Carlos Guerra:

CAFTA will worsen several of the worst parts of NAFTA

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When Lori Wallach discusses the proposed Central American Free Trade Agreement — which would expand NAFTA into five Central American nations and the Dominican Republic and broadens its most notorious elements — she seldom resorts to understatement.

"If an armed force marched into a country and put a gun up the president's nose and said, 'You will now chuck out these laws and you will now allow foreign operators to be superior to domestic companies and you will now hand over your tax dollars,' U.N. troops in blue helmets would be dispatched immediately,'" she laughs before detailing what she calls CAFTA's "'foreign investor über alles' rules."

For 15 years, the Harvard-trained international trade lawyer has detailed the excesses that are increasingly being inserted into international trade pacts.

Despite their "free trade" monikers, they are less about freeing trade than they are about protecting investors and shielding them from nations' domestic regulations, and laws, often at a price paid by workers and the environment.

"The rules in NAFTA, and now CAFTA, establish a whole new set of rights and privileges for foreign investors that go far beyond those provided by the constitutions of the countries involved, even what the U.S. Constitution provides U.S. citizens and companies," she says. "And they set up a system of obligations that these governments owe foreign investors while limiting the governments' actions."

Provisions that require governments to compensate people and companies when taking their property, for example, have been broadened to mandate compensation for "regulatory takings," or losses caused by any government action.

"So if a government regulation or action undermines the value of your property in any way, they have to pay you," she says. "This will eviscerate the ability of governments to have even the most basic public-interest protections."

NAFTA's "Chapter 11" provisions have become notorious as growing numbers of investors have successfully sued the United States, Canada and Mexico over environmental regulations and other rules. And in one NAFTA claim, a U.S. firm even collected $4 million from Canada because its regulators were supposedly rude.

Wallach says that these rules are much broader in CAFTA, and "investments" are more broadly defined — and protected — which she says will only provide foreign investors more ways to raid the tiny nations' treasuries.

"They made them 10 times worse," she says. "And the definition of a 'covered investment' with special privileges now includes things like assumption of risk.

"Isn't that what business activity is, putting down your money and taking your chances and if it works you get rich and if it doesn't you lose your shirt?

"But somehow (in CAFTA) the assumption of risk is something you should be compensated for."

The attorney also points out that both accords create dispute resolution mechanisms that effectively trump federal and state laws.

"They basically privatized the enforcement of investor rights," she says. "Dispute resolution is done in a closed, secret tribunal in which the public is not allowed, only the private investor and the country they're suing, and there is no due process, no oversight, no conflict-of-interest rules, no appeals, none of these protections."

And even before CAFTA was negotiated, the state of Texas signed onto the pact — and its liabilities.

Stay tuned to find out why.