

## International Centre for Settlement of Investment Disputes

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By e-mail

July 31, 2008

Mr. Steven Shrybman  
Sack Goldblatt Mitchell LLP  
30 Metcalfe Street, Suite 500  
Ottawa, Ontario  
K1P 5L4  
Canada

**Re: Merrill & Ring Forestry L.P. v. Government of Canada  
NAFTA/UNCITRAL Arbitration Rules Proceeding**

Dear Sir,

On the instructions of the President of the Tribunal, I am herewith providing you with the necessary information for the submission of an application on behalf of the Communication, Energy and Paperworkers Union of Canada, the United Steelworkers and the British Columbia Federation of Labour as per your request of June 27, 2008.

The Tribunal has decided on this matter as follows.

Your above-mentioned letter petitions “the Tribunal for leave to intervene in these proceedings” on behalf of the entities noted above. The Tribunal must first point out in this respect that, if the meaning of the petition is to request the granting of the status of a disputing party or an analogous status to the entities you represent, the Tribunal lacks the jurisdictional authority to do so either under NAFTA Chapter 11 or the UNCITRAL Arbitration Rules governing these proceedings. Such status is expressly restricted to a “Party and an Investor of Another Party”.

The status of a non-disputing party is also restricted to very specific situations envisaged in Articles 1126, 1127, 1128 and 1129 of NAFTA, with particular reference to the limited right of participation of other NAFTA parties. There is in this matter, however, a somewhat broader discretion of NAFTA Tribunals to consider applications within the scope and restrictions, as noted, in particular, by the tribunals in *UPS (UPS v. Canada*, Decision of the Tribunal on Petitions for Intervention and Participation as Amici Curiae, October 17, 2001, paras. 60 – 65, 70 – 72) and *Methanex (Methanex v. US*, Decision of the Tribunal on Petitions from Third Persons to Intervene as “Amici Curiae”, January 15, 2001, paras. 24 – 47).

If what your petition envisages is the submission of an *amicus curiae* brief, the Tribunal does have jurisdiction to consider such a request in the light of Article 15 (1) of the UNCITRAL

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Arbitration Rules. Nothing in the NAFTA prohibits the exercise of discretion to this effect. To this end, however, a number of requirements need to be met by the pertinent application for leave to submit an *amicus curiae* brief. Recommendations to that effect have been set out in the NAFTA Free Trade Commission Statement on Non-Disputing Party Participation dated October 7, 2003, the text of which is attached for your convenience. Please note in particular Section B, paragraphs 1 and 2 of the Statement.

As you will note, Section B of the Statement anticipates that the submission will be made at the same time as the application for leave from the Tribunal to file such a submission. In this regard, we direct your attention to the standards for granting leave to file such a submission, which are contained in Section B, para. 6 of the Statement, as well as to the procedures for submitting and considering the submission, contained in Section B, paras. 3 – 10 of the Statement.

Should you wish to make such a submission, please file both the submission and the application for leave from the Tribunal before September 8, 2008. The Tribunal will request the parties' views on such an application and thereafter make a decision on whether to grant leave to file the submission. If granted, the Tribunal will further set an appropriate date by which the disputing parties may respond in writing to the non-disputing party submission.

Sincerely yours,

A handwritten signature in black ink that reads "Eloise Obadia". The signature is written in a cursive style with a long horizontal flourish at the end.

Eloise M. Obadia  
Senior Counsel

Attachment

cc: Members of the Tribunal