

In the Driver's Seat:

NAFTA'S CHAPTER 11 AS A JUDICIAL VEHICLE FOR THE EXPANSION OF INVESTOR RIGHTS

By Vincent L. Frakes

THE NORTH AMERICAN FREE TRADE Agreement (NAFTA) thrust the United States, Canada, and Mexico into a realm of new rules governing disputes between investors and governments of member countries. As outlined in Chapter 11 of the agreement, NAFTA's investor-to-state dispute resolution process allows private investors and companies to bring suit against member country governments in special tribunals to obtain monetary awards for government actions that violate their rights under the treaty. Originally intended to resolve such disputes while avoiding politicization and strained international relations, Chapter 11 instead provides investors with rights and protections unprecedented in a multilateral trade agreement.

Understanding the stark differences that exist in the economic and political systems of each member country, NAFTA tribunals hearing disputes weigh the host country's regulatory and legal framework in making a judgment. However, the vague and uncertain nature of Chapter 11 language allows foreign investors to forum shop, increasing their rights by offering an additional adjudicative body that in many cases grants more leniency than domestic courts of member countries. Moreover, there is a visible trend of favoring foreign investors by NAFTA tribunals over host country governments, bringing to light questions of the jurisdictional authority of member states' domestic courts. This trend can be easily demonstrated through the decisions in three recent cases brought under NAFTA's Chapter 11: *Metalclad Corp. v. Mexico*, *S.D. Myers, Inc. v. Canada*, and *Pope & Talbot, Inc. v. Gov. of Canada*. Finally, the limited number of disputes that are heard by NAFTA tribunals are a testament to the inconsistency in applicability of Chapter 11 by these courts and leaves open the question of NAFTA's ability to protect foreign investment through its arbitration process.

The Investment Chapter

CHAPTER 11 OF NAFTA OFFERS several grounds on which foreign investors can bring claims against host member countries following satisfaction of jurisdictional requirements. The arbitration mechanisms and procedures under NAFTA represent a more sophisticated system than those provided under tradition-

al bilateral investment treaties.¹ Section A of Chapter 11 establishes grounds for a claim in Articles 1102 (National Treatment), 1103 (MFN Treatment), 1104 (Standard of Treatment), 1105 (Minimum Standard of Treatment), and 1110 (Expropriation and Compensation). Moreover, Chapter 11 protects investors from "measures" taken by host governments, including laws, regulations, and policies that affect government's interaction with companies.²

While claims relating to national treatment and minimum standard of treatment present certain challenges, the expropriation provision of Article 1110 is the most contentious. As with most free trade agreements, expropriation exists when a party directly or indirectly nationalizes the investment of a foreign party, and the act does not fall under a stipulated exception.³ Differences in regulatory structures and practices in member countries contribute heavily to the large proportion of investor-state disputes involving expropriation.

Chapter 11 grants a large amount of discretion to a NAFTA tribunal in determining the merits of a claim and the satisfaction of jurisdictional requirements. Under NAFTA, the requirements of a valid investor-state claim include modest criteria, which, once met, allow the tribunal to decide the case based on factors such as the 'ordinary meaning' of the treaty's text pursuant to Article 31 of the Vienna Convention on the Law of Treaties in relation to the facts at hand.⁴ Even though Chapter 11 has been praised by some as a model after which future trade agreements should form dispute resolution systems,⁵ several cases typical of NAFTA jurisprudence demonstrate that the vague language of Chapter 11 has been applied inconsistently by the tribunals, resulting in expanded foreign investors' rights.

Expansion of Investors' Rights under Chapter 11 – Case Studies

NAFTA TRIBUNALS HAVE HEARD a variety of cases involving disputes between investors and member states since the agreement's inception in 1993. The most interesting arbitral matters involve expropriation (Article 1110), as investors fight measures taken by host governments of countries where they do business, but often include important disputes over other provisions of the agreement

as well. Three NAFTA decisions, *Metalclad Corp. v. Mexico (Metalclad)*, *S.D. Myers, Inc. v. Canada (Myers)*, and *Pope & Talbot, Inc. v. Gov. of Canada (Pope & Talbot)*, involving claims arising under Article 1110 are representative of the expansion in investors' rights by allowing companies to forum shop for a domestic court or international tribunal that issues the most favorable decision to the investor. Analysis of these three cases demonstrates the disturbing trend toward increased investors' rights under the NAFTA arbitration system that circumvents domestic courts in favor of investor friendly tribunals applying international law.

Metalclad v. Mexico

The dispute between Metalclad, a U.S. corporation, and Mexico is one of the most noted examples of the issue of the legal rights afforded international investors under Chapter 11 of NAFTA.⁶ In 1993, Metalclad purchased a Mexican waste management company, COTERIN, to build a hazardous waste landfill, which was completed in March 1995,⁷ but never opened.⁸ In its plea to the arbitral tribunal, Metalclad cited violations of two NAFTA provisions: (1) fair and equitable treatment under Article 1105 and (2) prohibition against direct or indirect expropriation without compensation under Article 1110.⁹ After a three-year long arbitration, the tribunal decided in favor of Metalclad on both counts of the claim and ordered Mexico to pay the corporation \$16.7 million in damages.¹⁰

Reassuring investors and building trust and respect for its legal framework is a key challenge to any nation seeking to participate in the global competition for investment.¹¹ Given the lack of transparency in the legal system and weak rule of law in Mexico, investors often fear harmful government intervention, especially in relation to expropriation without compensation. Rulings by domestic courts in all three NAFTA countries have traditionally been unfavorable to investors.¹² Such treatment makes sense because domestic regulatory and procedural restrictions may provide a difficult environment for a foreign investor to prevail.¹³ Increased access to arbitral panels in Mexico through NAFTA (which Metalclad utilized) grants investors the ability to forum shop and choose arbitration over domestic courts, promising more favorable treatment and outcomes.¹⁴

The *Metalclad* decision represents a potential threat to the jurisdictional authority of domestic courts of NAFTA member countries because of its successful use of international tribunals. Even though the case involved Mexican law, the tribunal's rationale may have undermined judicial systems of NAFTA member countries by rendering a decision inconsistent with those issued by domestic courts on similar issues of law.¹⁵ Consequently, an effectual new type of forum shopping could emerge where lawful and legitimate domestic courts are passed over in favor of NAFTA tribunals that are much more preferable by investors because of their likelihood to grant awards not

viable in domestic judicial systems of member countries.

More worrisome is the potential for tribunals under Chapter 11 to brush aside carefully considered state and local governmental action aimed at regulating industry in favor of economic gain. *Metalclad* provides an example where local action and an attempt at regulating investor conduct was tempered by a tribunal decision, signaling the superiority for investors of NAFTA arbitration decisions in member countries.

S.D. Myers v. Canada

S.D. Myers, Inc., a U.S. company that was at one time engaged in PCB remediation,¹⁶ experienced the slowing of its business in the United States, and consequently moved its executive operations to Canada, where only one true industry com-

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petitor existed.¹⁷ In March 1989, Canada signed the Basel Convention, pledging to manage hazardous waste (such as PCBs) in an environmentally sound manner.¹⁸ After intense lobbying efforts on behalf of both sides, the Canadian Minister of the Environment signed an Interim Order that effectively banned the exportation of PCBs from Canada,¹⁹ adversely affecting Myers and its business interests.

Myers's claim against Canada noted a violation of four provisions of NAFTA. First, Myers argued a national treatment violation, claiming that the Interim Order issued by the Canadian government discriminated against U.S. waste disposal operators seeking to export PCBs to the United States for treatment.²⁰ Myers argued that Canada's imposition of export bans did not represent treatment in line with international law to its investment, thus resulting in a breach of Article 1105.²¹ Further, Myers stated the Canadian action was tantamount to expropriation under Article 1110, for which Myers was not paid any compensation.²²

The tribunal rejected Myers's contention that Canada's actions represented an expropriation violation, and instead ruled they amounted to a regulation.²³ Further, even though

the tribunal did not rule out the possibility that such action could be reviewed vis-à-vis Article 1110, the general body of precedent does not usually treat such action as expropriation. The most important part of the decision, however, related to Articles 1102 and 1105.

On a basic level, Article 1102 ensures that a “party may not subject enterprises to different or more onerous operating conditions simply by virtue of foreign ownership.”²⁴ Ultimately, the *Myers* tribunal decided that Canada’s motive for remaining consistent with the Basel Convention directives was justifiable, but the actions it undertook to achieve the objective (e.g. the Interim Order) were not and constituted a breach of Article 1102 of NAFTA.²⁵ The tribunal also held that a breach of Article 1105 “occurs only when it is shown that an investor has been treated in such an unjust or arbitrary manner that the treatment rises to the level that is unacceptable from the international perspective.”²⁶ Accordingly, the panel determined that the issuance of the Interim and Final Orders to close the U.S.-Canada border to PCB exports from Canada to America represented a breach of Article 1105.²⁷

The pro-investor decision of the *Myers* tribunal concerning the national treatment and fair and equitable treatment claims signifies increased investor rights under arbitral interpretation of NAFTA’s Chapter 11 that threatens the power of domestic courts in member countries. The decision further asserts that investors can prevail on claims outside the expropriation realm. The ruling in favor of *Myers* based on blatant discrimination by the Canadian government²⁸ slightly expands the legal rights afforded to investors under Chapter 11 law relative to domestic standards by offering them the choice of a potentially investor-friendly tribunal or pursuing a domestic legal claim that could result in a high damage award. This situation could potentially pose a threat to highly regulated and equitable domestic legal systems through forum shopping on behalf of foreign investors. Another NAFTA investor could use Article 1102 to seek damages for treatment ‘less favorable’ that results from the proper application of a legitimate law or regulation.²⁹ The lack of precedent and consistency in NAFTA tribunals’ decisions could allow investors to win awards for weaker claims from future tribunals based on the inconsistent nature of prior decisions.

Similar logic of the investor’s expansion of rights based on the *Myers* tribunal’s decision regarding Article 1102 can be applied to the ruling on minimum standard of treatment under Article 1105. NAFTA investors may be able to prove a valid claim that they and their investment were treated unfairly and unequally under a particular measure through the use of international obligations or principles,³⁰ an avenue that is not available to domestic investors in any of the NAFTA countries. Such an ability represents an increase in legal rights for foreign investors and confers an advantage over domestic companies

because the former can pursue claims unavailable to national companies by going through arbitration (where they might be able to secure an investor-friendly tribunal) or domestic courts (where they might secure a higher award). Ultimately, the *Myers* case illustrates that investment protection must exist in NAFTA to protect against blatantly discriminatory measures from stable member countries like Canada with properly functioning legal systems.³¹



Pope & Talbot v. Canada

Pope and Talbot, Inc., a U.S. based company that harvested timber Canada through a British Columbia subsidiary³² and was subject to Canadian law with respect to those operations, exported timber to the U.S.³³ In order to follow through with its obligations under the 1996 U.S.-Canada Softwood Lumber Agreement (SLA), Canada instituted a system of regulations requiring compliance by any foreign investor.³⁴ Pope and Talbot claimed that this allotment system discriminated against its Canadian subsidiary, and further that the Canadian government’s adoption and implementation of it violated NAFTA’s Chapter 11 provisions concerning national treatment (Article 1102), minimum standard of treatment (Article 1105), performance requirements (Article 1106), and expropriation (Article 1110).³⁵

The arbitration dispute resulted in several decisions, each dealing with a specific claim made by Pope & Talbot. Initially, Canada argued that the matter did not involve an investment dispute, and the arbitration could not proceed accordingly.³⁶ The tribunal did not agree and ruled that Canada's reading was overly narrow.³⁷ The tribunal further ruled that Canada's attempt to deter exports to the U.S. did not constitute a performance requirement as proscribed by Article 1106 because these requirements were neither imposed nor enforced.³⁸ The tribunal also ruled in favor of Canada on Pope & Talbot's claim that applying the SLA regime constituted a violation of national treatment under Article 1102 of NAFTA because there was no differential treatment of the foreign investor without reasonable rationale or without unduly undermining the investment liberalizing objectives of NAFTA.³⁹ In a lengthy opinion, the arbitration panel concluded that the conduct of the administrative agency in charge of regulating the SLA was egregious enough to constitute a violation of Article 1105,⁴⁰ though, because the obligation to afford fair and equitable treatment continues after a claimant initiates arbitration.⁴¹ Ultimately, the tribunal determined that Canada did not engage in expropriation, but refused to apply Canada's narrow interpretation that Article 1110 does not cover regulatory action.⁴²

Although the Pope & Talbot decision denied the investor's expropriation claim, the proceedings highlight the enormous discretion afforded to the tribunal to determine property interests and the broad range of rights investors possess in NAFTA arbitration.⁴³ Chapter 11, as applied by the *Pope & Talbot* tribunal, sets forth a definition of protected investment that is "enormously broad"⁴⁴ and encompasses business as well as generalized economic interests, including the interest in conducting business or profiting from an investment.⁴⁵ This contrasts sharply with the Takings Clause included in the Fifth Amendment of the United States constitution,⁴⁶ which applies only to real property and other specific interests in property, usually as defined by state law.⁴⁷ The distinction shows the basic differences between the domestic law and NAFTA arbitration approaches, where the latter heavily favors the investor by affording protections not offered under domestic law.

Despite the ruling in Canada's favor, the *Pope & Talbot* decision did not secure the power of the state regulatory system vis-à-vis the investor. Thus, the *Pope & Talbot* opinion sends a clear message to NAFTA member countries that national regulation or policing that approaches a substantive expropriation standard will not be tolerated.⁴⁸ This message goes well beyond normal concepts of judicial economy⁴⁹ and provides a strong warning to governments that seek to use agency regulation as an alternative means of enforcement as the growing rights of foreign investors suppress the powers of national and local laws. The investor now possesses an increased set of rights relative to

domestic law that could prove to be highly problematic by encouraging investor forum shopping to override carefully planned government regulation.

Conclusion

AS DEMONSTRATED BY THE THREE CASES ABOVE, NAFTA has produced a trend of increased globalization with limited judicialization.⁵⁰ Contributing to this situation is the fact that there are few cases on which future tribunals can rely and little consistency in the body of arbitration law. Moreover, the somewhat closed nature of the process discourages public discourse and deliberation on important issues brought forth by investors in their claims against host governments.⁵¹ As a result, prior tribunal decisions carry little weight in the eyes of the international community and future tribunals are not pressured to follow their decisions.

Furthermore, domestic courts in NAFTA member countries are prevented from playing an active role in the resolution process of interstate disputes, either by legislative or judicial mandate,⁵² thus expanding the rights of international investors and reducing the power of domestic courts with respect to Chapter 11 disputes. Appropriately, commentators recently criticized Chapter 11 as "an end-around the Constitution,"⁵³ and the change of tone can be attributed to the increased perception that investor protections are being used (both successfully and unsuccessfully) in progressively grander ways.⁵⁴

As the United States and the rest of the Americas edge closer to a regional trade agreement in the form of the Free Trade Area of the Americas encompassing most, if not all of the Western Hemisphere, lessons from NAFTA, particularly in respect to investor-state arbitration, become more important. Further, NAFTA's tribunal structure that results in divergent decisions⁵⁵ must be amended in future trade agreements in order to ensure the application of a single set of legal principles. NAFTA's Chapter 11 investor-state dispute mechanism represents an important element in promoting international trade. However, it is haunted by inconsistency in its application and the ability of investors to exploit the system to secure broader rights than intended by the drafters of the agreement. **BLB**

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ENDNOTES: Vincent L. Frakes

- ¹ Jack J. Coe, Jr., *Taking Stock of NAFTA Chapter 11 in its Tenth Year: An Interim Sketch of Selected Themes, Issues, and Methods*, 36 VAND. J. TRANSNAT'L L. 1381, 1391 (2003).
- ² See Kelly M. Mann, *United Mexican States v. Metalclad Corporation: The North American Free Trade Agreement Provides Powerful Private Right of Action to Foreign Investor*, 35 URB. LAW. 697, 698 (2003).
- ³ See NAFTA, art. 1110, Dec. 17, 1992, reprinted in 32 I.L.M. 289 (1993) [hereinafter NAFTA] (claiming that nationalization or expropriation only allowed for a public purpose, on a non-discriminatory basis, in accordance with due process of law and Article 1105(1), along with payment of compensation).
- ⁴ See Andrew Shapren, Note, *NAFTA Chapter Eleven: A Step Forward in International Trade Law or a Step Backward for Democracy*, 17 TEMP. INT'L & COMP. L.J. 323, 327 (2003).
- ⁵ See Matthew C. Porterfield, *International Expropriation Rules and Federalism*, 23 STAN. ENVTL. L.J. 3, 42-3 (2004) (providing modifications that USTR will incorporate into future expropriation provisions to prevent foreign investors from having greater rights than domestic investors).
- ⁶ Mann, *supra* note 2, at 698.
- ⁷ *Metalclad Corp. v. Mexico* (NAFTA Arbitration 2000), ¶¶ 10-11 [hereinafter *Metalclad*].
- ⁸ *Id.* at ¶ 11.
- ⁹ *Id.* at ¶ 20; see also Mann, *supra* note 2, at 698-99.
- ¹⁰ *Id.* at ¶¶ 133-37; see also Mann, *supra* note 2, at 700.
- ¹¹ See Patrick Del Duca, Comment, *Law and the Border: The Rule of Law: Mexico's Approach to Expropriation Disputes in the Face of Investment Globalization*, 51 UCLA L. REV. 35, 36-7 (2003) (noting the emergence of a new constitutional design in Mexico to confront the challenges and opportunities of expropriation with respect to the management of investment and expropriation disputes, of which a necessary trust of the rule of law represents an important element).
- ¹² Coe, *supra* note 1, at 1424.
- ¹³ See Porterfield, *supra* note 5, at 69-70 (arguing that the unconstitutionality of procedural takings laws considered by Congress, as noted by the Attorneys General of thirty-seven states, presents one potentially significant obstacle to the preemption of state and local law under international expropriation rules).
- ¹⁴ *Compare Metalclad with Loewen Group, Inc. v. United States* (ICSID Award 2003), ¶ 162 (showing how the investor in the former case used the arbitration setting to achieve initial victory relative to the latter, which suggests that the remedies under domestic law are broader than under NAFTA).
- ¹⁵ Dana Krueger, Comment, *The Combat Zone: Mondev, International, Ltd. v. United States and Backlash Against NAFTA Chapter 11*, 21 B.U. INT'L L.J. 399, 417 (2003).
- ¹⁶ *S.D. Myers v. Gov. of Canada* (NAFTA Arbitration 2000), ¶¶ 90-91 [hereinafter *Myers*].
- ¹⁷ *Id.* at ¶ 93.
- ¹⁸ *Id.* at ¶ 105.
- ¹⁹ *Id.* at ¶ 123.
- ²⁰ See *id.* at ¶¶ 130-33 (noting also that the Interim Order was specifically designed to curtail Myers' operations and investments in Canada).
- ²¹ *Id.* at ¶¶ 134-35.
- ²² *Myers* at ¶¶ 137-43.
- ²³ See *id.* at ¶¶ 279-288; see also Madeline Stone, Comment, *NAFTA Article 1110: Environmental Friend or Foe*, 15 GEO. INT'L ENVTL. L. REV. 763, 779 (2003).
- ²⁴ See Robert A. Schmoll, Comment, *NAFTA Chapter 11 and Professional Sports in Canada*, 36 VAND. J. TRANSNAT'L L. 1027, 1054 (2003) (quoting Daniel M. Price & P. Bryan Christy III, *An Overview of the NAFTA Investment Chapter: Substantive Rules and Investor-State Dispute Settlement, in The North American Free Trade Agreement: A New Frontier in International Trade and Investment in the Americas* 173 (Judith H. Bello, et al., eds., 1994)).
- ²⁵ See *Myers* at ¶¶ 255-56 (holding that Canada's legitimate goal of wanting to maintain the ability to process PCBs within Canada in the future did not comport with preventing SDMI from exporting PCBs to the U.S. for processing under the Interim Order because it contravened Canada's international commitments under NAFTA).
- ²⁶ *Id.* at ¶ 263 (further noting that such a determination of an Article 1105 breach must be made in light of the high degree of deference international law affords domestic authorities in their regulation of matters within their own borders).
- ²⁷ *Id.* at ¶ 268.
- ²⁸ Krueger, *supra* note 15, at 409.
- ²⁹ See Todd Weiler, *A First Look at the Interim Merits Award in S.D. Myers, Inc. v. Canada: It is Possible to Balance Legitimate Environmental Concerns with Investment Protection*, 24 HASTINGS INT'L & COMP. L. REV. 173, 181-83 (2001) (arguing that the tribunal's "like circumstances" test applied in the *Myers* decision represents the proper approach to quell any fears of overly broad and potentially frivolous claims under Article 1102).
- ³⁰ *Id.* at 184.
- ³¹ *Id.* at 188.
- ³² *Pope & Talbot, Inc. v. Gov. of Canada*, Interim Award (NAFTA Arbitration 2000), ¶ 4 [hereinafter *Pope & Talbot I*].
- ³³ *Id.* at ¶ 29.
- ³⁴ *Id.* at ¶ 30; see also David A. Gantz, *Protection of Protection Investment Under the NAFTA Chapter 11 – UNCITRAL Arbitration Rules: National Treatment, Performance Requirements, Fair and Equitable Treatment, Expropriation, Damages, Allocation of Costs*, 97 AM. J. INT'L L. 937, 938 (2003) (describing the categorization used to determine the exemption status from requirements under the SLA, including the definition of an "established base" (EB) for which there was no export fee, "lower fee base" (LFB), for which there was a U.S. \$0.50 per thousand board feet, and "upper base fee" (UBF), for which there was a U.S. \$1.00 per thousand board feet).
- ³⁵ *Pope & Talbot I* at ¶ 11.
- ³⁶ *Id.* at ¶¶ 8-26.
- ³⁷ See *id.* at ¶ 19 (noting that the tribunal's decision was based on fact that no provision in Chapter 11 Section A stipulates that investment and trade in goods are to be divorced from each other and further citing the tribunal's finding that "the fact that a measure may primarily be concerned with trade in goods does not necessarily mean that it does not also relate to investment or investors").
- ³⁸ *Pope & Talbot v. Gov. of Canada*, Award on the Merits of Phase 2 (NAFTA Arbitration 2001), ¶ 75 [hereinafter *Pope & Talbot II*]; see also Gantz, *supra* note 35, at 941.
- ³⁹ See *Pope & Talbot v. United States*, Award on the Merits of Phase 3 (NAFTA Arbitration), ¶¶ 87-88 [hereinafter *Pope & Talbot III*] (deciding that the Canadian government's decision to apply the regulations regime to four provinces was not discriminatorily motivated, and therefore did not violate Article 1102 and that firms in other provinces used as evidence by Pope & Talbot were not in like circumstances with the claimant).
- ⁴⁰ *Pope & Talbot v. United States*, Award on the Merits of Phase 4 (NAFTA Arbitration), ¶¶ 65-67 [hereinafter *Pope & Talbot IV*].
- ⁴¹ William W. Park, et al., *International Legal Developments in Review: 2002 Business Transactions and Disputes*, 37 INT'L LAW 445, 455 (2003).
- ⁴² See *Pope & Talbot IV* at ¶¶ 939-40 (further elucidating the tribunal's decision as based on the fact that no allegation investment was nationalized or that the export control regime was confiscatory and reliance on jurisprudence of Iran-U.S. Claims Tribunal).
- ⁴³ See Porterfield, *supra* note 5, at 44 (suggesting that despite rulings against the investor in the *Pope & Talbot* and *S.D. Myers* cases, the tribunal's language in these and *Metalclad* decisions provides foreign investors with significantly greater substantive and procedural rights than property owners in the U.S. under the Takings Clause of U.S. Constitution).
- ⁴⁴ Daniel M. Price, *NAFTA Chapter 11 – Investor-State Dispute Settlement: Frankenstein or Safety Valve?*, 26 CAN.-U.S. L.J. 107, 119 (2001).
- ⁴⁵ NAFTA, *supra* note 3, at art. 1139.
- ⁴⁶ See U.S. CONST. amend. V (stating "nor shall private property be taken for public use, without just compensation").
- ⁴⁷ Porterfield, *supra* note 5, at 44.
- ⁴⁸ *Id.* at 49.
- ⁴⁹ Gantz, *supra* note 35, at 949.
- ⁵⁰ Patricia Isela Hansen, *Judicialization and Globalization in the North American Free Trade Agreement*, 38 TEX. INT'L L.J. 489, 489 (2003).
- ⁵¹ *Id.* at 500-01.
- ⁵² See NAFTA, *supra* note 3, at art. 2021; see also Hansen, *supra* note 51 at 493 (noting that the agreement expressly proscribes the establishment of a private right of action under the law of a NAFTA country for the alleged violations by other NAFTA countries).
- ⁵³ See Krueger, *supra* note 15, at 400 (quoting Bill Moyers Reports: Trading Democracy, PBS television broadcast (Feb. 5, 2002), at http://www.pbs.org/now/printable/transcript_tdfull_print.html).
- ⁵⁴ *Id.* at 400.
- ⁵⁵ Charles N. Brower, *NAFTA's Investment Chapter: Dynamic Laboratory, Failed Experiments, and Lessons for the FTAA*