APPLETON & ASSOCIATES

INTERNATIONAL LAWYERS

Washington DC *Toronto*

February 26, 2003

By Fax

The Right Honourable Sir Kenneth J. Keith
Court of Appeal of New Zealand
Corner Molesworth & Aitken Streets, P.O. Box 1606
Wellington, New Zealand

Dear Sir Kenneth:

RE: NAFTA UNCITRAL Investor-State Claim
UPS of America, Inc. and the Government of Canada
Our File No. A5245

We are writing in response to Canada's still further submissions of yesterday's date addressing the procedural conduct of this arbitration. These submissions in sur-reply were made without leave of the Tribunal and ought not to be considered.

The procedural direction of the Tribunal dated February 7, 2003 allowed UPS to make the reply submission it made on February 14th but did not provide for any sur-reply by Canada. To consider Canada's further submission simply allows Canada to reargue its case yet again. For example, the first four paragraphs of Canada's letter are essentially a repetition of the arguments in its Memorial on Compliance with the Award on Jurisdiction.

In repeating it submissions, Canada has misstated the contents of that Award. Canada alleges that "the Award did not address whether allegations that Canada Post engaged in anti-competitive conduct can be based on Article 1102", and asserts that "these allegations were made for the first time in the Revised Amended Statement of Claim". That is clearly not the case as is demonstrated by the Tribunal's Award under the heading "Anti-competitive measures and article 1102" at paragraphs 99 through 103, where the Tribunal specifically addressed that issue in the context of allegations respecting access to the Canada Post infrastructure. Indeed, Canada itself specifically raised this issue in its own Reply Memorial, which we will clearly demonstrate when the Tribunal permits UPS to make a full response to Canada's ill-timed arguments. It is therefore incorrect to suggest now that these matters are raised for the first time in the Revised Amended Statement of Claim.

1140 Bay Street, Suite 300, Toronto, Ontario M5S 2B4 Tel. (416) 966-8800 Fax. (416) 966-8801 www.appletonlaw.com

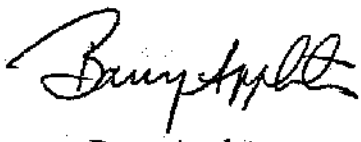
816 Connecticut Avenue, NW, 12th Floor, Washington DC 20006 Tel. (202) 293-0900 Fax. (202) 293-0988

- UPS will respond to all the arguments Canada is advancing in its new jurisdiction motion when it is properly permitted to do so by order of the Tribunal. As previously stated, in our view, the appropriate time for such a response to Canada's further jurisdictional objections is at the merits hearing.

- Canada has offered no explanation for its objections to any form of document production and thereby has not complied with the Tribunal's Procedural Direction of December 13, 2002. As explained in UPS' submission of February 14, 2003, such document production may begin immediately even if the Tribunal grants Canada's request to have its jurisdictional objections heard on a preliminary basis.

Finally, we do not believe that additional submissions on the issue of confidentiality are required.

Yours very truly,



Barry Appleton
Counsel for the Investor

cc: Dean Ronald A. Cass
L. Yves Fortier, C.C., Q.C.
Michael P. Carroll, Q.C.
S. Tabet
Gonzalo Flores, ICSID