

**North American Market Working Group**  
*U.S. Food and Agriculture Dialogue for Trade*

**Importance of Investor-State Dispute Resolution**

Investor-state dispute settlement (ISDS) provisions have been included in trade agreements negotiated by the United States since the early 1980s. They protect U.S. investors from mistreatment, particularly in countries where the legal and regulatory regime is underdeveloped, non-transparent, biased or susceptible to corruption, and provide U.S. companies with the same protections for their foreign investments that their foreign competitors already enjoy here as a matter of U.S. domestic law.

The protections afforded in NAFTA and other agreements require the host government to treat investors of the other State in accordance with the following standards:

- **Non-Discrimination:** Accord treatment no less favorable than the accorded domestic or other foreign investors (i.e. Most-Favored Nation)
- **Minimum Standard of Treatment:** Provide “fair and equitable treatment” and “full protection and security” as these obligations are understood under customary international law.
- **Expropriation:** Provide prompt, adequate and effective compensation in the event of a direct or indirect expropriation.
- **Transfers:** Permit investors to freely transfer capital into and out of the country.
- **Localization Requirements:** Refrain from imposing localization requirements.
- **Nationality Requirements:** Refrain from requiring that senior management of the investor be nationals of the host country.

These obligations are enforceable through the ISDS provisions in Chapter 11 of NAFTA. Under Chapter 11, any investor – an individual, a non-profit or a business – can submit claims for breach of the agreement to an independent, international tribunal and recover money damages for losses incurred.

These investment rules benefit U.S. businesses because:

- 1) They **open foreign markets**, allowing U.S. businesses to invest and increase exports
- 2) They **reduce the risk** by establishing core private property protections similar to U.S. law
- 3) Investment rules provide a “**fail safe**” **enforcement mechanism** for companies that have been mistreated to seek remedies before a neutral arbitration panel, and an insurance policy against changes in government in Mexico or Canada.

*Investor-State Dispute Resolution Success Story:*

U.S. exporters of corn syrup won cases against Mexican measures to protect the Mexican sweetener market from U.S. exports, and were awarded commercially significant monetary compensation for the proven damages from these measures. The U.S. has never lost a case under Chapter 11.