Lessons From NAFTA
The High Cost of "Free Trade"

The corporate and political advocates of the North American Free Trade Agreement (NAFTA) continue to defend this trade deal and even to claim that its effects on the workers and consumers of all three countries--Canada, the United States, and Mexico--have been enormously beneficial.

In fact, the impact of NAFTA on most of the people in all three countries has been devastating. The agreement has destroyed more jobs than it has created, depressed wages, worsened poverty and inequality, eroded social programs, undermined democracy, enfeebled governments, and greatly increased the rights and power of corporations, investors, and property holders.

NAFTA has also been used to weaken Canada's sovereignty and promote its economic assimilation by the United States. It has led to greater pressure on Canada and Mexico to conform to U.S. foreign policy objectives. Most alarmingly, the three governments are bent on extending this failed model to other countries in Central and South America and the Caribbean in the proposed Free Trade Area of the Americas (FTAA). Before leaping into that abyss, citizens and policy-makers throughout the hemisphere should stop and look at the concrete results of this trilateral trade agreement.

On NAFTA's 10th anniversary, researchers based in all three countries have assessed the agreement's consequences and found them to be overwhelmingly negative. Their findings are presented in the following summary of their longer studies.

CANADA

The era of Canada-U.S. free trade began with the signing of the Canada-US Free Trade Agreement (CUFTA) in 1988, and it triggered a phenomenal growth in commerce between the two countries--from a value of US$116 billion in 1985 to more than US$240 billion by 2002. Between 1989 and 2002, Canadian exports to the U.S. rose by 221%, while imports from the U.S. went up by 162%.

Politicians and media pundits point to these figures as "proof" of NAFTA's "success," but such crude mercantilist measures fail to conform to the actual economic rationale for free trade. One of the arguments, for example, was that free trade would increase Canada's disappointing rate of economic growth, which in the eight years prior to CUFTA had averaged only 1.9% per capita per year. Instead, in the first five years of free trade, real GDP growth per capita was actually negative, averaging -0.4% a year. The GDP rate rose after NAFTA came into effect, but for the entire free trade era has averaged 1.6% annually, which is still below the pre-CUFTA rate.

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Productivity: The main economic rationale for free trade, however, was that increases in two-way trade would boost Canadian productivity, and thus lead to higher wages and rising living standards. What actually happened was that, between 1989 and 1993, average labour productivity in the business sector grew at an annual rate of 0.6%, which was less than half of its rate of growth over the previous eight years (1981-88), when productivity rose by 1.6% per year. Over the same CUFTA period (1989-93), real (inflation-adjusted) hourly wages in Canada rose by only 0.2% per year--less than half the 0.5% average increase over the previous pre-free-trade years.

Productivity growth regained and even exceeded its pre-CUFTA rate in the NAFTA years from 1994 to 2002, averaging 2.1%, but real wage gains continued to lag behind increases in productivity as employers, not workers, reaped the benefits of higher hourly output.

A comparison of productivity increases and labour costs in the key manufacturing sector in the U.S., Canada and Mexico from 1993 to June 2002 shows that, over this period, the cumulative increase in Canadian output per hour was only 14.52%, while the increase in the U.S. amounted to 51.98%, and in Mexico 53%. Labour costs, measured in U.S. dollars, actually fell in all three countries, further evidence that productivity gains were not passed on to workers in any of the three NAFTA countries.

In the years prior to CUFTA, manufacturing productivity in Canada stood at 83% of the U.S. level. By 2000, it had dropped to only 65%. So the productivity gap widened rather than narrowed, as promised by the proponents of free trade.

One of the reasons for the widening productivity gap is the dominance of foreign transnational corporations in Canadian manufacturing, since foreign corporations typically invest much less than domestic firms in industrial research and development.

Investment: The promoters of free trade predicted that it would lead to new foreign direct investment (FDI) in Canada and to the expansion of U.S.-owned branch plants. Such U.S. investment did grow by a modest C$36.8 billion in the CUFTA years, and by a further C$102 billion under NAFTA up to 2002. But most of this "investment" took the form of takeovers of Canadian firms, not new "greenfield" investments. From 1985 to 2002, there were 10,052 foreign takeovers of Canadian companies, 6,437 of them by U.S. corporations.

Of all the new direct foreign investment in Canada over this period, an extraordinary 96.6% was for takeovers and only a meagre 3.4% for new business. And to make matters even worse, many of these takeovers were financed through borrowing within Canada.

At the same time, there was a marked increase in Canadian FDI in the U.S., showing a pattern of disinvestment from Canada. By 2002, Canadians held about US$133 billion worth of FDI in the U.S., three times more than they did in 1990. But this doesn't mean that Canadian investors are taking control of key U.S. industries. As Mel Hurtig points out,

"There is not one single industry in the U.S. that is majority-foreign-owned and/or foreign-controlled." As of 1999, Canadians owned less than 0.6% of U.S. industrial investment.

Job losses and labour "flexibility": In describing its "success," NAFTA boosters credit the agreement with increasing employment and prosperity in all three countries. Admittedly, during NAFTA's first nine years, employment in Canada grew by 19%, representing a gain of 2.7 million new jobs. But fewer than half these new jobs were full-time. And this apparently rosy period of Canadian job gains under NAFTA should be set against the prior six-year period of heavy job losses under CUFTA. Between 1988 and 1994, Canada lost 334,000 manufacturing jobs, equivalent to 17% of total manufacturing employment in the year before CUFTA came into effect. Canada's official unemployment rate rose from an average of 7.8% in 1988-90 to 11% during 1991-93.

During the first 13 years under CUFTA and NAFTA, Canada created less than half as many full-time jobs as during the previous 13 years. Moreover, many of the jobs created during the NAFTA period have been part-time, insecure jobs with fewer benefits, particularly for women. A study on labour market conditions in Canada under NAFTA found that "part-time workers--overwhelmingly women--earn just two-thirds the wages of equivalent full-time workers, and less than 20% receive benefits from their employers."

The year 2002 was marked by a superficially impressive increase of 560,000 jobs in Canada, but 40% of them were part-time and another 17% were self-employed. Thus, while the overall employment statistics look positive, the process of creating a more "flexible" workforce continues.

Social programs: Canada's business élite has consistently argued that, for Canada to be competitive in NAFTA, its social programs would have to be cut to match the generally inferior U.S. levels. This process started just four months after the implementation of CUFTA when the Mulroney government brought down its 1989 budget. It imposed cuts to Unemployment Insurance, old Age Security, and federal transfers to the provinces for health care and education. This pattern of social spending cuts continued throughout the mandate of the Tory government, and was accelerated by the Liberals after they took office in 1993--especially in their 1995 budget which included $29 billion in spending cuts over the next three years.

The most stark example of this downward harmonization of Canadian social policy is what happened to unemployment insurance. The UI system has been slashed repeatedly by both Tory and Liberal governments to conform to the lower standards prevailing in the U.S. Whereas in 1989, 87% of the unemployed in Canada qualified for UI benefits (as compared to 52% in the U.S.), by 2001 only 39% of jobless Canadians could qualify for coverage. These deep cuts hurt more women than men because women more frequently work part time and enter and leave the workforce more often due to child-care responsibilities.

Trade disputes: The Mulroney government and other free trade pushers claimed that a free trade agreement with the U.S. would exempt Canada from American anti-dumping and countervailing duty measures. This promise, too, proved false. Canada remains subject to U.S. arbitrary actions such as the punitive U.S. duty on Canadian softwood lumber exports. All that Canada got was a provision that special panels would decide whether U.S. trade laws were being correctly applied. But even if a panel were to rule against the U.S., the U.S. would be free to change its laws unilaterally to negate such a ruling.

Before the free trade era, Canada was able to oppose U.S. charges that its agricultural supports and its regional development and transportation programs were "trade-distorting," but under the free trade deals disputes in each of these cases were settled in favour of the U.S.

Agriculture: The experience of Canadian farmers clearly demonstrates that more trade does not necessarily translate into more prosperity. The National Farmers Union points out that, since 1988, agricultural exports have almost tripled, but net farm income (adjusted for inflation) has fallen by 24%. Over the same period, farm debt has doubled, 16% of Canadian farmers have been forced off the land, the number of independent hog farmers has dropped by 66%, and there are 2,400 fewer jobs in the agri-food processing industry.

The NFU concludes that free trade agreements "may increase trade, but they dramatically alter the relative size and market power of the players in the agri-food production chain. Free trade helps Cargill and Monsanto, not farmers."

Social inequality: Canada has become a noticeably more unequal society in the free trade era. Real incomes declined for most Canadians in the 1990s, with median income in 1999 having dropped by $1,100, or 2%, from the 1990 level. While this decline can't entirely be blamed on free trade, it is undeniable that the downward pressure on wages, the loss of so many secure full-time jobs, and the sharp cutbacks to social transfer payments have contributed significantly to rising inequality.

Free trade and other neoliberal economic policies have also led to a markedly more unequal distribution of wealth. From 1984 to 1999, the poorest 40% of Canadians had their share of the nation's total wealth reduced from 1.8% of all personal assets to just 1.1%. Over the same period, the richest 10% of the population enjoyed a rise in net worth from 51.8% of all wealth to 55.7%.

THE UNITED STATES

The proponents of NAFTA in the United States claimed that it would create more jobs through increased exports, and that these jobs would provide good wages and benefits. They further predicted that the economic growth generated by free trade would promote economic equality and a reduction of poverty. Higher rates of productivity, they added, would enhance American workers' living standards, and special side-agreements would protect the environment and labour rights.

Now, 10 years later, none of these claims has materialized. In fact, the exact opposite has occurred. We don't allege that all the economic problems we cite below have been caused by NAFTA alone, but we believe that NAFTA has made them worse. More importantly, NAFTA is now only one part--albeit a crucial part--of a global "free trade" structure that glorifies the workings of a deregulated market, demonizes government planning and regulation, and perceives human beings and civil society generally as little more than customers in a vast continental shopping mall.

Canada and Mexico are the United States' No. 1 and No. 2 trade partners in terms of the volume of exports. Together, they constitute 39% of all U.S. trade activity, and their importance is even greater when we consider the volume of capital flows within North America.

So we need to look both specifically at the impacts of trade and investment flows on the U.S., and also whether, after 10 years of NAFTA, this model of free trade is living up to the promises its proponents have made. If their promises have not been kept, as we believe to be the case, it is high time to consider alternatives.

NAFTA and employment: The exact number of U.S. workers negatively affected by NAFTA is difficult to calculate. A special Act of Congress created a program of benefits for workers who have been certified as having lost jobs due to NAFTA, and, as of July 2002, the number stood at 413,123. But this figure grossly understates the job losses directly caused by NAFTA because many workers don't know about this program and others apply for relief under a more generic trade adjustment program. Also pertinent is that only industrial workers can qualify. Service providers are not eligible, nor are workers who lose their jobs indirectly to NAFTA such as auto parts suppliers who are laid off when the auto plant they serve is moved to Mexico. Thus the number of jobs lost directly and indirectly because of NAFTA is considerably higher than 413,123.

U.S. employment did grow during the late 1990s, but that growth served mainly to redistribute employment into industries that pay lower wages and offer fewer benefits. This shift is perceptible in the fact that, between 1990 and 2000, manufacturing industries in the U.S. lost 1.5 million jobs. Meanwhile, service sector employment grew by 10.5 million jobs, and retail and wholesale trade jobs increased by 3 million. Service sector jobs accounted for 99% of the net new jobs created during the 1990s. Surveys of such displaced industrial workers indicate that they suffered a reduction of wages of 13%, on average, when they found new employment in the service sector. Average wages in the service sector are only 77% of those in manufacturing.

NAFTA and labour: During the NAFTA debate, unions feared its impact on worker rights. The Clinton administration responded with a weak side agreement designed to gain some labour support. But this side agreement is so toothless and cumbersome that it has never effectively protected the rights of workers. As the unions feared, the greater ease afforded the corporations to move operations out of the U.S. has armed them with the threat of moving

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to undermine job security and quality, suppress wages, and discourage union organizing. When firms actually do move, jobs are lost--not because of increased competition from Canadian and Mexican imports, but because of the availability of lower wages elsewhere.

Studies have found that, between 1992 and 1995, over half the employers surveyed had used the threat of closing and/or moving production during union organizing drives, and to resist union bargaining efforts if such drives were successful. The average annual number of new union members gained through organizing efforts dropped from about 300,000 in the mid-1970s to less than 100,000 by the mid-1990s.

NAFTA proponents claimed that the higher rates of productivity spurred by free trade would protect U.S. workers' living standards. Productivity indeed increased during the 1990s, but wages relative to this productivity growth have lost considerable ground. While productivity rose by 25% between 1990 and 2000, real wage growth was only 8%. Thus, in an era of high capital mobility and falling unionization, the relationship of wages to productivity has come apart--and the result has been a lower living standard for U.S. workers.

The stagnation of wages and the shift in the distribution of jobs has contributed to a significant redistribution of income from the poor and middle income groups to those in the higher income brackets. During the 1990s, the richest 5% of the population increased their share of total family income in the U.S. by nearly 3%, while the poorest 20% lost about 4% of their share.

The spillover effects of these NAFTA-induced changes include a decline in the number of workers covered by health care benefits as they were shifted into jobs without such benefits; a sharp increase in part-time, temporary, on-call, and other forms of contingent work; increases in the rates of poverty and homelessness; and rising rates of incarceration.

The shift in jobs to lower wage areas has not only depressed wages in the U.S., but has also created a global system of production in which goods are produced by the cheapest labour. Some economists have argued that this system is more "efficient," but it has also reduced the ability of consumers to buy the products of the cheap-wage system. During the 1990s, this slack was taken up by a large increase in consumer debt--up from 63% of annual personal income in 1979 to 85% in 1997. Between 1990 and 2000, credit card debt grew from $432 billion to $1,173 billion.

This level of consumer debt has acted as a drag on economic recovery in the U.S., and so has the debt incurred by the growing negative balance of trade. Spending more on imports than exports in the U.S. as a whole has meant that during the 1990s the U.S. has had to borrow money from outside the country to make up the difference. Specifically, we have been accumulating a debt with the rest of the world that amounts to 23% of our GDP, which is over $400 billion a year--a figure that some economists predict will balloon to 40% by 2006.

NAFTA and Immigration: One of the promises of NAFTA was that it would help Mexico and lower pressures to immigrate to the U.S. This has not happened. Between 1991 and 2000, the number of persons declared "illegal aliens" and deported from the U.S. grew by 51% to 1,814,729, with 95% of these deportees being from Mexico. Between 1998 and 2001, legal Mexican immigration to the U.S. increased by 40%, and in 2001 205,000 Mexicans came to this country. Violations of the civil rights of Mexican migrants to the United States are a growing problem, both when they attempt to cross the border and once they are living and working in the United States.

NAFTA and Inequality: The problems associated with NAFTA and other trade agreements have exacerbated inequalities between people of colour and white society. The gap in wages between white workers and those of both African Americans and Latinos has widened. In 1990, the difference between white median family income and that of African Americans and Latinos was $12,645 and $18,901, respectively. By 2000, these gaps had increased to $14,249 and $19,748.

There is also a gap in access to health care benefits that has not been narrowed in the NAFTA years. In 2000, 67% of whites received health care benefits, compared with 60% of African Americans and 45% of Latinos.

One reason for these growing gaps has to do with the massive job dislocation that has been caused by negative trade balances and highly mobile capital. African Americans and Latinos are often the first to be laid off and it takes them longer to find alternative employment. As a result, unemployment rates of both African Americans and Latinos have been consistently higher during the 1990-2000 period. In 1990, the African American employment rate was three times higher than the rate for whites (15.1% compared to 4.8%). Latinos had a rate of 9.3%. By 2000, with strong economic growth, the gaps narrowed slightly but were still significant--7.6% for African Americans and 5.7% for Latinos, compared with a rate of 3.5% for whites. So even in the best of times these minority groups did poorly, and during the current recession it is likely that the gaps will widen once more.

The end result is that more African Americans and Latinos have fallen into poverty and/or have been incarcerated. The average poverty rate for whites between 1999 and 2000 was 7.5%, but for African Americans was 23.1% and for Latinos 22.1%. At present, African Americans and Latinos make up 62% of the U.S. prison population. In 1999, 11% of all black males and 4% of Latinos in their 20s and 30s were in prison or jail, compared with only 1.5% of whites in the same age bracket.

MEXICO

The government of Mexico regarded NAFTA as a fundamental element in its overall economic strategy. This strategy was--and continues to be--the IMF and World Bank recipe: growth based on exports and the stimulus of foreign investment. Proponents of NAFTA promised that it would generate more jobs and reduce poverty. Mexican exports did indeed

grow enormously, and there was a huge inflow of foreign investment--but no significant economic growth was achieved, and neither more nor better jobs were created.

The Mexican government and the country's largest economic players have promoted NAFTA as a success. They cite data which, although accurate, are much too general and serve mainly to hide the deep problems that still plague the economy. These "success" stories have been repeated so often that they have become myths, leading people not to question or analyze them, but rather to support the extension of NAFTA to the rest of the hemisphere in the proposed Free Trade Area of the Americas (FTAA).

But it is imperative to evaluate the results of NAFTA before approving it blindly as a model for other countries.

Foreign trade: Exports increased by over 300% under NAFTA, from US$51.9 million in 1993 to $160.7 million in 2002. During the first nine years of NAFTA, Mexico's accumulated exports exceeded a trillion dollars ($1,086,285,300,000). These exports were mainly manufactured goods. Since the inception of NAFTA, Mexico has built up a $141 billion accumulated trade surplus with the United States.

These spectacular figures feed a myth--that Mexico has become the No. 1 exporter in Latin America and one of the leading exporters in the world, and that this is all due to NAFTA. It is a purported success story that is presented to other Latin American countries as a strong argument for them to negotiate and sign the FTAA. But a more careful analysis of the export data exposes a far different--and far less bright--reality.

Clearly, the objective should be not just to export, but to export in order to grow and create jobs. Paradoxically, these enormous foreign sales have not been translated into growth in the Mexican economy. The average annual rate of per capita growth of its GDP under NAFTA has been less than 1%. The trade surplus with the U.S. is mainly due to maquiladora and petroleum production, whose dynamics are independent of NAFTA. And much of the trade surplus takes the form of intra-firm trade among U.S. companies. Three of the largest five export companies in Mexico are U.S. automotive plants that assemble cars in Mexico in order to sell them globally, with many going to the U.S. The same is true with computer assembly plants. Mexico exports many other industrial products to the U.S., but the manufacturing sector as a whole is running a trade deficit.

So it is an exaggeration to say that Mexico has become a manufacturing export power because of NAFTA. In reality, in the NAFTA period, 54% of exports have been petroleum or maquiladora production--and these exports have not generated general growth in the Mexican economy. Also significant is that most of the inputs in Mexico's exports are imported goods.

The Mexican economic strategy is based on the idea that exports will be an engine of growth for the economy, but that has not happened, mainly because the export companies

are not connected to the rest of the country through national productive linkages. Instead, they are like an island that is disconnected from the rest of the economy and generating hardly any new jobs.

As for the foreign investment, it is concentrated predominantly in these export-oriented companies. Five of the six biggest export firms are 100% foreign owned and account for more than 20% of total exports. In summary, Mexico exports a lot, but what it exports is nor very Mexican, and the increase in exports spurred by NAFTA has not been an engine of economic growth, nor has it generated the promised additional jobs.

NAFTA's real purpose: Under the NAFTA rules on trade and investment, conditions are created so that companies find it easier to maximize their profits, but without any requirement to contribute to the host country's development. In an export-oriented economy, under NAFTA, the interests of the exporting country are ignored. A foreign company can set up Mexico and produce goods for export in a way that does little or nothing to promote overall economic or employment growth.

To overcome these problems, a country needs a well-defined national industrial policy, but the terms of NAFTA put severe limits on developing any such policy, leaving everything instead to market forces. The upshot is that, without any industrial policy, accelerated trade liberalization has pulled the Mexican economy into a vicious tug-of-war between growth and trade deficit, to the "denationalization" of its exports and the delinking of national production chains. The advocates of NAFTA claim that it generates modernization, efficiency, and competitiveness. This is the basis for the theory of free trade, but its failure to accomplish any of these things in Mexico exposes the theory as a myth.

Foreign investment: Direct investment in Mexico has increased under NAFTA--totalling some US$153 billion up to 2002--but it is not well integrated into the country's national productive chains and therefore has not produced the promised multiplier effects in terms of growth and employment. It has been mainly concentrated in the manufacturing export sector, in banking, and in commerce. There was virtually no foreign investment in the Mexican countryside, just a bare 0.25% during the entire NAFTA period. So the gap between Mexico's poor and marginalized areas and those that enjoy greater wealth has been widened by NAFTA, not narrowed.

Employment: The negotiators and promoters of NAFTA promised that it would create more and better jobs. They now speak of "thousands" of jobs having been generated by the export sector. There is no doubt that large exporters and the maquiladoras have hired more workers, but conversely, many jobs have been lost by the former domestic suppliers to those exporters.

During the first nine years of NAFTA, 8,073,201 new jobs were created in the country--but that number was 46.6% lower than was needed to provide work for all the people aged 15-64 entering the workforce. In addition, most of these new jobs were "bad" jobs, with 55% of

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them not providing even the minimal benefits required by law, such as social security, 10 days' vacation a year, and a Christmas bonus. These are general data, of course, and are influenced by many factors besides NAFTA, but they do demonstrate the failure of the country's basic economic strategy--of which NAFTA is a key element--to generate growth and employment.

Productivity has increased by 53% in the non-maquiladora manufacturing sector during the NAFTA years, which would be a welcome improvement if the benefits of the higher productivity were shared with the workers. But in fact, during the nine years of NAFTA, labour costs (mainly wages and benefits) declined by 36%--meaning that the workers produced 53% more per hour of work, but at a 36% less cost for employers.

NAFTA's impact on the agricultural sector is even more dramatic than critics had predicted. Imports of corn and oilseeds have increased from 8.8 million metric tons a year in 1993 to 20.3 million metric tons in 2002. The situation with meat, tropical fruits and other products is similar. These imports have replaced national products, increasing rural unemployment. Statistics indicate that Mexico is losing its food sovereignty and instead has increased its dependency on imports, which has generated a major outflow of foreign currency. The supposed advantages for consumers based on greater access to less expensive, imported food products turned out to be pure rhetoric. From 1994 to 2002, the prices the goods in the basic food basket increased 257 percent, while prices paid to agricultural producers rose only 185 percent.

Trade relations between Mexico and the United States and Canada are characterized by numerous inequalities that explain much of NAFTA's negative impact on the agricultural sector. These include asymmetries existing even before NAFTA, such as differences in levels of technology and higher production costs for energy and other inputs, problems in the negotiations, including Mexico's failure to exclude sensitive agricultural goods and the lack of any provisions to review the accord, and problems after the signing of the agreement, particularly the passage of the 2002 US Farm Bill, which dramatically expanded the already unequal levels of subsidies given to U.S. farmers.

Organizations of small, medium and business-level producers representing the great majority of the country's farmers have united in the "El Campo No Aguanta Más" (The Countryside Can't Take It Anymore) campaign. They are calling for the suspension of NAFTA, or at least for its renegotiation, because less than a thousand individuals have come out ahead as a result of NAFTA, while millions are on the losing end.

Conclusion: NAFTA has not fulfilled the objectives and expectations set forth by its promoters. It has not even achieved significant economic growth--at least, not stable, sustained and sustainable growth. And it certainly has not brought social justice.

Even the low growth rate that has occurred has come at the cost of massive environmental degradation and the depletion of natural resources.

Instead of creating more and better jobs, NAFTA has accelerated the disintegration of national production chains and the denationalization of the country's productive structure. Nearly all the banks in Mexico and most of the large export companies are now owned by foreigners.

There have been few winners and many losers. NAFTA has created a few islands of economic success--very successful in terms of profits for their owners and investors--but the economy as a whole has not benefited.

Taking stock of these results of NAFTA should lead to a rethinking of the way that Mexico has been integrated into the global economy. Clearly, NAFTA is not a model that other countries should emulate. No country's welfare should ever be left solely to market forces. A viable national development plan is essential--one that allows a country to create the economic conditions that will optimize its economic potential.

We do not need more free trade agreements. We do not need deregulation and unfettered competition. We need international agreements that promote sustainable development and a more equitable distribution of income at both the national and global levels.

Another world is possible. So is another and better form of globalization.

An issue for all: NAFTA's Chapter 11

This "investor-state" clause gives foreign investors the right to sue governments directly for compensation for immediate or even future loss of profits caused by public interest laws. Chapter 11 is a serious threat to the ability of governments at all levels to pass laws or adopt policies that serve the public good.

Corporations seeking damages under the investor-state clause can take their claims to special NAFTA tribunals, whose hearings are usually held in secret, with no obligation to allow participation by private citizens, NGOs, or even local government officials. Such tribunals supersede the authority of national courts--and their rulings cannot be appealed.

So far, 27 charges by corporations against governments have been filed under Chapter 11. Both the Canadian and U.S. governments have been sued over bans on hazardous gasoline additives. The Canadian government settled the case involving MMT, a nerve toxin, by paying the U.S.-based Ethyl Corporation $13 million in compensation. Canada's Methanex Corporation is demanding $970 million in compensation for a California ban on MTBE, a chemical that can cause cancer that was leaching into local groundwater. The U.S. Metalclad Company successfully sued Mexico over a local community's refusal to allow the company to open a toxic-waste dump without the necessary environmental precautions. In each of these cases, the public danger posed by the banned chemicals or environmental conditions was not a consideration, only the companies' loss of actual or potential profits.

There is also evidence that companies are using the threat of investor-state charges to discourage governments from even considering the passage of new public-interest laws. Lobbyists for the U.S. tobacco giants Philip Morris and R.J. Reynolds threatened such a suit when the Canadian government proposed to legislate plain packaging for cigarettes, and the legislation was quickly withdrawn.

Similar threats in recent years have reportedly scuttled planned Canadian environmental and public-safety laws on pesticides, pharmaceuticals, and other chemicals.

Despite the inhibiting effects of Chapter 11, however, none of the three NAFTA governments has tried to eliminate or even modify this clause. On the contrary, their efforts continue to extend it to other countries in the hemisphere through the proposed FTAA.