IN THE MATTER OF A CLAIM UNDER CHAPTER 11, SECTION B OF THE NORTH AMERICAN FREE TRADE AGREEMENT
and
IN THE MATTER OF AN ARBITRATION UNDER UNCITRAL ARBITRATION RULES

B E T W E E N:

UNITED PARCEL SERVICE OF AMERICA, INC.
Claimant

and

GOVERNMENT OF CANADA
Respondent

Rt. Hon. Justice Sir Kenneth Keith, KBE
L. Yves Fortier, CC, QC
Dean Ronald A Cass

RESPONSE BY THE CANADIAN UNION OF POSTAL WORKERS AND THE COUNCIL OF CANADIANS TO THE SUBMISSIONS OF THE DISPUTING INVESTOR AND MEXICO CONCERNING THEIR PETITION TO INTERVENE IN THESE PROCEEDINGS.

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1. With the exception of Mexico's submissions concerning the relevance of its domestic law which we return to below, we believe we have already addressed the substantive points raised by the responses filed by Mexico and the disputing investor either in our initial submissions or in our reply to Canada's submissions.

2. However we note that as was true for Canada's response, neither Mexico nor the disputing investor offer any comment on several of the substantive arguments we made in support of our petition, nor do they refute the authority we offered in support of those submissions.

3. For example, with the exception of Canada's somewhat terse recognition that "there is public interest in Chapter Eleven disputes" none of the parties address the truly unique and unprecedented dimensions of the dispute procedures established by the NAFTA investment disciplines. These embrace a far broader domain of public and private interests that has

historically been the case for international commercial arbitration and strongly suggest the need to provide much greater scope for third party intervention than would be warranted for disputes that are essentially private in character.

> Petition of the Canadian Union of Postal Workers and the Council of Canadians, paragraphs 78 through 89.

4. The parties are also silent on the more fundamental question concerning the role of international law in general, and of international conventions and covenants in particular, as a guide to the interpretation of procedures that are utterly silent on the subject of third party participatory rights. While the Parties and the disputing investor invite the Tribunal to consider some sources of international law, notably municipal law on amicus interventions, and decisions by other dispute bodies convened under the NAFTA or the World Trade Organization, their submissions are silent on other sources of international law which we submit are supportive of the rights the petitioners seek.

> Petition of the Canadian Union of Postal Workers and the Council of Canadians, paragraphs 63-114.

5. Of particular relevance in this regard are the works of qualified publicists and scholars which we refer to, and the international conventions such as the International Covenant of Civil and Political Rights which provides clear support for the protection of the interests that are at risk in consequence of these proceedings.

6. Similarly, on the subject of confidentiality the parties offer no specific response to significant developments in the law that support far greater transparency with respect to the deliberations of arbitral tribunals.

> Petition of the Canadian Union of Postal Workers and the Council of Canadians, paragraph 126.

7. With respect to Mexico's submissions, we believe that Mexican municipal law on the subject of third party rights is only relevant if it reflects general principles of law, international custom or some other source of international law that it is encumbent upon this Tribunal to consider pursuant to Article 1131:1 of the NAFTA. But in this regard it should have no greater weight than the municipal law of Canada or the United States, that recognizes and routinely provides for the participation of third parties in judicial proceedings on terms far less onerous than those which Canada, and the disputing investor propose apply in this case.

8. Finally, we object to the ad hominen comments set out in the disputing investor's submissions. Ignoring evidence of the petitioners' direct and public interests in this dispute and which are described in some detail in our submissions, the disputing investor dismisses the petitioners as "intermeddlers seeking to advance their own political agendas." These comments would be inappropriate in any case, but certainly when

directed at a party, the Council of Canadians, that Mr. Appleton, the disputing investor's counsel, has previously acted for

All of which is respectfully submitted.

Dated at the City of Ottawa, in the Province of Ontario, Canada this 20th day of June, 2001.

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