

# Make Trade Fair for the Americas

## Agriculture, Investment and Intellectual Property: three reasons to say no to the FTAA

While poverty, inequality and the concentration of wealth persist in Latin America and the Caribbean, trade and investment agreements are being promoted that would seriously limit the possibilities of development and poverty eradication in the countries of the region. The Free Trade Area of the Americas is an agreement that would favor the interests of large corporations over the rights of the people of the Americas.



## Summary

Trade and investment have great potential for creating sustainable development, reducing poverty and meeting basic rights. Instead of realizing this potential, however, trade and investment have contributed to increasing poverty, greater inequality between and within countries, and a greater concentration of wealth produced by the global economy.

Oxfam International believes that these contradictions are a result of the unfair rules that govern trade and international investment, as well as the double standards by which rich countries and large companies define their own terms for inclusion in the global economy, to the detriment of poorer countries.

Oxfam International has launched the **Make Trade Fair** campaign, aimed at changing international trade rules, especially those of the World Trade Organization. However, parallel to the WTO, the plan to integrate Latin America and the Caribbean into the Free Trade Area of the Americas is moving forward at full speed. Some aspects go much further than the most worrisome WTO rules, as in the case of investment and intellectual property.

In addition to the FTAA, the US is pushing for other bilateral and sub regional agreements at an accelerated pace. A free trade agreement between the United States and Central America (CAFTA), which reproduces the same framework of rules, has been given particular momentum.

In 2001, 214 million people, nearly 43% of the Latin American population, were living in poverty, 92.8 million (18.6%) of whom lived in abject poverty. The Economic Commission for Latin America and the Caribbean (ECLAC) projections for 2002 indicate a poverty increase of approximately 7 million people, of whom nearly 6 million are living in extreme poverty.<sup>1</sup> Any integration project in the Americas should address this social reality, but the trade and investment policies put forth by the FTAA do not promote sustainable development and poverty reduction and could further intensify the scenario of inequality and exclusion in the region.

Oxfam International opposes the FTAA and we, along with a broad range of civil society organizations on the continent, propose that alternative rules be discussed for a different type of integration, such as those put forth by the Hemispheric Social Alliance and the continental campaign against the FTAA.

Eliminating poverty and promoting development in the Americas require radical changes in the existing trade and investment rules. Oxfam International has prioritized three themes: agriculture, investment and intellectual property, for which we propose the following:

**1. Fair Trade Rules for Agriculture, including:**

- Special and differential treatment in agriculture, taking into account food security needs and the interests of small producers;
- Putting an end to the dumping of cheap food by rich countries, which destroys the livelihood of millions of farmers in developing countries by forcing them to compete unfairly in their local markets;
- Improved access to markets for developing country products;
- Greater equity in the marketplace, giving countries the flexibility to support small producers and regulate the monopolistic behavior of transnational agricultural corporations.

**2. Regulating Foreign Investment to Promote National Development, including:**

- Measures to develop links between the export sector and the local economy, ensuring the development of local production capacities;
- Promotion of international labor and environmental standards and other measures to create positive contributions to sustainable development;
- Controls to limit the flow of speculative and short-term investment;
- Limits to foreign investors' ability to bypass the laws and courts of host countries, and the elimination of the concept of indirect expropriation.

**3. Intellectual Property Rules that Guarantee Public Welfare, including:**

- Promotion of reforms in the TRIPS agreement and implementation of the Doha Declaration in order to reduce the price of medicines;
- Prohibition of patents on genetic plant resources for food and agriculture;
- Keeping intellectual property protection out of the negotiations of the FTAA and other trade agreements in the region.

## **Introduction**

Oxfam International has launched the Make Trade Fair campaign, which seeks to change international trade rules so that trade and investment can contribute to sustainable development, reducing poverty and meeting basic rights.

This document is part of that campaign, and it supports our arguments against the FTAA and the alternatives that we propose. It does not address the full agenda of the FTAA, but is focused on three key themes for the region: agriculture, investment and intellectual property. These themes illustrate the relationship between trade and investment rules and poverty. They are closely linked to the work of partners that Oxfam programs have supported for many years. Based on this experience, Oxfam International believes that eliminating poverty and promoting development in the Americas requires radical changes in trade and investment and a different model of integration.

## **1 Agriculture: Double Standards and Poverty**

Agriculture is a crucial source of livelihoods in Latin America and the Caribbean, and a key component in the strategies for poverty reduction and development in the region. Agriculture is also one of the largest industries in the world, though its international scope is limited, given that only 10% of agrarian production is traded internationally.

However, the region is facing a chronic crisis in food security and growing poverty in rural areas. Throughout Latin America and the Caribbean, 54 million people suffer from malnutrition (11% of the total population), the majority of whom are women and children.<sup>2</sup> This is due to the flagrant double standards of liberalization of agricultural trade, which maintain subsidies and protection in rich countries and require liberalization in developing countries. The crisis is worsened by the withdrawal of public investment in developing countries and the fall in prices and incomes.

In the region, agriculture is the source of survival for millions of people. In Latin America and the Caribbean, approximately 123 million people (25% of the total population) live in rural areas and depend directly or indirectly on agriculture. Seventy-seven million (63.7%) of them live in poverty, of whom 47 million live in extreme poverty.<sup>3</sup> In the United States and Canada there is also a large

number of small producers who live in poverty. In the US, 14.2% of the rural population is poor, and over 500 small farmers go bankrupt every week.

Developing countries have special needs relative to their agriculture sectors. These include ensuring access to food for their poorest citizens, providing sustainable livelihoods for their large rural populations, and guaranteeing foreign exchange for the payment of essential imports. At the World Food Summit in 2002, the governments of the world recognized these special needs, reaffirming “the fundamental importance of the production and national distribution of food, sustainable agriculture and rural development in achieving food security.”<sup>4</sup>

However, current agricultural trade practices and the further liberalization proposed under the FTAA do not consider this important dimension of agriculture. Instead, they act in favor of large-scale production and increase the dependence on imported foods in Latin American and Caribbean countries. The survival of small producers, for whom there are no alternatives to agriculture, is being threatened by the rise in power of large agribusinesses and their control over markets. Although agricultural production for export offers opportunities for some, it is only one element for achieving sustainable livelihoods. Agriculture is too vital to poverty reduction, food security and environmental sustainability to be left to the forces of the global market.

## The Double Standards of Trade Liberalization

Agricultural liberalization policies are a clear example of the double standards that exist in international trade. While the United States, the International Monetary Fund, and the World Bank promote indiscriminate liberalization of agricultural markets in developing countries, rich countries maintain subsidies and protectionist policies. Both the US and the European Union continue to grant huge direct payments to farmers.

The US goes even further than any other country on the continent in its support for domestic agriculture. Despite rhetoric on reducing trade-distorting measures, US internal subsidies increased through the 2002 Farm Bill by 80% compared to those of 1996, granting more than \$180 billion in various measures to support US producers over the next ten years. Export credits are also included as a tool of this policy.

It must be noted that these generous subsidies do not reach small North American producers. Rather, they are focused on benefiting large agribusinesses. Sixty percent of the direct payments go to only

10% of producers, who control enormous commercial operations. On the other hand, 50% of farmers receive little or no government support. The cotton barons of western Texas are a particularly significant example. They obtained \$3.6 billion in subsidies last year, more than they received from their actual cotton sales.

Due to its volume of exports, US agriculture policy plays a predominant role in the global decline of commodity prices. The combination of domestic policies that encourage low prices and tools such as export credits make it possible to export grain at 60% of its production cost, devastating small producers both in the US and in developing countries.<sup>5</sup> At the same time, the measures that the developing countries employed to protect themselves from the impact of this unfair competition have been widely eliminated over the last 15 years.

In addition to the support measures for their producers, the US and Canada have been using various types of tariffs and non-tariff barriers to imports from Latin American and the Caribbean. Thus, Brazil is believed to lose \$1 billion per year in orange juice sales to the US due to these protectionist measures.<sup>6</sup>

In Latin American and the Caribbean, trade liberalization began with the IMF instruction to implement structural adjustment programs in the mid 1980's. At the end of the Uruguay Round of negotiations of the General Agreement on Tariffs and Trade (GATT) in 1994, all countries of the region had significantly cut their tariffs and eliminated many of the non-tariff barriers to imports. Compared with other developing regions, Latin American and the Caribbean have the lowest tariffs. The average agricultural tariff is 59% for all developing countries and 40% for the region (ranging from 25% in Chile to 52% in Colombia). The average applied agriculture tariff (the tariff that is implemented in practice) for all developing countries is 21%, while it is 14% for Latin America and the Caribbean (from 9.8% in Chile to 20% in the Dominican Republic).<sup>7</sup>

The majority of governments in the region have also eliminated non-tariff related measures such as import permits, quotas and minimum prices, which provided them with mechanisms to manage their import levels. Domestic agricultural support policies in Latin America and the Caribbean have also been undermined. The same structural adjustment programs that sought balanced budgets dismantled rural credit and marketing institutions and other government support services on which small farmers depended. They also reduced public investment in rural infrastructure. In Bolivia, public investment in agriculture fell drastically from 10% of total national public spending in 1989 to only 4.45% in 1997.<sup>8</sup>

In many cases, these government institutions were inefficient and subsidized the interests of the elite rather than the poor farmers. However, they provided important services to producers who could engage in markets on fairer terms. The dismantling of credit and marketing structures has harmed rural women in particular who, because they have fewer guarantees to ownership of land, have lost access to key resources for their development.

These double standards have brought about predictable results. There has been an increase in agricultural dumping with falling prices and deterioration of living standards among small farmers throughout the continent. Moreover, corporations have increased their control over agriculture, which has resulted in an increase in poverty and malnutrition.

## Agricultural Dumping

One of the most important causes for the collapse of rural livelihoods in Latin America and the Caribbean is dumping by transnationals from the US, i.e. the export of products below production cost that compete unfairly with local products and force global prices down in an artificial manner. For example, the US exports wheat at 46% below the production cost and corn at 20% below production cost. Furthermore, when poor countries adopt open market policies, as all Latin American and Caribbean countries except Cuba have done to varying degrees, local prices match global prices. This means that local farmers are deprived of their own domestic markets, with devastating effects on their income.

**Box 1: Agricultural Dumping in Mexico**

Basic grains imports into Mexico under the North American Free Trade Agreement (NAFTA) have doubled between 1994 and 2001 to 110 million tons with a value of \$18.5 billion. In the case of corn, Mexico imports an average of 6 million tons annually, compared to 2.5 million tons prior to NAFTA. The market price of grains dropped, and the actual prices to producers have fallen between 35%-60%. Today, the price of corn for producers is \$80 per ton. However, its production cost is \$120 per ton.

This has resulted in the stagnation of domestic production of basic grains and an increase in food dependency, which has affected the livelihoods of over 2.5 million corn producers. However, due to the concentration of the commercial chain between importers and distributors, this price reduction has not benefited consumers, since the sales prices to the public continue to rise. The price of tortillas, the base diet of the majority of Mexicans, has risen from 0.80 pesos/kg in 1993 to 5.00 pesos/kg in 2002.

The current crisis in the Mexican countryside has forced an unprecedented mobilization of rural organizations who are fighting for a revision of the agricultural chapter of NAFTA as well as more equitable means of financing and subsidies for small producers (approximately 40% of the total). In 2003, NAFTA requires that all tariff rates on agricultural products except corn, beans and powdered milk be reduced to zero and the import quota limit be eliminated, leaving Mexican producers completely unprotected from unfair competition from dumping.<sup>9</sup>

The US, however, has strict and sophisticated anti-dumping laws to protect its own market, and it has no qualms about imposing its anti-dumping obligations and compensation measures against other countries. The most important US law to unilaterally address what it considers unfair trade practices is Section 301 of the 1974 Trade Act, which gives the USTR considerable discretion in determining what constitutes dumping. The US anti-dumping law has been used against Chilean mushrooms and salmon, frozen Brazilian orange juice, fresh flowers from Colombia, Chile, Ecuador and Mexico, tomatoes from Mexico, and honey from Argentina.<sup>10</sup>

No Latin American or Caribbean country has been able to use comparable measures against the US. In fact, the experience of many Latin America and Caribbean countries with Section 301 has made them distrustful of anti-dumping standards as a means of containing US trade practices. The mere threat of invoking Section 301 has led developing countries to restrict their exports, against their own interests. Therefore, multilateral standards to fight dumping are urgently needed.

## Increase in Corporate Control

The progressive reduction in government involvement in the Latin American and Caribbean agriculture sector has gone hand in hand with the growing concentration and vertical integration of the private sector. Despite formal agricultural trade negotiations taking place between governments, which are supposed to defend the interests farmers and consumers in their countries, it is the transnational agribusinesses that are the true beneficiaries of the US and international rules that, to a large extent, they themselves designed. The system is designed to progressively reduce domestic prices for products so that large agriculture transnationals can buy their raw materials at very low prices. At the same time, the transnationals benefit from a complex export credit system and the US food aid program, which make it possible to easily place their products in international markets.

The result has been a consolidation of the agribusiness sector both vertically (buying, processing, and distributing) and horizontally (domination of an entire sector by a small number of companies). For example, five large oligopolies (Cargill, Continental, Louis Dreyfus, Bunge and Archer Daniels Midland) control nearly 90% of the world grain trade.<sup>11</sup> These companies buy, transport and mill grain, feed livestock they either own or have had produced under contract, or convert grains into cereal, often crossing several national borders in the process.

The consolidated control of the market by powerful groups of corporate buyers contrasts with the fragmented supply of the producers. Millions of small farmers and suppliers desperate to sell their harvests for cash are at a tremendous disadvantage compared with the transnationals. In addition, over the last fifteen years, the withdrawal of government involvement in the production and marketing of primary products in Latin America and the Caribbean has encouraged transnational companies to be more active in the producer countries.

Farmers that produce for the national market in Mexico or Bolivia are not competing with farmers from the United States, but with the major exporting corporations that are the principal beneficiaries of the subsidies and other agriculture policies of the US. The concentration of ownership and vertical integration in agriculture has enormous implications for farmers throughout the region, particularly because it increases dependence on imported food.

The FTAA ignores the unfair relationship between millions of individual producers and a few large buyer corporations, and it does not consider the need for government to regulate the monopolistic behavior of transnational agribusinesses.

## Falling Prices and the Impact on Rural Livelihoods

Thousands of rural Latin American and Caribbean families that produce goods for local markets have seen their livelihoods destroyed by the flood of cheap products, principally from the US. This is particularly the case for small farming families, the majority of whom have low productive capacity and face the challenges of unstable infrastructures and weak government support institutions. These farmers are not in a position to compete with the large-scale production of more developed economies.

### **Box 2: Impact on Haitian Rice Growers.**

In Haiti, poverty and malnutrition dramatically increased during the rapid market liberalization period. When the tariff on rice was drastically reduced from 35% to 3% in 1994/95, imports of subsidized rice from the US flooded the domestic market and local production fell, devastating the means of survival of 50,000 rice-producing families. Currently, two-thirds of the rice consumed in Haiti is imported. Worse still, Haiti has not been able to generate sufficient income to maintain the rhythm of food imports, leading to increased debt.

Similar experiences occurred in the Jamaican dairy sector, which was virtually destroyed by subsidized milk from Europe, and Guyana poultry farms, which were closed due to the dumping of chicken from the United States.

However, it is not only farmers who produce for national markets who have been impoverished by the liberalized agricultural trade. Millions of small producers from the countryside who produce coffee, cotton and bananas for export and the rural workers tied to these products have also faced falling prices, the destruction of their livelihoods and concentration of corporate control over the sector.

Deregulation of international trade in raw materials in the 1990s has led to dramatic price reductions, with a devastating impact on small producers in countries that depend on these exports to finance education, health care and investment in development. Many of these countries have heavy debt loads, which also reduce the resources available to invest in human development.

In the specific case of cotton, the US's massive subsidies have made prices fall even further, which is especially devastating to the region's small cotton producers. In Peru, thousands of small cotton producers have had to drastically reduce their cultivation while cotton imports, the majority of which are of US origin, abruptly grew 284% in 2002.<sup>12</sup>

A group of transnational agribusinesses located in the US has long dominated the region's trade, especially in tropical products. These companies have actively intervened in trade negotiations to promote

their private interests, often at the cost of small producers. This was the case in the claim filed at the WTO by the US against the European Union, challenging the EU's preferential price on bananas produced by small farmers in the Caribbean. The decision in favor of the US position resulted in the abject poverty of thousands of banana farmers.

## The FTAA and Agriculture

The likelihood that the FTAA can resolve these unfair trade practices is undermined by the incredible power imbalance between the countries that take part in the negotiations.

Thanks to the structural adjustment programs, the majority of Latin American and Caribbean countries have conceded many of their border and internal support measures. They have not had significant export subsidies. Therefore, they have little negotiating power to succeed in regulating US trade practices, which are so harmful to their own agricultural products. This became evident in the FTAA negotiations, which reached their most critical point at the Trade Ministers meeting in Quito in November 2002. Several Latin American and Caribbean countries insisted that the FTAA negotiations stop unfair practices such as dumping of subsidized agricultural products. Despite agricultural subsidies being included in the official Ministerial Declaration for the first time, a unified agreement was not reached on the matter, which was instead referred to the framework of the WTO negotiations.

Significantly, the draft of the FTAA chapter on agriculture perpetuates this power imbalance. It establishes an accelerated reduction of tariffs, taxes and other national agriculture policy tools, but fails to incorporate the existing WTO safeguard. At the same time, it maintains credit programs for export that contribute to dumping. The text on special and differential treatment only considers a longer period for eliminating subsidies in developing countries and the right for only the smallest countries of the region to preserve domestic support policies, as established in the WTO<sup>13</sup>.

The key causes underlying rural poverty – lack of public investment, monopolistic behavior of the transnational agribusinesses and declining prices – are subjects that require attention and international regulation so that agricultural trade contributes to development and poverty eradication. Regional integration that favors development would include measures to increase public investment in rural areas, impose antitrust disciplines on transnational corporations, and encourage alternative policies to increase the global prices of basic products (such as holding buffer stocks and production quotas).

The negotiations of the FTAA, however, do not tackle these structural problems.

The explicit purpose of the FTAA negotiations on agricultural trade is to promote export opportunities, while limiting the three principal methods used by governments to protect national producers: tariff measures, support for domestic production and export subsidies. The assumption is that government intervention in the market discourages producers from innovating and modernizing and prevents the most efficient producers from being successful.

This argument does not take into account historical experience. All developed countries achieved their industrial development by protecting and promoting their agriculture sectors in order to guarantee food security and satisfy growing urban populations. No country in the region can to generate sufficient options for subsistence outside agriculture that make up for the current destruction of rural livelihoods caused by liberalization.

The speed and sequence of integration are crucial considerations in minimizing social costs. Rapid liberalization, as has occurred in most of Latin America and the Caribbean, is reinforced in the proposed FTAA. This rules out the development path used in various East Asian countries, such as South Korea, Thailand, Vietnam and Taiwan, which succeeded in significantly reducing poverty. These nations used small-scale agriculture to promote their economic development and gradually liberalized agriculture exports. They developed alternative sources of non-agricultural jobs before reducing the restrictions on imports.

The FTAA negotiations consider agriculture for export as the goal of rural economic development, rather than considering it as one element within a broader plan to achieve sustainable livelihoods. In the current negotiations on agricultural trade, exporters' interests have prevailed, and access to the lucrative US market for those products that Latin America and the Caribbean can produce more cheaply – vegetables, flowers and other products with market niches – seems to be the sole objective of the governments in the Americas. The liberalization of Latin America and the Caribbean in exchange for access to the US market often has negative implications for farmers who produce goods for the domestic market and restricts the policy options for agricultural development.

## Fair Trade Rules for Agriculture

Eliminating poverty and promoting development in Latin America and the Caribbean requires changes in trade rules based on the recognition of the right to sustainable livelihoods.

## Special and Different Treatment for Agriculture

In the WTO negotiations, several developing countries have proposed measures that would give them the flexibility necessary to defend themselves against unfair trade practices. These measures would allow them to undertake public investments relevant to rural development and food security by exempting their key food security products from liberalization commitments. Moreover, these measures would better allow governments to promote development by strengthening local and regional markets through protection measures and incentives, including increasing tariffs and internal supports.

A hemispheric integration agreement that promotes development should allow developing countries:

- Flexibility to support an increase in food production directed toward rural development and basic food security crops;
- Exemption from tariff reduction requirements and renegotiation of tariffs for basic crops produced by small farmers;
- Exception from commitments to reduce all internal support measures that pursue food security goals;
- Creation of a special fund to support the production and marketing of small producers, with an emphasis on the elimination of barriers that exclude women from their benefits.

## Ban Dumping of Cheap Food

The FTAA trade negotiations must prevent US transnational corporations from continuing to sell their agricultural surpluses at prices lower than local production cost. Dumping lowers global prices and weakens small farmers by establishing unfair competition in their own domestic markets. This is why the following measures are required:

- Eliminating any subsidies that permit export below the actual production cost and strict regulation of credits for exports and food aid;
- Permitting importing countries to raise tariffs as a defense against food dumping and implement safeguards to protect their markets from cheap imports;
- Reforming the internal support policies of the US in order to eliminate their effects on unfair competition or export dumping and the concentration of wealth and monopolistic practices of the large agribusinesses. The large North American budget for agriculture must be used to protect the environment, promote

food security, ensure the livelihoods of small producers, and increase the prices of products throughout the continent.

## Access to Markets for Developing Countries

Developing countries have opened their markets unilaterally while rich countries maintain protection, carving out protected areas for their agricultural sector. The continent's poorest nations have lost a large part of their negotiation power. Therefore, the following are required:

- The US and Canada should relinquish their claims for greater access to the markets of Latin American and Caribbean countries, and renounce the minimum access obligations that is now codified in the WTO;
- Canada and the US should unilaterally reduce the tariffs on products originating from the region, particularly those produced by the poorest farmers;
- The US and Canada should eliminate escalating tariffs, which discourage value-added activities in the region.

## Equity in the Marketplace

The liberalization of agricultural trade places small-scale farmers in direct and unfair competition with the largest agribusinesses in the world. Standards are urgently required that encourage government support for increasing the market power of small farmers. Disciplinary standards are equally important to control the monopolistic behavior of transnational corporations. This would help eliminate export dumping. Therefore, the following are necessary:

- Allowing all countries the flexibility to support small farmers through public marketing enterprises controlled by farmers, marketing boards and similar mechanisms;
- Instituting disciplinary standards on the monopolistic behavior of the transnational agricultural trade and limiting the market distortions that this behavior can produce.

## 2 Investment: People Before Profits

Investment has real potential to contribute to poverty reduction and sustainable development. Foreign investment has become the most important source of external capital, surpassing declining official development aid by more than four times<sup>14</sup>. Yet the investment

rules proposed in the FTAA fail to capture that potential because they are heavily weighted toward the protection of private investors' rights instead of considering development and poverty reduction needs.

These are the reasons why, in 1998, Oxfam objected to the negotiation of the Multilateral Agreement on Investment, which attempted to expand the scope for investors' rights. Today, these same rights continue to be a priority for rich countries that press for stricter investment rules to be included in the new round of negotiations at the WTO and in free trade accords like the FTAA and bilateral investment treaties.

## Investment Patterns: Quantity Without Quality

Investment has boomed over the past decade, reaching unprecedented levels to become the main source of financial transfer from rich to poor countries. Foreign direct investment (FDI) has increased in Latin America and the Caribbean almost ten times during the 1990s, from 10.2 billion in 1990 to 95.4 billion in 2000.<sup>15</sup> Although there has been a recent decrease in FDI inflows to this region (in 2001, FDI flows to Latin America and the Caribbean dropped to 85.3 billion), the overall trend has been towards large increases in investment flows.

Governments, transnational companies and international financial institutions have pushed the importance of foreign direct investment (FDI) as one of the pillars of development. Developing country governments in the Americas compete with each other to attract investment through deregulation of capital controls and by relaxing labor and environmental laws, while at the same time increasing protections for investors. Free trade agreements and bilateral investment treaties are the major mechanisms used by rich countries to facilitate this significant movement of capital.

Despite the widespread conviction that investment is good for development, the record in the Americas shows that FDI has had a limited positive impact on economic growth and sustainable development. Even taking into account the investment boom, the UN Commission for Latin America records a meager 1.6% economic growth rate for the region between 1998 and 2002,<sup>16</sup> which is well below the 2.7% annual rate required to reduce poverty according to the UN Millennium targets. Poverty remains unacceptably high in Latin America (43% of the population in 2001), with the number of people living in poverty up from 200 million in 1990 to 214 million in 2001.<sup>17</sup>

Oxfam believes that quality investment can play a role in fostering economic growth, employment, and more balanced regional development. However, increasing the quantity of investment

without ensuring the quality will not promote sustainable development. This is particularly the case with speculative capital flows and indirect investment, which are often the center of devastating financial and economic instability. The negative cycles of financial and economic instability are directly linked to increased rates of poverty.

### **Box 3: A Village Facing Mining Investment**

Tambogrande, a village of approximately 18,000 inhabitants located in a fertile agriculture zone in Northern Peru, has been considered in recent years as a possible site for a controversial mining project by the Canadian-based Manhattan Minerals Corporation. According to an independent environmental impact assessment, if the mine were constructed, a local river would need to be diverted, and about 8,000 citizens would have to be relocated. In addition, there would be other significant environmental consequences, including the pollution of water, land and air.

In June 2002, the citizens of Tambogrande, along with Oxfam partners CONACAMI (the National Coordinator of Communities Affected by Mining) and FEDEPAZ (a human rights group), organized a referendum that asked the population whether it supported mining projects in agricultural areas such as that in Tambogrande. Of the 73% of people who participated in the vote, an overwhelming 94% voted against the mining operation. In December 2002, the people of Tambogrande received a prestigious human rights award commending their civic initiative in holding the referendum.

The investment rules proposed in the FTAA have the potential to crush citizen initiatives like this one. This is because of the ease with which corporations could initiate legal proceedings against governments that attempt to regulate investment in order to protect the environment and public health, as well as provide preferential support to domestic companies in order to achieve their competitiveness.

FDI can contribute to economic growth if it is linked to the local economy. Moreover, FDI also has the potential to level regional inequalities by stimulating economic activity and jobs in less wealthy areas in a manner that is consistent with the local and regional development plans that are determined democratically by the population. Through the transfer of technology, investment can make it possible for developing countries to improve their technology base and retain greater value-added production. The role of governments is central to this process to ensure that their investment plans are carried out according to their development policies. But in practice, free trade agreements and the FTAA limit governments' ability to make FDI play this positive role.

The emphasis of trade and investment agreements that the FTAA intends to consolidate is the amount of investment, not the quality. The scope of investors' rights is increased, while their obligations are

decreased. This is to the detriment of the public interest and poverty reduction.

Mexico is a clear example of this. The flow of FDI to Mexico during the NAFTA period between January 1994 and September 2002 reached an astonishing figure of \$116.5 billion<sup>18</sup>. A large part of this investment was directed toward mergers and acquisitions, in conjunction with a wave of restructuring between multinational companies. Citibank, for example, bought the largest bank in Mexico, Banamex, in 2001. While this appears to be FDI, the merger does not generate economic activity or additional jobs.

Over half of the investment in Mexico has gone to manufacturing, including to high-tech products such as automobiles, electronics and computers<sup>19</sup>. Companies use Mexico as a place to assemble products for their re-export to the North American market, importing components and technologies for this purpose. Exports have boomed, tripling under NAFTA, but so have imports. According to data from the Economic Commission for Latin America and the Caribbean (ECLAC)<sup>20</sup>, foreign companies are responsible for two-thirds of exports from Mexico, but the added value for Mexico is limited. The latest-generation Ford assembly plant in Chihuahua exports over 90% of its production, but it uses almost no local supplies other than labor<sup>21</sup>.

Nearly half of the FDI in manufactured goods goes toward low value-added assembly production, most of which takes place in maquiladoras along the US-Mexico border. This sector represents half of the manufactured exports from Mexico. This is an additional indicator that the apparent Mexican “success” in attracting FDI and increasing its exports could not be directly copied in other countries, since it is based to a large extent on Mexico’s geographic proximity to the US. In any case, the majority of Mexicans who work in these factories do not have sufficient income to buy the goods that they manufacture. The largely female workforce faces highly precarious work conditions, and basic workers’ rights are frequently denied.

The contradiction between the potential of FDI for development and the poor record of FDI in relation to sustainable development is largely a result of investment provisions that focus disproportionately on rights and protections for investors and prioritize private profit over the public interest. The ability of governments to regulate investment in order to protect citizens and promote sustainable development is undermined by the investment chapters of both NAFTA and the FTAA. If investment is to be a tool for development, it must be bound by rules that enable governments to play a positive role in promoting equitable development.

## NAFTA and FTAA: Investing in Corporate Welfare

The most significant model for the investment chapter of the FTAA is Chapter 11 of NAFTA. This set of rules expands investor rights beyond the regulations that previously existed under the General Agreement on Tariffs and Trade (GATT) and sets significant limitations on the ability of governments to regulate investment to achieve sustainable development and poverty reduction.

As in NAFTA, the FTAA chapter on investment includes<sup>22</sup>:

- A broad definition of investment, including portfolio and financial investments as well as traditional FDI, limiting the possibility of regulating harmful speculative investments;
- A mechanism to settle investor-to-state disputes that gives foreign corporations the right to bring direct action against governments for alleged breaches in investment rules, thus bypassing domestic laws and national judicial systems;
- Extensive protections for investors from a wide range of governmental regulations. The enactment of a law, whether for the environment, health or public well-being, which is perceived as interference with the firm's ability to obtain future profits from its investment can be considered an indirect expropriation. This has led to cases under NAFTA in which governments have been forced to pay large compensation awards to investors;
- Guarantees that foreign investors must be treated at least as well as domestic investors (national treatment) and all member countries be treated the same (most favored nation treatment). The impacts of these requirements on emerging local industries that do not have the ability to compete with foreign firms can be devastating. They limit governments' ability to help their own companies, which would be perceived as discriminating against foreign companies;
- Prohibitions against the use of performance requirements. This prevents states from requiring investors to purchase supplies from local sources, meet minimum levels of domestic content, or to meet employment targets, all of which could help boost local development.

The draft FTAA text replicates the investment provisions of NAFTA. Corporations have used national treatment, indirect expropriation and investor-to-state provisions to create legal challenges and demand compensation in international dispute settlement organizations, which have a reputation of being undemocratic and lacking in transparency<sup>23</sup>. These cases have resulted in extremely

high costs and the erosion of domestic laws, the objective of which was to protect citizens' rights to a healthy and a clean environment.

#### **Box 4: Oil and Indigenous Resistance in Ecuador**

The Shuar and Achuar are indigenous peoples of the Ecuadorian Amazon whose livelihoods are highly dependent on their land.

The discovery of oil in the lowlands of the northern region of Ecuador has brought about devastating environmental impacts, which led three main indigenous federations in the area to declare their unconditional opposition to oil development on their land. In addition, they denounced the tactics used by the US oil company Arco Oriente Inc. of offering employment, water supplies, health care and air travel in order to pressure the Shuar into granting permission to use their land.

At the request of Federación Independiente del Pueblo Shuar de Ecuador (FIPSE), an Oxfam partner, lawyers from the Center for Economic and Social Rights brought a suit seeking to prohibit Arco from directly approaching FIPSE individuals, communities and territories, instead of the organization's legitimate leadership.

On August 24, 1999, carrying signs declaring "No Oil Development on Shuar Lands!" hundreds of Shuar and Achuar people converged in the town of Macas to present the suit to the local court. On September 8, 1999, a judge ruled that Arco had violated the rights of the Shuar people to organizational integrity and ordered the company to refrain from approaching or negotiating with individual members of communities of the FIPSE without authorization from the court.

Forcing Shuar residents to decide between the potential benefits of increased investment and subjecting their ancestral land to open oil development was a clear violation of the collective rights of the Shuar people's to determine how to manage their own natural resources independently, as they had done for centuries. These rights are guaranteed by the Constitution of Ecuador, as well as Convention 169 of the International Labor Organization concerning indigenous and tribal peoples and the International Covenant on Economic, Social and Cultural Rights.<sup>24</sup>

This type of legal victory would be difficult under the proposed FTAA, whereby specific provisions of what is called "indirect expropriation" could prevail over the rights of the local communities to achieve sustainable livelihoods according to their own development options.

## **Contempt for Labor and the Environment**

The provisions on labor and environmental protections have also been widely criticized for failing to ensure that international standards are upheld. The weak language contained in the FTAA only recommends that countries do not relax their pre-existing labor and environmental laws, whether they are effective or not. Countries are only obligated to "strive to ensure" that such standards are not weakened in order to attract foreign investment.

The draft of the FTAA leaves open the possibility that governments can be sued for maintaining these environmental and labor

standards if they are perceived by corporations to be barriers to trade that impede profit-making. The failure to link investment and trade to measures that promote sustainable livelihoods, such as the ILO core labor standards and multilateral environmental agreements, restricts their contribution to development and poverty reduction.

Rather than seeing investment as a way to promote sustainable, equitable development, the FTAA provides implicit incentives for investors to seek out the lowest level of environmental regulation and the most freedom under which to operate, despite externalities that could destroy the ecosystems and rural livelihoods. The FTAA also fails to ensure real protection for indigenous people, whose identity and survival depend on their right and ability to live within their own relationship with their natural resources. Maintaining environmental health and balance is fundamental to the very existence of indigenous peoples, as is the right to determine their own economic development. However, these values and needs are neither recognized nor supported in the proposed FTAA.

Similarly, rich countries, multilateral organizations and corporations pressure developing countries to open the provision of essential basic services that are vital to the public well-being, such as health care, education and the supply of water, to private investment. The negotiations of the FTAA are another tool to increase this pressure. In this way, all service provisions proposed in the FTAA are subject to negotiation unless they are specifically taken off the table by countries. By pressuring governments to accept greater liberalization, the FTAA has the potential to limit their ability to provide the basic services needed by all citizens, most notably the poorest.

## Guaranteeing the Right to Sustainable Development

The draft investment chapter of the FTAA establishes specific protections for investors that are greater than those relative to labor, the environment and sustainable livelihoods. Moreover, the FTAA would significantly restrict the ability of governments to regulate investment and leaves them little room to promote the achievement of broader development goals, such as linking investment to the national and local economy, protecting space for the implementation of national development plans, and the promotion of poverty reduction strategies.

With its focus on protecting corporate interests over those of the citizens, the FTAA, like NAFTA, lacks the minimal requirements

required to make investment work to reduce poverty, encourage equitable and sustainable development, and ensure the promotion of human rights. These fundamental requirements have, as their basis, an assurance that governments retain the right to regulate foreign investment in order to further national development and poverty reduction goals. Specific recommendations that would ensure that this occurs include:<sup>25</sup>

- Performance requirements that create linkages between the export sector and the local economy and promote reinvestment of profits;
- Measures to reinforce technology transfer in order to promote development of local production capacity;
- Flexibility to restrict investment when it has the potential to threaten labor and environmental rights and when it does not clearly contribute to development;
- Protections for labor and the environment that require countries and companies to respect international standards;
- Controls to limit the flow of speculative indirect and short-term portfolio investment, especially with safeguard measures in times of financial crisis;
- Exceptions from privatization for basic services that are vital to the public well-being such as water, education and health;
- Exclusion of the concept of indirect expropriation. Limit the ability of foreign investors to bring international suits against national governments. Disputes must first comply with the national organizations and laws of the host country;
- An active commitment by the US and Canadian governments to monitor the behavior of its transnational companies so that they comply with the national laws of the host country on investment and human rights, for example, conditioning credits and guarantees for investment on compliance with basic standards.

These measures involve substantial changes from what is proposed in the FTAA and in the discussions at the WTO. If the rights of investors continue to dominate and these considerations – demanded by citizens, women’s organizations, indigenous peoples and local communities affected by the investments – are ignored, the inclusion of updated multilateral investment rules will not contribute to promoting fair trade for the Americas.

### **3 Intellectual Property and Public Welfare<sup>26</sup>**

The negotiations on intellectual property (IP) in the FTAA<sup>27</sup> provide another reason for opposing the agreement. Without doubt, IP is a fundamental theme for Latin American and Caribbean countries. It involves developing the capacity and potential of countries of the region with regard to knowledge, research, science and technology, and the use of biodiversity. These are all key elements for development and guaranteeing the quality of life of their populations. However, the conditions under which IP is being handled in trade agreements are a real obstacle to achieving these goals.

#### **Intellectual Property and Development**

The objective of IP rules is to legally protect the ownership of ideas, artistic creations and technological innovations through patents, copyright, and trademarks. This protection should contribute to the development of all countries. However, reality reveals exactly the opposite.

The principal international treaty that determines IP rules is the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), introduced at the WTO in 1995. Of the principal justifications for its existence were to guarantee ownership rights, recover investment costs and stimulate innovation and to contribute to development, by facilitating the access of developing countries to technology transfer and research and development (R&D). All of this has proven to be a fallacy.

TRIPS continues to intensify the monopolization of knowledge and increase the differences between the rich and the poor because it favors the interests of large companies at the expense of the public interest. While millions of people are excluded from their basic rights to health, food and education, knowledge is increasingly privatized, directed toward corporate interests and designed for the rich consumer market.

The enormous disparity that exists between industrialized and developing countries weakens the argument that trade agreements on IP contribute to development. Instead, they contribute to the concentration of the economic power of industrialized countries to the detriment of developing countries.

- Industrialized countries make 90% of R&D investments, own an even higher percentage of patents, and are the largest IP exporters. The United States is the largest investor in R&D with 40% of the total global. In 1998, it had a trade surplus of over \$23 billion from IP exports.<sup>28</sup>
- Economies need increased access to technology and knowledge in order to increase their national development. Developing countries are becoming importers of high tech goods and knowledge protected by TRIPS. From the 1970s to 1995, when TRIPS was signed, Brazil's IP royalty payments were approximately \$300 million per year. But, since 1996, royalty payments have grown to \$3 billion per year in 1999<sup>29</sup>. In Mexico, only about 1% of patent applications are submitted by residents of that country<sup>30</sup>.
- The priority over what to invent and what to research is determined completely by profits. R&D is directed toward satisfying the rich consumer market and not toward the needs of the poor. There is an urgent need for R&D in medicine and agriculture. Millions of people are dying every year due to a lack of access to medicines. However, less than 10% of the overall expenses on health research is directed toward the 90% of the most common diseases of the majority of the population. Agricultural research is more targeted toward product appearance and taste than to sustainable production, on which the livelihoods of millions of small farmers depend.
- TRIPS grants 20-year monopolies to patent holders on all processes and products, a period that prevents any attempt to transfer technology when one considers the speed of current technological changes.
- TRIPS does not include the protection of traditional IP. This encourages biological piracy that affects indigenous peoples and small farmers in developing countries who hold almost 90% of the world's biological resources.

The Hemispheric Social Alliance's analysis of the FTAA text on IP<sup>31</sup>, notes that all proposals stem from existing agreements at the WTO. The FTAA uses TRIPS as the minimum reference, and there is pressure to reach a framework that is "TRIPS-plus," which would even further increase monopoly advantages and limit access to the few mechanisms that protect the rights of developing countries. Whether in the case of patents, traditional knowledge, or access to genetic resources and plant varieties, there is nothing in the current negotiations that is at all favorable to Latin American or Caribbean countries.

## Intellectual Property and Health

The case of access to medicines demonstrates, in practice, the negative consequences of an IP trade agreement based on the interests of large companies. According to World Health Organization (WHO) data, the diseases that cause the largest number of deaths in poor countries are: pneumonia (3.9 million), HIV/AIDS (2.6 million), diarrhea (2.2 million), tuberculosis (1.7 million), and malaria (1.1 million)<sup>32</sup>. Eleven million people per year could be cured or live longer lives if they had access to medicines.

In Latin America and the Caribbean, HIV/AIDS is also the second cause of death from disease. Currently, 1.8 million people are living with HIV/AIDS in the region, with 110,000 deaths recorded in 2001 alone. After Sub-Saharan Africa, the Caribbean is the region in the world most affected by HIV/AIDS. Thousands of people affected by the virus simply do not have access to retro-viral medicines.

The monopoly on patents and their minimum 20-year term make the prices of medicines inaccessible to the majority of countries in the South. This is because transnational companies, which have this monopoly, determine prices while they greatly increase their profits. In 1999, the patented triple retro-viral treatment for HIV/AIDS cost between \$10,000 and \$15,000 annually per patient in industrialized countries. In the same year in India, generic manufacturers marketed the same combination of medicines for only \$1,500. Today, the price of generics has dropped to \$295, which has forced the large companies to drastically lower their prices. In Thailand, the price of medicines to treat AIDS-related meningitis dropped to less than 1% of their former price once the patent expired. In Brazil, an internationally recognized program to distribute free HIV/AIDS medicines was only possible due to government access to low-priced generic medicines.

Not only is the pharmaceutical industry the principal beneficiary of TRIPS, but it is also its principal mentor. The combined interests of these transnationals and the US government were behind the inclusion of TRIPS at the WTO. In the current negotiations of the FTAA, the countries of the region are facing these same interests and pressures under even more unfavorable conditions, given their more vulnerable position of power in regional and bilateral negotiations.

The US has a complex global strategy relative to TRIPS, which seeks to guarantee maximum protection for IP. Three tools are used:

- Investigation and unilateral sanctioning. The US Trade Representative (USTR) can use Section 301 of the 1974 Trade Act, which permits unilateral trade sanctions for countries that it believes are acting against US trade interests. Section 301 can be applied after a process of research and reporting in which groups

such as the Pharmaceutical Research and Manufacturers of America (PhRMA) play an important role;

- Bilateral IP agreements and regional and bilateral trade instruments introduce specific measures in national legislation, as is the case with the FTAA;
- The TRIPS agreement and sanctioning mechanisms present at the WTO.

These tools give the US government many options, rather than depending on only one option such as the dispute system established at the WTO. The US government also seeks to guarantee the status quo and prevent changes that are not in its interest.

Given the severe impact that TRIPS has on the public health of millions of people in developing countries, Oxfam, along with other organizations such as Doctors Without Borders, the Health GAP Coalition and Third World Network, has been participating in the global mobilization that pressed for the Doha Declaration in 2001. The declaration establishes the priority of health over commercial interests. Although it was a modest step, considering that has yet to be implemented, it would be possible for developing countries to use the safeguards present in TRIPS, such as the suspension of patents, without fear of trade sanctions.

Suits brought by pharmaceutical companies against the government of South Africa and by the US government against Brazil at the WTO have been the most important precedents for creating international public opinion and demonstrating the negative impact of the TRIPS agreement. Considering the imbalance of forces in the region, it is unlikely that national governments could mobilize such an effective response under the FTAA.

### **Box 5: Pressure on Brazil<sup>33</sup>**

In March 1987, PhRMA presented a petition to the USTR against Brazil for not offering patent protection for pharmaceutical products, alleging significant commercial losses for the US companies. In July 1987, the USTR began to investigate and consult with Brazil, and, one year later, the US President declared that Brazil's policy was unreasonable. In October 1988, the US President used the authority of Section 301 to impose trade sanctions on some Brazilian exports. As a result, in July 1990, the Brazilian government announced the decision to create a law to offer patent protection for pharmaceutical products and their production processes. On May 14, 1996, the Industrial Property Law was approved. Pressure from the US and PhRMA was so strong that Brazil began to comply with the patents for medicines ten years prior to the date required by the TRIPS agreement.

In January 2001, the US government filed a complaint at the WTO against the Brazilian law, arguing that it discriminated against imported products and contradicted TRIPS. The suit cited Article 68 of the Brazilian law as justification. This article states that if the patent holder does not manufacture the medicine in the country within a period of three years from its registration, the government can suspend the exclusive rights and authorize another company to manufacture the product. At the same time, PhRMA intensified its pressure on the USTR. The complaint generated a strong national and international mobilization because it put the internationally recognized Brazilian HIV/AIDS treatment program at risk. Amazingly, Brazil never resorted to using Article 68 and never violated a patent in the country. The pharmaceutical industry's main concern was Brazil's "bad example" of producing low-cost generic medicines and facing up to the pharmaceutical giants by using legal safeguards in order to guarantee the population's right to health. The complaint was withdrawn by the US in 2001.

In its proposal for the FTAA, the US government is seeking "TRIPS-plus" rules, which would grant greater IP protection than companies currently have, and which goes back on the Doha Declaration. In September 2002, Doctors Without Borders<sup>34</sup> presented to the USTR a clear critique of the US government position in the FTAA IP negotiations, indicating the key points under discussion. Oxfam agrees with this critique that argues that the US proposal would:

- Severely restrict the use of compulsory licensing. This is a step backwards from the progress in Doha, where WTO member countries affirmed the right to use compulsory licensing in accordance with their national legislation. The US proposal aims to limit the use of compulsory licensing to four situations: non-trade public purposes; declarations of national emergencies; other situations of extreme urgency; or anti-competitive practices. This could mean blocking compulsory licensing for price abuses, for example.

- Extend the term of pharmaceutical patents beyond the minimum 20 years established by TRIPS. The US wants to increase the term of patents in exchange for earlier registration of generic drugs and to compensate for possible delays due to administrative procedures and regulation that occur when patents are granted and new medicines are registered. This is not a requirement of the TRIPS agreement, and it is not in the legitimate interests of patent holders.
- Grant excessive authority to regulatory bodies that enforce patents. This includes the regulatory authorities notifying patent holders of the identification of any company that is seeking approval to market a generic version of a patented invention while the patent is valid. These authorities would operate as agencies that further reinforce the use of patents.
- Grant pharmaceutical companies exclusive rights over data (for example, results of clinical trials) for a minimum of five years. The TRIPS agreement only requires that undisclosed data be protected from unfair commercial use and competition laws that are also unfair. Guaranteeing exclusive rights over pharmaceutical data will result in delays and limit generic competition in cases where the patent has expired or a compulsory license has been granted.

The proposals presented by the US government in the FTAA only confirm the intent to establish “TRIPS-plus” rules in the region.

## Intellectual Property and Food Security

The biological and genetic materials that provide the main resources to the biotechnology and seed industries are also the basis of the means of survival of thousands of poor rural communities. The requirements of the TRIPS agreement to protect plants under patents or a *sui generis* system, such as the rights of seed breeders, have serious impacts on food security and the protection of biodiversity.

The use of patents threatens to restrict the ability of small producers to conserve, use, and sell seeds, which would seriously impact on their means of survival. It is estimated that there are already over 900 patents on the five crops that amount to over three-quarters of the world food supply, with only four transnational companies holding over half of this number.<sup>35</sup> Almost all of these patents are controlled by industrialized countries.

In addition, developing countries are pressured to adopt the rights of the seed producers contained in the International Union for the Protection of New Varieties of Plants (known as UPOV). The UPOV adds one more mechanism to TRIPS to extend corporate control over

the supply of seeds. In regional trade negotiations, the situation is more worrisome. Mexico's experience with NAFTA and the free trade agreement with the European Union (EU), are examples of "TRIPS-plus" rules. NAFTA obligates Mexico to use the 1991 version of the UPOV, which is unfavorable to developing countries since it conditions membership on granting exclusive rights over plants for 20 years. The EU used NAFTA as a reference and included the adoption of the 1991 UPOV in its agreement with Mexico. The earlier version of the UPOV, which gave farmers the right to keep and use seeds to develop their own varieties, has simply been replaced in the current trade negotiations.

Strong protectionist measures for biotechnology are another highly controversial subject with regard to the benefits that they could offer society. Despite the questions raised about genetic engineering, such as its current inability to prevent genetic mutations in living organisms, it is clear that the logic of the market continues to prevail. The driving force behind bio-technological research and patent controls is different from the initiatives to reduce poverty. Research is directed at products that obtain higher profits on the market. Patents provide companies with a double benefit: raising the prices of seeds and promoting the sale of supplies.

The TRIPS agreement includes few guarantees against the creation of monopolies. On the contrary, it encourages them. Control over biotechnological innovations is highly concentrated in six large industries that conduct commercial research in the area of genetically modified crops. The extension of patent rights has contributed to the concentration of power in the seed industry in several developing countries. In Brazil, the process was followed by a wave of mergers and company takeovers. Presently, only two companies, Monsanto and Dupont, control three-quarters of the Brazilian corn market.<sup>36</sup>

Introducing these same negotiations in the FTAA would continue to reproduce these same problems, since there are no proposals that seek to change the framework established by TRIPS and UPOV. Moreover, the proposed FTAA continues to ignore and contradict the Convention on Biological Diversity, which could be considered in trade negotiations as a counterweight to balance public and private interests, especially with regard to biological resources.

## Radical Changes in Intellectual Property

Oxfam maintains that:

- IP must remain outside of the FTAA negotiations and other regional and bilateral trade agreements in Latin American and the Caribbean;
- “TRIPS-plus” rules through the FTAA and other agreements are unacceptable;
- The US must stop using Section 301 of its Trade Act and the threat of sanctions to pressure countries for “TRIPS-plus” rules;
- The US and all countries of the region should sign the Convention on Biological Diversity (CBD);
- The TRIPS agreement must be reconciled with the Convention on Biological Diversity, stressing the obligation of patent holders to present the origin of biological materials and obtain prior consent of their original owners, communities and indigenous peoples;
- Patents on genetic plant resources for food and agriculture must not be permitted in any trade agreements. Rich countries must not force the introduction of the 1991 UPOV as a system to protect plant varieties;
- The countries of the region must comply with the Doha Declaration and promote greater reforms in the TRIPS agreement in order to improve access to low-cost medicines.

## 4 Conclusions

***“[T]he current rules have not helped our countries overcome, nor even reduce, our economic problems. We propose alternative rules to regulate the global and hemispheric economies that are based on a different economic logic: that trade and investment should not be ends in themselves, but rather tools for achieving just and sustainable development.”***

*Alternatives for the Americas, Hemispheric Social Alliance, December 2002, pp.8-9*

Oxfam believes that radical changes are needed to trade and investment rules in the Americas in order to promote poverty reduction, respect for human rights and sustainable development. These changes require greater and unified political will from Latin American and Caribbean governments, greater capacity of civil society organizations to make proposals and mobilize, and radical

reforms in the institutions and trade agreements that are being rapidly implemented on the continent. An integration project must be based on the participation of all actors including social movements, parliamentarians, and universities and not only the business sector and governments if it is going to address the social inequality and poverty on the continent.

This document is in keeping with the set of proposals that support Oxfam's Make Trade Fair campaign. It also acknowledges the important efforts by civil society organizations in the continent to develop alternative proposals, in particular the "Alternatives for the Americas" of the Hemispheric Social Alliance<sup>37</sup>.

Within the changes required, those in agriculture are essential, since they are critical to ensuring the human right to food and poor countries' right to development. Rural and family agriculture still provides the highest number of jobs and a large part of the national income in the poorest areas of the Americas.

In this sense, a "one size fits all" approach to agricultural trade would further damage developing countries and endanger the livelihoods of poor farmers. Special and differential treatment must include significant flexibility to raise tariffs and increase internal support to achieve food security and development goals. The implementation of any tariff reduction commitment must be based on reaching development milestones, not arbitrary schedules that are negotiated politically.

Similarly, the disproportionate focus on investors' rights limits the rights of developing countries to regulate foreign investments based on national development needs. The principal of national treatment that investors press for in the FTAA places at risk the development of local technological and production capacities that all quality investment should promote. In the same way, it blocks governments' and citizens' ability to counteract the negative social and environmental effects caused by much investment in the region.

Intellectual property rules must remain outside of the FTAA and other bilateral and regional trade agreements, since they will only result in maintaining the interests of pharmaceutical and agribusinesses to the detriment of public health objectives and the right of developing countries to guarantee food security and protect biodiversity. At the same time, it is important to end the use of mechanisms to apply pressure on developing countries, such as the use of Section 301 of the US Trade Act, which threatens achieving more equitable trade strategies in the Americas.

The enormous gap that separates these proposals from those currently being negotiated leads Oxfam to believe, along with many other organizations and movements on the continent, that the

proposed FTAA is not consistent with the promotion of sustainable development in the Americas.

In short, an integral and radically different proposal is necessary, which provides the flexibility required for the governments of developing countries in the region to protect and promote the interests of their farmers, workers, women, indigenous people, and citizens, and thus restore their ability to choose their own development and poverty reduction strategies.

## Note

<sup>1</sup> Economic Commission for Latin American and the Caribbean. *Panorama Social de América Latina*, 2001-2002. November, 2002. Available at: [www.cepal.cl](http://www.cepal.cl)

<sup>2</sup> *Ibid*, p. 211

<sup>3</sup> According to ECLAC and Institute for Food and Agricultural Development figures.

<sup>4</sup> *Declaration of the World Food Summit: 5 Years Later*. Rome. June 2002.

<sup>5</sup> Oxfam International. *Rigged Rules and Double Standards*. 2002. Ch. 4. Available at: [www.maketradefair.com](http://www.maketradefair.com)

<sup>6</sup> Brazilian Ministry of Foreign Affairs, November 2001.

<sup>7</sup> ECLAC, *op cit.*, p.109.

<sup>8</sup> CODEDCO, Efecto de las Acuerdos GATS y ASA en los consumidores de Bolivia (2001), La Paz, Bolivia.

<sup>9</sup> Information from the Asociación Nacional de Empresas Comercializadoras del productores del Campo (based on official statistics).

<sup>10</sup> ECLAC, *op cit.* Ch. 5.

<sup>11</sup> Cited in Murphy, S. *Managing the Invisible Hand: Markets, Farmers, and International Trade*. The Institute for Agricultural Trade Policy/Canadian Foodgrains Bank, 2002.

<sup>12</sup> CEPES, *Algodón: menos áreas, más importaciones*. Agraria Magazine 40. October 2002. Lima, Peru.

<sup>13</sup> Draft text of the Free Trade Area of the Americas, Chapter on Agriculture. Derestricted November 1, 2002. Available at: [www.ftaa-alca.org](http://www.ftaa-alca.org).

<sup>14</sup> Oxfam International, *op cit.*

<sup>15</sup> United Nations Conference on Trade and Development. *Handbook of Statistics*. 2002. Available at [www.unctad.org](http://www.unctad.org).

<sup>16</sup> ECLAC. *Proyecciones Latinamericanas 2001-2002*. 2002. p.54. Serie Estudios Estadísticos y Prospectivos, n. 16. Santiago, Chile. Available at [www.eclac.cl](http://www.eclac.cl).

<sup>17</sup> ECLAC. *op cit.*

<sup>18</sup> Banco de México, *Balanza de Pagos*. Taken from the National Institute for Statistics and Geography.2002.

<sup>19</sup> Oxfam International, *op cit.* Chapter 7.

<sup>20</sup> ECLAC. *Foreign Investment in Latin America and the Caribbean*. 1999.

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<sup>21</sup> Oxfam International, *op cit*.

<sup>22</sup> FTAA draft text, *op cit*. Chapter on Investment.

<sup>23</sup> See *NAFTA Chapter 11 Investor-to-State Cases: Bankrupting Democracy*. September 2001. Public Citizen and Friends of the Earth, and *Alternatives for the Americas*. December 2002. Hemispheric Social Alliance. Available at [www.asc-has.org](http://www.asc-has.org).

<sup>24</sup> Convention 169 of the International Labor Organization, Articles. 7.1, 14.1, 15.1 and 15.2; and the International Covenant on Economic, Social and Cultural Rights, Articles 1.1 and 1.2.

<sup>25</sup> *Alternatives for the Americas, op cit*.

<sup>26</sup> The analyses presented are based on the studies and documents prepared for *Rigged Rules and Double Standards* by Oxfam International and the following documents used for the “Cut the Cost” campaign on access to medicines:

- “Fatal Side Effects: Medicine Patents under the Microscope”. February 2001.

- “Patentar la Injusticia: Las reglas del comercio internacional, una amenaza para la salud de los pobres”. February 2001.

- “Priced out of Reach: How WTO patent policies will reduce access to medicines in the developing world”. October 2001

<sup>27</sup> FTAA draft text, *op cit*. Chapter on Intellectual Property.

<sup>28</sup> International Monetary Fund (IMF), Volume 55, Balance of Payments. 2001.

<sup>29</sup> Gontijo, C. Study on intellectual property (forthcoming).

<sup>30</sup> World Bank, 2002.

<sup>31</sup> Documents from the Hemispheric Social Alliance:

- *Alternatives for the Americas, op cit*.

- *El ALCA al desnudo: un análisis ciudadano de las negociaciones gubernamentales en torno al Area de Libre Comercio de las Americas – Analisis Preliminar: Borrador para Discussion #2*. October 2002.

<sup>32</sup> World Health Organization. *Statistical Yearbook*. 2000.

<sup>33</sup> Oxfam International. *Companhias Farmacêuticas x Brasil: Uma ameaça à saúde pública*. May 2001.

<sup>34</sup> Documents from Doctors Without Borders:

- IP Negotiations in FTAA and Access to Medicines: Undermining achievements of the WTO Declaration on the TRIPS Agreement and Public Health. March 2002.

- Testimony at the Public Hearing Concerning Market Access in the Free Trade of the Americas Negotiations of the Office of United States Trade Representative. September 9, 2002.

<sup>35</sup> Action Aid. *Patents and food security*. Action Aid Briefing 5. 1999. London.

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<sup>36</sup> Wilkinson, J. and Castelli, P. *The Internationalisation of Brazil's Seed Industry: Biotechnology, Patents and Biodiversity*. 2002. Published by ActionAid. Rio de Janeiro, Brazil.

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