DECISION BY ARBITRAL TRIBUNAL

NORTH AMERICAN FREE TRADE AGREEMENT

POPE & TALBOT INC.
(hereinafter sometimes the "Investor")

and

THE GOVERNMENT OF CANADA
(hereinafter sometimes the "Respondent")

1. On September 18, 2000 counsel for the Government of Canada, Ms. Meg Kinnear, faxed to the Tribunal and to Mr. Barry Appleton, counsel for Pope & Talbot, copies of her letter to the Canadian Privy Council Office of the same date. That letter commented on the Tribunal's Decision and Procedural Order No. 11, both dated September 6, 2000, setting out arguments pro and con for complying with that Order. Ms. Kinnear's communication attached what she described as a "draft letter of response to the Tribunal in anticipation of your determination".

2. On September 19, 2000, Ms. Kinnear wrote again to the Tribunal and Mr. Appleton advising that the transmission on the 18th was due to an inadvertent error by a member of her staff and that the mistake had come to her attention through an article published in the Canadian National Post. She assured the Tribunal that counsel for Canada had not shared the letter to the Privy Council or discussed its contents with anyone other than their client.

3. Later on the 19th, the Presiding Arbitrator asked for a similar assurance from Mr. Appleton as well as an explanation of how (as reported in the National Post) he had come to discuss the letters with a journalist.

4. In response, Mr. Appleton admitted that he "communicated the fact" to the National Post. The Tribunal infers by this language and from the quotations from those letters in the National Post article that Mr. Appleton at least apprised the journalist of the contents of Ms. Kinnear's letter to the Privy Council and of

the unsigned draft appended thereto, and, perhaps, gave a copy of those letters to the journalist. In justification for this action, Mr. Appleton notes that, acting pursuant to the Tribunal's Procedural Order No. 5, which he contends provides for making public all awards of the Tribunal, he had previously made public the Tribunal's September 6, 2000 Decision on official secrecy and professional privilege. He goes on to state: "It is our view that Canada's response to this public award was equally a matter on the public record".

5. Mr. Appleton further claims that he assumed that the "draft letter of response" appended to Ms. Kinnear's letter to the Privy Council was dispatched to him and the Tribunal "further to (Canada's) decision to not provide documents which were due on the previous weekend". He contends that none of the documents sent to him on 18th "were marked as draft" and that he "did not notice that Ms. Kinnear's letter (of response to the Tribunal) was unsigned".

6. The Tribunal finds Mr. Appleton's behaviour on these matters highly reprehensible. It is not for the parties to determine for themselves what matters in these proceedings should be made public. In Procedural Order No. 1, the Tribunal ruled that, with exceptions not relevant here, "submissions by the parties to the Tribunal generally are to be kept confidential". Thus, even if the unsigned, draft attachment to Ms. Kinnear's letter to the Privy Council were an actual response to the Tribunal's Procedural Order No. 11, it was not to be made public. Still less was her letter to the Privy Council.

7. The Tribunal also finds Mr. Appleton's assertions concerning his assumptions on receiving Ms. Kinnear's letter to the Privy Council not acceptable. Any experienced lawyer would recognize that letter for what it was - legal advice rendered to a client. Contrary to Mr. Appleton's assertion, the appended letter was characterized as a draft in Ms. Kinnear's letter to the Privy Council. Any experienced lawyer would be expected to notice if a document of that

importance was signed. And finally, the argument that Canada was at the time delinquent in responding to Procedural Order No. 11 is wrong: paragraph 1 of that Order gave Canada 21 days to respond, i.e. until September 27. That paragraph was the subject of Ms. Kinnear's letters of September 18.

8. In short, Mr. Appleton's actions on this matter were either an intentional violation of the Tribunal's Procedural Order No. 1 or a reckless disregard of that Order.

9. The Tribunal has considered carefully the comments and suggestions submitted by the parties called for in the Tribunal's letter dated September 21, 2000.

10. The Government of Canada asked for costs in relation to the Motion by the Investor dated August 22, 2000 out of which this matter arises. The Tribunal did not deal with costs in its Decision dated September 6, 2000. In the circumstances which have arisen since the Decision of September 6 was made, the Tribunal has decided that Canada should be found entitled to costs in relation to that Motion, which the Tribunal fixes at US $10,000.

11. The Tribunal accordingly directs the Investor to pay to the Respondent the sum of US $10,000 no later than October 11, 2000.

12. In so directing, the Tribunal expresses the wish that Mr. Appleton will recognize that it is his conduct which has resulted in this direction being made against the Investor and, consequently, that he will voluntarily personally assume those costs.

13. The Tribunal moreover assumes that Mr. Appleton will make the present Decision public, as he has all of the Tribunal's previous Awards, Decisions and Orders.

14. The Tribunal wishes to make it expressly clear that the position of the parties in this arbitration will not be prejudiced in any way by this incident. It will not affect the way in which the Tribunal deals with the parties in the remainder of the case.

15. The Tribunal regards this matter as now closed.

The Honourable Lord Dervaird, Presiding Arbitrator

Murray J. Belman, Arbitrator

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

DATED: September 27, 2000