NAFTA Chapter 11 Investor-to-State Cases: Bankrupting Democracy

LESSONS FOR FAST TRACK AND THE FREE TRADE AREA OF THE AMERICAS

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EXECUTIVE SUMMARY:
In the spring of 2001, President George W. Bush asked the U.S. Congress to delegate to him a 6-year chunk of Congress constitutional authority over international trade through a process called Fast Track. Bush seeks Fast Track trade authority (which his Administration is attempting to rename "Trade Promotion Authority") to expand the 1994 North American Free Trade Agreement (NAFTA.) The proposed NAFTA expansion, formally called the Free Trade Area of the Americas (FTAA), would spread NAFTA's rules to an additional 31 Latin American and Caribbean nations by 2005.

The publicized goal of the FTAA proposal is to facilitate trade and deepen economic integration by expanding the NAFTA provisions that eliminate tariff and nontariff barriers to trade and investment throughout the hemisphere. Careful consideration of NAFTA's record therefore becomes central to discussions of Fast Track and the FTAA.

Thus, this year, Public Citizen is releasing a series of reports on NAFTA's actual performance over its seven years in existence. This report, **NAFTA Chapter 11 Investor-to-State Cases: Bankrupting Democracy**, analyzes NAFTA's groundbreaking investment chapter, which granted expansive new rights and privileges for foreign investors operating in the three NAFTA signatory nations: U.S., Canada, and Mexico. It is often said that NAFTA was more of an investment agreement than a trade agreement. Now NAFTA's investor privileges and protections are at the core of the proposed FTAA.

NAFTA's investor protections are unprecedented in a multilateral trading agreement. Since the agreement's enactment, corporate investors in all three NAFTA countries have used these new rights to challenge a variety of national, state and local environmental and public health policies, domestic judicial decisions, a federal procurement law and even a government s provision of parcel delivery services as NAFTA violations. While most cases are still pending, some corporations have already succeeded with these challenges. (Please see the chart listing these cases and their status at the end of the Executive Summary.)

Remarkably, NAFTA also provides foreign investors the ability to privately enforce their new investor rights. Called "investor-to-state" dispute resolution, this extraordinary mechanism empowers private investors and corporations to sue NAFTA-signatory governments in special tribunals to obtain cash compensation for government policies or actions that investors believe violate their new rights under NAFTA. If a corporation wins its case, it can be awarded unlimited amounts of taxpayer dollars from the treasury of the offending nation even though it has gone around the country's domestic court system and domestic laws to obtain such an award.

Supporters of NAFTA claimed that these extensive investors protections and their private enforcement mechanism were necessary to protect investors from the state seizure of private property (i.e., nationalization). Mexico, which nationalized its foreign oil refineries in 1938, was the prime target of these concerns.

However, the majority of the investor-to-state cases filed to date have had little to do with the seizure of property NAFTA supporters feared. Instead, the cases challenge environmental laws, regulations and government decisions at the national, state and local level:

- The California-based Metalclad company successfully challenged the denial of a construction permit by a Mexican municipality for the building of a toxic waste facility;
- Environmental and health bans of suspected toxins have been challenged, with one case already resulting in reversal of a Canadian government ban on the gasoline additive MMT;
- Canada's implementation of two international environmental agreements has been successfully challenged, and Canada will soon be ordered to pay damages to U.S. investors in both cases;
- Foreign corporations have taken two lawsuits they lost in U.S. domestic courts to be "reheard" in the NAFTA investor-to-state system, one challenging the concept of sovereign immunity regarding a contract dispute with the City of Boston and the other challenging the rules of civil procedure, the jury system and a damage award in a Mississippi state court contract case;
- The American company, United Parcel Service (UPS), has filed a suit challenging the governmental provision of parcel and courier services by the Canadian postal service; and
- A Canadian steel fabrication company challenged a federal "Buy America" law for highway construction

projects in the U.S.

This extraordinary attack on normal government activity such as operating a civil justice system through courts, denying a construction permit or establishing health and other public interest regulations has drawn growing criticism to NAFTA's Chapter 11 investment rules. For some Republican and Democratic members of Congress who voted for NAFTA, these cases have been an unexpected and unwelcome result of the agreement. The Republicans were promised NAFTA would not undermine U.S. local and state sovereignty and control. The Democrats were promised NAFTA would not undermine domestic environmental and health laws. Both were promised NAFTA would not give foreign investors better treatment than local businesses or open the U.S. Treasury to new demands from foreign investors. But the NAFTA Chapter 11 cases have made a mockery of these promises.

Of the 15 cases reviewed in this report, the damages claimed by the companies add up to more than U.S. $13 billion. Initially, not many cases were filed under these provisions. However, once the first investors obtained damages and/or reversal of the government policy they attacked, a flurry of additional cases were filed.

The expansion of NAFTA's new investor rights to 31 more countries of the Western Hemisphere via the FTAA has the potential to generate an explosive number of new cases. While these cases could drain the treasuries of the hemisphere's richest nations, the potential impact these cases would have on the hemisphere's poorest and weakest nations is even more alarming.

Given President Bush's Fast Track request is based on his desire to expand NAFTA's investment rules to the entire hemisphere through the FTAA, the NAFTA Chapter 11 issues have become central to the Fast Track debate.

The expansive rights granted to corporations under NAFTA were just one of the factors that went largely unnoticed by Congress and the media due to the fact that in the United States NAFTA was approved under an unusual "Fast Track" procedure, which expired in 1994 and was used only five times since its development in 1974 by President Nixon. Under Fast Track, Congress role in developing the contents of international commercial agreements is severely limited. Once Congress grants a president Fast Track, the Executive Branch is allowed to negotiate the agreement and sign it, locking in the contents, before Congress has a vote on the deal. Because Congress role was limited to a *post hoc* yes or no vote with no amendments allowed, many members of Congress who voted in favor of NAFTA had no idea that these investor provisions were a central element of its contents.

The use of Fast Track for NAFTA demonstrates how the process can obscure meaningful analysis of a proposed agreement's actual binding terms. Potential legal, public health and environmental implications can be overlooked. Given the broad set of domestic law issues now implicated in today's international commercial negotiations, many consider Fast Track to be an outdated trade policy tool. As a new Fast Track fight looms in Congress in the fall of 2001, the sovereignty and public policy implications of the NAFTA cases reviewed in this report argue against the use of Fast Track for development of the proposed FTAA and more generally as a tool of democratic decision-making and public policy.

This report reviews the major NAFTA investment cases of public interest and the potential for a massive acceleration of cases if similar investor rights are incorporated into the FTAA. As these cases are decided behind closed doors in NAFTA tribunals, information about the cases is difficult to obtain. Indeed, there is no requirement that the public or Congress be given notice that a NAFTA Chapter 11 case has been filed against the United States, raising the specter that in addition to the cases we have been able to unearth, perhaps more cases have been filed and either have been quietly settled through negotiated payments or are still pending. Researchers must rely upon the final panel reports that are sometimes released by the tribunal at the end of the process and on the few other documents that have made it into the light of day, the majority of which have been written by the plaintiff corporations themselves.

Analysis of the NAFTA cases as a whole compels certain conclusions:

Foreign Investors Granted Greater Rights than U.S. Corporations or U.S. Citizens:
NAFTA's investment rules provide new rights and privileges for foreign investors that go significantly beyond the rights available to U.S. citizens or businesses in U.S. domestic law and provide a venue exclusively available to foreign investors to seek payment of U.S. taxpayer funds for alleged business losses. Previous trade or investment agreements typically focused on ensuring "national treatment" that foreign investors or goods obtained the *same* treatment as domestic businesses and products. But NAFTA establishes new rights applicable only to foreign investors claiming compensation from taxpayers for the costs of complying with the same domestic policies that all domestic companies must follow. The string of cases analyzed in this report show how these NAFTA rules are being used by foreign investors to demand payment for any government action that impacts the value of an investor s property. Yet such a notion of "regulatory takings" does not exist for U.S. citizens or companies because it has been rejected by Congress and the courts. Attempts to legislate a broader definition of property rights through regulatory takings legislation has been repeatedly rejected by Congress. In addition, the U.S. Supreme Court held in the 1993

Concrete Pipe case that "mere diminution" of the value of an investment is not sufficient to establish a taking. Yet it is precisely a diminution of value resulting from compliance with government regulations that is at issue in most of these NAFTA cases. In short, these NAFTA cases are giving foreign investors greater rights and remedies on U.S. soil than are available to U.S. companies here at home.

Foreign Investors Allowed to Evade Legal Liability?
NAFTA's investor-to-state tribunals provide a way for foreign litigants to seek government compensation for damages ordered by U.S. courts. In one NAFTA case, a huge Canadian funeral conglomerate called the Loewen Group is using NAFTA's investor protections to, in effect, "reverse" a Mississippi jury s ruling in favor of a small funeral home operator who sued the conglomerate for breech of contract. After the conglomerate refused to engage in pre-trial settlement discussions, the jury found that Loewen had engaged in a variety of fraudulent actions and applied $500 million in punitive and compensatory damages. Loewen claims that it was then "forced" to settle the case for $150 million, because the Mississippi Supreme Court would not waive the normal rules of civil procedure for the company. These rules require that a defendant post a bond when filing an appeal so that it cannot liquidate its assets in case the appeal is unsuccessful and the underlying damages must still be paid. Loewen is suing the U.S. taxpayers for $725 million under NAFTA to compensate the company for this "expropriation," almost five times the amount of the settlement. The U.S. defense in this case was that a jury ruling in a civil contract case was not a "government action" against which foreign investors were granted special NAFTA protections. Remarkably, the NAFTA tribunal in the Loewen case has ruled that not only is a Mississippi jury award in a contract case a legitimate target of a corporate suit under NAFTA, but to date the panel has placed no limits on what types of court decisions could be open to challenge. If Loewen prevails in its NAFTA case, the corporation will be able to push the "bill" for its illegal behavior onto the U.S. taxpayers, another "privilege" not allowed U.S. corporations. Moreover, this case shows how NAFTA provides an incentive for foreign investors to resist reasonable settlement discussions with the prospect that any final unfavorable court orders or damages could be evaded using NAFTA.

Public Disputes, Private Tribunals:
Rather than setting up a new dispute settlement mechanism to handle these investor-to-state disputes, NAFTA instead relies upon two already existing dispute resolution systems one operating under the auspices of the World Bank, the other operating under the auspices of the United Nations. Originally, these two arbitration bodies were set up to arbitrate private cases between contractual parties in narrow commercial disputes. These commercial disputes dealt primarily with private law issues, affecting only the parties to the dispute. Thus, in the past, the fact that these proceedings were strictly confidential with no access by the press or public and no process for amicus briefs was of less concern to the public at large. Now, however, these closed-door arbitral bodies are dealing with significant issues of public policy. Under NAFTA an array of public interest regulations, such as a California law phasing out a gasoline additive found to be contaminating water wells around the state, and other normal government functions have been challenged as violating NAFTA. The citizens of the state must rely on federal government agencies such as the Department of Justice, Department of State and the Office of the United States Trade Representative to defend their new law, which was created over several years using an open process. Even the Attorney General of California has no formal role. The residents of California cannot be party to the case, are not entitled to documents and cannot observe the operations of the NAFTA tribunal. Yet it is their tax dollars that may one day be awarded to the corporation that is demanding $1 billion in compensation. Questions regarding the appropriateness of these private arbitration bodies for these public-interest disputes are made more urgent by the fact that cases in these bodies seem to be accelerating under NAFTA and under various bilateral investment treaties. In its 35-year history, the World Bank's arbitral body has handled approximately 79 cases. However, half of those cases have been instigated in the past five years alone. The accelerating pace of complaints, coupled with the secretive, undemocratic nature of the arbitral bodies and the vast powers of the tribunal to award an unlimited amount of taxpayer dollars to compensate a successful corporation are proving to be a significant threat to the public interest.

Potential Cost to the Taxpayers in the Billions:
In the end, it is the taxpayers of the challenged country who must pay the compensation to a corporation if it succeeds in its NAFTA suit. 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 filings: $1.8 billion from U.S. taxpayers, $294 million from Mexican taxpayers and a whopping $11 billion from Canadian taxpayers. In the California case, the corporation is seeking nearly $1 billion or 1.2% of the state budget in compensation for the environmental measure phasing out the gasoline additive. A number of awards of that size could significantly impact the treasuries of national governments, and put pressure upon governments to squeeze states and localities for funds.

State and Local Governments are Not Safe from NAFTA Tribunals Reach:
Not only have federal laws, such as a U.S. "Buy America" procurement law, been challenged under NAFTA's Chapter 11, but a variety of measures taken by state, provincial and municipal governments have been challenged as well. In the toxic waste case, involving the U.S. Metalclad corporation, the decision of a Mexican municipality to demand a construction permit before a U.S. company could begin building a toxic waste facility was successfully challenged as NAFTA-illegal. In the same case, a later decision by the Governor of the state to create an ecological reserve was deemed a NAFTA violation challenged and the Mexican government has been ordered to pay $15.6 million in damages. In another NAFTA case, British Columbia's decision to ban the bulk export of lake and river water to

prevent it from being sucked up and shipped to California in supertankers was challenged by a California corporation called Sun Belt. The Mondev corporation of Canada has attacked the actions of the Boston Redevelopment Authority, the City of Boston and the Massachusetts Supreme Court in a NAFTA tribunal over a real estate deal arguing that NAFTA overcomes the U.S. common law right of sovereign immunity. While it is true that under NAFTA, a panel cannot directly rescind a law, and it is the federal government that is technically liable for any damages, federal governments currently have a variety of avenues under domestic law to bend state and local governments to their will. For example, federal governments can hold funds for state and local projects hostage until the offending measure is rescinded or until the locality agrees to contribute to the damage award. State and local governments must begin to take a hard look at these NAFTA cases to understand the implications for state sovereignty and governance under NAFTA as well as the FTAA.

Governments Subject to Endless Second-Guessing by NAFTA Tribunals:
A tribunal in another NAFTA case found that Canada's temporary ban of PCB exports because of environmental concerns (during a brief period when the U.S. lifted its PCB import ban) were reasonable. However the tribunal also ruled that Canada's actions were NAFTA-illegal because the tribunal decided that the manner in which Canada sought to implement its environmental goal was not the least trade restrictive manner possible. The panel, with no apparent expertise in environmental policy, put forward a variety of suggestions on other alternatives Canada might have pursued to achieve similar ends. In the California case, the Canadian corporation Methanex is arguing that the state of California should not phase out the gasoline additive called MTBE (a suspected carcinogen, which is highly soluble in water posing a greater risk to drinking wells than similar additives), but rather should deal with the problem of MTBE-contamination of drinking water by cleaning up all potentially leaky fuel tanks an extraordinarily costly endeavor that still would not remove all causes of MTBE water contamination.In a number of cases, corporations argue that the very process by which a law was achieved constitutes a violation of their new NAFTA investor rights. In the California case, the MTBE phase-out was achieved after a multi-year public process during which the state took deliberative actions, first commissioning numerous studies, followed by public hearing and debate. In the coming months, a NAFTA panel will be empowered to inform us if these common practices of democratic governance will soon be considered violations of NAFTA's new investor rights.

NAFTA Challenges Chill Public Interest Policies:
In another environmental case, the U.S. Ethyl corporation filed a suit against a Canadian environmental and public health measure restricting a gasoline additive it developed *as the was being debated in parliament*. NAFTA rules require corporations to wait six months after the events which give rise to the claim and then require an attempt to resolve the situation through negotiations before pursuing a NAFTA case. That a NAFTA tribunal accepted this case, which was a blatant attempt to intimidate a legislative body from taking action, sends an alarming signal. In the end, the government of Canada settled the case by revoking the ban on the gasoline additive MMT and paid the company $13 million before the NAFTA tribunal had issued final ruling. If similar investor rights are incorporated as planned into the FTAA, the potential for large multinational corporations to bully the governments of the weakest and poorest countries of the hemisphere would be extraordinary. The mere threat of a vast damage award and the high costs of defending a suit could make poorer nations concede before the fight had been joined, which is the trend that has occurred in poor nations threatened with World Trade Organization (WTO) challenges filed on a state-to-state basis.

Principle of Sovereign Immunity Attacked:
In addition to the implications of having governmental decisions second-guessed and undermined by NAFTA panels, the legal principle of sovereign immunity itself has been attacked in a NAFTA case. The doctrine of "sovereign immunity" is a centuries-old legal concept that holds that governments cannot be sued unless the lawsuit is expressly allowed by law. Many states and the U.S. federal government waive sovereign immunity by statute or on a case-by-case basis. One NAFTA case involves a Canadian corporation, Mondev, which has been involved in a lengthy contract dispute with the City of Boston over an option to buy a parcel of land. Mondev's arguments were rejected by the Massachusetts Supreme Court on the grounds of sovereign immunity. Mondev has in effect "appealed" this U.S. domestic court decision to a NAFTA tribunal. The crux of Mondev's argument is the notion that new rights for foreign investors granted in NAFTA trump a state's sovereign immunity protections. If a NAFTA panel rules in Mondev's favor, not only will it effectively "reverse" a state supreme court decision, but again foreign corporations will be granted rights and privileges not allowed U.S. corporations operating on U.S. soil. Moreover, a bedrock principle of Common Law jurisprudence will have been trampled by a three-person NAFTA tribunal with broad ramifications for U.S. governance at all levels.

NAFTA Fishing Expedition for Government Compensation by Foreign Corporations:
Another troubling trend in the NAFTA Chapter 11 cases is the tendency of corporations to seek government compensation in instances when its actual investment in the country being sued is not readily apparent. Only two of the 15 NAFTA cases deal with circumstances that could be vaguely characterized as a seizure of property. Indeed, in many of these NAFTA cases it is unclear what "property" the investor held in the country being challenged. In the PCB case, it is not at all clear what investment the U.S. company had in Canada; it simply sought to import PCB waste from Canada for treatment and disposal in its Ohio plant. In finding for the company, the NAFTA tribunal decided, among other things, that "market share" was a legitimate investment under NAFTA meaning that the fact that the company ever had been able to import PCB waste treatment in Canada established a right to do so

protected by NAFTA. This is an alarming ruling that could spark an array of new suits geared toward garnering a larger share of the market. In the Sun Belt bulk water case, the U.S. company had visions of a joint venture with a Canadian company that would allow it to export Canadian water in tanker ships to California, but Sun Belt never claimed to have any property in Canada whatsoever. It would require a stretch of the imagination to liken these cases to seizure of property. Instead, the majority of cases being brought under NAFTA most closely resemble claims for "regulatory takings" not permitted under U.S. law.

NAFTA Environmental Protections Meaningless:
The Preamble of NAFTA states that countries will undertake their obligations in a manner "consistent with environmental protection and conservation." Further language in Article 1114 of the investment chapter purports to protect the environment, and prevent a race to the bottom in environmental standards. These provisions of NAFTA have been given such short shrift by NAFTA tribunals as to render them meaningless. In the toxic waste case, there was no evidence that the tribunal weighed NAFTA's environmental provisions at all before reaching their final decision. The ruling does make clear that no weight was given to the environmental concerns of the community which was the reason that local officials tried to block the dump. Further, the panel set a number of disturbing precedents. It not only equated the denial of a municipal construction permit and the creation of an ecological reserve with an "expropriation" under NAFTA, but it broadened the definition of expropriations to include "incidental" interference with the value of a property thus opening the door for all sorts of legitimate zoning by a sub-national government to be challenged under NAFTA. In the PCB case, an environmental treaty that regulates trade in hazardous waste called the Basel Convention, was considered by the NAFTA tribunal, but in the end was completely discounted.

Importing Obligations of all of NAFTA and WTO Into Chapter 11:
Utilizing the Article 1105 requirement that investors must be treated "in accordance with international law," corporations have sought to import the obligations of NAFTA as a whole, as well as international trading obligations of the General Agreement on Tariffs and Trade and the WTO, into Chapter 11 litigation. In the toxic waste case, the panel improperly imported the transparency obligations of NAFTA Chapter 18 regarding publication and administration of domestic law into Chapter 11. In the PCB case, the NAFTA tribunal decided that NAFTA's Chapter 11 protections applied even though the company did not have a concrete investment in Canada but rather sought to import PCBs into the U.S. for disposal. This ruling opens up the possibility that the NAFTA chapter governing services (Chapter 12) now could be dragged into investor-to-state enforcement in its entirety. Indeed, in a new case involving a service provider, United Parcel Service (UPS) is challenging the manner in which Canada provides postal services alleging discriminatory treatment under NAFTA's Chapter 12 as well as Chapter 11. In addition, the heart of UPS case rests on provisions in NAFTA Chapter 15 regarding state-run enterprises. Finally, in the California MTBE case, the corporation has attempted to import key elements of WTO law and jurisprudence into its argument. If this trend continues, the grounds for complaint under NAFTA's Chapter 11 will grow immeasurably, subjecting NAFTA parties and taxpayers to endless litigation and costly compensation.

Arbitrary Rulings Mean Rudeness by Government Officials Can Be NAFTA Violations:
One ground for bringing an investor-to-state suit is NAFTA Article 1105 which guarantees a minimum standard of treatment for foreign investors. The article states that "Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security." Previously in bilateral investment disputes, similar language has been interpreted narrowly to apply to clear violations of international law, for example, detention without trial. NAFTA panels, however, have interpreted this language to create an enormous catch-all remedy for corporations that believe they have been treated unfairly. In the one case, the panel ruled against the corporation on claims that the Canadian government had violated an array of NAFTA terms. However, the panel found a violation of the minimum standard of treatment guarantee anyway. The panel did not find a violation of domestic or international law, rather it found that the overzealous and rude behavior of government representatives checking the company's paperwork was itself a violation. The ruling in this case broadens the Article 1105 catch-all to any instance when a corporation feels it has been treated unfairly. A recent July 31, 2001 clarification by the NAFTA governments has attempted to deal with this issue by seeking to narrow the application of Article 1105 to treatment that is required by "customary" international law. Yet the new interpretation does not define what is meant by "customary," providing enormous opportunity for a continuation of the expansive interpretation by the tribunals.

From Defense to Offense:
A number of corporations are not even attempting to claim expropriation when initiating NAFTA Chapter 11 cases. Rather they appear to be using other provisions of NAFTA's investment chapter to improve their strategic position in the marketplace. A glaring example of this strategic maneuvering is the UPS case against the Canadian postal service. UPS is arguing that because Canada Post provides public mail services, it should not also be providing integrated parcel and courier services. UPS claims that Canada Post's vast infrastructure is a NAFTA-illegal subsidization of its parcel and courier service, giving Canada Post an unfair advantage in the marketplace. In an era when public and commercial service delivery are often commingled, few public services including health care and education would be immune from similar corporate challenges. The UPS case encapsulates one of the most disturbing trends in the NAFTA cases taken as a whole, which is that many corporations seem to be moving from the defensive (protecting themselves against seizure of property) to the offensive in an attempt to carve out move

favorable market conditions or market share.

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On July 31, 2001, the Free Trade Commission, comprised of three NAFTA country trade ministers, issued a "clarification" related to NAFTA Chapter 11. NAFTA provides for the Free Trade Commission to issue interpretations of NAFTA rules if agreed to by consensus.

The Chapter 11 clarification dealt with two issues. First, in response to building criticism of the closed-door process, the trade ministers attempted to address the issue of timely disclosure of NAFTA tribunal documents. The language the trade ministers agreed to in their clarification, however, still allows tribunals to set the guidelines regarding the release of documents other than the final award and tribunals could bar the release of any document until the case is completed. In addition, corporations have requested and have been granted confidentiality orders by tribunals. This practice was not prohibited by the clarification. In the end, the trade ministers clarification may have limited effect.

Second, the clarification attempted to clear up the confusion surrounding the "minimum standard" of treatment provisions of Article 1105 by limiting NAFTA rights and protections to those afforded by "customary" international law. Unfortunately, the language the trade ministers agreed to conflicts with the plain language of NAFTA and does not define what is encompassed in the rubric of "customary" international law. As a result, although we are instructed that a traditional interpretation is intended, we do not know what body of law is included, leaving in place what amounts to an extremely vague and open-ended standard that can be used to challenge efforts to protect the environment and the public interest.

Meanwhile, in issuing this limited clarification, the trade ministers from the three NAFTA nations refused to deal with the core problems of Chapter 11 that have been raised by legislators and policy analysts in all three nations. The regulatory takings provisions of Article 1110 has drawn the most fire, but the trade ministers refused to provide an interpretation of the provision or in any way limit its use, despite increasingly expansive interpretations of the article by NAFTA Chapter 11 panels which continue to treat non-discriminatory domestic environmental and health policies as regulatory takings.

These radical regulatory takings provisions should be excised from NAFTA and kept out of the FTAA. Unfortunately, the Bush Administration has rejected just such demands from Congress. Congress must ensure that any Fast Track delegation of its constitutional trade authority to the Executive Branch guarantees that the Chapter 11 problems are remedied and certainly not expanded.