THE INFLUENCE OF NAFTA CHAPTER 11 IN THE BIT LANDSCAPE

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I. INTRODUCTION

The North American Free Trade Agreement ("NAFTA") has been in force for just over a decade.[1] In that period, the investment chapter of NAFTA, Chapter 11, generated numerous awards which contributed to the evolution of international investment law and the arbitral process. This article reviews Chapter 11's historical context and catalogues some general results arising from its operation. Section D considers Chapter 11's impact on the development of international investment law and procedure. Finally, several observations are offered as to the Chapter's possible influence on the future development of international investment law.

II. HISTORICAL CONTEXT

NAFTA Chapter 11 has received considerable public and political attention in recent years, particularly in Canada and the United States. This commentary often overlooks the context in which the Chapter was negotiated.

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[*] This article is based on comments given by Ms. Kinnear at a panel discussion on March 4, 2005 at the University of California – Davis. It represents her personal views only. It is not an expression of the official or unofficial views of the Government of Canada.

[1] North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., 32 I.L.M. 605, 639 (entered into force Jan. 1, 1994) [hereinafter NAFTA].

At the time of the NAFTA negotiations, the United States was focussed on broad trade goals. In particular, it sought to incite progress in the stalled Uruguay Round of multilateral trade talks[2] and to create a large free trade region without tariffs and other trade barriers.[3] From an investment perspective, many of the concepts in Chapter 11 were familiar to U.S. negotiators from earlier investment treaties to which the United States was a party. For example, the United States had a history of entering into bilateral investment treaties ("BITs") with obligations governing areas such as transfers and national treatment and providing for arbitration of disputes arising under those agreements. NAFTA's investment chapter also had much in common with the 1988 Canada – United States Free Trade Agreement ("CUSFTA").[4] Concepts such as expropriation have an even longer history in U.S. constitutional law, which presumably added to the United States' comfort level with the investment chapter.

For Canada, a primary objective in entering NAFTA was the creation of a dispute settlement system that could address U.S. trade remedy law and the excesses Canada saw in the application of U.S. domestic anti-dumping and countervailing duties (NAFTA Chapter 19). Additionally, Canada sought effective state-to-state dispute settlement (NAFTA Chapter 20), applicable to all chapters of the treaty.[5] While effective investor-state dispute settlement was obviously an important objective in NAFTA negotiations, it did not have the

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[2] L. Ian MacDonald et al., *The Negotiation and Approval of the FTA, in* FREE TRADE-RISKS AND REWARD 73, 76-77 (L. Ian MacDonald ed., 2000) [hereinafter MacDonald]; *see also* MAXWELL A. CAMERON & BRIAN W. TOMLIN, THE MAKING OF NAFTA: HOW THE DEAL WAS DONE, 68-69 (2002) [hereinafter Cameron & Tomlin]; Justine Daly, *Has Mexico Crossed the Border on State Responsibility for Economic Injury to Aliens? Foreign Investment and the Calvo Clause in Mexico after the NAFTA*, 25 ST. MARY'S L. J. 1147, 1153-54 (1994).

[3] *See* Carla A. Hills, *The Most Comprehensive Agreement Ever, in* MacDonald, *supra* note 2, at 197-99; Michael Gordon also notes that while free trade was well established between Canada and the United States, due to the CUSFTA (*infra* note 4), the United States was particularly interested in an agreement which facilitated free economic exchange between the U.S. and Mexico, while permitting initiatives aimed at reducing illegal immigration between the two countries. Michael Gordon, *Economic Integration in North America: An Agreement of Limited Dimensions but Unlimited Expectations*, 56 MOD. L. REV. 157, 157-167 (1993).

[4] CUSFTA contained obligations on national treatment (Article 1602), performance requirements (Article 1603), transfers (Article 1606) and expropriation (Article 1605). Such obligations were similar to those outlined in NAFTA Articles 1102, 1106, 1109 and 1110 respectively. *See* Canada-U.S. Free Trade Agreement, Jan. 2, 1988, U.S.-Can., 27 I.L.M. 281 (entered into force Jan. 1, 1989) [hereinafter CUSFTA], *available at* http://www.dfait-maeci.gc.ca/tna-nac/documents/cusfta-e.pdf.

[5] Jonathan T. Fried, *FTA and NAFTA Dispute Settlement in Canadian Trade Policy*, *in* MacDonald, *supra* note 2, at 171.

same prominence in the public debate in Canada as did trade remedy or state-to-state dispute settlement.[6] From a substantive investment law perspective, Canada had recent experience with its Foreign Investment Promotion and Protection Agreements ("FIPAs") before entering into NAFTA. Canada began negotiating FIPAs in 1989 to secure increased investment liberalization, using a model developed by the Organization for Economic Cooperation and Development ("OECD"). Although similar to the U.S. BIT program, the FIPA program was neither as developed nor as exhaustive as its American counterpart. Additionally, the similarity of Chapter 16 of CUSFTA to Part A of NAFTA Chapter 11 made Chapter 11 a logical continuation of Canada's efforts to liberalize its international investment regime.[7]

Mexico approached the NAFTA negotiations with a particular focus on issues related to agriculture, general market access and the agreement's impact on maquiladoras.[8] In contrast to Canada and the United States, Mexico's public policy background led to a unique perspective on negotiation of an investment chapter. Since the 19th century, Mexico had challenged traditional international law rules governing investment and pursued restrictive economic policies. This stance shifted after the financial crisis of the 1980's, marked by Mexico's 1982 debt default, when economic pressures pushed Mexico to liberalise investment regulation in a bid to secure capital and technology.[9] As a result, Mexico's experience with investment

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[6] Investment provisions are not listed by Cameron and Tomlin as being among Canada's chief NAFTA negotiation objectives, unlike other types of dispute resolution mechanisms. *See* Cameron & Tomlin, *supra* note 2, at 66.

[7] Christopher Wilkie, *The Origins of NAFTA Investment Provisions: Economic and Policy Considerations, in* WHOSE RIGHTS? THE NAFTA CHAPTER 11 DEBATE 6-33 (Laura Ritchie Dawson ed., 2002).

[8] On agriculture see FREDERICK W. MAYER, INTERPRETING NAFTA: THE SCIENCE AND ART OF POLITICAL ANALYSIS, 40 (1998); on general market access see Isidro Morales, *The First NAFTA Crisis and the Future of Mexico-US Trade Relations*, *in* NAFTA, THE FIRST YEAR: A VIEW FROM MEXICO, 18 (David R. Dávila Viller ed., 1996); on maquiladoras see Manuel Chavez & Scott Whiteford, *Beyond the Market: Political and Socioeconomic Dimensions of NAFTA for Mexico*, *in* POLICY CHOICES: FREE TRADE AMONG NAFTA NATIONS, 17-19 (Karen Roberts & Mark I. Wilson eds., 1996); *see also* Jaime Serra Puche, *NAFTA and the Mexican Economy*, *in* MacDonald, *supra* note 2, at 200.

[9] Gloria L. Sandrino, *The NAFTA Investment Chapter and Foreign Direct Investment in Mexico: A Third World Perspective* 27 VAND. J. TRANSNAT'L L. 259, 300 (1994). Sandrino cites the following as factors Mexico's 1980's economic crisis: decline in world petroleum prices; increase in world interest rates, world recession; and sustained balance of payments difficulties caused by an excessive imports to exports ratio. One clear indicator of Mexico's resulting shift in policy stance was the country's 1986 entry into General Agreement on Tariffs and Trade ("GATT"). *See also* Cameron & Tomlin, *supra* note 2, at 56-58.

liberalization was relatively new at the time of the NAFTA negotiations.[10]

In 1994, when NAFTA took effect, no arbitral awards had been given under U.S. BITs or Canadian FIPAs. For its part, Mexico had only recently restructured its domestic laws to permit international commercial arbitration.[11] Hence, Mexico had no experience with investor-state arbitration.

The historical record suggests that the Parties' main goals in signing NAFTA related to objectives other than Chapter 11's investor-state dispute resolution mechanism and that investor-state arbitrations under BITs were relatively unusual at the time. Given this context, the volume or type of arbitration that was instituted under NAFTA Chapter 11 was not easily predictable.[12] Nor could anyone have foreseen the number of cases between Canadian and American disputing parties. Some NAFTA commentators contend that the proliferation of Chapter 11 cases was to be expected in an investment treaty between developed and developing countries with an extensive volume of reciprocal trade and investment.[13] However, this analysis is

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[10] Sandrino, *supra* note 9, at 327.

[11] In 1989 Mexico reformed its domestic and international commercial arbitration laws to allow arbitration among private parties. Mexico's Commercial Code was reformed to permit commercial arbitration on January 4, 1989. Articles 1415 to 1437 were added under the heading "Title Four: Of Arbitration Procedures." *See* Margarita Trevino Balli & David S. Coale, *Recent Reforms to Mexican Arbitration Law: Is Constitutionality Achievable?* 30 TEX. INT'L L.J. 535, 543 (1995). Following this change in the Commercial Code, Mexico passed a law in 1992 authorizing the country to enter into treaties containing mechanisms for dispute resolution between Mexico and foreign governments or foreign individuals. Dispute resolution mechanisms which were permitted under the 1992 law included investor-State arbitration. Patrick Del Duca cites this law as "Ley sobre la celebración de tratados," D.O., *available at* http://www.cddhcu.gob.mx/leyinfo/pdf/216.pdf (Jan. 2, 1992). Patrick Del Duca, *The Rule of Law: Mexico's Approach to Expropriation Disputes in the Face of Globalization* 51 UCLA L. REV. 35, 114 (2003).

[12] There has also been a marked increase in non-NAFTA investor-state disputes in recent years. UNCTAD reported in November 2004 that of the cumulative total of cases brought under bilateral, regional and plurilateral investment treaty clauses (160) more than half (92) were brought within the past three years. UNCTAD, *International Investment Disputes on the Rise,* OCCASIONAL NOTE, UNCTAD/WEB/ITE/2004/2, *available at* http://www.unctad.org/sections/dite/iia/docs/webiteiit20042_en.pdf (Nov. 29, 2004). Comments of U.S. Senator Kerry in 2002 suggest that U.S. legislators who passed NAFTA did not anticipate the arbitrations which would result. "When we passed NAFTA, there wasn't one word of debate on the subject of the chapter 11 resolution - not one word. Nobody knew what was going to happen. Nobody knew what the impacts might be." 107 CONG. REC. S4594 (daily ed. May 21, 2002) (statement of Sen. Kerry), *available at* http://thomas.loc.gov/home/r107query.html.

[13] *Cf.* David A. Gantz, *Some Comments on NAFTA's Chapter 11,* 42 S. TEX. L. REV. 1285, 1288 (2001)**.** Gantz notes that "There have been a number of cases between

retrospective. It also ignores a central point, that the number of Chapter 11 cases brought to date is unremarkable relative to the volume and complexity of reciprocal trade and investment flows among the three NAFTA Parties.

III. GENERAL TRENDS IN THE APPLICATION OF NAFTA CHAPTER 11

Having reviewed NAFTA's historical context, it is worth considering several broad trends in Chapter 11 litigation to date. At least four such trends are evident.

A first observation is that in the initial years after NAFTA's entry into force, no notices of arbitration or notices of intent were filed. This suggests that the availability of Chapter 11 was not widely noted in the investor constituencies of the three NAFTA Parties. This can be contrasted with litigation under NAFTA Chapter 20 and Chapter 19, both of which became active almost immediately after the agreement entered into force.[14] In comparison, the first Chapter 11 notice of intent was filed in March 1996 by a Mexican company named Signa, claiming that Canada's Patented Medicines (Notice of Compliance) Regulations violated Articles 1105 and 1110. It never proceeded beyond this stage. The first NAFTA investor-state arbitration was not commenced until January 1997, three years after NAFTA went into effect.[15] This case was brought by Metalclad Corporation, a U.S. investor, that filed a notice of arbitration alleging that Mexico's treatment of Metalclad's development of a waste landfill in the state of

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the United States and Mexico -- all filed by the developed country (U.S.) investor against the developing country (Mexico) government."

[14] The first Chapter 20 case was *Tariffs Applied by Canada to Certain U.S.-Origin Agricultural Products,* for which the United States requested consultations with Canada on February 2, 1995. *See* Tariffs Applied by Canada to Certain U.S.-Origin Agricultural Products, (NAFTA Ch. 20 Arb. Trib. Dec. 2, 1996), No. CDA-95-2008-01, *at* http://www.nafta-sec-alena.org/app/DocRepository/1/Dispute/english/NAFTA_Chapter_20/Canada/cb95010e.pdf. The first NAFTA Chapter 19 case, which pertained to the import of apples to Canada, was dropped before the Panel Report stage. *See* Certain Fresh, Whole, Delicious, Red Delicious and Golden Delicious Apples, Originating in or Exported from the United States of America, Excluding Delicious, Red Delicious and Golden Delicious Apples Imported in Non-Standard Containers for Processing, No. CDA-94-1904-01. Following this, the first Chapter 19 Panel Report was released on April 10, 1995, which reviewed an injury determination by the Canadian International Trade Tribunal. *See* In the matter of Synthetic Baler Twine with A Knot Strength of 200 Lbs or less, Originating in or Exported from the United States of America, (NAFTA Ch 19. Arb. Trib. Apr. 10, 1995), No. CDA-94-1904-02, *at* http://www.nafta-sec-alena.org/app/DocRepository/1/Dispute/english/NAFTA_Chapter_19/Canada/ca94020e.pdf. See Annex 1 for a listing of the eleven Chapter 19 cases which preceded the first investor claim under Chapter 11.

[15] *Metalclad Corp. v. Mexico*, Notice of Arbitration, Jan. 2, 1997.

San Luis Potosi breached NAFTA Chapter 11. A series of cases followed *Metalclad* in quick succession.[16]

A second notable trend is that the early Chapter 11 cases were brought exclusively by U.S. investors against government measures of Canada and Mexico. It appeared at first as if the United States would not be the subject of investor-state arbitration. After the *Metalclad* case, U.S. investors commenced four further Chapter 11 claims: *Azinian* (March 1997), *Ethyl* (April 1997), *Waste Management Inc.* (September 1998) and *Myers* (October 1998).[17] The first claim against the United States under Chapter 11 was *Loewen* (October 1998), brought by a Canadian funeral home company concerning conduct of the Mississippi and U.S. federal courts.[18] This claim was followed by two claims against U.S. measures in 1999 (*Mondev* and *Methanex*), one in 2000 (*ADF*), and two in 2002 (*Canfor* and *Kenex*).[19] Another claim against the U.S. was launched in 2003 (*Glamis*), followed by three more in 2004 (*Grand River, Terminal Forest* and *Tembec*).[20] Clearly no NAFTA party is immune from investor-state claims.

A third noteworthy trend related to Chapter 11 was the increased public attention given to tribunal proceedings and awards. This attention came from several quarters and addressed various elements of investor-state arbitration. The concerns related primarily to alleged incursions on sovereignty,[21] the potential for regulatory chill[22] and

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[16] *See* NAFTA Annex 2 for a listing of concluded Chapter 11 claims.

[17] *Azinian v. Mexico*, Notice of Arbitration, Mar. 10, 1997, *Ethyl Corp. v. Canada*, Notice of Arbitration, Apr. 14, 1997, *Waste Management Inc. v. Mexico*, Notice of Arbitration, Sept. 29, 1998, *S.D. Myers Inc. v. Canada*, Notice of Arbitration (Oct. 30, 1998), *available at* www.dfait-maeci.gc.ca/tna-nac/documents/myers2.pdf.

[18] *The Loewen Group Inc. v. United States*, Notice of Arbitration, Oct. 30, 1998.

[19] *Mondev International Ltd. v. United States*, Notice of Arbitration, Sept. 1, 1999, *Methanex Corp. v. United States*, Notice of Arbitration, December 2, 1999, *ADF Group Inc. v. United States*, Notice of Arbitration, July 19, 2000, *Canfor Corp. v. United States*, Notice of Arbitration, July 9, 2002, *Kenex Ltd. v. United States*, Notice of Arbitration, Aug. 2, 2002.

[20] *Glamis Gold Ltd. v. United States*, Notice of Arbitration, Dec. 10, 2003, *Grand River Enterprises et al. v. United States,* Notice of Arbitration, Mar. 12, 2004, *Terminal Forest Products Ltd. v. United States*, Notice of Arbitration, Mar. 31, 2004, *Tembec Corp. v. United States*, Notice of Arbitration, Dec. 3, 2004.

[21] For example, concerns regarding national sovereignty were voiced in Canada by groups including the Council of Canadians. *See, e.g.,* Stephen Shrybman, *Our Sovereignty at Risk,* CANADIAN PERSPECTIVES, Winter 2005, at 4*, available at* http://www.canadians.org/documents/wincp05_p56.pdf. Similarly, U.S. organisations such as Public Citizen and Friends of the Earth also expressed concerns relating to sovereignty. *See, e.g.,* PUBLIC CITIZEN, NAFTA CHAPTER 11 INVESTOR-TO-STATE CASES: BANKRUPTING DEMOCRACY (Sept. 21, 2001), *at* http://www.citizen.org/documents/ACF186.PDF. *See also, e.g.,* EARTHJUSTICE, GROUPS DEFEND CALIFORNIA'S RIGHT TO PROTECT PUBLIC HEALTH: CANADIAN CORPORATION'S

perceived preferential treatment given to foreign investors (as compared with domestic investors) to sue a NAFTA government.[23] There was also significant public and media attention paid to what was labelled the "closed door" and "secretive" nature of investor-state arbitration.[24] Ironically, a trait traditionally seen as a strength of commercial arbitration,[25] the ability to litigate and perhaps compromise in private, became a liability in the NAFTA context.[26]

Public focus on Chapter 11 raised attention from U.S. legislators. In particular, the *Trade Promotion Act* debates, which led to the 2002 Trade Promotion Authority, involved significant discussion of the

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NAFTA SUIT THREATENS STATE SOVEREIGNTY (Mar. 10, 2004), *at* http://www.earthjustice.org/news/display.html?ID=793.

[22] The issue of regulatory chill was stressed particularly in the environmental context, although this was not the exclusive focus. Several NGO publications reflect this concern. *See, e.g.,* HOWARD MANN, INT'L INST. FOR SUSTAINABLE DEV. & WORLD WILDLIFE FUND FOR NATURE, PRIVATE RIGHTS, PUBLIC PROBLEMS 30-33 (2001), *available at* http://www.iisd.org/pdf/trade_citizensguide.pdf. *See also, e.g.,* EARTHJUSTICE, STATEMENT ON FAST TRACK (TRADE PROMOTION AUTHORITY): ENVIRONMENTAL LAWS AND REGULATIONS AT RISK (Dec. 5, 2001), *available at* http://www.earthjustice.org/news/display.html?ID=273. For exploration of the issue of regulatory chill see Howard Mann & Julie A. Soloway, *Untangling the expropriation and regulation relationship: Is there a way forward? In* ESSAY PAPERS ON INVESTMENT PROTECTION (Mar. 31, 2002), *available at* http://
]www.dfait-maeci.gc.ca/tna-nac/documents/untangle-e.pdf.

[23] *See, e.g.*, PUBLIC CITIZEN, NAFTA CHAPTER 11 INVESTOR-STATE CASES: LESSONS FOR THE CENTRAL AMERICAN FREE TRADE AGREEMENT vii (Feb. 2005), *available at* http://www.citizen.org/documents/NAFTAReport_Final.pdf. *See also, e.g.*, PUBLIC CITIZEN, NEW STUDY ANALYZES SEVEN YEARS OF CORPORATE INVESTOR CHALLENGES TO DEMOCRATIC GOVERNANCE AND STATE SOVEREIGNTY UNDER NAFTA (Sept. 4, 2001), *available at* http://www.citizen.org/
pressroom/release.cfm?ID=960.

[24] *See*, *e.g.*, Anthony DePalma, *NAFTA's Powerful Little Secret: Obscure Tribunals Settle Disputes, But Go Too Far, Critics Say*, N.Y. TIMES, Mar. 11, 2001, at BU1.

[25] Confidentiality is widely cited by practitioners and arbitration associations as a primary advantage of arbitration. *E.g.*, INTERNATIONAL COURT OF ARBITRATION, INTRODUCTION TO ARBITRATION: ADVANTAGES OF ARBITRATION, *at* http://www.iccwbo.org/court/english/arbitration/introduction.asp. Confidentiality is also protected under the International Chamber of Commerce's Rules of Arbitration. *See* INTERNATIONAL COURT OF ARBITRATION, RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE app. I art. 6 & app. II art. 1 (Jan. 1, 1998), *at* http://www.iccwbo.org/court/english/arbitration/rules.asp.

[26] *See, e.g., NOW with Bill Moyers: Trading Democracy* (PBS television broadcast, Feb. 1, 2002); also, in 2002 the Canadian Department of Foreign Affairs and International Trade was nominated for the "Code of Silence Award" given annually by the Canadian Association of Journalists, for its participation in closed door NAFTA Chapter 11 tribunals. Canadian Association of Journalists, *Federal Ministry of Justice Wins 2nd Annual Code of Silence Award*, April 13, 2002, *at* http://www.caj.ca/news/news-archives/Code-of-silence-award-PR2002.htm.

investment chapter.[27] Review of some U.S. legislators' comments during these debates almost suggests that the political climate was shifting towards a U.S.-style Calvo doctrine.[28] These U.S. legislators adopted this perspective in various speeches where they urged that foreign investors should not have greater rights than U.S. domestic investors.[29] They advocated that U.S. domestic standards in areas such as expropriation should be incorporated into international investment treaties.[30] As one Senator stated, "U.S. negotiators must not conclude

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[27] *See* 107 CONG. REC. . H7881 (daily ed. Nov. 7, 2001) (statement of Rep. Brown); 107 CONG. REC. H8816-7 (daily ed. Dec. 4, 2001) (statement of Rep. Lynch); 107 CONG. REC. H8894-6 (daily ed. Dec. 5, 2001) (statement of Rep. Brown); 107 CONG. REC. H8972-9026 (daily ed. Dec. 6, 2001) (statement of Rep. Hastings, et al.); 107 CONG. REC. E2257-9 (daily ed. Dec. 12, 2001) (statement of Rep. Gilman); 107 CONG. REC. E2305 (daily ed. Dec. 14, 2001) (statement of Rep. Kennedy); 107 CONG. REC. S3795-3806 (daily ed. May 2, 2002) (statement of Sen. Baucus); 107 CONG. REC. S4267-8 (daily ed. May 13, 2002) (statement of Sen. Baucus et al.); 107 CONG. REC. S4297-8 (daily ed. May 14, 2002) (statement of Sen. Baucus et al.); 107 CONG. REC. S4346 (daily ed. May 15, 2002) (statement of Sen. Wellstone); 107 CONG. REC. S4592-603 (daily ed. May 15, 2002) (statement of Sen. Kerry et al.); 107 CONG. REC. H3132 (daily ed. June 4, 2002) (statement of Rep. Kaptur). Questioning by members of Congress in related Congressional Hearings also reveals an emphasis on Chapter 11. *President Bush's Trade Agenda for 2002: Hearing before the Committee on Ways and Means House of Representatives,* 107th Cong. (2002), *at* http://waysandmeans.house.gov/legacy/fullcomm/107cong/2-7-02/107-57final.htm.

[28] According to the Calvo Doctrine, named for Argentinean diplomat and legal scholar Carlos Calvo, disputes involving foreign investors and host states ought to be resolved exclusively through local courts, precluding international arbitration or action via diplomatic channels. The doctrine attained influence in several Latin American countries and was reflected in these countries' foreign investment policies and constitutions. As Cremades writes, the doctrine "placed foreigners on an equal- and no more than equal - footing with Latin American nationals by providing that foreigners could seek redress for grievances only before local courts." *See* Bernardo M. Cremades, *Disputes Arising out of Foreign Direct Investment in Latin America: A New Look at the Calvo Doctrine and other Jurisdictional Issues*, 59 DISP. RESOL. J. 78, 80 (2004).

[29] Comments reflecting the view that foreign investors' rights should not exceed domestic investors' rights include the following: "There is a growing consensus that we need to make sure that new trade and investment agreements don't give foreign investors in the United States greater rights than we give our own citizens." 107 CONG. REC. S4267-8 (daily ed. May 13, 2002) (statement of Sen. Baucus). Legislators' concerns regarding preferential treatment being given to foreign investors were also reflected in the final version of the act which eventually granted Trade Promotion Authority, the *Trade Act of 2002.* The act mentions explicitly at § 2103(b)(3) that the United States is to pursue its trade objectives "while ensuring that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States." Trade Act of 2002, Pub. L. No. 107-210, § 2103(b)(3), 116 Stat. 933 (2002), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ210.107.pdf.

[30] Comments reflecting the view that domestic legal standards should be incorporated into treaty obligations include the following: "We honor the concept of

agreements that give foreign investors greater protection of their property rights than our own citizens already enjoy. Our well-developed law should define the ceiling."[31] Ultimately, the Trade Promotion Authority was granted. However, it was accompanied by specific strictures on the future negotiation of investment chapters, many in response to concerns arising under NAFTA Chapter 11.[32]

A fourth observation on trends under Chapter 11 is that the United States has not yet lost a case, although it has received final awards in four cases.[33] In contrast, Canada settled one case and paid damages in two other cases.[34] Mexico won four cases and paid damages in two cases.[35] Those who follow NAFTA Chapter 11 speculate whether this outcome is merely serendipitous or whether it indicates something systemic. However, any conclusions would be premature, especially given the small number of final awards to date.

NAFTA or any treaty creating a dispute mechanism, but when a government action causes physical invasion of property or denial of economic use of that process, that should be consistent with U.S. Supreme Court holdings." 107 CONG. REC. S4592-603 (daily ed. May 15, 2002) (statement of Sen. Kerry).

[31] 107 CONG. REC. S4267 (daily ed. May 13, 2002) (statement of Sen. Baucus).

[32] Agreements containing investment dispute resolution mechanisms fell under § 2103(b)(2) of the *Trade Act of 2002,* which stated that such agreements could only be entered into if they "made progress" in meeting certain trade negotiation objectives. These objectives, outlined in § 2102(a)(3), included, among others, promotion of transparency. In addition, § 2104 obliged the President to consult with Congress and various committees in advance of the negotiation and signing of such agreements. *See* Trade Act of 2002, *supra* note 29.

[33] As of August 2005, the United States had received final awards in four cases and had won each case: *Mondev International Ltd. v. United States*, Final Award, Oct. 11, 2002, *ADF Group Inc. v. United States*, Final Award, Jan. 9, 2003, *The Loewen Group Inc. v. United States*, Final Award, June 26, 2003, and *Methanex Corp. v. United States* Final Award, Aug. 3, 2005.

[34] As of August 2005, Canada had settled one case, *Ethyl Corp. v. Canada*, *see* Environment Canada News Release, *Government to Act on Agreement on Internal Trade (AIT), Panel Report on MMT* (July 20, 1998), *available at* http://www.ec.gc.ca/press/mmt98_n_e.htm. Canada also paid damages pursuant to the awards in *S.D. Myers Inc. v. Canada*, Final Award, Oct. 21, 2002 and *Pope & Talbot Inc. v. Canada*, Damages Award, May 31, 2002.

[35] As of August 2005, Mexico won four cases: *Azinian v. Mexico*, Final Award, Nov. 1, 1999, *Waste Management Inc. v. Mexico – I*, Final Award, June 2, 2000, *Waste Management Inc. v. Mexico – II*, Final Award, Apr. 30, 2004, and *GAMI Investments Inc. v. Mexico*, Final Award, Nov. 15, 2004. It paid damages pursuant to the awards in *Metalclad Corp. v. Mexico,* Final Award, Aug. 30 2000 and *Feldman v. Mexico*, Final Award, Dec. 16, 2002. The *Metalclad* award was later set aside in part in *Mexico v. Metalclad Corp*., [2001] B.C.J. No. 950, 2001 BCSC 664 (B.C.S.C.).

IV. CONTRIBUTION TO THE BITS LANDSCAPE

Amidst the swirl of public discussion on Chapter 11 were developments from a technical or legal perspective. Such developments arose as the various cases progressed, through the release of interim tribunal decisions and final awards. Similarly significant was the NAFTA Parties' issuance of a Note of Interpretation[36] as well as two clarifying Guidelines.[37] Not only did these developments advance common understanding of Chapter 11's scope and application, but they also contributed to the development of international investment law and interpretation of obligations in BITs between non-NAFTA Parties. Six identifiable contributions are worth noting.

The first contribution is the relatively large body of modern international investment case law generated by NAFTA Chapter 11 panels. Aside from the Iran – United States Claims Tribunal, NAFTA is unique in having generated a body of investment law interpreting the obligations and process applicable to investment treaties.

Second, NAFTA contributed to the increasing coherence of international investment jurisprudence. This is especially clear from a review of Chapter 11 cases. Most Chapter 11 tribunals canvas diverse international law sources including awards of Mixed Claims Commissions, the International Court of Justice ("ICJ"), World Trade Organization ("WTO")/GATT panels, the Iran-United States Claims Tribunal, International Center for Settlement of Investment Disputes ("ICSID") panels and other tribunals. Their attempts to synthesize this law contributes to creation of a cohesive law of international investment.[38] In addition, NAFTA cases themselves are creating investment law precedents. Although NAFTA specifically states that there is no *stare decisis* among its cases,[39] NAFTA tribunals commonly look to past cases and try to apply, reconcile or occasionally distinguish

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[36] Canada's Trade Negotiations and Agreements: NAFTA Free Trade Commission, *Notes of Interpretation of Certain Chapter 11 Provisions* (July 31, 2001), *available at* http://www.dfait-maeci.gc.ca/tna-nac/NAFTA-Interpr-en.asp.

[37] Two sets of guidelines were issued by the NAFTA Parties as part of the *NAFTA Free Trade Commission Joint Statement,* "Celebrating NAFTA at Ten". *Statement of the Free Trade Commission on Non-disputing Party Participation* (NAFTA Free Trade Commission, October 7, 2003)*, available at* http://www.dfait-maeci.gc.ca/nafta-alena/Nondisputing-en.pdf; *Statement of the Free Trade Commission on Notices of Intent to Submit a Claim to Arbitration* (NAFTA Free Trade Commission, October 7, 2003), *available at* http://www.dfait-maeci.gc.ca/nafta-alena/NoticeIntent-en.pdf.

[38] *See* Jack J. Coe, Jr., *Taking Stock of NAFTA Chapter 11 in its Tenth Year: An Interim Sketch of Selected Themes, Issues, and Methods*, 36 VAND. J. TRANSNAT'L L. 1381, 1406 (2003).

[39] NAFTA, *supra* note 1, art. 1136(1).

such cases from the matter before the tribunal.[40] In turn, the ICSID and other tribunals consider, cite and apply NAFTA cases that interpret BITs between non-NAFTA parties. All of this leads to a comprehensive and more unified body of investment law.

Unification of investment jurisprudence is a positive trend to the extent that it creates a transparent and predictable law of international investment. However, efforts to unify investment jurisprudence should not detract from the primary rules of treaty interpretation in the Vienna Convention. The primary focus of a tribunal must be on the words of the specific treaty the tribunal is interpreting and the context of the particular agreement.

A third contribution is that NAFTA has set the "gold standard" in making international investment law publicly accessible. This is an improvement on the previous norm: anyone who has tried to research a question of international investment law, especially a procedural point of commercial arbitration, knows how difficult it can be to locate useful authority. Relevant awards often were not published, or were published in part or in an obscure location. NAFTA Chapter 11 changed this, both formally in its text and practically in its application. Annex 1137.4 of NAFTA allows either disputing party to make an award public when Canada or the United States is a party to the dispute. Applicable arbitration rules govern publication of the award where Mexico is a disputing party.[41] In practice, the NAFTA Parties exceeded the transparency norms of the agreement. All three Parties put their pleadings and awards on the internet, as well as other background material such as the treaty text, notes of interpretation and negotiating drafts. In addition, websites by practitioners such as Professor Newcombe (ita.law)[42] or Professor Weiler (naftaclaims)[43] are making this body of law accessible as never before. Similarly, by July 2004 all three NAFTA Parties publicly committed to seeking open hearings in every arbitration. Open hearings are now the norm in such cases.

Fourth, NAFTA spurred the development of case law surrounding

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[40] For example, the tribunal in *GAMI Investments, Inc. v. Mexico,* reviewed several NAFTA Chapter 11 Awards in its analysis of Articles 1105 & 1110, holding, for instance, that "The present Tribunal endorses and adopts the following passages from *S.D. Myers." GAMI Investments, Inc. v. Mexico*, Final Award, *supra* note 35, para. 93 [emphasis in original]; *See also id.* paras. 95-101 & 124-32. Similarly, the tribunal in *Feldman v. Mexico* looked explicitly to the reasoning in *Azinian* to further its own analysis of Article 1110. *Feldman v. Mexico*, Final Award, *supra* note 35, paras. 110-12.

[41] NAFTA, *supra* note 1, Annex 1137.4.

[42] Investment Treaty Arbitration Resource Website, *at* http://ita.law.uvic.ca/ (last visited Nov. 2, 2005).

[43] NAFTA Claims, *at* http://naftaclaims.com/ (last visited Nov. 2, 2005).

procedural aspects of investment arbitration. For example, NAFTA cases addressed amicus submissions,[44] cabinet confidence,[45] disclosure of documents[46] and preliminary motions on jurisdiction.[47] While treatment of these issues by NAFTA tribunals is not always consistent, NAFTA investor-state cases certainly advanced the state of the law on all of these issues, or at least added significantly to the discussion.

Fifth, NAFTA contains a variety of novel procedural mechanisms which have been adopted in recent Canadian and U.S. Model BITs. By virtue of this repetition in model and other BITs, it is almost certain that these mechanisms will be found in generations of BITs to come and will play a continuing role in the development of international investment law. Examples of such mechanisms include binding notes of interpretation,[48] the right of the non-disputing treaty Party to address issues of interpretation,[49] consolidation of claims,[50] *amicus curiae* (or non-disputing party) guidelines[51] and the guidelines for the format of Notices of Intent.[52] While some of these have occasionally been found

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[44] *Methanex Corp. v. United States*, Decision of the Tribunal on Petitions from Third Persons to Intervene as Amici Curiae, Jan. 15, 2001, at 12-23; *UPS v Canada*, Decision of the Tribunal on Petitions for Intervention and Participation as Amici Curiae, Oct. 17, 2001.

[45] *ADF Group Inc. v. United States*, Procedural Order No. 3 Concerning the Production of Documents, Oct. 4, 2001; *ADF Group Inc. v. United States*, Final Award, *supra* note 33; *Pope & Talbot v. Canada*, Decision by Tribunal, Sept. 6, 2000; *S.D. Myers v. Canada*, Procedural Order No. 10 (Crown Privilege), Nov. 16, 1999; *UPS v. Canada*, Decision of the Tribunal Regarding Canada's Claim of Cabinet Privilege, Oct. 8, 2004.

[46] *See, e.g.*, *Feldman v. Mexico*, Procedural Order No. 5, Dec. 6, 2000, *ADF Group Inc. v. United States*, Procedural order No. 3, Oct. 4, 2001, *International Thunderbird Gamin Corp. v. Mexico*, Procedural Order No. 2, July 31, 2003.

[47] *See Ethyl Corporation v. Canada*, Preliminary Tribunal Award on Jurisdiction, June 24, 1998; *S.D. Myers v. Mexico*, Order dismissing Judicial Review in Federal Court and Reasons for Order, Jan. 13, 2004, at 20; *Methanex Corp. v. United States*, First Partial Award, Aug. 7, 2002; *Canfor Corporation v. United States*, Decision on the Place of Arbitration, Filing of a Statement of Defence and Bifurcation of the Proceedings, Jan. 23, 2004, at 9-13; *UPS v. Canada*, Decision of the Tribunal on the Filing of a Statement of Defence, Oct. 17, 2001; *UPS v. Canada*, Award on Jurisdiction, Nov. 22, 2002; *Metalclad Corp*. v. Mexico, Final Award, *supra* note 35, at 18-21; *Mexico v. Metalclad Corp*., *supra* note 35, at 31-32; *ADF Group Inc. v. United States*, Award, *supra* note 33, at 65-67; *Feldman v. Mexico*, Interim Decision on Preliminary Jurisdictional Issues, Dec. 16, 2002.

[48] NAFTA, *supra* note 1, art. 1131.

[49] *Id.* art. 1128.

[50] *Id.* art. 1126.

[51] Statement of the Free Trade Commission on Non-disputing Party Participation, *supra* note 37.

[52] Statement of the Free Trade Commission on Notices of Intent to Submit a Claim to Arbitration, *supra* note 37.

in or have analogues in previous BITs, the NAFTA is notable in having created and implemented such procedural innovations.

Sixth, Chapter 11 addressed a limited number of substantive obligations. No awards have been issued based on Most Favoured Nation treatment (Article 1103), performance requirements (Article 1106), senior personnel (Article 1107) or transfer of funds (Article 1109). The awards have concentrated on the obligations of national treatment (Article 1102), the minimum standard of treatment (Article 1105) and expropriation (Article 1110). The case law on these three obligations has not been the radical departure from investment treaty law or customary international law that some commentators would suggest.[53]

A. Article 1102 - National Treatment

Article 1102 generated a significant amount of discussion. Some tribunals found it difficult to adapt the General Agreement on Tariffs and Trade ("GATT") concept of "like product" to the broader investment context of "according treatment in like circumstances," and struggled with the concept of nationality-based discrimination in the investment context. At the same time, there appears to have been wide recognition that Article 1102 must be interpreted in a way that considers relevant policy imperatives. These cases uniformly consider legitimate policy bases in determining like circumstances.[54]

B. Article 1105 - Minimum Standard of Treatment

Early awards addressing Article 1105 were difficult to reconcile with one another. The tribunal in *Pope & Talbot* held that fair and equitable treatment was "additive"[55] to the minimum standard of treatment, despite express wording to the contrary ("including") in

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[53] *See, e.g.,* Charles H. Brower, II, *Structure, Legitimacy, and NAFTA's Investment Chapter* 36 VAND. J. TRANSNAT'L L. 37, 66-69 (2003).

[54] *Pope & Talbot Inc. v. Canada*, Award on the Merits of Phase 2, Apr. 10, 2001, paras. 87-88, 93 & 102-103; *ADF Group Inc. v. United States*, *supra* note 33, para. 157; *S. D. Myers Inc. v. Canada*, Partial Award, Nov. 13, 2000, para. 252; *Loewen Group, Inc. v. United States*, Final Award, *supra* note 33, para. 139; *GAMI Investments, Inc. v. Mexico*, Final Award, *supra* note 35, paras. 114-15**.**

[55] *Pope & Talbot Inc. v. Canada*, Award on the Merits of Phase 2, *supra* note 54, para. 110-11. For treatment of states' obligation under 1105 and criticism of *Pope & Talbot's* 1105 holding see the following: *UPS v. Canada*, Award on Jurisdiction, *supra* note 47, paras. 95-97; *Mondev International Ltd. v. United States*, *supra* note 33, para. 108; *Loewen Group, Inc. v. United States*, *supra* note 33, para. 128; *ADF Group Inc. v. United States*, Final Award, *supra* note 33, paras. 176-86; *Mexico v. Metalclad Corp*., *supra* note 35, para. 68.

Article 1105.[56] The Metalclad tribunal held that Article 1105 included an obligation to "create a fair and transparent environment".[57] On the set-aside application in *Mexico v. Metalclad,* Judge Tysoe unequivocally refuted this line of interpretation. He found that "there [was] no proper basis to give the term 'international law' in Article 1105 a meaning other than its usual and ordinary meaning."[58] Yet another variant on Article 1105 was advanced in *Myers*, where the arbitrators determined that a breach of Article 1102 was a breach of Article 1105.[59]

However, since July 31, 2001, when the Parties issued a Note of Interpretation clarifying Article 1105,[60] the case law on Article 1105 has been increasingly cohesive. For instance, *Mondev*,[61] *ADF*,[62] and *Loewen*[63] held that Article 1105 incorporated the customary international law on minimum standard of treatment. In *Waste Management*, the tribunal synthesized previous cases to conclude that Article 1105 was violated by state conduct "if the conduct is arbitrary, grossly unfair, unfair or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involved a lack of due process leading to an outcome which offends judicial propriety."[64]

C. Article 1110 - Expropriation

The interpretation of expropriation under NAFTA Chapter 11 has clearly drawn from customary international law and did not depart from earlier international investment precedents. Despite urging by investor lawyers in early Chapter 11 arbitrations to create a *lex specialis* out of phrases like "measures tantamount to", the expropriation awards in NAFTA Chapter 11 have been straightforward and consistent. Pursuant to these awards, expropriation exists where there is substantial deprivation of an investment. Tribunals have

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[56] Article 1105 (1) reads as follows: "1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security." NAFTA, *supra* note 1, art. 1105.

[57] *Metalclad Corp. v. Mexico*, Final Award, *supra* note 35, paras. 76 & 99; the tribunal's finding was later overturned by the British Columbia Supreme Court. *See Mexico v. Metalclad Corp*., *supra* note 35, paras. 70-76.

[58] *Mexico v. Metalclad Corp*., *supra* note 35, para. 68.

[59] *S. D. Myers Inc. v. Canada*, Partial Award, *supra* note 54, para. 266; for a critique of this view see *UPS v. Canada*, Award on Jurisdiction, *supra* note 47, para. 99.

[60] Notes of Interpretation of Certain Chapter 11 Provisions, *supra* note 36.

[61] *Mondev International Ltd. v. United States*, Final Award, *supra* note 33, para. 125.

[62] *ADF Group Inc. v. United States*, Final Award, *supra* note 33, para. 184.

[63] *Loewen Group, Inc. v. United States*, Final Award, *supra* note 33, para. 128.

[64] *Waste Management, Inc. v. Mexico*, Final Award (II), *supra* note 35, para. 98.

looked to similar considerations to assess the extent of interference with the investor's rights, including the degree of control the investor has over the investment, the extent of the taking and the effect of the taking.

V. LEGACY FOR THE FUTURE

NAFTA contributed to modern international investment law by creating a relatively large, cohesive body of procedural and substantive law that merges past precedent to create a norm for future awards. The recent U.S. and Canadian Model BITs are certain to consolidate this legacy.[65] Review of these Model BITs frequently reveals clear NAFTA roots, updated to incorporate practical experience gained in the last ten years. For example, the Model BITs incorporate procedural innovations such as amicus briefs, have relatively detailed arbitral procedures and guarantee a very high degree of transparency.[66] They also incorporate substantive developments in NAFTA, with annexes on customary international law, the minimum standard of treatment and expropriation. The recent Uruguay – U.S. BIT appears to have followed the 2004 U.S. Model BIT almost verbatim.[67] Canada has not signed a FIPA based on its new model, but currently is negotiating FIPAs with China, India and Peru. Other countries are also developing model investment treaties to guide their negotiations. This next generation of BITs is likely to adopt significant portions of the U.S. and Canada Model BIT and further consolidate the contributions of NAFTA to international investment law.

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[65] US Model Bilateral Investment Treaty, November 2004, *at* http://www.ustr.gov/assets/Trade_Sectors/Investment/Model_BIT/asset_upload_file847_6897.pdf; Canada's Foreign Investment Protection and Promotion Agreement Model (2003), *at* http://www.dfait-maeci.gc.ca/tna-nac/documents/2004-FIPA-model-en.pdf.

[66] U.S. Model Bilateral Investment Treaty, *infra* note 68, arts. 28-37; Canada's Foreign Investment Protection and Promotion Agreement Model, 2003, *infra* note 68, arts. 20-47.

[67] *See* Treaty Between the Republic of Uruguay and the United States of America Concerning the Encouragement and Reciprocal Protections of Investment (Oct. 25, 2004), *at* http://www.state.gov/documents/organization/38051.pdf.

ANNEX 1: CHAPTER 19 CASES PRECEEDING THE FIRST CHAPTER 11 CLAIM[68]

Case Name	File No.	Date of Panel Decision	Agency Reviewed
Certain Fresh, Whole, Delicious, Red Delicious and Golden Delicious Apples, Originating in or Exported from the United States of America, Excluding Delicious, Red Delicious and Golden Delicious Apples Imported in Non-Standard Containers for Processing	CDA-94-1904-01	Terminated - No Decision Issued	Canadian International Trade Tribunal (CITT) Injury Finding
Synthetic Baler Twine with a Knot Strength of 200 lbs or Less, Originating in or Exported from the United States of America	CDA-94-1904-02	April 10, 1995	CITT Injury Finding
Live Swine from Canada	USA-94-1904-01	May 30, 1995	U.S. Department of Commerce Final Results of Countervailing Duty Administrative Review
Certain Corrosion-Resistant Steel Sheet Products Originating in or Exported from the United States of America	CDA-94-1904-03	June 23, 1995 & Nov. 2, 1995	Revenue Canada Final Determination of Dumping

[68] Information on cases compiled from "Status Report of Panel Proceedings - Completed NAFTA Panel Reviews", http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=10#cn_ch19c; *see also* "NAFTA Chapter 19 Binational Panel Decisions - REVIEWING CANADIAN AGENCIES' FINAL DETERMINATIONS", http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=377; *see also* "NAFTA Chapter 19 Binational Panel Decisions - REVIEWING U.S. AGENCIES' FINAL DETERMINATIONS", http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=380.

Certain Corrosion-Resistant Steel Sheet Products, Originating in or Exported from the United States of America	CDA-94-1904-04	July 10, 1995	CITT Injury Finding
Leather Wearing Apparel from Mexico	USA-94-1904-02	Oct. 20, 1995	Department of Commerce Final Results of Countervailing Duty Administrative Review
Certain Malt Beverages from the United States of America	CDA-95-1904-01	Nov. 15, 1995	CITT Order Rescinding Injury Finding
Fresh, Whole, Delicious, Red Delicious and Golden Delicious Apples, Originating in or Exported from the United States of America	CDA-95-1904-02	Terminated - No Decision Issued	Revenue Canada Final Determination of Dumping
Machine Tufted Carpeting Originating in or Exported from the United States of America	CDA-95-1904-03	Terminated - No Decision Issued	Revenue Canada Re-determination
Porcelain-on-Steel Cookware from Mexico	USA-95-1904-01	April 30, 1996	Department of Commerce Final Results of Antidumping Duty Administrative Review
Color Picture Tubes from Canada	USA-95-1904-03	May 6, 1996	Department of Commerce Determination not to Revoke Antidumping Duty Orders and Findings nor to Terminate Suspended Investigations
Oil Country Tubular Goods fromMexico	USA-95-1904-04	July 31, 1996	Department of Commerce Final Determination of Sales at Less than Fair Value

ANNEX 2: CONCLUDED CHAPTER 11 CLAIMS (As of August 2005)[69]

Name	Country of Investor Nationality	Date of Notice of Intent	Date of Claim/Notice of Arbitration	Articles Pleaded	Award & Result	Review
Ethyl Corp. v. Canada	United States	Sept. 10, 1996	April 14, 1997	1110, 1106, 1102	Settlement by Canada	None
Metalclad v. Mexico	United States	Sept. 28, 1996	Jan. 2, 1997	1102(1-3), 1103, 1104, 1105, 1106(1)(f), 1110, 1111	Award in favor of Claimant	British Columbia Supreme Court (Tribunal Award set aside in part)
Azinian v. Mexico	United States	Undated	March 10, 1997	1102(1-3), 1103, 1104, 1105, 1106(1)(f), 1110, 1111	Award in favor of Mexico	None
Waste Management Inc. v. Mexico (I)	United States	Feb. 6, 1998	Sept. 29, 1998	1105, 1110	Award in favor of Mexico	None

[69] Information compiled from the NAFTA Parties' government websites. International Trade Canada, *Dispute Settlement: NAFTA – Chapter 11 – Investment,* http://www.dfait-maeci.gc.ca/tna-nac/NAFTA-en.asp; U.S. Department of State, *NAFTA Investor State Arbitrations,* http://www.state.gov/s/l/c3439.htm; Secretaría de Economía, *Solución de Controversias en Materia de Inversión,* http://www.economia-snci.gob.mx/ls23al.php?s=18&p=1&l=1. Some information also taken from a private website. NAFTA Claims, http://naftaclaims.com/.

S.D. Myers v. Canada	United States	July 21, 1998	Oct. 30, 1998	1102, 1105, 1106, 1110	Award in favor of Claimant	Federal Court of Canada (Canada's application for review dismissed)
Loewen Group, Inc., v. United States	Canada	Unknown	Oct. 30, 1998	1102, 1105, 1110	Award in favor of the United States	Application in U.S. District Court for District of Columbia to vacate Award (Pending)
Pope & Talbot Inc. v. Canada	U.S.	Dec. 24, 1998	March 25, 1999	1102, 1103, 1105, 1106	Award in favor of Claimant	None
Methanex Corp. v. United States	Canada	July 2, 1999	Dec. 2, 1999	1105, 1110	Award in favor of the United States	None
Mondev International Ltd. v. United States	Canada	Unknown	Sept. 1, 1999.	1102, 1105, 1110	Award in favor of the United States	None
ADF Group Inc. v. United States	Canada	Feb. 29, 2000	July 19, 2000	1102, 1105, 1106	Award in favor of the United States	None
Waste Management Inc. v. Mexico (II)	United States	June 19, 2000	Sept. 18, 2000	1105(1), 1110	Award in favor of Mexico	None
GAMI Investments, Inc. v. Mexico	United States	Oct. 1, 2001	April 9, 2002	1102, 1105, 1110	Award in favor of Mexico	None
Marvin Feldman v. Mexico	United States	Feb. 20, 1998	April 30, 1999	1102, 1110	Award in favor of Claimant	Ontario Superior Court (Mexico's application for review dismissed)