

Key Environmental Reasons to Oppose CAFTA

1. CAFTA Chapter 10 contains an even worse version of NAFTA's Chapter 11, allowing foreign investors to completely bypass domestic courts to challenge state, local and national environmental protections.

Multinational companies can demand compensation for the impact of environmental and public interest laws on their business interests by bringing suits directly to international tribunals. While granting multinational investors broad rights, these rules **do not include any enforceable obligations** that multinational companies must meet.

CAFTA's rules fail to meet the mandate in Fast Track legislation that foreign investors should receive "no greater rights" under these rules than those available under U.S. law. Despite some tweaks, key U.S. legal standards are ignored and investors continue to receive rights that go far beyond U.S. law. For example:

- CAFTA does not ensure the government's ability to regulate a public nuisance, such as pollution released from a property.
- CAFTA does not protect the government's ability to take actions to limit harmful personal property, such as banning the sale of a hazardous chemical.

CAFTA's foreign investor rules actually go even further than NAFTA's Chapter 11 in giving investors broad rights. For example:

- The definition of investment is broadened to include a much wider range of business interests that companies can sue over, including intellectual property rights.
- CAFTA explicitly allows foreign companies to challenge government decisions about any aspect of a natural resource contract or agreement with the government, such as federal oil, gas, and mineral leases.
- CAFTA introduces standards from U.S. law – such as "character of government action" – in an open-ended and vague way, without any context or clarity, leaving interpretation entirely to international tribunals.

2. CAFTA does not require countries to improve their environmental laws to meet any basic or minimum standards. The agreement only requires that countries enforce their existing environmental laws, but even this commitment is severely compromised:

CAFTA allows countries to decide not to enforce any portion of their environmental labor law by deciding to allocate resources elsewhereⁱ. Such decisions cannot become the subject of an arbitral (dispute resolution) panel.ⁱⁱ

CAFTA allows countries to weaken their existing environmental law in order to attract investmentⁱⁱⁱ. Countries “shall strive to ensure” that they do not do so, but there is no possible enforcement of this provision since weakening environmental laws in order to attract investment cannot become the subject of an arbitral panel^v.

CAFTA limits any fines for failure to enforce environmental laws to \$15 million^v – while sanctions for breaches of commercial provisions are unlimited^{vi}. Fines will be given back to the country that fails to enforce its own environmental laws. Fines for failure to enforce a nation’s environmental laws are to be spent in (i.e., given back to) the violating country, supposedly to enhance environmental law enforcement. However CAFTA does not prohibit a violating country from redirecting existing funds away from the area into which the fines are being directed, thus potentially resulting in no net increase in enforcement funding^{vii}.

CAFTA does not provide a meaningful process for citizens to address countries’ failure to enforce their environmental laws. In stark contrast with the damages that can be awarded to companies under CAFTA’s Chapter 11 investment rules, the “citizen submission” process in CAFTA does not provide for clear, enforceable outcomes if a country is violating the environmental rules in CAFTA.

3. CAFTA service rules threaten protection of environmentally-sensitive areas and exhaustible resources in Central America.

For Central American nations and the Dominican Republic, CAFTA’s services rules apply “top-down” to all services sectors, except those that the countries explicitly exempt. That is a commitment far beyond the Central Americans’ current obligations under the WTO.

The services covered include a wide range of environmentally sensitive sectors – including **oil exploration and drilling, pipelines, water distribution, retail distribution, waste disposal, fishing, mining services**, and many others. In their schedules protecting existing non-conforming measures, the Central American countries have listed few existing service sector measures that would protect ecologically-sensitive areas or exhaustible resources.

CAFTA’s service rules forbid limitations on the number of suppliers of any service, the amount of a service supplied, or the number of service operations allowed.^{viii} For example, limiting the size or number of big-box retail stores in Central American countries would violate CAFTA’s services rules.

4. CAFTA procurement rules for state, local and national purchasing by governments threaten green preference laws.

CAFTA’s procurement rules strictly limit the factors that States can consider while making purchasing decisions, leading to potential restrictions on environmental procurement criteria.

ⁱ Article 17.2.1(b) gives each country “the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other environmental matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.”

ⁱⁱ Article 17.10.7

ⁱⁱⁱ Article 17.2.2

^{iv} Article 17.10.7

^v Article 20.17.2

^{vi} Article 20.16

^{vii} Article 20.17.4

^{viii} Article 11.4