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**Before the United States Senate
Subcommittee on International Trade of the Committee on Finance
On the Status of the Free Trade Area of the Americas:
Negotiations and Preparations for the Miami Ministerial**

May 13, 2003

Mr. Chairman, Members of the Subcommittee, I thank you for the opportunity to testify today on behalf of the thirteen million working men and women of the AFL-CIO on this important topic.

As negotiations toward a Free Trade Area of the Americas (FTAA) enter the final stretch, it is essential that the U.S. Congress evaluate the progress of these negotiations and convey its views to our negotiators.

The AFL-CIO recognizes and welcomes the deep connections and ties between the United States and the rest of our hemisphere. We support the objective of a social and economic integration process that will contribute to stable and sustainable growth and will ensure that the benefits of growth are shared. However, we remain skeptical that a new trade agreement modeled on past agreements will deliver these results.

We are deeply concerned that the Free Trade Area of the Americas negotiations are headed in the wrong direction and will exacerbate, rather than solve, the very serious problems facing American working families and our counterparts throughout the hemisphere. In addition, we believe that the negotiation process needs to be opened up dramatically to more transparency and accountability, so that ordinary citizens and their organizations throughout the hemisphere can participate effectively in the political debate over how best to integrate the economies of the western hemisphere.

In our view, in order to truly promote the interests of average working people in the United States and throughout the hemisphere, the FTAA must incorporate:

- enforceable workers' rights and environmental standards in its core;
- measures to ensure that countries retain the ability to regulate the flow of speculative capital in order to protect their economies from excessive volatility;
- debt relief measures that will improve the ability of the developing countries to fund education, health care, and infrastructure needs, thereby contributing to closing the gap between rich and poor nations, and reducing inequality within nations;
- equitable and transparent market access rules that allow for effective protection

- against import surges, dumping, and unfair trade subsidies; and
- a transparent, inclusive, and democratic process, both for the negotiation of the FTAA and for its eventual implementation.

In addition, FTAA negotiations on investment, services, procurement, and intellectual property must not undermine the ability of governments to enact and enforce legitimate regulations in the public interest:

- investment rules should not discipline so-called indirect expropriations, should rely on government-to-government rather than investor-to-state dispute resolution, and should contain a broad carve-out allowing governments to regulate corporate behavior to protect the economic, social, and health and safety interests of their citizens;
- services rules should be negotiated sector by sector, should not apply to public services, and should not include commitments on temporary work visas until these visa programs are revised to protect the rights of all workers;
- government procurement rules should allow federal, state and local preferences for domestic purchases to continue and should give governments scope to serve important public policy aims such as respect for human rights and worker rights, environmental protection, economic development and social justice; and
- intellectual property rights provisions should allow governments to limit patent protection in order to protect public health and safety, especially regarding patents on life-saving medicines and life forms.

These issues are addressed in turn below.

Workers' Rights

The FTAA's rules governing international trade and investment will affect the living standards and communities of working people all over the hemisphere. As the San Jose Ministerial Declaration states, "the negotiation of the FTAA shall take into account the broad social and economic agenda contained in the Miami Declaration of Principles and Plan of Action *with a view to contributing to raising living standards, to improving the working condition of all people in the Americas and better protecting the environment*" (emphasis added). This goal should be at the center of the FTAA negotiations.

Unfortunately, the AFL-CIO sees few signs that the FTAA process has fulfilled this mandate. There is no chapter on labor issues in the draft FTAA text. The FTAA ministers have rejected reasonable U.S. proposals even to establish a study group to discuss workers' rights in the FTAA context. Only one provision relating to labor has even been proposed in the FTAA, and this provision would be non-binding.¹ Unless the FTAA includes

¹ This proposal, part of the draft chapter on investment, calls for countries to "strive to ensure" that labor laws are not waived or derogated from in order to attract an investment. This proposal is unacceptably weak. A similar provision on the relaxation of environmental standards in the NAFTA investment chapter is non-binding, and the only remedy it provides is Party-to-Party consultations, not regular dispute resolution procedures.

enforceable protections for core workers' rights, we are likely to see the same kinds of job loss, wage depression, and rights violations throughout the hemisphere under the FTAA that have characterized NAFTA.

If enacted, the FTAA would eventually replace current preferential programs in Latin America for the Caribbean Basin and Andean countries, as well as the Generalized System of Preferences (GSP). Since all these programs contain enforceable workers' rights conditionality, the FTAA would represent a big step backwards for workers' rights protections in the region, while simultaneously locking in permanent market access. This would exacerbate U.S. job losses, while failing to ensure that Latin American workers could benefit from increased trade and investment flows.

NAFTA has not raised living standards or improved working conditions in the U.S., Mexico and Canada as its promoters promised. Trade and investment between the NAFTA countries grew dramatically in the past nine years, but this growth has been very unbalanced, with the benefits disproportionately favoring multinational corporations, often at the expense of workers, family farmers, communities, and the environment in all three NAFTA signatories. U.S. workers lost hundreds of thousands of good jobs under NAFTA, Canadian wages have fallen below U.S. levels, and average real wages have fallen for workers in Mexico.

The weak NAFTA labor side agreement has not protected workers' rights. In all three NAFTA countries, fundamental workers' rights continue to be abused with impunity. The North American Agreement on Labor Cooperation (NAALC) has very limited enforcement powers, especially when contrasted with the commercial provisions of NAFTA. Although NAALC cases have led to many hearings and reports on labor issues, virtually no concrete changes have been made to countries' laws or practices to improve workers' rights.

To truly promote growing employment and better working conditions, the FTAA must include enforceable workers' rights in the core of the agreement itself. The core labor rights recognized by the International Labor Organization (ILO) in its 1998 Declaration on Fundamental Rights and Principles include the freedom of association, right to organize and bargain collectively, a minimum age for the employment of children, and prohibitions on forced labor and employment discrimination. Commitment to observing these core labor rights, in addition to adequate enforcement of each country's own labor laws, should be a condition of entry into the FTAA, and appropriate enforcement mechanisms must be established to ensure that countries continue to adhere to core labor standards and effectively enforce their own labor laws. Non-compliance must be remedied, with recourse to the withdrawal of trade benefits for serious and on-going violations, as would be the case for the violation of any other portion of the agreement.

Trade Remedy Laws

Recourse to effective and transparent domestic trade remedy laws is necessary to ensure that international trade is fair and balanced and to allow domestic industry and workers to adjust to international competition. Trade agreements such as the Uruguay Round, which

established the WTO, have required the U.S. to make dozens of changes to weaken its domestic trade laws and have reduced the government's ability to effectively implement these laws. The draft bracketed text of the FTAA contains even more proposed provisions that would eviscerate U.S. trade laws by imposing tight restrictions, and even some outright prohibitions, on methodologies used to resolve antidumping and countervailing duty cases. These provisions – and any other provisions that could undermine U.S. trade laws – are completely unacceptable. The FTAA must not in any way infringe on the right of countries to protect their industries, workers and farmers from unfair trade practices.

Investment

NAFTA gives corporations the right to challenge our laws in secret tribunals and to demand compensation from governments. Companies have used NAFTA to challenge laws protecting the environment, public health, workers, and consumers, arguing that these laws hurt their profits. For example, when a Mexican state did not allow the Metalclad Corporation to build a toxic waste dump on a local ecological preserve, Metalclad used NAFTA to successfully demand \$16 million in compensation from the Mexican government. In another case, a company called Methanex is demanding almost one billion dollars from the United States because California passed a law banning a harmful fuel additive that Methanex produces. The draft FTAA contains bracketed language identical to many of NAFTA's investment provisions. If enacted, these provisions would extend these rights to even more investors throughout the hemisphere.

FTAA investment rules should not grant investors any rights greater than those rights that investors already enjoy under U.S. law. The FTAA should contain a broad carve-out allowing governments to regulate corporate behavior to protect the economic, social, and health and safety interests of their citizens. The FTAA should rely on government-to-government rather than investor-to-state dispute resolution, and all dispute resolution mechanisms should be fully transparent and accessible to interested members of the public.

Services

NAFTA restricts the ability of governments to regulate services – even public services. Increased pressure to deregulate and privatize services could raise the cost and reduce the quality of such basic services as health care and education. A NAFTA dispute panel decided the United States will have to let Mexican truck companies provide their services throughout this country, even though we do not have enough inspectors to ensure that all of these trucks meet U.S. safety and labor standards. Enron is using an investment agreement with rules similar to those found in NAFTA to demand compensation from Argentina for a water service concession contract gone wrong. The government took a local water system back into public hands when, under Enron's control, rates went through the roof, dirty water came from the taps, and the water was shut off. Enron is now challenging the government's right to re-take control of the water system under the investment agreement.

The FTAA should not constrain the ability of governments to regulate services and to

protect and promote public services. Services rules should be negotiated sector by sector and the FTAA should contain a broad, explicit carve-out for all public services. The FTAA should not include commitments on temporary work visas until these visa programs are revised to protect the rights of all workers.

Procurement

NAFTA does not allow governments to include social, environmental or workers' rights criteria in their purchasing decisions. When President Clinton ordered the federal government to stop using taxpayer dollars to buy goods made with the worst forms of child labor in 1999, he had to exclude Mexico and Canada from the order because these kinds of protections are not allowed under NAFTA rules. If these rules are extended to state and local governments, as is now being proposed in the FTAA negotiations, responsible contracting requirements, project labor agreements and living wage laws could all be challenged. FTAA government procurement rules should allow federal, state and local preferences for domestic purchases to continue and should give governments scope to serve important public policy aims such as environmental protection, economic development and social justice, and respect for human rights and worker rights through their purchasing decisions.

Development

NAFTA has not created shared prosperity in Mexico. Despite growing trade and investment under NAFTA, Mexican wages are lower than they were before NAFTA came into effect, and poverty levels are higher. Regional and economic inequality persist, and many workers from rural areas have migrated to work in the *maquiladora* zones or in the United States, where their rights are not protected fully. In recent years, many of the maquiladoras have closed, as production has shifted once again, often to China, leaving higher unemployment and devastated communities. Pollution levels have also risen in Mexico and the border region poses a severe environmental challenge. If the FTAA does not do more to help countries pursue sustainable and equitable development, instability and inequality in the region will only increase.

The FTAA should allow countries to regulate the flow of speculative capital in order to protect their economies from the excessive volatility that has led to financial crises in Mexico and Argentina. In addition, the agreement must address the possibility of massive currency devaluations and the impact these devaluations have on fair competition in the hemisphere. The FTAA should include debt relief measures that will allow developing countries to adequately fund education, health care, and infrastructure needs, thereby contributing to closing the gap between rich and poor nations, reducing inequality within nations, and diminishing the financial instability caused by mounting debt burdens. The FTAA also must include equitable and transparent market access rules that allow for effective protection against import surges or other trade law violations, and end massive and unfair trade-distorting subsidies for agribusiness. The FTAA must also include enforceable protections for the environment.

Transparency and Participation

We welcome the periodic publication of bracketed draft FTAA text (in 2000 and in 2002) and encourage the FTAA governments to continue to make these drafts available, as negotiations proceed. However, citizens in every country have a right to know not only what the draft FTAA proposals are, but which ones their governments are supporting and opposing. We urge the U.S. government to provide leadership and promote transparency in the FTAA negotiations by volunteering to make its own full negotiating positions public in a timely fashion and encouraging other countries to do the same.

In addition, all of the new market access proposals submitted this year should also be made public. Once the agreement is concluded, dispute resolution measures should also be open to the public.

All non-governmental input into the FTAA process, including that of the business community, should be subject to equivalent procedures. The AFL-CIO strongly objects to the privileged and superior access to the negotiation process given to the Business Forum, a gathering of business representatives in the days immediately preceding each FTAA ministerial, relative to groups representing other segments of civil society.

We call on the U.S. government to officially recognize the Labor Forum at the upcoming ministerial in Miami, and give the Labor Forum the same terms of access as that of the Business Forum. We also call on the Bush Administration to ensure that the Labor Advisory Committee on Trade Policy and Negotiations (LAC) can resume regular meetings and have new members added in a timely fashion.

A transparent, inclusive, and democratic process, both for the negotiation of the FTAA and for its eventual implementation, is essential to ensure the legitimacy of the FTAA process.

Conclusion

The FTAA must not simply replicate the failed trade policies of the past. If the negotiations continue along their current path, they will yield an agreement that undermines workers' rights and the environment, exacerbates inequality in the hemisphere, and constrains the ability of governments to regulate in the interest of public health and the environment. Such an agreement will face fierce opposition from groups in many countries, including from the AFL-CIO.

A different kind of hemispheric integration agreement is needed – one that upholds workers' rights, protects the environment, and stimulates equitable development. The labor movement and other members of civil society have presented reasonable and coherent proposals for what such an agreement should look like. In our view, the success or failure of the FTAA will hinge on negotiators' willingness carry these proposals forward in the FTAA process.