

**Congress of the United States**  
**Washington, DC 20515**

December 5, 2003

The Honorable Robert Zoellick  
United States Trade Representative  
600 17th Street, N.W.  
Washington, D.C. 20508

Dear Ambassador Zoellick:

We are writing to raise our concerns with the investment provisions in the Central America Free Trade Agreement (CAFTA), the Free Trade Area of the Americas (FTAA) and other trade agreements that the U.S. is currently negotiating. We believe that U.S. investment abroad can bring critical benefits, particularly to developing countries. However, we also believe that the investment rules in recently enacted free trade agreements (FTAs) with Chile and Singapore are not an appropriate model and should be revised as the United States negotiates new trade agreements.

Above all, we continue to be deeply concerned about the impact of investment rules on critical public interest policies in the U.S. and abroad, including those that protect the environment, public health and safety, workers and consumers. As NAFTA's Chapter 11 demonstrates, investment rules can be used to inappropriately challenge government actions that protect the public interest. In response to these concerns, Congress enacted language in the Trade Act of 2002 that requires investment provisions of future trade agreements to ensure that foreign investors are not accorded "greater substantive rights" than U.S. citizens enjoy under U.S. law. Provisions that allow foreign investors to challenge government decisions about natural resource agreements, such as oil and gas leases on public lands, raise additional concerns.

Finally, we are concerned that proposed investment rules could undermine the development goals of developing countries. The World Bank's Global Economic Prospects 2003 report concluded that there is no evidence to demonstrate that investment agreements lead to increased flows of investment to developing countries. Yet the investment rules in recent FTAs could restrict the ability of developing countries to implement domestically oriented economic development strategies, especially to promote decent employment and to encourage the emergence of new and infant industries. For example, investment rules that prohibit policy tools to promote linkages between investors and local economies could impede valid development goals. We are also concerned about the development impact of provisions that place limitations on the use of capital and other financial controls in cases of financial instability.

For these reasons, we believe that CAFTA, the FTAA and other future agreements should significantly revise the investment language used in past agreements.

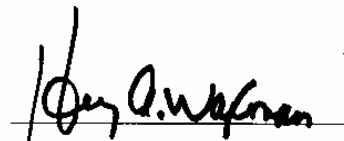
- Investment rules should ensure the complete application of the “no greater rights” standard for expropriation challenges and for “fair and equitable treatment.” For example, the agreements should ensure that government regulation to prevent a public nuisance is not considered an expropriation. The investment rules should also ensure that an expropriation challenge is considered based on the *permanent* impact of a government action on a property in its *entirety* (“*parcel as whole*” *analysis*), and they should make the critical distinction found in U.S. law between land and personal property. Finally, the “fair and equitable treatment” standard should be limited to procedural due process standards based on U.S. law.
- In addition, given continuing uncertainties about the impact of investment rules on environmental protection, we believe that investment rules should provide adequate environmental exceptions that would ensure that appropriate and non-discriminatory environmental policies would not be subject to unjustified challenges.
- The Trade Act of 2002 also requires new trade agreements to provide for “an appellate body or similar mechanism” in the investor-state dispute resolution process as a check on extreme or unreasonable outcomes. This requirement to create an appellate process should be fully met in future agreements, including CAFTA and the FTAA.
- Finally, we believe that developing countries should be given adequate opportunities to use capital controls and to enact appropriate development oriented economic policies.

We hope that you will address our serious concerns as you negotiate the CAFTA, FTAA, and other agreements. We look forward to your response concerning these issues.

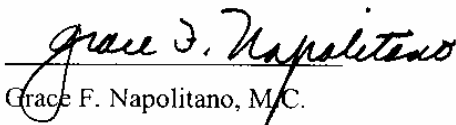
Sincerely,



Earl Blumenauer, M.C.



Henry A. Waxman, M.C.

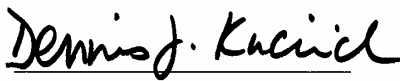


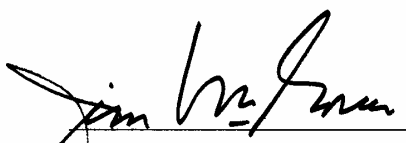
Grace F. Napolitano, M.C.

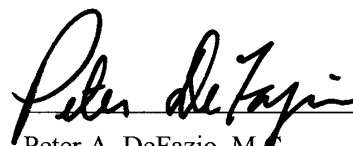


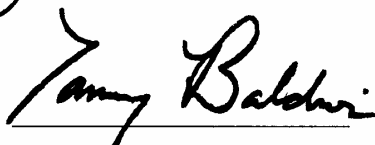
Michael Michaud, M.C.

  
Tim Ryan, M.C.

  
Dennis J. Kucinich, M.C.


  
James P. McGovern, M.C.

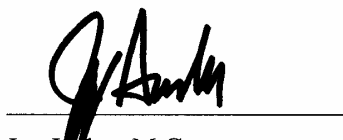
  
Peter A. DeFazio, M.C.

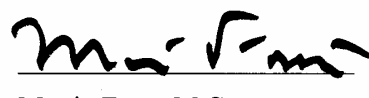
  
Tammy Baldwin, M.C.

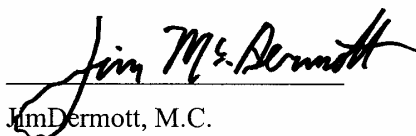
  
Barbara Lee, M.C.

  
Hilda L. Solis, M.C.


  
Barney Frank, M.C.

  
Jay Ingle, M.C.

  
Martin Frost, M.C.

  
Jim Dermott, M.C.

  
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Maxine Waters, M.C.

  
Sherrod Brown, M.C.