

**APPLETON & ASSOCIATES**

INTERNATIONAL LAWYERS

*New York Toronto*

Privileged and Confidential

**NOTICE OF ARBITRATION  
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

- AND -

**GOVERNMENT OF CANADA**

Respondent/ Party

Suite 4400, P.O. Box 95, Royal Trust Tower, Toronto-Dominion Centre, Toronto, Ontario M5K 1G8 Tel. (416) 815-8800 Fax. (416) 815-8801

950 Third Avenue, Suite 1700, New York, N.Y. 10022 Tel. (212) 935-9558 Fax. (212) 371-3215 [www.appletonlaw.com](http://www.appletonlaw.com)

Pursuant to Article 3 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 initiates recourse to arbitration under the UNCITRAL Rules of Arbitration (Resolution 31/98 Adopted by the General Assembly on 15 December 1976).

**A. DEMAND THAT THE DISPUTE BE REFERRED TO ARBITRATION**

Pursuant to Article 1120(1)(c) of the NAFTA, the Claimant, hereby demands that the dispute between it and the Respondent be referred to arbitration under the UNCITRAL Rules of Arbitration.

**B. 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 0H8

**C. REFERENCE TO THE ARBITRATION CLAUSE OR THE SEPARATE ARBITRATION AGREEMENT THAT IS INVOKED**

The Claimant invokes Section B of Chapter 11 of the NAFTA, and specifically Articles 1116, 1120 and 1122 of the NAFTA as authority for the arbitration. Section B of Chapter 11 of the NAFTA sets out the provisions agreed concerning the settlement of disputes between a Party and an Investor of another Party.

**D. REFERENCE TO THE CONTRACT OUT OF OR IN RELATION TO WHICH THE DISPUTE ARISES**

The dispute is in relation to the Claimant's investment in Canada and the damages that have arisen out of the Government of Canada's ("Canada") breach of its obligations under Section A of Chapter 11 of the NAFTA.

E. THE GENERAL NATURE OF THE CLAIM AND AN INDICATION OF THE AMOUNT INVOLVED

S.D. Myers, Inc. ("S.D. Myers"), a corporation established and existing under the laws of the State of Ohio, in the United States of America, has been engaged in the business of the processing, transportation and disposal of polychlorinated biphenyl ("PCB") contaminated waste since 1982. It processes, transports and manages the disposal of PCBs according to the guidelines set out by the United States Environmental Protection Agency ("EPA") for PCB production and waste management. Although processing occurs at its specialized treatment facility in Tallmadge, Ohio, from 1994 S.D. Myers has operated in Canada on its own and in a joint venture with the intention of processing, distributing and treating PCB-contaminated waste from Canadian customers.

Beginning in 1993, S.D. Myers commenced a process to obtain permission from the EPA to import waste from the Canadian PCB marketplace. On October 26, 1995, the EPA granted S.D. Myers a discretionary permit for approval to export PCB waste from Canada into the United States. Other permits were granted to U.S. PCB waste disposal companies, but S.D. Myers was the only U.S. company operating in Canada at that time.

On November 1, 1995 advice was given to the Canadian Environment Minister, the Hon. Sheila Copps M.P., that the operations of companies exporting PCB waste from Canada to the United States should be banned if the commercial interests of Canadian PCB waste companies were to be protected. The Minister was also advised that a PCB waste export operation ban would be inconsistent with Canada's NAFTA obligations and that there were no strong environmental arguments to justify closure of the border to the operations of companies exporting PCB wastes.

On November 16, 1995 the Environment Minister made an Interim Order of an emergency nature to close the border to the export of PCB wastes to the United States. This Order was not properly made in accordance with Canadian law and, therefore, on November 20, 1995, the Environment Minister again approved and signed the Interim Order to ban the export of PCB wastes from Canada to the United States. This order amended the existing *PCB Waste Export Regulations* which had allowed for the export of PCB wastes to the United States.

On November 28, 1995, Canada issued Order-in-Council #1995-2013 which is known as the *PCB Waste Export Interim Order*. The *PCB Waste Export Interim Order* was converted to a final order on February 26, 1996, by Order-in-Council # 1996-261.

As a result of Canada's actions, the Investor has suffered economic harm to its Investment through interference with its operations, lost contracts and opportunities in Canada.

The Investor alleges that the Government of Canada has breached its obligations under Chapter 11 of the NAFTA, including, but not limited to breaches of the following specific provisions:

- (1) Article 1102 - National Treatment;
- (2) Article 1105- Minimum Standard of Treatment;
- (3) Article 1106- Performance Requirements;
- (4) Article 1110- Expropriation and Compensation.

**Losses Suffered By the Investor**

The Investor has suffered or will suffer the following losses:

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

**F. 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 that the Tribunal may deem appropriate.

**G. APPOINTMENT OF ARBITRATORS**

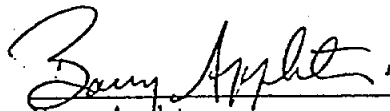
Pursuant to Article 1123 of the NAFTA, the Investor and the Party have agreed on the number of arbitrators which shall be three and on the procedure for appointment. One arbitrator is to be appointed by each of the disputing parties and the third, which is the presiding arbitrator, is appointed by agreement of the disputing parties.

**H. STATEMENT OF CLAIM**

Pursuant to paragraph 4(c) of Article 3 of the UNCITRAL Arbitration rules, the Investor has included its Statement of Claim with this Notice of Arbitration.

**DATE OF ISSUE:** October 30, 1998

APPLETON & ASSOCIATES  
950 Third Avenue, Suite 1700  
New York, NY 10022  
Ph: (212) 935-9558 Fax: (212) 371-3215

  
Barry Appleton  
Counsel for the Claimant / Investor

GOVERNMENT OF CANADA  
Office of the Deputy Attorney General of Canada  
Justice Building  
284 Wellington Street  
Ottawa, Ontario K1A 0H8