

New Hampshire got caught in CAFTA's lobster trap Obscure treaty provisions limit state's options

**By Arnie Alpert
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Buried in the fine print - Annex 9.1.2(b)(i), to be specific - of the recently ratified trade agreement among the United States, five countries in Central America and the Dominican Republic are provisions that dictate how the state of New Hampshire will conduct business with firms that want contracts to sell us goods and services.

How our state found its way into an obscure provision of the international agreement commonly known as CAFTA, and why it stayed there despite Gov. John Lynch's request to remove us, are illustrative of the threat that agreements like CAFTA pose to our state's sovereignty and to democracy itself.

The text of CAFTA is 3,746 pages long. It includes 22 chapters, three annexes, seven tariff schedules and 31 side letters. The provisions pertaining to how our state spends taxpayer dollars are described in the agreement's Chapter 9, dealing with government procurement.

CAFTA's procurement rules limit the policies the federal government and some state governments can follow. For example, if our elected officials were to pass a law limiting the foreign outsourcing of public-sector jobs, such as call center services, that law could be challenged as an unfair "barrier to trade."

But the rules go beyond simply stating that New Hampshire cannot express preference for a local firm over one based in the other six CAFTA countries. For example, a state law prohibiting the purchase of uniforms made in sweatshops could trigger a trade dispute even if the law applied equally to sweatshops from all countries. That is because CAFTA (Article 9.7.2) prohibits the use of "technical specifications "that deal with how goods are made or how a service is provided.

Whether such procurement laws are good public policy is not the point. The point is whether it is our elected officials or the members of international trade tribunals who should be able to decide. It is supposed to be up to each state to decide whether to be governed by CAFTA's procurement chapter. But it is not that simple.

On Nov. 18, 2003, Gov. Craig Benson authorized the federal government's trade negotiators to list New Hampshire among the states that agree to bring their purchasing policies in line with CAFTA's specifications, which at the time were incomplete and secret, even from the governor.

Then Lynch was elected. This past May 11, he sent a letter to the U.S. trade representative instructing him to take New Hampshire out of CAFTA. He reasoned that if Benson could put the state into CAFTA, he could take us out.

But the trade representative took no action, instead claiming he would have to renegotiate the whole agreement.

If you read the official version of CAFTA, approved by Congress in July with the votes of the state's two senators and two representatives, New Hampshire is still there. In other words, CAFTA's provisions are like a lobster trap; once you get inside, it is impossible to get out again.

The other CAFTA countries can now bring complaints to international tribunals if they believe a New Hampshire decision about how to spend our tax dollars deviates from CAFTA's rules.

It is ironic that one of the contentions made by the Bush administration to win CAFTA's passage was that the agreement would promote democracy. Now, the administration is trying to bring the CAFTA model to the Andean and Southern African countries. If future agreements are going to impose binding rules on state and local government, our own democratically elected leaders will have to raise their voices higher.

Fortunately, there are provisions in CAFTA (Article 9.16) that allow the federal government to change the list of states bound by procurement rules; our elected officials should insist the federal government do so now.

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