

IN THE ARBITRATION UNDER CHAPTER ELEVEN
OF THE NORTH AMERICAN FREE TRADE AGREEMENT
AND THE UNICITRAL ARBITRATION RULES BETWEEN

**CANFOR CORPORATION, TEMBEC INC., TEMBEC INVESTMENTS INC., TEMBEC
INDUSTRIES INC. AND TERMINAL FOREST PRODUCTS LTD.**

Claimants

v.

**THE GOVERNMENT OF
THE UNITED STATES OF AMERICA**

Respondent

**SUBMISSION OF TERMINAL FOREST PRODUCTS LTD.
OPPOSING REQUEST OF UNITED STATES
FOR CONSOLIDATION OF THE CLAIMS OF
CANFOR CORPORATION, TEMBEC INC. ET AL AND
TERMINAL FOREST PRODUCTS LTD..**

DAVIS & COMPANY LLP
2800 - 666 Burrard Street
Vancouver, BC V6C 2Z7

HARRIS & COMPANY
1400 - 550 Burrard Street
Vancouver, BC V6C 2B5

P. John Landry
Telephone: 604.643.2935
Facsimile: 604.605.3588

Keith E.W. Mitchell
Telephone: 604.891.2217
Facsimile: 604.684.6632

COUNSEL FOR TERMINAL FOREST PRODUCTS LTD. June 10, 2005

INDEX

	Page
I. Introduction	1
II. That Terminal and Canfor have common counsel is irrelevant	1
III. The protection of confidential information is critical	2
IV. Terminal has not filed a Statement of Claim	2
V. The United States has not established the existence of common questions of fact or law	3
VI. The United States has not objected to jurisdiction in Terminal's case	3
VII. Consolidating Terminal's proceeding will result in delay	3

I. Introduction

1. Terminal Forest Products Ltd. ("Terminal") opposes the application of the United States for consolidation of these proceedings with those advanced by Tembec Inc., et al. ("Tembec"), and Canfor Corporation ("Canfor").

2. Terminal has reviewed, and respectfully supports, the arguments made by Canfor opposing consolidation. Terminal adds the following observations.

II. That Terminal and Canfor have common counsel weighs against consolidation

3. The United States seems to make much of the fact that Terminal and Canfor have common counsel. That fact is irrelevant at best, but more accurately, is a factor weighing against consolidation. Terminal and Canfor have common counsel only because Canfor was prepared to consent to Terminal retaining the same counsel as Canfor.

4. As part of that retainer, both Canfor and Terminal agreed, and indeed required, that counsel not share confidential information, including confidential business information, about either Canfor or Terminal with the other company.

5. As long as the claims are separate, there is no need for separate counsel as there is little likelihood of any conflict arising from the mere fact that the two parties have the same counsel. If the proceedings are consolidated, separate counsel may need to be retained to represent Terminal's interests, as those interests are different from Canfor's. It is inefficient and prejudicial for Terminal to be required to seek other counsel when the United States has been dilatory in bringing this application.

III. The protection of confidential information is critical

6. Terminal is very concerned about the difficulties of dealing with confidential information in any consolidated proceedings. Given the extremely confidential nature of its business operations in Canada and the United States, it cannot put forward confidential information, which will be absolutely essential to demonstrating how the United States' conduct has affected it and its United States investments, if there is a risk of that information being disclosed to Canfor or Tembec. Terminal is deeply concerned that it will not be able to obtain a fair hearing given the complexities involved in separating each of the claimants confidential business information.

IV. Terminal has not filed a Statement of Claim

7. Terminal filed its Notice of Arbitration, thereby preserving its right to proceed against the United States. Since filing that Notice, however, it has not taken further steps in its proceeding, nor has the United States asked it to or required that a Tribunal be appointed. Terminal is not, as the United States puts it "toll[ing] the NAFTA's three-year limitations period". Terminal was entitled to, and did, file its Notice of Arbitration so as to protect its rights. Initiating a claim does not, as the United States alleges, "eviscerate[] the purpose of the NAFTA's limitation period." Rather, the purpose of a limitation period is to ensure that the United States is on notice that it faces a claim within a prescribed time limit. Limitation periods relate to when a claim can be commenced. They do not relate to the conduct of it.

8. If the United States objected to Terminal not having proceeded to file a Statement of Claim or to appoint an arbitrator, then its remedy would have been to ask the appointing authority to act in Terminal's stead. It has not done so. Indeed it has not even asked Terminal to

appoint an arbitrator or file a Statement of Claim, thereby clearly demonstrating that it is content to leave Terminal's claim as it is.

V. The United States has not established the existence of common questions of fact or law

9. The business of Terminal is focussed almost entirely upon the high-value Western Red Cedar market. That is a market in which, for all material purposes, neither Tembec nor Canfor participate. The characteristics of that market are fundamentally different from the SPF market, on which Canfor and Tembec focus. Terminal is not in the commodity market, and many of the issues and much of the conduct of the United States as it relates to Terminal are significantly different than as relates to the other commodity producers of softwood lumber. There will be distinct and separate issues raised by Terminal when it files its statement of claim, as the conduct of the United States in relation to investors and their investments in the Western Red Cedar sector differ from those in the SPF market.

VI. The United States has not objected to jurisdiction in Terminal's case

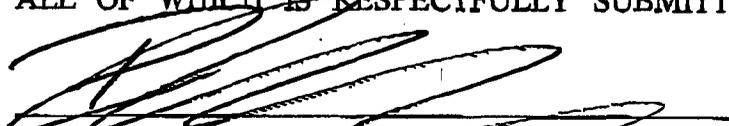
10. Terminal disputes the suggestion that its proceeding gives rise to common issues of either fact or law with the Canfor or Tembec proceedings. Contrary to the assertions in its submission to this Tribunal, the United States has not objected to the jurisdiction of a NAFTA Article 1120 Tribunal to hear Terminal's case. The closest the United States has come to objecting to jurisdiction is the statement in its argument in support of consolidation that it will.

VII. Consolidating Terminal's proceeding will result in delay

11. If this Tribunal determined to consolidate these three proceedings, Terminal remains entitled to be treated fairly and with equality. This, of necessity, means that Terminal will need

to consider whether it needs to retain separate legal counsel, and if so, to have sufficient time for such counsel to be properly briefed, will need to prepare a statement of claim, and will need to fully brief any jurisdictional issue which the United States may advance against it. It is absurd for the United States to suggest that Terminal might simply "rest on the claimant's filings already made in the *Canfor* and *Tembec* proceedings" when those submissions do not address the particular circumstances of Terminal, and indeed when those submissions do not even articulate any objection against Terminal and when Terminal has not been involved in any way in any of the jurisdictional proceedings.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



P. John Landry



Keith E.W. Mitchell