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TRADE LAW DIVISION
DEPT. OF FOREIGN AFFAIRS
INTERNATIONAL TRADE
MINISTER OF FOREIGN AFFAIRS

17 September, 2001

Dear Sirs and Madam

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

The Tribunal refers to the faxes from Appleton & Associates and from Canada dated 10 September 2001 containing their responses to the questions faxed by the Tribunal on 14 August 2001.

The Tribunal does not propose to make any ruling at this stage, but will deal with the matter along with issues of damages at and after the hearing fixed for November 2001.

However it would be of assistance for the Tribunal to obtain certain further clarification and information from Canada.

In the first place, the Tribunal notes the failure of Canada to respond to the Tribunal's question with regard to the implications of Article 1103 on the NAFTA Commission's Interpretation of Article 1105, arguing solely that the Investor has abandoned its rights to press a claim based on Article 1103.

As the Commission's Interpretation must have been intended to apply to future cases where waiver might not apply (and would not, unless given retroactive effect, even apply to this one) the Tribunal again requests Canada to provide an answer to the question. The Tribunal's view is well

known - the Commission's interpretation would, because of Article 1103 (in the words of Article 32 of the Vienna Convention) produce the absurd result of relief denied under Article 1105 but restored under Article 1103. Nevertheless the Tribunal wishes to know Canada's view on this question before coming to a final conclusion in response to the Commission's interpretation.

In the second place, the Tribunal believes that the effects of the interpretation could depend upon what the Commission considered to be the effects of its interpretation. Without pre-empting at this time the implications properly to be drawn it appears to the Tribunal that if the Commission viewed its interpretation to have retroactive effect on this case, its actions could be viewed as seeking to overturn a treaty interpretation already made by a NAFTA Chapter 11 Tribunal, Canada acting both as a disputing party and as a member of a reviewing body. Consequently the Tribunal wishes to know what caused the Commission to take action in this manner and what the members were told about the effects of their action on this case.

The Tribunal accordingly seeks specifically answers to the following:

1. When and by whom was the matter of the interpretation of Article 1105 first raised with the Commission?
2. Were the Commission members told that Canada would argue that their interpretation would have any effect in this case?
3. Was the Commission presented with any basis for their interpretation apart from the language of Article 1105? For example was any negotiating history provided for their consideration?
4. Was the Commission advised of possible conflict between the interpretation it was asked to adopt (or proposed to adopt) and Article 1103?

Canada is asked to inform the other NAFTA parties of these questions and to invite them to submit their comments if any by Monday 1st October 2001. Canada is asked to submit any responses it may have by the same date, Monday 1st October 2001.

Appleton & Associates is allowed until Monday 8th October 2001 to make any responses it considers appropriate.

Yours faithfully



Presiding Arbitrator