

**CIVIL SOCIETY PARTICIPATION IN TRADE
POLICY-MAKING IN LATIN AMERICA: THE
CASE OF THE ENVIRONMENTAL MOVEMENT**

Peter Newell

CSGR Working Paper No. 201/06

April 2006

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Abstract:

In recent years, and particularly perhaps since the ‘battle of Seattle’ in 1999, the issue of civil society participation in trade policy has attracted increasing policy and academic attention. Much of this attention has been drawn to the question of institutional access and channels of participation and representation within the WTO. The challenge is one that has faced other global institutions such as the World Bank and IMF for a number of years (O’Brien et al 2000).

Improving the transparency of and access to decision-making in the context of up-scaling civil society participation is not exclusively a global challenge, however. There has been a great deal of activity at the regional level around trade negotiations and increasingly in Latin America with the FTAA (Free Trade Area of the Americas) following in the wake of NAFTA (North American Free Trade Agreement) and Mercosur (Mercado Común del Sur). Few institutional reforms have been brought about without significant pressure from civil society, however. Some challenges are common to all movements attempting to participate and make their voice heard in the sensitive and traditionally closed arena of trade negotiations. But others are unique, and reflect distinct regional political histories, previous experiences of mobilisation and prevailing social and material realities. Given this, it becomes important to understand what can be learned from the experience of a globally significant region like Latin America about the possibilities and limitations of civil society participation in trade policy.

By comparing the documented experiences of NAFTA with analysis of Mercosur and the evolving FTAA negotiations, in terms of the participation of the environmental movements, important insights may be gained about: who is participating in trade policy, how and with what effect and, equally importantly, who is not participating and what are the implications of this?

The analysis will therefore attempt to identify key factors which shape these dynamics. These include;

- key strategic issues within the movements and among groups themselves (diversity of strategies, politics of coalition-building, patterns of influence and engagement/non-engagement)
- the organisation of institutional access (rights, representation, process, decision-making)
- key economic and political regional dynamics which affect each of the above (differences between and within individual countries regarding key issues and attitudes towards participation)

By comparing across different sets of trade negotiations and institutional arrangements it will be possible to identify what the key drivers and shapers of change appear to be. In other words, the extent to which these appear to derive from the nature of the institution or process itself, the strategies of the movement engaging with it, or more likely still, some combination of both these elements. The challenge is to account for diverse forms of engagement and non-engagement and, more importantly, to derive lessons from them about the possibility of constructing more effective, sustainable and transparent mechanisms of participation and representation in trade policy based on experiences to date in Latin America.

Key words: Civil society-trade policy-environment-Latin America

Address for Correspondence:

Senior Research Fellow,
Centre for the Study of Globalisation and Regionalisation,
University of Warwick,
Coventry CV4 7AL, UK

Email: P.J.Newell@warwick.ac.uk

1. Introduction

The challenge, identified above, has risen to prominence in global, and increasingly also regional politics within Latin America, as a result of a series of complex, but inter-related, reasons. Firstly, involving civil society actors in economic policy can be seen on one level as a legitimating exercise in the face of powerful critiques about the secrecy in which key decisions regarding trade and investment get taken. Such critiques are lent greater moral force by growing evidence of the social and economic inequalities and environmental damage that flows from decision-making processes on these issues conceived in narrow economic terms alone. These claims have been articulated most vociferously by the anti-globalisation movement, but resonate with deeper social concerns about who is benefiting from globalisation and who is bearing the costs of the process. Governments have sought to make the case that globalisation, and trade liberalisation in particular, is good for the poor. 'Managing' globalisation through strong institutions responsive to diverse societal actors is seen to key to ensuring that these benefits are realised (DfID 2000; Newell et al 2002). In this sense, institutionalised public participation is seen as an important vehicle by which states can defend their claims to represent a broad notion of the public interest (Albán 2003). As Deere and Esty note (2002:6) 'Public understanding and acceptance of the benefits, tradeoffs, risks and consequences of different policy proposals is essential', especially perhaps because the public, some publics more than others, will be expected to bear the costs of adjustments and realities under new market conditions.

Closely related to legitimacy, is transparency in respect to decision-making. Key to public trust is evidence that governments' policies reflect a careful consideration of issues including non-economic social and environmental concerns, for example and are not merely designed to serve special interests. There is an important distinction here between popular participation and the participation of organised civil society (Albán 2003), where with the latter important issues of accountability arise and need to be addressed if civil society actors are not also to be regarded as just another cadre of special interests.

Instrumentally too, an informed public and open debate is said to help raise key issues and to ensure that non-trade issues are brought into the negotiations. Participation can allow for more complete information and priority-setting and therefore better quality decision-making. CSOs can inject new ideas, specialised expertise and lend technical support to delegations lacking capacity. There is also a complementary role for citizen participation in monitoring and enforcement, filling gaps left by governments and regional bodies (Caldwell 2002). The emphasis on 'due process' also comes down then to the fact that 'while public scrutiny may make government officials uncomfortable, openness and procedural inclusiveness are essential to good public decision-making' (Deere and Esty 2002:333).

Perhaps most crucially, from a strategic point of view, the involvement of NGOs can help to 'build public support for the trade agreement that emerges. By engaging their parliaments and the public in the formulation of national trade policy objectives, trade negotiators can develop trade initiatives with a clear sense of the standards and benchmarks which legislators and the public expect them to meet' (Fisher 2002:191). This also makes it more likely, therefore, that NGOs will provide much needed support to get accords through national parliaments, as well as help to monitor the

implementation of agreements (CIECA 2002).

Public participation is also an obligation enshrined in many multilateral agreements. In the environmental context, international impulses towards public participation derive from agreements such as principle 10 of the Rio Declaration of 1992, as well as individual multilateral environmental agreements to which many Latin American countries are party. They emphasise public consultation and participation, as well as access to information.¹ Civil society organisations themselves often invoke the right to participation before, during and after negotiations towards free trade agreements in the phases of design, implementation and evaluation (ONGs Chilenos 2003; CIECA 2002). The experience of environmentalists from Latin America in engaging with their governments around the Rio process was a mixed one, however, with highly uneven degrees of access to governments and receptivity to their positions (Friedman et al 2001). Beyond access to negotiators, the broader claim to participation is that those whose lives are affected by trade policy have a right to a role in the process of designing those policies (Brock and McGee 2004). The Alianza Social Continental (ASC) has claimed as one of its mobilising rationales in this regard, ‘the desire to stop being merely spectators in a game that affects all our lives but is played only by people with the power and money, to determine our own destiny’ (Púlsar 2001: my translation).

The WTO experience

The challenge(s) I engage with here is that which trade negotiators at the WTO, including many Latin American countries of course, have faced for a long time. For this reason, it is worth summarising, for a moment, some of the key issues that have emerged in this context. The WTO has evolved a relationship with civil society where NGOs (not broader social movements), particularly those ‘concerned with matters related to those of the WTO’, are regarded as a ‘valuable resource’ that ‘can contribute to the accuracy and richness of the public debate’, that can ‘increase the awareness of the public in respect of WTO activities’. Allowing them to fulfil this role requires members to improve transparency and communication with NGOs, making information available more rapidly and improving public access to documents through the internet. This is in addition to ‘the organisation of ad hoc symposia on specific WTO-related issues, informal arrangements to receive the information NGOs may wish to make available for consultation by interested delegates and the continuation of past practice of responding to requests for general information and briefings about the WTO’.² The danger with this model, as Wilkinson notes, citing Marceau and Pedersen, is that symposia serve as ‘a useful arms-length exercise in NGO-WTO relations with the secretariat serving as a ‘buffer’ between Members and NGOs’ (2002:203).

There remains limited scope for institutionalised forms of engagement by civil society groups. Item 5 of the same declaration makes clear that ‘If chairpersons of WTO councils and committees participate in discussions or meetings with NGOs it shall be in their personal capacity unless that particular council or committee decides otherwise’. Wilkinson (2002:204) rightly suggests that this means ‘NGOs are unable *officially* to

¹ See Glover et al (2002) for more on national experiences of meeting such commitments in Mexico and Brazil, among others, in the context of the Cartagena Protocol on Biosafety.

² WTO ‘Guidelines for arrangements on relations with NGOs’ document WT/L/162, July 18th 1996

influence WTO policy'. More bluntly still, item 6 states;

‘As a result of extensive discussions, there is currently a broadly held view that it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings. Closer consultation and cooperation with NGOs can also be met constructively through appropriate processes at the national level where lies primary responsibility for taking into account the different elements of public interest which are brought to bear on trade policy-making.’

Not only then are NGOs not be involved in the work of the WTO or its meetings, but there are guards in place to secure the essentially inter-governmental nature of WTO decision-making. Where interaction does have to take place, the emphasis is clearly on organised elements of civil society with, what the WTO would define, as a legitimate interest in its work. As Wilkinson argues ‘The emphasis is on the development of relations with NGOs, rather than with the more informal, less well organised tracts of public opinion. And, by committing itself to court only those willing to engage with the WTO, large sections of more critical public opinion are marginalised’ (2002:204).

Even for organised civil society with relevant expertise, there are many barriers to effective participation. For example, although the Appellate body allowed NGOs to submit amicus briefs to panels and appellate bodies, broader forms of participation from independent experts have not thus far been permitted. Moreover, panels and the appellate body continue to meet behind closed doors and submissions of parties are not automatically made available to non-participants (Williams 2001a). Williams notes elsewhere that while;

‘The earlier closure of the WTO process to non-corporate actors has been tempered.. the venue still privileges those who possess structural power, granting them superior instrumental access. While the WTO has progressively expanded access to non-governmental organisations, the fact that the organisation includes business groups in the NGO category reinforces the influence of the corporate sector in the policy process’ (2001b:46).

There is clearly then a great deal of relevant experience with these issues within global trade fora. There are though, specific challenges for Latin America. In large parts of the region, democratic processes remain, in historical terms, relatively new. Friedman et al argue (2001:32); ‘regional dynamics have a profound impact on participation in global civil society. The contention among NGOs over the most effective use of energy and resources can easily be traced to a history of confrontation between civil society and the state in Latin America and to uncertainties about the extent of democratization’. At an institutional and regional level, the challenge of participation is also a relatively new one, despite the existence of mechanisms for consultation with business and labour within the Andean Pact and a permanent consultative committee within *el Sistema de la Integración Centroamericana*, for example (Botto and Tussie 2003:31).

There is a strong sense, however, in which NAFTA definitively broke with previous models of thinking about participation in trade policy in the region (ibid:33). ALCA opens up the possibility of extending this change across the whole hemisphere. However, as Deere and Esty (2002:6) suggest ‘Within Latin America, numerous calls for greater public dialogue on potential trade and environment issues in the FTAA

context have gone unheeded by many governments'. Ministerial statements from the summits have called for mechanisms for incorporating non-governmental views other than business through consultation and dialogue (ALCA 2004), but there is a gap between the rhetoric and the reality with many Latin American governments actively resisting attempts to open up trade decision-making to greater input from civil society.

There are a complex set of historical and political reasons for this suspicion regarding the participation of civil society actors in trade policy in Latin America. Besides the Mexican government's bitter experience of the NAFTA negotiations, which I discuss below, Botto and Tussie (2003:36) also observe a prevailing fear about loss of competence or sovereignty for decision-making in this area. This relates to a concern that the numerical and financial superiority of organised civil society in North America would serve to compound existing under-representation of less developed countries within the region in trade negotiations with their more powerful counterparts. With the exception of Mercosur, many of the initiatives for the inclusion of civil society actors in trade negotiating processes within the region have come from North American governments, a path set most clearly by the Clinton administration in the context of the NAFTA negotiations. Despite this, there is now a rich history of experience within Latin America around these issues which is worth sharing with a broader audience. Questions remain about well key lessons are being effectively learned, even by those involved in the ongoing negotiations. Despite a continued lack of participation in the ALCA negotiations, for example, Deere and Esty (2002:18) suggest 'a clear lesson from the NAFTA experience is that civil society and domestic private-sector actors are essential partners for governments faced with the challenge of advancing trade objectives and environmental priorities simultaneously'.

2. Towards a framework for analysis

The purpose of this section is not to review all literatures that are potentially relevant to our enquiry here. Rather, it is to identify key insights from important bodies of work that help us to make sense of the patterns of mobilisation and participation I describe in the sections which follow.

Social Movements

Much of the social movement literature in general, and in relation to Latin America specifically, focuses on groups and struggles that are in many ways outside the formal arenas of political bargaining that are the subject of our analysis here, even if they react to and define themselves in opposition to those processes. This is partly explained by the fact many Latin American NGOs began to organise and mobilise under, and in opposition to, authoritarian rule. As Friedman et al (2001:11) note; 'This common formative experience shaped the actions and attitudes of the groups profoundly, not least in their shared ambivalence toward cooperation with the state'. Elements of such work nevertheless help us to understand the forms of mobilisation taking place around ALCA for example, or that preceded and continue to characterise the NAFTA and Mercosur negotiations. They shed light on the organising strategies of 'outsiders' in trade debates, though as we will see below, these forms of mobilisation and non-engagement also interact with and shape the politics of bargaining between states and those elements of civil society within formal negotiating arenas.

Early work on social movements with Latin America during the 1970s was oriented towards the radical agendas of left intellectuals concerned with the revolutionary potential of those movements to overthrow the capitalist state. As Haber notes, at this time, 'environmental and women's movements were assessed in terms of their assault on capitalism and the capitalist state, whether or not they saw themselves in those terms' (1997:127). Perhaps slightly exaggerating the case, Petras and Morley (1990:158) claim; 'practically all of the significant political changes that took place in Latin America in the 1960s and 1970s were the direct or indirect result of massive social movements and not of electoral processes or militarized guerrilla movements'. Through the 1980s and 1990s interest has grown in new social movements and different ways of understanding their relevance to political life. There has been significant interest, for example, in high-profile movements such as the urban squatters in Chile and Peru (*pobladores* and *barriadas*), the *madres de la plaza de Mayo* in Argentina, the Zapatistas in Mexico and the Movement of the Landless (MST) in Brazil. More recently, the focus has been more on the democratising potential of social movements in Latin America; the extent to which they can sustain and deepen the transitions to democracy witnessed across the region since the 1970s, as well as their role in constructing alternative politics or new visions of development (Alvarez et al 1998; Jacobs 2002). There is danger here of romanticising Latin American social movements (Roberts 1997), but the point is that they have been a crucial element in the changing landscape of Latin American politics such that the politics of regional economic integration can be expected to be cast in their light.

Different academic traditions are employed in these literatures to make sense of the movements from Marxist and Gramscian analysis emphasising class politics and the (re)production of hegemony (Petras and Morley 1990) to more postmodern readings which emphasise identity and knowledge politics and the need to capture power not solely in terms of ability to change institutional behaviour, and not driven entirely by material concerns (Alvarez et al 1998). More recently, the role of movements in responding to the limits of state capacity to deliver basic human needs and to cope with the fall-out of economic crisis and the social dislocation it produces has provided another rich vein of enquiry, particularly of course focused on Argentina (Auyero 2003; Almeyra 2004; Bombal 2003). This is particularly important given the general finding that changing economic relations make new forms of protest politics possible, even if the form of protest chosen and the elite response to such protest play out differently in different country settings (Faber 1997:128).

Influence and impact

In thinking about influence and what enables movements and NGOs to be more or less successful, again there are wide-ranging debates and literatures that I cannot attempt to do justice to here. There is nevertheless some consensus around the importance of (i) political opportunity structures; the role of formal political institutions in providing points of access and channels of influence which shape how groups mobilise and which strategies they adopt in order to utilise these (ii) structures of mobilisation; the types of organisation, the networks and resources that groups draw on for collective action (iii) framing devices; the meaning civil society groups give to their goals in order to create cohesion internally and to communicate their intentions to external actors (McAdam, McCarthy and Zald 1996).

Such approaches form part of a growing interest in the transnational dimensions of social movements and international networks of protest and collaboration (Keck and Sikkink 1998; Korzeniewicz and Smith 2003). More activist oriented literatures on global citizen action, for example, (Edwards and Gaventa 2001) seek to identify lessons about the conditions in which international coalitions are able to impact on the operations of regional and global economic actors, suggesting relevance for our enquiry here. Some of the key insights are summarised in box 1.

Box 1: When global citizen action works

Brown and Fox (2001) suggest groups able to do some the following may have a longer-lasting impact;

- a) Make the campaign fit the target by using the right tactics, coalitions and resources to bring about a particular type of change. Reflecting on IFI campaigns, Nelson suggests (2001: 69) 'NGO influence is focused on a handful of policy issues and their victories have come in carefully, strategically chosen campaigns'.
- a) Open up cracks in the system by engaging with allies within the system that may also be looking for support for their own positions
- b) Recognise that impact takes different forms and that definitions of success will change over time. Brown and Fox suggest (2001:51), 'Campaigns that do not succeed with direct influence may still be considered to have had significant impact when measured by more indirect indicators.
- c) Create footholds for others to follow, creating institutional openings and changes that will allow other groups to shape change in the future from the earliest stages of the policy process.
- d) Address their own accountability to those they claim to represent; beyond NGOs as a proxy for civil society.
- e) Address power and communication gaps to build trust and enable quick and cohesive responses to changing circumstances.
- f) 'Key individuals and organisations, acting as bridges in a global network, can have influence wildly disproportionate to their wealth or formal power' (Brown and Fox 2001:56).

On the environmental side, issue specific studies have also sought to assess the impact of strategies on negotiations themselves through alliances with sympathetic elements within the state, provision of strategically useful information, media-oriented strategies of exposure and embarrassment and the forging of connections to key domestic political audiences to maintain pressure on 'lead' or 'laggard' governments (Arts 1998, Newell 2000). Within Latin America, some studies have also sought to evaluate the effectiveness of 'Environmental Protection Issue Networks'. Though drawing on links to global processes, the focus has tended to be on issues of local environmental protection (Rodrigues 2000). The definition of such networks means that they include a very broad range of actors beyond the scope of our enquiry here, including elements of the state and multinational organisations, the private sector, media and scientific

associations, alongside NGOs and grassroots movements (Rodrigues 2000: 127-8).

Assessing the impact of NGO participation on trade policy presents a fraught task, however. It implies all the familiar problems of mistaking correlation (participation in trade policy and an outcome favourable to an NGO agenda) with causation (assuming that one is directly related to the other), as well as attempting to capture the multiple dimensions and forms of power. I do not have space here to explore the intricacies of debates about power, but it is worth noting the importance of notions of non-decision-making power and anticipated reaction in understanding processes of exclusion from decision-making processes, as well as power that operates silently and often invisibly, but which nevertheless has an impact on policy outcomes (Newell 2000).

Charting the influence of civil society groups on trade policy also has to be placed in a context of the counter-veiling influence of actors opposed to their positions. Power is of course relative, and political economy or structural accounts would expect that business leaders and representatives of regional and global capital enjoy privileged access and representation within trade negotiations. Many observers have noted the disproportionate degree of access and influence for business groups in trade talks in Latin America (Hochstetler 2003). Their input has been organised through coalitions such as the *Foro Empresarial de las Américas* and the *Red Empresarial para la Integración Hemisférica*, a key mechanism for attempting to demonstrate a transnational interest in market liberalisation that transgressed specific sectoral and national concerns (Botto and Tussie 2003). Though such activities have not been the focus of our analysis, it is useful to mention the influence of business actors, both because in some accounts they are considered part of civil society (at least as organised political actors) and therefore make use of, and are shaped by, many of the same institutional channels that guide civil society involvement in general, and because cross-referencing serves to highlight some key differences in the resources, access and influence of business compared with other civil society actors.

Insights from these literatures need to be adapted to resonate with the contemporary regional realities of Latin America to reflect, for example, the growth of political opportunity structures at regional level and the growing density of transnational links which can serve to amplify the voice of movements in the region within other decision-making fora (Hochstetler 2003a). Clearly, the challenges of effectively making use of political opportunity structures, of mobilising effectively and of framing campaigns in ways which resonate with diverse publics across the region, are magnified when we scale-up to regional trade arenas.

The uniqueness of trade policy

There is also something unique about the trade policy process which we need to take account of in thinking about the possibilities for civil society engagement. Brock and McGee (2004) summarise these challenges in terms of (i) structural complexity and inequities (ii) the exclusion of alternatives to trade liberalisation narratives and (iii) the dynamics of representation. Trade policy produces different forms of politics and creates unique political opportunity structures. The policy-making process on a 'high-politics' issue such as trade has tended to be much more secretive and less accessible to non-state actors, particularly NGOs that often have fewer established ties

and points of access to these ministries overseeing trade policy. Within Latin America, the process has been led by national ministers and ministries of foreign affairs and economy through bodies like Mercosur's *Consejo del Mercado Común*. In this sense, there has been less access for NGOs to trade policy compared with many other international and regional bodies in issue areas where entitlements to make statements, access to delegations, and availability of information are routine expectations. Instead, private meetings and 'flexible' decision-making processes are often a euphemism for 'a system of governance deeply flawed by lack of transparency and accountability' (Brock and McGee 2004:8).

Trade negotiations are characterised by a great deal of bilateral bargaining over reciprocal measures on commercially sensitive issues and there is less emphasis on plenary-based open negotiation compared with other issue areas. Brock and McGee note; 'trade policy-making entails many trade-offs at national and international levels that would necessarily constrain the scope for conceding to specific demands made by any poor person or group' (2004:5). There are also high requirements for legal and economic expertise that many NGOs are not well placed to provide. The highly technical nature of the negotiations also heightens the challenge of using traditional campaigning tools such as media work and popular education where the challenge of 'demystifying' is exacerbated. Meaningful engagement is often further compounded by 'the sealed, ideological homogeneity of knowledge, information and analysis in the trade area' (Brock and McGee 2004:27). As I argue below, perhaps especially with trade policy, these factors place a high premium on national political arenas to make a difference and hence individual state-civil society complexes become key.

The disparities in resources between trade negotiators and those seeking to influence them is also clearly key. Cavanagh argues 'To negotiate NAFTA, the three governments devoted millions of dollars to infrastructure. They had top-level translators and interpreters. They had hundreds of people freed from other duties for the process. As citizen groups, we are still in the beginning stages of developing such an infrastructure' (Cavanagh et al 2001:158). In terms of understanding the competing pressures on governments in relation to trade policy, it is also important to acknowledge the pressure exercised by other global economic agents such as the World Bank and IMF towards market opening and trade liberalisation. This broader politics of aid and debt has been shown to have an important effect on the 'negotiating space' of developing countries when 'Broad cooperation agreements between wealthy and developing countries often relate aid and trade' (Brock and McGee 2003:15). For those CSOs with good access to departments of development or overseas aid, this can of course provide an indirect entry point for exercising influence over trade policy, but it also often serves to close off opportunities for challenging the current direction of trade policy.

Regarding links between trade and environmental policy in developing countries, Hochstetler (2003:2) highlights a number of factors which mean that 'politicians can normally assume that they can negotiate trade openings without needing to take steps to appease an environmentally based opposition coalition'. Underpinning this of course, is the prevailing suspicion that environmental standards require costly changes in production processes that will reduce their competitiveness. Industry groups rarely miss the opportunity to fan this fear in resisting calls for environmental provisions. As discussed below, this dynamic takes on a regional dimension in so far as Brazil has

comparatively higher environmental standards and capacity than Uruguay, Paraguay and Argentina within Mercosur and the U.S and Canada than Mexico in the context of NAFTA and ALCA.

3. Environmental provisions within the agreements: Brief history and context

NAFTA

The NAFTA agreement has perhaps generated the most interest because of its environmental clause and is the most high profile of the regional trade regimes because of the involvement of the US and Canada. Critics envisaged a scenario in which lower environmental standards in Mexico would attract polluting industries in the US and Canada towards Mexico and that harmonisation of standards would pull Canadian and US levels down to an inferior common denominator dictated by the less demanding nature of Mexican rules (Schatan 2000:167).

The NAFTA environmental side agreement, one of the most sensitive issues in the NAFTA negotiations, was aimed at countering these fears that pollution-intensive industries would relocate to the Maquiladora area on the Mexican side of the border. Indeed, President Clinton made support for NAFTA conditional on the conclusion of an environmental side agreement. The agreement is meant to ensure an upward harmonisation of environmental standards so that a country can set the standard it considers most appropriate for achieving the level of protection it desires, even if these are stricter than those established internationally (Schatan 2000). Formally, companies are also required to return production waste back to country of origin, but the NAFTA rule of national treatment meant companies could dispose of waste according to Mexican environment laws where there is concern that monitoring and enforcement is weak. In one survey, more than a quarter of companies said stronger environmental provisions in the US prompted them to relocate in Mexico (French 1993) and according to Mexico's secretariat of Urban Planning and Ecology more than half the Macquiladora plants produce hazardous waste and while waste is supposed to be transferred to the US, 'compliance has been the exception rather than the rule' (LeQuesne 1996:68).

Despite the fact that an environmental commission was established to provide periodic reporting on the state of the environment and the impact of the NAFTA agreement in particular, sanctions against persistent violators of legislation are seen as a last resort. Indeed, at the end of 1995 the US Congress threatened to reject 'fast-track' authority for the incorporation of new countries into NAFTA unless sanctions were removed from the Side-Agreements. Instead, the North American Commission for Environmental Cooperation is empowered to summon technical advisers, mediate and make recommendations to parties aimed at finding a mutually satisfactory solution to the dispute.

Where a party is not implementing its own environmental laws effectively, it can be taken to dispute settlement through a complex process whereby the complainant (which can include communities threatened by a violation of environmental law) has to prove systematic non-implementation according to weakly defined criteria, after which the country is required to pay a fine where there is evidence of a 'persistent pattern of failure to effectively enforce its environmental law' (Article 22). Alongside this,

however, is a provision which determines that standards can be challenged if it is felt that they negatively impact trade and do not employ recognised risk assessment and 'sound science' criteria. Finally, as a further sop to critics and to pacify concerns about the potential for environmental deregulation, there are guidelines for environmentally responsible business investment. Article 114 of the ESA attempts to invalidate the relaxing of health, safety or environmental measures in order to attract investors and the NAFTA agreement also provides that international environmental agreements recognised by the three parties should take precedence over national rules. Where there is conflict between NAFTA and an MEA the latter prevails. Audley notes (1997:141) in this regard that 'given the dominance of trade over the environment, the environmental provisions found in the NAFTA package are quite incredible'.

Limitations of environmental provisions within NAFTA from an environmental point of view include the fact that environmental concerns can only be raised with a party when a trade link exists; the scope of 'environmental' is restricted to traditional pollution control measures; the fact that lowering standards to attract foreign investment, though forbidden in the agreement, does not incur sanctions; key environmental principles such as polluter pays are not incorporated into the agreement and, like the WTO, standards cannot be process-based (Schatan 2000). Hogenboom (1998:250) claims in this regard, that the debate's narrow focus was partly caused by the strategy of the moderate wing of the US environmental movement in accepting the narrow environmental approach of the three governments and denouncing proposals by critical organisations for a North American development initiative which would comprehensively deal with environmental issues.

Mercosur

By contrast, the debate on the relationship between trade liberalisation and environmental protection within Mercosur in Latin America is less well advanced. Mercosur developed in a two-stage process; a transition period until 1994 when tariffs were removed from 85% of regional trade and then, in 1995, it became a customs union with an agreed Common External Tariff (Curtis 2001). The agreement includes Argentina, Brazil, Paraguay and Uruguay as full members and Bolivia and Chile as associate members. The four member states signed the Treaty of Asunción in 1991.

The incorporation of environmental issues has been weak and sporadic at best (Onestini 1999), despite the fact that Asunción treaty that brought Mercosur into being lists regional quality of life and sustainable development amongst its broader aims. Efforts to negotiate a environmental legal agreement for Mercosur look a decade (1991-2001) reflecting a combination of regulatory competition, the weakness of environmental groups and the correspondingly high levels of influence exercised by business actors. Mercosur's environmental agency has a weak institutional status and a limited agenda, reflecting perhaps the low levels of institutionalisation that characterise Mercosur as a whole. While there is a technical sub-committee (REMA- Reunión Especializada de Medio Ambiente), created in 1992, which looks at non-tariff restrictions, international norms (ISO 14001), labelling (a possible Mercosur eco-label) and the provision of information about countries' environmental legislation and joint impact assessments, it focuses only on trade-related aspects of environmental policies. The aim has been to eliminate non-tariff barriers to trade applied for environmental reasons by harmonising PPMs, expressed in the form of non-binding directives. There is no broader remit for its

work, for example with regard the environmental impact of trade liberalisation, and environmental standards are viewed as barriers to trade in potential conflict with the goals of trade liberalisation that drive the Mercosur project. Business groups such as CEADS (Argentine Business Council for Sustainable Development) have lent their support to such initiatives, aimed at harmonising environmental standards and removing potential barriers to trade (Agüero 2002).

Since 1995, REMA has met as the environment working group (SGT6), about four times annually. The working group has, according to Hochstetler (2003:12), 'been unable to make environmental issues a significant component of the Mercosur process'. It has far less formal power in comparison to the environmental institutions that exist within NAFTA, described above. REMA was initially not established as a formal sub group but instead as a temporary conference of environmental ministers and academics. This early informality reduced the impact it had on the agreement as a whole. This weakness is compounded by the fact that the dispute resolution process of the Mercosur is unavailable for environmental disputes, so REMA had no means for enforcement (Blum 2000). It also operated without the active engagement of civil society, which only started to mobilise actively around trade and environment themes from 1995 (CEDA 2002).

In 2001, the Mercosur Environmental Framework Agreement was signed in a form far less ambitious and expansive than the 1996 protocol version. The protocol to the Asunción Treaty is essentially an expanded re-articulation of earlier non-binding directives (Tussie and Vásquez 2000). This may in part reflect that, as Tussie and Vásquez note, Mercosur's path 'is mainly drawn up by agreements between the government and the private sector with little input from other actors in the society' (2000:188). It may also reflect the fact that none of the Mercosur countries has yet adopted domestic rules for industry location from an environmental policy perspective and common minimal environmental requirements may be difficult to develop given that attracting investment is the driving rationale for Mercosur.

There are also issues around the broader 'ecological footprint' of Mercosur. If the infrastructural developments proposed for the region in order to enhance integration are not managed responsibly, the environmental consequences could be devastating. For example, the Inter-American Development Bank has identified a mixture of transport, hydroelectric power projects and gas pipelines as essential foundations of an infrastructure for integration (Onestini 1999). Interesting, however, reflecting Brock and McGee's observation (2004) that development and aid policy may provide more (indirect) routes into trade policy than pursuing change through trade institutions alone, NGOs helped to successfully encourage the IDB to withdraw funding for the controversial *hidrovia* proposal to construct a water superhighway to be built on the River Plate system. The provision of alternative environmental and economic assessments and a legal case brought by coalitions of opponents in Brazil and Argentina and backed by the Brazilian government were key to the successful stalling of this Mercosur initiative (Hochstetler 2003).

In many ways, the environment remains a side issue in Mercosur, despite early declarations professing a commitment to sustainable development and the desire to reconcile the goals of growth and efficiency with environmental protection. The window of opportunity that existed to adopt environmental measures seriously has not

been exploited (Tussie and Vasquez 2000a:129). At best, Mercosur should be regarded as a 'potential coordinating mechanism for environmental upgrading rather than as the up-grader itself' (ibid:202). At worst, as Hochstetler (2003) notes, environmental provisions within Mercosur have actually been downgraded over the course of the agreement. There has been little collective acceptance of any environmental provisions that are not already held by three of the four countries (Hochstetler 2003).

ALCA

ALCA, (FTAA), surpasses the previous two agreements in its potential breadth and ambition, with some suggesting that Mercosur could be absorbed within ALCA (Carranza 2003). As Fisher puts it; 'As we begin the new century, negotiators are looking ahead to one of the most demanding trade negotiations in history: the goal is a comprehensive agreement linking 34 countries and 800 million people from the Arctic Ocean to Tierra del Fuego' (Fisher 2002:183). For many, ALCA should be understood as a continent wide extension of the basic terms and conditions of NAFTA (Teubal and Rodriguez 2002), hence the caricature that activists use of 'NAFTA on steroids', or perhaps more diplomatically 'NAFTA-plus' (Brock and McGee 2004:12). Because of the requirement for political coordination at continental level, critics suggest ALCA could imply 'the institutionalisation of strategies of neo-liberalism and structural adjustment across the whole continent. It produces through these means the institutionalisation of a type of economic and social discipline' in a way which serves the interests of large corporations and the government of the US (Teubal and Rodriguez 2002:174 [my translation]).

It is certainly true that the ALCA project was conceived by the US government. At the end of 1994, the heads of government of the Americas (with the notable exception of Cuba) produced a declaration expressing their desire to initiate negotiations towards an ALCA to be concluded before 2006. The negotiations only began in April 1998, three and half years later. In Quebec City in 2001, negotiators presented the first draft of the text of an agreement. Rather like Mercosur and NAFTA before them, many activists are critical of the way in which the negotiations have been conducted 'in secret' (Acción Ecológica 2004). This is despite the fact that some claim 'The FTAA process has been conducted with rather more transparency than was the case with NAFTA' (Brock and McGee 2004:12).

The proposed FTAA will address every major industry, commodity and trade issue. So far, a series of commissions have been established in areas of key relevance to the environment such as agriculture and intellectual property rights. Agriculture was considered so important a sector for negotiation that not only does it have a special commission, but it is also covered by the work of other commissions on subsidies, antidumping and compensation rights. Liberalisation of services also includes 'environmental services' such as water, controversial in light of the experience to date of water privatisation of water in countries such as Argentina and Bolivia (Finger 2005). The national treatment provisions are what concern many activists, where companies from all countries in the region will be afforded the same entitlement to provide services on a commercial basis. Also, it is alleged quotas or prohibitions on the export of resources such as water for environmental reasons will be considered protectionist (Acción Ecológica 2004 [my translation]).

At ALCA meetings in Buenos Aires and Quebec there have been explicit inter-governmental statements in support of the trade in GMOs, prompting concerns among activists that ALCA will provide a back door route to spreading the use of GMOs in the region (Global Exchange *ud*). This would be against the expressed reservations of countries like Bolivia, and driven by the need to find new markets for US, Canada and Argentina, the world's three largest producers and exporters of GM produce rejected in Europe and parts of Asia. This issue has been raised by campesino groups in countries that serve as centres of origin for key crops such as maize, like Mexico, a country which has already experienced contamination of non-GM crops by transgenic varieties. The same groups have registered concern that IPR provisions within ALCA might continentalize North American patenting provisions, over-riding collective communal and indigenous peoples' rights (Acción Ecológica 2004). This forms part of a broader platform of opposition to biopiracy and the protection of indigenous knowledge, an issue of particular importance in Latin America given the richness and extent of its biodiversity.

ALCA negotiators have been divided on the role of environmental provisions with the agreement. Gitli and Murillo (2002: 156-7) describe three loosely defined positions on the appropriate relationship between trade and environment within ALCA. There is the U.S on one end of the spectrum in support of environmental provisions, Mexico, Central America and the Andean community on the other end, roundly opposed to their inclusion, and a group in the middle who might consider environmental provisions depending on what they contained, involving Canada, Chile and Mercosur. These positions are not, of course, static. There are differences within governments, which create openings for new alliances between groups from civil society and government departments. Mexican negotiators involved in the NAFTA negotiations that felt forced to 'swallow' environmental provisions, have been active in their opposition to linking environmental considerations with trade commitments (Deere and Esty 2002). Yet President Fox of Mexico appointed Victor Lichtinger as head of the *Secretaría de Medio Ambiente y Recursos Naturales*, who has affirmed the importance of the interface between trade and environment issues. As Deere and Esty put it however, (2002:2) 'The question remains whether trade officials at Mexico's Secretaría de Economía will ultimately be convinced by Lichtinger's logic and advance a forward-looking trade and environment agenda'. In addition, nearly all Latin American governments have adopted the Mexican stance against developing an environmental agenda as part of the ALCA negotiations, a position made clear at the ministerial meeting in Miami, November 2003 (Ricco 2004).

Many contend, however, drawing on the experience of NAFTA in particular, that an agreement with environmental provisions would be a precondition for acceptance by North American governments. During the Quebec summit in July 2003, Canada presented ALCA negotiators with a concept proposal broaching the issue of environmental provisions in the ALCA trade talks (Ricco 2004). Though controversial, as Hochstetler (2003:4) puts it; 'the domestic politics of trade agreements in industrialised regions preclude new trade agreements that do not include environmental provisions, ...civil society groups and their congressional allies in North America will block the FTAA in particular under such conditions.' On this basis, some have called for provisions that draw on NAFTA's Commission for Environmental Cooperation including defined mechanisms for individuals and organisations to submit issues and a citizen's advisory committee. These would go far beyond the provisions within

Mercosur which, as I have described, are limited to informal provisions for making presentations. As Hochstetler (2003:25) suggests; 'Considering how little autonomy Mercosur decision makers grant their own national environmental agencies in a regional setting, they are unlikely to agree to grant such freedom of action to citizens across the hemisphere and an independent bureaucracy'.

4. The Politics of Mobilisation

This section seeks to explore the forms of mobilisation within the environmental movement, and to a lesser extent, campesino movements, around each of the three key trade agreements. Who was mobilising and how, around what sort of issues and how did the coalitions formed change over time? The aim is to generate insights into how groups claim rights to participation, and prepare themselves to make use of those spaces that exist within trade policy arenas (described in the next section) or protest either the lack of such spaces or the limits imposed by the ways in which they are currently constituted.

The NAFTA³ agreement and its handling of environmental issues generated significant, though uneven, degrees of mobilisation by environmental groups in each of the three countries party to the agreement. The emergence of transnational relations between ENGOs in Mexico, the U.S and Canada was, in many ways, unprecedented. Initially, this was centred around collaboration between border organisations in the U.S and Mexico,⁴ but developed well beyond this. Hence, though impacting directly a smaller number of countries within the region, the novelty of the process and the ways in which the issues being addressed resonated with concerns environmentalists were expressing globally regarding pollution havens and the importance of environmental protection measures in trade agreements, meant that NAFTA became a site for much broader set of struggles. There were nevertheless important differences in structure, constituency and strategies that organizations adopted that were, to some extent, determined by nationality (Hogenboom 1998:141).

In some cases such differences were a driver of the transnational alliances that were formed.⁵ In Mexico, for example, the lack of openings at state level was an important reason for Mexican ENGOs' alignment with foreign groups 'which had more political clout' (Hogenboom 1998:147). Mexican groups also relied on counterparts elsewhere for access to information about the negotiations, which their own government was failing to provide. This was particularly true of more critical groups with less access to government. Hogenboom (1998:165) describes the difference in approach as one between transnational *coalitions* that moderate ENGOs were more inclined to construct, and transnational *alliances* that critical groups were more likely to develop. She notes, 'While the transnational relations of moderate groups were limited, pragmatic and predominately tied to the political moment of NAFTA negotiations, the transnational relations of critical environmental organizations were more profound and directed at more structural cooperation' (1998:165).

³ Tratado de Libre Comercio de América del Norte (TLCAN).

⁴ An example here would be the binational 'Border Health and Environment Network'.

⁵ Carranza (2003:90) claims more broadly that it is the fact that groups find it so difficult to press their demand at the national level in a context of globalisation that regional forms of civil society are taking shape, such as an 'incipient Mercosur civil society'.

RMALC (Mexican Action Network on Free Trade), for example, worked with Action Canada Network, the Canadian group 'Common frontiers' and the Alliance for Responsible Trade and the Citizens Trade Campaign in the U.S. This was in addition to the extensive collaboration between border groups, already noted. Such transnational ties served to amplify the influence of weaker groups in Mexico that, through connections with allies in North America, got to participate in key policy arenas where decisions on NAFTA were being taken. This participation took the form of hearings in the US Congress which, through exposure in the US, helped to secure access to Mexican officials (Hogenboom 1998:152), evidence of what Keck and Sikkink (1998) call the 'boomerang effect'. For US groups, ties to Mexican groups helped to improve their credibility in presenting positions that went beyond their own narrow interests as well as permitting them to act as vehicles for transmitting information from the 'front-line' about environmental problems confronting Mexico.

The importance of North-South alliances between activists outside the formal process has also been appreciated by activists mobilising around ALCA. Ruben notes 'Northern groups recognized ...that a strong mobilization in Quito would undermine oft-heard claims that people in developing countries are clamouring for free trade while only misguided students, angry anarchists and selfish trade unionists stand in the way' (2004:2). This led to the raising of tens of thousands of dollars by activists in Europe and North America to enable campesino and indigenous peoples' movements to attend the protest, just as Ecuadorian union members came with the help the U.S.-based trade union AFL-CIO. In return, movement activists conducted interviews with Northern media about the issues they were protesting, organised by their allies in Europe and North America.

The process of alliance building has not been without its difficulties. The different organisational structures of groups often prove to be a point of contention. In the context of NAFTA, the fact that compared with large membership based organisations from the US and Canada, many Mexican groups had fewer official members, created tensions about how wide a group of citizens were being adequately represented. This has been an issue in the ALCA negotiations too, with trade unions in particular questioning who NGOs represent, occasionally referring to them in dismissive terms as 'non-governmental individuals'. NGOs, in turn, have been critical of the overly hierarchical and bureaucratic nature of some trade unions (Korzeniewicz and Smith 2003:69).

In the NAFTA context, both the scale of funding disparities between groups from Mexico and North America and particularly, the extent of corporate funds received by the latter, also created suspicions among some Mexican ENGOs about how far those groups agendas were influenced by their funding sources; companies that stood to benefit from NAFTA (Hogenboom 1998:153-4). Despite these issues, united positions were possible, such as the Common Declaration on NAFTA in 1991 issued by a group of more than twenty Mexican, US and Canadian ENGOs calling, among other things, for the inclusion of environmental issues in NAFTA, a review of the environmental effects of NAFTA and the participation of environmental experts in the negotiations.

Though covering a broad range of issues, in their own right, environmental concerns featured quite prominently in these coalitions. The point of departure for many of these

coalitions was not to claim that NAFTA was responsible for the social and environmental problems they were experiencing, but that it was accelerating them. A tactic on the part of NAFTA proponents was to characterise those against the plan as protectionist, encouraging some groups to demonstrate that they are not against trade and investment, but rather in favour of different frameworks of rules. Some went about articulating that alternative in the form of the 'Just and Sustainable Trade and Development Initiative for North America'. Following inputs from other groups within the region, the agreement was broadened to become 'Alternatives for the Americas: Building a Peoples' Hemispheric Agreement', explicitly building in chapters on labour, environment and gender.

The timing of NAFTA also made a difference to the issues around which groups mobilised. Signed in 1992 and coming into effect in January 1994, the agreement emerged at a time of high levels of environmental concern on the back of UNCED in 1992. With global attention focussed on the way in which NAFTA mediated the relationship between trade and environment, greater pressure was felt by those negotiating its terms to strengthen environmental provisions. By contrast, ongoing negotiations within Mercosur and ALCA have been, to some extent, overshadowed by economic crisis within the region (Argentina in 2000/2001 and previously Brazil's massive currency devaluation in January 1999) such that the very project of regional integration has been in doubt at key moments (Carranza 2003). The timing of the decline in collective environmental provisions under Mercosur is, according to Hochstetler (2003: 4) 'most clearly linked to the severe crisis of the entire Mercosur agreement and the Argentine economic crisis in the late 1990s in particular, which had little to do with the environmental protocol itself, but contributed to its decline'.

Timing also made a difference in terms of the types of alliance that were possible. Coming as it did in the early 1990s, NAFTA managed to bring into loose alliance coalitions of labour and environmental interests to combat threats to hard-fought regulation. As Obach notes (2004:63); 'Although unions and environmentalists had distinct concerns in regard to NAFTA, the common threat the agreement presented created the impetus for labor-environmental cooperation'. At times working independently, at other times together, national coalitions were formed that included many of the major labour and environmental actors such as the *Citizens Trade Campaign* and the *Alliance for Responsible Trade*. They also went on to work together in opposing fast-track trade authority for the Clinton administration through bodies such as the *Citizen's Trade Watch Campaign*.

Links with the Unions were beneficial for environmentalists in amplifying their voice for a number of reasons. Audley notes 'the pre-emptive leverage enjoyed by environmental groups was ...as much a product of their association with other more traditionally influential trade actors opposed to NAFTA as it was their own importance as a political issue for members of Congress' (Audley 1997:145). In other words, it was the anti-NAFTA labour forces that really challenged NAFTA's success. This opposition from labour created a political incentive for the USTR to engage with an interest group 'they otherwise felt no obligation or political pressure to engage' (Audley 1997:145). Suggesting that the alliance was mutually beneficial, Mayer notes (2002:99) 'The environmental connection helped labour unions broaden their appeal to the media and to the general public which often appeared more interested in dramatic images of environmental degradation than in the plight of workers'. Araya (2001)

suggests, however, that while such alliances were useful for drawing the attention of US Congress to these issues, in the context of ALCA, they could serve to compound fears that the environmental debate is a convenient cover for protectionist interests.

Though trade negotiations become focal points from cross-sectoral and transnational mobilising, it should be made clear that many groups also choose not to engage with trade policy processes. This can either be because they are not seen to be relevant to a group's core activities or because financial and/or technical barriers mean that mobilising around these issues is not a realistic possibility. Within Mexico, for example, the Mexican Ecologist Movement, with good connections to the media, largely 'side-stepped' the NAFTA issue (Hogenboom 1998:145). There also often appears to be a divide between capital city based groups that are more geared to addressing national and international policy agendas, and environmental and campesino groups based in rural areas that attach a lower priority to these agendas. As Hogenboom notes in the context of Mexico, 'Their distance from the political centre of Mexico city, a lack of finance and experience, and poor access to information about NAFTA discouraged their participation in the NAFTA debate' (1998:146).

*Insider/Outsider Strategies*⁶

Insiders

We will see below how differences in perspective regarding the relationship between trade and environment played out between insider and outsider groups in the context of NAFTA within each of the countries party to the agreement. Similar divisions have also emerged in the context of the ALCA discussions with some groups adopting a critical position within the ASC (la Alianza Social Continental)⁷ and other groups investing in efforts to identify and advance 'win-win' linkages between environmental protection measures and trade liberalisation.

An example of such a group from the latter category would be the Canadian-based IISD (International Institute for Sustainable Development) which, together with the international bodies IUCN and UNEP, organised symposia for this purpose. Academic leaning environmental NGOs also played a part in trying to forge the contents of a common deal on environmental provisions that would be acceptable to all parties to the summits, 'Agenda Ambiental para el ALCA'. The organisations leading this effort included the *Centro de Investigación y Planificación del Medio Ambiente*, Global Environment and Trade Study (US) and *Centro Internacional de Política Económica para el Desarrollo Sostenible* (Costa Rica). *Grupo Zapallar* was also created in 1999 to bring together experts from different sectors and countries of Latin America to contribute to a more productive dialogue about trade and sustainable development (Bülow 2003:102; CEDA 2002).

⁶ Rather than a hard and fast distinction, the difference between insider and outsider groups and strategies should be seen as a spectrum of roles that groups can move in and out of and which change over time (Korzeniewicz and Smith 2003).

⁷ A number of national environmental groups within Latin America have also come out against ALCA. Examples would include the Consejo Profesional Analistas Ambientales de la República Argentina and Instituto de Ecología Política (Chile) (Bülow 2003:95).

One element of this strategy of engagement has been to build bridges with industry. Audley (1997:83) notes in the case of NWF, for example, a policy 'of constructive engagement with industry elites convinced them that a dialogue between business and responsible environmental organisations could result in effective changes in investment patterns and improve the chances for environmental quality through trade.' Alongside engagement with trade negotiators, therefore, lobbying directly those making the day-to-day investment decisions that impact upon resource use is also seen to yield immediate and positive results. Such strategies may be particularly significant given prevailing scepticism, among both governments and the majority of civil society, about the possibility of constructing a hemispherical environmental agenda. The preference among governments is to promote such issues through the UN or through the forum of environmental ministers in Latin America and the Caribbean.

At the level of implementation, leading American NGOs such as NRDC have taken a lead in trying to shape the coordination of proposals coming out of the summit meetings by initiating, among other things, bodies such as the *Foro Interamericano sobre la Legislación Ambiental*. Representation on the executive committee of the body is meant to be open both to governmental and non-governmental actors such that for Bülow (2003:89) it represents another potential mechanism for the participation of civil society in policy implementation. Latin American groups less critical of the free trade agenda have organised themselves in similar ways. Some more research-oriented NGOs, such as FARN (Fundación Ambiente y Recursos Naturales) in Argentina, have supported efforts towards the harmonisation of environmental protection, producing their own analyses of existing legislation and suggesting places for common improvement (Hochstetler 2003). They hosted for example the project 'Environmental assessment and capacity building for the Free Trade of the Americas Agreement', coordinated by the *Foro Interamericano de Derecho Ambiental* within the ambit of the OEA (Organización de Estados Americanos) (Walsh et al 2003). This was an attempt to assess environmental challenges resulting from the FTAA (amongst other trade agreements), pursued through country studies undertaken in collaboration with national environmental officials and experts. Domestic policy options were then discussed through 'public/private' dialogue with government officials (Walsh et al 2003:vii). A similar function is performed in Costa Rica by the *Grupo Permanente de Análisis sobre Integración, Comercio y Ambiente* that brings together academics, NGOs and the private sector (Gitli and Murillo 2000). Research-oriented groups such as FARN, CEDEA (*Centro de Estudios Ambientales*) (Argentina) and WWF have, therefore, engaged in ways which reflect their expertise, attending the key ALCA meetings and even being invited to make presentations. In the case of CEDEA, for example, the group was invited to present work they have previously undertaken for UNEP on the impact of trade liberalisation on the fisheries sector (UNEP 2002; UNEP 2002a). These sorts of more technical inputs are clearly more useful and politically acceptable to those negotiating the agreement.

Sometimes the strategy is aimed at directly engaging the government with a view to shaping their negotiating stance. In Mexico in relation to NAFTA, 30 ENGOs organised themselves in the Union of Environmental Groups which sought to foster positive relations with the Mexican government in order to have a say in Mexico's official position on environmental safeguards in NAFTA (Hogenboom 1998). Despite their insider status, aided by the fact that one of UGAM's advisers was a prominent

environmental lawyer, they faced many of the same barriers to effective participation as outsiders in terms of poor access to official information and the lack of state capacity to handle inputs from civil society. Their input, along with that of organisations such as the Group of Hundred, was restricted to some 'side-room' discussions during negotiations on the supplemental environmental agreement. Rather like CEDEA and FARN in Argentina, groups such as Mexico's INAINE (Autonomous Institute for Ecological Research) that carry out technical and scientific research for government agencies were invited into government processes and cooperated, on occasion, with other groups on the issue of incorporation of environmental measures within NAFTA.

Through their own insider role, many such groups have nevertheless pushed for the broadening of participation and the construction of an infrastructure of participation, raising such issues as access to information. Rights to participate often presuppose rights to know and access to information. This has become a key rallying cry in the context of NAFTA. The environmental right-to-know movement in the three countries party to the NAFTA agreement has fought to bring Mexico's Pollution Release and Transfer Register in line with those of the US and Canada. If President Fox signs, the regulations will make Mexico the first country in Latin America to require public disclosure of industrial chemical releases to air, water and land on an annual, site by site, chemical-specific basis, ensuring that Mexico lives up to its written commitments under the NAFTA environmental side accord (Nauman 2004). This comes on the back of efforts by Mexican NGOs writing public letters and carrying out personal visits to pressure the Mexican government and subsidiaries of the US and Canadian corporations operating in Mexico to comply with the stipulations of the NAFTA environmental side accord for reporting to a PRTR similar to those in the rest of North America (Nauman 2004).

This has inspired efforts to create a mandatory public register in Chile and NGOs in Costa Rica have been mobilising around the same issue. The campaign has taken 10 years to reach this far, however, with industry claiming compliance will be too cumbersome and costly and raising concerns about being forced to reveal trade secrets. Frequent turnover of staff within the Mexican government has also slowed the change process, amid changing bureaucratic roles, new battles over funding and having to build PRTR (Pollution and Release Transfer Register) staff capacity each time. Learning the lesson from this campaign, groups mobilising around ALCA have been calling for strict information disclosure requirements. The Sierra Club, for example, has argued under its 'Fair trade bill of rights' that companies should be required to disclose information on their toxic releases when they operate abroad on the basis that communities everywhere have a basic right to know (Sierra Club 2001).

The extent to which groups mobilise around trade agreements, based on the Latin American experience, seems to reflect not only the formal political and institutional opportunity structures, as I discuss below, but also their sense of where their campaigning energies are most likely to yield change. The lack of spaces for engagement with Mercosur and the deliberate undermining of its environmental provisions has led some groups to abandon it and focus their attentions on ALCA, which is in any case potentially much more far-reaching in economic and environmental impact. This 'strategic turn' perhaps also reflects a broader power play in which the US is seeking to outmanoeuvre Mercosur by speeding up negotiations towards ALCA (Teubal and Rodriguez 2002). Aware of its importance, therefore,

Hochstetler (2003:4) suggests 'South American environmentalists will join their Northern counterparts in opposition to the FTAA despite low levels of mobilisation around Mercosur'. She suggests;

'The member states of Mercosur are likely to get quite a bit more pressure from regional environmentalists about a potential FTAA than they have over Mercosur itself. Regional environmentalists have strong ties across the hemisphere on trade issues, ties that are often stronger than those among environmentalists in just the Mercosur countries. In addition, many of them have been willing to support Mercosur partly as a preferable outcome to the FTAA, but are wholly opposed to the latter' (2003:26).⁸

Outsiders

Environmental NGOs critical of free trade have organised around each of the three key agreements discussed here. In Mexico, ENGOs actively opposed to the official NAFTA proposals were organised in the 'Pact of Ecologists'. As in the U.S, the government made efforts to divide the coalition which succeeded in 1998 in pushing some moderate groups to break away, leaving the remaining groups to coalesce around a more critical agenda, acting mainly through RMLAC.⁹ Though generally cast as an outsider group, RMLAC did also engage in formal exchanges with government on occasion, employing to some extent a 'double-strategy' (Hogenboom 1998:144).

Opposition to ALCA within civil society has been widespread, reflecting both what is stake in political and economic terms and the number of countries and associated civil societies involved. A large number of anti-ALCA movements have developed positions that place themselves outside the process. The forms of protest in many ways mirror, and build on, experiences of campaigning around trade issues in the WTO and investment issues associated with the aborted MAI (Multilateral Agreement on Investment). 'Virtual' alliances held together through exchange of information and formulation of positions through exchange over the internet, combined with joint demonstrations around key summits such as Quito and Quebec, as well as the plurality of concerns hosted under 'rainbow' alliances, are indicative of this form of mobilising. Such protests have been aimed at challenging the secrecy of the process, as well as the nature of the development model being promoted. For example, one item of graffiti in Palermo, Buenos Aires from the time of the ALCA meeting there in 2001 reads 'Su opulencia es nuestra exclusión'.

Within these coalitions, environmental groups critical of the process and sceptical about the compatibility of trade liberalisation with sustainable development have articulated concerns which resonate with a much broader critique of neo-liberal development models. There are the familiar concerns about both the environmental impact of increased volumes of trade and the potential for mobile capital to exploit lower environmental standards, as it is claimed has occurred in the *maquiladoras*, or to encourage 'regulatory chill' among states competing for their investment. As one group argues, 'ALCA implies a direct increase in the consumption and therefore production

⁸ See for example, 'Sustainable South' and 'Sustainable Southern Cone'.

⁹ This coalition included alongside environmental groups, worker and peasant groups, development and human rights groups and women's groups. It was created in 1991 in the context of the NAFTA negotiations.

of fossil fuels, this implies an increase in CO₂ emissions which the US does not want to control' (Acción Ecológica 2004 [my translation]). Relatedly, by reforming the legal base of energy policy in the region, there is concern that exploration for and extraction of fossil fuels will increase, further implying both social impacts on those that inhabit these areas (often poorer indigenous communities) and of course environmental damage in forested and fragile ecosystems (Acción Ecológica 2004).

On the question of rules, the issue is the compatibility of trade and environmental rules. The title of a Sierra Club briefing on ALCA captures this position; 'New pro-corporate rules threaten our environment and health' (u.d). These strategies and positions are very much cast by the NAFTA debate and the need to build on the lessons from that experience. A key set of concerns, raised both during NAFTA talks and subsequently, centre on the issue of the likelihood that trade rules will be allowed to over-ride environmental provisions, over-turning regulations hard won at national level. This resonates with claims environmentalists have made internationally that there is an imbalance between *regulation for* business over *regulation of* business (Newell 2001). In the NAFTA context the right of multinational companies to sue is one manifestation of this, where in the Ethyl case, for example, the Canadian company *Methanex* successfully sued the US for \$1 billion after California phased out a hazardous gasoline additive which the company helped to manufacture. Sierra Club (u.d) claim 'Under the FTAA, as under NAFTA, individual foreign investors could gain the right to sue the United States for cash damages before secretive, three judge panels' should environmental laws affect their profits under broad interpretations of non-discrimination provisions. ALCA, like NAFTA, also proposes to ban the use of 'performance requirements' which environmentalists see as key to sustainable production (Newell 2004). Previous cases of trade-environment conflicts that have gone before the WTO dispute panel involving Latin American countries, do not give environmentalists many grounds for optimism that environmental measures will not be overridden by trade concerns.¹⁰

Beyond challenging specific provisions of the trade agreements, some groups have sought to change the rules of engagement, rather than make use of those that exist as insider groups have. In the context of NAFTA, the strategy of the adversarial coalition was to try and change the rules of the negotiations through, for example, House resolutions (246) and a NEPA lawsuit. As noted, they also formed alliances with other oppositional elements, most notably from the labour movement. For example, the MODTLE (*Mobilization on Development, Trade, Labor and the Environment*) was established as a tri-national dialogue among activists from all three NAFTA countries.

¹⁰ Perhaps the most high-profile of the cases involving trade rules and environmental protection measures was that involving the U.S and Mexico in a dispute over restrictions on the import of Mexican tuna on the grounds that it was caught with nets that were trapping dolphins. The decision, made in 1991, was that the restriction of trade for protection of the environment outside a country's border contravened GATT rules and that production process standards are considered to be non-tariff barriers. U.S environmentalist Ralph Nader described the decision as a 'breathtaking attack on progress made in the last ten years' (quoted in Vogel 1997:114). A second case concerned a challenge by Venezuela and Brazil in 1996 to the implementation of the U.S Clean Air Act of 1990 which, they argued, discriminated against foreign refineries. The Dispute Panel ruled in favour of Venezuela and Mexico and the Appellate body confirmed this ruling. The decision served to entrench the view of environmentalists that the dispute settlement procedures in the world trading system were biased against environmental interests.

Via Campesina?

For a set of reasons already alluded to, campesino and indigenous peoples' groups have become increasingly involved in regional debates about trade policy. Their strong ties to agriculture, proximity to resource rich areas and dependence on resource economies, as well as their sensitivity to issues of property rights and access to affordable services, mean that trade agendas that have broadened to cover these issues necessarily impact upon their livelihoods. As organisations of the poor, such groups have nothing like the political clout or resources of some of their counterparts in the labour and environmental movement, but they have sought to make their voices heard through traditional patterns of protest, resistance and confrontation with the state.

Philip Oxhorn claims 'In many ways, indigenous movements present the most fundamental challenges for understanding the quality of democratic regimes and for theories of social movements. Their distinctly non-western experience, history of violent abuse, and understanding of rights in collective rather than liberal-individualist terms all seem to set them apart from other movements, and perhaps even from the context of civil society in which they are frequently placed' (2001:174). In spite of this, or perhaps because of it, Korovkin (2001:37) notes an 'urban bias' in much of the literature on social movements in Latin America, such that most studies 'barely touch on organisational processes in rural areas, especially those populated by indigenous peoples.' This is significant from the point of view of participation in trade policy, which tends to be centred in around capital cities and involving trade policy activists whose links to rural or grassroots groups are often weak.

Within the last few decades have seen a resurgence in campesino movements and movements of rural workers, more autonomous than before and more independent of the state and political parties (Teubal and Rodriguez 2002:193; Polanco 1997; Edelman 1999). In Brazil this has taken the form of the movement of the landless (MST *Movimiento de los Trabajadores Sin Tierra*) known for its land occupations, though similar demands for access to land have driven movements in Mexico, Argentina, Brazil, Colombia, Peru, Ecuador and Paraguay. Again, such movements appear to be most active in areas with high concentrations of indigenous populations. Examples include *La Confederación de las Nacionalidades Indígenas del Ecuador* (CONAIE), the movement *Katarista de Bolivia* the *Consejo Regional Indígena del CAUCA* (Colombia), *Movimiento Campesino de Santiago del Estero* (MOCASE Argentina) *União das Nações Indígenas* (Brazil) and the *EZLN* (Zapitistas) organised under a politico-ethnic banner. Few have been able to emulate the success or profile of the MST on these issues alone,¹¹ though in global terms the EZLN perhaps attracts more attention.

In other contexts (Mexico, Colombia, El Salvador and Guatemala) movements have taken the form of armed struggles. In some settings movements identify themselves by their indigenous, ethnic or community identities. In some cases they have formed

¹¹ The MST's success is partly related to the fact that a large part of the population is sympathetic to the struggle for agrarian reform and agrees that the government should confiscate unproductive land and redistribute it to those without land (Teubal and Rodriguez 2002:195).

alliances with women's and environmental movements, in the latter case against large projects such as hydroelectric dams. In general they represent and campaign on issues that affect those most exploited in the countryside, though occasionally they work with producer groups such as the *Movimiento de Mujeres Agropecuarias en Lucha* (MMAL) de la Argentina (Teubal and Rodriguez 2002:193). Often broader critiques are explicitly articulated, such as in the case of the Zapatistas who are expressly critical of NAFTA. Indeed, the Zapatista movement is in many ways a product of the impact of neo-liberal reforms on the rural poor in Mexico which turned the rural poor against the governing PRI whom they had traditionally supported and towards the platform articulated by EZLN (Teubal and Rodriguez 2002; Acción Ecológica 2004). While the struggles of such groups are essentially based around land claims and for better living conditions, they articulate, according to Teubal and Rodriguez, 'more important social currents against the contemporary global model of neo-liberalism' (2002: 195 [my translation]). For example, CONAIE participated in, and often led, protests and strikes against structural adjustment in Ecuador in the mid-1990s (Korovkin 2001).

This then is the entry point to understanding the role of campesino and indigenous peoples' movements in regional trade debates. Clearly opposed to many of the central tenets of the liberalisation process, such movements are outsiders in the process, though clearly can lay claim to a much broader constituency of support and interest than most environmental groups. While ALCA is seen by some as an opportunity for social groups to put forward proposals that they have developed in the context of Mercosur on social and campesino issues (Teubal and Rodriguez 2002), others raise concerns about specific provisions of the proposed ALCA that have specific implications for campesinos and indigenous peoples. Issues of particular concern include agricultural reforms and the removal of subsidies, fears about further consolidation of power in the hands of large food producers and measures to strengthen IPR protection, in particular the ability to register private property claims over communally held resources in the manner permitted by the WTO TRIPs accord) (Acción Ecológica 2004).

Reflecting a broader *Via Campesina* agenda of food sovereignty (*la soberanía alimentaria*), such groups express resistance to entrenching the external food dependency that already characterises many of the countries in the region, as well as displacing existing production and rural livelihoods with the expansion of North American agriculture in the region (Teubal and Rodriguez 2002:188). Their fears are fanned by the experience of the rural poor in Mexico in the wake of NAFTA where, for example, the maize sector lost a considerable degree of competitiveness, especially in the *ejidal* sector (communal) where there are fewer opportunities to diversify produce or modernise traditional patterns of cultivation in order to compete in the open market (ibid: 189). It was these negative impacts, according to Teubal and Rodriguez, that fuelled the rural protests in Mexico and offer a sign of the possible impacts of ALCA on the same sectors in the rest of Latin America and therefore of which groups may mobilise around the agreement (2002:189).

Less focussed explicitly on agriculture, these groups have also opposed, alongside others, the privatisation of key public services which raise questions of employment, access and affordability for their members. For example, campesino and indigenous groups were active in the battle at Conchabamba Bolivia over increased prices which put access to water beyond the reach of these groups, as it did in Guayaquil in Ecuador when a foreign company assumed control of its supply (Acción Ecológica 2004).

Global connections in their campaigning become apparent in so far as opposition to ALCA is re-framed as a broader struggle against the global industrialisation and intensification of agriculture, or the privatisation of public services the world over. Connections have been forged, for example, to international campaigns against GMOs, which also have a regional resonance given the centrality of Argentina¹² and Brazil to the global GM debate. According to Teubal and Rodriguez, 'Various campesino movements have successfully articulated in recent years an authentic global movement' (2002:197 [my translation]). This is grounded in opposition to TNC control of agriculture (including patenting and bio-piracy), free trade in agricultural produce (especially dumping), the use of hormones and transgenics and in favour, amongst other things, of food security and food sovereignty. Again, the umbrella group *Via Campesina* would perhaps provide the clearest articulation of this position and demonstrates its global connectivity through involvement in the World Social Forums, for example. Coalition-building of this sort and a range of protest activities have been the main strategies adopted by campesino movements, often aided as noted above by the financial support of sympathetic groups in Europe and North America.

The positions, strategies and patterns of influence associated with campesino and indigenous peoples' groups stand in sharp contrast to other voices from the rural actor; organised agricultural associations and farmers' unions with greater resources and many more openings to engage with the formal process of trade policy. The power of the large agricultural lobbies in North America and their ability to extract subsidies and concessions is notorious. But campesino movements should also be counter-posed with large farming unions and associations that represent the views of landed agricultural elites in Latin America, not only in terms of their membership base, but in terms of their ability to engage effectively with regional trade debates. In Argentina groups such as *Sociedad Rural Argentina* and *la Cámara de Exportadores* have offices employing professionals with the mandate and resources to conduct strategic analysis of the implications of trade negotiations such as ALCA (Walsh et al 2003:41). They also have sufficient media and political connections to guarantee exposure of their positions and sympathy for their demands.¹³

Insider/Outsider Influence

These differences in approach between insiders and outsiders indicate not only diverse strategic preferences, but also significant ideological differences, that successive trade negotiations have merely served to entrench. This difference in approach reflects a broader split within the environmental movement, in particular, between those who view trade liberalisation per se as antithetical to ecological sustainability and those who take the view that under certain conditions trade liberalisation can contribute to sustainability. Just as Unions adopted very different positions on NAFTA depending on whether they were a social movement or a business union, so the environmental community has mobilised around different issues and priorities accordingly. Reflecting these differences, groups such as the National Wildlife Federation, NRDC, the

¹² Foro de la Tierra y la Alimentación

¹³ For example, in Argentina, the day after speeches by leaders of the *Sociedad Rural* and government ministers at the annual *Feria Rural*, conservative papers such as *La Nacion* routinely devote front-page coverage to their demands and proposals.

Environmental Defense Fund and World Wildlife Fund were able to support NAFTA¹⁴, while the Sierra Club and Friends of the Earth, Greenpeace and Public Citizen, for example, took an adversarial position (Obach 2004). The former constructed the 'Environmental Coalition for NAFTA' which sought to have the accord, complete with side agreement, accepted. Audley notes (1997:91) 'What had begun in January 1991 as a unified effort to include environmental issues into trade policy ended in bitter disagreement among those organisations most actively involved in negotiations'.¹⁵ Ties between critics and the pro-NAFTA alliance were nevertheless maintained by groups such as Sierra Club and Public Citizen (Korzeniewicz and Smith 2003), again suggesting the permeability of categories of 'insider' and 'outsider'.

These divisions made it easier for administrations like the US to minimise the conflict caused by environmental issues by targeting key environmental groups willing to accommodate President Bush's economic objectives (Audley 1997:59). Endorsement of NAFTA by the majority of national environmental organisations 'neutralized' any threat posed by environmental opponents to the agreement because such endorsement gave the administration, members of Congress and other pro-trade policy elites solid support for their defence of NAFTA on environmental grounds (Audley 1997:109). The deal was reciprocated. Audley notes, (1997:130) 'organizations supporting NAFTA were rewarded with a higher number of advisory appointments, thereby facilitating long-term participation in trade policy monopolies.' During key debates on fast track decision-making on trade, for example, accommodating groups moderated their demands in exchange for formalized roles in trade policy. Representatives of a few environmental organisations were invited to join policy advisory committees of USTR, for example (Hogenboom 1998:161). Those invited were those that had shifted position to support the trade initiative including NRDC, WWF, NWF Nature Conservancy and National Auduborn Society.

In return for access, accommodating groups found it increasingly necessary to distance themselves from groups such as Greenpeace and Public Citizen. Indeed, 'Preferred access to pro-trade policy elites and willingness to avoid public conflicts between trade officials and their own organisations positioned accommodating groups to exert greater influence over the tone and content of the environmental demands for NAFTA than was enjoyed by adversarial organisations' (Audley 1997:84). Part of this strategy involved not fielding politically unrealistic policy alternatives and being willing to offer recommendations open to broad interpretation, aimed at keeping the environmental community 'within political reach of accepting the policy alternatives negotiated in NAFTA' (Audley 1997:87). As a result of interviews with congressional staff, negotiators and administrative officials, Audley (1997:90) deduces that WWF and EDF, in particular, were instrumental in creating the NAFTA provisions. Perhaps not coincidentally, these groups also have the strongest ties to Republican party elites. Mayer (2002:102-103) also suggests that although many changes requested by the environmental community were not adopted, the language on environmental, health and safety standards was 'renegotiated.' The trade-off of dropping opposition in favour

¹⁴ At one point in support of a strong and independent commission, these groups formed part of a self-styled group of 7 (WWF, NRDC, EDF, NWF, NAS, Defenders of Wildlife and the Nature Conservancy) (Mayer 2002:106).

¹⁵ There were also of course important differences of opinion within organisations and between group's and their boards that had to be overcome (Audley 1997).

of participation did not perhaps yield the results the groups expected. Audley concludes overall; 'environmental groups traded the preemptive leverage they once enjoyed during the trade negotiations for procedural inclusion in trade policy decisions but did not realise the potential leverage enjoyed by older members of the trade policy regime' (Audley 1997:137).

Though bringing different benefits to the groups concerned, the strategies groups adopted may have had the effect of reinforcing one another. Audley's (1995) study of the environmental movement's role in the NAFTA debate suggests that accommodating and adversarial strategies were key to the participation of environmental groups in the trade talks. The combination of 'good cop/bad cop positions', meant that engagement with those groups pushing a more accommodating agenda was made more attractive by the vocal pressure and opposition of more confrontational elements within the movement. Responding to their moderated demands was necessary because the adversarial environmental coalition maintained a plausible threat to defeat NAFTA (Audley 1997: 149). Further, 'Organizations responsible for establishing and maintaining that threat were incapable of using the leverage to change the agenda but were essential in creating the space for cooperative environmental organisations to translate pre-emptive power into concessions' (Audley 1997:152).

Despite criticism of the accommodating strategy of insider groups, Audley (1997:152) maintains it may have been the ability of these groups 'to establish a set of conditions within reach of the U.S negotiators and neutralize the opposition voice from within the environmental community, that gained environmental organizations the concessions now embodied in NAFTA'. One factor that enabled them to do this was the small number of environmental groups actively involved in the decision-making. This reflected a general lack of priority attached to trade issues among leading environmental groups. Among the national environmental organisations involved in NAFTA from the U.S, there were fewer than six staff people dedicated to trade and environment issues (Audley 1997:73). Their control of the agenda may be further consolidated by the additional resourcing they have been able to attract to work on trade and environment issues from philanthropic foundations as a result of their more accommodating positions.

Their engagement (and effectiveness) was, at the same, heavily shaped by the tactics and policy agendas of policy-makers they were seeking to influence. Particularly important here were the formal and informal rules and relationships adopted by trade policy elites to minimize the impact of environmental interests on negotiations (Audley 1997:64). For example, President Bush selected representatives from five national environmental organisations and one-state level environmental director to participate as members of the USTR's public advisory committee. As with the scenario described previously, the selection of these advisors from environmental groups involved in trade negotiations revealed 'an effort to incorporate environmental groups most likely not to oppose negotiations' (Audley 1997:65). Audley argues; 'Careful selection and placement of environmental advisors and control over the manner in which environmental issues were framed within trade policy negotiations enabled the Bush administration to minimize the influence of formally incorporating environmental issues into negotiations' (Audley 1997:68).

5. Institutionalised participation and political opportunity structures

I noted in section 2 the importance attached to political opportunity structures in shaping the ways in which the movements seek influence and the extent to which channels exist for them to make their voices heard. The challenge of constructing the institutional means for organised civil society to make a contribution to trade debates is certainly not unique to Latin America, as I noted in the introduction. It has also long been acknowledged by international environmental bodies. The Commission on Sustainable Development, in a general review of relationships between trade, environment and development, found that ‘there is considerable need for improvement in areas of transparency, openness and the active involvement of the public and experts in relation to its work on trade and environment’ (CSD 1995).

The purpose of this section is to look at those mechanisms of participation that exist within the formal arenas created by NAFTA, Mercosur and ALCA respectively, with a view to understanding for whom such processes are working and which groups and interests are effectively screened out of current regional trade debates by the ways these institutional channels have been constructed. In sum, which mechanisms exist, who is able to use these spaces effectively and under what conditions?

NAFTA

With NAFTA, we see clearly how institutional and historical factors interact to create opportunities and challenges for groups seeking to shape trade policy. Audley (1997:48) notes, ‘The combination of institutional factors-historical circumstances, procedural rules and presidential politics -created a situation ripe for an interest group not formally part of the trade regime to gain access by acting as a pivotal player in establishing a compromise that enabled pro-trade elites to pursue their agenda of trade liberalisation’. I noted above how environmental organisations exploited this opportunity to formalise their participation in negotiations by benefiting, however unconsciously, from the strong differences of opinion over the merits of trade. This suggests the importance, not just of political windows of opportunity to push for change, but also the importance of issue-framing and discourse, either as a strategy to emphasise unity and diversity, as used by some of the alliances against free trade, or as a mechanism of exclusion and de-legitimation, as it is often used by policy elites. I noted in section 2 the bounded nature of much of the discourse and the knowledge forms which underpin it in relation to the construction of liberalised trade as a panacea for tackling poverty and achieving sustainable development. Audley notes in the NAFTA context, ‘Confining the scope of NAFTA’s negotiations to exclude fundamental issues of concern to environmentalists produced a situation in which dialogue surrounding these issues is now dominated by the scope and normative principles of free trade’ (Audley 1997:138).

As I noted in the introduction, the impact of campaigns on institutional structures is often not easy to discern in the short term, but may yield longer term benefits for groups in the future. Hence with NAFTA, although environmental concerns over trade policy did not ‘substantively alter the norms and principles of trade policy’ (Audley 1997:4), some (minor) changes to institutional procedures were achieved that may create windows of opportunity for future activism around NAFTA. Audley notes (1997: 118),

'While NAFTA did not alter the practice of using trade experts as panelists, panel members may now call upon experts from the environmental community to provide them information relevant to the case'. A Border Environmental Cooperation Commission was also created in response to concerns expressed by NGOs about the effect of trade expansion on the Mexico-U.S border. An eighteen member Advisory Board, made up of residents of the border region, is integrated into the decision-making procedure to ensure that interests of state and local communities affected by BECC decisions are represented (Audley 1997:122).

The Montreal-based trinational North American Commission for Environmental Cooperation (CEC), set up by the NAFTA environmental side agreement, has also been useful to the environmental right-to-know movement, described above. It has established a multi-stakeholder PRTR advisory council 'that forments cross-border efforts to strengthen environmental RTK' (Nauman 2004). Both UNITAR (UN Institute for Training and Research) and CEC have leant support to carry out work related to this function. UNITAR funded a multi-sector National Coordinating Group to initiate discussions on this issue and limited support has been forthcoming from CEC for developing a web site, holding conferences and workshops, providing training to corporate executives and promoting public outreach. Nevertheless, national level commitment to the process has been lacking on occasion. The Mexican PRTR advisory committee on the regulations 'was heavily weighted with industry opponents, federal funding for travel to meetings has been non-existent and meeting announcements often were made at the last minute. All this has made participation difficult' (Nauman 2004). Indicative of the trend towards industry domination of the process, the National Coordinating Group set up by the PRTR to oversee policy formulation consisted of 38 groups, only four of which were NGOs and academics. In addition, results of the reporting from the first cycle will not be made public because Mexican legislation does not require it and resources do not exist to go beyond requirements.

The environmental side agreement of NAFTA also creates a Joint Public Advisory Committee (JPAC) to the NACEC designed to provide input from NGOs and the private sector to the NACEC's governing council (Fisher 2002). The Joint Public Advisory Committee consists of 15 members, with each nation appointing an equal number of representatives. The committee seeks public input and recommendations to help determine the advice it provides to the Environmental Council (Blum 2000). According to Fisher (2002:189), 'By consistently working to seek public input and incorporate the insights and expertise of civil society into its activities and projects, the NACEC's initiatives have been greatly enhanced'. Articles 14 and 15 of the side agreement provide that any citizen or NGO from the parties may send to the secretariat a submission asserting that a party is failing to effectively enforce its environmental law in order to promote exports or investment. In response, the NACEC's secretariat may be obliged to provide a factual record, though without legal value or the ability to trigger trade sanctions.

Despite these institutional innovations and the degree of interest the agreement generated, and continues to generate, NAFTA has been criticised for its top-down approach and lack of consultation with civil society in the negotiation process (Deere and Esty 2002). A key lesson from this experience has been that merely having the mechanisms in place does not mean they are used effectively. As of the end of August 2001 the NACEC had received just 31 citizen submissions, 12 of which were under

review and 19 had been closed. 10 of the 19 closed submissions were terminated because they did not meet the established criteria (Gitli and Murillo 2002).

Resources, perceptions of return on effort and shifts in strategic priorities mean that the extent to which groups make use of or engage these mechanisms will change over time. For example, since the heyday of NAFTA, leading environmental groups such as the Sierra Club have shifted their focus away from daily participation in the activities of trade bodies and sought to focus their attention instead on raising the level of interest in trade policy among their members (Audley 1997:133). Lack of resources, even among the accommodating groups, inhibits further participation. Audley (1997:133) suggests, 'Even among the organisations that were appointed to the most number of advisory boards, there is little money to maintain the same level of participation in trade and environment debates'. Costly engagement is more difficult to justify in a context of pervading frustration with lack of leverage in the process. The concern about lack of progress is compounded by a number of factors. First, the proliferation in the number of forum where dialogue takes place, each requiring time, personnel and money. 'None of the organizations has the resources to sustain such a high level of commitment. The large number of forums also serves to dissipate focused interest in the dialogue itself' (Audley 1997:133). And despite efforts by NGOs themselves to continue the dialogue informally, there remains a strong sense in which 'the political opportunity to continue pressing for trade policy reform has passed' (Audley 1997:133).

Mercosur

In comparison with NAFTA, Mercosur's mechanisms of participation are under-developed. While ambitious in its economic and commercial dimensions, Mercosur is weak in the construction of political dimensions that facilitate participation and representation of citizens that make up its member states (Scagliola 2002:157). The Agreement of Florianopolis, the Environmental Framework Agreement in Mercosur, spells out in two places the importance members attach to civil society participation 'in the treatment of environmental questions' and more generally 'in the protection of the environment and the use of sustainable natural resources' (Decision No. 2/01-Annex; preamble and chapter 1(e)).

There is a *Foro Consultivo Económico y Social*, created by the Protocol of Ouro Preto in 1994, which has spaces designed for businesses and unions, but offers few opportunities for environmental or other activists (Botto and Tussie 2003:32). Indeed, business groups actively sought to exclude other social groups from this consultative forum. This privileging of business and labour actors over environment, human rights, peasant and womens' organisations is part of a regional trend in South America, according to Gudynas (2001). In the case of both the *Foro* and the *Comisión*, described below, Hochstetler concludes (2003b:212 [my translation]) they 'only have consultative functions that make them *cul de sacs* for political participation'. Hence, while some herald the emergence of a 'regional democratic public space', Carranza suggests that voice within Mercosur's institutional structure, even for labour 'centrals', has not translated into effective participation in the definition of social and labour policies (2003:93)

As with other regional integration processes, those standing to benefit from expanded market opportunities under the Mercosur agreement, have been heavily involved from

the outset (cf Grant et al 2000). Privileged industry access is often justified by the shared rationale of market integration and the practical and experiential expertise industry groups can claim to have (Hochstetler 2003a). The plans for Mercosur, according to Teubal and Rodriguez, 'were made with privileged participation of the big economic groups and governments leaving to one side small industry, small producers and workers' (2002:185 [my translation]). The details of the decisions made at meetings of SGT6 are quite explicit about the key role of business, while civil society groups hardly get a mention (*Secretaria do Meio Ambiente Governo do Estado de São Paulo* 1997). Business groups from Brazil and Argentina were among those that have participated most extensively. This general pattern of influence is also true of ALCA where *El Foro Empresarial de las Américas* and *La Red Empresaria para la Integración Hemisférica* have gained recognition by governments, as well as extensive access to them in order to present their proposals (Casaburi and Zalazar 2001).

Whilst acknowledging these privileged inputs into the policy process, it is important to emphasise that control of decision-making has rested with national governments within Mercosur. The majority of decisions regarding Mercosur are taken by national Presidents and their economic and diplomatic advisers with little input from citizens (Hochstetler 2003a:210). The process has been led by national ministers and ministries of foreign affairs and economy through bodies such as the Mercosur *Consejo del Mercado Común*. Primary responsibility for implementation is given to the *Grupo del Mercado Común*, made up of representatives from the national economic and foreign ministries and central banks. Unlike NAFTA, the dispute resolution mechanisms within Mercosur, which in theory could provide an opening for citizen engagement, are under-developed and specifically, there are no environmental dispute resolution mechanisms and there is no mention of the role of citizen groups. As Hochstetler (2003:13) puts it; 'in practice, most conflicts are resolved through direct negotiations among the region's national presidents, a forum not especially open to broad social participation'. Even the joint parliament (*Comisión Parlamentaria Conjunta*) is simply made up of selected members of the four national congresses and, while in theory this provides more opportunities for engagement by civil society actors, it is structurally very weak and therefore plays a limited role in key decision-making.

NGOs often have fewer established ties and points of access to those ministries leading the Mercosur negotiations. Hochstetler (2003:12) notes; 'Both by design and by the political development of Mercosur over time, the foreign and economic ministries dominate the Mercosur process and they have regularly focussed on other issues'. This reflects a broader trend within trade policy-making where ministries with the weakest ties to environmental groups have the strongest influence over the direction of policy. As Alanis-Ortega and Gonzalez-Lutzenkirchen (2002:44) note; 'Within Mexico, the Economic Ministry exerts extensive influence on environmental policy decision-making, regulations and practices that could influence economic or trade activity. At the international level, Mexico's Economic Ministry actively negotiates for Mexico in multilateral environmental forums where trade questions arise.' In this sense, officials from these ministries get to exercise a veto over environmental policy measures with which they disagree. This is part of a broader regional trend where, with increasing attention to the potential of regional trade for fuelling national growth, economic technocrats working for these ministries have assumed a privileged role in national policy-making (Hogenboom 1998).

The profile of these actors is in strong contrast to the weakness of environmental actors, governmental and non-governmental. In some cases, even assuming that environmentalists have good relations with environmental ministries, is problematic. There are examples of environmental policy leaders actively intervening to block reform agendas pursued by environmentalists. Hochstetler cites the example of President Menem of Argentina's environmental secretary, Maria Julia Alsogaray, who 'made no secret of her views that any environmental protections needed to be kept profoundly coherent with the demands of neo-liberalism' (2003:10).

The regional environmental institutions of Mercosur that do exist, are essentially a gathering of the four national environmental agencies (Hochstetler 2003:5). The working subcommittees of Mercosur have no permanent agenda or roles, except in the most general sense to enable the realisation of the goals of the Treaty of Asunción, leaving them little capacity to act as autonomous policy entrepreneurs. As Hochstetler (2003:13) notes 'These provisions give the Ministries of Foreign Relations and Economy considerable control over SGT6...which they have not hesitated to exercise, often endorsing other goals over environmental protection'. Weak institutions in this regard equate with fewer channels of access or mechanisms of influence, however indirect, regarding key power brokers within the foreign and trade ministries. It is clear then, that the majority of opportunities that environmental activists could make use of within the Mercosur decision-making structure are confined to environmental areas that are considered secondary problems by the key Mercosur bodies. Hochstetler (2003:15) notes, 'Given the limited agenda and powers of the Environmental Sub-committee, it is not surprising that SGT6 has not become a major focus for environmentalists in the region, even though it has tried to include non-governmental actors.'¹⁶ The marginalisation of environmental concerns within Mercosur in general, compounds and even encourages their own (self) exclusion from the centres of decision-making.

Those openings for civil society participation that do exist are certainly not open to all groups and perspectives in the same way. Consistent with the pattern described above, SGT6 has been especially keen to involve industrial interests. From its fourth meeting in 1996, SGT6 invited the private sector to participate in the opening day of its meetings, though non-state actors were excluded from later decision-making sessions. SGT6 documents make clear the bodies preference for bringing in groups that 'have some direct interest in any of the stages of the process of production, distribution and consumption' (Hochstetler 2003:15). Interestingly, this definition has been used to include environmentalists, even if it is clearly not a proactive call for their participation (Hochstetler 2003:15). In contrast, private sector actors can ask to be put on the first day agenda and to make their own proposals directly. These formal inputs into the regional process are of course complemented by openings provided by national governments. During the NAFTA negotiations in Mexico, for example, the 'cuarto de junto' (side-room) negotiations allowed top business leaders to work out strategies and positions with top officials from the Salinas government (Alanis-Ortega and González-Lutzenkirchen 2002:46).

Pre-negotiation meetings with national delegations provide a potentially important

¹⁶ The ECOS Foundation has been the only regional environmental NGO specifically created to track the Mercosur process.

avenue of influence for civil society actors. Both Argentina and Brazil hold national meetings before Mercosur meetings to discuss the agenda. Hochstetler (2003:15) suggests in the past, government representatives from Argentina have presented written proposals and documents from national NGOs networks in closed sessions. Government representatives from SGT6 have also participated in NGO-led dialogues with government such as that organised by the group ECOS in 1998 on 'External trade, the environment and sustainable development within Mercosur: The role of civil society' (Hochstetler 2003a:213).

Such informal engagements do not compensate for the many restrictions on meaningful NGO participation in Mercosur proceedings. There are difficulties in accessing information about decisions in the process of being made, or even that have already been made within Mercosur (CEDA 2002). Documents are not routinely distributed in advance so, as Hochstetler (2003:15) suggests, 'meetings can consist of observers sitting at the margins of a room while SGT6 members sit at a central table and make cryptic comments about negotiating documents, without divulging their actual content'. Another mechanism which permits decision-makers within Mercosur to deny NGO access to their meetings is to call 'extraordinary' rather than 'ordinary' meetings which means that NGOs cannot even attend the first day of the meeting.

There is also evidence that levels of participation have actually decreased over time (Hochstetler 2003), perhaps reflecting the dynamic, already noted, whereby some NGOs choose to disengage from a process that offers few returns, especially after the diluting of the protocol on environmental issues and the continued narrow pro-trade bias of SGT6. Though previously it was the case that the greatest presence from environmental groups would be from the country where the meeting was being hosted, by the time of the Mercosur meeting in December 2001, no environmentalists attended. In addition to what has already been said, this also underscores the importance of cost as a barrier to participation, even in regional trade meetings, as well as lack of awareness that the meetings were actually taking place. The importance of funding to enable participation from civil society has been underscored by NGO calls for financing mechanisms to cover the costs of groups wanting to attend the meetings of environment ministers (CEDA 2002).

ALCA

"Despite repeated calls for the open and democratic development of trade policy, the FTAA negotiations have been conducted without citizen input. A process has been set up to solicit citizens' views, but there is no real mechanism to incorporate the public's concerns into the actual negotiations. The public has been given nothing more than a suggestion box. At the same time, however, hundreds of corporate representatives are advising the US negotiators and have advance access to the negotiating texts. While citizens are left in the dark, corporations are helping to write the rules for the FTAA".

Global Exchange (ud)

Perhaps in contrast to Mercosur, the involvement of diverse social actors has been on the agenda of ALCA from the very beginning (Botto 2003). From Quebec onwards, the summits of the Americas have pronounced the importance of civil society participation in ALCA deliberations. The Ministerial reunion in San José in 1998 produced a declaration to this effect. At the Santiago summit, governments confirmed that they encouraged ‘all sectors of civil society to participate and to contribute in a constructive manner their points of view through mechanisms of consultation and dialogue created in the process of the ALCA negotiations’ (Ricco 2004:7 [my translation]). Efforts to promote transparency, access to information through the internet (such as text being negotiated between states), public reports and participation in seminars, are held up as evidence of efforts to reach out to civil society (CEDA 2002), even if concerns remain about the technical nature of information provided which is difficult for citizens to make sense of (Ricco 2004).

It is the establishment of a Committee of Government Representatives on Civil Society that forms the centre piece of ALCA’s architecture of participation, however. The FTAA draft declares the objectives of the committee to be information exchange, establishing procedures for accepting submissions, issuing status reports on the negotiations and managing civil society inputs. It is dismissed by critics, meanwhile, as a ‘meaningless side show’. This is due to its absence of authority, work plan and lack of a real mandate, operating more as a ‘drop box’ for comments from civil society than a serious forum for debate (Deere and Esty 2002:7). According to ALCA’s own web site, ‘Vice-Ministers and Ministers are to decide the treatment and response to be given to these contributions’ (ALCA 2004). Groups can submit recommendations to the committee, ‘but the committee is not obligated to actually consider the views expressed’ (Blum 2000:6). This lack of follow-up on the impact of proposals submitted has led to sharp criticism of its effectiveness as a mechanism of participation (Casaburi and Zalazar 2001).

The underlying political purpose of the committee is made clear in the FTAA draft; ‘The aim of the Committee of Government Representatives on Civil Society is to *build broad public understanding of and support for* hemispheric trade liberalization by serving as a channel of communication between civil society at the regional level and the FTAA negotiations’ (cited in Blum 2000:6 [emphasis added]). It is also open only to those groups that express their views in a ‘constructive manner’ (ibid), a device clearly intended to screen out critics. The Mexican Commerce Minister (Herminio Blanco) stressed the limited role of the committee in the following terms; ‘This is no study group, no negotiating group, it’s a committee that receives proposals and presents them to ministers’ (Cited in Blum 2000:7). The short summaries produced by the committee of inputs from civil society for the Trade Negotiations Committee led environmentalists to react by saying; ‘We just don’t think it’s a good use of our time... We don’t want our view mediated by a bunch of bureaucrats’ (quoted in Blum 2000:7). For all its limitations, the committee remains the only remaining official avenue for consideration of the environmental implications of the FTAA, given that the negotiating groups have failed to identify specific opportunities for raising environmental concerns directly (Caldwell 2002). Even the existing body has faced opposition from a number of Latin American countries (Fisher 2002).

Since its creation, the CRG (The Committee of Government Representatives on Civil Society Participation) has met about 20 times and has extended three open invitations to

civil society groups to present contributions regarding the ALCA process (CIECA 2002), the first of which was issued on 1st November 2001 (CEDA 2002). The first two calls received 70 contributions and the third received 56. Declining interest perhaps reflects both greater enthusiasm in response to the first call, the first such innovation of its sort, and subsequent frustration with the 'drop-box' model of participation (CIECA 2002:337). In addition, five regional seminars about ALCA were organised (CIECA 2002). Yet, according to Deere and Esty (2002:7), no formal process links the civil society dialogue and any of the FTAA's nine negotiating groups. They suggest 'In fact, no procedures even exist to guide the consideration of submissions from civil society, let alone analysis of them'. They claim there has been no substantive analysis of the more than 80 submissions received from various groups and organisations since the committee was established, only the brief summaries mentioned above. On this basis, they argue 'Although the Civil Society Committee nominally reports directly to the FTAA trade ministers, it does so in terms that are far too general to be of any real use. Such lip service to critical issues and to the process of public participation promises to become a serious obstacle when it comes to ratify the FTAA' (Deere and Esty 2002:7).

As with Mercosur discussions, within ALCA, the false separation of arenas for the discussion of trade issues with the active involvement of business actors, and those where social and environmental issues were discussed and in which NGOs were present, led to many civil society groups withdrawing from the process (Botto and Tussie 2003:41). Without looking at the two sets of issues together, it would be impossible to explore the effects of trade on poverty and the environment and entrenches a separation of trade objectives from broader development goals which many groups have been critical of (ONGs Chilenos 2003).

There have been government led initiatives carried forward by individual administrations within the ALCA process to improve the participation of civil society in decision-making on environmental issues.¹⁷ Examples would include the initiative between the Bolivia government and the World Resources Institute, or the roles created by the governments of the US and Canada¹⁸ for processes led by groups such as Fundación Futuro Latinoamericano, the North-South Centre of the University of Miami and latterly Corporación PARTICIPA and Fundación Esquel at key summits (Botto 2003). Civil society groups have also created their own parallel conferences to register their views and make their voices heard, including on environmental issues. The 'Cumbre de los Pueblos' that was set up alongside the Santiago meeting, for example, included a *Foro de Medio Ambiente*. Organisations such as *Grupo de Apoyo a la Sociedad Civil* also operated as a vehicle for coordinating the recommendations and evaluations of civil society groups during the summits (Korzeniewicz and Smith 2003).

In addition, while the focus of this section has been on the institutional opportunity structures available to civil society within regional trade accords, we should not

¹⁷ This is in addition to broader region wide initiatives through bodies such as the OEA such as its 'Estrategia Interamericana para la Promoción de la Participación Pública en la Toma de Decisiones sobre Desarrollo Sostenible' or the same bodies initiation of the Foro Interamericano sobre Legislación Ambiental (Botto 2003:244).

¹⁸ FOCAL (Fundación Canadiense para las Américas), an independent NGO, though financed by the Canadian government, played a leadership role in facilitating civil society participation in the Quebec summit (Korzeniewicz and Smith 2003).

overlook the importance of bilateral or sub-regional agreements such as CAFTA (Central America Free Trade Agreement). Bilateral trade accords provide a potentially important policy space for civil society participation. The Chile-Canada Agreement on Environmental Cooperation, negotiated in parallel to their bilateral free trade agreement, is held up as a positive model for handling environmental protection measures, but also contains a provision that allows citizens and NGOs of the two parties to make submissions alleging a party's failure to effectively enforce its environmental laws. Such submissions may not include complaints affecting a private individual or a specific productive activity, although they may be filed against the parties if they fail to enforce their own environmental legislation (Matus and Rossi 2002:266). In practice, critics allege many of the provisions regarding public participation in the agreement have too many weaknesses to be effectively utilised (CEDA 2002). The broader point remains valid, however, that excessive focus by activists on the larger international issues and events such as Cancún, or summits of the Americas, can sometimes distract attention away from important battles over provisions in bilateral and sub-regional agreements that attract a lower profile.

6. Regional politics

I noted at the start of the paper some of the uniqueness regarding social movements in Latin America, or perhaps more pertinently, the way they have been represented in academic literatures on the subject. I also noted some elements of trade policy-making in Latin America which set it part from equivalent processes in other parts of the world. When we add to the mix the uneven process of democratisation in the region, it is unsurprising to find that there are also unique and diverse cultures of participation across the region. Such national cultures are particularly important to our analysis here in the light of the limitations discussed above regarding political opportunity structures at regional and international levels vis-à-vis trade policy. It has essentially been left to each individual country to decide on appropriate mechanisms of participation, such that activists have come to depend again on national structures of decision-making where consultations demonstrate ‘very diverse quality’ (Bülow 2003:87). Maintaining and strengthening spaces for participation at the national level is seen by NGOs themselves as a key way of influencing broader debates about trade policy within the region (CEDA 2002).

National Cultures of Participation and Political Opportunity Structures

Across Latin America, different cultures of participation are expressed through state institutions which serve to enable or restrict opportunities for civil society engagement (see box 2). This is in addition to uneven state capacity to build consensus and to construct channels of participation for non-governmental actors (Botto 2003). Weaker governments have been shown, in other contexts, to be more open to, and to some extent more reliant upon, input from CSOs in trade policy making. The reflections of an official from an African trade ministry resonate with the experience of poorer states within Latin America where; ‘civil society has demonstrated that they have more strong analytical capacity than most government agencies, which don’t have the capacity because they don’t have the resources, the time, to engage in trade policy analysis’ (quoted in Brock and McGee 2004:46).

In North America, channels of participation have tended to be more institutionalised, while in Latin America they have been more informal and more restricted to private interests with a direct stake in trade negotiations. The pace at which channels have been opened up to civil society participation has also been varied across Latin America with Mexico leading the way, followed by Chile, Costa Rica, Brazil and Peru and finally Argentina (Botto 2003). Trade policy is in many ways then, grafted onto existing patterns of regional and national decision-making and interest group representation (Aravena y Pey 2003; Natal y González 2003; Botelho 2003; Guiñazú 2003). It is unsurprising, therefore, that decision-making on the relationship between trade and environmental issues is affected by these broader dynamics (Bülow 2003).

The political opportunity structures available to groups are affected by the degree of institutional embeddedness of environmental issues. The degree of development of national environmental policy supported by an effective bureaucracy appears to be a key shaper of access and influence for different environmental groups. In the context of Mercosur, for example, while Brazil has a more extensive and well-established framework for environmental protection, the level of environmental protection in Argentina is relatively under-developed, whereas in Paraguay the problem is one of a

more generalised lack of political institutionalisation according to Hochstetler (2003:7). Relatedly, Brazil also has available many more institutional opportunities favourable to civil society participation. For example, environmentalists are represented on government councils that determine environmental regulations and evaluate environmental impact assessments. This may account for the way in which the Brazilian government was more responsive to the arguments and demands advanced by environmental activists than the other countries that were more sensitive to the demands of economic actors. Teubal and Rodriguez (2002) imply an ideological component to these differences of position, suggesting that the government of Brazil is more willing to defend social sectors within the country compared with Argentina, which has embraced more wholeheartedly the ideology of the free market. Yet in so far as such ideologies can be separated from institutional structures of participation, they may reflect the outlook of particular administrations, which are of course subject to change, as I discuss below.

It is also less clear that these differences always impact upon institutional channels available on trade policy specifically. Hochstetler (2003a: 216) claims, for example, that the Brazilian government has not created new spaces as such for civil society in the Mercosur negotiations, even if it remains the case generally that in Argentina and Mexico, there are comparatively fewer institutionalised opportunities for participation by civil society (Devia 2002). In the case of Argentina, this is true despite constitutional changes in 1994 that have become the focus of NGO campaigning by groups such as FARN for access to information on environmental matters. Pressure from civil society can of course encourage governments to create such structures of participation at the national level. Though only an associate member of Mercosur, Chile has created a working group on ALCA, in response to demands from Chilean NGOs, which brings together social organisations and the chancellor's office (Casaburi and Zalazar 2001) (see box 1).

The approach a government takes both to environmental issues and to the question of civil society participation also appears to be subject to the whims of party political differences. At the level of individual administrations, priorities can change with an impact on the profile of environmental issues and the resources committed to tackling them, such as happened when Argentina's Fernando de la Rúa lowered the status of the Environmental Secretariat in 1999. Conversely, in Chile, greater efforts have been made to consult with civil society groups on trade policy under the socialist administration of Ricardo Lagos (Botto 2003:252). In terms of both priority attached to the environment and participation of activists in policy, much is expected of Lula's PT (Partido dos Trabalhadores) government in Brazil, brought to power with the backing of many populist and interest groups opposed to ALCA and further regional integration. As Hochstetler (2003:25) notes, 'the PT will have a hard time ignoring the nearly 100 percent rejection of the FTAA by its social base'. Compromise will no doubt be the outcome. Petras and Morley (1990: 176), speculating on the electoral success of PT in Brazil before they came to power, suggested; 'Insofar as the political leaders of the PT, participating in the electoral process, gain access to state office and become members of the political class, they inevitably become enmeshed in the commitments and constraints of existing state power....The PT today stands between the class demands of the movements and the pressures of the institutional and economic powers'. Lula's thinly veiled criticism of the World Social Forum at a speech given at the event recently, calling it an 'ideological fair' (*Clarín* 28/10/04), when previously he

was greeted at such events as something of a leader of the movements, is perhaps suggestive of this tension in practice.

Box 2: National Models of Participation

The **Dominican Republic** has set up a CCSC (consultative council for civil society) to coordinate discussions on WTO and ALCA related matters. Civil society groups have been less active than business groups in the council, complaining of a lack of information about the process and suggesting that the complexity of the negotiations makes it hard for them to link the negotiations to their core work.

Chile was the first country in Latin America to institutionalise the participation of business groups and to open dialogue with civil society specifically around the ALCA negotiations (Botto 2003). It has created a working group on ALCA in response to demands from Chilean NGOs which brings together social organisations and the chancellor's office (Casaburi and Zalazar 2001).

Mexico set up a 'Consejo Consultivo del Acuerdo Comercial' inviting participation from the private sector, academia, unions and campesino groups, though not specifically for ALCA. Its principal function has been to inform these groups, but also to build consensus and support for trade policy. The body is said to exclude those groups, including environmentalists, opposed to the government's position (Botto 2003).

In **Brazil**, the opening of official channels of participation was part of a broader restructuring of the state. Initiatives have included the creation of a web page on the internet aimed at improving the exchange of information, regional consultations and the construction of new spaces (though voluntary) in the inter-ministerial thematic groups working on trade issues (Botto 2003).

Though the last of the countries to open up channels of participation to civil society, the Chancellor in **Argentina** has set up a consultative council for civil society (CCSC) to encourage communication between government staff involved in the ALCA and Mercosur negotiations and civil society groups interested in international trade issues in which Argentina is involved (Walsh 2003:41). A web site has been set up to share summaries and materials discussed at the meetings. This committee has met a dozen times, always in Buenos Aires, generating concerns about the under-representation of groups from the 'interior' (Ricco 2004). There is also a *Consejo de Comercio Internacional* which brings together government officials and representatives from the business and academic sectors.

Bureaucratic politics also play a major role here. I noted, in the discussion on Mercosur, how environmental groups had been kept away from the key centres of decision-making by virtue of weak connections to the trade ministries that wield most authority in these debates. Influence they have been able to exert with environmental ministries has not extended beyond those ministries because of their isolation within

overall government decision-making. If access to powerful parts of the state is important, access to key states in the negotiations is even more so.

The domestic politics of the most powerful actors in trade negotiations determine in significant ways the extent to which the influence of groups working within those countries is internationalised and has impacts disproportionate to their representational and resource base. For example, Mayer (2002:98) shows; 'The nature of the US political system, particularly the need for the Congress to approve trade agreements and the Congress's sensitivity to external pressures (i.e lobby groups), created a strategic opportunity for environmental groups to exercise their new found leverage'. In other words, the relative weakness of political parties and the relative strength of interest groups in the US make the US Congress particularly responsive to outside political pressure. This was true of NAFTA and, as noted above, will provide veto opportunities for an ALCA deal that does not include environmental provisions, despite the current lack of attention to these. The domestic politics of the U.S also illustrate the importance of timing in combination with the availability of these institutional channels. The environmental community in the U.S, or more precisely certain elements within it, were able to use the opportunity provided by Clinton's election, together with a general tide of opposition to NAFTA, to extract environmental concessions through the side agreement that otherwise may not have been achieved.

Disparities in access to national processes also have knock-on implications for the possibilities of regional influence, often serving to magnify disparities in voice and profile. Bülow (2003:84) suggests, for example, in the case of the Miami summit, that while extensive processes of consultation were available to groups in the U.S and Canada, no such inputs were permissible for groups from Argentina, Chile, Mexico or Brazil. Within Mexico for example, the President's Office has never explicitly addressed the question of trade and environment and within the NAFTA discussions Mexican negotiators worked hard to limit side agreement provisions regarding transparency, public participation and public access to information (Alanis-Ortega and González-Lutzenkirchen 2002).

The concern of the Mexican government, as with other governments in the region, is that creating participatory structures at regional level that only better resourced and well-networked groups will be able to take advantage of, serves to reproduce the over-representation of North-American concerns and the under-representation of the agendas of Latin American groups. In other words, opening up channels at the international level allows 'two bites at the apple' for those groups that are vocal and well-mobilised at the national and international level (Wilkinson 2002:208). The counter-claim is that it is the very lack of representation at the national level that makes entry points at the international level democratically important. If things are left for states to work out with their own civil societies, similar patterns of inequity and access will no doubt get reproduced, where those groups that are already powerful and have both good relations and institutionalised channels of access to government will be able to make their voices heard and those that do not will remain on the margins. State discretion to include also implies discretion to exclude.

Beneath these debates about the appropriateness of participation in trade policy within the region, often lie more fundamental concerns, that new mechanisms will allow the U.S, in the case of ALCA, or Brazil, in the case of Mercosur, to amplify and reinforce

their positions within the negotiations via civil society groups from their countries lending their weight to calls for improved environmental provisions, for example. As noted above, a repeated concern in the Mercosur negotiations has been Brazil's ability to gain a competitive advantage by raising the environmental performance requirements for businesses across the region, given the relative advancement of its own environmental policy. The preference instead has been for lowest common denominator 'downward harmonisation'. Likewise, within the context of ALCA, there is a suspicion that the insertion of environmental provisions is driven by the U.S as a device to offset a potential loss of competitiveness through practices of environmental dumping or to create forms of eco-protectionism (Bülow 2003). The possibility of alliances between groups, and the development of coherent agendas that adequately express the concerns of groups across North and South America, is disabled by these broader politics of trade and the place of the environment within those politics, as we will see below.

The Regional Politics of Mobilisation

Regional dynamics are also important to understanding the politics of mobilisation; the agendas around which groups cohere and the possibilities of transnational cooperation. There has been a general asymmetry in participation during the ALCA summits, where there has been a much stronger presence for environmentalists from North America than from organisations from Latin America (Bülow 2003: 84). There are also, of course, differences of priority. NWF, NRDC, NAS, as with NAFTA, were pushing for an environmental side agreement, while the FFL (*Fundación Futuro Latinoamericano*) of Latin American organisations attached less importance to environmental issues. There have also been tensions among U.S groups about their role in the preparations for the summit, with privileged roles for groups such as WRI often at the expense of others previously used to extensive consultation. These dynamics reflect the experience during the NAFTA negotiations and the broader politics of transnational collaboration that characterised that process, described above. Despite differences of emphasis, there has been common ground among groups across the region on the need for enhanced transparency in the deliberations in the run up to and during the summits of the Americas and for improvements in mechanisms for the participation of civil society. This is reflected, for example, in the document 'Without effective citizen participation, there cannot be sustainable development' (Bülow 2003:85) [also see box 3 below].

Demands around civil society participation have continued to be made through the Peoples' Summits that led to the ASC (la Alianza Social Continental), a network, officially founded in 1999, of those groups most critical of the summits of the Americas, and of ALCA in particular. Over the course of the summits of the Americas ASC has been strengthened by groups' frustration with the lack of openings within formal processes and the failure to meaningfully act on the promising rhetoric regarding civil society participation that peppered early ministerial drafts.¹⁹ Differences of emphasis on key issues remain, however. On the environment, differences over the nature of the relationship between sustainable development and free trade have persisted, reflecting the broader ideological divisions discussed above, as well as some fractures along North-South lines. Other fault lines include disagreements over

¹⁹ Korzeniewicz and Smith (2003) show summit by summit how the relationship between insiders and outsiders and within the ASC has changed over the course of the negotiations.

subsidies and protection for agriculture and sectors like steel and textiles, as well as the role of environmental and labour rules. At times, such differences were amplified by conflicts between protest cultures which bring together groups of such divergent social profiles as middle class students and campesino groups (Ruben 2004).

Some of these differences appear to be subsumed within umbrella coalitions that imitate those formed around the time of the NAFTA negotiations, such as *La Alianza por un Comercio Justo y Responsable*²⁰. Agreement has also been possible within the ASC on the core themes of official recognition of the social fora and inclusion on the official agenda of issues of labour rights, human rights and the environment (Botto and Tussie 2003:41). At the summit of Santiago in 1999 the ASC was able to generate a document, following a series of workshops on key themes, laying out alternatives to the programmes being promoted within ALCA. What emerged was '*Alternativas para las Américas: Hacia la construcción de un acuerdo hemisférico de los pueblos*'.

The fact that Brazil is the most reticent of the Latin American countries about ALCA, is perhaps reflected by the fact its civil society groups are the most active from the region within the ASH (Alianza Social Continental). Groups that have been involved in the politics of previous regional trade agreements such as NAFTA, including *La Red Mexicana de Acción Frente al Libre Comercio*, are also active within the alliance. ASC also maintains links to other networks that cover different sectors and issues such as campesino concerns. An example would be the *Coordinadora Latinoamericana de Organizaciones del Campo* (CLOC), a regional network based in Quito Ecuador that coordinates the work of organisations working with campesinos, indigenous communities and rural worker and small producer organisations (Korzeniewicz and Smith 2003).²¹ The meeting point with broader ASC agendas is issues such as economic justice, food sovereignty and sustainable agricultural development.

With attempts to construct regionally relevant and effective campaigns on ALCA, given the economic disparities between the countries of the region the agreement covers, the diverse traditions of campaigning that exist, and the uneven degrees of institutionalisation of the issues it addresses, we would expect to find evidence of many of the tensions and relations that characterise global NGO campaigns. In particular perhaps, the issues of representation, power and accountability that they raise. There are important lessons to be learned here for South American activists. Chiriboga (2001:74), for example, suggests that; 'The experience of Southern NGOs in global campaigning up until the 1990s had been limited to providing project information and political legitimacy to campaigns designed, structured and developed in the North and directed toward an audience of Northern government decision-makers'. There was some sense in which campaigns around NAFTA reproduced this dynamic. Tussie and Tuozzo (2001:115) also posit a warning, and a challenge at the same time, when they suggest 'NGO coalitions tend to reproduce the hegemony of the global North. Northern

²⁰ National networks by this name also exist. In Chile for example ACJR (*La Alianza Chilena por un Comercio Justo y Responsable*) was created by a range of groups critical of the Pinochet-led model of neo-liberal restructuring (Korzeniewicz and Smith 2003:55). In the ALCA context it has pushed for the incorporation of social and environmental clauses. In Brazil, there is *La Rede Brasileira pela Integração dos Povos* (Rebrip) which advances a similar agenda through good links to the PT.

²¹ Key members include groups such as *La Asociación de Organizaciones Campesinas Centroamericanas para la Cooperación y el Desarrollo*.

NGOs often steer the direction of the coalition, partly because they control the management of resources, but also because they have more influence over the definition of the campaign's goals and agenda'. Korzeniewicz and Smith (2003:62) suggest such a dynamic has been an issue within the ASC with some southern groups claiming that their northern counterparts have used advantages in experience and access to governments to advance national and sectoral interests under the guise of a common, alliance-wide position. Creating spaces within coalitions which bring together groups with often competing agendas, and with huge disparities in access to resources and networks of influence, will be an enormous challenge for future campaigns around ALCA.

7. Conclusions

'A significant step toward a comprehensive trade and environment policy in FTAA negotiations is recognition that the old, exclusive and secretive deal-making process of trade negotiations must give way to an inclusive, transparent and democratic process.. The era of international trade negotiations being insulated from public concerns, including respect for the environment, is over' (Caldwell 2002:296).

We have learned that top-down mechanisms of participation in trade policy often serve to reinforce inequities and dichotomies within civil society. In the run up to ministerial meetings of ALCA, for example, space was made available for academics, think-tanks and consultants and not other elements within civil society. There is also a degree of political screening at work here in so far as these groups play a key role in consensus building because these actors, while perhaps disagreeing on the roadmaps to get there, support the basic principles of market liberalisation (Botto and Tussie 2003:42). Given this, it is perhaps unsurprising that attempts to construct virtual mechanisms of engagement where groups can deposit suggestions, were essentially only taken up by these same actors; academics, business foundations and a sprinkling of NGOs principally from North and Central America. As noted above, many were sceptical of the value of engaging with initiatives such as this when there was no way of monitoring the impact of the proposals. This was compounded by the lack of effort on the part of many Latin American governments to make people aware at national level of those spaces and opportunities that do exist for engagement (Botto and Tussie 2003:43).

There is a delicate balance to strike between attempting to construct ambitious mechanisms of consultation on a hemispheric, or even regional basis, and focussing attention on improving national mechanisms of consultation that, in the final instance, is where responsibility resides for considering the public interest in the formulation of trade policy (CIECA 2002). As we have seen, groups with poor access to national decision-making structures often value openings at regional level to make their voices heard. Ensuring that they are in a position to exploit those openings means overcoming barriers they face in terms of funding to attend meetings and the personnel implications of stretching often small staffs even further by engaging in regional processes. As noted above, those who benefit most from participatory mechanisms in regional trade accords appear to be those that also have open to them channels of influence at national level, hence the concern about getting 'two bites of the apple'.

I noted in the introduction a wide range of reasons, strategic and principled, why opening up trade policy to a plurality of voices and interests makes sense, even from the

point of view of trade negotiators not traditionally accustomed to sharing decision-making authority with others. Hence, whilst trade policy makers may lack the ability (or willingness) to address issues of capacity within civil society, in order to ensure that groups can make the most of those channels of engagement that do exist, they can at least work to ensure that mechanisms are in place for diverse groups to be represented in policy arenas that, despite the rhetoric, remain relatively closed and inaccessible to non-economic interest groups and elites.

Reflection on these mechanisms, and for whom they work best, may, perhaps should, prompt broader reflection about the way in which regional and international policy is made. Some writers have called for the development of mechanisms which invoke the principle of subsidiarity, in order to enable decision-making at lower levels of authority where participation from a broader, and importantly less well-resourced, spectrum of actors, is more realistic. While this has been the subject of environmental debates at the international level (Newell 2002), Leis and Viola (ud) propose the SGT of Mercosur as an appropriate venue to consider changes to decision-making based on the principle of subsidiarity. This would imply a multi-level governance system of jurisdiction, where decisions get taken at the level most appropriate to the nature and scale of the problem, given also considerations of cost and efficiency, but with a presumption in favour of taking decisions at the lowest level possible. Given the patterns of elite domination described above, where even parliaments are often denied real decision-making authority, it is certainly worth exploring further the advantages and disadvantages of such institutional innovations aimed at democratising the decision-making process.

Box 3: Reform proposals include:

- The right of the public to review and comment on the written record of future trade disputes
- Access to working documents...providing citizens with information they need to make sound and informed choices about policies that affect their future. Defining information disclosure policies and the de-restriction of relevant documents (country position papers, draft text, preliminary and official agendas, schedules of meetings, contact information for national representatives).
- Establish a verifiable avenue for public comments on the activities of each FTAA negotiating group. Clear and measurable procedures that indicate how civil society concerns will be addressed within the context of the negotiations.
- Meetings with different sectors of civil society where negotiators explain in detail proposals on key issues that affect different sectors. Such consultations should be open before, during and after the negotiations.
- A permanent role for NGOs in future FTAA activities.
- The creation of a *Civil Society Forum* parallel to the ministerial meetings with the power to present its conclusions to the ministers or a *Social Forum on Integration* (Foro Social de Interacción) with a permanent, independent institutional status within the negotiations.
- Designate public participation as a specific overall trade negotiation objective.
- The creation of committees for civil society participation at the national level to evaluate and monitor trade agreements.
- The creation of a work plan to overcome the obstacles that currently restrict citizen participation including an information clearing house, national advisory committees, the promotion of research, training and capacity building and funding for direct participation in negotiations.
- The performance of the civil society committee within FTAA should be given as high priority as the FTAA's other committees such as the Trade Negotiations Committee (TNC) or the sectoral working groups.

(Caldwell 2002; CEDA 2002; ONGs Chilenos 2003; CIECA 2002).

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Centre for the Study of Globalisation and Regionalisation

University of Warwick
Coventry CV4 7AL, UK

Tel: +44 (0)24 7657 2533

Fax: +44 (0)24 7657 2548

Email: csg@warwick.ac.uk

Web address: <http://www.csg.org>