



Explore, enjoy and protect the planet

NEW **PRO-CORPORATE RULES** THREATEN OUR ENVIRONMENT & HEALTH Make Trade Safe, Clean & Fair

STATE GOVERNMENTS HAVE OFTEN LED THE WAY IN EFFORTS TO PROTECT OUR COMMUNITIES FROM AIR AND WATER POLLUTION, TOXIC WASTE, AND OTHER ENVIRONMENTAL THREATS. BUT TODAY THE BUSH ADMINISTRATION IS NEGOTIATING NEW PRO-CORPORATE “INVESTOR” RULES THAT WOULD THREATEN THE ABILITY OF LOCAL, STATE, AND FEDERAL GOVERNMENTS TO PROTECT OUR ENVIRONMENT. THE NEW RULES COULD HARM THE AUTHORITY OF STATES TO PROTECT THEIR CITIZENS AND PREVENT STATES FROM PIONEERING ENVIRONMENTAL SOLUTIONS THAT ARE LATER ADOPTED ACROSS THE COUNTRY.

Putting Our Communities at Risk

The Bush administration wants to expand pro-corporate rules on “investment” from the North American Free Trade Agreement (NAFTA) so that they apply across the Western Hemisphere, creating a new Free Trade Area of the Americas (FTAA). The administration is also negotiating investor rules under the 150-nation World Trade Organization (WTO).

Under the proposed new rules, foreign investors could gain new powers to undermine domestic environmental safeguards. As the host to more than \$2 trillion in foreign direct investment from other countries, the United States has a lot to lose. Foreign companies operating here – for example, Citgo (Venezuela), Daimler-Chrysler (Germany), Vivendi/Veolia (France) – or their home governments could use the new rules to sue U.S. taxpayers for cash damages if new environmental laws or other social safeguards affect their profits. Our companies could do the same abroad.



Under the FTAA, as under NAFTA, individual foreign investors could gain the right to sue the United States for cash damages before secretive, three-judge trade panels. Under the WTO’s investor rules, foreign governments could file complaints against the United States on behalf of their companies. If a local, state, or federal public-interest law is found to be in violation, the federal government must pay compensation or change the law. If a state or local law is found to be in violation, the federal government could force that state or locality to bring its law into compliance, even if doing so would weaken community safeguards.

HERE IS HOW KEY PROVISIONS OF THE NEW "INVESTMENT" RULES COULD UNDO ENVIRONMENTAL SAFEGUARDS:

▲ *Is Clean Water at Risk?*

YES. The investor rules on "expropriation" could prevent governments from setting standards that protect the public if doing so harms a foreign company's profits.

For instance, the Methanex Corporation of Canada used NAFTA's investor provisions to sue U.S. taxpayers for \$1 billion after California phased out a hazardous gasoline additive, which the company helps to manufacture. The additive, MTBE, was found to be leaking from gasoline storage tanks and polluting drinking water wells around the state. Should Methanex prevail, the federal government would have to force California to reverse its ban or pay damages to the company. The number of similar lawsuits will only grow if investor provisions are included in the FTAA or the WTO.

▲ *Is Clean Air at Risk?*

YES. The proposed investor rules of the FTAA and the WTO, like NAFTA's investor rules, would ban "performance requirements" such as those requiring certain clean-air technologies.

For instance, under NAFTA, the Bush administration issued new regulations that would allow trucks domiciled in Mexico to haul freight anywhere in the United States. A federal judge recently imposed a temporary stop to the plan on grounds that it violated clean air standards. Under the Bush plan, trucks from Mexico do not have to meet California or U.S. clean air standards.

If the administration responds by requiring that the Mexican trucks adopt the same air pollution control technologies that are required for U.S. trucks, Mexican trucking firms could use NAFTA or FTAA investor provisions to sue for damages on grounds that they faced an illegal "performance requirement."

▲ *Could New Pro-Corporate Rules Worsen Global Warming?*

YES. The investor rules would enforce a very broad version of "non-discrimination" that could threaten a wide range of environmental safeguards. Even if a law was written to apply equally to all companies, it could still be deemed to violate "non-discrimination rules" if a foreign company claimed it had been put at a competitive disadvantage.

For instance, California recently passed a law that requires automakers to reduce global warming emissions from cars. If investor rules take effect in the WTO, Germany could challenge the law as discriminatory on behalf of Daimler-Chrysler. While the California law might be even-handed on its face, Germany could argue that Daimler-Chrysler suffered a greater competitive impact because it would have to spend more than other carmakers to meet the new standards. The investor rules could thus be used to force California to weaken its global warming standards.

We Can Do Better

Instead of the investor rules now under negotiation, we need rules that protect the environment, uphold the authority of state governments, and strengthen communities while promoting commerce. New rules should give no greater rights to foreign investors than U.S. citizens have under U.S. law. In addition, negotiators should ensure that foreign investors comply with basic corporate responsibilities wherever they operate. For starters, all companies should be required to disclose their toxic releases and human rights and labor practices.

TAKE ACTION: "Look Before we Leap"

Negotiations on the FTAA and the WTO are both slated for completion in 2005. In the meantime, citizens and government officials need to learn much more about the potential impacts on communities of these far-reaching agreements. We are calling on state and local government officials to analyze and report on how key laws and programs under their authority could be affected by the new investor rules. To get involved, please:

- **Sign a postcard** asking state authorities to prepare a "Community Impact Report" on the investment agreements.
- **Contact the Responsible Trade Program** to learn more.



For more information: Contact Margrete Rangnes at margrete.rangnes@sierraclub.org

408 C Street N. E. Washington, DC 20002 • TEL: (202) 547-1141 FAX: (202) 547-6009 • www.sierraclub.org/trade