



CAFTA Facts

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The Facts on How Trade Agreements Like CAFTA Protect Millions of American Investors

Leveling the Playing Field for Millions of American Investors

- Tens of millions of Americans have invested their personal wealth in the American and global economy. The U.S. economic and legal system affords them and foreigners who invest in the United States access to fair, transparent, and rules-based legal systems. A good rules-based investment climate is important for promoting economic growth and job creation, and for encouraging savings.
- But for many U.S. investors, the playing field is not level. Foreigners get access to the U.S. legal system, but U.S. investors overseas are often disadvantaged. U.S. investors have invested billions of dollars overseas, stimulating trade. But the system only works if U.S. investors are treated fairly in foreign markets like Central America.
- Trade agreements like CAFTA strengthen transparency and the rule of law and promote anti-corruption efforts. And, when all else fails, they provide a fair way for investors to protect their rights through investor-state arbitration.

CAFTA Investment Rules Promote Fair, Rules-Based, and Transparent Systems

- CAFTA contains fair and transparent arbitration procedures available to investors in the event that a government expropriates (“takes”) their property, discriminates against their investment, or violates one of the other investment obligations.
- The United States has never lost a single case filed against it under investor-state arbitration proceedings, nor has the United States ever paid a single cent to any investor to settle such a case.
- Some critics cite NAFTA Chapter 11 investor-state cases and claim CAFTA would undermine U.S. domestic laws. This is false. Most of the cases cited by critics are claims which are still pending (e.g. the Methanex case), or which have been found by domestic tribunals to be violations of domestic law (e.g., the Ethyl case), or which have been denied (e.g., the Loewen case).

CAFTA Goes Beyond NAFTA

- In response to the guidance that Congress provided in the Trade Act of 2002, the Administration has substantially revised the investment text used in free trade agreements. CAFTA is thus significantly different from NAFTA Chapter 11:
 - The CAFTA expropriation provisions are drawn directly from key U.S. Supreme Court decisions.
 - The arbitration process under CAFTA is more open and transparent than NAFTA. Under CAFTA, hearings and documents are now public and amicus curiae submissions are now expressly authorized. (The NAFTA Parties recently issued guidelines along the same lines for investor-state arbitration under NAFTA as well.)
 - Building on the NAFTA experience, CAFTA takes new steps to ensure that investors cannot abuse the process. The agreement includes a special provision (based on U.S. court rules) that allows tribunals to dismiss frivolous claims at an early stage of the proceedings and expressly authorizes awards of attorneys’ fees and costs if a claim is frivolous.
 - The investor-state arbitration process under CAFTA is fully accountable. Governments may review draft opinions (litigants may comment on them) and issue interpretations of the rules that are binding on tribunals.
 - CAFTA takes regulatory interests fully into account. The CAFTA text specifies, for example, that nondiscriminatory regulatory actions designed and applied to protect the public welfare do not constitute indirect expropriation “except in rare circumstances.”