future profits. This is the infamous "investor-state mechanism" found in Chapter 11 of NAFTA.

Since the signing of NAFTA in 1994, the provisions in Chapter 11 have been used to override domestic legislation, asserting the rights of corporations over the rights of a country and its people. In addition, Chapter 11 includes investment obligations like 'Most Favoured Nation' (MFN) and National Treatment which guarantee all investors — domestic and foreign — the same treatment, prohibit imposing performance requirements on foreign corporations, and disallow government commitments to buy local products or enforce domestic content.

In Canada, and increasingly in the US and Mexico, there has been considerable public outcry in response to investor-state cases that have obliged governments to pay compensation to corporations for potential losses and led to the roll-back of domestic laws or regulations protecting the environment and human health. Ethyl Corporation, a US Company, sued the Canadian government over its ban of the gasoline additive

CHART 2: Canada and Latin America Trade and Investment Agreements

Trade and Investment Cooperation Arrangements (TICAs)

- Southern Cone Common Market (MERCOSUR), signed June 16, 1998
- Andean Community, signed March 31, 1999

Memorandum of Understanding on Trade and Investment (MOUTI)

- Central America signed March 18, 1998

Regional Agreements

- NAFTA, signed January 1994
- Canada-CA4 (under negotiation)
- Canada-CARICOM (under negotiation)

Bilateral Free Trade Agreements

- Canada-Costa Rica Free Trade Agreement
- Canada-Chile Free Trade Agreement
- Canada-Andean Countries (now under discussion)
- Canada-Dominican Republic (now under discussion)

Foreign Investment Protection and Promotion Agreements (FIPAs)

Poland 1990, USSR 1991, **Argentina 1993**, Hungary 1993, Czech and Slovak Federal Republics 1992, Ukraine 1995, Latvia 1995, Philippines 1996, **Trinidad and Tobago 1996, Barbados 1997, Ecuador 1997, Venezuela 1998, Panama 1998**, Egypt 1997, Thailand 1998, Armenia 1999, **Uruguay 1999**, Lebanon 1999, **Costa Rica 1999**, Croatia 2001, Romania 1997, South Africa 1995 (not yet in force), and **El Salvador, 1999 (not yet in force)**
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MMT, a cancer-causing chemical. In an out-of court settlement, the government paid Ethyl Corp. US\$13 million in compensation, formally apologized, and reversed its ban on MMT. Metalclad Corporation sued the Mexican government for prohibiting it from reopening a toxic waste dump in Guadalupe, San Luis Potosi. The NAFTA tribunal ruled in favour of Metalclad and ordered the Mexican government to pay more than US\$16 million, plus interest, to the company.

The public outcry in Canada against the NAFTA provisions led a Parliamentary Committee to call on the government not to duplicate NAFTA Chapter 11 provisions in the FTAA. Recommendation 21 of "Strengthening Canada's Economic Links with the Americas," the June 2002 report of the House of Commons Sub-Committee on International Trade, Trade Disputes and Investment, addressed this contentious part of the NAFTA agreement. It reads: "That the Government of Canada diligently strive to attain FTAA con-

sensus on the importance of achieving a comprehensive agreement to protect investment within the FTAA. NAFTA type investor-state provisions should be excluded from the FTAA agreement." While the Parliamentary Committee favours some form of protection for foreign investors, it clearly rejects NAFTA's investor-state mechanism.

The Canadian government's official response to the Parliamentary Committee defends NAFTA's investment rules saying that they "have worked relatively well" but also claims that "the government is not advocating the replication of NAFTA dispute settlement rules in the FTAA." To support the latter claim, the government refers to a note signed with the US and Mexico on July 31, 2001. This document, however, seeks only to make the investor-state mechanism more transparent and to clarify the body of law on which investor-state cases are based.

Nevertheless, before participating in the 7th Meeting of Trade Ministers from the Americas in Quito, Ecuador, Canada's Minister for International Trade, Pierre Pettigrew, publicly referred to having learnt from past experiences vis-à-vis investor-state provisions and said that Canadian negotiators would ensure that no new abuses would occur. (Derosiers, 10/11/02) A few days later, it became clear which interests the Canadian government was keen to protect when a senior trade official stated that Canada was planning to enter into FTAA negotiations "backing plans to let companies sue countries." Rather than a concern that trade and investment deals are overriding national constitutions, the Canadian government was interested in protecting Canadian corporations investing abroad. The official named the government of Argentina as a culprit for having caused the Bank of Nova Scotia to write off its \$345 million investment there. (LeGras, 10/24/02)

In fact the Bank of Nova Scotia was far from being a victim of arbitrary action by the Argentine government. As our last *Global Economic Justice Report* describes in detail, the Bank of Nova Scotia, and other foreign banks, played a significant role in bringing on the Argentine crisis by abetting capital flight. The foreign banks operating in Argentina helped domestic elites send a reported US\$80 billion abroad over the last 10 years. The Canadian trade official also failed to mention that the Argentine economic collapse was due in large part to the policies forced on the government by International Financial Institutions like the IMF and the World Bank. (GEJR 3/02)

The government of Canada's failure to keep Chapter 11 NAFTA language out of the FTAA is clear from the second draft of the agreement, released on November 1, 2002, by the continent's trade ministers following their meeting in Quito. It contains the same basic investor-state mechanism as NAFTA and even the same broad references to "measures tantamount to expropriation" as grounds for corporations to launch suits. The definition allows for "indirect expropriation" which can be widely interpreted as covering a host of government actions.

One change in the second draft of the FTAA is the addition of new language in an innocuous article on "Fair and

Equitable Treatment” for investors. This article corresponds to one in NAFTA on “minimum standards of treatment” for foreign investors which proved to be a gold mine for trade lawyers bringing investor-state cases against governments. They used it to read into NAFTA all kinds of interpretations of investor rights that are not explicit in NAFTA itself. The Canadian government’s claim not to be duplicating NAFTA’s investor state mechanism in the FTAA relies on a narrower interpretation of this one clause. It comes down to a commitment that foreign investors are not to be given treatment “beyond that required by customary international law.”

A second change proposed to the investor state mechanism is that the secretive and unaccountable dispute settlement mechanism is to be made more transparent through the public release of documents. In other words, a dispute between governments and corporations will continue to bypass national judicial systems, but more information will be available to the public.

Investor-State Goes Bilateral

Confirmation of the Canadian government’s intention to make only minimum changes to the investor-state mechanism so as to protect its usefulness to Canadian corporate investors is contained in a secret Cabinet memo that was recently leaked to Halifax Initiative and other non-governmental organizations. The document, dated October 28, 2002 and titled “Revised Model Foreign Investment Protection Agreement (Improved Model for Investment Protection Rules),” makes recommendations on how to improve Foreign Investment Protection and Promotion Agreements (FIPAs).

Since 1994 FIPAs, or bilateral investment treaties, have been based on the NAFTA Chapter 11 model and have been negotiated with a number of countries including those in Central America (see Chart 2). Canada, along with other countries of the North, has been negotiating these agreements primarily with countries in the South or the former Eastern Bloc. These countries are not home to any transnational corporations (TNCs) that are likely to have investments in Canada. This means that the FIPAs can be used to protect the interests of Canadian corporations investing abroad but are unlikely to result in investor-state suits against the Canadian government.

Overall, the strategy is to “provide security and confidence to investors” (par. 5). The document states: “By establishing a clear set of rules, the risks associated with foreign investment are diminished: investors should know the ground rules; and should be confident that they can enter a market and compete on equal footing with other investors” (par. 6). Later the same paragraph justifies setting out these types of supranational agreements, claiming that “in some developing countries the rule of law is not firmly established.” In order to protect the investor, FIPAs will replicate the supra-national provisions of international trade agreements, even though these serve to further undermine national sovereignty.

It is important to note the three recommendations the document makes for changing the FIPA model because they indi-



Source: Indy Media, Quito

Excluded from official meetings, people hit the streets of Quito to have their voices heard during FTAA trade ministerial meetings.

cate the position that the Canadian government is likely to take in other bilateral negotiations and in the FTAA talks. The three main objectives proposed for the new FIPAs are (a) substantive clarity in the obligations, (b) maximum openness and transparency in the arbitral process; and (c) discipline and efficiency in the dispute settlement procedures.

Under the first objective, sub-point (iii) recognizes the need to clarify what constitutes measures “tantamount to expropriation” and says that guidelines will “specify that expropriation requires a substantial deprivation of an investment: **mere economic injury, including that which results from regulatory action, does not amount to expropriation**” (emphasis added). In addition, the term “tantamount to expropriation” will be clarified as meaning “equivalent to” for the purpose of the obligation of compensation. This recommendation seems to be a positive step as it clearly states that economic injury due to legislation is not considered expropriation yet the definition “substantial deprivation of an investment” leaves lots of room for interpretation. **As of yet, however, there is no indication the similar language will be written into the FTAA or applied to Chapter 11 of NAFTA.**

Sub-point (iv) regarding the clarification of the definition of investment seems to seek additional guarantees of business rights during the exploratory phase leading up to an investment decision in order “to cover the pre-establishment phase of investments in order to protect Canadian investors abroad from discriminatory action when it is most likely to occur.” This will undoubtedly serve to favour oil and mining companies as they engage heavily in pre-investment explorations of mineral or petroleum deposits. They will be able to do so knowing that their investments are covered both by FIPAs and by insurance from Export Development Canada (EDC). This will likely encourage natural resource exploitation in areas like the Mesoamerican Biological Corridor, including further exploitation of the crude oil in the Peten region of Guatemala.

As to the second objective of open and transparent arbitration proceedings, the government seems to be making attempts to respond to civil society concerns. The document recommends that all Tribunal proceedings be open to the pub-



The Mesoamerican Biological Corridor, a fragile ecosystem that holds some of the world's most diverse plant species. All of this is threatened by the PPP that plans for a mega-highway to be built through the corridor in order to facilitate the flow of goods under the bilateral and FTAA deals.

lic (sub-point i-c) and supports the idea of “institutionalizing the possibility for non-disputing parties to submit amicus briefs (sub-point ii-c).” It should be noted, however, that these Tribunals appear to have been granted a legitimization over and above domestic courts and that trade lawyers will continue to make decisions that will potentially affect a myriad of national laws. As well, there is an on-going legitimization of the notion that an investor, a corporation or a bank has the right to sue a government over loss of profits. An adequate response to this concern would require recognizing the right of a democratically elected government to establish investment regulations that support the principles of sustainable development and uphold the primacy of human rights standards.

The leaked Cabinet memo states that the Canadian government should ensure that FIPAs and bilateral trade agreements (referring directly to the CA4 negotiations) include measures that will include “substantive investment protection provisions as well as an investor-state dispute settlement mechanism” (par. 20). Thus the emphasis is on protecting Canadian investors, not on encouraging sustainable and viable development. Anticipating critics, the government claims “developing

countries are often the initiators of such negotiations and benefit from the reduced risks investors face as a result of these rules.” Thus, it unabashedly states, “FIPAs contribute to a pro-development strategy for developing countries.”

Although there has been some small progress in terms of investment treaties, Chapter 11 and investor-state mechanisms, many of the most problematic elements of investor-state provisions will remain intact. Clearly, protecting Canadian investors is the overriding objective of these deals. The Canada-Costa Rica Free Trade Agreement (CCRFTA), which was ratified on August 26, 2002, refers to the previously signed FIPA under its investment section, which is consistent with the NAFTA Chapter 11 model. It stands to reason that this model will be replicated within the Canada-CA4 Agreement.

Anti-privatization struggles in Central America, such as those in El Salvador, concerning services such as health care, telecommunications, and electricity may also be seen as struggles against investment rules like NAFTA's Chapter 11 and the FIPAs because these rules privilege foreign corporate access to public services to the detriment of the majority of the population.

A different framework for thinking about investment is needed. As *Alternatives for the Americas*, the platform of the Hemispheric Social Alliance (of which KAIROS is a founding member) states: “Hemispheric rules should encourage foreign investment that generates high-quality jobs, sustainable production, and economic stability, while allowing governments to screen out investments that make no net contribution to development, especially speculative capital flows. ***In that way, citizens' groups and all levels of government should have the right to sue investors who violate investment rules.***” (www.asc-hsa.org)

The Miracles of Market Access

Increased access to the markets of the United States and Canada for products from the Caribbean, Central and South America is supposedly the chief reason why Southern governments would consider engaging in bilateral trade deals or the FTAA, despite the sovereign rights they would have to surrender in the process. Many Latin American governments view access to Northern markets as a solution to their economic crises. Their hope is that increased market access will allow them to diversify beyond the small number of commodities they now export.

Due to cheap labour costs (including lax child labour laws) and low environmental standards, Central America is considered to have a ‘comparative advantage’ over other producers of labour-intensive products. The theory of comparative advantage assigns to Central America a continued role in supplying certain agricultural commodities (like coffee and sugar) and hosting low-wage industries like *maquila* assembly plants. Market access is supposed to open up the larger economies to goods from the smaller economies leading to “economic prosperity for all.”

However, recent studies by the United Nations Conference on Trade and Development (UNCTAD) and the UN Food and Agricultural Organization (FAO) show that trade liberal-

ization between large, powerful economies and smaller, weaker ones has not delivered on this promise. UNCTAD reports that poverty is growing in those developing economies that have the most open trading regimes. A study by the FAO found that in 16 developing countries where trade was liberalized, food imports rose rapidly while export levels remained flat. The study noted a general trend in these countries towards the consolidation of land by large landholders, resulting in marginalizing small producers, undermining food security and increasing both unemployment and poverty. Given that Central American economies are small, agricultural commodity-based economies, these UN studies are cause for alarm.

The weak bargaining power of small economies is not sufficient to overcome many measures that countries like the US actively use to protect their own domestic markets. The theory of comparative advantage disregards the capacity of large economies to compete more easily in the global market as well as the unique situation of individual countries and the Central American region as a whole. The current model of development, the consequences of natural disasters, and the weight of debt all hinder 'competition' in the international markets. (*Voces del Sur*, 07/02)

As a result, Central American negotiators have advocated for Special and Differential Treatment in trade negotiations, arguing that their small size puts them at a disadvantage compared to the US and even countries like Brazil in the FTAA negotiations and globally within WTO negotiations.

Publicly, government officials in the FTAA negotiations have consistently proclaimed their commitment to recognizing 'special and differential' treatment for smaller and developing economies and acknowledged that 'one size' clearly does not fit all. The April 2001 Summit of the Americas Declaration of Quebec City states, "We attach great importance to the design of an Agreement that takes into account the differences in the size and levels of development of participating economies."

These fine words are clearly contradicted by another leaked Memorandum to Cabinet entitled "Mandate for WTO Negotiations." In that policy document, Canada takes a hard-line stance in its approach to Special and Differential Treatment. It states that Canada must do everything in its power not to accede to such requests at the WTO from developing countries: "Acceding to these requests would have serious implications for the structure and nature of the global trading system, effectively legislating a two-tier system and developed countries are strongly opposed." Canada must "isolate hard-line opponents" who want to hold up progress on trade negotiations that will delay potential gains in market access (pars. 57-59).

One way in which the Canadian government, and others in the North, try to confuse the issue is by claiming to address Special and Differential Treatment by applying it to capacity building and technical training for negotiators from small countries. At the recent 7th Ministerial meeting in Quito, the Trade Ministers approved the Hemispheric Cooperation Program. "The Program is intended to strengthen the capaci-

ties of those countries seeking assistance to participate in the negotiations We note that the Program includes a mechanism to assist these countries to develop national and/or sub-regional trade capacity building strategies..." (par. 18). For example, the Canadian International Development Agency supported a course on "Trade Policy and Law" attended by 54 Central Americans. Their trainers, and others are generally Northern negotiators who are predisposed to promote a 'level playing field' type of negotiation rather than 'Special and Differential Treatment.' (B. Mangas, Interview 08/02)

In the view of the members of the Hemispheric Social Alliance, which includes many civil society groups from throughout Central America, increased market access cannot be seen as a magical solution to their distorted development. As *Alternatives for the Americas* puts it: "Access for foreign products and investments should be evaluated and defined within the framework of national development plans. Timetables for tariff reduction should be accompanied by programs to ensure that domestic industries become competitive during the transition."

The Agriculture Subsidy Stew

Agriculture is also a critical area for Central America as the region's economies are highly dependent upon exporting farm products. The issue is complicated by the fact that agriculture is being negotiated in several places at the same time: in bilateral and plurilateral agreements, within the FTAA and on a world scale as part of the talks on revising the WTO's Agreement on Agriculture. For Central America, and indeed for all the hemisphere's farmers and *campesinos*, a key issue is the link between agriculture and food security.

Another issue is the massive size of US agricultural subsidies, recently increased by US\$80 billion over the next 10 years. Yet, the 7th FTAA Ministerial Quito Declaration, like the WTO Doha Declaration before it, "reaffirm(ed) the hemispheric commitment to the elimination of export subsidies affecting trade in agricultural products in the Hemisphere and to the development of disciplines to be adopted for the treatment of all the other practices that distort trade in agricultural products, including those which have an equivalent effect to agricultural export subsidies." (1/10/02, par. 15)

In fact no progress whatsoever was made in actual negotiations on agricultural subsidies in Quito. While the US says it wants to talk about reducing the subsidies that distort agricultural markets, its bargaining position is devious. An August 18, 2002 *New York Times* article reveals the US bargaining ploy is to negotiate away the recent increases in its own subsidies leaving its program of supports for US agribusiness firms at almost the same level prior to this year's increase in the Farm Bill. (Andrews, 8/18/02)

In Mexico, NAFTA has had disastrous effects on the indigenous and *campesino* farmers. In Chiapas the land tenure system was entirely changed by the removal of subsidies and assistance to small farmers. According to the Democratic Campesino Organization:

“Subsidies to corn producers in Mexico were completely phased out in 1997, 12 years ahead of schedule, thus creating an uneven playing field. Moreover, since NAFTA came into effect in 1994, tariffs have been lifted and cheap corn and beans from the US have flooded the Mexican market, making it impossible for Mexican producers to compete. In addition, free market policies that began prior to 1994 but which have been made permanent in NAFTA, have resulted in the elimination of credit for small farmers, leaving them at the mercy of local loan sharks who charge usurious interest rates.”

– *Ecumenical Church Leaders Delegation to Mexico, 2001*

With NAFTA, food security objectives were abandoned in favour of agri-business interests. An entire food production system was destroyed within three years. The implications for Central America are for more of the same. A growing dependence on imports has dramatically affected food security as corn production has diminished while bananas and sugar production has increased. In Guatemala, prospects are grim for the large Mayan indigenous population which has been cultivating domestic corn for hundreds of years. Once known as the “cradle where grains begin because of the diversity of corn found in the area,” Guatemala is now importing more than 50% of its corn. Most of this corn comes from the US as big agribusinesses are flooding the market in a fashion similar to what occurred in Mexico. (Inforpress 22/11/02)

Central American governments continue to advocate for the removal of the over \$300 billion in annual subsidies that the OECD countries provide for their own domestic agricultural production. While the US is planning on bargaining away its recent *increase* in agricultural subsidies, it continues to press others to remove their subsidies entirely. Given US support for its own huge agribusiness corporations, it is unlikely that even a dramatic removal of subsidies would level the playing among countries and lead to ‘economic prosperity’ in Central America. For this reason, southern organizations like CLOC — the Latin American Congress of Rural Organizations are running campaigns demanding that agriculture be taken out of the WTO entirely.

What is needed is an entirely different framework that looks at agriculture through the lens of food security. **On that basis alone, all countries should be able to protect or exclude staple foods from trade agreements** and use measures like supply management marketing boards to assure adequate income for their own farmers.

And Then There's Democracy

The official Declaration from the 2001 Summit of the Americas emphasized strengthening representative democracy. In the Action Plan, the leaders of the Americas committed themselves to ensuring transparency and good governance, open media and communications and empowering local governments. Closer scrutiny, however, reveals contradictions inherent in the free trade integration model with regard to

democracy and national sovereignty. Trade agreements are increasingly proving to be supranational economic constitutions, thereby reducing the power of governments at all levels. This directly compromises a government's obligations to meet its citizens' social and economic needs since signed agreements are binding over and above national law as well as international standards.

An excellent example of how international standards and measures are being circumvented is through the World Trade Organization's code on TRIPS (Trade Related Intellectual Property Rights). In Guatemala, TRIPS was used to thwart a law designed to protect infant health which had been enacted in accordance with UNICEF's international standards. Guatemala banned infant formula packaging that made claims which equated the product with healthy robust babies. Gerber Products persuaded the US State Department to threaten a WTO challenge of the ban, arguing that Gerber had an “intellectual property right” under the WTO TRIPS agreement to label its product as it liked. Faced with this threat, Guatemala revised its law and allowed labelling which is in clear violation of international guidelines. (Fienieg, 07/01)

This case demonstrates the weakness of governments and government legislation as well as international standards and guidelines in the face of trade rules and regulations. Clearly, trade is trumping human rights. Secret Tribunals rather than national courts are making decisions in a profoundly undemocratic and exclusionary manner. Consequences for Canada have been severe “because WTO and NAFTA rules are so comprehensive, the central and provincial governments had to change myriad existing laws.” (Clarkson: 2002:5)

In an attempt to legitimize the investor-state mechanism, Canadian government officials are proposing that the Tribunals now be opened and are exploring the possibility of submissions being made to the proceedings by ‘friends of the court.’ Even with these changes, the structure of Tribunals would remain intact and they will continue to supersede domestic courts and judges.

Overall, there has been a tremendous amount of secrecy surrounding trade and investment negotiations. A groundswell of protest calling for transparency in the FTAA negotiations, for the release of the text, and for authentic input from concerned citizens across the Americas has emerged in recent years. Given this growing resistance, leaders negotiating the FTAA agreement agreed to release the text after the last two major negotiating meetings. However, most of the text is bracketed which means that decisions have yet to be made on large portions of the document thereby enabling government leaders to continue to ‘play their hands close to their chests.’ Governments have touted their commitments to ‘transparency’ but the contradictions abound. Not all deals are ‘open to the public’ — negotiators of the Canada-CA4 have clearly stated that those texts were secret.

As in the case of Plan Puebla Panama, the people of Central American have had no opportunity to have their voices heard in bilateral trade and investment deals. Beyond

superficial invitations for consultations, grassroots organizations and civil society have been offered no recourse to actively participate in decision-making surrounding the 'development path' for Central America. Negotiations are closed to participation from the public, whether it be NGOs, peoples movements, unions, local communities or individuals.

The Trade and Investment Agenda

All bilateral and regional trade agreements are supposed to be consistent with the World Trade Organization's rules although, in the language of negotiators, they can be "WTO plus." The US clearly wants the FTAA to be "NAFTA plus," that is, to build on NAFTA without taking anything away from it. Technically the FTAA could be "NAFTA minus" in some respects and still be compatible with the WTO. For example, the investor-state mechanism within the FTAA could turn out to be less onerous than its parallel in NAFTA. This would be good news for the countries of Central and South America and the Caribbean but not necessarily for Canada as NAFTA would probably still govern the investments of US corporations in Canada.

In announcing the launch of free trade negotiations with the CA4 on November 21, 2001, the Canadian government stated: "From a broader perspective, a free trade agreement with the region would signal Canada's continuing commitment to the hemisphere and would inject further momentum into FTAA and WTO negotiations by serving as a model for cooperation between developed and developing countries." Bilateral trade agreements and bilateral investment treaties frequently refer to ongoing negotiations within the WTO system on issues such as trade in services.

Bilateral trade agreements play a role in pushing the scope of broader processes like the FTAA and the WTO along by setting precedents that can later be incorporated into the bigger schemes. Both Canada and the US are practically mirroring each other's efforts in pursuing bilaterals throughout the region. This strategy serves two purposes: it sets precedents and isolates countries one-on-one.

Many countries, particularly those with smaller economies are eager to be first in negotiations so they can gain access to markets. In doing so, they are setting precedents and making commitments that are not really that different from the commitments that they would have to make under the larger agreements. Setting precedents is also occurring through the BITs — Bilateral Investment Treaties.

Therefore, for the countries of the North, bilaterals can accomplish the same objective as the FTAA but through other means. This is a crucial point because, speculation over whether the FTAA would be signed in 2005 as planned, has led some to assume that no FTAA means no neo-liberal free trade integration. Yet trade and investment bilaterals are just another formulation of the FTAA agenda and because of that will most likely negatively impact the Central American region. Bilateral trade agreements currently being negotiated are simply another

What You Can Do

Across the Americas, concerned citizens — faith-based and grassroots groups, indigenous communities, campesinos, women, anti-poverty groups, ecological groups, and labour organizations — have joined together to say **No To The FTAA!** Citizens have been organizing public consultations, plebiscites, and petitions to allow the public to voice its views on this mega-trade integration deal. In September an unofficial plebiscite was held in Brazil in which over 10 million Brazilians voted and 98% rejected the FTAA.

In Canada, Common Frontiers, a broad-based coalition of national organizations to which KAIROS belongs, is coordinating a Canada-wide Petition Campaign calling on our government to **STOP, LOOK, and LISTEN!** (Please see insert.) Recognizing the FTAA as Hazardous to our Health, we call on the government to STOP negotiating the proposed FTAA and all trade deals that put profits before public well-being; LOOK at the economic instability and the social and environmental damage caused by economic and trade liberalization; and LISTEN to Canadians as we demand that universal medicare be preserved, and to citizens across the Americas who reject the FTAA and demand respect for human rights and national sovereignty.

The FTAA campaign is a key part of KAIROS' 2002-3 animation theme, "Living Hope: Building Movements of Global Justice". Resources and in-person workshops to animate this theme and strengthen your local justice group are available, along with print/website kits on the FTAA and the World Social Forum. Get involved! Contact KAIROS at 129 St. Clair Ave. W., Toronto, ON, M4V 1N5. Toll free 1.877.403.8933.

General information: info@kairoscanada.org
Resources orders: orders@kairoscanada.org
Check out FTAA and Living Hope information at:
www.kairoscanada.org

aspect of the corporate privatization agenda.

Secondly, the strategy of negotiating bilaterals may also be seen as a way in which to 'isolate hard-line opponents' as referred to in the secret "Mandate for WTO Negotiations" document. For example, Brazil, the largest economy in the Americas, has often dragged its feet in FTAA negotiations by opposing US protectionist measures vis-à-vis agricultural subsidies and other protected industries. "From the Brazilian perspective, the FTAA is not a genuine free-trade area at all but a preferential trading system that benefits the United States at the expense of its Latin American trading partners." (Gourevitch, 11/8/02) Because Brazil has tried to counter the US agenda, current bilaterals may also be seen as a means to isolate Brazil to the point where its government has no choice but to play ball according to US rules.

It is necessary therefore to take a holistic approach in both analysis and action. To use the words of Bolivian Pablo Solón, we are dealing with a four-headed monster whose four heads, the WTO, the FTAA, regional level plans like PPP and bilateral investment and trade deals, need to be resisted simultaneously.

From Resistance to Transformation

Though the people in El Salvador can claim a victory in the passing of the anti-privatization law, their struggle is far from over. Recently, president Flores has encouraged major corporations to file a suit of unconstitutionality against the anti-privatization law with the Supreme Court. (SJC 12/1/02)

Nevertheless, their victory remains significant. In their prolonged struggle to protect their health care system from privatization the people of El Salvador have successfully sent a clear message that their right to health is a human right that must not be subordinated to private interests. They have asserted that the well-being of the average citizen in El Salvador — who would otherwise be excluded from the health care system — must be placed first and foremost in evaluating privatization

schemes, mega-development plans like Plan Puebla Panama, bilateral trade deals, bilateral investment treaties like FIPAs, and over-arching trade integration plans like the FTAA.

The 'distorted development' path combined with austere structural adjustment measures has led to an economic and social crisis in Central America that will clearly not be resolved by more free trade and more foreign direct investment. Truly participatory national development discussions, decision-making and planning could potentially offer a just and democratic solution, based on the primacy of human rights and human needs.

As in El Salvador, people and communities throughout Central America and indeed all of the Americas, have risen up to say, "No" to this model of integration and "Yes" to another Americas that clearly puts peoples rights before profits.

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