AN ARBITRATION UNDER CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT

BETWEEN

UNITED PARCEL SERVICE OF AMERICA INC

AND

GOVERNMENT OF CANADA

DIRECTION OF THE TRIBUNAL ON THE PARTICIPATION OF *AMICI CURIAE*

THE TRIBUNAL:

Dean Ronald A Cass, Arbitrator
L Yves Fortier CC, QC, Arbitrator
Justice Kenneth Keith, President

1 August 2003

1. The Tribunal has considered the submissions made on behalf of the disputing parties and the *amici curiae* on the modalities for the making of written submissions on behalf of the *amici*.

2. The Tribunal will not reconsider its decision of 17 October 2001 and in particular the Order which it made then. The Order reads as follows:

> The Tribunal declares that it has power to accept written *amicus* briefs from the Petitioners. It will consider receiving them at the merits stage of the arbitration following consultation with the parties, exercising its discretion in the way indicated in this decision and in accordance with relevant international judicial practice. In all other respects the Petitions are rejected.

3. The Order is limited to written briefs. It does not extend to the adducing of evidence (see para 69 of the decision). The Tribunal is to consider receiving the briefs at the merits stage.

4. One governing consideration will be whether the *amici* are likely to be able to provide assistance beyond that provided by the disputing parties (see para 70 of the decision).

5. The submissions are to relate to issues raised by the disputing parties and cannot introduce new issues in the litigation or go beyond the scope of the case as defined by the disputing parties.

6. The *amici* will not have access to confidential information protected under the confidentiality Order of 4 April 2003.

7. At the point that the exchange of documents is completed and any interrogatories are answered the *amici* may apply to the Tribunal, with notice to the disputing parties, which will have the opportunity to make submissions on the application, for leave to file written submissions. Any application is to indicate the issue or issues on which the *amicus* wishes to make submissions, its position on those issues and the way in which it will provide assistance beyond that provided by the disputing parties, and it is to

provide other relevant information including the relationship (if any) it has to the disputing parties or the other NAFTA parties.

8. The Tribunal will decide whether to grant leave and on what terms. The Tribunal does not expect that it will give leave to file submissions which are longer than twenty pages (including schedules).

9. The disputing parties and the other Parties to NAFTA will have the right to respond to submissions filed by the *amici*.

10. The Tribunal reserves the power to determine any further aspect of the procedure relating to the participation of *amici curiae*, including the times at which applications are to be made and submissions and responses are to be filed.

For the Tribunal
1 August 2003