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

BETWEEN:

S.D. MYERS, INC.

Claimant / Investor

v.

GOVERNMENT OF CANADA

Respondent / Party

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Pursuant to Article 18 of the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) and Articles 1116 and 1120 of the North American Free Trade Agreement (NAFTA), the Claimant hereby submits its Statement of Claim.

A. NAMES AND ADDRESSES OF THE PARTIES

Claimant/ Investor	S.D. MYERS, INC. 180 South Ave. Tallmadge, Ohio 44278
Respondent/ Party	GOVERNMENT OF CANADA Office of the Deputy Attorney General of Canada Justice Building 284 Wellington Street Ottawa, Ontario K1A OH8

B. STATEMENT OF THE FACTS

Procedural History of the Dispute

1. On July 22nd, 1998 S.D. Myers served upon Canada a Notice of Intent to Submit to a Claim to Arbitration[1] ("Notice of Intent"). The Notice of Intent was delivered by the Investor at least 90 days before this Claim was submitted in accordance with Article 1119 of the NAFTA.

2. This Claim has been submitted less than 3 years from the date on which the Investor first acquired, or should have first acquired, knowledge of the breach and knowledge that the Investor had incurred loss or damage, pursuant to Article 1116 of the NAFTA. Pursuant to Article 1120 of the NAFTA, the Investor submits this Claim on the basis that more than six (6) months have elapsed since the events giving rise to the claim.

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1 A copy of which is included as Schedule 2 to this Claim.

3. On October 30, 1998, the Investor and its joint venture partner filed their consents and waivers to the extent required by NAFTA Article 1121(1) with the submission of this Claim.[2]

4. S.D. Myers wrote to the Government of Canada on July 22, 1998 requesting a meeting in an attempt to settle the claim through consultation or negotiation pursuant to Article 1118 of the NAFTA.[3] Canada replied on July 27, 1998 agreeing to contact the Investor in early September to arrange the meeting.[4] No further contact was made between the parties until the Investor re-initiated contact with Canada on September 23, 1998.[5] From that date onwards the parties exchanged numerous letters[6] in an attempt to agree upon a time and place for the consultation meeting. Despite the repeated attempts of the Investor to hold a consultation at a mutually acceptable forum and time, the disputing parties were unable to agree to a consultation prior to the submission of this Claim.

5. The Investor submits that it has fulfilled its obligations under Article 1118 of the NAFTA and that the Government of Canada has waived any right to call for further and subsequent discussions.

Jurisdiction of this Tribunal

6. The Investor's claim is within the jurisdiction of this Tribunal. The Investor's claim meets the requirements set out in Section B of Chapter 11 of the NAFTA, including the application of the UNCITRAL Arbitration Rules as applicable, for seeking compensation from an Investor-State Dispute Settlement Tribunal for any harm caused by the breach of a Party's obligations under Section A of Chapter 11.

7. Sections A and B of NAFTA Chapter 11 contain the contract between the disputing parties and the arbitration agreement between them. Pursuant to paragraph 1 of Article 18 of the UNCITRAL Arbitration rules, a copy of this NAFTA Chapter is annexed to this

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2 A copy of which is included as Schedule 3 to this Claim.

3 A copy of which is included in Schedule 5 to this Claim.

4 A copy of which is included in Schedule 5 to this Claim.

5 A copy of which is included in Schedule 5 to this Claim.

6 See copies included in Schedule 5 to this Claim.

Statement of Claim[7]

8. To bring a claim, a claimant must be an investor of a Party. The Investor, S.D. Myers, Inc., is a corporation incorporated in the State of Ohio in the United States of America. The operations of the Investor in Canada alone and jointly with S.D. Myers (Canada) Inc. constitute an "investment" as defined by NAFTA Article 1139.

9. Canada's measures to close the border for companies exporting PCB wastes were measures relating to the investments of Investors of another NAFTA Party and to the Investors of another NAFTA Party.

10. Section A of Chapter 11 of the NAFTA sets out the obligations of NAFTA Parties to provide a certain standard of treatment to the investors of another Party. Section A includes the obligation to grant national treatment to investors,[8] to meet minimum standards of treatment[9], not to impose performance requirements[10] and to pay the fair market value in the case of expropriation or a measure tantamount to expropriation without delay.[11] The Investor, S.D. Myers, Inc. has alleged that Canadian government measures breached these Section A obligations in its Notice of Intent to Submit a Claim and in this Statement of Claim.

11. The Government of Canada has caused loss or damage to the Investor by reason of, or arising out of, its breach of its obligations contained in Section A of NAFTA Chapter 11.

12. The actions of the Government of Canada constitute a measure which has resulted in harm to the Investor and its investment in Canada.

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7 A copy of which is included as Schedule 4 to this Claim.

8 NAFTA Article 1102.

9 NAFTA Article 1105.

10 NAFTA Article 1106.

11 NAFTA Article 1110.

The Facts

13. The Investor, S. D. Myers, is a corporation incorporated under the laws of the State of Ohio, in the United States of America, with its head office in Tallmadge, Ohio. The Investor engages in, or arranges for, the processing, transportation and disposal of waste contaminated with polychlorinated biphenyls.

14. The Investor processes PCB wastes at its specialized treatment facility in Tallmadge, Ohio. The treatment facility in Tallmadge Ohio operates within the guidelines established by the United States Environmental Protection Agency ("EPA") for the handling and disposal of PCB's.

15. From 1994 onwards, the Investor conducted business operations directly in Canada and through a joint venture with S.D. Myers (Canada) Inc., a corporation established and existing under the laws of Canada[12]. S.D. Myers sought to achieve successful contracts for the processing, distribution and treatment of PCB-contaminated waste from Canada at its facilities in the United States of America. Such activities took place at least from 1994 onwards and included ongoing physical presence by staff of S.D. Myers in Canada. In addition, the Investor, and its joint venture partner, both had property in Canada used for the purpose of economic benefit.

16. In 1990, Canada issued its *PCB Waste Export Regulations.*[13] These regulations ban the export of PCB wastes to all countries other than the United States. Exports to the United States from Canada were permitted under the provisions of the *PCB Waste Export Regulations* on the condition of the prior consent of the United States Environmental Protection Agency ("EPA").

17. On October 26, 1995, the EPA gave its consent to the import of PCB waste by S.D. Myers from Canada into the United States. S.D. Myers' permission from the EPA effectively opened the border for the export of PCB waste from Canada. This act prompted officials from Environment Canada to reassess Canada's position regarding PCB waste export and to address the associated policy, legal and political issues.

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12 In June of 1996, the corporate name of S.D. Myers (Canada) Inc. was changed to Myers Company for Environmental Development Inc.

13 SOR/90-453 (the "*Regulations*"), pursuant to the *Canadian Environmental Protection Act*, R.S.C. 1985, ch. C-16("CEPA").

18. On October 31, 1995, officials from Environment Canada prepared a briefing note entitled "The Export of PCB's to the United States"[14]. This briefing note set out the legal factors that the Minister of the Environment had to consider with respect to a change in Canada's PCB Export Policy.

19. The October 31, 1995 briefing note clearly stated that it was Canada's policy to protect Canada's only PCB destruction company (Chem-Securities of Swan Hills, Alberta) from the effect of competition from U.S. based companies. The note stated that the Minister informed Chem-Securities that she would close the border if the U.S. Government opened it.

20. A further, more detailed briefing note dated November 1, 1995 advised the Minister that if she were to close the border to PCB waste exports that such a closure could not be substantiated on environmental grounds and that the action would be inconsistent with Canada's NAFTA obligations.[15] This note stated *inter alia*:

> *An Interim order cannot be justified. Interim Orders are designed to provide immediate action to resolve "significant danger" to the environment and/or human health. It can be argued that the opening of the US border poses no such significant danger. It will be difficult to argue that the transportation of PCBs to the USA poses a greater danger than transporting PCBs to Swan Hills Alberta*

21. The November 1, 1995 Briefing Note was part of a briefing package distributed to Environment Canada regional directors with other briefing materials on November 10, 1995. The November 10th briefing package states in a number of instances that there would be strong opposition to closing the border from the Privy Council Office ("PCO"), the Department of Foreign Affairs and International Trade ("DFAIT") and Industry Canada who, at an earlier meeting with Environment Canada officials, expressed the view that PCB export was a trade issue. It also stated that the Interim Order would possibly

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14 See Environment Canada, Hazardous Waste Branch. Briefing Table, "Export of PCBs to the United States". October 31, 1995, a copy of which is included in Schedule 6 to this Claim.

15 Environment Canada, Memorandum, To: EP Regional Directors, From: Director, Hazardous Waste Branch, November 10, 1995 ("November 10th Briefing Package"): Memo included attachments as follows: (i) Memorandum to Minister, no date, (ii) Ministerial Briefing Note, "Export of PCBs to the United States", November 1, 1995, and (iii) Media Response Note, "Export of PCB Waste", November 8, 1995; a copy of which is included in Schedule 7 to this Claim.

result in a contravention of NAFTA and be overturned.

22. A further political concern was enunciated in briefing materials prepared by senior officials for the Minister of the Environment. According to these materials obtained by the Investor through Canadian *Access to Information* legislation, during the spring and summer of 1995 the Minister privately informed two Canadian competitors of the Investor, Chem-Security (Alberta) Inc. and CINTEC Environment Inc., that she would regulate the closure of Canada's borders to PCB waste exports to the United States, if the United States opened its border.[16]

23. By November 2, 1995, senior operational officials at Environment Canada furthered the effectiveness of Canada's practice of preventing the Investor from conducting its PCB waste export business in Canada. On November 2, 1995, a letter signed by George Cornwall, Director, Hazardous Waste Branch, Environmental Protection Service, Environment Canada, was sent by facsimile to the members of the Interdepartmental Committee on the Federal PCB Destruction Program ("PCB Interdepartmental Committee").[17] The November 2nd letter informed the PCB Interdepartmental Committee of the EPA enforcement discretion granted to S.D. Myers and further encouraged the members of the group not to enter into any contractual relations with S.D. Myers.

24. On or around November 16, 1995, the Hon. Sheila Copps M.P., Minister of the Environment, signed the Interim Order necessary to put the PCB waste export operations ban into effect. A Press Release was released on this date announcing the signing of the Order.[18] Due to technical failures of this order, including a failure to promptly consult with provincial governments and other federal departments, the order signed on November 16th was deemed to be invalid. The Order was re-signed by the Minister officially on November 20, 1995 and was made effective on that date.

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16 Environment Canada, Briefing Note, "Export of PCBs to the United States", Updated November 16, 1995, p.4 "Background", a copy of which is included in Schedule 8 to this Claim; also see Schedule 6, Environment Canada, Hazardous Waste Branch, Briefing Table, October 31, 1995.

17 A copy of which letter is included in Schedule 9 to this Claim.The PCB Interdepartmental Committee was comprised of 37 representatives of government organizations and Crown Corporations responsible for overseeing the disposal of PCB wastes.

18 Environment Canada, News Release, "Environment Minister Signs Interim Order to Ban the Export of PCB Wastes to the United States", November 16, 1995, a copy of which is included in Schedule 10 to this Claim.

25. On November 28, 1995, the Government of Canada officially issued Order-in-Council #1995-2013, which is also known as the *PCB Waste Export Interim Order* (the *"Interim Order"*).[19] The *Interim Order* amended the existing *PCB Waste Export Regulations* to prohibit the export of PCB wastes from Canada to the United States. The *Interim Order* was converted to a final order on February 26, 1996, by Order-in-Council #1996-261 (the *"Final Order"*).

26. The *Interim Order* was replaced by a formal regulation on February 4, 1997, by Order-in-Council #1997-154 (the *"Formal Order"*). Also on February 4, 1997, the *Formal Order* was simultaneously replaced by the *PCB Waste Export Regulations, 1996*, effectively allowing export of PCB waste from Canada.

27. Within the *Regulatory Impact Analysis Statement* accompanying the *Formal Order*, the Canadian government cited its knowledge of the EPA's prior consent to accept Canadian PCB waste. The Statement also made clear Canada's knowledge that both its *Interim* and *Final Orders* were made in relation to one particular American investor -- S.D. Myers. The statement provided:

> *On becoming aware that the United States Environmental Protection Agency (US EPA) had granted a request for "enforcement discretion" to a US company, S.D. Myers, allowing Myers to import P.C.B.'s from Canada to the USA for the purpose of disposal, the Minister of the Environment issued the PCB Waste Export Interim Order on November 20, 1995. This Interim Order prohibited any PCB wastes to be exported to the USA.*[20]

28. Prior to the signing of the *Interim Order* by the Environment Minister, it was made clear in briefing documents that a major justification for the *Interim Order* would be that it was the policy of Canada since 1989 to destroy PCB wastes in Canada by Canadians and that they should not be exported.[21] The source of this policy is said to be the original *1989*

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19 A copy of which is included as Schedule 1 to this Claim.

20 *Regulations Amending the PCB Waste Export Regulations*, SOR/97-108, Canada Gazette, Part II, Extra No.1, Vol.131, February 7, 1997, p.3; a copy of which is included in Schedule 11 to this Claim.

21 See October 31, 1995 Briefing Table, schedule 6; November 2, 1995 Interdepartmental Committee Memo, schedule 9; also see November 10, 1995 Briefing Package,a copy of which is included in Schedule 7 of this Claim.

Canadian Environmental Protection Act ("CEPA") *PCB Export Regulations*[22] and a 1989 agreement amongst the Canadian Environment Ministers, Federal and Provincial, under the Canadian Council of Ministers of Environment ("CCME").[23] The Minister reiterated this policy justification in a statement to the House of Commons on June 9, 1995,[24] in the Ministerial Press Release announcing the signing of the *Interim Order*,[25] and in a public speech made on November 16, 1995.[26]

29. During the year and a half previous to the issuance of the *Interim Order*, the Investor made many contacts with officials at Environment Canada in an effort to encourage an "open-border policy". Statements and representations were made by Environment Canada officials indicating a policy in favour of an open border to the United States. In reliance upon these representations, during the same period the Investor made efforts in the United States to seek the necessary EPA approval which would meet the requirements of the Canadian *PCB Waste Export Regulations* to allow export of PCB waste from Canada to the United States.

30. The 1989 Regulations, which the Minister of the Environment used to justify the *Interim Order*, contains the same provisions which would have allowed the Investor to export PCBs to the United States prior to the issuance of the *Interim Order*.

31. Pursuant to s.35(1) of the CEPA, the main criteria for the issuance of an Interim Order is clear, the Ministers of Environment and Health must both "...believe that immediate action is required to deal with a significant danger to the environment or to human life or health

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22 See Environment Canada, Briefing Note, "Justification for Interim Order", November 15, 1995, a copy of which is included in Schedule 14 of this Claim.

23 See Schedule 7, November 10, 1995 Briefing Package: Briefing Paper, p.00009.

24 Hansard, House of Commons, June 9, 1995, a copy of which is included in schedule 12; also see, Environment Canada, Briefing Note, Updated November 16, 1995, a copy of which is included in Schedule 8 to this Claim.

25 See Schedule 10.

26 Speaking Notes for The Honourable Sheila Copps, P.C., M.P., Deputy Prime Minister and Minister of the Environment, Speech to the Canadian Bar Association (Ontario) - Environmental Section, Toronto, November 16, 1995, p. 2; a copy of which is included in Schedule 13 to this Claim.

..." In the November 10 Briefing Package to EP Regional Directors,[27] the following statements were made concerning the environmental argument to justify the closure of the border:

> *... A NAFTA challenge to border closure is very likely as there is no strong environmental argument to justify closure. On the other hand, NAFTA could be used to support maintaining the status quo if you chose that option.*[28]
> *An Interim order cannot be justified. Interim Orders are designed to provide immediate action to resolve "significant danger" to the environment and or human health. It can be argued that the opening of the US border poses no such significant danger. It will be difficult to argue that the transportation of PCBs to the USA poses a greater danger than transporting PCBs to Swan Hills Alberta.*[29]

Thus, the Minister of the Environment had no basis upon which to reasonably believe that the Order was required to deal with a significant danger to the environment or to human life or health.

32. Canada had a duty under its *Regulatory Policy* to consult with interested parties, in particular with those parties on whom the impact of a regulatory requirement would be substantial.[30] Canada did not consult with the Investor in any way between October 26, 1995, the date of the EPA approval, and the issuance of the *Interim Order* on November 20, 1995, or in the period prior to the issuance of the subsequent *Final Order* given on February 26, 1996. Notwithstanding the fact Canada knew there would be a direct and substantial impact upon the Investor and its Investment, Canada failed to consult with the Investor at any time between 1995 and the filing of this Claim.

33. The effect of both of these measures, the *Interim Order* and the *Final Order*, was to ban the export of PCBs from Canada and prohibit S.D. Myers from conducting business in Canada (hereafter the *Interim Order* and *Final Order* are variously referred to as the

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27 See Schedule 7;

28 See Schedule 7, Memorandum to Minister, undated.

29 See Schedule 7, Briefing Note, November 1, 1995, p.2;

30 Regulatory Affairs Division, Program Branch, Treasury Board of Canada Secretariat. *Government of Canada Regulatory Policy*, November 9, 1995, Appendix B: Regulatory Process Management Standards.

"PCB waste export operations bans" or the "export ban"). As a result of Canada's actions, the Investor suffered economic harm to its investment through lost contracts and lost opportunities in Canada. The inability of the Investor to have continued access to the Canadian PCB disposal market has resulted in damage to the Investor arising directly from Canada's NAFTA inconsistent measures.

NAFTA Obligations Breached

34. The Investor alleges that Canada has acted in a manner inconsistent with at least four provisions of the NAFTA through the promulgation of the measures which ended the operations of companies exporting PCB waste.

National Treatment

35. NAFTA Article 1102 sets out the NAFTA's national treatment obligation for investment. Under Article 1102(2) the investments of investors of other NAFTA Parties must be given the best in-jurisdiction treatment with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in like circumstances to the investments of Canadian investors. When read substantively, the national treatment obligation ensures that all companies, whether domestic or foreign, are treated equally and without discrimination.

36. The *PCB Waste Export Interim Order* and *Final Order* constitute disguised discrimination aimed at S.D. Myers and its investment in Canada contrary to the NAFTA national treatment obligation set out in Article 1102.

37. The *PCB Waste Export Interim Order* discriminated against American waste disposal operators who sought to operate in Canada by preventing them from exporting PCB contaminated waste for processing in the United States. Thus, American waste disposal companies were not permitted to operate in Canada in the same fashion as Canadian PCB waste disposal companies Canada has limited where investments can operate on an arbitrary and discriminatory basis. By granting better treatment to Canadian waste disposal companies, Canada breached its national treatment obligation under NAFTA.

38. When preparing and effecting the measure, Canada was well aware that S.D. Myers had been operating in Canada and had been seeking to process, distribute and treat PCB-contaminated wastes. On November 20, 1995 when Canada issued the *PCB Waste Export Interim Order*, it was clear that Canada knew that its export ban would specifically affect S.D. Myers and its investment in Canada. The *PCB Waste Export Interim Order* was a

clear and direct government measure aimed at prohibiting the export of Canadian PCB wastes to the US by an American PCB waste disposal company. This represented discrimination against S.D. Myers as an American Investor actively operating and competing within the Canadian marketplace.

39. The *PCB Waste Export Interim Order* was intended to curtail the operations of the Investor and its investment in Canada. While this American investor was prohibited from conducting its business of exporting PCB contaminated wastes, Canadian-based companies were provided better treatment by being permitted to conduct business in Canada without interference.

Minimum Standard of Treatment

40. The NAFTA Article 1105 sets out the NAFTA's legal obligation for investment requiring that Canada treat the Investor and its investment in accordance with international law, including fair and equitable treatment. Article 1105 imports into the NAFTA the international law requirements of basic due process, economic rights, obligations of good faith, and natural justice.

41. In the making, approval and application of PCB Export bans, Canada failed to accord to the Investor, and its Investment, treatment in accordance with international law in violation of NAFTA Article 1105.

42. The promulgation of the PCB Export Bans by Canada was done in a discriminatory and unfair manner which constituted a denial of justice and a violation of good faith under international law.

Performance Requirements

43. NAFTA Article 1106(1) prohibits a number of specific governmental activities collectively referred to as performance requirements. Under Article 1106(1), a Party may not impose or enforce a "requirement, commitment or undertaking" in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor.

44. Under subparagraph (1)(b) of Article 1106, a NAFTA Party may not require investors to include in their products or services any amount of goods or services that originate within the Party.

45. Under subparagraph (1)(c)of Article 1106, Parties may not require investors to give any preferential treatment to any products or services made domestically. Investors cannot be required to acquire or use goods or services that originate within a Party.

46. The PCB Export Bans operated effectively to mandate that the Investor dispose of PCB contaminated waste in Canada, if such disposal were to occur at all. This resulted in a performance requirement requiring PCB disposers to accord a preference to Canadian goods and services and to achieve a given level of domestic content contrary to Canada's obligations arising under Article 1106 of the NAFTA.

47. Canada's measures affecting the operations of PCB waste exporters were applied in an arbitrary and unjustifiable manner which also constituted a disguised restriction on international trade or investment.

Expropriation

48. The effect of the PCB Export Bans has been toeffectively deprive the Investor of the benefits of its Canadian investment. This constitutes a measure tantamount to an expropriation.

49. A fundamental obligation contained in the NAFTA Investment Chapter relates to expropriation. This obligation is contained in Article 1110 of the NAFTA. The NAFTA does not define the term expropriation but it is clear that it is designed to protect against direct and indirect measures by extending its coverage to "measures tantamount to expropriation." Under international law, expropriation refers to the act by which governmental authority is used to deny some benefit of property. This denial can be actual or constructive.

50. International law and the NAFTA both impose standards on the treatment of those whose property has been expropriated. Article 1110 of the NAFTA does not prevent governmental regulatory actions. It merely requires governments to compensate investors for interference with their property rights as set out in the NAFTA. The Government of Canada has not paid any compensation to the Investor for this expropriation despite the requirement of NAFTA Article 1110.

51. As stated in §712 of the American Law Institute's *Restatement (Third) of the Foreign Relations Law of the United States* (1986):

A state is responsible under international law for injury resulting from:

> *(3) other arbitrary or discriminatory acts or omissions by the state that impair property or other economic interests of a national of another state.*

As stated in Comment (f) and (i) to §712:

> *Discrimination implies unreasonable distinction. Takings that invidiously single out property of persons of a particular nationality would be unreasonable. [. . .] [E]conomic injuries that fall within Subsection (3) are generally unlawful because they involve discrimination or are otherwise arbitrary.*

52. Comment (g) of §712 states that restrictions on the taking by a state of the property of a national of another state apply:

> *. . . not only to avowed expropriations in which the government formally takes title to property, but also to other actions of the government that have the effect of "taking" the property, in whole or in large part, outright or in stages ("creeping expropriation"). A state is responsible as for an expropriation of property under Subsection (1) when it subjects alien property to taxation, regulation, or other action that is confiscatory, or that prevents, unreasonably interferes with, or unduly delays, effective enjoyment of an alien's property or its removal from the state's territory.*

The Expropriation of the Investment of the Investor

53. It is clear that Canada knew that the *PCB Waste Export Interim Order* would interfere with the investment of the Investor operations. In the Regulatory Impact Analysis Statement accompanying the *Formal Order*, Canada confirmed its awareness of the EPA's prior consent to accept Canadian PCB waste. The Statement provides evidence that Canada knew exactly what impact its actions would have on the business operations of S. D. Myers.

54. Canada's measures depriving the Investor of its ability to carry out its otherwise legal business operations was made on a discriminatory basis and not made in accordance with the due process of law and NAFTA Article 1105(1). Canada has also failed to meet its obligation of providing compensation to the Investor as set out in NAFTA Article 1110.

55. The effect of the PCB Export Bans has been to deprive the Investor of the benefits of its Canadian operations constituting a measure tantamount to an expropriation.

Losses Suffered By the Investor

56. The Investor has suffered or will suffer the following losses:

i Lost sales and profits since the date of introduction of the measures;
ii Loss of value of its investment in its joint venture with S.D. Myers (Canada) Inc.;
iii The cost of reducing operations in Canada;
iv Fees and expenses of professional services incurred to defend itself from this NAFTA-inconsistent measure.
v Tax consequences of the award to maintain the integrity of the award.

C. THE POINTS AT ISSUE

57. There is one basic point at issue: Has the Government of Canada taken measures inconsistent with its obligations under Section A of Chapter 11 of the NAFTA?

D. RELIEF OR REMEDY SOUGHT

The Claimant claims damages in the amount of not less than:

1. US $20,000,000.00 (TWENTY MILLION UNITED STATES DOLLARS) arising out of the Government of Canada's breach of its NAFTA obligations;

2. Costs associated with its efforts to prevent the Government of Canada's breach of its NAFTA obligations;

3. Costs associated with these proceedings, including all professional fees and disbursements;

4. Prejudgement and post-judgement interest at a rate to be fixed by the Tribunal; and

5. Such further relief that Counsel may advise and the Tribunal may deem appropriate.

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