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# International Trade & WTO



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**International Trade**



## foreword

### ? 2001, the year to watch

The next WTO Ministerial will be held in Qatar in the beginning of November. Before the Free Trade Area of the Americas will organize a meeting at the Ministerial level in Buenos Aires during the first week of April, and a Summit in Quebec at the end of April. The General Agreement on Trade of Services is currently being discussed in Geneva. What is at stake is the right for peoples to provide access to health, education, their rights to produce their own culture, while transnational corporations a re-regulating the world to their own profit. This is called corporate globalization. And we will see a lot of it building a Brave New World during this first year of the New Millennium, while trying to fight back some of its promoters named WTO, IMF, WB, FTAA, GATS, European Commission, G8...

### ? Disclaimer

The documents published hereafter do not represent ATTAC's point of view. They can express the opinion of other organizations, of thematic study groups, of local chapters, of researchers... It is about being able to share expertise and knowledge to build together this other world that is possible and to take back our future. All documents were published on ATTAC's website or e-newsletter.

# 1 > GATS. Public Services—What Future?



This document was prepared as a draft proposal for discussion at the ATTAC Scientific Council meeting of January 2001. This paper's focus is limited to marketable public services, those for which users pay, in Europe for three reasons. The first is the authors' competence in this field, the second, that public services function according to their own economics and so are easily dealt with as a whole, and the third, that their very existence is constantly challenged and their future is far from assured. Furthermore this essay does not deal with problems which are particular to each sector but tries to set the scope for a discussion of a more general nature.

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## A problem of definition

What is meant by public service? When we speak of public services, one intuitively feels that it has something to do with the general interest which, properly said, cannot therefore be given up to the private sector or market forces. There are two significant dangers with these alternatives. On the one hand, significant changes in social use can be neglected, for example, left to the private sector, Minitel which took fifteen years to reach profitability, might never have existed, while on the other, market forces alone cannot be expected to reduce social inequalities.

But what is meant by general interest, who defines it and how? General interest implies that everyone must benefit. The very fact that public services exist is a reflection of the compromises society reaches. Political choices and questions surrounding the balance of power are thus never far away.

This idea, then, of public service implicitly dismisses any technological determinism that might correlate the role of public services and the current state of technology development. This is not to say that technological advances should not be taken into account, simply that these alone are insufficient grounds for questioning the very existence of public services. The scale of technological advances differs according to sector, numerous in the telecommunications industry, fewer in railways or electricity hence the need to look at the public service as a whole block.

Dependant above all on political choices and power struggles, public services cannot be determined once and for all. Their fields of action can increase or decrease, technological advances can be used either to challenge the public services or to enhance them, widening their range of activities to other fields.

## The economic system of the public services

There are two different kinds of public service: non-marketable and marketable.

### - non-marketable public services

These are publically funded. They are fully budgeted for, as, for example, the French education system.

### - marketable public services

These are user-financed. They include the large networked public services such as post and telecommunications, electricity and rail. This networked economic system has quite specific characteristics, the prices of the services provided do not reflect their real cost. It is therefore difficult to know exactly how much each service is worth in a network system.

Prices are balanced out so that the various categories of users can benefit. Decisions are always political; should 'big' pay for 'small', town for country, today's users for tomorrow's? This tariff redistribution also works within the different provisions of service. In this kind of system the high-return activities pay for, or subsidise, those with a low-return or which do not pay at all. It is essential, therefore, for this economic system not to have its high return activities weakened. To achieve this, a monopoly is necessary. Economies of scale can then be achieved by avoiding network duplication (the notion of a natural mo-

nopoly). Ultimately, it allows the maximum optimization of the network where the value of the network is assessed by the number of connected people; its in everybody's interest to have the lowest prices possible so that as many people as possible can afford to connect (the club effect).

However, a monopoly system does not inherently guarantee quality public services, it can simply be used to collect money. This was the case in France until the mid-seventies when half of the population was waiting for the telephone while the other half was waiting for the dial tone. To combat this tendency, the state-owned company is probably the most appropriate structure to manage such a system. Because they have neither shareholders nor social capital to develop, they can be beyond the logic of capitalist profitability. But this is still no guarantee that public utilities will not behave as private firms do.

### Is there something distinctly French regarding the public service?

After 1945 most industrialized countries followed much the same policy: nationalisation of the major public services, monopoly structure, special employment status for civil servants. Their aim was to follow comprehensive and effective industrial policies within the context of post-war reconstruction. These policies led to a major social redistribution together with prices low enough to allow most of the population to gain access to new services; in France, the telephone was the exception.

But these policies were established in France on ground well-prepared. The late nineteenth century witnessed the birth of the notion of public service: the birth of secular and compulsory education, the rail network, etc. all strongly reflecting the principle of equality, a founding principle of the Republic. This specific tendency, found only in France, has at its roots the political weight of the peasantry and the urban lower-middle-class in the creation of the French society, the class alliances which followed and the social compromises occurring at that time. The combination of these two aspects gave the question of the public service in France a force not seen in other countries. The role of the public service was born from the desire to ensure equal treatment of users whatever their individual situation. This concept of equality is different from the equality of conditions, which means assuring equal treatment of people in the same situation, eg. all people living in the mountains are treated in the same way but differently from those living in the cities.

### The roots of the present crisis

The present crisis affects both types of public services, marketable and non-marketable, but in different ways. The national regulations set up after the Second World War limited the activities and development of capital. The diminishing effectiveness of these regulations, partly due to the globalisation of business activities and the political decisions which dismantled these regulations, left an open door for capital to extend its hold on society.

#### - non-marketable public services

The willingness to 'commoditise' their activities (cf. the negotiations on AGSC) left little room for manoeuvre in the public sector budgets, a self-inflicted wound: tax counter-revolution which weakened the state, debt increases, high interest rates. This led to a loss of efficiency and a crisis of legitimacy, the effect of which was multiplied by

the crises within each service. For example, the education system, already suffering from attempting to make available the same education for everyone was subjected to neoliberal policy attacks, and all this in a climate of high unemployment.

#### - networked public services

The networked public services undergo a process of deregulation (in fact a change of regulation) aimed at privatising state-owned companies. The rationale is to allow available funds to be invested in new sectors hence opening them up to competition. It is also to provide 'big-business' with the lowest priced services, hence the will to put an end to applying adjustments.

Instead of acting as a new framework for the establishing of general interest public policies, Europe has become a major weapon to be used against networked public services, even if an article of the treaty (16th art) acknowledges the role of the general interest services. The processes of deregulation inspired by the Commission and adopted by all governments use the European treaty to make competition the rule in the organization of economic life and the opening up of markets an essential requirement (public services are subject to these regulations, art. 86 - 90). The Commission's right to instigate deregulation is contained in article 86-3, which it categorically refuses to modify.

The principle the Commission wants to enact, which already exists in the telecommunications industry and which is accepted by all governments, is that prices should meet costs. This directly challenges the principle of price adjustment, undermining the very basis of the public services which the Commission wants to replace by the notion of universal service. This notion stems from the deregulation of the telecommunications industry and can be defined as, a set of services of a given quality, taking into account specific national contexts, to which all consumers must have access, at an affordable price. It is conceived as a provisional plan to ease the way for liberalisation. This notion poses many problems.

First of all, "affordable prices are still to be defined. Secondly, the principle side-steps the issue of equal treatment. Thirdly, the development of the services included in the universal service. This development is possible in theory but denied in practice, the Commission refusing to insist that it is financed by the operators. It is logical enough as the universal service was only ever seen as a transitory principle until market forces can be brought to bear.

In a 1996 communique on general interest services in Europe the Commission admitted that market mechanisms sometimes have their limits and can exclude a part of the population. Yet this same Commission immediately reasserts the free-market creed and adds that "services for the general interest are in principle subject to the rules adopted by the Commission to establish a single market, that is to say, the rule of free competition. The recent communique of the Commission on this matter (20/09/00) reasserts the same issue. On the one hand, the Commission asserts that the Community protects activities in the general interest and the mission of public service. On the other, the Commission points out that most of the time the market is the best mechanism to provide these services (in the general economic interest). For the Commission, general interest and respecting the rules of competition and the domestic market are two sides of the same coin. This implies that the means used to fulfill the general interest should not create unnecessary commercial distortions. In

this logic, the market rules and public services must show that they will not unnecessarily disrupt its smooth functioning.

These moves have destabilised the public utilities. They face a dilemma; either to keep fulfilling their public service mission, to be financially challenged by private operators providing only the most profitable services, or simply become for-profit companies, making choices according to the principle of profitability and eventually privatising, even if the European Commission does not make it compulsory. In practice, it is the latter proposition that has been chosen as public utilities are gradually becoming multinational corporations, public service reduced to a marketing tool with little to do with reality.

### What to do?

Arguments must be presented at both national and European level. What already exists must be preserved in order to re-take the initiative.

- Legitimise public services by making them user-friendly

The French public service could well do without the public. Since the end of the nineteenth century the state has been understood as the guarantor of the general interest and the public have simply delegated to the state the protection of their interests. This situation was reinforced by both the concept and practice of dividing up the services into so many small, specific services that it was impossible for a member of the public to have a single-point-of-contact. This ultimately prevented the public service becoming a comprehensive social power and secured its separation from the public it was supposed to serve.

However, this situation can evolve rapidly in the face of the changes in progress. People are gradually becoming aware of the unintended consequences of the transformation of the public service on the major part of the population. This will of the consumer associations to stand as an influential social power runs counter to the managers of the public utilities wish to confine the relationship with users to that of a mere market relationship by transforming users into customers.

To see a user of public services as a citizen requires the breaking of two habits. The first, which has prevailed over France from the post-war years up to the late-seventies, delegated decision-making power to specialists coming from the senior branches of the civil service. This certainly and undeniably succeeded but brought with it some questionable issues: industrial lobbies were able to introduce a profit-orientation with the blessing of these services.

This logic is still with us today but is being over-shadowed by a second trend, which sees the market as an infallible regulator. Instead of anticipating social needs, having a long-term vision and enabling itself to initiate pro-active policies, it is only about responding to market needs. Apart from technocrats decisions and market rule space must be created for democratic debate so that the user-citizen can have his say about the different possibilities. The differences in points of view often reflect conflicts of interest. The rapid technological changes in some sectors and the uncertainties bound to them increase the difficulty in decision making. Democratic debate can help to clarify these issues.

- Respond to social exclusion

Aspects of social marginalization bound to growing unemployment and lack of job security have appeared during

the last twenty years. Despite the present economic recovery and the steadily decreasing unemployment rate the latter remains high and the number of poor workers in particular, keeps increasing.

Public services have not been able to respond to this situation whilst changing into for-profit companies. Profit-seeking does not mix well with meeting pressing social issues, particularly as successive governments have not allowed state intervention in these utilities. Moreover, the notion of universal equality prevented the necessary measures being taken in favor of these social strata.

Discussion should be opened with the associations involved in this issue to clearly define a certain number of rights (the right to communication, to energy, etc.) and the means to achieve them ensured.

- A moratorium on opening up to competition and new privatisations

The European Council of Lisbon confirmed the speeding up of the liberalisation of transport, energy and postal services. The telecommunications industry was the first to be privatised and the rest of the networked public services will follow. The stakes, then, are high. Preventing deregulation in the sectors still untouched is essential if we want to keep the principle of adjustment, the basis of the public services.

Public service privatisation is presented as the logical end of opening up to competition. Even only partly privatised public utilities thus weaken the public service and accelerate the movement towards the situation where the creation of shareholder value" prevails.

Efforts to force private companies to accomplish public services have time and again proven their ineffectiveness. Whether we look at France or abroad, there exist so many examples that it should no longer be necessary to continue these arguments. Historically, the only private company which has really provided a public service is AT&T in the USA, until 1984 when deregulation commenced in the telecommunications industry. This was made possible only because the American authorities imposed extremely restrictive measures on AT&T's activities in exchange for a monopoly: AT&T could not intervene abroad or in other sectors but its own; it had to provide services across the entire country and at the lowest possible cost.

- Impose public service provisions in deregulated sectors

It seems difficult, because of the balance of power, to reconsider the opening up to competition already done. Can a public service be set up in a sector ruled by competition? It would appear difficult unless several conditions are juxtaposed.

The present regulation essentially aims to level the playing field thanks to an asymmetrical regulation which favours newcomers at the expense of the historic operator. The inclusion of other purposes linked to the implementation of a public service mission must be bound to specific commitments as regards price, national and regional development and the development of new services. In this context, the law would put a public operator in charge of these missions. Operators should be compelled to finance them by putting money into a public service fund proportional to their market share. In this situation it all depends on the level of the commitments.

Such a system was introduced in France when the telecommunications industry was deregulated in 1996 together with the setting up of a universal service fund. The

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results were unsatisfactory, there was no integration of new services such as cell phones or the Internet, little commitment in the old telecommunications industry, insufficient social rates and constant delays.

In fact one of the consequences of imposing public service commitments in a deregulated sector is that the competitive system is itself questioned. This calling into question is rejected not only by the companies in question but also by governments and the Commission.

- Take the battle to the European level

This is a central issue and one of the most difficult because through defending public services, the coherence of the European construct is attacked head-on. Political decisions in Europe are taken by the Council of Ministers. A battle on the European level must therefore put pressure on national governments. Furthermore, the increase in power of the European Parliament makes it all the more necessary to fight on this level while the opportunities to fight also increase as the debates surrounding the directive on the postal service has recently shown.

It is the competitive system, the very foundation of the treaties, that needs to be brought into question. The treaties need to be re-thought, in general and the 86th article, in particular modified so that national public services can survive. It seems difficult to demand public services on a European level when such diversity exists at the national level. The risk in claiming such things is to sink to the lowest common denominator, a concept the "universal service" is already ridden with.

However, confronted with the political will to open up markets to competition we must impose a system of co-operation. Co-operation between the major European public operators, with a shift from a competitive system to a co-operative system setting common rules and common development plans. Common objectives can be established sector by sector for the entire European Community so that the provision of services could be homogenized on a European level.

Last of all we must demand a moratorium on deregulation and privatisation until a serious assessment and debate upon their effects are conducted.

This, however, implies that users and public service employees (civil servants) take a united stand in order to build the necessary balance of power. But thats another story!

■ 1

## 2 ➤ Towards the construction of an European Higher Education Market?

On the 19th of June 1999 twenty-nine European ministers of education signed the Bologna-declaration. This common declaration is a continuation and refinement of the principles embodied in the Sorbonne-declaration. The main goal of these declarations is the upgrading of the decreased international competitiveness of the European higher education system. This concern has to be situated in the context of the newly emerging global higher education market. Australia and the United States are the dominant players on this global market while European countries lag behind. This means that European universities attract relatively few students from outside Europe.

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The Bologna-declaration is a package of measurements to enlarge the market share of the European higher education systems.

It emphasised the creation of a European Higher Education Area as a key way to promote citizens' mobility and employability all over the European Continent and the Continent's overall development. To reach that aim the declaration points out a number of specific objectives:

- (1) the adoption of a system of easy readable and comparable degrees;
- (2) the adoption of a system based on two main cycles (undergraduate and graduate), the first cycle lasting a minimum of three years and leading to a qualification relevant to the European labour market;
- (3) establishment of a system of credits as a proper means of promoting the most widespread student mobility;
- (4) overcome obstacles to the effective exercise of free movement of students, teachers, researchers and administrative staff;
- (5) the promotion of European co-operation in quality assurance with a view to develop comparable criteria and methodologies;
- (6) the promotion of the necessary European dimensions in higher education particularly with regards to curricular development, inter-institutional co-operation, mobility schemes and integrated programmes of study, training and research.

At first sight this blueprint of 'the Europe of knowledge' seems very attractive. The implementation of the Bologna-declaration will surely have some benign consequences. But there are some snakes in the grass. The Bologna-declaration promotes comparability of educational institutions, qualifications and course programmes. This is meant to increase the competition between educational institutions for students, teaching staff and resources. Moreover, the Bologna-declaration is an important step in the commodification of education. It transforms education in a standard commodity that can be sold on a global education market. Furthermore, the declaration only talks about education as relevant to the labour market. The emancipatory task of education is not mentioned at all. A broad, democratic access to higher education is also not guaranteed. Not every student will be allowed to follow a graduate (Master) course. Financial thresholds and entrance exams will probably emerge. It is an explicit objective of the Bologna-declaration to drive a large group of students to the labour market after they have obtained an undergraduate (Bachelor) qualification. In this way employers will be able to reduce the wages because much employees will have only a Bachelor qualification (instead of a Masters).

The Bologna-declaration presents a perspective for the European higher education systems in the twenty-first century. We reject this perspective as a mere economic and thus too narrow vision on education. Moreover, we

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are incensed about the democratic deficit in the whole process. Students and teachers were not asked to participate in the drafting of the declarations.

The Bologna-declaration is drafted and signed outside the framework of the European Union or any other international organisation (WTO). Still it is major and unnoticed treath to our European education systems. But the longer the more students and teachers acknowledge this danger. Within a few months (May 2001) the European ministers of education will meet each other in Prague to talk about the implementation of the declaration and further measures. We urgently need to build a large transnational coalition to contest this whole process.

■ 2

### 3 > Trade Representatives Talk



We decide to publish the transcript of the press conference by the two persons in charge of trade negotiations within the WTO, one representing the 15 countries of European Union, the other the United States. Although comments could be made and further analysis be done, we thought more important to leave their speeches how they were made.

Transcript of press conference by EU Trade Commissioner Pascal Lamy and USTR Robert Zoellick, Washington, March 9, 2001

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LAMY: As a host, let me first welcome Bob Zoellick here and thank him for coming. I know he doesn't do that very often and I take it as a sign of our collaboration, and I'll leave him the opening of this press briefing.

ZOELLICK: Thank you Pascal. Indeed, as our press core knows I haven't even given them a press briefing yet, so it's only appropriate that it's on foreign territory. I just wanted to give you a couple of thoughts about how I tried to approach the meeting and give you a little sense of what we tried to discuss.

I really do believe as the two biggest actors in the global economy that the United States and the European Union can promote not only economic openness but freedom and values around the world.

From my own experience in the private sector over the past eight years, I certainly saw what was occurring in terms of a private sector-led development of a transatlantic marketplace through investment, and mergers and acquisitions, in addition to trade. Indeed, I was struck when I looked at the numbers that today the trade between the United States and Western Europe is twice as big as it was when I left this about ten years ago, and obviously that's been complemented by investment and other issues as well. Given this deeper economic integration and the fact that our countries are allied in a security context, at least most of them, I think one of the points that Pascal and I both started with was to try and focus on areas of common interest. We talked about the importance of launching a new round of trade talks in the WTO, and some things we might be able to do to enhance the prospects of that; try to help developing countries appreciate the benefits of trade and I mentioned to Pascal that I thought the work that he was doing in past months around the world in trying to draw developing countries to see the benefits of this system would be to our mutual benefit; trying to frame the rules of the economic system; another one that certainly got a lot of attention is the interests in trying to deal with access to medicines in particularly in the context of HIV and aids; and also our ongoing work in dealing with the Chinese accession to the WTO.

We also spoke about how trade liberalization could be an important catalyst for political and economic reform. I spoke a little bit about the legislative agenda that I saw that we will try to be proceeding with including one I thought was of particular interest given recent transatlantic history and that is some liberalization of trade, some preferential access for the Balkans to try to support the process of democratization there. I hope that what we'll be able to do in most of our time and we certainly did that today was to try to emphasize the elements that unite us rather than divide us, and in particular as I mentioned in the developing world context, I complemented the effort that I knew Pascal took on everything but the arms issue, which I think is an important step.

While as all of you know, Pascal and I have worked together before and I believe have a strong mutual respect. We also recognize that we face some very tough issues, not surprisingly today and the time we had was not one where we were going to be cutting deals, but I also think we have a strong sense to try to do the best we can to resolve some of these problems. Some of them have been around for quite a while so they are not going to be



easy to deal with, but to try to see if we can try to over time not only solve these but try to anticipate other problems or opportunities down the road and try to address some urgent issues. In that context, as you know, President Bush announced recently that he was going to be attending the US-EU summit in Göteborg in Sweden, and so we talked about some things that we might be able to start with in some of our own internal staff work to prepare for that summit meeting.

LAMY: Thanks Bob. I've been here for nearly two days now and obviously this morning's meeting was the cornerstone of my contact rebuilding with the Washington trade constituency and I have no doubt Bob is the pilot of this. I spent my time yesterday in Congress on the Hill, because I also know that it is a very important part of his authorizing environment as the Council of Ministers and the European Parliament are on my side. And I'll be meeting a few other officials and ministers this afternoon. I have nothing to contradict what Bob just said to which I agree. I think as he rightly said the main point of our meeting today was not to cut deals here and there, but to have a broad look at our relationship and the way we are going to manage it on both of our sides given the fact that we have authorizing environments to which we have to report. On the multilateral side, I think we agreed on strong support for the WTO Round and of the importance of the US Trade Promotion Authority process in this respect, and I have informed Bob of the sort of message I've been passing yesterday in Congress which is that we now need a clear signal of US involvement in the multilateral trading system and that this trade promotion authority is clearly the right road to proceed now. This does not mean that we don't have to pursue regional or bilateral trade relationships. We are both doing it and we just need both of us our trade policy to walk on two legs, the multilateral one and the bilateral regional one. On the issues in which you are most interested, which is the disputes part, it's not the main part, which we all know. In percentages, it's a very small percentage of the extremely important trade investment and economic relationship which we have, but it is there and we've obviously started with the most urgent one which is bananas.

On this as you know we have in the EU agreed to a new system for the transition between now and the 2006 tariff only system, which we have no doubt is WTO compliant, the interim system we've tried to make WTO compliant. We believe that first-come, first-serve is WTO compliant. There clearly is a different view on the US side and we've agreed and I did this after the conversations I had with my colleague [EU Commissioner for Agriculture] Fischler last week in Brussels that we would take some more time in order to look at how can we solve this dispute before we definitively lock the EU system into the new system, which is the first-come, first-serve. So, we have some time ahead, not much, but some time ahead of us and we'll work hard in trying to find a solution to that, either in adjusting the first-come, first-serve system or in looking at whether country quota system, although I have reticence in principle for that, but we must be ready to look at things which we don't like on each side, on bananas.

As Bob said, we've also spent quite a lot of time in looking outside the box on a number of issues which are problems of this planet, whether it is these developing countries; the contribution of the trade system to developing countries; access to medicines, the problems of China, Russia, Saudi Arabia, other countries joining the WTO, what's our view on that and how can we both contribute to

the positive side of this process. I think we've really succeeded at least in this first conversation to take the broad view which I believe is what we should do if we want the sort of big leverage we have given our importance on the trade scene to the solution of a number of issues. We have to take the broad view, and we have to have both a positive agenda on what we can do together and the more we have a positive agenda, I feel the easier it will be to deal with the inevitable frictions and disputes that we have and that's the spirit in which we've been working. So much for introductory remarks and we're now going to switch to questions.

#### Q & A

Q: Maybe the question is for Mr. Zoellick, the final arrival of the euro at the beginning of next year, will it have any effect on trade and the American economy?

ZOELLICK: I have long believed that the euro was an important economic and political development and I actually believed its greatest important would be in terms of its effect on the transformation of the corporate structure in Europe because I believe it's created a basis for price comparisons not only for consumers but for corporations doing benchmarking and so along with some other trends in asset management, I believe it has contributed to a very healthy restructuring of European corporations which by the way has also contributed to a stronger interest in their position to themselves both transatlantically and globally as world competitors, and to go back to my opening remarks. I recall when I last looked at this I think it was 1999 data the mergers and acquisitions by European companies in the United States were roughly \$250 billion in 1999, the reverse was about \$97 billion. And it's a good example of the transatlantic integration that is really being driven by the private sector. The second point is that one could talk about currencies, but as a trade official I'm not permitted to do so.

Q: As you well mention you are both operating in authorizing environments, and in this particular case it's the US Congress and it's not entirely clear how fast the US Congress will be able to act on negotiating authority if at all this year. What would you like to see, there's a lot of talk in Washington about sending the right signal to our trading partners as the representative of the largest trading partner, what sorts of signals do you believe would foster action on the multilateral agenda and in what time-frame?

LAMY: I think the impression I got yesterday on the Hill was that much of this was still in the cooking, and that's precisely why I went there, because a number of chefs are cooking it and it's a just a good moment to sort of look over their shoulders and if necessary, I mean add some sort of pepper to the sauce. And I've been there with this simple message that I understand a number of concerns exist in Congress about which things should be addressed in the Trade Promotion Authority, and that we on our side share a number of these concerns. So, I don't think there is any divergence here and my whole point yesterday was to try and synergize our own building up efforts to the Round with the US Administration efforts to build up for the Trade Promotion Authority. If there are questions of substance which at some stage come and we of course

think on our side a lot about for instance trade and environment, we are ready to contribute and to make this a positive rather than a negative.

As you probably know, the EU position on trade and environment is rather clear, it's been profiled for some time, social issues and notably core labor standards have to figure in the process of preparation of this Round, the environmental questions and the problem of compatibility between trade rules and environment-protecting rules, are an important part of our position, my feeling is that these questions will play some roles here and if we can be helpful we'll do it.

ZOELLICK: I think I'll take the courageous step of quoting the President's preference that the Trade Promotion Authority be done quickly. I will add this is that I have spent a lot of time on the Hill over the past few weeks with Republicans and Democrats, and I'm pleased with the degree of interest I've discovered on this and I'm also pleased in particular that a number of the Democrats who I spoke to on the Ways and Means Committee both before and afterwards emphasized how they hoped we could make this a bi-partisan effort in some ways they were teasing about the context of taxes, but I know that given their record in the past, that I take that as a sincere offer, and I have said in testimony I am of an open mind in terms of I know the variety of issues and ideas that are being discussed and I think that we will look forward to trying to address some of those to get the broadest possible support to move the Trade Promotion Authority. I will just add one other thought and that is that each country, as Pascal has said, has their own authorizing environment, and Pascal has been very helpful on this in emphasizing as you know that in the past many of the global negotiations started before the United States had this authority. We're trying to press it early because it's a priority of the President and we believe that it will enable us to use his first term most effectively on the trade agenda. There are other countries that are going to have to be able to make difficult decisions. I know that in my past experience of this with the Uruguay Round, there were a few difficult issues on the European side on agriculture, and that will move at its own course, And there are some in Japan as well. So, each country and political system has to face this question as Pascal said of authorizing environment. I'm hopeful that we can do this not only to get our authority to move forward, but as Pascal and I discussed, use this to give some impetus to the global talks with the WTO.

Q: My first question would be for Commissioner Lamy, and the second for Mr. Zoellick, is about bananas. What timeframe are we talking about now? Do you foresee a system implementing a system after 2001, and my question for Mr. Zoellick is what's the reaction to that proposal?

LAMY: I used the words we agreed on our side to give to both of us some more time, some more time is not a lot more time, but it is some more time. And, it's a difficult thing for us, given that we have now this mandated legislation, and that this mandated legislation needs in order to be operational a lot of back office regulations notably for the customs system to operate. So we don't have a lot of time, we don't have many weeks ahead of us, but I think the decision which we've taken in Brussels before this meeting that if there is a chance to solve this problem to get rid of the sanctions and to move to a system which

is WTO compliant, we must run it. There are some risks on both sides. I run some risks in doing this. Bob will probably run some risks in entering into a negotiation of this kind but we both believe we need to run these risks and to take this chance which we agreed with [Commissioner] Fischler we should take. So, we don't have a lot of time, we have some time.

ZOELLICK: As probably all of you know in excruciating detail, this problem has been around for about eight or nine years. I've been in office for four or five weeks and I told Pascal early on that I thought we should do our best to try to resolve this issue. I don't know whether we can do it. I certainly wouldn't put words in Pascal's mouth on this, but I both think we're committed to try to resolve it and in that context I am pleased that he has agreed that, and pleased to try to move with this expeditiously to see if we can address this problem, and it's one that is obviously extremely important in terms of not only the industries involved, but in some confidence in the WTO system, so we'll do our best.

Q: First a question to both of you maybe. Did you discuss the steel industry? And then specifically to Mr. Zoellick. In a hearing earlier this week on the Hill you said that the steel industry might receive some further protection from international competition for a limited amount of time, but would be forced to restructure. So could you elaborate a bit how this restructuring might look like, and how you are really going to make sure that the American steel industry is actually restructuring. If you look at the American steel industry nowadays compared to the European steel industry, there hasn't been much consolidation.

ZOELLICK: If you attended the hearing you would have also heard some members of Congress who would have differed with you on that final statement, so I will let you discuss that with them, but I certainly think that it's fair to say that there has been a considerable shrinking and adjustment in US steel industry already, and if you simply look at the employment figures you see that. Yes, we did discuss steel, and it reflects some of the nature of the dialogue that I think we both want to create. I thought it was important to outline with Pascal some of our early thinking on a number of these topics, and I mentioned that I had seen the articles recently about some of the private sector restructuring taking place in the European context in dealing with some of the capacity issues and I thought that was a healthy sign, and in the US context, what I am looking at with Secretaries O'Neill and Evans is the context of a 201 investigation, which as you probably know is a form of temporary protection while industries restructure. As to the nature of that restructuring what I emphasized in that hearing and what I have mentioned to steel business leaders as well as steel union leaders is that we need to get their strong suggestions and commitments about restructuring and then separately we have a process going on within the Executive branch to examine some of the business issues related to this. They clearly relate to global markets, and one of the reasons that I was pleased to raise this with Pascal, was I think that it's also beneficial for us to get more information and share information about what's happened in the United States and Europe. I hope frankly we can get that with other regions as well, as I'll let Pascal comment on what he believes on that.

LAMY: On this, steel clearly is a spot on my radar screen which is getting bigger and bigger and I served in the Navy and on your radar screen and when a spot is getting bigger and bigger and it's on the collision course you'd better watch it. And that's what we tried to do. It clearly is a looming big problem, which if we don't handle it carefully will connect with the already sort of not 100 percent clear track record on the use of trade defense in WTO, and we all know what the situation is, and so it's a potentially very difficult issue. What we agreed to do is look at the substance before rushing into protection and the inevitable sort of consultation litigation consequences of that. We have to look at the substance. I discussed this on the Hill yesterday.

There is a view on the Hill and not THE view, but A view, that the US steel industry is extremely competitive, and that the problems of its profitability and its low equity capitalization has to do with the nasty rest of the world, and I think you exist and we have to take into account. Now we in Europe, there is a view in Europe, and I'm not saying it's THE view, but there is A view widely shared that we have done a lot of restructuring on the European side, not the least with the recent concentrations and restructuring and more to come, as you probably a number of them have been announced recently, and we've sort of done the job of cleaning our house and that if the others don't do it, then it's we shouldn't be bearing the blame for that. Now, I'm just describing rapidly these two things. I'm not taking any of these views on my own. I don't think Bob would either, but what we can do together is look at the substance; connect the figures; connect industry operators on both sides so that they can discuss that; and liaise with our political constituencies so that the case itself is looked at carefully. We believe that if we do that we will contribute to sort of airing this problem and making it a bit more transparent, notably so that people like you will be able to have your own judgment on what the reality of the situation is.

Q: Question for both gentlemen on the prospects for a new Round. UK Trade Minister Mr. Caborn this week said this week that he thinks the outline of a new agenda should be in place in time for the US-EU summit in late June. Is that a realistic timetable? And if so, what kinds of steps will you be taking to meet that sort of timetable?

ZOELLICK: Since he's an EU minister and that I know the competency rests with the Commission, I will of course defer to Pascal to answer this first.

LAMY: I have no problem with Caborn's idea that we should be there as soon as possible. I probably would be a bit less committal than he has been or is reported as having been on the idea that the Göteborg EU-US summit would agree on the agenda for the Round. And if he said that, which I'm not sure he did, I wouldn't anyhow take this onboard because as you know I frankly do not believe that the agenda of the Round rests in the hands of an EU-US summit, and even if it was the case that we agreed by Göteborg on each and every part of this trade agenda, my advice would be not to put it this way because that's not the way you will convince developing countries that they now have a stake in the system which allows them to be onboard. So, that's for the procedure, and I don't think the procedure is the most important. The most important is substance, which are the items on the agenda, which we

have to address with the US in order to narrow potential or possible differences which may or not and we've got to review this point by point still be there and we've started to do this morning. We've looked at all the headlines of the agenda and we've agreed that our people would together work on this and what the situation I'm trying to create is a situation where there is enough understanding between the European Union and a number of developing countries that this can now move forward, and there is enough understanding between the EU and the US that the system can now move forward, and I've come to the conclusion that this is the best way to proceed. It has more to do with substance than with process, and I think given the sort of strong presidential interest in the new Round, which was expressed on this side, we now have to go back to work and if we're ready by June, if we're ready before June great, if we're ready after June, Qatar is in November.

ZOELLICK: I'll Just add to this as you may know Mike Moore was in town not long ago shortly after I was confirmed and I had a chance to talk with him about his ideas that I know that Pascal has as well. I think we all share an interest of trying to get as far as we can with the built-in agenda focusing on services and agriculture that was left from the Uruguay Round. I think there's been some useful work there that we want to try to continue. I think both of us generally agree that on top of that we should take advantage of various informal channels to try to see what we can add to that and move forward in other areas. I mentioned to Pascal that as I review the US positions I am sincerely interested in looking at the full range of ideas the EU has to see whether we have areas where we can cooperate or at least accommodate or in some way adjust, and in the process then I'll obviously be discussing with my other cabinet colleagues and various groups of interest in the Congress. But this is an opportunity for a new administration to take a fresh look at some of these issues and see where we can move ahead. As I mentioned in my opening remarks I really applaud Pascal's efforts to look at the developing countries to bring them around, in part because they'll be the greatest losers if this doesn't go forward. In effect the EU and the US will be able to take care of ourselves and we'll move ahead with various trade agreements, so whether it's questions of capacity for the developing countries, whether it's particularly sensitive topics, I think this can be a win-win effort for them, and obviously one that I think the US and EU share a general approach to is working with other countries to improve the transparency of the WTO system. WE both understand the critical role that civil society will play in support for trade, moving forward and how we have to make sure that the trading system is conducive and supportive of the democratic values that the United States and the EU are both committed to. And part of that is a transparency and an openness and I was pleased when I talked with actually my Mexican counterpart as many of you President Fox has set a new course for Mexico on this, and so I think there's possibilities to move in that area as well, so at least my hope is that if we move on a number of fronts, built-in agenda, informal working with developing countries, then by some time in the summer we should be in a much better position to determine what sort of final push can make this happen. Just one other thought on this that I can't speak for the EU, but I suspect there's a similar view, the United States and the EU alone can't get this done. We're both committed to try to make it happen, Japan will play a key role, Canada and others will play a key role, developing countries as a whole are obviously seg-

mented in different ways, so I guess the message that I would see and we spent a lot of time talking about the Round in a lot of different dimensions, is that we are both committed to it, and now others are going to have to also move forward so we can make this happen this year.

Q: Two quick follow on questions, then a real question. To Ambassador Zoellick, the quick follow in from your point of view in the banana talks, are both systems of first-come, first-serve and historical allocation on the table in these future talks in an effort to resolve them?

Second, to Commissioner Lamy, in terms of the internal EU decision-making process, at what point do you envision the need to change the 1999 mandate? And on China accession, what can the US and EU do to move the process further. The EU has acted in a broker role, did you discuss the ways to continue that broker role to bridge the gap or is it all up to China?

ZOELLICK: On Chinese accession, the United States and the EU have worked very closely on this issue and I think very effectively over the past years, and I know that my predecessors and Pascal and his predecessors all had an important role in this. Obviously, it's very important to bring China into the WTO. We can only do so if China is willing to take the steps to come into conformity with its bilateral agreements, and we are certainly trying to work with them to do so. I have been personally engaged on the agriculture issue, given its importance along with Secretary Veneman, and we have made some suggestions to our Chinese counterparts to see whether they are indeed willing to move forward. I hear different things from Beijing, and in a way this is our serious effort to see whether they are serious. That's not the only issue, obviously, we have a whole host of services issues, where we work very closely with the European Union on, and will continue to, but I really think that for a new administration we are trying to seize this issue and now it will be up to the Chinese to see whether they want to reach back on it. In terms of the bananas issue, I'll just say this I think this is a problem that needs to be resolved. It's kicked around long enough. I know how difficult it is and I appreciate the spirit in which Pascal has approached this because I know this has certainly been a frustrating issue on both sides of the Atlantic. It has put in the minds of many people on the US who have questioned the WTO system and the reliability of the dispute resolution system, and so at that we and our colleagues need to try to get to work in a relatively expeditious timeframe to see whether we can resolve it, and time will tell.

LAMY: On your question, the legislation we as an executive authority have to implement is the first-come, first-serve legislation. It takes time because we have implementation regulations which are extremely complex, that's the difference between free trade and quotas, which are uniquely complex and which are in the pipe. The new system must come in force on the 1st July. There is a series of non-compressible deadlines starting from July and coming to now, which in the position we had before we discussed this were that our whole process of implementation regulations should have started beginning of March. We agreed with Franz Fischler under our executive authority maneuver to have some time ahead of us in order to come to a possible deal, whether it is possible or not we will see. This we believe is inside our executive authority.

If we had to either adjust the first-come, first-serve system, or reswitch to a country [quota] system, then the thing would have to go to the Council, no doubt about that and we will do it. Of course in due time and this is one of the reasons why we don't have much time.

Q: For Ambassador Zoellick, A WTO arbitration report recently gave July 26 deadline for complying with some sort of repeal on the 1916 anti-dumping act. I was wondering if that was discussed today and if the US is committed to meeting that deadline, and if so what form would that take, would it be an administration bill repealing the law?

ZOELLICK: We did discuss that and a whole host of other issues as I mentioned. We wanted to deal with the Round, deal with some positive bilateral possibilities. We also went through the host of disputes. This is an issue that you probably know also concerns the Commerce Department and we exchanged some views on the subject and we will still have to figure out what to do.

Q: Commissioner Lamy, Ambassador Zoellick just mentioned transatlantic mergers. There is a Dutch company, ASM, that finds itself locked on the Hill in a takeover of an American high-tech company on the grounds of national security. Did you take this matter up or perhaps the wider question of protectionism in the guise of security arguments?

LAMY: The answer to that is yes. This was on our checklist, as it should be when we have problems which are signaled by important operations on both sides. It's a question of implementation of the Exxon-Florio regulation, so we've spotted this. It's on our list. I will follow it up on my side, and Bob will look at this on his side. Basically it's a DOD regulation which to my knowledge the implementation of which is in the hands of the Treasury, so we will look at that. But it has been on our list.

Thank you all for coming.

## 4 > WTO Tidbits

### WTO - New Round ?

07 mar - Mike Moore puts off the decision about launching a new Round until midsummer

However, he did admit that the Ministerial Conference to be held in Qatar need not necessarily depend upon the launch of fresh negotiations. It could be a more conventional event than that. He declared that holding an informal meeting could prove useful, so that ministers could meet without the obligation of delivering statements

07 mar - The Swedish presidency of the European Union wishes to create stronger links between human and environmental rights and WTO rules

Sweden announced that during its Presidency it would promote broad agreement on the liberalization of world trade by including in it environmental and social subjects. However, this announcement seems in contradiction with that of the European Commissioner on External Relations, who last month expressed the opinion that these subjects should remain outside the sphere of the WTO.

Sweden also wants to speed up the liberalization of trade in textile products with Asian and Latin American countries. In this field, bilateral agreements between the EU and 13 countries would boost the economic growth of these countries, while lowering prices of the products concerned in Europe and also helping exporters of European textiles. Sweden added that the removal of EU restrictions would depend on the willingness of the poor countries to remove their own tariff barriers to imports of textile products from the European Union.

28 feb - Bilateral free trade treaties are proliferating at the expense of the US

This is revealed by a recent report of the Business Round Table, which expresses concern and demands that the US government adopt a more aggressive policy.

11% of world exports are covered by US Free Trade Agreements, the figure being 33% for the European Union.

Where bilateral investment treaties are concerned, the United States comes 26th on the world scale, with 43 of these treaties against 909 for the European Union.

Mutual Recognition Agreements to harmonize norms could thus disadvantage American products when and if agreements are unfavourable to them. The new American Trade Representative warns that the US would become more active in promoting bilateral agreements if negotiations for the Free Trade Area of the Americas - still a priority for President Bush - did not make better progress.

The US could thus lose the opportunity to influence the future of multilateral trade. The first necessity is for a national consensus around the policies to be implemented, especially on the social and environmental norms which would need to be included under the influence of trade unions and ecologists



The WTO Tidbits are published in the Courriel d'information, the Newsletter, the Correo Informativo and the Informasjonen, weekly e-newsletters with 35,000 subscribers. These information are gathered by an international volunteer group that are working in analyzing and watching WTO and international trade treaties:

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28 feb - The problems linked to social and environmental norms are at the heart of concern for American trade interests

Rather than imposing sanctions on countries with no policies in these areas, one of the options proposed by the Americans would consist in lowering tariffs on products conforming to such policies. Other options would provide for clarification of the relationship between WTO rules and multilateral agreements on the environment, so as to make sure they do not run counter to each other. And also to strengthen the International Labour Organization (ILO), but without giving support to the idea that the ILO could impose commercial sanctions.

The initiative for the options comes from the National American Manufacturers, the National Foreign Trade Council and the American Council for International Business. But not from the American Chamber of Commerce, which is completely opposed to the inclusion of social and environmental topics in debates on Trade. For its part, the Business Round Table (the lobby of multinational companies) recognizes that globalization requires environmental questions to be taken into account in shaping trade policies, and considers that "to respond to these pressures [of the environmentalists] should be one of the major tasks of both government and the business world in the current year." It remains critical, however, of taking environmental problems directly into account in trade agreements like those concluded in the context of the WTO. In these cases, it says, protection of the environment is liable to be a pretext, the hidden agenda being to prohibit trade; it would be better to promote multilateral environmental agreements [independent of the WTO, like the Montreal Protocol] to ease pressure on the WTO, which should not become a forum for environmental questions.

28 feb - The American pharmaceutical industry : Bush's hidden treasure chest

Among the innumerable pressure groups buzzing round Washington from White House to Congress, none is as powerful and aggressive as the Pharmaceutical Research & Manufacturing Association (PhRMA), which has astronomical financial means and 297 lobbyists - one for every 2 members of Congress! During the recent elections, the PhRMA accorded 70% of its electoral war chest to Republican Party candidates. Now that these occupy the White House and dominate Congress, the PhRMA is well placed to protect its mind-boggling profits.

The origin of these "super-profits" is the proliferation of pharmaceutical discoveries and the parallel world-wide propagation of patents. Profits also depend on the aptitude of the PhRMA to use its political leverage to block any price limitation and all sales of generic medicines. The pharmaceutical industry has notably played an important part in drawing up the TRIPs agreements on intellectual property rights. It exerts increasing pressure on the American government to impose strict observance of the TRIPs, thus preventing several countries from having recourse to generic medicines, which would be far less costly for their populations.

Pharmaceutical firms invoke as justification the very high costs of research into new medicinal products. However, there is no clear link between these costs and the enormous profits of the industry, given that a high proportion of research is carried out with government funds by laboratories like the National Institutes of Health (NIH). Yet this

question has never been clearly presented to the public because of the enormous influence of pharmaceutical bodies on official policies.

One sign of the permeability of the partition between the pharmaceutical industry and the Bush administration is that this latter includes several former directors of pharmaceutical firms. As the democrat representative Sherrod Brown wrote, "The PhRMA doesn't need to lobby: it's already in the White House." It is also very well represented in Congress: for instance the very conservative Orrin Hash, main beneficiary after George Bush of PhRMA favours in the recent elections, is president of the Senate Judiciary Commission, and thus well placed to arbitrate in controversies over patents.

21 feb - The European Commission allocates travelling allowances to 40 NGOs.

The aim is to have these NGOs attend the meetings of the Commission between February and November 2001.

The official objective of these periodical meetings, which have existed since 1998, is to influence the position of the EU in its dealings with the WTO. A series of consultations is being held in Brussels between public interest groups and the Commission, represented by the General Directorates of Agriculture, Trade, the Environment, Health, Consumers' Protection and Development. The beneficiaries of the 40 available places will be respectively NGOs interested in social, developmental and environmental problems, and representatives of trade unions, business groups and agricultural lobbies. The next meetings will be on Investments, Competition, the reform of the WTO and Intellectual property Rights.

21 feb - Asia remains divided on the question of launching a new Round

Malaya, particularly expresses the need to draw up a specific agenda before summoning a new round, considering that there exist too many differences, both between the big developed countries themselves and between these and the developing world. Differences exist on the level of the inclusion or not, in the discussions, of anti-dumping measures, of environmental versus trade concerns, of unilateral actions and of social problems. This opinion resulted from discussions in mid-January between the 10 members of ASEAN, joined by China, Japan and South Korea.

India, whose concern is shared by other developing countries in the APEC, informed Mr Moore that the problem of the implementation of measures which should already be underway, and the actual schedule of the Round, are things which must be hammered out before the round can be launched. India added that non-trade subjects, like social problems, investments, the environment and competition, should be kept out of the agenda of multilateral trade discussions.

India renewed its appeal to the G-15 (which now includes 17 developing countries) to make efforts to reach agreement among themselves, so as to be able effectively to react to the challenges of the WTO and the world trade system. It further affirmed that trade liberalization should mean better access to markets for goods and services from developing countries.

The British International Development Secretary, Clare Short, offered to nearly triple present aid to development,

bringing it to 500 million dollars, if India made progress in reducing poverty within a framework of globalization. Mr Moore and Ms Short solicited the support of India for the launch of a new round.

21 feb - Access of 48 least developed countries to the European market once more put off

Under the programme named "All except arms", the Commission now proposes an extension of the transitional period from 2002 to 2006 for banana imports and from 2006 to 2008 for sugar and rice. Oxfam UK comments that this deferred schedule will mean "an increase in EU exports at dumping prices on the world market, thus contributing to even lower prices for produce from ACP countries", particularly concerned by the measure.

25 jan - Meeting of the Work Group on Relations between Trade and Investments

It is the developed countries that are pushing for the establishment of multilateral rules on DIAs. The developing countries, among them India, Pakistan, Egypt and Malaya are still hostile to the idea. They argue that the numerous bilateral investment treaties already signed give sufficient satisfaction, and that a WTO agreement on DIAs would limit the scope of developing countries for attracting the investments they want. Yet the national investment plans of these countries - especially where the car industry is concerned - are already under fire from the WTO.

25 jan - The ASEAN meeting focuses on regional concerns

A few days after the APEC (Asia-Pacific Economic Cooperation) meeting, which ended with a declaration of total support for the opening of a new round of global multilateral negotiations, the ASEAN meetings had as their main theme the development of their region.

Exemptions from the lowering of customs duties received particular attention. These exemptions aim to help the regional economies respond to the rapid adjustments linked to trade liberalization and to aid their burgeoning industries. Discussions on the possibility of a free trade area being extended to include China, Japan and South Korea (ASEAN + 3) were also thought desirable. Yet the announcement by Ch. Barshefsky that an agreement was to be negotiated with Singapore - an agreement which would include social and environmental clauses - took members of the Congress by surprise. The Singapore ambassador in Washington had been notified of this idea only a very short time prior to the meeting. Some fear that setting up bilateral agreements could prejudice ASEAN plans to set up its own free trade area, while destabilizing the multilateral system.

Since the Seattle muddle, the world has seen increasing numbers of bilateral regional agreements. According to some analyses, this rise of regionalism could counterbalance the slow progress of liberalization at the multilateral level and, where the Asia-Pacific countries are concerned, serve as a counterweight to the admission of China to the WTO, which could cause capital invested in South-East Asia to be re-invested in China, thus endangering the economic stability of the region

12 jan - "No one can make decisions for you"

In making this declaration to members of the WTO in the course of his 2000 Report in early December, Mr Moore was surely affirming what ATTAC has always said?

After a self-congratulatory introduction about the satisfactory functioning of the multilateral trade system, the second part of his speech hinted at various fears for the future, giving the lie to the fine optimism of the first part.

First of all, the "inventory of next March" which the WTO is to carry out is liable to translate into a "raising of barricades".

Another dicey question seems to be "the 400 anti-dumping measures" which have led to 400 inquiries being initiated in the last year (against only 166 in 1995). Can liberalisation give rise to protectionist measures?

Mr Moore worries about another looming danger : it comes from "bi-lateral and multilateral trade agreements", which are multiplying at a huge rate, and which "could be considered as substitutes for multilateral liberalisation". Their initiators do not always look on competition with a favourable eye. In the form of New Year good wishes, Mr Moore confided the fourth challenge facing his organisation : it "must communicate more effectively about the nature and activities [of the WTO] and about the benefits which the multilateral trade system should transmit to those from whom, in the end, we hold our mandate: the people." For "We shouldn't allow anti-globalisation protesters to win by default because they have made their arguments known to the public at large".

Finally, the result of the year's preparation for a new Conference, due to launch a new round, seems "slender" (to use an adjective much employed by Mr Moore this year). Indeed, "important differences subsist between national positions, especially concerning subjects which are to be discussed in pending negotiations". Of course, for his part, he will do all he can to reach the necessary political decisions for launching a new round. But, not wanting to take sole responsibility for a new failure, he hastens to add that "only the governments of WTO member states are in a position to take these decisions".

That's why he concludes: "No one can decide for you". Which is what we've been saying all along...

12 jan - Observer status for intergovernmental organisations appears to be a problem for the WTO.

The main disagreements have concerned the ILO (International Labour Organisation); many developing countries refusing to give it observer status because of the sensitive nature of social subjects at the WTO. The Convention on Biodiversity provokes identical reactions from the USA, which are not a party to the Convention and continue to oppose its having observer status on the TRIPs Council. Needless to say, the Arab League encounters fierce opposition from Israel in obtaining this status...

12 jan - Malayan NGOs call on their government to oppose a new round of trade talks.

On the anniversary of the Seattle Conference, 14 Malayan NGOs, including youth, ecology and consumer organisations, called on their government to "resist and reject pressure for a new Round" of multilateral trade talks. "The Government should, on the contrary, insist, in common

with other developing countries, that the WTO concentrate its efforts on reform and revision of existing agreements and of its anti-democratic decision-making procedures".

#### 04 jan - Qatar makes another offer

Qatar once more shows interest in hosting the next WTO Ministerial Conference, declaring that it can now provide 4.400 hotel rooms (as against 2.800 in its previous offer). This announcement comes at a time when WTO representatives are looking at possible sites in Chile, which has made its interest publicly known. The extra 1.600 rooms Qatar now proposes have been made available in luxury villas and on cruiser launches. They would house the thousands of delegates, journalists and NGO representatives expected for the Conference. Seattle had housed more than 7.000 accredited persons. Qatar has also indicated that a room in the Exhibition Centre at Doha would be provided for 4 to 500 NGO representatives. According to some sources, the Conference would probably be held before the Ramadan fast, which begins end November 2001. Chile, for its part, will give an answer by December 14 at the latest after estimating the financial feasibility of hosting the Conference

### GATS

#### 05 jan - GATS

The Council on Trade and Services (CTS) met in early December to discuss a wide agenda going from safeguard measures to exemptions from the Most Favoured Nation principle. Little progress has been noted. Concerning safeguard measures based on the principle of non-discrimination, the possibility of extending the deadline for negotiations came under debate. Certain States (among them Thailand) affirm that, in the absence of safeguards to protect the providers of services on the national level, negative consequences like the Asiatic financial crisis could have incalculable consequences for entire national economies. A 15-month delay was accorded until March 2002.

At the outset of the Most Favoured Nation concept (GATS Art. II), the clauses of exemption enabled any country to exclude from it, for a period of ten years, certain specific national policies. Countries availing themselves of these exemptions were under the obligation to review conditions of access every 5 years. The Council is studying a proposal to revise these clauses of exemption in 2004.

As to GATS Art. XIX, the Council has been mandated to undertake negotiations in pursuit of the liberalisation of trade in services. The Special Session of the Council, created to carry through negotiations in this area, met on December 5-6. The second phase of negotiations should start next March. The WTO Secretariat has received the green light for putting in writing all the proposals - oral or written - received to date, including one from the 24 developing countries. This last proposal is deemed important because it underlines the determination of this group of developing countries to get the negotiations moving. It reaffirms a great number of themes already included in the GATS, especially the need for States to follow a flexible course of commitments, taking account of their stage of development and respecting their national objectives.

In a proposal originating from the EU, the Committee established that member States should retain the right to

protect their national policy aims, recognizing explicitly the right to lay down rules and introduce new regulations. This proposal stresses that negotiations on services give no brief for negotiating privatisations and deregulation. Finally, it states that it is still too soon to set a deadline for negotiations.

The Indian proposal makes note of the fact that liberalisation is still very slow in the field of temporary cross-border movements, for professional reasons, of people from developing countries engaged in providing services. Border restrictions (visas and work permits) still hold up the movements of independent operators. Similarly, the Mutual Recognition Agreements (MRAs), by which countries recognize the qualifications and professional diplomas of foreign operators, and which are confined to the developed countries, act as technical obstacles barring access to markets for operators from developing countries.

The GATS Council meetings schedule sets the next meeting at 19-30 March 2001. A day-long symposium on tourism is to be held on February 27-28 2001.

### TRIPS

#### 05 jan - Intellectual property rights (TRIPs)

The ad hoc Committee met in Geneva from 27/11 to 1/12. The agenda included several bones of contention, such as the revision of Art.27.3 on the protection of inventions of plant varieties, and informal consultation on the interface between TRIPs and the UN Convention on Biodiversity. Different aspects of the problem of original trade names were also touched on: the application of Art.23.4 (the establishment of a multilateral system of notification and registration). and Art.24.2 (revision of the application of provisions aiming to give a higher degree of protection to original trade names).

Brazil has continued to fight for TRIP to be extended to subjects not directly connected with intellectual property. It proposed amendments to Art.27.3 which would allow States to impose conditions for filing patents whenever necessary. These amendments would encourage States to give (a) the origin of genetic material; (b) the traditional knowledge employed to obtain the material; (c) assurance that the resultant profits were fairly distributed; and (d) proof that the person filing a patent has received the agreement of the government of the country or the local communities where the material originated.

Singapore defended flexibility in this area. While recognizing the need to share out profits and to prove that the patent issued corresponds to a real invention, this country insists on the legitimacy of protecting patents so as to reward research and development. Positions remain unchanged concerning the relation between TRIPs and the Biodiversity Convention. Developing countries like Brazil and India consider that there can be conflict between the two agreements and prefer that they follow the TRIPs agreements. Other states think there is no necessary conflict between them and want problems of biodiversity left out of the field of application of the TRIPs. For Australia, problems exist only in the field of application and not in the provisions themselves.

On the subject of original trade names, the EU for the first time pronounced in favour of extending their protection, joining Switzerland, India, Sri Lanka and Turkey. The US indicated that a higher degree of protection would be es-



## > WTO Tidbits

essentially a political measure and would have no legal meaning. According to them, Art.23 was a way of allowing the EU to join the consensus of the Uruguay Round. They proposed to scrap Art.23 rather than extend its application.

Should complaints regarding non-violation (when a measure nullifies or reduces the profit expected by other states) be allowed under the TRIPs? The US thinks so, whereas Canada, the EU and the developing countries think not.

■ 4

## 5 > The Free Trade Area of the Americas



The Free Trade Area of the Americas (FTAA), currently being negotiated by 34 countries of the Americas, is intended by its architects to be the most far-reaching trade agreement in history. Although it is based on the model of the North American Free Trade Agreement (NAFTA), it goes far beyond NAFTA in its scope and power. The FTAA, as it now stands, would introduce into the Western Hemisphere all the disciplines of the proposed services agreement of the World Trade Organization (WTO) - the General Agreement on Trade in Services (GATS) - with the powers of the failed Multilateral Agreement on Investment (MAI), to create a new trade powerhouse with sweeping new authority over every aspect of life in Canada and the Americas. The GATS, now being negotiated in Geneva, is mandated to liberalize the global trade in services, including all public programs, and gradually phase out all government "barriers" to international competition in the services sector. The Trade Negotiations Committee of the FTAA, led by Canada in the crucial formative months when the first draft was written, is proposing a similar, even expanded, services agreement in the hemispheric pact. It is also proposing to retain, and perhaps expand, the "investor-state" provisions of NAFTA, which give corporations unprecedented rights to pursue their trade interests through legally binding trade tribunals. Combining these two powers into one agreement will give unequalled new rights to the transnational corporations of the hemisphere to compete for and even challenge every publicly funded service of its governments, including health care, education, social security, culture and environmental protection.

**By Maude Barlow**

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Original document: <http://attac.org/fra/list/doc/barlow.htm>

### What Is the FTAA?

The Free Trade Area of the Americas is the name given to the process of expanding the North American Free Trade Agreement (NAFTA) to all the other countries of the Western Hemisphere except Cuba. With a population of 800 million and a combined GDP of \$11 trillion (US), the FTAA would be the largest free trade zone in the world. If reports coming from the Negotiating Groups working on the key elements of the deal are correct, the FTAA will become the most far-reaching free trade agreement in the world, with a scope that will reach into every area of life for the citizens of the Americas.

The FTAA was launched by the leaders of 34 countries of North, Central and South America and the Caribbean at the December 1994 Summit of the Americas in Miami, Florida. At that meeting, then President Bill Clinton pledged to fulfil former President George Bush's dream of a free-trade agreement stretching from Anchorage to Tierra del Fuego, linking the economies of the hemisphere as well as deepening social and political integration among the countries based on the same free-market model as NAFTA.

However, little real progress was made until the next Summit of the Americas, this one held in Santiago, Chile, in April 1998, at which time the countries set up a Trade Negotiations Committee (TNC), consisting of the vice ministers of trade from each country.

With support from a Tripartite Committee made up of the Inter-American Development Bank, the Organization of American States and the UN Economic Commission for Latin America and the Caribbean (ECLAC), nine Working Groups were established to deal with the major areas of negotiations: services; investment; government procurement; market access (covering tariffs, non-tariff measures, customs procedures, rules of origin, standards and technical barriers to trade); agriculture; intellectual property rights; subsidies, anti-dumping and countervailing duties; competition policy; and dispute settlement.

As well, three non-negotiating special committees were established to deal with the issues of smaller economies, civil society and electronic commerce. These committees and working groups have been meeting with increasing frequency throughout 1999 and 2000 and the early part of 2001, regularly bringing over 900 trade negotiators and mountains of material to Miami where most of the meetings take place.

From the beginning, the big corporations and their associations and lobby groups have been an integral part of the process. In the U.S., a variety of corporate committees advise the American negotiators and, under the Trade Advisory Committee system, over 500 corporate representatives have security clearance and access to FTAA negotiating documents. At the November 1999 ministerial meeting in Toronto, the Ministers of Trade of the Americas agreed to implement 20 "business facilitation measures" within the year in order to speed up customs integration.

One of the tasks of the negotiators is to compare and consolidate the key components of a variety of trade and investment agreements throughout the area, including:

- \* NAFTA - a free trade and investment agreement between Canada, the U.S. and Mexico
- \* MERCOSUR - a common market of the Southern Cone countries of Brazil, Argentina, Paraguay and Uruguay
- \* the Andean Pact

\* Caricom - the Caribbean Community As well, a number of Bilateral Investment Treaties (BITS) have been signed between individual countries, based on the "investor-state" model of NAFTA, whereby corporations can directly sue governments for alleged property rights violations without first involving their own governments.

There are some differences among these pacts and agreements; MERCOSUR's goal, for example, is to become a common market, whereas NAFTA has not attempted to establish common labour standards among its three members and the U.S. clearly would not tolerate the free movement of labour from Mexico. And MERCOSUR does contain some social provisions and programs for displaced workers that are absent from NAFTA.

But the similarities between these treaties far outweigh the differences. Both NAFTA and MERCOSUR include measures to deregulate foreign investment and grant national treatment (non-discriminatory) rights to foreign investors. Both prohibit "performance requirements" whereby foreign investment must enhance the local economy and support local workers.

And both are based on a model of trade and investment liberalization that locks in the Structural Adjustment Programs (SAPs) introduced earlier into Latin America by the World Bank and the International Monetary Fund (IMF). Under these programs, most developing countries were forced to

- \* abandon domestic industry in favour of transnational corporate interests
- \* turn their best agricultural lands over to export crops to pay off their national debt
- \* curtail public spending on social programs and abandon universal health care, education and social security programs
- \* deregulate their electricity, transportation, energy and natural resources sectors
- \* remove regulatory impediments to foreign investment

Tensions of leadership exist in the negotiations. Since 1995, the U.S. Administration has been unsuccessful in obtaining renewal for its "fast-track" legislation, which basically authorizes Congress to adopt free trade agreements in full. This has given Brazil, the undisputed economic leader in Latin America, the opportunity to challenge U.S. supremacy in the negotiations and bid to lead the process of economic integration of the Americas.

As well, the encroachment of the business community of the European Union into Latin America, especially in banking, telecommunications, automobiles and consumer products, has served as a catalyst for the United States to reassert its leadership in the hemisphere. The EU has been intensifying its presence in the region, negotiating individual free trade and investment agreements with countries such as Chile, Mexico and Brazil. The U.S. is counting on the successful completion of the FTAA to maintain the dominance of its corporate sector in the region.

Further pressure has been placed on obtaining a success-

ful FTAA in the light of the defeat of the Multilateral Agreement on Investment (MAI) at the first ministerial meeting of the WTO in 1996 and at the Organization for Economic Cooperation and Development (OECD) in 1998, and the shut-down of the "Millennium Round" meeting of the WTO in Seattle in December 1999. In fact, WTO officials are finding it difficult to even secure a venue for a new Ministerial meeting. As well, APEC - the Asia Pacific Economic Cooperation Forum - is faltering and few have expectations that it will make the hoped-for breakthrough to become a free trade and investment zone.

Many trade observers and pundits have identified the FTAA as the natural heir of these failed projects and are fearful that another such failure could put the whole concept of these massive free trade agreements on the back burner for years. In fact, in a January 2000 statement, Associate United States Trade Representative Peter Allegeier said that the FTAA has taken on new importance after the fiasco in Seattle and may well aspire to go further than the WTO, freed of the need to play the deals off against one another.

The next ministerial-level Summit of the Americas is to be held in Quebec City in April 2001. At this Summit, leaders will be presented with a heavily bracketed first draft for a Free Trade Agreement of the Americas, out of which they will start to fashion a full text. The agreement was originally intended to be completed for implementation by 2005, but some countries, including Chile and the United States, are pushing to move the ratification date up to 2003, depending on how far negotiators get at the Quebec City Summit meeting.

#### What's in the FTAA?

Essentially, the planned FTAA is an expansion of the existing NAFTA, both in terms of including many new countries in the pact and in terms of extending free trade's reach into new sectors, based on tough new WTO provisions. In a statement that accompanied the original 1994 Miami Summit, the Ministers made a series of recommendations in the form of a Declaration. In it, they said that agreement had been reached on several key "Objectives and Principles," including:

- \* economic integration of the hemisphere
- \* promotion of the integration of capital markets
- \* consistency with the World Trade Organization (WTO)
- \* elimination of barriers and non-tariff barriers to trade
- \* elimination of agricultural export subsidies
- \* elimination of barriers to foreign investment
- \* a legal framework to protect investors and their investments
- \* enhanced government procurement measures
- \* new negotiations on the inclusion of services

Since then, information about just what is contained in the FTAA working documents has been sparse. However, from meetings with the United States Trade Representative's office, members of Public Citizen's Global Trade Watch report that the U.S. is intent on liberalizing services, including health care, education, environmental services and water services. As well, the FTAA will include provisions on investment similar to those in the defeated

Multilateral Agreement on Investment and Chapter 11 of NAFTA, whereby corporations will be able to sue governments directly for lost profit resulting from the passage of laws designed to protect health and safety, working conditions or environmental standards.

The "Miami Group" - the U.S., Canada, Argentina and Chile - are also intent on forcing all countries of the Americas to accept biotechnology and genetically modified foods (GMOs), thereby promoting the interests of biotech companies such as Cargill, Monsanto and Archer Daniels Midland over the survival needs of small farmers, peasants and communities throughout Latin America. Finally, reports Public Citizen, the U.S. is trying to expand NAFTA's corporate protectionism rules on patents to the hemisphere, rules that give a company with a patent in one country the monopoly marketing rights to the item throughout the region, thereby robbing local people of access to traditional medicines.

As well, reports from the negotiators themselves have inadvertently found their way into the public domain. An October 7, 1999 confidential report from the Negotiating Group on Services was recently leaked; it contains detailed plans for the services provisions of the FTAA. Sherri M. Stephenson, Deputy Director for Trade with the Organization of American States, prepared a paper for a March, 2000 trade conference in Dallas, Texas, in which she reported on the mandate and progress of the nine Working Groups by sector. FTAA Web sites and Canadian government documents contain important information as well.

Put together, these reports expose a plan to create the most far-reaching trade agreement ever negotiated. The combination of a whole new services agreement in the FTAA combined with the existing (and perhaps even extended) NAFTA investment provisions represent a whole new threat to every aspect of life for Canadians. This powerful combination will give transnational corporations of the hemisphere important new rights, even in the supposedly protected areas of health care, social security, education, environmental protection services, water delivery, culture, natural resource protection and all government services - federal, provincial and municipal.

## Mandates of the Nine Negotiating Groups

### 1. Services

The mandate of the Negotiating Group on Services is massive: "To establish disciplines to progressively liberalize trade in services, so as to permit the achievement of a hemispheric free trade area under conditions of certainty and transparency" and to develop a framework "incorporating comprehensive rights and obligations in services." It is a new agreement and meant to be compatible with the General Agreement on Trade in Services (GATS) - the WTO services negotiations now in progress.

The General Agreement on Trade in Services was established in 1994, at the conclusion of the "Uruguay Round" of the GATT and was one of the trade agreements adopted for inclusion when the WTO was formed in 1995. Negotiations were to begin five years later with the view of "progressively raising the level of liberalization." These talks got under way as scheduled in February 2000, chaired by Canada's Ambassador to the WTO (and former International Trade Minister) Sergio Marchi. The common goal of Europe, the U.S. and Canada is to reach a general

agreement by December 2002.

It is called a "multilateral framework agreement," which means that its broad commission was defined at its inception and then, through permanent negotiations, new sectors and rules are to be added.

Essentially, the GATS is mandated to restrict government actions in regards to services through a set of legally binding constraints backed up by WTO-enforced trade sanctions. Its most fundamental purpose is to constrain all levels of government in their delivery of services and to facilitate access to government contracts by transnational corporations in a multitude of areas, including health care, hospital care, home care, dental care, child care, elder care, education (primary, secondary and post-secondary), museums, libraries, law, social assistance, architecture, energy, water services, environmental protection services, real estate, insurance, tourism, postal services, transportation, publishing, broadcasting and many others.

The FTAA negotiating services agreement is even more sweeping than the GATS. As well as incorporating "comprehensive rights and obligations," it will apply to "all measures [defined by Canada as 'laws, rules, and other official regulatory acts'] affecting trade in services taken by governmental authorities at all levels of government." As well, it is intended to apply to "all measures affecting trade in services taken by non-governmental institutions at all levels of government when acting under powers conferred to them by government authorities."

The services agreement, says the Negotiating Group, should have "universal coverage of all service sectors." Governments are granted the right to "regulate" these services, but only in ways compatible with the "disciplines established in the context of the FTAA agreement." The framework of the services agreement has six elements of consensus.

These include:

- \* sectoral coverage ("universal coverage of all service sectors")
- \* most-favoured-nation treatment (access granted to investors/corporations from any one FTAA country must be granted to investors/corporations from all FTAA countries)
- \* national treatment (investors/corporations from all FTAA countries must be treated the same as domestic and local service providers)
- \* market access ("additional disciplines to address measures that restrict the ability of service providers to access markets")
- \* transparency (disciplines "making publicly available all relevant measures which may include among others, new laws, regulations, administrative guidelines, and international agreements adopted at all levels of government that affect trade in services")
- \* denial of benefits ("FTAA members should be able to deny the benefits of the services agreement to a service supplier that does not meet such criteria." Criteria could include "ownership, control, residency, and substantial business activities.")

This list represents sweeping new authorities of a trade agreement to overrule government regulation and grants huge new powers to service corporations under an expanded FTAA. For instance, if national treatment rights in services are included in the FTAA, all public services at all levels of government would have to be opened up for

competition from foreign for-profit service corporations. This agreement would disallow any government or sub-national government from preferential funding to domestic service providers in services as diverse as health care, child care, education, municipal services, libraries, culture, and sewer and water services.

The combination of this sweeping services agreement with the proposed extension of the investment rules grants unprecedented new powers to the FTAA and the private interests it promotes. For the first time in any international trade agreement, transnational service corporations will gain competitive rights to the full range of government service provisions and will have the right to sue any government that resists for financial compensation. That the real goal of this services/investment juggernaut is to reduce or destroy the ability of the governments of the hemisphere to provide publicly funded services (considered "monopolies" in the world of international trade) is seen clearly in the words of OAS Deputy Trade Director Stephenson:

"Since services do not face trade barriers in the form of border tariffs or taxes, market access is restricted through national regulations. Thus the liberalization of trade in services implies modifications of national laws and regulations, which make these negotiations more difficult and more sensitive for governments."

The FTAA Negotiating Group on Services has requested the organization of national inventories of measures affecting (i.e., inhibiting) the free trade in services.

## 2. Investment

The mandate of the Negotiating Group on Investment is to establish "a fair and transparent legal framework to promote investment through the creation of a stable and predictable environment that protects the investor, his investment and related flows, without creating obstacles to investments from outside the hemisphere." It builds on the investment chapter of NAFTA, Chapter 11, which is, as legal trade expert Barry Appleton explains, "the very heart and soul of NAFTA."

NAFTA was the first international trade agreement in the world to allow a private interest, usually a corporation or an industry sector, to bypass its own government and, although it is not a signatory to the agreement, directly challenge the laws, policies and practices of another NAFTA government if these laws, policies and practices impinge on the established "rights" of the corporation in question. Chapter 11 gives the corporation the right to sue for compensation for lost current and future profit from government actions, no matter how legal these actions may be or for what purpose they have been taken.

Chapter 11 was successfully used by Virginia-based Ethyl Corp. to force the Canadian government to reverse its legislation banning the cross-border sale of its product, MMT, an additive to gasoline that has been banned in many countries and that Prime Minister Jean Chretien once called a "dangerous neurotoxin." S.D. Myers, an American PCB waste-disposal company, also successfully used a Chapter 11 threat to force Canada to reverse its ban on PCB exports - a ban Canada undertook in compliance with the Basel Convention banning the transborder movement of hazardous waste - and successfully sued the Canadian government for \$50 million (US) in damages for business it lost while the short-lived ban was in place.

Sun Belt Water Inc. of Santa Barbara, California, is suing

the Canadian government for \$14 billion because British Columbia banned the export of bulk water in 1993, thereby closing any opportunities for the company to get into the water-export business in that province.

The Negotiating Group on Investment has made substantial progress in including in the FTAA the same or enhanced investor-state rights that exist currently in NAFTA, including:

- \* basic definitions of investment and investor
- \* scope of application (very broad)
- \* national treatment (whereby no country can discriminate on behalf of its domestic sector)
- \* most-favoured-nation treatment (whereby access to investors from one FTAA country must be given to investors of all FTAA countries)
- \* expropriation and compensation for losses (whereby an "investor" or corporation can claim financial compensation for lost business and profit from the creation or implementation of regulation, including environmental laws, from the government of another NAFTA signatory)
- \* key personnel (the ability of corporations to move their professionals and technicians across borders outside of the normal immigration process)
- \* performance requirements (limits on or the elimination of a country's right to place performance requirements on foreign investment)
- \* dispute settlement (whereby a panel of appointed trade bureaucrats can override government legislation or force the government in question to pay compensation in order to maintain the legislation)

The inclusion of such sweeping investment provisions is a way of introducing a form of the Multilateral Agreement on Investment, a proposed OECD investment treaty that was abandoned in the face of massive civil society resistance, into the FTAA. Combined with proposed strengthened provisions on market access, agriculture and intellectual property rights and sweeping new proposed provisions on services and government procurement, these investment provisions will grant new powers to the corporations of the hemisphere. Such powers will allow them to challenge all government regulations and activities, and undermine the ability of all governments to provide social security and health protection to their citizens.

## 3. Government Procurement

The mandate of the Negotiating Group on Government is very clear: "To expand access to the government procurement markets of the FTAA countries" within a new agreement. This will be done by achieving a "normative framework that ensures openness and transparency of government procurement processes," ensuring "non-discrimination in government procurement" and "impartial and fair review for the resolution of procurement complaints."

This FTAA mandate on government procurement appears to go further than that of the FTAA's WTO counterpart, the WTO Agreement on Government Procurement, whose aim is to prevent governments from fostering domestic economic development when purchasing goods. Measures targeted by the WTO include favouring local or national suppliers, setting domestic content standards or imposing community investment rules. For now, the WTO does

not enforce market access or national treatment rules on the purchase of direct government goods and services.

However, the FTAA Negotiating Group appears to go much further and open up all government contracts, services and goods to competitive bidding from other FTAA countries' corporations. The Negotiating Group has requested an inventory of the relevant international classification systems and a compilation of each government's procurement statistics.

#### 4. Market Access

The mandate of the Negotiating Group on Market Access is to select a methodology and timetable for the elimination of all remaining tariffs and "non-tariff" barriers and agree upon the pace of tariff reduction. Tariffs are border taxes; under both NAFTA and the WTO, they have largely been eliminated in Canada and the Americas.

Non-tariff barriers are all the rules, policies and practices of governments, other than tariffs, that can impact on trade. Non-tariff barriers can potentially include everything governments do, including delivering services and protecting the health and safety of their citizens. Their inclusion in the mandate of this Negotiating Group expands the scope of NAFTA market access provisions considerably.

These provisions are expanded in another important way. Under NAFTA, market access is subject to national treatment. This means that imported goods coming into a country from another NAFTA country must be treated "no less favourably" than domestic goods. But national treatment in NAFTA did not extend to government procurement or to domestic subsidies and was applied to services only in a limited way. This protected most government programs from national treatment challenge.

Under the proposed FTAA rules, however, it appears that services will be covered more fully by the market access rules. As well, government procurement restrictions that allow governments to protect local providers will be more open to challenge from an expanded mandate of the government procurement provisions. And the ability of foreign for-profit service corporations to use the national treatment provision to challenge government services monopolies will be greatly expanded under a proposed new agreement on services.

Further, the Negotiating Group on Market Access has also been charged with identifying and eliminating any unnecessary "technical barriers to trade" in line with the WTO.

The WTO Technical Barriers to Trade (TBT) Agreement is an international regime to harmonize environmental and other standards which effectively creates a ceiling but no floor for such regulation. Under its rules, a nation must be prepared to prove, if challenged, that its environmental and safety standards are both "necessary" and the "least trade restrictive" way to achieve the desired conservation goals, food safety or health standard. This means that a country bears the burden of proving a negative - that no other measure consistent with the WTO is reasonably available to protect environmental concerns. The WTO TBT Agreement also sets out an onerous procedural code for establishing new laws and regulations so arduous that it is very difficult for any nation to meet.

While there are provisions in NAFTA on technical standards, they are not as stringent as those found in the WTO TBT Agreement. NAFTA does require that technical barriers not constitute "an unnecessary obstacle to trade."

" However, NAFTA acknowledges the right of all parties to maintain standards and regulatory measures that result in a higher level of protection than would be achieved by measures based on international standards as long as they apply these standards in a way that does not discriminate between national and domestic goods. By choosing the stronger provisions of the WTO, FTAA negotiators have introduced tougher restrictions on the governments of the Americas and their right to regulate in the best interests of their citizens.

#### 5. Agriculture

The mandate of the Negotiating Group on Agriculture is to eliminate agricultural export subsidies affecting trade in the hemisphere, based on the WTO's Agreement on Agriculture (AOA); "discipline" other trade-distorting agricultural practices; and ensure that "sanitary and phytosanitary measures" are not used as a disguised restriction to trade, using the WTO agreement as a model.

The FTAA's AOA agriculture provisions set rules on the trade in food and restrict domestic agriculture policy, down to the level of support for farmers, the ability to maintain emergency food stocks, set food safety rules and ensure food supply.

The WTO Agreement on the Application of Sanitary and Phytosanitary Standards (SPS) sets constraints on government policies relating to food safety and animal and plant health, from pesticides and biological contaminants to food inspection, product labelling and genetically engineered foods. As with TBTs, the WTO SPS Agreement goes further than NAFTA.

The NAFTA provisions do not in themselves impose any specific standards; they set out a general approach to ensure that SPS measures are used for genuine scientific reasons, not as disguised barriers to trade. Member countries are still allowed to take SPS measures to protect human, animal or plant life and health at the level they consider "appropriate." While NAFTA "encourages" the parties to harmonize their measures based on relevant international standards, the WTO seeks to remove decisions regarding health, food and safety from national governments and delegate them to international standard-setting bodies such as the Codex Alimentarius, an elite club of scientists located in Geneva, largely controlled by the big food and agribusiness corporations.

The WTO SPS Agreement has been used to defeat the use of the "precautionary principle," which it held not to be a justifiable basis upon which to establish regulatory controls. (The precautionary principle allows regulatory action when there is risk of harm, even if there remains scientific uncertainty about the extent and nature of the potential impacts of a product or practice.) By choosing the WTO SPS Agreement over the NAFTA SPS provisions, the drafters of the FTAA are moving to totally remove the right of individual governments of the Americas to set standards in the crucial areas of health, food safety and the environment.

#### 6. Intellectual Property Rights

The mandate of the Negotiating Group on Intellectual Property Rights is "to reduce distortions in trade in the Hemisphere and promote and ensure adequate and effective protection to intellectual property rights."

Intellectual property refers to types of intangible property

such as patents which generally grant their holders an exclusive power. Trade rules on intellectual property extend this exclusive right, often held by corporations, to the other signatory countries to the agreement. As of January 1, 2000, all FTAA countries are now subject to the rules of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

This agreement sets enforceable global rules on patents, copyrights and trademark. It has gone far beyond its initial scope of protecting original inventions or cultural products and now permits the practice of patenting plants and animal forms as well as seeds. It promotes the private rights of corporations over local communities and their genetic heritage and traditional medicines. It allows transnational pharmaceutical corporations to keep drug prices high; recently TRIPS has been invoked to stop developing countries from providing generic, cheaper drugs to AIDS patients in the Third World.

The FTAA Negotiating Group on Intellectual Property has speculated that it might go beyond the WTO TRIPS Agreement in certain unspecified areas. Certainly, through the additional powers of Chapter 11, the investor-state clause, intellectual property rights in the FTAA will have the additional enforcement powers of cash fines and harsh penalties.

### 7. Subsidies, Anti-dumping and Countervailing Duties

The mandate of the Negotiating Group on Subsidies, Anti-dumping and Countervailing Duties is to "examine ways to deepen existing disciplines provided in the WTO Agreement on Subsidies and Countervailing Measures and . . . to achieve a common understanding with a view to improving, where possible, the rules and procedures regarding the operation and application of trade remedy laws in order not to create unjustified barriers to trade in the Hemisphere."

The WTO Agreement sets limits on what governments may and may not subsidize. It has been strongly criticized by many developing countries as favouring northern countries and large agribusiness concerns. As well, Article XXI of the GATT exempts activities in the military sphere, including massive government research and export subsidies, in order to protect governments' "essential security interests." Because the security exemption shields the war industry from WTO challenge, it spurs government spending on the military and any industry related to national security. Since the majority of global military spending is concentrated in the economies of a few northern countries, the WTO security exemption gives these countries an enormous competitive edge over other, smaller countries.

### 8. Competition Policy

The mandate of the Negotiating Group on Competition Policy is to "guarantee that the benefits of the FTAA liberalization process not be undermined by anti-competitive business practices." The Negotiating Group has agreed to "advance toward the establishment of juridical and institutional coverage at the national, sub-regional or regional level, that proscribes the carrying out of anti-competitive business practices" and "to develop mechanisms that facilitate and promote the development of competition policy and guarantee the enforcement of regulations on free competition among and within the countries of the Hemisphere."

Basically, the goal of competition policy, relatively new to trade negotiations, is to reduce or eliminate practices that appear to protect domestic monopolies. Canada is proposing that each country adopt measures and "take appropriate action" to "proscribe anti-competitive business conduct."

Ostensibly, the aim is to promote competition, but the result, particularly for developing countries, is that they are often forced to break up their existing monopolies, only to find that they have given foreign-based transnational corporations golden opportunities to come in and pick off the smaller domestic companies and establish a whole new monopoly protected by WTO agreements such as the TRIPS and the Financial Services Agreement, both of which protect global mega-mergers.

### 9. Dispute Settlement

The mandate of the Negotiating Group on Dispute Settlement is "to establish a fair, transparent and effective mechanism for dispute settlement among FTAA countries" and to "design ways to facilitate and promote the use of arbitration and other alternative dispute settlement mechanisms, to solve private trade controversies in the framework of the FTAA."

It is yet to be seen whether the FTAA dispute settlement mechanism will mirror the NAFTA model or the WTO model. However, the Negotiating Group's mandate includes "taking into account inter alia the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes." If this is the case, then the FTAA dispute settlement system between governments is more likely to resemble the more punitive system of the WTO than the NAFTA.

Under NAFTA, a country that loses a case before a dispute resolution panel must either accept the ruling and offer "appropriate compensation" to the other government or risk retaliation of "equivalent benefits." NAFTA does not create a common set of trade laws for the member countries. NAFTA dispute panels rule on the basis of the domestic trade laws of the importing country.

The role of a WTO dispute panel, however, is to decide whether a country's disputed practice or policy is a "barrier to trade," and to overturn the offending practice or policy if it is deemed to be. Under the WTO Dispute Settlement Body, a country, often acting on behalf of its own corporate interests, can challenge the actual laws, policies and programs of another country and strike down its domestic laws. A losing country has three choices: change its law to conform to the WTO ruling; pay permanent cash compensation to the winning country; or face harsh, permanent trade sanctions from the winning country.

Dozens of nation-state health, food safety and environmental laws have been struck down through this WTO process. Needless to say, the rulings affect poor countries differently than wealthy ones. Sanctions against a country that depends on one or two export crops for survival can be devastating. It is little surprise that the majority of WTO challenges have come from wealthy countries. In fact, the United States initiated almost half of the 117 WTO challenges launched between 1995 and 2000.

Of course, the recourse to private "investors" (i.e., corporations) in NAFTA's Chapter 11 does not exist in the WTO. It would appear that the FTAA negotiators will choose to retain the powers of private dispute settlements contained in the investor-to-state provisions of NAFTA, while opting for the more stringent conditions of the WTO

to settle state-to-state disputes. This would be in keeping with the other proposals for the FTAA; whichever existing (or even proposed) model has the strongest "disciplines" is the model of choice for the FTAA.

### **The three non-negotiating committees have also been meeting.**

The Committee on Small Economies has "recognized the asymmetries" between the different countries of the Americas and the need to come up with a plan "in order to create the opportunities for the full participation of the smaller economies and to increase their level of development." However, the plan appears vague, consisting mostly of providing "a database of technical assistance needs of smaller economies." Nowhere in this committee's mandate is there an acknowledgement of the enormous disparity between the wealthy and the poor of the hemisphere, both between and within countries.

The Committee on Civil Society acknowledges that "civil society has emerged as a new actor in the trade dialogue." Although its mandate is "to receive inputs from civil society, to analyze them and to present the range of views to the FTAA Trade Ministers," the purpose of any dialogue is "to maintain transparency in the negotiating process and to conduct the negotiations in such a manner as to broaden public understanding and support for the FTAA." It appears that the Committee's real role is not to listen, but to keep up the appearance of real dialogue. In fact, says Stephenson, the benefit of this Committee's work "may diffuse pressures related to issues of labour and the environment."

The Joint Government-Private Sector Committee of Experts on Electronic Commerce, on the other hand, is a very important committee whose subject has all the hallmarks of an emerging sector. Electronic commerce has exploded in recent years. United States E-commerce sales were close to \$30 billion (US) in 2000, up 75 percent in one year, and may account for one quarter of world trade by 2005, the year the FTAA is to be ratified. The U. S. has identified a goal of adopting worldwide rules for a global non-regulatory, market-oriented E-commerce regime. Many billions of dollars every year could be lost if taxes are removed from this kind of trade, leaving governments with even more reduced funding bases for government programs.

The committee, heavily dominated by the most powerful corporate producers of Internet hardware, software and communications equipment, such as Microsoft and AT&T, has already carried out extensive analyses of E-commerce issues and is exchanging views with other organizations such as the WTO and the OECD. It has mandated several key studies on all aspects of trade and E-commerce, and is clearly a growing powerhouse within the FTAA family.

Finally, the FTAA Trade Negotiations Committee has identified three areas for "early harvest agreements" - on forestry, energy and fisheries - which it hopes will be agreed upon at the April 2001 Ministerial Summit in Quebec City. This means that, in these areas, agreement could be reached before the 2005 deadline for full FTAA ratification to remove tariffs from these environmentally sensitive resources, with no opportunity for public input.

[...]

## **Conclusion**

If the terms and recommendations of the FTAA Negotiating Groups are the substantive basis for a hemisphere trade pact, the whole process is totally unacceptable and the citizens of the Americas must work to defeat it entirely. In spite of government protestations that they have negotiated these new trade and investment rules in full collaboration with their citizens, the proposed FTAA reflects none of the concerns voiced by civil society and contains all of the provisions considered most egregious by environmentalists, human rights and social justice groups, farmers, indigenous peoples, artists, workers and many others. Every single social program, environmental regulation and natural resource is at risk under the proposed FTAA. As it appears to stand now, there is no possible collaboration to make this trade pact acceptable.

That is not to say that the citizens of the Americas are opposed to rules governing the trade and economic links between our countries. In the wake of the failed MAI, Canadian civil society groups held a national inquiry called *Confronting Globalization and Reclaiming Democracy*, in which hundreds of groups participated. The results show clearly that, based on a different set of fundamental assumptions, such as the United Nations Universal Declaration on Human Rights and strong environmental rules, Canadian citizens would be prepared to enter into a process to develop closer ties with other countries in the Americas and around the world. However, it cannot start with the assumptions and goals of this FTAA.

This process must begin by revisiting current international trade agreements like the WTO and NAFTA; it is time for a new international trading system based on the foundations of democracy, sustainability, diversity and development, and much good work is being done on these alternatives. As a beginning, Chapter 11 must be removed from NAFTA; water must be exempted; the energy provisions rewritten with an emphasis on conservation; and culture must be truly exempted.

Most important, the world of international trade can no longer be the exclusive domain of sheltered elites, trade bureaucrats and corporate power brokers. When they understand what is at stake in this hemispheric negotiation, the peoples of the Americas will mobilize to defeat it. That is the fate it deserves.



## 6 > Globalization, FTAA Becomes an Issue on Campus

Every spring, thousands of American college students head south for a week of sun and surf. But while Fort Lauderdale and Padre Island are still the most popular destinations, the spring break hot spot this year is actually north of the border - in Quebec City. Hundreds of students from the Northeastern US are expected to make the trek to the walled city in April as part of a major protest against the Free Trade Area of the Americas agreement. Thousands more will participate in related events - from teach ins to rallies - on their own campuses.

A trade agreement may seem like an unlikely issue to stir student passions. The North American Free Trade Agreement, after all, was passed in 1994 with little if any student opposition. But in the ensuing years, a student-led movement against sweatshops has transformed politics on campus. Thanks to the anti-sweatshop activists, campuses across the country are seeing more activism than they've seen since the anti-apartheid days of the 1980's.

The new activism, says political economist Mark Brenner, is increasingly economic in focus. "The intersections between the economy and other issues have become much more important for student activism." Brenner, a researcher at the University of Massachusetts, argues that once students begin focusing on international problems like sweatshops, it's only a matter of time before trade policy emerges as a target. "This is an area where you can really see the direct links between injustices and neo-liberal economic policies."

The anti-sweatshop movement hit university campuses in 1997, after several students who had interned with UNITE, the union representing textile and apparel workers, took their labor experience back to Duke University in North Carolina. While their cause was global, the students picked a very local target: clothing - hats, sweatshirts, and more - bearing their university's logo. They then pressured Duke to pass a code of conduct requiring that manufacturers of the school's apparel respect the right of workers to unionize. They succeeded, and within months, students on other campuses were waging similar battles.

The students have since formed a national organization - United Students Against Sweatshops - and now claim 175 chapters at schools across the country. In addition to the activist group, the students have also teamed up with labor and human rights activists to form the Workers' Rights Consortium, a monitoring organization set up to investigate worker complaints. The WRC recently made headlines by revealing reports of worker abuse at the Kuk-Dong garment factory in Atlixco, Mexico. Responding to allegations of low wages, forced overtime and physical abuse at the plant, the group sent a delegation to the plant, which makes clothing for US universities and counts Nike as its biggest customer. "The student anti-sweatshop movement is proving that global solidarity is not just a lovely idea," says journalist Liza Featherstone, who is writing a book about the movement. "Corporations like Nike know that and they're very scared."

At the beginning of April, anti-sweatshop activists and student labor activists plan to join forces, participating in a national day of action in support of workers' rights and against corporate greed. The date, April 4, marks the 33rd anniversary of the assassination of Dr. Martin Luther King, Jr. Meanwhile, students up and down the East Coast have begun to gear up for 'Operation Quebec City.' From Harvard to the University of Connecticut, they're holding teach-ins, civil disobedience trainings, and workshops on economic inequality.

By Jennifer C. Berkshire

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If the anti-sweatshop movement has made it harder for corporations like Nike to conduct business as usual, it has also encouraged students to think about the economic context in which sweatshops thrive. In the past, an interest in questions economic by American university students was limited to two fairly small and distinct groups: the anti-capitalists and the fervently pro-business right wing camp. Students today are still polarized, says Dave Monahan, a senior at Tufts University outside of Boston, but the nature of the division has changed. "There are plenty of good corporate-friendly consumers out there among today's youth. But there are a lot of younger people who are discontented as well."

Monahan thinks that a significant segment of his generation has been pushed into the left by 'over-marketing,' the seemingly endless stream of brand-names, logos, and product images that is aimed even at very small children. "It leaves kids very little space to breathe, to try to form their identities. They are told that no matter what they think they are, there is a lifestyle package out there already waiting." Most young activists, concludes Monahan, are only loosely ideological. "They tend to know only that there is a lot wrong that nobody is doing anything about, and the ones who seem to be in charge are huge multinational corporations."

For thousands of students and young activists, that wariness, distrust, even hostility towards corporations crystallized in Seattle a year and a half ago. Suddenly, the enemy had a name - several, in fact: the WTO, the IMF, the World Bank, free trade and corporate-driven globalization. The activists' critique isn't perfect; they tend to blame corporations for everything from environmental devastation to police brutality, exempting the state from any responsibility. Still, their message - that corporations have too much power over our lives, our labor and our world - has proved irresistible to a growing movement of young people.

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The students' biggest concern isn't being sprayed with tear gas, though, but whether they'll be able to get across the border at all. Rumors have been rife for months that border police plan to turn back globalization activists. So the students have a back-up plan: they'll gather at so-called 'convergence centers' in Maine, Vermont and New York State to protest the closing of the border. Besides, they say, keeping them out just proves their point: free trade has more to do with eliminating borders for capital than for people.

But whether they succeed in physically crossing the border or not, the students have already accomplished a great deal. In just a few years, these activists have mana-

ged to put companies like Nike on the defensive about working conditions in their factories. They've learned how to 'talk trade,' educating themselves on the inner workings of international financial institutions. Many even credit them with re-energizing the American labor movement.

As important as students are to the anti-corporate globalization movement, though, activist Kitty Giannini cautions against overstating their role, or indeed that of any of the particular forces that make up the whole. "There is something different about the movement that is taking shape right now," she says. "It is not just a youth movement or a labor movement, it is a global movement, fighting against the extreme injustices caused by total corporate domination." Giannini plans to be part of that global movement when she travels to Quebec City in April. She hopes that you'll be there too.

## 7 > The FTAA & the AIDS Crisis in the Global South

ACT-UP and the Health GAP (Global Access Project) Coalition have recently begun a campaign to defeat the FTAA. Our mission is to end the global AIDS pandemic, while the FTAA's mission is to make it worse. If it is put into effect, the FTAA will stop the growing movement by poor countries to manufacture cheap AIDS drugs, to treat the 30 million people with AIDS in the global south.

Unfortunately, because the FTAA threatens so many human rights on so many issues, many anti-globalization activists are not yet aware of the FTAA's grave implications for people with AIDS worldwide. So we'd like to provide all anti-FTAA activists, speakers, roadshows and organizers with information about this issue--- in hopes that our movement's opposition to the FTAA will address it's massive threat to the 30 million people living and dying of AIDS right now in the third world.

Put simply, the FTAA will kill people with AIDS in Brazil--- immediately. But far worse, it may push back the cause of treating AIDS in the third world by decades. And the misery and death this would cause are simply not measurable. Here's a brief summary of the situation.

The New York Times said it with chilling honesty this Sunday; "Someday we may look back on 2001 with nostalgia, for a time when AIDS was merely a global health catastrophe." AIDS is hitting the third world in a way not seen since the Black Death killed a quarter of Europe. AIDS is not just a health crisis in some parts of the world; it's causing the wholesale collapse of Africa. More than 20% of people in many sub-Saharan African nations have the virus; for young people in South Africa, the rates are higher than 50%. Ten, twenty years down the road, this disease will be having effects the likes of which we cannot even comprehend now. The world has never yet seen a continent virtually die because it's people are poor. We will.

And that is why they're dying--- they're poor. AIDS is a manageable disease for people in the First World and the rich; triple-cocktail drug therapy has caused AIDS death rates to plummet in places where people have access to them. But the corporations that make those medications charge between 10,000 and 15,000 dollars a year per person. America can afford to make that available to it's people. No third world nation can. This results in a situation where 95% of people with AIDS worldwide have no access to medicine. 30 million people are dying and it's getting worse.

But the pills actually cost pennies to produce. Any developing country could manufacture these drugs and treat AIDS. But pharmaceutical corporations--- the most profitable industry in the world--- depend on their iron-clad patent laws to make billions of dollars in profit. And to protect their power and wealth, the corporations use the American government to force third world nations to not make generic versions of these drugs. It's a simple equation. Because the US forces global trade policies to protect corporate patent rights, 30 million poor people are dying.



As you already know, the governments of the western hemisphere and their corporate bosses are signing our names to the Free Trade Agreement of the Americas as we speak. This secret treaty's being made to destroy activist victories, privatize public services, and gut public safeguards; to roll back everything that 500 years of resistance has won. Our world and our lives are on the auction block. We understand this and that's why we're going to stop them. And people with AIDS and their allies are going to be on the front lines.

**By Act-Up Philadelphia**

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So people in the global south and north have started fighting back. American AIDS advocates have brought pressure to bear on their government and rich corporations, while a small number of third world countries have begun defying the pharmaceutical industry and manufacturing the needed medications. These countries---India, Thailand, Brazil, and South Africa ---have said a big, risky "fuck you" to the richest industry on earth; because they must. And Brazil is leading the way.

Brazilian civil society forced their government to implement a health plan that does what no other country does-- ensure every human being with AIDS that they will get the treatment they need. In just a few years their comprehensive program has cut AIDS deaths there in half, and caused infection numbers there to be a mere fraction of what analysts were predicting for 2001. A New York Times headline recently ran- "The world's AIDS crisis is solvable- Look at Brazil". Brazil has done more than just provided treatment for their people; they have started a move in the third world towards dealing with the AIDS crisis. And they have done it by ignoring corporations' patents and placing human need over corporate greed. This scares the hell out of greedy pharmaceutical corporations.

Brazil's system works. It is the system the world needs. And Brazil has offered to teach any third world country how to set up their own generic systems. In May at a generic AIDS drug conference in Burkina Faso, they may begin doing that. The tide is turning towards life for 30 million infected poor people, and the corporations are desperate to stop it.

The pharmaceutical corporations are bringing massive pressure to bear on the Brazilian government. Today, February 1, their lackeys in the United States government are formally denouncing Brazil's free AIDS drug program at a WTO meeting in Geneva. And their plan to destroy Brazil's program is to create new, more powerful and pro-corporate intellectual property laws in the upcoming Free Trade Agreement of the Americas.

If the US succeeds in placing stronger, pro-corporate intellectual property laws in the FTAA (called TRIPS-plus), Brazil's generics system will be dealt a death blow. The FTAA's corporate patent protection policies will force Brazil's generic drug program to stop manufacturing essential medications, extend corporate patent length and attack the generic drug system through the backdoor with a variety of crippling regulations. This spells disaster for people with AIDS in Brazil, but the larger picture is even more grim. The possibility of treating AIDS in the third world that Brazil offers will be gone--- and with it, a golden, practical opportunity for treating AIDS worldwide.

The FTAA has large-scale ramifications for 30 million people with AIDS in the third world that are simply deadly. Let's name the problem: Rich corporations are using the FTAA to kill millions, to ensure their profits continue.

This will not stand. People with AIDS and their allies, from Brazil to the US, are fighting this agreement. And we will win. ACT-UP and AIDS advocates worldwide are resisting

the FTAA, specifically on the grounds that TRIPS-plus intellectual property provisions are unacceptable and deadly.

In the light of this deadly threat, we hope this information will help folks raise the AIDS disaster issue as part of their FTAA activism; right now, the movement isn't talking much about the suffering and genocide corporate greed and globalization are causing through the AIDS crisis in the developing world. But the issue's gotta be on the table. 30 million people living with AIDS in the global south have their lives on the line here.

We plan to be in the US Trade Representatives face, we plan to be in Quebec City, and we plan to be everywhere it takes to defeat this death sentence for people with AIDS in the global south. We invite everyone who fights globalization and corporate power, and everyone who places human need above corporate greed, to join our demand and work together to defeat the FTAA.

We're specifically hoping that all anti-globalization activists will put the AIDS issue among the forefront of our movement's opposition. 30 million people with AIDS in the third world should not be thought of a side-issue or footnote. We've come too far for that. AIDS and the global south are central to the suffering globalization causes; so they need to be central to our resistance as well.

Please feel free to contact us, with questions, comments, or requests for more information. We have a movement again. Let's use it to defend our world and our lives from corporate power. Let's put AIDS on the agenda. Let's defeat the FTAA and everything else the corporations and their lackeys try to impose on us from above.

Silence is death. Resistance is life.

NO FTAA! NO TRIPS-PLUS, EVER!

Sincerely, ACT-UP Philadelphia