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23 October, 2001

Dear Sirs and Madam

**NAFTA UNCITRAL Investor-State Claim  
Pope & Talbot Inc and the Government of Canada**

The Tribunal has been considering the responses made by the parties to the queries raised by it in its letters of 14 August and 17 September 2001. As already stated, the Tribunal does not propose to make a ruling at this stage. However it considers that its deliberations at and after the hearing would be assisted if the parties would address the following points on the issue of the NAFTA Commission's Interpretation in relation to Article 1105.

1. In respect that the Tribunal is required by Article 1131 to decide the issues in dispute in accordance with the NAFTA Agreement and applicable rules of international law, and it may be taken as a rule of international law that no-one shall be judge in his own cause, and that the purpose of this arbitral mechanism is under Article 1115 to assure due process before an impartial tribunal, is it correct for the Tribunal to apply an interpretation by the Commission so as to affect an award previously made by the Tribunal whereby it has determined an issue in

dispute (namely Canada's liability for a breach of Article 1105) adversely to Canada?

2. Assuming for purposes of these questions that the Interpretation is to be taken as binding on the Tribunal with retroactive effect on its ruling in respect of the verification issue, and that the Tribunal holds that its earlier ruling is "inconsistent with" or "contrary to" the interpretation of the Commission on Article 1105, by what standard is customary international law to be ascertained?
3. In particular, since Article 1105 (1) states that the concepts of "fair and equitable treatment" and "full protection and security" are to be taken as included within the principle of treatment in accordance with international law and the Interpretation is to the effect that these concepts do not require treatment in addition to or beyond that which is required by the customary international law minimum standard, what is to be taken as the content of these concepts as part of customary international law at the time that the NAFTA was negotiated?
4. Views are also invited on the applicability of Article 1102 to the verification issue on the basis of the facts found by the Tribunal. The parties are referred to paragraph 117 of the award by the Tribunal.

The Tribunal anticipates that it will wish to develop these and possibly other issues relating to the effect of the Interpretation by the Commission in the course of the hearing in November. If parties find it helpful to make further written submissions on these aspects of the matter prior to the hearing they may do so, provided that such submissions reach the Tribunal and the other party 7 days before the start of the hearing.

The hearing was scheduled for Tuesday and Wednesday 13 and 14 November with a possible extension into Thursday 15. In view of the developments arising from the Interpretation issue the Tribunal proposes to set aside the whole of Thursday 15 and Friday 16 November for continuation of the hearing if necessary, and the parties are asked to make themselves available for that time.

Yours faithfully



Presiding Arbitrator