

INTERIM ORDER BY THE ARBITRAL TRIBUNAL

In

NAFTA UNCITRAL INVESTOR-STATE CLAIM

Pope & Talbot, Inc. and Government of Canada

1. On February 22, 2002, the Investor, Pope & Talbot, Inc., requested the Tribunal to rule in relation to the intention of Canada to make public on March 8, 2002, certain documents in this proceeding pursuant to the Canadian Access to Information Act ("ATIA"). The Investor claims that that publication would violate Procedural Order On Confidentiality No. 5 in this proceeding and the UNCITRAL Rules, which, pursuant to NAFTA, govern these proceedings.
2. Canada waited until February 28, 2002, to respond to the Investor's submission. Canada's faxed response on that date did not include a number of documents it submitted in support of its views. Those documents did not reach the Canadian and American members of the Tribunal until March 4, 2002 and, as of the time of this ruling, have not yet reached the Presiding Arbitrator.
3. In these circumstances, the Tribunal requested Canada to delay release of the documents beyond March 8, 2002. That request was made on March 1, 2002, but Canada failed to respond until after the Tribunal made a telephone request for an answer during the afternoon of March 4, 2002.
4. Canada refused the Tribunal's request for a delay. It offered instead to seek consent to a delay from the party requesting the documents under the ATIA; Canada stated it would seek a response from that party before March 8, 2002, but if it was not forthcoming by that date, it would release the documents.

5. The Tribunal has difficulty understanding why Canada is unable to delay release on its own volition. Canada's letter of March 4, 2002 refusing the Tribunal's request states that the standard made applicable by the ATIA is "timely" release, and the March 8 deadline was expressly the result of the 30 day period set out in Procedural Order No. 5, rather than any provision of the ATIA. (While section 7 of the ATIA speaks of giving written notice to the requesting party within 30 days of its request, section 9 authorizes an extension where "consultations are necessary." One would have hoped that consultations aimed at securing a ruling from this Tribunal would qualify within that provision.)
6. In the event, Canada's rejection of the Tribunal's request for delay and simple fairness necessitate an interim ruling on the Investor's request so as to permit it to have at least some opportunity to seek relief from the Canadian courts, if it so desires.
7. The Tribunal rules that the public release of the documents described in Appendix A hereto would violate Procedural Order No. 5 and, in some cases, Canada's obligations under NAFTA.¹ Those documents are confidential within the meaning of the Order and therefore must be treated as confidential by the parties and not disclosed to third parties other than in accordance with the terms of that Order. The documents described in Appendix B hereto are not confidential documents within Procedural Order No. 5.
8. The Tribunal intends to make a final ruling in this matter promptly after all its members have received Canada's full submission.



March 5 2002

Lord Dervaird, Presiding Arbitrator, on behalf of the Tribunal

¹ Copies of these documents were submitted by the Investor, and Canada has not challenged the Investor's representation that those are indeed the documents in question.

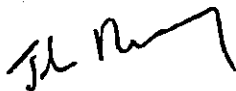
APPENDIX ONE
DOCUMENTS WHICH ARE CONFIDENTIAL
WITHIN THE TERMS OF PROCEDURAL ORDER
ON CONFIDENTIALITY NO. 5

1. Letter from Eric Harvey to Tribunal dated February 10, 2000.
2. Submission prepared by Eric Harvey dated 10 March 2000 (and affidavit of Daniele Ayotte).
3. Letter from Eric Harvey to Tribunal dated March 10, 2000.
4. Canada's undated Reply to Investor's Response to Canada's Application on Confidentiality signed by Fulvio Fracassi for Eric Harvey.
8. Part of Transcript of Hearing of January 7, 2000 (pp 536, 537, 539, 541).
9. Part of Transcript of Hearing of January 7, 2000 (pp 535 - 552).
10. Part of Transcript of Hearing of January 6, 2000 (pp 157 - 162).
11. Letter from Eric Harvey to Tribunal dated March 24, 2000.
12. Letter from Eric Harvey to Tribunal dated November 30, 1999.
13. Letter from Eric Harvey to Tribunal dated December 1, 1999.
14. Letter from Eric Harvey to Tribunal dated December 6, 1999.
15. Letter from Eric Harvey to Tribunal dated December 10, 1999.
- 19 & 20. Letter from Eric Harvey to Tribunal dated March 21, 2000.
21. Letter from Eric Harvey to Tribunal dated April 20, 2000.

In addition to those numbered items upon which Appleton & Co has commented there are included in the copy bundle sent to the Tribunal several other documents. Most of these are fax cover sheets to which no confidentiality attaches. However immediately following the letter numbered 25 in the Folio of Documents sent by Appleton & Co to each member of the Tribunal there is a further copy of pages 536, 537, 539 and 541 of the Transcript of the Hearing of January 7, 2000 (also sub-numbered 004081, 004082, 004083 and 004084) which are confidential documents.

APPENDIX TWO

No confidentiality under Procedural Order No. 5 attaches to the other documents contained in the bundle sent to the Tribunal. For the avoidance of doubt this includes the following items identified by number in the letter from Appleton & Co dated February 13, 2002:- 5, 6, 7, 16, 17 and 18. Fax cover sheets are not in the view of the Tribunal confidential documents.



Lord Dervaird

Presiding Arbitrator on behalf of the Tribunal

March 5 2002.