



For Immediate Distribution
Thursday, March 6, 2003

NEWS RELEASE

NAFTA's Chapter 11 (Investor-State) Arbitration Process in Need of Reform, Says New IRPP Study

But Experts Disagree on Need to Clarify Scope and Nature of Investor Protection

*Institute for
Research on
Public Policy*

*Institut de
recherche
en politiques
publiques*

Montreal – Today, the Institute for Research on Public Policy (IRPP) is pleased to release “NAFTA’s Chapter 11: Investor Protection, Integration and the Public Interest,” a new study by Toronto international trade law expert Julie Soloway, which features comments by University of Victoria law professor Chris Tollefson. The two experts say that the time is ripe for procedural changes to the NAFTA Chapter 11 investor-state arbitration process that would make it more transparent and accessible. However, they disagree on the need to clarify the scope and nature of investor protection under the Chapter.

Chapter 11 provides for certain obligations that define how a NAFTA government must treat an investment or an investor from another NAFTA country. If an obligation is breached, investors may initiate a dispute-settlement proceeding directly against a NAFTA government. Soloway argues that procedural reforms to that process may be warranted: “In this vein, a more robust set of rules governing transparency and NGO participation would be useful. As well, the parties should seriously consider the possibility of a permanent NAFTA appellate body as a way to provide consistency in the appeal process from tribunal decisions.”

Soloway argues, however, that it would be premature to take steps to clarify the substantive protections afforded investors in the Chapter. She concludes that Chapter 11 jurisprudence so far does not undermine or constrain the right of NAFTA governments to adopt measures in the public interest in domains such as public health and the environment. In addition, she argues that there is no evidence to suggest that the Chapter has deterred governments from enacting environmental protection or public health regulations.

While welcoming Soloway’s conclusions as to the need for procedural reform, Professor Tollefson contends that there is also a compelling need to clarify the scope and nature of investor rights under the Chapter. In his view, “the discretion the Chapter reposes in tribunals is ill-defined and overbroad; a discretion that has already led in several cases to highly questionable interpretive results.” Canada, he says, must redouble its efforts to ensure a better balance between investor rights and domestic policy preferences, whether under NAFTA or future trade and investment agreements.

“NAFTA’s Chapter 11: Investor Protection, Integration and the Public Interest” is the latest *Choices* study to be released as part of IRPP’s Canada’s Options in North America series. It is now available on-line in Adobe (.pdf) format on the Institute’s Web site (www.irpp.org). Please find the summary attached.

Julie Soloway is a partner in the competition/international trade and business group at Davies Ward Phillips & Vineberg LLP. Chris Tollefson is a Professor at the University of Victoria Faculty of Law and Executive Director of the UVic Environmental Law Centre.

For more information or to schedule an interview, please contact the IRPP.

To receive IRPP media advisories and news releases via E-mail, please subscribe to the IRPP E-distribution service by visiting the newsroom on the IRPP Web site.

Founded in 1972, the IRPP is an independent, national, nonprofit organization whose mission is to improve public policy in Canada by generating research, providing insight and sparking debate that will contribute to the public policy decision-making process and strengthen the quality of the public policy decisions made by Canadian governments, citizens, institutions and organizations.

- 30 -

Contact: Sng Tran-Quang
Media Relations Officer
IRPP

(514) 985-2461
stranguang@irpp.org
www.irpp.org