

**IN THE MATTER OF A CLAIM UNDER CHAPTER 11, SECTION B
OF THE NORTH AMERICAN FREE TRADE AGREEMENT**

and

**IN THE MATTER OF AN ARBITRATION UNDER
UNCITRAL ARBITRATION RULES**

B E T W E E N:

**UNITED PARCEL SERVICE OF AMERICA, INC.
Claimant**

and

**GOVERNMENT OF CANADA
Respondent**

**Rt. Hon. Justice Sir Kenneth Keith, KBE
L. Yves Fortier, CC, QC
Dean Ronald A Cass**

**RESPONSE BY THE CANADIAN UNION OF POSTAL WORKERS
AND THE COUNCIL OF CANADIANS TO CANADA'S SUBMISSIONS
CONCERNING THEIR PETITION TO INTERVENE IN THESE PROCEEDINGS.**

1. Canada has asserted that the Tribunal cannot add the Petitioners as parties nor accord them the substantive status, rights or privileges of a disputing party. With respect to the first of these assertions we rely upon our submissions of May 10, 2001. With respect to second, we note that the Petitioners have not, and are not, seeking the substantive status, rights or privileges of a disputing party. Neither petitioner is seeking the right to introduce new substantive issues or claims to this dispute, but rather only the right to be apprised of, and to have a fair and reasonable opportunity to respond to, the substantive issues the disputing investor has raised; and to make submissions concerning the place of arbitration and the jurisdiction of this Tribunal.
2. Canada invites this Tribunal to adopt the reasoning of the Methanex award concerning the matter of amicus standing. However, the petitioners in the Methanex case were not claiming a direct interest in the matters at issue in that dispute, and they did not seek party standing in those proceedings. Accordingly the Tribunal's comments in that case are neither binding on this Tribunal nor were they necessary to resolve the question before it.
3. Canada asserts that it would not make sense to give the third parties greater rights than other NAFTA Parties have under NAFTA Article 1128. In our submission there is no direct parallel between the nature of the direct interests the Petitioners assert, and the

interests a NAFTA Party might have in a claim brought against another Party.

- 4. Moreover nothing would preclude this Tribunal from according similar or greater participatory rights to a NAFTA Party based on the same principles of fairness, equality and fundamental justice upon which the Petitioners rely.
- 5. Furthermore, the participatory rights the Petitioners are seeking are not ones they claim arise directly from the provisions of NAFTA but rather from the discretion accorded this Tribunal pursuant to Article 15(1) of the UNCITRAL Rules and from the principles of fairness, equality and fundamental justice that are features of both domestic and international law and which we submit should guide the exercise of that discretion.
- 6. Canada's references to the joinder of claims [Oxford Shipping Co. Ltd and NAFTA Article 1126(2)] are not relevant to the present case because, as noted, the Petitioners are not seeking the right to join new issues or claims in these proceedings.
- 7. We also disagree with Canada's assertion that the test for public interest standing is for "the community at large must have some pecuniary interest, or some interest by which its rights and liability are affected, for their to be a public interest in NAFTA Chapter Eleven Arbitrations." We are aware of no domestic or international authority that supports such a stringent test for public interest intervention. However, even by this measure the interests of the Petitioners are sufficient in our submission to justify according them participatory rights as intervenors in these proceedings.

Submissions of the Petitioners, May 10, 2001, paragraphs 22 - 49.

- 8. In response to the other assertions and arguments put forward by Canada, we repeat and rely upon the submissions we have made in support of the applicants' Petition.

All of which is respectfully submitted

Dated at the City of Ottawa, in the Province of Ontario, Canada this 18th day of June, 2001.



SACK, GOLDBLATT AND MITCHELL
20 Dundas St. West, Suite 1130
Toronto, Ontario
M5G 2G8

Steven Shrybman
Telephone: (613) 862-4862
Facsimile: (416) 591-7333
Counsel for the Petitioners