



IN THE MATTER OF AN ARBITRATION UNDER  
CHAPTER 11 OF THE  
NORTH AMERICAN FREE TRADE AGREEMENT

UNDER THE UNCITRAL ARBITRATION RULES

BETWEEN:

POPE & TALBOT, INC.

Claimant / Investor

-and-

THE GOVERNMENT OF CANADA




Respondent / Party

PROCEDURAL ORDER No. 2

With respect to preliminary matters, specifically those contained in Respondent/Party's Statement of Defence, Section II, items A, B, C, and D. The Claimant/Investor has withdrawn from its claim item C, MFN treatment, as being subsumed under National Treatment. The Tribunal directed the Claimant/Investor to confirm same in writing to the Respondent/Party, with copies sent to the Tribunal members.

So far as item D, estoppel, is concerned, the Tribunal accepts the position that it should be dealt with on the merits. As for items A and B, the Tribunal considers that these properly form the subject of written submissions in the nature of a Motion to Strike, where all relevant facts alleged by the Claimant/Investor shall be taken as true. Those written submissions will be delivered within two weeks from today's date by the Respondent/Party to the Claimant/Investor and the Tribunal. Claimant/Investor will provide the Respondent/Party and the Tribunal with its written submissions within the two weeks following. The Tribunal shall then proceed to make a ruling on the matter as quickly as possible.

Signed:

  
\_\_\_\_\_  
The Honourable Lord Dervaird, Presiding Arbitrator  
  
\_\_\_\_\_  
Mr. Murray Berman, Arbitrator  
  
\_\_\_\_\_  
The Honourable Benjamin J. Greenberg, Q.C., Arbitrator


Dated: October 28, 1998

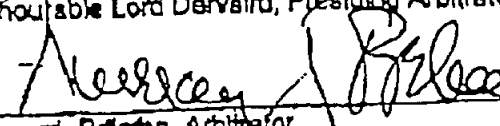


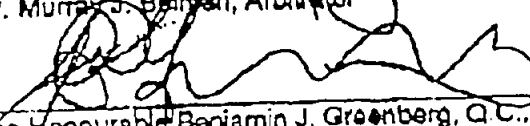


When a period of delay expires on a Saturday, Sunday or statutory holiday, the period shall be extended to the next business day.

Signed:

  
 \_\_\_\_\_  
 The Honourable Lord Dervald, Presiding Arbitrator

  
 \_\_\_\_\_  
 Mr. Murray J. Bennett, Arbitrator

  
 \_\_\_\_\_  
 The Honourable Benjamin J. Greenberg, Q.C., Arbitrator

Dated: October 28, 1998

POPE & TALBOT, INC.

Claimant/Investor

-AND-

GOVERNMENT OF CANADA

Respondent/Party

PROCEDURAL ORDER ON CONFIDENTIALITY NO. 2

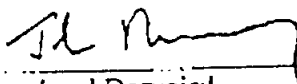
1. In accordance with UNCITRAL Arbitration Rules Article 25(4), hearings shall be held *in camera* unless the parties agree otherwise.
2. Transcripts of hearings and submissions by the disputing parties, such as memorials, counter-memorials, pre-hearing memoranda, witness statements and expert reports, including appendices and exhibits to such submissions, and any applications or motions to the Tribunal, shall be kept confidential and may only be disclosed according to the conditions established below for "Protected Documents" or "Third Party Protected Documents," as the case may be.
3. The following documents may be released into the public domain, subject to redaction of confidential business information as agreed to by the parties:
  - Notice of Intent
  - Notice of Arbitration
  - Statement of Claim
  - Statement of Defense
4. Subject to NAFTA Articles 1127 and 1129, no document:
  - (i) for which business confidentiality has been claimed in these proceedings between Pope & Talbot, Inc. and the Government of Canada (hereinafter referred to as "Protected Documents"), or information recorded in those documents, or
  - (ii) for which business confidentiality with respect to third parties has been claimed in these proceedings between Pope & Talbot, Inc. and the Government of Canada (hereinafter referred to as "Third Party Protected Documents"), or information recorded in those documents, shall be disclosed except in accordance with the terms of this Order or with prior written consent of the person that claimed business confidentiality over the document and the person to whom the business confidential information relates.
5. If any person in possession of a Protected Document or Third Party Protected Document receives a request pursuant to law to disclose a Protected Document or Third Party Protected Document or information contained therein, that person shall give prompt written notice to the party that claimed confidentiality over the document and to the person to whom the confidential

information relates so that such party may seek a protective Order or other appropriate remedy. Such notice shall be provided not less than thirty (30) days before disclosure unless the law requires disclosure in a shorter period of time.

6. Notice pursuant to this Order shall be provided to the Claimant by sending notice by fax to the counsel of record for Pope & Talbot, Inc. while these proceedings are pending (or after the completion of the proceedings, to the Investor) and to the Government of Canada by sending notice by fax to the General Counsel of the Trade Law Division of the Department of Foreign Affairs and International Trade (or his or her successor or designate). Notice to the person to whom the confidential information relates shall be sent by registered mail.
7. The party claiming confidentiality shall clearly identify each page of a Protected Document or Third Party Protected Document with the notation "CONFIDENTIAL BUSINESS INFORMATION. SUBJECT TO CONFIDENTIALITY ORDER. UNAUTHORIZED DISCLOSURE PROHIBITED" or the notation "CBI - DISCLOSURE PROHIBITED."
8. The party claiming confidentiality with respect to third party documents shall clearly identify each page of a Third Party Protected Document with the notation "CONFIDENTIAL THIRD PARTY BUSINESS INFORMATION. SUBJECT TO CONFIDENTIALITY ORDER. UNAUTHORIZED DISCLOSURE PROHIBITED" or the notation "CBI THIRD PARTY - DISCLOSURE PROHIBITED."
9. Protected Documents identified by the parties and information recorded in those Protected Documents may be used only in these proceedings between Pope & Talbot, Inc. and the Government of Canada and may be disclosed only for such purposes to and among:
  - (1) counsel whose involvement in the preparation or conduct of these proceedings is reasonably necessary;
  - (2) officials or employees of the parties whose involvement in the preparation or conduct of these proceedings is reasonably necessary;
  - (3) independent experts or consultants retained or consulted by the parties in connection with these proceedings; and
  - (4) witnesses who in good faith are reasonably expected to offer evidence in these proceedings and only to the extent material to their expected testimony.
10. Third Party Protected Documents identified by the parties and information recorded in those Third Party Protected Documents may be used in these proceedings only. Neither Pope & Talbot, Inc. nor the Government of Canada may, directly or indirectly, use Third Party Protected Documents or information recorded in or derived from those Documents for any purpose other than this arbitration. Third Party Protected Documents used for the purpose of the arbitration may be disclosed only:
  - (1) to counsel whose involvement in the preparation or conduct of these proceedings is reasonably necessary;
  - (2) to independent experts or consultants retained or consulted by the Parties in connection with these proceedings; and

(3) to a representative of the Claimant/Investor present at the hearings when such Third Party Confidential Documents or information are presented.

11. All persons receiving Protected Documents or Third Party Protected Documents shall be governed by this Order. Each party shall have the obligation of notifying all independent experts, consultants and witnesses retained by such parties of the obligations of this Order. The obligations created by this Order shall survive the termination of these proceedings.
12. This Order is binding on all persons receiving Protected Documents, Third Party Protected Documents and information recorded in such documents pursuant to paragraphs 9(1), 9(2), 10(1) and 10(3) of this Order. The party making disclosure pursuant to paragraph 9(1), 9(2), 10(1) and 10(3) of this Order shall take reasonable steps to inform all recipients of Protected Documents or Third Party Protected Documents of their obligations under this Order.
13. It shall be the responsibility of the party disclosing Protected Documents, Third Party Protected Documents or the information therein to any person in accordance with this Order, to ensure that such person executes a Confidentiality Agreement in the form attached as Appendix "A" before gaining access to any such document. Each such Confidentiality Agreement shall be filed immediately with the presiding arbitrator, who shall keep such Agreement confidential. Where Protected Documents or Third Party Protected Documents are to be disclosed to a firm, organization, company or group, all employees and consultants of the firm, organization, company or group with access to the Protected Documents or Third Party Protected Documents, must execute and agree to be bound by the terms of the attached Confidentiality Agreement.
14. At the conclusion of these proceedings, all Protected Documents and Third Party Protected Documents are to be returned to the party who supplied the documents, subject to the requirement of the *National Archives of Canada Act*.
15. This Order is without prejudice to any assertion of privilege. If the Tribunal orders production of a document for which privilege is claimed, the party asserting privilege may claim the protection available under this Order.
16. This Order shall be subject to further direction of the Tribunal.

  
\_\_\_\_\_  
The Hon. Lord Dervaird  
Presiding Arbitrator

Dated: 17 December 1999



NAFTA UNCITRAL INVESTOR-STATE CLAIM  
POPE & TALBOT INC AND THE GOVERNMENT OF CANADA

PROCEDURAL ORDER NO. 6

1. The Tribunal will sit on Thursday 6 January 2000 as already indicated with continuation if necessary on 7th January 2000.
2. The hearing will be confined to the following issues:
  - (i) Is it within the jurisdiction of this Tribunal to order interim measures of the type desired by the Investor against Canada?
  - (ii) Assuming there is such jurisdiction, are the circumstances of this case such as to warrant an order for interim measures being pronounced of the type desired?
3. The Tribunal does not consider that oral evidence is appropriate in relation to the first issue.
4. As regards the second, the Tribunal wishes to emphasise that oral evidence must be confined to the issue before this hearing.
5. In these circumstances the Tribunal will permit cross examination of Mr Gray, Mr Friese and Mr Rosen on behalf of Canada, and Mr George and Mr Lund on behalf of the Investor. If the Investor does not require to cross examine Mr George or Mr Lund, he is required to inform the Tribunal accordingly by Saturday 18 December 2000.
6. Cross examination will be limited to a maximum of one hour for each witness. Evidence in chief will be confined to the written material already submitted by each witness.
7. Re-examination of witnesses will be permitted for a maximum of 10 minutes per witness.
8. Time taken in answering questions from the Tribunal will not be included in the time allotted for cross examination and re-examination.
9. Upon the conclusion of the oral evidence, Counsel for the Investor will make his submission and Counsel for Canada will respond. Each Counsel will be allowed a maximum of 1 hour. Counsel for the Investor will be entitled, if he wishes, to reserve a maximum of 15 minutes out of his hour to reply to the response for Canada.

  
Lord Derwaired  
Presiding Arbitrator

17 December 1999

NAFTA UNCITRAL INVESTOR-STATE CLAIM  
POPE & TALBOT INC AND THE GOVERNMENT OF CANADA

PROCEDURAL ORDER NO. 7

1. The Tribunal will deal in the first instance only with issues as to entitlement in relation to claims made by the Investor under NAFTA Articles 1102, 1106 and 1110.
2. In the event that it is successful on any of the aforesaid claims to entitlement, the Tribunal will proceed to deal with the issues as to damages.
3. In the event that the Investor is unsuccessful in relation to its claim under NAFTA Articles 1102, 1106 and 1110 the Tribunal will deal with issues as to entitlement under NAFTA Article 1105. If the Investor is successful under that head, the Tribunal will proceed to deal with issues as to damages.
4. The investor will lodge a Memorial with the Tribunal and Canada by January 28, 2000 confined to its claims under Articles 1102, 1106 and 1107.
5. Canada will be entitled to lodge a Counter-Memorial by March 15, 2000.
6. The Investor will be entitled to lodge further submissions in response thereto by April 7, 2000.
7. Other Parties, i.e. the USA and Mexico will be advised that they may lodge written submissions by April 7, 2000.
8. Each of the disputing parties may lodge written comments on the written submissions of the Parties referred to in 7 above by April 14, 2000.
9. The Investor and Canada shall present an agreed bundle of documentation to the Tribunal by April 14, 2000.
10. All other documentary material on which either party seeks to rely shall be made available by April 14, 2000.
11. The names of all witnesses upon whom each party seeks to rely shall be made available to the Tribunal and the other party along with copies of that witness' statement by April 20, 2000.
12. The hearing on these issues will take place in Montreal between 1st and 5th May, 2000. The precise time and place will be notified later.

*The Honourable*  
*19 January 2000.*

NAFTA UNCITRAL INVESTOR-STATE CLAIM  
POPE & TALBOT INC AND THE GOVERNMENT OF CANADA

PROCEDURAL ORDER NO. 8

In relation to the Application by the Government of Canada concerning Pope & Talbot Inc's refusal to produce certain documents following Canada's first request for Discovery of Documents, the Tribunal records in the first instance that according to the information furnished to it Pope & Talbot Inc has now supplied Canada with documents falling under the following heads of Request:-

Nos. 1, 2, 6, 17, 19, 26, 30, 31, 32, 34, 38, 39, 40, 41, 42, 43, 49, 51, 52, 57, 64, 68, 70, 74-90 (inclusive), 95, 118-120 (inclusive), 130, 134, 147, 152, 155, 157, 158, 162, 163, 164, 167, 170, 195, 197, 198, 203, 212, 214, 215, 226-229 (inclusive), 231-240 (inclusive), 251, 252, 254, 255, 256 and 286.

In the second place, the Tribunal records that Pope & Talbot Inc has indicated that it cannot identify any documents falling under the following heads of Request:-

Nos 3, 4, 7-11, 14-16, 18, 20-22, 24-25, 28-29, 33, 36-37, 58-62, 63, 65-66, 68, 69, 91, 92, 94, 96-98, 123, 125-127, 129, 131, 132, 135-139, 143-151, 154, 156, 159, 161, 166, 171, 204-208, 209, 210, 213, 217, 218, 221, 225, 241-250, 253, 257-259, 261-267 and 280.

In these circumstances the Tribunal does not consider further these heads of Request at this stage. This procedural order is confined to those requests which Canada has made and which Pope & Talbot Inc has refused on the grounds stated by it, and which it continues to refuse to produce. The Tribunal deals with these as follows (adopting the categories specified by Canada in paragraph 5 of its Application).

- a) Documents which the Claimant has refused to produce on the grounds that they are publicly available and readily accessible to Canada. Those in respect of which that refusal is maintained appear to be Nos. 5, 12, 13, 19 (Part), 23, 27, 35, 93, 133, 140, 141, 142, 153, 160 and 169. In the Tribunal's view the fact that those documents are available to Canada from other sources, assuming that to be correct, is not an adequate basis for refusal to produce to Canada those in the possession of the Claimant.

Accordingly the Claimant is required to produce documents under the heads listed in this paragraph.

- b) Documents which the Claimant has refused to produce on the grounds that they are not relevant. These are nos. 71-73, 99-117, 222-224, 268, 269 and 289. In relation to the first three Nos. 71-73 Canada suggests that such documents may contain information on the Claimant's position on issues arising in U.S. - Canada Softwood Lumber Trade. In the Tribunal's view this is not relevant. So far as the remainder is concerned, Nos. 99-107 relate to Stock Quota Plans, Executive Incentive Plans and the like. No relevant connection between these and the current arbitration has been put forward by Canada. Nos. 108-110, if relevant at all, would be so in relation to assessment of damages and are accordingly refused at this stage. No attempt at arguing relevance is put forward in relation to Nos. 222-224, and this request is accordingly rejected. So far as concerns 111-117 and 268-269, the Tribunal does not accept Canada's assertion that these documents are relevant. In the result the Tribunal refuses the request related to each of the above heads. However, the Tribunal does not thereby exclude the possibility that any of these may be relevant at the stage of damages.
- c) Documents which the Claimant has refused to produce on the grounds that they are in the possession of the Government of Canada. In the event the only Requests under this head not dealt with under other heads or already produced are Nos. 165 and 168. No adequate reason for non production has been advanced. Accordingly the Claimant is directed to produce documents under these heads.
- d) Documents which the Claimant refuses to produce on the grounds of lawyer-client privilege. The Tribunal notes that Canada reserved its right to apply to the Tribunal in this respect. Meantime the Tribunal rejects the request to order production as regards these items (Nos. 38-43, 50, 58-62, 69, 94, 196, 204-208, 213, 263, 264, 266 and 267)
- e) Documents which the Claimant refuses to produce on the grounds that they relate to the damages phase of the arbitration. The Tribunal accepts this ground of refusal and rejects at this stage the application in relation to these documents (Nos. 44-48, 50, 53-56,

124, 172-194, 196, 199-202, 216, 260, 270, 273-277, 279, 282-203).

- f) Documents which the Claimant refuses to produce on the grounds that the demands are not sufficiently specific. So far as items 67 and 211 are concerned as framed they are entirely unspecific. It appears that Canada is concerned to discover documents relating to meetings of the Interior Lumber Manufacturers' Association attended by the Investor or the Investment. The Tribunal is prepared to order production under these two heads provided it is restricted to such meetings only. Items 121 and 219 are entirely unspecific and are rejected. Items 122 and 220 are sufficiently specific and the Tribunal grants the application in this respect.

In the result the Tribunal grants the request of Canada and directs the Claimant to produce documents falling under the numbers specified below, and rejects the application in all other respects. In ordering such production however, the Tribunal accepts the Claimant's contention that it is not appropriate to go back as Canada sought to do to 1990, and in each case the date from which documents require to be produced is 1994.

Requests Nos. 271-293 relate to Harmac Pacific Inc. It is premature at this stage for the Tribunal to make any order in relation to documents relating to Harmac.

The Claimant is accordingly directed to produce the documents requested in the First Request of the Government of Canada listed in the undernoted paragraphs and subject to the qualifications and limitations above stated:-

Nos 5, 12, 13, 19 (Part), 23, 27, 35, 67, 93, 122, 133, 140, 141, 142, 153, 160, 165, 168, 169, 211 and 220.



Lord Dervaird  
Presiding Arbitrator

NAFTA UNCITRAL INVESTOR-STATE CLAIM  
POPE & TALBOT INC AND THE GOVERNMENT OF CANADA

PROCEDURAL ORDER NO. 9

In light of recent decisions by the Tribunal it makes the following procedural order.

1. By July 13, 2000 Canada will provide the Tribunal and the Investor with a statement of its position on the "Super Fee" question.
2. By July 20, 2000 the Investor will make its response to the statement by Canada on the "Super Fee" question.
3. Canada will furnish the Investor with the documents called for in relation to the Article 1105 claim by July 26, 2000.
4. By August 9, 2000, Canada will provide the Tribunal and the Investor with the documents requested by the Tribunal in the Appendix to its Interim Award dated June 26, 2000.
5. By the same date August 9, 2000, Canada will provide the Tribunal and the Investor with the written answers to the questions set out in the Appendix to the Interim Award dated June 26, 2000.
6. By September 6, 2000, the Investor will provide the Tribunal and Canada with its Memorial in relation to its claim under Article 1105 of NAFTA.
7. The Investor may include within that Memorial if it so desires any additional comments in relation to its claim under Article 1102 of NAFTA but that limited to matters arising out of new material provided by Canada under heads 4 and 5 above.
8. That Memorial will be accompanied by any documents on which the Investor seeks to rely together with a list of witnesses on whom it wishes to rely and affidavits by them.
9. By October 11, 2000, Canada will provide the Tribunal and the Investor with its counter-Memorial in relation to the claim under Article 1105 of NAFTA. It may also include a response to any additional comments made by the Investor in relation to its Article 1102 case.
10. The counter-Memorial will be accompanied by any documents upon which Canada seeks to rely together with a list of witnesses on whom it wishes to rely and affidavits by them. In addition it will specify by that date October 11, 2000, any witnesses, named in the list, provided by the Investor by September 6, 2000, whom it wishes to cross-examine.
11. By October 25, 2000, the Investor will if it so wishes furnish the Tribunal and Canada with a Supplemental Memorial dealing with issues raised in the

counter-Memorial by Canada, and may produce along with it any additional documents to meet matters raised in Canada's counter-Memorial. It will also specify by that date any witnesses named in the list provided by Canada by October 11, 2000, whom it wishes to cross-examine.

12. Canada shall by October 27, 2000 intimate to the Tribunal and the Investor if it wishes to lodge a Supplemental Counter-Memorial to deal with new issues raised by the Investor in the Supplemental Memorial and the grounds on which it seeks to do so; the Investor may respond to those grounds by October 31, 2000, and the Tribunal shall decide, if the matter arises, whether Canada should be permitted to lodge a Supplemental Counter Memorial by November 2, 2000.
13. If the Tribunal permits Canada to lodge a Supplemental Counter Memorial that shall be done by November 8, 2000.
14. By November 1, 2000, the USA and Mexico will furnish the Tribunal and the parties with any observations they wish to make on the interpretation of NAFTA Clause 1105. Canada is requested to advise the USA and Mexico of this provision.
15. By November 8, 2000 the parties will submit any observations either wishes to make on the observations made by the USA or Mexico on the interpretation of NAFTA Clause 1105.
16. The Tribunal has set aside Monday 13, Tuesday 14, Wednesday 15 and possibly Thursday 16 November, 2000, for the hearing of this part of the case, at the offices of Messrs Stikeman Elliott, Montreal.
17. The parties are requested to advise the Tribunal at their earliest convenience of the time which each considers necessary for the hearing of this part of the case.
18. It is to be anticipated that further orders will be made by the Tribunal once the documents called for have been made available.

July 11, 2000

9. By that same date September 1, 2000, the USA and Mexico will furnish the Tribunal and the parties with any observations they wish to make on the interpretation of NAFTA Clause 1105. Canada is requested to advise the USA and Mexico of this provision.
10. The Tribunal has set aside Monday 11, Tuesday 12, Wednesday 13 and possibly Thursday 14 September 2000, for the hearing of this part of the case, at the offices of Messrs Stikeman Elliott, Montreal.
11. The parties are requested to advise the Tribunal at their earliest convenience of the time which each considers necessary for the hearing of this part of the case.
12. It is to be anticipated that further orders will be made by the Tribunal once the documents called for have been made available.

*John R. ...*

*Presiding Arbitrator*

*June 29 2000.*



NAFTA UNCITRAL INVESTOR-STATE CLAIM  
POPE & TALBOT INC AND THE GOVERNMENT OF CANADA

PROCEDURAL ORDER NO. 10

I refer to the production by Canada on or about July 25, 2000 of documents in response to the Investor's Request for Documents dated February 15, 2000 and to the subsequent faxes from the parties. The Tribunal has made the following interim decisions:-

- A1. The Tribunal allows the Investor 7 days from the receipt of documents due to be filed by Canada on August 9, 2000 to intimate whether it wishes to make a motion in relation to Canada's refusals to produce documents.
2. If the Investor does intimate a wish to make a motion, it may then file a motion by August 23, 2000.
3. Canada may file a response to that motion by August 30, 2000.
- B. Meantime, the Tribunal wishes Canada to address the following issues in respect of these documents:-
  1. Canada shall inform the Tribunal and the Investor of the date or dates upon which the Clerk of the Queen's Privy Council for Canada was asked to issue a certificate in relation to the documents for which Cabinet Confidence is claimed, and if possible, that date upon which any such certificate is likely to be issued.
  2. Canada shall furnish in relation to the documents as to which solicitor-client privilege is asserted which are identified in Schedule B the following particulars:-
    - (1) The full name and designation of the individuals between whom the communications in question have passed.
    - (2) Where an individual is asserted to have been acting as legal adviser, the full name and professional qualification of that individual.
    - (3) A general indication of the nature of the document for which Solicitor-Client privilege is claimed.
  3. The information required in B1 and B2 above shall be provided by August 16, 2000.
- C. The Investor shall furnish the Tribunal with copies of the Request for Documents dated February 15, 2000 and the Response by Canada dated February 29, 2000 by August 16, 2000.

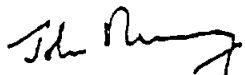
Presiding Arbitrator

Date:

NAFTA UNCITRAL INVESTOR-STATE CLAIM  
POPE & TALBOT INC AND THE GOVERNMENT OF CANADA

PROCEDURAL ORDER NO. 11

1. As regards those documents which Canada has specified as 1-12 in the Schedule to the undated letter from Mel Cappe to the Honourable Lord Dervaird, Canada is invited within 21 days from this date to provide to the Tribunal the dates of each of the documents, an identification of each document, and an indication of the aspect of the dispute if any to which each document relates, and to give justification in relation to each document for the privilege claimed.
2. Canada is required to produce within ten days of this date the following documents listed in Schedule "B" subject to removal from each document of any part which is legal advice or a summary thereof: B3, B9, B12, B24, B28, B34 and B35.



Presiding Arbitrator

6<sup>th</sup> September 2000