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**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. 2

Regarding the remedies phase of the proceeding

MAY 2, 2008

CONSIDERING:

- (A) the October 28, 2007 Revision of Procedural Order No. 1 (PO-1);
- (B) the Tribunal's Award on Liability of March 3, 2008;
- (C) the Parties' April 3, 2008 responses to the Tribunal's Award;
- (D) the Parties April 11, 2008 submissions;
- (E) later submissions by the Parties.

The Arbitral Tribunal hereby decides as follows:

1. Revised Procedural Order No. 1 (PO-1)

The provisions of Revised PO-1 relating to the organization of the proceedings shall apply to organization of the proceedings under this Procedural Order No. 2 (PO-2), unless otherwise provided herein.

2. Calendar

As indicated in PO-1, the Parties agreed on a bifurcated procedure. This PO-2 sets out the schedule for the remedies phase of the proceeding as suggested by the Parties in their joint letter of April 22, 2008, and completed by the Tribunal.

- 2.1. By **May 29, 2008**, Claimant shall file its Statement of Case with all evidence (documents, law texts, authorities, witness statements, expert reports) on which it intends to rely during the remedies phase.
- 2.2. By **June 30, 2008**, Respondent shall file its Statement of Defence with all evidence (documents, law texts, authorities, witness statements, expert reports) on which it intends to rely during the remedies phase.
- 2.3. By **July 21, 2008**, Claimant shall file its Reply Memorial with any further evidence, but only in rebuttal to Respondent's Statement of Defence or the accompanying evidence.
- 2.4. By **August 11, 2008**, Respondent shall file its Reply Memorial with any further evidence, but only in rebuttal to Claimant's Reply Memorial or the accompanying evidence.
- 2.5. By **September 1, 2008**, each Party shall submit a notification of the witnesses and experts presented by itself and by the other Party it wishes to examine at the Final Hearing.
- 2.6. **On September 5, 2008**, if considered necessary by the Tribunal, after consultation with the Parties, the Tribunal or its Chairman on behalf of the Tribunal shall hold a pre-Hearing telephonic conference to resolve any outstanding areas of disagreement.
- 2.7. By **September 13, 2008**, the Tribunal issues a Procedural Order regarding further details of the Final Hearing.
- 2.8. From **September 22 to 24, 2008**, a Final Hearing shall be held in New York City.

3. Written Submissions

- 3.1 No submissions shall be made other than those set forth in this Procedural Order unless ordered or approved by the Arbitral Tribunal.

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- 3.2. Particular attention is recalled to section 2 of PO-1 including its section 2.6. in a slightly adapted version for this procedure on remedies:

2. Communications

- 2.1. *The Tribunal shall address communications to the addresses indicated by the Parties as their representatives and counsel*
- 2.2. *Counsel of the Parties shall address communications directly to each member of the Tribunal (with a copy to representative and counsel for the other Party and to the LCIA)*

by e- mail, to allow direct access during travel,

and confirmed either by courier or by fax (but fax communications shall not exceed 15 pages).

- 2.3. *Deadlines for submissions shall be considered as complied with if the submission is received by the Tribunal and the other Party in electronic form or by courier on the respective date.*
- 2.4. *Longer submissions shall be preceded by a Table of Contents.*
- 2.5. *To facilitate word-processing and citations in the deliberations and later decisions of the Tribunal, the e-mail transmission of memorials and substantial or longer submissions shall be in Windows Word, or in a PDF document that can be word-searched and from which text can be copied and pasted into Windows Word.*
- 2.6. *To facilitate that parts can be taken out and copies can be made, submissions of all documents shall be submitted separated from Memorials, unbound in ring binders and preceded by a list of such documents, consecutively numbered with consecutive numbering in later submissions (C-1, C-2 etc. for Claimant; R-1, R-2 etc. for Respondents) and with dividers between the documents. As far as possible, in addition, documents shall also be submitted in electronic form (preferably in Windows Word to facilitate word processing and citations).*

To facilitate work for all concerned in this 2nd phase of the procedure on remedies, rather than referring to the documents submitted in the earlier phase on liability, all documents the Parties wish to rely on in this procedure on remedies shall be submitted in new ring binders starting with a new numbering (CR-1, CR-2, etc. for Claimant and RR-1, RR-2, etc for Respondent).

- 3.3. The use of demonstrative exhibits (e.g., charts, tabulations, or computer presentations) is allowed at the hearing, provided that no new evidence is contained therein. Each Party shall provide the other Party with an electronic and

hard copy of any demonstrative exhibit that it intends to use during the Final Hearing at least two business days before commencement of the Final Hearing.

4. Documentary Evidence

- 4.1 All documentary evidence shall be submitted in the form provided above in subsection 2.6. of section 3.2.
- 4.2 No new evidence may submitted after the dates set out in the above calendar.
- 4.3 Documentary evidence of a Party that is not filed by the dates set out in the calendar shall not be admissible absent agreement of the other Party or a showing of reasonable cause for the omission, as determined by the Arbitral Tribunal, or unless produced upon order of the Arbitral Tribunal.
- 4.4 Copies of documents submitted by a Party shall have the same evidentiary weight as originals, unless the opposing Party makes a challenge to authenticity promptly upon learning of the grounds for challenge.

5. Evidence of Witnesses and Expert Witnesses

- 5.1 On the date mentioned in the above calendar, each Party shall file the Witness Statements and Expert Reports on which it seeks to rely.
- 5.2 On the date mentioned in the calendar, each Party shall file Witness Statements and Expert Reports on which it seeks to rely in response to issues or allegations raised in the last written submission of the other Party.
- 5.3 Testimony of witnesses or experts for whom a Witness Statement or an Expert Report is not submitted by the dates set out in the calendar shall not be admissible.
- 5.4 Each Witness Statement or Report of an Expert Witness shall:
 - (a) set out the name and address of the witness and a description of his or her qualifications, including his or her competence to testify;
 - (b) state whether the witness is a fact or an expert witness;
 - (c) in the case of an expert witness, contain a description of the method, evidence and information used in arriving at the conclusions;
 - (d) in the case of a fact witness, contain a full and detailed description of the source of the witness's information, sufficient to serve as that witness's evidence in the matter in dispute;

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- (e) contain the evidence that the Party presents of that fact witness or expert witness in the form of a narrative; and
 - (f) be signed by the fact witness or expert witness, with an indication of the date and place of signature.
- 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 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.
- 5.6 On the date mentioned in the above calendar, each Party shall provide the opposing Party, with a copy to each member of the Arbitral Tribunal, the administrative Secretary, and the LCIA: (i) the names of any fact or expert witnesses whose Statement or Report has been submitted by the opposing Party, with the request that they be available for examination at the hearing; and (ii) as the case may be, a request for the Arbitral Tribunal to permit the appearance at the hearing of fact witnesses whose Witness Statements or expert witnesses whose Reports have been submitted by that Party. The Arbitral Tribunal shall rule on any outstanding issue in connection with the appearance of fact and expert witnesses in its Procedural Order regarding further details of the Hearing by the date set out in the calendar.
- 5.7 Failure to make a fact witness or expert witness available for cross-examination without good cause shall result in that witness's Witness Statement or Expert Report being disregarded by the Tribunal.
- 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 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.

6. Status Conference

On the date mentioned in the above calendar, if considered necessary by the Tribunal after consultation with the Parties, the Arbitral Tribunal and the Parties will confer by telephone regarding any outstanding issues with respect to the organization of the hearing, or other procedural matters.

7. Hearing

7.1 On the date mentioned in the calendar, a hearing will be held in New York City, at a venue to be decided by the Arbitral Tribunal in consultation with the Parties. Hearing logistics shall be handled by the LCIA, in consultation with the Parties.

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.

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

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.

9. Language

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- 9.1 As provided on its signature page, the SLA was executed “in duplicate . . . in the English and French languages, each version being equally authentic.”
- 9.2 Documentary evidence and legal authorities may be submitted in their original language. The Party wishing to rely on documentary evidence or legal authorities in a language other than English shall provide an English translation of the relevant document.
- 9.3 The hearing shall be conducted in English. Witnesses may testify in either English or French. The testimony of witnesses testifying in French shall be simultaneously interpreted into English. The cost of simultaneous interpretation shall be paid as set out in Article XIV(21) of the SLA.

10. Confidentiality

The Parties should seek to agree promptly on rules required for the treatment of information or documents designated as confidential, or submissions containing information or documents designated as confidential.

For the Arbitral Tribunal,



Karl-Heinz Böckstiegel
Chairman of the Tribunal