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The Rise and Demise of NAFTA Chapter 11

Scott Sinclair

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The Rise and Demise of NAFTA Chapter 11

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Introduction

The removal of investor–state dispute settlement (ISDS) from the renegotiated NAFTA was a critical victory for democratic sovereignty over investor power. Within three years, the Canada–U.S.–Mexico Agreement (CUSMA) will eliminate ISDS between Canada and the U.S. and significantly scale it back between the U.S. and Mexico.

At the conclusion of CUSMA negotiations in October 2018, Chrystia Freeland, then foreign affairs minister, emphasized the elimination of ISDS as one of her proudest achievements. "ISDS elevates the rights of corporations over those of sovereign governments. In removing it, we have strengthened our government's right to regulate in the public interest, to protect public health and the environment, for example," she said.[1]

Canada's negative experience under NAFTA's investment provisions (in Chapter 11) over the last quarter century supports the argument that ISDS has harmed the public interest. Without pressure from the Trump administration, however, it is highly doubtful that the Liberal government would have curtailed ISDS on its own. In fact, all indications are that the Canadian government remains committed to ISDS in other negotiating venues.

The abolition of ISDS has been demanded by NAFTA Chapter 11 critics and trade justice activists for over two decades. Its removal is cause for cele-

bration. This move greatly reduces Canada's vulnerability to ISDS lawsuits, nearly all of which have been initiated under NAFTA by U.S. investors. It is also an important step toward dismantling the ISDS regime globally. Yet it is only a partial victory.

CUSMA's revamped investment chapter gave the old NAFTA Chapter 11 a three-year lease on life, during which much harm can still be done. ISDS also persists in an attenuated form between the U.S. and Mexico. Most significantly, Canada, the U.S. and Mexico continue to be enmeshed in an extensive web of bilateral and regional accords containing ISDS, including the misleadingly labelled Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

ISDS background

Investor–state dispute settlement clauses in international trade and investment treaties allow foreign investors to bypass the domestic courts and sue governments directly before private international arbitration tribunals. Historically, ISDS had been a feature of bilateral treaties between developed and developing countries,[2] but the signing of NAFTA marked the first time investment arbitration was part of a comprehensive regional trade agreement. Furthermore, NAFTA's investment chapter "came to include stronger elements of investor protection and liberalization than found in the Canada–U.S. Free Trade Agreement or in any [then] existing bilateral investment treaty (BIT)."[3]

Arbitration can be invoked unilaterally by foreign investors from the three NAFTA countries. Investors do not need to seek consent from their home governments and are not obliged to try to resolve a complaint through the domestic court system before launching a claim. Under NAFTA Chapter 11, all three parties to the agreement consent to submit investor claims to binding arbitration, allowing investors to forego using the domestic courts altogether.

While national governments alone are responsible for defending ISDS cases, government measures at the federal, provincial, state, and local levels can and frequently have been targeted by investors. Cases are decided by tribunals of three members: one chosen by the investor, one chosen by the challenged government, and a third selected by mutual agreement. Tribunal decisions are final and not appealable on their merits in national courts.

Investors can challenge not only discriminatory actions by governments but even non-discriminatory policies they allege are unfair or frustrate their

legitimate (in the opinion of the arbitrators) expectations of profit. In fact, NAFTA Article 1105, which enables investors to challenge non-discriminatory measures that allegedly fall short of minimum standards of treatment under customary international law, has been invoked by investors in over 90% of NAFTA claims (see table of disputes).

Claimants can seek compensation for government measures that are allegedly unfair or inequitable (NAFTA Article 1105), discriminatory toward foreign investors or investment (NAFTA Article 1102 and 1103), constitute direct or indirect expropriation (NAFTA Article 1110), or apply performance requirements such as local development benefits (NAFTA Article 1106). While tribunals cannot force a government to change NAFTA-inconsistent measures, they can award monetary damages and legal costs to investors. These damage awards are fully enforceable in the domestic courts of any NAFTA party.

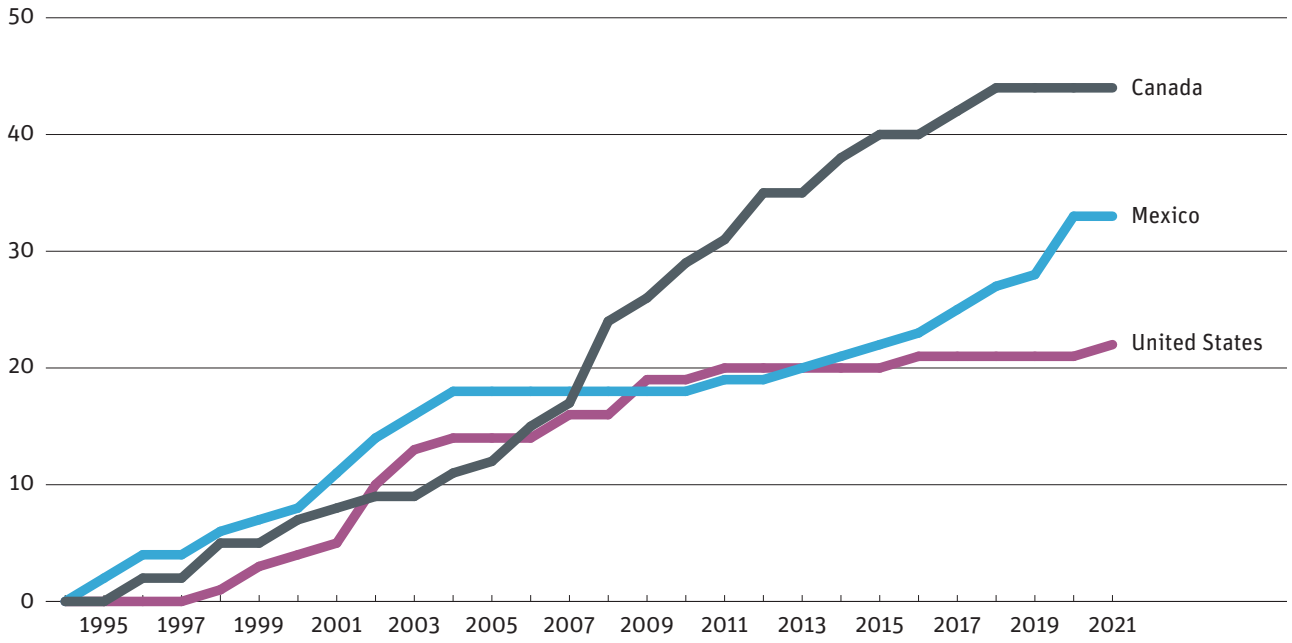
The significant number and variety of claims under NAFTA Chapter 11 underscore how making such broadly framed investment rights enforceable through investor–state arbitration greatly increases both the frequency and controversy of disputes. Governments tend to be more cautious about bringing matters to formal state-to-state dispute settlement. They must consider diplomatic relations and weigh the consequences for their own similar domestic policies if the challenge should succeed. Private investors, on the other hand, are not constrained by such considerations. They have been far quicker to invoke dispute settlement and are much more aggressive in their interpretation of investor rights.

Early rulings weaponize ISDS

When NAFTA came into force on January 1, 1994, few outside of a handful of investment lawyers were even aware of the ISDS system buried in Part B of the investment chapter, let alone its policy implications. “I was in the Clinton administration when NAFTA was passed, and there was never, never…a discussion about Chapter 11,” said Columbia University economist Joseph Stiglitz.[4]

The obscurity of NAFTA’s ISDS system was short-lived. In 1996, Ethyl Corporation, the U.S. company responsible for leaded gasoline, launched the first NAFTA claim against Canada. Ethyl objected to a Canadian ban on the import and inter-provincial trade of MMT, the manganese-based gasoline

FIGURE 1 NAFTA ISDS claims by country (running total)



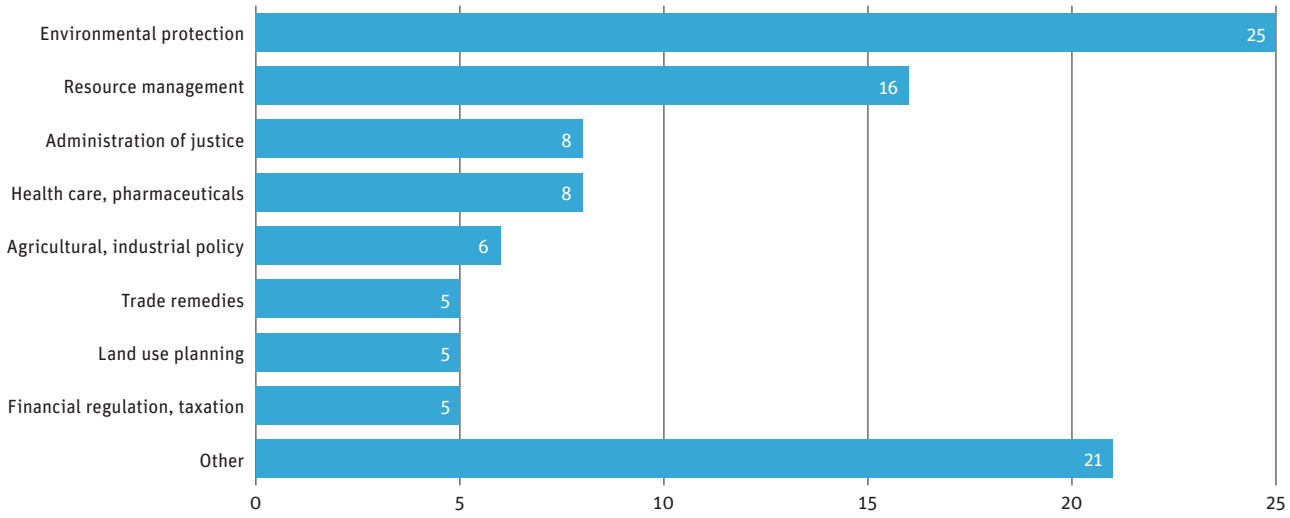
additive that is a suspected neurotoxin. Automakers also claimed that MMT interfered with automobile on-board diagnostic systems.

In 1998, after preliminary tribunal judgments against it, the Canadian government settled with the company. It paid Ethyl US$13 million, repealed the MMT ban and, ludicrously, apologized to the company. Suddenly, NAFTA Chapter 11 had the attention of policy-makers and the public.

Next up, in 1998, a U.S. waste disposal firm challenged a temporary Canadian ban on the export of toxic polychlorinated biphenyl (PCB) wastes. Canada argued that the ban was taken for environmental protection reasons in accordance with its obligations under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. The NAFTA tribunal brushed this argument aside, deciding that Canadian actions had violated the Chapter 11 rules on discrimination and minimum standards of treatment. It awarded SD Myers $6.05 million and ordered the government to pay the investors' legal costs of US$850,000.

Perhaps the worst early NAFTA ruling was against Mexico. Metalclad, a U.S. waste management company, contended it had been treated unfairly after a Mexican local government consistently refused it a permit to construct and operate a hazardous waste treatment facility and landfill in La Pedrera,

FIGURE 2 NAFTA claims by measure challenged



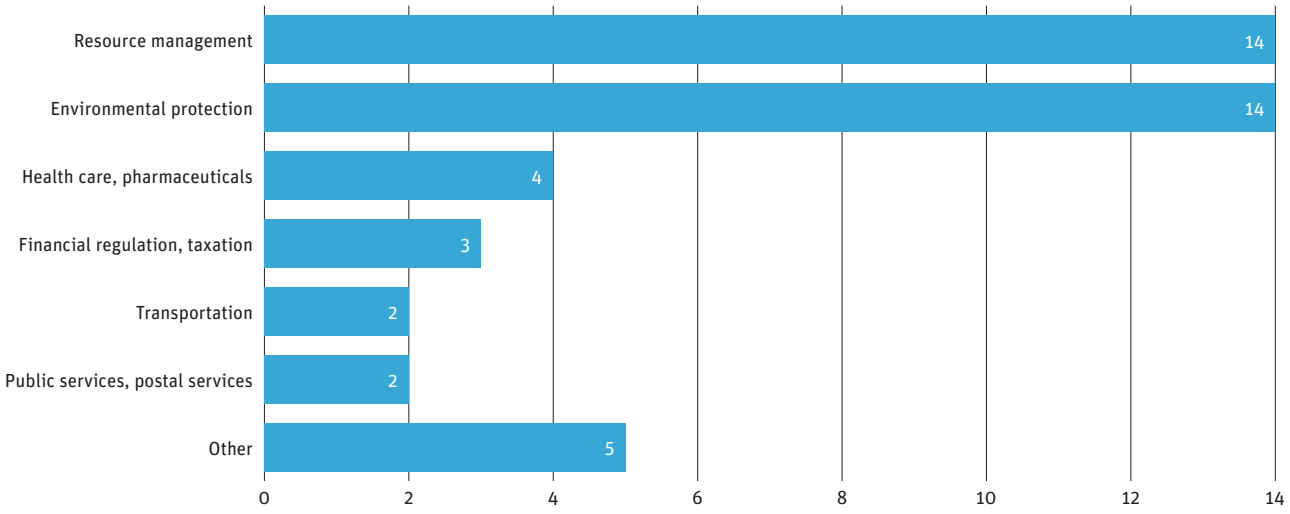
San Luis Potosi. Subsequently, several federal permits related to the project were issued and construction proceeded, even in the face of a municipal "stop work" order.

Ultimately, the state government intervened to create an ecological preserve in the area where the facility and site were to be located, effectively ending the project. The investor successfully argued that these measures were "tantamount to expropriation." In August 2000, Mexico was ordered to pay US$16.7 million in compensation plus interest, a huge sum of money for the state and local governments that ultimately bore the cost.[5]

The U.S. government also had a close call in the early days of NAFTA. A Canadian funeral home operation, Loewen, was roughed up by a Mississippi jury in a civil case. In 1998, Loewen sued for US$725 million in damages under NAFTA. The U.S. government feared it was on the verge of losing. The notion that a tribunal could second-guess the decision (even a debatable one) of a U.S. court was not going to fly. The State Department sent the message through their appointee that if the tribunal dared to rule against the U.S. that could be the end of NAFTA Chapter 11.[6] After the bankrupt Loewen was sold, the tribunal seized on a technicality to dismiss the case.

Together these claims demonstrated the power of NAFTA Chapter 11. Assertive trade lawyers had achieved two things through ISDS that property rights zealots could not get through the domestic court system. The first was an extreme definition of "regulatory takings" (the idea that government

FIGURE 3A NAFTA claims against Canada by measure challenged



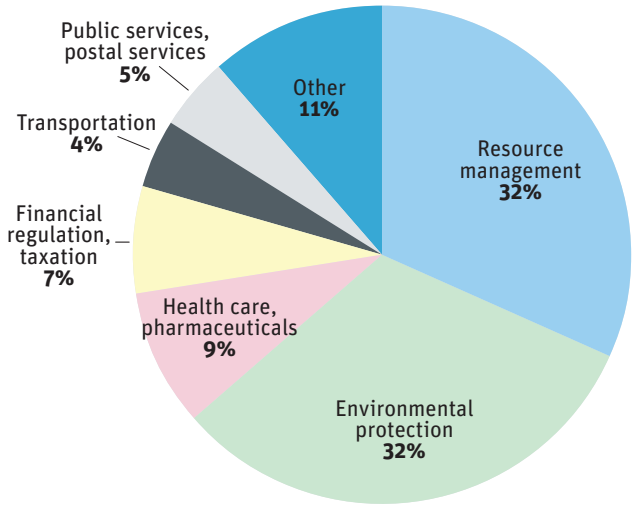
regulation can limit property rights to the degree that it constitutes expropriation). The second was an aggressive interpretation of the minimum standards of treatment owed to investors under customary international law (which previously had been confined to abuses like imprisonment without trial).

Following its early losses, a concerned Canadian government attempted to persuade the U.S. and Mexican governments to agree to reform NAFTA Chapter 11. While stopping short of calling for the elimination of ISDS, Canada proposed substantive changes to narrow and clarify the meanings of expropriation, national treatment and minimum standards of treatment, and asked for procedural changes to curb expansive tribunal rulings.

The Canadian initiative was quashed by the Bush administration in the U.S. and its corporate allies, who were seeking to include ISDS in the proposed Free Trade Area of the Americas (FTAA). In April 2001, as more than 20,000 demonstrators marched outside the Summit of the Americas in Quebec City to protest the FTAA, Prime Minister Jean Chrétien yielded to pressure, stating that, "while some don't like it," NAFTA Chapter 11 works "reasonably well."[7]

Ultimately, in July 2001, the three governments agreed to three side notes of interpretation on the topics of transparency, indirect expropriation, and the meaning of minimum standards of treatment. But NAFTA Chapter 11 itself was not amended. With any serious reform attempts stymied, the path was now clear for a spate of ISDS suits.

FIGURE 3B NAFTA claims against Canada by measure challenged



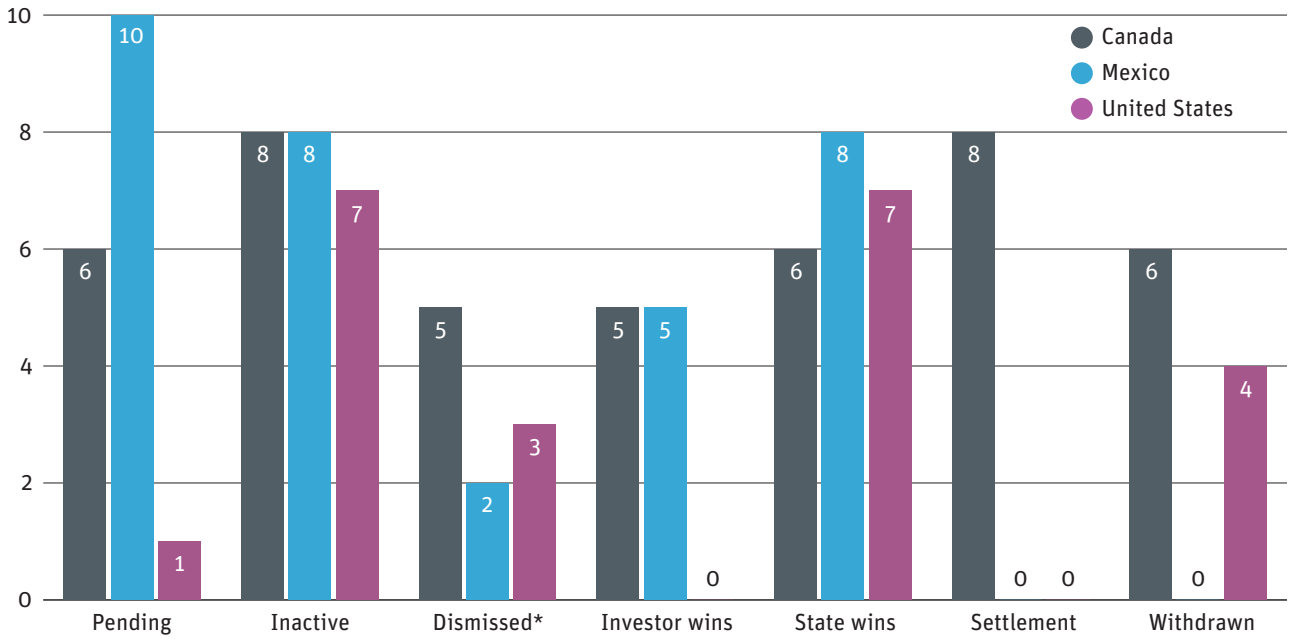
Overview of claims against Canada

Canada remains the principal target of foreign investors under NAFTA Chapter 11. It has now been sued 44 times. The number of known claims against Mexico has recently risen sharply, but at 33 still falls short of Canada's share. Despite its size and economic might, there have only been 22 claims against the U.S.

To date, Canada has lost or settled (with compensation) 10 claims. Canadian governments have paid out more than $263 million in damages and settlements. In addition, Canada has incurred more than $113 million in unrecoverable legal costs (up to March 2020), according to data acquired through an access-to-information request.[8] These figures do not include added interest on payments to investors, which typically accrue from the date the alleged NAFTA violation occurred.[9]

But the damage done by NAFTA Chapter 11 goes beyond the sums of money extracted from Canadian taxpayers. The worst consequence was empowering foreign-owned corporations to use a private justice system to challenge vital and legitimate public policy measures. Environmental protection and natural resource management measures have been a favoured target, accounting for more than 60 per cent of the claims against Canada (see Figure 3b).

FIGURE 4 Cases by disposition



* Dismissed on jurisdictional grounds, i.e. the tribunal ruled that it lacked jurisdiction to decide the dispute.

Far too often, these lawsuits have been successful. When NAFTA Chapter 11 was put in place just over a quarter-century ago, no one imagined that foreign investors would win challenges in the following areas:

- the regulation of harmful chemicals (Ethyl Corp.) and toxic waste exports (SD Myers);
- second-guessing routine bureaucratic and administrative decisions (Pope and Talbot);
- the expansion of private property rights to encompass publicly owned water and timber (AbitibiBowater);
- the compensation of investors when provincial governments exercise their right to refuse contentious development proposals (Windstream Energy and St. Marys);
- restricting the ability of governments to enforce local economic development requirements in return for an investor's access to publicly owned natural resources (Mobil and Murphy); or

- condemning the results of an environmental assessment of a Nova Scotia quarry because the assessors chose to consider community values (Bilcon).

More than anything else, it was the cumulative impact—on government decision-makers and public opinion—of these bruising losses that set the stage for the Trudeau government's acquiescence to the Trump administration's demand to ditch the system in the new NAFTA.

A more insidious effect of NAFTA Chapter 11 was its impact on global arbitrations, which skyrocketed after investors started winning their suits. When NAFTA came into effect in 1994, there had been only a handful of treaty-based investor–state disputes worldwide. But NAFTA Chapter 11 demonstrated that cases challenging virtually any government measure could be fought and won. By 2020, arbitrations had ballooned globally to 1,061 known cases, many of them dealing with challenges to non-discriminatory public interest regulation.[10]

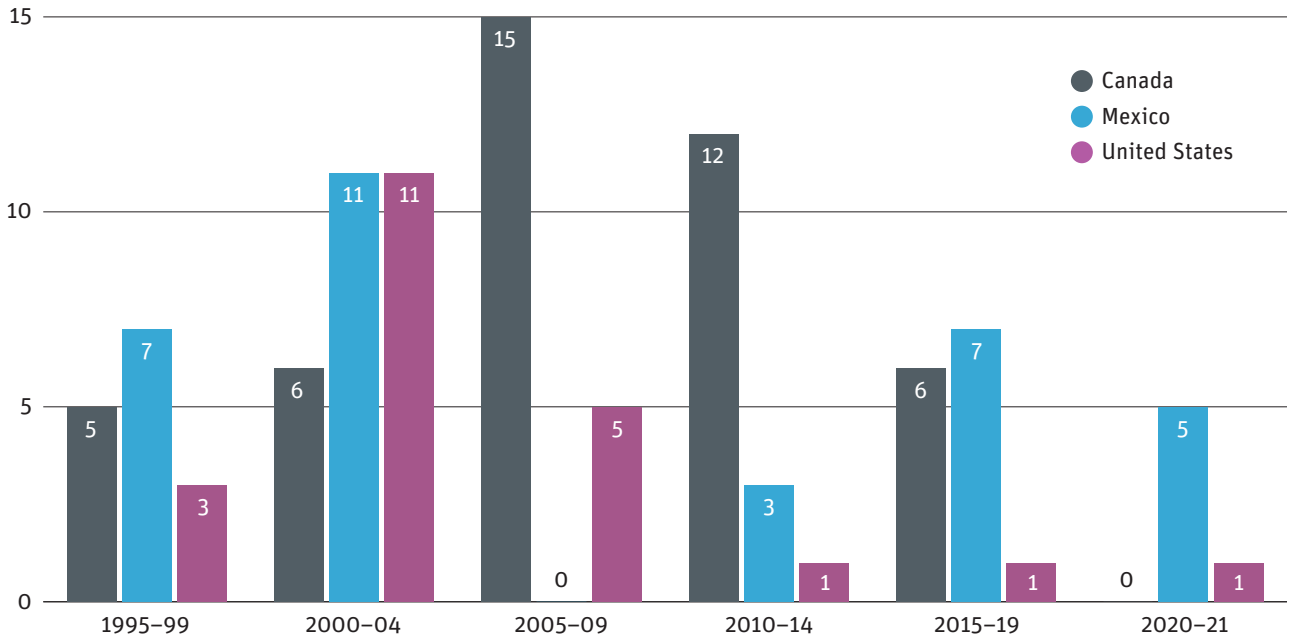
Paying to govern: an update on key recent cases

Since the CCPA last updated this report in early 2018, there have been no new rulings on the merits in cases involving any of the NAFTA parties. Canada, however, has faced tribunal results about how much it must pay in damages to resolve two significant NAFTA Chapter 11 cases. Canada had previously lost both these cases (to Mobil Investments and Bilcon), but the tribunal proceedings continued to decide how much public money should be awarded to the winning investors.

A frequent refrain of proponents, including government trade officials, is that ISDS "does not and cannot require countries to change any law or regulation."[11] A lame corollary is that the ability of elected governments to regulate in the public interest is unaffected.[12]

While NAFTA tribunals, as already noted, cannot directly strike down a public policy that violates a treaty's investment provisions, they can order governments to pay potentially unlimited compensation to investors. When democratically elected governments must "pay to govern," this undeniably affects public decision-making and sovereignty. The outcomes of the Mobil and Bilcon cases underscore this basic fact.

FIGURE 5 NAFTA ISDS cases by country (5-year totals)



(i) Mobil Investments II

The Mobil II case demonstrates perfectly how ISDS can force governments either to get rid of a lawful, democratically enacted regulation or pay, in perpetuity, if they opt to maintain it. This is not a particularly attractive choice.

In 2015, after seven years of litigation, Exxon Mobil's Canadian subsidiary and a smaller company, Murphy Oil, jointly won $17.3 million in damages after successfully challenging requirements that companies operating in the Newfoundland and Labrador offshore oil sector dedicate a tiny percentage (0.33 per cent) of their revenues to research and development, education and training within the province.

The NAFTA tribunal rejected Canada's legal arguments that the R&D guidelines fell within the scope of the Canadian reservation (exception) for benefits plans under the authority of the Canada–Newfoundland Atlantic Accord Implementation Act. In 2004, the implementation of the guidelines had been toughened after the offshore petroleum board concluded that companies were not meeting their existing R&D pledges.

The tribunal, with one of the three arbitrators in dissent, took the extremely narrow view that the Atlantic accord and any subordinate measures

were excluded by the reservation only exactly as they existed in 1994 when NAFTA took effect. No changes could be made to strengthen them, and the discretionary authority under the act, which both Canada and the provincial government had reasonably assumed was protected, could not be exercised to make the R&D requirements more effective.

The March 2015 ruling concluded that so long as the R&D guidelines remain in place, Canada is in "continuing breach" of NAFTA and damages continue to accumulate. The tribunal's initial $17-million fine only covered damages until 2012.

Almost immediately, Mobil filed a new claim to collect ongoing damages. After rejecting Canada's jurisdictional objections, in June 2018, the tribunal turned to the task of ongoing damages owed by Canada for maintaining the measure.

In January 2020, the parties announced a settlement. Under its terms, Canada will give ExxonMobil $35 million (in the form of a credit) to indemnify the company for the costs of complying with the research and development guidelines from 2012 until the end of the Hibernia and Terra Nova projects.

It is bad enough that under NAFTA it is illegal to oblige one of the world's most profitable corporations—ExxonMobil earned US$14.3 billion in 2019 alone—to contribute to the local economy in return for access to publicly owned natural resources. But as the Mobil case shows, the tribunal can order ongoing damages for as long as governments retain the offending measure.

Few governments can tolerate such a situation. Given the clear evidence to the contrary, it is specious to argue that democratic authority and the right to regulate in the public interest are unaffected by ISDS.

(ii) Bilcon vs. Canada

Canada's defeat in the Bilcon case shattered federal government assurances that NAFTA's investment protections "do not compromise the environmental protection measures that Canada has implemented."[13] In March 2015, a NAFTA tribunal ruled that an environmental assessment, which led to a U.S. firm being denied a permit to build a massive quarry in a sensitive coastal area in Nova Scotia, breached Canada's NAFTA obligations.

In 2007, after three years of extensive study and public consultation involving all interested parties, a joint federal-provincial environmental assessment panel had recommended against the quarry and related marine terminal due to their negative environmental and socioeconomic effects. The

governments of Nova Scotia and Canada accepted that recommendation, denying approval for the controversial project.

Bilcon did not appeal any decisions related to the project through the domestic courts, even though it had the right to pursue a federal court review of the environmental panel's finding. Instead, it bypassed the Canadian courts and went directly to NAFTA investor–state dispute settlement. The NAFTA tribunal ruled 2-1 that both the environmental assessment process and the subsequent decision to block the project violated the company's NAFTA guarantees to minimum standards of treatment and national treatment.

In January 2019, the tribunal awarded the claimant US$7 million plus interest accruing from October 2007. While still a considerable sum, the award fell far short of the over US$440 million in damages sought by Bilcon. The tribunal decided not to award the investors damages for lost future profits from the project. Instead, it assessed compensation based on "the lost opportunity" to have a fair environmental impact assessment. But if, by disappointing the investors' inflated expectations, the tribunal hoped to quell the furor over its earlier ruling, it failed.

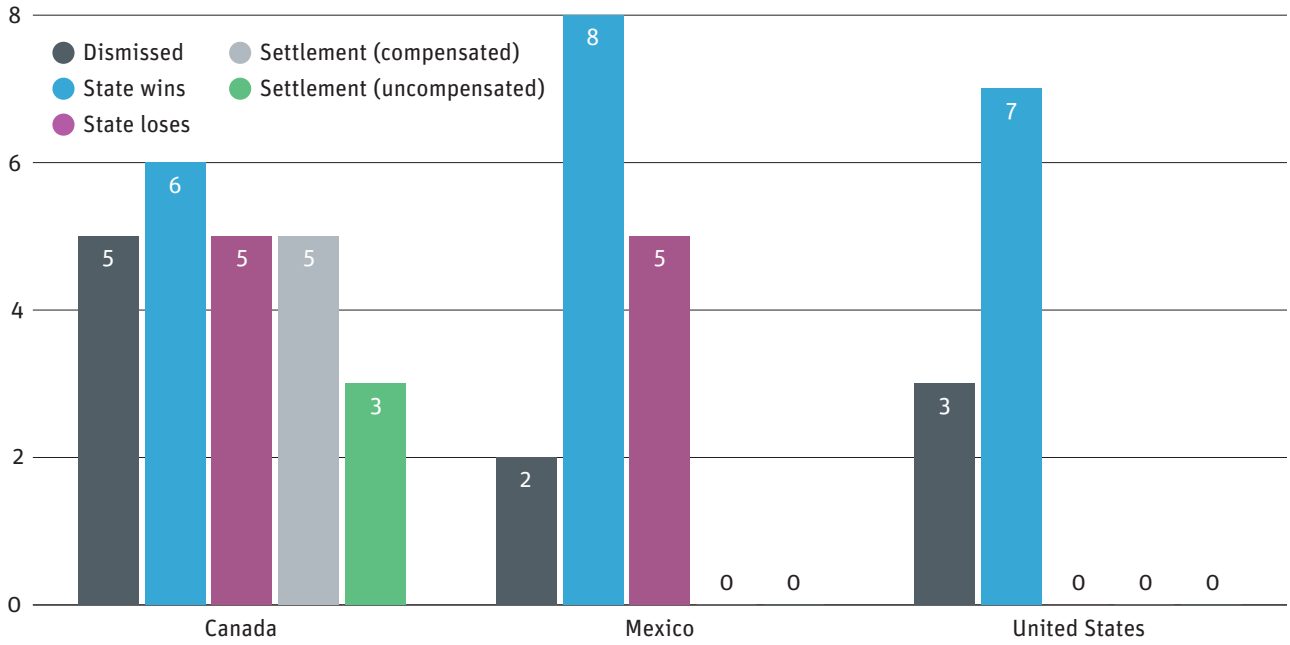
The decision by the tribunal majority to condemn the results of an environmental assessment process because the assessors dared to consider "community values" triggered public anger.[14] Many independent analysts and legal scholars also criticized it strongly. For example, Meinhard Doelle, an environmental law professor at Dalhousie University in Halifax, argued that the tribunal "lacked, with the exception of the dissenting member, even a basic understanding of the legal context within which the decisions it was asked to rule on were made."[15]

The 2015 ruling was also the target of a series of official censures. The first was the searing dissent of the Canadian government appointee to the tribunal. Donald McRae objected to the majority's ruling as being a "significant intrusion into domestic jurisdiction" that "will create a chill on the operation of environmental review panels." Fittingly, he described it as "a remarkable step backwards" for environmental protection.[16]

In a subsequent NAFTA case (Mesa Power v. Canada), all three NAFTA governments filed written submissions arguing that the Bilcon tribunal majority "erred by failing to require the Investors to establish that the actions of Canada resulted in a breach of customary international law, and by equating a failure to comply with applicable domestic law with a failure to meet the minimum standard of treatment at international law."[17]

Finally, in May 2018, the Federal Court of Canada ruled it lacked a legal basis—the grounds for courts to review an arbitral decision are limited and

FIGURE 6 Decided cases by country



narrow—to set aside the tribunal's decision, as requested by the federal government. But the judge tellingly declared: "I accept that the majority's Award raises significant policy concerns. These include its effect on the ability of NAFTA Parties to regulate environmental matters within their jurisdiction, the ability of NAFTA tribunals to properly assess whether foreign investors have been treated fairly under domestic environmental assessment processes, and the potential 'chill' in the environmental assessment process that could result from the majority's decision."[18]

While the tribunal took a relatively conservative approach to assessing damages, it was too little, too late. The majority's arrogant interference with the well-reasoned, considered recommendations of a duly mandated environmental review panel had struck a nerve. When historians look back at the demise of NAFTA Chapter 11, the Bilcon case will likely be seen as the event that tipped the scales—finally galvanizing North American governments to take action to curb ISDS.

An unfortunate legacy: CUSMA Annex 14-C

The CUSMA allows for investor–state claims to be taken under the old NAFTA rules for three years after the new agreement entered into force on July 1, 2020. Such claims must involve so-called legacy investments, that is, investments made during the lifetime of NAFTA (January 1, 1994 to July 1, 2020).

Crucially, however, new government measures affecting those investments taken anytime until July 2023 can still be challenged. Under CUSMA Annex 14-C, "Legacy Investment Claims and Pending Claims," each party gives their prior consent for foreign investors to initiate such legacy claims. This consent expires on July 1, 2023, which raises the prospect of a surge in ISDS claims as the deadline approaches.

It has not taken long for investors to assert these legacy rights. On his first day in office, President Biden, as promised, revoked the permit for the controversial Keystone XL (KXL) pipeline meant to carry bitumen from the Alberta tar sands to Gulf Coast refineries. Rejected by the Obama administration in 2015, it was greenlighted by Trump in 2017 and tied up in the courts for years. Fortunately, this climate-busting project is now dead.

But because of the extended investor–state rights in NAFTA's Chapter 11, that won't be the end of the story. While the pipeline will not be built, the company and the Alberta government can still pursue hefty compensation from Washington.

Besides TC Energy, the project's investors include the province of Alberta, which foolishly sunk $1.3 billion of public money into the failing project, along with providing a further $4.5 billion in loan guarantees. Premier Jason Kenney has confirmed that Alberta will sue over what he calls "a clear violation of the investor protection provisions in the North American free-trade agreement."[19] It is likely the company will be at his side.

As already noted, while an ISDS tribunal cannot force the U.S. to reverse its Keystone decision, it can impose severe financial penalties. This fine (or award) can cover not only the investor's (or investors') expenditures, but also its expected future profits. Tribunal awards, which cannot be appealed on their merits, are legally enforceable in the U.S. and in many foreign courts.

The U.S., as its State Department likes to boast, has never lost a NAFTA case. But all streaks come to an end. If the U.S. loses the KXL case, which is a definite possibility, it could result in the largest fine in NAFTA history.[20]

In 2016, after the Obama administration revoked its permit, Trans Canada Energy (now TC Energy) filed a NAFTA claim seeking a payout of US$15 billion. The company withdrew that lawsuit after the Trump administration reversed

the Obama decision. Since then, more money has been poured into the doomed project and any NAFTA compensation claim would be even higher.

Canada has also been hit with its first "legacy claim," which like the KXL case involves the energy sector. Koch Industries, privately owned by the notorious funders of libertarian causes and climate change deniers, is suing Canada over Ontario's cancellation of the province's participation in a cap-and-trade emissions trading program (with Quebec and the state of California). A Koch subsidiary reportedly purchased US$30 million in emission allowances, but the company was denied compensation by the Ontario government because it was a market—not an industry—participant in the emissions trading scheme.

Whatever your views on the merits of cap-and-trade, this is a bizarre situation. The Koch family has done more than most to sow doubt about climate change and to create a polarized environment where right-wing governments can irresponsibly trash established climate programs.[21] Now they stand to profit when that happens.

This is the kind of rigged system fostered by NAFTA Chapter 11 and ISDS more generally. Companies can place risky bets on politically contested projects knowing that even if they fail, the investors have a good chance to recover their costs, and then some, through an investor–state claim.

The CUSMA annex permitting legacy claims was an unfortunate and unnecessary concession to extreme investor rights. Unlike many other investment protection treaties, NAFTA did not contain a "survival clause" that would have allowed previously established investors to bring claims for an extended period after the agreement ends.[22] NAFTA's termination could have immediately ended recourse to ISDS, providing a clean break. Instead, North American governments and their citizens now face a messy period of uncertainty, investor threats, and continuing litigation.

Mexico's continuing exposure to NAFTA claims

While Canada and the U.S. agreed to terminate ISDS between themselves, the Mexican government of Enrique Peña Nieto settled for a more complicated arrangement. ISDS is no longer available between Canada and Mexico through CUSMA, though it remains in place in the CPTPP. Going forward, a "pared-back" version will cover investments between the U.S. and Mexico. In addition, U.S. investors with government contracts in a range of key sectors, including energy, will retain full access to old-style, unreformed ISDS.

This complex situation, and the already appearing threat of legacy claims, leaves the current government of Andrés Manuel López Obrador (AMLO) vulnerable to a potential flood of highly costly ISDS litigation. This is the classic role of ISDS—punishing a newly elected progressive government as it tries to reverse the neoliberal policies of previous right-wing regimes.

(i) Ongoing access to ISDS between the U.S. and Mexico

CUSMA (known as USMCA in the U.S. and T-MEC in Mexico) did not fully eliminate ISDS between the U.S. and Mexico. A scaled-back form of ISDS will continue to apply between those two countries. The trimmed-down version will provide recourse only for breaches of USMCA's national treatment, most-favored-nation treatment and direct expropriation provisions.

Importantly, this means that other controversial provisions such as minimum standards of treatment, indirect expropriation, and performance requirements prohibitions can no longer be invoked directly by foreign investors. All the investor protection obligations in USMCA Chapter 14 will, of course, still be enforceable through state-to-state dispute resolution. But for reasons already discussed, confining such disputes strictly to governments will reduce the number and intensity of disputes.

Unlike under NAFTA, the surviving form of ISDS laid out in Annex 14-D will only be available to already established foreign investors, not to those merely seeking to invest. In another significant change, foreign investors must pursue remedies in the local courts or other domestic avenues to resolve a dispute, for up to 30 months, before they can launch an ISDS claim.

More problematically, however, Annex 14-E of the agreement provides ongoing, special access to ISDS for investors with federal government contracts in a range of sectors including oil and natural gas, power generation, telecommunications, transportation services, and infrastructure. This means that U.S. investors with covered Mexican government contracts (and, hypothetically, Mexican investors with U.S. government contracts) will retain access to unreformed ISDS and to the same suite of investment protections as they had under NAFTA Chapter 11.[23]

(ii) The rising number of claims against Mexico

Mexico has been sued 33 times under NAFTA Chapter 11, lost 5 cases, and has paid out more than US$205 million in damages. In recent years, Mexico has faced a spike in claims, with investors seeking hundreds of millions of

dollars in damages. Between 2015 and 2021, there were 12 new NAFTA claims against Mexico, compared to six against Canada and two against the U.S. While overall Canada is still the most sued country, since 2015 Mexico has faced more investment claims than Canada (see Figure 5).

In addition, Mexico already faces four known legacy claims. The first two involve increased efforts by the Mexican government to collect taxes in the country's mining sector. Coeur Mining, Inc., a U.S. firm with gold and silver operations in the Mexican states of Chihuahua and Durango, is embroiled in a legal dispute over expected refunds of value-added tax. First Majestic, a Canadian mining company with silver mining operations in Mexico, is fighting the tax authorities' efforts to collect US$209.2 million allegedly owed in back taxes. The companies argue, among other things, that the Mexican government's "harsh enforcement" efforts frustrate their legitimate investment expectations in violation of NAFTA Article 1105.

More recently, two separate groups of disgruntled U.S. investors have launched legacy claims related to Mexico City's newly elected mayor's[24] decisions not to proceed with private concessions begun under the previous city government. Further challenges have been threatened because of the new federal government's proposed energy reforms. AMLO was elected president in 2018 on a pledge to restore Mexican energy sovereignty and to reinvigorate Mexico's tradition of public ownership and control of energy resources.

In March 2021, the Mexican senate passed a new electricity law that directs the national electricity regulator to give priority to publicly produced power and then to purchase private power as needed to meet demand. The law also establishes a fee structure that makes power affordable to consumers and limits future price hikes to the cost of inflation.[25] These measures are not especially radical or unusual by global standards. Nonetheless, they have provoked a vitriolic reaction from foreign investors and some foreign governments, including Canada's.[26]

Under Mexico's previous government, the neoliberal Peña Nieto administration, many foreign multinationals invested in private renewable power projects, which were given priority access to the country's electricity grid. The AMLO government has pledged to respect all existing contracts, unless they involved corruption. But under the new law such projects, many of which locked in high, long-term high prices, will now be the last called upon to meet fluctuating electricity demand.

There have been growing threats of litigation under the USMCA and other trade agreements, including the CPTPP. It is technically possible that

some of these challenges could proceed under USMCA Annex 5-D covering government contracts. Canadian investors might also bring claims under the CPTPP, which, preserves the traditional ISDS regime between Canada and Mexico. But, practically speaking, for the next several years, any challenges against Mexican energy reforms will almost certainly proceed through the more straightforward, investor-friendly legacy claims process.

The end of NAFTA Chapter 11 and the future of ISDS

Canada and the U.S. began to correct a great injustice when they agreed to remove investor–state dispute settlement from the new NAFTA. This step significantly reduces both countries' vulnerability to investor–state disputes. All but one of the 44 claims against Canada under NAFTA Chapter 11 have been brought by U.S. investors. Likewise, Canadian investors have been responsible for 20 of the 22 claims against the U.S.

Getting rid of ISDS was also a remarkable victory for the social movements who have tirelessly campaigned against it. Going forward, the move will greatly decrease the deterrent or chilling effect of ISDS on progressive policy initiatives. This is critical, especially as citizens and social movements insist that North American governments take bold actions to address climate change and economic injustice.

Of course, the substantive obligations in CUSMA's investment protection chapter will still apply and can be enforced through state-to-state dispute settlement. These neoliberal strictures may therefore continue to cramp the policy space of elected governments hoping to introduce measures, such as Green New Deal policies, that go against powerful corporate interests. But since enforcing these rules is now discretionary, we can expect this weapon to be employed more sparingly than ISDS, especially if all three countries are moving in the same policy direction.

There is still a long way to go to fully eliminate the threats from ISDS, both at home and abroad. Despite Minister Freeland's strong criticism of ISDS when CUSMA was signed, the Canadian government is enmeshed in an extensive web of bilateral and regional accords containing ISDS. The largest is the CPTPP, in which a NAFTA-style ISDS system covers major capital exporters such as Japan and Australia. The United Kingdom, Canada's third largest source of foreign direct investment after the U.S. and the European Union, has expressed interest in joining the CPTPP.

Canada has comprehensive trade agreements with South Korea, Chile, Colombia, and some other smaller countries, that include ISDS. In addition, Canada has 38 Foreign Investment Promotion and Protection Agreements (FIPAs) in force, the most significant of which is the Canada–China FIPA. Most of these bilateral treaties contain some form of ISDS.

The Canada–Moldova FIPA was signed on June 12, 2018, during the CUSMA talks, and entered into force on August 23, 2019. Canadian officials are also pursuing an ISDS chapter in the planned, but stalled, free trade deal with the Mercosur trading bloc (Brazil, Argentina, Uruguay and Paraguay).

Under questioning from NDP trade critic Daniel Blaikie at the House of Commons trade committee, a senior Canadian trade official testified that, "the investment chapter outcome that we have in the CUSMA is really a reflection of the unique North American context. While under CUSMA we don't have ISDS with the U.S., we still maintain ISDS with Mexico under the CPTPP." Summing up, the official emphasized that "Canada maintains the flexibility to negotiate variable outcomes with respect to our various partners on ISDS, and we would determine whether or not we would be seeking ISDS on a case-by-case basis."[27]

Canadian investors, especially from the mining and energy sectors, are aggressive users of ISDS against other governments. Under the Canada–Colombia FTA, for example, three Canadian mining firms are suing the Colombian government because of measures to ban mining in the páramo, environmentally sensitive alpine wetlands that provide over 70% of the country's water supply.[28]

Such attacks against public interest and environmental protection regulations are a stain on Canada's international reputation and undermine environmental protection efforts that benefit the global community.[29] For such reasons, and as Canada's own experience under NAFTA Chapter 11 underscores, it is highly desirable to end the threat that ISDS poses to the public interest nationally and globally.

While there is clearly much work to be done to pressure the Canadian government to abandon its support for ISDS, Gus Van Harten, one of Canada's and the world's foremost experts on ISDS, wisely counsels the government to "adopt the perspective of quiet determination to withdraw from its ISDS risks and costs where possible and whenever possible."[30] It will take time to unravel the tangled knot of agreements containing ISDS. But it is a worthwhile effort that can be accomplished. Other democracies, notably South Africa, have shown how it can be done.

Canada should take the following steps to phase out ISDS:

- Don't include ISDS in any future agreements or ratify pending agreements that contain ISDS.
- Communicate to all Canadian FIPA partner countries Canada's willingness to renegotiate based on a new template that does not include ISDS.
- For those countries who don't agree to renegotiate, withdraw from the FIPA as soon as possible, by giving notice of termination under the terms of those agreements (including the Canada–China FIPA).
- Similarly, for Canada's bilateral free trade agreements, offer partners the opportunity to renegotiate the investment provisions based on a new model that does not include ISDS. Such provisions were typically included at Canada's insistence, and current or future governments in Colombia, Chile, or South Korea can reasonably be expected to grasp this opportunity.
- Following the CUSMA example, seek to renegotiate regional trade agreements to remove ISDS. The CPTPP will pose a significant, long-term challenge in this regard. But right away, Canada can follow the example of participants such as New Zealand and negotiate bilateral side letters, or understandings, that neither party consents to ISDS proceedings involving the other.
- If the U.K. wishes to accede to the CPTPP, Canada should insist on a side letter disavowing ISDS between the two jurisdictions and should not agree to ISDS in any bilateral Canada-U.K. trade and investment pact.
- Canada should communicate to the EU and its member countries that it no longer supports CETA's proposed, but still unratified, Investment Court System, and that its position is that these provisions should never be implemented.

As Van Harten noted in his parliamentary testimony, such a project would likely take a generation to complete. But many of these steps could be taken right away and would bear immediate fruit in reducing the risks and costs, both economic and social, associated with ISDS.

Finally, it is a customary principle of international law, codified in the Vienna Convention on the Law of Treaties, that subsequent treaties among the same parties and dealing with the same subject matter take priority over

previous ones. Earlier treaties can only be applied to the extent that they are compatible with later ones.[31] It is therefore possible that rather than having to undo investment protection treaties one by one, a provision inserted in a future United Nations treaty or global climate change accord could neuter ISDS challenges among the signatories with a single stroke of the pen.

There are other reasons to be hopeful. U.S. sponsorship was pivotal to the proliferation of ISDS. Just as the early NAFTA Chapter 11 cases turbocharged the ISDS regime in North America and globally, its undoing in USMCA might animate the reverse process of dismantling the system. In Europe, there is anger over lawsuits from investors demanding massive compensation for the phasing out of fossil fuels.[32] In the Global South, dozens of countries, large and small, have chosen to extricate themselves from damaging investment treaties.[33]

While it will not be an easy task, the prospects for dismantling ISDS are better today than ever.

Notes

1 "Prime Minister Trudeau and Minister Freeland speaking notes for the United States-Mexico-Canada Agreement press conference." October 1, 2018. Available at: https://pm.gc.ca/en/news/speeches/2018/10/01/prime-minister-trudeau-and-minister-freeland-speaking-notes-united-states.

2 The first bilateral investment treaty was signed between Germany and Pakistan in 1959. As Quinn Slobodian recounts, "Ludwig Erhard, economics minster for West Germany and member of the [neoliberal Mount Pelerin Society], visited Pakistan in late 1958 and his policy advice was adopted 'in toto' by General Mohammed Ayub Khan after his seizure of power in a coup." The Treaty for the Promotion and Protection of Investments, which became "the template for all future bilateral investment treaties" was part of the package of neoliberal reforms recommended by Erhard to the military dictatorship. Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism*, Harvard University Press, 2018, pp. 142–3.

3 Howard Mann, "Private Rights, Public Problems: A Guide to NAFTA's Controversial Chapter on Investor Rights," International Institute for Sustainable Development, 2001.

4 Patrick Gillespie, "The NAFTA teardown: Here's where Trump could start," CNN, December 1, 2016. Available at: https://money.cnn.com/2016/12/01/news/economy/nafta-trump-chapter-11/index.html.

5 The tribunal's findings were partly negated in a judicial review by a BC court (Vancouver was the seat of arbitration). In a withering judgement, the BC Supreme Court set aside the tribunal's controversial decisions on fair and equitable treatment and the conclusion that the municipal blockage was equivalent to expropriation. Notwithstanding his clear discomfort with the tribunal's ruling that the state ecological decree constituted indirect expropriation, the Canadian judge felt obliged to defer to it, given the very narrow legal grounds of review. This is one of the few instances where a Canadian court has ruled that a NAFTA tribunal erred. Nonetheless, the U.S. company's NAFTA victory was upheld, although pre-award interest payments were reduced because of the court review. See Anthony Depalma, "Judge Issues Split Decision in Nafta Rules Case," *New York Times*, May 4, 2001. Available at: https://www.nytimes.com/2001/05/04/business/judge-issues-split-decision-in-nafta-rules-case.html.

6 David Schneiderman documents how the U.S. appointee Abner Mikva, "a retired DC circuit court judge, met with Department of Justice (DOJ) officials prior to the panel being constituted. 'You know, judge,' he was told by DOJ, "if we lose this case we could lose NAFTA.' 'Well, if you want to put pressure on me,' Mikva replied, 'then that does it.'" See David Schneiderman, "Judicial Politics and International Investment Arbitration: Seeking an Explanation for Conflicting Outcomes," Northwestern Journal of International Law & Business, Spring 2010, p. 405.

7 Summit of the Americas, transcript of last press conference, April 22, 2001. Quoted in Scott Sinclair, "Canadian government retreats on NAFTA investor–state concerns," Briefing paper, Canadian Centre for Policy Alternatives, June 11, 2001.

8 Figures released by the Canadian Department of Justice under the *Access to Information Act*. File number A-2019-01731/MCA, April 24, 2020.

9 In addition, the figures for past awards are not adjusted for inflation and are considerably higher when measured in today's dollars.

10 "As of 31 July 2020, the total number of known treaty-based ISDS arbitrations had reached 1,061." UNCTAD ISDS Navigator update, November 26, 2020. Available at: https://investmentpolicy.unctad.org/news/hub/1666/20201126-unctad-isds-navigator-update-1060-known-investment-treaty-cases-by-31-july-2020.

11 Jeffrey Zients, "Investor–state Dispute Settlement (ISDS) Questions and Answers," Obama White House Archives, February 26, 2015. Available at: https://obamawhitehouse.archives.gov/blog/2015/02/26/investor-state-dispute-settlement-isds-questions-and-answers.

12 "Including mechanisms for dispute resolution through international arbitration in FTAs does not restrict any level of government from legitimately legislating in the public interest." *FTAs: Myths and Realities*, Global Affairs Canada. Available at: https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/ceta-aecg/facts-faits.aspx?lang=eng.

13 *Ibid*.

14 Ana Swanson, "A Nafta Battleground on the Shores of Canada," *New York Times*, Oct. 16, 2017; Michael Harris, "Tearing up NAFTA? Please start with Chapter 11," *iPolitics*, Feb 15, 2018.

15 Meinhard Doelle, Clayton Whites Point NAFTA Challenge Troubling, Environmental Law News, Dalhousie University, March 25, 2015. Available at: https://blogs.dal.ca/melaw/2015/03/25/clayton-whites-point-nafta-challenge-troubling/.

16 Paul Withers, "NAFTA defeat 'disappoints' federal government," CBC News, March 25, 2018. Available at: https://www.cbc.ca/news/canada/nova-scotia/nafta-defeat-disappoints-federal-government-1.3008719.

17 *Canada (Attorney General) v Clayton*, 2018 FC 436, para. 97. Available at: https://www.canlii.org/en/ca/fct/doc/2018/2018fc436/2018fc436.html?resultIndex=1#_Conclusion.

18 *Ibid*. para. 198.

19 Dean Bennett, "Alberta's Toews says final bill on defunct Keystone XL not 'materially' above $1.3B," Toronto Star, March 9, 2021.

20 Reuters Legal, "Q&A: Int'l arbitration expert on Alberta's threat of 'slam-dunk' case v. USA over Keystone veto," February 5, 2021. Available at: https://tinyurl.com/3bcm794c.

21 Jane Mayer, "'Kochland' Examines the Koch Brothers' Early, Crucial Role in Climate-Change Denial," The New Yorker, August 13, 2019. Available at: https://www.newyorker.com/news/daily-comment/kochland-examines-how-the-koch-brothers-made-their-fortune-and-the-influence-it-bought.

22 For example, under the (still unratified) investment protection provisions of the Canada-EU Comprehensive Economic and Trade Agreement foreign investors would be entitled to bring investor–state claims related to established investments for up to 20 years after termination.

23 There is some uncertainty and debate about the scope of access to old-style ISDS for covered government contracts. Some former U.S. trade negotiators and the U.S. energy industry, however, believe that the coverage is broad and would apply, for example, to new or existing contracts and licenses for exploration or development. That issue will only become clear over time, and probably through litigation. In the short term, it is moot, because ISDS claims can proceed under the legacy provisions. See, for example, David A. Gantz, "The United States-Mexico-Canada Agreement: Energy Production and Policies," Mexico Center, Rice University's Baker Institute for Public Policy, September 19, 2019. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3456282.

24 Carrie Kahn, NPR, "Meet Mexico City's First Elected Female Mayor," July 25, 2018. Available at: https://www.npr.org/2018/07/25/631465464/meet-mexico-citys-first-elected-woman-mayor.

25 Kurt Hackbarth, "AMLO Is Fighting to Make Mexico's Energy a Public Resource," Jacobin, March 15, 2021. Available at: https://jacobinmag.com/2021/03/amlo-morena-electric-industry-act-fossil-fuels-pemex-renewables.

26 Jude Webber, "Mexico's president defends electricity reform favouring state utility," Financial Times, March 3, 2021.

27 Standing Committee on International Trade, Evidence, Friday, February 5, 2021. Available at: https://www.ourcommons.ca/DocumentViewer/en/43-2/CIIT/meeting-15/evidence.

28 Lorenzo Cotula, "Investment disputes from below: whose rights matter?" International Institute for Environment and Development, July 23, 2020.

29 An April 2019 CCPA study identified 43 known instances of Canadian investors using ISDS to sue a foreign government outside North America. The mining and energy sectors accounted for 70 per cent of those cases and developing countries were targeted in 86 per cent of cases. Crucially, a quarter of all ISDS claims brought by Canadian investors abroad involved environmental policy. Hadrian Mertins-Kirkwood and Ben Smith, Digging for Dividends: The use and abuse of investor–state dispute settlement by Canadian investors abroad, Canadian Centre for Policy Alternatives, April 30, 2019. Available at: https://www.policyalternatives.ca/digging-for-dividends.

30 Standing Committee on International Trade, Evidence, Monday, March 22, 2021. Available at: https://www.ourcommons.ca/DocumentViewer/en/43-2/CIIT/meeting-20/notice.

31 The "governing principle" is that "the later treaty governs the earlier, but only with respect to the relations between parties to the later treaty." See John Currie, *Public International Law*, Essentials of Canadian Law series, Irwin Law, 2001, pages 133 ff.

32 Mehreen Khan, "EU urged to quit energy treaty as companies sue over climate action" Financial Times, February 7, 2021.

33 The most recent developing country to renounce its investment treaties is Pakistan, which has been forced to pay billions of dollars to foreign investors under ISDS. "BOI prepares strategy for reforming bilateral investment treaties," Pakistan Today, April 3, 2021. Available at: https://profit.pakistantoday.com.pk/2021/04/03/boi-prepares-strategy-for-reforming-investment-treaties

CCPA
CANADIAN CENTRE for POLICY ALTERNATIVES
CENTRE CANADIEN de POLITIQUES ALTERNATIVES

NAFTA Chapter 11 Investor-State Disputes

to March 31, 2021

Compiled by Scott Sinclair

Trade and Investment Research Project, Canadian Centre for Policy Alternatives

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
March 4, 1996	**Signa S.A.**	Mexican generic drug manufacturer (a joint venture partner with Canadian firm Apotex) claims that Canada's Patented 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)	C$50 million	Arbitration never commenced. Notice of intent withdrawn by investor.
April 14, 1997	**Ethyl Corporation**	U.S. chemical company challenges Canadian ban on import and inter-provincial trade of gasoline additive MMT, which automakers 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)	$201 million	In 1998, after preliminary tribunal judgments against Canada, the Canadian government settled. It paid Ethyl US$13 million, repealed the MMT ban and issued an apology to the company.
July 21, 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. Canada argued the ban was taken for environmental protection reasons in accordance with its obligations under the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal.	Art. 1102 (national treatment) Art. 1105 (minimum standard 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 standard of treatment). It awarded the investor C$6.05 million, US$850,000 in costs plus interest in compensation. Canada applied to the federal court to set aside the tribunal's award. On Jan. 13, 2004 the court dismissed Canada's application.
November 27, 1998	**Sun Belt Water, Inc.**	U.S. water firm challenges British Columbia water protection legislation and moratorium on exports of bulk water from the province.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1104 (standard of treatment) Art. 1105 (minimum standard of treatment)	C$50 million	Claim is discontinued.

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
December 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 (SLA).	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1106 (performance requirements) Art. 1110 (expropriation and compensation)	$500 million	Tribunal ruled that Canada's implementation of the SLA violated NAFTA Article 1105 (minimum standard of treatment). Canada was ordered to pay US$461,566 in compensation (including interest) and US$120,200 of the investor's legal costs, for a total of US$581,766.
January 19, 2000	**United Parcel Service of America, Inc.**	Multinational U.S. courier company alleges that Canada Post's limited monopoly over letter mail and its public postal service infrastructure enable 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	On May 24, 2007 the tribunal, in a 2-1 decision, dismissed the investor's claims. One tribunal member dissented, in part. The tribunal determined that key NAFTA rules concerning competition policy could not be invoked by an investor under Chapter 11 dispute procedures. It also ruled that certain activities of Canada Post were essentially arms-length from the Canadian government and therefore not subject to challenge by the investor. Such activities could be scrutinized in a government-to-government dispute. It also rejected claims that Canada Post unduly benefited from more favourable treatment.
December 22, 2000	**Ketcham Investments, Inc. & Tysa Investments, Inc.**	U.S. lumber companies challenge 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)	C$30 million	Complaint withdrawn by investors in May 2001.
September 7, 2001	**Trammell Crow Co.**	U.S. property management company alleges 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 the company reached an undisclosed settlement with Canada Post.

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
November 6, 2001	**Chemtura Corp. (formerly known as Crompton Corp.)**	U.S.-based agro-chemical company challenges the Canadian government ban on the sale and use of lindane, an agricultural pesticide. Lindane is a persistent neurotoxin and suspected carcinogen now banned in more than 50 countries worldwide. Following a 1998 decision by the U.S. Environmental Protection Agency to close the border to Canadian canola treated with lindane, Canada restricted, and later banned, the domestic use of lindane. Since 2004, Crompton's seed treatment business in North America has been owned by Bayer Crop Sciences, a subsidiary of the German multinational corporation, Bayer AG.	Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$78.5 million	Chemtura filed its first notice of arbitration on Oct. 17, 2002 and a second on February 10, 2005. On August 2, 2010 the tribunal dismissed the investor's claims. Furthermore, the tribunal ordered the investor to pay the costs of the arbitration (US$688,000) and to pay 50% of the Government of Canada's costs in defending the claim (C$2.899 million).
February 26, 2004	**Albert J. Connolly (Brownfields Holding, Inc.)**	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 quarry site that was subsequently protected under Ontario's Living Legacy Program, a natural heritage protection program.	Art. 1110 (expropriation and compensation)	Not available	Claim is inactive.
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. It is further alleged that Canadian immigration and work rules restrict U.S. citizens from working on Canadian film and television projects and are NAFTA-inconsistent.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1106 (performance requirements) Art. 1110 (expropriation and compensation)	$20 million	Statement of claim submitted Jan. 31, 2005. Amended statement of claim submitted June 16, 2005. Claim is inactive.
July 26, 2005	**Peter Pesic**	U.S. investor claims that a Canadian government decision not to extend his temporary work visa impairs his investments in Canada.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment)	Not available	Notice of intent to submit a claim to arbitration subsequently withdrawn by investor.
February 28, 2006	**GL Farms LLC (USA) and Carl Adams**	U.S. agribusiness challenges Canadian provincial and federal government restrictions on the export of milk. It also challenges requirements that milk producers in Ontario must obtain a quota authorized under Canada's supply management system for dairy products.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation) Art. 1502(3) (monopolies and state enterprises)	$78 million	Notice of arbitration received on June 5, 2006. Claim is inactive.

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
September 25, 2006	**Merrill and Ring Forestry L.P.**	Washington State forestry company alleges that Canadian federal and provincial regulations and policies restricting the export of unprocessed logs favour log processors in B.C. at Merrill and Ring's expense, expropriate its investment in B.C. timber lands, and violate minimum standards of treatment. Canadian log export controls are exempted from NAFTA obligations governing trade in goods (Annex 301.3., Section A.)	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1106 (performance requirements) Art. 1110 (expropriation and compensation)	$25 million	Final award issued on March 31, 2010. The panel dismissed all the investor's claims and ordered that the costs of the proceedings be split between the two parties. The tribunal members were divided on the appropriate benchmarks to be applied regarding Art. 1105. But they agreed that whichever benchmarks were applied, the investor had not proven minimum standards of treatment had been violated.
October 12, 2006	**V. G. Gallo**	A Canadian company (Notre) planned to dispose of Toronto's municipal waste by dumping it in a large man-made lake located on a former open-pit mine in northern Ontario (Adams Lake). In 2002, following the breakdown of negotiations between the company and the City of Toronto, Notre allegedly transferred the ownership and control of the project to a numbered company involving a U.S. citizen, V.G. Gallo. In June 2004, the newly elected Ontario provincial government enacted legislation preventing the controversial project from proceeding by banning the dumping of garbage in Adams Lake or any other Ontario lake. The claimant argues that this measure, and others, were "tantamount to expropriation" without compensation and deprived it of the minimum standard of treatment under international law. The Ontario law provided for compensation of reasonable expenses incurred by investors related to the proposed project, while precluding compensation for any loss of goodwill or possible profits. Ontario came to terms with Notre on compensation, but the Gallo enterprise did not avail itself of compensation under the provincial law.	Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	C$105 million	Statement of claim submitted June 23, 2008. Jurisdictional hearing held February 2011. On September 15, 2011 the tribunal dismissed the claim on jurisdictional grounds. The tribunal concluded that Mr. Gallo could not prove the date when he acquired ownership and control of the enterprise or that this transfer occurred prior to the enactment of the Ontario legislation. Mr. Gallo was ordered to pay Canada US$450,000 for legal costs.

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
August 3, 2007	**Mobil Investments Canada, Inc. & Murphy Oil Corporation (I)**	Mobil Investments is the U.S.-based holding company for the ExxonMobil group's investments in Canada. ExxonMobil, the world's largest oil and gas company, is a partner in the Hibernia and Terra Nova oil and gas fields off the coast of Newfoundland and Labrador. Murphy Oil Corporation is a U.S. oil and gas company also active in the Newfoundland offshore. The investors allege that Canadian guidelines stipulating that energy companies active in the offshore invest in research and development within Newfoundland and Labrador are NAFTA-inconsistent performance requirements. The claimants previously challenged these guidelines in the Canadian courts and lost. The investors contend that the 2004 requirements that companies spend a fixed minimum amount on local research and development are more onerous than pre-existing local benefits agreements, which were expressly reserved from NAFTA by Canada (Annex I). The investors also allege that the provincial R&D guidelines represented a "fundamental shift" in regulation that undermined the investors' "legitimate expectations," in violation of minimum standards of treatment under customary international law.	Art. 1105 (minimum standard of treatment) Art. 1106 (performance requirements)	C$66 million	Notice of arbitration submitted November 1, 2007. Preliminary hearing held May 2009. Arbitral hearing on merits held October 2010. On May 22, 2012, the tribunal ruled that the local R&D requirements constituted a "prohibited performance requirement" under Article 1106. The tribunal rejected, with one dissenting opinion, Canada's arguments that the guidelines fell within the scope of the Canadian reservation with respect to Article 1106 for benefits plans under the authority of the Canada–Newfoundland Atlantic Accord Implementation Act. The tribunal dismissed the investors' claim that the R&D guidelines breached Article 1105. On February 20, 2015 the tribunal awarded monetary damages of C$13.9 million to Mobil and C$3.4 million to Murphy for the period 2004 to 2012. The tribunal majority found Canada in continuous violation of NAFTA Article 1106 since 2004, meaning that as long as the R&D guidelines remain in effect, damages will accrue. Mobil and Murphy have each filed additional claims (see below) to recover damages since 2012.
October 30, 2007	**Gottlieb Investors Group**	U.S.-based private investors allege that changes in the tax treatment of energy income tax trusts constituted NAFTA-inconsistent discrimination against U.S.-based energy trusts, were equivalent to expropriation of their investment in energy income trusts, and violated minimum standards of treatment, since the investors had relied on the Canadian Conservative government's promise not to change the rules governing income trusts.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$6.5 million	NAFTA Article 2103(6) provides, in the case of an investor-state claim involving taxation measures, that national tax officials can vet the claim. Where the competent national authorities agree that a taxation measure is not an expropriation, the investor is precluded from invoking Article 1110 as a basis for a claim. In April 2008, Canadian and U.S. tax authorities determined that the taxation measures at issue in the Gottlieb claim were not an expropriation under Article 1110. Although the investors could still proceed based on the remaining allegations in their notice of intent, the claim is inactive.

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
February 5, 2008	**Clayton/Bilcon Inc.**	Bilcon, a U.S. company registered in Delaware and controlled by members of the Clayton family, proposed to construct and operate a massive quarry and marine terminal on the Digby Neck, an environmentally sensitive region in southwestern Nova Scotia. The company intended, for a period of 50 years, to mine basalt, crush it into aggregate, and ship it in post-Panamax freighters through the Bay of Fundy to the U.S. eastern seaboard. In 2007, a joint federal-provincial environmental assessment panel recommended that the proposed project be rejected because of its negative environmental impacts. Following the panel report, the Nova Scotia and Canadian governments notified Bilcon that they would not approve the controversial project. The investor alleges that the administration of the environmental assessment review, along with various provincial and federal government measures, were discriminatory and/or violated minimum standards of treatment.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment)	$101 million	Notice of Arbitration received on May 26, 2008. On March 17, 2015 the tribunal majority ruled that the conduct of the Canadian environmental assessment review, along with various provincial and federal government measures, discriminated against the company and violated minimum standards of treatment. The tribunal majority felt the investor had been encouraged by government officials to pursue the quarry project, which was later "arbitrarily" rejected upon the advice of the federal-provincial environmental assessment panel. The tribunal held that this treatment frustrated the investor's "legitimate expectations." The dissenting tribunal member described the majority's ruling as a "significant intrusion into domestic jurisdiction" that "will create a chill on the operation of environmental review panels." Canada applied to the federal court to set aside the tribunal's award on the merits. On May 2, 2018, the court dismissed Canada's application. In January 2019, the tribunal awarded the claimant US$7 million, plus interest accruing from October 2007. The tribunal declined to award the investors compensation for lost future profits, instead it assessed compensation based on "the lost opportunity" to have a fair environmental impact assessment.
February 5, 2008	**Georgia Basin Holdings L.P.**	Washington State forestry company alleges that Canadian federal and provincial regulations and policies restricting the export of raw (i.e., unprocessed) logs favour log processors in B.C. at the investor's expense, expropriate its investment in B.C. timber lands, and violate minimum standards of treatment. The claimants' allegations are very similar to those at issue in the Merrill & Ring arbitration (see above), in which the tribunal dismissed all the investors' claims.	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)	$5 million	In late 2007 counsel for Merrill & Ring requested that Georgia Basin Holdings be added as a party in the Merrill & Ring arbitration, which had already commenced (see above). On January 31, 2008 the tribunal decided not to allow Georgia Basin Holdings to participate in that arbitration. Claim is inactive.

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
July 11, 2008	**Melvin J. Howard, Centurion Health Corporation**	U.S. investor alleges that its plans to establish private, fee-for-service health clinics in Vancouver, British Columbia and Calgary, Alberta were frustrated by various local, provincial and federal regulatory measures. The investor alleges that federal regulation, in particular the Canada Health Act, which prohibits extra billing for publicly insured medical services, adversely affected its planned investments.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1502 (monopolies and state enterprises) Art. 1503 (state enterprises)	$160 million	Notice of arbitration submitted on January 5, 2009. Revised statement of claim submitted on February 2, 2009. In August 2010 the tribunal terminated the claim on the basis that the investor had not made a deposit required to cover its share of the initial arbitration costs. The claimant was ordered to pay Canada's share of the arbitration costs. But the tribunal ruled that Canada had to pay its own legal costs, which the tribunal deemed excessive.
August 25, 2008	**Dow AgroSciences LLC**	Dow AgroSciences LLC is a wholly owned subsidiary of the U.S.-based multinational corporation, Dow Chemical Company. Dow AgroSciences manufactures 2,4-D, an active ingredient in many commercial herbicides. In 2006 Quebec banned the use of certain chemical pesticides, including 2,4-D, on lawns within the province. Several other provincial and municipal governments are considering or have already enacted similar bans on the use of pesticides for cosmetic lawn care purposes. The constitutional validity of such pesticide bans has been upheld by the Supreme Court of Canada. Dow AgroSciences alleges that the ban is without scientific basis and was imposed without providing a meaningful opportunity for the company to demonstrate that its product is safe. Dow further alleges that the ban is "tantamount to expropriation."	Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	C$2 million+	Notice of arbitration received on March 31, 2009. On May 25, 2011 the parties reached a settlement under which Dow withdrew its claim. In return, the Government of Quebec formally acknowledged that 2,4-D does not pose an "unacceptable risk" to human health. The disputed regulatory measures related to pesticides are maintained and no compensation has been paid to the claimant.
September 16, 2008	**William Jay Greiner and Malbaie River Outfitters Inc.**	The investor, a U.S. citizen, owns and operates an outfitting business including a hunting and fishing lodge in the Gaspé region of Quebec. The investor alleges that conservation measures taken by the Quebec provincial government to reduce the number of salmon fishing licences and to restrict access to certain salmon fishing areas were tantamount to expropriation, discriminated against the investor in favour of Canadian-owned fishing lodges, and violated minimum standards of treatment.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	C$8 million	Notice of arbitration submitted November 2, 2010. Amended notice of arbitration submitted December 2, 2010. The claim was withdrawn by the investors on June 10, 2011.

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
October 14, 2008	**Shiell Family**	U.S. family group of investors alleges that the Canadian courts and various Canadian government agencies treated them improperly during the bankruptcy proceedings of their Canadian firm.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1106 (performance requirements) Article 1109 (transfers) Art 1110 (expropriation and compensation)	$21.3 million	Claim is inactive.
October 17, 2008	**David Bishop**	The investor, a U.S. citizen, owns and operates an outfitting business in Quebec. The investor alleges that conservation measures taken by the Quebec provincial government to reduce the number of salmon fishing licences and to restrict access to certain salmon fishing areas were tantamount to expropriation, discriminated against the investor in favour of Canadian-owned fishing lodges, and violated minimum standards of treatment.	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)	$1 million	Claim is inactive.
April 2, 2009	**Christopher and Nancy Lacich**	U.S. private investors allege that changes in the tax treatment of energy income tax trusts were discriminatory, equivalent to expropriation of their investment in energy income trusts, and violated minimum standards of treatment.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$1,178.14	Arbitration never commenced. Notice of intent withdrawn by investor.

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
April 23, 2009	**AbitibiBowater Inc.**	AbitibiBowater, one of the world's largest pulp and paper firms, was formed in 2007 from the merger of Bowater Inc. of the U.S. and Abitibi Consolidated Inc. of Canada. In 2009 AbitibiBowater filed for bankruptcy protection. In November 2008 AbitibiBowater announced it would close its last pulp and paper mill in Newfoundland and Labrador (NL). The company had operated mills in the province since 1905. In December 2008 the provincial government enacted legislation to return the company's water use and timber rights to the Crown and to expropriate certain AbitibiBowater lands and assets associated with the water and hydroelectricity rights. The NL legislation provided for compensation at fair market value for AbitibiBowater's expropriated assets, but the company spurned that process and launched a NAFTA claim.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$467.5 million	Statement of claim submitted February 25, 2010. In August 2010 the Canadian federal government announced that it had agreed to pay AbitibiBowater C$130 million to settle the claim. The decision to settle without litigating is controversial for several reasons. First, it is the largest NAFTA-related monetary settlement to date. Second, AbitibiBowater was compensated in large part for the loss of water and timber rights on Crown lands, which are generally not considered compensable rights under Canadian law. Finally, while the Canadian federal government stated it would not seek to recover the costs of the settlement from the Newfoundland government in this instance, it said it intended to hold provincial and territorial governments liable for any future NAFTA-related damages paid by the federal government in respect of provincial measures.
January 25, 2010	**Detroit International Bridge Company**	Detroit International Bridge Company is the owner and operator of the Ambassador Bridge between Detroit and Windsor, one of the busiest crossings between Canada and the U.S. The investor objects to Canadian government plans to build a second bridge across the Detroit River. The dispute concerns Canadian federal legislation, the International Bridges and Tunnels Act of 2007, which gives the Government of Canada authority over the construction, operation and ownership of international bridges. The investor asserts that the act violates the Boundary Waters Treaty of 1909 and Canadian commitments to the investor made under the authority of that treaty. Canada contends that the arbitration should be "time-barred" because the investor filed the claim more than three years after learning about the alleged breaches.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$3.5 billion	Notice of arbitration submitted April 29, 2011. Amended notice of arbitration submitted in January 2013. On April 2, 2015 the tribunal, with one arbitrator dissenting, dismissed the claim on jurisdictional grounds. NAFTA Article 1121 requires a disputing investor to waive their right to litigation in the domestic courts of any NAFTA party with respect to the same measure(s) being challenged under NAFTA. The tribunal ruled that the claimant, who continued to pursue a lawsuit against Canada in the U.S. federal courts on the same matter, had failed to meet this waiver requirement. The claimant was ordered to pay a portion of Canada's costs, amounting to C$1,977,000.

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
March 19, 2010	**John R. Andre**	The investor, a Montana-based businessman, operates a hunting lodge on Aboriginal land in the Northwest Territories, one of Canada's northern territories. The investor alleges that conservation measures taken by the territorial government to decrease the number of caribou that can be hunted annually expropriated its investment in the hunting and outfitting lodge. The investor further alleges that the allocation of the quota for caribou and other regulatory measures favoured local and Aboriginal hunters and outfitters over non-residents.	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)	$4 million+	Claim is inactive.
May 13, 2011	**St. Marys VCNA, LLC**	St. Marys VCNA is a U.S.-based cement corporation, which is a subsidiary of the Brazilian-owned Votorantim Group, one of the largest industrial conglomerates in Latin America. St. Marys VCNA alleges that its Canadian subsidiary, St. Marys Cement Inc., was the victim of political interference in its attempt to open a quarry at a site near Hamilton, Ontario. St. Marys Inc. took over the site in 2006 from Lowndes Holdings Corp., which since 2004 had been seeking approval for a quarry on land that was zoned agricultural. However, as early as 2005 local residents began campaigning against the quarry on environmental and social grounds. Due to concerns related to groundwater, and in response to public pressure, the Ontario Ministry for Municipal Affairs and Housing issued a zoning order that prevented the site from being converted from agricultural to extractive industrial use. St. Marys claims the 2010 zoning order was unfair, arbitrary, discriminatory and expropriatory.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$275 million	Notice of arbitration submitted September 14, 2011. Canada attempted to have the claim dismissed pursuant to NAFTA Article 1113 (denial of benefits) on the grounds that St. Marys VCNA was a Brazilian-owned company without substantial U.S. business activities and therefore did not qualify as a U.S. investor. St. Marys challenged this move in an Ontario court, but abandoned the case before the court could rule. The parties reached a settlement on February 28, 2013, which saw St. Marys withdraw the claim in exchange for C$15 million in compensation from the Ontario government.

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
July 6, 2011	**Mesa Power Group, LLC**	Mesa Power Group is a Texas-based energy company owned by billionaire T. Boone Pickens. Mesa controls four wind farm projects in southwestern Ontario. Ontario's 2009 Green Energy Act is intended to boost renewable energy production and create jobs in the green energy sector. The act's feed-in-tariff (FIT) program provides incentives for renewable energy producers. Under the FIT program, projects are ranked to determine priority for government power purchase agreements (PPAs) and access to the transmission grid. The claimant alleges that 2011 changes to the FIT program discriminated against Mesa by favouring other local and international investors, including Korea's Samsung C&T, which secured a PPA. According to the investor, these "sudden and discriminatory" changes cost them access to a number of lucrative contracts. Mesa also alleges that "local content" requirements related to the FIT program are NAFTA-inconsistent performance requirements.	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. 1503 (state enterprises)	C$775 million	Notice of arbitration submitted October 4, 2011. On March 31, 2016 the tribunal, with one arbitrator dissenting, ruled that the FIT program constituted government procurement, which (by reason of NAFTA article 1108(8)) was excluded from challenge under NAFTA Articles 1102, 1103 and 1004. Furthermore, the tribunal majority rejected Mesa's complaints that various Ontario government administrative measures breached NAFTA's minimum standard of treatment obligation. The claimant was ordered to pay 30 per cent of Canada's legal costs, amounting to C$2,948,701.
January 26, 2012	**Mercer International Inc.**	Mercer International is a U.S. investor which, through its Canadian subsidiary, owns and operates a pulp mill and biomass cogeneration facility in Castlegar, British Columbia. The mill is both a consumer and producer of electricity. B.C. Utilities Commission (BCUC) regulations prevent mills that benefit from low-cost, subsidized power from reselling an equivalent amount of self-generated power to BC Hydro, a provincial public utility, at higher commercial rates. The company alleges that it has been disadvantaged vis-a-vis other mills in the province with self-generating capabilities. Mercer also claims that it has been denied "direct subsidies, low-interest loans or other financial incentives" available to its competitors.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1502(3) (monopolies and state enterprises) Art. 1503(2) (state enterprises)	C$232 million	Notice of arbitration submitted April 30, 2012. On March 6, 2018, the tribunal dismissed Mercer's claim. The tribunal ruled that it lacked jurisdiction to hear several of Mercer's allegations because they were time-barred or excluded by NAFTA's national treatment exemption for government procurement. The tribunal also dismissed, with one arbitrator dissenting, the company's argument that it had been discriminated against. The tribunal awarded costs to Canada of C$9.15 million. On December 10, 2018, the tribunal dismissed Mercer's request for a supplementary decision.

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
October 17, 2012	**Windstream Energy, LLC**	Windstream Energy is a U.S.-based wind power company, which in 2008 proposed an offshore wind farm in Lake Ontario: Windstream Wolfe Island Shoals Inc (WWIS). In 2009 Windstream signed a 20-year feed-in-tariff (FIT) contract with a provincial government regulatory body, the Ontario Power Authority, for the purchase of renewable energy. The FIT contract was expressly subject to WWIS receiving all the regulatory and environmental approvals required to proceed with the project. In February 2011 the Government of Ontario announced a moratorium on freshwater offshore wind development on the grounds that further scientific research was needed into the impacts. Windstream claims that the moratorium is discriminatory and tantamount to expropriation. Although other firms were also affected by the moratorium, Windstream claims it was discriminated against because it was the only offshore wind developer with a FIT contract.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	C$475 million	Notice of arbitration submitted January 28, 2013. On Sept. 16, 2017 the tribunal dismissed the investor's claims related to national treatment, most-favoured-nation treatment and expropriation. But it ruled that certain Ontario government actions had breached NAFTA's minimum standard of treatment provision. In particular, the tribunal ruled that the Ontario government had not undertaken sufficient scientific studies to resolve the uncertainly around the environmental safety of offshore wind power. Those studies that were conducted did not lead to any regulatory changes either allowing offshore wind projects to proceed or to a permanent ban. The claimant was thus left, according to the tribunal, in a state of "regulatory limbo." Canada was ordered to pay the investor C$25,182,900 in damages and C$2,912,432 in legal costs. The Ontario government paid the award, plus interest, in March 2017.
November 7, 2012	**Eli Lilly and Company**	Eli Lilly is a U.S.-based multinational pharmaceutical company that produces and markets the drugs Zyprexa (olanzapine) and Strattera (atomoxetine), among others. Zyprexa was first patented in Canada in 1980, but Eli Lilly received a patent extension in 1991 on the grounds that it had found new uses for the drug not covered by the original patent. In 2009, however, the Canadian Federal Court invalidated the patent extension because the drug had not delivered the promised utility. Olanzapine was subsequently made available to generic competition. Eli Lilly's 1996 patent for Strattera was invalidated on similar grounds in 2010. Eli Lilly is contesting the invalidation of its patents and the Canadian courts' application of the "utility standard," which stipulates that an innovation must be useful to merit patent protection. Eli Lilly claims that the Canadian courts' decisions denied it minimum standards of treatment under international law and constituted expropriation without compensation.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	C$500 million	First notice of intent subsequently withdrawn. Second notice of intent submitted June 13, 2013. Notice of arbitration submitted September 12, 2013. In its March 17, 2017 final award the tribunal dismissed Eli Lilly's claims. The tribunal unanimously dismissed the investor's claims on minimum standards of treatment and expropriation. The tribunal agreed with Canada that judicial decisions should be accorded a high degree of deference. But its reasoning left the door partly open to future NAFTA arbitral review of court decisions, even those that do not violate a gross denial of justice standard. The tribunal ordered the claimant to pay 75 per cent of Canada's legal costs and Canada's share of the arbitration costs, totalling approximately C$4,800,000.

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
November 8, 2012	**Lone Pine Resources Inc.**	Lone Pine Resources is a Calgary-based oil and gas developer. Between 2006 and 2011, Lone Pine acquired an exploration permit covering 11,600 hectares under the St. Lawrence River, with the intention of mining for shale gas. Hydraulic fracturing (or fracking) is highly controversial in Quebec and elsewhere. In 2011, after extensive public and legislative debate, the Government of Quebec passed Bill 18, an Act to Limit Oil and Gas Activities. The legislation revoked all permits for oil and gas development under the St. Lawrence River and prohibited further exploration by resource companies. The law was enacted in response to findings of an environmental study on hydrocarbon development in the area, which concluded that the river basin environment is not conducive to hydraulic fracturing. Lone Pine, which is suing the Government of Canada through its U.S. affiliate, claims that it was not meaningfully consulted regarding Bill 18 or compensated for the revoked permit and loss of potential revenue.	Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$119 million	Notice of arbitration submitted September 6, 2013. The tribunal hearing on the merits was held in Toronto in November 2017. Following the death of one of the tribunal members, the tribunal was reconstituted with a new chair in September 2020. The tribunal process continues.
February 14, 2014	**J. M. Longyear, LLC**	U.S. investors in a forestry company that owns and operates a 63,000-acre woodlot in Ontario assert that the enterprise was improperly denied provincial tax incentives for sustainable forestry management.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment)	C$12 million	Notice of arbitration submitted May 20, 2014. On June 26, 2015 the investor formally withdrew its claim.
October 16, 2014	**Mobil Investments Canada, Inc. (II)**	Mobil Investments is the U.S.-based holding company for the ExxonMobil group's investments in Canada, and a partner in the Hibernia and Terra Nova oil and gas fields off the coast of Newfoundland and Labrador. In 2012, a NAFTA tribunal (see above) ruled that Canadian guidelines stipulating that energy companies active in the offshore invest a certain percentage of their revenue in research and development within Newfoundland and Labrador are NAFTA-inconsistent performance requirements. Since the R&D guidelines remain in effect, Mobil is seeking ongoing damages for the period 2012 to 2014.	Art. 1105 (minimum standard of treatment) Art. 1106 (performance requirements)	C$20 million	Notice of arbitration submitted January 16, 2015. After rejecting Canada's jurisdiction and admissibility arguments in June 2018, the tribunal proceeded to determine the amount of ongoing damages owed by Canada to the claimant. In January 2020, the parties announced a settlement. Under its terms, Canada will give ExxonMobil $C35 million (in the form of a credit) to indemnify it for the costs of complying with the research and development guidelines from 2012 until the end of the Hibernia and Terra Nova projects.

CLAIMS AGAINST CANADA					
Date Complaint Filed[1]	**Complaining Investor**	**Issue**	**NAFTA Articles Cited**	**Amount Claimed ($US)**[2]	**Status**
October 16, 2014	**Murphy Oil Corporation (II)**	Murphy Oil Corporation is a U.S. oil and gas company active in the Newfoundland offshore. A NAFTA tribunal (see above) found that Canadian guidelines stipulating that energy companies active in the offshore invest in research and development within Newfoundland and Labrador are NAFTA-inconsistent performance requirements. Since the R&D guidelines remain in effect, Murphy is seeking ongoing damages for the period 2012 to 2014.	Art. 1105 (minimum standard of treatment) Art. 1106 (performance requirements)	C$5 million	Notice of arbitration submitted January 16, 2015. Settled, on undisclosed terms.
September 1, 2015	**CEN Biotech Inc.**	U.S. investors in a planned medical marijuana production facility in Ontario allege that Canada breached NAFTA's non-discrimination and minimum-standard-of-treatment provisions when Health Canada denied the facility a licence. The company has been the object of numerous allegations of public misrepresentation and insider trading.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment)	$4.8 billion	Arbitration never commenced. Notice of intent withdrawn by investor.
September 30, 2015	**Resolute Forest Products Inc.**	Resolute (formerly AbitibiBowater) owns several paper mills in Quebec that produce "supercalendered" paper used for magazines and brochures. Resolute alleges that provincial government financial assistance to a competing mill in Nova Scotia discriminated against Resolute, resulted in unfair competition and provoked U.S. trade remedy action, which ultimately led to the forced closure of one of Resolute's Quebec mills.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$70 million+	Notice of arbitration submitted December 30, 2015. The tribunal held jurisdictional hearings in August 2017. In a January 30, 2018 decision the tribunal upheld jurisdiction over most of Resolute's claims. Hearings on the merits were held in November 2020. The tribunal process continues.
March 2, 2017	**Tennant Energy, LLC**	U.S.-owned energy company alleges that it was treated unfairly by Ontario authorities administering the province's feed-in-tariff program.	Art. 1105 (minimum standard of treatment)	C$116 million+	Notice of arbitration submitted on June 1, 2017. In a February 2020 procedural order, the tribunal rejected Canada's request for security of costs (i.e. for the claimant to deposit a sum of money with the tribunal to cover any future order to pay Canada's legal costs.) The tribunal also ordered the claimant to disclose (confidentially), the source and amount of any third-party funding it was receiving. The tribunal process continues.

CLAIMS AGAINST CANADA

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)[2]	Status
November 14, 2017	**Omnitrax Enterprises Inc.**	U.S. railway company that owns the only rail line to the port of Churchill, Manitoba alleges that the 2012 dismantling of the Canadian Wheat Board (CWB) damaged the company's main line of business (transporting Western grain for export). It also alleges that the Manitoba government's decision not to approve the company's proposals to transport oil by rail for export from Churchill further undermined its investment.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	C$150 million	In August 2018, Omnitrax sold the railway to a consortium of local investors. As part of a broad legal settlement, the company agreed to drop its NAFTA claim while the government of Canada agreed to end its domestic legal action against the company for failing to keep the line operational.
October 10, 2018	**Theodore Einarsson, Harold Einarsson, and Russel Einarsson**	The claimants are investors in Geophysical Service Incorporated (GSI), a company that gathers and licenses seismic data for use in oil and gas exploration in the Canadian offshore. Under Canadian law, the seismic data can be kept confidential for a period of five years, after which it is made publicly available. GSI argues, among other things, that the period of protection should be defined by international copyright law (life of the author, plus 75 years). GSI lost a domestic court case alleging copyright infringement. The decision by an Alberta court was upheld on appeal, and GSI was denied leave to appeal to the Supreme Court. Vannin Capital is a third-party funder in the arbitration, providing financing in return for a share of any proceeds.	Art. 1105 (minimum standard of treatment) Art. 1106 (performance requirements) Art. 1110 (expropriation and compensation)	$2.529 million+	Notice of intent submitted on October 10, 2018. Notice of arbitration submitted April 18, 2019. The tribunal process continues.
November 19, 2018	**Westmoreland Mining Holdings LLC (formerly Westmoreland Coal Company)**	The claimant is a US mining company with a subsidiary in Alberta. In 2016 it acquired Westmoreland Coal Company, which had declared bankruptcy. Westmoreland Mining Holdings alleges that Alberta's 2015 Climate Plan, which ordered the phase-out of electricity from coal-fired plants, adversely affected its coal-mining operations in the province. Furthermore, it alleges that transition payments made to certain Canadian firms (which, unlike the claimant, were involved in both mining and electricity production) discriminated against Westmoreland on the basis of its nationality and treated it unfairly, in violation of NAFTA's minimum standards of treatment obligation.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment)	C$470 million+	First notice of arbitration submitted on November 19, 2018. Westmoreland Coal Company withdrew the first notice of arbitration on July 23, 2019. A second notice of arbitration and statement of claim were filed by a related entity, Westmoreland Mining Holdings LLC, on on August 12, 2019. In an October 2020 procedural ruling, the tribunal agreed to consider certain of Canada's jurisdictional objections to the claim (those that relate to whether the claim was made within the prescribed time limits) before the arbitration turns to arguments on the merits. The tribunal process continues.

CLAIMS AGAINST CANADA					
Date Complaint Filed[1]	**Complaining Investor**	**Issue**	**NAFTA Articles Cited**	**Amount Claimed ($US)**[2]	**Status**
December 17, 2020	**Koch Industries and Koch Supply & Trading v. Canada**	The claimant is a U.S. conglomerate controlled by the Koch Brothers, who are notorious funders of libertarian causes and of groups denying climate change. The dispute is reportedly related to the 2018 cancellation by the Ontario's newly elected Conservative government of the province's participation in a cap-and trade emissions trading program. Koch Supply & Trading reportedly purchased $30 million in emission allowances. But the company was denied compensation by the Ontario government because it was a market, not an industry, participant in the emissions trading scheme.	Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	Not available	Notice of intent submitted on December 17, 2020. This is the first known "legacy claim" against Canada since the entry into force of CUSMA on July 1, 2019. While CUSMA eliminated ISDS between Canada and the U.S., it allows foreign investors to make claims for existing investments for a three-year period (until July 1, 2022). No documents related to the case are publicly available yet.

CLAIMS AGAINST THE UNITED STATES

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
October 30, 1998	**The Loewen Group, Inc. and Raymond Loewen**	Loewen, a Canadian funeral home operator, challenges a civil case verdict by a jury in a Mississippi state court that awarded $500 million in compensation against it. Loewen also alleges that bond requirements for leave to appeal were excessive.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$725 million	Although the tribunal agreed that there had been a "miscarriage of justice" against Loewen, it ruled that the claimant had not fully exhausted the remedies available to it to correct this injustice through the U.S. court system. The tribunal held that in disputes involving the administration of justice, the exhaustion of local remedies was required to establish a breach of minimum standards of treatment. Ultimately, in June 2003 the tribunal determined that it "lacked jurisdiction" to determine the investor's claims and dismissed them. During the arbitration proceedings the Loewen Group went bankrupt and its assets were reorganized as a U.S. corporation. It assigned its NAFTA claims to a newly created Canadian corporation owned and controlled by the U.S. corporation. The panel ruled that this entity was not a genuine foreign investor capable of pursuing the NAFTA claim. On October 31, 2005 a U.S. court denied Raymond Loewen's petition to vacate the tribunal's award.
May 6, 1999	**Mondev International Ltd.**	The investor is a Canadian real estate developer that had a contract dispute with the Boston Redevelopment Authority, a municipal government body. The investor alleges that a Massachusetts state law immunizing local governments from tort liability and a subsequent Massachusetts Supreme court ruling upholding that law violate minimum standards of treatment under international law and other NAFTA obligations.	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. The tribunal ruled that Mondev's claims were time-barred because the underlying dispute pre-dated NAFTA.
July 2, 1999	**Methanex Corp.**	Methanex is a Canadian manufacturer and distributor of methanol, an ingredient in the gasoline additive MTBE. The investor alleges that California's 2002 phase-out of MTBE, which has contaminated ground and surface water throughout California, expropriated its investment and denied it minimum standards of treatment under international law.	Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$970 million	On August 3, 2005 the tribunal rejected the investor's claims on the merits. It also dismissed the case on jurisdictional grounds, finding no "legally significant connection" between California's regulatory measures and Methanex's purported investment. The tribunal ordered Methanex to pay the U.S. government's legal costs of approximately $3 million and the full cost of the arbitration.

CLAIMS AGAINST THE UNITED STATES

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
February 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 NAFTA Article 1108.
November 5, 2001	**Canfor Corp.**	Canadian lumber company challenges U.S. antidumping and countervailing duties against Canadian softwood lumber exports. The investor also challenges aspects of the Byrd Amendment authorizing the payment of countervailing and antidumping duties collected on Canadian softwood lumber imports to U.S. softwood lumber producers.	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 submitted on July 9, 2002. On September 7, 2005, at the request of the U.S. government, the Canfor, Terminal, and Kembec claims were consolidated into a single arbitration. On June 6, 2006 the tribunal ruled that it had no jurisdiction on claims concerning U.S. antidumping and countervailing duty law, but that it does have jurisdiction to decide claims concerning the Byrd Amendment. Canfor withdrew its claim as a condition of the October 2006 Softwood Lumber Agreement between the governments of Canada and the U.S.
January 14, 2002	**Kenex Ltd.**	Canadian manufacturer of industrial hemp products challenges seizure of industrial hemp products under U.S. Drug Enforcement Agency (DEA) 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 submitted on August 2, 2002. In February 2004, a U.S. court granted a petition by Kenex and others to prohibit enforcement of DEA rules barring non-psychoactive hemp products. Claim is inactive.
March 15, 2002	**James Russell Baird**	Canadian investor challenges U.S. 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	Claim is inactive.

CLAIMS AGAINST THE UNITED STATES

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
May 1, 2002	**Doman Inc.**	Canadian lumber company challenges U.S. antidumping and countervailing duties against Canadian softwood lumber exports. The investor also challenges aspects of the Byrd Amendment authorizing the payment of countervailing and anti-dumping duties collected on Canadian softwood lumber imports to U.S. softwood lumber producers.	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	Claim is inactive.
May 3, 2002	**Tembec Inc.**	Canadian lumber company challenges U.S. antidumping and countervailing duties against Canadian softwood lumber exports. The investor also challenges aspects of the Byrd Amendment authorizing the payment of countervailing and antidumping duties collected on Canadian softwood lumber imports to U.S. softwood lumber producers.	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 submitted on December 3, 2004. At the request of the U.S. government, the Canfor, Terminal, and Kembec claims were consolidated into a single arbitration. In December 2005 Tembec withdrew its claim. It then unsuccessfully challenged the consolidation order in the U.S. courts. In July 2007, after a lengthy process, the tribunal awarded costs of the proceedings to the U.S. government, requiring a $271,000 payment by Tembec.
September 9, 2002	**Paget et al. & 800438 Ontario Limited**	An Ontario numbered company operated three subsidiaries in Florida that sold or leased bingo halls. Between 1994 and 1995 the state of Florida accused it of violating the Racketeer Influenced and Corrupt Organizations Act and subjected it to a tax audit. As a result, the State of Florida seized the company's property. Ontario Ltd. claims that the state improperly refused to return its property and destroyed its financial records.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$38 million	Claim is inactive.
June 12, 2003	**Terminal Forest Products Ltd.**	Canadian lumber company challenges U.S. antidumping and countervailing duties against Canadian softwood lumber exports. The investor also challenges aspects of the Byrd Amendment authorizing the payment of countervailing and antidumping duties collected on Canadian softwood lumber imports to U.S. softwood lumber producers.	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 submitted on March 31, 2004. At the request of the U.S. government, the Canfor, Terminal, and Kembec claims were consolidated into a single arbitration. On June 6, 2006 the tribunal ruled that it has no jurisdiction on claims concerning U.S. antidumping and countervailing duty law, but that it does have jurisdiction to decide claims concerning the Byrd Amendment. Terminal Forest Products withdrew its claim as a condition of the October 2006 Softwood Lumber Agreement between the governments of Canada and the U.S.

CLAIMS AGAINST THE UNITED STATES

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
July 21, 2003	**Glamis Gold Ltd.**	Canadian mining company alleges that regulations intended to limit the environmental impacts of open-pit mining and to protect Indigenous peoples' religious sites made its proposed gold mine in California unprofitable, thereby expropriating its investment and denying it "fair and equitable" treatment as required under NAFTA Article 1105.	Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$50 million+	Notice of arbitration submitted on December 9, 2003. On June 8, 2009 the tribunal issued its award, dismissing Glamis's claims. The tribunal found that the economic impact of the environmental regulations on the company's investment was not substantial enough to be deemed an expropriation. It also rejected the investor's claim that a range of state and federal government measures related to the mining project violated minimum standards of treatment. The tribunal ordered the company to pay two-thirds of the costs of the proceeding.
September 15, 2003	**Grand River Enterprises Six Nations, Ltd., et al.**	Canadian Indigenous-owned manufacturer of tobacco products based in Ontario and a Canadian Indigenous-owned tobacco wholesaler operating in the United States allege that their 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)	$310 million+	Notice of arbitration submitted on March 12, 2004. In January 2011, after protracted and fiercely contested proceedings, the tribunal dismissed the manufacturer's claim on jurisdictional grounds and dismissed the wholesaler's claim on its merits. The tribunal ruled that the costs of arbitration be split equally between the parties.
August 12, 2004	**Canadian Cattlemen for Fair Trade**	Canadian cattle producers challenge the U.S. ban on imports of Canadian live cattle following the discovery in 2003 of a cow infected with bovine spongiform encephalopathy (BSE) from an Alberta herd.	Art. 1102 (national treatment)	$235 million+	First notice of arbitration submitted on March 16, 2005. Approximately 100 claims were consolidated into a single arbitration. In January 2008 the tribunal dismissed the claims on jurisdictional grounds. It ruled that the Canadian cattle producers did not have standing to bring the claim because they "do not seek to make, are not making and have not made any investments in the territory of the U.S."

CLAIMS AGAINST THE UNITED STATES

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
April 16, 2007	**Domtar Inc.**	Domtar Inc. is a large North American pulp and paper company with headquarters in Montreal, Quebec. Domtar alleges that the collection of U.S. antidumping and countervailing duties against Canadian softwood lumber exports was unlawful under U.S. law and inconsistent with the NAFTA obligations of the U.S. government. Furthermore, the investor challenges aspects of the Byrd Amendment authorizing the payment of countervailing and antidumping duties collected on Canadian softwood lumber imports to U.S. softwood lumber producers. The investor also contests aspects of the 2006 Softwood Lumber Agreement between Canada and the U.S. It asserts that these measures discriminated against Domtar, denied it minimum standards of treatment under international law, and prevented the timely transfer of profits from Domtar's U.S. operations.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1104 (standard of treatment) Art. 1105 (minimum standard of treatment) Art. 1109 (transfers)	$200 million+	Notice of arbitration and statement of claim submitted on April 16, 2007. Claim is inactive.
September 21, 2007	**Apotex Inc. (I)**	Apotex Inc. is a Canadian pharmaceutical company that develops and manufactures generic drugs. In 2003 Apotex sought U.S. Food and Drug Administration approval to develop a generic version (sertraline) of Pfizer Inc.'s anti-depressant medication Zoloft once Pfizer's patent expired in 2006. Apotex later went to court to attempt to dispel uncertainty regarding the status of patents on Zoloft, thereby avoiding the possibility of a patent infringement lawsuit by Pfizer. The U.S. courts dismissed Apotex's suit for a declaratory judgment clarifying the patent situation. Meanwhile, a competing generic drug manufacturer was able to develop and market its own generic version of Zoloft, thereby allegedly causing further harm to Apotex. Apotex alleges that the U.S. court judgments discriminated against it, denied it minimum standard of treatment, and expropriated its investment in sertraline.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$8 million	Notice of arbitration submitted on December 10, 2008. Preliminary hearing held in February 2012. On June 14, 2013 the tribunal dismissed both the sertraline and pravastatin (see below) claims on jurisdictional grounds, ruling that Apotex did not have investments in the U.S. that qualified for protection under NAFTA Chapter 11. Apotex was ordered to pay the legal costs of the U.S. government ($526,000) and the costs of the proceedings.

CLAIMS AGAINST THE UNITED STATES

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
April 2, 2009	**CANACAR**	CANACAR is the association representing Mexican independent truckers. The Mexican truckers assert that the U.S. has violated its NAFTA obligations by not permitting the truckers to enter the U.S. to provide cross-border trucking services and barring them from investing in U.S. enterprises that provide cross-border trucking services. They further allege that the U.S. has violated minimum standards of treatment by refusing to comply with a 2001 NAFTA government-to-government panel ruling.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment)	$2 billion annually	Notice of arbitration submitted on April 2, 2009. In 2011 the Mexican and U.S. governments agreed to a three-year memorandum that allowed Mexican trucks into the U.S under certain conditions. In exchange, Mexico eliminated $2.3 billion worth of tariffs on U.S. goods. Claim is inactive.
June 4, 2009	**Apotex Inc. (II)**	Apotex Inc. is a Canadian pharmaceutical company that develops and manufactures generic drugs. Apotex sought U.S. Food and Drug Administration (FDA) approval to develop a generic version (pravastatin) of the heart medication marketed by Bristol Myers Squibb (BSM) under the brand name Pravachol once BSM's patent expired in 2006. Apotex subsequently became involved in court disputes over delays in the development of its product due to data exclusivity rights claimed by competing manufacturers of generic pravastatin. Apotex alleges that certain U.S. court judgments and FDA decisions discriminated against it, denied it minimum standard of treatment and expropriated its investment in pravastatin.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$8 million	Notice of arbitration submitted on June 4, 2009. Preliminary hearing held in February 2012. On June 14, 2013 the tribunal dismissed both the sertraline (see above) and pravastatin claims on jurisdictional grounds, ruling that Apotex did not have investments in the U.S. that qualified for protection under NAFTA Chapter 11. Apotex was ordered to pay the legal costs of the U.S. government ($526,000) and the costs of the proceedings.
September 2009	**Cemex**	Cemex, a Mexican corporation, is one of the world's largest cement manufacturers. It is embroiled in a dispute with the state government of Texas over royalty fees on quarrying. The NAFTA claim is an attempt by Cemex to protect itself against potential losses in the Texan courts.	Not available	Not available	Notice of intent reportedly submitted in September 2009. Claim is inactive.

CLAIMS AGAINST THE UNITED STATES

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
November 23, 2011	**Apotex Holdings Inc. and Apotex Inc.**	Apotex Holdings Inc. is a Canadian investor that owns and controls Apotex Inc., a Canadian pharmaceutical company specializing in generic drugs, and Apotex Corp., which distributes these drugs in the U.S. Following an inspection of Apotex's Canadian manufacturing facilities in 2009, the U.S. Food and Drug Administration (FDA) discovered deficiencies and issued an import alert on drugs produced in Apotex's Signet and Etobicoke facilities. The alert, which was in place from August 2009 to July 2011, prevented Apotex's U.S. distributor from importing the majority of its products from Canada. Apotex claims that the import alert "decimated" its American business resulting in "hundreds of millions of dollars" in lost sales. Apotex claims that similar measures were not taken by the FDA against Apotex's competitors and therefore the measures were discriminatory and violated minimum standards of treatment.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment)	$520 million (reported)	Notice of arbitration submitted March 6, 2012. On August 25, 2014 the tribunal dismissed all claims. By a 2-1 majority, the tribunal ruled that it lacked jurisdiction over certain claims because Apotex was barred from revisiting the issue of whether Apotex Inc.'s "abbreviated new drug applications" constituted NAFTA-protected "investments." A previous NAFTA tribunal had ruled against Apotex on this matter (see cases above). On the remaining claims, the tribunal unanimously concluded that the import alert was a "lawful and appropriate" exercise of the FDA's regulatory authority. The tribunal ordered Apotex to pay the U.S. government's legal costs and three-quarters of the costs of the arbitration.
March 29, 2013	**Stanford Financial Group**	A group of investors from 12 different countries filed claims under five different investment treaties, including NAFTA chapter 11. They allege that U.S. authorities failed to promptly shut down a long-running Ponzi scheme operated by a U.S. businessman, Allen Stanford. In 2012, Mr. Stanford was convicted of fraud and sentenced to prison. But the investors argue that the authorities failed to act sooner because his victims were not U.S. citizens.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1104 (treatment no less favourable) Art. 1105 (minimum standard of treatment) Art. 1110 (Expropriation)	$512 million	Arbitration never commenced, although the investors have also pursued UNCITRAL proceedings under other bilateral investment treaties. NAFTA claim is inactive.

CLAIMS AGAINST THE UNITED STATES

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
January 6, 2016	**TransCanada Corp. & TransCanada Pipelines Ltd.**	Canadian energy company and its affiliate allege that the delay and eventual rejection by the Obama administration of the Keystone XL pipeline discriminated against the company, denied it fair and equitable treatment, and expropriated its investment. The Keystone XL pipeline is a planned 1,900-km pipeline to carry bitumen from the Alberta tar sands to refineries in the southern U.S. After the Trump administration approved the controversial project, the investor and the U.S. government agreed to discontinue the NAFTA claim. In January 2021, the newly elected Biden administration issued an executive order blocking the project, leading to the possibility of a renewed NAFTA challenge.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$15 billion	Notice of arbitration submitted June 24, 2016. On March 24, 2017, at the request of the parties, the ICSID Secretary-General formally discontinued the arbitral proceeding. Alberta premier Jason Kenny, whose government has a $C1.5 billion ownership stake in the pipeline project, stated that "there would be a solid case under free-trade agreements in North America to seek damages should a presidential veto effectively kill the project."
Not available	**Northern Dynasty Minerals**	Northern Dynasty is a Canadian mining company whose wholly owned subsidiary Pebble Limited Partnership was, in late 2020, denied necessary federal permits under the U.S. Clean Water Act for a large copper and gold mine in Alaska. In 2014, the Obama administration had also refused permits for the controversial project due to threats posed to sockeye salmon habitat. Subsequently, in 2016, the Canadian investor threatened a NAFTA chapter 11 case. Reportedly, after now being blocked a second time, the firm is considering bringing a legacy investor-state claim against the U.S. government.	Not available	Not available	No notice of intent is available. According to a November 2020 press release, the Claimant plans on first appealing the decision by U.S. Army Corps of Engineers to deny the permits.

CLAIMS AGAINST MEXICO

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
April 21, 1995	**Amtrade International**	U.S. company claims it was discriminated against by a Mexican company while attempting to bid for pieces of property, in violation of a pre-existing settlement agreement.	Not available	$20 million	Arbitration never commenced.
August 1995	**Halchette Corp.**	U.S./Canadian company files notice of intent against Mexico in dispute over airport concession.	Not available	Not available	Notice of intent has not been made public. Arbitration never commenced.
October 2, 1996	**Metalclad Corp.**	U.S. waste management company alleges unfair treatment after a Mexican local government consistently refuses it a permit to construct and operate a hazardous waste treatment facility and landfill in La Pedrera, San Luis Potosi. Subsequently, several federal permits related to the project were issued and construction proceeded, even though no municipal permit had been obtained by the company and in the face of a municipal "stop work" order. Ultimately, the state government intervened to create an ecological preserve in the area where the facility and site were to be located, effectively ending the project. The investor alleges that these measures were tantamount to expropriation.	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) Art. 1111 (special formalities and information requirements)	$90 million	In August 2000 the tribunal ruled that Mexico's failure to grant the investor a municipal permit and the state decree declaring the area an ecological zone were "tantamount to expropriation" without compensation and breached the minimum standard of treatment in NAFTA Article 1105. Mexico was ordered to pay $16.7 million in compensation, plus interest. Mexico applied for statutory review of the tribunal award before the B.C. Supreme Court (Vancouver was the seat of jurisdiction) on the grounds that the tribunal had exceeded its jurisdiction. In a rare move, the Court set aside the parts of the award dealing with minimum standards of treatment and indirect expropriation, but allowed the part of the tribunal's original award relating to the ecological decree to stand.
November 24, 1996	**Robert Azinian et al. (Desona)**	U.S. waste management company challenges Mexican court ruling revoking its contract for non-performance of waste disposal and management in Naucalpan de Juarez.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$17 million+	Notice of arbitration received on March 10, 1997. On November 1, 1999 the tribunal dismissed the investor's claims. The tribunal rejected the investor's contentions that it had been denied justice by the Mexican courts and that the annulment of the concession was tantamount to expropriation.
February 16, 1998	**Marvin Roy Feldman Karpa (CEMSA)**	U.S. cigarette exporter challenges Mexican government decision not to rebate taxes on its cigarette 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 compensation of $0.9 million plus $1 million in interest. 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's appeal of this decision was rejected by the Ontario Court of Appeal on January 11, 2005.

CLAIMS AGAINST MEXICO

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
February 20, 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 then resubmitted its notice of intent. The tribunal subsequently confirmed its jurisdiction. In April 2004 the tribunal dismissed the investor's claims on their merits. The tribunal observed that a breach of contract did not rise to a breach of NAFTA's investment protections, especially since the claimant had judicial remedies available.
November 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 submitted on October 30, 2001. On July 17, 2006 the tribunal dismissed the investor's claim. A redacted version of the final award became publicly available during 2007. The tribunal determined that, while the investor had been subjected to discriminatory treatment, under the NAFTA financial services chapter rules only claims involving expropriation were open to investor-state challenge. The tribunal ruled that Mexico's treatment of the investor did not rise to the level of expropriation.
November 11, 2000	**Billy Joe Adams et al.**	A group of U.S. property investors disputes a Mexican superior court decision regarding title to real estate investments and related matters. The judicial decision required the return of certain land to its rightful owners, resulting in the eviction of residents of a tourism/housing development, many of whom were US citizens.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$75 million	Notice of arbitration submitted on February 16, 2001. Claim is inactive.
August 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	Claim is inactive.

CLAIMS AGAINST MEXICO

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
October 1, 2001	**GAMI Investments Inc.**	U.S. minority shareholders in a Mexican sugar company claim that their interests were harmed by Mexican government regulatory failures 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	Notice of arbitration submitted on April 9, 2002. On November 15, 2004 the tribunal dismissed the investor's claims in their entirety.
December 12, 2001	**Francis Kenneth Haas**	U.S. investor in a small manufacturing company in the State of Chihuahua alleges unfair treatment by the Mexican courts and authorities in the investor's dispute with local partners in the company.	Art. 1105 (minimum standard of treatment)	$17 million, approximately	Claim is inactive.
January 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	Claim is inactive.
February 12, 2002	**Robert J. Frank**	U.S. investor seeks compensation 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. 1110 (expropriation and compensation)	$1.5 million	Notice of arbitration submitted on August 5, 2002. Claim is inactive.
March 21, 2002	**International Thunderbird Gaming Corp.**	Canadian gaming company disputes 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 submitted on August 1, 2002. On January 26, 2005 the tribunal dismissed the investor's claim. Thunderbird Gaming was ordered to pay Mexico's legal costs of approximately $1.2 million and three-quarters of the cost of the arbitration. On February 14, 2007 a U.S. court rejected Thunderbird Gaming's petition to vacate the NAFTA tribunal's ruling.
January 28, 2003	**Corn Products International**	U.S. company challenges a range of Mexican government measures that allegedly discouraged the import, production, and sale of high-fructose corn syrup (HFCS), including a tax on soft drinks sweetened with high-fructose corn syrup. Mexico argues that it applied the 20% tax to protect its sugar cane industry, which is losing domestic market share to imported HFCS, while facing barriers in selling sugar in U.S. markets.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1106 (performance requirements) Art. 1110 (expropriation and compensation)	$325 million	In January 2008 the tribunal ruled that Mexico had violated NAFTA's national treatment obligation. The tribunal dismissed the investor's claims that the tax was a prohibited performance requirement and tantamount to expropriation. The panel report was not publicly released until April 2009, more than a year after the award was rendered. Mexico was ordered to pay the investor $58.38 million.

CLAIMS AGAINST MEXICO

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
October 14, 2003	**Archer Daniels Midland,** **Tate and Lyle Ingredients**	A large U.S. agribusiness and the U.S. subsidiary of a British multinational company challenge a range of Mexican government measures that allegedly discouraged the import, production and sale of high-fructose corn syrup, including a tax on 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)	$100 million	In November 2007 the tribunal ruled that Mexico had violated NAFTA's national treatment obligation. In contrast to the Corn Products International panel (above) and even though the facts were similar, the ADM tribunal ruled that the tax on HFCS also constituted a prohibited performance requirement. Mexico was ordered to pay the investors $33,510,091, plus interest of approximately $3.5 million.
August 27, 2004	**Bayview Irrigation District, et. al.**	Seventeen Texas irrigation districts claim that the diversion of water from Mexican tributaries of the Rio Grande watershed discriminated against downstream U.S. water users, breached Mexico's commitments under bilateral water-sharing treaties and expropriated water "owned" by U.S. interests.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$554 million	On June 21, 2007 the tribunal dismissed the claim on jurisdictional grounds. The tribunal ruled that the claimants, who were U.S. nationals whose investments were located within the territory of the United States, did not qualify as foreign investors (or investments) entitled to protection under NAFTA's investment chapter, simply because their investments may have been affected by Mexico's actions. Significantly, however, the tribunal concluded that "water rights fall within [NAFTA's] definition of property."
September 30, 2004	**Cargill Inc.**	A large U.S. agribusiness challenges a range of Mexican government measures that allegedly discouraged the import, production and sale of high-fructose corn syrup, including a tax on 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)	$100 million+	Notice of arbitration submitted on December 29, 2004. The tribunal found against Mexico in an award rendered on September 18, 2009. The redacted award was not publicly released until 18 months later. The tribunal ruled that the Mexican tax on HFCS violated NAFTA's national treatment and constituted an illegal performance requirement. Mexico was ordered to pay the investor $77.3 million plus $13.4 million in interest for a total award of $90.7 million. Mexico initiated a review of the award tribunal's decision in Ontario courts. The court upheld the tribunal's award.
February 15, 2011	**Internacional Vision (INVISA), et al.**	A group of U.S. investors allege a decision not to renew a 10-year agreement to erect billboards on Mexican federal land near a U.S-Mexico border crossing constituted expropriation and abusive treatment.	Art. 1102 (national treatment) Art. 1104 (standard of treatment) Art. 1105 (minimum standards of treatment) Art. 1110 (expropriation and compensation)	$7.5 million	Arbitration never commenced. Claim is inactive.

CLAIMS AGAINST MEXICO					
Date Complaint Filed[1]	**Complaining Investor**	**Issue**	**NAFTA Articles Cited**	**Amount Claimed ($US)**	**Status**
February 19, 2013	**Kellogg, Brown & Root (KBR)**	A U.S. energy services company seeks damages against the government of Mexico related to a 2011 decision by the Mexican courts to annul a $320 million arbitration award issued by the International Chamber of Commerce (ICC) in December of 2009. The original arbitration related to a contract dispute between Pemex, the Mexican state energy company, and COMMISA, a KBR subsidiary.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standards of treatment) Art. 1110 (expropriation and compensation) Art. 1503(2) State enterprises	$400 million+	Notice of arbitration submitted August 30, 2013. On April 30, 2015, in an only recently published award, the tribunal ruled that KBR had failed to waive their right to litigation in other fora with respect to the same measure being challenged through NAFTA (see Detroit International Bridge Co. v. Canada above). In August 2016, KBR was successful in convincing a U.S. court to enforce the original ICC award. The following year, Mexico and KBR reached a settlement involving a reported payment of $435 million to KBR.
May 23, 2014	**B-Mex, et al.**	A group of U.S. gaming investors allege that after parting ways with their Mexican business partner their five Mexican casinos were targeted and harassed by Mexican authorities. In the initial notice of intent only eight investors were identified, but the final grouping included an additional 31 claimants.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$100 million	Notice of intent submitted on May 23, 2014. Notice of arbitration submitted on June 15, 2016. On July 19, 2019 the tribunal majority rejected Mexico's arguments that the claimants not named in the original notice should be disqualified on procedural grounds, and that the notice was faulty in other respects. It asserted its jurisdiction over all the investors' claims, but one. Mexico's appointee to the tribunal dissented, in part, from the majority's jurisdictional ruling. In a rare move, the tribunal ordered Mexico to pay an interim award of $1.4 million to cover part of the claimants' legal costs to date. In July 2020, an Ontario court rejected Mexico's application that the tribunal had exceeded its jurisdiction. Interestingly, both Canada and the U.S intervened in support of Mexico's application. The merits phase of the tribunal process is underway, with a hearing scheduled for November 2021.
August 6, 2015	**Lion Mexico Consolidated (LMC)**	Canadian real estate investment firm disputes the cancellation by Mexican courts of mortgages on three properties which secured loans provided by LMC to Mexican nationals. LMC alleges that its Mexican counterparties forged key legal documents and the Mexican courts have not provided their firm a fair opportunity to dispute this fraud and recover its investments.	Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$223 million	Notification of Arbitration received on December 11, 2015. In August 2018 the tribunal ruled that the short-term, promissory notes issued by Lion Mexico Consolidated do not qualify as investments under NAFTA, but the mortgages held by the investor do qualify. The claim has proceeded to the merits phase on that basis. The tribunal process continues.

CLAIMS AGAINST MEXICO

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
April 21, 2016	**Joshua Dean Nelson**	The claimant is a U.S. investor in a partnership that planned to operate Tele Facil in the Mexican telecommunications market. He alleges that the failure of Mexico's national regulator, the Federal Institute of Telecommunications, to enforce their venture's interconnection agreement with Telmex, Mexico's dominant telecoms provider, irreparably harmed their business and destroyed the value of their investment. The claimant also alleges that the Mexican courts denied Tele Facil justice.	Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$500 million	Notification of Arbitration dated September 26, 2016. On June 5, 2020 the tribunal issued a final award which dismissed the investor's claims in their entirety. Furthermore, the tribunal ordered the claimant to pay the full costs of the arbitration and 80% of Mexico's legal fees, an amount totaling $2,054,199.
February 20, 2017	**Vento Motorcycles, Inc.**	Vento was founded in Mexico but now assembles motorcycles in the U.S. for export to Mexico. Mexican trade authorities ruled that Vento's motorcycles are assembled with mostly foreign components and do not have sufficient North American content to qualify for preferential tariff treatment under NAFTA. Accordingly, Vento's vehicles are now subject to a 30% import duty. The company asserts its competitors in Mexico, whose assembly and component sourcing practices are allegedly similar, do not pay such a duty, resulting in discrimination against Vento.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1104 (standard of treatment) Art. 1105 (minimum standard of treatment)	$658 million to $2.7 billion	On July 6, 2020 the tribunal issued a final award. While rejecting several of the Mexican government's jurisdictional objections, the tribunal ultimately dismissed the investor's claims in their entirety on the merits. The tribunal ruled that Vento's competitors were not in like circumstances, and therefore there was no discriminatory treatment. It also found that the conduct of Mexico's customs officials in denying preferential treatment was reasonable and did not violate minimum standards of treatment. The claimant was ordered to pay 50% of Mexico's legal fees and 60% of the arbitration costs, totalling roughly $982,000.
Jan. 17, 2019	**Sastre and others**	A group of French, Canadian, and Portuguese investors challenge the allegedly illegal seizure in 2016 of three boutique hotels in the city of Tulum. Municipal authorities claim the closure relates to the breach of a lease agreement regarding the property on which the hotels are located. The investors are proceeding jointly under NAFTA chapter 11 and Mexican bilateral investment treaties with Portugal, France and Argentina. Although Mexico objects to this "self-consolidation", the arbitration is being heard by a single tribunal, established under UNCITRAL.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$70 million	Notice of arbitration dated Dec. 19, 2019. The tribunal is currently considering preliminary, jurisdictional objections made by the Mexican government. The tribunal has chosen to rule on these preliminary jurisdictional issues before the arbitration proceeds to the merits of the investors' claim. The tribunal process continues.

CLAIMS AGAINST MEXICO					
Date Complaint Filed[1]	**Complaining Investor**	**Issue**	**NAFTA Articles Cited**	**Amount Claimed ($US)**	**Status**
June 19, 2018	**Alicia Grace and others**	The U.S. claimants are minority shareholders in a Mexican holding company (Oro Negro) that leased drilling rigs to Pemex, the Mexican state-owned oil and gas company. In 2015, amidst declining global oil prices and severe budgetary cuts, Pemex amended the leases, lowering the amounts paid for Oro Negro's drilling services. In 2017, Oro Negro declared bankruptcy, following which Pemex terminated the leases. Ultimately, the company's drilling rigs were seized by its creditors. The claimants allege that this unfavourable treatment was due to Oro Negro's refusal to pay bribes to Mexican government officials.	Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$700 million+	Notice of arbitration submitted June 19, 2018. Statement of claim filed October 7, 2019. Mexico's statement of defence filed June 1, 2020. The tribunal process continues.
September 3, 2018	**Legacy Vulcan**	Legacy Vulcan, a U.S. miner of stone construction material, and its Mexican subsidiary Calizas Industriales de Carmen, acquired a limestone quarry in the Yucatan peninsula in the late 1980s. Over time, they began exporting quarried material to the U.S. through a local deep-water port. The company also became embroiled in disputes over their right to extract from areas under ecological protection, resulting in a 2004 memorandum of understanding with local authorities. The investor charges that the Mexican authorities did not honor the MOU. In 2018, Mexican Environmental Protection Federal Agency suspended one of the investor's mining licenses.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$500 million+	Request for arbitration registered by ICSID on January 3, 2019. On November 23, 2020 Mexico filed a counter-memorial on the merits. The tribunal process continues.

CLAIMS AGAINST MEXICO					
Date Complaint Filed[1]	**Complaining Investor**	**Issue**	**NAFTA Articles Cited**	**Amount Claimed ($US)**	**Status**
January 4, 2019	**Odyssey**	Odyssey, a Florida-based underwater marine exploration company, and its Mexican subsidiary, Exploraciones Oceánicas S. de R.L. de C.V. (ExO), sought permission to dredge phosphorite ore off the coast of Baja California Sur. The company estimates that the 3,000-square kilometer underwater site contains enough reserves of phosphate to supply "the fertilizer needs of North America for the next 100 years or more." In April 2016, the Mexican Ministry of the Environment and of Natural Resources (SERMANAT) rejected the Don Diego mining project due to its environmental impacts, including the risk it would pose to threatened loggerhead turtles. Loggerhead turtles are a long-lived, migratory marine species. Baja California Sur provides critically important habitat for juvenile loggerheads to develop and mature.	Art. 1102 (national treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$3.54 billion	Notice of arbitration filed on April 5, 2019. The membership of the tribunal was finalized on March 3, 2020. The tribunal process continues.
March 5, 2020	**Coeur Mining**	Coeur Mining Inc. is a U.S. firm, registered in Delaware, with gold and silver operations in the Mexican states of Chihuahua and Durango. The investor is embroiled in a legal dispute with the Mexican government over expected refunds of value-added tax (VAT).	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	$45 million	Notice of intent (file March 5, 2020) disclosed by the Mexican Secretaría de Economía. The company referred to the legal dispute over the repayment of VAT in its 2019 annual report. This is one of the first "legacy claims" against Mexico.
May 30, 2019	**Espiritu Santo Holdings**	In 2016, a joint venture formed between Canadian technology companies (ES Holdings and L1bero) and Mexican partners, was awarded a ten-year concession to install and maintain new digital taximeters in all Mexico City taxi cabs. The contract, which was subsequently amended to allow the company to collect fees for every trip, was opposed by many local taxi drivers. The concession was suspended in May 2018, prior to municipal elections in July. The new mayor, who campaigned against the concession, has vowed not to reinstate it. ES Holdings alleges this situation is tantamount to expropriation.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	Not available (redacted)	Notice of intent dated May 30, 2019. Request for arbitration registered by ICSID on May 11, 2020. The Canadian firm's joint venture partners have filed a parallel claim.

CLAIMS AGAINST MEXICO					
Date Complaint Filed[1]	**Complaining Investor**	**Issue**	**NAFTA Articles Cited**	**Amount Claimed ($US)**	**Status**
May 13, 2020	**First Majestic Silver Corp**	First Majestic is a Canadian mining company based in British Columbia with silver mining operations in Mexico. The Mexican tax authorities (SAT) charge that First Majestic's Mexican subsidiary, Primero Empresa Minera, owes about $209.2 million in back taxes. Legal proceedings to recover these back taxes are ongoing in the Mexican courts. The company accuses the Mexican authorities of "excessively harsh enforcement and intimidation", as well as ignoring previous agreements on transfer pricing and double taxation.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1109 (transfers) Art. 1110 (expropriation and compensation)	$500 million	Request for arbitration submitted to ICSID on March 2, 2021. The investor is represented by the Canadian law firm Osler, Hoskin & Harcourt LLP. This is the second known legacy claim against Mexico.
August 11, 2020	**Doups Holdings LLC**	Doups, incorporated in the U.S., holds a direct interest in a Mexican company, Soluciones Pagomet (SP). In March 2018, several months before municipal elections, SP was granted renewable 10-year concessions to install, implement, manage and operate collections systems for vehicle parking in Mexico City. Doups claims that it took "all necessary actions to meet its obligations", including developing the required technology and entering into commercial alliances, to comply with the concessions. SP's proposal for the installation of parking meters required specific approval from the Mexico City Mobility Secreteriat ("SEMOVI"), which was not forthcoming under the new municipal government. When its proposal was left unanswered by SEMOVI, SP alleges that it was forced to suspend its activities. Subsequently, in a public press conference and meeting, SEMOVI formally revoked SP's concessions. Doup argues that the State failed to provide the investor with due process of law, acted discriminatorily and wrongfully expropriated its rights under the concessions.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	Not available (redacted)	Notice of intent filed on August 11, 2020. This is the third known legacy claim against Mexico.

CLAIMS AGAINST MEXICO

Date Complaint Filed[1]	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed ($US)	Status
September 4, 2020	**Sepadeve International LLC**	Sepadeve hold a direct interest in Urbipark, a local company which was granted Revocable Temporary Administrative Permits (PATRs) for the use of public spaces for vehicle parking in Mexico City. In November 2017, the Mexico City Mobility Secreteriat ("SEMOVI") issued a Declaration of Necessity. The Declaration required that all PATRs be replaced mandatorily with concession agreements, to be granted according to new requirements. Urbipark "conditionally resigned" the PATRs, in view of having them converted into concessions. Although the investor argues that Urbipark was "legally entitled" to transition its PATRs into concessions, SEMOVI, under a new municipal government elected in July 2018, did not grant Urbipark concessions. The investor claims that the SEMOVI acted discriminatorily and arbitrarily, frustrating its legitimate expectations to update its PATRs into concessions, so as to recover its investment.	Art. 1102 (national treatment) Art. 1103 (most-favoured-nation treatment) Art. 1105 (minimum standard of treatment) Art. 1110 (expropriation and compensation)	Not available (redacted)	Notice of Intent filed on September 4th, 2020. This is the fourth known legacy claim against Mexico.

Notes
1. Date of first notice of intent, where available.
2. All amounts in US dollars, except where indicated.

Sources Global Affairs Canada (http://www.international.gc.ca), U.S. Department of State (www.state.gov), Mexico's Secretaria de Economia (www.economia-snci.gob.mx), Investment Arbitration Reporter (www.iareporter.com), italaw (https://www.italaw.com), and Public Citizen (www.citizen.org).

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