
Expands Corporate Power

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At the heart of NAFTA is an insidious corporate power grab: NAFTA grants rights to thousands of multinational corporations to bypass domestic courts and directly “sue” the U.S., Canadian and Mexican governments before a panel of three corporate lawyers. These lawyers can award the corporations sums to be paid by taxpayers, including for the loss of expected future profits. These corporations need only convince the lawyers that a domestic law or safety regulation – that we rely on for a clean environment, essential services, and healthy communities – violates their extreme NAFTA rights. The corporate lawyers’ decisions are not subject to outside appeal and the amount they can order taxpayers to give corporations has no limit.

How could multinational corporations attack domestic health, environmental and financial protections on which we all rely and that local companies have to follow? NAFTA and other corporate-rigged deals contain a provision known as Investor-State Dispute Settlement (ISDS). ISDS gives multinational firms stunning powers, including the ability to challenge new policies – from Wall Street regulations to climate change protections – because the corporations claim the policies violate their NAFTA rights and frustrate the corporations’ “expectations” of how they should be treated.

If a tribunal rules against a challenged policy, there is no limit to the amount of taxpayer money it can order the government to pay the multinational corporation. The amount is based on the “expected future profits” the tribunal surmises that the corporation would have earned in the absence of the public policy it is attacking. Under NAFTA and other U.S. pacts, tribunals have ordered nearly \$3 billion in taxpayer compensation to multinational firms, and nearly \$70 billion is pending.

NAFTA allows the lawyers on these tribunals to rotate between serving as “judges” and bringing cases for corporations against governments – a conflict of interest that would be forbidden as highly unethical under most legal systems. These “tribunalists,” as they are formally called, are not bound by precedent or the opinions of governments, and there is no outside appeal to their rulings.

If that were not sufficiently outrageous, NAFTA’s special protections for multinational corporations also incentivize more job outsourcing. These corporate rights and powers eliminate many of the usual costs and risks that make firms think twice about moving to low-wage countries, literally incentivizing corporations to launch a new wave of job outsourcing.

While this shadow legal system for multinational corporations has been around since the 1950s, just 50 known cases were launched in the regime’s first three decades combined. In contrast, corporations have launched more than 50 claims in each of the last five years.

The United States has not yet had to pay out on an ISDS case to date. There have only been 14 ISDS cases against our laws – all by Canadian firms under NAFTA. A study by Columbia University Law School shows that we have only narrowly escaped liability in some of these cases. Canadian and Mexican taxpayers have shelled out millions to corporations after NAFTA ISDS attacks on forestry and water policies, toxics bans, land use policies and more. As corporations and law firms become emboldened and more creative, it is likely only a matter of time before the U.S. taxpayers are on the hook. For instance, after the environmental movement’s historic victory in stopping the

Keystone XL pipeline, TransCanada, the corporation behind the pipeline, has launched a \$15 billion claim against the United States – which would be equivalent to \$100 from every American's tax return.

ISDS is now so controversial that some governments have begun terminating their treaties that include ISDS. The United States can and should follow suit.

Visit www.isdscorporateattacks.org to learn more.

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