



FACT SHEET _____ NOVEMBER 2006

INVESTOR TO STATE PROVISIONS:

PUTTING PROFIT BEFORE PEOPLE

Since 1994, foreign companies have used a little known trade provision called "investor to state" to undermine laws and regulations in countries where they do business. These agreements let foreign companies sue local, state and national governments over laws protecting the health and safety of your family. To make matters worse, three unelected bureaucrats decide these cases—not U.S. courts and not U.S. jurors.

NAFTA's Chapter 11

NAFTA Chapter 11 is one section of the North American Free Trade Agreement (NAFTA). This trade agreement, passed in 1994, includes rules and regulations regarding trade and commerce between the United States, Canada and Mexico. Through NAFTA, tariffs and other "trade barriers" were systematically eliminated, resulting in lower commodity prices, job loss and a system where trade disputes are decided in secret, unaccountable tribunals. Specifically, NAFTA's Chapter 11, allowed companies from Canada, Mexico and United States to sue the national governments of the other two countries if environmental, consumer safety or farm policy laws or regulations damage their right to make a profit or a projected profit.

Since NAFTA, most trade negotiations have included the same provision under different chapters of the agreements. The Central American Trade Agreement, passed last year expanded these rights to corporations in six other countries. Pending agreements like the Oman, Peru and Thailand Free Trade agreements also include investor to state provisions.

Takings Law

The "investor to state provision" of trade agreements, establishes a new concept of property rights and takings for corporations. U.S. courts and legislators have rejected the idea that government actions that result in the loss of an individual's or company's potential future profits is a "takings" of property that should be compensated.

Unelected trade negotiators embraced this concept, however, and have effectively overridden U.S. law, granting foreign corporations greater rights than U.S. citizens or corporations. Under investor to state provisions, there is no limit or guideline concerning the type of laws that can be challenged. In many cases, a company's right to profit overrides critical issues of human health and safety or environmental protection. Corporations can sue for a law or regulation to be overturned and for monetary compensation for the loss of revenue or projected revenue. When a tribunal rules in favor of a corporation, the defending country uses its taxpayers' money to pay the settlement.

Sovereign Immunity

Investor to state provisions give undue preference to foreign companies by overruling sovereign immunity of the United States. Sovereign immunity holds that governments cannot be sued unless law expressly authorizes the lawsuit. Investor to state allows foreign companies to sue the U.S. government—even in cases where U.S. law does not afford domestic companies the same right.

In the first ten years of NAFTA, an astonishing \$13 billion has been claimed by corporations in their initial findings: \$1.8 billion from U.S. taxpayers, \$294 million from Mexican taxpayers, and \$11 billion from Canadian taxpayers.

--Bankrupting Democracy, Public Citizen