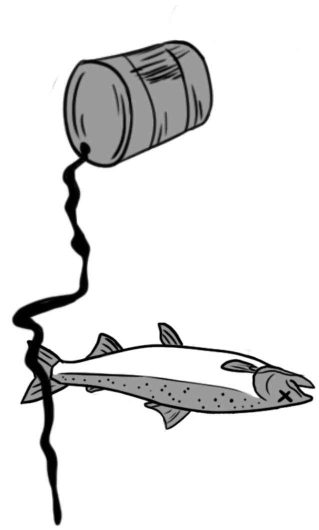
Getting it Right:

A people's guide to renegotiating NAFTA

NAFTA's Chapter 11 Threatens the Environment and Good Public Policy



U.S. President Donald Trump has made it clear that he thinks the North American Free Trade Agreement (NAFTA) has been a bad deal for the United States. He has called Canada and Mexico to the table to renegotiate the deal. President Trump wants to put "America First" in NAFTA, or walk away from the deal.

For years, we have seen the ravages of NAFTA – the Chapter 11 corporate lawsuits that have cost Canada millions of dollars and eroded our environmental and public policy, hollowed out manufacturing towns and put hundreds of thousands of people out of work, and created greater inequality in Canada, the U.S. and Mexico.

The Council of Canadians is calling for three major things to make NAFTA a fairer deal:

- **Eliminate Chapter 11, the investor-state dispute settlement (ISDS) process**. ISDS provisions give corporations the right to sue the Canadian government, often for millions – even billions – of dollars, if any public policy or government action denies them investment or profit opportunities.
- **Remove all references to water as a good, service or investment**. Canada is vulnerable to bulk water exports and increased water privatization with this NAFTA rule.
- **Eliminate NAFTA's energy proportionality rule**. This rule requires Canada to export a locked-in percentage of our energy production to the U.S. This means more production in the environmentally destructive tar sands, which will stop us from meeting our climate commitments.

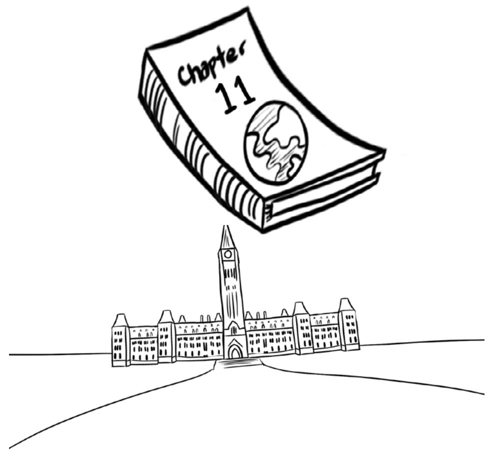
Chapter 11 ISDS provisions

Investor-State Dispute Settlement (ISDS) provisions grant private investors from one country the right to sue the government of another country if it introduces new laws, regulations or practices – be they environmental, health or human rights – that cause corporations' investments to be less profitable.

ISDS provisions:

- Protect foreign investors, but no one else. Domestic corporations, civil society, unions or governments do not have the same rights to challenge government decisions.
- Cost $4 million on average to defend a case. Chapter 11 cases are heard by three arbitrators, an elite group of investment lawyers who only look at investment issues, behind closed doors.
- Create a public "chill" that may dissuade governments from enacting policy. A study by Gus Van Harten, a scholar at the Osgoode Hall Law School in Toronto, showed that policymakers will delay or shelve decisions because of the threat of potential ISDS lawsuits.

Canada is the most sued country in the developed world because of NAFTA



Canada has faced 38 Chapter 11 ISDS lawsuits – the most amongst the three NAFTA countries. At the moment, Canada faces ISDS lawsuits claiming $2.6 billion in damages. Canada is the most sued country in the developed world because of NAFTA. According to the Canadian Centre for Policy Alternatives, two-thirds of the ISDS lawsuits against Canada are over environmental policies.

Here are some examples:

Lone Pine, a Canadian energy company, is suing the Canadian government through its American affiliate for $118.9 million USD because Quebec introduced a temporary moratorium on oil and gas fracking under the St. Lawrence River. This challenge is even more concerning because it involves a domestic company using a foreign subsidiary to sue its own government.

Bilcon of Delaware is demanding the Canadian government pay $300 million USD in damages after an environmental assessment panel rejected the company's plan to build a quarry and marine terminal. The project, located in an environmentally sensitive area of Nova Scotia, was opposed by the local community, in part due to its threats to endangered species.

The Canadian government paid Ethyl Corporation $13 million in an out-of-court settlement based on a challenge, filed in April 1997, to Canada's ban on the import and interprovincial trade of the gasoline additive MMT, a suspected neurotoxin.

Is ISDS the future?

The first ISDS agreement was between Pakistan and Germany in 1959. Since that time, there has been absolutely no evidence to show that ISDS has actually encouraged investment.

More and more, countries around the world are pulling out or revising their ISDS treaties. Recently, Ecuador declared it would scrap its ISDS agreements, including one with Canada. Brazil, India, Australia, South Africa, and Indonesia have all made trade agreements without ISDS provisions. According to the World Trade Organization, these countries are among the top 30 trading nations in the world.

In 2005, a trade agreement between Australia and the U.S. came into force without ISDS provisions. Both countries said that ISDS was unnecessary because each has a "robust" legal system for resolving disputes.

Take action!

Business interests should never trump public interests. Call on Prime Minister Trudeau to stand up to Trump on NAFTA! Demand that the Canadian government scrap the Chapter 11 ISDS process from NAFTA and any future trade agreements.

For more information about the Council of Canadians' campaign for a better and fairer NAFTA, visit canadians.org/NAFTA or call us toll-free at 1-800-387-7177.

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