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# ***A New Mechanism for Hemispheric Cooperation on Environmental Sustainability and Trade?***

*DRAFT CONCEPT PAPER FOR CONSULTATION.*

*Developed by Members of the Hemispheric Working Group on Trade and Environment:*

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## 1. Introduction

The launching of the FTAA (Free Trade Area of the Americas) process opened the doors for mutually supportive environmental, social and trade policies, and for the participation of civil society. The FTAA is being negotiated in the context of a broader Summit of the Americas process, which holds the potential to advance sustainable development. The original 1994 'Summit of the Americas' agenda aimed to create a partnership between the economies and countries of the Americas for environmental protection, economic growth, democratic reform and social justice. A key component of sustainable development is environmental management. Just as the Americas Environment Ministers who met in Montreal in April, 2001, committed to maximize the potential for mutually supportive policies on economic integration and environmental protection,<sup>i</sup> so did the Declaration of the Third Summit of the Americas, in April, 2001, Quebec City, address the environment as part of 'creating prosperity' in the Western Hemisphere. These advances are embedded in a context of increasingly serious environment and development challenges in the Americas, and resulting advancements in environmental law and policy on various levels.<sup>ii</sup> In particular, an active forum of Environment

Ministers of LAC (Latin America and the Caribbean) has been meeting for several years under the auspices of the United Nations Environment Programme Regional Office for Latin America and the Caribbean, with Canadian and American observers.<sup>iii</sup> Modeled on the 1992 Rio 'Earth Summit' Agenda 21, a hemispheric sustainable development agenda was also declared by the 34 governments in the 1996 Santa Cruz Summit of the Americas in Bolivia. Unlike in Rio, no legally binding environmental accords were opened for signature in Santa Cruz, but various sectoral environmental initiatives have been launched, including the *Red Inter-Americana de Recursos Hidricos (RIRH)*, *Iniciativa Energia Renovable en las Americas (EREA)*, and the *Inter-American Biodiversity Information Network (IABIN)*.<sup>iv</sup>

Governments of the Americas have agreed in principle that... "[d]evelopment strategies need to include sustainability as an essential requirement for the balanced, interdependent, and integral attainment of economic, social, and environmental goals."<sup>v</sup> Creating the appropriate hemispheric legal and policy framework to promote sustainability would be simply a fundamental starting point.

## 2. The Americas: Two Regions, Five Sub-Regions, One Hemisphere.

To develop such an agenda, it is first necessary to look at the actual 'architecture' of international economic, development and environmental cooperation in the Americas, and how it has changed recently. Traditional international relations theory divides the Western Hemisphere into sharply defined breaks between North and Latin America (with an addition of 'the Caribbean' in *voce sotto*). However, in practice, the Free Trade Area of the Americas is being deliberately<sup>vi</sup> built upon advances achieved in five sub-regional trade agreements; the Mercosur, the Andean Community (ANCOM), the Caribbean Community (CARICOM), the Central American Common Market (CACM), and the North American Free Trade Agreement (NAFTA). As policy makers grapple with the question of trade and environment in the FTAA process, they would

do well to consider models from the whole range of sub-regional mechanisms.<sup>vii</sup> While *North American Agreement for Environmental Cooperation* is a well-known example, the newer and perhaps further-reaching *Framework Agreement on the Environment* in the Mercosur, as well as the *Central American Alliance for Sustainable Development*, the efforts of the *Andean Consejo de Autoridades Ambientales de la Comunidad Andina*, or certain aspects of the *CARICOM*, also present innovations worthy of examination. A new kind of hemispheric thinking, based on consideration of at least five sub-regional models for trade and sustainability policy linkages, is necessary to recommend strategic directions for the high priority international nexus of trade and sustainable development in the Western Hemisphere.

### 3. A Survey of Models for Hemispheric Environmental Cooperation

The FTAA is different from all sub-regional environmental cooperation processes in three ways. First, the 34 Parties are already linked by a complex web of occasionally in-effective but historically established hemispheric and sub-regional inter-governmental organisations and legal instruments. Any proposals will not be starting from scratch, and cannot expect to create scratch, then start, either. Second, in terms of procedure, a special political context exists in connection with advancing FTAA negotiations, where parallel hemispheric environment and development measures might be welcomed as part of the package. Finally, trade liberalisation itself is a debated issue in the public mind of many countries today, and a well-informed civil society movement is developing in the Americas parallel to the ever-stronger protest voice. It will be necessary to put forward a focused trade and sustainability agenda with appropriate financial and political support in order to convince these groups to support a new hemispheric process. To do so, an examination of sub-regional models is useful.

Environmental management regimes exist in the five sub-regions of the Americas through a series of sub-regional agreements aimed at preserving the environment and promoting sustainable development. Common challenges include the need for coordination of environmental laws, standards, certification, capacity building or awareness programs, coping with forest fires, transboundary air and water pollution, desertification, and floods, as well as efforts for joint ecosystem management, wildlife protection or conservation of biodiversity.<sup>viii</sup> Sub-regional environmental regimes in the Americas are integrated to varying degrees into the relevant trade agreements or common markets, or into other broader political processes. Institutional arrangements also vary greatly. Early examples address common concerns requiring trans-boundary environmental management and simply coordinate among relevant environmental authorities. Others have mandates that include forming new institutions, maintaining reporting relationships within a common market coordination mechanism, independent mechanisms for fact-finding or dispute settlement, or access to the overall community dispute settlement system aspects, and provisions for cooperation on a variety of common concerns.

*The Mercosur Framework Agreement on the Environment* Linkages between trade and the environment were recognised early in the process of building the *Mercosur*, and a 'Sub-Grupo No.6' now exists on the environment, as one of the recognised technical working bodies. The Council (Consejo Mercado Común), in June 2001, approved the *Mercosur Framework Agreement on the Environment* which was added to the *Treaty of Asunción* of the *Mercosur*.<sup>ix</sup>

A comprehensive treaty, the 2001 *Mercosur Framework Agreement on the Environment*, at Chapter 2, Article 4, establishes a shared objective of "sustainable development and environmental protection through the development of economic, social and environmental dimensions, contributing to a better quality of environment and life for the people."<sup>x</sup> This objective establishes the accord as an integrated instrument. The text of the agreement provides for upward harmonisation of environmental management systems and increased co-operation on shared ecosystems, in addition to mechanisms for social participation and the protection of health. At Chapter 3, it commits member states to cooperation on the development of instruments for environmental management including quality standards, environmental impact assessment methods, environmental monitoring and costs, environmental information systems and certification processes. At Chapter 4, Art. 8 to 11, there are provisions for the settlement of any disputes (by reference to the existing Mercosur dispute settlement process) and other general mechanisms for implementation of the Framework Agreement. The Annex provides a framework for the future development of protocols in three areas: sustainable management of natural resources (such as protected areas, biological diversity, biosafety, wildlife management, forests, and hydrological resources); quality of life and environmental management (such as hazardous waste management, urban planning, renewable energy, and improvement of soil and atmosphere/air quality); and environmental policy (such as environmental impact assessment, economic instruments, environmental information exchange, environmental awareness programs). Though the regime has much work to do to ensure that the promise of the 2001 *Framework Agreement on the Environment* is realised, the elements are there, and key civil society actors have expressed cautious optimism in this linkage at a sub-regional level.<sup>xi</sup> It is

interesting to note that the 2001 *Framework Agreement on the Environment* was generated by the consideration of environmental issues from within the structures of the customs union. In this instance, it appears that the international economic negotiations took environmental priorities into account, then created a place for environmental cooperation as part of the general sub-regional economic integration process for convenience and to ensure continued political will.

*The CARICOM and environmental regimes:*

Caribbean structures for environmental cooperation include the UNEP Regional Seas Programme, a global initiative which encourages nations to cooperate under a framework "regional sea convention," with subsequent affiliated protocols on specific areas of the marine environment.<sup>xiii</sup> A Caribbean Environment Programme (CEP) exists and is facilitated by the Caribbean Regional Co-ordinating Unit (CAR/RCU) located in Kingston, Jamaica. Created in 1986, CAR/RCU serves as Secretariat to CEP, and has a coordinating rather than implementing role. The objectives of the Secretariat are to provide assistance to all countries of the region, strengthen national and subregional institutions, co-ordinate international assistance, and stimulate technical co-operation among countries. So, on a regional level the 1983 Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (*Cartagena Convention*) has also led to a Protocol concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region to the Cartagena Convention (*Oil Spills Protocol*), the Specially Protected Areas and Wildlife (SPAW) Protocol which entered into force in 2000, and *the Land-Based Sources of Marine Pollution (LBS) Protocol*. While a new unit has been developed at the CARICOM secretariat to promote increased cooperation on environmental issues, the Caribbean has traditionally kept the common market negotiations fully separate from environmental legal frameworks. This is partly due to their membership in many global arrangements, and the fact that support for environmental cooperation often comes from abroad, just as many environmental problems are caused by forces beyond the control of the islanders.

*The Andean Community (CAN) and its Comité Andino de Autoridades Ambientales :*

In 1998 a *Comite Andino de Autoridades Ambientales* (CAAAM) was created, the functions of which include, amongst others, the elaboration of strategies for the management of natural resources, and support to the General Secretariat regarding the design of an Environmental Action Plan for the Andean Community. As of 2001, the CAAAM met twice and, together with the General Secretariat, is creating a biodiversity strategy for the CAN.<sup>xiii</sup> Decision 391 of the Andean Community, of 1996<sup>xiv</sup>, empowers the national authority and indigenous Afro-American and local communities in each country as the custodians of traditional knowledge and resources, to grant prior informed consent to potential users in return for equitable returns.<sup>xv</sup> The biodiversity strategy integrates a joint Andean Declaration on phytosanitary measures, which includes provisions on biosafety. This implies that environmental cooperation measures are being developed as part of the Andean integration processes, not separate.

*Central or Mesoamerica, and the Central American Alliance for Sustainable Development:*

The environment became a significant international issue in Central America in 1989, following the signature of the 1989 *Central American Convention for the Protection of the Environment* (CPC), and the subsequent creation of the *Central American Commission for the Environment and Development* (CCAD). In 1992, the CCAD coordinated the development of a joint position ("Agenda 2000") for the region at UNCED. After UNCED, CCAD supported the creation of the Central American Inter-Parliamentary Commission on the Environment. This Commission, consisting of members of parliament from the seven Central American countries, was instrumental in getting member countries to sign a regional Forests Convention that is now being implemented by the regional Central American Forest Council created exclusively for this purpose. The Alliance for Sustainable Development (ALIDES) was created in 1994, generating a conceptual and operational framework for sub-regional and national goals and strategies. The ALIDES is a comprehensive sub-regional initiative that addresses political, moral, economic, social, and environmental issues which might otherwise have fallen to trade negotiators to resolve. National Councils on Sustainable Development were established, and act as

instruments for implementation. ALIDES was seen as a potential foundation from which to strengthen environmental protection and other development priorities. It was a starting point for the 1994 CONCAUSA (CONvenio CentroAmérica - USA), a partnership for sustainable development which provided funding to the region for a list of concrete commitments including environmental measures such as the conservation of biodiversity, development of renewable energy, environmental legislation standards and eco-friendly industrial processes. The Plan Puebla Panama also brings new energy to sustainable development for a broader Mesoamerican cooperation with several south Mexican states on infrastructure, natural resource management and development.

*North America, the North American Agreement for Environmental Cooperation and other aspects of the NAFTA*

Environmental provisions in NAFTA itself also include innovative commitments. In Chapter 11, parties agree not to try to attract investment by relaxing or ignoring domestic health, safety or environmental regulations. As explained in an earlier IISD Statement, other parts of Chapter 11 designed to ensure that foreign NAFTA investors will be safe from harassment by host governments have been defined in unintended ways and used to attack environmental laws in all three countries. In Chapter 7 dealing with sanitary and phyto-sanitary (SPS) measures and in Chapter 9, dealing with other standards-related measures (SRM), NAFTA outlines how parties should establish their respective levels of protection, set the standards which achieve those levels of protection, and base those standards on science. Finally, in Chapter 104, NAFTA lists seven international environmental agreements, including the Montreal Protocol, the Basel Convention and CITES, and establishes their paramountcy over the NAFTA in case of disagreement. In addition, well-documented NAFTA Labour and Environment Side Agreements exist between the three countries, clearly designated as separate, non-trade agreements. The environmental agreement (the NAAEC) created the North American Commission for Environmental Cooperation (NACEC), which promotes environmental cooperation among the three countries, and by which dispute settlement provisions can be invoked if a country persistently

fails to enforce environmental laws that have conferred a trade benefit. The NACEC itself does not set standards in the various countries, though part of its mandate is to help harmonize them upward. Rather, its role in such disputes is to see that enforcement of existing laws takes place. It is also charged with, among other things, monitoring the environmental effects of NAFTA.

*Bi-lateral Environmental Accords:*

Many bi-lateral trade, environment and investment accords exist in the Americas. In terms of the environment – trade linkage, three bilateral trade agreements illustrate innovative mechanisms which to some degree integrate economic and environmental provisions. The *Chile-Canada Environmental Side Agreement* bears special mention in this respect. As a new accord, created in order to ensure compatibility with the provisions of NAFTA for Chile in the event of its accession, the agreement includes several innovative mechanisms which address earlier policy concerns. Differences between the NAAEC and the Chile-Canada Environmental Side Agreement relate to the introduction of a gradual compliance/enforcement agenda, the simplification of the institutional set-up of the environmental agreement, and the exclusion of trade sanctions in the Chile-Canada Agreement. In future agreements amongst countries of the region these differences can serve as important precedents. Another interesting example for innovative bilateral accords, is a technical assistance program that has been established under the framework of the NAFTA between Mexican authorities and the US Environmental Protection Agency to provide an Integrated Border Environmental Plan and an action agenda of collaborative projects with strong social and environmental components to improve health, working conditions and polluted areas on the border with the maquiladora factories.<sup>xvi</sup> A new accord has also been signed between Canada and Costa Rica, with a focus on access to environmental information, and capacity building for environmental policy or law makers. These new bi-lateral agreements, as they are more flexible, have room for innovation in integrated social, environmental and economic legal instruments that they employ. They bear observation for models that could be useful for much larger processes.

## 4. Setting Processes in Place: Innovative Models for Openness.

Public involvement generated through transparent and participatory processes means higher quality, more diverse exchanges of expertise, data and ideas leading to better informed decisions, more effective domestic implementation, and broader legitimacy in trade and environment decision-making.<sup>xvii</sup> As shown in the *Aarhus Convention*, three key aspects of openness are access to information, access to mechanisms for civil society participation, and access to justice.<sup>xviii</sup>

Processes of democratisation, empowerment and capacity-building in good governance at all levels are a precondition of openness in the Americas. Indeed, increased information and participation for civil society, across the Americas, is not a new or revolutionary idea. Inter-American events were among the first efforts of some governments to officially include certain sectors of civil society, such as private enterprise, in multilateral conferences.<sup>xix</sup> However, international trade debates, until 2001, were completely closed, since governments often had to make commitments that went against the interests of a particular industry who favoured protectionist policies, and essentially legitimate fears existed in the trade community of 'protectionist special interests' gaining too great a voice in the processes which are meant to remain 'isolated and free from political pressure.'<sup>xx</sup> But a distinction must be made between public interest organizations, civil society, and private vested interests or protectionist groups, and the cooperation of the first is essential for a trade agreement to succeed in a democratic and participatory society. The recent decision to release the draft text of the FTAA generates greatly increased transparency.

Some of the best models of innovative mechanisms for increased transparency and public participation are found in the sub-regional environmental accords (REAs) to which many countries in the Americas are accountable. Three examples in particular come to mind.

First, as mentioned above, the NAAEC is a particularly good model for openness in a regional environmental agreement, testing various innovative mechanisms with some degree of success which has granted it some legitimacy in the eyes of civil society organisations in North America. This is based on a firm mandate. The preamble of the Agreement

recognises the importance of the civil society participation in the conservation, protection and improvement of the environment. Regarding access to the information process, the agreement establishes a series of provisions related with the general public access to information at all levels. According to Art. 2, the parties should periodically produce reports about the state of the environment that have to be made public and administrative and legal procedures are contemplated to guarantee access. Similar provisions are in place regarding public participation, one of this mechanisms is established in Art. 9, mandating that the Council hold public meetings in all its ordinary sessions and consult with non governmental organisations, including independent experts, in decision making process. The agreement contemplates the possibility for a fact finding record to be undertaken, even if solicited by civil society groups, in Art. 14 and 15, and grants highly controversial access to justice for investors in Chapter 11.

The Mercosur 2001 *Framework Agreement on the Environment* has two mechanisms or provisions to promote increased openness. Public participation is an objective pursued expressly, and it can be argued that specific actions on civil society participation may yet be agreed in the protocols to the accord.

Indeed, a close examination reveals specific preamble commitments on access to information and participation of civil society, though while the above-mentioned provisions for access to justice are present, these appear only for the use of States. In Chapter 1, Art. 3, governments commit to the promotion of effective civil society participation in addressing environmental issues. Specific new provisions also offer certain hope. In Chapter 3, Art. 6, the actors named to implement the accord include member States with the participation of appropriate national organisations *and civil society organisations*; activities include, at Article 6 a) to increase information exchanges concerning environmental laws, regulations, procedures, policies and practice, including their social, cultural, economic and health aspects, particularly those which might affect trade or competitiveness." The transparency system contemplated sets systems in place which, while bureaucratic in character, will depend upon the way they are operationalised. Institutions and much else are delegated to the future protocols and member governments. The

work of the Economic and Social Council also provides mechanisms for direct participation by civil society organisations and technical experts, in particular through informal consultations held before every meeting of Technical Working Group (Sub-Grupo No. 6).

Finally, the Caribbean Community is far ahead on its formal mechanisms for participation of civil society. First, in 1997 a *Civil Society Charter* was ratified, which recognises the need for participation for a wide range of actors. This Charter is now being revisited by the CARICOM, to strengthen existing mechanisms of consultation between government and civil society. They plan that new

mechanisms will be identified and seek a commitment to ongoing collaboration at national and regional levels. A range of issues deemed critical to the future development of the Caribbean Community are discussed at a Caribbean Community (CARICOM) Forum. Some of the proposed issues relate to the reform of the Region's education system and its relationship to employment, productivity and technology acquisition; recapturing/retaining migrating skills; instruments at the regional and national level to promote domestic savings, and focusing on the Caribbean as a "zone of peace". These would be elements in the search for a "New Model of Economic Development" for the Caribbean.<sup>xxi</sup>

## 5. Recommendations for a Hemispheric Sustainability Agenda

The survey of existing institutional mechanisms for environmental cooperation in the Americas raises a number of leading questions. At present, most of the sub-regional processes have given less priority to international legal structures for environmental or social cooperation, preferring to leave these issues mainly to be addressed by domestic instruments. However, if the accords lead to deeper integration between the economies of these nations, will not political expediency force at least parallel, if not integrated and institutionalized structures for environmental and social policy coordination, even if it is simply mutual recognition of health and environmental standards? What about the harmonisation or mutual recognition of enforcement mechanisms? Will these provisions always be added as an 'afterthought' or can they be part of the agenda-setting process? The diversity of economic, social and environmental realities in the Region seems to favour a discussion on some basic definitions regarding key sustainability concepts as well as potential priorities for cooperation in the Region. How are social and environmental variables interlinked? Whereas almost all of the sub-regional agreements include some type of environmental cooperation, there is a range of topics that have been dealt with. Can priority areas be identified? Is there some common denominator that can be established?

The intricacies of the new arrangement with 34 countries on very different levels of development promise interesting policy debates if the FTAA

follows the dominant trend, and recognises sustainable development as one of its goals.

Current studies and research advance these recommendations and leading questions for a constructive approach to trade and sustainability interface in the Americas:<sup>xxii</sup>

### a) Consider the long-term sustainability aspects of a potential FTAA:

A long term goal of a trade agreement is sustainable development for the hemisphere's communities. This could be recognised in the preamble to the final text of the FTAA, as a way to diffuse opposition and ensure policy coherence in later legal interpretation. To avoid future policy inconsistency in the FTAA, proposals can also be discussed for interpretative texts concerning potential relationships between trade, development and environment measures, or specific references in the FTAA which recognise an exemption for trade measures being taken pursuant to existing or new environment and development accords. To help define the areas in need of such measures, sustainability reviews can be conducted *ex-ante* (prior to the conclusion of the FTAA agreement), through the use of sustainability impact assessment (SIA). The SIA analysis can also identify useful parallel measures for trade policy, help develop proposals for liberalisation sequencing options which would mitigate or lower any negative environmental effects, and strengthen the



sustainable development benefits of liberalisation. Leading countries could launch processes to conduct preliminary, participatory sustainability reviews of the proposed FTAA, seeking coordinated approaches in each sub-region as appropriate. This could be done with support from the IDB, ECLAC and OAS (regional institutions which provided in-depth analysis of the region's trade structures prior to the launch of the FTAA). In particular, SIAs research can focus on the specific environmental or social implications of each of the nine FTAA negotiating groups (agriculture, investment, market access, intellectual property, services and other issues). The SIAs could compile comparative data and develop a matrix which builds upon recent work at the UNEP, OECD, various national governments, the North American Commission for Environmental Cooperation, as well as work by NGOs and research organisations.<sup>xxiii</sup> Civil society organisations could also participate as partners in all aspects of the sustainability reviews, and their ongoing or future efforts to carry out such reviews in the context of the FTAA should be supported by private foundations. In this context, governments should seek joint decisions on trade measures for environmental purposes, or methods for the mitigation of sustainability impacts of trade liberalization.

### **b) A New Americas Ecological Cooperation Mechanism?**

The Americas is a contiguous geographic and cultural area with common migratory species and linked ecosystems. The region could benefit from a coherent ecological cooperation agenda and increased resources or capacity building for the implementation of their international or domestic environmental commitments. A new, cooperative stand-alone Americas Environmental Accord (AEA) could be negotiated, with a clear, coherent agenda and new, additional, effective financing measures to ensure implementation. The innovative, far-reaching 2001 *Mercosur Framework Agreement on the Environment* might provide a number of substantive starting points:

- What is the shared objective of the AEA? Sustainable development and environmental protection in the western hemisphere might be useful as a goal.
- The AEA can provide for increased cooperation on environmental management

systems and shared ecosystems, in addition to mechanisms for social participation and the protection of health.

- The AEA can commit member states to cooperation on the development of instruments for environmental management including quality standards, environmental impact assessment methods, environmental monitoring and costs, environmental information systems and certification processes.
- The AEA can have provisions for the settlement of any disputes (establishing a fair, open dispute settlement process) and other general mechanisms for implementation of the accord.
- An Annex to the AEA can provide a framework for the future development of protocols in key areas identified by governments. Ideas include sustainable management of natural resources (such as protected areas, biological diversity, biosafety, wildlife management, forests, and hydrological resources); quality of life and environmental management (such as hazardous waste management, urban planning, renewable energy, and improvement of soil and atmosphere/air quality); and environmental policy (such as environmental impact assessment, economic instruments, environmental information exchange, environmental awareness programs).

Additional agenda items, drawn from other sub-regional models, include:

- Compiling and developing methodologies for the collection of aggregated, empirical data on environmental conditions, making it available to citizens and environmental policy makers;
- Supporting domestic implementation of environmental laws, by providing analysis, mechanisms for capacity building, policy linkage and even accountability through streamlined procedures for challenges of non-enforcement;
- The creation and strengthening of instruments for access to environmental information, monitoring, and capacity building, coordination of policy on new biological technologies, sciences and traditional knowledge;

- Providing a space for countries in a region to join forces on joint efforts to address natural disasters such as forest fires, transboundary air and water pollution, desertification and floods.
- Providing, where common agendas exist, regional negotiating mechanisms in multilateral environmental agreements and cooperative MEA implementation (this includes clearinghouses, experts networks, technology transfer and financing mechanisms).
- The AEA could be structured to build on existing regulatory frameworks to achieve their goals, simply creating administrative units within agencies to implement the accord.

### **c) Open Spaces for Continuous Trade and Sustainability Dialogue:**

It is essential to build a strong hemispheric civil society voice with the capacity to participate effectively in shaping trade and integration policy. Two sets of concerns exist on a hemispheric level in this respect. First, it is feared that civil society voices are of uneven strength in the FTAA process, and that increased openness might lead to unbalanced participation from some countries. When the participation of civil society exclusively reflects social and ecological concerns of the more developed partners, civil society participation might simply be used as a tool to fight so-called social / ecological dumping by less developed partners, instead of promoting their sustainable development needs. Second, while opportunities can be created by accords or mandated by governments, it is the responsibility of civil society and other groups to take them up. Often, these groups and marginalized communities lack the very capacity, analysis and resources to take advantage of spaces for dialogue. This leaves formal channels under-utilised, particularly in environmental regimes, and means disparities in regional and sub-regional representation which could hinder the development of effective processes on the hemispheric level. Based on the above survey of existing mechanisms for openness in sub-regional accords, three recommendations can be made:

- Civil society 'Peoples Summits' parallel the FTAA Trade Ministerial meetings and other grassroots mechanisms are

developing. With this kind of new energy, the Americas integration process has much greater chances of obtaining the support and participation of the broader public, but more is needed. A civil society Charter, supported by implementation mechanisms, could be developed.

- Under auspices of leading institutions, experts networks are being created in order to foment the exchange of information, participation and cooperation between different regional actors on trade and sustainable development issues. A centre or institution could be created with a mandate to undertake capacity building, increase information analysis and flow, and provide technical support on hemispheric sustainable development issues. Policy and grant-makers would need to support the creation of such a non-advocacy mechanism that can facilitate comprehensive policy dialogues among the different interests, sub-regional perspectives and sectors.
- The first step could be to open a place for a broad dialogue on hemispheric trade and environment issues, with the Environment Ministers Forum of Latin America and the Caribbean as a foundation institution and technical support from other IGOs on the Americas. In partnership with the existing Hemispheric Working Group on Trade and the Environment, a Standing Conference or some kind of Public Advisory Committee could be constituted, which would provide a place for dialogue between senior officials from governments, regional and hemispheric institutions, and the NGOs, academic institutions and private sector voices. It must be legitimate, non-bureaucratic and inclusive. It should aim at building consensus on a focused trade and sustainability agenda that would be built upon hemispheric trade and environmental policy frameworks. Its activities would include information sharing, networking, policy analysis and outreach, and terms of reference could be elaborated in cooperation with leading actors in the debates.

## 6. Conclusions: Inspiration for a Networked New Start?

These three sets of ideas are broad, and address the hemispheric economic integration process as a whole, building from the progressive goals of the 1994 Miami Summit of the Americas, the 1996 Santa Cruz de la Sierra Summit of the Americas, the 1998 Santiago Summit of the Americas, and the 2001 Quebec City Summit of the Americas. It is essential to consider a few additional points.

In the FTAA negotiations to date, environment and development issues have too often been viewed through the prism of their potential disruptive effects on trade relations. Hence, there has not been sufficient scope for analyzing and discussing the fuller set of trade and sustainable development linkages. While this shortcoming is critical, not just from an environmental perspective but for the trade community as well, to achieve broad-based support for any new trade agreement it is clear that environmental concerns will also have to be addressed in a sensitive, step by step policy discussion. For governments of the Americas to have a hemispheric cooperation agenda which fosters rather than frustrating sustainability objectives, countries with extremely diverse development trajectories and economic conditions

must be satisfied. Any work programme to lay the foundations for an effective AEA must build upon the efforts of existing institutions with hemispheric, sub-regional or regional scopes. This must be done with a strong emphasis on the majority, Latin American and Caribbean priorities, addressing current fears and concerns, and based on hemispheric approaches to these issues. It will be essential to avoid last minute negotiations, which could unnecessarily alienate key players.

The opportunity, and the challenge, is clear. An Americas Environmental Accord is necessary and possible. Whatever its form, this must be a strong, adequately resourced mechanism for hemispheric cooperation on environmental sustainability, and it must be woven into the broad, flexible networks of existing sub-regional, regional and hemispheric institutions and environmental accords, many of which constitute regimes in their own rights. It must link with and advise trade liberalisation processes so that they can better support sustainable development. And it must find innovative ways of including all actors for an Americas integration process which is legitimate, visionary and sustainable.

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<sup>i</sup> See [http://www.ec.gc.ca/press/2001/010330\\_f\\_e.htm](http://www.ec.gc.ca/press/2001/010330_f_e.htm)

<sup>ii</sup> See Cordonier Segger, M-C. et al. (2001) *Ecological Rules and Sustainability in the Americas*, Winnipeg: IISD (International Institute for Sustainable Development), which divided current international environmental regimes in the Americas into 1) Species-specific accords - those which protect particular migratory or transboundary species and populations, 2) Natural resources accords- those which ensure that the productive capacity of certain natural resources is respected, restored or managed, 3) Ecosystem areas accords - those which encourage conservation of a particular ecosystem, habitat or heritage area, and 4) Ecological cooperation accords – those new comprehensive environmental agreements formed as part of a broader integration package. Many use trade measures for environmental purposes (TMEPs), and in several, TMEPs may be vital to agreement ratification rates or incentives for implementation.

<sup>iii</sup> See Notes from 08 October 2000, 5<sup>th</sup> Inter-sessional meeting of the Latin America and Caribbean Environment Ministers Forum. Doc. UNEP/LAC-IC.5/8, Anexo I, Parte 1 *Proceso de preparacion regional para Rio +5*, from the *Comite Tecnico Interagencial del Foro de Ministros de Medio Ambiente de America Latina y el Caribe*.

<sup>iv</sup> OAS, CIDI / CIDS (1999),

<sup>v</sup> 'Santa Cruz de la Sierra Declaration, Bolivia, 1996., Art.2'

<sup>vi</sup> San José Declaration of the Trade Ministers, 1998

<sup>vii</sup> Coming from the environmental field the authors focus on this element of sustainable development. Comments and complementary information from the social, cultural or other perspectives are not only welcome but would be extremely useful.

<sup>viii</sup> See Cordonier Segger, M-C. et al. (2000) *Trade Rules and Sustainability in the Americas*, Winnipeg: IISD (International Institute for Sustainable Development).

<sup>ix</sup> *Acuerdo Marco sobre Medio Ambiente del MERCOSUR*, Approved Text from the XX Reunión del Consejo Mercado Común, 22 June 2001, Asunción, MERCOSUR/CMC/DEC.Nº 2/01. To be annexed, upon ratification by member states, to *El Tratado de Asunción, el Tratado de Ouro Preto*, la Resolución Nº 38/95 del Grupo Mercado Común y la Recomendación Nº 01/01 del SGT Nº 6 "Medio Ambiente".

According to reports of a meeting of the SGT No 6 in August 2001 in Montevideo, by August there was still no ratification of the treaty in any of the member countries – see [www.fundacionecos.org](http://www.fundacionecos.org).

<sup>x</sup> See *Acuerdo Marco sobre Medio Ambiente del MERCOSUR*, Approved Text from the XX Reunión del Consejo Mercado Común, 22 de junio de 2001 en Asunción MERCOSUR/CMC/DEC.Nº 2/01. at Art. 4 where it the objective is stated to be "desarrollo sustentable y la protección del medio ambiente, mediante la articulación de las dimensiones económicas, sociales y ambientales, contribuyendo a una mejor calidad del ambiente y de la vida de la población."

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<sup>xi</sup> See Leichner Reynal, M.(2001) 'The Mercosur Framework Agreement on the Environment', (2001) ICTSD (International Centre for Trade and Sustainable Development): Bridges Fall Edition

<sup>xii</sup> See <http://www.cep.unep.org/>

<sup>xiii</sup> See [www.comunidadandina.org/](http://www.comunidadandina.org/) and ICTSD (1999) for a further explanation of the activities of the CAAAM and the Environmental Action Plan.

<sup>xiv</sup> For a full text of this Decision see [www.comunidadandina.org](http://www.comunidadandina.org)

<sup>xv</sup> See Prakash, S. (1999) According to the 1992 *Convention on Biological Diversity* (CBD), access to resources is subject to the prior informed consent (PIC) of the provider of such resources. This means that any company or individual seeking access to genetic resources must first seek and receive the consent of the custodian of these resources, before procuring any genetic resources from the provider's jurisdiction. Therefore, access must be granted on mutually agreed terms, as defined by the seeker and provider.

<sup>xvi</sup> See Esty, D.C. (1994) *Greening the GATT: Trade, Environment and the Future*, Washington: Institute for International Economics, pp.376-378).

<sup>xvii</sup> International Institute for Sustainable Development (1994), p 29.

<sup>xviii</sup> See Economic Commission for Europe Committee on Environmental Policy Fourth Ministerial Conference "Environment For Europe", Aarhus, Denmark, 23-25 June 1998 *Convention On Access To Information, Public Participation In Decision-Making And Access To Justice In Environmental Matters*.

<sup>xix</sup> See Charnovitz, S. (1997) Two Centuries of Participation: NGOs and International Conferences, *Michigan Journal of International Law*, Vol. 18, No. 2, Winter 1997

<sup>xx</sup> See Murillos R., C. (1998) Costa Rican Vice-Minister of Trade, In: *Trade And Environment, Opening the Dialogue*, National Audubon Society and Intel, San Jose

<sup>xxi</sup> Online: CARICOM <<http://www.caricom.org>>, see also <<http://www.caricom.org/chartercivilsoc.html>>.

<sup>xxii</sup> Based on: The Trade Rules and Sustainability in the Americas project of the IISD, ICTSD and UNEP - initiated in 1998, with a view to providing policy advice for the Summit of the Americas process and the potential FTAA in 2005. It sought to apply the Winnipeg Principles for Trade and Sustainable Development to the process of western hemispheric integration, and specifically to the FTAA process, by comparing examples from the existing sub-regional trade regimes. Other examples of innovative research in this area include: The Yale Centre for Environmental Law, the CINPE (Centro Internacional de Política Económica para el Desarrollo Sostenible) and the Centro de Investigación y Planificación del Medio Ambiente (CIPMA)'s work on a two-year project entitled "FTAA and the environment", assessing in a preliminary way environmental implications from the FTAA; a recent symposium, hosted by the Miami-based North-South Centre, the International Centre for Trade and Sustainable Development (ICTSD) and other partners, which developed a series of recommendations for environmentally sound trade expansion in the Americas.

<sup>xxiii</sup> See for example UNEP (2001), WWF and CIPMA(2001), OECD (2000), CEC (1996) and CEC (1999) and respective websites: [www.unep.org](http://www.unep.org); [www.wwf.org](http://www.wwf.org); [www.oecd.org](http://www.oecd.org); [www.cec.org](http://www.cec.org); [www.cipma.cl](http://www.cipma.cl)

**THIS CONCEPT PAPER IS IN DRAFT FORM, TO STIMULATE EXPERT CIVIL SOCIETY, GOVERNMENT AND PRIVATE SECTOR DISCUSSION OF AN AMERICAS ENVIRONMENT ACCORD BASED ON THE MERCOSUR FRAMEWORK AGREEMENT ON THE ENVIRONMENT AND OTHER PROCESSES, IN PREPARATION FOR A SEMINAR TO BE HELD IN PUNTA DEL ESTE - APRIL, 2002. WE WOULD GREATLY APPRECIATE COMMENTS AND INPUT TO BE SENT TO [MCSEGG@IISD.CA](mailto:MCSEGG@IISD.CA); [MLREYNAL@ADINET.COM.UY](mailto:MLREYNAL@ADINET.COM.UY), [AKGL@CEMDA.ORG.MX](mailto:AKGL@CEMDA.ORG.MX); AND [NBORREGAARD@CIPMA.CL](mailto:NBORREGAARD@CIPMA.CL).**