IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT AND THE UNCITRAL ARBITRATION RULES

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In the Matter of Arbitration :
Between: : :
MERRILL & RING FORESTRY L.P., : :
Investor, : :
and : :
GOVERNMENT OF CANADA, : :
Respondent. : : 
- - - - - - - - - - - - - - - x Volume 2

HEARING ON JURISDICTION AND THE MERITS

Tuesday, May 19, 2009

The World Bank
1818 H Street, N.W.
MC Building
Conference Room 13-121
Washington, D.C.

The hearing in the above-entitled matter came on, pursuant to notice, at 9:04 a.m. before:

PROF. FRANCISCO ORREGO VICUÑA, President
MR. J. WILLIAM ROWLEY, QC, Arbitrator
PROF. KENNETH W. DAM, Arbitrator
Also Present:

MS. ELOÏSE OBADIA, Senior Counsel,  
Secretary to the Tribunal

Court Reporter:

MR. DAVID A. KASDAN  
Registered Diplomate Reporter (RDR)  
Certified Realtime Reporter (CRR)  
B&B Reporters  
529 14th Street, S.E.  
Washington, D.C. 20003  
(202) 544-1903

APPEARANCES:
On behalf of the Investor:

MR. BARRY APPLETON  
DR. ALAN ALEXANDROFF  
MR. MARTIN ENDICOTT  
Appleton & Associates  
International Lawyers  
77 Bloor Street West  
Suite 1800  
Toronto, Ontario M5S 1M2  
(416) 966-8800

MR. GREGORY J. NASH  
Nash & Company  
2333 Three Bentall Centre  
595 Burrard Street  
P.O. Box 49043  
Vancouver, British Columbia V7X 1C4  
Canada  
(604) 669-0735

On behalf of Merrill & Ring:

MR. NORM P. SCHAAF

MR. PAUL STUTESMAN

APPEARANCES: (Continued)

On behalf of the Respondent:

MS. SYLVIE TABET  
MS. LORI DI PIERDOMENICO
WITNESSES:

PAUL STUTESMAN

Direct examination by Mr. Nash
Cross-examination by Mr. Watchmaker
Questions from the Tribunal
Redirect examination by Mr. Nash
RICHARD RINGMA

| Direct examination by Mr. Nash | 378 |
| Cross-examination by Ms. Tabet  | 416 |
| Questions from the Tribunal     | 422 |
| Redirect examination by Mr. Nash| 435 |

JOHN COOK

| Direct examination by Ms. Tabet  | 438 |
| Cross-examination by Mr. Nash    | 457 |
| Redirect examination by Ms. Tabet | 580 |
| Questions from the Tribunal      | 583 |
| Further redirect exam. by Ms. Tabet| 591 |
| Further questions from the Tribunal | 594 |

JUDY KORECKY

| Direct examination by Ms. Tabet  | 599 |

1  PROCEEDINGS
2    PRESIDENT ORREGO VICUÑA: Good morning to
3       you all. We are ready to begin, and I gather that
4       Ms. Tabet has an issue to raise.
5  MS. TABET: Yes, I do. Thank you.
6           Just briefly, yesterday we heard a great
7       deal of new evidence, and we raised this, and I just
wanted to—now that we've had a careful—an opportunity to review the transcript to bring your attention to those—to that new evidence.

And we have confirmed, gone back to the Witness Statements and have indeed confirmed that there is a great deal of this.

And so, we've provided you transcripts with highlighted portions of the new evidence that you heard yesterday. And I won't bring you through it, but you will see that it is quite extensive.

So, in light of the Tribunal Order that preceded these hearings where you decided that we should not be introducing new documents at this stage, we do feel that it was inappropriate for the Investor and their counsel to have done so, and as well as unfair and contrary to the equality of the parties governing these proceedings.

So, we would ask you to review these passages and to strike them from the record.

PRESIDENT ORREGO VICUÑA: Mr. Appleton.

MR. APPLETON: Good morning, Mr. President and Members of the Tribunal.

I, of course, have not had the opportunity to review the volume of materials that Ms. Tabet has
just presented us with. However, I decided to take the leisurely hours that we had available to us after receiving a very excellent transcript last evening from Mr. Kasdan and to review the record. And, in fact, as you will see from my visual aid, I have reviewed the entire record last evening, and I have noted in the record exactly what evidence that has been done and that came in, what was new, what happened to be responsive, and where it's responsive to, and exactly to what it's responsive to. And if you'd like, why don't we take an example. We could take any example. You can pick a card, if you'd like to discuss it because we feel it's such an important issue that we can deal with this now because it's an important issue we need to dispense with.

We are convinced that the evidence that has been presented is responsive, and it is responsive specifically to the issues raised in the supplemental statements by Canada's witnesses saying that there are issues about the authenticity, the veracity, credibility about these very specific witnesses, and it all relates to specific issues raised in the Witness Statements by those witnesses.
who are being examined. And, in our view, that is
exactly the proper scope for a witness hearing.
Just the same way as if the members of the Tribunal
wish to ask a question of the witness on exactly
what they said or exactly the questions posed to
their testimony by the witnesses of the other side
in their direct.
And so our view is that it's going to be
very difficult to keep having these objections all
the time. We can specifically address these in
Ms. Tabet's statement. We can specifically take any

I'm ready to deal with those this morning.
But the most important thing is that it is
exactly the equality of the parties and the
procedure that we are protecting. Both sides are
entitled to be able to deal with these types of
issues.
I point out, for example, that yesterday in
the binders that Ms. Tabet circulated--excuse me,
could you pass me one of the binders from yesterday,
either Mr. Schaaf's or Mr. Stutesman. Canada
introduced a new document into the materials.
They--excuse me. I get to speak right now,
Ms. Tabet, and you'll have your opportunity.
So, for example, if we take the--if we take Mr. Stutesman's documents, the one that has three pieces here, you'll see that they're relying on a document from the PricewaterhouseCoopers Report, and that Report, as we all know, is withdrawn. So, that is not in evidence, but yet she had Tab 67 here. I was ready to make an objection at that time. That is, in fact, a new document to the arbitration. She relied on the same document again in Mr. Schaaf's material.

Now, I have no problem admitting documents if we have a proper process to deal with that; and, in fact, for this document, I probably wouldn't have an objection. I think it would be practical and reasonable to deal with it, but there is a process to go through. All I'm saying is practically we need to deal with this and that we have been very careful to ensure that the material is directly responsive and either is exactly in the scope of the Witness Statements, or it is exactly responsive to questions specifically posed by the other witnesses because we don't want to be in the position to recall witnesses because then, when Canada's witnesses come up and say something and we have to
bring another witness, we don't want to do that. That wouldn't be efficient, and it wouldn't be orderly, and both sides have exactly the same opportunity. So, I don't want to belabor this, but I thought it was important to deal with this up front in light of the fact I thought it was possible that Ms. Tabet might bring this this morning, and I don't want this to be an ongoing issue. It's important that we can get this resolved in a workable manner as early as possible. We have nothing further to say on this.

PRESIDENT ORREGO VICUÑA: Fine. Thank you, Mr. Appleton.

Well, sorry.

MS. TABET: May I speak to that?

PRESIDENT ORREGO VICUÑA: Please do.

MS. TABET: With apologies, I just feel compelled to point to the fact that the new document that Mr. Appleton was referring to is his document, so it's a bit amusing that he refers to as a "new document." Whether he chose to withdraw it or not, it's certainly not a new document.

And secondly, by arguing that new evidence
is responsive where they've had several opportunities to respond to Canada's objection to their case is also a bit stretching the reality here, in particular when we're talking about new examples, for example, of blockmail that they've introduced yesterday that we did not have a chance to respond to, and, obviously, did not have a chance to carefully find out what they're talking about or to look at our records.

So, all this kind of new evidence should not really be introduced at this late stage. They had many opportunities to make their case.

MR. APPLETON: Excuse me--oh, all right.

Well, the only point I'd like to add is that Ms. Tabet knows that this evidence has all been put before her before she's had the opportunity to cross-examine. She has every opportunity to cross-examine, and it's difficult for us to see that when Ms. Tabet says that she's concerned that there aren't examples in the record about the specific types of allegations that are involved, and then the witnesses give examples on examination, I can't see why she can complain about that. That's exactly what she wants to say. It's exactly the type of
20 evidence that deals directly with her statements,
21 and she has the total right to cross-examine on that
22 evidence from the witness hearing, and it’s from the

09:10:09 1 witnesses.

I'm sorry, I don't want to delay what
2 you're doing.
3 (Tribunal conferring.)

PRESIDENT ORREGO VICUÑA: Fine. We have
4 had this--you will have been able to appreciate a
5 discussion among ourselves about how to handle this
6 question, and there are two points that the Tribunal
7 would like to make.
8
9 The first is that, of course, the principle
10 continues to be and has always been and will always
11 be that no new evidence should be introduced at the
12 hearing. There is no question about that.
13
14 Now, the practical difficulty is what is to
15 be regarded as new evidence. There have been
16 arguments on both sides saying it is new, it is not
17 new. The Tribunal has noted, not now but yesterday,
18 that some of the issues that have been identified as
19 new evidence were, to an extent, an aberration on
20 the evidence that was already on the record, on the
21 Witness Statement, and illustrated by way of example
of how it worked in practice.

So, would that be taken that there would be new evidence, or is it an elaboration of existing evidence? That's one practical difficulty with which we will be, of course, confronted.

Now, the second issue is that it is quite right, as Mr. Appleton has mentioned, that if after the Witness Statements have been filed and the witness is available for examination, and there are points which emerged after his statements to address issues or situations or aspects in which you would feel that his opinion is relevant in connection with the subject matter of his opinion, well, in that context, it would be very helpful if the party who is soliciting this so-called "new evidence"—I would not like to label it that at this point, but the party who was arguing that there is new evidence would have the chance to react to it. That's perfectly normal as well.

And for that, on addressing your question to the witness that might be regarded as part of the new, say, development, it would be very useful if the counsel conducting the examination would be able
to point that out, saying on this point you had or
you are asked to develop a point of view which is in
response to or whatever is the case. And then that
will have the advantage that first the other party
will know what's the situation about, and we will
have eventually a chance to react to it in
cross-examination or at whatever stage, and then it
will be useful for the witness and for the Tribunal
to be aware about which is the connection with the
statement originally.

That is as far as the Tribunal would like
to go at this stage. We are, of course, not
prepared to say what anyone has marked here or there
is or not new evidence that will have to be
accepted. So, what we encourage you to do is to
develop this kind of practical fair play, warn,
advise, and react, and then at the end of the
hearing the Tribunal is prepared to look at
everything that has been called new evidence and the
explanation of why new evidence is new evidence or
it is not, and come to a conclusion, say, well, this
should be there because of whatever reason or should
09:19:23 1 not be there, and then the principle applies.
  2 Is that fair enough for all workable and
  3 understandable?
  4 MS. TABET: Fair enough.
  5 MR. APPLETON: Thank you very much,
  6 Mr. President, for clarifying that.
  7 PRESIDENT ORREGO VICUÑA: Okay.
  8 So, procedural issues done away with,
  9 hopefully, we are ready to begin with the first
 10 Witness Statement of this morning.
 11 MR. NASH: Our next witness will be
 12 Mr. Paul Stutesman, and he is the Vice President of
 13 the Merrill & Ring Group responsible for marketing
 14 and sales. And as he will be giving evidence
 15 throughout his testimony and intermingled with it,
 16 which is in relation to business strategies,
 17 commercial opportunities, and commercially sensitive
 18 information, we would ask that the hearing be closed
 19 for the portion of his testimony and that Mr. Cook
 20 be excluded.
 21 Keeping in mind that Mr. Cook is with the
 22 Provincial Government, which has an arm called B.C.

09:20:28 1 Timber Sales, which is in competition with Merrill &
PAUL STUTESMAN, INVESTOR'S WITNESS, CALLED

MS. TABET: Sorry, may I just—I really
don't want belabor the point, but here is the
problem. Yesterday, Mr. Schaaf and Mr. Kurucz, and
I'm sure Mr. Stutesman today, will talk about
specific examples of blockmail. Well, how is
Mr. Cook supposed to respond to any of this if he's
not even allowed to hear what they're alleging? And
obviously he's aware of these instances because, you
know, if they're alleging that he's aware, but, you
know, how can he answer? He's not aware if he
doesn't even know what's at issue? How can he
explain what he knows, doesn't know what is going on
and what they're describing? How can he even
respond to that?

PRESIDENT ORREGO VICUÑA: Well, I think
that the situation in this respect is quite clear.
The ruling of the Tribunal originally was that none
of the information which was of interest for the
competitor to Merrill & Ring, which is an arm of the

British Columbia Forest Service or Government or so,
should be conveyed to that service because of this
competition between two corporations that are
working in the same field.

So, to that extent, if elements or aspects are going to be discussed that are connected with it, there is no way to avoid it, and Mr. Cook should still be ignorant of those because it would be part of the information that's not to reach him.

Now, that is, of course, a question of factual appreciation. I cannot know; no one can know at this point whether a certain element is or not part of that connection, but that's the only way, and I'm sure Mr. Cook will be able to endure a few more minutes of walking about the Bank.

So, Mr. Stutesman, why don't you please read for us the Witness Statement in front of you.

THE WITNESS: I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT ORREGO VICUÑA: Thank you,

Mr. Stutesman.

(End of open session. Confidential business information redacted.)
Q. Mr. Stutesman, you're the Vice President and General Manager of Merrill & Ring Forest Products?

A. Correct.
Q. And you're responsible for the marketing and sales for the Merrill & Ring Group?
A. Yes.
Q. And Merrill & Ring, as you know, has operations obviously in B.C. and in Washington State in the U.S.?
A. Correct.
Q. Do you do the marketing and sales for Merrill & Ring for all of its logging operations?
A. Yes, generally speaking.

ARBITRATOR ROWLEY: Mr. Stutesman, you're being recorded, and there is also amplification, and so if I could ask you to sit closer to the microphone, then everybody will hear you better.

Thank you.
marketing logs in the Northwest and to Japan and
Korea.

Q. And you were appointed to Merrill & Ring as
the Sales and Marketing Manager in 1996; that's
correct?

A. Right.

Q. And to your current position in 1998, so
you've been doing it for about 11 years; correct?

A. A little longer than that, about 13. Yeah.

Q. Okay. Where are Merrill & Ring's clients
located around the world?

A. Well, they're basically on the Pacific Rim
located in Washington, Canada, Japan, Korea, a

little bit in China.

Q. And what is involved in your marketing
activities vis-à-vis your customers? What do you do
in respect of that?

A. Well, I do the direct sales to the Japanese
market. I have gentlemen, capable gentlemen working
for me that do the Korean sales and most of the U.S.
domestic sales, and Mr. Kurucz does our Canada
domestic sales.

Q. And how do you go about establishing your
customers' needs?
A. Well, over time, as you work with customers, you try to understand what they are looking for in terms of a log, who their end use customers are, if they're a wholesaler or if they're a mill, what log and what species and what qualities they're looking for. And then it's an ongoing communication with visiting and E-mails and phone calls and general business stuff.

Q. And your job is to try and find out what your customers want and to deliver it to them in a timely way?

A. Correct.

Q. With the quality they want and at the price they are agreeing to pay?

A. Right. That's the harder price.

Q. The price is the harder part?

A. The price is the harder part.

Q. In your experience, do customers of Merrill & Ring ever request Federal timber marked logs or Provincial timber marked logs?

A. No, generally, they're looking for a quality of log that fits their needs. And if it's a Doug fir log that's a nice Doug fir log, it doesn't matter whether it's from South Coast, North Coast,
Q. You mentioned North Coast and South Coast. You're located--Merrill & Ring is located on the South Coast of British Columbia?
A. Correct.
Q. Do North Coast logs compete with your logs from the South Coast?
A. For sure. The customers will say, you know, this is price we're getting for logs out of Prince Rupert, and, you know, you need to be cognizant of that, et cetera, so it's an interactive marketplace.
Q. And do Merrill & Ring's costs of production and delivery play a role insofar as you're aware in the customers' mind in his deliberations over whether to buy logs from Merrill & Ring?
A. No, the costs don't play a role. Generally speaking, they're looking at what the market value is for that log and how it compares to what other competitors are supplying them, so costs don't play a role.
Q. Mr. Schaaf gave evidence yesterday regarding the harvesting process and the procedures he follows in preparing a harvest, the annual
harvest. Can you explain to the Tribunal your role in that process.

A. Well, as Norm started yesterday, we sit down several times during the course of the year and look at longer term, shorter term plans, and we do that both for the timberlands in the United States and Canada, so we try to look out and see what markets are going to be available to us, what the pricing is going to be like, what on Norm's schedule is the timber he's decided to cut for the year, what the makeup of that timber is, how much is Doug fir, hemlock, et cetera, so we do our best to match the timber available to harvest to the marketplace.

Q. And when does that planning start?

A. Well, again, it's an ongoing process. We get pretty serious about the next year's plans sometime after the middle of the year, previous year.

Q. And do you involve Mr. Kurucz in that process as well?

A. We do when we are talking about the Canadian marketplace. We'll talk with Tony about what he sees in Canada in terms of domestic demand activities of the other competitors in the
Q. From your perspective as a person at Merrill & Ring responsible for the marketing and sales of logs, can you describe how your process of harvesting and planning and selling differs in your operations in Washington as compared to British Columbia.

A. Right. Well, in the United States, in the U.S. side in Washington, we are just looking at, again as I described, what's available, what's the timing, and who are the customers, how we might line those customers up, and how during the course of the year the markets might change, so should we log this type of stand in the front half, back half. In Canada, it's a--we start with again what's available, what's road, what has roads into it, what the markets like are. The twist on the Canadian side is that then we begin to discuss what we--what we think about is going to happen in terms of what can we get out into the world market, what's the domestic market in Canada doing, how bad is that going to hurt our returns. So, it brings in a whole different set of factors that are really--markets are difficult to predict in general, but then when
you add in the factors of can we get it out, how much will we have to give up in this process to the domestic guys to satisfy their needs or their perceived needs. That's kind of what--those are all factors that weigh in, and so a lot of times in the timing of the harvest. So, when do we want to harvest this? It is oftentimes a backwards economic analysis, so when do we think the slowest demand will occur in Canada? And the weakest market in Canada, that's when we decide to harvest more because oftentimes in almost all cases, the highest price in Canada is considerably worse than the lowest price on the international market. So--

Q. Is that generally true?

A. That's generally true. There are certain sorts and species, but for 70 percent of the wood that's generally true.

Q. So, you were saying that it forces you to plan in a backward economic way, I think.

A. Right.

Q. What do you mean by that?

A. Well, again, in Washington we are looking at supply and demand. You want to try and harvest
when the market prices are the best. In Canada, we
are trying to anticipate, and it again becomes a bit
of a guessing game as to when we can get the most
wood through the system into the world market, and
that oftentimes means when the Canadian market—even
though we might log 30 percent of our volume
when—30 percent of our volume is traditionally sold
in the Canadian market, 35 percent, even though that
market may be weak, and we know we will sacrifice
there, a weak market in Canada means it might be
easier for us to run the gauntlet of the blocking
that we are going to encounter.

Q. Could you turn to your statement, please,
your first statement dated February 8, 2008. I'd
like to turn specifically to the effect of the
Control Regime, Export Control Regime, on your
operations and the way you go about doing things, in
particular your marketing and sales. And if you
turn to Page 4 of your statement, and in particular
under the heading C at Paragraph 20, starting at
Paragraph 20, you refer there to the fact that
Merrill & Ring is subjected to an unpredictable
business environment by arbitrary Government
Can you elaborate upon that and explain what you mean by that.

A. Well, again, as I said earlier, when we cut the trees, we're not exactly sure what--in fact, we are not exactly sure at all--where the logs are going to end up, where--we're taking a tree that has been growing for 60 years, and you have to understand the tree has parts to it, so generally the first cut, the butt cut as they so to speak, has the Japanese quality log in it, so we--because it's the cleanest and it has the clearest quality, and the Japanese are willing to pay a premium for wood. They enjoy wood in their homes.

So, generally in the first cut of the tree is the highest quality; and then in the second cut is maybe a Korean or domestic quality, and generally in the top is a low end domestic sawlog or a pulp log.

So, with Mr. Kurucz and myself, we say, okay, how are we going to sort these trees? So, in the U.S. side, we just--we go out, and we sort them
according to their quality and their diameter, their
length as to what our customers' going to want.
In Canada, we kind of do the same thing,
but at the same time we are somewhat restricted
by--sometimes more than somewhat--restricted by the
rules that the Province says this is the package we
have to make. Doesn't fit our customer, but it fits
the rules and regulations that we have to abide by
in order to get it through the system. That's kind
of the first hurdle.
And the second hurdle is we have to
anticipate what some of the domestic customers and
generally we know that three, four, or five
customers or domestic mills in Canada and what
they're going to want from us, what they're going to
say, what they're going to block us on.
So, these mills understand that the logs
that we're getting to Japan, that lower cut log, we
are making it a very substantial profit, oftentimes
twice the value of a log that we will sell to them.
So, we know that if--they know that they
can basically hold us for ransom to block those logs
so that they can get some of those logs or some of the other logs at a cheaper price. So, basically—and that process occurs in a number of ways. Basically, the four or five guys, it's like four or five dance partners. They all have a different way of approaching that some of them want to talk before the music starts. Some of them want to wait until everything is in the ad, and then they call up and lay this, well, you know, I'm going to need some of those logs at a very cheap price, you know. And then—or, if we can't come to an agreement, then they throw in a block, and then we talk with them afterwards. So—and we are trying to anticipate when we're doing the planning process, how much wood do we have to cut to their needs that we have to use as basically this is what we'll give up in order to get this over here so we can get the higher value? So, yesterday, Tony, Mr. Kurucz, talked about, you know, getting the Canadian value, the fair market value. Well, there is two parts. Tony is talking about can I get the fair Canadian market price on the wood that gets offered on? Well, the
offers always tend to be on the low end of the Canadian market price because that's what—I mean, the goal of those mills is to buy logs at the cheapest possible price, and my goal is to get the most money for those logs, and so they're going to offer at the low end of the range. So, Tony is trying to get just market price on that piece that we have to give up in order to get this other piece over here out at a much higher profit. Unfortunately, they hold all the cards because if they—if we don't settle with them here, they'll just continue to block the higher priced logs over here.

So, we lose twice. If we sell below Canadian market, we lose on the Canadian market. And, of course, every boom of higher value that we sell within the Canadian market is lost opportunity on the other side. Whereas differently in the U.S., we can just take that log to the best market without the cost, the expense, the aggravation, and the guesswork of going through that process.

Q. What is the extent to which this what has been called blocking and blockmail and this whole system play in your thinking in terms of your
marketing planning, your sales, the way you go about getting logs to market from British Columbia?

A. Well, in the planning process, we will make--they call--you've heard the term booms or rafts or a group of. They load the logs in a bundle. They'll make 30, 40 logs in a bundle, and they strap them, and they throw them in the water, and then they push these bundles together and make a raft. The size of the raft, the bigger the raft you make, the lesser expensive it is to move it. We make the rafts in fairly small sizes because that way if we get blocked on a boom, then we have bits and pieces that we can negotiate with. If we make three or four big booms and we get three of them blocked, then we've basically laid all of our cards out, and now we have nothing to barter with.

So, the process is what size of the boom do we make. Of course, what logs do we put into this sort. Yesterday, again Mr. Kurucz referred to the fact that we've kind of given up on making an 8- to 11-inch Japan sort because Itochu always blocks it anyway, so we just put it in there. We try to appease them on the front end.

It becomes day-to-day business for us, but
it's not really day-to-day business in the way that we do business in the U.S. It's like the bully shows up at the end of the street, and you go by with your lunch bag, and he takes your cookies every day. And if you give him any trouble, he takes your sandwich, too. The problem is you can't go back home because your mother says you have to go to school. My boss says and Norm says, we have to take this wood to market. We have to sell it, and your job is to get the best price. And the job isn't just getting--you know, I have a full-time job working with my customers, finding out what the market is, listening to what's going on in that environment, and then I have to listen also. You know, I operate in Canada. I listen to my competitors. I listen to other suppliers that I do business with. What's the blocking environment like? Who is blocking this month? We may actually start logging in October or, excuse me, in April, and we may not bring logs to market until July sometimes because we'll just make them and put them in inventory because we know we're going to get 60 percent of them blocked. So, we defer until we see more wood flow
into the marketplace.

So, that--so, basically, the whole process in Canada starts with how do we get through the gauntlet and how do we negotiate our way through it. And then, as the blocking comes in, we know we are going to pay a price. We know we are going to pay a ransom. Then we just--then it's just a process of determining the least loss or the least amount of ransom we have to pay.

And sometimes it gets very difficult because we may have two or three domestic guys blocking the same booms, or if they don't block them, they are offering on them.

And so, we have to decide, okay, we lose this guy. Maybe he will take hemlock instead of Douglas fir because that will only cost us five bucks a meter or 40 bucks a meter instead of 60 bucks a meter. Whatever the numbers are.

So, it becomes a real, I say, dance.

Q. Can you describe actually by way of an illustration or example exactly how a block works.

A. Well, again, before the block comes in, we're trying to communicate with those that will communicate. Oftentimes they don't communicate
because they don't have to. They know the wood is coming in the advertisement. They know all about your business. They know what you're producing. Anything that you want to sell export, they know that.

So--but then it goes into the--we boom the wood up in the sizes we want. We put the paperwork together. We send it to the Government. They put it in the advertisement, public advertisement, and then we wait until the deadline to see if we have any blocks. If we--

Q. And a block is an offer?

A. An offer letter, yes.

Q. Okay.

A. And so when we receive an offer, then we have to decide how we deal with the offer. Generally speaking, the argument I have always made, you know, this is a supply test, so theoretically this advertisement list is a test of whether there is a supply shortage, so--which again is again contradictory. If the market price within Canada is $70, and they put in a 65-dollar offer, my argument has always been when I've talked to Mr. Jones or
Ms. Korecky, if it's a supply shortage, generally supply means, you know, if you go to the store and you need something and it's short, you don't care if the price is $2 a pound and the normal price is a buck 50. You pay $2.

They say the supply is short. They offer us a buck and a quarter because they know we have no place to go with that boom. Or they know that if we know want these other booms out, we will sell them that boom.

And so, that—so, you know, it—so that's—so that we evaluate the price, but we know the price is not close to what we're going to get on the export market, but then we evaluate it compared to the domestic market. And then we begin a negotiation with those people, okay, I see you blocked this boom. What do you really want? What do you really need? How much can we really provide? Because oftentimes they will block a high value boom that they really don't want, but it's more of a shot across the bow, so to speak. Hey, we're here. We need some of your wood, and so, you know, here it is. What are you going to sell us now. And so as oftentimes you will see, we'll
get wood blocked and then--or offered on, and then it will get released shortly thereafter, means we--and offer times the letters say in replacement of other volume, so they get what they want. We get what we want, except we just gave up a huge amount of money upside because we had to do it.

Q. So, that's the circumstance where an offer is made during the 14-day advertising period.

There's a delay between the end of that 14 days and the TEAC meeting--

A. Right.

Q. --where that offer is going to be considered.

A. Right.

Q. And during that period, it could be four, five, or six weeks in there?

A. Generally, it's month plus or minus, I think.

Q. And in that period, you're describing a negotiation whereby the offer is then withdrawn?

A. Right.

Q. In exchange for something you've given up.

A. Right.

So, what you need to understand is
that--and then I have--if we cannot negotiate our way out of it or feel we can't negotiate our way out of it, or we have an offer that's so unfair that we think we can appeal to the Federal Government, then we start that process, and we still may be negotiating along the way with those people because we are not sure how long that process is going to take, and if we will win in that, so we start that process.

But you have to understand that at the same time once we start production, Norm has marshaled together a group that has a million dollars' worth of equipment out there trying to produce as many loads a day as they can because they're paid on a volume basis. So, while I'm working on this two week package here, there's more two week packages coming. And as you--if you like stop the treadmill, pretty soon the wood starts to stack up. My customers don't have--they're not getting wood that I've said--I think this wood is coming, I think I'm going to be able to sell you this wood, you know. I got to get it through the system first.

So, in the meantime--so, the process is if you waited every time you go to TEAC or FTEAC for
relief, it just is not very workable in terms of just normal business.

Q. And what about an appeal to Ms. Korecky, for example, from an FTEAC decision? Is that a workable, practical process from your standpoint?

A. Not from my standpoint. I get--again, we can't--you can't run your business with Government, at least not very effectively, so we work the process. We work the system. When we do see something that's outlandish, we turn something in. Sometimes we are successful. Sometimes the answer is somewhat expedient and sometimes it's not expedient, and sometimes--I mean, they always rule on the boom, but they often don't give us--they give very little reason. They don't respond sometime to my requests as I put in my statement about Itochu. Why should CIPA be able to block when Itochu is exporting logs? According to Notice 102, anyone that's exporting logs shouldn't be blocking logs? But I've complained several times, a couple of times in writing, about the fact that Itochu is a Japanese trading group that I do business with on the log export side, and if I talk to them about CIPA, they say, oh, that's a different business.
Q. What's the relationship between CIPA and Itochu?

A. I believe they're a wholly owned subsidiary of Itochu.

Q. And Itochu has logging operations in British Columbia?

A. No, Itochu just buys logs and exports them there. Itochu oftentimes, I think the last two or three times, they will send ex pats or Japanese citizens to work in Vancouver, and they will be in charge of the log trading business for the North American business. And then as they finish that assignment which will be running three, four, five, six years, then they move over to CIPA, and they are in charge of the CIPA log business and veneer business.

Q. So, what does CIPA do?

A. Well, CIPA peels veneer, which means they take a log and they make sheets of veneer, the thin sheets that you see in plywood. I don't think CIPA lays up any plywood. I think they may, but a lot of their veneer goes to another Itochu subsidiary in Washington State that lays up LVL, laminated veneer
Q. So they're wood processors--CIPA is?
A. Correct.
Q. So what is the complaint that you've made to Ottawa about CIPA and Itochu?
A. Well, they are basically owned by the same company. It would be like an arm of Merrill & Ring starting a sawmill and then blocking everyone's wood while the other arm was exporting logs. It violates the principle of Notice 102.
Q. If you go to your statement at the bottom of Page 5, Paragraph 25, you refer at the last sentence on the bottom of the page there starting three lines up at the far right-hand side, "For example, many of our Japanese clients want 40-foot Douglas fir logs. If we cut our logs to this length to meet this need, we are at risk of domestic lumber processors blocking the export. If a lumber processor wants 34-foot logs or just does not want us to sell to Japan, it can offer us a price that reflects that shorter length. As a result, we can be forced to sell the 40-foot logs at a 34-foot price."
First of all, does that happen? Has that happened in your experience?

A. That has happened.

Q. And how has it happened? Can you explain that to the panel.

A. Well, again, we--the 40-foot logs, again we are at a bit of a guessing games when we're cutting these logs. We're hoping we can get the higher value by cut log out to Japan, and we will make as much of that sort as we can, and we may make that decision while Tony is having conversations with CIPA. They may say, well, how much wood do you need? Oh, we are getting lots of wood, but by the way, it doesn't really matter because if we want wood, we are going to block it, so you should just make some for us just in case.

And so--but we sometimes say, well, let's roll the dice. Let's think they are going to be filled up. We will just make Japanese sorts out of all the good logs, and then they will block that boom, and there has been a time where we couldn't--we couldn't satisfy their needs or there
were too many people to satisfy, and eventually we
had—they offer on the logs, and they will offer
less than they're paying in the domestic market.
Then the reason they give is because the logs don't
meet their lengths.
And so, and we say 34-foot logs, Canadians
say 35-foot logs. It's basically the same log.
It's just a terminology issue.
Q. So, what then happens to the other 6 feet?
A. Well, I think they—I don't know exactly
what they do with it. They say they chip it.
Q. Will they pay you for it?
A. Well, we get paid for it, but at a very
reduced rate.
Q. How do you feel that the Regime treats you
vis-à-vis other log manufacturers in British
Columbia? And I want to just first turn to one
thing and ask you: Are you familiar with standing
exemptions?
A. Yes.
Q. Do you know what they are?
A. Yes.
Q. Can you explain to the panel what they are and how they work.

A. Well, basically they're an exemption that the Province grants to certain Provincial Lands that says, in advance of you cutting your trees, you know that you could take a certain percentage out into the world market without going through a surplus test. So we have appealed to have that same--have the Federal Government give us that same type of opportunity, and they've declined to do so. So, basically we're stuck with going through the process.

The Province can, at its discretion, decide when and how it wants to feed its logs into the market. We have no discretion. All of our wood has to go through the process, has to go in a public offering, all under the guise that there's a supply shortage, and there really is no supply shortage. It is--I think since I have been doing this, there is no supply shortage of timber in British Columbia.

All of the major, and often the major companies that are blocking our wood, Interfor, Western Forest Doman, and then Western Forest Products, they all have timber licenses with the Government of Canada.
to cut certain volumes. And in their timber license, and I'm not an expert on this, but they have a certain annual cut that they get to cut every year, and all of those--almost all of those companies--and I know for a fact Interfor because they're one of our blockers--is behind on their annual cut. So, their annual cut is--they may be behind in their cut a million or 2 million meters. Logs that are on the stump, all they have to do is go out and harvest them and bring them into their mill. But they can block our logs and hold us hostage and buy our logs cheaper so they don't go and cut their own logs. They don't need to. And not just ours. I'm talking about Federal timberland owners.

So, they use this as a way to create a shortage. We don't have to log our timber. It's maybe wintertime, and it's expensive logging, so we will just use the export list, as Tony said, as a shopping list to feed the mill, and then if the markets don't come along and we don't need the wood, well, we don't need to buy it. So it's--and then I know at times when Doman blocked our wood, I did make the case with
Thomas Jones at the time that this was unfair, and he actually upheld that decision.

But again, how can the company like Western, who has the biggest cut on the Coast of B.C., 20-some million cubic meters at that time, and they're only cutting 70 percent or 50 percent of what they are allowed to cut, how can it really be a supply shortage? It's a contrived supply shortage, so that's another frustration. And I have made that case, and, you know, the Federal Government obviously doesn't agree with me on that.

Q. So, as a federally regulated owner of timberlands, Merrill & Ring is not eligible to get a standing exemption?

A. No, it's not.

Q. It's not eligible to get any kind of a standing application? We hear the term standing application, standing advertisement. It is not able to export its product without cutting it first?

A. Correct. It has to be cut, put into the form that the Government approves, put in the location that the Government approves, and wait for the advertising period to run its case.
Q. And those standing exemptions are not available to any South Coast operator?

A. Not with Federal timberland marks—timber marks.

Q. And your North Coast competitors can get them?

A. Yes. Some of them are just ongoing. It's standard operating procedure.

Q. Have you ever had the experience where you've seen a barge going south with North Coast logs going past your booms with your logs?

A. Of course.

Q. Okay. Can you comment, please, on the process with respect to the rules that are involved and how those are applied, and from your standpoint, is it a clear process, that you know the rules in advance and how they will be applied?

A. I would say that it's not a very clear process. There's very limited rules. When you make an appeal to FTEAC, there's no defined process. Even the fair market price that they develop, that the FTEAC develops, is made by, as you've heard, a group of sawmillers and a few industry people. No private timberland owners, and so they make the
decision about what the market price is.

And oftentimes the people in the room are
the ones that have done--done the--made the offers
or made the blocks.

Now, from what I hear, and, of course, I
can only hear because these meetings are all secret,
there are no minutes. There is no information that
comes out of them. So from what I hear, if someone
is in the room who has made a block, they step out
of the room, and then they come back in when that
boom or that offer is dealt with. Of course, they
come back into the room, and they know what the
price is, and they know what they need to do next
time to be at the bottom end of that price or
whether that price works. They know what the rest

of the market is doing. They know what every one of
those other people in the room know. They know
everything about the blocking process. I know
nothing--I mean, the blocking status. I know
nothing. I have requested from the Federal
Government a number of times, can you tell me who is
being blocked and at what price? They've said, no,
I can't tell you that. That's confidential
information. People wouldn't want their prices out.
I said, no problem, don't tell me the price. Just tell me who is being blocked. I just want to know who is being blocked because there are several occasions where I know we may have been the only person blocked. There may be 200,000 meters on an ad or 150,000 meters, and we may have six or eight or 10,000 meters. We are the only ones blocked.

So--and yet FTEAC upholds that, and it's supposed to be a surplus test. If there is a supply shortage, why aren't they blocking--I can't believe that my logs are the best logs of the 200,000 meters. We have high quality, but the other logs are relatively the same.

So, you know, I have made that argument. It basically just falls on deaf ears, and so, you know, I still don't know. I'm certain--I'd bet next month's paycheck on it because I don't know the information, is that our percentage of blocks in the last 10 years relative to the volume offered far exceeds anyone else's. Which means a number of things. It means that, number one, we don't have some abilities that other of the big players have to have the Provincial Lands that they operate to
12 negotiate with.
13 So, provincial--so some of the larger
14 players have provincial cuts, and they could take
15 their Provincial Lands and negotiate because on the
16 provincial side you have to pay a fee-in-lieu tax,
17 so that cuts into the value of your export. Even
18 though they could export those, they have to pay a
19 tax to the Province. It's now 15 percent. It used
20 to be hundred percent. Anything you exported had a
21 hundred percent tax out of the Province that
22 exceeded a Federal price line.

10:01:19 1 So, large companies couldn't--didn't really
2 pay to export. They used those logs to pay off.
3 Their ransom was in provincial logs. I don't have
4 provincial logs or, as they say, a very limited
5 number of provincial logs, as Norm has pointed out.
6 So, basically part of the reason we get
7 blocked more, and Mr. Jones has said, and I
8 apologize to Mr. Jones if he is not here to defend
9 himself, but in conversations I've said, Tom, we
10 can't--we can't do. We can't offer all these
11 people. There is too many of them. I can offer
12 logs to these two guys when the market's good, and
13 there's two other guys over here that want our logs.
And the only reason that these mills actually let us get wood out, I think, at times is because they know if they block everything, we'll just stop logging, and/or we'll be forced to stop logging or we'll sell it to somebody else at the Canadian price that's higher than theirs. But anyway, basically--so, I think the Government knows that all this prenegotiating goes on. I mean, again, these other companies just don't

I hope we get this all out. I mean, I have to because I'm relatively small, but they can just plow ahead knowing they'll just have to pay that ransom as they're going along, and they can oftentimes pay it with logs that are--it's less of a ransom for them, so that's why at times we are the only one targeted.

It's not a shortage of supply. It's we can get cheap logs on this list. You have to pay your due. Everybody else does. And we spend a lot of time--you know, there was a reference to not so many of your logs get blocked. We spend a lot of time and energy putting our logs in the advertisement
15 when it's most effective for us. We could make more
16 money in the marketplace if we'd log more in the
17 wintertime. We log in the summertime because that's
18 when there is more log on the market, less chance of
19 being blocked.
20 So, we oftentimes will hold our--if we
21 happen to run into the--into the fall, we will hold
22 our booms until Christmas week and advertisement

10:03:39 1 because we are hoping that Christmas is a big
2 holiday time. We are hoping that the mills are on
3 holiday, so that they won't make an offer.
4 I mean, we try to play every angle we can,
5 and if we hear that someone is in the penalty
6 box--and again, we don't know if they are in the
7 penalty box--
8 Q. What do you mean by the penalty box?
9 A. If someone violates a rule where they've
10 exported a boom and then they block like the
11 reference to Interfor, if we know they are in the
12 penalty box, we will push wood into the ad as fast
13 as we can if they're blocking our wood, trying to
14 get as much through the system before they come back
15 on. But, of course, we never really know because
16 FTEAC operates in secrecy, and we don't really know
what happens there, unless basically we try to find
out by asking people around the industry, and
sometimes we find out.

Q. Are the FTEAC decisions published?
A. The only--
Q. Do you get notice of what's happened to all
of the other blocks and offers being considered?
A. No, no.

Q. Do you get notice about your blocks?
A. Yeah, basically we get a letter, and so the
letter comes to us and to the Federal Government at
the same time that says an offer is made on your
boom.

Q. Do you know how FTEAC comes to a fair
determination of price, whether the offer is fair?
A. Well, no. I don't know how they do it. I
hear about it.

Again, this group of individuals sits
around. They don't have--there is no real
periodical or price for a sheet that goes around.
You determine market price by talking to customers,
making deals, you know, and so there is no, like,
price sheet for Vancouver logs.

Q. Is there an exchange for Vancouver logs
like a price of oil you can find that out in a given day? Is there price for hemlock on a given day?

A. No, you find out the price by again talking to your other competitors, talking to your customers, what are they buying from so-and-so.

Some of it is true. Some of it's not. Again, it's a part of the business, but so, there's no price.

So, what happens is these guys sit around there and they say, well, I think I have been selling this sort for this much. Hemlock gain for 50 bucks. I have been getting 52, and I'm getting 48. And again, what you need to understand is a lot of them are buying it, so they are motivated to keep the price low, and oftentimes those guys around the table are also participating in British Columbia's timber sales, so they have timber sales that they put up, and they bid on those sales to supply their mills.

So, if--so as they buy those logs, they don't want to know their competitors are sitting around the table as well, so they're just saying to their competitors they don't want to tell them if they get a high price. So, we may bring a price where we say, we are getting $90 for this or 95, as
Tony described. If--there may be one of them getting 95, but it's not to their benefit to tell the rest of their competitors around the table they have a market that they get 95 on because they're bidding on a timber sale next week. I mean, it's just--there is so much conflict of interest about what these people are doing that I would want to keep it secret too if I was there.

Q. So, is there anywhere published a standard that FTEAC uses to describe the process they will go through in determining whether an offer is a fair offer at the domestic price?

A. Not that I'm aware of. There's--up until recently, I didn't know what kind of price difference a fair offer would mean. Now there has been some comments--actually only recently last--since we started this case that there is a plus or minus 5 percent rule. I think it's a concept. There is a concept out there that plus or minus 5 percent might be workable, but it's really not. As we had a recent complaint, Ms. Korecky said that's just a guideline, and each boom has to do with its value based on the market and some values
22 are--require more differences to be fair than

10:08:10 1  others.
2 Which I just find interesting.
3 And in fairness to Ms. Korecky, she knows
4 nothing about logs and nothing about log pricing.
5 She's totally at the whim of log information from
6 this group of people around the TEAC board meeting
7 that know about the markets, know about how things
8 work in the log market, and again she said to me one
9 time, I think they're offering on your chip-n-saw
10 because I had been looking in the advertisement that
11 it's supposed to be hem-bal, and you don't have
12 any--hem-bal is short for hemlock and balsam. You
13 don't have any balsam in there. It's all hemlock.
14 And I smiled because basically they're
15 interchangeable. And some timber stands have
16 hemlock, and some timber stands have some balsam.
17 Balsam is a bit of a minor specie. Hemlock is
18 usually always the major component of a hemlock
19 balsam mix. And I said, "Judy, you can check with
20 the TEAC group, and hem-bal is interchangeable."
21 And she did come back later and say that, but it
22 typifies.
And again, no disrespect to Ms. Korecky. I wouldn't expect her to be a log expert, but she's at--he has to depend on and rely on this group of people I think completely appointed by the Province to help her in her Federal decision making.

Q. You mentioned Interfor is one of the major blockers; I think that was the term you used.

A. I have used other terms for them, but, yes, that's one.

Q. Are they a major player in the British Columbia forestry industry?

A. Yes, they are.

Q. They log large swaths of land, Provincial Land, in British Columbia.

A. Yes.

Q. And they have sawmills in British Columbia?

A. Yes.

Q. And the purpose of their blocks is to get supply for their sawmills in British Columbia?

A. Correct, yes.

Q. And you've encountered them on more than one occasion being a blocker of your wood?
Q. Of what kind of frequency? How often are they interfering? In one way or the other, either in advance or after the offer is made.

A. Again, depending on who is in charge of the account, it depends, sometimes in advance, sometimes with the block, sometimes after. You know, it's through the process.

It varies with the marketplace. I mean, sometimes, you know, they're not as active as others. We try to avoid them, like we said, but yeah, they're a pretty--as you will look back, they're pretty frequent in their blocking.

Q. Do you know the name John McCutcheon?

A. Yes, I know Mr. McCutcheon.

Q. Who is Mr. McCutcheon?

A. He used to work for Interfor, used to work I think before that for Primex, but I could be wrong on that. People change jobs. He now works for a tugboat towing company I believe.

Q. And he was the Chair of TEAC for about 10 years?
A. That's what I hear. I have never seen a list of the members.

Q. You've never seen a list of the members?
   A. No.

Q. Are you advised who the members are?
   A. No.

Q. When you say that they're--
   A. I just hear about who they are.

Q. You hear about it through the grapevine?
   A. Right.

Q. You say that there are no minutes made of these meetings. In fact, there are minutes, but are they published to the industry? Do you ever hear of them?
   A. I believe they're confidential.

Q. You have never--other than through this case, have you ever seen one?
   A. No.

Q. Not in the industry--
   A. Actually, I haven't seen any in this case. Maybe I missed those. I would like to have read them.

Q. Mr. Stutesman, thank you. Those are my questions.
PRESIDENT ORREGO VICUÑA: Thank you so much, Mr. Nash, for your direct interrogations. So, would you like to proceed right now? Break for five minutes?

MS. TABET: Yes.

PRESIDENT ORREGO VICUÑA: Okay, we will break for five minutes.

(Brief recess.)

PRESIDENT ORREGO VICUÑA: Mr. Watchmaker, are we ready?

MR. WATCHMAKER: I believe we are ready.

PRESIDENT ORREGO VICUÑA: We are ready to proceed, then, with the cross-examination of Mr. Stutesman.

MR. WATCHMAKER: Thank you, members.

CROSS-EXAMINATION

BY MR. WATCHMAKER:

Q. Mr. Stutesman, my name's Raahool Watchmaker. I'm counsel to Canada.

Members, as a preliminary matter, I just want to say that as I said yesterday, I do have some questions for Mr. Stutesman that are on the restricted record. I've made sure that those questions are at the end of my examination, and at
that point I will indicate that they are restricted, and I'd ask Mr. Cook to leave the Chamber at that point, but right now I will continue in public.

Thanks.

(End of confidential session.)
A. Correct.

Q. And you have been in this position since 1998?

A. Yes.

Q. Okay. Now, you're responsible for the marketing and sales of logs from all of the companies in the Merrill & Ring family, including the Investor in this case; is that right?

A. Correct.

Q. Okay. And as I understand it, Mr. Stutesman, Merrill & Ring owns lands subject to both Federal and Provincial rules?

A. Yes, there is a small number of acres that are under Provincial.

Q. Okay. And that for its Federal Lands, it follows the process under Notice 102.

A. Correct.

Q. And for its Provincial Lands it's subject to the B.C. Forest Act; is that right?

A. Correct.

Q. Now, yesterday I heard Mr. Appleton introduce you to the members, and I assume you were here for the testimony of your colleague, Mr. Schaaf?
A. Correct.

Q. Okay. Now, in response to questions from Mr. Nash about what your company can do if you don't like an FTEAC decision, Mr. Schaaf had said that Merrill & Ring can write complaints in writing to FTEAC representatives, Ms. Korecky or the Minister, and he then asked Mr. Schaaf, asked a further question and about what further recourse there could be after that, and Mr. Schaaf's response was, and I'm quoting from Page 136, Lines 11 and 12 of the official transcript, members, "We have never found an avenue beyond that that we can raise an appeal, short of this Tribunal."

Do you recall that testimony? I believe it's on the screen?

A. Yes, I do.

Q. Now, subsequently in response to a question from the President on whether there was legal recourse in Canada before Canadian courts, your colleague responded that, "We were not aware of avenues of appeal that we would have within the Canadian court system in a dispute relative to the way in which the Regime was managed." And that's at Page 207, Lines 14 to 17.
Now, Mr. Stutesman, could you please turn to Tab 1 of the Core Bundle that's been handed to you.

A. I don't have that.

Q. My apologies.

(Document handed to the witness.)

A. Okay.

Q. Now, this is a letter from your lawyers Pomerance & Company to Mr. Tom Jones at the Export Controls Division dated April 18, 1998. Could you turn in the second page, please. I would like you to look at the last paragraph on this page.

Your counsel here, Mr. Davis, refers to the K. F. Evans case at the Federal Court Trial Division.

Do you see that, sir?

A. Yes, I do.

Q. This was a judicial review in 1996 at the Federal Court of Canada against Notice 26, which is the predecessor of Notice 102; isn't that right?

A. Yes.

Q. Okay. And if you turn the page, I will just note for you at the bottom there your colleague, Mr. Schaaf, is copied on this letter.
Do you see that?
A. Is this--it's the same letter, but just no page numbers. Okay, yes, I see that.
Q. Mr. Stutesman, are you aware of the case that your competitor TimberWest took against Canada at the Federal Court of Canada in 2006?
A. Yes, I am aware.
Q. And this was a complaint to the Canadian courts about Notice 102; isn't that right?
A. Yes, it was.
Q. And you know this because you were a witness in that case, weren't you?
A. Yes, I was.
Q. Okay. Now, what about the Island Timberland case that was launched last year at Federal Court by Mr. Ringma's company I believe?
A. I really don't know any details about that case. I just have heard that it's ongoing. I haven't had any discussions with Mr. Ringma or any Island Timberlands people about the case. I don't really know what their basis is. I mean, I don't know what their basis is for the case.
Q. You're aware it's a challenge of the Log Expert Control Regime?
A. Actually, I didn't know that.

Q. All right. Fair enough.

At this time, I would ask that Mr. Cook leave the Chamber and that we go into a restricted session.

(End of open session. Confidential business information redacted.)

10:33:54 1

CONFIDENTIAL SESSION

BY MR. WATCHMAKER:

Q. Okay. Now, I'd like to take you to Paragraph 16 of your Witness Statement, and I believe it's your Reply Witness Statement.

A. Reply?

Q. Yeah.

A. Okay.

Is there a Reply in this--I don't have that Reply here in front of me. I just have--is there a Reply in this binder here somewhere? I just see the statement.

ARBITRATOR ROWLEY: Perhaps your counsel would put it before you.

THE WITNESS: The Reply?
BY MR. WATCHMAKER:

Q. It's also on the screen.

MR. NASH: Well, I have to say there are some highlights and there are some notes on it.

THE WITNESS: If it's on the screen, that will work for me.

Number 16?

10:35:33

BY MR. WATCHMAKER:

Q. 16, yes.

So, Paragraph 16 of the statement you take issue with the assertion of Dr. Reishus, Canada's expert economist, that you "export higher quality logs than you sell domestically."

Is that right, Mr. Stutesman?

A. Yes.

Q. And in response to Dr. Reishus's statement you state in the second sentence of Paragraph 17 that you, "sort your logs for consistent quality, regardless of who the final customer turns out to be."

Is that right?

A. Yes, it's what it says.

Q. And I believe Mr. Schaaf yesterday also
17 confirmed that testimony.
18 Now, you state further in the third
19 sentence of Paragraph 17 that, "It is true that we
20 would like to prepare higher quality sorts for
21 exclusively--sorts exclusively for export, since
22 customers on the international market are more

10:36:27 1 willing than domestic buyers to pay prices that
2 truly reflect the value of some premium logs."
3 Is that right?
4 A. Yeah, that's correct. What you need to
5 understand is that I will sell the log to the
6 highest market, so there are times when I'm cutting
7 these logs for the international market, but there
8 are also times, then, if the Canadian market comes
9 up--for example, this past year the Canadian market
10 for red cedar was higher in most cases than any
11 other market--I'll sell it. I sell a high grade log
12 into Canada, it's not necessarily about where it
13 goes. It's about who can pay me the most money
14 for it.
15 So, you know, the concept here of what I
16 was discussing about is that Mr. Reishus says that,
17 you know, we are trying to export all the good ones
18 and leave the bad ones behind in Canada. We are
just trying to sell them to the best price. So, if
the Canadian marketplace can pay the price and be
competitive, it's easier for us. It's closer to
home, get our money quicker, love to do that. So

10:37:28 Q. Okay. But the first phrase here is that
you'd like to prepare higher quality sorts
exclusively for export, but you can't actually do
that in British Columbia; is that correct?
A. Well, we do some parts of it, but generally
we can't take the risk of doing all of that because
then they're in a form that, as we described
earlier, they're in a 40-foot log farm and we are
blocked by a 34- or 35-foot peeler mill, and then we
lose twice in that process.
Q. Right. I see that you say at the fourth
and fifth statement sentence of Paragraph 17 that
it's "too risky to prepare higher quality sorts
exclusively for export because you never know when
your logs are going to be blocked."

Is that right?
Q. Okay. So the Log Expert Control Regime prevents you from preparing higher quality sorts for logs exclusively for export from B.C.; is that right?

A. The way the system operates, I mean, they don't come right out and say you can't do it, but the way the system operates, the way that the sawmills in British Columbia have manipulated their ability to offer on our logs and restrict our access to other markets, that's--again, nothing in the Notice 102 says you can't make export logs, but the result of that process and the actions that people take because of that force us to--well, compel us to do that.

Q. Okay. So, then with respect to, say, your Washington State logs, because there is no Regime there, there is no threat of blocking hanging over your logs from Washington State; that's right?

A. Correct. We generally make the same sorts in Washington as we do in Oregon--I mean, excuse me, Washington and in Canada, so when we do make an HC sort in Canada, it's comparable to our HC sort in Washington. And whether we can put as much--you
10:39:44 1 know, whether we can put all those logs into the
2 sort and get them into the export market is the
3 unknown part.
4 Q. Okay. I'm a little confused, sir. You say
5 that you prepare your domestic sorts consistently,
6 and you have to do because it's "too risky to
7 prepare higher quality sorts exclusively for
8 export." And my question to you was, in Washington
9 State where you don't have the threat of blocking,
10 are you able to sort your export logs for higher
11 quality?
12 A. No, all the logs go into the highest sort
13 available.
14 Q. Okay. I'd like to turn to something else
15 at this point. I want to understand better what
16 you're talking about with respect to this alleged
17 ransom.
18 You make a decision to sell to a domestic
19 mill at a certain price because you think you can
20 get a better price on other logs by exporting; is
21 that right?
22 A. Correct. Generally, there is an agreement.
10:40:51 1 You give me these logs, we will let these other
2 logs--we will either rescind our offer or we won't
3 block you the next time through.
4 Q. Okay. So, this is a business decision that
5 you have to make?
6 A. This is a business decision. We are forced
7 to negotiate with a customer that we don't even want
8 to deal with. So, I would say it's a business
9 decision that Notice 102--you know, in the United
10 States we get to choose our customers. You know, if
11 there is a customer that treats us unfairly or a
12 customer that, you know, is not consistent in their
13 buying, then we don't sell to them, or we make them
14 pay a premium. But in Canada if someone blocks one
15 of our booms, we have to talk to those people. We
16 have to negotiate with them.
17 Q. Okay. Well, let's stick to Canada. You do
18 have the alternative of putting these logs through
19 the surplus process and then at least getting a
20 domestic fair market value for them, don't you?
21 A. Well, it's not a matter--it's a matter of
22 choosing the--you say business decision. The best
business decision is to sacrifice these logs over here at a lower price. So, you know, Tony was here, and Tony works very hard, and he takes his business very personally, so he's very upset and concerned when he can't get the Domestic Market Price. And my decision--and it's my responsibility to say, Tony, we are going to give up $2 a meter, we are going to give up $3 a meter. Yeah, it's going to cost us 15 or 20,000, but we are going to make $150,000 or $200,000 or $250,000 on these booms over here because we get them into the world market. So, Tony's concerned about the 10. I have to look at the big picture. So, basically, these logs we gave up $2 or $3 in the domestic market. We also probably gave up another $40 or $50 if we could take them to the export market. So it's not--when you say it's a business decision, it's a business decision that we have to make in order to keep operating, as does every other Federal landowner in the Province.

Q. So, you're essentially posed with a choice, and you've made that choice.

A. Correct.
Q. I mean, you said in response to Mr. Nash that you can't always make a sale to another Canadian company; isn't that right?

A. We can't always sell to another Canadian company, and at times when we have been held ransom by or hostage, whatever term you want to use by two or three companies, we just have to say we surrender, and we have to sell to the one who has the highest price, and then we do things like slow down our logging or wait a couple of advertisements to put more wood in because we can't--we can't navigate the system.

Q. Okay. Sir, I have just got a couple more questions for you.

You mentioned that you don't know who the members of FTEAC are in response to question from Mr. Nash, and you actually said that you didn't even know who they were through the process of this case. I would like you to turn to Paragraph 129.

A. Well, I said I know who they are kind of through what I hear from people.
A. So, back to my original statement?

Q. Your Memorial, sir. You probably don't have it with you. We can provide it to him.

A. 129?

Q. It's Paragraph 129.

A. I'm there.

Q. I believe the paragraph spans two pages.

If you could look it's the second page of the paragraph.

A. Okay.

Q. You know that these are names of members of FTEAC.

A. Yes.

Q. Okay. And as you said, you are aware of members.

A. I am aware of members.

Q. There is no published list, that's your testimony?

A. So, I don't know who the members are today because I don't know when they change or how often they change.

MR. NASH: I just raise--to raise a point that I understand that this document is restricted access, and I understand that Mr. Stutesman has not
seen the document because it was restricted to the Investor in this case.

MR. WATCHMAKER: That's not my understanding of this portion of the Memorial.

MR. APPLETON: Excuse me, maybe I could clarify.

Mr. Stutesman is a representative of Merrill & Ring. Merrill & Ring is not allowed to see restricted access information. That means the information that we would put in that we would have available to us that Mr. Stutesman would not be able to see, and therefore Mr. Stutesman has not seen that list because we have not provided it. We have been very careful to be totally compliant with the orders of this Tribunal, which said that it's confidential, and therefore this confidential version has been blocked out, and he hasn't seen that. This is the first time he's seen this information. We just thought it was appropriate that the Tribunal be aware of that.

PRESIDENT ORREGO VICUÑA: The question is quite simple: You have seen or have not seen that information?

THE WITNESS: I hadn't seen it before, but
my statement was pretty accurate, but I think he put that in there. The list I hadn't seen.

PRESIDENT ORREGO VICUÑA: In that case, you cannot answer the question.

THE WITNESS: Yeah, right.

BY MR. WATCHMAKER:

Q. We just simply ask to provide the witness with a public version of the Memorial.

A. But I knew who some of those people were. I guess in answer to the question I knew--

MR. APPLETON: Don't answer the question. If the question is that Mr. Watchmaker would like to ask the question with the public version, we're happy to give him the public version and then he can ask any questions he likes. But we should do it on that. But if the witness wants to speculate or talk about this version that he hasn't seen, I think we should make sure we know what the question is. That's all. So we are all very clear.

ARBITRATOR ROWLEY: Is there anything confidential about the makeup of the members of TEAC or FTEAC? Is there?

MR. APPLETON: Apparently there is. This came from Canada, and the way that we got this
information was from--

ARBITRATOR ROWLEY: That cannot be true.

MR. APPLETON: The restricted access information was how they provided us with some of the materials that we have or from other court cases that we have been able to deal with, so I agree with you. I see no reason why this should be in that way.

ARBITRATOR ROWLEY: Then if there is no problem, and if Canada is prepared to deal with it, let's have the witness deal with the matter because there is nothing confidential about the members of TEAC or FTEAC.

MR. APPLETON: As long as we understand

this is his first chance to see it.

PRESIDENT ORREGO VICUÑA: If you are referred to the public version, we should stick to that; and, to the extent that the question might be connected to that public version is all right for you to look at it and answer it.

MR. WATCHMAKER: We will just wait for the public version, then.

(Pause.)

PRESIDENT ORREGO VICUÑA: Do you have with
you, Mr. Watchmaker, the public version?

I didn't quite hear your question.

MR. WATCHMAKER: I'm sorry, Mr. President. I didn't quite hear your question.

PRESIDENT ORREGO VICUNA: Do you have with you the public version?

MR. WATCHMAKER: We are obtaining the public version right now.

ARBITRATOR ROWLEY: Would it be useful for all further witnesses first to have their Witness Statements with them, as was not the case here. And secondly, for the future to have all versions of the pleadings here in this room at all times so we not be delayed this way?

MR. WATCHMAKER: We will make sure of that. Thank you, members. This is the public version up on the screen now. I'd just ask you to note that this is the public version, and these are members of FTEAC.

BY MR. WATCHMAKER:

Q. Are they not, Mr. Stutesman?

A. They look like--I know that at least four or five of them are, or were as of 2006, as it says there.
Q. Okay. Thank you very much, sir. Those are my questions.

MR. WATCHMAKER: Canada reserves the right to recross this witness if the need arises, and I'd like to ask that Mr. Cook be allowed back into the hearing room, subject to Mr. Nash's redirect.

MR. NASH: No questions in redirect.

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR ROWLEY: Mr. Stutesman, what percentage of the raft of timber or lots of timber that you--for which you seek an Export Permit are granted export licenses? My terminology may be inaccurate, but you know what I mean.

THE WITNESS: Yeah, I think I know what you mean. Generally speaking, we get a fairly high percentage. I don't know exactly what the percentage is, but it's--I would say of the total booms that we try to export, we might get 70 percent of them out, but that's--or 65, so a lot of times by the time we get them into the advertisement, we have already kind of worked our way through the system with someone. We've paid our ransom, so that number actually that's in the list might be in the high eighties or something.
ARBITRATOR ROWLEY: Well, there is some evidence, and I won't have it exactly right, and I think it's Ms. Korecky's evidence that it's in the area of 96, 97 percent of the timber for which you seek export licenses, you are granted export licenses. Just accept that for a moment for our discussion.

THE WITNESS: Okay.

ARBITRATOR ROWLEY: Is there any reason, assuming that Ms. Korecky is telling the truth, why their records would be inaccurate?

THE WITNESS: Oh, I would assume that--I don't know for what time period, but that could be accurate.

ARBITRATOR ROWLEY: Nor do I know what the time period.

THE WITNESS: Yeah.

ARBITRATOR ROWLEY: But there is no disagreement, I think, between Merrill & Ring and Canada that a high percentage of product for which you seek export licenses you are granted export licenses, albeit perhaps you have to make some business decisions or put in your language you may have to deal with blockmailers to achieve it; is
16 that right?
17 THE WITNESS: Yeah, I guess the "seek" is
18 the key word there because we have already given up
19 on some of the other ones. If we could seek all of
20 the wood--what we'd like to do is seek all of the
21 wood that we want into the advertisement and not
22 have to be--not be required to satisfy domestic

10:55:00 1 mills and so, but you're right. The numbers are
2 probably accurate.
3 ARBITRATOR ROWLEY: I understand that. And
4 as I listened to you and I see the pleadings in
5 evidence, I get the understanding that Merrill &
6 Ring would like to be able to export more lumber
7 without restriction. And I then look, however, at
8 the fact that about a little more than a third of
9 your sales, by statistics, are consistently sales
10 into the Canadian market. Why do you sell to much
11 into the Canadian market if you can get a higher
12 price, you say, for virtually everything, subject to
13 red cedar occasionally? Why do you sell so much
14 into Canada if you can get so much of a higher price
15 elsewhere and you get 98 percent of your product
16 through the system?
17 THE WITNESS: I'm glad you asked that
because that's the ransom we are paying. That
36 percent--now, some volume would stay in Canada
anyway, but our volumes in Canada would be much
smaller, you know, if we didn't have--make sure I
can explain this well.

That 36 percent, we would love to export
parts of that volume out into the world market, but
when we get blocked or threatened to be blocked by
these sawmills, we have to capitulate and give them
what they require in order to get what we want out.
So, that's why there is the significant difference
between the percentage we get out, which is very
high, and the percentage that we sell within Canada
seems high relative to what I said about value.
So, I think it--I think it reflects--this
is what I tell my boss--we are doing a damn good job
of navigating the system relative to the strength
and size of our company. We still give up a lot of
dollars, but relatively speaking, we do a good job.
You know, they don't always view it that
way. They say what about that 30 percent times this
many dollars that we should have had in? And, of
course, I say, I didn't make the rules. I just live
by them.
ARBITRATOR ROWLEY: I have to say every case I do, I learn a little bit about an industry, but so far you're the best witness in terms of teaching me because I hadn't really figured out about the three portions the three, the "buck" cut, the second cut, and the top cut, and I probably will exhibit that I haven't got it right.

THE WITNESS: You did good.

ARBITRATOR ROWLEY: But the "buck" cut is pretty good stuff, the second is still pretty damn good. The top cut doesn't sound very attractive. That's not quite a third of the three, but are you basically selling the top cut in Canada?

THE WITNESS: The top cut, most of the time, 80 percent of the time is sold in Canada.

ARBITRATOR ROWLEY: Is that because you couldn't export it?

THE WITNESS: No, it's because the price is better in Canada. Pulp logs are low value logs that they use in the pulping process, so transporting them is expensive, and the Canadian pulp market is relatively competitive. In fact, at times we bring logs from Washington State into the B.C. pulp
market.

ARBITRATOR ROWLEY: That was one of my questions, whether you exported from the U.S. into Canada.

So when I say you couldn't export it, you choose not to export it because there is a better market in Canada for the top of the tree?

THE WITNESS: Right.

ARBITRATOR ROWLEY: One final question.

We've talked about sawmills in British Columbia, and we've talked about a number of people in the timber market and in British Columbia that own sawmills, and you have named a few to us: Interfor, Doman, Western Forest Products.

Who--Interfor is a large organization, is it?

THE WITNESS: It's a corporation, yes.

ARBITRATOR ROWLEY: U.S. corporation?

THE WITNESS: It's a Canadian corporation.

Fairly--size-wise, I wouldn't consider it huge, but it's a medium to small-sized corporation.

ARBITRATOR ROWLEY: Is it Doman or Doleman?

THE WITNESS: Yeah, Doman has actually been sold to Western Forest Products, and now it's, I
think, a privately--actually, Western Forest Products is a publicly held company.

ARBITRATOR ROWLEY: And is that a Canadian corporation?

THE WITNESS: Yes, a Canadian corporation.

ARBITRATOR ROWLEY: But CIPA, how do I spell that?

THE WITNESS: C-I-P-A. Basically it's--

ARBITRATOR ROWLEY: That's an acronym.

THE WITNESS: Yes.

ARBITRATOR ROWLEY: And that's a Japanese corporation?


ARBITRATOR ROWLEY: So, at least with respect to CIPA, it's a Japanese company that's blocking you and benefiting from the--from whatever benefit the blockers can achieve?

THE WITNESS: Yes, um-hmm.

ARBITRATOR ROWLEY: I think those are my questions. My colleagues may have one or two.

Thank you.
PRESIDENT ORREGO VICUÑA: I have just one question, Mr. Stutesman. And perhaps a follow-up which is that you explained about the penalty box in the process.

THE WITNESS: Right.

PRESIDENT ORREGO VICUÑA: If I understood rightly, that means that when someone who has blocked logs will proceed next to export those logs; is that correct?

THE WITNESS: Someone who has violated the rules in some respect, but definitely if you export logs and then you try to block logs, that's not allowed under Notice 102. So if you're caught, then have you a 90-day suspension period where you cannot make offers, and they call it penalty box because the Canadians are pretty big on hockey, so it's a hockey term.

PRESIDENT ORREGO VICUÑA: Now, tell me a bit about the practical side of it. Is it possible for a Canadian sawmill who is blocking theoretically to supply his own line of production to do something else with the timber he's blocking, say, for
example, turn it over to a third party, export it, or do something else than bringing it into the sawmill and making whatever it is he's going to do?

THE WITNESS: Once that's blocked and they own it, I think they can do anything they want with it. Relatively speaking, they probably--they could export it if it had an export--if it had passed through the test.

You know, oftentimes we sell them to a mill that has been blocked or hasn't been blocked, but may have been on the list and clear. I have no evidence of anyone ever trying to export one. We suspected, as Mr. Kurucz said yesterday, that Interfor was going to sell one to A&A Trading and A&A was maybe going to try to export it. I don't really know if they could actually export that boom without our permission because we were actually, I think, the owner that has to apply for the Export Permit.

So, generally speaking, they could, I think, exporting those logs after they bought them would be very rare and very difficult, but they could sell them to another mill if they said
suddenly their excess, their needs are excess. So, once they buy them, their ownership. 

So, domestically within Canada they could do anything they want with them. Generally speaking, though, they do use the logs generally.

PRESIDENT ORREGO VICUÑA: Fine. Thank you so much. You are excused now. You have now photocopied--

MR. NASH: Mr. President, I have just one set of questions arising from Mr. Rowley's questions.

ARBITRATOR ROWLEY: Could I just ask you to hold firm for a minute.

(Pause.)

REDIRECT EXAMINATION

BY MR. NASH:

Q. I have some question, and it's in reference to the butt cut, the middle cut, and the top cut. And the butt cut, you said, is of the highest quality?

A. Yes. Generally, yes.

Q. And why is that?

A. Well, it--as the tree grows in the forest, it starts out--you know what a Christmas tree looks
like. It's got limbs all the way down to the bottom, and as it gets bigger, the forest gets thicker, the trees—the limbs lose light, and the limbs fall off, and so then the tree loses its limbs and the limbs basically grow over, so—and the limbs are fairly small, or when they stop growing they stop altogether.

So then, as the tree grows out, it's growing lumber that doesn't have limbs or knots in it, so it's oftentimes when it's cut, it's clear, so when you look at something that thick, it's probably fake wood there, but doesn't have limbs showing, that's a value. It gives it a little bit more strength. Sometimes big knots, knots can break poor veneer in plywood. It makes the clean—this clean face here without knots.

So, generally depending on how big it is and how old it is, you developed the quality that you get from that tree, the highest quality's in the butt cut.

As in the middle cut, if you're cutting lumber, the grades of lumber are not—if you're just using construction, two-by-fours behind the walls, you put sheetrock over, they don't have to have
clear portion, recollect.

Q. And the top cut?

A. And the top cut, if it's small—if it's straight enough and clear enough, it will make what they call a chip-n-saw log, and you feed them through a sawmill like spaghetti, and they go zip, and they make one board, and the rest goes into chips that goes to the pulpmill. Or depending on the price, sometimes they just go to the pulpmill where they take the bark off of them and chip them up and make paper and all the products that come from the pulpmill process.

Q. And you know an awful lot more about trees than I do, but I take it that the diameter of the tree is the largest at the butt?

A. Correct, yeah.

Q. And it goes up in a triangular?

12:54:32 1   A. Cone type.

2   Q. Cone. And the diameter of the tree is the smallest the at top cut; is that correct?

3   A. Correct.

4   Q. So the volume of a tree is the largest the further down the tree you go?

5   A. Generally in the butt cut if you cut a 40,
a 36 or a 40-foot log off the butt contains around
50 percent of the volume of the tree or 50 to 55,
60 percent, depending on the age of the stand.

Q. In the butt cut?
A. In the butt cut.
Q. And the other 45 or 50 percent would be
from the top two-thirds?
A. Correct.
Q. And what would be the volume approximately
of the top third, roughly speaking?
A. Roughly speaking, 20 percent, 15 to 20.
Q. Thank you. Those are my questions.

THE WITNESS: Thank you.
(Witness steps down.)

PRESIDENT ORREGO VICUÑA: Thank you,
Mr. Nash.

Mr. Stutesman, you are excused now. Thank

THE WITNESS: Good morning.
Q. Mr. Ringma, you're employed by Island Timberlands?

A. That's correct.

Q. And it's a forestry company operating in British Columbia?

A. That's correct.

Q. And you're the Director of Marketing and Distribution?

A. That's correct.

Q. And how long have you held that post?

A. Since the inception of company, since May
Q. And you're responsible for selling logs for Island Timberlands?
A. Yeah, as Director of Marketing Distribution, I'm responsible for all the sales and distribution of all our product, all our forest products.

Q. Both domestically and for export?
A. That's correct.

Q. Can you briefly describe the business of Island Timberland, what it does?

A. Island Timberlands has about 600,000 acres of land located predominantly on the Southeast Coast of Vancouver Island, also some areas on the mainland side, and up to as far as the north of Queen Charlotte Islands, Bangor island, basically from Campbell River south on the east side, some areas as well on the mainland side, and then also some property up in Charlotte Islands right up by there.

Q. Just one Procedural Matter, Mr. President, Mr. Ringma is in exactly the same position as Mr. Stutesman in terms of the evidence that he's going to be giving here this morning. He will include evidence about his company's strategies with
respect to blocking, marketing, and the problems around that.

And therefore I would ask that the session be closed to the public and that Mr. Cook be excluded.

(End of open session. Confidential business information redacted.)
15 also spent five years with Weyerhaeuser Corporation  
16 out of Pacific Northwest.  
17 Q. And Island Timberlands owns both  
18 provincially regulated lands and federally regulated  
19 lands; that is correct?  
20 A. That's correct. We are about 75 percent  
21 federally regulated and about 25 percent  
22 provincially.

11:38:40 1 Q. And Island Timberlands applies for Export  
2 Permits for some of its logs?  
3 A. We are constantly applying. Every  
4 Bi-Weekly List we have applications for surplus on  
5 every list that appears on the FTEAC committee.  
6 Q. Can you give the Tribunal a sense of  
7 approximately how many export applications you would  
8 be processing in a given year.  
9 A. Average year, between 2,400 to 3,000  
10 applications.  
11 Q. I would like you to briefly describe--first  
12 of all, are you familiar with the term blocking?  
13 A. Very much so.  
14 Q. And are you familiar with the term  
15 blockmailing?  
16 A. Absolutely.
Q. Can you explain briefly, and then we will get into a bit more detail about your understanding of those terms and how they impact what you do in your business.

A. Within the world of the surplus criteria, a domestic sawmill has an ability to put an offer on our booms when we post them on the surplus list. It is our intent to obviously try the booms that we've prepared for export to have them export it. From the time the offer is made, we've got approximately 14 days to make an attempt to have the offeror remove their block or their offer on our domestic--on our export wood. In doing so, we will try to offer them substitute volume and have them remove their offer.

We also get blockmail or an opportunity for them to purchase our wood, which is not done under the actual offer process. Best way I can explain that would be we are very well-known for being exporters. They see us every week put up or every two weeks put up wood. What they can then do is phone us and tell us we have a need, and if you don't fulfill our need, we will put an offer on your wood next week.
19 So, there is actually three different
20 opportunities or three different ways that our
21 business is interfered: One, which is an offer that
22 actually makes it all the way to the FTEAC

committee, which would be an offer that stands to
2 test and goes to the committee level for fair market
determination. Two would be offers that are written
4 and are withdrawn prior to the meeting, and that was
5 withdrawn because we've made an attempt to have them
6 removed. And the third would be phone calls and/or
7 messages asking us for wood to guarantee that they
8 don't write letters on our offer, on our advertising
9 list.
10 Q. Thank you.
11 If you could turn to Paragraph 8 of your
12 Witness Statement which is dated December 11, 2008,
13 and go to Page 2.
14 A. Um-hmm.
15 Q. And go to Paragraph 8.
16 You state there, "Since we have such a high
17 volume of logs on the market, domestic log
18 processors are constantly threatening to block our
19 logs from export. We referred to some of these
20 processings as blockmailers, since they are using
their ability to offer an advertise price as
leverage against us into supplying them with logs or

What blockmailers do is threaten
to place official offers on our export logs if we do
not supply them with the logs they want. Since they
know they can get better prices on the export market
than on the domestic market, they know we have an
incentive to deal with them."

Now, I just want to ask you, in that
context does blockmail affect all of the booms you
might have in any one advertisement? And perhaps
you can take the Tribunal through the process of
getting your booms advertised and how that works.

A. In the way we sort and prepare our wood, we
have various varieties and qualities of wood, both
by species, diameter, and quality.

So, when we put our 50 or 60 applications
to advertise out, there will be varying qualities.
The domestic mill that offers does not offer across
the whole spectrum. He will normally target a
sector that's most closely related to the type of
mill he operates. So if we have 50 applications, he
may only target five or 10 of them. Conversely, a
smaller company that may only have five or seven,

can maybe only have two or three, but what we do get
is multiple companies at different times, so we may
get five offers from this guy over here, five offers
from this guy over here, so we will get multiple
offers.

Q. Going down to Paragraph 10 of your
statement and going through to the very last
sentence, "The end result is that blockmailers
continue to hold log exporters ransom with relative
impunity." And I would ask you to comment. Is this
Island Timberland's experience?

A. That's correct. From what we can see,
there is no mechanism within the jurisdiction of
DFAIT to punish anyone or any violator for somebody
who has been caught or levering price or putting
offers on booms that were not valid or for offering
on wood where they had no need. There is no
mechanism that we can understand that would allow
them to do anything.

Q. And how does Island Timberlands actually
lose money through this blockmailing system?

A. We've actually got three opportunities for
loss. The first would—if we have to sell
domestically, it would be the value difference
between the domestic price as offered and the
opportunity value of the international price if we
were able to export it. So, that's the first and
largest loss.

The second loss would be from the domestic
offer that is made—that we use when we are using
substitute volume to unblock, so when we offer them
wood, they know that that volume—that we need to
get our export volume out, so they will often offer
us slightly lower than domestic or lower than
domestic prices, knowing that we have a strong need
to remove the offers prior to the 14-day date.

The third one would be because they're
buying at a substandard price, that then now
establishes a new floor price in the residual
domestic marketplace, the nonexport marketplace, so
there is usually three places where we can stand to
lose as a result of this blockmailing.

Q. Going on to Paragraph 11, you state in your
statement, "As a result, we at Island Timberlands
11:45:49 1 have developed a strategy to help mitigate the
damage we incur from blockmailers."
3 Can you first describe this strategy and
4 then comment on whether the blocking occurs only on
5 your actual advertised booms.
6 A. Our strategy had been we don't have a lot
7 of recourse. We are the net recipient of whatever
8 the system will allow these people to do. We have
9 got the most at stake.
10 Tree farming is an interesting business.
11 It takes us over 50 years to develop a crop. So
12 when it's finally time to sell it, we've got a
13 strong need to maximize our opportunity, so we need
14 to use every available means to access whichever
15 market will give us our best financial return.
16 Conversely, the entire surplus test, the
17 way it's set up, puts everything in favor of a
18 domestic offeror. He has no investment at this
19 point in time other than a sawmill. He has no
20 investment in the growth of timber. He has got a
21 huge opportunity to be able to buy from us without
22 carrying his own inventory. He has a great
opportunity as well to leverage price because he knows we have a strong need or demand to get our export volume out. And so, by doing that, there is far more opportunity for them, and so what we need to try to do is to make it as difficult as possible for them to participate, so we will be intentionally drag out the negotiations, offer some substitute volume which is a little bit more difficult for them to achieve because we don't have anything else to protect ourselves.

In our view, we're being extorted. We have no other opportunity but to try to allow the process to be as difficult as possible for them because there is no defense for what they are doing within the current rules of the surplus test.

Q. You mentioned that you have in excess of 600,000 acres of timberland in British Columbia?

A. That's correct.

Q. And Merrill & Ring has approximately 10,000, including the Georgia Basin Holdings property. Are you able to avail yourself of strategies that a smaller player will not be able to avail themselves of?
A. I believe we have two opportunities. We are a larger company. Our harvest level is higher. We've also got a higher percentage of provincially regulated volume, so we probably have a better opportunity to defend ourselves by having more substitute volume and access to substitute volume.

Q. And when you say you have a higher--you've got a larger provincial stand, how does that impact your ability to implement strategies that are effective for Island Timberlands?

A. Well, in our defense strategy, there are three things I could do: I can offer a lower quality export boom, which would be one thing, so they're offering over on the grade A or grade B logs, and I can offer them a grade C log to help minimize my loss.

I can go into the open market and buy replacement volume from the open market and use that as a substitute volume. Or I can go to my provincially regulated lands and take logs from my provincially regulated lands which has a lower return and use that. So, I can use that or any combination thereof, depending on who it is who's blocking and who are they blocking. So, our
5 strategy again is always try to give them the least
6 amount of volume to minimize my losses to try to
7 make the painful, the financial hurt the less
8 painful for us.
9 Q. In this context, do you sometimes use logs
10 for which you already have an Export Permit to trade
11 off to the blocker?
12 A. Yeah, that would be a case of where we've
13 already have a permit, but it's a lower quality
14 boom, so again using my analogy, if I have a grade C
15 type log that perhaps I have a permit on, but I
16 might use it because it has a lower return to me, so
17 I will use it to unblock a grade A or grade B type
18 boom.
19 Q. Could you demonstrate by there is a white
20 board behind you, and perhaps you could give an
21 example of volumes that you might use in order to
22 achieve your objective in response to a block.

11:50:56 A. So, if these are pyramids of volume during
1 an application list, and these are the dollars, so
2 this, the value of this is $60, and the value of
3 this is $200, I may at a time get an offer from
4 somebody on some volume that is in this category, so
what I would do is perhaps try to find some volume in here as substitute and use it to unblock this. My costs don't change on my logs, but my value does, so I will always try to use the lowest quality wood that's barely adequate to remove the block that's in front of me. So, in doing this, I can use some of this.

I will also go to the open market, the Vancouver market, and buy volume that I can also offer in to help relieve this. And that I can use my Provincial Land which again it normally has a tax applicable to it called a fee-in-lieu, so my margin improvement is lower than my Federal. So I have three strategies that I'll use, open market, provincial, and then lowest or least lost, this value which is the least lost strategy of trying to satisfy this particular offer that's been offered on my logs, so it's a minimize my loss rather than maintain my margin. It's minimize my loss by using whatever I can find to find substitute opportunity for the person who's maybe offering my logs.

Q. And the part in the bar graph that you have shown, that could already be available for export but you said is the lower quality and the lowest
quality that you can use in order to accomplish that objective?

A. Yes, I would always try to use the lowest quality volume with the least margin to satisfy whatever I can in terms of offer.

So, this is a combination strategy, and this could vary by who it is and what type of sawmill that is putting offer on the logs.

Q. Now, is this an isolated occurrence that you're dealing with these blocks, or is it part of just doing business under this Regime?

A. For us as Island Timberlands, unfortunately this is regular business. It's every second Friday. It's ongoing. It doesn't go away.

Q. When you say every second Friday, why is that? Can you describe the process that happens on a Friday.

A. The Bi-Weekly List goes out, and it's posted for 14 days and offer writers have until 4:30 of the business close on Friday to get their offers in. We sit patiently at the fax machine waiting for these offers to come in, and this is--triggers then our next response, which is to deal with these people to have them virtually try to give our 14
Q. Do you try to deal with these people as you referred to them in advance of the 14-day list coming up?

A. That's the second part of the unblocking strategy that we have, is if somebody repeatedly is offering on our wood, we will sometimes even enter into negotiation of what is it that you're really need? What is it that I can offer you to make you go away, knowing the game, though, that I'm in, the submersive position because they hold the cards because if I don't meet their needs ultimately in terms of price and/or volume, 14 days later I've got the block. You could be rest assured that they are in control. I have no opportunity other than to appease their needs or I will not get my export volume out.

Q. Are you familiar with Interfor having been a blocker in British Columbia?

A. Interfor, in 2007, in the first six months, sent us over 200 offer letters, and we managed--out of the 200 offer letters, I think only one or two of them actually ever went to FTEAC committee, and that brings up a real interesting opportunity, is that
FTEAC lots of times only sees the very tip of the iceberg, so at the committee level they only review the offers that remain in place. So if you actually think of it a bit as an iceberg, at the very top, a few letters have made it all the way to the committee level. A whole bunch of letters have been removed, and then beneath that is all this other unblocking that takes place for which letters have never been given, and I would refer that to as the unblocking or the blockmill process iceberg, where a very, very low percentage actually makes it to FTEAC for review.

The next is the middle where offers have been written, but they have been removed before the 14 days permits went in, and then down underneath the dangerous part are all those other discussions that take place that are a preventive measure to stop the blocking.

Q. So, from the middle line up on your pyramid, those are offers--those would represent offers that have come in in response to the 14-day advertising period?

A. That's the one where I would use, for example, the Interfor example of 200 offers written
and only one or two of them ever made it to the FTEAC example and the committee meeting.

Q. And three people get those offers: The company who is applying for the Export Permit, that would be you?

A. That's correct.

Q. The Federal Government, that would be Ms. Korecky's department?

A. Yeah, DFAIT.

Q. DFAIT. Department of Foreign Affairs and International Trade?

A. Sorry.

Q. And the third entity to receive those would be Mr. Cook's arm; is that correct?

A. Yeah, the Provincial Government gets a copy because they are the ones that actually administer the surplus list.

Q. Right.

So, the two Governments receive these letters, and then some of them, and that's the lined part in the middle part of the period, right there, are withdrawn?

A. No, this is where all the letters arrive,
and these were the only ones that make it to FTEAC.

Q. Right. So, the straight line there are all the letters that are withdrawn before it gets to the committee?

A. That's correct.

Q. And then the committee only sees those that you haven't negotiated away?

A. That's correct.

Q. But they know about the others. The Governments know about the other letters because they receive them?

A. My understanding is the Government obviously has them, but I don't know if the FTEAC committee in the review process reviews letters that have been withdrawn. I don't know that for certain.

Q. Have you ever been told that?

A. No.

Q. Now, what do you know about the FTEAC process? Have you ever--is it an open process where people can go and listen?

A. No, it's very much shrouded in a veil of secrecy. The minutes are not available to the public. The meetings are not available to the
17 public. You can make an application to attend, but
18 you can only deal with the issue that you bring
19 forward to the meeting.
20 And so, what actually happens is
21 against—heavily skewed against the seller of wood,
22 the buyer submits and has information and gets

11:58:23 1 response, but as sellers, we are left very much in
2 the dark. We don't know who else's wood has been
3 offered on. We don't know what prices have been
4 offered. We don't see anything else, so we have to
5 put all our goods on the table. We have to say,
6 here is all what's available, but we don't see
7 anything else.
8 And when the decisions come out, if there
9 is a decision on a fair price determination, we are
10 not informed by a phone call or by a fax, yet
11 although all our offers come in by fax, we have to
12 go back on the on-line system and find out by seeing
13 if the status of the boom has actually changed.
14 Q. Are you informed of the decision respecting
15 the applications made by all of the other companies
16 that TEAC considers?
17 A. Not whatsoever.
18 Q. So if Interfor has an offer, for example, a
blocking letter that's under consideration, do you
ever find out how that offer was dealt with by
FTEAC?

A. No.

11:59:22 1 Q. That's a matter of confidential
information, apparently?

A. That's a matter of confidential
information, but the unfairness part is that we
can't determine and have no way of testing whether
or not we have been singled out or if that Interfor
is dealing fairly with all five companies that have
wood available, so we have no way of determining
that. It's only if we catch them or report them
with a violation will FTEAC actually or DFAIT
actually do something.

Q. Do you know Mr. John McCutcheon?

A. Yes, I do.

Q. And where do you know him from?

A. I know him from when he worked for Primex
Forest Products, Interfor, and I knew him while he
was also Chairman of FTEAC.

Q. And Primex was a company that was bought
out by Interfor in the early 2000s?

A. That's correct.
Q. And was Mr. McCutcheon on FTEAC at that time?

A. Yes, he was.

Q. Now are I would like to return to standing exemptions. Are you eligible on the South Coast of Vancouver Island in that area to receive standing exemptions?

A. No, we're not.

Q. Can you explain your standing exemptions, your understanding of them to the panel--to the Tribunal, please.

A. A standing exemption would be where we would make an application to have our timber advertised in its standing form rather than in its harvested form, so what we would be asking to go through the surplus criteria while the timber is still standing. The reason we would be looking to do that is so that we could make decisions on the manufacturing, sorting, and the marketable allocation prior to making our investment. So, it would be a good advantage for us to ensure both the salability and the margin opportunity of our stands when they reach maturity, but we have been told that although the Federal
Government has allowed it to happen in the Interior, they will not grant it on the Coast, and we are still discussing that with them further, but at this point in time we have got a fairly blanket reply that's not applicable to the Coastal area.

Q. And you sent a letter to Ms. Sabatino in October of 2007? Do you recall that?

A. Yes, I did.

Q. And just for the record I won't refer the witness to the letter, but it's Tab 74 from the Investor's Schedule of Documents.

And Tab 74 was Ms. Sabatino's response.

Ms. Sabatino was filling in for Ms. Korecky while she was on leave; is that correct?

A. That's correct.

Q. As the Federal FTEAC Committee Member?

A. That's correct.

Q. And what was the response to your request for a standing exemption?

A. That was not permitted.

Q. Were reasons given at that time?

A. No, they were not.
Q. On your provincially regulated lands on the South Coast, are you eligible for standing exemptions?
A. No, I'm not.
Q. Why is that?
A. The rule applies to all private land, and whether it's Private/Federal or Private/Provincial regulated, and neither are applicable for standing.
Q. Do you have competitors that own properties, timberlands in the North Coast?
A. Yes, we do.
Q. And do the competitors on the North Coast, are they eligible for standing exemptions?
A. You have a Province in the North Coast issued an OIC.
Q. What's an OIC?
A. Order in council.
Q. Thank you.
A. So the Province made a surplus declaration in both the North Coast and the Mid-Coast, so that's kind of from the tip of Vancouver Island to this area here is referred to as the Mid-Coast, and from
there to just below Alaska is the North Coast. So, there are two current active OICs allowing this wood from the Province to go out without being advertised, and meanwhile I've got property located here in Queen Charlotte Islands which is federally regulated, and I still have to go through the advertising process.

Our geography is very similar, our markets can be very similar, yet I have to go through the process of advertising and they do not.

Q. Which means, is it, that they get their Export Permit upon application?

A. The OIC normally dictates a volume, and as the volume is being produced over the course of the year, it's diminishing. For example, they will say you can export up to 35 percent of your harvest, so as the wood's being harvested, they will continue to put up it's working negative off the total volume.

Q. And when you they don't go through the advertising procedure, what you mean is they don't have to qualify for eligibility for export?

A. That's correct. Their wood is declared surplus on production.
Q. And their wood is declared surplus while you're meeting a surplus requirement test?
A. That's correct.
Q. I see.

Now, if you had an exemption on your Queen Charlotte, can you just put your pointer up to The Queen Charlotte Islands there where your other lands are.

If you had an exemption on those lands, where would you transport your logs to?
A. I would have three options. I could still bring the volume down to the Vancouver area and load my vessels there, but I would have certainty of sale, or I could go straight across the coast of Prince Rupert, which is only about 50 miles across, or can go up into Ketchikan and load ships right up in there.

The most important part about the standing green is it gives me the freedom and the ability to load direct because I too would be able to then make an arrangement with my customer, and he could arrange his vessel to be timed with my harvest, but today I have to take all my volume down, put it into Vancouver Island--Vancouver Fraser River for storage.
4 while the entire surplus process unfolds, and that's
5 another six to eight weeks of timing. And again, I
6 have to go into freshwater because I cannot leave my
7 logs in salt water for that period of time.
8
9 Q. Why can't you leave your logs in salt water
10 for that period of time?
11 A. Well, we've got a little sea insect called
12 toredo which actually bores into the wood when it's
13 in salt water and does damage to the outer surface
14 and the quality of the wood.
15
16 Q. Is there a risk of loss of your logs in
17 that trip down from the Queen Charlottes to the
18 Fraser River south of Vancouver?
19 A. Normally only a catastrophic loss if the
20 entire barge tips over. We've had that happen
21 several times in past history. Normally once it's
22 on the barge, the higher level of loss comes from
23 the sorting grounds and how sound into the Fraser
24 River and the duration of storage in the Fraser
25
26 12:06:33

1 River. The trip itself, if the barge survives the
2 transit, there is no loss on the actual barging.
3 This is a very wide open body of water, and the
4 barge normally will wait for calmer seas before it
comes down. The bigger loss by far is from the
sorting grounds and the duration of wood while it's
in the process of being advertised.
Q. Do I take it, then, that your competitors
who have standing exemptions on the North Coast
could pursue the options you would like to pursue if
you had that flexibility to go to Ketchikan in
Alaska or Prince Rupert?
A. Yeah, most of the ones in the North Coast
are heading out of Prince Rupert. That wood is
competing with us directly in Asia.
The Mid-Coast, they're bringing their wood
also to Vancouver, but from Mid Coast they bring it
to Vancouver, they can load on receipt, so they come
down the same channel that I do, but they go
straight into the Fraser River and straight on board
the ship, no waiting time.
Q. No waiting time. And that's if you've got

12:07:38 1 an exemption?
A. That's correct.
Q. And you're not eligible for that?
A. No.
Q. There is an appeal process apparently with
respect to FTEAC decisions. Are you familiar with
that and is that a satisfactory process from your standpoint?

A. Well, over the last five years, I have written a lot of communication to DFAIT and to the Committee Members of FTEAC, and I found generally that most of their answers to my questions have been fairly vague or in some cases no response whatsoever, so when I have challenged some of these issues or these policies or some of my concerns, I have been left with no choice but to file judicial reviews as my last opportunity, if I can't get someone at the committee level to listen to me or--not the committee level, at the DFAIT level, the policy level, my last choice is to file a judicial review, and that is again subject to review of a judge.

Q. Where are your logs sitting when you go through the process of trying to get an Export Permit?

A. Predominantly in the Fraser River but I also have some wood stored in Alberni Canal on the west side of Vancouver Island, but usually on this side here, if it's the East Coast, again because of the time delay, I will usually go into one of the
9 fresh river estuaries and store it for that period
of time in the estuary.

Q. Has there been over the last 10 years
a shortage of logs in British Columbia?

A. Absolutely not. There is a couple of real
key indicators that between the committee and the
DFAIT, they just haven't seemed to use for the best
of their information. Number one, the Province
allots a harvest level every year. It's referred to
as the AAC, the annual allowable cut. In the last
10 years, that cut has not been fulfilled on the
Coast and in B.C. in general, and so the cumulative
difference between what was allowed be cut and what
actually has been harvested is in excess of

So, what the Province has, the Province
actually has 75 million cubic meters of trees left
standing that they could have harvest, but they have
not harvested. And so, meanwhile, we are getting
forced to go through a surplus criteria.

Also, in the last six years, more than 60
sawmills have disappeared out of British Columbia.
So, capacity has gone down. Standing trees are
still available to cut. And yet here we are a
private company with less than 5 percent of the
total harvest done in the entire British Columbia
land base, and we are being forced to go through
this silly surplus criteria. It makes no sense to
us at all. So, we've challenged that, provided them
with information saying why do you guys still do
this to us? To which we get a blank response or oh,
the Minister still feels it's necessary, and that's
the frustration for us. Why should we be held to an
extortive practice when in actuality there is a
surplus. We've got information out there. The
Government gets told what the allowable cut is. The

Government knows what actually was harvested, and

DFAIT has a responsibility to be aware of that and
act appropriately. But in our mind, they're not
doing that by forcing us to continue to do this.
Q. And meanwhile, the Government is issuing
standing exemptions orders in council?
A. That's a sheer conflict. The government
owns 95 percent of the forests. They're in through
TEAC recommending that we continue to advertise our
wood, and meanwhile they let their wood go out on
surplus. It makes no sense to me at all.
Q. Does the B.C. Government have an auction of timber on a relatively regular basis?

A. About 20 percent of the current annual provincial cut is put out on what one calls the B.C. timber sales. It's the avenue of open market bidding on standing timber, and that too is an undercut position, which means open market buyers of wood have access to not only wood that's been harvested, but they have an ability through the Government to bid on standing timber. And again, because of the surplus situation today and the economy today, that program is undercut. In other words, BCTS's has got standing volume as well so that they have what is called no bid sales, been putting up blocks of timber that nobody is bidding on. So, there is clear indicators that there is a surplus.

Q. You mentioned Interfor. Can you comment on CIPA in respect to its blocking activities.

A. CIPA and Interfor probably in the past five years have been the two most aggressive blockers. CIPA runs the veneer mill. There's actually only three veneer mills on the Coast. The other two veneer mills have never sent us a letter. It's only
been CIPA that has ever written on our wood. So again, I'm really concerned that if there was a shortage of plywood logs or veneer logs, why aren't all three mills offering? Why is only one mill consistently offering?

Q. About how many cubic meters of wood would Island Timberlands export in a typical year?

A. Probably between about 1 million and 1.4 or 5 million cubic meters.

12:13:32 Q. Do you have an estimate of what level of volume of cubic meters you have to deal with by way of this blocking process to achieve that export volume?

A. Well, in 2007, to get 1.3 million cubic meters out on the export with permits, it took me about 300,000 cubic meters of volume to unblock my 1.3 million.

Q. Can you speak to the effect of the Regime on your costs.

A. It's multiple, and it starts right from the harvesting. Because there is the Regime and because I have to go to the surplus, I have no opportunity to take forward sales position with any of my international customers, so immediately I'm putting
wood out on spec, which is a financial disadvantage to me because again, I need to go thank you the process. On the harvesting side, it probably starts on the sorting and manufacturing. Again, if I had a predetermined customer, I can be more definitive on my manufacturing specifications, so then I have to also sort into the B.C. domestic end use sort categories, which are again--isn't a customer-driven sort, so it's not what the customer wants. It's what the Provincial Government wants me how to buck it up my logs into their categories to make it available for these domestic sawmills, so there is an extra cost in that. I have to dual scale my logs--in other words, I have to measure them in two different ways. I have to measure them in my customer scale and in the provincial scale because again if it goes on the export list, it has to have a metric scale. I have to transport my wood further because instead of going directly from the bush to my customer's ship or to my barge, I have to go into the Fraser River for storage. I could incur log loss from both that extra transportation and from the prolonged storage in the
And I could have damage to my wood from excessive river sill, from sun checking, from any other smaller items that could also create degradation.
quality of the logs and the size, their sort and so
on, and to inspect the logs? Is that the idea?
A. My understanding is they want to have

Q. Is visual inspection sometimes an important part of assessing the quality of a log?
A. Generally, visual is the most important part because depending on who saw the logs or manufactured the logs, to see them physically gives you a better feel for how well they were sorted or how well they have been manufactured.
Q. To your knowledge, do the TEAC and FTEAC Committee Members go out and inspect the logs that they're determining fair price on in the course of their deliberations?
A. To the best of my knowledge, they do not.
Q. Thank you, Mr. Ringma. Those are my questions.

PRESIDENT ORREGO VICUÑA: Thank you, Mr. Nash.
We will proceed, then, to the cross-examination, please.
Q. Hello, Mr. Ringma. I'm counsel for Canada, and I will have a few brief questions.

A. Thank you.

Q. Thank you.

Mr. Ringma, is Island Timberlands--I understand it's a Canadian company, isn't it?

A. It's a privately held company.

Q. It's owned by two Canadian partners, as I understand it?

A. No, more than two.

Q. But they are Canadian?

A. Two major Investors are Canadian, that's correct.

Q. Okay, thank you.

And we've heard your testimony say today that you had to go through the surplus test just like Merrill & Ring; is that correct?

A. That's correct.

Q. And that you're also not able to advertise standing timber on the Coast, just like Merrill & Ring?

A. That's correct.
Q. And that with respect to your remote lands, you were also subject to a minimum volume requirement?

A. In some of our areas.

Q. Where it's remote?

A. Yes.

Q. Thank you.

Now, I had a few questions on your strategies to satisfy to try to get around the system or to be able to export your logs. And you said you had three strategies. I will try to recall them correctly, but if I don't, please correct me.

You said one of the strategies was to give them a lower quality of boom than what you were advertising.

A. That's correct.

Q. Couldn't Merrill & Ring also do that?

A. I don't know how they sort their logs or what quality of wood they have available.

Q. But in theory they could also do that, couldn't they?

A. If you have the wood available.
Okay. So, that brings me to your second strategy, and you said the other strategy that you use is to buy on the open market to satisfy the buyer that is interested in the logs you're advertising, so I assume Merrill & Ring could also do that; isn't that true?

A. I don't know if that's their corporate policy or not to buy on the open market. They might by virtue of their structure not be interested in buying logs in the Vancouver marketplace.

Q. So they might not be interested, but they could?

A. Anybody could buy logs on the open marketplace, including the people who are writing offers on the wood. The Vancouver marketplace is an opportunity for people to buy wood, so I find it very interesting that I'm buying wood to satisfy a mill that's offering on our logs.

Q. No, I understand that you don't like the surplus test, Mr. Ringma.

And then you talked about the third strategy, and you said that it was to use your
12:21:00 provincially regulated logs because they have a
lower return to satisfy a buyer that's interested in
your logs.

A. That's correct.

Q. Okay. So, I think you agree with me that
if a company has to pay the fee-in-lieu on its
provincial logs, it's worse off than if it doesn't?

A. It's about a 15 percent discount.

Q. So, in a sense, the provincial log
producers are worse off than the Federal log
producers?

A. Why would you say that?

Q. Well, you just said that they're worse off
because they have to pay a 15 percent discount, so
with respect to exporting, I guess you would be in a
better position if you had only Federal Land; isn't
that true?

A. I don't quite understand what you're
saying, what--

Q. Well, let me see. You said that for a
provincial log exporter to export, they have to pay
a fee-in-lieu of manufacture, and that Federal

12:22:06 landowners don't have to pay that fee-in-lieu of
A. That's correct.

Q. So, the Federal log producers for exporter purposes are in a better position because they don't have to pay that fee?

A. What the fee-in-lieu is put on by the Province to recur or to increase their stumpage applicable to their land base. So if you understand the reason that fee-in-lieu was placed is pretend the landowner--in this case, the Province of British Columbia--owns the land and they say the stumpage on this land will be $30 a cubic meter. But then if you choose to export, we are going to add an extra tax to your logs which will be a fee-in-lieu. So, it's just the Province gaining more revenue from their trees.

Q. So, you would prefer exporting your Federal logs than your provincial logs; is that correct?

A. Well, the costs don't change on the logs. The logs are side by side.

Q. Well, but you don't have to pay the fee for the Federal logs?

A. I don't have to pay the fee on the Federal logs.
Q. All right. Thank you. I think that's my questions.

MR. NASH: No questions in redirect.

PRESIDENT ORREGO VICUÑA: Do you have a question?

QUESTIONS FROM THE TRIBUNAL

ARBITRATOR DAM: I did have a question, just to make sure I understand this and help me organize the material which you explain very well, but I just want to make sure how the system works. And putting aside the standing of exemption, talking about the normal situation, I wanted to understand whether the problem with the advertising and all the things that go with that is the same for all of the areas in which you operate. You pointed to quite a number of different areas in which you operated, southern Coastal area, northern Coastal area, some Inland areas. Is it the same everywhere?

12:24:04 THE WITNESS: In terms of our response of what we have to do?

ARBITRATOR DAM: Yes.

THE WITNESS: Yes, it is.

ARBITRATOR DAM: No differences. I just
want to be clear about that. There is a different--there are geographical differences, though, with regard to the standing exemption.

THE WITNESS: Yeah, generally from the North Coast or from the Queen Charlotte Islands I incur a higher transportation cost and higher processing costs. The areas are more remote. The cost was getting the contractors and harvesters into the areas, so generally all my costs are higher in that area, but once the log gets to the Vancouver Log Marketplace, in terms of surplus criteria, a log is a log, and it's suffered or it's exposed at the same level.

ARBITRATOR DAM: And where does the standing exemption law assist on the fly and where it does not?

THE WITNESS: The standing exemption is that the current Crown has got is the North Coast, which comes down to about here and the Mid-Coast that comes to almost the tip of Vancouver Island, so it's that area from south of the Alaska panhandle and to the top of Vancouver Island and inland to Hydaland (ph.).
8 is the same, whether it's Federal Land or Crown Land
9 or Provincial Land, going back to my first question?
10 THE WITNESS: For us, it's the same.
11 ARBITRATOR DAM: The same.
12 THE WITNESS: Because even though we
13 have--the more important part, it's all private
14 land. It's just on the 25 percent we have to use
15 the Provincial rules on that 25 percent as though it
16 was public tenure, so the post-1906 just says you
17 will pay a fee-in-lieu of, and you have got a
18 restriction on the grades that you can export. So
19 the pre-1906 you can export all grades of timber.
20 On the post-1906 there is restriction on both grades
21 on the higher grades.
22 ARBITRATOR DAM: Very good. Thank you very

12:25:51 1 much.
2 ARBITRATOR ROWLEY: Mr. Ringma, of the
3 2,400 to 3,000 applications for Export Permits you
4 make a year, what percentage are approved?
5 THE WITNESS: Approved at the FTEAC level?
6 ARBITRATOR ROWLEY: I don't care who
7 approves them. You're going to have to get a Export
8 Permit.
9 THE WITNESS: Oh, pardon me. Permitted? I
would say we are in the 95 percent or higher club. Probably even 97.

ARBITRATOR ROWLEY: And of the 1.3 billion cubic feet that you export, and you gave us that figure, I don't know whether that's every year or that's an average.

THE WITNESS: It's about average. We would sea between a million and million-five.

ARBITRATOR ROWLEY: You say that you have to supply about 300,000 cubic feet to domestic sawmills and peeler mills and such in order to ensure that you can export the 1.3 million.

THE WITNESS: The 300,000 was just to the ones who interfere with our process. I also have domestic sales that are noninterfered, but just the 300,000 are just people who have approached us and said, if you don't do this, we will do that. Or to the ones who actually wrote letters, so 300,000 is specific to the unblocking activity. But I also have other domestic wood that I sell into the market in an unconstrained fashion.

ARBITRATOR ROWLEY: Yes, but the 300,000 that you describe as interference with your process, that is--it reflects, does it not, an appetite for
300,000 cubic feet of timber in British Columbia?

THE WITNESS: Not in my--pardon me, not my opinion because I believe the companies that are active in this, in this activity, could source their wood from other areas. There is adequate wood out there. My belief is they're using this system strictly to lever price and to get supply in a fairly easy fashion rather than going out and being aggressive and doing their own harvesting and/or being involved more actively in the Vancouver marketplace. That's the unfairness portion.

There's lots of opportunity for them to get wood, but they're using what I call the easy street, the Friday afternoon fax at my expense because I have to appease them. If I don't appease them, I have problems the next 14 days.

ARBITRATOR ROWLEY: Thank you very much, Mr. Ringma.

PRESIDENT ORREGO VICUÑA: Mr. Ringma, I have--do you want to do the question now?

THE WITNESS: No, no. That's fine.

PRESIDENT ORREGO VICUÑA: Okay.

I have two questions to put to you.
If my maths are not awfully bad as they are, 300,000 cubic feet in 1.3, which was the example you used, would amount virtually to 25 percent.

THE WITNESS: About 20 percent, that's correct.

PRESIDENT ORREGO VICUÑA: Would that be an appropriate figure to say out of my exports, 25 percent--I mean, out of the volume I could have exported, 25 percent goes into the blockmailing solution to get rid of it? Would that be a fair estimate?

THE WITNESS: Partially, but be aware that I don't always use just export quality wood, so that 300,000 could be a combination of some export quality wood.

The other thing that happens is, because we know the surplus Regime exists, it sometimes limits us what we will even put up for export, so the 20 percent is a fairly ballpark number, but I wouldn't say if we didn't have the Regime that I could export 20 percent more. It could or could not, depending on international appetite and where the real domestic marketplace exists, because from
time to time there is a domestic need, and if the
domestic price is a better alternative, I'm not
necessarily in the game of having to export. I'm in
the game of optimizing my value into which whichever
country gives me that price. That could be
domestically on some sorts.

PRESIDENT ORREGO VICUÑA: I understand.

Now, in connection with the question that

12:31:08 1 Ms. Tabet put to you, on the provincial side you
2 will have to pay this fee-in-lieu of the tax and so,
3 and that is, if I heard rightly, 15 percent at
4 present.

THE WITNESS: It's 5 percent on hemlock,
6 10 percent on Douglas-fir, so it changes by species
7 and quality, so I would say it's most of our wood at
8 Douglas-fir, so for all intents and purposes it's
9 10 percent of the domestic value of that same tree.
10
PRESIDENT ORREGO VICUÑA: Okay. Now, the
11 question is this: How do you compare the costs,
12 say, the 1.3 million you are exporting. If they
13 come from Provincial Land, how would you compare the
14 fee-in-lieu? 10 percent? 5 percent? 15? Whatever
15 it is, how would you compare that cut in your income
16 or your earning to the cut that you will be getting
because of going through the Federal Export Permit procedure, you will be having to send off this 300,000 cubic feet to settle the problem of the blocking? Can you compare the two things so as to come to the conclusion in relation to which Ms. Tabet asked you? Is it better for you to export

12:32:56 from Federal Land or from Provincial Land? In one you have to pay the fee; on the other one you don't have the fee, but you have these other effects. You see the point?

THE WITNESS: Yeah, I think I do if I understand you correctly, but the harvesting costs and the surplus cost and all the costs of putting the logs in through the surplus criteria does not change whether the logs are Federal or not, so the only thing that changes between the Federal and the provincial is the tax.

PRESIDENT ORREGO VICUÑA: Correct.

THE WITNESS: So, the real net difference is that if the log is worth a hundred dollars, and I have to pay the tax, I'm going to pay a 10-dollar cubic meter tax to the Provincial Government for the privilege of exporting that log off our private lands.
19 PRESIDENT ORREGO VICUÑA: Yes, but that
20 would be more expensive or cheaper than going
21 through the cost of applying to the Federal system,
22 the Federal Regime, in which you will be having to

12:34:06 1 distract 20 percent of your exports?

2 THE WITNESS: So, you're trying to compare
3 the fee-in-lieu comparison to the cost of removing
4 all the blocks?

5 PRESIDENT ORREGO VICUÑA: That's right. To
6 see who would be better off if you go one way or you
7 go the other.

8 THE WITNESS: That really would depend, and
9 I'm not trying to give you a soft answer. It would
10 really depend on which area you are being blocked,
11 because if you get down into the commodity end of
12 the business, in the low end, the opportunity, the
13 margin opportunity is far less. Over here on the
14 high end, if I'm dealing with some high end volume,
15 my costs don't change. So if I'm a 60-dollar cost,
16 I've got zero opportunity here, I've got 140 over
17 here. So if somebody blocks me on the high end wood
18 I would far rather pay the tax to get the wood out
19 and get the margin. If someone is blocking me on a
20 commodity or a lower end volume or lower value or
lower opportunity, then it becomes marginally, you might say ah, you might be better off to pay the tax or you may not be better off to pay the tax and just get the blocks stand.

PRESIDENT ORREGO VICUÑA: Okay.

THE WITNESS: So it does change because not all logs are created equally.

And again, this is a little bit more of an Island Timberlands thing because we have both old growth and second-growth. We have more wood in the higher end of the scale, so my strategy might be somewhat different than somebody who has more just lower quality wood.

PRESIDENT ORREGO VICUÑA: Right. Now, one last question I have. In your statement at the very end, you mention at Paragraph 21 that what happens, in fact, is that there is a Government subsidy to inefficient mill processors which, instead of coming from, say, a budget, a State budget, it's coming from the companies that have to offer their logs at a lower price. That's your argument.

THE WITNESS: Um-hmm.

PRESIDENT ORREGO VICUÑA: You also mention
most domestic log processors are simply inefficient and uncompetitive.

THE WITNESS: That's perfectly true on the Coast of British Columbia where we are located. I would say the mills in Interior British Columbia are more efficient, but on the Coast over the course of time we have not seen the reinvestment, and so the mills in the Coast have become pretty obsolete and uncompetitive. That's correct.

PRESIDENT ORREGO VICUÑA: Okay. But the question is this: How, in your view, does the issue of subsidy arise there?

THE WITNESS: When I have to sell logs to a sawmill, to an insufficient sawmill, at below market price, below the international price, I see that as a subsidy. I should be able to sell them at the international price.

PRESIDENT ORREGO VICUÑA: Okay.

So sorry, please.

ARBITRATOR DAM: You know, the conditions are different in different economic regions, but you're saying that even similarly situated Canadian
sawmills differ in their efficiency, apparently,
because calling it a subsidy does perhaps not have
legal consequences, but it certainly has economic
implications. It wouldn't follow Canadian sawmills
are inefficient simply because prices are higher in
the export market. But you're saying even within
Canada, these particular B.C. sawmills are less
efficient than other Canadian sawmills?

THE WITNESS: That's correct. This
geographic region of the Coast, the sawmills are
fairly obsolete. They're labor-intensive, and
things like the recovery—in other words, the amount
of lumber they produce from a round log is not
efficient because they have not kept up with
technology.

ARBITRATOR DAM: I'm not sure that it
matters one way or another, but are you implying a
reason that they're inefficient?

THE WITNESS: Pardon me?

ARBITRATOR DAM: Are you making any
implication with regard to why they are inefficient,
why they have not kept up?
THE WITNESS: I think it's been a lack of investor confidence to put more money into the Coast in the conversion capacity.

ARBITRATOR DAM: I see. Thank you.

PRESIDENT ORREGO VICUÑA: Mr. Nash?

MR. NASH: A few questions arising from the Tribunal's questions.

REDIRECT EXAMINATION

BY MR. NASH:

Q. As I understand it, you have to advertise all of your logs for sale?

A. That's correct. Every log that I would like to have an Export Permit on, I have to advertise.

Q. Whether they're provincially regulated logs or federally regulated logs?

A. That is correct.

Q. The standing exemption example that we have in the North Coast, there is a portion of volume of some suppliers where they do not have to advertise.

A. That's correct.

Q. They can automatically export.
A. Yes, and not only that, but they can also take the residual volume, the volume that they did not put out in the OIC they can also advertise that as well, so they get a double benefit. They can take the best 35 percent of that and put it out of the country without advertising it, and then still take the residual and put it out under advertised.

Q. So, they're in a significantly different position than your company?

A. Hugely advantaged.

MR. NASH: Thank you.

PRESIDENT ORREGO VICUÑA: Thank you very much, Mr. Ringma. You are excused now. You have finished your Witness Statement and discussion.

(Witness steps down.)

PRESIDENT ORREGO VICUÑA: So, we are ready to break. Shall we break--

(Tribunal conferring.)

PRESIDENT ORREGO VICUÑA: Yes. Well, there is for the afternoon Mr. Cook and Ms. Korecky. How long do you envisage? Do you have any sort of outlook of how long would it take,

approximately? I mean, not precisely.

MS. TABET: I think we should be able to
finish by 5:00.

MR. NASH: It's hard to tell. It's hard to
tell. It depends on the evidence. I would expect
to be some time with Mr. Cook and Ms. Korecky in
cross-examination.

PRESIDENT ORREGO VICUÑA: Okay.

MR. NASH: But I would hope that we could
finish by 5:00 or shortly thereafter.

PRESIDENT ORREGO VICUÑA: Okay. So, let us
break for an hour then until a quarter to 2:00, and
we reconvene at that point. Thank you.

(Whereupon, at 12:41 p.m., the hearing was
adjourned until 1:45 p.m., the same day.)

AFTERNOON SESSION

PRESIDENT ORREGO VICUÑA: Good afternoon,
Mr. Cook.

JOHN COOK, RESPONDENT'S WITNESS, CALLED
PRESIDENT ORREGO VICUÑA: Could you read your Witness Statement in front of you.

THE WITNESS: I will.

I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.

PRESIDENT ORREGO VICUÑA: Thank you, Mr. Cook.

Ms. Tabet will examine you now.

DIRECT EXAMINATION

BY MS. TABET:

Q. Good afternoon, Mr. Cook.

I understand that you are the Export Policy Forester?

A. That's correct. I'm the Export Policy Forester for the Province of B.C. That job requires that I manage the policy around log exports relative to Provincial Lands.

It also puts me in a position as being the Secretary to the Timber Export Advisory Committee. That's the Secretary to the Minister.

And secondly, I act as the Secretary to the Minister--
interruption. We have to know the session is open or closed?

MS. TABET: Oh, sorry. The session is open. I had assumed unless we said otherwise it would be open.

PRESIDENT ORREGO VICUÑA: Thank you.

(End of open session. Confidential business information redacted.)

CONFIDENTIAL SESSION

BY MS. TABET:

Q. You were telling us that part of your responsibility includes being the Secretary to the Advisory Committee?

A. The Timber Export Advisory Committee and also to the Federal Timber Export Advisory Committee, which are commonly known as TEAC and
And you are the one that makes recommendations to the Minister?

A. Right. I would pass forward the recommendation from the committee, and if there was further recommendation required on my behalf, I would pass that forward to the Minister for decision.

Q. Can you describe the Regime under part 10 of the B.C. Forest Act generally.

A. Yes. The Regime is the timber manufacture in B.C. It requires that all timber cut from Provincial Lands and for private lands granted after March of 1906, that all of the timber removed from those lands must be either used or manufactured within the Province of B.C. That is the first section of the Act.

The second section of part 10 deals with potential for exemptions from that requirement of which there are three opportunities. The first one being the surplus exemption; the second being an economic exemption, which is generally used for standing timber; and, the third is a utilization exemption which is used to try and make sure you
gain the maximum value from a stand before any potential values are lost.

Q. Okay. I want to come back to those three exemptions because they are important here, but what do you do once you obtain an exemption in order to export?

A. Once an exemption has been obtained you then have to further apply for an Export Permit from the Province, and that permit would only allow you to move that timber from the Province within Canada. And in the process of acquiring that permit, you are required to pay a fee-in-lieu of manufacture. That net fee is only paid when you apply for the permit. So, once a person has paid the fee, received the permit, they then proceed to the Federal Government to obtain a further permit from Canada to allow it to be exported from the country.

Q. Now, you spoke about the first type of exemption, the surplus exemption. Can you explain how that works.

A. The surplus exemption is a process by which the timber is advertised on a Bi-Weekly List, so every two weeks the timber in a boom form for harvested surplus is put onto this list. It is
advertised for a period of two weeks when any
potential buyers have the opportunity to place an
offer on that advertised timber.

Once that offer period closes, any offers
that will be in existence are then placed on the
table for TEAC to review. TEAC or in this case
FTEAC as well will review the Federal offers, so
those offers at the committee level are reviewed for
their fairness and treated accordingly. If the
offer is low, then it is deemed that the wood would

be surplus because the demand is not good enough to
effect a fair price. If the offer was fair, then
the timber is declared to be nonsurplus.

Q. So, often offers—in some cases logs are
advertised but don't receive any offer?
A. In reality, in most cases, most of the wood
that is advertised, average of around 98 percent of
the wood that is advertised never receives an offer.

Q. Okay. And then for those that receive an
offer, you said that the committee will
determine—look at them to see—make a
recommendation as to whether they're fair. How do
they do that?
A. So, for the 2 percent of the offers that do
come before the committee, or all of the offers come
before the committee, the committee must first
review activities from their previous meeting, any
follow-up business, review of earlier minutes, and
then they proceed on to a section of the meeting
referred to as market review.

At that stage of the meeting, the various
Committee Members who are all well experienced in

the log brokerage and marketing business through
their affiliations work through the existing market
that they know at the time. The market relevant to
the period in time in which the advertising and
surplus are the offers are from. Once they have
established market values for each of the sorts and
species that are commonly found in the program, we
would not move on to the next stages until that
section was complete.

Now, they do a market value for the Coastal
area and the Interior area as a separate summary.

Q. They go through each of the sort and
species, so there is a lot of these.

A. That's correct. It's for the Coast it's
two pages of information. The Interior is much more
succinct.
Q. And who are the members of this committee?
A. We have X--
Q. Without you necessarily telling me the names, I mean what I'm curious is how can they make this determination?
A. Okay. The Members of the Committee, one of the requirements is that they have an expertise in the log business, in log trading. They have to have a good idea of what the marketplace is. They have to be well versed in typical logging costs and milling and manufacturing issues. They're well experienced individuals in the industry.
Q. So, they're not only log buyers?
A. No, there is a breakdown of log buyers, and there are log sellers there. There are some that are involved on a peripheral basis more as consulting, but there are a mix of people on that committee.
Q. Okay. And do they go and look at the logs that are being advertised?
A. No, they have not. In my experience, not normally on a meeting basis, but once a year we would do a field trip out to look at situations in
the field, not specific to an offer necessarily, but
to look at things generally.

The offer and the advertising process
gives the committee considerable information that they can use to assess what the

value of that boom of logs under consideration would be. They've got the length, they've got the
diameters, they've got the species, they got the
designated sort that has been provided by the
advertiser. They have any information that may have
been provided by the offeror who will sometimes
provide anecdotal evidence of boom material.

Likewise, we occasionally receive
additional information from the advertiser, often
photographs of the timber so we have something to
look at. Those sort of issues make it quite
feasible to review the approximate value.

Q. And when a company that's advertising logs
submits information, is that something that the
committee considers?

A. Yes, we always consider additional
information when it becomes available, and it's
welcomed by the committee because it often is,
especially in a situation where you have you timber
that is perhaps a little unusual that's on the market, it gives us an opportunity to truly understand what that timber is.

Q. Now, correct me if I'm wrong, but there was a bit of confusion in terminology about standing applications to advertise and standing exemptions. Can you maybe start by explaining what the standing application is.

A. A standing application can apply in three areas. In the Interior of the Province we allow standing timber to be advertised under the surplus program in small lots. We also have allowed or used to allow some years ago standing timber under the economic program which is occasionally known as standing green. We also allowed standing advertisings under the utilization program under situations where you had fire damage or some such thing as that which had damaged the timber. So, that's the standing exemption process.

Q. Okay. Then can you explain the other two types of exemptions like starting with the economic exemption.

A. Okay. An economic exemption is one where the Applicant is trying to demonstrate to the
area in question is not economic without an element of export being applied. What that means is they have to provide their costs of operating to the point of delivery, and also their expected values of that timber they anticipate getting off of that site, which is a fairly significant review process of that information. Admittedly, quite a bit of it becomes subjective.

Do you want me to do the utilization?

Q. Yes. Can you explain to us the utilization exemption, please.

A. Okay. The utilization exemption is where you have timber that is generally damaged. It could be standing, it could have been felled, it could be any number of reasons, but it is timber that is not in a green condition, that has been damaged in some way, which makes it not as marketable as what a green log would be.

A good example is in the northeastern component of the Province, we have an area where the oil and gas industry is quite effective, and they have been clearing land at a great rate at times and
then wasting the timber. There was an ability to
make that timber available to a market outside of
B.C. through a utilization exemption.

Q. And in those cases, you granted the
exemption for a whole region?

A. That became an area-based exemption, yes.

Q. Okay. Maybe it would be useful to turn to
a map. And if I can have you describe the Coastal
and the Interior regions, please.

A. We touched this before, but essentially the
Coastal region is the dark Green Zone that you see
down the ridge, the white being the mountain range.
Everything to the west is the Coastal region, and
everything to the east of that is the Interior
condition.

Q. And there are different conditions in the
Coast and the Interior, I take it?

A. Yes, there are. The Coast is from a
transportation perspective, is much more mobile
because of water access. You're able to move wood a
great distance for reasonable costs, whereas the
Interior tends to be primarily truck transport,
which is much more expensive; therefore, shorter
distances involved.

Q. Can you show us where there is milling and
where the Vancouver Log Market is.

A. Over the next slide.

Okay. This would show the north and the
south. But what happens is the milling is generally
down in here, mostly in the Vancouver area. There
are belts--

Q. I believe if we go to the next slide,
that's at Tab 5 of the Core Bundle?

A. So the red dots that you see are the mills
very heavily weighted to this area, Georgia Basin,
Vancouver. You have another belt in the north,
this--Prince George is here. This is a fairly
active area which happens to be also where the bark
beetle is active. And then you have a belt through
the southern parts of the Province, generally
smaller mills, but again the Interior mills are
closer--are spread out over the Province more so
because of the transportation of log issue being
more difficult.
Q. And where is the Vancouver Log Market again?

A. The Vancouver Log Market is essentially around—it's focused here, but there are bits of it that would cover a lot of lower parts of the island. It's essentially the Georgia Basin.

Q. Can you show us on the map where, where there are some of the standing exemptions that you have been talking about.

A. Okay. From a Coastal perspective, there are only two standing exemptions that exist. There is one in here, which is the Mid-Coast area and then there's one in this area, which is the North Coast. Those are two standing exemptions. There are others in the Interior, but they're not as connected to what happens on the Coast.

Q. Again, can you explain why you have those exemptions in the Mid-Coast and North Coast.

A. The Mid-Coast North Coast areas really do not have any sawmills to speak of. They're a great distance from the primary marketing area of Vancouver. The expense of getting those logs to that market is extreme. The quality of the timber generally in those areas is not as good as further
Q. And what's the effect of having that exemption?
A. The exemption that exists there allows them under the exemption to export up to 35 percent of what they harvest, so they have to harvest. They can't just harvest for export. They have to harvest more than what they want to export. The idea is to generate some industrial activity in those areas as best they can. It also helps to supply the market further south with the timber that hasn't been exported.
Q. And do they usually export that 35 percent that they're allowed to export?
A. Most times they do not. On average, it's been 15 percent, maybe 20 percent in some years. So although they have the ability to export 35, they very rarely reach that level.
Q. Why is that?
A. The market isn't there to support it, or the quality of the log isn't there to support the buyer.
Q. I take it that logs further south are of better quality?
A. As you move south in the Province, the quality tends to improve, yes. That's our approximation.

Q. Now, can you explain to us what total percentage of exports, the exports from those areas that have exemptions, the standing exemptions, represent?

A. Of the exports on the Coast that exist today, the exports from that particular area and those exemptions would not even make 1 percent of the total.

Q. Now, some of Investor's witnesses have said that they frequently see coming from the North Coast where there are exemptions logs that compete with theirs come by, pass them by and just to be exported. Can they know if the log is coming by or going to the export market or to the Vancouver market?

A. No, they would not know that by the barge just traveling by. There is no stamp on the side of the barge, no.

Q. So, it could--

A. It could be for any market.

Q. Okay. And would they know--oh, okay. I'm
7 just trying to understand this.
8 A. All of the wood from that part of the
9 Province north of Vancouver Island has to be
10 transported by barge. There is no way of knowing
11 what the destination of that wood is eventually
12 going to be, despite the barge going by their
13 doorstep.
14 Q. I see.
15 Now, we've heard some of the Investor's
16 witnesses make allegations that they are forced to
17 make deals in order to avoid an offer being made on
18 their logs. They said that, for example, they're
19 forced to sometimes to sell below the Domestic
20 Market Price. Can you explain that to me.
21 A. The only offers that I would be party to
22 would be offers that would come before the Timber
23 Export Advisory Committees. An offer that takes
24 place in the industrial marketplace, I would have no
25 knowledge of what it is or what levels it's at. But
26 the offers that come before the committee are always
27 viewed for their market level. Are they at the
28 market level.
29 So, if an offer were to be in there that
30 was below the market level, the committee would not
accept that offer as being relevant to stop export.
Q. So, if they waited and have their logs go through the surplus process, then, in your view, they would at least get the fair market value, the domestic fair market value?
A. They would get the fair domestic market value, yes.
Q. The Investor's witnesses also said that sometimes they are forced to cut logs or to make particular sorts for domestic mill in order to avoid an offer being placed on some of their other logs. For example, they say that in some instances they are forced to sell 40 feet log at 34 feet price. Does the surplus test allow that?
A. If that were to occur, and the boom that was in front of the committee for review was a 40-foot log boom, that boom would be reviewed as if it was to be sold into the standard sawmill market, which that boom would normally go to. It has to be valued on what it is, not what the buyer wants it to be.
Q. I'm not sure I understand.
A. They would value it based on a sawlog boom value, depending on the sorts and the species and
whatever particular grades happened to be in that boom.

Q. But they would get then a value for the 40 feet or for 34 feet?
A. They would definitely be judged on the value of a 40-foot log. Would not be judged on the value of a 34-foot log.

Q. Thank you, Mr. Cook. That's all my questions.

PRESIDENT ORREGO VICUÑA: Thank you, Ms. Tabet.

Mr. Nash will cross? Yes, please.
13 Minister of Forests?
14 A. That's correct.
15 Q. And have been so employed for about 17
16 years, since 1992?
17 A. 1992 is when I started, yes.
18 Q. And prior to being appointed the Export
19 Policy Forester, you were with the revenue branch of
20 the Ministry of Forests; is that right?
21 A. That's correct.
22 Q. And you worked on administrative and policy

1 matters there in the revenue branch?
2 A. Yes. I was in charge of policy for both
3 Interior appraisal values, dumpage manuals and coast
4 stumpage manuals.
5 Q. And prior to joining the Government in
6 1992, you were an administrative forester in the
7 private industry; is that right?
8 A. That's correct.
9 Q. So, you dealt with for private companies
10 applications for timber?
11 A. Our company did not make applications for
12 timber in that sense. We applied for cutting
13 permits, if that is what you mean.
14 Q. And did you prepare reports to Government?
Was that one of your responsibilities when you were working in private industry?

A. Yes, it was.

Q. And attended to administrative kinds of matters as opposed to the marketing of logs and that kind of thing?

A. I was involved in both to some degree. I had a peripheral involvement in the log supply ends of things in my later years with the company.

Q. That was back in the eighties?

A. Late eighties, early nineties.

Q. And you're not an economist; is that right?

A. No, I'm not.

Q. And did you have any responsibilities in private industry for sales and marketing? Was that part of your job title or job function?

A. No, I did not.

Q. So, is it fair to say that your career in forestry has been on the administrative policy side of the business?

A. The majority of my career would be there, yes.

Q. And so you've never been actually responsible for marketing logs?
A. No, I have not.

Q. Or selling logs to customers?

A. No, I have not.

Q. Or getting logs towed from A to B or barged from A to B?

A. I did get involved in the transportation on

1 a peripheral basis, yes.

Q. Have you ever been involved in organizing the harvesting of timberlands?

A. Yes, I have.

Q. Have you been involved in preparing logs for market, getting them ready to be sold?

A. Are you asking about the physical preparation?

Q. Yes.

A. No, I have not.

Q. In your experience that we have just touched on was all prior to 1992, when you joined the Government; is that right?

A. That's correct.

Q. Ms. Korecky is currently the Federal

representative on TEAC/FTEAC?

A. That's right.

Q. And when was she appointed to that
position?

A. I'm not a hundred percent sure of the date, but it was in 2005.

Q. If I was to say on an acting basis in

September 2005, and on a permanent basis in

November 2005, would that about ring true to you?

A. I wouldn't know for certain, no.

Q. You were there before she was there?

A. From my recollection, we arrived about the

same time. Certainly, from the committee meeting

perspective, she had some involvement pretty much

from the first day I was there.

Q. Now, you have a forestry background; that's

been your career?

A. That is correct.

Q. Did you come to know that Ms. Korecky had

no forestry background before she was appointed to

FTEAC?

A. I'm aware of that, yes.

Q. And what were you aware of her background

when she was appointed in terms of her professional

experience either in Government or in private

industry?

A. I was not aware, and it was not relevant to
Q. It was relevant to you that she had no experience in forestry because you helped explain to her the lay of the land in the British Columbia forestry market, if I can put it that way?

A. I certainly assisted her in that front, yes.

Q. Because she did not have any firsthand knowledge of that, at least to your knowledge, of how the industry operated in British Columbia; is that fair?

A. That's fair.

Q. And so you shared with her your perspective on how the forestry industry worked in British Columbia in the early days of her involvement in FTEAC and yours?

A. I would have shared, and I also put her in contact with others in the industry that would help her to understand some of the issues.

Q. I'd like to turn to the procedures for advertising and procedures for presenting offers.

As I understand it, if an exporter wants to sell a boom or many booms of logs, they give notification to somebody that they want to advertise on what's
been referred to as the 14-day list; is that right?

A. They make an application if that is what they want to do, yes.

Q. And they apply to whom to do that?

A. For provincial volume they apply to the regional district office relevant to the area where they operate. For Federal timber they apply through Ottawa.

Q. Do they apply to the Export Controls Division in Ottawa? Is that the procedure?

A. Yes, that would be the procedure.

Q. And is there a deadline prior to the publication of the list before which that application to advertise must be received?

A. It's approximately 10 days ahead of when the advertising date would be.

Q. So, if you want to advertise, let us say, not this Friday but next Friday, you would have to have your application in today?

A. That's correct.

Q. So, there is a 10-day period from the time that they have decided to apply, at least a 10-day
period, to the time that the advertisement will
actually appear; is that right?
A. That's correct, yes.
Q. And then there is the 14-day period when
the logs are advertised on the list.
A. That's right.
Q. And I believe it used to be that at some
point that the logs that were to be advertised had
to be transported to a marshaling point where they
could be advertised for sale; is that right? And
before they could actually apply to get advertising.
A. No. A boom can be advertised from any
number of locations as long as--prior to
approximately two years ago it had to be stationary
during the time of advertising. Since that time we
have allowed transport of that boom during the
advertising period.
Q. So, until two years ago the rule was that
the boom had to be stationary, and you changed that
rule two years ago so that the boom could be
actually in transit to a location?
A. That's correct. It was an attempt to speed
up the process for the log sellers, yes.

Q. Did the logs have to be at a certain location when the list was published, at a stationary location?

A. They have to be at a stationary location, yes, but an undetermined location.

Q. And who changed that rule?

A. It was a rule that was changed through dialogue with the industry and then within the committee and amongst the Federal counterparts and myself. So, it was a joint decision that this was the right thing to do.

Q. Was that rule, the original rule, published anywhere?

A. The original rule that they had to be stationary?

Q. Yes, so they could not be in transit.

A. That would have been in the 1999 procedures.

Q. And has the 1999 procedure been amended?

A. There has been a document put forward to all of the provincial operators to advise them that
the wood can now be moved--advertised in transit.
Q. So, that was a decision that was made by, I think you said, after discussion but was made by TEAC and FTEAC; is that right?
A. They helped in the deliberations and provided advice that this was a sensible thing to do. That decision was made within my office.
Q. So, do you have authority to make those decisions?
A. On a decision like that, yes, I would.
Q. And that would be you could exercise that authority unilaterally?
A. Yes, I can.
Q. To go back to the procedure for advertising, during the 14-day period offers may or may not come in to purchase the booms being advertised; is that fair?
A. That's fair, yes.
Q. And if the offers--as I understand it, the offers go to three places. The first place it goes to is to you, the second place it goes to is Ms. Korecky's division, and the third place would be to the owner of the logs; is that right?
A. Not quite.
Q. Okay.

A. The original of an offer always goes to the advertiser because that is the party that would have it binding on. The copy of it would go to the regional district involved, and a copy would go to the Federal Government, yes.

Q. And so you receive all offers for all advertised logs whether they be Federal or provincial in your office; is that correct?

A. No, I do not.

Q. Okay. Do you receive them only for the provincial?

A. My office does not receive any of them directly.

Q. Okay. Well, who does the offer go to?

A. The offer goes to our regional district office. I work in a branch office.

Q. So, a representative of the Provincial Government receives all of the offers both Federal and provincial; is that correct?

A. The provincial representative receives only provincial offers.

Q. So, are you saying that not a copy of the Federal offer goes to the provincial representative?
A. It did in past. It does not anymore.

Q. When did that rule change?

A. I'm not certain of the exact date, but it would have been in early 2006.

Q. And who changed that procedure?

A. I'm not aware of who changed that procedure.

Q. Who made the decision that not all offers would go to the Province and not all offers would go to the Feds?

A. I'm not aware of who made that decision.

Q. Who made the decision that not all Federal offers had to go to the Province?

A. Perhaps I need to clear this up.

Q. Certainly.

A. The offers do eventually come to me in the process of review for TEAC, but from an administrative point of view, they only need to go to the advertiser of the timber and the Government relative to the ownership of the land or the
granting of the land.

So, in the Federal case, the timber offers would go to the Federal Government and to the owner of the timber. In the provincial case, they would come to the Provincial Government and to the owner of the timber.

Q. Eventually, do you receive, you, yourself, personally receive all Federal and provincial offers?

A. I would, yes.

Q. And so you actually receive the hard copy of each offer that comes in on each boom?

A. I would see only those offers that are in good standing and are requiring review at the committee level.

Q. I just to want clear that up because

the—when an offer comes in, it also goes through some process whereby it gets to your office, and then how is it determined whether the offer is in good standing?

A. Did the offer arrive in the office within the time bar allowed?

Q. Yes.

A. Was it complete? Was it sent to all of the
9 parties it was supposed to be sent to?
10 Q. Right.
11 A. That sort of things.
12 Another thing that tends to happen is an
13 offer may be withdrawn prior to the time of review,
14 which would mean I would not receive it.
15 Q. So, if— at what point in that two-week
16 period do you receive the offers that are in good
17 standing?
18 A. I would receive those offers within the
19 week prior to the export Advisory Committee
20 meetings.
21 Q. And when in regulation to the expiry of the
22 14-day period would that normally be? I gather it's

1 sometimes four or five or six weeks down the road?
2 A. It could be as short as two weeks and
3 probably three weeks.
4 Q. And so, do you receive offers then that
5 have been withdrawn during the advertising period?
6 A. No, I would not.
7 Q. So, by the time you get the package, all of
8 the offers are in good standing?
9 A. Yes, they would be.
10 Q. And for a typical meeting, how many offers
would you normally have, both Federal and provincial?

A. Four, five, sometimes six or seven. It's not a large number.

Q. And what are the mechanics of the withdrawal of an offer? How does that work? You're not dealing with that, I gather, in the First Instance, but somebody else in the Provincial Government is dealing with that?

A. Yes. The regional staff who basically are the first line of access to the licensee who was applying are the primary body administrating that,

Q. So somebody in the Provincial Government is aware that offers are received during the 14-day notice period; correct?

A. Correct.

Q. And somebody in the Provincial Government is aware which ones have been withdrawn?

A. Correct.

Q. And is it your understanding that that's the same is for the Federal Government as well?

A. Someone within the Federal Government would monitor those that have been made and those that
were withdrawn, yes.

Q. For those offers that go to TEAC/FTEAC, as I understand it, you prepare a package for the committee; is that right?

A. That's correct. As the Secretary, I'm responsible to prepare the information they will need to review.

Q. And so, that information would include all of the offers that are in good standing that have not been withdrawn; is that right?

A. The committee's generally provided with a summary sheet of what those applications with offers are. They do not see the exact offer itself at that stage of the game, no.

Q. Do they know who at that stage of the game who the offer is being made by?

A. Yes, they do.

Q. Do they know who owns the logs upon which the offer is being made?

A. Yes, they do.

Q. And how long in advance of the meeting would they normally receive that package?

A. One or two days.

Q. And they're expected to review the offers
and other material or the summary sheet of the
offers prior to the meeting; is that right?
A. It's my expectation that they would do
that, yes.

Q. And the--so, when you arrive at the FTEAC
meeting, wherever it is in British Columbia, and I
gather it goes around British Columbia.
A. Generally in the Vancouver area.

Q. And are the members from different parts of
British Columbia?
A. Yes, they are.

Q. Does it take some time to assemble
everybody in one spot to get them all there?
A. That's up to them, but they all know when
the meeting time will be, and they make arrangements
to arrive on time.

Q. So, when the TEAC/FTEAC meeting begins, I
think you indicated you do a market review; is that
right? The members do?
A. That's correct, yes.

Q. And that market review is against the
backdrop of the offers that have been made on the
booms that are up for consideration at that given
meeting; correct? Is that fair?
They would be knowledgeable of it, yes.

And then FTEAC/TEAC adjudicates on the various offers and comes up with a determination of whether each and every offer is fair as against the domestic price; is that right?

Once they have determined what the domestic prices are, then they will review each of the offers on its own relative to the application and determine the validity, yes.

And that part—that part of the process, is there adjudication over the merits of the offer as against the domestic price; is that correct?

That's correct.

And the committee does not take into account international price at all; that is correct?

No, it does not.

That's an irrelevant consideration?

It's not relevant to the mandate of the committee.

Q. And the committee does not see, as it's sitting there meeting, does not see any of the offers that have been withdrawn?

A. No, it would not see those.

Q. And, of course, it is unaware if there have
been other "negotiations," if I can use that term, between parties, log sellers and buyers, which have avoided offers being made; is that fair?

A. I don't think it's fair to say they are not aware of it, but they're not aware of any specifics relative to any that may have been withdrawn, no.

Q. When you say you don't think it's fair that they're not aware of it, what do you mean by that?

A. Well, as they are log traders and active in the log market, they would be party to discussions with friends and cohorts that I'm sure they're aware of it, but that's the only level that I would understand them to be aware of.

Q. And just to be clear, they're having discussions with friends and cohorts about negotiations, side deals that are made to avoid the block; isn't that fair?

A. I'm not party to those discussions. I wouldn't know.

Q. Oh, you're not party to them, but you're aware and have been aware that those kinds of discussions go on; isn't that fair?

A. It's fair to say that I'm aware that that does happen, yes.
Q. And it's a concern to you that it happens, isn't it?

A. It is a concern, yes.

Q. And the reason it's a concern is that it's not the way the system is intended to run; isn't that right?

A. The intention of TEAC is to--is to review the offers on any timber that has been applied for export. It is meant to be the balancing in the marketplace, for lack of a better term.

Q. It's the balancing in the marketplace?

A. It's to adjudicate whether the offers are fair. It's to keep fairness and continuity within the process for export.

Q. So, you're answering, I think, my question, and perhaps you could be more specific about why it is a concern for you that these other side deals are taking place. Sometimes even before offers are made.

A. Concern to me personally is that it is using the export system in a fashion that it was not intended for.

Q. And can you elaborate upon that.

First of all, what was it intended for, and
how is it being used in a way that it wasn't intended for?

A. Well, the export exemption process and the offering process creates different negotiating positions within the business. If a person has an exemption, they certainly have a stronger position to bargain with the domestic buyer over price than a person who does not have one. That's possible. It's not the best position to be in perhaps, but it's reality.

Q. Is the reality of the Regime the system that's in place and the decisions that are made under it; isn't that fair?

A. I don't understand your question.

Q. It's the reality--when you say it's the reality, you mean it's the reality of the situation with the rules in place as they are; isn't that fair?

A. It is a part of the marketplace as it has existed for many years.

Q. Under the Export Control Regime, the system of TEAC and FTEAC; correct?
A. This would go back a hundred years.

Q. The Notice 102 was brought in April 1st, 1998; is that correct?

A. That's correct.

Q. So, what you're concerned about in this blocking scenario—are we agree on the terminology, these deals that are being made are to avoid the block or to respond to the block? Is that fair?

A. I don't tend to refer to them that way. I consider an offer if there is an offer on the table. What goes on outside of that I have no knowledge of directly of.

Q. Yes, but, Mr. Cook, you've told us about a concern that you've had, and you've indicated that and stated that the concern is that the system isn't working the way it's supposed to work. We agree on that--correct?--in that respect.

A. Perhaps.

Q. And part of the problem in this system is that there is not a level playing field between the players; isn't that true? And you gave the example of a party with a standing exemption and one without
and so on. Isn't that part of the problem?

A. The standing exemption is an entirely different issue.

Q. I was just reflecting what you were saying about the standing exemptions and parties being in different positions in your explanation of your concern?

A. My concern has nothing to do with the standing exemption. It's all to do with the harvest application process.

Q. And what's your concern in that regard?

A. The one that you just described to me.

Q. Pardon me?

A. Which is is the marketplace fair. The intention of TEAC is to try and maintain fairness within that marketplace.

Q. And the way the marketplace is working under this system is that it's not fair to all parties; isn't that fair?

A. If a person chooses to use the Advisory Committee process for what it was intended, they would be getting a fair hearing. These are people that choose not to use that.
Q. And if there are people who want to use the system for other purposes, like to their own commercial advantage, that's not what it was intended to do; isn't that fair?

A. TEAC is there to make sure that that is maintained at a fair and balanced level.

Q. But let's get back to these negotiations that occur that you're aware of but not party to that occur outside of the TEAC process. Now, you've indicated you're aware of them; right? Correct?

A. Correct. I'm aware of them.

Q. And the way you become aware of them is that they're an issue in the industry; isn't that fair?

A. The way I become aware of them is through letters or phone calls of complaint. Generally, that's how I would be aware of it.

Q. And you look into those complaints and try to resolve them and figure out what they're about?

A. If I'm provided with factual and written evidence of the situation, then I would look into it. I have yet to be actually provided that evidence. I cannot act on circumstantial evidence.

Q. Is it part of the industry knowledge, at
least to your knowledge, that this process goes on
that these deals are negotiated and block offers are
made? Is that fair?
A. The log market in Vancouver is extremely
large. How, why, and where offers on timber are
made is not something I'm party to.

Q. Have you ever heard of circumstances where
a particular log exporter has sold other logs at a
lower price to a domestic purchaser in order to free
up his logs for export, the logs that he wants to
get out?
A. Through these proceedings, I've heard of
that, yes.

Q. And that would concern you?
A. Not greatly as those people have chosen to
take that route.

Q. But in terms of the level playing field
that would concern you because that certainly is not
the way the system is supposed to work, is it?

A. These people operate in a free market
whereby they have the ability to choose or not
choose to buy timber in that fashion. They may come
to the committee if they wish to, or if they choose
to operate outside of it, that's their business.
It's not anything to do with the committee.

Q. So, you're saying that this market is a free market?

A. In the marketplace itself, that's correct, within Canada.

Q. And are you suggesting that the determinations of TEAC/FTEAC have nothing to do with an effect on price?

A. Absolutely nothing on the domestic market.

Q. And you say that from the standpoint of having the knowledge about how markets work and economics works?

A. Yes, I would.

Q. But you're not an economist?

A. No, I'm not.

Q. Just to confirm, TEAC--the membership and composition of TEAC is identical to the composition of FTEAC except for one member; is that correct?

A. That is correct.

Q. And that would be currently Ms. Korecky?

A. That's correct.

Q. And previously Mr. Jones?

A. I believe it was Mr. Jones, yes. He was not there while I have been involved.
Q. That's one of my other questions.

Mr. Jones retired from the public service in 2004; is that right, or do you know that?

A. I do not know.

Q. When you came on FTEAC/TEAC, was there a Federal representative actually on FTEAC?

A. Yes, there would have been. I don't recall the person who the person was at the moment but there was certainly somebody there.

Q. There was a person there after Mr. Jones retired?

A. Not physically. They were by conference call.

Q. Do you know Mr. John McCutcheon?

A. Yes, I do.

Q. And he most recently worked in the industry for Interfor?

A. That was the last logging company that he worked for, that's correct.

Q. And he was previously with Primex; is that right?

A. That's correct.

Q. And Primex was bought out by Interfor?

A. That's right.
Q. He worked for Primex in the nineties and then Interfor in the 2000s?
A. I don't know the dates, but it's approximate.
Q. In that range.
A. Mr. McCutcheon was Chair of TEAC for how many years? He left in 2006; isn't that right?
A. He left in 2006. Exactly how many years he was Chair, I'm not sure, but it was quite a few.
Q. If I was to say eight to 10, would that be within the range?
A. It's probably in that range, yes.

Q. And prior to that he had been a member for another 10 or 12 years?
A. I believe he had been a member from the instigation of the TEAC committee itself.
Q. A long serving member of the committee?
A. Yes.
Q. And an influential member of the committee; fair enough?
A. As the Chair he would be an influential member, yes.
Q. Does the committee have independent
12 consultants retained for the purpose of advising on
13 the price in the market?
14 A. No, it does not.
15 Q. Does it have any representative, leaving
16 aside yourself and Ms. Korecky, in that group of
17 industry representatives who do not have an interest
18 in one way or another in the industry?
19 A. No, they would have all have an interest in
20 the industry in some fashion.
21 Q. So, they would all be working in some way
22 for companies that are involved in the industry, and

1 they get their knowledge about the log marketplace
2 from that experience; is that fair?
3 A. That would be reasonably fair, yes.
4 Q. And so these industry representatives, what
5 they bring to the table at that meeting is their
6 experience in the marketplace working for the
7 companies they work for; is that fair?
8 A. For those that are still working for
9 companies, that's correct. There we have a couple
10 who are semi-retired, so they have a lesser
11 involvement, but still have a good feel for what's
12 going on.
13 Q. Now, I think you mentioned a two-page
document that is circulated prior to the meeting giving market information. What is that document?

Did I get that right?

A. No.

Q. Okay.

A. The only information circulated prior to the meeting to the Committee Members is an agenda, a summary of the applications that will be reviewed so they know what they're facing, any other issues that may come up that we require advice on. That's what they would be provided.

Q. So, there is no market study or discussion paper about what values are of particular species and grades and sorts presented to the committee for its deliberations?

A. No, the committee creates that. That is their purpose.

Q. That's what the committee does.

A. That's correct.

Q. And they basically sit around a table and they exchange experiences; is that fair?

A. They exchange information and their exposure to the market to decide what is the
appropriate value on the domestic market at the time.

Q. And knowing all of the offers that at least reach the committee, all of these industry representatives are therefore aware of all of the offers of their competitors?

A. They do not have the offer details. They have nothing more than the summary sheet, but I understand that the committee operates on a completely confidential basis to the Minister. This is not anything they share with anybody else other than the committee.

Q. I'm just referring really to what knowledge they have as they're sitting in the committee room. They've got a summary sheet and the summary sheet sets out the part of the offeror?

A. Yes, it does.

Q. The log seller?

A. Yes, it does.

Q. The boom?

A. The boom number would be there, yes.

Q. The boom number would be there. A description of the boom?

A. A summary description, yes.
Q. The price being offered?
A. Yes, that's correct.
Q. Is there anything else they would have?
A. That's essentially it. They have the application number; that's always provided. And the location of the boom is known.

Q. And some of the offerors may or may not be competitors of theirs in the marketplace; is that correct?
A. There is a chance they are in some cases, yes.
Q. And some of those offerors may, in fact, have a common interest with certain members of the committee; fair enough? Not in practice--
A. Perhaps.
Q. Not noncompetitors, sort of friends in the industry.
A. They're all friends generally.
Q. And their companies may be in a similar position in terms of their--what they do in the market at a particular time; isn't that fair?
A. It varies, but they're in the log market. Their business is buying and selling logs.
Q. And how long do the meetings last?
A. Generally two to three, sometimes four hours.

Q. So, just to take Mr. McCutcheon as the example, in the period while he was Chair—he left in 2006; right?

A. That's correct. I think it was September of 2006.

Q. He would know as Chair—and he was working for Interfor at that time?

A. He wasn't at that time, no.

Q. When did he stop working for Interfor?

A. December of 2005.

Q. Okay. So, let's take 2005, then. He was Chair of the committee. He was an employee of Interfor, which is a large integrated forestry company in British Columbia; right?

A. It owns sawmills. It doesn't own anything beyond that.

They are not fully integrated, but they certainly are a logging company and a milling company.

Q. So, they buy logs for their sawmills in British Columbia?

A. They harvest their own and they buy logs,
21 yes.

22 Q. And they also log?

1 A. That's correct.

2 Q. And they sell logs?

3 A. Yes, they do.

4 Q. Do they sell logs for export?

5 A. Generally, no.

6 Q. Okay. So, so, Mr. McCutcheon being the Chair of the committee and an employee of Interfor would receive all of the information about every single offer that you've described coming before the committee; that's correct?

11 A. That's correct.

12 Q. He would know every company that was offering, he would know what price they were offering, he would know who the seller was, and he would have all of that information?

16 A. He would have that information, yes.

17 Q. And all of the other Members of the Committee would have that information?

19 A. Yes, they would.

20 Q. Could you turn to your Affidavit, please.

21 A. Do you have a number?

22 Q. The first Affidavit.
If you go to Paragraph 76, Page 21.

A. I'm there, yes.

Q. We will go to the second sentence. We will come back to remote in a bit, but the concept of remote areas in quotes of the B.C. coast is roughly defined as any location requiring an inordinate amount of time or cost to access for the lower mainland marketplace. Adjudications by TEAC and FTEAC—and let me just stop there. That's the process that's going on in this offering, the consideration of the offers of the TEAC meetings?

A. They adjudicate review, yes. Yeah.

Q. Okay. Now, is any notice of these meetings given to the industry?

A. Repeat that, please.

Q. Is any notice of the FTEAC/TEAC meetings given to industry?

A. No, the industry is not advised directly when the meetings are.

Q. They're not advised of the time or the place; that's correct?

A. No, they're not.
Q. Does TEAC or FTEAC have a Web site?
A. No, they do not.

Q. Is any notice given to the industry of the offers being considered at the meeting?
A. No, that would be third party private information.

Q. So that no notice is given to the industry on even a no names basis about the offers being considered; that's correct?
A. No, it is not.

Q. That is correct?
A. That's correct. It is not advised, yeah.

Q. Is any notice of a meeting agenda ever sent to the industry either before or after the meeting?
A. No, it is not.

Q. Is there a set of rules governing the procedures at the meeting?
A. There is a Terms of Reference that the committee works by, yes.

Q. And how long is that Terms of Reference?
A. How long?

Q. Yes. How many paragraphs is that?
A. It's about three pages.

Q. Okay. Are there--is there any notice to the industry of the procedures the committee will follow in determining the fairness of a particular offer?

A. No, there is not.

Q. Or the criteria that the committee will consider in its deliberations and adjudications on the offers? Is there any notice given to the industry of that?

A. No, there is not, no.

Q. We've heard reference to a Surplus Testing Procedure. Is that Surplus Testing Procedure defined anywhere?

A. The Surplus Testing Procedure is defined in the Provincial Procedures from 1999.

Q. So, that's the provincial procedure. Is there a Surplus Testing Procedure defined for the Federal consideration and adjudication?

A. The procedure's as noted in Notice 102 what would be what's available, yes.

Q. Could you turn to the Investor's Core Bundle of documents.

496
A. Is that the white binder?
Q. We will put it in front of you.

ARBITRATOR ROWLEY: Sorry, I'm not sure I

know which Core Bundle he should be looking at.

(Binder shown to the Tribunal.)

ARBITRATOR ROWLEY: Yes, thanks.

BY MR. NASH:

Q. For the moment, what is the Surplus Testing
Procedure? Can you define that.

A. Surplus Testing Procedure is where timber
that is advertised to find out if there is a
domestic market for it. If it is—if it receives an
offer, then it takes further review. If it does not
receive an offer, then the Surplus test has been
accomplished in that there was no interest in the
domestic market. Therefore that it would be surplus
to the Province.

Q. And if there is an offer received, what is
the next stage of the procedure?

A. If there is an offer, then that offer would
go before the Timber Export Advisory Committee for
review to see what the fairness of that offer was.

Q. Is it anywhere published the criteria that
will be used by the committee in the course of
applying that procedure? In its determination and
adjudication on market value?
A. The publication that is out there says that
the committee must review to the domestic market
level. It compares to a domestic market level.
Q. And my question is more specific, that in
determining that--coming to its determination on
that issue, is there anywhere where it is set out
what criteria will be applied in order for the
committee to come to that determination how it will
be measured, how they will establish how they've
arrived at the domestic market value?
A. I'm not aware that that is written down,
no.
Q. Is it written down anywhere, either
publicly or privately?
A. I'm not aware of it, no.
Q. And if it was written down, you would be
aware of it; that's fair?
A. I would think so.
Q. Does the committee give prior notice to the
industry of the prices for various species and
grades that it considers to be reflective of the
domestic market value?
A. No, it does not. Not from this department.

There are prices published but not through us.

Q. Well, there are prices published, but it's not like a price exchange or a stock exchange?
A. No.

Q. Or a commodity exchange?
A. No.

Q. There is no commodity exchange for B.C. logs; correct?
A. Not that I'm aware of.

Q. And prices for logs just like most commodities can fluctuate over time?
A. Yes, they would.

Q. So, is the industry given any notice as to how those price fluctuations will be taken into account when the committee determines the fairness of a particular offer?

A. No, they are not.

Q. So, essentially what the committee looks at is its own information as derived from its members most of whom, almost all of whom, come from private companies involved in the industry; that's fair?
A. They glean it from the marketplace as a
Q. What they do is they look at it from their perspective at the table and bring their information to the table for consideration by the committee?

A. As they're a broad-based group, then that is what they do, yes. That is the intention.

Q. Does the committee consider--well, you told me that. You've told me the international price--that the committee does not consider international price; that's correct?

A. That's correct.

Q. And international prices, by your experience, are generally higher than domestic prices?

A. They would not always be, no.

Q. They're generally higher than domestic prices, aren't they?

A. The values that you see are different. They're not always higher.

Q. Not always, but they're generally higher; isn't that fair?

A. I suppose. It is not an absolutely, but generally they would be.

Q. Generally international prices would be
Q. Most of the time is it fair that international prices will be higher than domestic prices?

A. I would not have knowledge of whether it is most of the time or not.

Q. All right. Is there a price range within which the committee considers an offer to be fair if it falls within a range of what they determine to be the domestic market value?

A. They provide a reasonableness kind of test, understanding that no boom logs is exactly the same--they would provide a test of reasonableness understanding that no boom of logs is exactly the same, so there always have to be some give and take to assess what's in front of them as best they can, so there is no absolute number. Is it reasonable, is it close, is it way off, that's the kind of thing they have to do.

Q. So, they don't have a range like a plus 10 percent or minus 10 percent?

A. They have ballpark.
Q. Ballpark?
A. Ballpark kind of range, and I have seen and heard of roughly 5 percent. It's not an absolute, though.
Q. Who have you seen and heard that from?
A. I have seen that recorded in the TimberWest case a couple of years ago.
Q. Well, you're sitting in on these meetings, every meeting, unless you're away from work, but every meeting you're sitting in.
A. Yes.
Q. And do they apply a plus or minus

5 percent, or do they not?
A. They do if it becomes necessary. Very rarely are offers anywhere close to that margin.
Q. So they have applied it plus or minus 5 percent?
A. If it's a close offer, they will look at it carefully and mentally do the math. Is it within 5 percent, yes, no, what other factors are there, and decide accordingly.
Q. And is the industry notified that in certain circumstances the committee will apply a plus or minus 5 percent range on an offer?
A. Did you say is the industry advised?
Q. Is the industry advised of that?
A. No, they're not.
Q. The industry isn't advised of any criteria that the committee takes into account in determining whether offer meets domestic fair value; isn't that fair?
A. They're advised that the offer must be at domestic levels.
Q. That's all they're advised?
A. That's correct.
Q. And they're not advised as to any aspect of the procedure that the committee will apply in coming to that determination; that's fair?
A. That's fair.
Q. At the end of the meeting decisions have been made, and just actually on that point, how are decisions made? Is there a vote?
A. The committee does not make decisions. The committee provides advice to the Minister who will eventually make the decision.
Q. Well, let's not get up hung up on decision or recommendation. The committee decides whether an offer meets domestic fair value. They make that
Q. They come to a determination, if you will, as to whether a particular offer meets fair domestic value; isn't that fair?

A. They review as to whether it is a low but fair or fair offer, yes.

Q. And then they make a determination of that, they review it, and then they come to a conclusion on that?

A. They conclude by consensus that that is the case.

Q. I call that a decision, but if you don't--do you agree with that?

A. From the committee to decide on what the state of the offer is, that could be viewed as a decision.

Q. Right.

A. How that decision is used is different.

Q. I understand.

And so you say that they come to a consensus on what fair market value is.

A. Correct.
Q. Is there unanimity?

A. Most of the time. Not always.

Q. And what happens if there is a dissent?

A. They argue around until they finally reach consensus.

Q. And then at the end of the meeting, you have all the determinations, if you will, that have made, decisions that have been made, and you go and write minutes; is that correct?

A. That's correct.

Q. And you record what has been decided in the meeting?

A. That's correct.

Q. Is there any record of what the discussion was in the meeting?

A. That's the minutes.

Q. There is actually a record of the discussions that occurred leading up to the conclusion?

A. No, there is not a record of the discussion necessarily. It's only a record of what the recommendation is.
18 Q. And then you send the minutes to the Chair; is that correct?
19 A. That's correct.
20 Q. And the Chair reviews them for accuracy?
21 A. That's correct.

1 Q. And then you also send them to Ms. Korecky currently?
2 A. If there's issues in there of concern for her, she would be reviewing, yes.
3 Q. And the minutes are finally finalized; is that fair?
4 A. That's correct.
5 Q. And then are they then sent to Committee Members?
6 A. The Committee Members would receive those members, that's correct.
7 Q. Are those minutes posted anywhere?
8 A. No, they're not.
9 Q. They're considered to be secret?
10 A. They're confidential to the Minister of Forests.
11 Q. And so, when Mr. McCutcheon, just to take an example, goes back out into the market, back to his--puts on his Interfor hat, he's got the minutes;
right? He's got a record of all the decisions made; correct?

A. If he has his Interfor hat on, then no, he does not have the minutes in his disposal.

Q. Does he physically receive a copy of the minutes?

A. He would, yes.

Q. So, he puts them in his filing cabinet, whatever filing cabinet that is.

A. That's correct.

Q. And he's back at work, and he knows all of the offers that have been presented; correct?

A. I would assume he would, yes.

Q. And all of the ones that have been--where recommendations have been made to reject; correct?

A. He knows the results of the discussions, yes.

Q. Is an exporter advised of the disposition of any of the other offers that are being considered by the committee other than the exporter's own offers? Do you follow that?

A. No, I do not.

Q. Let me make that clear. That was perhaps unclear.
Let's just take Merrill & Ring as an example. Merrill & Ring has booms of logs for sale, the 14-day period comes in, an offer is received, it goes to TEAC. And what happens after that? Does Merrill & Ring get notice that--of the outcome of the determinations to the adjudications of the committee?

A. If Merrill & Ring was applying for provincial timber, they would normally receive notice of either by receiving a ministerial order for their timber, which is an indication that they have been provided an exemption; therefore, the offer was not a fair offer, or they would receive a denial letter for the application.

Q. Does Merrill & Ring in those circumstances see any of the determinations made on the other offers, the non-Merrill & Ring offers that are being considered by the committee?

A. Definitely not.

Q. And those are secret as well?

A. The offers are confidential to the committee.

Q. Now, there has been discussion in this
matter of an appeal process. Is there an appeal
process laid out anywhere with respect to trying to
have TEAC's decisions either overturned or rejected?
A. Well, as TEAC doesn't make the decision,
there is no appeal there. However, if somebody
wishes to appeal the decision of the Minister, they
have the right under the Forest Act to do that.
Q. That's for the British Columbia Forest Act?
A. For British Columbia, yes.
Q. What is the comparable Federal regulation?
A. I would not know that.
Q. Do you know if one exists?
A. I would gather there is because there have
been some challenges there, yes.
Q. So you believe that there is a procedure
laid out for the Federal applications?
A. There is apparently a process. I don't
know the specific procedure.
Q. Could you go to the exhibit—we are going
to leave the Investor's Core book of documents for
one minute and go to something else. Please turn to
the exhibits to your Affidavit.
A. My first Affidavit?
Q. Yes.
Turn to first to Tab 12?
A. This would be order in council 161.
Q. That's order in council 161.
We have heard reference to exemptions.
This is an example of an exemption; correct?
A. This is a blanket exemption, yes.
Q. And this is a blanket exemption that applies to certain lands on the North Coast; correct?
A. This is the Mid-Coast area.
Q. Mid-Coast area.
And is it you that would recommend that an exemption be granted of this nature, or is it someone else?
A. The committee would have had an application brought to them, in this case probably by their regional manager or a number of participants harvesting in that locale. Then they would have reviewed to see what the nature of the process that they were applying for was, and recommend to the
1 Minister that something be done either as a blanket  
2 or not. 
3 I would take over from there based on their  
4 recommendation and put this forward to the Minister  
5 for a decision further up the line into cabinet. 
6 Q. If you read just the first sentence, "On  
7 the recommendation of the undersigned, the  
8 Administrator by and with the advice and consent of  
9 the Executive Council orders that"--and that's the  
10 cabinet in British Columbia?  
11 A. Right.  
12 Q. "Orders that as timber originating with the  
13 boundary of the attached schedule A," and there is a  
14 map attached, map, "is considered surplus to the  
15 requirements of timber processing facilities in the  
16 Province and is exempted from Section 127 of the  
17 Forest Act."  
18 Correct?  
19 A. That's correct.  
20 Q. And this would derive and arise out of the  
21 consideration by TEAC and FTEAC as to whether or not  
22 this was a justifiable thing to do; fair?  
23
24 A. Their advice is included with my own  
25 information and research through the forest region,
3 so it's a joint effort, yes.
4 Q. But the effort starts at FTEAC/TEAC?
5 A. No, the effort in this case starts with the
6 Applicant.
7 Q. And then is considered by FTEAC and TEAC?
8 A. By TEAC.
9 Q. And then TEAC makes the recommendation?
10 A. Would recommend to proceed or to not
11 proceed, yes.
12 Q. And that's the question that TEAC is
13 considering in that meeting, is whether the timber
14 originating within the boundary is considered
15 surplus to the requirements of timber processing
16 facilities in the Province?
17 A. That's what they would be reviewing, yes.
18 Q. Thank you.
19 And that was dated March 27, 2006?
20 A. That's correct.
21 Q. I would like to turn you to Exhibit 19.
22 A. Same document?

Q. Same document, same Exhibit 19 to your
2 Affidavit.
3 And this is a minute. It precedes your
4 involvement, but it would come from your records.
You maintain the records of TEAC as the Secretary?

A. I have access to them, yes.

(Comment off microphone.)

MR. NASH: Is it a restricted document?

She says it is.

THE WITNESS: I wrote them.

MR. NASH: Not quite these ones.

MR. APPLETON: Yes, it is restricted, this one; right? We just need a 30 second pause.

(Pause.)

MR. NASH: We are just going to go off the record for one moment, Mr. President. Unless this would be a good time for an afternoon break. I'm going to be going to either various documents that will fall into the same category.

PRESIDENT ORREGO VICUÑA: How long will--

MR. NASH: What? I'm going to say for a break, 15 minutes. I would think 30 to 40 minutes.

(Pause.)

PRESIDENT ORREGO VICUÑA: Okay. So, what's the problem?

MS. TABET: Sorry, the document at issue, and maybe this is only an issue for this one document, but the document at issue is minutes from
the TEAC committee that had been designated as
restricted so that Merrill & Ring cannot have access
to that information. So, the only issues that we
would--I see that they have--

MR. NASH: No, they have gone. They have
left.

MS. TABET: Thank you.

MR. NASH: No more issue.

I have been told that my voice may be going
a little too softly. Can you hear me, Members of
the Tribunal? Thank you.

(End of open session. Confidential
business information redacted.)

CONFIDENTIAL SESSION

BY MR. NASH:

Q. This is a minute of the Timber Export
Advisory Committee dated November 13, 2003; correct?
A. Correct.

Q. And it shows that Mr. McCutcheon is Chair,
and then there is a series of members who are
present, including Mr. Ruhl; right?
A. That's correct.

Q. And Mr. Ruhl was your predecessor?

A. That's correct.

Q. He was the Secretary.

And who is the--do you know, is there any Federal representative identified here?

A. On this particular meeting, no.

Q. No? So, you take it from that that the--your understanding of the way the Minister had done that the Federal representative would have been absent from this meeting; is that right?

A. They would have been absent, yes.

Q. Okay. And I see that it's identified as the Timber Export Advisory Committee. Are there separate minutes done for the Federal Timber Export Advisory Committee, the Federal arm of this?

A. No, there are not.

Q. So, this would be the minutes for both sides of the committee, if you will?

A. That's correct, yes.

Q. If you go over to, just to get a sense of how the meeting works, you do business arising out of the minutes, the bottom part of the page, and then you go over to the next page, number three,
harvested surplus applications. This market review is done, and today you know that at that point that the market review is done all of the Committee Members have all of the offers that have not been withdrawn and are going to be considered at the meeting; that's correct?

A. They should have had, yes.

Q. And they should have reviewed them?

A. I hope they reviewed them.

Q. You hope in the best of all worlds.

You then go over to—at the very bottom of the page you will see under B offers, Coast, October 17, 2003 Bi-Weekly List, and then you will see over on the next page that there is a series of applications identifying the application number, and Comox Timber would be the seller or the buyer?

A. That would be the seller. That's the Applicant.

Q. That's the seller, and the fir gang sawlogs are the kind of log being sold?

A. That's the description of the boom, yes.

Q. Do you have discussions with Ms. Korecky when she started about fir gang sawlogs?

A. I may have.
Q. In any event, an offer--it says an offer was received from CIPA Lumber Co. Ltd. The committee considered the offer to represent fair market value and recommended that the application be rejected. And that seems to be a fairly standard description of how an offer would be described when it's being described as being fair?

A. That's correct.

Q. And so, if you go down all of those offers, they're all from CIPA, and they're--the application--and what's the exact application that's being made here?

A. This is an application to export harvested timber.

Q. This is an application to export harvested timber. So, each one of those applications there is rejected; correct?

A. Correct.

Q. And if you go down to you see Merrill & Ring about mid-page fir standard sawlogs an offer was received from CIPA Lumber. The committee considered the offer to represent fair market value and recommended that the application be rejected. And the same below, the next--actually,
there is a point here that I would like to raise.

J. McCutcheon relinquished the chair and excused himself from the meeting citing possible conflict of interest.

Do you see that?

A. Yes, I do.

Q. Are is there conflict of interest standards and rules that the committee adopts to be sure that there can be no conflict?

A. We have a very firm policy, although I admit it's not written down. It is a very firm policy that anyone with a conflict or a perceived conflict will leave the room during any discussion on the issue under conflict.

Q. So, there is no written conflict policy guideline or rule identifying what consists of a conflict and what does not; that's correct?

A. No, there is not.

Q. But Mr. McCutcheon there has been in attendance for all of the offers that have been under consideration down to that point; correct?

A. Correct.

Q. The difference is that the next offer being made on Merrill & Ring's logs is received from
Q. And for those two offers he's away from the room. The next one is Merrill & Ring, and then he comes back to the room, and he assumes the Chair. Is that what happens?

A. That's correct.

Q. And then the process continues. So, exempt for those two international Forest Products offers there, everyone on that page is from CIPA; right?

A. Yes, it would appear it is, yes.

Q. If you go over to the next page, you will see that CIPA's name appears in every single one all the way down that page; right?

A. Yes.

Q. And then each and every one of those applications for export is rejected; is that right?

A. Yes, that appears they were.

Q. And then under offer—under the one just
about mid page it says "offer withdrawn," what's happened there?

A. I can only surmise as this predates my time, but it would assume that the offer was reviewed legitimately at the meeting. Subsequent to the meeting but before the minutes were prepared, the offer was withdrawn, so it would be recorded as such, meaning that the offer had no standing, the wood was free to go.

Q. I see. So, then it's free to go?

A. Yeah.

Q. Then over the next page, if you look at the next page, there is about four or five or six more CIPA Lumber offers. It seems a whole page here, the whole meeting seemed to be involved with CIPA Lumber and Interfor; is that right?

A. They are certainly two of the companies who are active in the purchase market. CIPA is not a company that has any tenure rights of its own. It operates purely out of the market place.

Q. So, they are active in the market?

A. They have to be or they don't have supply to turn into plywood.

Q. And what that offer being withdrawn means
to you is that a deal has been struck, whereby that
wood could go and other wood is being sold off to

CIPA in exchange for that benefit.

A. I have no knowledge that that would be the
case, so I would assume that they have reached a
fair negotiated price for something and thereby
don't need the offer in play.

Q. You assume that the seller and CIPA have
reached a—or that the Applicant for the Export
Permit and CIPA have reached a mutually satisfactory
understanding?

A. They have reached an agreement of some
sort, yes.

Q. That's what you assume?

A. That's all I could assume.

Q. And it seems to be on many offers that this
was done, about 10 of them out of the whole page
here and the next page there is about 10 where the
offer is withdrawn.

Do you suspect perhaps there is a
negotiation where CIPA has said, "I want your logs,
give me your logs and your export logs can go"? Do
you have any suspicion of that?

A. I wouldn't know that offhand, no.
Q. Do you have any sort of in-the-air understanding that that might be what's going on?
A. There is a possibility of that, but it's not a business part that I'm routinely aware of.
Q. And if there is a possibility of that in these circumstances, you would be concerned about that?
A. The issue here is that CIPA obviously reached an arrangement with any one of the number of sellers to buy some logs. That's a free-market arrangement.
Q. If there is a possibility these logs that those sellers wanted to export were being held hostage so that CIPA could get the logs at a cheaper price domestically, that would concern you, would it not?
A. I don't know that that would be the case.
I know that--
Q. Assume that's the case for a moment, please.
A. I can't do that.
Q. Take my hypothetical and assume that these
logs are being paid off as ransom to get the hostage free.

A. Okay.

Q. Okay. Would that concern you?

A. My concern from a TEAC level and certainly from a Minister's level is that the manufacturing plants in B.C. have access to timber. This would seem to show me that they've reached an agreement whereby they could purchase logs from the various sellers, nothing more than that.

Q. If you accept my assumption that the logs were being held as hostage, would that concern you?

A. If they were being held as hostage, that I only had to lead them into the marketplace for TEAC to do a proper review.

Q. It would not concern you if there was this dynamic going on between CIPA and the sellers of all these logs whereby CIPA was using the export logs as hostage to get cheaper logs domestically? That wouldn't concern you?

A. If they're offering a fair price on the domestic market for the logs that are being
advertised, that's what they should pay.

Q. What if the exporters have got a gun to his head, he wants to get these logs out for export and he's got to pay this ransom? Would that concern you?

A. I don't view it that way.

Q. You don't view it that way at all, from where you sit, your perspective, that's not happening?

A. I can't say that it's not happening, but it's not of my general concern.

Q. It's not of your general concern?

A. It's not something I have any position to do anything about.

Q. And nobody has done anything about it. If it happens, nobody has done anything about it; correct?

A. From the provincial level, I have never had anybody bring the case to me that required that, no.

Q. But if you were aware of it happening generally in the industry, you would think something should be done about it, wouldn't you?

A. I would be concerned about fairness in the
marketplace, but not being involved in the
day-to-day activity of the marketplace itself.
There is any number of processes involved in
negotiating a price for a boom of logs. I don't
know what they would all be.
Q. If you could go to Tab 20, Exhibit 20 of
your Affidavit--and this is a minute of the Meeting
Number 276, dated August 9, 2004. Mr. McCutcheon is
chair; we have covered him. Interfor operates
sawmills.
A. Mr. Cross. Who is he?
Q. Jim Cross is a member of the committee.
A. And who did he work for?
A. He's retired. Prior to this worked for a
number of logging companies mostly in the northern
section of the Province, northwest.
Q. Mr. Takhar worked for Terrace Lumber; is
that correct?
A. Yes, that's correct.
Q. And Terrace Lumber runs a sawmill and buys
logs; right?
A. They did, yes.
Q. And Mr. De Visser works for Coastland;
correct?
A. Currently, he works for Coastland, but at the time of these minutes he worked for another firm.

Q. He currently works for Coastland?
A. That's correct.
Q. And Coastland operates a veneer plant; is that right?
A. That's correct.
Q. We have been told that there are three veneer plants in British Columbia. One run by CIPA; correct?
A. Correct.
Q. And Coastland runs another one?
A. That's correct.
Q. And Richmond Plywood operates the other; that's correct?
A. That's correct, yes.
Q. And then Mr. Probyn operates a sawmill in Squamish?
A. He has a small sawmill there, I understand, yes.
Q. So, he buys logs?
A. Yes, but he's also a log broker.
Q. And Coastland also buys logs?
A. Coastland buys logs, yes.

Q. And Mr. Allison works for Richmond Plywood; correct?

A. That's correct.

Q. And he operates or works for a company that operates a plywood mill, the veneer mill we have referred to?

A. It's a plywood mill in this case, yes.

Q. And they buy logs?

A. They do. And they also sell logs.

Q. Right.

And absent from this meeting shows that Mr. Jones, the Deputy Director of DFAIT. He's the Federal representative; right?

A. That's correct.

Q. And he was absent from the meeting?

A. Apparently.

Q. Was not there as part of this adjudication, apparently?

A. Apparently, no.

Q. The minutes would indicate that the meeting went ahead without him?

A. That's correct.

Q. And the last minutes we looked at, there
was no Federal representative, and the meeting went
ahead without Mr. Jones; correct?

A. Correct, yeah.

Q. If you go to Page 3 of the minutes, here is
another example where Mr. McCutcheon left the chair,
excused himself from the meeting for the two offers
that were being made on the provincial Bi-Weekly
List by Progressive Timber and Merrill & Ring.

Do you see that?

A. Yes, I do.

Q. And then Mr. McCutcheon returned to the
meeting, and then there is a whole series of offers
by CIPA.

Do you see that?

A. Yes, I do.

Q. And that list goes down over--down that
page and over the top of the next page, and all of
the applications in that case were rejected;
correct?

A. Yes, it appears that they were all
rejected, yes.

Q. And Coastland and Richmond Plywood, who did
Mr. De Visser work for before Coastland?

A. It was a company called Mill and Timber.
Q. Mill and Timber. Are they a log processor?
A. They mill mostly cedar logs, yes.
Q. So, they buy logs?
A. Yes, they do.
And they also operated small timber sales and sold logs, as well.
Q. And Mr. Allison, working for Richmond Plywood, is deliberating upon the fairness of an offer that is being made by one of his competitors, CIPA Lumber; correct?
A. Correct, yes.
Q. And wouldn't it be fair to say that Mr. Allison, in the same market as CIPA Lumber, has an interest in seeing that the log price is lower for his mill?
A. Well, as Mr. Allison also sells logs, no, that would not be the case.
Q. Well, he's both buying and selling, isn't he?
A. Yes, he is.
Q. If he's buying, he would be interested for his plywood mill—that's what he's works for—in having cheaper logs?
A. You would think that that would be common nature for somebody to buy something as cheaply as possible, yes.

Q. Fair enough.

And then if you finally go to Tab 22--and this is a minute of a Meeting Number 310--I see that the minutes are now--I'm sorry, actually go to Tab 21. My mistake.

These are minutes of the meeting on June 1st, 2007, and Mr. De Visser is still there; correct?

A. Correct.

Q. And Mr.--who is Mr. Hynes?

A. Mr. Hynes is a representative from DFAIT.

Q. And who is Ms. Sabatino?

A. Ms. Sabatino is also from DFAIT.

Q. Okay. So, he was sitting in for Ms. Sabatino?

A. At that time, correct, yes.

Q. Who was sitting in for Ms. Korecky?

A. Ms. Sabatino at that time, I believe, was sitting in for Ms. Korecky.

Q. Right.

Do you have any idea what Ms. Sabatino's
experience is in the forestry industry in British Columbia?
A. I would think her experience in the industry is fairly small.
Q. Do you have any idea what Mr. Hynes's experience is in the forestry industry in British Columbia?
A. It would be limited, yes.
Q. And in any event, she was absent, and he was sitting in for her at that meeting?
A. That's correct.
Q. Now, is the industry notified when there are these changes in the composition of the committee?
A. No, they're not.
Q. Is the industry notified about the composition of the committee at all? Is there a list posted somewhere?
A. It is not posted, but it is public knowledge who the Members of the Committee are.
Q. How is that public knowledge--how is that public knowledge disseminated?
A. Anyone who asks is provided it.
Q. Anybody who asks?
15 A. That's correct.
16 Q. But you have to ask?
17 A. That's correct.
18 Q. There is no place that you publish a list of the members of TEAC from time to time?
19 A. Due to the nature of the committee, no, that's not what's done.
20 Q. And so with Merrill & Ring—if you go to

Page 3 of that minute—you will see about the fifth application down Merrill & Ring Canadian Properties?

A. I see it, yes.

Q. There is reference to the "offer:" "The committee considered the offer to be fair and represented the domestic market value of the logs. The logs under application are not considered surplus to domestic needs. It therefore recommended that the Minister refuse to approve the proposed export."

Now, would Merrill & Ring be notified that Ms. Korecky was not at this meeting?

A. As this was a Federal issue, I would not know that.

Q. You have no idea?

A. I have no idea.
Q. You have a hunch?

A. Probably not.

Q. Probably not.

Would they be notified that Ms. Sabatino was not present at committee?

A. No, they would not.

Q. Would they be notified that--formally notified that Ms. Sabatino, in fact, was now standing in for Ms. Korecky on certain--for a certain duration?

A. I don't know why that would be important.

Q. You don't know why?

A. I don't know why that would be important.

Well, isn't one of the purposes of Ms. Korecky's participation on the committee is to have somebody whose knowledgeable about the forestry industry in British Columbia so that she can understand, listen to, and come to a determination on her own, independently, as to whether or not this committee is acting in a fair manner? Isn't that part of her function?

A. Her function--and I will get her to clarify it clearly in her section, but her function would not be to do that. It would be to determine, subject to what the committee recommended, any
Q. She would.

And so Merrill & Ring, in their application here, as the adjudication, as you termed it, is going on, doesn't even know that the Federal representative who may have an impact on their application isn't at the meeting; is that fair?

A. That's fair to say that, yes.

Q. Okay. Or, in fact, she's actually been replaced on a leave basis for a period of time by some other representative; is that fair?

A. I don't know what advice Ottawa may have provided, but it's fair to assume that, I think.

Q. And then if you go to the next tab, Tab 22, Exhibit 22, you will see that many people are absent at this meeting, and that's a meeting that you attended as secretary; correct?

A. That's correct.

Q. What happens when people are absent? Are their views canvassed in their absence?

A. There is occasion when they will provide
Q. And is there occasion when that doesn't happen?

A. Well, it's not always that they are around at the time when it's appropriate to get those numbers, yes.

Q. So, we have two, four, six Members of the Committee absent, two Government representatives, yourself and Mr. Ruhl, who, when you became the secretary, became the chair; correct?

A. Correct.

Q. And five other people who are the ones actually making the decisions in this case; correct?

A. Four others.

Q. Four others.

A. That's correct.

Q. If a member retires from the committee, as Mr. McCutcheon did, is there a formal process for a reappointment or an appointment of another alternative to the committee?

A. There is not a formal process other than
通过正常的政府管理过程来为部长提供咨询。

Q. 这是如何运作的？

A. 本质上，委员会会拉出他们认识的人，这些个体通常理解他们的行业，且认为他们可以保持中立。他们被调查是否对担任委员会有兴趣。如果他们有兴趣，我们将进一步研究他们的背景——我会进行这项研究——然后向部长提交简报，让部长最终决定是否同意我们提出的人选。

Q. 部长在对提供给他的提议的建议中，是否曾经反对过委员会的建议？

A. 不，我还没有听说过这种情况。
Q. And there could be on average 20 or 25 of these applications every month or six weeks?
A. Well, there is many more applications, but there is not that many offers.
Q. I'm actually talking about the offers that are considered by TEAC.
A. About 25 every six weeks?
Q. There wouldn't be that many today. When we look at the earlier minutes here. There certainly were more, but today they are nowhere near that.
A. Today the markets is changed and the markets are down, but in those days--let's call it the more "normal days"--prior to the financial turbulence of last fall, would it be about 20 or 25 applications per meeting that each meeting would consider?
A. It could be in that range, yes.
Q. And that would be about every month or six weeks?
A. Every month, yeah.
Q. And so we've got about 300 applications a year on that rough analysis, approximately?
A. Roughly, yes.

Q. And does the Minister--and you don't know one instance in which the Minister has rejected a recommendation of TEAC with respect to those offers?

A. I'm only aware of one situation on the Coast recently in the last two to three years, where the committee had reviewed an offer and found the offer to be fair. I was subsequently provided some factual documentation from the Applicant, suggesting that the market was a little different than we as a committee had thought it was.

I reviewed that information and put my recommendation in contradiction to the committee, recommending that there would be declared surplus.

Q. And other than that--well, I take it your recommendation was accepted by the Minister?

A. My recommendation was accepted, yes.

Q. And all of the other recommendations that the committee has made, in your experience, have been accepted by the Minister?

A. In the time that I have been there since 2005, that's correct.

Q. In the last four years?

A. That's correct.
Q. Have you heard of the term the "penalty box"?
A. I've heard the term, yes.
Q. And as I understand it, if a company has exported logs within the last 90 days, they're not permitted to put an offer on other logs that have being exported; is that correct?
A. That's correct.
Q. And where is that rule found?
A. It's found in both Notice 102 and the Procedures for the Province.
Q. And they're supposed to be either directly or indirectly. In other words, as a company entity or through a subsidiary or related company.
A. That's correct. It's a direct or an indirect relationship, yes.
Q. And the reason is to try and prevent unfair practices in the system; correct?
A. That's correct.
Q. Is there an enforcement mechanism to determine whether this is happening? In other words, do you have like an investigation arm that you could turn to?
A. We monitor these as best we can,
5 understanding that it is a considerable number of
6 these applications.
7 Generally, it will be when somebody brings
8 a situation to our attention. We will review it to
9 try and decide what the case is.
10 Q. The normal circumstance is that you don't
11 have the resources to be monitoring all of this
12 activity all the time.
13 A. It's pretty difficult.
14 Q. So, you are going to be relying upon people
15 to be reporting to you?
16 A. That's the primary basis, yes.
17 Q. Okay. So, you're not monitoring it all the
18 time, so if it's going to be monitored, it's going
19 to be monitored by people in the private industry;
20 that's fair?
21 A. To some degree. But, however, I must add
22 that as the committee tends to meet monthly, they
23 are keenly aware of the people that are out there in
24 the marketplace doing the exporting. They're also
25 very aware because the offers are coming in front of
26 them, who is making the offers, so they help in
27 making the identification of problem situations,
28 yes.
Q. Is there a circumstance where Interfor has been put in the penalty box?
A. Yes, they have.

Q. On how many occasions has Interfor been put in the penalty box?
A. Only once that I'm aware of on the provincial level.

Q. When was that?
A. I believe it was 2006. It may have been 2007. I'm not certain of the year.

Q. And in that circumstance, is there a notification to the industry that a company who is engaging in this unfair practice is in the penalty box? Do you issue a bulletin to the industry?
A. This gets into very difficult territory in that if you were to announce that to the industry as a whole, you're stepping into third-party business areas directly affecting the impact of that company's ability to negotiate in the marketplace, so it's taken seriously as to how it is advised. Certainly from the committee level, they are aware of it. If any offers do come in, they are determined to be invalid, and they would have to go through the process.
Q. So, the answer to my question is that there
is no notice given to the industry that a delinquent
exporter is in the penalty box?
A. Generally, no.
Q. So, if they're going to find out, they're
going to find out independently of their own
resources?
A. That would be the case.
Q. Is there a specified procedure dealing with
complaints about that practice?
A. No, there would not be a specified
procedure.
Q. Is there a document which lays out anywhere
what the consequence will be for breaking the rules?
A. Yes, there is. They have the procedures
for both Federal and Provincial dictate the 90-day
period if you choose to make an offer after you
export or choose to export after the offer. It's
stipulated in the policy.
Q. Does the offender get served time? When
does the 90 days start?
A. It's slightly different. I would have to
refer to the document directly to tell you what that
would be.
Q. Okay, we won't do that.

And what opportunities are allowed to the person, the company that reports it to you to make submissions on whether or not the penalty should be imposed?

A. Can you rephrase your question? I'm not sure what you mean.

Q. I will try to.

Is the party that reports the infraction to you given an opportunity to make submissions as to why the penalty should be imposed?

A. Definitely they would be as part of their complaint to us.

Q. So, a competitor of Merrill & Ring's could be in the penalty box, and Merrill & Ring wouldn't know it?

A. That would be the case, yes.

Q. If you turn now to the Investor's Core Bundle of Documents, which I think you should have in front of you, and go to Tab 5, there is in Paragraph 1.4 a statement, a requirement: "In remote areas of the Coast, applications may be made for a minimum export of 2,800 cubic meters of logs."

Do you see that?
Q. And you're familiar with that Remoteness Rule?
A. Yes, I am.

Q. And "remoteness" is not defined in Notice 102, is it?
A. The definition of "remote" is not, no.
Q. There is no definition of "remote" in Notice 102?
A. No, there is not.

Q. Is there a definition of "remote" anywhere?
A. Yes, there is.
Q. Written?
A. Yes, there is.
Q. Where is that?
A. I believe it's Exhibit 28 in my Affidavit.
Q. We will come to that in a moment.
Well, actually let's go to Exhibit 28.
So, this is the definition of "remote"?
A. This is the definition that was discussed at the time it was done, yes.
Q. Discussed at the time, which preceded your involvement?
A. Much preceding my involvement.

Q. And it says, "The minimum volume of 2,800 cubic meters combined total of all species and sorts for timber located in remote areas is required in order for inclusion on the Bi-Weekly Export List. An area will be considered remote if one or more of the following conditions applies: One, the normal method of transport to the domestic market is by barge; two, access to view the timber is restricted to flying when the flight time exceeds two hours return." And then there is three and four which are other criteria.

Has this document, Exhibit 28, to your Affidavit ever been published anywhere?

A. Yes, it was.

Q. Where was it published?

A. It was published to the industry at large at that time.

Q. This was published to the industry at large at that time?

A. That's correct.

Q. Was it republished after April 1st, 1998, when Notice 102 came into effect?

A. Not that I'm aware of.
Q. And you would be aware of that, wouldn't you?
A. Not for Notice 102, no, I wouldn't.
Q. Would you be aware of it being published for any purpose after April 1st, 1998?
A. I would only be aware after 2005 when I started.

Q. Okay. And it hasn't been republished after 2005?
A. No, it has not.
Q. When did you first become aware of this document?
A. Somewhere in the last couple of years.
Q. Might it be around April 2nd of 2008, about last year?
A. Ah, it would have been before that.
Q. Are you sure of that?
A. It's within that range. I'm not sure of the precise date.
Q. You think it was before April of last year?
A. It was last year sometime. I don't know if it was April, March, or February, but it was somewhere in there.
Q. If you turn to--we will come back to
Exhibit 28, but I just want to turn to the Investor's Schedule of Documents, Document Number 80. Document Number 80, if you go to Page 3. Now, you understand this was a request made by the Investor for production of certain documents? A. Yes, I do.

Q. Have you seen this document before?
A. I believe I have, yes.

Q. If you go to Page 3, number 17, it reads, "Documents evidencing the definition of the term 'remote' as used in 102 having been communicated to private forest landowners in B.C. since January 1st, 1998."

Do you see that?
A. Yes, I do.

Q. And you swore a certificate on August 13, 2000. Do you remember? Did you not?
A. I don't remember the exact date, no.

Q. It's at Tab 103, and you swore that you completed a comprehensive, extensive and thorough search for records of all media types related to this action, and no relevant records were found in respect of that document request. Do you remember
20 doing that?
21 A. Yes, I do.
22 Q. So, there were no documents in the

possession of the Province of British Columbia that
you could find which defined "remote" and had been
communicated to private forest landowners in B.C.
since January 1st, 1998?
A. That's correct.
Q. The effect of this remoteness provision is
to require log suppliers to tow their logs to a
nonremote location so that advertisers--sorry,
offerors can come out and review the logs; isn't
that fair?
A. Well, the offeror can review the logs at
any location, but the intention was to bring it to a
location that was not exceptionally expensive or
difficult to reach.
Q. Because it was important for purchasers of
logs to be able to--prospective purchasers to be
able to assess the quality of the logs by going and
seeing them?
A. That's the intention, yes.
Q. And I think you have already said to the
committee that FTEAC does not go and see the logs in
A. That's correct.

Q. Are you aware of any notice of a definition of "remote" that the Government of Canada has published to define what "remote" means for the purpose of Paragraph 1.4 in Notice 102?

A. Am I aware?

Q. Are you aware?

A. No, I'm not.

Q. Are you aware of any document which has been published either by the Province or the Federal Government which sets out how that definition, any definition, will be applied in a certain circumstance? In other words, where the line will be that demarcates remote and nonremote.

A. No, I'm not aware of one, no.

Q. There is no such document?

A. No, there isn't.

Q. And no notice of the definition of "remote" for purpose of Notice 102 has been formally communicated to the industry generally or to the applicants in particular; is that right?

A. Since Notice 102?
Q. Right.

A. No, not that I'm aware of. There may have been from Ottawa, but...

Q. Now, until you were involved in the preparation of your Affidavit for this proceeding, you did not know actually, yourself, whether the minimum volume requirement is 2,800 cubic meters was written down anywhere; isn't that right?

A. I knew it was written down, but I had not found the source of the rating.

Q. You had never seen the document?

A. I had not, no.

Q. Until you started preparing your Affidavit for this proceeding?

A. That's correct.

Q. Did you have an understanding as to what the meaning of "remote" was?

A. I had a general understanding of it, yes.

Q. What was your understanding?

A. As stated in my Affidavit, generally an area that required barging would be automatically within a remote area, and also something of a fairly
lengthy distance from Vancouver by plane if it was
the only way of access. Generally, I think we
referred to half a day as the kind of common rough
judgment.

Q. And that understanding had come from your
years of experience in the Ministry?

A. No, it came from my experience within the
committee and the discussion that arose when the
question came up.

Q. And when you were preparing your Affidavit,
which I recall was sworn on May 7th, 2008, you had
been on the committee at that point now for
approximately three years?

A. At that point it would have been two years.

Q. You came on in 2005?

A. Did you say 2007 or 2008?

Q. I thought I said 2008.

A. Three years.

Q. Three years if it was 2008?

A. Yes.

Q. And you're saying you came to an
understanding what remote was from your experience
on the committee; right?
A. Correct.
Q. Just the discussions around the table from
the way people viewed it?
A. And reviews with Don Ruhl, who was my
predecessor and certainly was very aware of the
issue and probably was part of the drafting of it.
Q. If you go to your Affidavit, again
Paragraph 76. Now, you say in the second
sentence—we covered this; I just want to go back:
"The concept of remote areas of the B.C. Coast is
roughly defined as any location."
Let's just stop there.
Where is it roughly defined? Actually, my
first question, what does "roughly define" mean?
A. It's an approximate thing. It's not
absolute.
Q. Are these your words?
A. These are my words, yes.
Q. "As any location requiring an inordinate
amount of time."
What is an "inordinate amount of time"?
A. You're asking me to define what "an
inordinate amount of time" is?
Q. I'm asking you to advise the Tribunal what you mean by "requiring an inordinate amount of time." What does that mean?

A. Generally, a person going to view logs for purchase is on a day-by-day basis reviewing the number of booms. Is it way out of their way? Is it a day's travel, half a day's travel? What is it? Is it outside of the normal day-to-day business practice?

Q. That's as close a definition as you have come up with?

A. At this stage of the game, yes.

Q. And then it goes on to say, "Adjudications by TEAC/FTEAC suggest that anything over half day return travel time and/or couple of hours air charter cost would be considered remote."

And those are your words? That's your definition?

A. That's based on the definition that I was hearing from Mr. Ruhl and others that I talked to,

yes.

Q. And has that definition of remote ever been circulated to the industry, the players so that they understand here is the line, here is the
circumstance, here are the criteria, here is how they will be applied, to define whether I have got to tow my logs to another location or I can advertise them at the location where I want to, let's say Theodosia. Is that published anywhere?

A. They were certainly public in 1986. Beyond that date I don't know.

Q. Are you aware of any document since 1998 which laid out what an owner would need to do to understand whether his logs were remote or nonremote?

A. Other than the policy documents themselves which suggest that you check with the policy makers, no.

Q. So, there is no definition? You check with the policy makers; right?

A. There was no published definition at that time, no.

Q. Or even now?

A. The one from '86 still stands.

Q. The one from '86 still stands?

A. Yes, it does.

Q. And are you saying that this embodies the 1986 document?
A. My statement in 76?
Q. Yes.
A. I had not found that document by that time, but that is essentially what it means, yes.
Q. That's your interpretation.

Now, has anybody since 1998 said to the industry, "This is the document that we are relying upon" or "even these are the criteria we are relying upon to determine whether you have got to tow your logs at some expense from a remote location to a nonremote location"?
A. If I had been asked, we would have gone into it. I was never asked.
Q. Has anything been published? That's all I'm asking.

A. No, not that I'm aware of.
Q. Okay, thank you.
If you go to your Supplemental Affidavit, please.

MR. NASH: I just say that at this stage and further, I don't plan on referring to any TEAC minutes, which were the restricted access documents,
and so in that case I would ask that our clients and
other representatives that left be allowed back in
the room.

ARBITRATOR ROWLEY: It's open to the
public?

MR. NASH: It's open to the public. Thank
you.

(End of open session. Confidential
business information redacted.)

CONFIDENTIAL SESSION.

BY MR. NASH:

Q. If you go to Page 10 of your Affidavit at
Paragraph 31.

A. Yes.

Q. Now, this Affidavit was sworn a little
later on the 19th of March 2009, just this year. I
gather, sometime between May 7th and March 19, 2009,
you became aware of Exhibit 28, the 1986 document;
is that right?
A. That would be correct, yes.

Q. So, when you swore your first Affidavit, you weren't aware of the document, and when you swore your second Affidavit you became aware of it; correct?

A. No, I misrepresent. It was in my initial Affidavit. I had to have known it was there.

Q. Well, there is no reference—okay, I will accept that.

First of all, you say the top of the headline on the Page H, "BCMoF has a clear and consistent Remoteness Rule," and then you cite the

1 TEAC: "Remoteness is first established during a
2 TEAC meeting on December 5th, 1986."
3 Right?
4 A. That's correct.
5 Q. And we have confirmed that that clear and consistent Remoteness Rule has never been circulated
6 to the industry.
7 A. Other than at that time as I'm aware of, it was certainly—at that time.
8 Q. And you're aware of that second-hand; is that right?
9 A. By review of documentation that it had been
13 discussed, yes.
14     Q. I see.
15     So, there is other documents that reference
16 that this was discussed back in 1986?
17     A. I think Clause 32 here suggests exactly
18 what I'm talking about.
19     Q. So, there was a meeting. This clear and
20 consistent Remoteness Rule was discussed at a
21 meeting on January 12, 1987, confirmed that it was
22 understood and accepted as it was, and you say that

562

1 Mr. Ringma was employed by a certain company which
2 was represented at that meeting by another person.
3 And are you saying that's the notification
4 by which the public should be aware, the industry
5 should be aware that that was the definition of
6 remote?
7     A. The participants of that meeting was the
8 industry at large of which that company was one of
9 the members.
10     Q. And you reviewed a minute of that meeting;
11 is that right?
12     A. It was--I don't know if it was exactly a
13 minute, but it was certainly a review of what went
14 on in the meeting.
Q. And was that minute produced in these proceedings?
A. I'm not sure.
Q. Okay. So, going back, then, to Paragraph 76 and your rough definition and your words "requiring an inordinate amount of time" at Paragraph 76 of your first Affidavit, I would like to turn you to document 106 from the Claimant's Schedule of Documents.

And that's an e-mail?
MS. TABET: Sorry, Mr. Nash, could you direct us to where this is on the record, please.
MR. NASH: I'm sorry, it's Tab 106 of the Claimant's Schedule of Documents.
MS. TABET: That's not on the record.
Oh, I thought that the agreement was that documents that were going to be referred in these proceedings were going to be the documents that were produced with submissions.
MR. NASH: There may be some confusion. It may be the Reply Schedule.
MR. APPLETON: My understanding is that this is Tab 106 of the Claimant's Schedule of
"Do you recall when the 2,800 cubic meter minimum volume for advertising in remote locations was put into place? Was it written down anywhere that would describe the areas considered to be remote?"

"I would describe what we used today to be those areas that require barging of logs."

So, you wrote that e-mail to Mr. Walders?

A. I wrote that as part of a question, yes.

Q. To Mr. Walders?

A. To Mr. Walders, yes, because he was very involved in the industry and—or with the Ministry but with the export part at that time.

Q. And he had been involved with the Ministry on the export side for a long time.

A. A number of years. I don't know how many.

Q. He's quite experienced in the area?

A. I would say so, yes.
Q. And he was the guy that you would think would be the go-to guy to find out what that policy was?
A. He was certainly a point of first contact, yes.

Q. And this is three years after you have been on TEAC. You just told us that you got your knowledge through your involvement in TEAC. Do you want to correct the record that you didn't know from TEAC what the policy was and that you had a general consideration that it would require barging of logs?
A. To tell you the truth, this has probably not come up in TEAC at all.
Q. It had not come up?
A. No.
Q. I could have sworn you told me five minutes ago that you had been on TEAC for three years and that your understanding of what remote was had come from the discussions about--around the table at TEAC.
A. I believe there was one application that had come up where remote was an issue. That particular operation was a barge operation. I asked the general question, you know, what is this defined
as, and I received a general, very general,
discussion or description of what it was.

Q. Very general description from the members

A. That's correct.

And Mr. Ruhl, who was a prior policy
forester.

Q. And that's what you were going with?

A. At that time, yes.

Q. Right.

So, in any event, on April 2nd, you didn't
know whether it was written down or what exactly it
involved, so you wrote to Mr. Walders, and he wrote
back to you the same day: "John, the 2,800 cubic
meter minimum was originally put in place based on a
recommendation from the old LEAC, the constraint was
subsequently reviewed by TEAC around 15 years ago,
and the minutes of that meeting reaffirmed that
requirement."

Now, if you just for a moment track the
words of your Paragraph 76 to the next words in that
e-mail--do you have both documents in front of you?

A. This is from my original Affidavit?

Q. Yes, Paragraph 76.
Q. And then the second sentence, your Affidavit starts, "The concept of remote areas of the B.C. Coast is roughly defined," and from that point on the wording is virtually identical to Mr. Walders's e-mail back to you: "Remote was roughly defined as any location requiring an inordinate--roughly defined, any location requiring an inordinate amount of time or cost to access from the lower mainland log market. Previous adjudications by TEAC suggest that anything over a half day return travel time and/or a couple of hours air charter cost would be considered remote."

I'm going to suggest to you that you essentially cut and paste what was in Mr. Walders's e-mail, and you put it into your Affidavit. Isn't that true?

A. Yes, that would be true. That's information I had available.

Q. Okay. And yet you say this has been a clearly defined policy for many, many years, applied since 1986.

A. I said the policy has been applied where
needed. It has not been needed.

Q. Mr. Walders goes on: "In my view, there are a fair number of locations that are remote where barging is not required, i.e. the Head of Knight's Inlet."

So, there seems to be a debate going on between you and Mr. Walders. You think that remote areas are those areas that require barging of logs, and he thinks that they are areas where barging may not be required or may include areas that may not be required.

A. I actually--certainly an area that's barging requires some consideration of remoteness, but as the wording there says, other areas that don't require barging also have to have consideration.

Q. And how was that debate resolved, barging versus nonbarging, between you and Mr. Walders?

A. There is no debate on the barging.

Q. Well, your position seems to be that it requires areas that require barging of logs are remote?
A. Clearly they are, yes.
Q. Yes.
And his view there are a number of locations that are remote where barging is not required.
A. That's true, yes.
Q. Right.
So, it could be towing?
A. That would be the case, yes.
Q. And that might be what he might tell a member of the public or a member of the industry if the industry called him; right?
A. I suppose. At this time what I was referring to him he was not in that role.
Q. So, did you think towing was included as a criteria for determining what was remote and nonremote, after this exchange of e-mails?
A. Well, certainly I did.
Q. And are you maintaining a position here today that this policy was clear, and it was clear from 1986?
A. Clear to who?
Q. Clear to anyone who wanted to know, any member of the industry who wanted to have a definition of is this remote, do I have to tow, or can I advertise at my location?
A. I was not absolutely clear other than these references as you can see with Mr. Walders and what I eventually found in the document research process. What I view the knowledge in the industry as being clear, the issue very rarely, if ever, came up.

Q. So, to answer my question, it was never clearly laid out to the public, to the industry as to what the definition of "remote" was. And, in fact, there was a debate within the Ministry of Forests as to exactly the nature of that definition; correct? Is that fair?
A. No, I don't believe there was a debate. I believe what you see here is approximating what that policy was.

Q. What is your understanding of what the Federal definition of "remote" is? Is it the same as the Provincial?
A. I don't--I do not know that.

Q. So, you sit on this TEAC/FTEAC committee. You prepare all the materials for the committee,
you're the secretary of the committee, and you're
telling me you don't know whether the Federal
Government has a definition of "remote" that it
uses?
A. I can't speak to them having a different
one than this one, no.
Q. Do you believe that they use this one?
A. I believe they do, yes.
Q. Okay. Can you turn to Ms. Korecky's
Affidavit. This is a restricted access document, I
see. It's on the issue of remoteness. The meeting
will remain open to the public.
If you could look at Ms. Korecky's
Affidavit, her first Affidavit, Page 21.
A. Yes.
Q. Paragraph 85, second sentence: "'Remote
area' is defined in the industry as areas from which
logs must be barged rather than towed."
Is that your understanding of the Federal
definition of "remote"?
A. I see what I have read. I don't know that.
Q. I don't know one way or the other.
Mr. President, I see the time is moving on.
What I'm going to offer up as a suggestion is that
we break now, and I will review my notes, and if I have any further questions, come back after the break and ask those, if that pleases the Tribunal.

PRESIDENT ORREGO VICUÑA: Yes, that's quite reasonable, but I'm concerned not just about ending the examination of Mr. Cook, but what is likely to happen next.

MR. NASH: Yes.

PRESIDENT ORREGO VICUÑA: Do you have any thought? Because after 5:30 we are not going on, and the next witness would have to be rolled over to Wednesday and whatever else. Are you all aware of that?

MR. NASH: Yes, and I tried to take that into account in considering the questions I may have for Ms. Korecky, which will be a much shorter cross-examination.

PRESIDENT ORREGO VICUÑA: Okay. It's your time and leveled to your own distribution, so we break until 4:30.

MR. NASH: Thank you.

(Brief recess.)

PRESIDENT ORREGO VICUÑA: Mr. Nash, you may proceed, please.
MR. NASH: Thank you, Mr. President.

BY MR. NASH:

Q. How are TEAC members and FTEAC members paid?

A. Members of TEAC receive an honorarium.

Q. Are they all paid the same honorarium?

A. The members paid one rate, and the chair is paid slightly more.

Q. And is that the same for FTEAC?

A. The only payment comes from the Province.

Q. Are all members of TEAC and FTEAC representatives of the Canadian companies?

A. I believe they are, yes.

Q. Now, in the Forest Act, Forestry Act, if you turn to Tab 6 of the Investor's Core Bundle of Documents, you will see there, if you turn to Page 1 of the Act, after the Table of Contents...

A. Yes, I've got it, yeah.

Q. This is a handout that is distributed by the Province of British Columbia?

A. That's true.

Q. It's just a handout?

A. This policy document was a handout by the Government in 1999.
Q. Right.

And the Act provides in Section 127, "Unless exempted under this part, timber that is harvested from Crown Land from land granted by the Government after March 12, 1906, or from land granted by the Government on or before March 12, 1906, in a tree farm licensed area and with residue produced from the timber must be"--and then there is "use in British Columbia or manufacture."

The words start out "unless exempted," and there is the March 12, 1906, demarcation line.

Before March 12, 1906, it seems to be these are referred to as "Federal Lands."

A. Right.

Q. Post-March 12, 1906, are referred to as "Provincial Lands."

A. That's correct.

Q. Now, do you know the reason for that distinction between pre-March 12, 1906, and post-March 12, 1906?

A. Yes, I do.

Q. What is the reason for that?

A. On March the 12th of 1906, the Timber Manufacture Act in the Province was proclaimed,
which changed the provincial desire of how they
wanted to manage timber.

Q. So they--so, this Act which was passed, the
Forestry Act which was passed, Forest Act passed
much later, simply continued that demarcation line?
A. That was a key demarcation in history that
set out a different standard of ownership of timber.
Q. Now, it's an arbitrary line, though, isn't
it? You could choose any date, couldn't you?
A. No, this was the day the Act was enforced,
enacted.
Q. So, the--what are federally regulated or

Federal Lands in British Columbia? What are
Federal/Private Lands in British Columbia?
A. Federal/Private--other than lands granted
prior to 1906, or are you referring to the lands
granted--
Q. I'm referring to--when you used the term
"Federal Lands," what are they?
A. When I refer to "Federal Lands," they're
referring to lands granted to private interests
prior to March of 1906.
Q. They're actually Provincial Lands, aren't
they?
A. The lands are within the Province.
Q. And they're in all respects regulated by the Province. They're lands located in the territory of British Columbia are under Provincial jurisdiction; correct?
A. In most issues and manners, yes.
Q. Other than Federal parks or things like that; right?
A. Correct. And reserves would be different, as well.

Q. So, the lands that Merrill & Ring owns are not only Federal Lands. They're not in a land--they aren't lands in Federal jurisdiction; they're lands that are simply regulated federally; is that it?
A. They're Provincial, they're lands within the Province of B.C. that were granted prior to March of 1906, which gives them a different designation for the timber that's on them.
Q. For timber purposes only?
A. Timber is the one I'm most aware. There may be others; I'm not clear on what those would be, but they are not my concern.
Q. So, it appears there is an information circular, if you go to the next page, timber not
covered by the Forest Act in this handout in Paragraph 1.4, that the Province is advised owners of those lands granted prior to March 12, 1906, except when such land is in a tree farm license under Federal jurisdiction. Right?

A. Right.

Q. And that is the document relied upon to determine Federal jurisdiction over Merrill & Ring's lands; correct?

A. This is a document used generally for Provincial Lands. This is just pointing somebody—if they are Federal Lands, they're subject to a different set of policy.

Q. So, this is the advisory to those owners; that's what that is. This is simply an advisory?

A. This would be in the nature of an advisory to them, right.

Q. Could you turn to the Investor's Request for Documents from Canada, and turn to, if you will, to number 37, which reads: "Documents since April 1st, 1998, evidencing the TEAC/FTEAC rule that an offer is considered fair if it is within 5 percent of the current domestic market value of the logs."
Q. The request was for documents since April 1st, 1998, evidencing the TEAC/FTEAC rule that an offer is considered fair if it is within 5 percent of the current domestic market value of the logs. Do you see that?

A. Yes, I do.

Q. And in response to that request, you swore a certificate on the 13th day of August 2008. That's correct.

Q. Certifying that there were no records after a comprehensive, extensive, and thorough search; correct?

A. I could find no documents discussing the 5 percent, no.

Q. And you were tasked with trying to find the 5 percent rule for both TEAC and FTEAC?

A. I reviewed it from what records I had in
the Province. I believe there was a comparable
search going on for the FTEAC in Ottawa.

Q. Thank you, Mr. Cook. Those are my
questions.

PRESIDENT ORREGO VICUÑA: Thank you,
Mr. Nash.

Are there other redirect questions?

MS. TABET: Yes.

REDIRECT EXAMINATION

BY MS. TABET:

Q. Mr. Cook, I won't be long. I know you have
been very patient.

Mr. Nash took you through a few of the
minutes where there were examples of offers that had
been withdrawn.

Would you know why an offer was withdrawn?

A. I would not know directly, no.

Q. Now, Mr. Nash also referred to several
cases where—not cases. He referred to the fact
that companies felt, like his client felt, they were
being held with a gun to their head.

Were you ever provided any evidence of that
kind of blackmailing, what they call blockmailing,
that kind of behavior by private companies?
A. It was raised in discussion or phone calls occasionally, but no evidence was ever provided of it, no.

Q. So, general allegations?

A. That's all.

And not frequently, either.

Q. I think Mr. Nash also took you through a few of the TEAC minutes, and I won't go through this because we are in an open session, but generally speaking, is it your sense that both log buyers and log sellers are represented at those meetings?

A. Generally they are, short of the occasional absence of a member, but otherwise, yes, they are.

Q. And since you have been the Secretary to TEAC, has there always been a Federal representative attending the meetings?

A. Since I have been the Secretary, I can't recall any meetings where there was not a Federal representative in attendance or on a conference call.

Q. Now, we spent quite a bit of time on the issue of "remoteness" today. You said, I think, that it came up once. Can you give me a sense of why that issue wouldn't come up more than once?
A. I would only have to surmise that either it wasn't an issue to people or they understood it.

MS. TABET: Just give me a moment.

(Pause.)

BY MS. TABET:

Q. Let me take you back to Tab 12 of your first Affidavit. I think Mr. Nash took you to this document. It's on standing exemption.

A. That's correct, yeah. I only see 161.

Q. Could we go back maybe to the map that you were showing us earlier, and you can show us where this exemption—I think there was a map in the back of that document.

A. Next page.

Q. You're right, you're right.

Is there anywhere near where Merrill & Ring's lands are situated?

A. It's quite a bit north of their lands, yes.

Q. And can you tell me why an exemption was granted for that area?

A. This area has quite high costs relative to the need to barge any timber out of the area. The
costs of operating in there are extremely difficult.
The quality of the timber is not the greatest.
Generally there's pockets, but generally not the
greatest.
The harvesting in the area was quite down
as a result of various situations within the
marketplace. There was no mills in the area at all,
not that there had ever really been mills in that
immediate area.
The participants that were requesting the
exports made a reasonable case for a blanket export,
and the Minister accepted it.
Q. Thank you. I think those are all my
questions. The Tribunal may have some questions for
you.
PRESIDENT ORREGO VICUÑA: Thank you,
Ms. Tabet.
QUESTIONS FROM THE TRIBUNAL
ARBITRATOR DAM: Yes, I had a question.
My recollection is that, during the morning
proceedings, there was a discussion of how someone
might complain who wished to export logs about the
way in which the rules worked or the way in which
the committees worked, and the question was what the
remedy was, and my recollection is there was
allusion or reference to complaining.

Did any complaints come before you or the
committee, the two committees, about the fairness of
the procedures or fairness of the rulings? You said
something about that in your testimony just at the
end, in general, but if there were complaints that
came to you or came to your attention, how were they
handled?

THE WITNESS: Complaints do occasionally
come in, quite correct. If there is some evidence
to back up what the complaint is, I will certainly
attempt to take some action on it, and if it
requires it, further review through committee. If
it doesn't require it through committee, I have some
latitude to act to make recommendations towards the
Minister on my own, if that's what it requires. But
certainly most of the people in the industry know
who I am. I'm only a phone call away or e-mail away
if they have a question, and they are prepared to do

that.
ARBITRATOR DAM: And you have done so?

THE WITNESS: I have done so, yes. It doesn't happen often, but it does come up.

ARBITRATOR DAM: I don't wish to pursue that, but I was wondering what your practice was.

THE WITNESS: My practice is to at least react to something if there is something concrete. I mean, if I get a complaint of just a very general nature with no real facts to back it up, it's pretty difficult to do anything about it. I may ask around to see what I could find out, but without anything factual to work from, I really have no grounds to do it.

ARBITRATOR DAM: And there are no rules or regulations or written documents about how to handle it. You just handle this and certain matters as an administrative matter?

THE WITNESS: Yes.

ARBITRATOR DAM: All right. Thank you very much.

ARBITRATOR ROWLEY: Mr. Cook, I don't have an exact reference, so please, I'm not trying to put words in your mouth. But at the beginning of your testimony, you spoke about the meetings of TEAC and
FTEAC and that one of the first things that occurred once the fiscal meeting was underway was that the market valuation component of the meeting took place. Am I right?

THE WITNESS: That's right, yes.

ARBITRATOR ROWLEY: And perhaps I've got this wrong—my notes aren't helping me as much as I would like—I have some recollection you said something about a two-page document with a series of classes or something of the sort, but I don't want to put words in your mouth. Tell me about the valuation component of the meetings. How did you and the other Members of the Committees come to market valuations, and specifically were you seeking to value timber generally under its various classes and grades and sorts that you normally saw, or were you seeking to value timber only with respect to the applications for which there were offers before you?

THE WITNESS: No, in every case we reviewed the whole marketplace. I'd probably sent a two-page document for the Coast. It's approximately that. We would review for each species each for things like Douglas-fir, hem-bat, and cedar, there is probably six or seven sorts that were normally
reviewed and given a price to so there is some
continuity to it so we could look at trends over
time, if need be.

So, they're fairly common sorts that are
showing up in the marketplace and often are ones
that show up in the export marketplace as well, so
the ones we commonly have to deal with.

So, every specie that is traded generally
and every sort that is commonly traded is reviewed
on an individual basis. A price is created based on
evidence in the marketplace for at individual
species and individual sort.

ARBITRATOR ROWLEY: So, presumably you have
some sort of a laundry list of types and sorts?

THE WITNESS: Yes, I basically have a copy
page and form and away we go. Here are the common
ones we do, and there are occasions when sorts will
go out of favor and we will adjust and readjust to
whatever the new particular sort might be.

ARBITRATOR ROWLEY: And that form that you
commonly use, sometimes adjusted, would be used from
meeting to meeting, the same form?

THE WITNESS: The same form is used, and
it's refilled with numbers for the next month, yes.
And that each meeting is a price filled into a blank in the form for each of the sorts and grades?

That's right. That's what happens, yes.

And you keep a record of this on a running basis, do you?

I keep a summary of it, yes.

And then once that is done—and here I am leading, and I hate to do it, but I just want to move along—do you then look at the applications that are before you for which there are offers and compare the offer to the market valuation on your form?

That's what we do. We line it up with the appropriate spot and on the form and compare that price that we've established to see how and where it balances out.

Thank you.

One additional question which is related to this last line, how do you determine, say, the open market price for logs generally? Is there a kind of Stock Exchange where all the transactions are listed, or is it based
on--what sort of source? I have no idea. It's out of ignorance, and I thought you may be able to--

THE WITNESS: The Vancouver Log Market is an amazing place. The sorts that are generally traded on the market are the ones that we are dealing with, so the day-to-day market of virtually all of the volume that's traded within--for the mills in the local area are running through that marketplace. We are seeing a very small component of it. But the Members of the Committee are part of that marketplace or they are individuals who are active in it, and very, very conversant on what the day-to-day goings-on of the market are and what its values are. That's one of the criteria of them being in the committee, is to have that good base of knowledge.

PRESIDENT ORREGO VICUNA: And is that objective? Is that a price that you can see in the newspaper, or is it something that someone might say, "Look, I heard that the boom was sold for 10. When I look, it went for 15." How does it work?

THE WITNESS: Most of the Vancouver Log Market works on a verbal basis. There certainly are periodicals, various newspapers related to the
market that do come out. We have— I have those
generally as a cross-reference to see where things
balancing, and by and large they are the same thing.
The issue on those is the publication of
some of those documents has lagged a bit to when we
are holding the meetings, so I don't always have
them in time for the meeting if I was relying on
something on paper, so it's much more immediate to
be able to use the committee members themselves and
their knowledge of the marketplace.

PRESIDENT ORREGO VICUÑA: Okay. But just
to figure it out in my mind, is it a sort of fish
market, that someone will come, I have a basket
here—

THE WITNESS: I would say almost, yes.
PRESIDENT ORREGO VICUÑA: Just to clarify
in my own mind.

THE WITNESS: I believe another one of our
witnesses may be able to answer that a little bit
better for you.
PRESIDENT ORREGO VICUÑA: That's perfect.
Thank you, Mr. Cook.

Oh, sorry, you had a question?
FURTHER REDIRECT EXAMINATION

BY MS. TABET:

Q. Just as a follow-up on Mr. Rowley's questions, it's difficult to understand how the market-review process, how the individual application, how you then measure it to the market-review process.

So, can you just explain that a little bit how you fit that individual application in the market-review process. Is there like--in your

market-review process, is there a specific number, or is it a range, and how do you see where the application--how do you know where the application fits in?

A. Well, the sorts, of course, are a definition; say, Douglas-fir gang is a good example. Douglas-fir gang in the marketplace will be receiving it, and at some point in time perhaps $80, or maybe we have a range from 80 to $85 because there has been a number of transactions that sort of span that range that had gone on in the period of concern.

We then would look at the applications, that applications have had an offer from somebody
for a fir gang boom and the offer is provided at perhaps $70, or perhaps it's $90. It could be anywhere. That offer is known to the committee. It's written down in the same terms as the review is done or the market review is done. We literally compare those numbers. If there is some deviation from the price, we will look at the data in front of us to see if there is some reason that we can determine why the price is different, and basically we balance all of those factors out in determining the final market and whether the offer is fair or not.

Q. Now, I think you've talked about some of those factors, but can you be more specific because what makes the difference—we heard earlier the tree is a tree, but obviously not if some of them are sold at $50 and some at 150, so there is the sort, and there are some other factors that will affect the price.

A. Certainly. Within the sort, there is variation. You could have a fir gang sort that is approaching the higher end of the dimension average, the log diameters. You could have a sort that's at a lower end of the dimension average because there
is bounds for the sort itself for what fits in it.

So, if you have a boom that contains a predominance of smaller trees, it will have a lower price. There is also log grade considered. If you have in the B.C. Coastal market, "J" grade is certainly a gang log primarily. However, you may also have "U" grade, you may also have "I" grades. Those grades have a bearing on the values, so those have to be adjudicated to determine where the proper value is.

Q. Thank you, Mr. Cook.

FURTHER QUESTIONS FROM THE TRIBUNAL

ARBITRATOR DAM: I admit to being somewhat confused about the discussion of the 5 percent rule or whatever it is, 5 percent of the market price that if it's within 5 percent of THE market—if the offer is within 5 percent of the market price, A certain conclusion is made. But is that market price a point, or is it a spread so it's 5 percent from the edge of the spectrum or the spread or 5 percent from the mean, or is this more of a seat-of-the-pants judgment as to whether it's basically in the same range as prior transactions? Because, of course, all transactions will be prior
to the decision being made. So, I just didn't
understand the status of the 5 percent rule and how
it's applied in the sense of 5 percent from what
mean or three standard deviations or what.

THE WITNESS: Most of us there aren't
mathematicians.

Most of the prices are a single number for
the average, whether it's $80 or it's a hundred
dollars. There are some that you will get it's $95
to a hundred dollars, so it is a range. The
5 percent, is it below the lowest range? Is it
5 percent below the 95?

But remembering that the 5 percent is not
an absolute; it's an approximation; it's a
reasonableness test. Very rarely am I aware it's
been anywhere close to that in most cases. So, it's
very infrequently that the 5 percent rule really
needs to be considered. The offers are usually very
obviously fair or clearly well beyond a level that
would be considered, you know, below the level of
fair.

ARBITRATOR DAM: Thank you.

Please remind me where the 5 percent rule
is written down.
THE WITNESS: It is not written down.

ARBITRATOR DAM: It is not written down.

THE WITNESS: Because it is not an absolute.

ARBITRATOR DAM: But it is a general understanding that there is a 5 percent rule. Is that what you're saying?

THE WITNESS: It's a ballpark figure within the committee that we work with, yes.

ARBITRATOR DAM: Thank you.

PRESIDENT ORREGO VICUÑA: Okay, Mr. Cook, thank you very much for your participation. You are excused now.

(Witness steps down.)

PRESIDENT ORREGO VICUÑA: What would you like to do? Call in Ms. Korecky?

MS. TABET: We don't have time to get through the direct examination, so I suggest we do it tomorrow.

PRESIDENT ORREGO VICUÑA: So, you will have to accommodate that situation tomorrow, and you will have to take into account the three witnesses that are on for tomorrow, as well. How do you plan to handle that?
MS. TABET: Could Ms. Obadia remind us of the time used by the parties today.

MR. APPLETON: Before we do that, Mr. President, I would just remind everyone that I think we should try to use what time we have. To the extent we can do it, there would be—if we could get a start on this, I think we would get a good chunk of this underway, and then that way we would be in a position—there would be no—we certainly won't start our cross-examination tonight, so there will be no issue of breaking the witness in that type of way, but I think we could get this underway, and I think that would be the most effective thing, if we could do it. But it's up to the Tribunal, of course.

PRESIDENT ORREGO VICUÑA: But if I understood you rightly, Ms. Tabet, you won't be able to finish your direct examination in 20 minutes?

MS. TABET: Yes.

PRESIDENT ORREGO VICUÑA: Is that right?

MS. TABET: That's correct.

(Tribunal conferring.)
PRESIDENT ORREGO VICUÑA: Fine. The Tribunal has considered the situation, and thinks that it's better to start right now with Ms. Korecky, go as far as it will go by 5:30 and break there and then continue on tomorrow. But I must mention to you that we would not like to have much of a rollover because there is the situation of Friday in which Mr. Howse will allow to participate, but the parties want to have Friday off to prepare for Saturday. So, if we start rolling, then on Thursday at 5:30 you will ask for rolling on someone to Friday, and that will be a problem for you. Is it not right?

MS. TABET: Mr. President, I believe we have been fairly short to date, and we haven't abused your patience in terms of direct or redirect, so--and I am prepared to certainly try to do that again.

PRESIDENT ORREGO VICUÑA: Okay. So, we will start now with Ms. Korecky.

MS. TABET: May I ask Ms. Obadia to give us a time count, please.
SECRETARY OBADIA: Two days for witnesses and expert: For the Investor we have had six hours and three minutes, and for Canada one hour and forty-three minutes.

JUDY KORECKY, RESPONDENT'S WITNESS, CALLED DIRECT EXAMINATION

BY MS. TABET:

Q. Ms. Korecky, I understand you're the Deputy Director at the Export Control Division?

A. Certainly.

Q. I'm sorry, please read the Witness Declaration first.

A. Certainly.

I solemnly declare upon my honor and conscience that I shall speak the truth, the whole truth, and nothing but the truth.

Good afternoon, all.

Q. Thank you, Ms. Korecky.

So, I was going to ask you to explain your responsibility as Deputy Director of the Export Control Division.

A. Certainly.

As Ms. Tabet mentioned, I'm the Deputy Director of the Export Control Division responsible
ARBITRATOR ROWLEY: Would you move the microphone closer to you.

THE WITNESS: As the Deputy Director of the Export Controls Division, Policy and Regulatory, I'm responsible for managing all policies and regulations related to the export side of the Export and Import Permits Act. The items that we control for export are found on our Export Control List, which you have a copy in my exhibits. It is actually a list that is some 200 pages long which logs are one line item.

With respect to logs, I'm the Federal representative on FTEAC. I'm also responsible for administering Notice 102, and for making some of the decisions with respect to log export controls.

Q. So I understand that part of your functions are to make recommendations to the Minister?

A. I act—in certain instances I make recommendations to the Minister because the decisions of those that would be required to be made by the Minister, and other instances I act as the Minister's delegate and make certain decisions at my own level.
Q. And Ms. Korecky, can you tell me who
Ms. Sabatino and Mr. Heinz are.
A. Certainly.
Ms. Sabatino is a Senior Officer in our
Division, and she was the Acting Deputy Director
while I was away on my year-long maternity leave.
Blair Heinz is one of my senior officers.
He is intimately involved with me in log export
controls, and has been for two-and-a-half years.
Q. And, Ms. Korecky, what do you know about
the log industry?
A. I have a general understanding of the log
industry. In my role at DFAIT, I'm not required to
be a subject matter expert, and that is precisely
why we have a consultative committee.
And I would point out that we have--in the
log export control process, we engage in
consultations on most of those areas in which a
permit is required. We certainly cannot be subject

matter experts over the wide range of items and the
different considerations that are required.
So, the consultative process is something
that is not--slow down? Certainly.
The consultative process is not something
that is limited to logs but is something that we do on a regular basis with respect to all Export Permits.

Q. Ms. Korecky, I will ask you to slow down because I know David cannot take notes--

A. Where did you lose me? You've got me now, good.

Q. I believe you were talking about the consultative process, so with respect to logs, is there a consultative process?

A. Certainly. We have an Advisory Committee called the FTEAC, the Federal Timber Export Advisory Committee, which is made up of a group of industry experts who provide us advice with respect to the adjudication of individual offers, with respect to general market practices, with respect to the general state of the industry at a given point in time.

And as you will see from Notice 102, they also assist us in making certain assessments with respect to the validity of offers.

Q. You've referred to Notice 102, and we have discussed it, but in your own words, can you tell us what Notice 102 is.
A. Certainly.

Notice 102 is a policy statement that was issued by the Minister of Foreign Affairs in 1998 which sets out the procedures that are applicable to the export of all logs harvested in B.C. The Notice deals principally with the procedures related to the export of logs that fall under Federal jurisdiction. There is a brief mention of the linkage to where one ought to go for the specific procedures related to Provincial log exports as well as the process to be followed for the export of logs from aboriginal lands. But for the first part, the six-page notice—I would say five pages—relates directly to the process relating to the export of logs that fall under Federal jurisdiction.

Q. And can you tell us what logs under Federal jurisdictions are.

A. Could you please reframe your question.

Q. What are logs that are under Federal jurisdiction? You said "Federal jurisdiction."

A. Those are the logs that were granted by the Crown to private individuals prior to March 12, 1906.

Q. And--
A. As well as those logs that fall under--on aboriginal lands.

Q. And why this date of 1906?

A. There was obviously a jurisdictional shift on that date.

Q. Can you explain that.

A. I do not know the specific reason for which a jurisdictional shift took place at that point in time, but certainly lands that were granted by the Federal Crown were granted those before March 12, 1906, and those that were granted afterwards fell under Provincial jurisdiction.

Q. Fair enough. You're not an constitutional expert?

A. I'm not a constitutional expert.

I wasn't aware that the jurisdiction of Federal Lands and Provincials Lands were under--at issue in this case.

Q. Now, what was the situation before Notice 102?

A. Prior to Notice 102, Notice 23 was in place, and that dated from 1986 to 1998. Prior to that time, there was another policy in place dating back to 1967. Prior that, there were quota
restrictions. But I would state that from the outset starting--there was 42 of 43 log export controls have been in place with respect to the export of all logs from Canada.

Q. Now, with respect to the situation in British Columbia and the process for log exports from British Columbia, has there been any substantial changes from Notice 23 to Notice 102?

A. From the industry perspective, not really. Under both of those notices, companies are obligated to advertise their logs for export for a two-week period. Companies that choose to make offers on those logs must do so within that two-week period, and then those offers are considered by FTEAC. A recommendation is provided.

The distinction is, from a procedural perspective which is internal to us, that under Notice 23 the committee would provide a determination. Under Notice 102, the committee provides a recommendation. And the mandate of the committee is narrower to the extent that they are looking solely at the fair market value assessment of that particular offer and certain narrow areas related to the validity that are set out in
Section 4 of Notice 102. At which point in time if there is no offer, a boom is declared surplus—it's the same under both processes—and that boom would be issued a Surplus Letter, and then a company who owns that boom would be free to apply or not for a permit for a four-month period after that point in time. And there is a possibility of a limited extension on that surplus validity period.

If an offer has been received and FTEAC has reviewed that offer, determined that it is a valid fair market value offer, if I then look at that recommendation along with other factors, make a determination that that boom is not surplussed to domestic need, then that Surplus Letter is issued to the company with respect to that boom.

If, on the other hand, a determination is made by DFAIT that that boom is surplus to domestic need, they will receive a Surplus Letter.

Q. And the next step after that for them to obtain to be able to export their logs is what?

A. If they have a Surplus Letter, in some 60 percent of instances, they will actually apply for a permit.

Q. So, they don't apply for permits every time
their logs are declared surplus?

A. No, I think that consistently over the industry standard on the Federal side they only apply for permits 60 percent of the time that they're granted surplus status.

Q. Now, how long does this process take?

A. The process takes--are you--just to clarify because we did automate our system two years ago.

Would you like me to speak to the current process?

Q. Would you describe both, please, because I think the period of issue in this arbitration straddles potentially both.

A. Certainly.

Prior to April 1st, 2006, we were running a paper process, and companies would apply to advertise their logs directly to British Columbia. There would be a 10-day period during which time the application was processed, and I think the example came forward on a Tuesday, so it's a good thing we are speaking on a Tuesday, so I would say for this Tuesday the application to advertise would be received. Next Friday the boom would be advertised for two-week period. And if no offer had been received by the following Monday--Tuesday,
And the company would then come in by a paper again for that Export Permit application, and that Export Permit application would be processed manually. So, that process would have taken 10 days to get into the advertising system, a two-week advertising period, and then within a few days a Surplus Letter would be issued. And from our perspective, that is the process.

Q. So--

A. I will add that up for you.

So, 10 days plus another two weeks, that's 24 days, that makes 28 days on average.

And again, from our perspective, that is where our time line begins and ends because companies are then free to choose to apply for a permit or not--and again, they only apply for permit in 60 percent of instances, and they may apply for a permit on the day after they receive the surplus status like they may apply for a permit a month
later, two months later, three months later, and we are not responsible for that portion of the time line.

Q. I see.
A. Now, under the automated system--

(Simultaneous conversation.)

Q. So, you were going to describe the new process in place since 2006.
A. Since 2006, we have put in place what we called the EXCOL system, the Export Control On-line system, to deal with all of our Export Permits. We have a specific section. We have spent a fair amount of time and energy to create a system for log export controls only.

As a result of that system, companies now submit their application to advertise to DFAIT, and they must do this by a Tuesday, so again they would then advertise the following Friday. They will advertise for a two-week period, and then their Surplus Letter would be issued the following Monday or Tuesday, at the latest Wednesday. So, there again you have about a 28-day period.

Now, the distinction for the industry lies in the fact that the Surplus Letter is now sitting
so they could self-generate their own permit within seconds.

I would also point out that from a technical perspective--and John Cook refers to this in his Affidavit--that the Provincial Government is also seeking to automate their systems; and, when that comes on line, that front-end 10 days will be shortened, so the process at that point in time should take around three weeks from start to finish when no offers have been received.

Q. And in addition to this automation process in 2006, you have also over time sought to find ways to speed up the process?

A. Certainly.

One example which has been mentioned earlier today relates to our decision to allow companies to move their booms of logs during the advertising period. As was mentioned, previously to the end of 2006, beginning of 2007, companies had to place their logs in one place for the two-week period so that any interested buyers could go to that location and find those logs.
We realized, as the industry was changing, that we ought to change as well, and that we decided to allow companies to move those booms or logs during that advertising period as long as everyone acted in good faith, and a company seeking to view that boom of logs could call the advertising company who then informed them who was towing that boom of logs, and they could contact the towing company and go and view those logs.

And that system, by and large, has worked very well. We have had very few instances where companies have had difficulties with this system to date.

Q. Are you in frequent contact with the industry?

A. Oh, certainly. The industry contacts me on an ongoing basis--e-mails, faxes, telephone calls, letters--and both from the logging side of the industry as well as the milling side of the industry and the offering companies.

Q. Now, we've talked about log export controls being in place with respect to all the logs in
Canada, but why does the surplus test only apply to British Columbia then?

A. The surplus test only applies to British Columbia because of the unique situation of British Columbia. It is distinct from the other Provinces. The reality is that some 90 percent of logs that are exported from Canada are exported from British Columbia, and this is a pretty consistent figure.

Q. What was that percentage?

A. Ninety percent.

Q. And why does the Federal Regime not have some of those standing exemptions like the Provincial Government?

PRESIDENT ORREGO VICUÑA: Ms. Tabet, I'm afraid this is going to be your last question.

MS. TABET: My last question today?

PRESIDENT ORREGO VICUÑA: Today, certainly, so please finish the question or the answer.

THE WITNESS: Certainly.

The Federal Government--let me step back. I think everyone needs to understand that these are two separate regimes that intersect. The
Provincial Government has a broader force management mandate of which log export controls or their domestic manufacturer rule is one element. Our system is limited to log export controls. We have two different constitutional mandates, two different legislative mandates, and the focus of those two regimes is very distinct.

Our Regime is predicated on determining adequate supply and distribution in Canada. That is the limit of our mandate.

BY MS. TABET:

Q. Thank you, Ms. Korecky. We will continue tomorrow.

A. Thank you.

PRESIDENT ORREGO VICUÑA: Yes, we shall do that, and you continue to be a witness under oath until you are over, please.

Great. So, thank you so much, and we meet again tomorrow morning at 9:00.

(Whereupon, at 5:30 p.m., the hearing was adjourned until 9:00 a.m. the following day.)
I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

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DAVID A. KASDAN