

NAFTA Chapter 11 Investor-State Disputes

(to January 1, 2005)

compiled by Scott Sinclair, Trade and Investment Research Project
Canadian Centre for Policy Alternatives

Date Complaint Filed ⁱ	Complaining Investor	Issue	NAFTA articles cited	Amount Claimed (\$U.S.) ⁱⁱ	Status
Claims against Canada					
March 4, 1996	Signa SA	Mexican generic drug manufacturer claims that Canadian Patent Medicines, "Notice of Compliance" regulations deprived it of Canadian sales for its drug ciprofloxacin hydrochloride.	Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$50 million Cdn.	Notice of intent on March 4, 1996. Arbitration never commenced. Claim withdrawn by investor.
April 14, 1997	Ethyl Corporation	U.S. chemical company challenges Canadian ban on import and inter-provincial trade in gasoline additive MMT, which auto-makers claim interferes with automobile on-board diagnostic systems. Manganese-based MMT is also a suspected neurotoxin.	Art 1102 (national treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$250 million	After preliminary tribunal judgments against Canada, Canadian government repealed the MMT ban, issued an apology to the company and settled "out-of-court" with Ethyl for \$13 million (U.S.). (The inter-provincial aspect of the trade ban had previously been found to violate Canada's non-binding Agreement on Internal Trade.)
July 22, 1998	S.D. Myers Inc.	U.S. waste disposal firm challenges temporary Canadian ban (Nov. 1995 to Feb. 1997) on export of toxic PCB wastes.	Art 1102 (national treatment) Art 1105 (minimum standards of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$20 million	Tribunal ruled that Canada violated NAFTA articles 1102 (national treatment) and 1105 (minimum standards of treatment). It awarded \$5 million (U.S.) plus interest in damages. Canada applied to the federal court to set aside the tribunal's award. On Jan. 13, 2004 the court dismissed Canada's application.

Dec. 2, 1998	Sun Belt Water Inc.	US water firm challenges British Columbia water protection legislation and moratorium on exports of bulk water from the province.	Art 1102 (national treatment) Art 1105 (minimum standards of treatment) Art 1110 (expropriation and compensation)	\$10.5 billion	Canadian government asserts that the claim is inactive, while the investor asserts that the tribunal process is pending.
Dec. 24, 1998	Pope & Talbot Inc.	U.S. lumber company challenges lumber export quota system put in place by Canadian government to implement Canada-U.S. softwood lumber agreement.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$508 million	Tribunal ruled that Canada violated NAFTA Article 1105 (minimum standards of treatment). Canada was ordered to pay \$460,000 US in damages plus interest and \$120,000 US in legal costs (totaling approximately \$915,000 Cdn).
Jan. 19, 2000	United Parcel Service of America Inc.	Multinational U.S. courier company alleges that Canada Post's public service monopoly over letter-mail enables Canada Post to compete unfairly in express delivery. UPS also alleges that Canada Post enjoys other advantages denied to the investor (e.g. favourable customs treatment).	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1502(3) (monopolies and state enterprises) Art 1503(2) (state enterprises)	\$160 million	Tribunal process is underway. Award on jurisdiction made Nov. 22, 2002. Procedural order on amicus submission, Apr. 4, 2003. Further order on amicus submissions, Aug. 1, 2003.

Dec. 22, 2000	Ketcham Investments Inc. & Tysa Investments Inc.	U.S. lumber company challenges lumber export quota system put in place by Canadian government to implement Canada-U.S. softwood lumber agreement.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$30 million	Complaint withdrawn by investors in May 2001.
Sept. 7, 2001	Trammel Crow Co.	U.S. property management company alleged that Canada Post treated it unfairly in the outsourcing of certain real estate services.	Art 1105 (minimum standard of treatment)	\$32 million	Complaint withdrawn by the investor in April 2002 after it reached an "out-of-court" settlement with Canada Post.
Nov. 6, 2001	Crompton Corp.	U.S. chemical company challenges Canadian ban on use of lindane, a known carcinogen, in canola seeds and seed treatments.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1104 (standard of treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$100 million Cdn.	Notice of intent received Nov. 6, 2001. Canadian government asserts that the claim is inactive.
Feb. 19, 2004	Albert J. Connolly (Brownfields Holding)	U.S. investor claims that actions by Ontario's Ministry of Northern Development and Mines resulted in the forfeiture of the investor's interest in a commercial marble property that was subsequently protected under Ontario's Living Legacy Program, a natural heritage protection program.	Art 1110 (expropriation and compensation)	n.a.	Notice of intent received Feb. 26, 2004.

June 15, 2004	Contractual Obligation Productions LLC	U.S. animation production company challenges decision that it is ineligible for Canadian federal tax credits available only to production firms that employ Canadian citizens or residents.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	n.a.	Notice of intent received June 15, 2004.
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Date Complaint Filed	Complaining Investor	Reason for Complaint	NAFTA articles cited	Amount Claimed (\$U.S.)	Status
Claims against the United States					
July 29, 1998	The Loewen Group Inc.	Loewen, a Canadian funeral home operator, challenges a civil case ruling against it by a jury in a Mississippi state court and allegedly excessive bond requirements for leave to appeal.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$725 million	In June 2003, the tribunal dismissed the investor's claims.
May 6, 1999	Mondev International Ltd.	Canadian real estate developer challenges Massachusetts Supreme court ruling that Boston Redevelopment Authority, a municipal government body, is protected by local government sovereign immunity.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$50 million	In October 2002, the tribunal dismissed the investor's claims.
June 15, 1999	Methanex Corp.	Canadian chemical company challenges California's phase-out of MTBE, a gasoline additive which has contaminated ground and surface water throughout California.	Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$970 million	Tribunal has accepted admissibility of case, asked Methanex for more evidence to support their allegation that California Governor Gray Davis was improperly influenced by a competitor when he ordered the ban. Tribunal process underway.

Feb. 29, 2000	ADF Group Inc.	Canadian steel contractor challenges U.S. "Buy-America" preferences requiring that U.S. steel be used in federally-funded state highway projects.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements)	\$90 million	In January 2003, the tribunal dismissed the investor's claim. The tribunal concluded that the measures in question were procurement measures exempted under Article 1108.
Nov. 5, 2001	Canfor Corp.	Canadian lumber company challenges U.S. antidumping and countervailing duties against Canadian softwood lumber exports.	Art 1102 (national treatment) Art 1103 (most-favoured-nation treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$250 million	Notice of arbitration on July 9, 2002. Tribunal process underway.
Jan. 14, 2002	Kenex Ltd.	Canadian manufacturer of industrial hemp products challenges seizure of industrial hemp products under U.S. Drug Enforcement Agency rules.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1104 (standard of treatment) Art 1105 (minimum standard of treatment)	\$20 million	Notice of arbitration, August 2, 2002. Tribunal process underway.
Mar. 15, 2002	James Russell Baird	Canadian investor challenges US measures banning the disposal of radioactive wastes at sea or below the seabed.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1104 (standard of treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$13.58 billion	Notice of intent on March 15, 2002.

May 1, 2002	Doman Inc.	Canadian lumber company challenges U.S. antidumping and countervailing duties against Canadian softwood lumber exports.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1104 (standard of treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$513 million	Notice of intent on May 1, 2002.
May 3, 2002	Tembec Inc.	Canadian lumber company challenges U.S. antidumping and countervailing duties against Canadian softwood lumber exports.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$200 million+	Notice of arbitration and statement of claim, Dec. 3, 2004. Tribunal process underway.
June 12, 2003	Terminal Forest Products Ltd.	Canadian lumber company challenges U.S. antidumping and countervailing duties against Canadian softwood lumber exports.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$90 million	Notice of Arbitration, March 31, 2004. Tribunal process underway.
July 21, 2003	Glamis Gold Ltd.	Canadian mining company alleges that California regulations intended to limit the environmental impacts of open-pit mining and to protect indigenous peoples' religious sites made its proposed gold mine unprofitable.	Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$50 million+	Notice of arbitration Dec. 9, 2003. Tribunal process underway.

Sept. 2003	Grand River Enterprises Six Nations Ltd.	Canadian native-owned manufacturer and wholesaler of tobacco products alleges that its business was harmed by the treatment of "non-participating manufacturers" under the terms of a settlement agreement between 46 U.S. states and the major tobacco companies to recoup public monies spent to treat smoking-related illnesses.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1104 (standard of treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$360 million+	Notice of arbitration March 10, 2004 Tribunal process pending.
Aug. 12, 2004	Canadian Cattlemen for Fair Trade	Canadian ranchers challenge the U.S. ban on imports of Canadian live cattle and beef following the discovery of a BSE-infected cow from an Alberta herd.	n.a.	\$300 million+	Notice of intent not publicly available. Additional claims pending.

Date Complaint Filed	Complaining Investor	Reason for Complaint	NAFTA articles cited	Amount Claimed (\$U.S.)	Status
Claims against Mexico					
Oct. 2, 1996	Metalclad Corp.	U.S. waste management company challenges decisions by Mexican local government to refuse it a permit to operate a hazardous waste landfill in La Pedrera, San Luis Potosi and by state government to create an ecological preserve in the area.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1104 (standard of treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$90 million	Tribunal ruled that Mexico violated NAFTA articles 1105 (minimum standards of treatment) and 1110 (expropriation and compensation). Mexico was ordered to pay \$16.7 million US in damages. Mexico applied for statutory review of the tribunal award before the BC Supreme Court on the grounds that the tribunal had exceeded its jurisdiction. The court allowed most of the tribunal award to stand. The case was settled in October, 2000 when Mexico paid undisclosed damages to the investor.
Dec. 10, 1996	Robert Azinian <i>et al.</i> (<i>Desona</i>)	U.S. waste management company challenges Mexican court ruling revoking its contract for non-performance of waste disposal and management in Naucalpan de Juarez.	not available	\$19.2 million	In Nov. 1999, the tribunal dismissed the investor's claims.
Feb. 16, 1998	Marvin Roy Feldman Karpas (CEMSA)	U.S. cigarette exporter challenges Mexican government decision not to rebate taxes on its cigarettes exports.	Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$50 million	On December 16, 2002, the tribunal rejected the investor's expropriation claim, but upheld the claim of a violation of national treatment. Mexico was ordered to pay damages of approximately US\$1.5 million. Mexico initiated a statutory review of the award in the Ontario Superior Court of Justice to set aside parts of the Tribunal's award. In December 2003, the judge dismissed Mexico's application. Mexico has appealed this decision to the Court of Appeal for Ontario.

June 30, 1998	USA Waste Management Inc.	U.S. waste management company challenges state and local government actions in contract dispute with a Mexican subsidiary over waste disposal services in Acapulco.	Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$60 million	In June 2000 the Tribunal ruled that it lacked jurisdiction because Waste Management Inc. had not properly waived domestic legal claims as required by NAFTA. The investor resubmitted its notice of intent. The tribunal subsequently confirmed its jurisdiction. In April, 2004 the tribunal dismissed the investor's claims.
Nov. 15, 1999	Fireman's Fund Insurance Co.	U.S. insurance company alleges that the Mexican government discriminates against it by facilitating the sale by Mexican financial institutions of peso-dominated debentures, but not the sale of U.S. dollar-denominated debentures by Fireman's Fund.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation) Art 1405 (national treatment)	\$50 million	Notice of arbitration on Oct. 30, 2001. Tribunal process underway.
Nov. 11, 2000	Billy Joe Adams <i>et al.</i>	A group of U.S. property investors dispute a Mexican superior court decision regarding title to real estate investments and related matters.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$75 million	Notice of arbitration on Feb. 16, 2001.
Aug. 28, 2001	Lomas de Santa Fe	U.S. investor alleges that it was unfairly treated and inadequately compensated in a dispute over the expropriation of land by Mexican Federal District authorities.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1104 (standard of treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$210 million	Notice of intent on August 28, 2001.

Oct. 1, 2001	GAMI Investments Inc.	U.S. shareholders in a Mexican sugar company assert that their interests were harmed by Mexican government regulatory measures related to processing and export of raw and refined sugar, as well as the nationalization of failing sugar refineries.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$55 million	In November 2004, the panel dismissed the claim.
Dec. 12, 2001	Haas	US investor in a small manufacturing company in the State of Chihuahua challenges alleged unfair treatment by the Mexican courts and authorities in a dispute with local partners in the company.	Art 1105 (minimum standard of treatment)	n.a.	Notice of intent received January 9, 2002.
n.a.	Halchette	no details available	n.a.	n.a.	Notice of intent has not been made public. Arbitration never commenced.
Jan. 11, 2002	Calmark Commercial Development Inc.	U.S., property development company challenges decisions of the Mexican courts in a property dispute in Baja California.	Art 1105 (minimum standard of treatment) Art. 1109 (transfers) Art 1110 (expropriation and compensation)	\$0.4 million	Notice of intent on Jan. 11, 2002. Tribunal process pending.
Feb. 12, 2002	Robert J. Frank	U.S. investor seeks damages from Mexican government in dispute over development of a beachfront property in Baja California.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$1.5 million	Notice of arbitration on August 5, 2002. Tribunal process pending.

March 21, 2002	International Thunderbird Gaming Corp.	Canadian gaming company challenges the regulation and closure of its gambling facilities by the Mexican government agency that has jurisdiction over gaming activity and enforcement.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1104 (standard of treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$100 million	Notice of arbitration August 1, 2002. Tribunal process underway.
Jan. 28, 2003	Corn Products International	U.S. company challenges Mexican tax on sales of soft drinks sweetened with high-fructose corn syrup.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$325 million	Notice of arbitration on October 21, 2003. Tribunal process underway.
Aug. 27, 2004	Texas Water Claims	Seventeen Texas irrigation districts assert that the diversion of water from Mexican tributaries of the Rio Grande watershed discriminated against downstream U.S. water users and expropriated water "owned" by U.S. interests under bilateral water-sharing treaties.	Art 1102 (national treatment) Art 1110 (expropriation and compensation)	\$554 million	Notice of intent on Aug. 27, 2004. Tribunal process pending.

Summary of Cases Filed Under NAFTA Chapter 11
 (to January 1, 2005)

Respondent Country	Number of Cases Filed	Types of measure challenged	Total Damages Awarded ⁱⁱⁱ (\$U.S.)	Disposition of cases
Canada	11	5 environmental protection 2 softwood lumber 2 postal services 1 cultural policy 1 other	\$27 million Cdn. ^{iv}	2 decided against Canada, with damages awarded; 2 settled "out-of-court" 1 tribunal process underway 4 pending or inactive 2 withdrawn by complainant
U.S.	13	3 environmental protection 4 softwood lumber 2 state court decisions 1 procurement 3 health or food safety regulation	0	3 dismissed 6 tribunal process underway 4 pending or inactive
Mexico	15	4 environmental protection 4 real estate or development 3 manufacturing 1 financial services 1 gambling 1 cigarette taxation 1 other	\$18.2 million ^v	2 decided against Mexico, with damages awarded; 3 dismissed 3 tribunal process underway 7 pending or inactive

Sources: Government of Canada, Department of International Trade website (www.dfait-maeci.gc.ca), U.S. Department of State website (www.state.gov), NAFTA Claims (www.naftaclaims.com).



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- ⁱ Date of notice of intent, except where indicated.
 - ⁱⁱ All figures are in US\$ except where indicated.
 - ⁱⁱⁱ Including awards of legal costs, where available. Not including interest.
 - ^{iv} Including Ethyl settlement of approximately \$20 million Cdn.
 - ^v not including undisclosed interest and legal costs.