

FACT SHEET

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NAFTA CHAPTER 11: 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 proposing to include provisions similar to Chapter 11 in the Free Trade Area of the Americas and the World Trade Organization negotiations, which would extend these new rights to corporations in many 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 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 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

In the first seven years of NAFTA, with only a small number of cases filed, 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

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

Chapter 11 gives 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.

Secret Tribunals

Chapter 11 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.

Free Trade Area of the Americas

Negotiations are underway to enact a NAFTA-style agreement that encompasses 34 countries - every country in North and South America and the Caribbean except Cuba. This agreement, the Free Trade Area of the Americas, scheduled for completion in December, 2005, will include protections for foreign corporations similar to Chapter 11. This provision will result in a tremendous number of new cases—draining the treasuries of these countries, and will weaken health and safety standards for people across the Western Hemisphere.

Contaminated Drinking Water

On March 25, 1999, the Governor of California ordered the phase-out of methyl tertiary-butyl ether (MTBE) from gasoline sold in the state by 2002. MTBE is a gasoline additive designed to reduce harmful auto emissions. EPA classified MTBE as a possible human carcinogen after it had been found to cause cancer in laboratory animals.

MTBE has contaminated at least 30 public water systems in California. Santa Monica, had to shut down its municipal wells when MTBE leached into its drinking water supply. According to The New York Times, at least 11 other states either have laws restricting the use of MTBE or are considering passing one.

On December 3, 1999, Methanex used Chapter 11 to challenge the California executive order. Methanex demanded that MTBE be allowed in gasoline sold in California or that \$970 million be paid for keeping it out. In its NAFTA submissions, the corporation argued that the California phase-out was not the “least trade restrictive” method of solving the water contamination problem and therefore violated NAFTA’s guarantee of fair treatment for foreign investors under international law.

Methanex also claims that the ban improperly discriminates against MTBE in favor of a U.S.-produced gasoline additive ethanol and therefore gives preferential treatment to U.S. producers in violation of NAFTA.

Finally, the company claims that the California measure constituted an expropriation because it prevented Methanex from maintaining its market share and, in effect, transferred that market share to U.S. ethanol producers. This case is still pending.

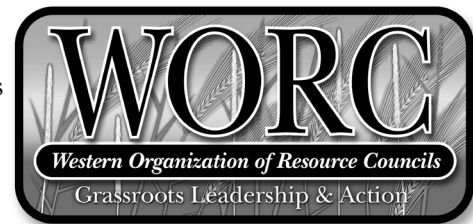
The Methanex and other Chapter 11 cases demonstrate that no state or local law, regulation, or other decision is safe from attack by foreign investors using the expansive new rights and privileges NAFTA grants foreign investors.

What You Can Do

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

- Call your Congressmen and tell them not to expand the mistakes of NAFTA Chapter 11 into other trade agreements.
- Write a letter to the editor in opposition of NAFTA Chapter 11 type trade policy
- Encourage your local governments to pass resolutions that ensure the laws and regulations they enact will not be challenged by a NAFTA Chapter 11 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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