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# Environmental Issues in Free Trade Integration in the Western Hemisphere

By: *Jill A. Kotvis\**

## A. Introduction

As we began to gather in Waco, Texas for our Conference on Free Trade for the Americas to discuss the economic integration of the Western Hemisphere and the extension of NAFTA to our Latin American neighbors, participants in the Summit of the Americas, to take place in Miami, Florida, one month later, were in the final stages of finding common ground on a statement of principles and an action plan to be proposed at that historic conference.

## B. The Summit of the Americas

On October 5, 1994, President Bill Clinton sent out formal invitations to the 33 other democratically-elected leaders in the Western Hemisphere to attend a conference in Miami, Florida in December. The Summit of the Americas Conference, which took place on December 9-11, 1994, was the first hemispheric gathering since 1967. Prior to the Summit, President Clinton stated, "the United States has an opportunity to cement a lasting trade relationship with its neighbors. The region's nations also appear ready to make a unique commitment to defend democracy and improve the hemispheric quality of life." To insure a Summit of action and not just words, leaders from each nation met extensively prior to the Summit to work out and agree upon a 14-point agenda for the Summit. To emphasize the importance of the Summit, President Clinton, on his way to the Miami conference, signed the recently ratified GATT Treaty at the headquarters of Organization of American States.

Trade and democracy were not, however, the only issues to be discussed at the Summit. When President Clinton originally called the regional Summit, he spoke of it as an opportunity to create a hemisphere-wide tradeblock that would promote environmental protection. Supporting the environmental element of the Summit, several pre-conference meetings were held in Canada, Argentina and Nicaragua. In October, the Canadian National Roundtable on the Environment and Economy brought government and non-government organizations' ("NGOs") representatives together to discuss the environmen-

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tal issues relating to the Summit. In August 1994, the Argentine government also brought together government and NGOs to discuss trade and environment issues for the Summit. And perhaps most astonishing, the seven Central American leaders met in Minagua, Nicaragua in October 1994, and formed the Alliance for Sustainable Development, a coalition which the United States was to join at the end of the Summit when the eight members signed an environmental sustainable development cooperation accord called *Conjunto Centroamericano-USA* or CONCAUSA.

Although much of the focus at the Summit of the Americas was on trade issues and the political stability necessary for maintaining democracy in the hemisphere, certain steps toward regional collaboration for the sustainable use and conservation of biodiversity in the western hemisphere were also achieved. The agenda of the Summit of the Americas called upon Western Hemisphere nations' leaders to address three key issues: (i) economic integration and trade liberalization; (ii) the strengthening of democratic institutions; and (iii) assuring sustainable development.

On Saturday, December 10, 1994, the 34 nations of the Western Hemisphere agreed to establish the Free Trade Area of the Americas across the Western Hemisphere by the year 2005. This Free Trade Area would cover a market of more than 850 million people and \$13 trillion in consumer buying in goods and services. The leaders also agreed to strengthen the region's emerging democracies and to protect its environment. To achieve these goals, the parties signed a Declaration of Principles, containing 23 separate and specific initiatives and a Plan of Action containing more than 100 action steps. These initiatives and actions will be pursued through lower-level working groups and regional meetings of second-level government officials over the next several months and will be known as the Miami Process.

Although the primary focus of the Declaration of Principles is on hemispheric economic integration, it recognizes that continued economic progress depends on sustainable development, as well as sound economic policies in dynamic private sectors. The Declaration also states that "[F]ree trade and increased economic integration are key factors for raising standards of living, improving the working conditions of people in the Americas and better protecting the environment." Two paragraphs are also specifically devoted to a discussion of guaranteeing sustainable development and conserving the natural environment for future generations. Specifically, the parties agree to advance "social well-being and economic prosperity in ways that are fully cognizant of [their] impact on the environment" and "to support the Central American Alliance for Sustainable Development, which seeks to strengthen those democracies by promoting regional economic and social prosperity and sound environmental management."

The Plan Of Action additionally devotes one of its four subsections to "guaranteeing sustainable development and conserving our natural environment for future generations." Sustainable development is broadly defined to include a Partnership for Sustainable Energy Use, a Partnership For Biodiversity and a Partnership For Pollution Prevention. Within the Partnership For Sustainable Energy Use, the parties agree to: (i) to promote economic development and to address environmental concerns consistent with Agenda 21 and the Framework Convention on Climate Change, Sustainable Development and Use; and (ii) encourage the World Bank and InterAmerican Development Bank to increase financing of energy projects to improve the environmental sustainability of conventional energy sources, in accordance with economic rationality. Within the Partnership For Biodiversity subsection, the governments agree, among other things, to: (i) build capacity

for the conservation and sustainable use of biodiversity through programs on management of parks and protected areas, forests and wetlands; (ii) seek to insure that strategies for the conservation and sustainable use of biodiversity are integrated into relevant economic development activities; (iii) develop and implement policies, techniques and programs to assess, conserve and sustainably use terrestrial, marine and coastal biodiversity resources, and most interestingly; (iv) launch a "Decade of Discovery", to promote hemispheric, technical and scientific cooperation and to facilitate the exchange of information, relevant to the conservation and sustainable use of biological diversity.

Within the Partnership For Pollution Prevention subsection, the signatory countries agree to:

- strengthen and build technical and institutional capacity to address environmental priorities such as pesticides, lead contamination, pollution prevention, risk reduction, waste and sanitation issues, improved water and air quality, access to safe drinking water, urban environmental problems, and to promote public participation and awareness;
- develop and implement national action plans to phase out lead in gasoline;
- strengthen national environmental protection frameworks and mechanisms for implementation and enforcement, and include sustainability criteria and objectives in national and other development strategies;
- undertake national consultations to identify priorities for possible international collaboration;
- support democratic governmental mechanisms to engage public participation, particularly from members of indigenous and other affected communities, in the consideration of policies regarding the environmental impact of development projects and the design and enforcement of environmental laws;
- convene a meeting of technical experts, designated by each interested country, to develop a framework for cooperative partnership, building on existing institutions and networks to identify priority projects. These projects will initially focus on: (1) the health and environmental problems associated with the misuse of pesticides, and (2) the impacts of lead contamination from gasoline and other sources. Subsequent activities could address waste, air, water quality, marine pollution from ships and other sources, and problems associated with urbanization;
- promote the participation of organizations, such as the InterAmerican Development Bank, the International Monetary Fund, the World Bank, Pan American Health Organization, and The Organization of American States, and non-governmental actors and organizations, as appropriate, to finance, develop and implement priority projects;
- develop environmental policies and laws with the goal of ensuring that economic integration of the region occurs in an environmentally sustainable manner;
- establish mechanisms for cooperation among government agencies, including the legal and enforcement areas, to facilitate environmental information exchange, technology cooperation and capacity-building;
- develop compatible environmental laws and regulations, at high levels of environmental protection, and promote the implementation of international environmental agreements; and
- discuss progress on implementation of international and national activities described above at the 1996 Summit Conference on Sustainable Development in Bolivia and at subsequent annual sustainable development ministerials.

U.S. officials say that they had to use the growing momentum toward free trade in the hemisphere to win inclusion of references to environment and labor standards, which many NGOs describe as diluted references to these areas. While it is true that the commitments in the environmental and sustainable development areas are less definite than those dealing with trade integration, the references in this agreement are certainly a step forward from the agreement flowing from the Asian-Pacific Rim Pact which had no references to the environment or sustainable development. Some observers say that indeed the Summit meeting may be a catalyst in creating environmental cooperation throughout the Western Hemisphere, building on the Alliance for Sustainable Development flowing from the Central American Nations meeting. Nevertheless, a partial victory was won for those interested in advancing environmental and sustainable development causes to the extent that the member nations agree to rapidly phase out leaded gasoline and join in a Sustainable Development Summit in Bolivia in 1996.

Implementation meetings are proceeding among the countries. The trade ministers met in Denver in July 1995, to launch seven working groups tasked with laying the foundation for the Free Trade Agreement. Four more working groups should be launched in March 1996, at the meeting scheduled for Cartagena. Working group topics include health standards, intellectual property rights, investment, services, government procurement, subsidies and competitive policy.

Although foreign trade ministers are playing the coordinating role, much of the implementation responsibility has passed into functional ministries of the governments and the private sector. The free trade area implementation architecture envisioned three parallel avenues of progress. The first is the traditional governmental role with the specialized ministries such as trade, finance, energy and environment, playing responsible roles. Almost monthly ministerial meetings at this level have been held in 1995. In June, the trade and commerce ministers met, in September, the ministers of health, in October, ministers of labor met in Buenos Aires and ministers of energy in Washington, D.C., and in November, the ministries in charge of tourism and finance regulations met separately.

The monthly ministerials are supported by a sub-system of responsible coordinators. Countries with a strong expertise which are interested in a given Summit initiative have volunteered to take specific responsibility to convene meetings, report on progress and best practices and develop working plans with quantitative targets. In this regard, Brazil and Canada have volunteered to be the responsible coordinators for democracy and human rights. Jamaica has volunteered to coordinate civil society participation; Mexico has agreed to coordinate education; and the United States has volunteered to take the lead on finance, counter-narcotics and energy. Notably, no country has stepped forward to seize the environmental initiative.

The second parallel avenue for progress is the multilateral institutions, particularly the InterAmerican Development Bank ("IADB") and the Organization of American States ("OAS"). The OAS' Unit for the Promotion of Democracy has agreed to fulfill the Summit's mandate to foster national dialogues and political reconciliation aimed at preserving democracy through the preemption of polarization in member states. The IADB is joining forces with the OAS and World Bank to strengthen parliaments and judiciaries in an effort to overcome artificial divisions between economics and politics. The IADB is also funding many other Summit initiatives, including infrastructure, micro-enterprise and health and education.

The third parallel avenue of implementation is the public-private sector partnerships consisting of academics, non-government organization leaders and private-sector associations. At the Denver hemisphere meeting in July 1995, over 1,200 business executives met in a trade and commerce forum to provide private business advice to the ministers on the integration process. They will also be included in the March meeting in Cartagena. Academics helped organize a conference in August 1995, on confidence and security building measures, and environmental groups are expected to play a central role in consultations leading up to the conference on sustainable development in Santa Cruz, Bolivia, in late 1996.

Despite these efforts, public focus has already faded from the Summit and some argue that little has been accomplished to implement its goals. The peso devaluation in Mexico and its impact on much of the Western Hemisphere may be one culprit; the enormity of the task another.

### *C. Implementation of Western Hemisphere Trade Integration*

Whether each of the nations in the Western Hemisphere will accede to NAFTA or negotiate a series of separate deals with the United States, and whether they will do so in current trading blocks, such as Mercosur and the Andean Pact, or individually, remains an unresolved issue, except for the nation of Chile (see paragraph D below). Mexico, who had already negotiated a series of individual trade pacts with several of its Latin American neighbors, and Canada strongly prefer building on NAFTA. Brazil favors expanding existing South American trade areas by building on Mercosur, which is made up of Brazil, Argentina, Paraguay and Uruguay. The Andean pact nations of Bolivia, Columbia, Ecuador, Peru and Venezuela have also considered approaching free-trade talks as a group rather than on an individual basis, as have the Central American nations. Another important unresolved question is whether or not special concessions should apply to certain nations or if a single set of rules for the entire Western Hemisphere should apply, thereby ignoring issues such as size, population, wealth and level of development.

Related to these issues, the major question remains regarding the treatment of environmental and labor issues -- issues which took on major significance in the NAFTA negotiations. Although the U.S. and Canada have repeatedly said that they will not consider trade agreements with any country in the hemisphere unless that country is willing to accept environmental protection requirements similar to those included in NAFTA, the question of inclusion of environment and labor issues were the roadblocks to the U.S. Congress approving fast-track authority for President Clinton to negotiate trade pacts in Latin America. Immediately preceding the Summit, leaders of the new Republican majority congress reminded President Clinton of their opposition to fast-track authority for any trade agreements that would also cover environmental and labor pacts. "We again reiterate that it is not appropriate to use fast-track procedures for legislation involving environmental and labor agreements which are not directly related to trade or other extraneous matters," said then-incoming house speaker Newt Gingrich, R-Ga., and Rep. Bill Archer, R-Tx. (new chairman of the House Ways and Means Committee). Whether or not fast-track authority is approved for Chile's ascension to NAFTA and follow-on international trade pacts, the inclusion of labor and environmental standards in trade agreements will continue to be supported by the democratic contingent in the U.S. Congress.

#### *D. Chile's Ascension to NAFTA*

In one of the few concrete actions flowing from the Summit of the Americas, the United States, Mexico and Canada agreed on December 10, 1994, to open up negotiations with Chile for membership in NAFTA. President Clinton, who had anointed Chile as the next free trade partner after the conclusion of negotiations with Mexico, described Chile as "an ideal partner" when promising Americans that the NAFTA/Chile Agreement would be a good deal for the United States.

Chile was the first choice to accede to NAFTA because it has moved further and faster in adopting and setting a record of free market reforms and advancing its economy than any other nation in Latin America. Chile, which began free market reforms in the 1970s, has experienced its ninth consecutive year of growth and is celebrating its fifth year under a democratically-elected government. It has also cut government-owned enterprises from 500 to approximately 50, reduced tariffs from a previous 105 percent to 11 percent, and inflation from 27 percent in 1990 to 8.9 percent in 1994. Chile's employment rate of 6 percent, in 1994, is one of the lowest in Latin America, and its exports grew by more than 25 percent that same year. Because of its advanced stage of economic reforms, many believe that Chile will meet NAFTA terms without difficult drawn out negotiations. According to Eduardo Anniat, Chile believes that it meets all of the requirements for membership in NAFTA. These comments do not, however, take into account the current state of environmental laws and enforcement in Chile.

Although both the Canadian Prime Minister and Trade Minister have said that Chile would have to agree, not only to the primary NAFTA document, but also to the side agreements on environmental protection and labor standards (positions supported by comments made by President Clinton last fall), the agreement between the NAFTA nations and Chile thus far is only to negotiate its compliance with the terms of the main NAFTA agreement - not the side agreements. Canadian International Trade Minister Roy MacLarin believes that the side agreements on environment and labor will subsequently become an integral part of the negotiations; he expressed the position that Chile would be expected to subscribe to the same rules as the three existing NAFTA members. The Clinton Administration, through a U.S. trade representative, reaffirmed its commitment to Chile's participation in the side agreements.

Some believe, however, that the issue may not provoke as much U.S. domestic opposition due to the geographical distance of Chile from the United States border. The geographical distance is, however, likely to have very little impact on whether or not environmental issues become significant in negotiations with Chile. The international focus on the environment brought about by conferences like that in Rio de Janeiro, public interest groups' growing voices, and the negotiations on NAFTA itself, have placed too much focus on this issue to allow it to fade into the background.

Perhaps more important, however, will be the impact of the current status of Chilean environmental law and enforcement, once it becomes more widely known. Chile is far behind Mexico in its development, implementation and enforcement of environmental laws and regulations. In fact, Chile is even further behind than Mexico was prior to implementation of fast-track negotiations on Mexico entering NAFTA in 1991. Chile lacks any uniform national code or legislation. Its framework environmental law was not formally approved until March of 1994 and the country lacks any regulations implementing the law. Based on this framework law which replaced 778 existing environmental documents, Chile's U.S. EPA equivalent, the National Environmental Commission, CONAMA, will

assist the government in drawing up specific laws such as a clean water act, clean air act and soil protection law, over the next five years. Although the 1980 Constitution qualifies to all persons in Chile the right to live in an unpolluted, environmentally sound environment, and the new framework law requires environmental impact statements, public participation and notice, and promotes environmental education and research, these minimal ingredients still contain no liability to clean up past pollution, no regulations for solid industrial waste, and no detailed air and water laws and regulations at this time.

In addition to the lack of environmental laws and regulations (and consequently enforcement), Chile faces a huge challenge of dealing with the environmental fallout from the past several years of spectacular growth. The country suffers one of the world's highest levels of air pollution, particularly in Santiago, Chile, where transportation relies primarily on 11,000 diesel buses. Twenty-eight thousand factories are estimated to be involved in producing more than 1,000,000 tons of waste into waterways each year, with an estimated cleanup cost of \$4 billion. Mining, one of the country's primary product areas, has severely impacted the Chilean environment and Chile is among the top ten sulphur polluters in the world. Although Chile is dedicated to making strides in the environmental arena, it is still at the first generation stage of developing and implementing environmental reforms, laws and planning.

In July of 1994, Chilean business leaders and government officials commented that it was unfair to impose U.S. standards on what they said was a developing country. Chile may therefore need to be reminded of the comments of its Ambassador to the United States, at a conference sponsored by the Center for Strategic and International Studies in January of last year, that "we feel that good environmental practice is good business practice; the only way to compete is with clean processes and clean goods." The Ambassador also stated that his country was prepared to join the North American Free Trade Agreement and that Chile would accept the ecological benchmark set in NAFTA and its environmental side deal. More recently, Chilean budget minister Eduardo Anniat admitted that Chile could be in for some problems in referring to environmental issues and NAFTA. Anniat, chief architect of President Eduardo Frei's economic program, is one government official reportedly pushing for awareness of the changes needed in the environmental area.

When one dissects the Environmental Side Agreement, one may find that Chile's acceptance of its terms provides little solace to those interested in making environment a part of trade. That is because the primary obligation of the parties to the Side Agreement is to enforce their environmental laws that are already on the books. The Side Agreement creates no obligation on the part of a signatory country to develop new laws. Because Chile's only existing environmental laws are the broad and sweeping statement of rights in its Constitution and the briefest of a framework law with no detail as to air, water, soil and hazardous waste standards and requirements, Chile would be agreeing to very little were it to sign up to the Environmental Side Agreement at this time, prior to the development of their framework laws' promised expansion.

Preparatory talks with Chile began in December 1994, with the three current NAFTA members meeting to discuss negotiating procedures and developing entrance criteria into NAFTA for application to Chile and subsequent prospective NAFTA members. Preliminary negotiations with Chile began in January 1995, with formal ministerial meetings held thereafter. During this time, five special committees were set up to review issues such as market access measures, subsidies and anti-dumping rules, agriculture and dispute settlement. Formal negotiations began in late July.

Although Chilean Finance Minister Eduardo Aninat predicted finalization within 15 months after start of negotiations, this date is obviously now unrealistic. The primary reason behind the delay may be the presidential politics in the U.S. Some argue that Senate majority leader Bob Dole, a NAFTA supporter, is de-railling "fast track" authority necessary to bring Chile into NAFTA; as a Republican presidential hopeful he may not want to give President Clinton a political victory with Chile. Others accuse Dole of courting the trade protectionist vote.

Meanwhile, the Clinton Administration may be dragging its feet in order to avoid alienating labor until after the elections. The Republican controlled congress and the democratic white house have been unable to reach an agreement on labor and environmental issues, which the Republicans want excised from discussions with Chile in exchange for granting "fast track" authority. Speeding up the talks with Chile, and some say, the very ability to obtain Chile's accession to NAFTA, may depend on the approval of "fast-track" negotiating. Election year politics may well push any activity on these issues into 1997.

### *E. Conclusion*

Chile is not alone in its lack of environmental laws and enforcement in Latin America. Other than Brazil, whose laws are somewhat developed, detailed and sophisticated, other South American neighbors are not far ahead of Chile in the development and implementation of environmental laws and regulations. Where laws are on the books, enforcement is often lax or non-existent, as in Brazil. Lack of funds, lack of infrastructure and lack of technology often work together to move environmental progress along at an extremely slow pace. Countries in the past, to whom economic development was more important than sustainable development, continue to need encouragement and support in the way of financing, technology and knowledge.

Latin America has emerged from decades of disastrous debt crises and non-democratic governments into democracy, economic stability, privatization and the elimination of free trade barriers. The extraordinary growth prospects of this region, and the extraordinary growth prospects which they present to the U.S., Canada and Mexico, should be used as a lever to promote sustainable development throughout the Western Hemisphere. They should be used to reverse a decade of environmental and sustainable development stagnation rather than to induce a future decade of de-reformation and reversal of the great strides made in these principles over the last several years. Countries in Latin America have pursued comprehensive reform. It is important that this comprehensive reform continue to include environmental reform and to always take into account equally, sustainable development and economic development. The "Partnership for Prosperity" must be dedicated to the achievement of environmental prosperity as well as economic and social prosperity for all people of the Western Hemisphere in a shared vision of sustainable development for the Americas.

*Sources for this paper included the Summit of the Americas formal Statement of Principles and Plan of Action and various government documents and newspaper and other current news articles.*