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# Competing Visions for the Hemisphere

*The Official FTAA Draft  
versus  
Alternatives for the Americas*

— January 2002 —

# INTRODUCTION

This document contrasts two competing visions for the future of the hemisphere. The left column describes the main elements of the draft Free Trade Area of the Americas (FTAA). It covers the nine official FTAA negotiating groups as well as four important areas that have been ignored by the negotiators: labor, environment, human rights, and gender. Although the draft of the official agreement, released on July 3, 2001, is almost entirely bracketed (indicating areas where there is not yet official consensus), the general thrust of the negotiations is clear. Despite mounting opposition, our governments are pursuing an expansion of the dominant free market approach to globalization that elevates the interests of large corporations above those of society as a whole.

In the right column, the pamphlet offers a contrasting vision put forth by the Hemispheric Social Alliance. The HSA is a coalition of labor unions and networks of peasant, indigenous, women's and other citizens groups from across the Americas committed to advancing an alternative to corporate globalization that supports human rights, democracy, and environmental sustainability. The HSA has been engaged in a multi-year process to develop a detailed set of recommendations for an alternative to the FTAA entitled "Alternatives for the Americas." This document is used as the basis for dialogue and continues to evolve as more input is gathered from across the Americas.

This pamphlet draws heavily from the current version of "Alternatives for the Americas" (Discussion Draft #3) as well as analyses of the FTAA draft by HSA members. It does not attempt to offer a complete list of all of the proposals from either the official FTAA or the HSA alternative, but rather highlights key points that draw out the stark contrast between these competing visions. Full versions of either of the HSA documents are available in Spanish and English at: [www.asc-hsa.org](http://www.asc-hsa.org)

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# INVESTMENT

*The official purpose of this negotiating group is to create a stable and predictable environment that protects international investors. The FTAA draft reveals that the negotiators' blueprint is NAFTA's controversial investment chapter. Under NAFTA, investors have filed dozens of suits demanding damages for government actions that allegedly diminish the value of their investment. For example, a U.S. corporation successfully sued the Mexican government after a municipality refused, on environmental grounds, to allow the firm to construct a hazardous waste facility. The threat of such lawsuits is particularly disturbing for countries seeking to strengthen social and environmental protections.*

FTAA	Alternatives for the Americas
<ul style="list-style-type: none"> <li>◆ as in NAFTA, the FTAA draft would give foreign investors special rights to sue governments through unaccountable arbitration panels that meet in secret.</li> </ul>	<ul style="list-style-type: none"> <li>◆ disputes would be handled by courts in the host country where citizens affected by decisions can participate. Only after national procedures are exhausted could a foreign investor file a complaint with an international tribunal.</li> </ul>
<ul style="list-style-type: none"> <li>◆ defines "expropriation" extremely broadly, to include both direct and indirect expropriation and measures tantamount to expropriation. This would allow foreign investors to demand compensation for any government acts, including public interest laws, that diminish their potential profits.</li> </ul>	<ul style="list-style-type: none"> <li>◆ would not allow foreign investors to sue over public interest laws. If a government <u>directly</u> expropriated a foreign investor's assets, compensation would be determined by national law and considering the amount of wealth taken out of the country during the duration of the investment.</li> </ul>
<ul style="list-style-type: none"> <li>◆ would place no obligations on investors to behave in socially responsible ways.</li> </ul>	<ul style="list-style-type: none"> <li>◆ would grant citizen groups and all levels of government the right to sue investors for violations of the agreement.</li> </ul>
<ul style="list-style-type: none"> <li>◆ would ban controls on capital flows.</li> </ul>	<ul style="list-style-type: none"> <li>◆ would establish an international tax on foreign exchange transactions to slow down currency speculation and generate a social and economic development fund to be administered by a UN agency in consultation with civil society. On the national level, authorities would have the ability to regulate flows of "hot" money into and out of their countries and to channel investment into productive activities.</li> </ul>
<ul style="list-style-type: none"> <li>◆ would prohibit "performance requirements" on foreign investments.</li> </ul>	<ul style="list-style-type: none"> <li>◆ governments would have the power to impose performance requirements on investors to help build an adequate domestic macroeconomy, transfer adequate technology and support social goals, such as job creation, protecting labor rights and environmental standards.</li> </ul>
<ul style="list-style-type: none"> <li>◆ would require treatment for foreign investors that is at least as favorable as for domestic investors ("national treatment") and investors from other FTAA countries ("most-favored nation treatment").</li> </ul>	<ul style="list-style-type: none"> <li>◆ would recognize inequalities between countries by encouraging concessions by the more powerful partners and allow governments the ability to promote strategic sectors.</li> </ul>
<ul style="list-style-type: none"> <li>◆ no provisions for debt reduction.</li> </ul>	<ul style="list-style-type: none"> <li>◆ would immediately cancel bilateral and multilateral debts of low-income countries (Bolivia, Guyana, Honduras, Nicaragua, Haiti, Jamaica and Peru).</li> </ul>

- ◆ would call for each country to conduct an audit into the origin and legitimacy of its external debt. (Illegitimate debts include those that cannot be serviced without placing a burden on impoverished people, those contracted for fraudulent purposes or non-beneficial projects, and those which grew after Northern countries unilaterally raised interest rates.)
- ◆ a neutral international arbitration panel or bankruptcy court would be established under the United Nations to work out arrangements for debt cancellation. Any such tribunal established under the auspices of the IMF would be unacceptable, as the IMF is itself a creditor.

## LABOR

*Officials have refused to create a negotiating group on labor. Trade and investment liberalization allow corporations to move their production facilities, capital, and products more freely across borders. For workers, this means that employers gain increased power to drive down labor costs by pitting workers against each other. Meanwhile, governments competing for foreign investment face pressure to look the other way when corporations violate basic worker rights. To protect labor rights in a meaningful way would require changing the whole orientation of the agreement rather than just including a labor clause.*

### FTAA

- ◆ the only relevant provision in the draft text is a provision in the investment chapter that urges countries to "strive to ensure" that domestic labor standards are not relaxed in order to attract investment. Because the provision is non-binding, it is basically meaningless

### Alternatives for the Americas

- ◆ countries would be required to commit to respecting basic internationally recognized worker rights.
- ◆ the ILO would monitor compliance.
- ◆ unions or other NGOs could file complaints regarding violations.
- ◆ the ILO would investigate and, if necessary, provide assistance to help the country comply.
- ◆ only if this stage is unsuccessful, an enforcement mechanism of trade sanctions would be applied.
- ◆ if the perpetrator is a specific company, sanctions would be targeted at the company.
- ◆ only if a government were found to be an active and repeated accomplice in the violation of rights would more generalized sanctions apply to all exports from a particular country.
- ◆ would create mechanisms to address adjustment needs, including compensatory financing, skills training, infrastructure development, and incentives for job creation.

## ENVIRONMENT

*Trade and investment liberalization policies ignore the environmental costs of economic activities, thereby encouraging more intense energy use, over-exploitation of natural resources and damage to biodiversity. Efforts to promote sustainable development are subject to being challenged as barriers to trade. There is no official negotiating group on environment, but several areas of the FTAA draft have serious environmental implications.*

FTAA	Alternatives for the Americas
◆ does not clarify whether international environmental agreements would take precedence over trade rules.	◆ provisions in environmental accords would take precedence over trade and investment rules.
◆ as in NAFTA and the WTO, countries are required to meet certain scientific burdens of proof in setting their standards and to show that laws and regulations are "necessary."	◆ countries would be encouraged to base environmental regulations on the precautionary principle (i.e., when in doubt, take the most cautious course of action).
◆ in the investment chapter, there is a non-binding and therefore meaningless provision that urges countries to "strive to ensure" that domestic environmental standards are not relaxed in order to attract investment.	◆ foreign companies would be held to the highest environmental standards, and obliged to share technologies that preserve the environment.
◆ ignores the environmental costs that are likely to occur due to increased forestry, mining, transport, fossil fuel extraction, fishing and other environmentally harmful activities.	◆ would subordinate trade and investment agreements to laws and policies on conservation of biodiversity and forests, eliminate subsidies for fossil-fuel energy and logging, create incentives for soil and natural resource conservation, and declare a moratorium on mining exploration in ecologically and culturally significant areas.
◆ governments could refuse to grant patents for environmental reasons, but only if commercial use of the inventions would cause "serious damage" to nature or the environment.	◆ would ban patents on lifeforms and the knowledge associated with them. Would protect collective rights of local communities in conservation, breeding and cultivation of biodiversity.
◆ would ban export taxes and export price floors, which can be used to conserve non-renewable resources	◆ countries would have the right to regulate companies and investors to ensure compliance with sustainable development objectives.

## HUMAN RIGHTS

*According to international law, the primary obligation of governments is to respect and ensure the rights of all persons, as defined by international conventions. And yet governments continue to either ignore these commitments or treat them separately from economic matters. As a result, the current approach to trade liberalization has exacerbated the marginalization of broad sectors of the hemisphere's population. The FTAA process continues the trend by not including an official negotiating group on human rights.*

**FTAA**

**Alternatives for the Americas**

<ul style="list-style-type: none"> <li>◆ references the agricultural trade provisions in the WTO. The new WTO round seeks to substantially reduce agricultural subsidies.</li> </ul>	<ul style="list-style-type: none"> <li>◆ if subsidies are necessary, they should be targeted to support small and medium-sized farmers and fishers. Subsidies should not be based simply on the amount of land owned, since this only encourages concentration of land ownership.</li> </ul>
<ul style="list-style-type: none"> <li>◆ would require countries to use international or subregional sanitary and phytosanitary standards in order to make them compatible with those of other FTAA countries. A stricter standard would be allowed only if there is scientific justification.</li> </ul>	<ul style="list-style-type: none"> <li>◆ sanitary and phytosanitary standards would be developed through public consultation, to ensure high quality and safety without driving smaller producers out of business by imposing standards that unfairly favor large industry or chemical-intensive agriculture. Would support organic producers, the study of the impact of transgenetic products on health and biodiversity, and labeling of these products.</li> </ul>

## GOVERNMENT PROCUREMENT

*The official purpose of this negotiating group is to increase opportunities for foreign investors to profit from government procurement markets throughout the hemisphere. This approach would reduce the power of governments to use purchasing and public works contracts as instruments for promoting social or environmental goals. Instead, contracts backed by taxpayer money would be subjected to narrow free market criteria.*

FTAA	Alternatives for the Americas
<ul style="list-style-type: none"> <li>◆ would prevent governments from giving preferences to local firms in granting contracts.</li> </ul>	<ul style="list-style-type: none"> <li>◆ countries would have the right to give domestic firms priority over foreign suppliers if it is in the interest of national social or economic goals. However, steps would be taken to prevent an excessive burden on public resources, such as requiring suppliers to offer bids within a certain percentage of competing foreign bids of similar quality.</li> </ul>
<ul style="list-style-type: none"> <li>◆ would ban policies that discriminate against any particular FTAA country in the purchase of goods or services (e.g., the anti-apartheid sanctions against South Africa in the 1980s).</li> </ul>	<ul style="list-style-type: none"> <li>◆ would allow governments to address concerns about human rights and environmental protection in procurement policies.</li> </ul>
<ul style="list-style-type: none"> <li>◆ would ban governments from setting qualifications other than price and quality and consider other kinds of criteria "unnecessary barriers to trade." Thus, even if the qualifications are not discriminatory, they can be subject to challenge as an unfair barrier to trade.</li> </ul>	<ul style="list-style-type: none"> <li>◆ criteria for competition would not be limited to price and quality, but could also include the types of technology to be used, number of jobs created and wages paid, and support for small and medium businesses.</li> </ul>
<ul style="list-style-type: none"> <li>◆ as in other trade agreements, the draft contains proposals to exempt particularly sensitive public services such as law enforcement and national security.</li> </ul>	<ul style="list-style-type: none"> <li>◆ includes proposals that recommend a longer list of services that should be reserved by the state.</li> </ul>

## MARKET ACCESS

*The official purpose of this group is to establish rules for progressively eliminating tariffs, non-tariff barriers, and other measures that restrict trade. The guiding principle is that of "national treatment," which means that governments are required to treat foreign investors, investments, and products at least as favorably as their national counterparts. Promoters claim that national treatment is a guarantee of non-discrimination and fairness. However, equal treatment among unequal parties is likely to exacerbate inequalities, both between and within the nations of the hemisphere.*

FTAA	Alternatives for the Americas
♦ would eliminate all tariffs over 10 years.	♦ producers and society in general would agree on a transparent and participatory process for establishing a timetable and choosing products to be subject to lower tariffs.
♦ offers no assistance to help with adjustment.	♦ trade and investment rules should be accompanied by industrial policies and technical assistance to ensure that national industries become competitive during the transition.
♦ would require national treatment and most favored nation treatment in granting market access, ignoring the fact that the hemisphere is not an even playing field.	♦ would address inequalities by encouraging special, differential and preferential treatment, not only for poorer countries, but also for small and medium-sized businesses and farmers.
♦ would prohibit technical regulations that are "more trade-restrictive than necessary," opening the door for challenges to environmental and other public interest regulations.	♦ countries would be encouraged to base environmental regulations on the precautionary principle.
♦ calls for elimination of non-tariff barriers, such as quotas, import licensing, and voluntary export restraints, but so far negotiations have focused on eliminating tariffs.	♦ would seek to eliminate non-tariff barriers and only allow them when the purpose is to support legitimate social and environmental goals.

## DISPUTE SETTLEMENT

*The purpose of this group is to establish a supra-national mechanism for settling disputes over alleged violations of FTAA rules. The FTAA draft proposal is similar to the NAFTA and WTO dispute settlement mechanisms in that it would exclude civil society from the process and address only trade, finance, and investment issues, with no possibility for handling disputes related to social or environmental issues or for penalizing corporate criminals. Our proposal would give privilege to national mechanisms and guarantee public participation.*

FTAA	Alternatives for the Americas
♦ disputes would go directly to supra-national mechanisms.	♦ only after national mechanisms are exhausted would there be recourse to supra-national mechanisms.
♦ only governments and foreign investors (in the case of disputes over investment rules) would have the right to initiate the dispute settlement process. Civil society groups would have no right to participate in any way.	♦ would allow civil society participation at all levels.

◆ complaints could only be filed regarding commercial disputes. (This is even a step backwards from NAFTA, which includes a mechanism for addressing violations of labor and environmental laws.)	◆ would establish an effective system for strengthening compliance with social standards. The process would emphasize incentives for compliance, including technical and financial assistance to the host government, with the goal that enforcement action would rarely be necessary.
◆ only governments could be the target of complaints.	◆ private employers, including multinational corporations, would be the primary focus of enforcement, while government violators could also be held liable.
◆ as under the WTO, disputes would be resolved in secret meetings by panels of technical experts.	◆ the process would be public and transparent and all stakeholders would have the right to participate. At least part of the tribunal would be composed of experts in the area of the rights in dispute.

## SERVICES

*The official purpose is to progressively liberalize trade in services (everything from financial services, telecommunications, and tourism to health care and education). This means opening up local service markets to foreign businesses and restricting or prohibiting governmental policies that interfere with the market. The emphasis on services within the WTO, NAFTA and now the FTAA has raised concerns that trade rules will accelerate and lock in World Bank and IMF-promoted privatization policies that have often yielded profits for owners but reduced access to and quality of social services for citizens, especially the poor.*

FTAA	Alternatives for the Americas
◆ would increase market access for foreign service providers in all sectors by requiring governments to grant them national and most-favored nation treatment. (Draft contains two competing proposals to allow smaller economies to claim exemptions, but negotiations on these recommendations are likely to be contentious.)	◆ would permit countries to liberalize their services in accordance with their national development priorities and to keep public control over essential services.
◆ on social services, such as education and health care, it would rely on the GATS exemption, which only applies when a service is supplied "neither on a commercial basis, nor in competition with one or more service suppliers." These conditions are extremely hard to meet, since almost no government service is provided as an exclusive monopoly.	◆ would require that countries guarantee the right to access to affordable basic services and prohibit liberalization that would restrict this access.
◆ would prohibit limits on the number of private education, health care, prison, water supply or other companies that can operate in a given state or community.	◆ would allow countries flexibility to protect local businesses that are vital to the national economy.
◆ includes proposals for self-regulation that focus on ensuring that regulations are not unnecessary barriers to trade and are aimed at using the market to achieve regulatory objectives.	◆ would require that governments develop strong regulatory capacity, focused on ensuring consumer protection and universal access to services, prior to any privatization.

# INTELLECTUAL PROPERTY RIGHTS

*The official purpose is to ensure protection of intellectual property rights (ownership rights and legal protections on ideas, artistic creations, technological innovations and marketing tools). The WTO's agreement on Trade-Related Intellectual Property Rights (TRIPS), which has become the standard, is criticized for being biased in favor of protecting and compensating corporations and against the interests of society at large. Of particular concern are TRIPS rules that give corporations the right to patent organic materials and monopolies on life-saving medicines.*

<b>FTAA</b>	<b>Alternatives for the Americas</b>
<ul style="list-style-type: none"> <li>◆ contains a proposal to adopt the intellectual property rights rules of the WTO (TRIPS).</li> </ul>	<ul style="list-style-type: none"> <li>◆ would assert the primacy of international agreements on human rights, human health, food security and biodiversity over TRIPS and other trade agreements.</li> </ul>
<ul style="list-style-type: none"> <li>◆ contains conflicting proposals on the right of governments to compel pharmaceutical companies to grant compulsory licenses to local firms to produce generic versions of patented medicines. One proposal would force generic firms to duplicate expensive tests and trials to demonstrate product safety. Another would allow compulsory licensing, but only where the patent holder does not produce the drug locally.</li> </ul>	<ul style="list-style-type: none"> <li>◆ governments would have the right to use compulsory licensing and other measures to guarantee access to essential drugs.</li> </ul>
<ul style="list-style-type: none"> <li>◆ one proposal would allow countries to ban patents on plants and animals, but the majority do not.</li> </ul>	<ul style="list-style-type: none"> <li>◆ would ban patents on all life forms, including plants and animals, microorganisms, and biological and genetic material and processes, including that derived from the human body.</li> </ul>
<ul style="list-style-type: none"> <li>◆ several proposals would restrict the rights of farmers to use seeds saved from plants.</li> </ul>	<ul style="list-style-type: none"> <li>◆ would support farmers' rights to save, use and sell farm-saved seed and the patent-free exchange of germplasm held in the public domain.</li> </ul>
<ul style="list-style-type: none"> <li>◆ some proposals support the protection of indigenous knowledge and communities, but they fail to assert the right of indigenous people to refuse to allow commodification of their collective knowledge.</li> </ul>	<ul style="list-style-type: none"> <li>◆ collective rights to community property would take precedence over intellectual property rules and traditional black and indigenous communities would have full autonomy in decisions over their traditional habitats, according to their cultural systems and traditional rights.</li> </ul>

## COMPETITION POLICY

*The official purpose of this group is to prevent anti-competitive business practices that are detrimental to consumers or pose obstacles to efficient resource allocation (e.g., price fixing, monopolies, and economic concentration). While these negotiations could be used in a positive way to break down the excessive economic power of international corporate giants, there are concerns that the real target of these talks is state-owned enterprises that are viewed as obstacles to the free market.*

FTAA	Alternatives for the Americas
<ul style="list-style-type: none"> <li>◆ state enterprises, whether monopolies or not, would be allowed to exist only if they do not contradict national or sub-regional standards for the promotion of competition and if they operate according to commercial criteria.</li> </ul>	<ul style="list-style-type: none"> <li>◆ public sector corporations are vehicles for healthy economic development, safeguards of sovereignty, and instruments of social and environmental justice. Although states should ensure that they are sound and efficient, these enterprises should not be subject to anti-monopoly laws or evaluated only by price and quality criteria.</li> </ul>
<ul style="list-style-type: none"> <li>◆ would create an autonomous authority with supranational jurisdiction to investigate and sanction anti-competitive practice. This goes beyond NAFTA, which obliges members to adopt competition rules but does not make them subject to supranational enforcement.</li> </ul>	<ul style="list-style-type: none"> <li>◆ this issue is not specifically addressed in the document, but given that the proposed competition rules contradict principles in the Alternatives document, this authority to enforce them would not be supported.</li> </ul>
<ul style="list-style-type: none"> <li>◆ one proposal would allow foreign investors to sue governments over monopolies and state-owned enterprises.</li> </ul>	<ul style="list-style-type: none"> <li>◆ as stated in the investment section, such investor disputes would be handled through national processes.</li> </ul>
<ul style="list-style-type: none"> <li>◆ includes proposals to ban stockpiling of raw materials and intermediate and final goods.</li> </ul>	<ul style="list-style-type: none"> <li>◆ would allow governments to pursue policies designed to strengthen food and energy security.</li> </ul>

## GENDER

*The official FTAA process ignores the differential impact of trade and investment liberalization on women, even though such policies have already affected women in the hemisphere in many complex ways. For example, the growing number of export assembly plants employ largely female workforces in low-paying, sometimes precarious jobs, where worker rights are often violated. The expansion of export-oriented agriculture has destabilized family farms, leading men to emigrate to urban areas, while women are left behind to care for families, land and households.*

FTAA	Alternatives for the Americas
<ul style="list-style-type: none"> <li>◆ there is no reference to gender impacts of the FTAA in the official draft. The declaration of the Third Summit of the Americas pronounces that the governments are committed to the promotion of gender equality, but there are no specific details on how this is to be accomplished.</li> </ul>	<ul style="list-style-type: none"> <li>◆ would require an assessment of the impact of trade policy on women and establish mechanisms for dialogue on incorporating gender concerns into trade and investment agreements.</li> <li>◆ would hold foreign investors accountable to domestic laws on sexual harassment, sex and pregnancy discrimination, and job and/or wage discrimination.</li> </ul>

- ◆ would enforce policies and laws that assure that women enjoy the full protection of civil, labor, reproductive, sexual, and human rights
- ◆ would provide technical and development assistance that promotes education, technological training, capacity building, and skills development for women, particularly women who are displaced or lose their livelihoods as a result of trade liberalization. Funds should be allocated to education, health, and labor programs that have a gender component.
- ◆ would provide technical aid and development assistance to ensure that women have equal access to resources such as credit, technological training, as well as assets such as land.
- ◆ would urge countries to implement the UN 20/20 Initiative, which calls for developing countries to allocate 20 % of budgets and for donor countries to allocate 20 % of foreign aid to social programs.

## **SUBSIDIES, ANTI-DUMPING & COUNTERVAILING DUTIES**

*This negotiating group lumps together three types of government actions that are criticized by free traders as distortions of the market: 1) anti-dumping laws, which allow countries to defend producers against imports sold below the cost of production; 2) countervailing duties, which are remedies against import surges, and 3) subsidies used to support key economic sectors or groups. In many countries, key groups strongly support these types of actions (e.g., the steel lobby in the United States and the livestock sector in Argentina). The sensitivity around these issues is evident in the ambiguous wording of the negotiating group's official purpose: to examine ways to deepen existing rules on subsidies and countervailing measures and to improve rules and procedures regarding trade remedy laws in order to not create unjustified barriers to trade. The Hemispheric Social Alliance is in the process of developing positions around these issues.*

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