

CAFTA: United Nations' Strength Lies in Trade Rules by Daryll E. Ray

Driving through the countryside during the late 1950s and the 1960s, it was not uncommon to see a billboard proclaiming "Get the U.S. out of the U.N.," reflecting, in part, the concern that U.S. sovereignty might be compromised by decisions made at the United Nations' headquarters in New York City. The sponsors of this billboard wanted to make sure that no world government would be able to impose its decisions on the citizens of the United States. The U.N. was seen as a harbinger of a coming "One World Government."

We may find it a bit ironic that, today, those fears seem to have subsided despite the creation of and broad powers given to the World Trade Organization and regional agreements like the North American Free Trade Agreement and the yet-to-be adopted Central America Free Trade Agreement.

We may find it ironic because, while the U.N. can be seen as a toothless tiger (it has little power to enforce the resolutions it passes), the trade agreements often include stringent enforcement powers.

Under NAFTA, the situation gets even more serious because of a provision in that agreement called Chapter 11. Under Chapter 11, an investor or group of investors in one country can sue the government of either of the other two signatory governments, if it is believed that an action by that government infringes on the investors' rights granted under NAFTA.

So, for instance, a case has been filed with regard to California's ban on the gasoline additive MTBE. California banned the additive because it was found in that state's groundwater and was ruled a potential carcinogen. Methanex, a Canadian corporation, which produced a product used to manufacture MTBE, sued the U.S. government for \$970 million arguing that the "California ban harmed it by substantially reducing the demand for methanol, its sole product."

If the court were to rule in favor of Methanex, it is

possible that a decision of an international trade disputes body could force California to rescind a decision that was made to protect the health of the people of California. In the United States, the courts have consistently ruled against U.S. corporations that have tried to make similar arguments against various regulations. But, because it is a Canadian company, Methanex has more rights under an international tribunal than a U.S. company would have under U.S. courts.

Business Week began a recent article (March 7, 2005) on the problems with Chapter 11 type rules by describing the situation in Utah, where gambling has been illegal throughout its 110-year history. The Caribbean island nation of Antigua and Barbados filed a case against Utah arguing that "gambling regulations in Utah and most other states conflict with America's obligation not to discriminate against foreigners providing 'recreational services.'" The WTO panel agreed with Antigua and Barbados and Utah lost a bit of its sovereignty. Powers that once were within the realm of individual states are being usurped by various trade dispute panels.

The recent trade ruling in the Brazil-U.S. cotton case has the potential to force a significant revision of the U.S. farm program. If the United States does not comply with the ruling, it could be subject to significant trade sanctions.

Once upon a time it took an invading army to deny a country its sovereign right to make decisions in the interests of its citizens. No longer is that true. Today it appears a government, a group of producers, a group of investors or a corporation, through the workings of an international trade dispute panel, can override those sovereign decisions, forcing the country to rescind a duly passed law or regulation it believes is in the best interests of its citizens or pay a substantial penalty.

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Editor's note: CAFTA includes the Sanitary PhytoSanitary language (also found in the WTO, NAFTA and FTAA) which makes CODEX guidelines mandatory in all member states.