

**TESTIMONY OF JOHN AUDLEY, SENIOR ASSOCIATE AND DIRECTOR,  
PROJECT ON TRADE, EQUITY, AND DEVELOPMENT  
AT THE  
CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE,  
  
BEFORE THE SENATE COMMITTEE ON FINANCE,  
  
REGARDING THE FREE TRADE AREA OF THE AMERICAS  
NEGOTIATIONS**

**May 13, 2003**

My name is John Audley, and I am Senior Associate and Trade, Equity, and Development Project Director at the Carnegie Endowment for International Peace. Founded in 1910 by Andrew Carnegie, the Endowment is a private, nonpartisan, nonprofit organization dedicated to advancing cooperation between nations and promoting active international engagement by the United States. The Trade, Equity, and Development Project seeks innovative, workable solutions to the tensions between trade liberalization, and environment, development, and labor policies.

In the September 2002 *National Security Strategy of the United States*, President George W. Bush states: “As we wage war today to keep the world safe from terror, we must also work to make the world a better place for all its citizens.”<sup>1</sup> The *National Security Strategy* argues that trade liberalization should help poor countries develop healthy economies that protect the environment and promote greater respect for worker rights.<sup>2</sup> To achieve this goal, the United States must work very hard to find common ground

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<sup>1</sup>The White House, *The National Security Strategy of the United States of America*, September 2002.

among the 34 nations in the Free Trade Area of the Americas (FTAA) on the difficult subjects of labor and the environment. My testimony focuses on the environment side of that challenge.

### **Bold Steps Taken by Congress**

Last August, congressional leaders took an unprecedented step by making environmental policy goals a principal negotiating objective for U.S. trade policy. In the *Trade Act of 2002*, Congress for the first time outlines binding negotiating objectives on the environment, which obligate trade agreements to:<sup>3</sup>

- Ensure that U.S. trading partners do not fail to effectively enforce their own environmental laws to gain an unfair trading advantage;
- Promote the sale of U.S. green products and services;
- Strengthen the capacity of U.S. trading partners to protect the environment;
- Reduce or eliminate government practices or policies that unduly threaten sustainable development;
- Establish consultative mechanisms to strengthen the capacity of U.S. trading partners to develop and implement environment and human health protection standards;
- Conduct environmental reviews, consistent with the policy and procedures established during the Clinton administration under Executive Order 13141; and

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<sup>2</sup>*National Strategy*, page 19; “The United States must foster economic growth in ways that will provide a better life along with widening prosperity. We will incorporate labor and environmental concerns into U.S. trade negotiations. . . .”

<sup>3</sup>Public Law 107-210, August 6, 2002.

- Promote consideration of multilateral environmental agreements (MEAs) in negotiations on the relationship between MEAs and trade rules, especially as they relate to GATT Article XX exceptions for the protection of human health and natural resource conservation.<sup>4</sup>

### **A Growing Trend in Trade Policy**

U.S. efforts to ensure that trade rules promote a healthy environment are part of a global trend to reconcile trade and the environment policies. In the November 2001 *World Trade Organization Doha Ministerial Declaration*, trade ministers agreed to negotiate key aspects of the trade and environment policy intersection.<sup>5</sup> Two recently concluded bilateral trade agreements—the U.S.-Singapore and U.S.-Chile Free Trade Agreements—include chapters on the environment and transparency and include parallel commitments to develop and implement a common agenda.<sup>6</sup> Along with the U.S.-Jordan Free Trade Agreement, the United States has successfully negotiated environment into three free trade agreements (FTAs). Regional negotiations with five Central American governments and the Southern African Customs Union and bilateral negotiations with Australia and Morocco are expected to follow this same pattern. Finally, Canada

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<sup>4</sup>For an explanation of the *Trade Act's* environmental provisions, see John J. Audley, *Environment's New Role in U.S. Trade Policy*, (Washington, DC: Carnegie Endowment for International Peace, Trade, Equity and Development, Policy Brief no. 3, September 2002). Online at <<http://www.ceip.org/trade>>.

<sup>5</sup>*Ministerial Declaration*, World Trade Organization Ministerial Conference, Fourth Session, Doha, Qatar, November 9-14<sup>th</sup>, 2001. WT/MIN/(01)/DEC/1.

<sup>6</sup> Drafts of both the United States – Singapore FTA, and the United States – Chile FTA can be found at <<http://www.ustr.gov/new/fta/index.htm>>. For an analysis of the environmental provisions in the U.S.-Singapore FTA, see John Audley, *Evaluating Environmental Issues in the U.S.-Singapore Free Trade Agreement*, (Washington, DC: Carnegie Endowment for International Peace, Issue Brief, April 2003), on line at <<http://ceip.org/files/pdf/TED-Audley-Singapore-FTA.pdf>>.

negotiated bilateral trade agreements containing environmental provisions with Chile and Costa Rica and is engaged in ongoing negotiations with four Central American nations.<sup>7</sup>

One of the important lessons to learn from trade and environment linkages is that integrating environment into trade agreements is not a “one size fits all” task. Each negotiation involves countries at different levels of development and requires individually tailored responses. Trade Promotion Authority (TPA) provides U.S. negotiators with the flexibility necessary to adhere to congressional instructions while tailoring each negotiation to its unique circumstances. Therefore, the challenge before FTAA negotiators is not whether, but how.

### **A Rough Road Ahead**

FTAA negotiations began in 1994, a time when the United States was still engaged in a bitter domestic argument over trade and environment linkages. From the very beginning, Latin American governments were very suspicious of U.S. efforts to link environment to trade, fearing that “green protectionism” would deny them market access. By deferring to solutions that might be found in World Trade Organization (WTO) trade negotiations, FTAA ministers effectively excluded environment.<sup>8</sup> Now, nearly half way through

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<sup>7</sup>Canada-Chile Free Trade Agreement, available in Spanish at <[http://www.direcon.cl/frame/acuerdos\\_internacionales/f\\_bilaterales.html](http://www.direcon.cl/frame/acuerdos_internacionales/f_bilaterales.html)>; Canada-Costa Rica Free Trade Agreement, available at <[http://www.dfait-maeci.gc.ca/tna-nac/Costa\\_Rica\\_toc-en.asp](http://www.dfait-maeci.gc.ca/tna-nac/Costa_Rica_toc-en.asp)>; and the Canada-Central America Four Free Trade Agreement negotiations were launched in November, 2001. See <<http://www.dfait-maeci.gc.ca/tna-nac/ca4-en.asp>>.

<sup>8</sup> In particular, see Articles 15 of the Summit of the Americas, Third Ministerial Meeting, Belo Horizonte, Brazil, May 1997; The issue of the environment and its relation to trade has been considered by our Vice Ministers since the Cartagena meeting and is the subject of ongoing discussions within the WTO and within the FTAA process. We will keep this issue under consideration, in light of further developments in the work of the WTO Committee on Trade and Environment.”

negotiations, the United States is faced with the daunting task of re-integrating environment into trade.

I remain hopeful that empowered with TPA instructions and drawing from other examples where environment is linked to trade, U.S. negotiators can still bring home a trade agreement that successfully integrates environment into trade. The balance of this testimony uses TPA instructions as a benchmark to evaluate the FTAA.

### **Transparency and Public Participation**

Though not nearly as transparent as the WTO, over the course of seven years the FTAA process has been dragged kicking and screaming toward transparency. Unfortunately, trade negotiators' resistance to a more open negotiating process has left deep scars that now threaten public support for the agreement. For example, using the Internet search engine "Google," I found that fourteen of the first twenty web sites listed for FTAA are *opposed* to negotiations.

Business community involvement in the FTAA dates back to the first Denver Ministerial in 1995, but during the 1996 FTAA Cartagena Ministerial the Government of Colombia asked the business community to meet before negotiations began to share their comments directly with trade negotiators. That decision fostered what has become known as the Americas Business Forum (ABF), which is now responsible for hosting the ministerial meetings.<sup>9</sup>

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<sup>9</sup> Donald R. Mackay, *Challenges Confronting the Free Trade Area of the Americas*, (Canadian Foundation for the Americas (FOCAL), June 2002).

Although nongovernmental organizations (NGOs) have not been granted the same level of access to negotiators as has the business community, they have struggled to keep apace by hosting parallel meetings at each FTAA ministerial. However, preferred access to negotiations for business groups fostered a great deal of resentment among NGOs, who felt that trade negotiators did not consider their interests. NGO misgivings regarding negotiations were exacerbated by the lack of negotiating transparency; texts were not made public, and a 1998 effort by the United States and Costa Rica to establish a formal avenue for public comments was rendered useless by Latin American negotiators.<sup>10</sup>

The first real step toward greater public involvement in the FTAA took place during the 2001 Quebec City Summit of the Americas. Building on their shared commitment to strengthen democracies, the heads of state instructed trade negotiators to strengthen their ties to the public.<sup>11</sup> During the Argentina FTAA Ministerial held immediately after the Summit, trade ministers agreed to release the draft negotiating text, improve information dissemination through the official FTAA web site, and instruct the Committee of Government Representatives on Civil Society (CGR) to develop a list of options designed to strengthen the ties between negotiators and interested citizens.<sup>12</sup> In response to these instructions, North American government officials hosted a regional FTAA public meeting in July 2002, where negotiators discussed specific subjects with civil society

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<sup>10</sup> During the 1998 San Jose Ministerial, at the eleventh hour the ministers agreed to create the “Committee of Government Representatives on Civil Society.” Until recently, efforts by the United States to use this channel to effectively engage the public have been blocked by other governments, most importantly Mexico during the administration of President Ernesto Zedillo (See Mackay, 2002).

<sup>11</sup> Summit of the Americas, Declaration of Quebec City, April 22, 2001.  
<<http://www.americascanada.org/eventsummit/declarations/declara-e.asp>>.

representatives.<sup>13</sup> During the November 2002 Quito FTAA Ministerial, negotiators failed to make further progress toward transparency, but the Government of Ecuador took the initiative to invite civil society representatives to report directly to the trade ministers, a first for NGOs at an FTAA ministerial.<sup>14</sup> While making little progress on substantive negotiations, vice ministers attending the April 2003 Trade Negotiation Committee (TNC) meeting in Puebla, Mexico, made considerable progress in the area of greater transparency. They instructed the CGR to organize a series of issue-specific public meetings, develop a list of “best practices” with regard to civil society outreach, and explore the possibility of creating a civil society committee to be incorporated into the institutional architecture of the FTAA.<sup>15</sup> The steps taken in Puebla are due largely to efforts by the Government of Chile, who first proposed these ideas during the November 2002 Quito Ministerial.

Given the improvements in access to information and negotiations, civil society groups are wrong to say that the FTAA negotiations remain secretive. The formal steps taken by trade negotiators to improve relations with civil society are important but by themselves are incapable of erasing the mistrust that has built up between governments and civil society groups. Congress has an excellent opportunity to assist U.S. negotiators in several ways as they try to earn the public trust:

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<sup>12</sup> *Ministerial Declaration*, Free Trade Area of the Americas, Sixth Meeting of Ministers of Trade of the Hemisphere, April 7, 2001, Paragraphs 23-27.

<sup>13</sup> See, North America Regional Seminar on the Free Trade Area of the Americas, hosted by the United States, Mexico, and Canada, Merida, Mexico, July 18, 2002, at <<http://www.ustr.gov/new/ftaa-merida.htm>>.

<sup>14</sup> *The Hemispheric Trade and Environment Forum to the VII Ministerial Conference of the FTAA*, October 31, 2002. The forum was organized by the Centro Ecuatoriano de Derecho Ambiental, in collaboration with non-governmental organizations from throughout the Western Hemisphere.

- ***Encourage more frequent release of the text:*** It is difficult for anybody to offer negotiators useful comments using a draft text that is more than nine months old. As negotiations approach the critical stage, civil society groups should be allowed access to more recent versions of the draft text. The TNC, composed of FTAA “vice ministers,” normally meets three times each year; the draft texts used during these meetings should be released shortly thereafter.
- ***Fund civil society participation at regional issue meetings:*** The real challenge to building trust between negotiators and civil society is in Latin America, where travel costs, even within a host country, are expensive for most citizens. The U.S. Agency for International Development (USAID) should be instructed to provide resources to enable Latin Americans to travel to the regional issue meetings. If USAID earmarked \$25,000 in travel costs per meeting, the money would enable a minimum of 250 Latin Americans to attend each meeting.
- ***Provide USTR with guidance regarding the proposed FTAA civil society group:*** For example, the United States could propose an approach based upon the tripartite governing structures of the North American Agreement on Environmental Cooperation and the International Labor Organization. Such a structure would enable governments, civil society groups, and the business sector to work together to provide guidance to the anticipated FTAA secretariat charged with administering the agreement.<sup>16</sup>

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<sup>15</sup> FTAA Trade Negotiating Committee, *Guidance and Instructions to the FTAA Entities*, FTAA.TNC/22, April 10, 2003.

<sup>16</sup> In a paper co-authored by Edward Sherwin, I make a number of detailed recommendations regarding the relationship between the FTAA and civil society groups, including an effective role for civil society in the



- ***Ensure effective public participation during the 2003 Miami Ministerial:*** The United States will host the 2003 FTAA Ministerial in Miami, Florida. On behalf of civil society groups, over the past few months the Miami-based North/South Centre has been negotiating with the Americas Business Forum organizers to ensure adequate space for civil society discussions. The Office of the U.S. Trade Representative (USTR) is actively engaged in these discussions, and has encouraged the Business Forum to work cooperatively with NGOs. It has also guaranteed civil society groups an opportunity to meet with trade ministers to discuss their comments. Congress should monitor these discussions to ensure adequate opportunities for civil society at the ministerial.

Transparency begins at home, and there are a number of steps that the USTR can take to improve its relationship with civil society. Recently I assisted members of the Trade and Environment Policy Advisory Committee (TEPAC) in the development of a report to U.S. Trade Representative Robert Zoellick regarding civil society relations. The suggestions raised during that public meeting included:

- Post public register testimony and comments on USTR's web site;
- Provide the public with a clear explanation about how trade decisions are made;
- Publish the names and e-mail addresses of USTR and interagency personnel involved in U.S. trade policymaking; and

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administration of the trade agreement, technical assistance and capacity building resource coordination among donor organizations, environmental indicator information collection and dissemination, and assistance conducting national environmental assessments. See *Politics and Parallel Negotiations:*

- Balance representation of civil society groups on USTR private advisory committees.

In a related matter, USTR's response to a federal court ruling issued late last year sends a mixed message regarding transparency to civil society groups. In December 2002 the U.S. District Court for the District of Columbia largely ruled in favor of a case brought by environmental groups who pushed for the release of U.S. negotiating positions related to the U.S.-Chile Free Trade Agreement negotiations. To protect future documents from access under the Freedom of Information Act, the USTR routinely formally classifies negotiating texts and related documents.<sup>17</sup> Presented with an opportunity to demonstrate to other trade negotiators that total secrecy is *not* essential to successful negotiations, the USTR instead chose to put more distance between itself and the interested public. The standard for transparency has already been set by USTR, when it immediately made public and placed on-line its March 31<sup>st</sup>, 2003 initial commitments on services liberalization submitted to the WTO Special Session of the General Agreement on Trade in Services.

### **Environment in the FTAA**

Environmental issues are simply not part of the draft FTAA text. Today, environment is not a recognized component of the negotiations, and most Latin American governments

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*Environment and Trade in the Western Hemisphere* (Washington, DC: Carnegie Endowment for International Peace, Working Paper no. 25, April 2002), <<http://www.ceip.org/trade>>.

<sup>17</sup> "Court Decision Leads to New USTR Strategy of Classifying Documents," *Inside U.S. Trade*, Vol.21, No. 17, April 25, 2003.

have fought repeated efforts by the United States and Canada to propose environmental language. Their opposition to the inclusion of the environment jeopardizes the USTR's ability to meet TPA's instructions, thereby reducing the FTAA's chances of winning support in Congress.

The U.S.-Chile FTA includes many examples that demonstrate how TPA environmental instructions can be met in the FTAA. In a separate chapter on the environment, the parties commit to ensuring that its laws provide for high levels of environmental protection, and that the parties will not fail to effectively enforce trade-related environmental laws to encourage trade or investment activity. This commitment is subject to dispute settlement, and any fines resulting from violations will be targeted at addressing the underlying problems preventing enforcement.<sup>18</sup> Disputes involving environmental policy will include panelists with expertise in environmental policy matters.<sup>19</sup>

The U.S.-Chile FTA environment chapter also establishes a variety of means to ensure public involvement in the administration of the agreement. Parties are required to establish and maintain opportunities for public discussion regarding implementation of the environment terms of the agreement. In addition to regular dialogue, an Environment Affairs Council will be created, which will meet regularly to discuss issues of common

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<sup>18</sup> *U.S.-Chile FTA*, Articles 19.1, 19.2. Dispute Settlement is addressed in Article 22.16.

<sup>19</sup> *U.S.-Chile FTA*, Article 19.7.

interest and engage the public in developing agendas for council meetings, including the use of fines assessed for violations of this chapter.<sup>20</sup>

Finally, both parties have agreed to an ambitious agenda for environmental cooperation on issues such as pollutant release and transfer register, reducing mining pollution, and improving agricultural practices.<sup>21</sup>

The United States was fortunate to have Chile as a negotiating partner, as it shares the same strong commitment to trade liberalization, high standards for environmental protection, and public involvement. The U.S.-Chile FTA breaks new ground on trade and the environment by taking the best from the North American and U.S.-Jordan FTAs and building a chapter that reflects both countries' commitment to strong economies, protected environment, and healthy public dialogue. While not perfect, it clearly meets congressional benchmarks for integrating environment into U.S. trade agreements.<sup>22</sup>

That said, the FTAA is an entirely different kind of trade negotiation, involving many more countries, each with its own history and differing levels of development. Although it is important to build on the U.S.-Chile FTA, given the stark differences between these two negotiating environments, it is not appropriate to adopt its environment provisions as a model for the FTAA. FTAA negotiations need to differ in several important ways:

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<sup>20</sup> *U.S.-Chile FTA*, Article 19.3

<sup>21</sup> *U.S.-Chile FTA*, Annex 19.3

- First, given the different commitments to democratic processes, U.S. positions in FTAA negotiations should emphasize the important role citizen involvement plays in the administration of a trade agreement. The United States should propose concrete approaches to incorporating citizens into the administration of the FTAA—such as the joint public advisory committee in the North American Agreement for Environmental Cooperation. A related model of national reporting is the Trade Policy Review Mechanism of the WTO: this could be a basis for examining environmental capacity and progress in the FTAA context.
- Second, given the poor capacity of most Latin American governments to protect the environment, the U.S. should propose that the UN Environment Program (UNEP) initiate annual reviews of the ability of our FTAA partners to implement their own environmental laws. This practice is already common practice among the Organization for Economic and Cooperation Countries, who are regularly subject to independent reviews of their environmental laws.
- Independent reviews of environmental enforcement by a responsible intergovernmental organization would accomplish three things. First, a UNEP-led study would help governments improve the quality of their environmental laws. Second, by identifying weaknesses in protection capacity or enforcement, the report would help target foreign assistance or private investment opportunities to build and operate key components of environmental infrastructure. Finally, as most

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<sup>22</sup> For a critique of some aspects of the U.S.-Chile FTA's environment provisions, see the February 27, 2003 Trade and Environment Policy Advisory Committee (TEPAC) report to the President, at

environmental damage is caused by domestic consumption, building the capacity of poor governments to mitigate trade-related environmental damage would also help to address community wide environmental infrastructure needs.

- Finally, Congress should become aware of the changes in U.S. trade-related negotiating responsibilities. By executive order, the U.S. Department of State is now responsible for negotiating and implementing environmental agreements that run parallel to trade negotiations.<sup>23</sup> Overall, this is a positive step; the State Department's Bureau of Oceans and International Environmental and Scientific Affairs has greater competence in the area of international environmental protection and is thus better able to negotiate and administer the agreement. It may also have the added benefit of freeing up badly needed human resources at USTR for other trade negotiations. That said, dividing trade negotiation-related responsibilities between agencies may complicate policy development. Congress should be aware of this new interagency procedure and ensure that it receives the support from other federal agencies necessary to be effective.

## **Dispute Settlement**

The November FTAA draft contains bracketed language that directly conflicts with TPA guidelines. For example, there is not yet a certain, meaningful mechanism for public

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<[http://www.ustr.gov/new/fta/Chile/advisor\\_reports.htm](http://www.ustr.gov/new/fta/Chile/advisor_reports.htm)>.

<sup>23</sup> See Federal Register Notice "DEPARTMENT OF STATE: Delegation of Authority 250; Further Assignment of Functions Under the Trade Act of 2002 ("Trade Act") to Other Departments and Agencies of the Executive Branch," Federal Register Notices, Vol. 67, No. 243, Wednesday, December 18, 2002.

participation. Several provisions would call for non-state experts to join dispute panels or provide technical support to governments, but the nature of this input would appear to be limited.<sup>24</sup> Outside experts would in essence serve as government consultants, not public liaisons or community voices. While the experts would bring their experience and training to the table, they would not be acting in a true nongovernmental capacity. Their freedom to take positions at odds with their governmental counterparts or to act in any representative capacity of a segment of civil society would presumably be very constrained.

There is a bracketed provision that would require public notice when a dispute resolution panel is established, but competing provisions make it unclear whether proceedings thereafter would be open or closed to the public.<sup>25</sup> Later in the draft, another bracketed paragraph under the heading “Public Participation” would provide notice to the public within a week after a dispute panel is chosen to allow “members of the public to submit views on legal or factual issues to the neutral panel.”<sup>26</sup> This is a very promising proposal because it could result in an *amicus curiae* (friend of court) process that would give non-state actors a direct voice in disputes. But a competing bracketed provision would resolve the matter in precisely the opposite manner. It states unequivocally “non-governmental participation in the dispute settlement system in the Chapter shall not be

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<sup>24</sup> *FTAA Draft Text*, November 2002, Article 12, paragraph 63 at < [http://www.ftaa-alca.org/ftaadraft02/eng/draft\\_e.asp](http://www.ftaa-alca.org/ftaadraft02/eng/draft_e.asp)>.

<sup>25</sup> *FTAA Draft Text*, Article 39, paragraph 210.

<sup>26</sup> *FTAA Draft Text*, paragraph 259.

permitted.”<sup>27</sup> The resolution of this issue is unclear, but it may be a critical turning point for public accountability and access to justice under the FTAA.

Finally, there is a proposed requirement that information filed in connection with a dispute be made public<sup>28</sup>—but again this is bracketed and constrained by provisions for the protection of “confidential information” whose scope is yet unclear.<sup>29</sup>

The U.S.-Chile FTA once again provides an example of how civil society can be effectively integrated into a dispute settlement procedure without compromising the need to withhold sensitive information from the public. As mentioned earlier, it stipulates that panels that hear environment and trade disputes will have expertise in environmental policy matters, allow for *amicus curiae* submissions, allow panels to independently seek information and technical advice from experts, and ensure that reports will be made public in a timely fashion. Congress should instruct the USTR to duplicate the public participation, financial penalty, and panel roster portions of the U.S.-Chile Dispute Settlement Understanding in the FTAA agreement.

## **Investment**

In their reports on the U.S.-Chile and U.S.-Singapore FTAs, a majority of the Trade and Environment Policy and Intergovernmental Policy Advisory Committees felt that both

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<sup>27</sup> *FTAA Draft Text*, paragraph 26.

<sup>28</sup> *FTAA Draft Text*, paragraph 210.

<sup>29</sup> *FTAA Draft Text*, paragraph 211. For examples of potential restrictions on information deemed “confidential,” see paragraphs 44(c) and 263(e).



agreements comply with TPA instructions.<sup>30</sup> That said, a sizeable minority of TEPAC members, as well as the Intergovernmental Advisory Committee (IGPAC), expressed concern over language in the dispute settlement chapter that they believe gives foreign investors rights of action not available to domestic investors.<sup>31</sup>

During the TPA debates, Congress became aware of the controversy surrounding legal terms such as “tantamount to,” “fair and equitable treatment,” and “customary international law,” all of which are contained in the bracketed chapter text.<sup>32</sup> While I do not entirely share the view of those who feel that this language undermines national and subnational regulatory authority, when coupled with a dispute settlement system that is not transparent, or whose decisions are not subject to appeal, it creates opportunities for the private sector to employ a new source of political pressure on domestic regulations.

Given the level of concern surrounding investment, I urge members of Congress to be especially vigilant with regard to the FTAA’s investment chapter. One way to shed greater light on this issue would be to hold hearings immediately after the release of the next draft text and allow the various parties to discuss their different opinions of the FTAA investment language.

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<sup>30</sup> Copies of the Trade and Environment Policy Advisory Committee and Intergovernmental Policy Advisory Committee reports on the Chile and Singapore bilateral agreements can be found on USTR’s web site at [http://www.ustr.gov/new/fta/Chile/advisor\\_reports.htm](http://www.ustr.gov/new/fta/Chile/advisor_reports.htm), and [http://www.ustr.gov/new/fta/Singapore/advisor\\_reports.htm](http://www.ustr.gov/new/fta/Singapore/advisor_reports.htm).

<sup>31</sup> In particular, see the letter attached to the IGPAC report from the National League of Cities, National Conference of State Legislatures, and National Association of Towns and Townships, and to the TEPAC report from the Center for International Environmental Law.

<sup>32</sup> See the *Trade Act of 2002* legislative history for a complete discussion of the controversy surrounding these phrases.

It is also particularly important to ensure that the dispute settlement proceedings meet the minimum test for openness and accountability, as set forward in TPA. Here again, the U.S.-Chile FTA serves as a useful model.

### **Technical Assistance and Capacity Building**

President Bush's *National Security Strategy* wisely links trade liberalization with development assistance designed to actually make a difference in the lives of the world's poor.<sup>33</sup> The Bush administration's 2003 foreign assistance budget proposal tries to make good on this commitment; for example, it includes \$47 million in technical assistance and capacity building for Central American nations—a 74 percent increase over the 2002 budget. U.S. leadership in preparations for the 2002 Quito FTAA Ministerial led to the announcement of a new technical assistance and development plan designed to encourage our trading partners to identify technical assistance and capacity-building needs. The Hemispheric Cooperation Program (HCP) is a positive step toward providing technical assistance and capacity building as outlined by Congress in TPA.<sup>34</sup>

As part of the Central American Free Trade Agreement (CAFTA) negotiations, Central Americans accelerated the development of their “national plans of action,” giving us a

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<sup>33</sup> *National Security Strategy*, section VII.

<sup>34</sup> Hemispheric Cooperation Program, Annex III of the *Ministerial Declaration of Quito*, Seventh Meeting of Ministers of Trade of the Hemisphere, Quito, Ecuador, November 1, 2002. <[http://www.ftaa-alca.org/ministerials/quito/minist\\_e.asp](http://www.ftaa-alca.org/ministerials/quito/minist_e.asp)>.

chance to learn from this first experience. First, while the USAID trade program strategy explicitly references environment, Central American governments did not include references to the environmental infrastructure (i.e, solid waste management, wastewater treatment, air quality monitoring) necessary to mitigate the negative effects of expanded economic activity.<sup>35</sup> Beyond the obvious suspicions regarding environment and trade felt by Latin American governments, there are three additional explanations for this omission. First, reports prepared for the Inter-American Development Bank indicate that, outside the United States and Canada, there is very little interaction between ministries responsible for trade policymaking and their environment or development ministries.<sup>36</sup> If environment and development ministries are not part of trade policy development, then their views will not become part of a government proposal. Second, despite USTR web site information that emphasizes all aspects of trade capacity building, it appears that U.S. foreign service officers are not fully aware of all aspects of U.S. policy. During a recent USAID training session on technical assistance and capacity building, Central American field officers asked for additional background on the subject of trade and environment to enable them to explain the connections more plainly to their counterparts.<sup>37</sup> In addition, USAID's trade-related capacity-building strategy gives top priority to projects that help generate local support for trade reforms and emphasizes participation in trade

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<sup>35</sup> The public version of each country's "national action plan" is posted on USTR's web site at <<http://www.ustr.gov/new/fta/cafta.htm>>.

<sup>36</sup> See Inter-American Development Bank, The University of Toronto Munk Centre for International Studies, and the Inter-American Dialogue, *The Trade Policy-Making Process Level One of the Two Level Game: Country Studies in the Western Hemisphere*, Occasional Paper no. 13 (Washington, DC: Inter-American Development Bank, March 2002).

<sup>37</sup> Course evaluation materials from the trade training course for USAID Economic Growth Officers, held March 3-4 in Antigua, Guatemala. USAID officials may request access to course evaluation materials at <<http://www.tcb-project.com/tcb/level4.php?domain=TCB&cat1=101&cat2=206&cat3=361>>. Evaluation materials are not available to the public at this writing, a policy which I recommend be changed to allow greater transparency and public input.

negotiations, implementation of trade agreements, and economic responsiveness to opportunities for trade. Trade and environment is given “specific consideration” as important for long-term “economic responsiveness” – i.e. building capacity to promote sustainable economic growth and reduce poverty.<sup>38</sup> However, to date environmental concerns have been largely neglected in terms of trade capacity building for negotiations and implementation, despite requirements set forth in the *Trade Act of 2002* that U.S. trade agreements will include commitments in this area. Finally, given the lack of public involvement in negotiations to date, Latin American governments may not feel the urgency to include environment and other development priorities as part of trade negotiations. This is unfortunate, because the Quito civil society declaration shared with ministers clearly demonstrates public support for linkages between trade and environment policies.<sup>39</sup>

To its credit, USTR and USAID are encouraging their Central American counterparts to engage in more active public outreach. One U.S. contractor, the Carana Corporation, recently reported that, after initial misgivings expressed by government officials, most Central American government officials support the public outreach process.

Unfortunately, a few weeks of outreach to communities that have suffered decades of government repression will not overcome citizens’ mistrust of government officials.

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<sup>38</sup> See U.S. Agency for International Development, *USAID Strategy: Building Trade Capacity in the Developing World*, PD-ABX-241 (Washington, DC: USAID, March 2003), p. 15.

<sup>39</sup> See *The Hemispheric Trade and Environment Forum to the VII Ministerial Conference of the FTAA*, October 31, 2002, at footnote 14.

Finally, there is a problem of coordinating resources. USAID development plans begin in regional offices and are timed to provide Washington headquarters information necessary to prepare budget proposals that coincide with the congressional budget cycle. Trade negotiations operate at their own speed, so technical assistance and capacity-building proposals that arise from trade negotiations may not be covered in a federal agencies funding requests to Congress. The resulting misconnection between promises and resources is evident. Technical cooperation pledges made in the U.S.-Jordan “side letter” on environment have yet to be realized, due in part to inadequate funding. And neither the U.S.-Chile nor U.S.-Singapore environmental accords are linked in any way to U.S. government support.

Ensuring that the United States meets its commitments to help build strong trading partners through appropriate technical assistance and capacity building should be a high priority for the U.S. Congress. I recommend that Congress take the following steps:

- Ask USAID to testify before Congress and explain fully its approach to trade-related technical assistance and capacity building. In particular, Congress should explore how federal agencies link financial resource allocation with technical assistance proposals that arise from trade negotiations.
- Encourage USAID to better use its web site to post information about USAID contractors involved in trade-related capacity building. A recently launched internal USAID Trade and Investment home page takes an important step in this direction,

and should be expanded.<sup>40</sup> But, while the web page can be accessed by members of the public who learn of its existence, it is not linked to the public USAID site; moreover, certain portions of the site which would benefit from transparency – including evaluation materials for trade capacity building seminars – are password protected. Citizens in every country, not just their governments, should have all the details regarding U.S. technical assistance contractors.

- Urge the U.S. Department of State to issue *demarches* that clearly explain U.S. trade-related capacity-building objectives and instruct foreign service officers to actively engage environment and development ministers to expand their level of understanding of the trade and environment linkages.

### **FTAA Environmental Review**

Per TPA instructions, and consistent with Executive Order 13141, USTR and the Council for Environmental Quality (CEQ) have initiated an environmental review of the FTAA negotiations. When completed, it will represent the seventh environmental review of U.S. trade negotiations.<sup>41</sup>

Environmental reviews of trade agreements represent an important tool to determine both positive and negative impacts of trade liberalization on the environment. Assessment methodologies have now been developed by UNEP, the North American Commission for Environmental Cooperation, the Organization for Economic Cooperation and

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<sup>40</sup> See < [http://www.usaid.gov/economic\\_growth/egat/eg/tech-trade/](http://www.usaid.gov/economic_growth/egat/eg/tech-trade/)>.

<sup>41</sup> The other six include: the North American Free Trade Agreement, the Uruguay Round General Agreement on Tariffs and Trade, the proposed acceleration of tariff reductions in forest products under the

Development, as well as private organizations the World Wildlife Fund and World Resources Institute.<sup>42</sup> But like all new methodologies, they must be flexible enough to build upon their strengths, and to minimize or eliminate their weaknesses. The executive order and guidelines lock in a U.S. approach to environmental reviews that is U.S.-centered and based on measurable changes to the U.S. economy before further examination of changes to specific environmental media is warranted.<sup>43</sup> Given the size of the U.S. economy, this approach has resulted in a series of *de minimus* (no significant effect) reviews, an outcome that has begun to undermine U.S. public support for this policy.

Now that Congress has made conducting environmental assessments of trade agreements part of U.S. law, I recommend that it pay closer attention to the results of each review. The draft FTAA review will be released early this summer, and I recommend that Congress include a closer examination of its results during the next hearing on the FTAA.

## **The Way Forward**

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Asia Pacific Economic Cooperation, the U.S.-Jordan FTA, the U.S.-Singapore FTA, and the U.S.-Chile FTA.

<sup>42</sup> See UNEP Reference Manual for the Integrated Assessment of Trade-Related Policies (New York and Geneva: United Nations, 2001); Commission for Environmental Cooperation, *Assessing Environmental Effects of the North American Free Trade Agreement (NAFTA): An Analytic Framework (Phase II) and Issue Studies* (Montreal: Commission for Environmental Cooperation, 1999); OECD, "Methodologies For Environmental Assessment Of Trade Liberalisation Agreements: Report Of The OECD Workshop Held On 26-27 October 1999," COM/TD/ENV(99)92/FINAL (OECD, May 2000); World Wildlife Fund for Nature (WWF) and Fundacion Futuro Latinamericano (FFLA), *The International Experts' Meeting on Sustainability Assessments of Trade Liberalisation: Quito, Ecuador, 6-8 March 2000* (Switzerland: WWF and FFLA, November 2000).

<sup>43</sup> See Kevin Gallagher, Frank Ackerman, and Luke Ney, *Environmental Reviews of Trade Agreements: Assessing the North American Experience* (Montreal: North American Commission for Environmental Cooperation, December 2001).

The FTAA negotiations have reached their final stage; until they are concluded, Congress should devote additional attention to their oversight and provide ample opportunity for public comment and discussion. Achieving U.S. trade and environment priorities in the FTAA will not be easy because the United States has few supporters in the region for this agenda. Achieving this goal remains possible, however, but success will require greater dedication to explaining U.S. objectives, developing coordinated technical assistance packages, and reaching out to the public.

Chile is a crucial ally in the U.S. effort to integrate environment and labor provisions into the FTAA. Already Chilean trade negotiators are trying to persuade other Latin American governments to engage the United States in a discussion of how to integrate the environment into the FTAA negotiations and not to wait until the United States forces some environment provisions as part of its eleventh hour negotiating strategy. I applaud efforts by Senator Max Baucus (D-Mont.), Senator Chris Dodd (D-CT), and their colleagues to urge President Bush not to punish Chile for its decision not to support the U.S. war in Iraq.<sup>44</sup> We have much to gain and a great deal to lose if we force Chile to wait any longer for improved U.S. trade relations.

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<sup>44</sup> "Chilean Minister Says Powell Offered Assurances on Chile FTA," *Inside U.S. Trade*, Vol. 21, No. 18, May 2, 2003