

## The NAFTA Constitutional Challenge (International Issues)

Despite the fact that investment rules have been rejected in most multilateral forums, proponents of neo-liberal trade keep trying to reproduce the NAFTA model on a bi-lateral basis. According to the United Nations Conference on Trade and Development (UNCTAD), Investment disputes involving millions of dollars are multiplying around the world and threaten to undermine the economic health and prospects of many developing countries.

### Are investment rules the accepted norm?

- In 1998, a proposal for a **Multilateral Agreement on Investment (MAI)** was soundly rejected amid strong public opposition and concerns about its potential impact on state sovereignty, the regulatory role of government, cultural policy, labour issues and environmental protection
- Proponents of investment rules have been trying to impose their model at the **World Trade Organisation (WTO)**. The issue became so controversial for developing countries that a recent framework deal to continue negotiations removed the question of investment from the agenda altogether.
- The negotiations for the **Free Trade Area of the Americas (FTAA)** are in disarray. The United States and Canada wanted to extend NAFTA investment rules to the FTAA. Several South American countries refused and the January 2005 deadline for a final agreement was missed.
- The **recent Australia/United State free trade agreement (FTA)** creates an interesting precedent. Australia refused to agree to an investor-state dispute settlement mechanism stating that it wasn't necessary because of their "shared legal traditions, open economic environment and the confidence of investors in the fairness and integrity of the respective legal systems."

### They say:

" Other FTA partners would take note, making it more difficult to negotiate investor-state provisions in our agreement with them. Only a consistent policy on investment protection can prevent that from happening."

The American corporate lobby in a letter to Trade Representative Robert Zoellick on the fact that the Australia/US FTA doesn't allow US corporations to sue Australia

### We say:

International treaties giving foreign investors the right to sue a country directly are a dramatic departure from the norms of international and domestic law. There is now growing skepticism and opposition to the establishment of international investor-state mechanisms such as the one found in NAFTA.

### NUMBERS AT A GLANCE

- In 1994, **3 cases** were brought to the International Centre for the Settlement of Investment Disputes (ICSID) **106 cases** were heard this year.
- There are currently **160** active claims worldwide. All were brought by corporations.
- There are **37** lawsuits by corporations against the government of Argentina.
- Mexico is fighting **14** claims, most under NAFTA.
- Canada currently faces **4** claims.
- In 2003, the Czech Republic was ordered to pay US\$ **270** million to a Dutch corporation. The company had challenged the government's broadcasting regulation
- Impoverished Ecuador was ordered to pay Oil giant Occidental US\$ **71** million under an investment deal with the US.

\* Numbers originally taken from an UNCTAD report on investment