

NAFTA Chapter 11 Investor-State Disputes (to March 1, 2007)

*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 SA	Mexican generic drug manufacturer claims that Canadian Patent Medicines, "Notice of Compliance" regulations deprived it of Canadian sales for its drug ciprofloxacin hydrochloride.	Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$50 million Cdn.	Notice of intent on March 4, 1996. Arbitration never commenced. Notice withdrawn by investor.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 auto-makers claim interferes with automobile on-board diagnostic systems. Manganese-based MMT is also a suspected neurotoxin.	Art 1102 (national treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$250 million	After preliminary tribunal judgments against Canada, Canadian government repealed the MMT ban, issued an apology to the company and settled "out-of-court" with Ethyl for \$13 million US. (The inter-provincial aspect of the trade ban had previously been found to violate Canada's non-binding Agreement on Internal Trade.)
July 22, 1998	S.D. Myers Inc.	U.S. waste disposal firm challenges temporary Canadian ban (Nov. 1995 to Feb. 1997) on export of toxic PCB wastes.	Art 1102 (national treatment) Art 1105 (minimum standards of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$20 million	Tribunal ruled that Canada violated NAFTA articles 1102 (national treatment) and 1105 (minimum standards of treatment). It awarded \$5 US million, plus interest in damages. Canada applied to the federal court to set aside the tribunal's award. On Jan. 13, 2004 the court dismissed Canada's application.
Dec. 2, 1998	Sun Belt Water Inc.	US water firm challenges British Columbia water protection legislation and moratorium on exports of bulk water from the province.	Art 1102 (national treatment) Art 1105 (minimum standards of treatment) Art 1110 (expropriation and compensation)	\$10.5 billion	Canadian government asserts that the claim is invalid, while the investor maintains that the claim is still active.

CLAIMS AGAINST CANADA

Date Complaint Filed ¹	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed (\$us) ²	Status
Dec. 24, 1998	Pope & Talbot Inc.	U.S. lumber company challenges lumber export quota system put in place by Canadian government to implement Canada-U.S. softwood lumber agreement.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$508 million	Tribunal ruled that Canada violated NAFTA Article 1105 (minimum standards of treatment). Canada was ordered to pay \$460,000 US in damages plus interest and \$20,000 US in legal costs (totaling approximately \$915,000 Cdn).
Jan. 19, 2000	United Parcel Service of America Inc.	Multinational U.S. courier company alleges that Canada Post's 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	Tribunal process is underway. Award on jurisdiction made Nov. 22, 2002. Orders on amicus submissions, Apr. 4, 2003 and Aug. 1, 2003. Hearing on merits held from Dec. 12 to Dec. 17, 2005 in Washington, D.C.
Dec. 22, 2000	Ketcham Investments Inc. & Tysa Investments Inc.	U.S. lumber company challenges lumber export quota system put in place by Canadian government to implement Canada-U.S. softwood lumber agreement.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$30 million	Complaint withdrawn by investors in May 2001.
Sept. 7, 2001	Trammel Crow Co.	U.S. property management company 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 it reached an "out-of-court" settlement with Canada Post.

CLAIMS AGAINST CANADA

Date Complaint Filed ¹	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed (\$us) ²	Status
Nov. 6, 2001	Chemtura Corp. (formerly known as Crompton Corp.)	U.S.-based agro-chemical company challenges Canadian government ban on the sale and use of the pesticide and fungicide lindane. Lindane is a persistent, neurotoxic pesticide and suspected carcinogen now banned in more than 50 countries worldwide, including the U.S. and Canada.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1104 (standard of treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$100 million	First notice of intent received Nov. 6, 2001, second notice received April 4, 2002 and third notice on September 19, 2002. Chemtura filed its first notice of arbitration on Oct. 17, 2002 and a second on February 10, 2005. Tribunal process underway.
Feb. 19, 2004	Albert J. Connolly (Brownfields Holding)	U.S. investor claims that actions by Ontario's Ministry of Northern Development and Mines resulted in the forfeiture of the investor's interest in a commercial marble property that was subsequently protected under Ontario's Living Legacy Program, a natural heritage protection program.	Art 1110 (expropriation and compensation)	Not available	Notice of intent received Feb. 26, 2004.
June 15, 2004	Contractual Obligation Productions LLC	U.S. animation production company challenges decision that it is ineligible for Canadian federal tax credits available only to production firms that employ Canadian citizens or residents. 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	Notice of intent received June 15, 2004. Statement of claim submitted Jan. 31, 2005. Amended statement of claim submitted June 16, 2005.
July, 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 received in July, 2005. Notice subsequently withdrawn by investor.

CLAIMS AGAINST CANADA

Date Complaint Filed ¹	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed (\$us) ²	Status
Feb. 28, 2006	Great Lake Farms (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 1103 (most-favoured- nation treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation) Art 1502(3) (monopolies and state enterprises)	\$78 million	Notice of intent to submit a claim to arbitration received on Feb. 28, 2006. Notice of arbitration received on June 5, 2006.
Sept. 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 raw (i.e. unprocessed) logs favour log processors in BC at Merrill and Ring's expense, expropriate its investment in BC timber lands, and violate minimum standards of treatment. Canadian log export controls are exempted from NAFTA obligations governing trade in goods (Annex 301.a.)	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)	\$25 million	Notice of intent to submit a claim to arbitration received on Sept. 25, 2006.
Oct. 12, 2006	V. G. Gallo	U.S. investor proposed a man-made lake on a former open-pit mine site located in northern Ontario as a landfill for municipal waste from Toronto. In June 2004, the newly elected Ontario provincial government enacted legislation preventing the controversial project from proceeding. The investor claims that this action was "tantamount to expropriation" and deprived it of the minimum standard of treatment under international law.	Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$355.1 million	Notice of intent to submit a claim to arbitration received on Oct. 12, 2006.

CLAIMS AGAINST THE UNITED STATES

Date Complaint Filed ¹	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed (\$us) ²	Status
July 29, 1998	The Loewen Group Inc.	Loewen, a Canadian funeral home operator, challenges a civil case ruling against it by a jury in a Mississippi state court and allegedly excessive bond requirements for leave to appeal.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$725 million	In June 2003, the tribunal dismissed the investor's claims. On Oct 31, 2005 a U.S. court denied Loewen's petition to vacate the tribunal's award.
May 6, 1999	Mondev International Ltd.	Canadian real estate developer challenges Massachusetts Supreme court ruling that Boston Redevelopment Authority, a municipal government body, is protected by local government sovereign immunity.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$50 million	In October 2002, the tribunal dismissed the investor's claims.
June 15, 1999	Methanex Corp.	Canadian chemical company challenges California's phase-out of MTBE, a gasoline additive which has contaminated ground and surface water throughout California.	Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$970 million	On August 9, 2005, the tribunal dismissed the investor's claims. The tribunal ordered Methanex to pay the U.S. government legal costs of approximately \$3 million and the full cost of the arbitration.
Feb. 29, 2000	ADF Group Inc.	Canadian steel contractor challenges U.S. "Buy-America" preferences requiring that U.S. steel be used in federally-funded state highway projects.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements)	\$90 million	In January 2003, the tribunal dismissed the investor's claim. The tribunal concluded that the measures in question were procurement measures exempted under Article 1108.
Nov. 5, 2001	Canfor Corp.	Canadian lumber company challenges U.S. antidumping and countervailing duties against Canadian softwood lumber exports. 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 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$250 million	Notice of arbitration on July 9, 2002. At the request of the U.S. government, the Canfor, Terminal and Kembec claims have been consolidated into a single arbitration. The consolidation order is being contested by the complainants in the U.S. courts. 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. The tribunal process continues.

CLAIMS AGAINST THE UNITED STATES

Date Complaint Filed ¹	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed (\$us) ²	Status
Jan. 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, August 2, 2002. In Feb. 2004, a U.S. court granted a petition by Kenex and others to prohibit enforcement of DEA rules barring non-psychoactive hemp products.
Mar. 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	Notice of intent on March 15, 2002. Claim inactive.
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	Notice of intent on May 1, 2002.

CLAIMS AGAINST THE UNITED STATES

Date Complaint Filed ⁷	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed (\$us) ²	Status
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 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 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$200 million+	Notice of arbitration and statement of claim, Dec. 3, 2004. At the request of the U.S. government, the Canfor, Terminal and Kembec claims have been consolidated into a single arbitration. The consolidation order is being contested by the complainants in the U.S. courts. 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. The tribunal process continues.
Sept. 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 Ontario Ltd.'s property. Two forfeiture proceedings took place, which the investor alleges did not result in a judgment in the state's favor. The company sought the return of property and compensation, but a Florida court ruled that claims against the state caused by the actions of prosecutors are barred by the Doctrine of Sovereign and Prosecutorial Immunity. 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	Notice of Intent to Submit a Claim to Arbitration on September 9, 2002. Claim inactive.

CLAIMS AGAINST THE UNITED STATES

Date Complaint Filed ¹	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed (\$us) ²	Status
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 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 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$90 million	Notice of Arbitration, March 31, 2004. At the request of the U.S. government, the Canfor, Terminal and Kember claims have been consolidated into a single arbitration. The consolidation order is being contested by the complainants in the U.S. courts. 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. The tribunal process continues.
July 21, 2003	Glamis Gold Ltd.	Canadian mining company alleges that California regulations intended to limit the environmental impacts of open-pit mining and to protect indigenous peoples' religious sites made its proposed gold mine unprofitable.	Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$50 million+	Notice of arbitration Dec. 9, 2003. Tribunal process underway. Arbitral hearing scheduled for August, 2007.
Sept. 2003	Grand River Enterprises Six Nations Ltd.	Canadian native-owned manufacturer and wholesaler of tobacco products alleges that its business was harmed by the treatment of "non-participating manufacturers" under the terms of a settlement agreement between 46 U.S. states and the major tobacco companies to recoup public monies spent to treat smoking-related illnesses.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1104 (standard of treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$360 million+	Notice of arbitration March 10, 2004. Preliminary hearing on jurisdiction held in March 2006. Tribunal rules that aspects of the complaint are "time-barred," but that the claim can proceed in part. Tribunal process underway.
Aug. 12, 2004	Canadian Cattlemen for Fair Trade	Canadian cattle producers challenge the U.S. ban on imports of Canadian live cattle and beef following the discovery of a BSE-infected cow from an Alberta herd.	Art 1102 (national treatment)	\$235 million+	First notice of arbitration March 16, 2005. Approximately 100 claims consolidated in a single arbitration. Tribunal process underway.

CLAIMS AGAINST MEXICO

Date Complaint Filed ¹	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed (\$us) ²	Status
Oct. 2, 1996	Metalclad Corp.	U.S. waste management company challenges decisions by Mexican local government to refuse it a permit to operate a hazardous waste landfill in La Pedrera, San Luis Potosi and by state government to create an ecological preserve in the area.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1104 (standard of treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$90 million	Tribunal ruled that Mexico violated NAFTA articles 1105 (minimum standards of treatment) and 1110 (expropriation and compensation). Mexico was ordered to pay \$16.7 million US in damages. Mexico applied for statutory review of the tribunal award before the BC Supreme Court on the grounds that the tribunal had exceeded its jurisdiction. The court allowed most of the tribunal's award to stand. The case was settled in October, 2000 when Mexico paid undisclosed damages to the investor.
Dec. 10, 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 Nov. 10, 1997. On Nov. 1 1999, the tribunal dismissed the investor's claims.
Feb. 16, 1998	Marvin Roy Feldman Karp (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 damages of approximately \$1.5 million US. 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 Jan. 11, 2005.

CLAIMS AGAINST MEXICO

Date Complaint Filed ¹	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed (\$us) ²	Status
June 30, 1998	USA Waste Management Inc.	U.S. waste management company challenges state and local government actions in contract dispute with a Mexican subsidiary over waste disposal services in Acapulco.	Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$60 million	In June 2000 the Tribunal ruled that it lacked jurisdiction because Waste Management Inc. had not properly waived domestic legal claims as required by NAFTA. The investor resubmitted its notice of intent. The tribunal subsequently confirmed its jurisdiction. In April, 2004 the tribunal dismissed the investor's claims.
Nov. 15, 1999	Fireman's Fund Insurance Co.	U.S. insurance company alleges that the Mexican government discriminates against it by facilitating the sale by Mexican financial institutions of peso-dominated debentures, but not the sale of U.S. dollar-denominated debentures by Fireman's Fund.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation) Art 1405 (national treatment)	\$50 million	Notice of arbitration on Oct. 30, 2001. On July 17, 2006 tribunal reportedly dismissed the investor's claim. Final award is not publicly available.
Nov. 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.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$75 million	Notice of arbitration on Feb. 16, 2001.
Aug. 28, 2001	Lomas de Santa Fe	U.S. investor alleges that it was unfairly treated and inadequately compensated in a dispute over the expropriation of land by Mexican Federal District authorities.	Art 1102 (national treatment) Art 1103 (most-favoured-nation treatment) Art 1104 (standard of treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$210 million	Notice of intent on August 28, 2001.

CLAIMS AGAINST MEXICO

Date Complaint Filed ¹	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed (\$us) ²	Status
Oct. 1, 2001	GAMI Investments Inc.	U.S. shareholders in a Mexican sugar company assert that their interests were harmed by Mexican government regulatory measures related to processing and export of raw and refined sugar, as well as the nationalization of failing sugar refineries.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$55 million	Notice of Intent on Oct. 1, 2001. In On November 15, 2004, the tribunal ruled that it had no jurisdiction and dismissed the investor's claim.
Dec. 12, 2001	Haas	U.S. investor in a small manufacturing company in the State of Chihuahua challenges alleged unfair treatment by the Mexican courts and authorities in a dispute with local partners in the company.	Art 1105 (minimum standard of treatment)	\$35 million, approximately.	Notice of intent received January 9, 2002.
n.a.	Halchette	no details available	n.a.	n.a.	Notice of intent has not been made public. Arbitration never commenced.
Jan. 11, 2002	Calmark Commercial Development Inc.	U.S., property development company challenges decisions of the Mexican courts in a property dispute in Baja California.	Art 1105 (minimum standard of treatment) Art. 1109 (transfers) Art 1110 (expropriation and compensation)	\$0.4 million	Notice of intent on Jan. 11, 2002. Tribunal process pending.
Feb. 12, 2002	Robert J. Frank	U.S. investor seeks damages from Mexican government in dispute over development of a beachfront property in Baja California.	Art 1102 (national treatment) Art 1103 (most-favoured-nation treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$1.5 million	Notice of arbitration on August 5, 2002. Tribunal process pending.

CLAIMS AGAINST MEXICO

Date Complaint Filed ¹	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed (\$us) ²	Status
March 21, 2002	International Thunderbird Gaming Corp.	Canadian gaming company challenges the regulation and closure of its gambling facilities by the Mexican government agency that has jurisdiction over gaming activity and enforcement.	Art 1102 (national treatment) Art 1103 (most-favoured- nation treatment) Art 1104 (standard of treatment) Art 1105 (minimum standard of treatment) Art 1110 (expropriation and compensation)	\$100 million	Notice of arbitration August 1, 2002. On Jan. 26, 2005 the tribunal dismissed the investor's claim. Thunderbird Gaming was ordered to pay Mexico's legal costs of approximately \$1.2 million US and three-quarters of the cost of the arbitration. On Feb. 14, 2007 a U.S. court rejected Thunderbird Gaming's petition to vacate the NAFTA tribunal's ruling.
Jan. 28, 2003	Corn Products International	U.S. company challenges Mexican tax on sales of soft drinks sweetened with high-fructose corn syrup.	Art 1102 (national treatment) Art 1105 (minimum standard of treatment) Art 1106 (performance requirements) Art 1110 (expropriation and compensation)	\$325 million	Notice of arbitration on October 21, 2003. Tribunal process underway.
Oct. 14, 2003	Archer Daniels Midland, Tate and Lyle Ingredients	A U.S. agri-business and the U.S. subsidiary of a British multinational company challenge a range of Mexican government measures, including a tax on soft drinks sweetened with high-fructose corn syrup, that allegedly discouraged the import, production and sale of 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 intent on October 14, 2003. Tribunal process underway.
2003	Cargill Inc.	U.S. agribusiness reportedly challenges a range of Mexican government measures, including a tax on soft drinks sweetened with high-fructose corn syrup, that allegedly discouraged the import, production and sale of high-fructose corn syrup.	n.a.	n.a.	No details available.

CLAIMS AGAINST MEXICO

Date Complaint Filed ¹	Complaining Investor	Issue	NAFTA Articles Cited	Amount Claimed (\$us) ²	Status
Aug. 27, 2004	Bayview Irrigation District, et. al.	Seventeen Texas irrigation districts assert that the diversion of water from Mexican tributaries of the Rio Grande watershed discriminated against downstream U.S. water users, 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	Notice of intent on Aug. 27, 2004. Tribunal process underway.

SUMMARY OF CASES FILED UNDER NAFTA CHAPTER 11
(to March 1, 2007)

Respondent Country	Number of Cases Filed	Types of Measure Challenged	Total Damages Awarded ³ (\$us)	Disposition of Cases
Canada	15	6 environmental protection 3 natural resources 2 postal services 1 cultural policy 1 agriculture 2 other	\$27 million Cdn. ⁴	2 decided against Canada, with damages awarded; 2 settled "out-of-court" 2 tribunal process underway 6 pending or inactive 3 withdrawn by complainant
U.S.	14	3 environmental protection 4 softwood lumber 3 state court decisions 1 procurement 3 health or food safety regulation	0	4 dismissed 4 tribunal process underway 5 pending or inactive
Mexico	17	4 environmental protection 4 real estate or development 5 manufacturing 1 financial services 1 gambling 1 cigarette taxation 1 other	\$18.2 million ⁵	2 decided against Mexico, with damages awarded; 5 dismissed 3 tribunal process underway 7 pending or inactive

SOURCES Government of Canada, Department of International Trade (www.dfait-maeci.gc.ca), U.S. Department of State (www.state.gov), Mexico's Secretaria de Economía, (www.economia-snci.gob.mx), NAFTA Claims (www.naftaclaims.com), Investment Treaty News (www.iisd.org/investment/itn) and Public Citizen (www.citizen.org).

NOTES **1** Date of notice of intent, except where indicated. **2** All figures are in US\$ except where indicated. **3** Including awards of legal costs, where available. Not including interest. **4** Including Ethyl settlement of approximately \$20 million Cdn. **5** Not including undisclosed interest or legal costs.

NAFTA INVESTOR-STATE DISPUTES: **ANALYSIS**

NAFTA's controversial investor-state dispute settlement mechanism allows investors from the three NAFTA countries to sue NAFTA governments for alleged breaches of the NAFTA investment chapter (chapter 11). Arbitration can be invoked unilaterally by investors, without seeking consent from their home government. All three NAFTA governments have given their unconditional, prior consent to binding arbitration.

Cases are decided by tribunals of three members, one chosen by the investor, one chosen by the challenged government, and one chosen by mutual agreement. Tribunal decisions are final, although they may be reviewed on narrow procedural grounds in the domestic courts. Although tribunals cannot force government to change NAFTA-inconsistent measures, they can award monetary damages to investors for measures which breach NAFTA investment rules.

Number of claims

There have been 46 claims, with a roughly equal number against each country (15 against Canada, 14 against the U.S. and 17 against Mexico).

New claims continue to mount against Canada. Three new cases were filed against Canada during 2006, including the controversial Adams Lake case.

There may well be other claims that have not yet become public. Claims against Mexico, in particular, are often slow to become public knowledge.

Disposition of claims

In the four decided cases against the U.S. to date, the investors' claims have been dismissed.

By contrast, tribunals have awarded damages to the complaining investors in both decided claims against Canada. Canada also settled a third claim (the MMT case) "out of court" by agreeing to pay the investor damages, repealing the challenged measure and issuing an apology.

Tribunals have awarded damages to the complaining investors in two claims against Mexico, while five claims against Mexico have been dismissed.

Subject matter of claims

There are active claims involving highly controversial matters against all three countries. For example,

- In the Glamis Gold case, a Canadian mining company is challenging Californian environmental regulations intended to limit the environmental impacts of open-pit mining and to protect indigenous peoples' religious sites.
- In the Bayview Irrigation case, Texas irrigation districts are alleging that the diversion of water from Mexican tributaries of the Rio Grande watershed discriminates against downstream U.S. water users, breaches Mexico's commitments under bilateral water-sharing treaties and expropriates water "owned" by U.S. interests.
- In the Adams Lake case, a U.S. investor is challenging the decision to halt a highly contentious landfill project that proposed to dispose of Toronto's solid waste in a man-made lake on the site of a former open-pit mine in northern Ontario.

A high number of claims (13 of 46) involve challenges to environmental protection measures. Beyond the immediate impact of these claims, there is concern about their chilling effect—that governments may avoid regulating for fear of becoming involved in a potentially costly NAFTA dispute.

Foreign investors are also aggressively challenging measures that governments maintained were not covered by NAFTA. For example, there are ongoing challenges related to water exports, log export controls, public postal services, Canada's agricultural supply management system, Canadian cultural policy, and other matters which were supposedly excluded from the NAFTA.



CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
CENTRE CANADIEN
de POLITIQUES ALTERNATIVES

410-75 Albert Street, Ottawa, ON K1P 5E7
TEL 613-563-1341 FAX 613-233-1458
EMAIL ccpa@policyalternatives.ca