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NAFTA Weakens Regulatory Power of Governments

What is this research about?

Chapter 11 of NAFTA allows investors to sue the government of Canada, Mexico or the US, for taking any action that has adverse effects on their investments. The fear of having to pay large compensations may hold back governments from making policies in the interest of public well-being. For example, concerns about the negative health problems from tobacco, alcohol and high calorie, low nutrient foods call for regulation such as health warnings on product packaging. Yet, foreign investors can challenge such regulations and take legal action against the government. Unfortunately, the interest of society may be at risk due to this trade agreement. This research suggests that this conflict may be solved by enacting, for instance, separate food trade agreements.

What did the researcher do?

The researcher analyzed the NAFTA Chapter 11 jurisprudence and discussed its impact on public policy. He also discussed the issues related to government laws on food advertising. Finally, he explained how NAFTA Chapter 11 weakens Canada's ability to fight obesity and hunger through counter-advertising policies.

What you need to know:

NAFTA creates a situation where governments have less power to intervene on issues such as obesity, hunger, and public health. This is likely to benefit only the privileged sector of society and harm low-income citizens.

What did the researcher find?

Corporations or individuals from one NAFTA country are free to bring claims directly against the government of another on the basis of NAFTA Chapter 11. This treaty impacts the Canadian government's ability to fight obesity and hunger through counter-advertising laws. Food advertising regulations may be seen as a barrier to trade, even though it benefits consumers. Other testing and certification procedures in the world of marketing can also be seen as trade barriers. Since NAFTA Chapter 11 has been vaguely defined, it makes it possible for foreign investors to identify advertising regulations as a breach of the agreement. The fear of a Chapter 11 lawsuit has, as a result, limited the regulatory power of the government.

How can you use this research?

Officials who work in NAFTA institutions may use this research. It provides insight on how certain agreements can create social and environmental issues. This research may be used to revise Chapter 11 and define its terms with further clarity. Future research should explore how there can be a balance between private interest and public policy.

About the Researcher

Alberto R. Salazar Valle is Professor at the Department of Social Science, York University. Similar issues are also discussed in his article entitled “NAFTA Chapter 11, Regulatory Expropriation and Domestic Counter-Advertising Law” (2010), *Arizona Journal of International and Comparative Law*, Volume 27, p. 31-82.

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Keywords

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