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Department of Finance
Canada

Ministère des Finances
Canada

Senior Assistant
Deputy Minister

Sous-ministre
adjoint principal

Ottawa, Canada
K1A 0G5

April 22, 2008

Mr. Eric Solomon
Assistant Secretary
Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue North West
Washington, D.C. 20220-0001
United States of America

Dear Mr. Solomon:

Subject: Measures Referred to in Gottlieb's Notice of Intent and Submitted for Consideration Under 2103(6) of NAFTA

Mr. Michael Woods, counsel for the Gottlieb Investors Group, which includes Marvin and Elaine Gottlieb, U.S. citizens residing in Chicago, IL (hereafter "Gottlieb"), wrote to you and me, as well as Mr. Jose Maria Zubiria Maqueo of Mexico, on October 30, 2007. The purpose of the letter was to notify the competent authorities pursuant to Article 2103(6) of the North American Free Trade Agreement (NAFTA) that Gottlieb intended to submit a claim to arbitration under Article 1110 of the NAFTA, alleging that a change in the tax treatment of Canadian income trusts in the energy sector announced by the Government of Canada on October 31, 2006 led to an unlawful expropriation of their investment in Canada. A copy of the Notice of Intent is attached for your convenience.

Article 2103(6) of the NAFTA provides that Article 1110, which governs the expropriation of an investment, applies to taxation measures, subject to compliance by the investor with a procedure which requires a determination by the appropriate competent authorities of whether a taxation measure is not an expropriation. I attach a copy of Articles 2103 and 1110 for your convenience. Where the appropriate competent authorities determine that the measure is not an expropriation, the investor is precluded under Article 2103(6) from invoking Article 1110 as the basis for a claim under Article 1116 or 1117 of the NAFTA. The competent authorities are defined in Annex 2103.6 of the NAFTA. In this case, you and I are the "appropriate" competent authorities under Article 2103(6).

In addition to an allegation of unlawful expropriation, the Notice of Intent referred to in the above letter alleges that Canada has breached its obligations under Articles 1102 (National Treatment), 1103 (Most-Favored Nation Treatment) and 1105 (Fair and Equitable Treatment) of Chapter 11 of the NAFTA. The measures at issue, referred to and discussed in the Notice of Intent,

Canada

concern, in particular, the Tax Fairness Plan announced by the Honourable Jim Flaherty, Minister of Finance for Canada, on October 31, 2006. The measures in the Tax Fairness Plan include:

- A Distribution Tax on distributions from publicly-traded income trusts and partnerships. For income trusts and partnerships that began trading after October 31, 2006, the Distribution Tax applies beginning with their 2007 taxation year. For income trusts and partnerships that were trading on October 31, 2006, the Distribution Tax will generally not apply until their 2011 taxation year;
- A reduction in the general corporate income tax rate;
- An increase in the Age Credit Amount; and
- The ability for pensioners to allocate pension income to their spouse.

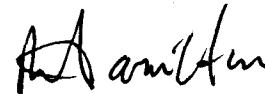
I have attached, for your information, the statement made by the Minister of Finance on October 31, 2006, as well as a backgrounder which explains the Tax Fairness Plan in detail. I would be pleased to provide any further information you might need.

In my capacity as one of the appropriate competent authorities designated under Article 2103(6), I have concluded that the above-referenced measures are not an expropriation under Article 1110 of the NAFTA.

As you know, Article 2103(6) provides for a 6-month period for appropriate competent authorities to make a determination that a disputed taxation measure is not an expropriation. The October 30, 2007 letter sent by Mr. Woods to the competent authorities pursuant to Article 2103(6) thus imposes an April 30, 2008 deadline for our respective offices to come to such a determination in this case.

I would welcome confirmation by return letter of your agreement that the measures referred to in the Notice of Intent are not an expropriation under Article 1110 of the NAFTA. Thank you for your cooperation in this matter.

Sincerely yours,



Bob Hamilton
Tax Policy Branch

c.c.: Ms. Meg Kinnear
Department of Foreign Affairs & International Trade
Mr. Éric Leroux
Department of Foreign Affairs & International Trade
Mr. Mark Feldman
U.S. Department of State