

**Friends of the Earth • National Environmental Trust  
National Wildlife Federation • Sierra Club**

July 22, 2003

**Chile and Singapore FTAs Fail to Ensure  
“No Greater Rights” for Foreign Investors –  
Agreements Threaten Environmental Standards**

Dear Member of Congress:

Despite claims to the contrary, the provisions on investment in the Chile and Singapore free trade agreements (FTAs) **do not meet the requirement in the Trade Act of 2002 that foreign investors should receive “no greater substantive rights” than U.S. citizens have under U.S. law.**

While the investor provisions of these new agreements include some incremental changes, they will give foreign investors broad rights under international law that do not exist under U.S. law. These rules will enable foreign investors to file suits before ad-hoc international tribunals that could jeopardize domestic public interest standards, as well as taxpayer dollars, in cases that are not subject to appeal. In so doing, they threaten environmental laws and regulations and set a dangerous precedent for future trade agreements agreements such as the Central America Free Trade Agreement (CAFTA) and the Free Trade Area of the Americas (FTAA).

For example, the Chile and Singapore agreements fail to meet the “no greater substantive rights” test in the following ways:

- In U.S. law, if someone creates a public nuisance – such as harming public health by releasing pollution from their property – the government has the legal authority to regulate the public nuisance without compensating the property owner. But the Chile and Singapore agreements fail to ensure that the government has the right to prevent a public nuisance like pollution without paying compensation.
- U.S. law makes a critical distinction between land and other kinds of property. In a decision written by Justice Scalia, the Supreme Court has said that the government can take actions that affect personal property – such as banning the sale of a hazardous chemical – without paying any compensation. (*Lucas v. South Carolina Coastal Council*). By contrast, the Chile and Singapore agreements would apply equally to all forms of property, tangible and intangible, giving foreign investors greater scope than under U.S. law to make claims against government actions in the public interest.
- In U.S. law, when government regulation affects a property, the impact must be analyzed in terms of the property as a whole – both geographically and over time.

For example, the Supreme Court ruled that a three-year moratorium on development to protect Lake Tahoe was acceptable government action that did not require landowners to be compensated. But the Chile and Singapore agreements fail to establish this principle, again providing greater scope for foreign investors to sue U.S. taxpayers for damages.

The investment rules in these agreements also include vague and unclear standards, such as “character of government action,” that are taken out of context from U.S. law and left to the interpretation of international tribunals not bound by U.S. legal standards and not subject to appeal. In addition, the open-ended “minimum treatment” standard is not limited to procedural due process standards under U.S. law. Tribunals could apply these standard in ways that further curtail government authority to protect the public.

Finally, the Chile and Singapore agreements add a novel, troubling provision that grants foreign investors the right to bring suits challenging government decisions involving natural resource agreements, such as Federal oil and gas leases. This could result in challenges to environmental standards and lead to disputes before international tribunals over oil and gas royalties obligations, potentially putting at risk millions of dollars in royalties paid to the U.S. government.

For all of these reasons, the investment suit rules in the Chile and Singapore FTAs do not meet the “no greater rights” standard mandated by Congress. Applied broadly, the Chile and Singapore investment language could cause serious harm to the environment and the public interest, and they establish the wrong model for the CAFTA and FTAA.

Sincerely,

David Waskow  
Trade Policy Coordinator  
Friends of the Earth

Bill Frymoyer  
Director of Public Policy  
National Environmental Trust

Jake Caldwell  
Program Manager, Trade and Environment  
National Wildlife Federation

Dan Seligman  
Director, Responsible Trade Program  
Sierra Club