

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
(ICSID)**

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER 11 OF
THE NORTH AMERICAN FREE TRADE AGREEMENT AND THE UNCITRAL
ARBITRATION RULES**

Between:

AbitibiBowater Inc.

Claimant/Investor

- and -

The Government of Canada

Respondent/Party

CONSENT AWARD

Arbitral Tribunal:

Professor Andreas Bucher

Mr. Doak Bishop

Dr. Gavan Griffith, Q.C.

Secretary to the Tribunal:

Ms. Eloïse Obadia

Representing the Claimant:

Mr. Michael T. Shor

Ms. Jean E. Kalicki

Mr. Patricio Grané

ARNOLD & PORTER LLP

Mr. Pierre Bienvenu

Mr. Martin J. Valasek

Mr. Paul D. Conlin

Ms. Alison G. FitzGerald

OGILVY RENAULT LLP

Mr. Colm St. Roch Seviour

Ms. Maureen E. Ryan

STEWART MCKELVEY

Representing the Respondent:

Ms. Sylvie Tabet

Mr. Christophe Douaire de Bondy

Mr. Adam Douglas

Ms. Claire McMenemy

DEPARTMENT OF FOREIGN AFFAIRS AND
INTERNATIONAL TRADE CANADA

Date of Dispatch to the Parties: 15 December 2010

The Arbitral Tribunal

Composed as above,

After deliberation

Makes the following CONSENT AWARD:

I. PROCEDURAL HISTORY

1. On 25 February 2010, AbitibiBowater Inc. (the “**Claimant**”) served a Notice of Arbitration and Statement of Claim on the Government of Canada (the “**Respondent**”), pursuant to Articles 3 and 18 of the Arbitration Rules of the United Nations Commission on International Trade Law, 1976 (the “**UNCITRAL Rules**”) and Articles 1116, 1117 and 1120 of the North American Free Trade Agreement (“**NAFTA**”) (the “**Notice of Arbitration**”).
2. In the Notice of Arbitration, the Claimant sought compensation under NAFTA Chapter 11 for damages arising out of an act passed by the Government of Newfoundland and Labrador on 16 December 2008, *An Act to Return to the Crown Certain Rights Relating to Timber and Water use Vested in Abitibi-Consolidated and to Expropriate Assets and Lands Associated with the Generation of Electricity Enabled by Those Water Use Rights* (the “**Act**”), on its own behalf and on behalf of Abitibi-Consolidated Company of Canada, Abitibi-Consolidated Inc. and AbitibiBowater Canada Inc. (the “**Claims**”).
3. On 22 June 2010, the Arbitral Tribunal was constituted as follows: Mr. Doak Bishop (American) and Dr. Gavan Griffith, Q.C. (Australian), were each appointed as arbitrators by the Claimant and the Respondent, respectively, and Professor Andreas Bucher (Swiss) was appointed as presiding arbitrator by agreement of the Parties.
4. On 6 July 2010, further to a joint request by the Claimant and the Respondent (together, the “**Parties**”), the Secretariat of the International Centre for the Settlement of Investment Disputes (the “**Centre**”) agreed to serve as administering authority in the arbitration.
5. On 19 July 2010, the Centre conveyed to the Parties the Arbitral Tribunal’s proposal to hold a first procedural meeting in Washington, D.C. on 26 August 2010, circulating at the

same time a provisional agenda. The Parties were invited to confer on the agenda items and revert to the Tribunal with their agreement on these items, if any, by 3 August 2010.

6. On 2 August 2010, the Parties jointly wrote to the Arbitral Tribunal to advise that significant progress had been made on an agreement concerning the agenda for the first procedural meeting and requesting that the meeting therefore be held telephonically, as opposed to in person, with the assistance of the Centre.
7. On 4 August 2010, the Centre conveyed the Arbitral Tribunal's agreement to hold the first procedural meeting telephonically.
8. On 25 August 2010, the Parties jointly wrote to the Arbitral Tribunal advising of their agreement on certain procedural matters. In their joint letter, the Parties also advised that they had reached and executed a final settlement, dated 24 August 2010 (the "**Settlement Agreement**"), a copy of which was attached, and had agreed to request that the Arbitral Tribunal record the Settlement Agreement in the form of a Consent Award, pursuant to Article 34.1 of the UNCITRAL Rules.
9. On the same day, the Arbitral Tribunal wrote to the Parties, requesting their joint consideration of the effect, if any, on the Tribunal's continued jurisdiction over these arbitral proceedings, including its jurisdiction to issue a Consent Award, once the Settlement Agreement had, by its terms, taken effect.
10. During the first procedural meeting, held by teleconference on 26 August 2010, the Parties confirmed their joint request, pursuant to Article 34.1 of the UNCITRAL Rules and paragraph 9 of the Settlement Agreement, that the terms of the Settlement Agreement be recorded in the form of a Consent Award, and made submissions on the timing of the Settlement Agreement's taking effect *vis-à-vis* the Arbitral Tribunal's jurisdiction to issue the requested Consent Award.
11. On 17 September 2010, the ICSID Secretariat issued Minutes of Meeting for the first procedural meeting, which record the Parties' joint request for a Consent Award, and confirm the basic procedural framework for the arbitration agreed by the Parties in contemplation of issuance of the present Consent Award.

II. THE SETTLEMENT AGREEMENT

12. The Parties provided the Arbitral Tribunal with an original copy of the Settlement Agreement, which was received on 13 September 2010.
13. Paragraph 1 of the Settlement Agreement provides that the Claimant “hereby irrevocably and permanently withdraws its Notice of Arbitration served against the Government of Canada”. Paragraph 9 further records the Parties’ agreement to request the incorporation of the Settlement Agreement in the present Consent Award, which will formally and permanently discontinue the arbitration proceedings:

The Parties agree jointly to request the incorporation in full of this Settlement Agreement in the form of a Consent Award, pursuant to NAFTA Article 1136 and Article 34(1) of the UNCITRAL Rules, to be issued by the Arbitral Tribunal constituted under NAFTA Chapter 11 to hear the dispute between the Parties, which will result in the formal and permanent discontinuance and termination of the NAFTA Chapter 11 arbitration proceedings commenced by AbitibiBowater with the filing of its Notice of Arbitration.

14. The Settlement Agreement takes effect upon the satisfaction of certain conditions. In particular, paragraph 13 of the Settlement Agreement provides as follows:

This Settlement Agreement shall be executed in three original copies in counterparts, one original for each Party and one original for the Arbitral Tribunal, and shall take effect upon the court approval referred to in paragraph 6 being obtained and all relevant appeal periods for such approvals having lapsed, and the New Company being constituted.

15. Paragraph 6 of the Settlement Agreement, referred to above, further provides as follows:

This Settlement Agreement is conditional upon AbitibiBowater [defined so as to include AbitibiBowater Inc. and its Canadian subsidiaries Abitibi-Consolidated Company of Canada, Abitibi-Consolidated Inc. and AbitibiBowater Canada Inc.] obtaining the approval of its terms by the Superior Court of Quebec in the CCAA Proceedings and by the U.S. Court in the Chapter 11 Bankruptcy Proceedings and court approval of AbitibiBowater’s restructuring plan. AbitibiBowater shall apply for such approvals promptly. Should AbitibiBowater fail to obtain the approvals referred to in this paragraph 6, this Agreement shall become null and void and AbitibiBowater shall retain the full benefit of the Claims.

16. The Settlement Agreement, in its recitals, also notes, among other things, that “AbitibiBowater is currently finalizing its restructuring process under the Chapter 11 Bankruptcy Proceedings and CCAA Proceedings and intends to continue operations in

Canada under a new corporate structure (the ‘New Company’).” Paragraph 5 of the Settlement Agreement confirms that payment made under that Agreement shall be made to the New Company.

17. Accordingly, the Settlement Agreement takes effect once the conditions in paragraphs 6 and 13 of the Settlement Agreement have been met.
18. In a joint letter to the Arbitral Tribunal dated October 15, 2010, the Parties confirmed their agreement that the Tribunal has jurisdiction to issue this Consent Award upon the coming into effect of the Settlement Agreement as the Parties further confirmed their understanding that, in relation to paragraph 1 of the Settlement Agreement, the Notice of Arbitration shall be deemed to be withdrawn by AbitibiBowater Inc. no sooner than upon issuance of the Consent Award, which shall formally and permanently discontinue and terminate these proceedings.
19. In a joint letter to the Arbitral Tribunal dated 14 December 2010, the Parties confirmed that the above-cited conditions having been satisfied, the Settlement Agreement has taken effect and accordingly, this Consent Award can be issued.

III. AWARD

20. Having reviewed the Settlement Agreement, the Arbitral Tribunal now, pursuant to Article 34.1 of the UNCITRAL Rules, records the Settlement Agreement verbatim as an Award on agreed terms as follows:

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by and between AbitibiBowater Inc., a Delaware corporation, and its Canadian subsidiaries Abitibi-Consolidated Company of Canada, Abitibi-Consolidated Inc. and AbitibiBowater Canada Inc. (collectively “**AbitibiBowater**”), and Her Majesty the Queen in Right of Canada (“**the Government of Canada**”). AbitibiBowater and the Government of Canada are hereinafter referred to collectively as the “**Parties**”.

WHEREAS, on 16 December 2008, the Government of Newfoundland and Labrador (the “**Province**”) passed *An Act to Return to the Crown Certain Rights Relating to Timber and Water*

use Vested in Abitibi-Consolidated and to Expropriate Assets and Lands Associated with the Generation of Electricity Enabled by Those Water Use Rights (the “Act”);

WHEREAS, on 16 April 2009, AbitibiBowater Inc. and certain of its U.S. and Canadian subsidiaries filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”) for relief under the provisions of Chapter 11 of the United States Bankruptcy Code, as amended (the “**Chapter 11 Bankruptcy Proceedings**”);

WHEREAS, on 17 April 2009, certain of AbitibiBowater Inc.’s Canadian subsidiaries also sought creditor protection under the Companies’ Creditors Arrangement Act with the Superior Court of Quebec in Canada (the “**CCAA Proceedings**”);

WHEREAS AbitibiBowater is currently finalizing its restructuring process under the Chapter 11 Bankruptcy Proceedings and the CCAA Proceedings and intends to continue operations in Canada under a new corporate structure (the “New Company”);

WHEREAS, on 25 February 2010, AbitibiBowater Inc. served a Notice of Arbitration and Statement of Claim (the “**Notice of Arbitration**”) on the Government of Canada, pursuant to Articles 1116, 1117 and 1120 of the North American Free Trade Agreement (“**NAFTA**”) and Articles 3 and 18 of the Arbitration Rules of the United Nations Commission on International Trade Law (the “**UNCITRAL Rules**”), on its own behalf and on behalf of Abitibi-Consolidated Company of Canada, Abitibi-Consolidated Inc. and AbitibiBowater Canada Inc., seeking compensation under NAFTA Chapter 11 for damages arising out of the Act (the “**Claims**”);

WHEREAS, the Parties wish finally and irrevocably to settle the Claims;

NOW, THEREFORE, in consideration of the mutual promises, undertakings and representations contained in this Settlement Agreement, the Parties agree as follows:

1. AbitibiBowater Inc. hereby irrevocably and permanently withdraws its Notice of Arbitration served against the Government of Canada.
2. AbitibiBowater Inc. hereby releases and forever discharges the Government of Canada from the Claims.

3. AbitibiBowater, or any successor company, hereby waives any right to bring a NAFTA Chapter 11 claim against the Government of Canada for any loss arising out of the Act.
4. AbitibiBowater, or any successor company, shall indemnify and hold harmless the Government of Canada against any claim, action or proceeding that itself, its subsidiaries, parents, predecessors, successors or assigns, have initiated or may initiate against the Government of Canada relating to the Act. Nothing in this indemnification shall be interpreted as extending to any rights or claims of AbitibiBowater's partners in the Star Lake Hydro Partnership and the Exploits River Hydro Partnership and/or of lenders or creditors to those projects.
5. As consideration for the above-cited final settlement and waiver of any and all legal action by AbitibiBowater against the Government of Canada arising out of or related to the Act and/or claims by AbitibiBowater against the Government of Canada relating to the assets and rights cited therein, including those raised in the Notice of Arbitration, the Government of Canada shall make a payment of \$130 million (CAD), following the constitution of the New Company, representing not more than the fair market value of the rights and assets owned by AbitibiBowater expropriated under the Act. Payment made under this Settlement Agreement shall be made to the New Company.
6. This Settlement Agreement is conditional upon AbitibiBowater obtaining the approval of its terms by the Superior Court of Quebec in the CCAA Proceedings and by the U.S. Court in the Chapter 11 Bankruptcy Proceedings and court approval of AbitibiBowater's restructuring plan. AbitibiBowater shall apply for such approvals promptly. Should AbitibiBowater fail to obtain the approvals referred to in this paragraph 6, this Agreement shall become null and void and AbitibiBowater shall retain the full benefit of the Claims.
7. This Settlement Agreement shall not constitute a legal precedent for any person, and shall not be used except for the sole purpose of giving effect to its terms, and shall not prejudice or affect the rights or defenses of the Parties or the rights of any other person except to the extent provided herein.
8. The Parties agree each to bear their own legal costs and expenses and to pay in equal shares the fees and expenses of the Arbitral Tribunal constituted under NAFTA Chapter

11 to hear the dispute between the Parties and of the International Centre for the Settlement of Investment Disputes, incurred as of the date of signature of this Settlement Agreement.

9. The Parties agree jointly to request the incorporation in full of this Settlement Agreement in the form of a Consent Award, pursuant to NAFTA Article 1136 and Article 34(1) of the UNCITRAL Rules, to be issued by the Arbitral Tribunal constituted under NAFTA Chapter 11 to hear the dispute between the Parties, which will result in the formal and permanent discontinuance and termination of the NAFTA Chapter 11 arbitration proceedings commenced by AbitibiBowater with the filing of its Notice of Arbitration.
10. In accordance with NAFTA Annex 1137.4, the Parties agree to the publication of this Settlement Agreement and the resulting Consent Award.
11. The Parties shall communicate and cooperate with each other prior to any public disclosure of the transactions contemplated in this Agreement. If one party is required by law or the rules and regulations of any stock exchange upon which its securities are listed to disclose the content of this Agreement, then it shall consult with the other party and allow it to comment on the proposed communication prior to its issuance.
12. For the purpose of construction and interpretation of this Settlement Agreement the entire agreement shall be read and construed as a whole without giving any specific effect to any article separately.
13. This Settlement Agreement shall be executed in three original copies in counterparts, one original for each Party and one original for the Arbitral Tribunal, and shall take effect upon the court approval referred to in paragraph 6 being obtained and all relevant appeal periods for such approvals having lapsed, and the New Company being constituted.
14. This Settlement Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and such rules of international law as may be applicable.

IN WITNESS WHEREOF, the Parties have executed and delivered this Settlement Agreement on AUGUST 24, 2010.

AbitibiBowater Inc

By: 

Title: PRESIDENT AND CEO

Dated: AUGUST 23, 2010

The Government of Canada

By: 

Title: DEPUTY MINISTER OF INTERNATIONAL TRADE

Dated: AUGUST 24, 2010

Abitibi-Consolidated Company of Canada

By: 

Title: PRESIDENT

Dated: AUGUST 23, 2010

Abitibi-Consolidated Inc.

By: 

Title: PRESIDENT

Dated: AUGUST 23, 2010

21. In accordance with NAFTA Annex 1137.4, the Parties agree to the publication of this Consent Award.

MADE at the place of arbitration, agreed for the purpose of the present Consent Award,
Montréal, Québec, Canada, on this 15 day of December 2010.



Mr. Doak Bishop
Co-Arbitrator



Dr. Gavan Griffith, Q.C.
Co-Arbitrator



Professor Andreas Bucher
President