

## Archived Content

Information identified as archived on the Web is for reference, research or recordkeeping purposes. It has not been altered or updated after the date of archiving. Web pages that are archived on the Web are not subject to the Government of Canada Web Standards. As per the [Communications Policy of the Government of Canada](#), you can request alternate formats by [contacting us](#).

## Contenu archivé

L'information archivée sur le Web est disponible à des fins de consultation, de recherche ou de tenue de dossiers seulement. Elle n'a été ni modifiée ni mise à jour depuis sa date d'archivage. Les pages archivées sur le Web ne sont pas assujetties aux normes Web du gouvernement du Canada. Conformément à la [Politique de communication du gouvernement du Canada](#), vous pouvez obtenir cette information dans un format de rechange en [communiquant avec nous](#).

**LCIA Arbitration 7941**  
**The United States of America v Canada**

**By the Arbitral Tribunal**

**V.V.Veeder QC, Prof. Dr. Bernard Hanotiau, Prof.Dr. Karl-Heinz Böckstiegel**  
**(Chairman)**

Date: October 28, 2007 **Revision of:**

**Procedural Order No.1 (PO-I)**

**1. Final Order**

This Order takes into account the comments received from the Parties by their letters of October 9 and 10, 2007, with regard to the Draft Order communicated by the Tribunal to the Parties.

**2. Applicable Procedural Rules**

2.1. Pursuant to and subject to Art. XIV of the Softwood Lumber Agreement (SLA) the proceedings shall be conducted in accordance with the LCIA Arbitration Rules effective January 1, 1998.

2.2. For issues not dealt with in the SLA, the LCIA Rules, or agreement by the Parties, the Tribunal shall conduct the arbitration in such a manner as it considers appropriate taking into account any views expressed by the Parties,.

**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 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). In this context it is noted that the Parties have agreed not to submit witness or expert testimony during the first (liability) phase of this procedure.

### **3. Timetable for the Liability Phase**

As indicated by their letters of October 9 and 10, 2007, the Parties have agreed on a bifurcated procedure to the effect that a first phase shall be restricted to the issue of liability (the *liability phase*) and, should liability be found by the Tribunal to exist, a second phase on remedies (the *remedies phase*). The Parties have also agreed that, in this first phase, neither of them shall submit statements of witnesses or experts or any requests for document disclosure

- 3.1. By **October 19, 2007**, Claimant shall file its Statement of Case (LCIA Rule 15.2) together with all evidence (documents, law texts, authorities) it wishes to rely on.
- 3.2. By **November 19, 2007**, Respondent shall file its Statement of Defence (LCIA Rule 15.3) together with all evidence (documents, law texts, authorities) it wishes to rely on.
- 3.3. By **November 28, 2007**, Claimant shall file its Rebuttal Memorial with any further evidence, but only in rebuttal to Respondent's Statement of Defence or regarding new evidence.
- 3.4. By **December 6, 2007**, Respondent shall file its Rebuttal Memorial with any further evidence, but only in rebuttal to Claimant's Rebuttal Memorial or regarding new evidence.
- 3.5. Thereafter, no new evidence may be submitted, unless agreed between the Parties or expressly authorized by the Tribunal.
- 3.6. **On December 12, 2007**, one day Hearing on Liability in New York. As agreed between the Parties, the Hearing shall consist of oral argument only, with no witness or expert testimony.
- 3.7. Parties shall not submit Post-Hearing Briefs unless agreed otherwise by the Parties or considered necessary by the Tribunal.
- 3.8. As a precaution, the period from **May 5 to 7, 2008**, shall be blocked by the Parties and the Tribunal in case a Hearing on the Remedies Phase becomes necessary and no other date is agreed between the Parties or set by the Tribunal after consultation with the Parties.

#### **4. Evidence and Confidentiality**

The following paragraphs of Art. XIV SLA are recalled:

*14. The International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration as adopted in 1999, as modified by the SLA 2006, shall apply in the arbitrations held under the SLA 2006, except that Article 6 of those Rules shall not apply.*

*15. If a Party wishes to designate information to be used in the arbitration as confidential, the tribunal shall establish, in consultation with the Parties, procedures for the designation and protection of confidential information. The procedures shall provide, as appropriate, for sharing confidential information for purposes of the arbitration with counsel to softwood lumber industry representatives or with provincial or state government officials.*

*16. Each Party shall promptly make the following documents available to the public, subject to Article XVI and any procedures established under paragraph 15:*

- (a) the Request for Arbitration;*
- (b) pleadings, memorials, briefs, and any accompanying exhibits;*
- (c) minutes or transcripts of hearings of the tribunal, where available; and*
- (d) orders, awards, and decisions of the tribunal.*

#### **5. Documentary Evidence**

- 5.1. All documents ( including texts and translations into English of all substantive law provisions, cases and authorities) considered relevant by the Parties shall be submitted with their Memorials, as established in the Timetable.
- 5.2. All documents shall be submitted in the form established above in the section on communications.
- 5.3. New factual allegations or evidence shall not be any more permitted after the respective dates for the Rebuttal Memorials indicated in the above Timetable unless agreed between the Parties or expressly authorized by the Tribunal.
- 5.4. Documents in a language other than English shall be accompanied by a translation into English.

#### **6. Hearing on Liability in New York on December 12, 2007.**

- 6.1. The Parties shall try to agree regarding the location and other logistics of the Hearing taking into account the details of the Hearing mentioned in the following sections. **By November 26, 2007**, the Parties shall inform the Tribunal of the agreement reached and of the arrangements suggested. Insofar as the Parties have not agreed or prefer not to make the arrangements themselves, the Tribunal shall decide and the LCIA will make the necessary arrangements.
- 6.2. It is recalled that Art. XIV.17 SLA provides as follows:

*Hearings of the tribunal shall be open to the public. The tribunal shall determine, in consultation with the Parties, appropriate arrangements for open hearings, including the protection of confidential information.*

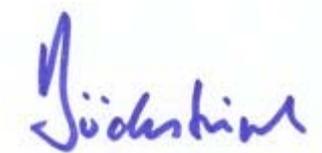
- 6.3. The Hearing shall be simultaneously transcribed using a live transcription software system, with the delivery to the Parties and members of the Tribunal of daily transcripts each evening after the close of the hearing.
- 6.4. No new documents may be presented at the Hearing. But demonstrative exhibits may be shown using documents submitted earlier in accordance with the timetable.
- 6.5. Subject to further agreement between the Parties and the Tribunal, taking into account the time available during the one day for the Hearing after deduction of the time needed for breaks and lunch,, the Tribunal intends to establish equal maximum time periods both for the Claimant and for the Respondent which the Parties shall have available. Changes to that principle may be applied for at the latest **by November 26, 2007.**
- 6.6. Unless otherwise agreed between the Parties and the Tribunal, the Hearing shall start at 9:00 a.m. and end no later than 6:00 pm. The **Agenda of the Hearing** shall be as follows:
  1. Short Introduction by Chairman of Tribunal.
  2. Opening Statement by Claimant of up to 90 minutes.
  3. Opening Statement by Respondent of up to 90 minutes.
  4. Questions by the Tribunal,  
and suggestions regarding particular issues to be addressed in more detail in Parties' 2<sup>nd</sup> Round Presentations.
  5. 2<sup>nd</sup> Round Presentation by Claimant of up to 1 hour.
  6. 2<sup>nd</sup> Round Presentation by Respondent of up to 1 hour.
  7. Final questions by the Tribunal.
  8. Discussion of any issues of the further procedure.

The members of the Tribunal may raise questions at any time, if considered appropriate.

## **7. Extensions of Deadlines and Other Procedural Decisions**

- 7.1. Short extensions may be agreed between the Parties as long as they do not affect later dates in the Timetable and the Tribunal is informed before the original date due.
- 7.2. In view of the very limited time available for the Liability Phase, extensions of deadlines shall only be granted by the Tribunal on exceptional grounds and provided that a request is submitted immediately after an event has occurred which prevents a Party from complying with the deadline.
- 7.3. The Tribunal indicated to the Parties, and the Parties took note thereof, that in view of travels and other commitments of the Arbitrators, it might sometimes take a certain period for the Tribunal to respond to submissions of the Parties and decide on them.

- 7.4. Procedural decisions will be issued by the chairman of the Tribunal after consultation with his co-arbitrators or, in cases of urgency or if a co-arbitrator cannot be reached, by him alone

A handwritten signature in blue ink, appearing to read 'Böckstiegel', is centered on the page. The signature is written in a cursive style with a large initial 'B'.

On behalf of the Tribunal  
Karl-Heinz Böckstiegel  
Chairman of Tribunal

