Trade and American Competitiveness Coalition

Strong Investor-State Dispute Settlement = Increased U.S. Exports

February 4, 2011

Investor-state dispute settlement provides a neutral and transparent forum to enforce foreign government commitments to treat U.S. investors and U.S. property fairly and without discrimination.

- Investor-state dispute settlement provisions appear in U.S. trade agreements with 14 countries, as well as bilateral investment treaties with another 39 countries.
- Investor-state provisions are included in over 2,600 non-U.S. agreements, most negotiated by Europe and Asia, that provide foreign companies an advantage in foreign markets over U.S. industries.
- Environmental organizations rely on similar arbitration provisions to enforce debt-for-nature agreements with foreign governments.

Contrary to the charges of some critics, investor-state dispute settlement provides:

NO Extraordinary Provisions, Special Rights or Privileges: The U.S. legal system already provides American and foreign investors the right to challenge U.S. government action through such provisions as the Due Process, Equal Protection and Takings Clauses of the U.S. Constitution and a host of other federal and state laws. U.S. investment agreements have been carefully developed to promote these core U.S. legal principles in foreign markets to benefit American investors and their economic activities. These provisions *do not* provide foreign investors in the United States with any greater substantive rights than are already available in the U.S. legal system.

NO Threat to Regulation: U.S. investment provisions do not create a threat to U.S. health, safety, environmental or other public-welfare regulation. Just like U.S. law, including the Administrative Procedure Act's protection against arbitrary and capricious action, investment provisions protect against unfair, expropriatory and discriminatory governmental action. Investment rules, like U.S. law, do not exempt any particular type of regulation from these basic rules of fairness. Doing so, as some suggest, would allow foreign governments to steal U.S. environmental and other technologies, for example, under the guise of protecting the environment and at the cost of U.S. industry and U.S. workers. Notably, investor-state panels have substantially less power than U.S. courts, since they have *no* ability to require a country to change its law.

NO Secret Tribunals: The United States has led the world in promoting open and transparent investor-state dispute-settlement mechanisms. Arbitrators are highly respected jurists and experts, such as former U.S. Secretary of State Warren Christopher and Judge Stephen Schwebel.

NO Onslaught of Cases: The United States has had investor-state mechanisms since the early 1980s. The only cases filed against the United States have been by Canada under NAFTA – 15 cases in 15 years – and the United States has won every one. This litigation is just a drop in the bucket compared to the hundreds of cases that are filed by U.S. and foreign individuals and companies every year on similar issues in U.S. courts.

Strong Enforcement, Plain and Simple: Both the President and Congress agree that enforcing U.S. agreements with foreign countries is vital to ensure that the United States can compete on a level playing field and expand exports. Investor-state dispute settlement is a vital tool for achieving that goal.

Increased Exports = More U.S. Jobs

Opening new markets is the key to increasing American exports.

The Trade and American Competitiveness Coalition is made up of U.S. business enterprises that support policies and legislation that will enhance U.S. competitiveness in the international economy to promote growth and prosperity for America's businesses, workers and consumers.