

Foreign Affairs and  
International Trade Canada

Department of Justice



Affaires étrangères et  
Commerce international Canada

Ministère de la Justice

125 Sussex Drive  
Ottawa, Ontario  
K1A 0G2

By Facsimile

June 18, 2008

Barry Appleton  
Appleton & Associates  
77 Bloor Street West, 18<sup>th</sup> Floor  
Toronto, Ontario  
M5S 1M2

Dear Mr. Appleton,

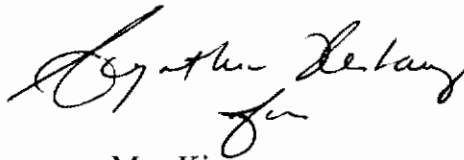
**Re: Bilcon of Delaware et. al v. Canada**

I write with respect to the Notice of Arbitration (the "NOA") that was served on Canada in the above-referenced case. Canada reserves all of its rights to object, on any and all grounds, to the jurisdiction and/or competence of any tribunal constituted pursuant to Chapter 11 of the NAFTA in this matter. Preliminarily, however, Canada notes that the NOA has been filed in violation of Article 1120 of the NAFTA. That article provides that "a disputing investor may submit the claim to arbitration" provided that "six months have elapsed since the events giving rise to the claim."

In paragraph 13 of its NOA, Bilcon states that the environmental assessment, the "event" which is the basis of its allegations, "did not come to an end until the last of the relevant government authorities finally rejected the project." In the same paragraph, Bilcon also claims that the "last" of the relevant government authorities to decide not to approve the project was the federal government in December 2007. In particular, the federal government's decision was made public on December 17, 2007. Canada takes no position at this time as to the correctness of Bilcon's assertion concerning the end date of the environmental assessment process. However, pursuant to the allegations in the NOA, under Article 1120 Bilcon was not permitted to file its NOA until June 17, 2008. Therefore, Bilcon filed the NOA several weeks before it was permitted to do so under the NAFTA.

However, Canada is willing to treat the untimely filed NOA as if it was filed appropriately on June 17, 2008. If you agree with this proposal, please so indicate in writing. Note that upon your agreement, June 17, 2008 will become the operative date for the calculation of any deadlines or timeframes. As mentioned above, this proposal is made without prejudice to Canada's rights to object, on any and all grounds, to any tribunal's jurisdiction and/or competence to hear this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Meg Kinnear" with a stylized flourish below it.

Meg Kinnear  
General Counsel and Director General  
Trade Law Bureau