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Trade rules and sustainability in the Americas

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Virgina Paul, St. Lucia



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Table of contents

Thanks and acknowledgements	v
Preface: The trade rules and sustainability in the Americas project	vii
Introduction: Evolving subregional and hemispheric regimes	1
Chapter 1. Economic, environmental and social regimes in the Americas	7
1.1 The economic regimes of the Americas	7
1.2 The environmental regimes of the Americas	12
1.3 The social regimes of the Americas	14
Chapter 2. Summary of the TRSA recommendations	17
Chapter 3. The Winnipeg Principles and the FTAA	21
3.1 Efficiency and cost internalization	21
3.2 Environmental integrity	27
3.3 Equity	33
3.4 International cooperation	38
3.5 Openness	42
3.6 Science and precaution	46
3.7 Subsidiarity	50
Chapter 4. General conclusions	55
Chapter 5. TRSA Winnipeg Principles comparative table	59
Biographies of the project team	65
Endnotes	67

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“Who will oppose an Americas united in heart, subject to one law, and guided by the torch of liberty?”

— *Simon Bolivar, 1822*

Preface

The trade rules and sustainability in the Americas project

THE INTEGRATION OF THE AMERICAS, once a visionary ideal of liberty for the peoples of the hemisphere,¹ may soon become a reality. Evolving conditions, regimes and systems are new, chaotic, exciting and uniquely ‘Americas.’ It is our challenge, as a new generation shaping the uncharted economic geography of our continents, to ensure that the opportunities presented by these processes are seized with thought, courage and wisdom, ensuring that new regimes will support sustainability objectives. Global and regional evaluations are revealing that current levels of effort to achieve sustainable development are insufficient.² The international trade aspects of economic growth, environmental protection and social justice regimes may be key intervention points to ensure progress toward long-term sustainability, especially at a regional level where countries share ecosystems and social conditions.³

The trade rules and sustainability in the Americas research project draws upon lessons learned in the trade and sustainable development debates at the World Trade Organization (WTO) and in Western Hemispheric subregional or bilateral trade integration processes. Its aim is to analyze the interaction between developing trade, environment and social regimes in the American hemisphere. This project is a case study of the applicability of the so-called Winnipeg Principles on trade and sustainable development⁴ to the Americas (Table 1).

Table 1: What is 'Winnipeg Principles' analysis?

A group of international experts, convened by the International Institute for Sustainable Development through 1992–93, endorsed the Winnipeg Principles on trade and sustainable development, seven indivisible guides for trade and trade-related environment and development policies, practices and agreements, to help ensure that they work to achieve sustainable development:

Efficiency and cost internalization: How can we support a more efficient use of resources, and ensure that true values are being reflected in costs in the Americas through a more developed trade regime?

Environmental integrity: How can we identify and respect limits to the regenerative capacity of ecosystems, avoid irreversible harm to plant and animal populations and species, and ensure protection for valued and endangered areas in the Americas through a more developed trade regime?

Equity: Do developing trade regimes contribute to social justice? How can we support a just distribution of physical and natural capital, knowledge and technology, both within and between generations in the Americas?

International cooperation: How can developing trade regimes promote linkages across borders and identities, and enhance international systems of cooperation at all levels?

Openness: How can developing trade regimes be negotiated in a transparent, open and participatory way? How can we strengthen civil-society participation in the processes in the Americas?

Science and precaution: How can developing trade regimes respect the precautionary principle? How can objective criteria in science promote better long-term decisions and how can short-term needs be balanced against lack of scientific certainty?

Subsidiarity: How can developing trade regimes contribute to decision-making on the best possible level? How can we ensure that the lowest jurisdictional and political level, depending on the nature of the issues, is assigned priority consistent with effectiveness in the Americas through a more-developed trade regime?

How could trade integration in our hemisphere support sustainability?

Starting from the question, ‘How could trade rules in the Western Hemisphere foster and not undermine sustainability objectives?’ this study reviews existing trade, environment and social conditions and regimes in the Americas, then uses the Winnipeg Principles as a framework to analyze the situation and to suggest mechanisms for progress toward sustainability. The project aims to strengthen capacity in the Americas on these issues and to provide a tool to increase informed public participation in current trade policy-making processes. With guidance from a 14-person expert advisory council, an interdisciplinary research team, from diverse sectors of society based in Uruguay, Ecuador, Costa Rica, St. Lucia, Mexico and Canada, has been investigating these issues for over a year as part of a continuing project. Methods include literature and Internet reviews, in-depth interviews and participatory sessions with government leaders, social-movement participants and other experts from diverse sectors, and analysis of strategic intervention points and mechanisms. By seeking perspectives from civil-society experts, public and private sector leaders, academia and Agenda 21 major-group participants, it is possible to draw upon a wide range of experiences from many levels and generate concrete policy recommendations.

Trade Rules and Sustainability in the Americas

Introduction

Evolving subregional and hemispheric regimes



GIVEN THE EMERGENCE of several regional agreements across the Americas, ranging from NAFTA to MERCOSUR, and indications of recent financial fragility in Latin America, is there a need for a Free Trade Area of the Americas (FTAA)? And, if this becomes likely, could such a hemispheric agreement support sustainable development? This study started from several key assumptions.

A hemispheric research perspective is needed

The unique geographic and political context suggested by current conditions is not limited to a description of the hemisphere as the sum of five subregional economic arrangements, nor a battle between two faceless geopolitical areas (North and Latin America). Rather, a hemispheric research perspective can be used, based on the developing commonality in regional economic, social and environmental contexts. The Americas perspective is more appropriate to current globalizing conditions, reflecting the current multifaceted nature of shifting allegiances across the continent. This presents challenges in statistical analysis, requiring additional aggregation of data, but addresses the potential of new international regimes in the Americas.

The FTAA is a potential trade agreement

The FTAA project takes place at a critical moment. This is the first time that the methodology of the Winnipeg Principles on trade and sustainable development had been tested on a *potential* rather than *negotiated* trade arrangement, opening unique opportunities for recommendations to be taken into account if the agreement is completed, and generating useful comparative

research on the subregional regimes if it is not. For example, research results were submitted directly to the newly created FTAA Committee of Government Representatives for the Participation of Civil Society that was highlighted in the 1998 World Trade Organization 50th Anniversary Conference as a mechanism with the potential to ensure much-needed openness.

The Americas integration process: A long trajectory

The Americas integration process was initiated over a hundred years ago at the First Pan-American Conference in 1889. It was given new impetus at the 1994 Miami Summit of the Americas, where heads of state agreed upon the four main goals of democracy; economic integration and free trade; elimination of poverty and discrimination; and sustainable development and conservation in the Americas (Table 2).

Table 2: The Americas integration process.

The mandate of the 1994 Summit of the Americas—“Partnership for Development and Prosperity: Democracy, Free Trade and Sustainable Development in the Americas.”

“Although faced with differing development challenges, the Americas are united in pursuing prosperity through open markets, hemispheric integration, and sustainable development.... We reiterate our firm adherence to...the principles of the sovereign equality of states, non-intervention, self-determination, and the peaceful resolution of disputes. We recognize the heterogeneity and diversity of our resources and cultures, just as we are convinced that we can advance our shared interests and values by building strong partnerships....

The 1994 Miami Summit Agenda themes

1. To preserve and strengthen the community of democracies of the Americas.
2. To promote prosperity through economic integration and free trade.
3. To eradicate poverty and discrimination in our hemisphere.
4. To guarantee sustainable development and conserve our natural environment for future generations...”

*Miami Summit Declaration of Principles, Summit of the Americas Implementation home page, U.S. Department of State's Summit Coordinating Office, December 1994 Miami Summit.*⁵

The ambitious Miami Summit Agenda is only beginning to be implemented. As maintained by Steve Charnovitz, “the countries of the Americas face common problems of high unemployment, unsatisfactory growth rates and

environment damage.”⁶ National leaders do not have all the answers; they need business and civil-society engagement to face hemispheric challenges.⁷ The Americas regional integration initiative suggests that there is potential for greater international cooperation to resolve common problems on the shared continents. A recent forum concluded that regional integration agreements hold the potential to offer needed possibilities to address sustainable development, addressing equity issues between members and fostering interdependence and policy cooperation on a variety of non-trade concerns.⁸ Indeed, economic integration and free trade is only one of four 1994 Miami Summit agenda items, but this goal is a powerful force driving the integration process, and a good place to start. In spite of energetic efforts in even more recent summits, such as the 1994 Miami Summit, the 1996 Santa Cruz Summit on Sustainable Development⁹ (Table 3), and the 1998 Santiago Summit of the Americas, sober reflection reveals that efforts toward hemispheric integration face very real political opposition in many countries of the Americas as they attempt to move beyond the goals of conferences.¹⁰ Though political will and economic growth in the region might falter in 1999, an overall impetus exists across 34 governments and a community of over 700 trade negotiators committed to a common hemispheric agenda. Ability to meet sustainability objectives will be key to the success of the initiative. New ways are needed to develop trading arrangements, institutions and mechanisms which guarantee that economic development today does not compromise the social and ecological needs of the future.¹¹

Table 3: 1996 Bolivia Summit of the Americas on Sustainable Development.

“The 1992 Earth Summit in Rio de Janeiro, Brazil, established a framework to address the challenges of protecting the environment and development communities while respecting people’s quality of life. In 1996 the Americas became the first region in the world to produce a blueprint for action.

In December of that year, the hemisphere’s heads of state and government met in Santa Cruz de la Sierra, Bolivia, and agreed on an ambitious agenda to promote sustainable development. They stressed a number of key factors, including:

1. *Equitable economic growth* – strategies must support local economies and allow for full participation by the private sector, especially small businesses and micro-enterprises. The region should continue to open its doors to trade, while maintaining effective environmental policies.

2. *Social dimensions* – the hemisphere has an urgent need to reduce poverty and must address such basic human needs as nutrition, drinking water, health care and housing. Measures must value human dignity and respect cultural diversity.
3. *Healthy environment* – any measures or programs should take into account environmental impacts and seek to mitigate negative effects.
4. *Public participation* – citizens should be involved in decisions that affect their lives and livelihood. They need more opportunities to exchange ideas and information, including traditional knowledge from their cultures.

The Bolivia Summit proposed 65 initiatives for programs in health and education, sustainable agriculture and forests, communities and cities, water and coastal areas, and energy and minerals.”

Sustainable development: Converting words into deeds, Santiago 1998, OAS 1948–1998, Part of the briefing kit: OAS after the Second Summit of the Americas.

Sustainability: A different kind of growth

A common conceptual framework is needed to provide guidance, one that recognizes the objectives of all sides of the debate. The starting point of this study, sustainable development, suggests not just simply less pollution, or an end to growth, but rather a commitment to a different kind of growth.¹² This growth can generate resources for social infrastructure and long-term environmental priorities through fair trade on both micro and macro levels.¹³ In addition, a sustainability perspective allows the study to go one step further. In an increasing number of situations, structures must be set in place that actively promote the transformation of current production and consumption patterns and the redistribution of the benefits of natural resource use if long-term security priorities are to be addressed. Sustainable development is a starting point, and a sustainability perspective can deepen the analysis where appropriate (Table 4).

This study starts from the premise that addressing social and environmental concerns together is necessary to ensure any degree of success.

Table 4: Sustainable development and sustainability.

Sustainable development, as coined by the 1987 World Commission on Environment and Development, is based upon meeting the needs of the present generation without compromising the ability of future generations to meet their needs. A sustainable development approach recognizes economic, social, and environmental priorities for development. In particular, the World Commission on Environment and Development stated that “sustainable development...meets the needs of the world’s poor, to which overriding priority should be given,” while recognizing limits based on the state of technology, social organizations and the environment itself.

The *sustainability paradigm shift* suggests structural, economic and social changes. Many interdependent factors combine to grant sustainable choices for consumers and producers. Creating the appropriate hemispheric legal and policy framework to promote sustainability would be seen as a fundamental starting point from a sustainability perspective. This suggests that activities are sustainable when they:

1. Use materials in continuous cycles;
2. Use continuously reliable sources of energy; and
3. Come mainly from the qualities of being human (i.e., creativity, communication, coordination, appreciation, and spiritual and intellectual development).

World Commission on Environment and Development, Our common future, Oxford: Oxford University Press, 1987; and M. Knickerson, Guideposts for a sustainable future project, Perth, 1996.

An overview of the trade rules and sustainability in the Americas study

The research results are placed in the context of the current debates, where significant economic, environmental and social conditions in the Americas today are described, and existing systems of legal norms, policies and standards are outlined. This ‘regimes perspective’¹⁴ stems from an integrated and interdisciplinary conception of sustainable development, based on all three pillars of international economic, environmental and human rights law and policy.¹⁵ The report is structured to offer innovative policy options, and examples of places where these mechanisms have been proven, in the context of existing and proposed regimes. Chapter 1 of this report describes the existing economic regimes in brief detail, and provides observations on the environmental and social regimes. Then, chapter 2 lists recommendations for a hemi-

spheric trade integration process. Chapter 3 summarizes the research and analysis, reviewing the trade aspects of the Americas integration process through the lens of the Winnipeg Principles on trade and sustainable development:¹⁶ efficiency and cost internalization; environmental integrity; equity; international cooperation; openness; science and precaution; and subsidiarity. Since the FTAA is a *potential* trade agreement, each chapter proposes recommendations and innovative measures or mechanisms to help shape new trade rules that support sustainability objectives. Some general conceptual conclusions are then drawn in chapter 4. Chapter 5 provides examples of concrete sustainable development mechanisms in subregional and other trade agreements on all levels, in a comparative table of the Americas trade rules from a Winnipeg Principles perspective. These are referenced to provide sources for more detailed information.

Chapter 1

Economic, environmental and social regimes in the Americas



1.1 The economic regimes of the Americas

IN TODAY'S ERA OF GLOBALIZATION, any Americas integration project requires solid economic foundations. The economies of the Americas are currently linked by a complex web of standards, rules, schedules and responsibilities, including over one hundred bilateral trade accords, five subregional trade integration arrangements and memberships in the WTO. A new FTAA aspires to join 34 national economies under one integrated area by the year 2005, as part of the aforementioned Miami Summit Agenda. Heads of state, in the 1998 Santiago Summit, launched negotiations for the largest free trade area of the world, a market of almost 800 million people, with a recent average overall growth rate of 5 per cent, though slight contraction is projected for 1999 reflecting financial events worldwide. The gross domestic product (GDP) has been discredited in recent years as an indicator of well-being,¹⁷ but it is still possible to note that the Americas has a combined GDP of \$9 trillion (US), representing 34.7 per cent of the world's GDP per capita and 29.6 per cent of its market, though it has only 13.13 per cent of the world's population.¹⁸ In addition, in considering economic conditions suggested by the gross national product (GNP) per capita, the diversity of development levels across the Americas becomes apparent and preconceptions are challenged. Of 34 nations, four rank high: the United States, Argentina, Canada and the Bahamas. Another five countries are over or near the world's per capita average GNP: Mexico, Uruguay, Antigua and Barbuda, St. Kitts and Nevis, and Barbados. The next highest set includes Brazil, Chile, Venezuela, Costa Rica, Panama, Dominica and Grenada.

The economic geography of the Americas is broken into five existing subregional trading arrangements: the Southern Common Market (MERCOSUR), the North American Free Trade Agreement (NAFTA), the Caribbean Community (CARICOM), the Central American Common Market (CACM) and the Andean Community (CAN), where recent quantitative data are provided by 1999 Economist Intelligence Unit Reports (Table 5).

Table 5: Subregional trade agreements in the Americas.

The North American Free Trade Agreement: United States, Canada and Mexico

NAFTA is one of the more developed models of a free trade zone in the hemisphere, with the region having a population of 393 million people and an estimated GDP of \$8,495.9 billion (US). It is essentially a free trade area, and became effective in 1994. In 1996 intra-block exports reached almost 50 per cent as a proportion of total exports, expanding 9 per cent a year. There is no common external tariff, and labour and environment side agreements exist between the three countries.

The Southern Common Market: Brazil, Argentina, Uruguay and Paraguay

MERCOSUR is a combined market composed of more than 207 million people with a GDP of about \$1,163.4 billion (US). It is suggested that this customs union has become a new model of integration in Latin America, with intraregional exports coming to 21.5 per cent of total at \$19,967 million (US), and a common external tariff averaging 11.4 per cent arranged in 11 tiers from 0 to 20 per cent.¹⁹ The market aims to become a community, committed to democratic principles and the stabilization of their economies.²⁰

The Andean Community: Bolivia, Colombia, Ecuador, Peru and Venezuela

CAN dates from 1969, has a total population of 106 million and a GDP of about \$226 billion (US). Chile was a founding member, but withdrew with differing investment strategies in 1976.²¹ The intra-regional trade expanded by an average of 29 per cent a year between 1990 and 1995, in 1996 accounting for 16 per cent of total non-oil exports, and reached \$5,403 million (US) by 1997. Common external tariffs range from 5 to 35 per cent in five tiers. The Andean Group is a customs union. Once doubtful,²² it has recently gained strength.²³

The Caribbean Common Market: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago. (The British Virgin Islands and Turks and Caicos Islands are associates.)

CARICOM²⁴ comprises 14 small countries, with two associate members and the Dominican Republic and Haiti negotiating to join. It has a population of about 13.4 million people and a GDP of \$23.6 billion (US) (minus the Dominican Republic and Cuba).²⁵ CARICOM succeeded the 1968 Caribbean Free Trade Association (CARIFTA), and by mid-1995, largely eliminated barriers to reciprocal trade. In 1996 intraregional exports averaged about 8 per cent of total exports (excluding petroleum and petrol-based products). Common external tariffs from 5 to 20 per cent are in use in most countries (with 40 per cent on agricultural products), and harmonization of customs procedures is under discussion.²⁶ The region is protected by non-reciprocal trade preferences,²⁷ under the Caribbean Basin Initiative and other agreements,²⁸ and is mandated to enhance the economic, social and cultural development of the Caribbean people.

The Central American Common Market: Guatemala, El Salvador, Nicaragua, Costa Rica, Honduras and Panama

The CACM is a customs union of about 42 million people and a GDP of about \$54 billion (US). Inter-CACM trade accounts for roughly 20 per cent of total exports, an increase of 4 per cent from 1990. In mid-1993, Guatemala, Honduras, El Salvador and Nicaragua formed the customs union, joined by Costa Rica and Panama in 1995. Common external tariffs average 15 per cent (tiered from 5 to 20 per cent). Mexico and Belize are now engaged in negotiating a single treaty covering the whole of the region, to be concluded by the year 2002.²⁹

Over 106 bilateral or country-to-region trade agreements exist between countries of the Americas

One recent estimate in 1998 counted over 106 bilateral agreements in force or being negotiated in the Americas.³⁰ Some are simple tariff elimination agreements, or selective strategic objectives, and others seem geared toward bilateral common markets. This is rapid proliferation—in 1994, there were only 26 bilateral or trilateral free trade agreements or customs unions in the hemisphere. Agreements have continued to develop, including bilateral investment treaties.³¹

"Latin America at a glance—A comprehensive guide to the region's markets and operating environment," The Economist Intelligence Unit Research Report, London, 1999.

On a more general level, it is also essential to take into account the Latin American Integration Agreement (LAIA),³² and commitments incurred by the countries of the Americas as members of the WTO.³³

Toward an FTAA

The current push toward integration began in the 1994 Miami Summit of the Americas, when 34 heads of state set a goal of hemispheric integration, creating four priority goals and a 23-point Plan of Action, which included the creation of an FTAA. The negotiations of the FTAA were launched in the Santiago Summit of the Americas in 1998 and aim to reach an agreement by the year 2005.³⁴ The FTAA Declaration commits to “take into account the broad social and economic agenda contained in the Miami Declaration of Principles and Plan of Action with a view to raising living standards, to improving the working conditions of all people in the Americas and protecting the environment.”³⁵

The trade ministers further agreed to an initial structure for negotiations, which will include at least one ministerial meeting every 18 months. A trade negotiations committee (TNC) was established at a vice-ministerial level to select the chairman and vice-chairman of each negotiating group and to guide the work of the negotiating groups—overall architecture of the agreement and institutional issues—through meetings held no less than twice a year.³⁶ Nine negotiating groups were formed for the negotiations stage: market access; investment; services; government procurement; dispute settlement; agriculture; intellectual property rights; subsidies, antidumping and countervailing duties; and competition policy. The negotiating groups will be guided in their work by the general principles and objectives in the Joint Ministerial Declaration.³⁷ Meetings will be held in the same venue, rotating every three years (Miami, Panama City and Mexico D.F.), and the chair and vice-chair of the FTAA process have been established (Table 6).

Table 6: Chairs and vice-chairs of the FTAA process.

Dates	May 01, 1998– Oct. 31, 1999	Nov. 1, 1999– April 30, 2001	May 1, 2001– Oct. 31, 2002	Nov. 1, 2002– Dec. 31, 2004
Chair	Canada	Argentina	Ecuador	Co-chaired by Brazil and the United States. ³⁸
Vice-chair	Argentina	Ecuador	Chile	

In addition to the negotiating groups, a consultative group on smaller economies was established to address the concerns of the small countries. An administrative secretariat will be created to support the negotiations, located in the same place as the negotiating groups. It is financed by local resources and the tripartite committee institutions.³⁹

Including environment and labour issues has been debated since the Miami Summit. Although civil-society groups and the U.S. delegation proposed creating a study group on trade and the environment at the Costa Rica March 1998 Trade Ministerial Meeting, some governments were concerned about the relevance of these issues to the FTAA agenda or a perceived domination of NGO agendas by groups from a few large countries, while others supported an integrated consideration of these issues in the context of each working group. The result was a commitment to provide a voice for civil society regarding the issues of all the working groups through a new Committee of Government Representatives for the Participation of Civil Society. In Buenos Aires in June 1998, the first meeting of the trade negotiations committee was extended an extra day to set up a transitory instrument which would receive civil-society views on the FTAA. The committee will receive commentary and present the range of views to the ministers. Sectors of civil society present their views to the committee 'mailbox' in writing, until agreement is reached on a better mechanism which satisfies all the stakeholders.⁴⁰

As in many such initiatives, political will and the needs of diverse participants appear to present the most serious challenges to the process. The U.S. Congress, after recent setbacks in achieving 'fast track' presidential negotiating authority, seems unlikely to address the issue in this presidential term. In larger countries with weak social safety nets, such as Mexico and Brazil, recent economic dislocations appear linked to liberalization, resulting in concern for political stability and caution in proceeding. Brazil's projected economic contraction of 5 per cent is suggested to lead to a slight regional contraction in 1999, which would potentially cool immediate interest in integration. Further, smaller economies, such as those in the CARICOM and CACM nations, have preferential access to larger markets and might not see further liberalization as beneficial.⁴¹ The broad support for regional integration expressed by all heads of state in the Santiago Summit of 1998 does not appear consistent with these economic and political concerns, and recent regional cooperation in the face of natural disaster in Central America or potential financial crisis in South America underscores the overall increase in common purpose.

In conclusion, the economic geography of the Americas is evolving rapidly, and considerable economic integration exists on all levels, some dating from the late 1960s. The task of designing one single free trade area or common

market that meets the needs of 34 incredibly diverse economies seems a large one, but elements in place at a hemispheric and subregional level suggest that the project is, in theory, feasible.

1.2 The environmental regimes of the Americas

Nothing makes more sense than an ecologically integrated continental regime. The Americas' environment consists of interdependent chains of shared biological systems, spanning almost 140 degrees of longitude and 130 degrees of latitude, an area of some 1.38 million square kilometres. The Americas, the most biodiverse region on Earth,⁴² is not just a series of distinct areas (e.g., the Arctic or the Amazon) but rather two continents linked by gradually evolving ecological zones, migratory routes of myriads of species, ecoregion provinces, connected waterways and coasts, and an increasingly active civil society environmental movement.⁴³

Mounting attention on environmental concerns in most countries of the Americas has resulted in the development of national, subregional and hemispheric regimes. On a national level, for example, almost all nations of the two continents now recognize the 'right to the environment' in their constitutions (Table 7).

Table 7: The environment in the constitutions of the Americas.

- Panama's 1972 Constitution, one of the first in the Americas to incorporate environmental matters, focuses on the link between health and the environment.
- Cuba's 1976 Constitution and Peru's 1979 Constitution hold similar clauses assigning environmental responsibilities to the community as a whole or to national institutions.
- More recent provisions were drafted in the 1980s, including Guyana in 1980, Belize and Chile in 1981, Honduras in 1982, El Salvador in 1983, Ecuador in 1984, and Guatemala in 1985. These recognized a dimension of environmental rights as part of human rights protection, including provisions of collective participation and petition to the government among others.
- Mexico's environmental amendments in 1987 and 1992, Haiti's and Nicaragua's in 1987, Brazil's in 1988, Colombia's in 1991, Peru's in 1993 and Argentina's in 1994 represent a third area in which natural resources and biodiversity conservation objectives are mentioned, as well as proper and safe hazardous waste operation, and constitutional considerations for sustainable development.

- Paraguay's recent 1992 Constitution, which directly alludes to the human right to "live in a habitat that is environmentally healthy and ecologically balanced" is among the most advanced.⁴⁴
 - In Canada, provincial Bills of Environmental Rights exist in some places, but the Charter of Rights and Freedoms contains no reference to the environment, and the Constitution Acts of 1867 or 1982 contain only jurisdiction references concerning development, conservation and management of non-renewable natural resources, forestry and energy.⁴⁵
-

On a subregional level, agreements, institutions and projects have linked trade and environmental objectives in recent years. The environmental component of an integration initiative can become part of, be relatively stand-alone from, or even be run parallel to, the trade accords. In the Americas, the link is often reflected several ways at once. The recent protocol on the environment among the MERCOSUR nations provides a framework for transboundary environmental cooperation, while a technical working group (Subgrupo No. 6) investigates trade linkages from within MERCOSUR. The well-documented North American Agreement for Environmental Cooperation (NAAEC) is served by a Commission for Environmental Cooperation (CEC), which has developed projects such as ecoregional mapping for North America, a tripartite compendium of environmental laws, and a regional air pollution audit. Environmental standards are also provided for in the text of the NAFTA treaty itself. A parallel track subregional environmental project is more independent, building on cooperation created by economic integration to address conservation priorities directly, such as Central America's proposed Mesoamerican Biological Corridor, a network of protected areas that would serve as an effective biological link between the two major ecological realms of the Americas—the Nearctic and Neotropical.

At multiple levels throughout the Americas and in all countries, the creation of new regimes and improvement of existing ones continue to occur. On the whole, these regimes appear to be a rapidly developing field, and examples of effective implementation can be balanced against environmental laws, including protected areas that exist only on paper. Though many examples of effective coercive enforcement for international environmental regimes in the Americas are not readily apparent, it has been argued that consensus-based implementation and cooperation have traditionally been the more appropriate manner to ensure compliance with the provisions of multilateral environmental agreements (MEA).⁴⁶ Law, policy and local or international civil-society initiatives have also formed around specific environmental sectors or issues without clear coordination mechanisms, making gap analysis very difficult and effective institutional representation a challenge.

Key aspects of the challenges ahead involve coordination and cooperation among diverse initiatives in a highly dynamic and evolving series of regimes, the provision of adequate financial resources and the need for increased awareness and political will at all levels. A further study is contemplated to examine trade and other measures linked primarily to the ecological regimes of the Americas.

1.3 The social regimes of the Americas

Current social conditions in the Americas concerning human development and basic human needs such as health, education, housing and food security are not yet optimal. Though progress has been made, many challenges still exist, such as securing basic needs and achieving income equity.⁴⁷ Likewise, to satisfy human rights commitments, especially for workers, women and indigenous peoples, as well as migrant rural peoples and refugees, it appears that a redoubling of efforts is required. The yawning gap between the rich and the poor across the Americas is widening.⁴⁸

Important questions on social conditions focus especially on how a hemispheric integration process would be achieved, in which context, and for the benefit of whom.⁴⁹ Changes in social conditions are difficult to interpret on a hemispheric level. For example, the extent of inequity may be decreasing between the economies in the Americas, but is becoming more of a challenge within each society. If we compare the highest 10 per cent of income levels with the lowest 40 per cent across the Americas, a growing gap can be distinguished. Among the top five countries that experienced major economic growth (up to 5 per cent per annum) in recent decades, concentration of wealth also increased dramatically.⁵⁰ The Gini coefficient is given as an indicator of equity in the Americas (with '1' as inequity and '0' as total equity). The highest level of inequity is detected in Colombia (0.51), followed by Brazil, Chile, Honduras, Panama, Argentina, Bolivia, Paraguay and Mexico (all of which are above 0.40). In Costa Rica levels of inequity remained the same, and only Uruguay improved its income distribution over the last decade.⁵¹ In other words, though economic growth and development might progress in the countries of the Americas, conditions do not necessarily improve for the majority of their peoples.

In terms of the existing regimes, some examples of subregional, regional, global and bilateral social agreements and the social provisions of existing and potential trade agreements include the Pan American Health Organization, or the American Convention on Human Rights (ACHR), produced under the auspices of the Organization of American States (OAS), 1969, and ratified by over 25 of the 34 countries in the Americas.⁵² Table 8 outlines the major socially sustainable regional agreements to date. A special study will examine trade and other measures linked primarily to the social regimes of the Americas.

Table 8: International social institutions and conventions in the Americas.

Global: United Nations conventions and institutions

- ◆ Copenhagen Declaration of Economic and Social Rights
- ◆ ILO Conventions ILO Convention 169, Concerning
Indigenous and Tribal Peoples
- ◆ International Covenant on Economic, Social and Cultural Rights
- ◆ International Covenant on Civil and Political Rights
- ◆ Convention on Elimination of all Forms of Racial Discrimination
- ◆ Convention on Elimination of all Forms of Discrimination Against
Women
- ◆ Convention on the Rights of the Child
- ◆ Vienna Declaration
- ◆ Beijing Platform of Action
- ◆ Istanbul Declaration
- ◆ Rio Declaration
- ◆ Agenda 21
- ◆ Cairo Programme of Action
- ◆ Rome Declaration of World Food Security

Hemispheric: OAS treaties and institutions

- ◆ Inter-American Commission of Human Rights (ICHR)
- ◆ Inter-American Court of Human Rights
- ◆ Inter-American Council for Integral Development (ICID)
- ◆ Inter-American Programme on Culture
- ◆ Inter-American Convention Against Corruption
- ◆ Inter-American Programme on Cooperation to Combat Corruption
- ◆ Inter-American Juridical Committee
- ◆ Unity for Democratic Promotion (UDP)
- ◆ Washington Protocol *
- ◆ Managua Protocol *
- ◆ Salvador Protocol to the American Convention of Human Rights in
the ECOSOC *
- ◆ Inter-American Convention on the Forceful Disappearing of
Peoples *

- ◆ Inter-American Convention for Prevention, Sanction and Eradication of Violence Against Women, “Convencao Belem Do Para” *
 - ◆ The Cartagena de Indias Protocol *
 - ◆ The Inter-American Convention to Prevent and Sanction Tortures *
-

**International instruments designed to support democracy and human rights.*⁶⁴

Chapter 2

Summary of the TRSA recommendations



Principles in practice for a potential FTAA

THE STRATEGIES SUMMARIZED BELOW provide an overview of how the Winnipeg Principles can be applied to a potential hemispheric agreement, such as the FTAA, to integrate trade and sustainability concerns. These principles should be used as a framework to map out the agenda of the FTAA to translate the objectives of sustainable development into a hemispheric reality across the Americas. This will enable the entire region to successfully meet the global challenges of the new millennium. The most pressing task ahead is to ensure that environmental and social concerns are not sacrificed or relegated to the background to promote economic growth. This can only be achieved by maintaining a balance between efficiency, cost internalization and environmental integrity.

Efficiency and cost internalization: How can we support a more efficient use of resources, and ensure that values are being reflected in costs in the Americas through a more developed trade regime?

- Develop appropriate measures to internalize environmental and social costs of economic growth, taking into account patterns of wealth generation and distribution.
- Assess hemispheric product chains to ensure they contribute to sustainability.
- Uncover and discourage unsustainable subsidies in developed economies.
- Undertake pollution audits on all levels with civil society and business partners.

Environmental integrity: How can we identify and respect limits to the regenerative capacity of ecosystems, avoid irreversible harm to plant and animal populations and species, and ensure protection for valued and endangered areas through a more developed hemispheric trade regime?

- Develop a stand-alone hemispheric ecological cooperation agreement and institution.
- Promote eco-regional, protected-area networks as part of integration processes.
- Investigate the environmental aspects of the FTAA working-group agendas.
- Conduct an environmental assessment of the proposed trade agreement.
- Create a framework for international environmental laws across the Americas.
- Strengthen inclusive certification processes and eco-labelling for renewable resources.

Equity: How can developing trade regimes contribute to social justice? How can we support a just distribution of physical and natural capital, knowledge and technology in the Americas?

- Incorporate substantive core labour standards into the text of the FTAA.
- Establish transparent measures to identify and address trade-related equity issues.
- Address the concerns of labour constituencies in the FTAA debates.
- Strengthen mechanisms to ensure equity among economies in the trade negotiations.
- Establish an accountable, hemispheric investment code for sustainable foreign direct investment.

International cooperation: How can developing trade regimes promote linkages across borders and identities, and enhance international systems of cooperation at all levels?

- Support the creation of a new sustainable development forum of the Americas.
- Invest in a sustainable development friendly hemispheric dispute-settlement mechanism.

- Establish trade sector specific international cooperation regimes.
- Develop mechanisms to ‘speak with one voice’ in multilateral forums.

Openness: How can developing trade regimes be negotiated in a transparent, open and participatory way? How can we strengthen civil-society participation in these processes in the Americas?

- Recognize country-level openness as a prerequisite.
- Create a civil-society initiated bridge between the trade and sustainable development communities.
- Continue the parallel summits process and other civil-society driven forums.
- Strengthen hemispheric initiatives to facilitate civil-society participation in trade agreements.
- Hold a regional consultation process with civil society before adopting the FTAA.

Science and precaution: How can developing trade regimes respect the precautionary principle? How can objective criteria in science promote better long-term decisions and how can short-term needs be balanced against lack of scientific certainty?

- Set systems in place to strengthen and develop science, including traditional knowledge and hemispheric biological conservation epistemic research communities.
- Embrace the precautionary principle in trade treaties and related infrastructure projects.
- Ensure a precautionary approach to the development of trade in biological technology.
- Build expertise, systems and transparency to ensure precautionary regulatory decisions on all levels.

Subsidiarity: How can developing trade regimes contribute to decision-making on the best possible level? How can we ensure that the lowest jurisdictional and political level is assigned priority consistent with effectiveness?

- Develop trade capacity-building programs for subnational authorities.
- Develop hemispheric social and ecological standards systems in coordination with subnational regimes.
- Develop consultative and capacity-building measures to engage indigenous peoples.

Chapter 3

The Winnipeg Principles and the FTAA



AN INTEGRATION PROCESS IS TAKING PLACE among the countries of the Americas. The need for poverty alleviation and the importance of environmental policies in the Americas are key starting assumptions; regimes are developing to specifically address these priorities. However, as trade flows grow and relations become more dynamic, a process for elaborating trade rules is also a significant intervention point for change. Existing trading arrangements and reciprocal commitments on all levels are complex, and growing more so every day. For instance, as Mexico considers trade accords with the European Union, the USA appears distant from a reintroduction of 'fast track' negotiating authority.⁵³

Not only is it possible to take the Winnipeg Principles into account in a trade liberalization project, but on bilateral and subregional levels in the Americas, many trade agreements have already done so in different ways and, in some cases, with a degree of success. Using the Winnipeg Principles on trade and sustainable development, it is possible to examine these experiences and build upon them to suggest innovative institutions and mechanisms which, if taken into account, could begin to ensure that the integration of the Americas process supports sustainable development priorities. The Winnipeg Principles are broad enough that some issues cross over from economic to environmental or social fields, though in this analysis we attempt to remain focused on the trade rules under each principle.

3.1 Efficiency and cost internalization

Increased efficiency is posited as the strongest point of convergence for trade, environment and development policies. According to the Winnipeg Principles, "an activity that is efficient uses the minimum amount of resources

to achieve a given output, or, alternatively, achieves maximum output from a given amount of resources.”⁵⁴ Much of present environmental degradation is considered the result of price structures that do not adequately reflect environmental or social costs, or failure to take into account losses caused by resource mismanagement.⁵⁵ As costs are progressively internalized, the contribution of all economic activity, including trade, to the efficient use of resources is enhanced.⁵⁶ It is also maintained that by better valuing environmental resources, including waste-absorption capacity and primary resources, consumers take the full costs of products into account, reducing the ‘ecological debt’⁵⁷ which would otherwise become a burden upon the society where goods are produced. It is important to note that some values cannot be internalized, for example intrinsic values such as spiritual and ethical parameters, ecological and scientific considerations, or the importance attached to the continued existence of a particular resource in an undisturbed state.⁵⁸

Trade liberalization in the Americas is expected to generate wealth by promoting more efficient use of resources through trade-barrier reduction, permitting economies of scale to develop and industries to use their comparative advantages. This is implicit in the first general objective of the FTAA process: “to promote prosperity through increased economic integration and free trade...which are key factors for raising standards of living, improving the working conditions of people in the Americas and better protecting the environment.”⁵⁹ It is also thought that increased efficiency will result in the use of fewer resources to achieve important development or sustainability goals.⁶⁰ For example, independent power producers in the Americas are hoping to use the liberalization of the electricity sector to deliver energy services to rural areas and address future requirements that deal with climate change.⁶¹ The goals of increased efficiency may vary across the continent, in keeping with the FTAA principle that “differences in [countries’] level of development should be taken into account.”⁶²

Import restrictions are considered by many governments to be a significant cause of price distortions, which can result in detrimental social and environmental impacts.⁶³ Protectionism in some countries, specifically tariffs that rise with the degree of processing, discouraging local processing of raw materials (known as tariff escalation), can be seen to block exports and prevent value from being added in the country of export. Smaller economies often try to make up for the low prices by increasing the volume of exports, such as in the mining, fisheries or agriculture sectors of Bolivia, Peru, Central America and the Caribbean.⁶⁴ This can provoke social, environmental and economic impacts. One of the environmental effects when countries of the Americas are forced to overexploit their natural resources is destruction of wilderness and natural capital. A social effect can be seen in the perpetuation of poverty through narrowing of opportunities for local employment and income gener-

ation, which confounds progress on issues such as health and human rights. In addition, from a social and environmental perspective, concerns exist that the scale effects of increased economic growth and exchange, including over-consumption in some areas and over-exploitation in others, might swamp the supposed benefits of increased trade.⁶⁵ Often, problems are seen as a result of market failures, the inaccurate pricing of goods and services that does not reflect 'externalized' social and environmental costs. If a country's exports already face limited market shares, it is politically difficult to even consider measures to internalize costs borne by the society or ecological systems if these hold the potential to affect export prices. For example, in at least nine Latin American countries, primary products account for over 75 per cent of the total value of goods exported, and for 14 countries a single primary product constitutes at least one-fifth of exports.⁶⁶ For countries such as these, fluctuations in world prices for primary commodity exports is a major concern and in the face of volatile or deteriorating terms of exchange, solutions cannot be seen to cause even short-term economic loss.

In establishing regimes in the Americas, various measures can be considered to address these challenges, including definition of quality objectives or mutual recognition of standards, emission standards for certain processes, and controls on the production and use of hazardous substances. The potential for targeted border-tax adjustments, charges and other economic instruments to adapt price signals can also be researched, as can ways to reduce subsidies which promote unsustainable activities, such as in the fisheries, forestry and agricultural sectors. Some of these mechanisms are being used in MERCOSUR, for example, or by the hemispheric signatories to the 1987 Montreal Protocol of the 1985 Vienna Convention for the Protection of the Ozone Layer. To meet this principle in a hemispheric market, however, multilateral hemispheric solutions are needed, and governments, industry and civil society have important roles to play in ensuring innovative answers are investigated and institutionalized equitably. Some potential starting points include the following:

- **Measures to internalize environmental and social costs of economic growth, including wealth generation and distribution**

Across the Americas, many national-level growth indicators still fail to internalize the measurable costs of human resource or environmental degradation, and these create unrealistic statistics to measure the level of progress. There are formidable challenges in identifying and valuing the costs of using environmental resources and in allocating costs to particular goods. Consensus is only beginning to emerge on essential concepts, definitions, measurement techniques, data needs and methods of analysis. Many countries have limited experience in tackling such complexities, and limited resources with which to do so. For the smallest economies,

special considerations can include longer time frames and assistance for implementation, along with market access that goes beyond niches. Others are leading the way: Costa Rica, Mexico, Brazil, Canada, the United States and Chile are all developing environmental accounting programs. A South American initiative is also underway between governments, scientists and economists, and civil-society organizations under the banner of the International Union for the Conservation of Nature (IUCN) in Quito and the United Nations Environment Programme (UNEP). There is room for involvement by the Organization of American States through its Environment and Sustainable Development Unit, perhaps in new work being done to address these issues, such as the environmentally adjusted net domestic product (Table 9).

Table 9: Environmentally adjusted net domestic product.

New indicators, such as the 'environmentally adjusted net domestic product' (EDP), which takes into account depreciation of manmade capital, are only just being developed to give us a different vision of the picture. EDP studies deduct estimates of resource depletion (e.g., oil, mineral and timber extraction) from the net domestic product (NDP) to create the EDP1, and further deduct estimates of the monetary value of environmental degradation (e.g., air and water pollution, waste disposal, soil depletion and groundwater use) to calculate an EDP2. These indicators are beginning to be recognized by the United Nations and other agencies. For example, a recent study of Mexico for 1985 estimated that its EDP1 was 94 per cent of the NDP, and its EDP2 was 87 per cent.⁶⁷ Likewise, a recent World Bank study of Costa Rica by the World Resources Institute indicated negative Forestry 'Green National Accounts' from 1970 to 1989, and considerable reductions in the normal GDP estimated from agriculture and fisheries sectors.⁶⁸

Cost internalization can also take place by product or sector, supported by a trade agreement. Bilateral trade agreements exist in the Americas which take the full lifecycle analysis of products into account, as in the Chile-Canada Environmental Side Agreement provisions which include (within the mandate of the Council, in Article 10, Section 2) suggestions that governments "*consider and develop recommendations regarding...the environmental implications of goods throughout their life cycles.*"⁶⁹ How can we implement these provisions in the context of the FTAA objectives regarding the facilitation of the adjustment of smaller economies? In the Americas, the accepted truisms—that large companies or northern producers are automatically benefiting most from trade arrangements, as they can produce in a more sustainable way because of more advanced technology—can be questioned. Smaller-scale companies might benefit more

from sustainability-focused regional trading opportunities as this provides 'building-block,' trade-creation possibilities.⁷⁰ Is it possible, through environmental and social full-cost accounting, to show that certain smaller-economy goods are more sustainably produced? Further research is necessary in the Americas to clarify these kinds of issues.

- **Hemispheric product chains to ensure sustainability**

On the hemispheric level, as information flows and per capita incomes increase, educated domestic consumer markets across the Americas are making consumption choices toward more sustainably produced, socially and environmentally efficient goods.⁷¹ Growing green demand and technological development in the Americas, including Brazil, Mexico and other urban markets, are creating unique opportunities, and more research is needed on market openings presented by the socially and environmentally responsible consumer.⁷² For example, the convergence of modern voice, data and video communications through technological development is being recognized in the Americas as an opportunity for efficiency gains in fields as diverse as tourism, education, banking, manufacturing and government services.⁷³ Furthermore, when ensuring that true values are being reflected in costs, competitiveness and market-access concerns become critical, especially for smaller, primary export-dependent economies. In the course of internalizing costs, competitiveness concerns exist, since producers that do internalize costs are worried that they will lose business to those facing less onerous requirements. In instances where it can be demonstrated that continued underpricing of specific products is happening, a potential solution is to use eco-labels that allow more sustainably produced goods to be priced higher. In addition, internationally negotiated and coordinated schedules for the internalization of social and ecological costs are seen as a potential solution. International commodity-related environmental agreements (ICREAs) have also been proposed, with provisions such as transfer or voluntary international compensation funds for commodity-specific policies; synchronization of standards or policies to a particular sector; and commodity-specific certification to create market premiums.⁷⁴ To achieve this, agencies can build upon efforts such as the development of sectoral commodity chain analysis and agreements,⁷⁵ which analyze commodity regimes—the chains of buyers, sellers and distributors that are involved in getting commodities to market—to see where most rent is appropriated and where the opportunities lie for internalizing costs. This research can be commissioned in the context of the FTAA Market Access Working Group, or as parallel efforts linked to the liberalization process.

- **Elimination of unsustainable subsidies**

Unsustainable development can be encouraged by the wrong subsidies, further confusing the task of cost internalization. For example, a recent study in the U.S. and Canada by Northwest Environment Watch shows that timber companies receive billions of dollars in tax breaks, under-priced timber and other subsidies. Logging of Northwest national forests cost U.S. taxpayers some \$91 million in 1993, and Canadian taxpayers provided some \$2 billion (Cdn) in supports to the British Columbia forest products industry in fiscal year 1991–92.⁷⁶ Some critics focus specifically on public actions that subsidize agriculture, energy and transportation; others add logging, mining and automobiles to the list.⁷⁷ Subsidies have been uncovered which support neither economic growth nor sustainable development priorities—though these are not to be confused with subsidies with legitimate green or human rights purposes.⁷⁸ A common social and environmental agenda among civil-society organizations and governments with respect to unsustainable subsidies might considerably strengthen the agenda of the FTAA Agriculture Working Group or the Subsidies, Anti-Dumping and Countervailing Duties Working Group.

- **Pollution audits on all levels with partners**

The FTAA process has revealed a committed club of progressive business leaders willing to take on new challenges. According to the Belo Horizonte Business Forum of the Americas Declaration, “the nations of the American continent have never been so close to being united as now.” Many are entrepreneurs, or from small- or medium-sized enterprises. How can this enthusiasm be harnessed to promote increased efficiency and technology transfer for increased cost internalization? Recent environmental concerns centre on potential increases in hemispheric pollution levels. A recent review of the potential environmental impacts on Latin American countries of expanded trade in four extractive sectors (agriculture, forestry, fisheries and mining), and the manufacturing sector, suggest that each country conduct, in cooperation with civil-society groups and the private sector, national pollution audits similar to those pioneered recently in Venezuela.⁷⁹ These audits can also take place subregionally or regionally, and be used as technical foundations to set priorities for building monitoring capacity and later redefining ‘rights to pollute’ in each country, focusing on the most pollution-intensive sectors.

3.2 Environmental integrity

“Trade and development should respect and help maintain environmental integrity. This involves recognition of the impact of human activities on ecological systems. It requires respect for limits to the regenerative capacity of ecosystems, actions to avoid irreversible harm to plant and animal populations and species, and protection for valued areas. Many aspects of the environment, for example, species survival or the effective functioning of biological food chains, have values which cannot adequately be captured by methods of cost internalization, highlighting the need for other policy instruments.”⁸⁰ As we enter the next millennium, discussions regarding major environmental issues are ultimately dealing with planetary integrity, and regional systems are a key intervention point.

Supporters of free trade argue that economic growth results in augmented income levels, where the wealthier population will in turn demand higher environmental standards and more capital that can be invested in environmental policies. Detractors see the increase in economic activities as a potentially dangerous source of continued environmental degradation, with potential scale, structural and product effects.⁸¹ Economic activities do imply the modification of ecological systems. Depending on the particularities of such activities (as well as the types of environment where they take place), changes in the structure and dynamics of a certain ecosystem may lead to an overall decline in environmental integrity. For example, most of the natural environments of the Western Hemisphere have suffered some degree of habitat alteration, and many have been lost by conversion to human landscapes.⁸² Large undisturbed natural areas are restricted to the boreal regions of Alaska and Canada, and the Amazonian forests of South America.⁸³ Among the most affected biogeographic provinces are the Pampas of Argentina and Uruguay, and the Atlantic Forests of Brazil (where 2.1 per cent, 0.7 per cent, and 6.5 per cent remain undisturbed, respectively). In the Caribbean islands, undisturbed natural habitats are rare. Only 1.9 per cent of the natural habitats in Cuba, for example, have yet to be altered by humans.⁸⁴ Renewable resources can be rendered non-renewable by unsustainable levels of exploitation or by unwise, short-term extractive practices. For example, trade-driven expansion of shrimp farming in Ecuador may have caused the destruction of approximately half of the country’s mangrove forests in the 1980s⁸⁵ and intensive commercial fishing of Western Hemisphere waters has been linked to the collapse of several regional fisheries, including sardines in California, anchoveta in Peru, and, most recently, cod in the Northwest Atlantic.⁸⁶

Environmental integrity agendas are not foreign to regional integration processes. The European Community, as part of its Fifth Action Programme for the Environment, adopted several themes of pressing importance to envi-

ronmental integrity—conservation of biological diversity, climate change, acidification and air quality, management of water resources, urban environments, coastal zones, and waste management.⁸⁷ In the Americas, the 1996 Summit of the Americas on Sustainable Development process drafted a Bolivia Plan of Action which proposes cooperative action on the environment in five areas—health and education, sustainable agriculture and forests, communities and cities, water and coastal areas, and energy and minerals.⁸⁸ Though this agenda may not have significantly advanced, elements for cooperation are in place, delinked from the trade integration process. Ecological zones in the Americas extend beyond the frontiers of national borders.⁸⁹ For example, the waters of the Caribbean bathe the shores of 23 countries, 13 of which are island states largely dependent on marine resources; Amazonian forests are spread among eight countries; and the Western Hemisphere abounds with migratory wildlife as diverse as whales, butterflies, tuna and waterfowl. Biologically, the Americas comprise a unique system of interrelated living organisms: except for the southernmost islands of Chile, the biota of the Americas is more closely related to its cousins across the Western Hemisphere than to that of other parts of the world.⁹⁰ This system is essential for global environmental integrity. Of the dozen or so “mega-biodiversity” countries—nation states that account for a disproportionately large share of the world’s biodiversity—five are found in the Americas (Brazil, Colombia, Ecuador, Peru and Mexico).⁹¹

Challenges to environmental integrity in the hemisphere are urgent, especially in terms of unsustainable raw material extraction and ecological conservation. Much remains to be done in a coordinated manner by various forums, both within the FTAA process, and in the wider context of hemispheric integration. Examples from diverse areas in the hemisphere clearly reveal that addressing this issue in the context of trade is not simply the providence of any sector, subregion or country alone. Actions that can be considered by governments, industry and civil-society groups include the following:

- **Hemispheric ecological agreement and institution**

Major initiatives are taking shape, especially among civil-society groups and scientists, to protect irreplaceable natural systems across the Americas. At the regional level, a great deal more needs to be done. International law and institutions need to exist that can coordinate and integrate this work. Joint initiatives should ensure that these ecological links are investigated and protected. The Western Hemispheric Convention on the Protection of Wild Flora and Fauna entered into force on May 1, 1942, and provided for several mechanisms to increase ecological cooperation. However, the convention has not surfaced as an effective tool for hemispheric biological conservation because, among other reasons, it failed to establish

“the necessary administrative apparatus to keep it active,” such as a secretariat, a conference of the parties, or reports on the parties’ progress in implementation.⁹² A trade agreement can support new arrangements and ensure that these institutions are set in place if the political will is generated to do so. Such can be the case at the subregional level, as with the new Environmental Protocol being added to the Treaty of Asuncion of the Southern Common Market, MERCOSUR, whose draft 13 operating principles include the Winnipeg Principles,⁹³ or the much-documented North American Agreement on Environmental Cooperation, which among other activities, conducts pollution audits, analyzes the environmental effects of trade, and collates ecoregional maps to track ecosystem connections.⁹⁴ Another less known but successful subregional environmental agreement, one which restricts wildlife trade with the specific purpose of conserving remnant populations of a particular species, is the 1979 Convention for the Conservation and Management of the Vicuña (Lima) signed by Argentina, Chile, Bolivia, Ecuador and Peru, which succeeded a 1969 Convention for the Conservation of the Vicuña (La Paz).⁹⁵ On a bilateral level, under the framework of NAFTA, a technical assistance program has been established between Mexican authorities and the U.S. Environmental Protection Agency to provide an integrated border environmental plan and an action agenda of collaborative projects.⁹⁶ The governments involved in FTAA negotiations need to open a forum for multilateral talks on these issues.

- **Eco-regional protected-area networks parallel to integration at all levels**

An integration process can become a focus for multilateral efforts to establish ecologically linked protected-area networks, within the framework of ongoing conservation efforts. In theory, an ecologically representative, properly funded, and well-administered system of national protected areas offers the potential for long-term integrity of natural habitats and ecosystem-based natural resources in the Americas. Though the hemisphere’s more than 2,300 protected areas (IUCN Categories IV) conserve more than 370 million hectares (ha) of landscape, the geographical distribution and relative sizes of these conservation units is far from even. Of the hemisphere’s 34 countries, 21 have only 5 per cent or less of their total surface area under protection. In terms of hemispheric representation, 40 of the 69 biogeographical provinces in the Americas have less than 5 per cent of their surface area under protection. In Central America, where two-thirds of the region’s more than 160 protected areas are small (less than 10,000 ha) and together account for less than 500,000 ha of surface area, only five protected areas account for approximately one-third of the region’s total conservation surface (2.7 million of 8.7 million ha). In addition, and particularly in the hemisphere’s developing countries, protected areas often

exist only on paper, with little value as conservation units. Among others, limited financial and technical resources in these countries prevent effective enforcement of protective measures, ecological research, monitoring and educational programs.⁹⁷ Integrated ways to conserve these systems are also proposed on a subregional level, such as the Mesoamerican Biological Corridor, espoused in the 1992 Central American Convention for the Conservation of Biodiversity and the Protection of Priority Natural Areas. Mechanisms also exist in the context of intergovernmental institutions, such as the United Nations Environment Programme's Caribbean Regional Seas Program.⁹⁸ In addition, the 1978 Treaty for Amazonian Cooperation, signed by Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela, takes "into account the need for the exploitation of the flora and fauna of the Amazon region to be rationally planned so as to maintain the ecological balance within the region and preserve the species...[and] establish a regular system for the proper exchange of information on the conservationist measures adopted or to be adopted by each state in its Amazonian territories."⁹⁹ The Andean Community could strive to establish such a network in the Northern Andes, for example, an "Andes al Vuelo" project to ensure that bird populations restricted to thin altitudinal bands are not completely separated from one another. MERCOSUR could focus integration efforts on an "Arteria de Vida" project to ensure adequate protection of wetland habitats from the Pantanal to the Rio de la Plata. Such projects would undoubtedly help curb biodiversity loss and improve overall protected-area management in the participating countries by increasing information and funding flows to competent authorities.

- **Environmental aspects of the FTAA agenda**

Though some countries have suggested that the environment is not a trade issue because of fears of eco-protectionism,¹⁰⁰ within the existing FTAA process, the nine working group mandates are intimately related to specific environmental challenges and issues. Environmental provisions in trade agreements can commit countries to not lower environmental standards to attract investment, or to respect the provisions of multilateral environmental agreements in the case of conflicts. For example, on the subregional level NAFTA includes these clauses, and environmental provisions are found in bilateral free trade agreements between Mexico and Costa Rica,¹⁰¹ and between Chile and Canada. Participants in a recent meeting hosted by Yale University's Global Environment and Trade Study in Miami developed the following draft research agenda as a starting point for environmental aspects of trade agreements (Table 10). More investigation is necessary to develop a Latin American and Caribbean driven hemispheric trade and environment agenda.

Table 10: Environmental aspects of the FTAA working-group agendas.

1. *Market access*

- Developing incentives for more ecologically friendly products.
- Developing multilateral environmental management systems or performance standards for certification and eco-labels to gain access to opportunities generated by increasing green consciousness.
- Taking advantage of the growing demand for environmental goods and services in many countries.

2. *Investment*

- Preventing environmental standards from being waived to attract foreign investment, and compensation from being required for the development of legitimate environmental laws.
- Establishing common criteria to protect the investor, which are not based on a right to pollute.
- Providing better access to information about ethical investment criteria in the hemisphere.

3. *Services*

- Evaluating potential environmental impacts of higher levels of intra-hemispheric transportation, increased shipping and port services, and other large infrastructure projects resulting from augmented international trade.
- Developing low-impact service sectors (e.g., eco-tourism).

4. *Government procurement*

- Improving transparency in government procurement choices.
- Developing incentives for environmentally sound goods and services.

5. *Dispute settlement*

- Negotiating provisions that establish the precedence of multilateral environmental agreements in the case of conflicts between environmental objectives and trade agreements.
- Ensuring inclusion of provisions allowing dispute-settlement bodies to gain access to environmental expertise when necessary.
- Establishing procedures for multilateral monitoring of and accountability for environmental misdemeanours, to protect the rights of citizens.

6. *Agriculture*

- Taking into account soil exhaustion impacts from intensive use of pesticides and agro-chemicals.
- Addressing new environmental and scale challenges for phyto-sanitary institutions (information sharing, capacity development, and so on).
- Coordinating with multilateral environmental agreement secretariats on biosafety issues (safe release of genetically modified organisms, and so on).

7. *Intellectual property rights*

- Investigating protocols for access to genetic resources, bioprospecting and traditional collective resource rights.
- Promoting the development of, access to, transfer of and protection of clean technologies.

8. *Subsidies, anti-dumping and countervailing duties*

- Identifying subsidies that disrupt trade flows and create incentives for unsustainable levels of resource exploitation (e.g., agricultural subsidies which support chemical-intensive practices, energy subsidies, and so on).

9. *Competition policy*

- Recognizing and harmonizing domestic environmental policies, including environmental impact assessment systems, standards, market-based or voluntary instruments, and so on.

• **Environmental assessments of the proposed trade agreement**

An environmental review of the proposed trade agreement might illuminate sets of issues that negotiators can consider in developing the agenda. This process can develop a broad understanding of the environmental issues raised by the proposed agreement, and suggest means of addressing them that ensure that objectives of mutually complementary trade and environmental policies are met. For example, the United States review of NAFTA in 1994 revealed challenges (pollution problems on the border of the U.S. and Mexico) and opportunities (environmental and trade gains from pollution reduction).¹⁰²

- **Inter-American environmental laws**

Certain environmental integrity challenges are also best addressed in the context of existing global or regional structures. With cooperation from agencies such as the new Environmental Law Network of the Americas,¹⁰³ the integration process can support a gap analysis of the growing body of specific, sectoral hemispheric environmental legislation, which includes the Inter-American Convention for the Protection of Endangered Sea Turtles, and the aforementioned Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere. The integration process can also recommend appropriate new laws, putting financing mechanisms similar to those of other successful multilateral environmental agreements into place to encourage the compliance with common but differentiated responsibilities.¹⁰⁴

- **Inclusive certification processes and eco-labelling for renewable resources**

Civil-society processes can support the objective of ensuring that natural systems are not mined at non-renewable rates in one sector to the next. Newly developed sector-specific certification initiatives can be implemented positively to facilitate increased market access for industrial ‘best practices,’ including jointly developed or harmonized technical performance-based standards (which lead to appropriate environmental certification) and labels to gain access to increasing markets of ‘green consumers.’¹⁰⁵ Steps in this direction include, for example, the work of the Forest Stewardship Council (FSC) in Oaxaca, Mexico to provide locally based yet universally recognized standards for sustainable forest management, and the recent increases in forest industry adoption of the FSC certification process.¹⁰⁶ Also, the WTO Appellate Body’s recent ‘shrimp-turtle’ decision set precedent by finding that trade measures based on environmentally damaging production and processing methods (PPMs) could qualify for ‘provisional justification’ under GATT. This may mean that certain types of nonarbitrary and justified environmental regulations will be allowed to condition market access on observance of certain PPMs.¹⁰⁷

3.3 Equity

“Equity relates to the distribution both within and between generations of physical and natural capital, as well as knowledge and technology. In the transition to sustainability additional obligations should be assumed by those, primarily in the developed world, who have used resources in the past in a manner which limits the options of current generations, particularly in developing countries. Inequity contributes significantly to environmental degradation

and political instability, particularly in smaller or marginalized economies.”¹⁰⁸ In addition, for long-term social sustainability between and within generations, the concept of *fair distribution* should also be taken into account. Fair distribution relates not only to equal distribution but also to distribution where it is most needed to address problems of poverty, including health, food security, education and housing, as well as human rights. Hence, truly equitable trade implies opportunities for developing countries and for marginalized communities within developing and developed countries, suggesting new ways of regulating trade.

On the international level, the Winnipeg Principles propose that trade liberalization can contribute to greater equity through the dismantling of trade barriers that harm smaller economies. In the Americas, populations are growing, modernization and industrialization are proceeding, and private investment flows are mounting as rules are streamlined or eliminated.¹⁰⁹ Within countries, structural adjustments and tighter budgets are forcing states to privatize social institutions.¹¹⁰ Aid flows are drying up and civil-society organizations are taking on more of the social-justice and poverty-alleviation workload. Many equity and social-justice concerns are considered to be domestic issues for each society. However, the Americas has a long-standing tradition of freedom of movement, and in spite of recent severity in immigration laws on the part of certain countries, more peoples are migrating, from rural to urban areas, and from South to North.¹¹¹ As official and non-official migration becomes more common across the Americas, hemispheric human rights, particularly with regard to core labour standards, become issues of common concern, and the countries of the Americas increasingly face common equity challenges.¹¹² In addition, as we saw in the earlier description of the social regime, the gap between rich and poor in the Americas is widening,¹¹³ though more people are able to meet their basic needs at present than were able to do so 20 years ago. These challenges are increasingly brought to the core of trade integration processes, as economic linkages are seen to affect social conditions and the potential for implementation of social priorities. Strategies to address these issues include the following:

- **Core labour standards in the FTAA**

Over the last few decades, there has been a proliferation of international instruments regarding human rights, which aim to produce better social conditions and promote more equitable societies by setting certain common minimum standards. These standards are embodied in the American Convention on Human Rights¹¹⁴ and many other agreements. Countries across the Americas have signed and ratified these agreements, binding themselves to the rules. Social justice oriented organizations maintain that economic integration has meant, in NAFTA and MERCOSUR agree-

ments, falling wages, social disintegration and rising unemployment.¹¹⁵ They maintain that in all parts of the Americas, “bonded labour, grossly exploitative child labour and persecution of trade unionists persist today. Disregard for workers’ rights is by no means limited to the developing world.”¹¹⁶ The FTAA asserts as a general objective “to further secure... the observance and promotion of worker rights, renewing our commitment to the observance of internationally recognized core labour standards.”¹¹⁷ Though the ILO is the competent body to establish these standards, academic voices also recommend including a social clause that guarantees these universal rights in any trade agreement.¹¹⁸ (Table 11).

Table 11: Core labour standards.

The so-called core labour standards are usually defined in terms of five ILO Conventions:

- The freedom to organize;
 - The right to collective bargaining;
 - The freedom from forced labour;
 - The prevention of discrimination; and
 - Minimum age of employment.
-

A. Hale, “World trade is a women’s issue,” Women Working Worldwide, Manchester, 1996.

Extensive academic work has been done on the social dimensions of NAFTA, particularly the side agreement on labour cooperation.¹¹⁹ On a sectoral level, labour provisions and aspirational references to fair labour standards have also been incorporated into multilateral commodity agreements.¹²⁰ The FTAA must be alert to the fact that trade regimes in general have faced serious challenges with regard to ensuring equity. Perhaps the question at present is simply, ‘How can an FTAA ensure that it does not make things worse?’ Acceptance and integration of the notion of core labour standards into the FTAA agreement, already reflected in the constitutions of most countries of the Americas, might be one way to bridge this gap.¹²¹

- **Visible measures for trade-related equity issues**

The number of people in the Americas facing problems such as lack of employment and services, human rights violations, inability to meet basic human needs and low education levels has grown and inequities are more pronounced.¹²² For example, according to one Argentine study, 358 peo-

ple in the world accumulate more wealth than 2,300 million.¹²³ Civil-society organizations draw a connection between these facts and the economic development policies currently espoused in the Americas. In seeking to promote greater equity, it is possible to strive for growth to generate resources for social priorities, or to seek better distribution of existing resources. The two are not mutually exclusive for long-term success; the simultaneous application of both policies is necessary.¹²⁴ Though there are few clear examples where the wealth gains of trade liberalization have been clearly directed toward social priorities, the FTAA is premised upon the assumption that increased trade leads to increased revenue to dedicate to poverty elimination and social programs.¹²⁵ Targeted social impact studies are needed to define the consequences and opportunities of hemispheric trade integration on the most vulnerable social and economic sectors.¹²⁶ Based on this preparation, a common reserve facility or fund, with social and financial stability objectives, can be created to address multilaterally developed trade-related equity objectives on a hemispheric level. Precedents exist such as the Latin American Reserve Fund mechanism of the Andean Community (projected for \$840 million (US) and incorporating flows of \$9,477.8 million (US) since its creation in 1976).¹²⁷ The Andean Community also hosts annual Social Summits to address regional equity and social-agenda issues.¹²⁸ This kind of proactive initiative might address the perception that trade liberalization cannot reduce poverty and inequity.

- **Address labour constituencies in the FTAA debates**

Organized labour communities across the Americas have begun to develop their positions on equity issues, having founded a Hemispheric Social Alliance early in the FTAA process.¹²⁹ The participation of labour groups in trade negotiations is not unheard of. For example, in the Labour Side Agreement of NAFTA, a multilateral forum has been created to consider cases of labour rights violations, and, recently, a Mexican labour union brought a case before the North American Commission for Labour Cooperation, accusing the United States of not having applied their labour laws in certain instances regarding migrant workers.¹³⁰ The debate at present is characterized by ideological chasms, and mechanisms must be found to address the rhetorical positions before true dialogue is possible. An FTAA Social Charter has been suggested by certain labour unions engaged in the debate,¹³¹ and the process of negotiating such a document holds the possibility of opening doors to constructive discussion. It is also possible that global negotiations between the ILO and the WTO will shed some light on these issues, and links should be established between the multilateral and regional levels.

- **Equity among countries in the trade negotiations**

In negotiations of the FTAA, the tripartite secretariat of the OAS, the Inter-American Development Bank (IDB) and the Economic Commission for Latin America and the Caribbean (ECLAC) are required to provide technical assistance to members and are specifically mandated to provide extra support for smaller economies. Countries intend to take differences in level of development and size of participating economies into account in the negotiations, to ensure that the smaller countries are able to equally benefit from the ensuing liberalization process.¹³² For this reason, an FTAA consultative group on smaller economies was created, to provide administrative and substantive support that will empower small countries in the process. To strengthen this process, it is possible to draw upon subregional-level examples of past mechanisms developed to accommodate these priorities, such as the Caribbean community's use of dual annexes with differential schedules of liberalization commitments, depending on the size of the economy.¹³³ Lessons can also be generated by the draft WTO Plan of Action (POA) for the Least Developed Countries (LDC), a study of the feasibility of binding preferential tariff trades in a WTO preferential scheme which would apply specifically to the LDCs.¹³⁴

- **Measures for sustainable foreign direct investment**

Civil-society organizations, particularly those involved in campaigns related to proposals for a multilateral agreement on investment (MAI) in the Organization for Economic Cooperation and Development (OECD) or the WTO, advocate strong national controls on investments.¹³⁵ Concerns exist that poorly crafted investment rules on any level may exacerbate the exploitation of natural resources, contribute to environmental degradation and place downward pressure on national environmental laws and regulations. However, political attempts to simply regulate foreign investment in the Americas have not been overly successful. A telling example is found in the early history of the Andean Community, when governments, concerned that the Latin American Free Trade Area (now the LAIA) would operate only to benefit the most industrially developed countries, attempted to deter foreign ownership in favour of local or national interests and needs. The Andean Group's investment code regulated foreign investment, private loans and technology transfers, ensuring that most foreign companies follow a variety of measures to promote local development.¹³⁶ In 1976, three years after the pact was signed, a military coup and the imposition of a neoliberal economic regime led to Chile's withdrawal from the common strategy.¹³⁷ When Venezuela joined and Peru began a National Commission for Foreign Investment Technology

(CONITE) the code was further weakened by Decision 220, and, by the 1991 Decision 291, it was essentially repealed.¹³⁸

It is possible to argue that the attempt by socially oriented governments to make a trade regime reflect equity concerns had badly failed, though some suggest that, given the entrenched local financial interests, the domestic poor may not have benefited significantly from the unsuccessful regime either.¹³⁹ Conversely, economic attempts to redirect foreign investment to socially responsible priorities could be very effective if they are taken seriously and reviewed periodically. As stated by the National Wildlife Federation, "increased investment built on a solid commitment to sustainable development can potentially lead to transfers of cleaner environmental technologies and improved capital expenditures in environmental protection infrastructure."¹⁴⁰ This could potentially allow for better working conditions and social-program expenditures as well. Innovators in the Americas should consider developing common multi-lateral criteria for an environmental and social investment code to guide foreign direct investment, which can be included in potential trade accords and can inform lending institutions. Serious academic debate and public consultation are necessary to develop an appropriate and equitable agenda for investment control and protection, and the efforts of the FTAA Competition Policy or Investment Working Groups, in particular, should consider these issues.

3.4 International cooperation

Where disputes arise, the procedures for handling them must be capable of addressing the interests of the environment, development and the economy together. This may involve changes to existing rules and dispute-settlement mechanisms, or the creation of new mechanisms. The most desirable forms of international cooperation will avoid conflicts, through international efforts at development and environmental protection, and by improving the functioning of the trading system. When international disputes do arise, they must be resolved internationally. This requires open, effective and impartial dispute-settlement procedures that protect the interests of weaker countries against the use of coercive political and economic power by more powerful ones. Unilateral action on transboundary environmental issues, an option generally available only to a few large countries, should be considered only when all possible avenues of cooperative action have been pursued.¹⁴¹ These trade sanctions are the least desirable policy option, signifying failure by all parties concerned if they do not have multilateral support.

From a broad perspective, it is impossible to speak of international cooperation in the Western Hemisphere without referring to the Organization of

American States (OAS). Hemispheric cooperation in the Americas has been evolving for over a century, marked by international events such as the 1889 Pan American Conference. International cooperation, however, is one of the most challenging aspects of the Americas integration process.¹⁴² The enormous disparities in size of the 34 countries, economies and societies involved in the process have already produced a history of unilateral action and resentment. In past 'cold-war thinking,' the Americas was viewed as the 'backyard' of one or two large economies,¹⁴³ and this thinking has affected the possibilities for serious, egalitarian international cooperation in the region among civil society and governments. The 'North toward Latin America' geopolitical tendencies belie the egalitarian goals of the Organization of American States or the FTAA and ignore the obvious heterogeneity of the Americas (for example, contrast Haiti to Bolivia to Brazil to Belize to Mexico). This culture must be overcome. Any discussion of international cooperation and sustainable development in the Americas integration process must also take into account both the 23 initiatives in the Plan of Action from the 1994 Miami Summit of the Americas, and the 1996 Santa Cruz Summit of the Americas for Sustainable Development. The vision presented at these events, of course, will require much work to become a reality. Recommendations include the following:

- **New sustainable development forum of the Americas**

The hemispheric trade community can support a recent OAS recommendation as a mechanism to promote international cooperation for sustainable development in the Americas. The 1998 Report of the OAS Secretary General on the Bolivia Summit Implementation proposes a Forum of the Americas on Sustainable Development for continuing constructive dialogue that will intensify efforts to fulfill the Bolivia Summit commitments. Obstacles to cooperation, such as substantial research gaps, shortage of financial resources, lack of prioritization and lack of awareness at various jurisdictional levels can be addressed through this proposed annual high-level meeting. Proposed functions include reviewing two Bolivia Plan of Action topics a year (e.g., 2000 Cities and energy; 2001 Agriculture and biodiversity); coordinating and diffusing sustainable development policies; identifying new initiatives and exchanging information; and developing hemispheric positions on sustainable development issues.¹⁴⁴ A working group on trade and sustainability in this forum might provide institutional balance to the FTAA, and solid foundations on a second bank for any bridges between the trade and sustainable development communities. Links should be clearly defined between this forum and the FTAA process, providing communication mechanisms that allow the economic integration process to support and promote multilateral cooperation on broader trade-related sustainable development concerns and issues that otherwise fall to trade negotiators to resolve. Lessons from

the heart of the environment-development debate can be drawn from past subregional experiences. For example, the 1989 Central American Alliance for Sustainable Development was formally launched in 1994 as the 'Alliance for Sustainable Development (ALIDES),' a 'comprehensive Central American initiative that addresses political, moral, economic, social, and environmental issues'; national councils on sustainable development were established as instruments for implementation. ALIDES was seen as a potential foundation from which to strengthen environmental protection, labour laws, and social programs in spite of continued objections from the domestic and international business sector, and seemed effective between relatively equal partners in the region. ALIDES, however, also became the focal point for a public agreement between the U.S. and the Central American governments, CONCAUSA (CONvenio CentroAmérica USA), a partnership for sustainable development based on certain principles.

Though the CONCAUSA Declaration of 1994 provided a list of tangible, concrete commitments on the part of the Central American presidents and the U.S. president "to achieve the objectives of the Alliance for Sustainable Development, as established in the attached Action Plan...",¹⁴⁵ environmental measures—such as the conservation of biodiversity, development of renewable energy, environmental legislation standards and eco-friendly industrial processes—became the focus of implementation to the exclusion of other priorities. Although these are valuable goals, there was little reference in the declaration and resulting projects to priorities such as social equity, democratic participation, respect for cultural diversity, or the protection of human rights. A truly multilateral program will require cooperation and finesse on the part of the diverse governments and civil-society organizations, and increased respect for diverse, culturally appropriate definitions of sustainable development.

- **Sustainable development friendly hemispheric dispute-settlement mechanism**

Promoting international cooperation to resolve disputes and potential sanctions is not as straightforward as might be assumed. The disparities in the heterogeneous Americas community are likely to be felt, and appropriate responses will be impossible without a multilateral framework that is seen by all to be fair. To achieve this objective, several priorities can be considered. Unilateral sanctions must be discouraged. Countries that feel victimized by unilateral trade sanctions from larger economic powers are less likely to take international commitments on social or environmental issues seriously. For example, shrimp from certain countries was barred from the U.S. market because of trawling methods that also caught

endangered sea turtles. Ecuador outfitted all their boats with turtle excluder devices (TEDs) to regain access to the U.S. market, though, according to the Darwin Foundation, marine turtles shelter 60 miles off the coast whereas shrimp harvesting is carried out only eight miles from the shore. As Alban remarks “a small country such as Ecuador does not complain about the use of unilateral measures or the extra-jurisdictional application of U.S. Public Law, but instead dutifully assumes the burden of repeated inspections until it is finally certified.”¹⁴⁶ In addition, solutions must be sought, where appropriate, in forums designed specifically for social and environmental objectives. For example, as the shrimp-turtle debate developed, solutions were sought on a hemispheric level. International symposia on sea turtle biology and conservation led to the creation of an Inter-American Convention for the Protection and Conservation of Sea Turtles, with a secretariat in Venezuela.¹⁴⁷ Although all parties to the Convention are not assured of equal voices in certification procedures, the Convention is nonetheless a step in the right direction. Multilateral hemispheric solutions, based on clear commitments from all parties and solid funding mechanisms, can often be found to address public policy challenges without clouding trade debates. The Americas offers the ideal geographic and cultural unit to act as a nursery for these initiatives before they are applied globally where appropriate. Likewise, any Americas dispute-settlement mechanism must include provisions to ensure respect for legitimate public environmental or social goals, transparency and participation, and enforcement mechanisms, including incentives for compliance and binding punitive action.¹⁴⁸ The mechanism must be as effective as the WTO’s panel-and-appeal approach, but include NAFTA-like processes for input and participation. Critiques of the NAFTA dispute-settlement processes include concerns about its slow, diplomatic process and limited results, where publication of a fact statement has been referred to as a “slap on the wrist.”¹⁴⁹ As learned at the WTO, measures for capacity building and access to intervenor funding for smaller economies—procedures which ensure links with other competent bodies (such as UNEP Convention secretariats, or the International Labour Organization)—may be useful components. These could be complemented by policies that disclose information, which help to make available relevant documents and guidelines to submit *amicus* briefs, and provisions in consultation with independent experts (such as the turtle experts called in for the aforementioned shrimp-turtle dispute).

- **Sector-specific international regimes to ‘green’ hemispheric technology**

Certain economic sectors can benefit from greater international cooperation within the framework of economic integration. The potential for mutually beneficial environment and development sector-specific initia-

tives must be investigated, especially in services such as eco-tourism or low-impact mining. Examples exist of programs that have yielded multilateral results. In 1995, energy ministers of the hemisphere, assisted by government officials, energy experts from the private sector, multilateral bank experts and NGO representatives, established a Hemispheric Initiative for the Energy Sector, with the understanding that energy is an 'economic enabler,' to promote clean, renewable and sustainable energy sources in the region. The Hemispheric Energy Steering Committee, co-chaired by Venezuela and the United States, undertook cooperative surveys and sustainable market programs and periodically met along with representatives from relevant international organizations.¹⁵⁰ The Steering Committee established eight working groups, coordinated by different countries, to implement the energy action plans under the steering committee's guidance and attempted to disseminate information about its activities by creating a home page on the World Wide Web.¹⁵¹

- **A united voice in multilateral forums**

Governments of the Americas should consider speaking at the global level with one voice in multilateral environment, social and trade negotiations. Examples for such a form of cooperation can be found in the processes for reaching common positions by MERCOSUR nations, which occasionally are represented as a bloc in international forums.

3.5 Openness

Public involvement generated through transparent and participatory processes can mean higher quality, more diverse exchanges of expertise, data and ideas, leading to better informed decisions, more effective domestic implementation, and broader legitimacy. Easy and full access to information for all those affected and public participation in the decision-making process are two essential elements of openness.¹⁵²

Increased information and enlarged participation for civil society across the Americas are not new or revolutionary ideas. Inter-American events were among the first efforts of some governments to officially include certain sectors of civil society, such as private enterprise, in multilateral conferences.¹⁵³ The first Pan-American conference, in Washington, D.C., 1889, saw manufacturers, merchants and several lawyers on the U.S. delegation.¹⁵⁴ Since then, most processes have broadened and in some ways moved toward inclusiveness.¹⁵⁵ But international trade debates continued to be kept completely closed, since governments often had to make commitments that went against the interests of a particular industry that favoured protectionist policies. As well, the trade community had legitimate fears of 'protectionist special interests' gaining too great a voice in the processes that were meant to remain "isolated and free from

political pressure.”¹⁵⁶ A distinction must be made, however, between public-interest organizations, civil society, and private vested interests or protectionist groups, since the cooperation of the first group is essential for a trade agreement to succeed in a democratic and participatory society.

In the Americas, always known for strong human rights and labour movements, large numbers of citizens are also becoming increasingly involved in environmental organizing. Civil-society ‘ecologist’ organizations are “sprouting throughout the region,”¹⁵⁷ with over 200 groups in Venezuela, 150 in Chile, and more than 100 in Peru. The Brazilian NGO Forum is a model of cooperation between labour and environment groups with over 2,000 members, and the Canadian Environmental Network also claims a membership of almost 2,000 organizations. Some labour organizations have shown leadership on a hemispheric level, hosting parallel Summits to both the 1997 Belo Horizonte FTAA ministerial meeting and the 1998 Santiago Summit of the Americas.

Governments across the Americas are registering support for increased openness from within the trade and sustainable development communities. The participation of civil society in the discussion of the linkage between trade liberalization and environmental protection is essential in obtaining support for any agreement in key parliaments and congresses.¹⁵⁸ It cannot be avoided by governments.¹⁵⁹

As the international climate leans toward increased openness for civil society, there are many ideas for improved participation in trade rule decision-making from labour, environment and academic civil-society organizations. Present suggestions for improvement range from demands for full referendums in all countries before ratification of any accords (1998 Santiago Peoples Summit Declaration), to mechanisms for national civil-society study groups with the right to present ‘*amicus*’ briefs’ to negotiating committees, to NAFTA-like public advisory committees (such as the Canadian International Trade Advisory Committee or ITAC), to civil-society experts sitting on negotiating committee sub-committees (such as the proposal of the National Wildlife Federation of the United States of America).

Hemispheric openness efforts should include four components. First, a culture of openness must be constructed in the institutions through access to information. A tone is set through leadership by key political leaders in the debates, and through directors and high-level officials (for example, the governments, as well as the leaders at the Inter-American Development Bank, the Organization of American States and the Economic Commission for Latin America and the Caribbean). Second, mechanisms for dialogue must be put in place, preferably civil-society initiated, in partnership with governments and with shared decision-making power, with mandates, structures and mon-

itoring systems to ensure that they are accountable. Third, civil society must organize itself, generating expertise, representative voices and an equitable level of capacity from all subregions and countries. Fourth, civil society must reach out and generate awareness around the issues, fostering debate in the general public and among the grassroots, which ensures that the public interest is being truly sought. Specifically, the following recommendations can be made from the evidence across the hemisphere to date:

- **Country-level openness on a parallel track**

Country-level openness is fundamental in supporting the advancement of this principle at the international level, and consists of formal and substantive transparency and participation. Transparency can be guaranteed by law, such as in the Freedom of Information Acts of the United States and other countries of the hemisphere, as can the right for citizens to be informed and participate in public-policy processes beyond elections. In trade-policy initiatives, one mechanism to ensure participation by relevant civil-society organizations and business is the establishment of a national trade advisory committee, which includes representatives from civil society, environment, labour and consumer groups, and industry. Models can be found in Brazil's participation in MERCOSUR policy development, the United States trade advisory committee, and Canada's recent cross-country FTAA public-consultation process and parliamentary sub-committee hearings.

- **Civil-society bridge between trade and development communities**

Many problems occur because the two communities—diplomats and economists on one hand, and environment, development and consumer organizations on the other—simply do not understand each other. Each lacks the capacity to speak the other's language or accept the other's positions. At a global level, civil-society groups have initiated an International Centre for Trade and Sustainable Development to act as a bridge and to promote dialogue between trade and sustainable development communities in the debate.¹⁶⁰ This kind of institution, in the context of the Americas, could support the continuing development of the Committee of Government Representatives for the Participation of Civil Society, provide links to a working group of the Sustainable Development Forum of the Americas, and promote greater exchange of information and dialogue among the hemispheric trade, environment, consumer and development communities.

- **Parallel summits and other civil-society forums**

Continuing initiatives must be strengthened by civil society itself, which has a responsibility to build a strong, autonomous, hemispheric constituency with expertise, outreach capacity and accountability. To accom-

plish this effectively, further research is needed, especially from the perspectives of traditionally marginalized sectors, such as indigenous peoples, youth and women. Likewise, the Parallel Summits Process should be strengthened by all participants, building upon a comprehensive database of prior events and agreements in a permanent secretariat. Sector-specific, civil-society networks can be created and strengthened, especially among the environment, labour, indigenous and business associations involved in the debate. Also, civil-society working groups should be formed on national, regional and hemispheric levels to continue developing civil-society perspectives on the issues.

- **Hemispheric initiatives for civil-society participation in trade agreements**

On a subregional level, non-governmental participation in trade agreements is nothing new. The Grupo Andino has also developed a method to include the private sector in its deliberations. Decision 285 of the Commission of the Cartagena Agreement allows companies, through member countries, to request that an Andean group board apply measures to prevent or correct damage to production or exports caused by business practices that restrict free competition within the subregion.¹⁶¹ In the NAFTA context, each party to the North American Agreement on Environmental Cooperation maintains a national advisory committee, and the Commission for Environmental Cooperation receives advice from a 15-member joint public advisory committee (JPAC), which includes representatives of each country. The JPAC meets with the CEC council and hosts public sessions for civil-society groups and individuals.¹⁶² In South America, MERCOSUR, with political and social integration structures, provides access through an economic and social advisory council that receives information from labour, business and consumer representatives. Experts from civil society attend relevant meetings of the technical subcommittees. On a hemispheric level, considerable will exists on paper for the implementation of this principle, and mechanisms are being set in place. The civil society committee (CSC) initiative must be strengthened. Environmental and social concerns must become a specific agenda item for the committee, verifiable links must be established to the work of other FTAA negotiating committees, and all reports must be made publicly available. The CSC program could also include proactive public efforts to involve public dialogue or consultation, comprehensive information disclosure and communication policies, intervenor funding mechanisms for underrepresented groups, and measurable operational procedures which indicate how civil-society concerns will be addressed in the context of negotiations.¹⁶³

- **Consultation processes with civil society**

On a subregional level, concrete examples of initiatives to increase openness in integration processes include the Caribbean Community's Civil Society Charter,¹⁶⁴ which was developed through joint government and civil-society roundtables in a process that built capacity among all participants to understand the integration project.¹⁶⁵ Regionally, initiative 3 of the Miami Summit Action Plan, 'Invigorating Society/Community Participation,' and the commitments for increased citizen participation in the Bolivia Summit Action Plan, are potential starting points for the FTAA to examine in inviting civil-society groups to be part of a drafting process. If this is done well, and correct mechanisms are put in place, governments should not fear submitting their final decision to ratify the FTAA to a democratic plebiscite or referendum in each country before signature in 2005. Subregional referendums, if they can be done cost effectively and efficiently, would be very valuable in democratically determining public support for the integration process.

3.6 Science and precaution

Policies that intend to reconcile trade, environment and development interests depend on robust scientific data. In particular, ecological science and the science of complex systems can "provide the basis for many necessary decisions, including the suitability of health, safety and environmental standards. Action to address certain problems, however, will still have to be taken in the face of uncertainty and scientific disagreement, particularly where mistakes have very serious consequences. It is therefore essential in certain instances to adopt a precautionary and adaptive approach that seeks the prevention and easing of environmental stress well before conclusive evidence concerning damage exists, and which adapts policy as new scientific information becomes available."¹⁶⁶

Over the course of time, the Americas has been particularly active in various forums to enshrine the precautionary principle in international law. It is argued that the *Vorsorgeprinzip* was developed by German policy-makers,¹⁶⁷ but Mexico is documented as having first proposed adoption of the principle in an Americas context in 1983, to protect the marine environment.¹⁶⁸ Multilateral or hemispheric agreements can establish foundations for regulatory measures regarding science and precaution. From the Second Pan-American Scientific Congress meeting of 1915,¹⁶⁹ to the Miami Summit in 1994, Action Initiative 14 on 'Science and Technology Cooperation,' governments have sought to promote the development of science and technology in the hemisphere.¹⁷⁰ Among the 43 specific commitments from the Summit, the most important regarding science and precaution commits to mutual sup-

port and mitigation of natural disasters such as the El Niño phenomenon. There are also special projects to benefit smaller economies by mitigating the adverse effects of disasters and poverty.

The application of the science and precaution principle to trade and sustainable development in the Americas can be considered in the light of three additional issues: first, the need for greater scientific information, including traditional knowledge, in the Americas; second, respect for traditional knowledge in recent debates regarding safe release and trade in genetically modified organisms; third, because of the increased trade flows in the Americas with the strengthening of subregional trade agreements, large infrastructure development is occurring, and decisions should be taken with respect to science and precaution. Specifically, the following recommendations can be advanced:

- **Develop science, traditional knowledge, and hemispheric conservation research communities**

Science and traditional knowledge provide us with our fundamental information about the environment. Even so, in the Americas comprehension about industrial processes and ecosystems is still very poor, because of the lack of adequate data on, for example, the diversity of species, the point at which the extinction of a species is determined, the quantity of pollutants required to override ecosystem assimilation capacity, and other issues. International, knowledge-based communities of experts that share information and attempt to influence policy-makers, sometimes called epistemic communities, are considered fundamental keystones for biological conservation efforts.¹⁷¹ Several integration efforts in the Americas include consideration of scientific communities as a means to conserve biological diversity and natural resources. For example, the 1978 Treaty for Amazonian Cooperation (signed by Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela), supports efforts to “promote scientific research and exchange information [and]... establish a regular system for the proper exchange of information... on the conservationist measures adopted or to be adopted by each state in its Amazonian territories.”¹⁷² On all levels across the Americas, it is necessary to enhance systems for scientific analysis of environmental and social conditions, with particular attention to the rich heritage of scientific knowledge garnered by generations of testing by traditional and indigenous peoples. With regard to formal scientific inquiry, public participation in data collection can be of enormous help, and can in itself become the basis for a more extended research community, one that goes beyond the strictly academic. Indigenous associations, such as the Confederation of Indigenous Organizations of the Amazon Basin (COICA), are in a perfect position to complement formal biological research efforts in the

hemisphere. In addition, ongoing efforts (including those of civil-society organizations such as the World Wildlife Fund, and integrated conservation networks such as the International Union for the Conservation of Nature) aimed at increasing the amount and quality of ecological information available to policy-makers and resource managers should continue and be strengthened on a hemispheric level. As asserted by some experts, “instances have been documented where the knowledge of traditional societies transcends the knowledge gained by extended rigorous scientific effort.”¹⁷³ While a huge base of traditional knowledge still exists in the Americas, it is not yet taken into account or valued in most decision-making processes that affect communities or ecosystems.¹⁷⁴ These systems are critical for sustainable development; ecosystems do not often forgive mistakes committed in the elaboration of models and prediction.¹⁷⁵

- **Precautionary principle in trade treaties and large infrastructure development**

In the Americas, as countries continue to industrialize and develop common infrastructure across boundaries, the science and precautionary aspects of sustainable development relationships to trade will become increasingly significant. Some civil-society organizations suggest that mega-projects are being proposed under the framework of international trade agreements, which will result in large-scale environmental destruction and social dislocation.¹⁷⁶ For example, new hydroelectric dams, irrigation projects for open-pit copper mines, and the conversion of forests into wood chips or extensive cattle range, hold potential to cause ecological problems that outweigh benefits of liberalization.¹⁷⁷ The precautionary principle, in particular, must be taken seriously into account at all levels of decision-making. Perhaps one of the strongest examples of large infrastructure projects and the science and precautionary principle in a subregional process is the debate over the proposed Hydrovia Parana Paraguay canal project among MERCOSUR nations. The Hydrovia was proposed to traverse Uruguay, Argentina, Paraguay, Bolivia and Brazil for 3,000 km, providing agro-industry producers with cheap transportation for their export crops.¹⁷⁸ The proposal required draining the watershed, blocking tributaries, dredging, widening and channelling the Paraguay and Parana Rivers, and blasting mountain areas in Bolivia.¹⁷⁹ Upon publication of environmental and social impact assessments, the Brazilian government announced formally that they would no longer support the project, and the Uruguayan government followed suit. Many civil-society organizations and networks were involved in public pressure, but science provided essential technical support.¹⁸⁰ With regard to large infrastructure projects, some subregional trade integration processes have indicated respect for the precautionary principle, such as in the MERCOSUR

Hydrovia environmental and social impact assessments, or the proactive work of the U.S.-Canada International Joint Commission on shared water resources.¹⁸¹ The FTAA agreements can build on these successes by directly including clauses which bind it to respect the precautionary principle, as is done in the European Maastricht Treaty,¹⁸² and put in place mechanisms that draw upon the strong technical knowledge of the OAS Environment and Sustainable Development Unit for environmental and social impact assessments which include strong public-participation components before any proposed infrastructure projects reach proposal stage.

- **Precautionary approach to the development of biological technology**

Where human beings' health and environmental balance are concerned, prevention rather than remedy should be the priority. "Many environmental problems are of such nature and magnitude that they could not be adequately compensated through some monetary transfer, either 'polluter pays' taxation or some [form of] damages entitlement."¹⁸³ Increasing trade in biotechnologies and genetically modified organisms includes pharmaceuticals, new animal vaccines, animal growth hormones produced by recombinant DNA technology, and plants with new characteristics. In the Americas, major commercial biotechnology products that are being introduced to markets include plant varieties bearing genes for increased resistance to insects or viruses. Biosafety is concerned with decisions taken concerning the release (especially for testing in developing countries) of genetically modified organisms. These include hazard identification, risk assessment and risk management.¹⁸⁴ These processes have created a serious debate in the Americas, including concerns as to safe release of genetically modified crops for testing or commercial use in countries such as Uruguay and Argentina.¹⁸⁵ The precautionary principle, however, is not necessarily being respected with regard to new issues such as biosafety and the 'safe' release or testing of genetically modified organisms. If the potential risks of releasing new plants or pests into the environment with few controls are unknown, and trade in genetically modified organisms dramatically increases the potential range of impact, extreme precaution should be taken and stringent international guidelines adopted, rather than putting automatic trade-facilitation measures in place. More research is necessary in this area. Also, the FTAA Agriculture and Intellectual Property Rights working groups should carefully consider the view of the scientific community on the acceptable levels of risk, through an expanded working relationship with organizations such as the International Union for the Conservation of Nature, and links to ongoing biosafety protocol discussions in the UN Convention on Biological Diversity.

3.7 Subsidiarity

The subsidiarity principle recognizes that action can be effective at different jurisdictional levels, according to the nature of the problem. It shapes policies so that action can be taken at the lowest level consistent with effectiveness, whereas situations which require hemispheric action, such as the recognition of indigenous cultures or protection of migratory species, should be addressed at the hemispheric level. “In the context of trade and sustainable development, where issues of global dimensions have significant and varied effects at the local level, [subsidiarity] has particular relevance.”¹⁸⁶ In the Americas, the subsidiary principle has not yet become a serious challenge in the various integration processes as in the European Community. Since hemispheric agreements have always been negotiated between national governments, no supra-national institutions were created with mandates affecting sovereignty, and, moreover, decision-making is primarily national. For example, the Pan American Union, forerunner to the Organization of American States, was not created by treaty. The OAS’s existence is due to resolutions adopted at international conferences, by duly appointed delegates of various countries of the American hemisphere.

The subsidiarity principle can be applied to decisions at the national and regional levels. Distinct subsidiarity conflicts—with less relevance than in the European context—exist in the Americas and have never been resolved, including jurisdictional confusion between local authorities and centralized governments in large capital cities, as well as conflicts that arise from indigenous peoples’ demands for self-determination. Many countries were ruled by centralized military regimes and the level of autonomy left to local or regional governments was limited since major decisions were taken by the federal administrations. The democratic regimes that followed the military governments have recently attempted to decentralize their decision-making process, granting more power to regional and local governments and strengthening democratic institutions at these levels. Domestic and regional-level processes to encourage subsidiarity are proceeding across the Americas, particularly in the clarification of national-local democratic relationships and in the changing relationships with indigenous peoples. The 1998 Santiago Summit Plan of Action proposes, as a means to preserve and strengthen democracy, to “intensify the efforts to promote democratic reforms at the regional and local levels...”; some governments are examining ways to promote the transfer of responsibilities from the federal to the local and subnational levels. In addition, new international or hemispheric instruments such as ILO Convention 169 on Indigenous and Tribal Peoples and the Draft Inter-American Declaration of Indigenous Peoples Rights commit countries to respect the special needs of traditional and indigenous peoples. These goals can be achieved through the following strategies:

- **Trade capacity-building programs for subnational authorities**

In several countries of the Americas, there is now an ongoing political effort of decentralization, implying potential difficulties between rapidly evolving trade policy, which generally takes place on a national or multi-lateral level, and local policy-making. Capacity-building programs and national information points, which make trade expertise more accessible to subnational decision-makers, may be necessary to ensure that the most appropriate level of government can address trade issues effectively. For example, in Brazil the 1988 Federal Constitution stipulated a redistribution of budget, rights and obligations to provide more political power to the states and municipalities. Particularly with regard to the environment, there has been a trend toward decentralization from the federal level toward lower levels. Brazilian states have been promoting the establishment of environmental secretariats at the municipal level in order for them to take care of local protected areas, such as parks and reserves. Fiscal tools are being used by some states as a reward to the municipalities that make efforts to protect natural wildlife, granted through local environmental secretariats. A similar jurisdictional re-ordering has also happened in Canada, through a process of 'social union' summits between provincial and the federal governments.

- **Hemispheric standards systems in coordination with subnational regimes**

There are concerns regarding social or environmental 'dumping,' the existence of lower or distinct environmental or social standards in developing economies or the maintenance of costly, inefficient command-and-control standards in larger economies. Civil-society groups and some governments fear a 'race toward the bottom' of labour or environmental standards if trade liberalization simply proceeds unchecked. The subsidiarity aspect, however, is important with regard to non-investment-related standards, particularly on the environmental effects of industrial development, or present working conditions for value-added economic sectors. A multilateral research study should be conducted on environmental and social standards, drawing upon work done by the North American Agreement for Environmental Cooperation¹⁸⁷ (or modelled after other preparatory comparative studies done for the FTAA process), involving industry and sustainable development experts, with a strong public-participation component and reliance on comparative data. This may be preferable to the imposition of unilateral extraterritorial environmental or social measures. Competitiveness and industrial-relocation issues have been extensively considered elsewhere.¹⁸⁸ Proposals include the following: writing clear provisions on the lowering of standards (with monitoring

mechanisms) into any trade agreement; direct harmonization of manufacturing standards; mutual recognition of environmental or labour law (with multilateral monitoring of enforcement); domestic compliance in foreign operations of domestic companies; and ecological or social-justice labels attached to performance-based or environmental and social management and auditing system certification schemes. Examples of these systems have existed in the Americas, such as the Central American Economic Association of the 1960s.¹⁸⁹

- **Capacity-building measures to engage indigenous peoples**

To ensure that the lowest jurisdictional and political levels are assigned priority, the work of indigenous peoples for self-determination and better quality of life is a key issue.¹⁹⁰ Indigenous peoples across the Americas are gaining a stronger voice after 500 years, by mobilizing, networking and building cooperative relationships among themselves and civil society.¹⁹¹ Recent conflicts—in Oka of Canada, Chiapas of Mexico, Guatemala and Colombia, or with Chile's Mapuche peoples—are thought to be domestic conflicts between local, traditional authorities and national governments, but are echoed in almost all countries of the Americas. Increasingly, domestic policy responses are limited by international economic agreements. The hemispheric integration process and specifically, the FTAA, do not exist in isolation to political realities, and can take indigenous peoples into account, particularly with regard to the research agendas of the FTAA investment and intellectual property rights working groups. The potential for creative solutions exists, and good examples can be accessed by governments as well as business groups for procedures to draw indigenous peoples into the debates. For instance, five Latin American countries (Bolivia, Colombia, Ecuador, Peru and Venezuela) adopted a subregional approach to the subsidiarity principle, which culminated in the Andean Pact of 1996. The agreement empowers the national authority and indigenous Afro-American and local communities in each country as the custodians of traditional knowledge and resources, to grant prior informed consent to potential users in return for equitable returns.¹⁹²

Unique solutions to these challenges are offered by trade, and can be developed multilaterally or by domestic governments with strong regard to the subsidiarity principle. First, new methods of consultation with indigenous peoples are needed, with innovative procedures to ensure adequate representation and power sharing. Although countries in the Americas do not recognize indigenous peoples as nations, innovative forms of cooperation among local native communities and sovereign governments can provide opportunities for dialogue at the appropriate levels,

creating the potential that decisions concerning indigenous peoples be taken by those most concerned: the communities themselves. For example, the U.S. and Canada collaborate with indigenous peoples groups in the Arctic Council, a high-level forum which “provide[s] a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic indigenous communities.”¹⁹³ According to the treaty that establishes this forum, “permanent participation is equally open to other Arctic organizations of indigenous peoples with majority Arctic indigenous constituency.”¹⁹⁴ Sometimes, a new recognition of indigenous people’s land rights will mean reorganization of powers and authority over natural resources and, consequently, trade opportunities. Research and capacity building among these peoples to unlock cultural and traditional knowledge and provide control over its use in the marketplace is necessary under the subsidiarity principle. For example, in Canada’s north a jurisdictional transfer of authority has recently occurred. As part of the Nunavut Land Claims Agreement, a Nunavut Planning Commission (NPC) granted to the Inuit of the central and eastern Arctic control over all activities on their settlement lands as well as a voice in Crown land policy-making. The Nunavut Land Claims Agreement was implemented at the same time as the creation of the new territory of Nunavut. The new Nunavut parliament came into being in 1999 to represent all residents of the territory, Inuit and non-Inuit alike.¹⁹⁵

Chapter 4 General conclusions



THE WINNIPEG PRINCIPLES on trade and sustainable development are proving very useful as a framework to analyze the developing subregional and hemispheric integration processes in the Americas. The present regimes can be counter-intuitively characterized as 'under bureaucratic': though some very knowledgeable individuals exist, little information or expertise is systematically available. To use the principles as a tool in examining a trade agreement that does not yet exist, one is forced into the position of detective, drawing examples from all levels, teasing order out of a non-hierarchical, heterogeneous chaos that currently exists in the Americas. Naturally, this poses certain limitations and complications. For instance, the full relevance and applicability of principles, such as subsidiarity to the Americas, remains uncertain until the full regime develops. In addition, separating economic from social, environmental and political development was not always desirable or possible. The subject of this study was mainly the economic aspect, the new Free Trade Area of the Americas, but it is clear that special care must be taken to make sure that new mechanisms are found to ensure that the above-mentioned sustainable development challenges are met, not ignored. It is essential to recognize that the hemispheric economic integration project, while perhaps showing the most progress of the 1994 Miami Summit process goals, cannot proceed if the other three priorities of political democratization, social development and environmental protection do not advance as well. In addition, effective coordination must exist across all four priorities. Just as the trade agreement should support sustainable development, so should the other goals take into account principles such as these to ensure that their work will support sustainable development objectives, particularly in the use of trade measures to achieve their goals. Overall, four general conclusions can be drawn from the analysis, which will require thought, further development and action from many different sectors or positions in the debate to be addressed.

1. For hemispheric integration to succeed, structures must address sustainable development as the goal.

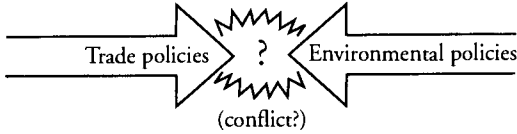
Sustainability holds social, environmental, cultural and political cooperation priorities on a level equal to commercial ones. An integrated hemisphere is being attempted, but institutions must be strengthened or established, with timetables, to support all four aspects of the 1994 Miami Summit process: social, environmental, political and economic goals. Social and environmental agreements can be negotiated as part of an integration process, coordinated between environment and development officials responsible for these processes, to ensure that these priorities are addressed in the integration process. For example, although some labour concerns can also be considered in the context of the existing regimes and institutions surrounding the American Convention on Human Rights,¹⁹⁶ and some purely environmental concerns might be advanced by rendering effective the Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere,¹⁹⁷ greater coordination and research are necessary to properly understand the required links between trade measures and the various regimes. Mechanisms to do this range from advancing a trade working group within the new OAS Sustainable Development Forum of the Americas, to considering equity and environmental aspects of each FTAA working group agenda item.

2. The trade and environment debate has to evolve.

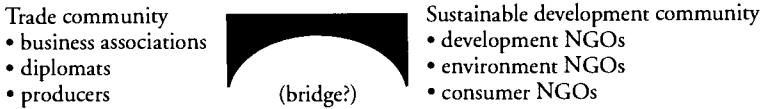
Often, participants are working from at least four distinct conceptual models when they attempt to engage in a constructive debate about the trade and sustainable development relationship. One model envisions trade priorities conflicting with environment priorities. Another views the trade community (a set of social participants that includes business associations and diplomats) and the sustainable development community (environment, development and consumer groups from civil society) as two sets of participants that cannot communicate. A third is based on the assumption that trade is an essential part of economic development which, along with social development and environmental protection, can lead us toward the goal of sustainable development if done properly. Our research led us to adopt a fourth model, which recognizes that trade measures can have inter-linked economic growth, social justice and environmental protection goals, and that it is the regime which governs their interaction (the integration process as a whole) that must support sustainable development (Table 12). The importance of developing this new hemispheric regime and then seeing it implemented leads us to our next conclusion.

Table 12: Four models for examining trade and sustainable development links.

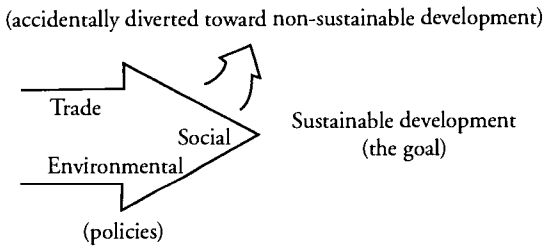
1. Trade and environment policy in conflict.



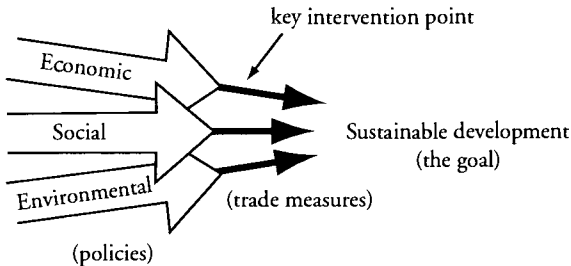
2. Trade and sustainable development communities don't understand each other.



3. Trade policies must be re-directed toward sustainable development.



4. Trade measures are an aspect of economic, social and environmental policies and can support sustainable development.



3. Civil-society voices must be heard in the FTAA process.

The Free Trade Area of the Americas, as a cornerstone of the Americas integration process, is on very shaky ground in two continents proud of their increasingly democratic governments. Especially in the U.S., Mexico and Brazil, public opinion can be seen to question the wisdom of free trade expansion as a policy direction. A bridging mechanism must be institutionalized to inform the environment and development movements of the debates across the Americas, and to promote dialogue between the trade and sustainable development communities. Civil society and governments should establish such a mechanism, based in the FTAA secretariat city, to ensure that civil-society organizations, especially groups which represented marginalized voices in the North and South, gain the capacity to participate effectively in the debates. This mechanism could use the successful Geneva-based International Centre for Trade and Sustainable Development as an example. Likewise, the Parallel Summit process, which is already in place, must be continued and strengthened, to provide a networking mechanism for organizations with a broad spectrum of views and priorities to further hemispheric civil-society cooperation and joint campaigns on issues of importance, such as investment.

4. The political will must exist to innovate within the FTAA, and smaller voices must be fully engaged.

Linking trade with the principles of efficiency and cost effectiveness; environmental integrity; equity; international cooperation; openness; science and precaution; and subsidiarity is not a revolutionary idea. The Winnipeg Principles drew together elements that guided the 1994 Miami Summit Declaration, the 1996 Bolivia Summit Declaration, the Southern Common Market (MERCOSUR), the North American Free Trade Agreement, CARICOM, CAN, the MCCA and other bilateral trade arrangements in the Western Hemisphere. Not only is recognition of the relationship between these priorities essential for trade rules to support sustainability, but many examples also exist of how to do it. These models can be drawn from the various subregional and other multilateral agreements on all levels, which have experimented with institutions and mechanisms to ensure that their integration process supports sustainable development objectives. The architects of an Americas integration process, particularly those designing the FTAA wing, can learn from these attempts and innovate using the prior ideas as examples or inspiration. Innovation is possible in the context of a genuine Free Trade Area of the Americas, involving five subregional agreements and over 106 bilateral relationships: the hemispheric integration process is not simply accession to NAFTA. It is essential that all economies of the hemisphere, from the largest to the smallest, are engaged in this process for these solutions to surface effectively and for the negotiations to benefit all communities. The following chapter provides an easy reference table of examples from various levels and processes, which could provide models or lessons for the above recommendations.

Chapter 5 TRSA Winnipeg Principles comparative table



THE TRSA RECOMMENDATIONS come mainly from models that have been tested often in the Americas before, in subregional or bilateral trade agreements that have existed, in some cases, for over two decades. Before giving up on sustainability (or a hemispheric trade regime), FTAA participants should investigate or link these experiences and build on any of the following useful lessons.

Existing sustainable development initiatives in the Americas trade regimes

Efficiency and cost internalization

- **Multilateral:** Americas signatories to the 1987 Montreal Protocol of the 1985 Vienna Convention for the Protection of the Ozone Layer can use targeted border-tax adjustments, charges and other economic instruments to adapt price signals.¹⁹⁸ For some commodities, international commodity-related environmental agreements are proposed, which would include transfer or voluntary international compensation funds for commodity-specific policies, synchronization of standards or policies to a particular sector, and commodity-specific certification to create market premiums.¹⁹⁹
- **Subregional:** NAFTA and MERCOSUR have considered or used tools such as the definition of quality objectives or mutual recognition of standards, joint subregional water or air pollution audits and suggested joint-emission standards for certain processes.²⁰⁰

- **Bilateral:** Provisions for full life-cycle analysis of products are found in the Chile-Canada Environmental Side Agreement.²⁰¹ Recent research in Costa Rica defines commodity product chains by their actors and objectives, the structure of markets, the strategies or instruments that actors use to influence this structure, and, finally, the product itself.²⁰²
- **National:** National pollution audits are being pioneered in Venezuela.²⁰³ 'Environmentally adjusted net domestic product' (EDP) has also been tested by the United Nations Environment Programme and others in Mexico and Costa Rica.²⁰⁴

Environmental integrity

- **Hemispheric:** The venerable 1940 Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere established shared Americas conservation regimes, and the 1973 Convention on International Trade of Endangered Species (CITES), ratified by all except Haiti and Grenada, controls trade in species or their products through an import and export permits system.²⁰⁵
- **Subregional:** The proposed 1998 Environmental Protocol to the Treaty of Asuncion of MERCOSUR,²⁰⁶ and the 1993 NAFTA Commission on Environmental Cooperation²⁰⁷ promote trade-related, cross-border environmental cooperation. A Mesoamerican Biological Corridor is approved under the 1992 Central American Convention for the Conservation of Biodiversity and the Protection of Priority Natural Areas; the Andes restrict trade in vulnerable species under the 1979 Convention for the Conservation and Management of the Vicuña (Lima); and the 1978 Treaty for Amazonian Cooperation promotes joint ecological management.²⁰⁸
- **Bilateral:** A USA-Mexico Integrated Border Environmental Plan is jointly administered with an action agenda of collaborative projects;²⁰⁹ the International Joint Commission administers USA-Canada water-body cooperation;²¹⁰ and the bilateral 1998 Free Trade Agreement between Mexico and Costa Rica includes environmental objectives.²¹¹
- **National:** The United States environmental impact assessment of NAFTA in 1994 revealed challenges (pollution problems on the U.S.-Mexico border) and opportunities (environmental and trade gains from pollution reduction).²¹²

Equity

- **Multilateral:** UN Conventions exist to prevent and punish genocide, eliminate racial discrimination, promote economic, social and cultural rights, and eliminate discrimination against women.²¹³ The hemisphere shares social regimes under the Pan American Health Organization, and the 1969 American Convention on Human Rights (ACHR).²¹⁴
- **Subregional:** The 1993 NAFTA Side Agreement on Labour Cooperation is a hotly debated yet existing mechanism,²¹⁵ and in the North American Commission for Labour Cooperation, a multilateral forum has been created to consider cases of labour rights violations.²¹⁶ The Latin American Reserve Fund mechanism is a potential model maintained by the Andean community to promote financial stability, and the Annual Andean Social Summits may involve social groups.²¹⁷ Also, the Caribbean community's distinct dual levels of liberalization obligations provide for special needs of smaller economies, slowing their insertion into the common market.²¹⁸

Science and precaution

- **Hemispheric:** From the Second Pan-American Scientific Congress meeting of 1915²¹⁹ to the Miami Summit in 1994, Action Initiative 14 on Science and Technology Cooperation,²²⁰ governments have sought to accelerate economic development through science and technology.
- **Subregional:** For large infrastructure projects, some subregional trade-integration processes have indicated respect for the precautionary principle, such as in the MERCOSUR Hydrovia environmental and social impact assessments,²²¹ or the proactive work of the U.S.-Canada International Joint Commission on shared water resources.²²²
- **National:** Mexico is documented as having proposed adoption of the precautionary principle in multilateral negotiations in 1983, to protect the Caribbean marine environment.²²³

International cooperation

- **Hemispheric:** The 1998 Report of the OAS Secretary General on Bolivia Summit Implementation proposes a Forum of the Americas on Sustainable Development.²²⁴ Instead of unilateral measures, the 1998 Inter-American Convention for the Protection and Conservation of Sea Turtles promotes more sustainable shrimp harvest methods, with a secretariat in Venezuela.²²⁵

- **Subregional:** The 1994 Central American Alliance for Sustainable Development (ALIDES) works in partnership with various National Councils for Sustainable Development.²²⁶ The NAFTA dispute-settlement processes include international input and participation provisions.²²⁷ Sector-specific initiatives such as the 1995 Hemispheric Initiative for the Energy Sector and Hemispheric Energy Steering Committee, co-chaired by Venezuela and the United States, can be effective.²²⁸
- **Subregional:** The MERCOSUR nations of Uruguay, Paraguay, Argentina and Brazil have processes for reaching common positions and can speak with one MERCOSUR voice in international forums, as does the EU.²²⁹

Subsidiarity

- **Subregional:** The Central American Economic Association of the 1960s attempted to develop a common regime of production standards to achieve regional uniformity in the legislative or other provisions affecting the production of goods.²³⁰
- **Bilateral:** New methods of consultation with indigenous peoples with innovative forms of ensuring adequate representation and power-sharing are being attempted by the U.S. and Canada in the high-level Arctic Council forum.²³¹
- **National:** Because of decentralization in Brazil, the 1988 Federal Constitution redistributes budget, rights and obligations, giving more political power and supplemental environmental authorities to states and municipalities.²³² In Canada's north, a jurisdictional transfer of authority is being explored through the Nunavut Land Claims Agreement and the creation of the new territory of Nunavut.²³³

Openness

- **Multilateral:** Civil-society groups and trade officials have initiated an International Centre for Trade and Sustainable Development to inform, act as a bridge and promote dialogue between trade and sustainable development communities in the debate.²³⁴
- **Hemispheric:** The San José Ministerial Declaration announced a new Committee of Government Representatives for the Participation of Civil Society.²³⁵ Civil-society-driven initiatives also include a Parallel Summits process, sector-specific networks on the environment, labour, indigenous and business associations, and civil-society working groups being formed on national, regional and hemispheric levels to continue developing capacity and exchanging information on the issues.²³⁶

- ***Subregional:*** The Caribbean community's 1997 Civil Society Charter was developed through joint government and civil-society roundtables in a process that built capacity among all participants to understand the integration project.²³⁷ Decision 285 of the Commission of the Andean Community's Cartagena Agreement allows companies, through member countries, to request that a Andean Group Board apply measures to prevent or correct damage to production or exports caused by business practices that restrict free competition within the subregion.²³⁸ Each party to the 1993 North American Agreement on Environmental Cooperation maintains a National Advisory Committee, and the Commission for Environmental Cooperation receives advice from a 15-member joint public advisory committee, which hosts public sessions for civil-society groups and individuals.²³⁹ MERCOSUR provides access to civil society through an Economic and Social Advisory Council, which receives information from labour, business and consumer representatives. Experts attend relevant meetings of the technical subcommittees.²⁴⁰
- ***National:*** Country-level openness consists of transparency and participation. Transparency can be guaranteed by law, such as in the Freedom of Information Acts of the United States.²⁴¹

Biographies of the project team

Marie-Claire Cordonier Segger, project coordinator, is an associate of the IISD Trade and Sustainable Development Program, Wainwright Scholarship candidate for degrees in civil and common law at McGill University in Canada, associate at the Royal Institute for International Affairs, England, and a visiting scholar at Cambridge University, England. She has an interdisciplinary BA (with highest honours) in international sustainable development law in the Americas, and speaks English, French, Spanish and basic Portuguese. She has coordinated other hemispheric projects and founded various environmental organizations, including the new Centre for International Sustainable Development Law in Montreal, Canada. She was a delegate to the 1992 UN Conference on Environment and Development, the 1996 United Nations Conference on Human Settlements, the 1996 Commission on Sustainable Development (CSD IV), and Bolivia Santa Cruz Summit of the Americas, the 1997 Rio + 5 Forum, the 1997 UN General Assembly Special Session on Sustainable Development, and the 1998 Santiago Summit of the Americas. She has served on the advisory committee of the Canadian International Development Agency's Environment and Sustainable Development Program, the CSD V NGO Steering Committee, and the National Steering Committee of the Canadian Environmental Network.

Mindahi Crescencio Bastida Muños, researcher, has a Master of Arts in political science from Carleton University in Ottawa, with a focus on NAFTA and indigenous peoples self-governance initiatives, and an honours degree in social sciences at the Autonomous State University of Mexico. He holds Italian, French and English diplomas with the UAEM Centre of Foreign Languages and is the Latin American representative for Pacific Cultural Conservancy International. He is also the general coordinator for the Otomi Regional Council of the Alto Lerma and represents 200 Otomi villages, where he coordinated community micro-enterprise and trade projects among indigenous peoples in Canada and Mexico. He was a global indigenous youth representative and coordinated youth participation at UNCED in 1992, served as member of the CSD V NGO Steering Committee at the UN and held positions as the Mexican representative on the Plural Group of Indigenous Peoples. He initiated a Mexico-wide Indigenous People's Council for Sustainable

Development between 56 different races and is currently coordinating the Lerma River Basin Project in Mexico State.

Paulo Guilherme Ribeiro Meireles, researcher, has a master's degree in international law from the Universidad de la Republica del Uruguay with a focus on the MERCOSUR subregional trade agreement, a graduate degree from the Geneva Graduate Institute of International Studies, and a BA in international relations from the Universidade de Brasilia. He has been a researcher with the Expert Panel on Trade and Sustainable Development at the World Wide Fund for Nature (WWF), assistant at the Trade Policy Review Division of the World Trade Organization, and an intern at the United Nations Centre for Human Rights. He is author of several research papers including, "The WTO and the environment" and "Multilateral environmental accords and potential barriers to trade." He also translated the Convention on Desertification into Portuguese.

Jorje Zalles Taurel, researcher, based in the Corporacion Latinamericano para el Desarrollo, is an Ecuadorian consultant specializing in wildlife conservation, natural resource management, and rural development. He holds a BS in general science from the Universidad San Francisco de Quito, Ecuador. His work on biological conservation in the Americas includes experience in the United States, Mexico, Costa Rica, Ecuador, Brazil and Paraguay. He has published extensively on the conservation of migratory birds of prey, and currently serves as treasurer to the board of directors of the Ecuadorian Ornithological Foundation.

Virgina Paul, associate researcher, is based at the Organization of Eastern Caribbean States (OECS). She holds a master's degree in trade and economics from the University of Strathclyde, Glasgow, UK, and a BA in business from the University of the West Indies of Barbados. She speaks English and basic French and Spanish. Virgina is currently Common Market affairs officer of the Economic Affairs Division, OECS Secretariat, and was formerly chief trade and industry officer at the Ministry of Trade and Industry and the Ministry of Commerce and Consumer Affairs in St. Lucia. She has served as director of the board of the National Development Corporation, the Caribbean Export Development Agency, the Eastern Caribbean States Export Development Agency, and secretary to the Trade License Board of St. Lucia.

Endnotes

- 1 In an inaugural address for the Angostura Congress, 1818, Simon Bolivar expounded upon an ideal of a united Americas and strongly advocated legal and institutional structures to be set in place: "The rules of law are more powerful than that of tyrants'; good manners, not force, are the backbone of the law; the exercise of justice is the exercise of freedom."
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year, the hemisphere's heads of state and government met in Santa Cruz de la Sierra, Bolivia, and agreed on an ambitious agenda to promote sustainable development.

- 10 In the Santiago Summit of the Americas, April 1998, President Frei of Chile's opening speech stated that "great social and organizational challenges lie ahead."
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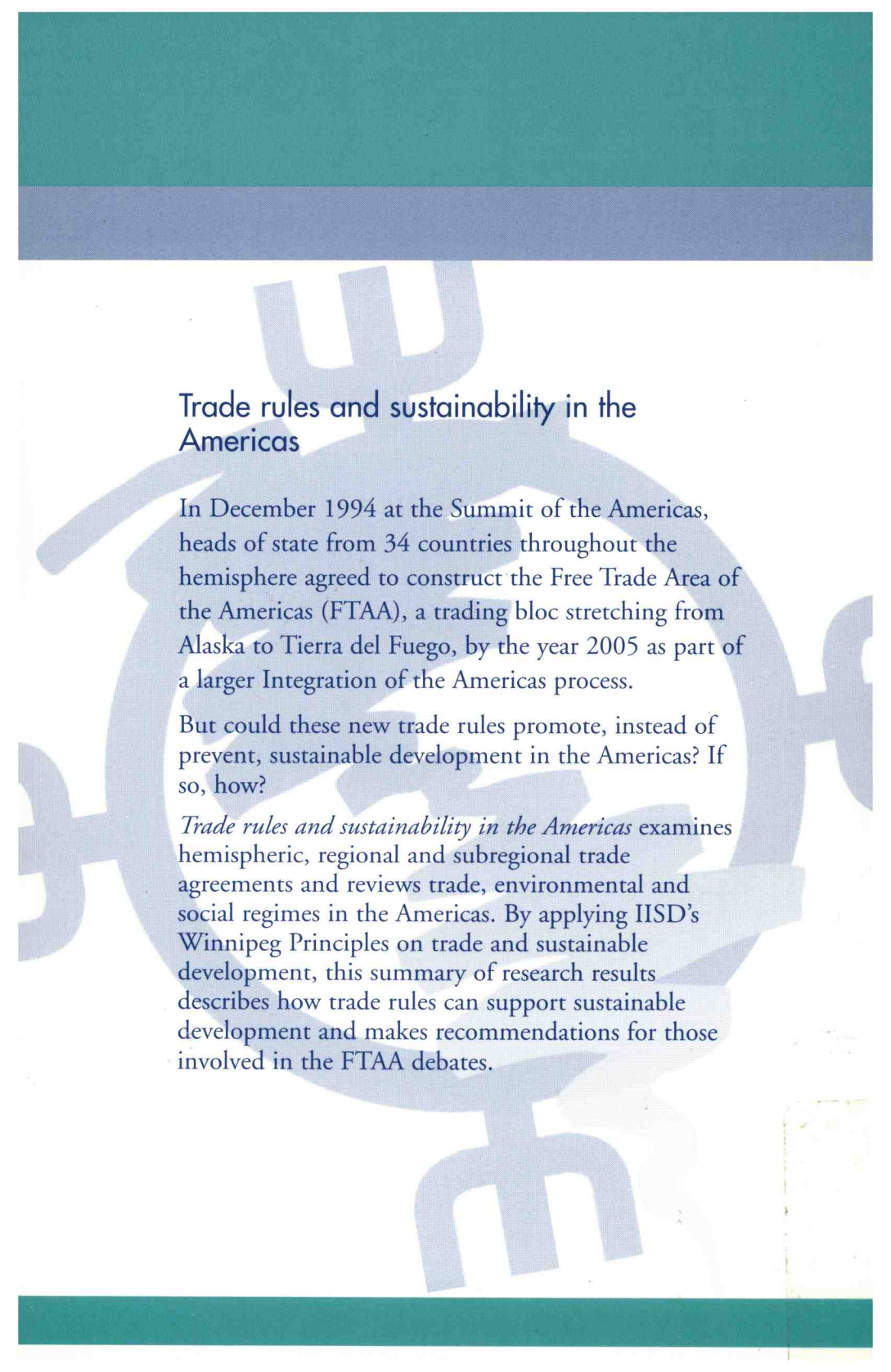
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- Inuit Circumpolar Conference, the Saami Council and the Association of Indigenous Minorities in the Far North, Siberia. The Far East of the Russian Federation are Permanent Participants in the Arctic Council.
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- 233 The Nunavut Act, an Act to establish a territory to be known as Nunavut, provide for its government and to amend certain Acts in consequence thereof (assented to June 10, 1993), can be found at <<http://www.assembly.gov.nt.ca/LEG/nunavutact.html>>. Information about the new territory can be found at <<http://npc.nunavut.ca/eng/nunavut/>>.
- 234 See the Web site of the International Centre for Trade and Sustainable Development (ICTSD) at <<http://www.ictsd.org/html/events.htm>>. ICTSD was established in Geneva in September 1996 to contribute to a better understanding of development and environment concerns in the context of international trade. The Web site is among the best on these issues, and their publications such as *Bridges* journal, discussion papers and dialogue summaries can be found there. "Bridges/Puentes/Pasarellas: Between trade and sustainable development," *Bridges*, Vol. 1, No. 4 (October 1997), No. 5 (November 1997), No. 6 (December 1997); Vol. 2, No. 7 (October 1998).
- 235 See M. Valente "Civil society fighting hard for inclusion in FTAA," Buenos Aires, June 22, 1998, [IPS/tra-so/mv/mj/sw/98](http://ips/tra-so/mv/mj/sw/98), and the FTAA Web site at <http://www.alca-ftaa.org/Englishversion/SOC_E.htm>.
- 236 See the ICTSD Archives at <<http://ictsd.org/html/ftaangoeng.htm>>, or the Cumbre de los Pueblos de las Americas, <http://members.tripod.com/~redchile/>.
- 237 Charter of Civil Society of CARICOM, Antigua and Barbuda, February 1997. The Charter articulates a political value system that emphasizes collaborative relationships within civil society and between civil society and the state. In principle, it promotes freedom of the press, fair and open democratic processes, morality in public affairs, respect for civil, political, economic, social and cultural rights, the rights of women and children, respect for religious diversity and greater accountability and transparency in government.
- 238 Commission of the Cartagena Agreement, 1991, in the World Investment Report 1997, "Transnational corporations, market structure and competition policy" (New York and Geneva: UNCTAD, UN), p. 222.
- 239 J. A. Haverkamp, Assistant United States Trade Representative for the Environment and Natural Resources, in "Trade and environment: Opening the dialogue," National Audubon Society/Intel Corporation, San José, 1998.
- 240 MERCOSUR Embassy of Uruguay, <<http://embassy.org/uruguay/econ/mercosur/>>.
- 241 A citizen's guide on using the Freedom of Information Act and the Privacy Act of 1974 to request government records, first report by the committee on government reform and oversight, March 20, 1997. See <http://www.tncrimlaw.com/foia_indx.html> or <<http://www.transparency.de/index.html>>.



Trade rules and sustainability in the Americas

In December 1994 at the Summit of the Americas, heads of state from 34 countries throughout the hemisphere agreed to construct the Free Trade Area of the Americas (FTAA), a trading bloc stretching from Alaska to Tierra del Fuego, by the year 2005 as part of a larger Integration of the Americas process.

But could these new trade rules promote, instead of prevent, sustainable development in the Americas? If so, how?

Trade rules and sustainability in the Americas examines hemispheric, regional and subregional trade agreements and reviews trade, environmental and social regimes in the Americas. By applying IISD's Winnipeg Principles on trade and sustainable development, this summary of research results describes how trade rules can support sustainable development and makes recommendations for those involved in the FTAA debates.