



# Final Financial and Narrative Reports

## **IISD/FOCAL: Americas Trade and Sustainable Development Forum**

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# **1. Background**

This narrative report accompanies the final financial report on the expenditure of funds in support of the Americas Trade and Sustainable Development Forum (ATSDF) Project, jointly administered by the International Institute for Sustainable Development (IISD) and the Canadian Foundation for the Americas (FOCAL). CIDA's contribution was directed specifically to the support of Southern experts' participation in the Forum.

The ATSDF was a two-day civil society forum held in conjunction with the November 2003 Miami Ministerial Meeting of the Free Trade Area of the Americas (FTAA). IISD and FOCAL were the two Canadian members of the organizing committee for the event, and received support for the enhancement of developing country participation in the event and, to a lesser extent, in support of their own activities in Miami. Total CIDA support was for CAD 60,000, and DFAIT support was for 62,400.

The event's objectives, as per the project proposal, were:

1. To gather substantive civil society expertise on the sustainable development-related aspects of the FTAA agenda, and to pass those along to policy makers in a manner that both engages and challenges them.
2. To serve as an important precedent for future Ministerial and other meetings, where there has been an encouraging evolution over time of civil society engagement, Canada's efforts in particular being of critical importance in this regard.
3. To raise awareness among civil society groups of the issues to be considered, which include a broad range of sustainable development-related themes.
4. To better situate the FTAA agenda within the broader agenda of the Summit of the Americas process, through a focus on the non-commercial aspects of trade and investment liberalization.

The event's outputs (again, as per the project proposal) were:

1. Participation of 27 developing country speakers in the ATSDF, spread across the various thematic "tents."
2. Unprecedented Ministerial briefings on the event sessions.
3. Comprehensive overall written report of ATSDF.
4. Organization of a workshop on the FTAA provisions on investment, from a sustainable development perspective, with written report.

As described below, these objectives and expected outputs were attained, in some cases well in excess of expectations.

## **2. The ATSDF**

### **2.1. The event**

The meetings took place as projected, on November 17 - 18, immediately preceding the Ministerial meetings. The format was a series of parallel sessions over the two days under nine thematic headings, or “tents.” The tents and tent managers were:

<p><b><i>TRADE AND AGRICULTURE</i></b></p> <ul style="list-style-type: none"> <li>➤ Institute for Agriculture and Trade Policy</li> </ul>	<p><b><i>TRADE, DEMOCRACY, AND HUMAN RIGHTS</i></b></p> <ul style="list-style-type: none"> <li>➤ Partners of the Americas</li> </ul>
<p><b><i>TRADE AND ENVIRONMENT</i></b></p> <ul style="list-style-type: none"> <li>➤ Centro Ecuatoriano de Derecho Ambiental</li> <li>➤ Tulane University</li> </ul>	<p><b><i>TRADE AND SMALLER ECONOMIES</i></b></p> <ul style="list-style-type: none"> <li>➤ Caribbean Policy Development Centre</li> <li>➤ National Coalition on Caribbean Affairs</li> </ul>
<p><b><i>TRADE, PARTICIPATION AND ACCESS</i></b></p> <ul style="list-style-type: none"> <li>➤ Participa</li> <li>➤ Tulane University</li> </ul>	<p><b><i>TRADE AND SUSTAINABLE LIVELIHOODS</i></b></p> <ul style="list-style-type: none"> <li>➤ Dante B. Fascell North-South Center</li> </ul>
<p><b><i>TRADE, CORRUPTION AND TRANSPARENCY</i></b></p> <ul style="list-style-type: none"> <li>➤ Transparency International</li> </ul>	<p><b><i>TRADE, KNOWLEDGE AND INTELLECTUAL PROPERTY RIGHTS</i></b></p> <ul style="list-style-type: none"> <li>➤ International Centre for Trade and Sustainable Development</li> </ul>
<p><b><i>INVESTMENT IN THE FTA</i></b></p> <ul style="list-style-type: none"> <li>➤ International Institute for Sustainable Development</li> <li>➤ Center for International Environmental Law</li> </ul>	

Management of the event was a groundbreaking non-hierarchical structure, wherein the core organizing group (see Annex 1 for membership) presided over selection of managers for the nine thematic areas, laid down guidelines and provided the physical infrastructure and logistical support. Within the space provided, over the two day period, the tent managers had free hand to advance the forum’s awareness-raising objectives as best they judged possible, organizing workshops, speakers, joint sessions with other tents, and media events. Tent

managers were also responsible for the recommendations or other input to be relayed to the Ministers following the ATSDF.

Despite the steep (USD80) registration fee, and the daunting logistical difficulties associated with participating in an event within the security perimeter (long lead times for registration, difficulties with credentials), over 300 participants from 28 countries, representing 128 organizations, attended the Forum (see participants' list, attached as Annex 2).

The results of discussions from the various tents, including meeting agendas and thematic reports, are attached as Annex 3. Reports for the Participation, Corruption and Sustainable Livelihoods tents were not available at the time of the writing of this report.

## **2.2. Results, impacts**

Although the project projected supporting 27 participants to the ATSDF from across the Americas, in the end support was provided to 41 participants from 15 countries (see attached list of supported participants: Annex 4). For most of these, the funding covered transportation to the event, accommodations while there, and per diems, though in some cases participants were able to cover some costs themselves. All of the supported participants were from developing countries (though several of them now live and work for organizations based in the US), all were participating as speakers in the various tents, and all were nominated by their respective tent managers on merits and on the basis of financial need. Final screening of the nominees was done by IISD and FOCAL.

The result from the perspective of the various tents was the ability to attract high quality speakers from throughout the hemisphere to participate in the discussions. The level of interaction and dialogue that was obtained in the end would have been unthinkable without this support.

The project was also able to support simultaneous translation for three of the tents (full support to investment and environment; partial support to a combined event by democracy, participation and corruption – most other tents secured their own financial support for translation). This immeasurably furthered the effectiveness of the discussions among northern and southern participants.

The project also supported time devoted by IISD to the managing of the investment tent (see agenda and meeting report in Annex 3). This tent brought together NGOs, private lawyers, media, development bank, government and

other participants to discuss the sustainable development implications of various scenarios for investment in the FTAA. It represented a gathering of some of the most thoughtful minds on the subject in the hemisphere.

Finally, the project supported management time devoted by IISD and FOCAL to the organizing committee's running of the overall event. This event having broken new ground in a number of dimensions, managing it turned out to be a significant commitment of resources.

A major impact of the support was the legitimacy conferred on the ATSDF by the participation of so many non-North American participants, at such a high level. Provision of translation also furthered this end. These elements of support had impacts not only on the quality of the discussions and the subsequent advances in each subject area, but also in terms of the optics and legitimacy of the event itself. This was an important mix, given that the ATSDF will likely serve as a template for future endeavours of this type.

Another explicit objective was the advancing of the Canadian-supported goals of transparency and participation in the context of trade negotiations. At the end of the ATSDF the rapporteurs from the various tents attended an unprecedented session with the Hemisphere's trade ministers

to relay their recommendations directly. The interaction and discussion was excellent, constructive and extensive. In the area of transparency and participation in particular, the Ministers took note of the ATSDF recommendation for a permanent mechanism for civil society input in the FTAA, and indeed made this recommendation part of the final Ministerial Declaration. A better result in pushing the envelope on these issues could hardly have been imagined.

The Ministerial Special Session also resulted in an invitation from the Ministers to appear before them again at subsequent Ministerial meetings. Another of the explicit goals of the ATSDF had been to establish the Forum as a permanent fixture of the Ministerial process, on a level

We express our interest in creating a civil society consultative committee within the institutional framework of the FTAA upon the Agreement's entry into force. Such a committee could contribute to transparency and the participation of civil society on an on-going basis as the FTAA is being implemented.

***Ministerial Declaration of Miami, 2003***

"We appreciate the recommendations made by the Eighth Americas Business Forum and the First Americas Trade and Sustainable Development Forum, organized with a broad representation of civil society, and with whom we met here in Miami, Florida. We encourage the holding of similar events organized parallel to all Ministerial and Vice Ministerial meetings and recommend that they include broad representation from civil society."

***Ministerial Declaration of Miami, 2003***

similar to the Americas Business Forum. The Ministerial “nod” has lent support from a critically important constituency for this sort of continued involvement. Future directions in this regard are discussed in greater depth below.

More broadly, the ATSDF opened up new channels of communication between civil society and western hemispheric governments, and engendered a new sentiment of trust in the constructive potential of civil society input. A number of government negotiators participated in the Forum, as speakers and discussants. Above and beyond the Ministerial meeting, representatives of the ATSDF held joint sessions with the Inter-American Parliamentary Forum, and access to the security perimeter meant excellent opportunities for interaction with negotiators and policy makers.

The advancement of the debates in key areas of interest to DFAIT and CIDA (including Trade, Democracy and Human Rights; Trade and Environment, Trade and Sustainable Livelihoods, Trade, Participation and Access) was one of the explicit goals of the project, and the high level of discussions again was critical in achieving this goal.

The ATSDF also had impacts on the NGO community as a whole. While the results of previous Ministerial meetings ended with ugly and divisive fighting between the various NGO factions, great care was taken in organizing this Forum (against the odds of tight timelines) to try to heal those wounds. In the end, through careful and tireless efforts, the ATSDF involved as tent managers several members of the Hemispheric Social Alliance—a group staunchly opposed to any FTAA negotiations, and a strong pole in the internal NGO debates—and attracted a number of prominent Alliance members as participants. While the philosophical divisions in the NGO community will not be resolved in the foreseeable future, the counter-productive rancour that followed meetings such as the Quito Ministerial has at least somewhat subsided.

### **3. Evaluation**

A formal evaluation form (see Annex 5) was circulated to all supported participants. The rate of response was disappointing, at just under 25% (10 of 41), but not low for such exercises as a rule. The graphic representation of the responses follows on the subsequent pages.

The breakdown between those who had attended previous meetings of this type and those that had not was split evenly. This question was posed in order to



gauge any difference in response between the two groups that might be attributable to their relative experience.

There was strong support for the statement that the substance of the event was useful, with 50% calling it “extremely useful,” and another 40% choosing the next most positive category (two, on a scale of one to five). *All* of the inexperienced respondents chose “extremely useful,” while the experienced respondents were split between scoring 2 and 3.

The question of whether the parallel workshops format worked well evoked the most negative response of any, though there were still no votes cast in categories 4 or 5. Half of the respondents chose a neutral “three” for this question, forty percent chose “two”, and ten percent chose “one” (extremely well). The experienced meeting-goers were strong in moving the results toward the negative, with 80% choosing the neutral “three.” These results seem to convey a feeling that there was not enough opportunity for participants to “cross over” to delve into the various different themes. There were several written comments to this effect as well.

On whether the event will impact on the FTAA negotiations, there was something of a bimodal split between the experienced and the inexperienced meeting-goers. The former delivered the only response of the entire survey to reach into the negative categories, with sixty percent choosing “four.” By contrast, eighty percent of the inexperienced respondents chose “two.”

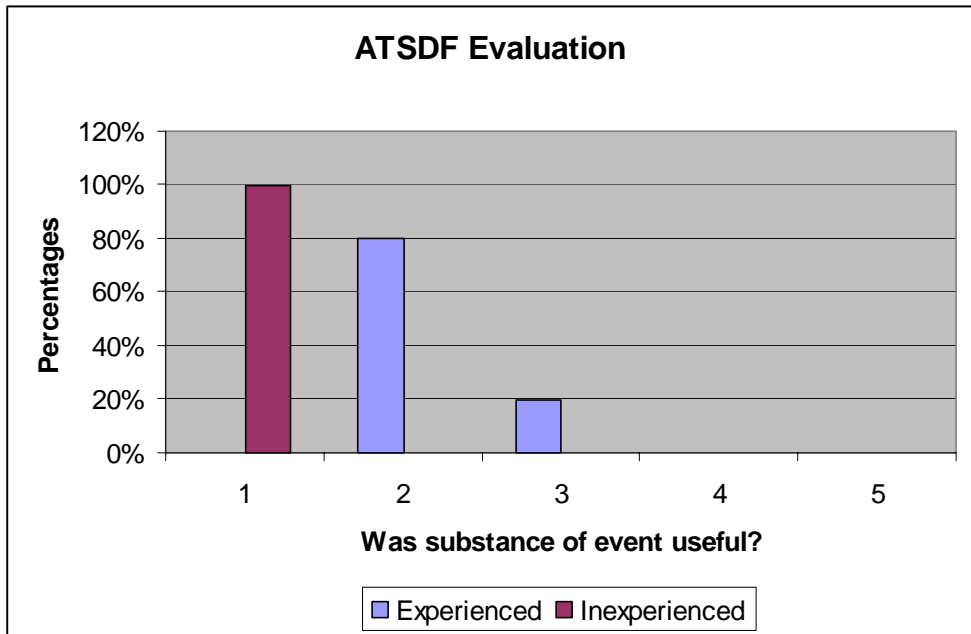
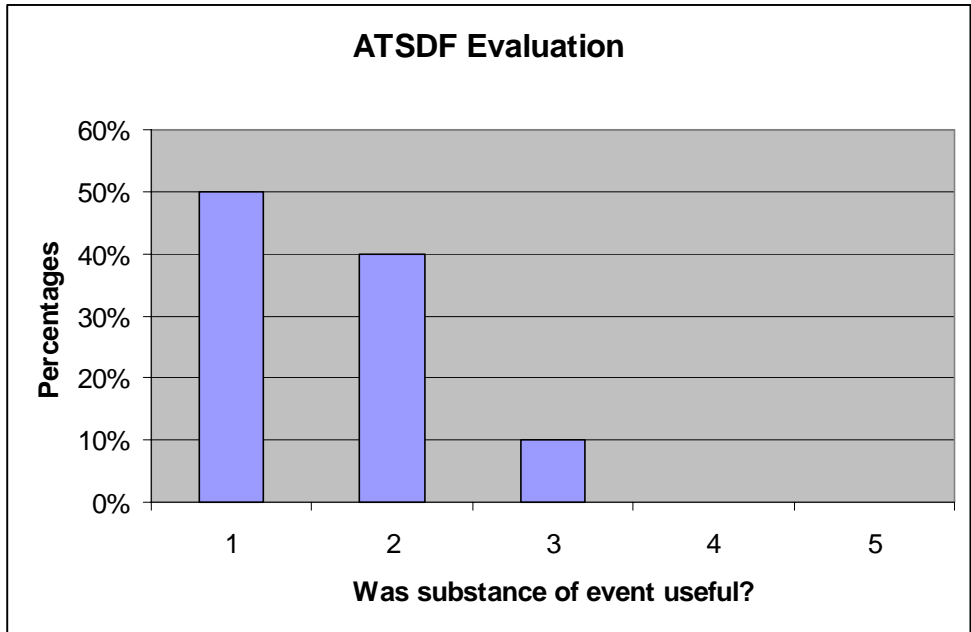
There was strong agreement that the respondents would like to see future events of this type at subsequent Ministerials, with sixty percent choosing “one” (yes, very much), and the remaining forty percent choosing “two.” The positive sentiment was slightly stronger among the inexperienced meeting-goers.

Written comments more or less supported the results obtained above, but with several additional themes addressed as well (see comments in Annex 6). These included the need for more inclusive organizing structure, and the need for a more intensive plenary at the end of the parallel sessions. Several points raised here are addressed below, in the section on moving forward.

**Question 2: Was the substance of the event useful to you?**

1 = Extremely useful

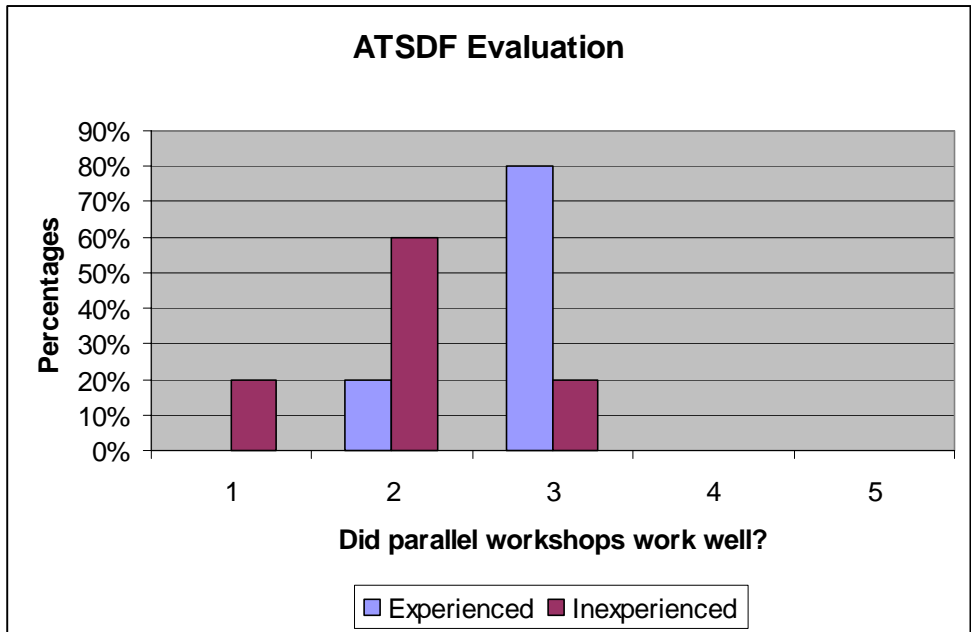
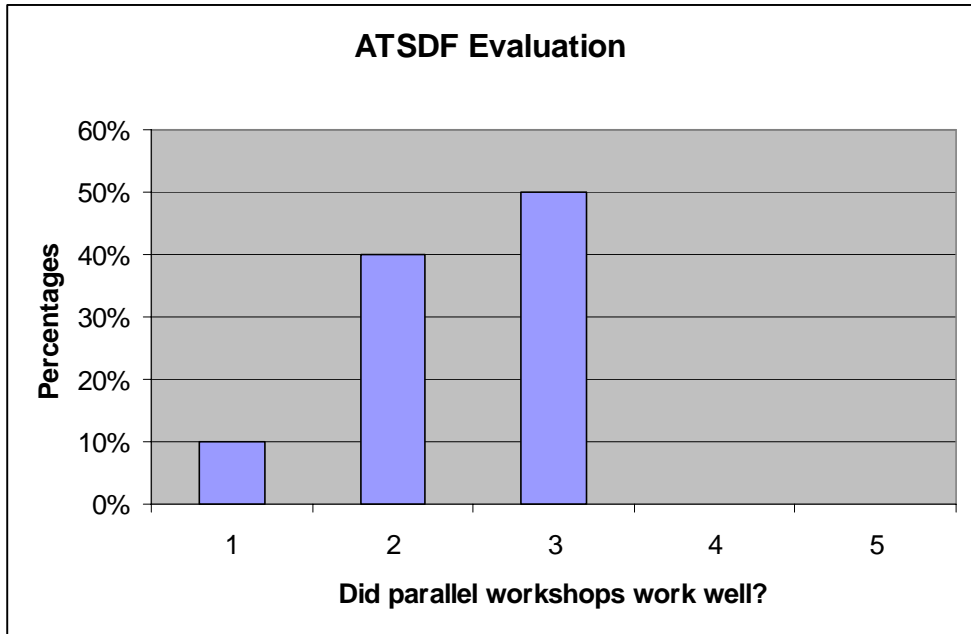
5 = I learned nothing of value



### Question 3: Did the format of separate parallel workshops work well?

1 = Extremely well

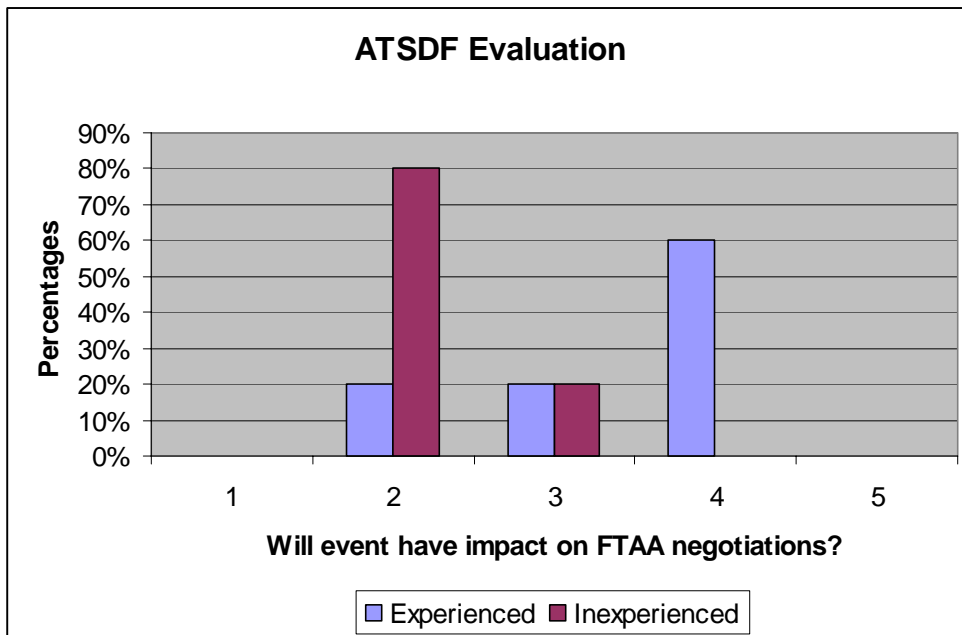
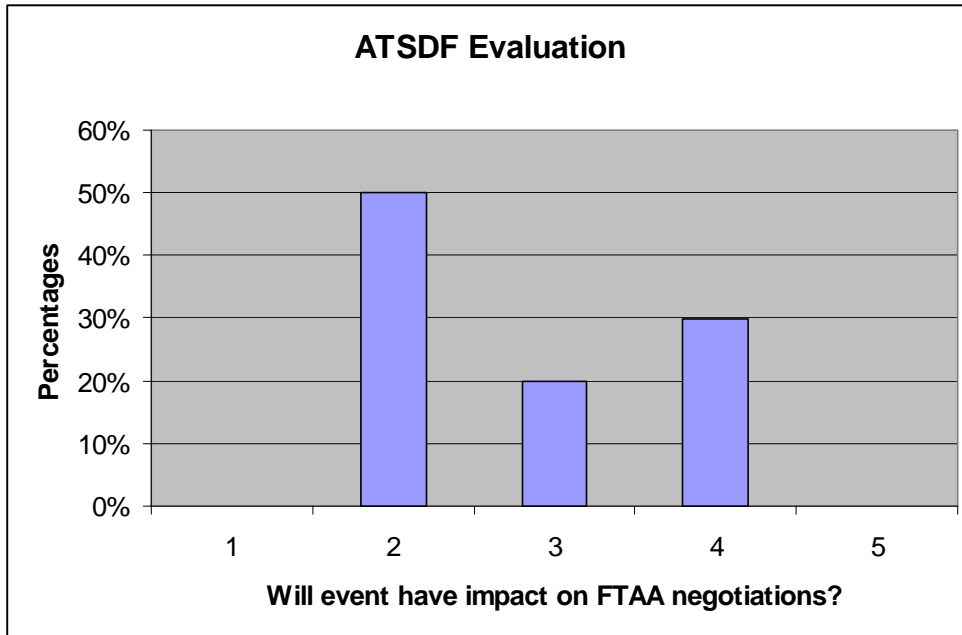
5 = I would never want to see it used again



**Question 4: Do you feel the event will in the end have any impact on the FTAA negotiations?**

1 = It will have a major impact

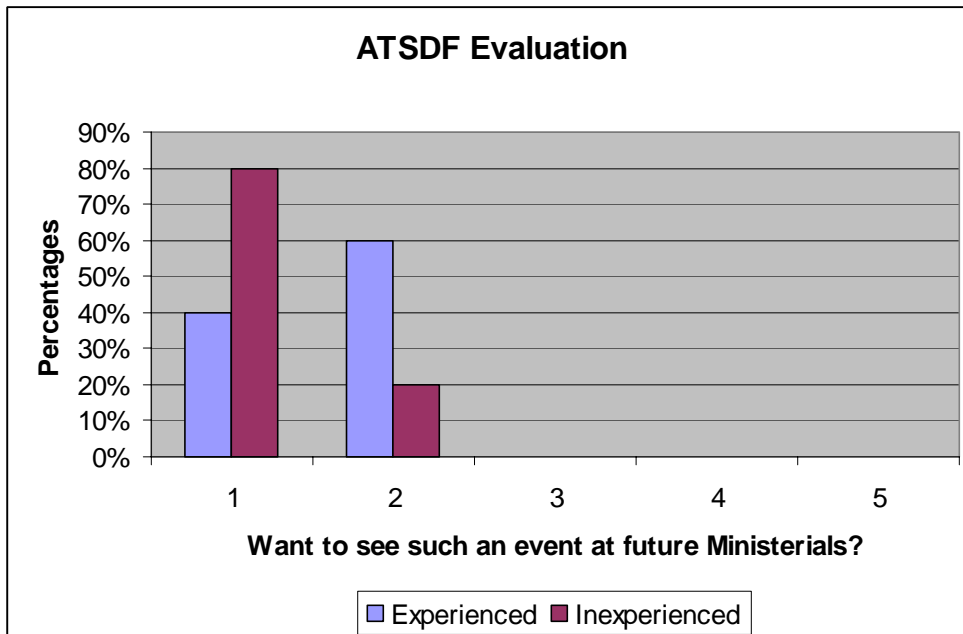
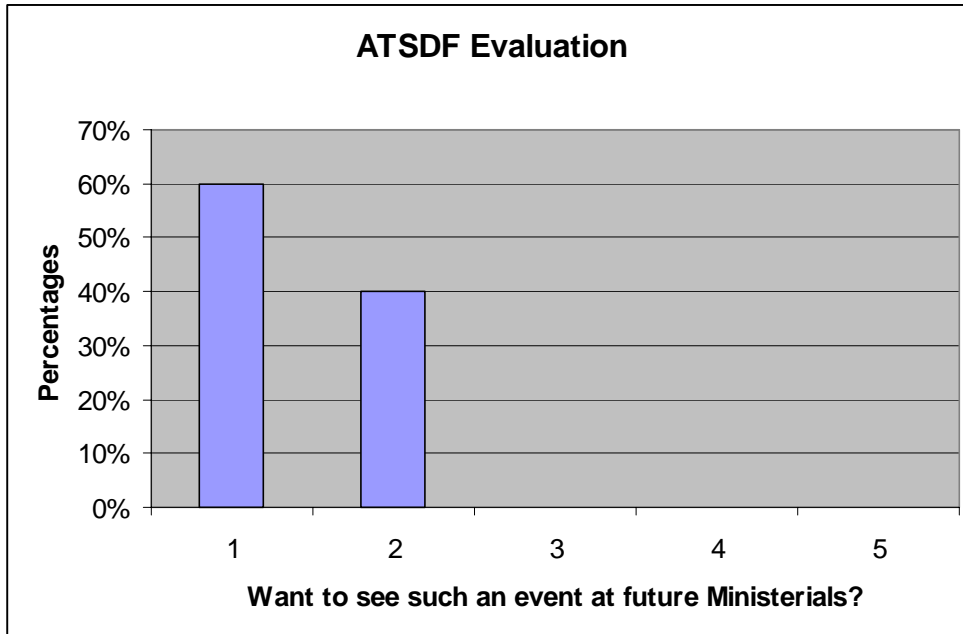
5 = It will have no impact



**Question 5: Would you want to see such an event staged at future Ministerials?**

1 = Yes, very much

5 = I would not want to see another such event



## 4. Future Directions

One of the key objectives of the ATSDF was:

*To serve as an important precedent for future Ministerial and other meetings, where there has been an encouraging evolution over time of civil society engagement, Canada's efforts in particular being of critical importance in this regard.*

It was noted above that the Ministers, as well as respondents to the supported participant survey, hoped that the ATSDF would become a permanent fixture of the FTAA Ministerial process, in much the same way as is the Americas Business Forum, providing a broad civil society input on issues related to sustainable development and the FTAA agenda. Indeed, the ATSDF seems to have laid the groundwork for such a result in more or less the way desired by its organizers.

Follow up, however, will not be easy. First, the lessons of the ATSDF must be absorbed and must instruct any future efforts. Among them:

- It is critically important to have a host organization located in the site of the Ministerial as spearhead for the organizing effort. The role of the North-South Center, confronting and surmounting logistical and political crises on a daily basis, proved invaluable to the success of the Forum.
- If it is to continue on a permanent basis, the ATSDF must evolve to a new form of management. The non-hierarchical structure described above worked very well for this first effort. But to manage an ongoing, living, institution a more permanent and dedicated structure would be needed – one that maintained the institutional “lightness” of the ATSDF management, but which employed key, dedicated, responsible individuals.
- One of the challenges that such a structure would have to address would be the inclusion of a wider variety of voices than were represented in the first Forum (though the ATSDF, as noted above, made notable progress in this direction).
- The interdisciplinary nature of the sustainable development theme, as reflected in nine parallel tents, was invaluable in bringing together a broad coalition of interested participants, and bringing their various concerns to bear on the FTAA process. But any future efforts will have to make integration of those various efforts easier. Several mechanisms

might enable this, such as a more substantial final plenary session, fewer tents, or fewer parallel processes.

Discussions are now ongoing among a number of the organizers as to how the ATSDF might be put onto a more permanent footing in time for the next Ministerial meeting in Brazil. If the FTAA process is to continue (and this is not a given, in light of the Miami results – see commentary in Annex 7), it will be essential to continue to push for a more meaningful voice on matters beyond the commercial interests typically held paramount by the negotiators. The ATSDF, for all its faults, represents a good model on which to build.

## **5. Notes on the Financial Report**

The following section lays out the final financial report for the contribution made by CIDA to the ATSDF. There is little to comment on in this report—line variances between actuals and budget being unremarkable—other than to note that the monies were expended more efficiently than forecast in the project budget and that, as noted above, the budget supported 41 participants to the ATSDF, rather than the 27 projected. This was due almost entirely to the availability of airfares for participants at rates much lower than the budgeted rates.

## **6. Final Financial Report**



## **Annex 1: ATSDF Core Organizing Group**

**[Tulane Institute for Environmental Law and Policy](#)** (Eric Dannenmeier)

**[PARTICIPA](#)** (Andrea Sanhueza)

**[North-South Center](#)** (Robin Rosenberg)

**[International Institute for Sustainable Development](#)** (Aaron Cosbey)

**[Facultad Latinoamericana de Ciencias Sociales \(FLACSO\)](#)** (Diana Tussie)

**[Centro Ecuatoriano de Derecho Ambiental \(CEDA\)](#)** (Maria Amparo Alban)

**[Carnegie Endowment for International Peace](#)** (John Audley, Scott Vaughan)

**[Canadian Foundation for the Americas \(FOCAL\)](#)** (Don MacKay)

### **Non-Core Group Tent Managers**

**[Transparency International](#)**

**[National Coalition on Caribbean Affairs \(NCOCA\)](#)**

**[Partners of the Americas](#)**

**[Institute for Agriculture and Trade Policy \(IATP\)](#)**

**[International Centre for Trade and Sustainable Development \(ICTSD\)](#)**

**[InterAmerican Democracy Network](#)**

**[Center for International Environmental Law \(CIEL\)](#)**

**[Caribbean Policy Development Centre \(CPDC\)](#)**

## Annex 2: ATSDF Participants List

	<b>Last Name</b>	<b>First Name</b>	<b>Company</b>	<b>Country</b>
1	't Hoen	Elisabeth	Medecins Sans Frontieres	France
2	ALBAN RICAURTE	MARIA	CEDA-CENTRO ECUATORIANO DE DERECHO AMBIENTAL	Ecuador
3	Abed de Zavala	Sheila	IDEA	Paraguay
4	Ahn	Christine	Institute for Food and Development Policy	United States
5	Ahtye	Celana	Latino Issues Forum	United States
6	Allen	Robert	University of Pennsylvania	United States
7	Almendarez Bonilla	Juan	CONACTA	Honduras
8	Alsop	Bronwen	CARANA/CTRADECOM	Barbados
9	Amat	Patricia		United States
10	Amos	William	Environmental Law McGill	Canada
11	Antia	Fernando	Universidad de la República (University of the Republic)	Uruguay
12	Aray	Ana	U.S. State Department	United States
13	Audley	John	Carnegie Endowment for Intrnational Peace	United States
14	BORREGAARD	NICOLA	RIDES	Chile
15	BUSTAMANTE SAENZ	SANTIAGO	CENTRO ECUATORIANO DE DERECHO AMBIENTAL	Ecuador
16	Bastidas Pazos	Ruth	CIELAP	Canada
17	Beaumont	Jessica	American Friends Service Committee	United States
18	Beck	Martha	O Globo (The World) daily newspaper	Brazil
19	Bell	Charles	Consumers Union	United States
20	Biggs	Shannon	Global Exchange	United States
21	Bloom	John	Campaign for Tobacco Free Kids	United States
22	Bloomekatz	Rachel	Harvard Institute of Politics	United States
23	Bradin	John	Progressive Asset Mgmt.	United States
24	Brant	Jennifer		United States
25	Brenneke	Angela		United States
26	Brenner	Joseph	CPATH	United States
27	Bryan	Anthony	University of Miami North-South Center	United States
28	Buchanan	Mildred		United States
29	Buendia Gomez de la Torre	Raul	Maria Luisa Gomez de la Torre Foundation	Ecuador
30	Bueno	Yvette	University of Miani North South Center	United States
31	Bustamante	Arturo	Sabre Latin America	United States
32	CARNEGIE	ARTHUR	Caribbean Law Institute Centre, University of the West Indies	Barbados
33	Cabrera Romero	Angél	FUNDACIÓN ECOLÓGICA ALPACAMAC	Ecuador
34	Caiani	Jean		United States
35	Caldwell	Douglas	National Wildlife Federation	United States
36	Campos Cubas	Victor		Nicaragua
37	Candia Rodriguez	Cristian	Consumers International	Chile
38	Carpentier	Chantal Line	Commission for Environmental Cooperation	Canada
39	Carroll	Marcia	Multinationals Resource Center	United States
40	Carvajal Isunza	Gustavo	Solórzano, Carvajal, González y Pérez-Correa, S.C.	Mexico
41	Castañeda de Rivero	Nora		United States
42	Castillo Sanchez	Jose	National Assembly of Nicaragua	Nicaragua
43	Castro	Max	University of Miami North-South Center	United States
44	Chamay	Marie	ICTSD	Switzerland
45	Chaves Quesada	Silvia Elena	Centro de Derecho Ambiental y de los Recursos Naturales	Costa Rica
46	Cho	Albert	World Resources Institute	United States
47	Clarke	Tony	Polaris Institute	Canada
48	Cocq	Karen	Polaris Institute	Canada
49	Cohen	Rachel	Medecins Sans Frontieres	United States
50	Connolly	Barbara	Office of the U.S. Trade Representative/ University of Notre Dame	United States
51	Cook	Jonathan	Yale School of Forestry & Environmental Studies	United States
52	Correa	Carlos	Universidad de Buenos Aires	United States
53	Cosbey	Aaron	Int'l Institute for Sustainable Development	Canada
54	Cuervo	Luciano	Chilean Directorate of Economic Relations (DIRECON)	Chile
55	Cullen	Margaret	Canadian Consulate General	United States
56	Dahle	Gro		United States
57	Dannenmaier	Eric	Tulane University Institute for Environmental Law and Policy	United States
58	Daubon	Ramon	Esquel Group Foundation	United States
59	Davis	Lisa	Freedom House	United States

60	Dawkins	Kristin	Institute for Agriculture and Trade Policy	United States
61	Dawkins	Tanya	Inter-American Forum	United States
62	De Hoyos	Carlos	U.S. State Department	United States
63	De La Torre Ugarte	Daniel	Agricultural Policy Analysis Center	United States
64	Delpiano	Catalina	Corporacion Participa	Chile
65	Dessureault	Darlene	Dairy Farmers of Canada	Canada
66	Dixon	Michelle		United States
67	Doyle	Valentine		United States
68	Drake	Elizabeth	AFL-CIO	United States
69	Dufey Dominguez	Annie	RIDES	Chile
70	Dumas	Juan	Fundación Futuro Latinoamericano	Ecuador
71	Duncan	Green	Public Services International	United States
72	Echeverria	Jaime	Tropical Science Center/EAE Consulting	United States
73	Echeverria	John	Georgetown Environmental Law & Policy Institute	United States
74	Edwards	Eric	Ncoca	United States
75	Elliott	Kimberly	Center for Global Development	United States
76	Emch	Adrian		United States
77	Estrada	Torri		United States
78	Etienne	Marta	U.S. State Department	United States
79	Evans	Katherine	Doctors Without Borders/Medecins Sans Frontieres	United States
80	Evia	Gerardo	CLAES	Uruguay
81	FREEMAN	Phyllis	University of Massachusetts	United States
82	Ferrara de Moreno	Marta	IDEA (Instituto de Derecho y Economia Ambiental)	Paraguay
83	Fine	Marjorie		United States
84	Fisher	Paul	Organization of American States	United States
85	Flecker	Karl	Polaris Institute	Canada
86	Flores Palacios	Jose	Agropecuaria	Nicaragua
87	Flores-Trejo	Helga	Heinrich Boell Foundation North America	United States
88	Frankena	Kim	USA	United States
89	Fredes Gonzales	Miguel	Centro Austral de Derecho Ambiental	Chile
90	Gallagher	Kevin	Global Development And Environment Institute, Tufts University	United States
91	Gallegos	Mariana	Cisneros Group of Companies	United States
92	Gamallo	Gustavo		Argentina
93	Garcia Buitrago	Beatriz	Consumers International	Chile
94	Garver	Geoffrey	Commission for Environmental Cooperation	Canada
95	Gass	Victoria	Washington Office on Latin America (WOLA)	United States
96	Giacaman	Viviana	Corporación PARTICIPA	Chile
97	Gill	Juliet	University of Miami	United States
98	Goldin	Stephen		United States
99	Goldstein	Elana	University North South Center	United States
100	Gonzalez	Sara	Georgia Hispanic Chamber of Commerce	United States
101	Gordon	Sule	Council for Responsible Public Investment	United States
102	Grenade	Wendy	North-South Center	United States
103	Gross	Robin	IP Justice	United States
104	Guadarrama Marr?	Luis	Centro Mexicano de Derecho Ambiental	Mexico
105	Gudynas	Eduardo	CLAES	Uruguay
106	Gurban	Gyorgyi		United States
107	Guzman Castro	Zulma	CAR	United States
108	HANG	NONG	International Fair 7 Advertising Co., Ltd(INFA)	Viet Nam
109	HILARIO	MARINA	PARTICIPACION CIUDADANA	Dominican Republic
110	Haar	Jerry	University of Miami North-South Center	United States
111	Hanak	Daryl	Alberta Ministry of International and Intergovernmental Relations	United States
112	Harris	Nancy	Environment Canada	Canada
113	Harrison	Kathleen	Tulane University Institute for Environmental Law and Policy	United States
114	Hiltz	Bonnie	Fundación Arias para la Paz y el Progreso Humano	Costa Rica
115	Hinze	Gwenith	Electronic Frontier Foundation	United States
116	Hoffman	Brendan	Essential Action	United States
117	Hunte	Cyril	NCOCA	United States
118	Ilich	Michael	Latino Issues Forum	United States
119	Iversen	Lilly	University of Miami North-South Center	United States
120	JAMES MONTAGUE	VANESSA	CEDA- CENTRO ECUATORIANO DE DERECHO AMBIENTAL	Ecuador
121	Jackson	john	UC Berkeley	United States
122	Jacott	Marisa	Fronteras Comunes	United States
123	James	Deborah	Global Exchange	United States
124	Joffe	Paul	National Wildlife Federation	United States

125	Jubany	Florencia	The Canadian Foundation for the Americas	Canada
126	KLINGER	IRENE	OAS-SUMMITS OF THE AMERICAS SECRETARIAT	United States
127	Kenah	Venecia	US GAO	United States
128	Kessariss	Karina	Centre for International Sustainable Development Law	Canada
129	Kirkland	Inge	U.S. State Department	United States
130	Knopf	Howard	Macera & Jarzyna	Canada
131	Kohn	Diane	Transparency International USA	United States
132	Kripke	Gawain		United States
133	Lamont	Alexandra	The Canadian Wheat Board	Canada
134	Lamoutte Navas	Joselle		United States
135	Lander	Edgardo		Venezuela
136	Lane	Heather	C.S. Mott Foundation	United States
137	Laos	Alejandro		Peru
138	Lara Cortes	Claudio	Consumers International	Chile
139	Lee	Thea	AFL-CIO	United States
140	Legendre	Sophie	Canadian Consulate General	United States
141	Leichner	Maria	Fundacion ECOS	Uruguay
142	Lewis	Lincoln	Guyana Trade Union Congress	Guyana
143	Linch	Alan		United States
144	Liston	Stephen	U.S. Department of State	United States
145	Livoti	Laura		United States
146	Lotrowska	Michel	Medecins Sans Frontieres	Brazil
147	Love	James	Consumer Project on Technology	United States
148	Lucas	Nicolas	World Resources Institute	United States
149	Lucas	Sarah	Center for Global Development	United States
150	MELENDEZ-ORTIZ	Ricardo	International Centre for Trade and Sustainable Development	Switzerland
151	Mackay	Donald	Canadian Foundation for the Americas	Canada
152	Magraw	Daniel	Center for Int'l. Environmental Law	United States
153	Magro	Maíra		United States
154	Maguire	Annise	Tulane University Institute for Environmental Law and Policy	United States
155	Maia	Katia		Brazil
156	Manglona	Keith	Latino Issues Forum	United States
157	Marczak	Jason		United States
158	Markell	David	Florida State Univ. Law School	United States
159	Marshall	Don	University of the West Indies	United States
160	Martel Jr.	Carlos	Georgia Department of Industry, Trade & Tourism	United States
161	Martinez	Jose	US GAO	United States
162	Martinez Garcia	Estanislao		Paraguay
163	Masaquiza	Manuel		Ecuador
164	Maurer	Crescencia	World Resources Institute	United States
165	Mayrand	Karel	Unisféra International Centre	Canada
166	McClauren	Philip	Ministry of Commerce, Investment and Consumers Affairs, St. Lucia	Saint Lucia
167	McSpedon	Joseph	Freedom House	United States
168	Mcdonald	Vincent	Ncoca	United States
169	Meade	Alston	National Coalition on Caribbean Affairs	United States
170	Meissner	Doris	Migration Policy Institute	United States
171	Mejia Franco	Luis	Consumidores Colombia COCO	Colombia
172	Mena	Gustavo	Instituto Dominicano de Derecho Ambiental	United States
173	Merino Dirani	Maria	Corp. Latinoamericana para el Desarrollo / Transparencia Internacional	Ecuador
174	Millis	Bryanna	Global Development And Environment Institute, Tufts University	United States
175	Mitchler	Nathan	Public Knowledge	United States
176	Mittal	Anuradha	Food First/Institute for Food and Development Policy	United States
177	Moncada	Eduardo	Inter-American Forum	United States
178	Morrison	Colleen	Doctors Without Borders/Medecins Sans Frontieres	
179	Munro-Knight	Shantal	Caribbean Policy Development Centre	Barbados
180	Murillo	Gabriel	Universidad de los Andes	Colombia
181	Murillo Rodriguez	Luis	Medecins Sans Frontieres/Doctors Without Borders	Costa Rica
		Guillermo		
182	NGHIA	TRAN	International Fair & Advertising Co., Ltd (INFA)	Viet Nam
183	Naishtat	Silvia	Clarín newspaper	Argentina
184	Nazario	Olga	Casals & Associates / ACSF	United States
185	Newfarmer	Richard	The World Bank	United States
186	Ochoa Garcia	Maria	National Foundation for Development (FUNDE)	El Salvador
187	Oliva	Maria	Center for International Environmental Law	Switzerland
188	Oliver	María	Fundación Ambiente y Recursos Naturales	Argentina
189	Olson	Richard	Institute for Agriculture & Trade Policy	United States

190	Omer	Assad	UNCTAD	Switzerland
191	Onestini	Maria	CEDEA	Argentina
192	Orellana	Marcos	Center for Int'l. Environmental Law	United States
193	PEREZ	LISANDRO	Florida International University	United States
194	Palacin	Miguel		Peru
195	Palmer	Ransford	National Coalition on Caribbean Affairs	United States
196	Passos	Valdemir	Blanver Farmoquimica Ltda.	United States
197	Pedrosa	Nilda	U.S. Department of State	United States
198	Pepin	Manon	Commission for Environmental Cooperation	Canada
199	Perez	Mamerto		Bolivia
200	Perez	Rachel	Latino Issues Forum	United States
201	Peterson	Luke	International Institute for Sustainable Development	United States
202	Pey Grebe	Coral	Alianza Chilena por un Comercio Justo, Etico y Responsable, ACJR	Chile
203	Picq	Manuela		United States
204	Pietricovski	Iara		Brazil
205	Polaski-Braswell	Sandra	Carnegie Endowment for International Peace	United States
206	Quinzi	Debra	University of Miami North-South Center	United States
207	Rajotte	Tasmin	Quaker International Affairs Programme	Canada
208	Ramirez	Jorge	Harvard University	United States
209	Ramos	Concepcion	University of Miami North-South Center	United States
210	Rand	Steven		United States
211	Rangel	Beatrice	Cisneros Group of Companies	United States
212	Reed	Cyrus	Texas Center for Policy Studies	United States
213	Remy	Yhasmine	Caribbean Policy Development Centre	Barbados
214	Ress-Love	Manon	CPTech	United States
215	Reyes	Christina	Latino Issues Forum	United States
216	Ricco	Victor	Centro de Derechos Humanos y Medio Ambiente	Argentina
217	Riggs	Peter	Forum on Democracy and Trade	United States
218	Rivera-Santander Mieses	Maria		Colombia
219	Rodriguez Alvarez	Gary	Bolivian Institute of Foreign Trade (IBCE)	Bolivia
220	Rojas	Josefa		Peru
221	Rosas	Maria		Mexico
222	Rosas Gonzalez	Maria Cristina Rosas Gonzalez	Universidad Nacional Autonoma de Mexico	United States
223	Rosell	Mónica	Comunidad Andina	Peru
224	Rosenberg	Robin	University of Miami North-South Center	United States
225	Roth	Amy		United States
226	Rothbaum	Anne	Partners of the Americas	United States
227	Roy	Sebastien	Medecins Sans Frontieres	Peru
228	Ruiz Mangas	Bianca	Centro Humboldt	United States
229	Russell	Asia	Health GAP	United States
230	SANIN	JORGE	OAS- SUMMITS OF THE AMERICAS SECRETARIAT	United States
231	Saks-McMillion	Marilyn	Delphi International	United States
232	Salazar Monzon	Jorge		Guatemala
233	Salguero	Rebekah		United States
234	Salvador Alonso	Maria	SRSA Study, CIEDUR	Uruguay
235	Saman	Eduardo		Venezuela
236	Sancho Mas	Francisco	Doctors Without Borders/Medecins Sans Frontieres	Nicaragua
237	Sandoval	Miguel	General Consulate of Mexico	United States
238	Schalatek	Liane	Heinrich Boell Foundation North America	United States
239	Segger	Marie-Claire	Centre for International Sustainable Development Law (CISDL)	Canada
240	Seroa da Motta	Ronaldo	IPEA	Brazil
241	Shaffer	Ellen	Center for Policy Analysis on Trade and Health	United States
242	Sharry, Jr.	Francis	National Immigration Forum	United States
243	Sinckler	Christopher		United States
244	Sinclair	Minor		United States
245	Smith	Cynthia	Partners of the Americas	United States
246	Solari	Natalia		Peru
247	Stabinsky	Doreen	College of the Atlantic	United States
248	Staples	Steven	Polaris Institute	Canada
249	Stark	Jeffrey	University of Miami North-South Center	United States
250	Suarez Carrera	Victor		Mexico
251	Swan	Alan	University of Miami School of Law	United States
252	Sztutman	Leo	Idec Instituto Brasileiro de Defesa do Consumidor	Brazil

253	THERY	JANE	OAS- SUMMITS OF THE AMERICAS SECRETARIAT	United States
254	TORRES C	RICARDO	INSTITUTO HUMBOLDT	Colombia
255	TUAN	NGUYEN	International Fair & Advertising Co., Ltd(INFA	Viet Nam
256	Ticehurst	Simon		Mexico
257	Torgeson	Kristina	Medecins Sans Frontieres	United States
258	Traynor	Kenneth	Canadian Environmental Law Association	Canada
259	Troell	Jessica	Environmental Law Institute	United States
260	Trongmethirat	Duangrak		United States
261	Tross	Vaughna	University of Miami North-South Center	United States
262	Tucker	Todd	Center for Economic and Policy Research	United States
263	Tussie	Diana	FLACSO	Argentina
264	Ulloa Solano	Rocio	Legislative Assembly	Costa Rica
265	Uribe Garcia	Lina		United States
266	Utset	Xavier	Freedom House	United States
267	VAUGHAN	THOMAS	ORGANIZATION OF AMERICAN STATES (OAS)	United States
268	Vargas Marin	Juan	PLADES y Red Global	Peru
269	Vargas Niello	Jose	Consumers International	Chile
270	Vasquez	Concepcion	U.S. State Department	United States
271	Villa Villanueva	Luis	Doctors Without Borders/Medecins Sans Frontieres	Guatemala
272	Visca	Paola	CLAES	Uruguay
273	Vivas-Eugui	David	ICTSD	Switzerland
274	Wagner	John	Earthjustice	United States
275	Walsh	Juan	AIDIS	Argentina
276	Waskow	David	Friends of the Earth	United States
277	Weinberg	Stephanie		United States
278	Weisbrot	Mark	Center for Economic and Policy Research	United States
279	Weissman	Robert		United States
280	White	Anna	Essential Action	United States
281	White	Benjamin	Animal Welfare Institute	United States
282	Wiener	Raul		Peru
283	Wiley	Thomas	Western Organization of Resource Councils	United States
284	Wilkenfeld	Judith	Campaign for Tobacco Free Kids	United States
285	Winkler	Sebastian	IUCN-The World Conservation Union	Switzerland
286	Wise	Timothy	Global Development And Environment Institute, Tufts University	United States
287	Wood	Elizabeth	Essential Action	United States
288	Yager	Loren	USA GAO	United States
289	Yoshioka	Erin	Latino Issues Forum	United States
290	Zabaleta	Alfonso	Ministry of Foreign Affairs	Venezuela
291	Zarsky	Lyuba	Global Development And Environment Institute, Tufts University	United States
292	Zuniga Rosas	Luis		Peru
293	beckett	anne	Harvard Institute of Politics	United States
294	cabrera medalia	jorge	INBio	Costa Rica
295	carpio bernedo	jorge	FOCO	Argentina
296	de Castro	Elza	Government of Brazil	Brazil
297	de Windt	Claudia	Organization of American States	United States
298	deCamargo-Neto	Pedro	SRB	Brazil
299	hayden	thomas	harvard institute of politics	United States
300	rubio	roberto		El Salvador
301	von Bülow	Marisa		United States

## **Annex 3: Reports from the ATSDF Thematic Tents**

### ***Investment***

#### **AGENDA**

#### **Monday November 17 (Day 1)**

##### **8:30 – 10:00. ATSDF Opening Plenary**

##### **10:15 – 10:30. Welcome to Investment Session**

- *Daniel B. Magraw Jr., President, Center for International Environmental Law, USA*
- *Aaron Cosbey, Associate and Senior Advisor, International Institute for Sustainable Development, Canada*

##### **10:30 - 12:30. Session 1: Is there an economic case for investment agreements?**

Do investment agreements attract FDI? If not, what else needs to be present to attract FDI? Are these other elements fostered by investment agreements? Does FDI, even when it comes, create economic well-being?

- ***“FDI: Making it Come, and Making it Work.”*** *Richard Newfarmer, International Trade Department and Prospects Group, World Bank Group.*
- ***“FDI in Mercosur”*** *María Lechner Reynal, Asociación Civil ECOS, Argentina*
- ***“Sustainable Industrial Development? The Performance of Mexico's FDI-Led Strategy.”*** *Kevin P. Gallagher and Lyuba Zarsky, Global Development and Environment Institute, Tufts University, USA*
- ***“Making Investment Work for Development.”*** *Simon Ticehurst, Oxfam International Mexico*

*Lunch break*

##### **2:00 – 4:00. Session 2: The experience with existing investment disciplines: what are the concerns?**

What has been the experience of the NAFTA countries with Chapter 11? What is the current reality of the BITs? What are the trends in investor-state agreements? What has been the impact of domestic investment laws?

- ***“NAFTA’s Chapter 11: Problems and Progress to Date”*** *Dan Magraw, Center for International Environmental Law, USA*

- ***“Bilateral Investment Treaties and Sustainable Development: Our Experience and Current Trends.”*** Luke Peterson, International Institute for Sustainable Development, Canada.
- ***“From Chile’s Investment DL 600 to the US-Chile Bilateral Agreement”*** Miguel Fredes, Centro Austral de Derecho Ambiental (CEADA), Chile

**4:30 – 6:00. Session 3: The experience of developing countries with BITs and investment contracts**

An exchange with officials and private sector lawyers from Latin American countries that have been subject to disputes under BITS and investment contracts.

- ***“The Experience of Mexico.”*** Gustavo Carvajal, Solórzano, Carvajal, González y Pérez Correa S.C.
- ***“The Experience of Costa Rica.”*** Jorge Cabrera, Costa Rica

**Tuesday November 18 (Day 2)**

**8:30 – 10:30. Session 4: Impacts of investment agreements on policy space for sustainable development: case studies**

Have investment agreements curtailed the policy space for implementing policies and regulations in support of sustainable development? How might they?

- ***“Will Investment Rules Shrink Policy Space for Sustainable Development? Evidence from the Electricity Sector.”*** Albert Cho, World Resources Institute, USA
- ***“The Case of the Tobacco Sector.”*** John Bloom, American Cancer Society
- ***“Water, Mining and Environmental Management: What can we learn from the NAFTA Chapter 11 files?”*** David Waskow, Friends of the Earth USA

**11:00 – 1:00. Session 5: An Investment Agreement in the FTAA?**

What observations can we make based on the current text? What are the prospects for an investment agreement in the FTAA? What are the impacts of the Cancun WTO Ministerial outcomes?

- ***“The State of the Negotiations”*** Alejandro Buvinic, Ministerio de Relaciones Exteriores, Chile
- ***“A Critique of the FTAA’s Draft Investment Chapter.”*** Marcos Orellana, Centre for International Environmental Law
- ***“The US Trade Promotion Authority: Implications for an FTAA Investment Approach?”*** Jake Caldwell, National Wildlife Federation, USA



*Lunch break*

**3:00 – 5:30. Session 6: A positive agenda for investment**

What would an investment agreement look like if it were specifically geared to foster sustainable development?

- ***“In Search of the Holy Grail? Making FDI Work for Sustainable Development.”*** Kevin P. Gallagher, *Global Development and Environment Institute, Tufts University.*
- ***“Elements of a Positive Agenda: International Agreements to Foster Sustainable Development.”*** Aaron Cosbey, *International Institute for Sustainable Development, Canada*
- ***“Pro-SD Elements in Investment Agreements: A New Conservation Fund in Ecuador.”*** Juan Dumas, *Fundacion Futuro LatinoAmericano (FFLA), Ecuador*
- *Carlos Murillo, Centro Internacional de Política Económica (CINPE), Costa Rica*

**5:30 – 6:00. Session 7: Wrap up**

- *Aaron Cosbey, International Institute for Sustainable Development*
- *Marcos Orellana, Center for International Environmental Law*

## Americas Trade and Sustainable Development Forum

### INVESTMENT TENT

*Convened By*

The Center for International Environmental Law (CIEL)  
The International Institute for Sustainable Development (IISD)

## Synthesis of Major Concerns

### *On the Economics of Foreign Investment:*

- Foreign direct investment (FDI) has the *potential* to increase well being by fostering economic development through transfer of technology and know-how, increased employment, and increased aggregate incomes.
- However, according to World Bank and UNCTAD studies there is no evidence that investment agreements help to attract FDI.
- Rather, existing evidence indicates that *investment agreements do not attract FDI*. In fact, decisions on FDI are influenced by issues such as proximity to the home state, macroeconomic stability, size of domestic markets, physical infrastructure, qualified labor and other variables.
- In any case, what is important for sustainable development is not the quantity of investment, but its *quality*. Much of Latin America's investment over the past decade has in fact simply displaced domestic investment, has reduced domestic capacity to innovate and has had serious environmental side effects.

### *On Investment Rules:*

- Investment disciplines have clear public interest implications, which distinguish these issues from private commercial transactions.
- Investment disciplines have the potential to undermine legitimate laws and regulations protecting health, safety, the environment, and other issues crucial to making development sustainable. And in fact, investors are increasingly utilizing investment rules to challenge such public interest regulatory frameworks.

- The special protection regime for foreign investment discriminates against local investors by affording foreign investors greater rights and a preferential competitive advantage.
- Investment rules are uni-directional and unbalanced because they only establish rights for investors, but no corresponding obligations requiring responsible conduct to ensure sustainable development.

### *On Investor-State Arbitration*

- Investment arbitration imposes huge transaction costs on respondent governments. A typical case costs in excess of a million dollars, and some governments have already spent millions of dollars defending their cases.
- Investment arbitration imposes huge potential liability on respondent governments. For example, Argentina is facing a potential 17 billion dollars of liability after its emergency economic measures, and the United States is facing a 1 billion dollar claim in just one case. In fact, the Czech Republic has been ordered to pay 1/3 billion dollars in a recent award.
- The fact that investment disputes are decided not by a standing and impartial court, but by practicing commercial lawyers whose independence is not guaranteed, undermines the legitimacy of the proceedings and decisions. As well, a mechanism for reviewing arbitration awards would improve their quality and reduce the potential for contradictory decisions (as were rendered in the Czech case mentioned above).
- Greater transparency in dispute settlement is required in light of the public interest nature of the issues adjudicated in these investment arbitrations. Open hearings and the opportunity to present amicus curiae briefs as a matter of right are a step in this direction, as exemplified by the Chile-U.S. FTA, but are not sufficient.
- Investment arbitration has the potential to undermine the institutional development of the local judiciary, as investors are allowed to deviate from the rule requiring exhaustion of local remedies.

## **Environment**

*Trade and Environment Tent*

### **Organized by:**

The Ecuadorian Center for Environmental Law – CEDA & the Environmental Law and Policy Institute at Tulane University



### **BACKGROUND INFORMATION**

The opportunity for direct dialogue in Miami arose from a series of discussions that began after the last FTAA ministerial in Quito in November 2002. A modest yet important step forward was realized in Quito where ministers for the first time agreed to formally receive input from non-profit civil society groups. Moving beyond Quito, many organizations saw a need to open up an even greater public space for dialogue inside the ministerial (inside the “security perimeter”) to make public input more meaningful, interactive and organic.

In that spirit the American Trade and Sustainable Development Forum -ATSDF at the Miami FTAA Ministerial, took place to add the dimension of a full range of workshops and public events that deal with trade-related social, political, labor and environmental issues. The purpose of this Forum was:

- Encouraging the participation of the full range of governmental and non-governmental actors in a forum that affords the cross-fertilization of ideas around issues that reflect the values of democracy and sustainable development recognized in the official process.
- An attempt to eliminate the need for various civil society organizations to establish parallel forums outside the security perimeter that reflect an unfortunate perception that non-governmental organizations cannot or will not contribute productively to free trade process and that private business has better access to the official process.
- Inserting into the FTAA and the Western Hemisphere framework the need for transparency and meaningful citizen participation.

## MAIN TRADE AND ENVIRONMENT TENT CONCLUSIONS

### I. ENVIRONMENTAL ASSESSMENTS AND TRADE: METHODS, CHALLENGES AND EXPERIENCES

- In regard *to environmental assessments and the sustainability of the trade policies within the American Hemisphere* and in particular in the Latin American region, this panel concluded that among the different studies that have been reviewed - more than 30, the cause-effect relation between trade and environment has been established. What remains unclear is whether or not this information can be used by the different stakeholders, and in specific by the trade negotiators while negotiating the FTAA. Additionally, another matter of preoccupation is the fragmentation of the debate, while for US and Canada the debate has been placed towards the relation between trade and environment, for Latin American countries is preferable to speak about trade and sustainable development due to the various implications that socio economic conditions have on environment.

Nevertheless, the general conclusion pointed at the high environmental vulnerability of the region.

In the panel that addressed the “*Methodology for Impact Assessment*” these ideas came strongly:

- It is very difficult to evaluate the true environmental impact, right now it is more important to know the results and have them on time to feed negotiations.
- Work has to be done in order to find an effective methodology in the evaluation of impacts, case by case methodology adjust better to the countries' needs.
- We need to know affecting factors in order to establish results.

In the Panel on “Environmental Assessments, methods, challenges, and experiences”, these conclusions came through:

- It is very important to incorporate social and economic aspects.
- There is a lack of analysis and participation from the social actors, as well as a lack of transparency in certain sectors.
- These days, cross-country models are still controversial.
- There is an uncertainty of activity levels because, among other reasons, case studies don't offer generalized and consistent results, and sectional models don't capture cross-sectional effects.

- The uncertainty of environmental indicators responds to a limited ecological knowledge, and to the need to distinguish between potential vs. actual impacts.

In the panel on “*Environmental sustainability in trade*” we can mention the following conclusions:

- A model is required as well as methodology which describes what the analysis of economic scenarios must contain.
- In order to take good advantage of the opportunities of the region, a dialogue must be initiated followed by a regional “opening.”
- We need to raise the standards of the discussions, and look for useful topics.
- To have a multidisciplinary team should be mandatory.
- There is a lack of environmental data and resources, there for, there is not real analysis that integrate different experiences.

## **II. SUSTAINABILITY ASSESSMENTS, AND TRADE: EXTENDING THE ANALYSIS**

Main Panels conclusions:

- The jobs rate in Latin America are explicit about the need for integrated analysis to be made.
- The evaluations should not only focus on monitoring, investigation and evaluation, it should also consider the consequences of the change in the ecosystem for the well being of the employees.

*“Sustainability assessment of the trade or sustainable trade policy”*

- The uncertainty of the results for case studies, minimum objectives must be diminished in order to identify the commercial measures.
- A study of trade measures must be and the impact on sustainable development must be sustained as common objectives in all of the studies.

## **“SOCIAL RULES AND SUSTAINABILITY IN THE AMERICAS”**

- To change the social conditions in America is a serious challenge.
- Something to consider in this process is the high rate of poverty in Latin America.
- There is the need to integrate the social dimension valuation with accurate mythology and involve governments in doing so.

## **III. INSTITUTIONAL MECHANISMS FOR COOPERATION**

Main Panel Conclusions:

### *“Greening Trade in North America”*

- The environment is something that needs to be monitored, but that monitoring should begin with social impacts.
- The goal of a Cooperation Mechanism is to make consistent the different policies adopted by Trade Ministers with those in the light of environment and social issues policies.
- A Cooperative Agreement must try to harmonize: market access, biodiversity, and investment agreements with environmental and social demands.
- A Mechanism for Cooperation should also bring technology transfer and funds to achieve compatibility between trade and environment policies in developing countries.

### “TCLAN AND ENVIRONMENT”

- The problem of the research is not only the methodology, but also the lack of information and real data.
- We need alternate policies in order to protect individuals.
- Do we want citizen cooperation and/or citizen petitions? What process would give citizens a voice?
  - What kind of evaluation?
  - What are the advantages to certain mechanisms?
  - Who has accountability?

### “FTAA & COOPERATION”

- The subject of cooperation is creating a lot of resistance.
- What are the principle problems?
  - Inequity
  - High levels of poverty
  - Weak democracies
  - Insufficient incentives due to low incomes
- Creative farming deserves subsidies.
- One of the main problems in Latin America is that most countries produce the same products, what makes them compete with each other and lower prices.
- We should consider the experience of the European Union as an example for the FTAA.
- One of our major problems is that we don't know how to negotiate.
- We have not been successful in the integration of environmental and social-environmental policies.

#### **IV. FINDING SYNERGIES IN THE FTAA BETWEEN THE CONVENTION OF BIOLOGICAL DIVERSITY AND INTELLECTUAL PROPERTY RIGHTS**

- It was noted, that so far the FTAA is the most advanced international discussion on issues in the context of a trade agreement.
- Some of the States involved in these negotiations have adopted advanced national legislation ensuring that IPRs are supportive of biodiversity and protect traditional knowledge.
- Any discussions within the FTAA should not undermine current negotiations in multilateral forums such as WTO, CBD, WIPO and FAO.
- The disclosure/certificate of origin is an important tool for securing compliance with national access and benefit sharing laws and for the prevention of biopiracy. However a more comprehensive approach is required to support full synergies between the CBD and the IPR regime.
- The issues addressed in this workshop relating to Access and Benefit Sharing and Traditional Knowledge should not only be covered under Chapter 6 relating to patents of the FTAA, but adequate consideration should be given throughout the entire agreement.
- Technology Transfer should move towards implementation related especially to Access and Benefit Sharing of genetic resources.
- CBD and the new ITPGRFA principles, together with adequate legal mechanisms for assuring legal access, are incorporated
- Protection of traditional knowledge and folklore is provided and fully developed.
- There is flexibility to chose and use the most convenient system to protect plan varieties through a *sui generis* system.

#### **V. ENVIRONMENTAL GOODS AND SERVICES: A DEFINITION FROM THE LATIN AMERICAN PERSPECTIVE**

- There is neither a comprehensive definition of environmental goods or services (EGS) at a multilateral level, nor any agreed criterion for their classification.
- Market imperfections and inefficiencies mean benefits are not straightforward.
- In terms of tariffs, it is important to highlight the disparity between the situation for traditional environmental goods and non-traditional ones.
- The credits extended by some industrialized countries to acquire certain EGS, the practice of conceding “tied” credit is of particular interest, i.e. it is offered if products are acquired from an exporter from the country providing the credit.

#### **VI. BIOSAFETY AND FOOD SECURITY**

“On genetically modified organisms (GMOs) in agriculture, the Forum called for the implementation of the "precautionary principle." The Cartagena Protocol on Biosafety, which already sets international rules on GMOs, should take precedence over the FTAA. "We therefore oppose the proposed strengthening of the SPS Agreement that is reflected



in the FTAA negotiating text, which would further restrict the rights of countries to implement the precautionary principle," the ATSDF forum concluded."

What is biosafety?

- Genetically engineered organisms pose specific risks for the environmental and human health.
- Therefore, biosafety is the adoption of regulatory measures to protect humans and the environment from harm posed by the deliberate or accidental release of GMOs /LMOs.
- Countries impose conditions on the import (trans-boundary movement) of engineered organisms equivalent to the conditions placed on domestically produced GMOs.

What exactly is risk assessment?

- Risk assessments are carried out to evaluate and estimate potential impacts on the environment and human health.
- Risk assessments provide valuable information to decision-makers, but they don't provide an objective answer on how much risk should be tolerated – that is a political decision.
- The effects of GMOs are difficult to predict – they are living organisms that reproduce and migrate.
- The long term ecosystem effects of GMOs are unknown.
- Countries may decide a precautionary approach to GMOs is appropriate, particularly those countries with high amounts of biological diversity.

## **CONCLUSIONS**

The Trade and Environment Tent, as part of the ATSDF called for a systematic implementation of sustainability assessment by countries as a valuable tool to integrate environmental and social concerns into trade negotiations. Made a special effort to call the attention of the delegations on the need to introduce and start a negotiation on a Cooperation Mechanism that tends to harmonize the different levels of development reflected in more technology transfer, more environmental compliance and funding to help countries cope with the adjustment cost reflected on their weak environmental and social institutions.

Additionally the Tent results made emphasis on the delicate issues related to intellectual property rights and biodiversity, as well as the risk of undermining "Cartagena Protocol" provisions and in particular the precautionary principle. It called for a transparent negotiation that takes into account the different Multilateral Environmental Agreements in the light of International Law and made a call to developing countries to negotiate Access and Benefit Sharing and Traditional Knowledge Protection.



## ***Agriculture***

### **ATSDF Agricultural Tent Recommendations**

November 17-18, 2003

**To be presented to FTAA Trade Ministers November 19, 2003.**

### **ATSDF Agriculture Tent: Recommendations**

Existing agricultural trade policies have failed to promote sustainable, viable agriculture in either developed or developing countries, with particularly dire consequences for the rural poor in the developing world.

FTAA proposals to date represent a continuation of these failed policies, and are therefore unacceptable.

#### **Trade rules should be developed that:**

- Grant all countries the right to develop their own agricultural and food policies, including the right to manage both production and inventories.
- Grant countries the right to protect themselves from dumping of agricultural commodities at below the cost of production.
- Prohibit dumping by any country into international markets.
- Provide farmers with a fair price and consumers with a safe, secure and affordable food supply that is environmentally sustainable.
- Reduce the anti-competitive market distortions caused by the disproportionate market power of agribusiness cartels.

#### **Subsidies and Dumping:**

- Developed countries are exporting agricultural products at prices below the costs of production, a form of dumping.
- In some cases, Northern agricultural subsidies contribute to agricultural dumping.
- For many crops, dumping is not the result of subsidies but of policies in the North that encourage chronic overproduction.
- Ending Northern subsidies will not by itself raise farm prices or end dumping for most crops.
- Putting an end to agricultural dumping should be the highest and most immediate priority for fairer trade rules.

**Environment:**

- Current agriculture and trade policies externalize many environmental costs, such as pesticide pollution.
- The FTAA, as proposed, would continue to externalize these costs with severe environmental impacts throughout the hemisphere.
- Any future trade agreement should include mechanisms to assess, avoid, and mitigate these environmental impacts.

**Genetically Modified Organisms:**

- Given the strong concern about the health, environmental, and socio-economic risks associated with the introduction of GMOs in agriculture, the precautionary principle should be the accepted basis for decisions about GMO cultivation and imports.
- Any trade agreement must recognize the right of countries to implement precautionary policies regarding the cultivation or importation of GMOs.
- The Cartagena Protocol on Biosafety is an important new international agreement, and represents the broadest consensus to date on GMOs.
- The Cartagena Protocol should therefore take precedence over trade agreements.
- We therefore oppose the proposed strengthening of the SPS Agreement that is reflected in the FTAA negotiating text, which would further restrict the rights of countries to implement the precautionary principle.
- Consumers must have the right to choose whether they are willing to consume GM products, and governments must have the right to protect their consumers from potential health threats posed by GM products.

## **Knowledge and IPRs**

On behalf of the Trade, Knowledge and Intellectual Property tent of the ATSDF, which included representatives from some 20 organisations, I would like to make the following statement:

Participants agreed that there should not be a IPRs chapter in the FTAA. Any future IP negotiations should take place in a suitable worldwide forum, such as the WTO. Some of the reasons for such a general statement are:

- a) The TRIPs Agreement has not been implemented by many developing and least developed countries when new standards are already sought;
- b) The high cost of implementation for new obligations that in most cases are TRIPS plus. In the case of the IPR chapter of the FTAA the costs might be higher than the potential benefits for developing countries and consumers in the Americas;
- c) Lack of effective assistance to address asymmetries in the technological field,
- d) The reduction of the knowledge and information currently existing in the public domain in detriment of consumers and users.

No TRIPS-plus provisions should be included in current international trade negotiations. What is needed is a more balanced regime between public and private interests, allowing, for example, the full implementation of TRIPS Articles 7 and 8. Some examples of the TRIPS plus provisions proposed in the FTAA draft chapter on IPRs include:

- a) Deletion of the exceptions to patentability,
- b) Limitations of measures that countries can undertake to address public health issues (i.e. limitations to compulsory licensing);
- c) Longer periods of protection for copyrights (from 50 to 95 years of protection plus the life of the author);
- d) Reductions of flexibilities to choose the most convenient system to protect plant varieties;

There should be a moratorium on bilateral/regional IP negotiations. Countries should refrain from pressuring others to increase IP protection in a bilateral/regional or multi-lateral forum.

International IP agreements should respect the Universal Declaration of Human Rights and more specifically Articles 19 and 27.

Participants agreed that the following principles and concerns should be taken into consideration in any multilateral, regional or bilateral negotiations involving knowledge resources:

- Flexibilities to address public interest concerns including health, environment, nutrition, food security, education that are already included in national patent laws and copyrights laws should be protected;
- IP proposals in the current FTAA text limit generic competition, the most powerful force for reducing drug prices. Generic competition has reduced the price of AIDS drugs by more than 98%. This is a matter of life and death. Countries must prioritise public health over private commercial interests and fully implement the Doha Declaration on TRIPS and Public Health;
- Flexibilities to choose and use the most convenient system to protect plant varieties whether through patents or a *sui generis* system should be kept;

- The Convention on Biological Diversity and the new FAO International Treaty on Plant Genetic resources for Food and Agriculture principles, together with adequate legal mechanisms for assuring legal access to and benefit sharing from genetic resources, must be directly incorporated in any international IPR treaty as well as national laws;
- Protection of traditional knowledge and folklore needs to be provided for and fully developed;
- Meaningful mechanisms to regulate abuse of rights, and competition policy to remedy failures linked to IP should be developed;
- With respect to copyright policy, trade agreements in general should be pro-competitive, promote innovation, respect personal privacy and reasonable private copying rights, ensure access to essential learning tools, and not undermine the efforts of developing countries to bridge the knowledge gap;
- Open and Free software development models should be encouraged, and nations should retain flexibility and sovereignty over setting limitations and exceptions to exclusive rights;
- Effective ways for facilitating technology transfer should be included and new mechanisms for stimulating needs-driven health R&D should be explored; In this case technology transfer should not be confused with technical cooperation,
- Special and differential treatment for developing countries must be incorporated and enhanced, and;
- Non violation actions that are currently included in the text of the chapter of dispute settlement should not be allowed in the IPRs field;

Finally an annex has been attached to this statement with recommendations of each of the session of the workshop on trade, knowledge and IPRs.

REPORT

**Session One**

***The IPRs Chapter of the FTAA: Outlining the Development Perspective***

The FTAA Chapter on IPRs imposes the following challenges:

- Includes commitments that go beyond what is already included or consolidated in the minimum standards of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to as TRIPS plus). Many Latin American countries are still trying to implement TRIPS.
- It expands the protection on subject matter and periods of protection to US levels and in some areas beyond US standards (referred to as US-plus) and includes WIPO new WIPO treaties to adhere to or ratify that not all current FTAA member countries have signed on to or agree with.
- The MFN clause contained in Article 4 of the TRIPS agreement is very different than the MFN principle found elsewhere in the WTO resulting in higher obligations automatically becoming multilateralised and is used as a tool to spread higher IPRs standards in bilateral and regional agreements.
- “Trade-offs” made in the TRIPS Agreement during the Uruguay Round were not given sufficient consideration. Before any more commitments are agreed to there is a need to evaluate transfer payments and copyright licensing to developed countries with the value of exports and industrial products. Currently, there are major distortions in trade in the hemisphere.
- TRIPS plus standards will mean losing existing flexibilities within TRIPS. It will be hard to regain these flexibilities. The WTO Doha Declaration on the TRIPS Agreement and Public health is an example of this.
- The negotiating process is undemocratic and non-transparent not only at the FTAA level, but also at the bilateral level. Texts are not derestricted and there is a lack of participation by all stakeholders. The TRIPS agreement minimum floor approach was rejected as it is seen only as a minimum standard upon which expansion can occur. As a result proposals submitted by Latin American countries are often not considered.
- It provides for a wide range of enforcement measures that could be distorting.
- Given existing WTO TRIPS obligations on every country in the FTAA and that the FTAA is being used as a mechanism to ratchet up IPRs standards, and it is questionable whether IPRS should continue to be negotiated in the FTAA forum.

**Session Two**

***Trading Away Health in the Free Trade Area of the Americas (FTAA) Agreement***

- There was an consensus among panellists and participants that in order to ensure that countries in the Americas can uphold their rights and obligations to protect public health

- and promote access to medicines for all, as per the Doha Declaration on TRIPS and Public Health, intellectual property (IP) should be excluded in the final FTAA agreement.
- Panelists focused on the example of HIV/AIDS, as the lack of access to antiretroviral (ARV) therapy is clearly a global public health emergency and is the most vivid example of the impact of patents on prices and the impact of prices on access to medicines in developing countries in the Americas and elsewhere. In Latin America and the Caribbean, there are approximately 2 million people living with HIV/AIDS, the majority of whom do not have access to ARV treatment. However, the impact of proposed IP provisions in the FTAA are not just related to HIV/AIDS but rather all new medicines for all diseases affecting people in the region – from neglected tropical diseases like Chagas and malaria to conditions affecting both rich and poor throughout the hemisphere.
  - IP provisions in the current draft FTAA text, which are clearly “TRIPS-plus,” will threaten access to medicines by restricting generic competition, the most powerful, reliable force for bringing the prices of medicines down (in the case of ARVs for the treatment of HIV/AIDS, this has led to drops in prices from over \$10,000 per person per year to less than \$300). This dynamic allows limited public health budgets to reach the largest number of people possible who require the treatment.
  - IP proposals in the current text, which correspond with the negotiating objectives of the United States, will limit generic competition by restricting the grounds on which compulsory licenses may be issued; extending patent terms beyond the 20-year minimum established in TRIPS; artificially linking patent status to drug registration by requiring drug regulatory authorities to consider patent status before granting marketing approval to generic manufacturers; granting exclusive rights on pharmaceutical test data needed to demonstrate safety and efficacy, which will delay generic competition for five years even where there are no patent barriers; restrict parallel importation to the FTAA region; and prohibit exports of medicines produced under a compulsory license.
  - Panelists gave many examples of the dangers of these provisions, and the concrete impact they will have on access to medicines in the Americas from Guatemala, Costa Rica, and Brazil. Data exclusivity clauses, already enacted in Guatemala for example, have caused the ministry of health to radically reduce the number of drugs registered for fear of commercial liability, and will have the effect of delaying generic competition for five years, a matter of life and death for people with HIV/AIDS. Countries like Costa Rica that have invested in a social security system that guarantees access to medicines will be heavily affected if generic competition is limited: with generics, ARVs account for 5.9% of the national budget for medicines, whereas with only brand-name drugs they would account for over 20%.
  - Although the FTAA is the most far-reaching effort to undermine the Doha Declaration, it is by no means the only one. Panelists explained that the US is systematically covering the globe with bilateral, sub-regional, and regional free trade agreements—such as the US-Chile, US-Singapore, US-Thailand, US-Jordan, US-Morocco, US-Southern African Customs Union, and US-Central American Free Trade Agreements. This strategy to establish a global “TRIPS-plus norm” isolates countries who are then more vulnerable to bilateral political pressure, and threatens to systematically restrict the ability of countries to make use of flexibilities in the TRIPS agreement, reaffirmed in the Doha Declaration.
  - Panelists explained that a good IP system is not necessarily one with the highest possible levels of protection; that the access to medicines debate shows the need for national diversity that allows for the most *appropriate* levels, which may differ per country; and that the final draft of the FTAA must not renege on the historic agreement reached in Doha.
  - Panelists highlighted other aspects of the FTAA agreement (such as the investment chapter) that will also affect IP and access to medicines, and identified several areas requiring further work, including the need to focus on patent abuse (not just patent protection), defining anti-



- competitive practices in terms of affordability and accessibility, promote technology transfer, and explore alternative paradigms for stimulating research and development (R&D).
- Regardless of the forum (national legislation, bilateral agreements, or the FTAA) countries must prioritise public health over private commercial interests and implement the TRIPS flexibilities fully.

### **Session Three**

#### ***Agriculture, Food and IPRs in the FTAA***

Intellectual property protection in agriculture has stimulated the biotech industry and corporate concentration, while inhibiting public research and development and narrowing the diversity of the gene pool. Local, national, regional, and global food security, farmers' livelihoods and agro-ecological health are all in jeopardy as a result.

Consequently, the panel recommended that plant variety protection, for instance, take into account these social, economic, ethical, and environmental concerns. In that sense, while the TRIPS Agreement obliges WTO Members to protect plant varieties, it does allow the use of a *sui generis* system, which the panel considered crucial to adapting this protection to safeguard the interests of all stakeholders. For countries in Latin America already Members of Union for the Protection of Plant varieties (UPOV) , it was pointed out that the 1978 version contains some recognition of the challenges of plant variety protection that were lost in the 1991 version, which substantially strengthened breeders' rights. Latin American countries should thus reject any standards in the IP *chapter* of the FTAA Agreement that seek to achieve the level of protection granted by UPOV 1991.

Another significant issue analysed by the panel was the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Its successful implementation depends to a large extent to the clarification of its relationship to IP regimes. IPRs have a crucial role to play, both for the conditions of access to plant genetics resources and the mechanisms of benefit sharing established in the facilitated multilateral system of access. Another outstanding concern in the ITPGRFA is the non-inclusion of genetic materials in the hands of the private sector, which has an adverse impact on the equity of the treaty. As a result, developing countries should strive for IPR regimes to 1) recognize and promote farmers' rights as defined in the treaty; 2) include food security as a matter of public interest and treat it accordingly; and 3) exclude naturally occurring biological material or genetic material "as received" from IP regimes or any other form of private appropriation to protect the rights of countries over their biodiversity and the contribution of local communities to agricultural industries.

### **Session Four**

#### ***Finding Synergies in the FTAA Between the Convention of Biological Diversity and IPRs (Joint session with the trade and environment tent)***

##### **Introduction**

This session focused on the interface between intellectual property rights and the conservation and sustainable use of biological resources, which is addressed by a variety of international instruments, most importantly the WTO Agreement on Trade-related Aspects of Intellectual Property Rights

(TRIPS), the Convention on Biological Diversity (CBD), the FAO International Treaty on Plant Genetic Resources for Food and Agriculture and the ongoing discussions in WIPO on traditional knowledge and on a new Substantive Patent Treaty.

It was noted, that so far the FTAA is the most advanced international discussion of these issues in the context of a trade agreement. In addition, some of the States involved in these negotiations have adopted advanced national legislation on ensuring that IPRs are supportive of biodiversity and protect traditional knowledge. Both these factors represent an important opportunity to ensure that the final results of the FTAA negotiations also support the global regime to conserve biodiversity, the sustainable use of biological resources, and the equitable sharing of benefits arising from access to genetic resources. Indeed, these FTAA negotiations can help trigger innovative thinking that can help break the stalemates that currently plague the negotiations at the global level, especially in the WTO.

### ***The relationship between the CBD and IPR in the light of the FTAA process***

The first presentation highlighted the relation between TRIPS and the CBD. The CBD recognises the sovereign right of countries over their biological resources. Access to and exploitation of genetic resources and related knowledge and practices are subject to prior informed consent and must give rise to equitably shared benefits. These key principles were again reiterated in the Bonn Guidelines on Access to Genetic Resources and are likely to form the basis of the international access and benefit-sharing regime to be negotiated under the auspices of the CBD as mandated by the World Summit on Sustainable Development (WSSD). The TRIPS Agreement on the other hand requires Members to grant intellectual property rights for all inventions, with some exceptions, and contains no provisions requiring prior informed consent and benefit sharing. These differences reflect the fact that, although both Agreements were practically negotiated simultaneously, different policy communities were involved in the drafting teams, often with insufficient or ineffective coordination.

In the past ten years, several developing countries, including from the Americas, have repeatedly called for a harmonisation of TRIPS and CBD within the framework of the TRIPS Agreement. Their concerns found reflection in the current Doha mandate of trade negotiations where governments agreed to explicitly include related issues of traditional knowledge protection, the TRIPS-CBD relationship and the review of Article 27.3(b) on the patentability of life forms in the Doha Ministerial Declaration.

Besides this general introduction presentations went into more depth in presenting the issue of certificates of origin; the increasing complexity of the IPR system at various levels, and the problems related to UPOV 1991.

### ***IPR's Protection for Traditional Knowledge and Access to Genetic Resources***

The second presentation gave an Andean perspective to the general issues presented above on the relationship between the CBD and IPR. In highlighting the relationship between the CBD and the draft FTAA the following issues were noted:

- Reduction of patent exclusions and exceptions
- Patenting of any biological material
- Patenting of any material having the same genetic sequence
- Taking into account CBD for microorganisms
- PV protectable through UPOV and/or patents.
- PV protection to all genera and species
- Folklore: Model Law, Indication of source (citation)

- Indications of Origin: Ample definition.
- Tech Transfer: Best effort clauses

It was noted that the IPR is a defensive means of protection compared to a more positive protection regime as granted through *sui generis* protection systems. The Andean proposal to the FTAA on this topic included the following elements:

- Effective *sui generis* protection or other alternative systems to protect knowledge, innovation and traditional practices associated or not to BR or GRs.
- Country of origin's sovereign right to determine access conditions.
- PIC from the parties and their communities.
- Access compensation and equitable benefit sharing.
- Appropriate measures to guarantee compliance and other parties rights over their BR, GRs and TKs
- IPRs granting in due respect to the other parties rights (BRs, GRs and TKs and derived products)
- Patent granting subject to conformity of access with CDB, national and international legislation. Disclosure of GRs utilized, country of origin, TKs innovations and practices and their source.
- Proof of the granting of PIC
- Previous Art searches shall include information related to biological and genetic material and their derived products and TKs
- Patent examination shall consider the information sent by the other parties.

#### ***Recommendations and Conclusions for the FTAA***

In sum the following issues emerged from the discussions:

- Any discussions within the FTAA should not undermine current negotiations in multilateral forums such as WTO, CBD, WIPO and FAO.
- The disclosure/certificate of origin is an important tool for securing compliance with national access and benefit sharing laws and for the prevention of biopiracy. However a more comprehensive approach is required to support full synergies between the CBD and the IPR regime.
- The issues addressed in this workshop relating to Access and Benefit Sharing and Traditional Knowledge should not only be covered under Chapter 6 relating to patents of the FTAA, but adequate consideration should be given throughout the entire agreement.
- Technology Transfer should move towards implementation especially related to Access and Benefit Sharing of genetic resources.
- CBD and the new ITPGRFA principles, together with adequate legal mechanisms for assuring legal access, are incorporated
- Protection of traditional knowledge and folklore is provided and fully developed
- Flexibilities to chose and use the most convenient system to protect plan varieties through a *sui generic system*

## **Session Five**

### ***Access to Information and the Copyright and Related Rights Provisions in the Proposed FTAA***

Recognizing the need to maintain a balance between the rights of authors, copyright owners and the larger public interest, particularly for the purposes of education, research and access to information, we recommend that the provisions relating to copyright and related rights:

- Respect international principles and obligations including Article 19 and 27 of the Universal Declaration of Human Rights,
- Be consistent with pro-competitive approaches to copyright policy,
- Accord higher priority to the protection of personal privacy,
- Ensure access to essential research, teaching, and learning tools, and
- Not undermine the efforts of developing countries to bridge the knowledge gap.

Recognizing that innovation is essential for the information society, we recommend that:

- Trade agreements should promote and not inhibit innovation.
- The FTAA provisions on intellectual property should encourage the development of open and free, non-proprietary interoperable software.
- Reasonable private copying rights for consumers, researchers, students and educators should be ensured.

Finally, the agreement should respect countries' national sovereignty and right to retain flexibility in creating limitations and exceptions consistent with their national policies and their existing international obligations.

## **Session Six**

### ***Rules and Systemic Issues: Non-Violation – Dispute Settlement Issues in IPRs, and Technology Transfer***

Non-violation complaints were incorporated into the multilateral trading system for the purpose of ensuring tariff concessions and are thus questioned in the current international trade framework. Their applicability to intellectual property is particularly challenged as non-violation complaints do not respond to the *sui generis* nature of, for instance, the TRIPS Agreement. Moreover, intellectual property only serves as an instrument of public policy if its inherent balance between public and private interests is respected and countries have the flexibility to design their particular regimes to match their circumstances and needs. Non-complaints would further tip the balance in favour of the producers of intellectual property and constrain domestic regulatory measures. As a result, Article 2 of the Chapter on Dispute Settlement of the FTAA should limit the scope of non-violation complaints to exclude the IP chapter.

## ***Small Economies***

### **SUMMARY OF OUTCOMES FROM THE SMALL ECONOMIES TENT**

1. We recognize that access to markets is important, but some protective mechanisms must be built-in for small economies.
2. The agreement should address a developmental program that targets poverty reduction.
3. The agreement should include the honoring by every member of the ILO core labor conventions.
4. The agreement should consider the development of a “Potential Impact Index” that measures the vulnerabilities of small economies to trade liberalization.
5. The agreement should support the restructuring of Caribbean economies for the production of higher value added exports.
6. Funding should be provided for research and development as part of the proposed structural convergence fund.
7. We recognize the need for enhanced infrastructure support to improve the ability of small economies to accommodate increased investments.
8. Under health and human resources development, special funding for programs impacting HIV/AIDS for the entire Caribbean is necessary.
9. In order to preserve cultural diversity we recommend that the audio-visual sector and media and broadcasting services be exempted from liberalization.
10. We support the retention of subsidies by small and vulnerable economies, as long as subsidies are maintained by developed countries.
11. We expect that with respect to the Caribbean these issues will continue to be addressed and supported on a regional basis.

## **DETAILED OUTCOMES FROM THE SMALL ECONOMIES TENT**

1. While we recognize the potential opportunities inherent in the proposed Free Trade Area of the Americas for small open and vulnerable economies, we equally understand and appreciate that smaller economies will face real threats to their survivability in an FTAA that fails to make appropriate provisions for them to manage the pace and rate of liberalization vis-a-vis other more developed and capable members of the FTAA.
2. In view of these realities and accepting the need for special attention to be paid to the needs of smaller and vulnerable economies, we strongly encourage Ministers to swiftly move to negotiate on and agree to a set of deep and comprehensive measures that provide special and differential treatment provisions within the FTAA that are concrete, clear, mandatory, and implementable across the various disciplines within the FTAA .
3. That provisions should include but not be limited to technical assistance and transitional measures associated with longer adjustment periods. Rather, that an appropriate frame- work that expands and improves on the S&DT measures in the GATT (94) should be developed with particular focus on limiting the extent of liberalization in market access across disciplines, curtailing regional MFN reciprocity requirements, providing exemption provisions according to sector sensitivity, and/or special safeguard measures and the provision of technical and financial assistance to aid with adjustment and help in building productive and competitive capacities.
4. That in regard to (3) above a Regional Integration and Adjustment Fund should be created to provide real financial assistance to smaller economies to aid in their adjustment to the requirements of greater trade liberalization across disciplines. And that such a fund should consist of “new money” and not of rolled over resources already promised as part of parallel initiatives such as the Hemispheric Cooperation Programme.
5. That the Agreement should consider the development of an “Impart Index Assessment System” that measures the level of impact of liberalization to aid policy makers in developing “soft trigger” mechanisms for accessing financial resources under the RIAF to offset negative impacts on sensitive sectors and industries.

6. That the agreement should address a developmental program that targets poverty reduction in keeping with the commitments made by hemispheric leaders on achieving the millennium development goals.
7. The agreement should have as one of its key principles the ILO core labor Conventions but that in doing so such commitments shall be dealt with outside the scope of the agreement in a way that does not devalue their importance, nor manipulate them in such a way that they become protectionist measures that distort trade.

## **Sectoral Recommendations:**

### **Market Access for Goods:**

We recommend that negotiators should proceed to conclude negotiations on market access based on asymmetrical commitments for smaller economies and where possible exemptions on reciprocity for critical or highly sensitive sectors critical to the very economic and social stability of these economies.

### **Agriculture**

We recommend that negotiators proceed cautiously with intentions for extensive liberalization of market access provisions for small economies in this area recognizing their very heavy reliance on agriculture for social, economic, and cultural survival. That alternately clear provisions should be made for stricter discipline to be exercised on domestic support measures, export credits and food aid policies of developed country members of the FTAA which have the potential to distort trade across the hemisphere.

### **Services**

We recommend that negotiators continue to consider progressive liberalization of trade in services with especial attention to extensive factory mobility particularly with reference to mode 4 liberalization in the Hemisphere. That such liberalization should not go beyond existing international obligations in the

GATS. We equally recommend that smaller economies should not be required to liberalize its services at the same rate and pace as other more developed FTAA members and that such sectors as health, education, water and port services should not be subject to liberalization.

We recommend that in keeping with our position on limited sectoral liberalization and appropriate exemptions where necessary smaller economies should not be required to undertake commitments in respect of government procurement, investment competition policy, and intellectual property rights which go beyond limited measures on transparency.

### **Dispute Settlements**

We support the development of dispute settlement mechanisms but caution that such should only be on a state by state basis, be simple and accessible to smaller economies.



## ***Democracy and Human Rights***

### **Executive Summary**

**The Americas Trade and Sustainable Development Forum (ATSDF) represented an historic opportunity for civil society to be engaged in the Free Trade Area of the Americas (FTAA) process. Meeting inside the security perimeter of a Ministerial meeting for the first time, over three hundred representatives from civil society organizations (CSOs) participated in workshops over the course of a three-day forum. At the conclusion of the workshops, delegates presented final recommendations and engaged in a substantive dialogue with the majority of the thirty-four trade ministers.**

Partners of the Americas and the Inter-American Democracy Network (IADN) coordinated a workshop entitled Trade, Democracy and Human Rights. This workshop convened three panels focusing on Trade and National Sovereignty, Trade and Poverty, and Trade and Democratic Governance. The Trade and Poverty panel concluded that trade can only benefit marginalized sectors if parallel domestic actions occur such as, increasing greater access to the negotiation and implementation process of free trade agreements (FTAs); increasing the domestic capacity of national governments so that the “losers” are able to reap a greater share of the benefits of trade; and giving all sectors, including marginalized populations a voice at the national level. The Trade and Democratic Governance panel agreed that civil liberties, political and press freedom, and transparency should be key policies in order to make the negotiation and implementation of a FTA a fair, efficient and constructive process. The Trade and National Sovereignty panel concurred that trade agreements should not allow foreign governments to override domestic environmental and health standards via foreign market access provisions.

Panel conclusions formed the basis for further deliberations which focused on synthesizing opinions in order to propose a set of final recommendations. Participants recognized that trade liberalization neither ensures short nor long-term overall benefits to the population or an efficient and fair distribution of potential gains. Additionally, with strong incentives, a FTA may compel national governments to develop public policies that prioritize inclusion, participation, and economic gains for all people. In the international sphere, it was determined that existing programs for capacity building and technical assistance should be strengthened for countries that either lack the institutions or experiences necessary to implement trade agreements and/or the infrastructure to reap the potential benefits of entering into a trade agreement. These recommendations were both presented and discussed with trade ministers from the FTAA member countries.

## Workshop Methodology

The Trade, Democracy and Human Rights Workshop focused on education, discussion, deliberation and recommendations. The first day began with an open plenary involving all nine workshops that comprised the ATSDF. ATSDF organizers then divided into their respective workshops for the remainder of the day. Participants could attend the panels for any of the simultaneously running workshops. The Trade, Democracy and Human Rights Workshop held three one-and-a-half to two hour moderated panels.<sup>1</sup> Each panel began with participant presentations and followed with a moderated discussion incorporating both participants and others in attendance. In total, thirteen organizations from throughout the hemisphere participated in the panels coordinated by the IADN and Partners of the Americas. Other attendees participating in the discussion section belonged to a multitude of additional organizations. The panels, presenters and moderators were the following:

- The Trade and National Sovereignty panel featured presentations by Médecins Sans Frontières/Doctors Without Borders, the Center for Policy Analysis on Trade and Health (CPATH) and the Florida Association of Volunteer Action in the Caribbean and the Americas (FAVACA). The Canadian Foundation for the Americas (FOCAL) served as the moderator for this panel.
- The Trade and Poverty panel included presentations by the Center for Global Development, Iniciativa CID, Washington Office on Latin America (WOLA), Asociación SER and the Venezuela Women's Bank. The Universidad Nacional Autónoma de México moderated the panel.
- The Trade and Democratic Governance panel included presentations by Freedom House and Transparency International-USA. The Esquel Foundation moderated this panel.

The Public Participation and Access Workshop and the Corruption and Transparency Workshop merged with the Trade, Democracy and Human Rights Workshop for a second day of joint sessions. Collaboration provided an opportunity for cross-fertilization between participants from each workshop, thus capitalizing on the diverse experience of participants and the crosscutting themes of each tent. The day commenced with a plenary in which summaries of the previous day's panels were presented; attendees then had the opportunity to voice any concerns about inaccuracies in the synopses. All points were addressed. The group then divided into two smaller working groups: one focused on the creation of a permanent citizen participation dialogue and the other analyzed the potential effects that a FTAA may have on historically

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<sup>1</sup> Full summaries from each panel can be found in the following section entitled *Panel Summaries*.

excluded and marginalized groups. The latter area fell under the auspices of the Trade, Democracy and Human Rights Workshop. After much deliberation, each working group composed a set of suggestions which were then discussed when the joint group reconvened.<sup>2</sup> A final plenary, encompassing the entire ATSDF, brought together all nine workshops for a dialogue focusing on the findings of the individual workshops. Delegates from each workshop were then selected to represent the group at a meeting with the trade ministers.

The civil society meeting with the trade ministers was held on the third day of the forum and included fifteen representatives from the participating civil society organizations. The vast majority of the thirty-four invited trade ministers attended the meeting moderated by Andres Oppenheimer from *The Miami Herald*. Civil Society representatives began the meeting with summaries of their findings and the ministers then had an opportunity to respond and ask follow-up questions. The trade ministers from the following countries showed their interest in engaging with civil society as evidenced by their verbal participation in this meeting: the United States, Brazil, Chile, El Salvador, Argentina, Mexico, Uruguay, Paraguay, and Bolivia.<sup>3</sup> Documents articulating some of the points raised by the civil society representatives also were circulated.

### Panel Summaries

#### *Trade and Poverty*

The panelists and participants articulated a variety of themes, both on the macro and micro level, in discussing how trade has the potential to alleviate poverty. In general, trade can only benefit marginalized sectors under certain circumstances. Greater access must be granted to the negotiation and implementation process of FTAs; national governments must work towards greater domestic capacity building so that the “losers” are able to reap a greater share of the benefits of trade; and all sectors must have a voice at the national table. This panel yielded the following question: How can the marginalized, historically excluded populations gain from FTAs?

The main points from this panel include the following:

- Developing countries should be able to protect institution and development strategies that developed countries no longer require.
- Trade rules and regulations should be asymmetric, reflecting the different development stage of each country, so that countries can respond to individual economic conditions.

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<sup>2</sup> The final recommendations are reviewed in detail in the *Final Recommendations* section.

<sup>3</sup> The complete Ministerial Declaration can be found in Annex 1.

- Negotiators must take note that trade should be a means, not an end, especially when considering the alleviation of poverty.
- Poverty is directly and positively linked with populations excluded from trade processes. How can these people reap the benefits from the formal economy?
- Growth does reduce poverty; but current evidence has not explicitly proven that trade, economic growth and decreased income inequality are positively correlated. Trade can improve or worsen inequality slightly.
- There should be equal or more attention paid to complimentary policies such as education and social insurance at the national level in order to bridge the gap between the winners and losers from trade agreements.

#### *Trade and Democratic Governance*

The panel agreed that civil liberties, political and press freedom, and transparency should be key policies in order to make the negotiation and implementation of a FTA a fair, efficient and constructive process. Comprehensive civil liberties are also tied to economic opportunity.

The main points from this panel included the following:

- For an effective FTAA, countries of the Americas address must the human rights and socio-economic factors which have affected development in the past two decades.
- Press Freedom is critical to democracy.
- Economic growth has been shown to bring political freedom.
- Parties should submit to transparent dispute settlement process.
- Transparent and fair civil liberties are necessary to fight corruption, a prerequisite for greater economic opportunity.

#### *Trade and National Sovereignty*

The panel concluded that trade agreements should not negate public health and access to medicines in favor of appeasing industry. Concern was voiced that previous FTAs, specifically NAFTA, allow foreign governments to override domestic environmental and health standards by permitting industries to take advantage of foreign market access provisions.

The main points from this panel included the following:

- Access to public health and medicines is a right for all and should take precedent over all other commercial interests.
- FTAs have been shown to override/supersede domestic legal regulations as evidenced by the case of MTBE in California.

- Regulations that a FTA may introduce in regard to the provision of basic services affecting public health, such as water, may actually harm governments' capacity to provide such services.
- The FTAA must not negate WTO agreements reached during the Doha Round or any previous Round.

Final Recommendations for the Trade, Democracy and Human Rights Workshop

**Trade has the *potential* to confer economic benefits and provide a stimulus for growth. Liberalizing trade, alone, does not ensure that these possible gains will be long-term or distributed efficiently among the general population. Among other factors, democratic, good governance is a prerequisite for attaining long-term benefits and an equitable, efficient distribution of gains. The general population, especially marginalized or historically excluded groups must be included in all political processes so that they can profit from both information about and access to economic opportunities. Since comparative advantage is maximized by the mobilization of all factors of production, exclusion is not only a social cost but also an economic one. While recognizing that a free trade agreement (FTA) is primarily an economic instrument, it is hoped that with strong enough incentives a FTA can be used to compel national governments to develop public policies that prioritize inclusion, participation, and economic gains for all people.**

This recommendation revolves around the following principles:

- A system of democratic governance where government officials represent and are accountable to their constituents.
- A policy of equality of access so that all can participate in both political and economic processes. Equal access should help economic opportunities become more readily apparent.
- A set of socially responsible public policies to implement recommendations.

**These principals should be addressed through concrete policies of inclusion at two levels:**

*International level*

A general inclusion clause should be included in all trade agreements. Existing programs for capacity building and technical assistance, such as the Hemispheric Cooperation Program, should be strengthened for countries that either lack the institutions or experiences necessary to implement trade agreements and/or the infrastructure to reap the potential benefits of entering into a trade agreement.

*National level*

Extensive and comprehensive government consultations should be conducted with all sectors of the population. Governments should ease the burden on potential “losers” of a FTAA through policies which improve outreach to rural, poor and indigenous; strengthen job training and placement programs; develop tax incentives for investment in new industries and economic development zones; and provide additional resources for public investment in education, health and infrastructure.

## Annex 4: ATSDF Supported Participants List

	surname	name	title	organization	address
1	Abed de Zavala	Sheila	Exec. Director	IDEA	Nicanor Torales 150, Asunción, Paraguay
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8	Chavez	Silvia	Director	Centro de Derecho Ambiental y los Recursos Naturales (CEDARENA)	Apdo. 134-2050 San Pedro - Costa Rica
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23	Mena	Gustavo	Director	Ministerio de Medio Ambiente	Avenida Tiradente, Edificio Lacombe, Piso 10, Emsache Maco, Santo Domingo, Republica Dominicana
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## Annex 5: ATSDF Supported Participant Evaluation Form

**1. Have you ever participated in a similar trade negotiating meeting (Ministerial Conference, Summit Conference of Ministers, etc.) at the multilateral or regional level, either in a civil society parallel forum or on the official delegation?**

Yes

No

**2. Was the substance of the event useful to you? (Click on a number.)**

1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Extremely useful → → → I learned nothing of value				

*Comments:*

**3. Did the format of separate parallel workshops work well?**

1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Extremely well → → → I would never want to see it used again				

*Comments:*

**4. Do you feel the event will in the end have any impact on the FTAA negotiations?**

1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
It will have a major impact → → → It will have no impact				

*Comments:*

**5. Would you want to see such an event staged at future Ministerials?**

1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Yes, very much → → I would not want to see another such event				

*Comments:*

**6. I feel the event could have been improved, in terms of its usefulness to me, and in terms of its impact on the FTAA process, by the following means:**

## **Annex 6: Supported Participant Written Comments**

### **Q. 2: Was the substance of the event useful to you?**

- And also it is useful to contacting organizations involved in these issues.
- This was an extremely useful experience. The process underscored the strength and weakness of traditional economic analysis in negotiations among unequals.

### **Q. 3: Did the format of separate parallel workshops work well?**

- Parallel workshops are fine, but a synthesized/thematic final report at the end of the workshop would be invaluable for follow up work.
- But force [sic] to decide on which workshop to participate, and actually they all were interesting.
- Falto mayor integración, pero falto tiempo también. *(I would have liked better integration, but I also would have liked more time.)*
- It worked extremely well for our group (small economies) because it allowed interested participants to present various viewpoints that provide greater depth to the common positions that finally emerge.

### **Q. 4: Do you feel the event will in the end have any impact on the FTAA negotiations?**

- A wider dissemination of our suggestions would make a difference
- Probably not much impact the first time around. We had to start somewhere. As the practice continues, our views will be taken more seriously and will increase significantly.
- Difícil predecir esto. NO creo que haya cambiado el centro del debate, que esta en otros tópicos y dinámicas. Sin embargo, creo que si puede haber abierto algunas puertas con el esquema de participación de sociedad civil. Pablo Lazo, que estuvo con nosotros, es el nuevo presidente del CGSC. *(That's difficult to say in advance. I don't think the focus of the debate has changed; it is centred on other topics and dynamics. Nonetheless, I think we may have opened some doors on the topic of civil society participation. Pablo Luz, who was there with us, is the new president of the CGSC.)*
- I think it will have some impact on subsequent negotiations, provided that these negotiations do not begin with positions that are fixed in concrete.

- Unfortunately it seems it will not have an impact. FTAA negotiations seem to have their own structural problems on a Ministerial level; there seems to be no room for a social agenda.

**Q. 5: Would you want to see such an event staged at future Ministerials?**

- I think it is extremely useful in order to impact on these scenarios.
- More time should be allowed for discussion with the ministers.
- It would be a triumph.

**Q. 6: I feel the event could have been improved, in terms of its usefulness to me, and in terms of its impact on the FTAA process, by the following means:**

- Better organization of joint session. There should be a 3-hour session of all NGOs, at which each group would present lengthier summaries than permitted in Miami. Also, more time should be allowed for comments and questions from the audience.
- More time for the group session before Minister's meeting.
- The event's usefulness to me was up to best expectations. A larger and more conspicuous representation from more varied interest groups may perhaps have served the lobbying function better, if resources could have permitted this.
- Habria que pensar como incluir a grupos mas criticos. Necesitamos sus insumos y reflexiones, asi como organziaciones sociales. *(We'd need to think about how to include more critical voices. We need their input, as well as that from social groups.)*
- La convocatoria y sus participantes son temas claves del proceso *(The call to participate, and those who make it, are key parts of the process.)*
- El trabajo previo a nivel nacional es tambien complicado pero necesario, si queremos animar un proceso inclusivo y amplio *(Previous work done at the national level is complex, but necessary if we want to encourage an broad inclusive process.)*
- La efectividad o real impacto es tambien importante evaluarlo. Es util para que, para quien? No es siempre claro esto. Y las personas a veces requieren mayor claridad para poder participar y saber donde están parados y a donde vamos. *(It's important to evaluate the effectiveness or real impact (of meetings like the ATSDF). For whom, for what is it useful? And at times people need more clarity to be able to participate - to know where they are now and where they are headed.)*
- While on the whole the experience was valuable, greater interaction with the ministers would be useful. Care should be taken not to schedule an excessive

amount of parallel sessions so as to assure reasonable attendance for each session.

- There is the question on representation and coordination with other civil society actors. Of course there are differences in approaches and in the message some groups would like to transmit to Ministers. But there should be a way in which the different groups, whatever their strategies, don't sabotage the work of others. It seems to me that one way of achieving this would be by way of stronger communication with Ministers all over the hemisphere, and not only to rely on some who appear to be leading the negotiations. The ATSDF's message is too important for it not to go to everybody.

## **Annex 7: Assessment of Miami FTAA Results**

### **Miami FTAA Results a Complete Wash**

*Aaron Cosbey*

*Associate and Senior Advisor, Trade and Investment  
International Institute for Sustainable Development*

The Trade Ministers of the western hemisphere gathered in Miami last week to hammer out progress on a proposed Free Trade Area of the Americas (FTAA). In the end, talks concluded a day early – something unheard of in international trade negotiations, where the norm is to cobble together desperate deals at the eleventh hour.

The Ministers did not, however, earn their unscheduled day off. Upbeat press releases notwithstanding, what happened in Miami was not agreement on how to move forward, but rather agreement to scuttle ambitions for a deal of any value.

The Miami negotiations were supposed to refine a draft agreement that covered nine diverse areas, including trade in agriculture and services, and rules on such things as investment, intellectual property rights and competition.

The US, however, refused to reduce domestic agricultural support and lower agricultural tariffs at anything but the global level, arguing that this would allow the EU and other subsidizers to have a field day in world markets. Brazil – the prize of the proposed FTAA from the US perspective – refused in turn to budge on issues sensitive to it unless it got better US market access for its agricultural exports.

So the two stitched up a deal to which the other 32 countries reluctantly signed, committing to bare bones agreement in all nine negotiating areas, with the possibility of negotiating deeper commitments in selected areas among sub-groups of the whole. The regional-level agreement would serve as a minimalist “buffet tray,” with no commitments on agriculture or Brazil’s sensitive issues, onto which countries could pile up whatever additional commitments they chose to take.

The Ministers can now go home boasting broad agreement, but they had to torpedo ambition and common sense to get it.

Brazil had good reason to resist negotiating in the areas of intellectual property, investment, services and government procurement. For example, the NAFTA has taught us that investment rules can be used by investors to attack government public interest regulations in areas such as environmental protection and public health. And stronger intellectual property rights disciplines would push essential medicines further from the reach of the poor.

With Brazil pushing hard, we might have achieved agreements in these areas that actually served the hemispheric interest. But the current arrangement allows the US to push through plurilateral deals that are bad for developing countries while Brazil, which is strong enough to be able to do so, opts out. The rest of Latin America will be relentlessly divided and conquered by the US in this kind of negotiating forum.

Lowered ambition also means a missed opportunity for Canada and others that, like Brazil, want the US to cut back its bloated domestic agricultural support programs and lower trade barriers in key areas.

The buffet tray approach also means that we can forget any hopes for a regional environmental mechanism. Some environmentalists had called for an institution to track and manage environmental concerns at the regional level, and build capacity in the hemisphere to better manage environmental challenges. Though Canada has included such an institution in all of its free trade agreements in the hemisphere to date (albeit with no real budgets) a scaled back regional agreement, scrubbed of any controversial elements, would surely mean a break in that trend.

The Miami deal should also worry developing countries outside the hemisphere. These countries have tried to rely on a strong rules-based multilateral system to protect their interests against trade bullies such as the US and the EU. But since the failure of the world trade talks in Cancun two months ago, the US has redoubled efforts to sew up bilateral deals, where it has much less trouble getting what it wants. Multilateralism, dealt a body blow by the Cancun results, has taken another powerful hit.

The Cancun failure, embarrassing and demoralizing for the Ministers, must have haunted them as they negotiated in Miami. Many charge that the skimpy results of last week's meetings were a desperate attempt to avoid another outright collapse.

The public interest would have been better served if the Ministers had frankly admitted failure, and vowed to continue working. Better no deal at all than a poor deal.