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APPLETON & ASSOCIATES

INTERNATIONAL LAWYERS

Washington DC

Toronto

CONFIDENTIAL

**NOTICE OF ARBITRATION
UNDER THE ARBITRATION RULES
OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW
AND
THE NORTH AMERICAN FREE TRADE AGREEMENT**

BETWEEN:

UNITED PARCEL SERVICE OF AMERICA, INC. ("UPS")

Claimant / Investor

- AND -

GOVERNMENT OF CANADA

Respondent / Party

Pursuant to Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL Arbitration Rules") and Articles 1116 and 1120 of the North American Free Trade Agreement ("NAFTA"), the Claimant initiates recourse to arbitration under the UNCITRAL Arbitration Rules (Resolution 31/98 Adopted by the General Assembly on December 15, 1976).

A. DEMAND THAT THE DISPUTE BE REFERRED TO ARBITRATION

Pursuant to Article 1120(1)(c) of the NAFTA, the Claimant hereby demands that the dispute between it and the Respondent be referred to arbitration under the UNCITRAL Rules of Arbitration.

B. NAMES AND ADDRESSES OF THE PARTIES

Claimant/
Investor UNITED PARCEL SERVICE OF AMERICA, INC.
55 Glenlake Parkway N.E.
Atlanta, Georgia 30328
USA

Respondent/
Party GOVERNMENT OF CANADA
Office of the Deputy Attorney General of Canada
Justice Building
284 Wellington Street
Ottawa, ON K1A 0H8

C. REFERENCE TO THE ARBITRATION CLAUSE OR THE SEPARATE ARBITRATION AGREEMENT THAT IS INVOKED

The Claimant invokes Section B of Chapter 11 of the NAFTA, and specifically Articles 1116, 1120 and 1122 of the NAFTA, as authority for the arbitration. Section B of Chapter 11 of the NAFTA sets out the provisions agreed concerning the settlement of disputes between a Party and an investor of another Party.

D. REFERENCE TO THE CONTRACT OUT OF OR IN RELATION TO WHICH THE DISPUTE ARISES

The dispute is in relation to the Claimant's investment in Canada and the damages that have arisen out of the Government of Canada's ("Canada") breach of its obligations under Section A of Chapter 11 and Chapter 15 of the NAFTA.

E. THE GENERAL NATURE OF THE CLAIM AND AN INDICATION OF THE AMOUNT INVOLVED

1. The Investor, United Parcel Service of America, Inc. ("UPS"), is a publicly traded corporation incorporated under the laws of the State of Delaware in the United States of America. The company was founded in 1907 and its shares are traded on the New York Stock exchange. UPS is the world's largest express carrier and package delivery company. In 1998 it employed 330,000 employees and delivered more than three billion packages and documents worldwide. UPS delivers packages throughout the United States and in over 200 other countries and territories.
2. The Investment, United Parcel Service Canada Ltd. ("UPS Canada"), is a corporation organized under the laws of Ontario, Canada which has operated since 1975. UPS Canada is owned entirely by the Investor. The Investor provides courier delivery and associated services throughout Canada and with the Investor, around the world. The Investor's investment includes four wholly owned subsidiaries, as follows:
 - (1) UPS World Wide Forwarding, Inc.
 - (2) United Parcel Service, Inc. (New York)
 - (3) United Parcel Service, Inc. (Ohio)
 - (4) UPS Internet Service, Inc.
3. Canada Post Corporation ("Canada Post") operates Canada's postal system. Canada Post has been delegated by the Canadian Parliament the "sole and exclusive privilege" of operating a postal service in Canada under s. 14.1 of the *Canada Post Corporation Act*.¹ Under s. 12 of the Act, Canada Post is also delegated authority to hire agents and employees to carry on its business (i.e. to operate the postal service). Canada Post is also specifically provided with exclusive authority to place its delivery and mail receptacles throughout the public domain.²
4. Canada Post is owned entirely by the Government of Canada ("Canada"). Canada Post is defined by Canadian law as a parent Crown corporation and is considered to be "wholly owned" by Canada. Accordingly, Canada Post constitutes both a "state enterprise" and a "government monopoly" for purposes of NAFTA Articles 1502 and 1503.

¹ R.S.C. 1985, c. 54

² Section 3, *Mail Receptacles Regulations*.

5. NAFTA Articles 1502(3)(a) and 1503(2) each require Canada to ensure that government monopolies and state enterprises, respectively, do not abuse the authority delegated to them to maintain or provide a designated monopoly. It is an abuse of such authority for a state enterprise or government monopoly to act in a manner inconsistent with the obligations owed by NAFTA Parties under the Agreement, and in particular, Part A of Chapter 11.
6. Canada Post cross-subsidizes and leverages the non-monopoly courier and parcel services it provides by using the infrastructure established under delegated authority (both explicit and implicit) to run a postal monopoly to reduce the costs of delivering these non-monopoly services. For example, Xpresspost services are offered through use of Canada Post's network of postal boxes and letter carriers. Xpresspost and Priority Courier services are also sold to the public through Canada Post's network of retail postal outlets. Postal distribution facilities, such as sorting stations, ground and air transportation, are also used for the delivery of non-monopoly courier products.
7. Canada Post's abuse of its delegated authority to run the postal monopoly constitutes a breach of Canada's national treatment obligation under NAFTA Article 1102 and its minimum standard of treatment obligation under NAFTA Article 1105, among other NAFTA obligations. The national treatment standard has been violated because Canada Post does not permit private sector competitors, such as UPS or its investments, to the same kind of access to the postal monopoly infrastructure that is provided to Xpresspost or Priority Courier. The minimum standard of treatment standard has been violated because Canada Post has abused its monopoly powers to engage in anti-competitive practices designed to harm private sector courier competitors such as UPS and its investments.
8. The existence of such abusive behaviour on the part of Canada is *prima facie* evidence of Canada's failure to use the necessary mechanisms of regulatory control, administrative supervision or other means to ensure that Canada Post does not use the authority delegated to it to operate the postal monopoly improperly. NAFTA Articles 1502(3)(a) and 1503(2) provide that the standards against which such behaviour will be set to include but are not limited to, NAFTA Articles 1102 and 1105.
9. Moreover, Canada has itself failed to accord the most favourable treatment available to the Investor and its investments under NAFTA Article 1102 by providing Canada Post with a far superior regime for customs clearance and package importation services. The details of Canada's provision of more favourable treatment to Canada Post in respect of its non-monopoly services only became known to UPS after it successfully obtained official access to partially-blocked documents describing an unpublished agreement between Canada Post and the Canada Customs Revenue Agency concerning the special

customs clearance regime to be provided to Canada Post. Canada's failure to provide the Investor and its investments with treatment no less favourable than that which it provides to Canada Post constitutes a breach of NAFTA Article 1102.

10. Canada has also independently breached NAFTA Article 1105 through its general conduct in abetting Canada Post's policy of obfuscating the truth behind the cross-subsidization of its non-monopoly services and other anti-competitive activities engaged in by Canada Post. In so doing, Canada has failed to treat the Investment in accordance with international law, including fair and equitable treatment, treatment in accordance with international norms such as transparency, and treatment in accordance with international principles such as good faith.
11. The Investor claims that Canada Post has used its delegated authority to act in a manner inconsistent with Canada's NAFTA obligations. Accordingly, if Canada has not fulfilled its obligation to control, supervise or apply other measures to ensure that Canada Post does not act inconsistently with Canada's NAFTA obligations, Canada will have breached its NAFTA obligations. The Investor claims as follows:
- (i) Canada Post is a government monopoly and state enterprise maintained by Canada.
 - (ii) Canada has delegated governmental authority to Canada Post with respect to its letter mail monopoly.
 - (iii) Canada Post has acted in a manner inconsistent with NAFTA Chapter 11 with respect to NAFTA Articles 1102 and 1105, and NAFTA Chapter 15.
 - (iv) Canada has breached its NAFTA Chapters 11 and 15 obligations by failing to control and supervise Canada Post.
 - (v) Canada has also reached its NAFTA Articles 1102 and 1105 obligations.
 - (vi) The Investor and its investments have incurred damages by reason of, and arising out of, Canada's breaches of its NAFTA obligations.

F. RELIEF OR REMEDY SOUGHT

The Investor claims damages for the following:

- i. Damages of not less than US\$160 million compensation for the damages caused by or arising out of Canada's measures that are inconsistent with its obligations contained in Part A of Chapter 11 and Chapter 15 of the NAFTA.
- ii. Costs associated with these proceedings, including all professional fees and disbursements.

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- iii. Pre-award and post-award interest at a rate to be fixed by the Tribunal.
 - iv. Tax consequences of the award to maintain the integrity of the award.
 - v. Such further relief that counsel may advise and that this Tribunal may deem appropriate.

G. APPOINTMENT OF ARBITRATORS

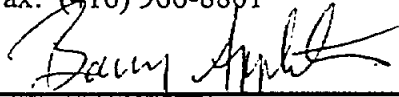
Pursuant to Article 1123 of the NAFTA, the Investor and the Party have agreed on the number of arbitrators, which shall be three, and on the procedure for appointment. One arbitrator is to be appointed by each of the disputing parties and the third, which is the presiding arbitrator, is appointed by agreement of the disputing parties.

H. STATEMENT OF CLAIM

Pursuant to paragraph 4(c) of Article 3 of the UNCITRAL Arbitration rules, the Investor has included its Statement of Claim with this Notice of Arbitration.

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