

# Corporations Reveal What They Want in New NAFTA: Expanded Protections to Make It Less Risky to Outsource Jobs and More Power to Attack Public Interest Laws

The North American Free Trade Agreement (NAFTA) gave vast new powers to corporations that make it easier to outsource jobs and attack the environmental and health laws on which we all rely. Deals like NAFTA granted multinational corporations the power to sue the U.S. government in front of a tribunal of three corporate lawyers. These lawyers can order U.S. taxpayers to pay the corporations unlimited sums of money, including for the loss of expected future profits. Under NAFTA, investors have grabbed \$392 million in attacks on natural resource policies and environmental and health safeguards. The demand to eliminate this controversial system — formally known as Investor-State Dispute Settlement (ISDS) — during NAFTA renegotiations is a rare point of unity across the political spectrum, but a powerful coalition of corporate interests is desperately trying to salvage the alarming powers they were able to insert into NAFTA.

## Empowering Foreign Corporations to Directly Attack Public Interest

NAFTA empowers individual foreign corporations to drag the United States, Canada and Mexico before extrajudicial tribunals. These tribunals are comprised of three private attorneys who are authorized to order unlimited taxpayer compensation for domestic policies or government actions that the corporations claim undermine their special NAFTA privileges. Consider these extreme features of the ISDS system that have been included in subsequent agreements:

- **Corporations elevated to same status as nations:** ISDS empowers corporations to privately enforce public treaties against sovereign governments. Only corporations have rights. Governments and citizens cannot initiate cases in this regime.
- **Three corporate lawyers serve as “judges” whose decisions cannot be appealed:** The tribunals authorized to rule against government policies are comprised of three private sector attorneys, unaccountable to any electorate. In the small roster of international investment tribunalists, there are 15 lawyers who have been involved in 55 percent of the total investor-state cases known to date. Many rotate between suing governments on behalf of corporations and acting as “judges” on other cases. The corporate lawyers’ decisions are not subject to appeal.
- **Billions in taxpayer compensation:** There is no limit to the amount of money a tribunal can order a government to pay a foreign corporation. If a corporation wins its investor-state case, the taxpayers of the “losing” country must foot the bill. Nearly \$4.5 billion in compensation has already been paid out to corporations in a series of investor-state cases under U.S. pacts with ISDS, including NAFTA. Of the more than \$59 billion in dozens of pending claims under NAFTA and other pacts, nearly all relate to environmental, energy, public health, land use and transportation policies – not traditional trade issues. In 2012, [a tribunal ordered payment of over \\$2 billion to an oil firm under the U.S.-Ecuador investment treaty](#). Even when governments win, they often must pay for the tribunal’s costs and legal fees, which average \$8 million per case, wasting scarce resources to defend public interest policies against corporate challenges.

## Corporations’ NAFTA Agenda: In Their Own Words

Given the woeful state of the system, one would think everyone would be opposed to ISDS. Most are: the [National Conference of State Legislatures](#), the [National Association of Attorneys General](#), the [National Association of Counties](#), [small business organizations](#), [hundreds of the nation’s leading legal and economics professors](#) and more. Stark criticism of ISDS has come from voices as disparate as [U.S. Supreme Court Chief Justice John Roberts](#), former [Reagan-era associate deputy attorney general Bruce Fein](#), pro-free trade think tanks such as the [Cato Institute](#), [Republican members of Congress](#) as well as [U.S. Senator Elizabeth Warren \(D-Mass.\)](#), [Nobel laureate economist Joseph Stiglitz](#), [unions](#) and [environmental](#) groups.

But the U.S. Chamber of Commerce calls efforts to roll back the extreme corporate powers in ISDS “highly dangerous.” The world’s largest energy and financial corporations use seemingly benign language in their formal demands to push for new NAFTA rules that could threaten critical climate and energy initiatives, health and safety rules, and financial regulations.

Drawing from their own statements, these companies state for the record that they want to:

**Retain the right to fight regulations:** Multinational corporations that have profited most from this extreme system, [such as Chevron](#), are doubling down, calling for greater protection of investor rights. While Chevron used ISDS to attack a 2013 court ruling in Ecuador ordering the company to pay for dumping toxic waste into the Amazon rainforest, the company calls ISDS, “important not only for the future of NAFTA, but also for the future of other free trade agreement relationships.”<sup>1</sup> Exxon Mobil and Chevron, through their industry association, the American Petroleum Institute, say that a “robust Investor-State Dispute Settlement (ISDS) mechanism” provides “a level of security for companies and a means by which they can adequately protect those investments.”<sup>2</sup>

**Lengthen the time period during which companies have access to ISDS:** The American Fuel & Petrochemical Manufacturers, which includes BP, Shell and Koch Industries, wants even more protection for investors: “A revised NAFTA should provide stronger and explicit protections ... NAFTA should ensure that investors have access to dispute resolution mechanisms for a reasonable period of time after either party completes contract performance.”<sup>3</sup>

**Extend ISDS privileges to banks and insurance companies:** The financial industry doesn’t want to be left out of enjoying extreme investor protections under the ISDS system. Says financial behemoth Citi: “A NAFTA modernization should extend to financial services the same level of protection ... as is provided for all other sectors in the existing NAFTA.”<sup>4</sup> The insurance company MetLife agrees, saying it wants the “same degree of investor protection and ability to enforce those protections under investor-state dispute settlement as provided to all other sectors.”<sup>5</sup>

**Ratchet up investor protections in Mexico and Canada:** Calling the ISDS system “limited” in its protections, the powerful National Association of Manufacturers wants to make sure “Canadian and Mexican governments are bound to equivalent levels of property protection.” Meanwhile, they want to extend ISDS to “breaches of existing and future investment agreements” for investments in such areas as natural resource extraction, water treatment services and road construction.<sup>6</sup>

**Kill any effort to remove ISDS protections within NAFTA or, if that fails, keep ISDS even without NAFTA:** Corporate lobbyists have stopped at nothing to press their case. The U.S. Chamber of Commerce said getting rid of ISDS was a “poison pill” for NAFTA negotiations that would “raise questions around the world about America’s commitment to ... due process.”<sup>7</sup> The Chamber joined two other lobbying groups to warn the administration that “attempts to eliminate or weaken ISDS ... will serve to undermine business community support for the NAFTA modernization negotiations.”<sup>8</sup> Meanwhile, the American Petroleum Institute raised the specter of China, claiming Mexico can turn to China if U.S. investors operate without access to ISDS.<sup>9</sup> The claim distorts reality: The Mexican government would probably prefer to award contracts to parties who cannot bring ISDS claims against the government. Finally, for good measure, a coalition of business groups has requested an extension of the enforcement period “to at least ten years after any potential termination of NAFTA.”<sup>10</sup>

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