

Statement of the Free Trade Commission on notices of intent to submit a claim to arbitration

A. Statement

The Free Trade Commission has determined that the attached form for notices of intent to submit a claim to arbitration, if properly completed, will satisfy the requirements of Article 1119 of the North American Free Trade Agreement (NAFTA) and help clarify the basis of a claim, and recommends that disputing investors use it.

B. Notice of Intent to Submit a Claim to Arbitration

1. Article 1118 of the NAFTA provides that “[t]he disputing parties should first attempt to settle a claim through consultation or negotiation.” Article 1119 of the NAFTA requires that a disputing investor provide written notice of its intent to submit a claim to arbitration at least 90 days before the claim may be submitted.
2. Efforts to settle NAFTA investment claims through consultation or negotiation have generally taken place only after the delivery of the notice of intent. The notice of intent naturally serves as the basis for consultations or negotiations between the disputing investor and the competent authorities of a Party. In order to provide a solid foundation for such discussions, it is important that the notice of intent clearly identify the investor and the investment and specify the precise nature of the claims asserted.
3. The Free Trade Commission recommends that the attached form be filled out in its entirety by each disputing investor. If additional space is needed to complete certain fields, extra pages may be added or information may be provided in a separate document.
4. For convenience, the places for delivery of notices of intent on Canada, México, and the United States are appended to this form.
5. If a claim is against México, the notice of intent and any accompanying documents should be submitted in Spanish or together with a translation into Spanish if they are submitted in English or French. If a claim is against the United States, the notice of intent and any accompanying documents should be submitted in English or together with a translation into English if they are submitted in Spanish or French. If a claim is against Canada, the notice of intent and any accompanying documents should be submitted in English or French together with a translation into English or French if they are submitted in Spanish.
6. The languages in which a notice of intent and any accompanying translations are submitted do not in any way prejudice any disputing party’s position on the language of the arbitration.
7. The form may be reproduced freely.

**NOTICE OF INTENT TO SUBMIT A CLAIM TO ARBITRATION
UNDER NAFTA CHAPTER 11**

I. TYPE OF CLAIM

The claim is intended to be submitted by:

- An investor of a Party on its own behalf. (SEE NAFTA ARTICLE 1116)
- An investor of a Party on behalf of an enterprise that is a juridical person that the investor owns or controls directly or indirectly. (SEE NAFTA ARTICLE 1117)

II. DISPUTING INVESTOR

**a) Full
name of
the
disputing
investor:**

(SEE NAFTA ARTICLE 1119)

If the disputing investor claims to be a national of a Party, please type the family name in all capital letters.

b) Indicate whether the disputing investor is:

- A Party
- A state enterprise of a Party
- A national of a Party
- An enterprise of a Party

(SEE NAFTA ARTICLES 201 and 1139)

c) For purposes of subparagraph (b), please identify the nationality of the disputing investor:

- México
- Canada
- United States

(SEE NAFTA ARTICLE 1139)

If the disputing investor claims to be a national of a Party, please provide a copy of a passport or other evidence of nationality or citizenship.

If the disputing investor claims to be an enterprise of a Party, please provide a copy of a deed of incorporation or other evidence of constitution or organization under the laws of the Party identified above.

d) Address of the disputing investor:

Address 1	
Address 2	
City	State or Province
Country	Postal Code
Phone	Fax
E-mail	

III. CLAIM BY AN INVESTOR OF A PARTY ON BEHALF OF AN ENTERPRISE (SEE NAFTA ARTICLES 1117 AND 1119)

a) Name of the enterprise: _____

b) Address of the enterprise:

Address 1	
Address 2	
City	State or Province
Country	Postal Code
Phone	Fax
E-mail	

If the claim is submitted by an investor of a Party on behalf of an enterprise, please provide:

- i) a copy of a deed of incorporation or other evidence of constitution or organization under the laws of the Party against which the claim is asserted; and*
- ii) evidence of direct or indirect ownership or control of the enterprise by the disputing investor. This provision does not require the disclosure of confidential business information.*

IV. INVESTMENT (SEE NAFTA ARTICLE 1139)

Indicate the type(s) of investment(s) involved:

- (a) an enterprise; (c) a debt security of an enterprise
- (b) an equity security of an enterprise;

- (i) where the enterprise is an affiliate of the investor, or
- (ii) where the original maturity of the debt security is at least three years, not including a debt security, regardless of original maturity, of a state enterprise;
- (d) a loan to an enterprise
 - (i) where the enterprise is an affiliate of the investor, or
 - (ii) where the original maturity of the loan is at least three years, not including a loan, regardless of original maturity, to a state enterprise;
- (e) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;
- (f) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or a loan excluded from subparagraph (c) or (d);
- (g) real estate or other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes; and
- (h) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under
 - (i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or
 - (ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise.

Please provide evidence of direct or indirect ownership or control by the disputing investor, such as a copy of a title to property, a deed of incorporation of the enterprise, share certificates, a joint venture agreement, etc. To the extent that the disputing investor has provided any relevant evidence under Section III, it is not necessary to duplicate it under this Section. This provision does not require the disclosure of confidential business information.

V. LEGAL REPRESENTATIVE AND SERVICE OF DOCUMENTS

- a) **Name:** Last Name, First Name, Initial
- b) **Address:**
- | | |
|-----------|-------------------|
| Address 1 | |
| Address 2 | |
| City | State or Province |
| Country | Postal Code |
| Phone | Fax |
| E-mail | |

Please provide a copy of a power of attorney or similar document that demonstrates that the legal representative is duly empowered to act on behalf of the investor.

c) **Indicate the name and address of the person to whom correspondence should be directed.**

Name: Last Name, First Name, Initial

Address:

Address 1	
Address 2	
City	State or Province
Country	Postal Code
Phone	Fax
E-mail	

VI. PROVISIONS ALLEGED TO HAVE BEEN BREACHED AND OTHER APPLICABLE PROVISIONS (SEE NAFTA ARTICLE 1119)

Indicate the provisions of NAFTA Chapter Eleven alleged to have been breached, and any other relevant provisions.

VII. ISSUES AND THE FACTUAL BASIS FOR THE CLAIM (SEE NAFTA ARTICLE 1119)

Describe the issues and the factual basis for the claim.

VIII. RELIEF AND AMOUNT OF DAMAGES (SEE NAFTA ARTICLE 1119)

Indicate the relief sought and the approximate amount of damages claimed.

Name and Signature

Date

Places for Delivery of Notices of Intent:

For Canada: **Office of the Deputy Attorney General of Canada**
284 Wellington Street
Ottawa, Ontario
K1A 0H8
Canada

For México: **Dirección General de Inversión Extranjera**
Secretaría de Economía
Insurgentes Sur 1940, piso 8
Col. Florida
México, D.F. 01030
México

For United States: **Executive Director (L/EX)**
Office of the Legal Adviser
U.S. Department of State
Washington, D.C. 20520
USA