

IMF-WB-WTO Synthesis Report

**An Overview of the Increased Coordination of the
International Monetary Fund (IMF), World Bank,
and World Trade Organization (WTO)
Trade Liberalization Policies**

2nd Draft Working Paper
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Views in this paper are those of the author

Executive Summary

In the late 1990s, the World Bank, International Monetary Fund (IMF), and the World Trade Organization (WTO) began a series of efforts aimed at increasing the policy coherence of their respective organizations. This paper is analysis of these efforts with a particular focus on policy coherence as it relates to promoting trade liberalization in the countries of the Global South (Africa, Asia, Latin America and the Caribbean).

The IMF and World Bank have long included trade liberalization among their many policy prescriptions attached as loan conditions in their agreements with borrowing nations. Currently these efforts are being better coordinated with the membership requirements regimes of the various agreements being negotiated within the WTO.

In April 2001, the World Bank released a paper titled “Leveraging Trade for Development,” in which a new series of lending instruments were to be offered to borrower governments for the purpose of assisting countries in their efforts to meet the complex membership requirements of the WTO, and other regional trade agreements currently being negotiated, such as the Free Trade of the Americas Agreement (FTAA).

This paper explores many of the concerns that have been expressed by critics of trade liberalization. Of particular importance is the dispute-settlement mechanisms in Chapter 11 of the North American Free Trade Agreement (NAFTA), which has been the model for inclusion in the FTAA and the WTO. The implications for the dispute-settlement mechanism for democracy are discussed. The broader concerns about the political leverage of the IMF, World Bank and WTO on countries of the Global South, and the implications of this leverage on national sovereignty and self-determination are also explored.

At a time when the efficacy of the neoliberal economic and political agendas of the IMF, World Bank, and WTO, and the leading sponsors, are under increasing scrutiny by critics and global protests, the policy coherence efforts of the three multilateral economic organizations deserve greater attention and analysis.

This paper is the second draft of a continuous series. Suggestions, comments and input for third and future drafts are encouraged (please send to: rowden@action.org)

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1) Introduction: Purpose of this First Working Draft

On the occasion of the April 2001 Free Trade of the Americas Agreement (FTAA) summit in Quebec City, the presidents of the World Bank and the Inter-American Development Bank (IDB) attended the event and announced that up to \$60 billion in loans would be made available over 5 years to the countries of Latin America to help prepare them for accession into the planned FTAA. The first working paper was the result of interest by an ad hoc group of policy researchers/activists in Washington DC to investigate 1) the implications of this announcement, and 2) to begin a broad overview of how the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO) intend on increasing their operational goals towards further trade liberalization and in pursuit of other WTO initiatives.

As an introductory overview to these issues, this second draft working paper will begin by providing background information, exploring the overlapping objectives of IMF-World Bank policies and WTO policies, and how these institutions seek to increase their collaboration.

2) Overview: Market Liberalization and the Threat to Public Interest Values

In the last 20 years, the logic of market liberalization has been blanketed over almost every aspect of political, economic and social life to such an extent that the very values about the responsibilities and obligations of nation-states to their citizens are threatened. The ethos that dominated the public finance of states for much of the 20th century included values such as equity and access, and led to established norms such as subsidized public health, public education, and cross-subsidization for utility rates to enable access and affordability for clean water, heat and electricity. These notions were based on the experience of industrialized economies, which understood that such state responsibilities and obligations were essential for enabling the entire society to improve itself. If significant sectors of society could not afford clean water, health care or education for their children, it would undermine the long-term interests of the whole society. State-subsidized provision of these essentials, such as public utilities and transportation systems, while not capable of providing private profit to any particular group of private investors in the market, were nevertheless fully funded by states because of the widespread understanding of the short and long-term public interest involved.

These ideas have been under attack from proponents of deregulation, privatization, and market liberalization for the last 20 years. The ascendancy of neoliberal economic policies began with the elections of Ronald Reagan in the US and Margaret Thatcher in the UK in the early 1980s, which sought to promote private sector interests to the detriment of state obligations to the public interest. Neoliberal policies have distorted the state's role in economic development and altered its priorities away from investing in the provision of social goods towards the serving of private interests, primarily those in the international private investment sector. In the industrialized countries of the Global

North, the quality and extent of public services and public goods have been diminished; throughout the Global South these have been obliterated by the economic austerity and radical restructuring tied as conditions to loans given by the IMF and World Bank.

While today there is much rhetoric about multinational corporations having become more powerful than the nation-state, it should be kept in mind that in fact states have participated in their own demise as it relates to abandoning the traditional responsibilities and obligations to the public interest. Particular governments have sought particular policy approaches that have informed this shift away from state responsibilities to the public (Daly, 2000; Panitch, 1997). Therefore, although global investors and multinational corporations may benefit and enthusiastically support neoliberal economic policies, it is states that have enacted the policies that have created the context of what is called globalization. The important thing to understand about this is that such policies can be halted, and, as *The Economist* noted after the IMF-World Bank protests in Prague, can be turned back.

3) Market Liberalization, Economic Growth and Democracy

Proponents of market liberalization by the IMF and World Bank claim that such policies will lead to higher economic growth, yet have scant evidence upon which to base this claim. Over the last 20 years in which such policies have been imposed on the poor countries by the IMF and World Bank, overall per capita economic growth rates have steadily and consistently declined (CEPR, 2001; BWP, 1999; Easterly, 2001). At the market liberalization Summit of the Americas in Quebec City in April 2001, the assembled presidents and prime ministers of the Western hemisphere countries proclaimed that liberalization would lead to greater democracy for nations in the Global South. Yet this contrasts starkly with the negative impacts IMF and World Bank operations have on the effectiveness of countries' democracies.

Regardless of what objectives might be desired by democratically-elected governments, the IMF and World Bank have long insisted upon their own liberalization objectives being met first, and have used conditions on desperately-needed loans to implement and enforce their own policies in the political economies of developing countries. The IMF and World Bank wring hundreds of concessions and promises out of governments with secret loan documents, negotiated outside of public view, with civil society organizations and even entire parliaments remaining excluded and uninformed. Most rich countries that provide foreign aid and loans to countries in the South will first look to the IMF to judge whether a country's economic policies are "sound" before offering loans or aid. Because the bulk of governments in the South are heavily dependent on foreign aid and bilateral loans to both repay their existing debts as well as for their own recurrent budgets, most are at the mercy of the IMF, whose "stamp of approval" acts as a green light for other bilateral aid and loans. In this way, the institutions use their position of power to exploit this dependency and circumvent democratic processes even where they exist.

Similarly, the World Trade Organization (WTO) holds its main negotiations in secret, unaccountable proceedings, then makes sure its members follow the agreed upon rules or else face expensive lawsuits (discussed below) or expulsion from membership in the organization. In these ways, the IMF, World Bank and WTO all seek to promote market liberalization to benefit private sector actors even if this involves overriding or circumventing any democratic input that may be voiced by the public or elements of civil society. These institutions have developed the capacity to undo existing state responsibilities to the public interest, or block those which might be enacted in the future.

Therefore, in both ideological terms and in operational objectives, the IMF and World Bank loan conditions have coincided with WTO membership requirements to undermine the ability of states to regulate their own economies, promote domestic industries and protect the short and long-term public interest. At the same time, the combined effects of their joint-promotion of trade liberalization have increasingly enabled private sector actors, primarily MNCs, to enjoy unprecedented freedoms in the process of deepening and broadening the globalization of the international economy.

This paper explores the ways the three institutions currently work together, and the implications of their plans to increase coordination.

4) Natural Allies: Coming Together

The negotiators at the WTO's predecessor organization, the General Agreement on Tariffs and Trade (GATT), began meeting with World Bank staff through informal contacts and informational exchanges in the 1980s. The World Bank invited the GATT's trade experts to give seminars on trade liberalization to the World Bank staff, and eventually the staffs at both institutions began to increase their collaboration on professional programs (Jordan, 1999). When the GATT was transformed into the new WTO organization, with its new dispute settlement mechanisms, this relationship with the World Bank continued through the World Bank's Trade Group, Private Sector Development Group, and the World Bank Institute, formerly known as the Economic Development Institute (EDI). A small group of specialists in the Bank's Trade Group worked to determine opportunities for the World Bank to work with the WTO (Jordan, 1999).

At the 1994 WTO Ministerial summit in Marrakech, ministers requested that the WTO, IMF, and World Bank collectively review the issue of coherence in global economic policymaking. Work on this question of coherence accelerated after the "Agreement between the World Trade Organization and the World Bank" was signed in April 1997. "Such coherence may be viewed as efforts by the three institutions, individually and collectively, to work toward harmonious implementation of common and complimentary objectives"(IBRD, 1998).

In a 1998 report titled, "Report of the Managing Director of the International Monetary Fund, President of the World Bank, and Director General of the World Trade Organization on Coherence," it is explained that although cooperation among the three institutions has been long and generally successful, and was informal and based on ad hoc procedures, "the globalization of economic activity has made it useful to put the existing structures of cooperation on a more formal basis" (IBRD, 1998).

This report was the result of the High Level Working Group on Coherence, which was established in 1995 and consisted of senior staff from the IMF, the World Bank and the WTO for the purpose of better coordinating policy among the institutions. "The expertise that the IMF and the World Bank have in areas being considered for the WTO--such as foreign direct investment and issues related to sustainable development--can contribute to the WTO's efforts to enhance the trade community's understanding of these issues. In a like manner, the WTO's considerable legal and technical experience in trade liberalization and related commitments, including trade in services--where some sectors are of particular importance to the IMF and World Bank--can be helpful to formulation of policies in the IMF and World Bank"(IBRD, 1998) Some of the areas where greater coordination is sought include: to coordinate contradictory policies, for example when countries seek to address balance of payments difficulties in accordance with IMF and World Bank programs and these conflict with WTO membership requirements; greater information sharing on trade policy surveillance of the world economy and individual countries; greater coordination in helping countries prepare for accession into the WTO; ensuring that bilateral and regional trade treaties compliment, rather than conflict with, larger multilateral trade objectives; in human capital and institutional capacity building to better prepare countries for WTO accession; and greater policy and operational coordination in the concerns over increasing efficiency with tariff reductions versus revenue aspects of tariffs.

Another report noted, the World Bank "enjoys a special partnership with the WTO and the IMF on trade issues, as evidenced by our agreements on cooperation and coherence in international economic policy making. These agreements provide a framework for consultation and interaction to ensure that policies are both consistent and mutually supportive"(IBRD, 1999).

At the 1999 WTO Ministerial in Seattle, the IMF, World Bank and WTO issued their Joint Declaration on Coherence. An October 1999 WTO report, "Coherence in global economic policy-making: WTO Cooperation with the IMF and the World Bank," outlined some of the details of the joint agreements between the three institutions.

Throughout 1999, the WTO Secretariat placed an emphasis on developing its cooperation with the staff of the IMF and the World Bank "to assist developing and least-developed countries to take greater advantage from their involvement in international trade and their participation in the multilateral trading system, in support of broader efforts geared towards poverty alleviation and economic development." To support this emphasis at the WTO, the importance of integrating developing countries more fully into the trading system, including through improved market access for their exports, was stressed in the

statements of finance and development ministers at the IMF/World Bank Annual Meetings in September 1999 (WTO, 1999).

The Director General, the Managing Director of the IMF and the President of the World Bank have each drawn attention to the complementary nature of efforts being undertaken by the international trade, development and finance communities, to 1) open markets to exports from developing countries, and especially the least-developed and poorest among them, to 2) assist these countries in building up their capacity to trade, and to 3) help relieve the problems of indebtedness of the highly indebted poor countries (HIPC). They have pointed out that, when taken together, these efforts represent "the essence of adopting a more coherent approach to global economic policy-making, and it is important that substantial progress is made on all three fronts" (WTO, 1999).

In this context, "the area in which the staff of the three organizations can make the most direct contribution, through their cooperative efforts, is in assisting developing countries to realize the expected benefits of their participation in the WTO and their implementation of WTO commitments, in terms of the contribution this makes to their economic development"(WTO, 1999). Therefore, effort #2 mentioned above, to build up the "capacity" of developing countries to trade, has become is a key focus of new loan programs at the IMF and World Bank, as well as through the multilateral regional banks: the Inter-American Development Bank (IDB), the African Development Bank (AfDB), and the Asian Development Bank (ADB).

The WTO report on coherence noted, "Assistance is being provided already to help developing and least-developed countries participate more effectively in the WTO and in its institutional machinery, for implementation, for complementary policy reform, and for building trade-related capacity. Subject to the availability of resources, the three organizations have agreed to cooperate more closely in these areas and to increase their support for these countries, in the light of the decisions that will be taken by WTO Ministers in Seattle and by the member Governments of the IMF and the World Bank" (WTO, 1999).

Regarding the establishment of consultations between the Director-General of the WTO and the Managing Director of the IMF and the President of the World Bank, the report stated, "The Director-General attended the meetings of the IMF Interim Committee and the IMF/World Bank Development Committee in April (1999) and in September (1999). On both occasions, the WTO's Director-General held private meetings with Mr. Camdessus and Mr. Wolfensohn in which they discussed putting trade to work more effectively for poverty reduction and economic, human and social development" (WTO, 1999).

Pursuant to paragraph 5 of the WTO/IMF cooperation agreement, and paragraph 4 of the WTO/World Bank cooperation agreement, the WTO Secretariat is invited, in an observer capacity, to attend meetings of the Executive Boards of the IMF and of the World Bank on general and regional trade policy issues, including the formulation of Fund or Bank policies on trade matters.

Regarding establishing the participation of the IMF and World Bank in WTO meetings, the coherence report explained the IMF and the World Bank are regularly invited to attend, in an observer capacity, the formal meetings of most WTO bodies (with the exception of the Dispute Settlement Body, the Committee on Budget, Finance and Administration, and dispute settlement panels). The IMF also participates regularly in consultations of the WTO's Committee on Balance-of-Payments Restrictions, this because countries' attempts to achieve balance-of-payments in accordance with IMF loan conditions can conflict with efforts to comply with WTO tariff reduction requirements.

In February 1999, the WTO's General Council authorized its Chairman to convene special informal meetings from time to time, at the request of delegations or the WTO Director-General, to discuss coherence issues, and representatives of the IMF and the World Bank have been invited to participate in informal WTO General Council meetings on Coherence. One example was in July 1999, the IMF was invited to consult with the dispute settlement panel that examined: "India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products" (discussed below).

In the areas of joint research and analysis, the WTO Secretariat has intensified its collaboration with the staff of the IMF and the World Bank in a number of areas:

- 1) Joint Seminars: Three seminars were organized under the coherence mandate in the last year (1999), each designed around a major research theme. They covered "Regionalism" (in June), "Developing countries participation in new trade negotiations" (in September), and "Developing countries and trade in agriculture" (in October).
- 2) Treatment of Monetary Reserves: On 18 June, the WTO Secretariat circulated a note on 'The Treatment of "Monetary Reserves" in WTO Balance-of-Payments Committee Consultations' in response to a request by a delegation. The paper was prepared with the cooperation of IMF staff.
- 3) Task Force on Small States: Last year (1998), the WTO was invited by the World Bank to join the Advisory Board of the World Bank/Commonwealth Secretariat Task Force on Small States. The WTO Secretariat participated in two meetings of the Advisory Board (in December 1998 and February 1999), and attended the final Task Force meeting in July as an observer.
- 4) International Task Force on Commodity Risk Management: Managing risk is highly volatile commodity markets remains one of the major challenges for development, especially for the poorest countries. In order to address these and other issues, the World Bank convened an International Task Force on Commodity Risk Management in Developing Countries which included a representative from the WTO Secretariat as well as from other international institutions, producers' and consumers' organizations, major commodity exchanges, and commodity trading firms. Its mandate was to explore new, market-based approaches to assist developing countries to better manage their vulnerability to commodity price fluctuations. The Task Force's report, entitled: "Dealing with Commodity Price Volatility in Developing Countries: A Proposed for a Market-Based Approach", was released in September 1999, and can be consulted in the Secretariat.
- 5) World Bank/IMF/WTO Conference on Capital Flows, Financial Crises and Policies: The WTO Secretariat participated in this conference in April 1999, and presented a paper on

“Financial services trade, capital flows, and financial stability”. Copies are available from the Secretariat.

6) Data Exchanges: Under the IMF/WTO and World Bank/WTO cooperation agreements (paragraphs 9 and 7, respectively), the WTO Secretariat now provides the IMF and the World Bank staff with access, on a confidential basis, to the Integrated Database of the WTO and to final schedules of commitments of WTO Members. Subject to the same confidentiality requirement, the Fund makes available to the WTO Secretariat the publications files of the International Financial Statistics (IFS), Balance of Payments Statistics (BOPS), Government Financial Statistics (GFS), and Direction of Trade Statistics (DOTS). The Fund's staff also makes available to the WTO Secretariat historical data and aggregate projections in the "World Economic Outlook" (WEO). Consideration is given to specific additional requests pertaining to the IFS, BOPS, GFS and DOTS databases, as well as requests for projections of individual country data to be used in the WEO and for other statistics. The World Bank provides the WTO Secretariat access to the Bank Economic and Social Database (BESD), as well as the Statistical Annex of the Global Economic Prospects and the Developing Countries.

7) IMF country reports: Under the WTO/IMF cooperation agreement (paragraph 11), the IMF makes available to the WTO, for the confidential use of the WTO Secretariat, copies of IMF staff reports and related background staff papers on Article IV consultations and on use of Fund resources for common members and on Fund members seeking accession to the WTO, subject to the consent of the member concerned. These documents contain details of the IMF's trade policy advice and conditionality. They are used by the WTO Secretariat for reference purposes, notably in the course of the preparation of Secretariat documentation for the Trade Policy Review Mechanism.

8) Technical cooperation: Creation of the Joint Vienna Institute. The WTO Secretariat works with the IMF, the World Bank, BIS, OECD, EBRD and the Austrian government as co-sponsors of the Joint Vienna Institute, established in 1998 to provide training support for countries making the transition from centrally-planned to market-based economies. Applied Economic Policy courses, where trade issues figure prominently, are held twice yearly from September to December, and February to April (WTO, 1999).

Pursuant to Article 10 of the WTO/IMF cooperation agreement, the WTO Secretariat and the IMF staff consult, as necessary, "on issues of possible inconsistency between measures under discussion with a common member and that member's obligations under the WTO Agreement, and on issues of possible inconsistency between measures under discussion with a common member and that member's obligations under the Fund's Articles of Agreement. Both the WTO Secretariat and the IMF staff take care to ensure that cooperation in this area is conducted in such a way as to respect fully the separate mandates, confidentiality requirements and the necessary autonomy in decision-making procedures of the two organizations, and that cooperation does not result in cross-conditionality nor extra conditions on WTO Members" (WTO, 1999).

The exchange of views and information "on trade and trade-related issues is an important requirement for greater coherence in policy-making, and the three organizations continue to draw extensively on the work and expertise of each other. For example, WTO reports utilize inputs from the IMF and the World Bank on macroeconomic, trade, and social developments. Similarly, the IMF and the World Bank use information on trade, trade

measures and related issues from WTO sources, particularly to ensure that their policy advice does not include WTO inconsistent measures" (WTO. 1999).

Regarding coordination on the least developed and net food-importing developing countries, the IMF and the World Bank report regularly to the WTO's Committee on Agriculture "on financial support they provide to these countries in this area, through adjustment programs or emergency lending in the case of the IMF, and through agricultural development projects, structural adjustment lending and emergency lending in the case of the World Bank" (WTO, 1999).

5) How the IMF and World Bank will support the WTO Initiatives: The Integrated Framework (IF)

"The popular view is that trade liberalization is an outcome of negotiated trade agreements. But, the UN Conference on Trade and Development (UNCTAD) emphasizes that the principle vehicles for trade liberalization are conditions attached to IMF and World Bank loans" (N&N, 2000; UNCTAD, 1999). The structural adjustment programs and other liberalization reforms as conditions on loans by the IMF and World Bank have, and continue to be, a major method of supporting WTO trade liberalization objectives. For example, between 1981 and 1994 (the end of the Uruguay Round), the World Bank made 238 loans that supported liberalization of trade or foreign exchange policy to 75 different countries. Between 1995-1999, 54 other World Bank adjustment operations (65 percent of all adjustment operations) have supported trade policy and exchange rate reforms (IBRD, 1999).

In a ongoing analysis of the last 5 years (1997-2001), 36 countries have agreed to comply with bringing their trade regime in line with WTO accession requirements, or have committed to accelerating implementation of WTO rules, as stated commitments in their official IMF loan documents. In most cases, these countries have made these commitments in their formal IMF Letters of Intent (LOIs) and Poverty Reduction Strategy Papers (PRSPs) required for receiving structural adjustment loans and debt-relief. In some cases, such as Azerbaijan in 1997, conformity with WTO rules was an actual condition of IMF lending. [This research will include an exploration of recent World Bank Letters of Development Policy (LDPs) and will be concluded in a future version of this working paper].

One of the key themes of the April 2001 World Bank report prepared just prior the annual IMF-World Bank spring meetings, "Leveraging Trade for Development: World Bank Role," includes a detailed commitment to providing new "capacity building" loans to better enable developing countries to negotiate for, and implement, trade deals in preparation for accession to multilateral, regional and bilateral trade agreements.

This World Bank commitment to facilitate countries' accession to the WTO actually began in 1996 with the launch of the Integrated Framework (IF) program in 1996. The

IF originally operated as a joint program between the World Bank, IMF, WTO, UNDP and UNCTAD, and was initiated at the 1996 WTO Ministerial Declaration for a Plan of Action and launched in 1997 in Geneva. Its two official objectives are "to enable least developed countries to use trade as an effective vehicle for development and to effectively advance their interests through the WTO" (Jordan, 1999). World Bank staff have described the IF as "a tool through which developing countries can increase their capacity to make trade rules useful" and "a mechanism through which the World Bank can help the WTO generate a broader sense of local ownership over the new trade rules in developing countries" (Jordan, 1999).

By the summer of 2000, 40 countries had completed their "needs assessment" for technical assistance in trade, the first step of the IF process. But the program lacked clear priorities, had weak administration and began to lose sufficient donor support. In the Bank's April 2001 report, it describes the "recently renovated Integrated Framework" as now ensuring "better integration of trade with national development strategies, the creation of a trust fund for IF activities, a stronger secretariat" (WB, 2001), and added the International Trade Center (ITC) to the mix of agencies administering the program (although the World Bank continues to be the leading agency in the program). It was further decided that a pilot program involving three countries would include a new set of diagnostic "trade integration studies" designed to analyze trade obstacles and prioritize technical assistance requirements. The new IF pilot studies are to be completed in November 2001.

The new focus on "capacity building" loans comes out of an earlier neglect by the World Bank and IMF of the lack of existing capacity in many developing nations to implement the rules and monitoring capacity necessary to adhere to the WTO's intricate requirements. The World Bank had ignored earlier warnings by its own staff that adhering to the technical and legal requirements of trade agreements may result in enormous administrative implementation costs and that these costs might decrease needed revenues in state coffers (Jordan, 1999). Early research by the World Bank significantly misdiagnosed these implementation costs that far exceed those for the industrialized countries. Joseph Stiglitz, former chief economist for the World Bank, noted that requiring poor countries to develop the legal and technical capacity to implement and comply with the agricultural, customs and intellectual property rights agreements of the WTO "created more problems than they solved" (Stiglitz, 1999).

Examples of these implementation costs include estimates that the average cost of implementing WTO obligations on 16 important elements of customs reforms standards would surpass \$40 million per developing country. The costs of sanitary and phytosanitary (SPS)-related measures as estimated in supporting World Bank projects in 10 countries ranged from \$43.3 million in Turkey to \$150 million in Russia; and the costs of implementing intellectual property rights (IPR) projects in three countries ranged from \$4 million in Brazil to \$32.1 million in Mexico (Finger and Schuler, 2000).

However, the World Bank now concedes, "the OECD countries have to consider ways to put in place steppingstones toward a broader framework that recognizes the special

problems developing countries experience as they adopt new rules. The traditional WTO approach of developing common rules may not be appropriate in several areas where there are substantial implementation costs and critical institutional development needs...All countries would benefit from a round of liberalization....that simplifies WTO procedures to better suit [developing countries'] administrative capabilities and requirements, and in general ensures that global rules support the development process" (WB, 2001).

Therefore, with the Bank's release of its new report, "Leveraging Trade for Development: World Bank Role," it admits that while it has had tremendous success in getting developing countries to lower their trade barriers over the years, "Lowering tariffs may not by itself produce growth." Thus, the Bank has decided to step up its cooperation with WTO objectives by announcing new "capacity building" loans that go beyond the border issues of tariffs and trade barriers to now address what are called "behind the border issues" of domestic regulations and administrative issues inside the domestic economy. "Developing countries have undergone a sea change in their approach to global integration. Many have reduced *border barriers*--tariffs, nontariff barriers, and customs inefficiencies," but, "This has exposed a huge new agenda in all regions of '*behind the border*' issues: trade in services, standards and technical regulations and investment policies as well as sectoral issues in finance, transportation, and telecommunications; policies in these areas have to be sound to ensure effective use of opportunities globalization presents" (WB, 2001). The bulk of the World Bank's resources on trade will be devoted to country policy reforms.

The World Bank and the WTO now want to move towards tackling such "behind the border" issues as developing countries' domestic regulatory and legal systems. The new Integrated Framework (IF) process will combine World Bank, IMF and WTO participation in designing and implementing "capacity-building" loans within countries' own Poverty Reduction Strategy Papers (PRSPs). According to an IMF paper on its increased coherence with the WTO through the IF program, developing countries will "mainstream trade into their development strategies within the coherent framework of poverty reduction strategy papers (PRSPs)" and this shall be accomplished "with the World Bank leading the mainstreaming process" (IMF, 2001).

In April 2000, the WTO's International Monetary and Financial Committee and its Development Committee "called on the IMF and World Bank to continue to work with the WTO and other interested parties to improve the effectiveness of trade-related technical assistance and to build institutional capacity, including through an improved Integrated Framework" (IMF, 2001). The IMF Managing Director and the WTO Director-General have met on several occasions to discuss, "improving coordination of agencies' policy advice and technical assistance" and "are in frequent contact with a view to avoiding inconsistency in policy advice. In addition, such contacts ensure that IMF and WTO policy advice and, for the Fund, lending conditions, do not result in cross-conditionality and fully respect the individual mandates, confidentiality requirements, and autonomy in the decision-making procedures of the two organizations," as they move forward on capacity-building loan programs in the context of the IF (IMF, 2001).

This stepped-up effort to facilitate countries' abilities to negotiate, implement and comply with the rules of new trade agreements such as the WTO will "overlap with ongoing sectoral reform programs" when drawing up national economic plans. "The Bank will have to weave country activities to promote trade integration into the whole cloth of the Bank's country assistance strategy," the paper states. "For low-income countries, trade policy is progressively intended to be a central part of the Poverty Reduction Strategy, jointly assessed by Bank and [International Monetary] Fund staff" (WB, 2001).

By moving in this direction of providing capacity-building loans for developing countries the World Bank hopes to make the argument that its "policy lending" activities, such as structural adjustment programs, can improve borrowers' trade performance in the globalizing economy while it also deepens its power over internal domestic regulation and administration of policies within economies. "This comes as the Bank seeks to reverse a decline in lending by expanding policy loans. Among the reasons for this, says Njoki Njoroge Njehu, director of the activist network *Fifty Years is Enough*, is that policy loans seldom are subject to the scrutiny and protests visited upon traditional projects, such as dams or mines, which tend to have easily-anticipated harmful effects on the poor and the environment" (Aslam, 2001). The latest push for trade liberalization forms part of "the rebirth, or second coming, of structural adjustment lending," says Nancy Alexander, a veteran Bank watcher and director of the non-governmental Globalization Challenge Initiative. "Structural adjustment loans are cheaper for the Bank to make and administer than are project loans" (Aslam, 2001).

According to its official reasoning and other documentation, the World Bank is concerned with harnessing trade to generate "pro-poor growth". The paper, "Leveraging Trade for Development: World Bank Role," however, provides only three passing references to what this might entail. It states, "a next priority of the Bank is to identify the effects of reforms on the poor, design targeted compensatory programs where possible, and help countries build in pro-poor growth programs through advice." Interestingly, the document builds on earlier World Bank recognitions that trade liberalization can be damaging to the poor, and now an increasing percentage of loans made to developing countries are slated for "social safety net programs" to mitigate the negative effects of their trade liberalization and other neoliberal policy prescriptions (Salop, 1999). Although the new report contains scant and vague references to the need to compensate the poor when they are harmed by liberalization, it still vigorously argues at length for the virtues of trade as an engine of economic growth and "pro-poor growth."

For example, the report notes that commodity price volatility has been very damaging to many segments of economies that are dependent on a few major exports. "Poor consumers, small businesses and smallholder producers may be particularly vulnerable to price swings" in international commodity markets (WB, 2001). However, rather than suggesting the old international price-control agreements be reinstated to guarantee commodity producers a secure minimum price on their exports, many of which were dismantled in the 1980s in accordance with neoliberal principles, the World Bank has developed a "market-based" approach to dealing with commodity price fluctuations.

In an example of the new WTO and World Bank coherence on "behind-the-border" issues, the new proposal is to establish a type of Wall Street savvy using options and derivatives mechanisms to allow commodity producers to hedge their bets against price swings in the markets. It is hosting an International Task Force on Commodity Risk Management in Developing Countries, with the goal of "finding ways of extending the reach of [First World] commodity risk management markets to consumers, smallholders and small businesses in developing countries." The World Bank, "is also trying to help reduce the consequences of volatile prices on government balance sheets by integrating commodity risk management tools--for example swaps and options--directly in its lending" (WB, 2001). In so doing, the neoliberal institutions are seeking further to undo and eliminate the remaining "statist," "inefficient," "ineffective," "costly" "unfair" and "interventionist" state approaches such as "domestic marketing boards, stabilization funds, quota or buffer-stock based international commodity agreements, and STABEX," which have only served to "crowd-out market-based instruments for managing price volatility" (WB, 2001).

The IF will create the structure through which the World Bank will "weave country activities to promote trade integration into the whole cloth of the Bank's country assistance strategy (CAS) for each country. For low-income countries, trade policy is increasingly important to many governments' Poverty Reduction Strategies." The IF, especially designed for integrating trade-promoting policies into PRSPs, "is designed to analyze options for trade-led integration, determine the relative payoff to trade-related reform, and work with local counterparts to design appropriate policy reform packages that both promote growth and protect the poor during the reform transition as options the government might consider in preparing its Poverty Reduction Strategy Papers (PRSPs)" (WB, 2001). For middle-income countries, such trade-integration policies will figure prominently in their CASs.

There are five key areas of World Bank-led IF activities that will seek to address behind the border issues of domestic regulatory and legal reforms, all of which will complement efforts towards facilitating countries' eventual accession into the WTO:

- 1) Undertaking diagnoses of obstacles to trade integration: For "high-protection countries," this means slating remaining border barriers for elimination, then moving on to identify remaining "constraints to successful globalization". The Joint Staff Assessment (JSA) committees who approve PRSPs for "economic soundness" will incorporate findings of these IF diagnostic studies in their appraisals of countries' PRSPs.
- 2) Designing pro-poor trade reform strategies: "Since segments of the poor may be hurt by trade liberalization in the short run, determining the incidence of the tariff structure and the implications of this incidence--for the poor, for employment, for regions, and so forth--is important for incorporating the poor into subsequent growth as well as for mobilizing support for reform. Further efforts are needed to analyze the gainers and losers in the transition process and adjust the policies, wherever possible, to take into account the political economy of income redistribution.
- 3) Pursue capacity building for trade-related policies and institutions as part of lending operations and country dialogue: Dialogue with ministries, regulatory bodies, customs authorities, standards

and certification bodies as well as think tanks and research institutes. "Trade facilitation, customs reform and standards development may be most effectively approached through a Bank lending operation. An export diversification project in Bangladesh designed to simplify and modernize customs, improve trade policy analysis, and build capacity for WTO rules is an example."

- 4) Provide advice on policies that affect the investment climate so as to ensure a supply response to trade reform: "The Bank, together with the Fund, is providing a steady stream of policy advice on investment climate issues that will, among other things, help ensure a responsiveness to trade reform initiatives" from foreign investors. To assist in this endeavor, the Private Sector Advisory Service (PSAS) "intends to address other investment climate issues, including basic entry and exit policies, the institutional underpinning of markets, and the functioning of private firms. This compliments the ongoing work of the Bank's regional staff in their advice on trade and structural policy and the IMF in its exchange rate and stability advice" (read: TRIMs compliance).
- 5) Provide advice on policies that encourage efficient trade-promoting foreign direct investment (FDI): Assistance from the Foreign Investment Advisory Service (FIAS), a component of PSAS, is planned here, particularly the use of its "new products to address the competitiveness of the FDI environment in host countries, the diffusion of best practice from foreign investors to the local economy, and corporate responsibility... Tools for assessing the investment climate will be developed, to complement traditional delivery mechanisms... MIGA has developed a sophisticated set of insurance mechanisms against selected risks in the political environment that can allay investor concerns, help improve the investment climate, and facilitate additional investment" (read: TRIMs compliance).

In summing up the IF initiative, Globalization Challenge Initiative (GCI) explained, "Projects in the context of the Integrated Framework advance trade in numerous ways. They cut through an enormous amount of red tape, streamlining the process to which exporters must adhere by, for instance, eliminating indirect taxes placed upon exporters, eliminating technical barriers to trade, and providing frameworks for procurement and adherence to voluntary international quality standards (e.g. ISO 9000 and ISO 14000)" (N&N, 2000).

6) **"Locking-in" Structural Adjustment**

After 20 years of IMF and World Bank structural adjustment loan conditions, many developing countries had significantly lowered their trade barriers and tariffs on imports and exports, and had deregulated various laws and regulations that had either promoted domestic industry or restricted the operations of foreign investors. In each of these cases, the deep indebtedness of these countries and their desperation to receive needed loans in order to service their debts and rectify their balance of payments imbalances was the political leverage used by the IMF and World Bank to insist upon these reforms.

However, while this leverage was instrumental in first enacting such reforms, foreign investors concerned with the long-term remained concerned that at some point in the future countries may seek to undo such reforms. Therefore, MNCs sought the

development of an "investor protection" mechanism that could be used to effectively prevent this possibility from becoming a reality. In other words, a way was sought to "lock in" the hard-fought gains from 20 years of imposing structural adjustment reforms in the developing countries.

The North American Free Trade Agreement (NAFTA) between the US, Canada and Mexico offered such a device deep in the bowels of its thick text, tucked into a clause in Chapter 11 of the trade agreement's rules. The idea was that Chapter 11's "investor-to-state" lawsuit mechanism would effectively provide a legal mechanism for foreign investors to "lock in" Mexico's structural adjustment reforms. The unprecedented and radical clause would allow US or Canadian investors the right to actually sue the Mexican government to get rid of any new law that is passed which might undo a liberalization reform of the previous 20 years.

NAFTA included a powerful new trade dispute settlement structure; a secret panel of judges comprising a tribunal that the three countries had agreed would issue binding decisions. This became the model for the WTO (the GATT agreements had no enforcement mechanism, so trade disputes between nations would linger unresolved for years at a time).

7) What is "Chapter 11" of the NAFTA treaty and why is it so important?

NAFTA's Chapter 11 goes further than any other agreement in the world to extend rights and protections to international investors. The most controversial aspect of the agreement is that it allows private investors to use dispute-settlement tribunals to sue the governments of NAFTA directly to demand compensation for a breach of any of Chapter 11's long list of obligations. It is a radical development because, although states have long been empowered to sue other states, corporations have never before been allowed to sue foreign states. This unprecedented power granted to corporations "restricts the ability of governments to protect the environment and public welfare and to ensure that foreign investment supports national development plans" (HSA, 2001).

The tribunals authorized under NAFTA's Chapter 11 (Sec.1110), dealing with investments, can be used by foreign investors who believe they have suffered a loss because of a breach in NAFTA rules. They can bring a claim against the government of the country where they made their investment. They can have the complaint heard under one of two existing sets of rules - one from the United Nations, the other from an independent office of the World Bank. These mechanisms have commonly been used to resolve private disputes between corporations, and are thus intended to provide a great degree of confidentiality, however the radical difference is now that a corporation can sue a government, which is unprecedented.

Interestingly, the tribunal that handles the NAFTA claims is located within the World Bank's offices in Washington DC, a division called the International Center for

Settlement of Investment Disputes (ICSID). With seven lawyers and four members of its support staff, it now oversees eight NAFTA cases. There are also 29 other disputes on the center's docket that arise from some of the more than 1,400 bilateral treaties involving more than 130 nations that have signed an international convention to abide by the World Bank's investment rules (DePalma, 2001).

The center's primary responsibility is to appoint the arbitrators to the panels, choosing from a list of internationally recognized experts who are paid \$1,500 a day for their work. The center is bound by strict confidentiality rules, and only investors can say whether documents should be made public. Under ICSID's rules, proceedings can be made public if both the investor and the involved government agree. But the NAFTA tribunal proceedings are never opened to the public, nor have third parties until now been allowed to submit briefs because corporations want the proceedings to remain closed (DePalma, 2001).

A tribunal decision technically cannot be appealed. However, it can be submitted to a local court for review, to ensure that there was no corruption or gross misinterpretation of the rules. Mexico has recently filed such a review in the case won by Metalclad. In this case, Metalclad had invested in building a toxic waste incinerator in a Mexican state before the plant had begun operating, then the state enacted a new environmental regulation forbidding such incinerators. Citing a breach of free trade rules under NAFTA, Metalclad used Chapter 11's "investor-to-state" lawsuit clause to sue the Mexican state government for huge financial damages to compensate for what are actually called "lost planned profits". Under the NAFTA rules, Mexico will have to pay the millions of dollars in damages or can choose to get rid of its law (*even if the law was put on the books through a democratic process and is otherwise constitutional*).

NAFTA claims the arbitration panels are meant to provide a nonpolitical alternative to resolving disputes in court. Whereas under all previous international trade agreements, governments would have to settle disputes by battling out their claims with other governments, and often retaliatory measures would fly back and forth and spiral out of control into full-fledge trade wars, and the theory goes, ultimately all consumers would be hurt. However, Chapter 11 of NAFTA actually allows MNCs to sue governments directly for huge damages, enticing them to scrap their own laws and regulations rather than pay the massive annual fines. This is how foreign investors can effectively seek to "lock in" 20 years of Mexico's structural adjustment liberalization reforms--by threatening to sue the government if new laws or regulations are enacted that attempt to undo the reforms imposed by the IMF and World Bank loan conditions.

8) The Attempt to Take "Chapter 11" Global: What was the MAI?

Because the "investors' rights" of NAFTA's Chapter 11 had never been included in the previous set international trade negotiations (the Uruguay Round), in 1995 MNCs and their industry associations lobbied to get a secret trade agreement launched under the

auspices of the Organization for Economic Cooperation and Development (OECD) headquartered in Paris. The treaty, called the Multilateral Agreement on Investment (MAI), sought to incorporate the Chapter 11-type investors' rights into a binding international treaty that would be originally signed by all the First World governments (members of the OECD), and ultimately be extended for ratification by all the developing countries as well. MNCs and other foreign investors believed that just as NAFTA worked to "lock in" the structural adjustment reforms in Mexico, an international treaty with the same provisions would enable global investors to ensure that all of the developing countries which had undertaken 15-20 years of IMF and World Bank liberalization reforms could similarly have those reforms "locked in" place.

Although the treaty was being negotiated in secret for three years in the OECD, its contents were leaked to European nongovernmental organizations (NGOs), which spread it to concerned groups in North America and around the world. NGOs across the world set up activist networks on the Internet to coordinate a lobbying effort to stop the MAI and they achieved this goal with spectacular success. Everywhere local chambers of commerce, small business associations, people of all political persuasions at the city, state and national levels could see that the MAI represented an attack on the ability of governments to enact legislation and regulate their own local or domestic economies. When public concern over these implications of the MAI became widespread enough, the OECD governments abandoned the MAI effort in 1998.

9) The next attempt to take "Chapter 11" global: Seattle WTO summit

After the global citizens' effort to expose and stop the MAI was successful, MNCs and their industry associations lobbied heavily for the European Union and Japan to champion their cause. The EU and Japan began to push to rename the MAI and add it to the investment agreement to be negotiated within the WTO, starting with the next ministerial that was being planned to begin at the 1999 Seattle summit (Wallach and Sforza, 1999).

The investor-to-state lawsuit clause of NAFTA's Chapter 11 has therefore found a new home at the WTO's Working Group on Trade and Investment, where the hope is to incorporate the provision for "protecting investors' rights" into a WTO agreement on Trade-Related Investment Measures (TRIMs).

The World Bank clearly understands that if the MAI could not "lock in" the structural adjustment reforms it has mandated on the developing countries for 20 years, then perhaps the WTO can. In its list of ways the World Bank and WTO can reinforce one another's objectives, the Bank writes, "An important example of common policy issues is the interrelationship between trade and liberalization as the outcome of WTO-based negotiations and unilateral trade reforms in the context of programs supported by the IMF and World Bank. When countries make autonomous reductions in trade barriers as part of IMF or World Bank programs....questions arise....[One] concerns the permanence

of liberalization, in order to provide greater predictability of policies and help promote private sector activity by avoiding policy reversals" (IBRD, 1998). In other words, if MNCs know in advance that they will be able to use Chapter 11-type lawsuits to prevent governments everywhere from enacting "policy reversals," then investors will be provided with the "greater predictability of policies" that will enable them to rest assured that the structural adjustment liberalization reforms of the last 20 years will remain intact, or locked in. Another joint IMF-World Bank paper puts it more directly regarding their efforts to prepare developing countries for accession into the WTO: "And participation in the WTO can lock in domestic reforms in a way that raises investor confidence" (WB, 2001).

Additionally, "the enforcement mechanism at the WTO can reinforce liberalization in a way that the World Bank has never been able to do. While the World Bank could cajole developing countries with the promise of more money, or threaten them with a cut-off if they failed to liberalize their economy and adhere strictly to its policy conditions, the WTO has a court system through which countries can be dragged and must defend themselves or face expensive retaliation measures" (Jordan, 1999). Because over half the countries on the Executive Board of the World Bank are borrowing nations, and a cut-off of loans to a country requires a board consensus, it has usually been rare for a World Bank loan cut-off to materialize. However, with the WTO, "It only takes one country to put the dispute mechanism into play" (Jordan, 1999).

10) Seattle WTO summit collapses

When most developing countries had engaged the industrialized countries in the trade negotiations of the Uruguay Round, which was completed in 1994, most had lacked the expertise and analytical resources for trade policy-making but that did not matter as much as today because these GATT negotiations were primarily focused on border issues such as trade barriers and tariffs for industrial products, and also because agricultural goods were not included in the negotiations. Since before the Uruguay Round was completed in 1994, however, the rich and poor countries have been negotiating about which items would remain included in the agenda of the next official round of trade negotiations, which was set to begin in under the new WTO institution in Seattle in 1999. The basic features of the implicit deal that had been struck in the Uruguay Round were that the industrialized countries would open their markets much more to agricultural products (Agricultural Agreement) and labor-intensive manufactured goods from the developing countries and, in return, the developing countries would agree to include negotiations on new issues for agreements on trade in services (GATS), intellectual property (TRIPs) and investment (TRIMS) in the next Round.

This new bargain was referred to as a "single undertaking," meaning that developing countries would have to agree to include all of the new components to negotiations, or nothing. Many decided to accept the deal, although few fully comprehended how much these new agreements were seeking to significantly transform the global trading system.

The transformation shifted the policy focus from the realm of traditional border barriers under the old GATT to new so-called "beyond the border" issues such as domestic regulatory and legal systems. Here the WTO hoped to simply transfer the structure of First World issues onto the developing countries. The World Bank has noted that the developing countries lack the skills, infrastructure and technological capacity required to implement these new agreements.

Inside the summit meetings of the WTO Ministerial in Seattle, developing countries were hoping to have their lingering concerns about problems regarding the previous Uruguay Round of GATT talks dealt with before they would be required to accept the new WTO agreements. When their attempts to express these concerns were rebuffed by the industrialized countries, who only wanted to push for an ever more ambitious new set of agreements, the developing countries became disappointed. But when the Quad group (the US, EU, Japan and Canada) took a selection of key members aside and departed for closed-door private sessions in their exclusive Green Room where the real negotiations would take place, the African and Caribbean nations led a revolt that culminated in most of the developing countries abandoning the entire summit meeting effort. This, combined with massive civic protests against the WTO outside on the streets, led to a total collapse of the Seattle Round.

The World Bank's new commitment to offer capacity-building loans to the developing countries to help them join the global trading system is designed to win support for the WTO among planning and development ministers in an effort to smooth over much of the opposition expressed in Seattle. Since Seattle, the World Bank has attempted to isolate those developing country trade ministries that are skeptical of the existing multilateral agenda and institutions. The World Bank's new maneuver is following similar attempts by the WTO in 2000, when it bypassed African missions at its headquarters in Geneva and sponsored a meeting in Gabon of regional trade ministers in an unsuccessful bid to win their agreement to launch a new trade round in Qatar (Aslam, 2001).

Now, Egypt and South Africa, who have been sufficiently persuaded, are reportedly trying to mobilize political support for a new round, and again the most critical developing countries' trade representatives are complaining they have been kept in the dark (Aslam, 2001). Nevertheless, the three institutions all expect that a new round of comprehensive trade negotiations will be launched in November 2001, at the WTO Ministerial conference in Qatar.

11) The next step for "Chapter 11-type" investor rights: Back down to the regional level

In the wake of the collapse of the planned Seattle Round, in which the Chapter 11-type of investor-to-state lawsuits provision for "investors' rights protection" would have begun to be negotiated for application on a global scale, investors have instead set their sights on a less ambitious, regional application of the provision. It is to be among the agreements

negotiated within the Free Trade of the Americas Agreement (FTAA), which seeks to extend the NAFTA to all of Latin America and the Caribbean. (*Discussed below*).

In June 19, 2001 the Hemispheric Social Alliance (HSA), a network of labor organizations and citizens coalitions representing more than 45 million people in the Americas, released an in-depth analysis of the leaked draft investment chapter of the FTAA. There has been intense speculation over the FTAA investment negotiations, particularly on the question of whether the blueprint for these talks would be the investment rules of the NAFTA. The draft text reveals that governments are once again attempting to expand NAFTA's investment rules, this time through the FTAA. Although virtually the entire draft is enclosed in brackets, the text closely mirrors NAFTA Chapter 11, including its "investor-state" provision.

The Hemispheric Social Alliance has worked to advance an alternative approach to rules on investment that would ensure that basic human, labor, environmental, and indigenous peoples rights, as defined by international protocols, would take precedence over investor rights. "However, the draft makes it clear that FTAA negotiators have ignored these recommendations...The negotiators appear to have learned nothing from the defeat of the MAI or the alarming use of NAFTA's investment chapter to challenge legitimate public interest regulations...In fact in several areas, they are attempting to use the FTAA to grant investors even stronger protections than they enjoy under NAFTA" (HSA, 2001).

HSA highlighted its concerns on the major issues in the draft text of the FTAA investment chapter:

INVESTOR-STATE: The draft text includes virtually verbatim the full text of NAFTA's undemocratic and unbalanced dispute settlement mechanism for corporate investors. This would give foreign corporations special rights to use secretive and unaccountable international arbitration rather than domestic courts to roll back democratically enacted laws and regulations throughout the hemisphere-as they have already begun to do in North America.

EXPROPRIATION: The draft proposes definitions of expropriation that are just as broad as in NAFTA, covering direct and indirect expropriation as well as measures tantamount to expropriation. This means that private corporations would be allowed to sue over any government act that may diminish their profits.

MINIMUM STANDARD OF TREATMENT: The draft also includes a vague and open-ended NAFTA obligation on minimum standard of treatment that has been used by foreign investors in all of the successful claims to date. This obligation is particularly problematic because investors have attempted to use it to expand the ambit of investor-state claims to include NAFTA obligations outside the agreement's investment rules.

CAPITAL CONTROLS: The proposed FTAA would go further than NAFTA to prevent governments from using capital controls, despite the growing consensus among financial officials that such measures can be

useful in combating international financial crises. The draft expands the types of transfers that must be permitted freely and without delay to include contributions to capital, royalties, fees and any other payment related to intellectual property rights and royalties derived from exploiting natural resources.

NATIONAL TREATMENT: Like NAFTA, the FTAA would require governments to treat foreign investors at least as favorably as domestic ones. Governments would have a one-time opportunity to negotiate exceptions to this obligation. However, the prospects for obtaining effective exceptions are limited by the lack of consultation in most countries between negotiators and the general public, as well parliamentarians and sub-national governments.

PERFORMANCE REQUIREMENTS: The first proposal in this section is a nearly verbatim repeat of NAFTA's broad ban on the use of performance requirements to ensure that investments support the host country's economic and social goals. These prohibitions are inconsistent with fostering sovereign economic and social development and therefore a threat to democratic policy making.

DEFINITION OF INVESTMENT: The draft includes eight alternative definitions of investment, revealing that there is some level of disagreement among negotiators as to who and what should be protected by the FTAA's investment rules. However, most propose definitions that are even broader than NAFTA's. For example, some of the proposals would extend coverage to intellectual property rights, derivatives, licenses, and commercial contracts. In some cases, these proposals replicate language from the failed MAI (HSA, 2001).

A new report from the Canadian Centre for Policy Alternatives (CCPA) suggests there is almost no chance that NAFTA Trade Ministers, meeting in October 2001, will make any meaningful changes to limit corporations rights to use NAFTA to challenge laws that protect public health and the environment because "The Bush Administration is clearly opposed to such changes," (CCPA, 2001). Canada's Trade Minister Pierre Pettigrew, who favored limiting NAFTA's investor-state dispute system, was publicly overruled by Prime Minister Chretien at the April 2001 Quebec Summit, undercutting Canada's position on this issue. "The main pressure came from the U.S. business community, which made it clear in an April 19, 2001 letter to the U.S. Trade Representative that it would tolerate no weakening of the investor-state clause," says Scott Sinclair of the CCPA. "As interpreted by NAFTA trade dispute tribunals, the definition of expropriation goes well beyond domestic law in all three countries." Sinclair is also concerned that the Prime Minister's comments will result in increased litigation under NAFTA's controversial investment rules.

Sinclair sees the recent judicial reviews of the NAFTA panel decisions as a positive step, but notes that the recent B.C. Supreme Court review of the Metalclad case against Mexico was very restricted. He urged state and provincial governments to give courts

more authority to set aside NAFTA panel decisions. "The main priority, though," says Sinclair, "is to remove the investor-state system from NAFTA and other investment agreements" (CCPA, 2001).

12) "Good" and "Bad" Regional Trade Agreements (RTAs)

In discussing the recent proliferation of regional trade agreements (RTAs) and bilateral trade treaties, the World Bank and WTO assess that these steps are good, as long as they are "designed in a way that they become steppingstones to greater openness and development, rather than a vehicle for protection and unintended inefficiency" (WB, 2001). The existence of some regional trade agreements, such as the Southern Cone in Latin America (MERCOSUR), which may create more exclusivity than openness, mark the line between what the institutions consider to be "good" and "bad" RTAs.

Good RTAs are attractive "because they can increase the credibility of reforms and may be less cumbersome to negotiate than multilateral reforms," and "smaller memberships may also make it easier to negotiate the increasingly important issues in regulatory regimes, a sharp contrast with complicated multilateral negotiations involving more than 100 countries" (WB, 2001).

Good RTAs, or those "regional arrangements, properly designed, have the potential to stimulate global trade through improving the efficiency and hence competitiveness of regional producers and expanding demand for inputs from nonregional sources," but, the World Bank warns, "regional agreements behind trade barriers may artificially shift import supply from external countries to countries within the trade area, and this may lead to reduced efficiency for participants if displaced external suppliers would provide goods at a lower cost. This trade diversion may disadvantage global export competitiveness in much the same way that national barriers do" (WB, 2001).

"Key design tests," on what determines good and bad RTAs "include whether regional arrangements involve lowering common external trade barriers, whether they stimulate increased competition, and whether they reduce transaction costs and extend to nondiscriminatory investment and services policies—all elements central to 'open regionalism'" (WB, 2001). In a clear critique of MERCOSUR, the World Bank adds, "The World Bank Policy Research Review, Trade Blocs (2000) concludes that North-South regional agreements are more likely to improve welfare than South-South ones," and "many South-South regional integration agreements have been formed that have had negative or ambiguous effects on income... An important component of making them steppingstones [to the WTO] rather than stumbling blocs to greater openness is for the countries involved to have low protection against non-member countries" (WB, 2001).

In this regard, the World Bank wants to ensure that regional trade blocs ease the way for broader multilateral integration, and ultimately only serve to complement steps towards an eventual acceptance of the biggest multilateral trade agreement: the WTO. In April

2001, it approved \$110 million in soft loans for a regional trade project involving the Common Market for Southern and Eastern Africa. The effort is designed in part to preempt the kind of political maelstrom into which the Bank was sucked in the 1990s, when it railed against Latin America's MERCOSUR for distorting international trade and investment flows by erecting barriers against non-members. MERCOSUR members defended it as nurturing domestic industries and jobs, and lashed back at the Bank for seeking to undermine it at the behest of the US government. From the perspective of the World Bank, MERCOSUR remains a spoiler at the WTO and in hemisphere-wide free trade talks working to build the FTAA. According to one World Bank trade specialist, the institution learned that the best way to "avoid future MERCOSURs is to steer regional integration processes from early on" (Aslam, 2001).

The kinds of "good" RTAs the World Bank and WTO deem acceptable include North-South arrangements such as NAFTA or some of the agreements between the EU and US and Africa. Regional and bilateral agreements with African countries have been utilized by the highly industrialized countries to introduce the issues that they have had difficulty introducing in the WTO. Through the domestic law enacted by the US, the so-called African Growth and Opportunity Act (AGOA), African countries are pressured to adopt WTO-like, and even WTO-plus, provisions relating to intellectual property rights (IPRs) protection, investment and financial liberalization reforms. These are all in exchange for some promised illusory benefits of greater access for African goods to lucrative US markets.

The Cotonou Agreement is similar. It sustains existing aid relationships between Europe and African, Caribbean, Pacific (ACP) countries but the trade component of the agreement contains provisions requiring African governments' compliance with a range of measures contained in the WTO agreements. It calls for full compliance with the TRIPS Agreement of the WTO. It requires African governments to negotiate for adoption of provisions on competition and investor protection (lawsuits) that the European Union is seeking in the WTO, and which African governments are opposing. In addition, it provides for the negotiation of reciprocal free trade agreements between the EU and African countries, separately or in regional groupings. This will prejudice agricultural production, and industrial development within national or regional development.

In support of existing IMF and World Bank structural adjustment programs, both the Cotonou Agreement and AGOA will pressure African countries to continue implementation of structural adjustment policies, while further dividing them and undermining Africa's efforts at regional integration.

13) Inside the WTO: The Released Draft Text of the WTO Doha Declaration

On September 26, 2001, the WTO released the Draft Ministerial Declaration. This is the draft of the Ministerial Declaration that the Ministers are to adopt in Doha, Qatar in November. The Declaration is the most important document of Doha as it will set the work and mandate of the WTO. The draft is the first attempt by the chairman of the WTO General Council, aided by the WTO director-general, to get WTO members to discuss a text that can be adopted. The draft is important as it sets the tone and framework of the next weeks' discussion.

The preamble (paragraph 1-8) contains rhetorical claims about the wonders of the trade system, such as how the trade system "embodied in the WTO" has promoted growth, development and employment the past fifty years, and how "trade plays a key role in alleviation of poverty" (WTO, 2001; Khor, 2001). The draft neglects any mention of the downside of the operations of trade, such as the massive losses to poor countries and poor people from the continuous decline in commodity prices and terms of trade, or the threats to livelihood and jobs when small firms and small farmers are unable to cope with the flood of cheap imports (Khor, 2001).

There is no mention of the concerns raised many times by developing countries about the imbalances and deficiencies in the present system and rules, and many of the same concerns raised at Seattle remain unaddressed. There is no mention of the need for a Development Agenda. Although the WTO secretariat and industrial countries have put forward a lot of statements and rhetoric about development concerns in the WTO, there is no such reflection in the preamble or elsewhere in the document. The need to mainstream development concerns in WTO, and to make development take center stage in WTO (together with concrete points) should be placed in the preamble. But this is altogether missing (Khor, 2001).

Regarding non-agricultural products (industrial tariffs) this key issue is dealt with in paragraph 13, which agrees to negotiations to reduce or eliminate tariffs and non-tariff barriers in industrial products, with product coverage to be comprehensive and without a priori exclusions. This is a 'new issue' in that the Uruguay Round outcome did not mandate negotiations for another round of industrial tariff liberalization. Several developing countries have voiced serious concerns about how tariff cuts have already led to de-industrialization, or the closure of their domestic industrial firms, such as during the recent Abuja OAU Ministerial conference. With little certainty of the benefits promised by further trade liberalization, many countries are hesitant to agree to negotiate another round of industrial tariff reductions without first studying the effects of past and future tariff reductions on their industries. "Therefore paragraph 13 will have to be amended, for example, with a proposal formulated by many African countries during the Abuja OAU Ministerial conference) that any engagement on industrial tariffs would be conditional on the completion of a study process to analyze the effects of previous and future tariff reductions on local industries and national economies of developing countries (Khor, 2001).

Third World Network's Martin Khor summed-up the draft text:

"...The draft Declaration fails to meet these requests. It has refused to recognize that the WTO is imbalanced and needs reform. It has also in a big way proposed the launching of a New Round with many new issues...In particular the draft is very imbalanced against the interests of developing countries. It gives the appearance of a 'clean text' with only a few points of contention (mainly investment and competition). In reality this 'clean text' is only trying to hide or paper over the disagreements among WTO members. It does this in a way that is imbalanced against the views and interests of developing countries. Like thousands of NGOs, most developing countries have been expressing the urgent need to correct present imbalances, and to resolve problems of implementation; they have expressed inability to accept negotiations on new issues, and their refusal to launch a New Round" (Khor, 2001).

14) Inside the WTO negotiations: GATS

The General Agreement on Trade in Services (GATS) agreement currently being negotiated in the WTO, the aims to promote trade liberalization in international "services". This means that its scope is vast and will cover every service imaginable from telecommunications to education, from banking to tourism, from food service to environmental services such as garbage collection and sewage treatment. Most importantly, it will include attempts to privatize key public services such as health, education, transportation, libraries, postal services, pensions, regulatory agencies, and water, energy and electricity utilities. The current 'GATS 2000' negotiations is attempting to formulate rules which encourage the "trading" of services on a global level. This means removing the laws and regulations that currently restrict foreign investors in order to allow service companies like BT, American Express and Barclays Bank, to operate in foreign markets more easily.

The danger to the public interest is that GATS will restrict what governments can and can't do to regulate and control the way vital public services are provided in their countries. It severely limits the kinds of rules governments can impose on companies that provide important services, for example rules that protect the interests of society and the environment. In this way, the GATS will threaten the vitality of democracies and the scope of the democratic process.

In accordance with neoliberal theory, an inherent and explicit ultimate goal of GATS is to eliminate the state's role in supporting or providing public services. GATS is likely to be used to achieve the whole or partial privatization of vital public services. In contrast to long-established notions of state support for vital public goods and services, with the idea of equity and access for all as the underlying goal, the GATS agreement views all services as commercial opportunities to be exploited by business. Private companies are already making inroads into many public services around the world, and the GATS will

provide a dramatic acceleration of this process. There is a very serious concern that with privatization, traditional values of equity and access for citizens of vital services will be sacrificed to the market-oriented neoliberal notion that even vital services should only go to those who can afford to pay for them at going market prices.

Services are becoming increasingly important in the global economy and trade in services is the fastest growing area of international trade, comprising over one-fifth of world exports. It is particularly important to the economies of industrialized countries, accounting for around 70% of employment and production (Moore, 1999). Because there are more government rules and regulations controlling the way services are supplied than in any other aspect of society, the GATS could change the very heart of what governments are elected to do, and put the interests of business above all other concerns.

Governments regulate services in many ways and for many objectives, including protecting vulnerable social groups, the environment, and promoting local economic development. Many such regulations could soon become "GATS-illegal." For example, under GATS rules governments would not be allowed to use "local content" laws, regulations or subsidies to selectively support local companies, to require foreign companies to involve local people in management, pay extra taxes on money they earn, hire or train local staff, transfer technology or conduct research and development. Nor would local governments be allowed to limit the numbers of service suppliers in a sector - for example, GATS could prevent governments from zoning laws restricting industrial development or the number of golf courses or safari parks in a region in order to protect local people's access to land and water.

Commercial opportunities may very well exist in energy, water & sewage, education and health services markets but who will benefit from the exploitation of these "opportunities" and who will lose out? The traditional public ownership of essential public services has made it difficult for foreign private-sector service providers to enter and compete in these markets in foreign countries, and the GATS agreement promises to change this situation, raising serious concerns around the world.

The EU is particularly pushing for water services to be covered as part of the "environmental services" section of GATS. Although most of the world's water services are provided by public sector utilities, privatization is a growing trend, and is being pushed a few enormous multinationals - all of which are European, and big players in the European Services Forum, an industry group set up specifically to lobby EU governments on GATS. In a clear example of institutional coherence with the WTO, the IMF and World Bank have been attaching water privatization as conditions on loans. For example, in 1999 the Bolivian government privatized the water system in the city of Cochabamba and the Kenyan government privatized part of its water system - the management of water billing and revenue collection for Nairobi. However, regarding essential public services, "any country which escaped privatization under structural adjustment programs will feel a left hook coming in from the WTO" (WDM, 2001).

The WTO dismisses the concerns being raised and argues that public services are entirely exempt and that therefore the agreement has no direct impact on the privatization of public services. However this so-called public services exemption is vague and deeply ambiguous and does not appear to cover any public services which are already in "competition" with private suppliers i.e. schools, hospitals, universities...But in fact, most public services do already have private sector "competitors" and therefore, would not be exempt from GATS.

15) Inside the WTO negotiations: TRIPs

Private sector actors claim that patent, trademark and copyright protection are essential to guarantee the levels of returns for investors; without them, it is argued, there would be no incentive for investors to put up the initial seed money for research and development of new products. In a striking contrast, the TRIPs negotiations seek extensive state protections for private property, yet allow for reduced state protections for jobs, the environment or the general public interest.

While this may be true, patents, trademarks and copyrights are all, by definition, anti-free market, protectionist laws that seek to prevent or impede the dissemination and diffusion of technology throughout the market. Therefore, while they clearly work to protect profit for those companies who own the "intellectual property," they are, by definition, in opposition to free trade principles and neoliberal economic theory. For these reasons, many, including some of the WTO's biggest supporters, believe the WTO's agreement on trade in intellectual properties (TRIPs) does not belong in the WTO agreement.

While, in theory, neoliberal edicts coming from the IMF and World Bank have sought to liberalize and deregulate the states of developing countries, one contradictory policy has been efforts to shore up the ability of states to police and enforce intellectual property rights for foreign investors and crack down on pirating or copying investors' technologies within their domestic markets. While critics might call this a double standard or hypocrisy, the World Bank and IMF have justified these statist policies as necessary to create and sustain, "an attractive investment climate" for investors who need the security of knowing they will not be ripped-off.

The example receiving most attention lately is the efforts by multinational pharmaceutical companies to prevent developing companies from making cheaper generic copies of HIV/AIDS drugs in their own economies.

One area where the WTO and IMF and World Bank are seeking to defuse the substantial criticism over protecting First World corporations' IPRs is to accelerate the pace of patenting, trade marking and copyrighting of developing countries' goods so that they too may become stakeholders in a strong IPR-enforcement regime in the WTO. The World Bank is working to assist several developing countries to get the IPRs established on their music and botanicals (Martin interview).

According to the released draft text of the upcoming Doha Declaration, the section on TRIPS (paragraph 14-17) is extremely disappointing and indeed disastrous. TRIPS is one of the agreements causing the most public outcry, particularly as it relates to patents on HIV/AIDS drugs. On September 17, 2001, hundreds of NGOs released a statement calling for the fundamental revision of TRIPS as it promotes monopolies by big companies, blocks the access of the public to affordable medicines and other products, and helps to facilitate biopiracy (Khor, 2001). Yet, despite this, the draft declaration has essentially ignored the public outcry and the developing countries' demands.

On article 27.3b (biodiversity), it merely instructs the TRIPS Council to give 'due attention' to the TRIPS-CBD relation and traditional knowledge. This ignores the many carefully articulated demands of the Africa Group and other countries to clarify that all living organisms and living processes cannot be patented; and that sui generis national plant-varieties policies that protect rights of local communities to their traditional practice of saving and exchanging seeds are recognized. These are in the pre-Seattle Ministerial text but absent here (Khor, 2001; WTO, 2001).

Many other proposals made by developing countries in the pre-Seattle text and at the TRIPS Council and implementation process following Seattle are also absent. There is no mention of the technology transfer objectives or obligations. There is also no mention of the mandated overall review of TRIPS under article 71.1, as if the drafters of this document do not want the WTO Members to be reminded of this pending review. The issue of TRIPS and medicines is also absent from this text as there will be a separate document on this issue. But even on this most obvious of issues where change is required, the situation is not optimistic as a group of developed countries (led by the US) is opposing the statement on this issue put forward by a large number of developing countries (Khor, 2001; WTO, 2001).

16) Inside the WTO negotiations: TRIMs

The TRIMs agreement underscores a dramatic shift from trade issues to those of domestic rules on investment within countries. While the World Bank has conceded that the developing countries may need special, extended time periods within which to fully liberalize in accordance with WTO requirements, it is adamant that investors' rights are not up for negotiation. The WTO's approach to rules on foreign investment, the World Bank asserts, "remains as valid as ever in areas such as the principles of non-discrimination and national treatment," meaning that governments must not show any preference for domestic investors over foreign ones, and that any laws or regulations which do so must be undone (Aslam, 2001). This is necessary, the Bank argues, because trade is growing fastest not between countries but among the scattered subsidiaries of multinational corporations. "If restrictions on foreign ownership are not lifted concomitantly with trade reform, one source of potential investment in exports is closed off," it says. Promoting investment, it adds, will involve adherence to its policy

prescriptions. These include "regulations that achieve public purposes with minimal distortions in incentives." That is jargon for privatization and re-regulation of public goods and services, including pension funds and domestic savings that, in the World Bank's view, could be put to productive use (Aslam, 2001).

In the new report, "Leveraging Trade For Development: World Bank Role," the fact that the First World has unfairly maintained their high trade barriers is acknowledged. And while efforts to get these lowered in the WTO negotiations are important, the World Bank suggests that developing countries use an alternative route to get their goods into the lucrative First World markets: by selling their products to local affiliates of multinational corporations.

The Bank states that foreign direct investment (FDI) is "often a vehicle for trade expansion as well as growth. Exports of foreign affiliates in developing countries to the parent organization abroad account for one-third of all exports from developing countries, and two-thirds of their exports involve a multinational buyer or seller." Therefore, "FDI thus offers marketing channels for the exports of developing countries and *foreign affiliates often enjoy preferential access to home markets that unaffiliated firms do not* [emphasis added]. It is no wonder that several studies have shown that trade propensities of foreign affiliates are higher than for domestic firms" (WB, 2001).

In underscoring where IMF and World Bank reforms on domestic regulations regarding foreign investment overlap with WTO imperatives, the new World Bank report explains: "FDI is intimately linked to the dynamic sectors of trade, notably services, in recent years. Investments in service sectors--insurance, finance, transportation, and telecommunications--have become an increasingly large share of total outward foreign direct investment, now rivaling manufacturing investments and dwarfing investments in primary production." The key lesson for developing countries is, "For many, the main way to trade is through foreign affiliates," however, developing countries are clearly warned, "Attracting FDI requires a *sound investment climate* and a well-designed *investment policy*, particularly toward FDI" (WB, 2001).

According to the released draft text of the WTO's upcoming Doha Declaration, an option is given between a lengthy paragraph 18 on investment rules (agreeing to negotiations with some terms of reference and feeble attempts to allay developing countries' concerns through technical assistance); and a short paragraph 19 (that the working group will do further work, with a report to be presented at 5th Ministerial). Developing countries will likely be pressured to accept paragraph 18, or at least to agree that the working group will continue for only two years and then negotiations will automatically be launched by the 5th Ministerial (Khor, 2001; WTO, 2001). "Developing countries that have stated they are not prepared to negotiate, or are opposed to investment rules being in WTO, have to stand firm against paragraph 18 and instead strengthen the language of paragraph 19 and ensure that there is no commitment whatsoever to transform the study process into negotiations at the 5th Ministerial allowed into the final text during negotiations. NGOs that have taken a stand against the establishment of a multilateral investment agreement

may advocate dropping paragraph 18 and insist that this issue should be dropped altogether from the WTO agenda" (Khor, 2001; WTO, 2001).

17) Inside the WTO negotiations: The Agricultural Agreement

The issue of government subsidies for agricultural industries has been one of the most contentious. First World governments have consistently failed to uphold their Uruguay Round agreements on lowering their key trade barriers on agricultural goods into First World markets. This has to do with a determination to keep their own strategic industries sustained as well as significant political pressure. However, IMF and World Bank trade barriers reductions over the years have allowed First World food producers to gain easier access to developing countries domestic markets, flood those markets with cheap (subsidized) produce, and out-compete local domestic producers, and drive them out of business.

The issue at hand in the WTO's agricultural agreement currently under negotiation is dependent upon the developing countries being able to prove that their produce and other food products comply with WTO sanitary and phytosanitary safety standards before they can be allowed to enter First World markets. While the original GATT trade negotiations were supposed to lower trade barriers on agricultural goods, many First World economies did dismantle some of their formal tariffs and quotas on developing countries' agricultural goods, to much public fanfare, but they have since replaced these with stricter, non-tariff barriers (NTBs) such as phytosanitary standards, product quality controls and others.

Therefore, one essential component of the enhanced WTO, IMF and World Bank cooperation includes capacity-building loans for developing countries to develop the technical capacity to spot-check their agricultural exports at the border for meeting the sanitary and phytosanitary standards within WTO requirements.

Agriculture remains one of the most contentious issues because its a point where the hypocrisy remains so glaring; while the rich countries insist on having their states subsidize their own agricultural exports in order to protect their own domestic "food security," the poor countries are not permitted to subsidize their own domestic agricultural industries and must open themselves to floods of foreign imports.

The draft text of the WTO Doha Declaration dealing with the Agreement on Agriculture (paragraph 11) only lists down issues, stating the text is to be elaborated later (WTO, 2001). However, agriculture is the critical issue on which many other issues depend. Developing countries continue to demand the ending or severe curbing of subsidies in industrial countries because these subsidies enable cheap food products from the rich countries to flood into the poorer countries and wipe-out domestic competitors. Many developing countries also strongly requested greater flexibility in implementing their own WTO obligations to avoid a situation where their small farmers become unviable as a result of import liberalization. "The right of the small and poor farmers to be protected

from cheap imports overrunning their livelihoods should now be recognized. But the section [in the draft text] is at present empty. It is thus very difficult or impossible to consider all the other issues as they have to be considered in relation to what is being presented in agriculture" (Khor, 2001).

18) How "Chapter 11-type" provisions may work within the WTO's Initiatives

The Chapter 11 investor-to-state lawsuit provision in NAFTA, as attempted in the failed MAI, dealt exclusively in corporations being able to sue governments to force them to remove new or existing legislation that impedes market access or other free trade rules. However, the WTO provisions remain, at least formally, in the traditional framework of state-to-state lawsuits, or governments suing other governments on behalf of corporate or industry clients.

Nevertheless, the GATS agreement being negotiated in the WTO has a highly questionable provision in its text. Within the text, some rules are only to take effect when countries commit to following them. Therefore, in much of the WTO responses to criticism, it is claimed that the GATS allows for "bottom-up" entry to various levels of commitments by different states, according to what each country, each parliament decides on its own. However, there are also many other parts to the agreement that are referred to as "generally applicable," or, in other words, that all governments must fully adhere to all parts of them equally.

One such clause refers to the investor rights protection mechanisms for lawsuits, or what could be the closest thing to a Chapter 11-type investor-to-state lawsuit mechanism. In Section 6.2.a, under the GATS discussion of "Domestic Regulation" it states:

"Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that the procedures in fact provide for an objective and impartial review."

The first sentence is so vague, and so open to later interpretations, that many are concerned it will allow corporations to go beyond the WTO's formally state-to-state lawsuit mechanism and provide the basis for allowing corporations to force governments into allowing their own domestic courts system to be used for what could be, in effect, investor-to-state lawsuits in pursuit of dismantling existing or new laws and regulations that impede the profits of "foreign service providers." Scott Sinclair, of the Canadian Center for Alternative Policy and author of *GATS: How the WTO Services Agreement Threatens Democracy*, explained that section 6.2.a. "could evolve into a type of way for a

foreign service provider to take a claim directly without the approval of their state," as the official state-to-state mechanism is supposed to mandate (Sinclair interview).

The idea is that foreign investors who wish to offer services in another economy, or foreign service providers, could theoretically sue a city or state to remove a law or regulation in a two-stage development. First, the foreign investor could get their own state to bring a state-to-state lawsuit against another country if necessary to force it to get into full compliance with GATS section 6.4, which calls on WTO members to make their local, state, district and federal courts available to address concerns regarding violations to trade agreements that would include foreign plaintiffs. Then, the second step would essentially amount to the type of investor-to-state lawsuit mechanism as exists under NAFTA's Chapter 11 (Sinclare interview). While this is only theoretical, because the language in section 6.2.a. is so vague, many who have been observing NAFTA's Chapter 11 remain very concerned about this aspect of the WTO's GATS agreement and its possible ability to undermine efforts by local economies to regulate themselves *vis a vis* foreign investors, or in effect, threatening the democratic process itself.

The ultimate concern regarding lawsuits and the GATS is that the services agreement will open the door to allow foreign service providers the opportunity to compete in the domestic market; then, once they are in the domestic market and allowed to compete against public service providers (the state's public services), they will use the section 6.2.a. to launch what will amount to investor-to-state lawsuits against states to force them out of the service providing business altogether. For example, currently under NAFTA's Chapter 11, US-based United Parcel Service, the package-delivery company, has filed a complaint contending that the very existence of the publicly financed Canadian postal system represents unfair competition that conflicts with Canada's obligations under NAFTA. Critics worry that if the tribunal upholds the U.P.S. claim, government participation in any service that competes with the private sector will be threatened (DePalma, 2001).

If such a mechanism becomes enabled under the GATS, foreign service providers everywhere may resort to a similar tactic and base it on similar justifications: if a state is subsidizing a service (providing it at less than going private market rates) then this constitutes an unfair "advantage" over a (foreign) private market provider and must be undone (eliminated) or hefty damages are owed to the plaintiff. Such an enabling clause in the GATS could, in theory, allow multinational corporations to seek legal measures to ultimately force all governments out of the business of providing key, vital services, and in so doing, threaten the very concept of service provision based on equity and access for all citizens which has been a traditional cornerstone of modern governments in the 20th century. The result would be that only citizens would be reduced to consumers and services would be exclusively for those who could afford to pay going private market rates.

19) Not Just For the South Anymore: Liberalization and the Attack on Public Services in the Rich Countries

Barry Appleton, a Canadian trade lawyer involved in several claims before NAFTA tribunals, said the arbitration panels were meant to provide a nonpolitical alternative to resolving disputes in court. But he said controversy had arisen because the drafters of NAFTA appeared to assume that the investor-protection provisions would be used by Canadian and American investors to protect their investments in Mexico from outright expropriation. "The Canadian and American governments thought this was not going to apply to them," Mr. Appleton said, "and now they're disappointed" (DePalma, 2001).

However, when these types of developments are applied to the WTO, it includes the domestic laws and regulations of the rich countries, too. There is every reason to suspect that predominantly public services are being targeted by the most powerful players in the WTO who are willing to make domestic sacrifices in order to get what they want. This approach is made explicit by Pascal Lamy, European Commissioner for Trade: "If we want to improve our own access to foreign markets then we can't keep our protected sectors out of the sunlight. We have to be open to negotiating them all if we are going to have the material for a big deal. In the US and the EU, that means some pain in some sectors but gain in many others, and I think we both know that we are going to have to bite the bullet to get what we want" (Lamy, 2000).

And regarding the FTAA, even in the event of greater solidarity among Southern countries in the negotiations, if a deal is completed it will likely move Canada further down the path of privatization and deregulation. The FTAA is legally required to go deeper than the WTO as a liberalizing force, and this raises vital issues around the future of Canadian public services, their state-owned industries (Crown corporations), and their ability to regulate in the public interest (Lee, 2001).

20) US and EU: Full Steam Ahead for the WTO

During President Bush's June meetings at the EU summit in Goteborg, Sweden, the EU and US agreed "to launching an ambitious new round of multilateral trade negotiations at the WTO Ministerial Meeting in Doha" referring to the planned WTO Ministerial in Qatar in November. The following excerpt from the "Göteborg Statement: Summit of the European Union and the United States of America, 14 June 2001" underscored a renewed commitment to most WTO agreements currently under negotiation, including the controversial dispute-settlement mechanism:

"We are committed to launching an ambitious new round of multilateral trade negotiations at the WTO Ministerial Meeting in Doha, and, in our high level discussions in recent weeks, have made progress towards this shared goal. We

seek a round that will lead both to the further liberalization of world trade and to clarifying, strengthening and extending WTO rules, so as to promote economic growth and equip the trading system to meet the challenges of globalization. The new round must equally address the needs and priorities of developing countries, demonstrate that the trading system can respond to the concerns of civil society, and promote sustainable development. We will work closely together and with our partners in the coming weeks to secure consensus to launch a round based on this substantive and forward looking agenda. We also welcome the steady progress made so far on WTO implementation and are ready to examine ways to make further progress in connection with the launch of a new round of trade negotiations. We will also reinforce and improve our provision of technical assistance to build capacity, including capacity to support negotiations, in developing countries, so as to aid both their implementation of WTO agreements and help them to integrate more fully into the trading system, including the dispute settlement mechanism. Finally, we will continue to make efforts to secure the early accession of candidate countries to the WTO, with particular attention to the specific situation of least developed countries. This will make the WTO a truly universal organization. Recalling that the dispute settlement mechanism of the WTO is a central element in providing security and predictability to the multilateral trading system, the EU and U.S. undertake to work constructively to improve that mechanism."

21) The FTAA : New World Bank-IBD loans for preparing countries to join the FTAA

The full draft text of the Free Trade of the Americas Agreement (FTAA) has yet to be publicly released, although some parts have been made available. A draft text for the agreement was compiled based on the positions put forward in the nine FTAA negotiating groups. This highly bracketed text (brackets indicate areas of disagreement) was assembled by the Trade Negotiations Committee (TNC), consisting of Vice-Ministers of the 34 nations, and announced at the last TNC meeting in Lima, Peru in January 2001.

A leaked copy of the FTAA draft Investment chapter surfaced just prior to the Quebec Summit. In broad strokes, "the draft Investment chapter shows that Ministers have not learned the lessons from the NAFTA (in particular, from the numerous investor-state challenges to date). Indeed, it appears that negotiators are seeking to expand the scope of investor rights, and further handcuff governments, in the FTAA," (Lee, 2001) (A more detailed analysis of the Investment chapter is being completed by the Hemispheric Social Alliance. They will also be analyzing the rest of the draft text when it becomes available).

The FTAA negotiations are to be completed by January 1, 2005. The agreement is then to be ratified and implemented by December 31, 2005. These dates clarify the original vague wording of a 2005 deadline for the FTAA, over which there was some dispute. In Quebec, it was announced that the next Summit of the Americas would be held in Buenos Aires some time in 2005. The 2005 completion date means that FTAA cheerleaders Canada and the US will both have to go through national elections prior to ratifying any trade deal. In the US, President Bush must be desperately trying to secure Fast Track trade negotiation authority (Fast Track enables the President to negotiate trade deals that are then put to a straight yes or no vote in Congress, avoiding lengthy input or objections and amendments by the public or civil society), which is considered necessary for the FTAA negotiations to proceed.

Numerous other countries will also face their electorates over the next four years. In Latin America, a crucial election for the future of the FTAA is the 2002 Brazilian election, because Brazil is both the largest economy in the region as well as the country that has expressed the greatest desire to proceed cautiously with FTAA negotiations. In the medium-term, a deadline of April 1, 2002 was set to agree on "negotiating modalities"-the structure and format for how the rest of the FTAA negotiations will proceed. The main negotiations on market access, tariffs and non-tariff barriers will then begin on May 15, 2002. The aim of this next round of negotiations is to compile a "second draft" FTAA text by the end of October 2002. This will coincide with the next FTAA Trade Ministerial meeting to be held in Ecuador (Lee, 2001).

Inside the Summit, there was some dissension in the ranks behind closed doors, captured by Radio-Canada when the translation equipment feed was mistakenly left on. The discussion by Latin American leaders openly questioned US President George Bush's assertion that unbridled capitalism is the answer to their problems. (Lee, 2001; CP, 2001). Earlier in the week, Bush had commented that free trade "applies the power of the market to the needs of the poor." Latin American and Caribbean leaders put on the table demands for funds directed towards poor countries to make the transition to a free trade zone viable. Some Latin American leaders are interested in development funds along the lines of transfers provided by the European Union to its poorer regions, "although this appears to be a non-starter with the US" (Lee, 2001).

Rather than that more generous EU approach, in Quebec the Inter-American Development Bank (IDB) announced \$40 billion in new project loans for the region over the next five years, but few present felt this would be enough to meet the bold goal of the Summit Declaration to halve poverty in the hemisphere by 2015. Furthermore, only part of these loans would go to projects in the area of poverty and inequality, while other parts of the money are dedicated towards numerous other projects and capacity-building "technical assistance" in support of regional integration (Lee, 2001).

Caribbean and Andean countries were successful in putting language into the FTAA's Buenos Aires Ministerial Declaration recognizing the need for "specific provision to meet the needs of those countries with different levels of development." However, it is unclear whether differential treatment would be, like the WTO, only limited to delays in

implementing the FTAA's disciplines, or something more substantial and permanent. This issue is significant for many Caribbean governments that rely heavily on tariff revenue, and could, like the WTO, cause conflicts between IMF budget balancing requirements and FTAA accession requirements

Many groups, particularly indigenous peoples' leaders, claimed the final Summit Declaration and Plan of Action only pays lip service to indigenous peoples. Unfortunately, the language is in the context of "participation and integration of indigenous peoples in the hemisphere," without addressing the fundamental issues about rights to land and to self-determination (Lee, 2001).

Before Quebec, Venezuelan President Hugo Chavez met with Brazilian President Henrique Cardoso and the leaders agreed to bring Venezuela into MERCOSUR by the end of the year. The move represents an important bridge for a proposed South American Free Trade Agreement, and would strengthen the MERCOSUR bloc's influence in the FTAA (and WTO) negotiations (Lee, 2001).

Similar to Brazil, Venezuela's government supports a go-slow approach to the FTAA and prefers regional trade bloc initiatives within Latin America: "If something needs to be accelerated, it's not the FTAA, it's the integration of Latin America. We have to increase our own productivity before going to the big leagues" (NotiSur, 2001). Venezuelan interest in MERCOSUR helped shore up a trade bloc that was shaken when Argentine Economy Minister Domingo Cavallo broke ranks with MERCOSUR's common external tariff by announcing an emergency package in March that raised tariffs on consumer goods to 35% and reduced tariffs on capital goods to zero. Argentina's move was an effort to stimulate its economy, which has been in recession for close to three years, amid serious foreign debt problems and a currency rigidly pegged to an overvalued US dollar (Lee, 2001).

Brazil and Venezuela represent two major stumbling blocs to smooth progress on the FTAA. Brazil in particular has stated its concerns over the US consistently resorting to anti-dumping and other protectionist measures. At the Buenos Aires Trade Ministerial just prior to the Quebec summit, the US agreed to "discuss" its trade laws (a source of irritation for almost every country), although it seems highly unlikely at this point that the US would entertain meaningful changes for the FTAA. These trade laws are considered sacrosanct by a Congress that has yet to grant Fast Track. Domestic political pressures are now building in the US to head off any concessions the US might make in the FTAA negotiations with regard to US trade laws, agricultural market access and agricultural export subsidies. Speaking to the Congressional Ways and Means Committee, US Trade Representative Robert Zoellick indicated that there would be little US movement on these issues (Lee, 2001).

The FTAA Summit's Plan of Action endorses hemispheric and regional integration of energy markets, noting that "market reform and stability, regulatory reform and trade liberalization will be addressed", but does not provide more in the way of details. After the summit, Canada, the US and Mexico agreed to set up a North American

Energy Working Group tasked with follow-up work. The US hinted to Mexico that it must pursue the "right policies" in energy to spur development. This may refer to privatization of Mexico's state-owned oil and gas company, Pemex, which was nationalized in the 1950s to the dismay of US oil interests. Privatization would facilitate a US re-entry into the Mexican oil and gas sector.

The completion of the FTAA is by no means a sure thing. Canada and the US must contend with Brazil and Venezuela as counterforces, plus with numerous smaller countries that have banded in blocs to bolster their negotiating positions. The more unity Latin American and Caribbean countries have, the stronger they will be in the negotiations. The US, on the other hand, would like to isolate countries through parallel bilateral trade negotiations to head off this possibility (Lee, 2001). The Chile-US free trade negotiations are an example, and the US may attempt to break off a weakened Argentina to undermine the MERCOSUR bloc.

22) IDB's Trade Sector Facility project

The first of the capacity building loans announced by the World Bank and the IDB at the Quebec FTAA summit is a \$5 million loan for Guatemala. The loan is the first to come from the IDB's new Trade Sector Facility project, which "is one of several of special fast-track, priority areas subject to a new policy for flexible lending instruments approved" by the Inter-American Development Bank in 2000 (IDB, 2001).

The loan's author, Trade Sector Facility manager Mario Berrios, explained that the IDB loans would help developing countries in the hemisphere better prepare for accession to the WTO, but also to regional agreements such as the FTAA.

The loan will provide assistance in several key areas, including training of trade officials; training in, and development of, integrated information systems to discuss trade with experts around the world; increasing training in technical skills and technical studies analysis; improve transportation coordination activities; and to promote better intra-government ministry consultations, as well as government consultations with civil society (Berrios interview).

The World Bank and the IDB signed a "Letter on Coordination Regarding Quebec Summit Plan of Action," in which they agreed to establish a Joint Summit Work Group to consult together regularly on their coordination of their potential support for components of the Quebec Summit Plan of Action. This includes both institutions' involvement in the Hemisphere's collective fora such as the Summit Implementation Review Group (SIRG).

The World Bank and IDB will conduct joint Country Financial Accountability Assessments (CFAAs) in which the staff of both institutions will work as one team. The CFAAs are intended to "be a source of recommendations to improve accountability that

can be supported in lending operations by one or both institutions. The CFAA will support the design and implementation capacity building programs in financial accountability” (WB-IDB, 2001).

The CFAA will include an analysis of the following: public sector budgeting; public sector accounting and reporting; public sector internal control system and records management; public sector use of technology; public sector auditing; legislative scrutiny of public sector financial management; private sector financial accounting and auditing practices; corporate governance and financial accountability; and public access to information on public sector financial management.

In their Memorandum of Understanding, signed between the World Bank and IDB in April 2000, the institutions pledged greater cooperation in: reciprocal representation in each others’ institutions; periodic consultations at the senior management level and other consultations; country-specific cooperation, including co-financing of specific projects; and cooperation with respect to selected themes and sectors.

References

- Aslam, 2001. "World Bank to Exploit Trade for Structural Adjustment," by Abid Aslam. Inter-Press Service (IPS). April 27, 2001.
- Berrios interview. Telephone interview with Mario Berrios, Inter-American Development Bank. June 12, 2001.
- BWP, 1999. "The IMF's Enhanced Structural Adjustment Facility (ESAF): Is It Working?" Bretton Woods Project (UK). September 1999.
- CCPA, 2001. "Canadian Government Retreats on NAFTA Investor-State Concerns," by Canadian Centre for Alternative Policies. June 2001. The report is available at: <http://www.policyalternatives.ca>
- CEPR, 2001. "The Scorecard on Globalization 1980-2000: Twenty Years of Diminished Progress." Center for Economic and Policy Research. Available at www.cepr.net
- CP, 2001. "Summit leaders taped during closed-door session" by CP wire service, in Toronto Star, April 22, 2001.
- Daly, Herman. Speech on Globalization at the 50th Anniversary of the Aspen Institute in Aspen, Colorado. August 20, 2000.
- DePalma, 2001. "Nafta's Powerful Little Secret," *The New York Times*. March 11, 2001. By Anthony DePalma.
- Finger and Schuler, 2000. "Implementation of Uruguay Round Commitments: The Development Challenge," by Michael J. Finger and Philip Schuler. *The World Economy*. Vol. 23, April. Oxford: Blackwell, 2000.
- HSA, 2001. "NAFTA Investor Rights Plus: A Summary of an Analysis of the Draft FTAA Investment Deal," report by the Hemispheric Social Alliance. June 2001.
- IBRD, 1998. "Report of the Managing Director of the International Monetary Fund, President of the World Bank, and Director General of the World Trade Organization on Coherence," by the World Bank. October 21, 1998.
- IBRD, 1999. "World Bank Support for Developing Countries on International Trade Issues," By the World Bank. August 25, 1999.
- IDB, 2001. "IDB Approves \$5 Million Sector Facility Loan to Improve Guatemala's Trade Opportunities," by the IDB. IDB newswire. May 16, 2001.

- IMF, 2001. "World Trade Organization Selected Activities, January 2000 to Present, and Some Current Considerations," by the IMF. April 25, 2001.
- Jordan, 1999. "The Death of Development?: The Converging Policy Agendas of the World Bank and the World Trade Organization," November 1999. The Bank Information Center. Washington, DC. www.bicusa.org
- Khor, 2001. "Draft Doha Declaration Seeks to Launch Big New Round, Ignores Civil Society Demands," TWN Info Service on WTO Issues. (Third World Network) September 28, 2001.
- Lamy, 2000. "Lamy Addresses New WTO Round," speech to the US Council for International Business, New York, June 8, 2000.
www.europa.eu.int/comm/trade/speeches_articles/spla23_en.htm
- Lee, 2001. "The FTAA after Quebec: What Happened? What's Next?" by Marc Lee. Paper by the Canadian Centre for Policy Alternatives. April 2001.
- Martin interview. Telephone interview with William Martin of the World Bank. June 15, 2001.
- Moore, 1999. "The future of international trade in services," speech by Mike Moore, Director General of the World Trade Organization, at The Third Debts Services Conference, Berlin. September 21, 1999.
www.wto.org/english/news_e/spmm_e/spmm06_e.htm
- N&N, 2000. "Ringleaders and Rulemakers of Globalization: IMF and WTO," News & Notices. January 2000. vol. 2, no. 1. A publication of Globalization Challenge Initiative.
- NotiSur, 2001. "Presidents of Venezuela, Colombia and Mexico revive G-3" in NotiSur, vol 11 no. 14. Latin American Data Base, April 20, 2001.
- Panitch, Leo. 1997. "Rethinking the Role of the State," in James H. Mittelman, ed. *Globalization: Critical Reflections*. Boulder: Lynne Rienner Publications, 1997.
- Salop, 1999. "Lending Retrospective: Volumes and Instruments Issues Paper," by Joanne Salop. World Bank. July 19, 1999.
- Sinclair Interview. Telephone interview with Scott Sinclair. Canadian Center for Alternative Policy. June 15, 2001.
- Stiglitz, 1999. "Two Principles for the Next Round, or How to Bring Developing Countries in from the Cold," speech by Joseph Stiglitz. Geneva 1999.

UNCTAD, 1999. "Trade and Development Report." 1999. p. 87.

Wallach and Sforza, 1999. *Whose Trade Organization?: Corporate Globalization and the Erosion of Democracy*. By Lori Wallach and Michael Sforza. Washington DC: Public Citizen, 1999.

WB, 2001. "Leveraging Trade for Development: World Bank Role," April 3, 2001. For the Development Committee (Joint Ministerial of the Board of Governors of the Bank and the Fund On the Transfer of Resources to Developing Countries). Prepared by the World Bank.

WB-IDB, 2001. "Letter on Coordination Regarding Quebec Summit Plan of Action," by The World Bank and Inter-American Development Bank. April 20, 2001.

WDM, 2001. "The links between trade and debt," World Development Movement. United Kingdom. www.wdm.org

WTO, 1999. "Coherence Report 1999: Coherence in global economic policy-making: WTO Cooperation with the IMF and the World Bank," October 21, 1999 WT/TF/COH/S/3 (99-4573).

WTO, 2001. "Draft Ministerial Declaration: Preparation for the Fourth Session of the Ministerial Conference." General Council. September 26, 2001. JOB(01)/140.