



FACT SHEET _____ MAY 2005

INVESTOR TO STATE PROVISIONS:

PUTTING PROFIT BEFORE PEOPLE

Since 1994, foreign companies have used NAFTA's "Chapter 11" to undermine laws and regulations in countries where they have done business. Under Chapter 11, companies from Canada, Mexico and the United States can sue the national governments of the other two countries if environmental, consumer, farm policy or other laws or regulations in that country damage their assets, including projected profits. Now, trade negotiators are including the same provisions in the Central American Free Trade Agreement (CAFTA) under its Chapter 11 extending these rights to corporations in six more countries.

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.

Takings Law

Chapter 11, the "investor to state provision" of the agreement, establishes a new concept of property rights and takings for companies based in one of the three NAFTA countries and that do business in one or more of the other countries. 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 in Chapter 11, however, and have effectively overridden

\$35 billion has already been awarded to foreign investors by NAFTA tribunals or governments as part of a settlement agreement – often over claims that would not have been allowed under domestic law or in domestic courts. Another \$28 billion has been claimed by NAFTA investors.

U.S. law, granting Canadian and Mexican corporations greater rights than U.S. citizens or corporations. Under Chapter 11, there is no limit or guideline concerning the type of laws that can be challenged under Chapter 11. 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 taxpayers money of the defending country is used 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. Chapter 11 allows Canadian and Mexican companies to sue the U.S. government even in cases where U.S. law does not afford domestic companies the same right. Passage of CAFTA will give corporations in six additional countries the same rights.

Secret Tribunals

Investor to state cases are not heard in the defendant's federal courts, but in secret, unaccountable tribunals. These three-person panels arbitrate disagreements and cases related to the trade agreement, rather than judges and juries. Each side chooses one member of the tribunal and the third member, who presides, is chosen jointly. There is no opportunity for public input or oversight in these tribunals. It is not even required that Congress be notified.

State and Local Laws

Any state or local law can be challenged by Chapter 11. In a case involving the U.S.-based Metaclad corporation, a NAFTA tribunal ruled in favor of the corporation when a community refused to issue a construction permit, denying expansion of a toxic waste dump.

Central American Free Trade Agreement (CAFTA)

Negotiations are completed for another NAFTA-style agreement that includes six additional countries. This agreement, the Central American Free Trade Agreement (CAFTA) has been signed by the President and awaits introduction to Congress. CAFTA's Chapter 10 will include the same protections for foreign corporations of NAFTA's Chapter 11. This provision will result in a tremendous number of new cases--draining the treasuries of these countries, and weakening health and safety standards for people across the Central and North America.

Contaminated Food

In August of 2004, the newest NAFTA Chapter 11 case was filed. It directly challenges our nation's ability to protect U.S. food safety and to prevent cattle disease in the U.S. cattle herd. A Canadian cattlemen's organization has sued the U.S. Department of Agriculture (USDA) for over \$350 million under NAFTA Chapter 11 provisions. The Canadian group claims they are due payment for loss of profits because of USDA's regulations Canadian cattle imports. This case is being brought even though the USDA regulations are a direct result of mad cow disease in Canada--even though the regulations were put in place to protect the health of U.S. consumers and cattle markets.

What You Can Do

By working together, we can ensure trade that is fair for all farmers, ranchers, consumers and the environment.

- Call your Congressmen and tell them to vote no on CAFTA. Do not to expand the mistakes of NAFTA Chapter 11 into six more countries.
- Write a letter to the editor in opposition of investor to state type trade policy such as Chapter 10 of CAFTA.
- Encourage your local governments to pass resolutions that ensure the laws and regulations they enact will not be challenged by investor to state case.

For more information on how you can play a role in ensuring fair trade policy, log on to the WORC web site at www.worc.org.



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