

March 21, 2002

The Honorable Max Baucus, Chair
Senate Finance Committee
U.S. Senate
219 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley, Ranking Member
Senate Finance Committee
U.S. Senate
219 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators:

On behalf of the nation's elected county officials, I am writing to express the National Association of Counties' (NACo) opposition to provisions in the pending trade legislation (H.R. 3005) that would dilute local government authority by granting foreign investors broad new rights to sue for financial compensation based on government regulations and other actions.

NACo is a strong supporter of free trade activities that enhance the economic base of local governments and promote county participation in the global economy. However, NACo opposes the adjudication of disputes arising out of trade agreements in a manner that would preempt local government authority, circumvent domestic judicial processes, or grant greater rights to foreign investors than those guaranteed to U.S. citizens by federal, state and local law.

The pending trade bill would authorize trade negotiators to include expansive "investor protection" provisions in future international trade agreements. The result would be that foreign investors operating in the U.S. would have greater legal rights against our government than our own citizens possess. Expansive monetary claims under the investor-state provisions would directly threaten the autonomy and sovereignty of units of local government. Furthermore, foreign investors' claims under these provisions would be adjudicated before arbitration panels whose decisions would not be subject to review in U.S. courts.

Naco's concerns regarding these provisions in the trade legislation arise out of Chapter 11 of the North American Free Trade Agreement (NAFTA), which allows

foreign investors to sue the U.S. government in disputes arising out of that agreement. NACo is concerned that broad interpretations of Chapter 11 by international arbitration panels may have a chilling effect on local decision making, subrogate legal protections of U.S. citizens to foreign investors, and result in the ultimate preemption and nullification of local government laws and regulations.

NACo urges the Senate to develop appropriate amendments to the pending legislation to preserve the authority of local governments and to ensure that foreign investors are granted no greater legal rights than US. citizens possess under U.S. law.

Thank you for your consideration of NACo's concerns.

Sincerely,

Larry E. Naake
Executive Director