
**Arbitration proceedings pursuant to the Softwood Lumber Agreement
between Canada and the United States of America,
entered into on 12 September 2006 (the SLA)
and the LCIA Arbitration Rules (the LCIA Rules)**

LCIA Arbitration 7941

In the matter between:

THE UNITED STATES OF AMERICA

AND

CANADA

PROCEDURAL ORDER (PO) No. 3

Regarding further details of the Hearing in New York starting September 22, 2008

SEPTEMBER 15, 2008

1. CONSIDERING :

the recent communications between the Parties and the Tribunal and the resulting agreement that the pre-hearing telephone conference provided for provisionally in § 2.6 of PO-2 is not necessary, this PO was first sent as a draft to the Parties for any comments they may have and is thereafter issued in its final form as follows.

2. Earlier Rulings

- 2.1. The Parties are invited to take into account all **earlier rulings** in Orders of the Tribunal and letters of its Chairman, unless they have been changed by later rulings or rulings in this Order.
- 2.2. The Tribunal particularly recalls **from Procedural Order No.2** dated May 2, 2008, the following Sections:

5. Evidence of Witnesses and Expert Witnesses

- 5.5. *The Witness Statements and Expert Reports shall come in lieu of direct examination of fact and expert witnesses at the hearing. The Party calling a fact witness or an expert witness will be deemed to have submitted that witness's direct testimony in his or her Statement or Report. Thus, absent leave of the Tribunal for reasonable cause, the direct examination of a fact witness or an*

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- expert witness will be limited to confirming his or her written testimony and comments on any new developments that have occurred after the Statement or Report was made.*
- 5.8. *Subject to limited direct examination regarding any new developments after the Statement or Report was made, witnesses giving oral evidence shall first be asked to confirm their Statement or Report. Each fact witness and expert witness shall then be examined by counsel for the opposing Party (“cross-examination”) and subsequently by counsel for the Party offering the witness, with respect to matters that arose during cross-examination (“re-direct examination”). The Subject to limited direct examination regarding any new developments after the Statement or Report was made, witnesses giving oral evidence shall first be asked to confirm their Statement or Report. The Arbitral Tribunal may pose questions during or after the examination of any fact witness or expert witness.*
- 5.9. *The Arbitral Tribunal shall at all times have control over oral proceedings, including the right to limit or deny the right of a Party to examine a fact or expert witness when it appears to the Arbitral Tribunal that such examination is not likely to serve any further relevant purpose.*
- 5.10. *Fact and expert witnesses shall be heard on affirmation.*

7. Hearing

- 7.2. *Unless otherwise determined by the Tribunal, the hearing will commence at 9:30 a.m. and conclude at 5:30 p.m., with a two hour break for lunch. On the last day, this schedule may have to be modified since members of the Tribunal may have to catch a plane that evening.*
- 7.3. *The **Agenda** of the hearing will be as follows:*
- (a) Introduction by the Chairman of the Tribunal*
 - (b) Opening statement by Claimant;*
 - (c) Opening statement by Respondent;*
 - (d) Examination of expert and fact witnesses;*
 - (e) Closing Statement by Claimant;*
 - (f) Closing Statement by Respondent.*

In view of the recent communications between the Parties and the Tribunal, this Agenda is established in more detail later in this Order.

- 7.4. *The Arbitral Tribunal shall provide the Parties with equal time periods during the hearing.*

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- 7.5. *A Live Note transcript of the hearing in English shall be prepared each day, with the cost to be paid as set out in Article XIV(21) of the SLA.*

8. *Post-hearing Submissions*

If agreed by the Parties or requested by the Arbitral Tribunal, the Parties shall file post-hearing submissions.

3. Further Rulings

- 3.1. In addition to and in implementation of these earlier rulings, the following is established:

4. Preparation of the Hearing

- 4.1. **By September 15, 2008**, the Parties shall inform the Tribunal of the names and functions of the persons (including witnesses and experts) attending the Hearing from their respective sides.
- 4.2. **Also by September 15, 2008**, Claimant is invited to submit, if that is possible in such a limited period, a short further Report by its **expert Dr. Neuberger**, but only in rebuttal of the 2nd Kalt/Reisman Report submitted by Respondent. This would have the advantage of facilitating the evaluation of any such rebuttal presentation in substance and in advance of the Hearing rather than only after the direct examination of Dr. Neuberger during the Hearing. If such a submission is not made in advance, during the Hearing Respondent's expert Prof. Kalt will be given a 4 hour period or will only be heard the next day in order to enable him to prepare his reply to the rebuttal presentation of Dr. Neuberger.
- 4.2. The Tribunal has taken note of the many and voluminous exhibits submitted by the Parties together with their briefs. As only a limited number of these exhibits will be used in the time available at the Hearing, to avoid that all exhibits have to be transported to New York, the members of the Tribunal intend to bring to the Hearing what they consider the most relevant documents, but, in order to facilitate and speed up references to documents during the hearing, the Parties shall prepare and provide at the beginning of the Hearing:

- * For the other Party and each member and the Secretary of the Tribunal "**Hearing Binders**" containing copies of those exhibits (including expert reports) or parts of exhibits to which they intend to refer in their oral presentations and expert examination at the Hearing,

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- * one full set of all documents submitted in this procedure.

5. Time and Place of the Hearing

- 5.1. The Hearing shall be held at the New York Palace Hotel as agreed in more detail in earlier communications.
- 5.2. As also agreed, the dates shall be from September 22 (starting at 9:30 am) to 24, 2008.

6. Final Agenda of Hearing

Taking into account the recent communications between the Parties and the Tribunal, the following Agenda is established for the Hearing:

1. Introduction by the Chairman of the Tribunal.
2. Opening Statements by the Parties of not more than 75 minutes each for the Claimant and the Respondent.
3. Examination of Dr. Neuberger, expert presented by Claimant, in the following format:
 - a) Affirmation of expert to tell the truth.
 - b) Short introduction by Claimant (This may include a short direct examination on new developments, if any, after the last written statement of the expert dated September 15, 2008.)
 - c) Cross examination by Respondent.
 - d) Re-direct examination by Claimant, but only on issues raised in cross-examination.
 - e) Remaining questions by members of the Tribunal, but they may raise questions at any time.
4. Examination of Prof. Kalt, expert presented by Respondent, in the same format vice versa as under a) to e) above. Respondent's direct examination may include examination of Prof. Kalt regarding the last report submitted by Dr. Neuberger on September 15, 2008. The Tribunal has taken note of Respondent's suggestion to finish Prof. Kalt's examination on Tuesday September 23, and of Claimant's expectation that this may be achieved. However, as a precaution, Respondent is invited to assure Prof. Kalt's availability also on Wednesday morning, if required.

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5. In view of additional Report by Dr. Neuberger of September 15 and the oral examination of Prof. Kalt on this Report, the Tribunal does not consider it necessary that the two experts be recalled after their primary examination. However, if a Party insists on such a recall, the experts may only be recalled for rebuttal examination by a Party or the members of the Tribunal, if such intention is announced at the time of his primary examination in time to assure the availability of the expert during the time of the Hearing.
 6. Remaining questions by the members of the Tribunal, if any.
 7. Closing Statement by Claimant of not more than 60 minutes.
 8. Closing Statement by Respondent of not more than 60 minutes.
 9. Discussion regarding possible Post-Hearing Briefs and other remaining procedural matters.

7. Other matters

- 7.1. Unless otherwise agreed between the Parties or ruled by the Tribunal, the experts may be present in the Hearing room during the testimony of the other expert.
- 7.2. According to Section 7.4. of PO No.2 where the agreement is recorded for the Tribunal to establish **equal maximum time periods** for the examination by the Parties, and taking into account the Calculation of Hearing time attached to this Order, the total maximum time available for the Parties (including their introductory statements) for the Hearing shall be as follows:

5 hours for Claimant
5 hours for Respondent.

Except for their Opening and Closing Statements under Agenda items 2, 7 and 8, it is left to the Parties how much of their allotted total time they wish to spend on Agenda items 3. or 4., subsections b, c, and d. The parties shall prepare their presentations and examinations at the Hearing on the basis of the time limits established in this Procedural Order.

- 7.3. Each Party is free to use **audio visual equipment** at the Hearing as long as a large screen for general viewing or individual display screens are made available both to counsel of the other Party and each member and

the secretary of the Tribunal. The Parties are invited to coordinate their logistics in this regard before the hearing.

- 7.4. The **Parties shall coordinate** with the court reporting service and the service of the Hotel **in advance of the Hearing** to assure that the services are available, tested and ready to start at the beginning of the Hearing. This shall include that microphones are set up for all those speaking in the Hearing room to assure easy understanding over a loud speaker.
- 7.5. The Tribunal may change any of the rulings in this order, after consultation with the Parties, if considered appropriate under the circumstances.



Karl-Heinz Böckstiegel
Chairman of Tribunal

Attachment to Procedural Order No. 3:

Calculation of Hearing Time

	Hours
Time available	
3 days of 8 hours	<u>24</u>
Time needed	
Lunch breaks: 3 x 2	6
Various breaks (procedural and 6 coffee)	3
Procedural discussions (estimated total)	2
Introduction by Chairman	0.5
Additional Questions by members of Tribunal	2.5

Total time for other purposes	14
That leaves for the Parties a total of	10
Available for each the Claimant and the Respondent (including the Opening and Closing Statements)	5