



THE LEAGUE
OF WOMEN VOTERS
OF JOHNSON COUNTY, KANSAS

December 16, 2002

Mayor Ed Eiert
Overland Park City Hall
8500 Santa Fe
Overland Park, Kansas, 66212

Dear Mayor Eiert,

International trade agreements may have important, perhaps damaging, consequences for people in Johnson County who expect their city and county governments to protect and promote their health and well-being. Experts report that such agreements can limit local authority on such matters as

- zoning laws and land use regulation
- incentives offered to local businesses; economic development
- city licensing of restaurants and other places of business
- environmental protection measures

National organizations of local and state officials have recognized the problem, and have urged the federal government to protect and maintain their authority. The organizations listed here have taken such actions:

- National League of Cities
- National Association of Towns and Townships
- National Association of Counties
- United States Conference of Mayors
- National Conference of State Legislatures
- Attorneys General from 35 states

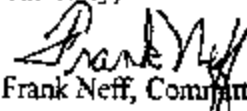
Scholars have made analyses of the likely impacts of various trade agreements. One of those, created by the Harrison Institute for Public Law, Georgetown University Law Center, is included.


Despite the concerns and the requests for change in policies, the negotiation of new agreements and the expansion of existing agreements continue.

Sharing the concern for democratic governance and our federal system, which is reflected in the statements of those organizations listed above, the League of Women Voters of Johnson County established a committee to study the impact which international trade agreements may have on our community. The League committee concluded that the impacts can be quite significant, and authorized its members to provide information to local government officials. A copy of the League's position is enclosed.

We will be pleased to provide additional information about the effects of the agreements, and of actions which local and state governments have taken in response.

Sincerely,


Frank Neff, Committee Chair


Elaine Mann, President

**CONSENSUS STATEMENT:
IMPACT OF INTERNATIONAL TRADE AGREEMENTS
ON THE LOCAL COMMUNITY**

The LWVJC believes that local government officials should inform themselves and their constituency of the impact of international trade agreements on Johnson County and its cities. A defined mechanism should be established whereby local government interests are represented in the development of these agreements.

In general, trade agreements must not weaken local laws in the areas of environment, health, safety and employment. However, there may be instances where, for reasons of strengthening, local laws may need to be changed to meet higher international standards.

Although privatization and/or foreign ownership may not be appropriate for every service that local governments provide, in cases where either occurs, there must be strict community regulation and oversight regardless of the national affiliation of the service provider. All private corporations must meet the same standards, rules, and quality expectations of our local laws and regulations, and be subject to the U.S. legal system.

LWVJC can help educate and inform citizens, who in turn should inform and monitor local government officials to ensure that they are aware and responsive to the potential impact of international trade agreements on Johnson County and its cities.

(The statement above was approved in the spring of 2002.)



HARRISON INSTITUTE FOR PUBLIC LAW
GEORGETOWN UNIVERSITY LAW CENTER

TRADE AGREEMENTS AFFECT STATE & LOCAL POWER

Citizens Trade Campaign

March 2, 2002

Presentation by William Waren¹ and Bethany Bonner²

Overview

1. **Why are global agreements a concern for state and local officials?**
 - Many state laws potentially conflict with global agreements.
 - Global agreements can be effectively enforced with punitive tariffs or awards of money damages.
 - International tribunals may not understand or care about U.S. federalism.
2. **How do trade and investment rules shift power away from states and localities?**
 - Six global agreements trench on state and local power.
 - WTO trade rules place government under more restraint than the U.S. constitution.
 - NAFTA's investment chapter provides sweeping protections of property rights that far exceed U.S. "takings" jurisprudence.
3. **Are there examples of global-local conflicts that have been litigated?**
 - *Crosby*: Mass. Burma law preempted.
 - *Methanex*: \$970 million claim.
 - *Loewen*: \$725 million claim.
 - *Metalclad*: \$16 million award.
4. **What roles can states and locals play?**
 - *Oversight* – Monitor global agreements and assess their impact on state and local authority.
 - *Lawmaking* – Adapt state and local lawmaking to the global economy.
 - *Advice* – Advise the federal government on international trade and investment policy that affects state and local authority.
5. **Why is it important for states and locals to participate in the trade policy debate?**
 - *Public Interest*: Polls show that Americans want a more balanced trade policy.
 - *Federalism*: Preserve the balance of power for state and local governments.

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HARRISON INSTITUTE FOR PUBLIC LAW
GEORGETOWN UNIVERSITY LAW CENTER

Trade Agreements Affect State & Local Power

Presentation By

William Warren & Bethany Bonner
*Harrison Institute of Public Law,
Georgetown University Law Center*
to
The Citizens Trade Campaign
Washington, D.C.
March 2, 2002

1. Why are global agreements a concern for state and local officials?

A paramount virtue of federalism is that states and localities serve as the "laboratories of democracy." That tradition of experimentation, progressive change and diversity creates the potential for conflict with international agreements that promote uniformity in trade and investment rules on a global scale.

We are writing the constitution of a single global economy.

*Renato Ruggiero,
past WTO Director-General*

The challenge for state and local legislatures will be to develop their capacity to respond to the threats and opportunities that come from layering global rules that regulate governments on top of our federal system. The result is not that trade rules automatically invalidate state and local law, as many people believe. NAFTA and the WTO agreements limit state sovereignty, but with subtle and sophisticated dynamics that shift economic and political power away from local venues.

- a. **Many state laws potentially conflict with global agreements.** The Harrison Institute has identified 11 categories of state law that potentially conflict with trade or investment rules under NAFTA or the WTO agreements, based on a review of California law. There are over 80 examples of potential conflicts within these categories in California. By "potential conflict," we mean that a state law appears not to comply with the international trade or investment rules.

Potential for Local-Global Conflict: Preliminary Survey of California Law

Categories of State Law	Examples of Potential Conflict
Economic development
Environmental health
Environmental resources
Agriculture & food safety
Land use control
Business licenses
Labor & human rights
Access to courts
Fair competition
Consumer protection
Taxation of multinationals

A Closer Look: Potential for Local-Global Conflict

Economic development

- Agricultural development
- Business development
- Distressed area revitalization
- Domestic procurement preferences
- Export promotion
- Small and minority business development
- Technology research and development

Environmental health

- Environmental services
- Groundwater protection
- Pollution abatement
- Toxic materials control

Environmental resource conservation

- Energy conservation
- Environmental procurement
- Fish conservation
- Recycled content markers
- Waste reduction
- Wildlife protection

Agriculture and food safety

- Commercial quality
- Food safety

Land use control

- Development limits
- Reclamation requirements

Access to courts

- Sovereign immunity
- Bond requirement for appeal

Business licenses

- Liquor license requirements

Fair competition

- Antitrust enforcement
- Rent control

Consumer protection

- True weight labeling
- Environmental representations

Taxation

- Corporate tax basis

Labor and human rights

- Goods made with forced labor

- b. **Global Agreements can be effectively enforced.** Global agreements have no direct legal effect unless a domestic government decides to enforce the agreements, but the agreements do provide for economic sanctions for noncompliance.
- Trade agreements empower nation states to invoke punitive tariffs.
 - Investment agreements empower private corporations to sue nation-states for economic compensation.
- c. **International tribunals may be unsympathetic to or uncomprehending of U.S. federalism.** Trade and investment cases are decided by tribunals of trade experts. Most are experienced in commercial arbitration, not constitutional law or public policy. Few of them are Americans, and few come from countries with a federal system of government comparable to that of the United States, Canada, or Australia. In most countries subnational units of government are mere administrative subdivisions of a centralized and unitary state.

The unitary-state model of governance is reflected in international trade law, which provides that subnational units including American states are bound by global agreements, to which they have not consented, even if the global agreement regulates core areas of state (subnational) sovereignty that could not otherwise be regulated by national governments.

NAFTA and WTO tribunals make decisions based on the vagaries of international law and the often equally circuitous and open-ended text of the agreements. Moreover, the agreements themselves are largely limited to commercial issues: issues related to fair play in the international competition for economic advantage. Unlike U.S. courts, WTO and NAFTA tribunals are not asked to weigh and balance commercial values with other competing values like that of local self-government in a federal system. The tribunals may not take U.S. law into consideration, unless of course it reflects an established principle of international law.

2. How do trade and investment rules shift power away from states and localities?

- a. **Six global agreements trench on state power.** Six trade or investment agreements, listed below, have the most direct impact on state and local government.
- *NAFTA Chapter 11 – Investment.* Chapter 11 covers any government measure that affects an enterprise, property, or other asset in the United States that is owned by a Canadian or Mexican investor.
 - *WTO Agreement on Technical Barriers to Trade (TBT).* The TBT covers any government regulation of trade in products as well as government or non-government standards for voluntary labeling or certification of products.
 - *WTO Agreement on Sanitary & Phytosanitary Measures (SPS).* The SPS covers any government measure that protects human or animal health from risks arising from disease-carrying organisms or the contents of food, beverages or animal feedstuffs.

- *WTO General Agreement on Trade in Services (GATS)*. The GATS covers any government measure that affects services unless a service is provided exclusively by the government, with no alternative in the private sector. Some GATS rules affect all services ("horizontal" commitments), and some GATS rules affect only specific "sector" commitments that are unique to each nation.
 - *WTO Agreement on Subsidies & Countervailing Measures (SCM)*. The SCM covers any financial contribution (including a direct monetary contribution, a tax benefit, a contribution of goods or services and a price support) that confers a benefit to a specific enterprise or industry.
 - *WTO Agreement on Government Procurement (GPA)*. The GPA covers procurement above a minimum threshold (approximately \$507,000 for goods and \$7.1 million for construction) for the government agencies listed by 37 states.
- b. **WTO trade rules place government under more restraint than the U.S. constitution.** Enforced by trade sanctions, some trade rules are analogous to U.S. constitutional limits on the law-making power of state and local government. However, the trade rules arguably go significantly further to limit governing power.

For example:

- "No discriminatory effect" rules (national treatment and MFN) are analogous to the commerce clause in the U.S. constitution, but sweep much more broadly.
- "Least-trade restrictive" rules may be analogous to now discredited theories of substantive due process used by the U.S. Supreme Court in the early 1900s to invalidate state economic and social legislation.
- Performance-based purchasing rules have no constitutional precedent in domestic law. They require governments to exclude criteria other than price and quality (such as those criteria that were used in the successful state South African sanctions campaign).

WTO Trade Rules

Type of Trade Rule	WTO Agreement
No discrimination - purpose or effect	GATT, GATS, GPA, SPS, TBT
Performance-based purchasing	GATT, GPA
Prohibited and actionable subsidies	SCM
Least trade-restrictive requirement	GATS, SPS, TBT
Scientific basis and risk assessment	SPS, TBT
Uniformity	SPS, TBT

- b. NAFTA's investment chapter provides sweeping protections of property rights that far exceed U.S. "takings" jurisprudence. Unique among multilateral economic agreements to which the United States is a party, NAFTA's investment chapter provides for investor-to-state dispute resolution. This allows companies to sue the United States directly, rather than rely on their country's trade ministry to bring a complaint (as is the case under trade agreements). Also in contrast to WTO proceedings that rely on trade sanctions to enforce the decisions of tribunals, NAFTA tribunals may award money damages. Claims amounting to \$1.8 billion are now pending against the United States in NAFTA investment cases.

NAFTA investment rules, like WTO rules, are analogous to U.S. constitutional limits, but in practice, they are being used by multinational corporations to bring claims for compensation of commercial interests that would never be accepted by U.S. courts

For example:

- Expropriation rules under NAFTA arguably are analogous to U.S. takings law, not as the Supreme Court currently understands it, but rather as the most hard-edged elements of the property rights movement would like to see it develop in the United States (as a requirement that government pay business for the cost of complying with environmental, economic and other regulations).
- NAFTA's minimum treatment rule, again, is arguably analogous to substantive due process in the early 1900s, giving tribunals wide discretion to invalidate government regulations that allegedly interfere with the flow of commerce.

NAFTA Investment Rules

Type of Investment Rule	NAFTA Provision
No discrimination - purpose or effect test	NAFTA art. 1102
Compensation for expropriation	NAFTA art. 1110
Minimum treatment under international law	NAFTA art. 1105
Transfer of profits, payments, proceeds of sale	NAFTA art. 1109
Limits on performance requirements	NAFTA art. 1106

3. Are there examples of global-local conflicts that have been litigated?

Two good examples of local-global cases are the recently-decided Massachusetts Burma Law case and the pending *Methanex* case.

- a. **The Massachusetts Burma Law case.** An example of the threat of globalization to progressive state politics is presented in *Crosby v. National Foreign Trade Council*, better known as the Massachusetts Burma Law case.
- **The horror in Burma.** The government of Burma is one of the most repressive in the world, infamous for its violations of labor rights and human rights. Over the past decade 5.5 million people have been conscripted into forced labor. Forced labor accounts for seven percent of Burma's economy. The military government viciously persecutes the

democratic opposition led by the Nobel Peace Laureate, Aung San Suu Kyi.

- **Massachusetts acts.** The Commonwealth of Massachusetts responded to this situation by enacting a selective purchasing law that was identical to its old South Africa sanctions law only with South Africa scratched out and Burma written in. The law restricted the authority of state agencies to purchase goods and services from companies doing business with Burma.
- **The WTO challenge.** Shortly after Massachusetts acted, the European Union and Japan threatened to bring a WTO action against the Massachusetts Burma law. The Massachusetts law was a clear cut violation of the WTO agreement on government procurement.
- **The NFTC suit.** Ultimately, the prosecution of a WTO case was suspended pending the outcome of a challenge to the Burma law brought in U.S. federal court by the National Foreign Trade Council (NFTC), an association of 600 multinational corporations. The NFTC suit was supported at the trial stage, on appeal, and in the Supreme Court by European Union amicus briefs, alleging that the Massachusetts law violated WTO obligations.

Ultimately in the *Crosby* case, the U.S. Supreme Court struck down the Massachusetts Burma law on relatively narrow grounds. The Court found that the Burma law was preempted by a subsequent and less far-reaching congressional act imposing sanctions on Burma. Nonetheless, the tone of the opinion in *Crosby* was surprising.

- **A lesson learned.** The lesson of the *Crosby* case is that both the U.S. courts and the WTO may be used to attack state procurement laws that are based on social or moral criteria in addition to purely economic criteria like cost and quality.

U.S. courts accepted an argument that the conflict between state and federal policy came not from disagreement over Burma policy, but from the failure of Massachusetts to comply with the WTO agreement.

The *Crosby* case and the machinations in the WTO that surrounded it should be a wake up call to those in the "living wage" campaign, those who support preferences for minority contractors, and those who support environmental purchasing preferences. Supporters of "buy local" and "buy America" preferences also should be alarmed.

- b. **The *Methanex* case.** The *Crosby* case is not an isolated example. The NAFTA investment cases challenging state laws are just as chilling. Take the *Methanex* case, another example of the threat of globalization to progressive state politics.

Methanex v United States is one of the first three cases brought against the United States under the investment chapter of NAFTA, which provides the most powerful protections of the rights of transnational corporations and other investors ever included in a multilateral agreement of its kind.

- ***Methanex corporation brings a claim.*** In June of 1999, the Vancouver-based Methanex Corporation filed a chapter 11 claim, seeking \$970 million. Methanex wants compensation from the United States government for alleged current and future financial losses resulting from California's phase out of MTBE, a gasoline additive that may cause cancer and presents environmental risks. The Methanex claim is now in arbitration before a panel of the United Nations Center for International Trade Law (UNCITRAL).
- ***California acted to protect the public and the environment.*** The *Methanex* case is remarkable because it illustrates how NAFTA's investment chapter allows a transnational corporation to bring a complaint against a state law for performing a core governmental function, protecting the public health and environment. (Not coincidentally, California is only one of fifteen states that have acted to address the MTBE risk to public health and the environment.)
- ***MTBE pollution in California.*** MTBE has contaminated groundwater and drinking water at several sites across California.

MTBE is found in many California lakes and reservoirs. In northern California, such lakes as Tahoe, Donner, and Shasta have been contaminated. To the south, MTBE has been detected in lakes and reservoirs like Castaic, Pyramid, and Perris.

One study estimates that MTBE has polluted 10,000 shallow groundwater sites in California. The UC Davis report more conservatively estimates that 3,486 groundwater sites in California are contaminated with MTBE.

California reports detecting MTBE in 30 public water systems. In Santa Monica, the city shut seven of its wells because of MTBE contamination, thus losing half its water supply. In South Lake Tahoe 12 of 34 wells were closed.

- ***MTBE is a health and environmental risk.*** MTBE has a foul taste, and it smells like turpentine. Even in low concentrations, it is easy to smell and taste MTBE in drinking water. The UC Davis team noted that "substantial evidence from studies of chronic exposure demonstrate that MTBE is carcinogenic in rats and mice." The study concludes that "MTBE is an animal carcinogen with the potential to cause cancer in humans." Allegations have also been made that MTBE is associated with other health risks including memory loss, asthma, and skin irritation.
- ***A Methanex award would establish that government must pay to regulate.*** NAFTA's investment chapter is unique among multilateral trade and investment agreements. It allows a transnational corporation like Methanex to act on its own initiative to bring the United States before an international tribunal. And, it allows such a transnational investor to seek hundreds of millions of dollars in damages for the acts of state and local governments.

In the pending NAFTA investment cases, Canadian corporations are making claims for compensation that would not be accepted by domestic courts applying the U.S. Constitution.

In this case, Methanex challenges California's exercise of its sovereign power to regulate to protect the public health. If Methanex wins, the United States will have to pay to allow California to regulate MTBE pollution of drinking water.

- c. **Related NAFTA cases.** Two other cases are pending against the United States under NAFTA's investment chapter, both of which challenge core components of state sovereignty.

- ***Loewen v. United States.*** A Canadian funeral home chain objects to a large punitive damage award against the corporation, which is allowed under Mississippi law to deter fraud. Loewen also objects to a Mississippi requirement, similar to that of many other states, that a bond must be posted before the award could be appealed. Loewen is asking for \$725 million in damages from the United States.
- ***Mondev v. United States.*** Another Canadian firm claims the Massachusetts law of sovereign immunity violates NAFTA's investment chapter. In a suit against a local development authority, a jury awarded Mondev substantial money damages. A judge subsequently disallowed the award because the development authority enjoyed sovereign immunity. Mondev is asking for \$50 million in damages. This case has important implications for America's federal system, given the states' 11th amendment right to sovereign immunity and recent U.S. Supreme Court cases giving an expansive reading to that right.

In addition several NAFTA chapter 11 brought against Canada and Mexico have already resulted in decisions that strike at core governmental functions.

- ***Ethyl v. Canada.*** A U.S. chemical company, the Ethyl corporation, brought a claim under NAFTA's chapter 11, arguing that its property was expropriated when Canada imposed a ban on the import and interprovincial transport of MMT, a toxic gasoline additive. Canada was forced to settle the case, lifting its MMT ban and paying Ethyl \$13 million in damages and legal fees.
- ***Metalclad v. Mexico.*** The Metalclad corporation brought a chapter 11 claim against Mexico, claiming its property had been expropriated and that it had not been accorded minimum treatment under international law when a Mexican local government enforced its environmental zoning authority to stop Metalclad from opening a waste disposal site located on top of an aquifer. A NAFTA tribunal agreed that Metalclad's property rights had been violated and ordered Mexico to pay over \$16 million in damages.
- ***S.D. Myers v. Canada.*** The S.D. Meyers company brought a chapter 11 claim, alleging that Canada's ban on the export of highly toxic PCB waste amounted to discriminatory treatment and a violation of minimum treatment under international law. A NAFTA tribunal agreed. Canada will have to pay S.D. Myers compensation in an amount to be determined in further proceedings.

4. What roles can states and locals play?

a. *There are three traditional roles for state and local officials in a new global context.*

Oversight ... Monitor global agreements and assess their effect on state authority.

Lawmaking ... Adapt state lawmaking to the global economy.

Advice ... Advise the federal government on trade policy that affects state law.

b. *Oversight – Monitor global agreements and assess their effect on state authority.*

Meaningful oversight means monitoring global agreements in order to assess their potential effect on local authority.

(1) *Current negotiations.* In 2001, there are three major negotiations or implementation processes that affect the powers of state and local government. The models for these negotiations include the WTO trade agreements and NAFTA's investment chapter.

(a) *Free Trade Area of the Americas* – The FTAA is being negotiated by 34 countries to establish trade and investment rules for the Western hemisphere. The FTAA is expansive; it would have 12 chapters that affect law-making power, most notably in five areas:

Investment

Subsidies

Procurement

Services

Trade in goods (technical barriers and food safety)

(b) *WTO built-in agenda* – There is a built-in agenda for expansion and interpretation of two major agreements (services and agriculture) and implementation issues on others (notably subsidies).

(c) *NAFTA interpretation of investor protection.* A unique provision of NAFTA chapter 11 enables the NAFTA nations to write an interpretive statement on what the open-ended terms of investor protection actually mean (e.g., "expropriation," "minimum treatment," "fair and equitable treatment") without going through a process of formal renegotiation and legislative ratification of NAFTA in each country. The first round of NAFTA investment claims sparked sufficient alarm that inter-agency working groups are now analyzing the options.

(2) *Assessing global impact on state authority.* The scope of current global negotiations is as broad as the scope of existing agreements. The Harrison

Institute's survey of California law provides a blueprint for state and local governments to define the scope of a partial or comprehensive impact assessment.

Scope of a Trade Policy Impact Assessment

Topics of State & Local Legislation (examples)	International Agreements						
	Invest- ment	Selected WTO Trade Agreements					
		NAFTA	GATT	TBT	SPS	GATS	SCM
Access to Courts							
Agriculture and Food							
Business Licenses							
Consumer Protection							
Economic Development							
Environmental Health							
Environ. Resource Conserv.							
Labor & Human Rights							
Land Use Control							
Taxation of Corporate Income							

c. Lawmaking — Adapt local lawmaking to the global economy.

Instead of just waiting to see what happens, state and local governments can adapt their law-making process to keep up with the global economy. They can:

- *Draft new laws strategically* so as to avoid unnecessary conflict or strengthen new laws against potential legal challenges.
- *Learn from trade agreements.* Write committee reports to address trade standards of review (e.g., science, risk assessment, and consideration of less-restrictive options).
- *Strengthen law-making politically.* Developing innovative (and thus not uniform) legislation in cooperation with other jurisdictions.

d. Advice — Advise the federal government on trade policy that affects state and local law.

State and local governments have expertise and a major stake in answering the major questions that are the subjects of current negotiations.

- (1) *Procurement.* Should the strict discipline of the WTO procurement agreement be copied by the FTAA procurement chapter (purchasing limited to price and performance criteria only). If so, should there be any general exceptions for environmental preferences, human rights standards, or living wage conditions? Should procurement agreements be expanded from 37 states to all 50 states? Should procurement agreements be expanded to cover local governments as well?
- (2) *Subsidies.* How should the FTAA define the scope of a prohibition on "export promotion?" Should there be a general exception to safeguard "green light" subsidies for distressed areas, the costs of environmental compliance, or research and development? Should transparency requirements (disclosure of subsidies) be implemented as currently required by the WTO subsidies agreement? Should the fiscal burden of disclosure fall upon state and local governments?
- (3) *Services.* Should service disciplines in GATS or the FTAA be expanded to cover water and energy utilities? Should service disciplines in GATS or the FTAA apply to all government service sectors such as land and resource management, hazardous waste management, education, health care and prison management? If so, should these areas of government services or regulated services be limited to only those measures that are absolutely "necessary" to serve the public interest? Should the GATS "regulatory reform" give foreign governments a notice and comment period before any state or local legislation that affects services can be adopted?
- (4) *Trade in goods.* Should the FTAA chapters on technical barriers and food safety mandate a process of risk assessment? How much science should be necessary to establish the legitimacy of precautionary labeling for food and beverages? Should trade rules enable industry standards to preempt consumer choice programs like environmental certification and labeling?
- (5) *Investment.* Should NAFTA's investor-initiated dispute process be carried over into the FTAA investment chapter? How should NAFTA and the FTAA define international investor rights in terms of expropriation, minimum treatment, or fair and equitable treatment? Should state and local governments that can be affected by the outcome of a NAFTA investment case have a right to notice and consultation?

5. Why is it important for state legislators to participate in the trade policy debate?

a. Balance of power for state and local government

Federalism and its balance of political power are the target of trade and investment disputes.

- (1) *Trade barrier complaints.* Federal systems promote diverse and complex law-making, which runs counter to the uniformity that trade rules are designed to promote. The EU has described the U.S. federal system as "market

fragmentation." The EU and Canada cite state and local laws as trade barriers. For example:

- Taxation and licensing of alcoholic beverage sales.
- Public procurement preferences.
- Consumer health measures, including labeling.

- (2) *Investor complaints.* In the initial round of complaints under NAFTA's investment chapter, private investors are seeking compensation for exercise of traditional government authority at the state and local level. These claims would not be viable in domestic courts without radical reforms that have been rejected by state legislatures. For example:

NAFTA claims against:

Are equivalent to:

Massachusetts sovereign immunity . . .

constitutional reform

Mississippi punitive damages . . .

tort reform

California MTBE phase-out . . .

takings reform

b. Balance of public interests.

- (1) *Support for trade liberalization.* A national survey by the University of Maryland shows that a large majority of American people support trade liberalization. An equally large majority also feels that trade policy disproportionately reflects the interests of multinational corporations "too much," and the interests of working people "too little."
- (2) *Support for environment, labor and public health measures.* While Americans support expanded trade, they give equal support to limiting trade so as to protect the environment and humane working conditions. Americans support the authority of other countries to limit imports from the United States in order to protect public health and other interests. See the University of Maryland survey report at www.pipa.org.

Public Attitudes on Trade

<u><i>Support for free trade</i></u>		<u><i>Support for balanced policy</i></u>	
Support free trade	76%	74%	Favor restricting imports based on environmental concerns
Favor trade agreements	62%	74%	Favor restricting imports based on working conditions
Support more agreements	55%	81%	Support other countries' ability to require labels on genetically modified foods

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE OPPOSING THE EXTENSION OF THE NORTH AMERICAN FREE TRADE AGREEMENT TO THE FREE TRADE AREA OF THE AMERICAS

WHEREAS, the North American Free Trade Agreement ("NAFTA") Chapter 11 has provisions which allow investors to seek monetary compensation from a signatory government through international arbitration if that government expropriates the investor's investment; and

WHEREAS, there is no clear definition of "expropriation" in NAFTA Chapter 11; and

WHEREAS, the nature of international arbitration is such that municipalities or the public are not directly involved in the process, and arbitration proceedings can be secretive without documents being publicly available through regular channels; and

WHEREAS, there is uncertainty regarding the outcome of any NAFTA arbitration because the arbitration decisions by definition are not binding on other arbitration proceedings; and

WHEREAS, large monetary awards may lead a signatory government to attempt to influence laws on a local level; and

WHEREAS, due to the lack of transparency of the arbitration process under NAFTA and the lack of a clear definition of "expropriation," there is a concern that claims pursuant to NAFTA Chapter 11 may lead to unintended results which affect the legitimate police power of local governments; and

WHEREAS, it is anticipated that the negotiations in progress to finalize the Free Trade Area of the Americas ("FTAA") will include provisions similar to NAFTA Chapter 11; and

WHEREAS, the City of Glendale should not be subjected to the unintended results of an FTAA which includes the Chapter 11 language of NAFTA.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE, CALIFORNIA:

SECTION 1. The Council does hereby oppose the extension of NAFTA to the FTAA.

SECTION 2. The Council does hereby request the U.S. Trade Representative to release proposals for the agreement and written submissions to the nine negotiating groups of the FTAA so that local governments may assess the impact of the agreement on their sovereignty.

SECTION 3. The Council does hereby request that the State Legislature investigate NAFTA and the proposed FTAA, and adopt implementing legislation for the agreements that prevent the interference with or dilution of the sovereignty of local governments.

SECTION 4. The Council urges Congress to take an active role in ensuring that the proposed FTAA agreement includes safeguards for the sovereignty of local agencies and protection of state and local environmental laws.

SECTION 5. The City Clerk shall send a copy of this resolution to George W. Bush, President of the United States, U.S. Trade Representatives, Honorable Adam Schiff, Congressman, 27th District, Honorable Dianne Feinstein and Honorable Barbara Boxer (members of the U.S. Senate), Honorable Sheila Kuehl, Senator, 23rd Dist., Honorable Jack Scott, Senator, 21st Dist., Honorable Dario Frommer, Assemblyman, 43rd Dist., and Honorable Carol Liu, Assemblywoman, 44th Dist.

Adopted this 26th day of June, 2001.

Austin Resolution 11/2/02

Megan Bobier, Program Coordinator for the Texas Fair Trade Coalition reported that the Austin, TX, City Council passed the resolution below.

Austin Resolution on Local Authority**In Trade and Investment Agreements**

Whereas, the U.S. Trade Representative (USTR) is negotiating to create a Free Trade Area of the Americas (FTAA) among 34 nations of the Western Hemisphere, create bilateral agreements such as the U.S.-Chile agreement, expand the General Agreement on Trade in Services (GATS), interpret the investment chapter of the North American Free Trade Agreement (NAFTA), and potentially to add an investment agreement under the World Trade Organization (WTO).

Whereas, all of these international negotiations serve to shift power away from state and local governments by including provisions on investment, procurement and trade in services.

Whereas, core functions of state and local government such as protection of ground water and other natural resources, corporate ownership of land, zoning, law enforcement by courts, and sovereign immunity will be undermined by investment agreements which increase foreign investor rights over and beyond the power of the state and local government.

Whereas, state and local purchasing preferences including small business, minority and woman-owned business, vendors with a competent track record, recycled content, and avoidance of goods made with forced child labor will be limited by procurement agreements which are based on the standard that government purchasing decisions should be limited to price.

Whereas, services that are traditionally provided or regulated by cities and states, including water and energy, health facilities, insurance, sewerage, solid waste, construction and alcoholic beverages, must not be more burdensome to trade than necessary under agreements on trade in services making it possible for trade panels to rule against public interest laws that are deemed burdensome to trade.

Whereas, serious concerns about these agreements have been raised by the National League of Cities, the National Conference of State Legislatures, the National Association of Counties and the National Association of Attorneys General.

Now, be it resolved, that Congress and the USTR should preserve the traditional powers of state and local governments as they negotiate and act upon international agreements by:

- * protecting state and local governments legislative power in the scope of investment, services and procurement agreements, and
- * where such protection has not been achieved, assuring that such international rules do not deviate from traditional deference to state and local regulatory authority, and
- * safeguarding state and local regulation within GATS rules on Domestic Regulation and limiting application of those rules to specific commitments made by countries.

Be it further resolved, that the Texas legislature should create a select

committee to assess the potential impact of international trade agreements on state and local governments and to keep abreast of negotiations in order to advise the USTR on safeguarding state and local authority.

And be it further resolved, that the USTR should not deny state and local officials access to negotiating documents necessary for such officials and their constituents to assess the potential impacts of such negotiations on their legitimate authority.

11/1/02

**Austin, TX City Council Unanimously Approves City Resolution on Globalization
Proposed by the Texas Fair Trade Coalition**

The Texas Fair Trade Coalition is pleased to announce that the city resolution on globalization (please see attached) passed at the Austin city council meeting today. Both the mayor, Gus Garcia, and city councilman, Raul Alvarez, proposed the resolution, and after a short speech from Raul about what the resolution means, the council approved it unanimously. Austin is the first city in Texas to pass the resolution. TFTC will now be working on getting it passed in El Paso and other cities across Texas. Our goal is to get it passed as soon as possible through as many cities as we can in order to take it to the state legislature in January, our ideal situation being to get a senate select committee approved to study the effects of globalization on local and state democracy. If anybody has any questions please feel free to write us or call us (512-472-1915), and we would appreciate hearing other organizations and individuals' experiences with getting the city resolution passed in their city.

Megan Bobier
Program Coordinator
Texas Fair Trade Coalition
420 W. Riverside
Austin, TX 78704
(512) 472-1771
megan@texasfairtrade.org
www.texasfairtrade.org

Resolution Relating toSponsor (S) Jonathan Hernandez

Agreement

FREE TRADE AREA OF THE AMERICAS (FTAA)

Introduced: 4/9/01

Referred to: _____

Action: AdoptedDate: 04/09/01Signed by Mayor 4/13/01**CITY OF BURLINGTON**

In the year Two Thousand One.....

Resolved by the City Council of the City of Burlington, as follows.

Agreement

That WHEREAS, the proposed Free Trade ~~Area~~ ^{Agreement} of the Americas (FTAA) is an effort to expand the North American Free Trade Agreement (NAFTA) to the entire Western Hemisphere, and

WHEREAS, the FTAA was initiated in 1994 by the 34 countries of North and South America (excluding Cuba) and would create the world's largest free market zone - affecting 650 million people and \$9 trillion in capital; and

WHEREAS, if adopted, the FTAA (like NAFTA) will further erode employment opportunities in the U.S. as even more jobs are moved to low-wage countries; and

WHEREAS, the US Trade Representative has said that the FTAA is likely to include NAFTA's Chapter 11, which authorizes "investor to state" lawsuits that allow corporations to sue over government actions (e.g., zoning, environmental or health measures) that have the "effect" of limiting the value of an investment, and that such government actions would be forbidden unless compensation is paid by the government, and

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Resolution Relating to ^{Agreement} ~~FREE TRADE AREA~~ OF THE AMERICAS (FTAA)

WHEREAS, such a "regulatory takings" clause would further threaten the sovereignty of local and state governments, which are already under attack from NAFTA's Chapter 11,¹ and encourage an environmental and public health race to the bottom; and

WHEREAS, the U.S. government is reportedly trying to force all countries to accept biotechnology and genetically modified foods in which unregulated U.S.-based corporations have taken a lead (i.e., Archer Daniels Midland, Cargill and Monsanto), regardless of the implications for farmers and consumers in other countries; and

WHEREAS, the strict intellectual property laws within the FTAA represent extreme corporate protectionism and will have devastating impacts on the people living in the global south because it will give a company with a patent in one country the monopoly marketing rights to the item throughout the region and allow pharmaceutical companies to keep drug prices high and block production of generic versions of life-saving drugs; and

WHEREAS, the 34 governments participating in the FTAA negotiations have committed to strengthening democracy throughout the hemisphere but have conducted the FTAA negotiations in secret, which prevents a healthy public debate; and

¹ A few examples of NAFTA Chapter 11 actions include (Source: Public Citizen, Global Trade Watch)

- (a) The Canadian funeral home chain Loewen Group used NAFTA investor protections to sue the U.S. government for \$750 million in cash damages after a Mississippi court found Loewen guilty of malicious and fraudulent practices that unfairly targeted a local small business (NAFTA permits companies to sue governments over rulings or regulations that may potentially limit their profits.) Loewen argues that the very existence of the state court system violates its NAFTA rights.
- (b) U.S.-based Ethyl Corporation forced Canada to pay \$13 million in damages and drop its ban on the dangerous gasoline additive MMT, a known toxin that attacks the human nervous system.
- (c) U.S.-based Metalclad Corp. sued a Mexican state to allow a toxic waste disposal site, claiming that the environmental zoning law forbidding the dump constituted an effective seizure of the company's property - a seizure that, under the property rights extended by NAFTA (and to be perpetuated in FTAA), requires that the offending government compensate the company.

Page 3

Resolution Relating to ^{Agreement} ~~AREA~~ **FREE TRADE OF THE AMERICAS (FTAA)**

WHEREAS, local resolutions like this one have been instrumental in defeating other destructive trade agreements such as the Multilateral Agreement on Investment.

NOW, THEREFORE, BE IT RESOLVED by the Burlington City Council that it hereby:

1. opposes the FTAA;
2. petitions the Federal government to refuse to sign any new trade and investment agreements, such as the proposed FTAA, that include investor-state provisions similar to the ones included in NAFTA;
3. urges the U.S. Trade Representative to withdraw from any further negotiation on the FTAA;
4. requests the U.S. Trade Representative to release proposals for the agreement and written submissions to the nine negotiating groups of the FTAA;
5. requests the release of a comprehensive list of the representatives to the FTAA negotiating groups from all 34 countries involved; and
6. urges the State Legislature to adopt stronger sovereignty safeguards in implementing , legislation for the FTAA and other trade agreements, now and in the future; and

BE IT FURTHER RESOLVED that the Mayor is authorized to communicate the City's position to the President, Vermont's Congressional delegation, the Governor, the U.S. Trade Representative, State Legislature and Congressional committees with trade jurisdiction.

ISTRATION:

hereby attest that a copy
of this resolution has been
sent to the following
apartment(s) on April 13, 2001
ayoc

ORIGINAL

RESOLUTION RELATING TO

Agreement

FREE TRADE AREA OF THE

AMERICAS (FTAA)

Adopted by the City Council

09 APRIL

2001

Wallace Asst. Clerk

Approved

April 13

2001

Wallace Mayor

TEST:

James Robinson

James Robinson
Administrative Secretary

* * * * *

Vol. Page

Offered by
Councillor

**National Association of Counties
National Association of Towns and Townships
National Conference of State Legislatures
National League of Cities
United States Conference of Mayors**

May 14, 2002

Dear Senators:

On behalf of the nation's state and local elected officials, we are writing to urge your support for Senator John Kerry's amendment to the investor-state provisions of H.R. 3009, The Andean Trade Promotion and Drug Eradication Act. This amendment is needed to protect the sovereignty of state and local governments and to ensure that foreign investors are granted no greater rights than U.S. citizens possess under the United States Constitution.

While we commend Senators Max Baucus and Charles Grassley for adopting new language that provides that foreign investors should receive "no greater rights" than those afforded to U.S. citizens, the language falls short of assuring this equality because it does not specifically set the Constitution as the benchmark. Further, it provides a loophole that allows U.S. laws to be gradually whittled down by competing language in international agreements.

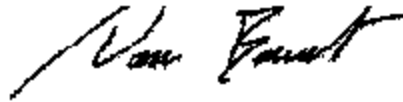
As evidenced by disputes arising from Chapter 11 of NAFTA, vague expropriation language has allowed some foreign investors to file frivolous takings claims that challenge laws that are traditionally in the purview of state and local governments. It is our view that the "no greater rights language", must specifically reference the U.S. Constitution as interpreted by the Supreme Court in order to provide equality between domestic and international business. The Kerry amendment references the U.S. Constitution while the Baucus-Grassley bill does not.

State and local governments enthusiastically support trade investments because they generate jobs and economic growth in our local communities. Our organizations' ardent support for free trade is balanced by our commitment to fair trade laws that respect the power of states and municipalities to regulate land-use, health, safety, welfare, morals and environment measures. To that end, our respective organizations have adopted policies that urge the United States to advocate for trade rules that contain legal standards consistent with the U.S. Constitution and applicable case law. Simply put, we do not believe that it is necessary to create different legal standards for foreign investors to attract their investments in our communities.

It is our understanding that Senator Kerry will offer an amendment that directs trade negotiators in future trade agreements to observe the principles of the Due Process Clause of the U.S. Constitution and ensure that a "material diminution in the value" of private property does not constitute expropriation. The Kerry amendment is also expected to insulate state and local measures from frivolous lawsuits. Also, it should not go unnoticed that a foreign investor wins where a foreign investor can demonstrate the measure was enacted or applied to discriminate against the investor. In addition, state and local measures can be subjected to legal challenge when there is a wrongful expropriation or violation of due process. With its emphasis on due process and fairness, it would follow that the Kerry amendment is a great complement to the underlying trade bill. Together, the bill and the pending Kerry amendment will go far to achieve parity between foreign investors and our U.S. citizens. To be sure, the Kerry amendment delicately balances the need to attract investors while respecting and protecting vital Constitutional, state, and local measures enacted to protect the health and safety of our citizens.

In the interest of free and fair trade, we respectfully urge your support for Senator Kerry's amendment to H.R. 3009, The Andean Trade Promotion and Drug Eradication Act. Your vote for this amendment will help ensure that foreign investors will be afforded the same Constitutional protections as are afforded to our citizens.

Sincerely,

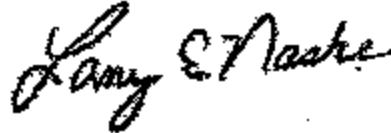


Don Borut
Executive Director
National League of Cities

William T. Pound
Executive Director
National Conference of State Legislatures



J. Thomas Cochran
Executive Director
United States Conference of Mayors



Larry Naake
Executive Director
National Association of Counties



Tom Halicki
National Association of Towns and Townships