



## TPP proponents unfairly paint critiques as naive

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I clearly touched a nerve in Washington, D.C., when I expressed concern (“Provision in TPP tilts field too much,” Missoulian, May 3) about special investor provisions in the Trans-Pacific Partnership being negotiated between the United States and 11 Asia-Pacific countries. Linda Dempsey, vice president of the National Association of Manufacturers, [wrote online](#) that my piece was “factually incorrect and rejects core American values.”

In response, first let me say I respect NAM and its work. While I do not know Ms. Dempsey, I have worked with a number of her predecessors. They, and others who know me, can attest to the fact that throughout my public policy career, I have always striven to assess issues on their merit and to treat interest groups on all sides in a fair and respectful way. I thought long and hard before critiquing the TPP’s investment provisions, because I know how easy it is to attack trade agreements from an emotional or ideological perspective.

That is why I find the overall response from TPP proponents to critiques of any kind to be so disappointing, even troubling. Rather than address critiques on their merits, the White House and other proponents variously paint individuals who raise concerns either as being naïve about the merits of open trade and investment or, in my case, as “rejecting core American values.”

Montana may be far removed from Washington, D.C., geographically, but I assure my NAM interlocutor that I strongly support core American values — among which are free and open debate about important matters affecting our country and its citizens.

Ms. Dempsey assumed I was unaware of changes made in 2004 to the original NAFTA agreement when I stated that investor provisions in the draft TPP text go far beyond those of NAFTA. If the March 2015 WikiLeaks text is authentic — and I have no reason to believe it’s not — then far from being factually incorrect, I stand by my assessment that the text under negotiation greatly expands the reach of the 2004 NAFTA language.

The original purpose of rules allowing international investors to sue governments for damage in international tribunals was to protect investors against arbitrary and capricious acts of governments. That purpose has real meaning when dealing with governments in far too many countries where private property rights do not exist or where they are widely ignored. Investors

have a legitimate reason to want protection against government seizure or uncompensated nationalization of private property.

But one must also look at how special investor rules might be applied at home. The United States and most advanced developed countries provide strong legal protections for investors — foreign and domestic alike — and have fair and robust judicial systems to resolve disputes. Space limitations prevent a full airing of troubling provisions. But as I read the TPP investment text, I see a host of sensitive domestic regulatory questions that could be subject to challenge by foreign investors. These include oil fracking, gene technology, central bank operations involving money supply or foreign exchange reserves, official debt restructuring, and more.

In Montana, we have active and heated debate underway not only about oil fracking but also coal development and its shipment to west coast terminals. A bipartisan coalition joined together to protect the east front of the Rocky Mountains, resulting in the withdrawal of leases for oil and mineral development.

These and other issues involve multiple competing interests that should be resolved in the context of the U.S. political and legal system and not be subject to second-guessing or adjudication by an outside panel of attorneys. These are not idle concerns. The libertarian Cato Institute reports that a U.S. firm is suing the Canadian government over its fracking regulations.

Ms. Dempsey concludes her letter by saying: “As manufacturers, we believe the United States should continue to export our basic rules — from nondiscrimination, due process and fairness to the protection of private property — so that other countries treat us the way we treat them.”

I wholeheartedly agree. Like motherhood and apple pie, if these U.S. values were the only ones included in the TPP’s special investor rules, I would have no problem with them. Indeed, I spent my entire career promoting them. But speaking out about my concerns is a matter of conscience for me. When I see a proposal that raises legitimate and serious questions, I feel a sense of civic responsibility as a knowledgeable observer to say something about it.

Free and open debate on important public policy questions. Now there’s a core American value for you.