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17 September, 2002

Dear Sir and Madam

**NAFTA UNCITRAL Investor-State Claim
Pope & Talbot Inc and the Government of Canada**

I have received the amended Procedural Order No. 5 incorporating the changes that have been agreed by the disputing parties, as well as earlier alterations.

I am obliged to the parties for preparing the Order in these terms, and I have signed it today, 17 September.

Yours faithfully



Lord Dervaird
Presiding Arbitrator

copy:

Murray J Belman
Fax: 00 1 202 585 6969

The Hon Benjamin J Greenberg Q.C.
Fax: 001 514 397 3363

POPE & TALBOT, INC.

Claimant / Investor

-AND-

THE GOVERNMENT OF CANADA

Respondent Party

AMENDED PROCEDURAL ORDER ON CONFIDENTIALITY NO. 5

1. In accordance with UNCITRAL Arbitration Rules Article 25(4), hearings shall be held *in camera* unless the parties agree otherwise.
2. The attachments to Canada's letter to the Tribunal dated April 12, 2002 (the so-called "rolling text") and the contents thereof may only be disclosed with the express written consent of all three NAFTA State Parties.
3. (a) The following documents may be released into the public domain, subject to redaction of all confidential business information and to the rolling text as agreed to by the parties:

Notice of Intent;

Notice of Arbitration;

Statement of Claim;

Statement of Defense;

The written (Memorials, Counter-Memorials, replies and all other written submissions to the Tribunal, including correspondence) and oral (transcripts) submissions of the parties, including submissions in support of motions, requests for directions, arguments on the merits, damages and costs;

All correspondence from the Tribunal to the disputing parties or other NAFTA Parties;

The evidence including affidavits and testimony presented to the Tribunal by the parties in written submissions or at hearings convened by the Tribunal to hear and receive evidence;

The formal responses of the parties to Tribunal questions;

Any submission made by another State Party under NAFTA Article 1128.

(b) Documents not listed in paragraph 3(a), such as documents exchanged between the disputing parties during the proceedings but not received in evidence by the Tribunal, shall not be released into the public domain.

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 of a Third Party Protected Document:

- (i) receives a request pursuant to law for the production of that document or information contained within it and determines that such request obliges that person to disclose a Third Party Protected Document or information contained therein; or,
- (ii) proposes to release publicly or use a 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 the person to whom the confidential information relates so that such a party or person may seek a protective Order or other appropriate remedy from a court of competent jurisdiction (in Canada, the Federal Court of Canada). Such notice shall be provided not less than sixty (60) days before disclosure unless the law requires disclosure in a shorter time, in which case that shorter notice period shall be identified in the notice.

For greater certainty, the term "request pursuant to law" includes a request under the *Access to Information Act* or any analogous statute authorizing access to information held by government agencies and institutions in Canada, the United States of America or in the United Mexican

States. The obligation to give notice arises only after the institution receiving the request determines that it cannot otherwise withhold disclosure of the document or information requested.

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 THIRD PARTY-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 by the party receiving them 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 by the party receiving them in these proceedings only. Neither Pope & Talbot, Inc nor the Government of Canada may, directly or

indirectly, use Third Party Protected Documents provided by the opposing party 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;
- (3) to a representative of the Claimant/Investor present at the hearings when such Third Party Confidential Documents or information are presented; and,
- (4) to officials of any State Party responsible for administering laws governing access to records in the possession, custody or control of governments and government institutions.

10.1 Notwithstanding paragraphs 2, 3, 4, 9, and 10 of this Order, but subject always to paragraphs 11 and 13 of this Order, Canada may disclose to federal, provincial and territorial trade representatives of the "C-Trade", a federal-provincial/ territorial committee which meets on matters relating to international trade policy, any confidential, Protected or Third Party Protected Documents. All such documents shall be treated as confidential and used solely for the purposes of "C-Trade" deliberations.


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. Canada shall notify all "C-Trade" representatives provided with confidential Protected or Third Party Protected Documents of the obligations under 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 paragraphs 9(1), 9(2), 10(1) and 10(3) of this Order shall take reasonable steps to inform all recipients of Protected Documents of 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 September 2002