

ECAT BULLETIN ON TPA

BULLETIN #9: DORGAN-CRAIG AMENDMENT # 3387: AN UNNECESSARY MANDATE

Background: The Dorgan-Craig Chapter 11 Amendment mandates that “the President shall negotiate with Canada and Mexico an amendment” to NAFTA Chapter 11 to provide full transparency for the investment arbitration tribunals.

Transparency is Good and the NAFTA Parties Have Already Made Progress in Opening Up Chapter 11 Panels. In July 2001, the United States, Canada and Mexico agreed to a substantial opening up of the NAFTA Chapter 11 process, by agreeing to release to the public all documents submitted to or issued by a Chapter 11 tribunal. Many of these documents can already be found on the State Department’s website.

Dorgan-Craig #3387 Provides an Unnecessary and Harmful Mandate. While the transparency of the NAFTA Chapter 11 process could still be improved, this amendment could do more harm than good:

- *MANDATING THE OUTCOME OF NEGOTIATIONS WILL HOBBLE U.S. NEGOTIATORS*, who will have to pay dearly to achieve that particular outcome, if it is even possible.
- *MANDATES CANNOT CHANGE THE VIEWS OF OUR TRADING PARTNERS*. The United States strongly advocated and was somewhat successful in opening up the NAFTA Chapter 11 process. Additional mandates will not change the negotiating dynamic, except to weaken U.S. negotiators.
- *AMENDING NAFTA CHAPTER 11 WILL LIKELY RESULT IN A REOPENING OF THE ENTIRE NAFTA*. The only certainty from such a negotiation is that it will be complex and lengthy as each side tries to rebalance the deal. This may result in greater costs than benefits for the United States.

H.R. 3005 directs negotiators to achieve such transparency in future agreements. Including such provisions in the Free Trade Area of the Americas that will include the 3 NAFTA countries will achieve the same result.

VOTE NO ON DORGAN-CRAIG AMENDMENT # 3387

EMERGENCY COMMITTEE FOR AMERICAN TRADE