

**Arbitration under Chapter Eleven of the North American Free Trade Agreement (NAFTA)
and the UNCITRAL Arbitration Rules**

CANFOR CORPORATION

Claimant

v.

UNITED STATES OF AMERICA

Respondent

PROCEDURAL ORDER No. 2

November 3, 2003

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WHEREAS

1. In a letter of October 27, 2003 co-signed by the Parties and communicated to the Arbitral Tribunal at the first organizational hearing of October 28, 2003, the Parties have indicated to the Arbitral Tribunal that they have been unable to reach an agreement on a place of arbitration and have proposed to make written submissions in this respect.

2. At that hearing, the Parties and the Arbitral Tribunal further discussed the issue of the place of arbitration.

3. In the Terms of Agreement signed at the end of the first organizational hearing of October 28, 2003, the Parties and the Arbitral Tribunal stipulated that, in accordance with Article 1130 of NAFTA and Article 16 of the UNCITRAL Arbitration Rules, failing an agreement between the Parties on the place of arbitration, such place shall be determined by the Arbitral Tribunal having regard to the circumstances of the arbitration (*see* paragraph 12 of the Terms of Agreement).

4. In addition, the Parties and the Arbitral Tribunal discussed the issue of whether the arbitral procedure should be bifurcated into two phases (jurisdiction, merits) and whether the Respondent should submit a Statement of Defence before the Arbitral Tribunal makes a decision on the issue of the bifurcation of the procedure.

THE ARBITRAL TRIBUNAL DECIDES AS FOLLOWS:

5. The Parties are invited to submit written submissions on the place of arbitration.

6. Pursuant to the Parties' agreement as expressed in their letter of October 27, 2003 and confirmed at the hearing of October 28, 2003, the procedural calendar for the written submissions on the place of arbitration is as follows:

- November 11, 2003: Claimant's memorial on the place of arbitration;
- November 25, 2003: Respondent's counter-memorial on the place of arbitration;
- December 3, 2003: Claimant's reply memorial on the place of arbitration;
- December 11, 2003: Respondent's rejoinder on the place of arbitration.

7. As further agreed at the hearing of October 28, 2003, the Parties will also address in their briefs the issue of whether the arbitral procedure should be bifurcated into two phases (jurisdiction, merits) and whether the Respondent should submit a Statement of Defence before the Arbitral Tribunal makes a decision on the issue of the bifurcation of the procedure.

8. Further directions will be issued as and when necessary.

November 3, 2003

On behalf of the Arbitral Tribunal:



Professor Emmanuel Gaillard
President