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NOTICE OF INTENT TO SUBMIT A CLAIM TO ARBITRATION UNDER SECTION B OF CHAPTER 11 OF THE NORTH AMERICAN FREE TRADE AGREEMENT

POPE & TALBOT, INC.

Investor

v.

GOVERNMENT OF CANADA ("CANADA")

Party

ırsuant to Articles 1116 and 1119 of the North American Free Trade Agreement ("NAFTA"), e Investor, POPE & TALBOT, INC. serves a Notice of Intent to Submit a Claim to rbitration for breach of the Party's obligations under the North American Free Trade greement.

NAME AND ADDRESS OF THE DISPUTING INVESTOR

INVESTOR:

POPE & TALBOT, INC.

1500 S.W. First Avenue,
Suite 200
Portland, Oregon 97201

SERVICE OF A TRUE COPY HEREOF
SIGNIFICATION DE COPIE CONFORME

Admitted the / Acceptée le 24th day / jour
of / de December 19 98

Linda Gauthier
for / pour Morris Rosenberg
Deputy Attorney General of Canada
Sous-procureur général du Canada

9:050...

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BREACH OF OBLIGATIONS

ıe Investor alleges that the Government of Canada has breached its obligations under Section of Chapter 11 of the NAFTA including, but not limited to the following provisions:

(i) Article 1102 - National Treatment;
(ii) Article 1103 - Most-Favoured Nation Treatment;
(iii) Article 1105 - Minimum Standard of Treatment; and
(iv) Article 1106 - Performance Requirements.

e relevant portions of the NAFTA are:

icle 1102: National Treatment

Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, duct, operation, and sale or other disposition of investments.

Each Party shall accord to investments of investors of another Party treatment no less favorable than that it ords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, ansion, management, conduct, operation, and sale or other disposition of investments.

The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, ·tment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or vince to investors, and to investments of investors, of the Party of which it forms a part.

For greater certainty, no Party may:

(a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or

(b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party.

cle 1103: Most-Favored Nation Treatment

Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, insion, management, conduct, operation, and sale or other disposition of investments.

Each Party shall accord to investments of investors of another Party treatment no less favorable than that it rds, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the blishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of stments.

:le 1105: *Minimum Standard of Treatment*

Each Party shall accord to investments of investors of another Party treatment in accordance with national law, including fair and equitable treatment and full protection and security.

Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to stors of another Party, and to investments of investors of another Party, non-discriminatory treatment with ect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed lict or civil strife.

Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent Article 1102 but for Article 1108(7)(b).

cle 1106: Performance Requirements

No Party may impose or enforce any of the following requirements, or enforce any commitment or rtaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an stment of an investor of a Party or of a non-Party in its territory:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

(g) to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.

A measure that requires an investment to use a technology to meet generally applicable health, safety or ironmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, cles 1102 and 1103 apply to the measure.

No Party may condition the receipt or continued receipt of an advantage, in connection with an investment is territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;

(c) *to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or*

(d) *to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.*

Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued eipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, compliance with a requirement to locate production, provide a service, train or employ workers, construct or and particular facilities, or carry out research and development, in its territory.

Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those agraphs.

Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a guised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be strued to prevent any Party from adopting or maintaining measures, including environmental measures:

(a) *necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;*

(b) *necessary to protect human, animal or plant life or health; or*

(c) *necessary for the conservation of living or non-living exhaustible natural resources.*

FACTUAL BASIS FOR THE CLAIM AND ISSUES

CTS

The Investor, Pope & Talbot, Inc., is a publicly traded corporation incorporated under the laws of the State of Delaware in the United States of America. The company was founded in 1849 and its shares are traded on the New York and Pacific stock exchanges.

The Investment, Pope & Talbot Ltd., is a corporation organized under the laws of the Province of British Columbia. Pope & Talbot Ltd. is owned entirely by Pope & Talbot International Ltd. (a British Columbia company) which is itself a wholly-owned subsidiary of the Investor, Pope & Talbot, Inc.

The Investment is a wood products company that manufactures and sells standardized and specialty wood lumber. The Investment harvests in the province of British Columbia, Canada and it operates three saw mills and two forestry divisions in that same province.

On May 29, 1996, duly authorized representatives from the Government of the United States of America and the Government of Canada signed the Canada-US *Softwood Lumber Agreement*. This agreement governs the export of softwood lumber first manufactured in the provinces of British Columbia, Alberta, Ontario and Quebec (the

"listed provinces") and it came into force retroactively from April 1, 1996.

The Government of Canada gave effect to the *Softwood Lumber Agreement* by placing Softwood Lumber on the Export Control List under the *Export and Import Permit Act*. This government measure regulated investors and their investments operating in the four "listed provinces" by subjecting them to special reporting requirements and the imposition of an export levy once a given quota of softwood lumber had been exported to the United States of America. No levy is imposed on lumber companies harvesting softwood lumber in the provinces of Saskatchewan, Manitoba, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland and in the Canadian territories ("the non-listed provinces")

The Investor alleges that Canada has acted in a manner inconsistent with at least four provisions of the NAFTA through giving effect to the terms of the *Softwood Lumber Agreement* by placing softwood lumber on the Export Control List under the *Export and Import Permit Act*.

ational Treatment

The NAFTA Investment Chapter national treatment obligation ensures that all investments, operating in like circumstances, whether domestic or foreign, are treated equally. The regulations made under the *Export and Import Permits Act*, in accordance with the terms of the *Softwood Lumber Agreement*, fail to meet this obligation as they fail to extend the best treatment available in Canada to the Investments of Investors harvesting softwood lumber who operate in the listed provinces. These Investors, and their Investments, are prevented from selling and processing softwood lumber on the same basis as softwood lumber operators in the regions not subject to the *Softwood Lumber Agreement*. This government measure interferes with the expansion, operation, conduct and management of the Investor's investment which operates in a listed province and which is not permitted to operate in Canada in the same fashion as similar investments conducting the same business operations operating in the non-listed provinces.

The Investor has suffered harm as a result of the Government of Canada's breach of its NAFTA investment chapter national treatment obligation.

Most-Favored Nation Treatment

NAFTA requires its Parties to provide to investors of other NAFTA Parties treatment no less favorable that it accords, in like circumstances, to investors of any Party or non-Party. Non-Party Investors that own or control a softwood lumber investment in the listed-provinces cannot operate in Canada in the same fashion as Canadian softwood lumber companies operating in the non-listed provinces.

) The Investor has suffered harm as a result of the Government of Canada's breach of its NAFTA most-favoured nation treatment obligation.

:inimum Standard of Treatment

The NAFTA requires a Party to accord to investments of investors of other NAFTA Parties treatment in accordance with international law including fair and equitable treatment and full protection and security. The regulations made under the *Export and Import Permits Act* in accordance with the terms of the *Softwood Lumber Agreement* fails to provide equitable treatment to the investments of Investors of other NAFTA Parties who operate in any listed province. These Investors, and their investments, are not accorded equitable treatment with other investments operating in non-listed provinces. Thus, American softwood lumber companies in listed provinces, such as the Investor and its Investment, are not accorded treatment in accordance with international law as required by NAFTA Article 1105.

The Investor has suffered harm as a result of the Government of Canada's breach of its NAFTA investment chapter minimum standard of treatment obligation.

rformance Requirements

Lumber companies harvesting softwood lumber in the non-listed provinces are accorded with a preference by the Government of Canada (that is the permission to export softwood lumber without the payment of any levy). The *Export and Imports Permits Act* (and the regulations made thereunder) operating in accordance with the *Softwood Lumber Agreement* operates to require an investment of an investor of a Party or non-Party to engage in economic activity in certain regions of Canada. This economic activity includes, but is not limited to, the requirement to perform certain services in the non-listed provinces such as harvesting and manufacturing softwood lumber there. This levy-free treatment in exchange for a requirement to harvest and manufacture in the non-listed provinces results in the imposition of a prohibited performance requirement contrary to Canada's obligations arising under Article 1106 of the NAFTA.

The Investor has suffered harm as a result of the Government of Canada's breach of its NAFTA investment chapter performance requirement obligation.

'UES

Has the Government of Canada taken measures inconsistent with its obligations under Section A of NAFTA Chapter 11, including but not limited to Articles 1102, 1103, 1105 and 1106?

If the answer to question 1 is yes, what is the quantum of compensation to be paid to the Investor as a result of the inconsistency of the Government of Canada with its obligations

arising under Chapter 11 of the North American Free Trade Agreement?

D RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED

The Investor claims damages for the following:

1. Damages of not less than USD$30 million as compensation for the damages caused by, or arising out of, Canada's measures that are inconsistent with its obligations contained in Part A of Chapter 11 of the North American Free Trade Agreement;

2. Costs associated with these proceedings, including all professional fees and disbursements;

3. Fees and expenses incurred to oppose the effect of the *Softwood Lumber Agreement* and those changes to Canadian domestic law made pursuant to that Agreement.

4. Pre-award and post-award interest at a rate to be fixed by the Tribunal.

5. Tax consequences of the award to maintain the integrity of the award.

6. Such further relief that counsel may advise and that this Tribunal may deem appropriate.

DATE OF ISSUE: DECEMBER 24, 1998

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