

CANFOR CORPORATION v. UNITED STATES OF AMERICA

**Arbitration under Chapter Eleven of the North American Free Trade Agreement (NAFTA)
and the UNCITRAL Arbitration Rules**

MINUTES OF THE ORGANIZATIONAL HEARING HELD IN NEW YORK ON OCTOBER 28, 2003 *

ATTENDEES

Arbitral Tribunal..... Professor Emmanuel GAILLARD, President
Professor Joseph WEILER, Arbitrator
Mr. Conrad HARPER, Arbitrator

Claimant..... Mr. P. John LANDRY
Mr. Keith E.W. MITCHELL
Mr. David CALABRIGO

Respondent..... Mr. Mark A. CLODFELTER
Mr. Barton LEGUM
Mr. Mark S. MCNEILL
Ms. Andrea J. MENAKER
Ms. Jennifer I. TOOLE

Acting secretary to the Arbitral Tribunal..... Ms. Yas BANIFATEMI

Court reporter..... Ms. Catherine M. DONAHUE

PROCEEDINGS

1. The President welcomed each of the Claimant and the Respondent and their respective representatives.
2. The Arbitral Tribunal and the Parties addressed each of the issues appearing on the agenda of the hearing, a copy of which is attached as Annex 1. In accordance with the Parties' agreement, a verbatim transcript was made of the hearing.
3. The Parties reached an agreement on the procedural rules governing the present arbitration, which were memorialized in the Terms of Agreement signed at the end of the hearing, a copy of which is attached as Annex 2.

November 3, 2003

On behalf of the Arbitral Tribunal:



Professor Emmanuel Gaillard
President

* Pursuant to an agreement of the parties, the hearing has been organized in New York City (United States), without prejudice to the issue of the determination of the place of arbitration or any indication as to the convenience of New York City in this respect.

ANNEX 1

CANFOR CORPORATION v. UNITED STATES OF AMERICA

**Arbitration under Chapter Eleven of the North American Free Trade Agreement (NAFTA)
and the UNCITRAL Arbitration Rules**

AGENDA

FIRST ORGANIZATIONAL HEARING OF OCTOBER 28, 2003 (NEW YORK) *

1. Constitution of the Arbitral Tribunal and declarations by the members of the Tribunal.
2. Means of communication; copies of instruments (Article 15(3) of UNCITRAL Rules).
3. Representation of the parties (Article 4 of UNCITRAL Rules).
4. Place of arbitration (Article 1130 of NAFTA, Article 16 of UNCITRAL Rules).
5. Applicable law (Article 1131 of NAFTA, Article 33 of UNCITRAL Rules).
6. Bifurcation of proceedings (jurisdiction, merits).
7. Written and oral pleadings (Articles 18-25 of UNCITRAL Rules).
8. Decisions by the Arbitral Tribunal (Article 31 of UNCITRAL Rules).
9. Award(s) (Article 1135 of NAFTA, Article 32 of UNCITRAL Rules).
10. Arbitrators' fees and expenses (Articles 38-40 of UNCITRAL Rules).
11. Administrative secretary.
12. Deposit of costs (Article 41 of UNCITRAL Rules).
13. Next sessions of the Arbitral Tribunal.
14. Possible parallel proceedings.
15. Miscellaneous.

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ANNEX 2

**Arbitration under Chapter Eleven of the North American Free Trade Agreement (NAFTA)
and the UNCITRAL Arbitration Rules**

CANFOR CORPORATION

Claimant

v.

UNITED STATES OF AMERICA

Respondent

TERMS OF AGREEMENT

October 28, 2003

I. NAMES, DESCRIPTIONS, AND ADDRESSES OF THE PARTIES

A. The Claimant

1. CANFOR CORPORATION, a company incorporated under the laws of British Columbia, with its head office in Canada at 1500 – 550 Burrard Street, Vancouver, British Columbia, Canada, V6C 2C1 (hereinafter “the Claimant”),

represented in this arbitration by its duly authorized counsel,

P. John LANDRY
Keith E.W. MITCHELL
DAVIS & COMPANY
Barristers and Solicitors
2800-666 Burrard Street
Vancouver, B.C. V6C 2Z7
CANADA

B. The Respondent

2. THE UNITED STATES OF AMERICA (hereinafter “the Respondent”),

represented in this arbitration by its duly authorized counsel,

Mr. Mark A. CLODFELTER
Mr. Barton LEGUM
Mr. Mark S. MCNEILL
Ms. Andrea J. MENAKER
Ms. Jennifer I. TOOLE
United States Department of State
Washington, D.C. 20520
U.S.A.

II. NAMES, DESCRIPTIONS, AND ADDRESSES OF THE ARBITRATORS

A. Arbitrator

3. PROFESSOR JOSEPH H.H. WEILER
Jean Monnet Professor of Law
Chair and Faculty Director, Global Law School Program
Director, Center for International Economic Law & Justice
NYU School of Law
40 Washington Square
New York, N.Y. 10012
U.S.A.

Tel.: (212) 992-8912
Fax.: (212) 995-4343
Email: weiler@jeanmonnetprogram.org

(Appointed by the Claimant. Professor Weiler’s statement of independence was made on May 25, 2003 and confirmed to the Parties through email of the President of October 17, 2003).

B. Arbitrator

4. MR. CONRAD K. HARPER
350 East 57th Street
New York, N.Y. 10022-2953
U.S.A.

Tel.: (212) 446-0001
Fax.: (212) 446-0002
Email: twoharps@att.net

(Appointed by the Respondent. Mr. Harper's statement of independence was made on February 21, 2003 and confirmed to the Parties through email of the President of October 17, 2003).

C. President

5. PROFESSOR EMMANUEL GAILLARD
Shearman & Sterling
114 Avenue des Champs-Élysées
75008 Paris
FRANCE

Tel.: 00 33 1 53 89 70 00
Fax.: 00 33 1 53 89 70 70
Email: egailard@shearman.com

(Appointed jointly by the Parties. Professor Gaillard's statement of independence was made on July 22, 2003 and confirmed to the Parties through email of the President of October 17, 2003).

III. NOTIFICATIONS AND COMMUNICATIONS

6. Written notifications or communications between the Parties or between the Parties and the Arbitral Tribunal shall be made by facsimile and by email, except for the communication of briefs and evidentiary documents, which shall be made by the most expeditious standard service offered by Federal Express, DHL, UPS or similar rapid delivery service and, where possible, by email as well. Minor notifications or communications may be made by facsimile or email only.
7. The address for notifications to or communications with the Claimant is:

P. John LANDRY
DAVIS & COMPANY
Barristers and Solicitors
2800-666 Burrard Street
Vancouver, B.C. V6C 2Z7
CANADA

Tel.: (604) 643-2935
Fax.: (604) 605-3588
Email: john_landry@davis.ca

Keith E.W. MITCHELL
DAVIS & COMPANY
Barristers and Solicitors
2800-666 Burrard Street
Vancouver, B.C. V6C 2Z7
CANADA

Tel.: (604) 643-2958
Fax.: (604) 605-3702
Email: kmitchell@davis.ca

8. The address for notifications to or communications with the Respondent is:

Mr. Barton LEGUM
Office of the Legal Adviser (L/CID)
2430 E Street, N.W.
Suite 203, South Building
Washington, D.C. 20037-2800
U.S.A.

Tel.: (202) 776-8443
Fax.: (202) 776-8388
Email: legumbc@state.gov

9. Notifications to or communications with the Arbitral Tribunal shall be sent to each of the three arbitrators at the addresses for each set out in Section II above.

In accordance with Article 15(3) of the UNCITRAL Arbitration Rules, all documents or information supplied to the Arbitral Tribunal by one Party shall at the same time be communicated by that Party to the other Party.

10. A notification or communication shall be deemed to have been made on the day it was received by the Party itself or by its representatives, or would have been received if made by either of the required means provided for above.
11. The Arbitrators, Counsel, and/or Parties are to notify immediately all parties to and signatories of the present Terms of Agreement of any change of name, description, address, telephone or facsimile number. Failing such notification, communications in accordance with the above provisions shall be valid.

IV. PLACE OF THE ARBITRATION

12. In accordance with Article 1130 of the North American Free Trade Agreement and Article 16 of the UNCITRAL Arbitration Rules, failing an agreement between the Parties on the place of arbitration, such place shall be determined by the Arbitral Tribunal having regard to the circumstances of the arbitration.
13. In any event, in accordance with Article 16(2) of the UNCITRAL Arbitration Rules, the Arbitral Tribunal may, after consultation of the Parties, decide to conduct hearings or meetings at any other appropriate place. Neither such decision nor the participation of the Parties in any such hearing shall be construed as a departure from the choice of the place of arbitration to be agreed upon by the Parties or to be determined by the Arbitral Tribunal.
14. Irrespective of the place of signing, the award(s) shall be deemed to have been made in the place of arbitration to be agreed upon by the Parties or to be determined by the Arbitral Tribunal.

V. APPLICABLE PROCEDURAL RULES**A. Procedure**

15. The Arbitral Tribunal shall resolve this dispute in accordance with the procedures prescribed by the North American Free Trade Agreement, the UNCITRAL Arbitration Rules and those issued by the Arbitral Tribunal. If these provisions do not address a specific procedural issue, the Arbitral Tribunal shall, after consulting the Parties, determine the applicable procedure.

B. Language of the Arbitration

16. The language of the arbitration shall be English.

C. Hearings

17. Pursuant to an agreement between the Parties, a verbatim transcript will be made of each hearing.

D. Decisions by the Arbitral Tribunal

18. In accordance with Article 31 of the UNCITRAL Arbitration Rules, any award or decision of the Arbitral Tribunal shall be made by a majority of the arbitrators.
19. Procedural measures shall be ordered by the President on behalf of the Arbitral Tribunal after consultation with the Co-Arbitrators. Before making such decisions, the Arbitral Tribunal shall afford the Parties an adequate opportunity to make presentations in relation thereto, unless circumstances render such presentations inappropriate. In cases of urgency, the President may order procedural measures alone, subject to revision, if any, by the Arbitral Tribunal.

E. Partial and Interim Awards

20. The Arbitral Tribunal shall be free to decide any issue by way of a partial or interim award, or by its final award, as it may deem appropriate. All awards, whether interim or final, shall be in writing and shall state the reasons upon which the award is based.

F. Administrative secretary to the Arbitral Tribunal

21. The Arbitral Tribunal may appoint a secretary at any time during this arbitration, whose fees will be borne by the Parties as part of the costs of the arbitration.

G. Constitution of the Arbitral Tribunal

22. The Parties have no reservations to express with regard to the constitution of the Arbitral Tribunal.

VI. FEES AND EXPENSES

A. Arbitrators' fees and expenses

- 23. The Parties agree that the Arbitral Tribunal shall fix the rate of the Arbitrators' fees and the fees of the administrative secretary.
- 24. The Parties agree that the costs of the arbitration include the expenses incurred by the members of the Arbitral Tribunal and by the administrative secretary.

B. Deposit of costs

- 25. In accordance with Article 41 of the UNCITRAL Arbitration Rules, the Arbitral Tribunal shall request each Party to deposit an equal amount as an advance for the costs of this arbitration. Supplementary deposits may be requested by the Arbitral Tribunal during the course of the arbitral proceedings.

Signed by Counsel on Behalf of the Parties and by the Arbitrators in Five Original Copies in New York City (United States) on October 28, 2003 *

For the Claimant

For the Respondent

THE ARBITRAL TRIBUNAL

Joseph H. H. WEILER

Conrad K. HARPER

Emmanuel GAILLARD

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