

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

- - - - - x
 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

MR. RAAHOOL WATCHMAKER
MR. PATRICK DUMBERRY
MR. SCOTT LITTLE
MS. CÉLINE LÉVESQUE
MR. ERIK LABELLE EASTAUGH
Departments of Justice and Foreign Affairs
and International Trade, Canada
125 Sussex Drive
Ottawa, Ontario K1A 0G2
Canada

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1 P R O C E E D I N G S

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

8 wanted to--now that we've had a careful--an
9 opportunity to review the transcript to bring your
10 attention to those--to that new evidence.

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

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

18 So, in light of the Tribunal Order that
19 preceded these hearings where you decided that we
20 should not be introducing new documents at this
21 stage, we do feel that it was inappropriate for the
22 Investor and their counsel to have done so, and as

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09:03:24 1 well as unfair and contrary to the equality of the
2 parties governing these proceedings.

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

5 PRESIDENT ORREGO VICUÑA: Mr. Appleton.

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

8 I, of course, have not had the opportunity
9 to review the volume of materials that Ms. Tabet has

10 just presented us with. However, I decided to take
11 the leisurely hours that we had available to us
12 after receiving a very excellent transcript last
13 evening from Mr. Kasdan and to review the record.
14 And, in fact, as you will see from my visual aid, I
15 have reviewed the entire record last evening, and I
16 have noted in the record exactly what evidence that
17 has been done and that came in, what was new, what
18 happened to be responsive, and where it's responsive
19 to, and exactly to what it's responsive to. And if
20 you'd like, why don't we take an example. We could
21 take any example. You can pick a card, if you'd
22 like to discuss it because we feel it's such an

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09:04:34 1 important issue that we can deal with this now
2 because it's an important issue we need to dispense
3 with.
4 We are convinced that the evidence that has
5 been presented is responsive, and it is responsive
6 specifically to the issues raised in the
7 supplemental statements by Canada's witnesses saying
8 that there are issues about the authenticity, the
9 veracity, credibility about these very specific
10 witnesses, and it all relates to specific issues
11 raised in the Witness Statements by those witnesses

12 who are being examined. And, in our view, that is
13 exactly the proper scope for a witness hearing.
14 Just the same way as if the members of the Tribunal
15 wish to ask a question of the witness on exactly
16 what they said or exactly the questions posed to
17 their testimony by the witnesses of the other side
18 in their direct.

19 And so our view is that it's going to be
20 very difficult to keep having these objections all
21 the time. We can specifically address these in
22 Ms. Tabet's statement. We can specifically take any

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09:05:44 1 issue. I'm ready to deal with those this morning.

2 But the most important thing is that it is
3 exactly the equality of the parties and the
4 procedure that we are protecting. Both sides are
5 entitled to be able to deal with these types of
6 issues.

7 I point out, for example, that yesterday in
8 the binders that Ms. Tabet circulated--excuse me,
9 could you pass me one of the binders from yesterday,
10 either Mr. Schaaf's or Mr. Stutesman. Canada
11 introduced a new document into the materials.
12 They--excuse me. I get to speak right now,
13 Ms. Tabet, and you'll have your opportunity.

14 So, for example, if we take the--if we take
15 Mr. Stutesman's documents, the one that has three
16 pieces here, you'll see that they're relying on a
17 document from the PricewaterhouseCoopers Report, and
18 that Report, as we all know, is withdrawn. So, that
19 is not in evidence, but yet she had Tab 67 here. I
20 was ready to make an objection at that time. That
21 is, in fact, a new document to the arbitration. She
22 relied on the same document again in Mr. Schaaf's

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09:06:51 1 material.

2 Now, I have no problem admitting documents
3 if we have a proper process to deal with that; and,
4 in fact, for this document, I probably wouldn't have
5 an objection. I think it would be practical and
6 reasonable to deal with it, but there is a process
7 to go through. All I'm saying is practically we
8 need to deal with this and that we have been very
9 careful to ensure that the material is directly
10 responsive and either is exactly in the scope of the
11 Witness Statements, or it is exactly responsive to
12 questions specifically posed by the other witnesses
13 because we don't want to be in the position to
14 recall witnesses because then, when Canada's
15 witnesses come up and say something and we have to

16 bring another witness, we don't want to do that.

17 That wouldn't be efficient, and it wouldn't be

18 orderly, and both sides have exactly the same

19 opportunity.

20 So, I don't want to belabor this, but I

21 thought it was important to deal with this up front

22 in light of the fact I thought it was possible that

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09:07:53 1 Ms. Tabet might bring this this morning, and I don't

2 want this to be an ongoing issue. It's important

3 that we can get this resolved in a workable manner

4 as early as possible.

5 We have nothing further to say on this.

6 PRESIDENT ORREGO VICUÑA: Fine. Thank you,

7 Mr. Appleton.

8 Well, sorry.

9 MS. TABET: May I speak to that?

10 PRESIDENT ORREGO VICUÑA: Please do.

11 MS. TABET: With apologies, I just feel

12 compelled to point to the fact that the new document

13 that Mr. Appleton was referring to is his document,

14 so it's a bit amusing that he refers to as a "new

15 document." Whether he chose to withdraw it or not,

16 it's certainly not a new document.

17 And secondly, by arguing that new evidence

18 is responsive where they've had several
19 opportunities to respond to Canada's objection to
20 their case is also a bit stretching the reality
21 here, in particular when we're talking about new
22 examples, for example, of blockmail that they've

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09:08:58 1 introduced yesterday that we did not have a chance
2 to respond to, and, obviously, did not have a chance
3 to carefully find out what they're talking about or
4 to look at our records.

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

8 MR. APPLETON: Excuse me--oh, all right.
9 Well, the only point I'd like to add is that
10 Ms. Tabet knows that this evidence has all been put
11 before her before she's had the opportunity to
12 cross-examine. She has every opportunity to
13 cross-examine, and it's difficult for us to see that
14 when Ms. Tabet says that she's concerned that there
15 aren't examples in the record about the specific
16 types of allegations that are involved, and then the
17 witnesses give examples on examination, I can't see
18 why she can complain about that. That's exactly
19 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

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09:10:09 1 witnesses.

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

4 (Tribunal conferring.)

5 PRESIDENT ORREGO VICUÑA: Fine. We have
6 had this--you will have been able to appreciate a
7 discussion among ourselves about how to handle this
8 question, and there are two points that the Tribunal
9 would like to make.

10 The first is that, of course, the principle
11 continues to be and has always been and will always
12 be that no new evidence should be introduced at the
13 hearing. There is no question about that.

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

22 of how it worked in practice.

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09:16:08 1 So, would that be taken that there would be
2 new evidence, or is it an elaboration of existing
3 evidence? That's one practical difficulty with
4 which we will be, of course, confronted.

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

19 And for that, on addressing your question
20 to the witness that might be regarded as part of the
21 new, say, development, it would be very useful if
22 the counsel conducting the examination would be able

09:17:46 1 to point that out, saying on this point you had or
2 you are asked to develop a point of view which is in
3 response to or whatever is the case. And then that
4 will have the advantage that first the other party
5 will know what's the situation about, and we will
6 have eventually a chance to react to it in
7 cross-examination or at whatever stage, and then it
8 will be useful for the witness and for the Tribunal
9 to be aware about which is the connection with the
10 statement originally.

11 That is as far as the Tribunal would like
12 to go at this stage. We are, of course, not
13 prepared to say what anyone has marked here or there
14 is or not new evidence that will have to be
15 accepted. So, what we encourage you to do is to
16 develop this kind of practical fair play, warn,
17 advise, and react, and then at the end of the
18 hearing the Tribunal is prepared to look at
19 everything that has been called new evidence and the
20 explanation of why new evidence is new evidence or
21 it is not, and come to a conclusion, say, well, this
22 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 &

2 Ring.

3 PAUL STUTESMAN, INVESTOR'S WITNESS, CALLED

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

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

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09:22:32 1 British Columbia Forest Service or Government or so,
2 should be conveyed to that service because of this
3 competition between two corporations that are

4 working in the same field.

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

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

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

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

21 PRESIDENT ORREGO VICUÑA: Thank you,
22 Mr. Stutesman.

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09:23:49 1 (End of open session. Confidential
2 business information redacted.)
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09:24:02 1

CONFIDENTIAL SESSION

2

DIRECT EXAMINATION

3

BY MR. NASH:

4

Q. Mr. Stutesman, you're the Vice President

5

and General Manager of Merrill & Ring Forest

6

Products?

7

A. Correct.

8 Q. And you're responsible for the marketing
9 and sales for the Merrill & Ring Group?

10 A. Yes.

11 Q. And Merrill & Ring, as you know, has
12 operations obviously in B.C. and in Washington State
13 in the U.S.?

14 A. Correct.

15 Q. Do you do the marketing and sales for
16 Merrill & Ring for all of its logging operations?

17 A. Yes, generally speaking.

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

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09:24:39 1 THE WITNESS: Okay.

2 BY MR. NASH:

3 Q. And you worked in the forest industry for
4 your entire career, 35 years?

5 A. Yes, I have.

6 Q. And what were you doing before you came to
7 Merrill & Ring?

8 A. Just before Merrill & Ring I worked for ITT
9 Rayonier as an Operations and Marketing Manager,

10 marketing logs in the Northwest and to Japan and
11 Korea.

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

15 A. Right.

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

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

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

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

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09:25:35 1 little bit in China.

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

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

10 Q. And how do you go about establishing your
11 customers' needs?

12 A. Well, over time, as you work with
13 customers, you try to understand what they are
14 looking for in terms of a log, who their end use
15 customers are, if they're a wholesaler or if they're
16 a mill, what log and what species and what qualities
17 they're looking for. And then it's an ongoing
18 communication with visiting and E-mails and phone
19 calls and general business stuff.

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

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09:26:36 1 A. Correct.

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

4 A. Right. That's the harder price.

5 Q. The price is the harder part?

6 A. The price is the harder part.

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

10 A. No, generally, they're looking for a
11 quality of log that fits their needs. And if it's a
12 Doug fir log that's a nice Doug fir log, it doesn't
13 matter whether it's from South Coast, North Coast,

14 Longview, wherever, U.S.

15 Q. You mentioned North Coast and South Coast.

16 You're located--Merrill & Ring is located on the

17 South Coast of British Columbia?

18 A. Correct.

19 Q. Do North Coast logs compete with your logs

20 from the South Coast?

21 A. For sure. The customers will say, you

22 know, this is price we're getting for logs out of

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09:27:33 1 Prince Rupert, and, you know, you need to be

2 cognizant of that, et cetera, so it's an interactive

3 marketplace.

4 Q. And do Merrill & Ring's costs of production

5 and delivery play a role insofar as you're aware in

6 the customers' mind in his deliberations over

7 whether to buy logs from Merrill & Ring?

8 A. No, the costs don't play a role. Generally

9 speaking, they're looking at what the market value

10 is for that log and how it compares to what other

11 competitors are supplying them, so costs don't play

12 a role.

13 Q. Mr. Schaaf gave evidence yesterday

14 regarding the harvesting process and the procedures

15 he follows in preparing a harvest, the annual

16 harvest. Can you explain to the Tribunal your role
17 in that process.

18 A. Well, as Norm started yesterday, we sit
19 down several times during the course of the year and
20 look at longer term, shorter term plans, and we do
21 that both for the timberlands in the United States
22 and Canada, so we try to look out and see what

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09:28:43 1 markets are going to be available to us, what the
2 pricing is going to be like, what on Norm's schedule
3 is the timber he's decided to cut for the year, what
4 the makeup of that timber is, how much is Doug fir,
5 hemlock, et cetera, so we do our best to match the
6 timber available to harvest to the marketplace.

7 Q. And when does that planning start?

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

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

14 A. We do when we are talking about the
15 Canadian marketplace. We'll talk with Tony about
16 what he sees in Canada in terms of domestic demand
17 activities of the other competitors in the

18 marketplace and, et cetera.

19 Q. From your perspective as a person at
20 Merrill & Ring responsible for the marketing and
21 sales of logs, can you describe how your process of
22 harvesting and planning and selling differs in your

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09:29:50 1 operations in Washington as compared to British
2 Columbia.

3 A. Right. Well, in the United States, in the
4 U.S. side in Washington, we are just looking at,
5 again as I described, what's available, what's the
6 timing, and who are the customers, how we might line
7 those customers up, and how during the course of the
8 year the markets might change, so should we log this
9 type of stand in the front half, back half.

10 In Canada, it's a--we start with again
11 what's available, what's road, what has roads into
12 it, what the markets like are. The twist on the
13 Canadian side is that then we begin to discuss what
14 we--what we think about is going to happen in terms
15 of what can we get out into the world market, what's
16 the domestic market in Canada doing, how bad is that
17 going to hurt our returns. So, it brings in a whole
18 different set of factors that are really--markets
19 are difficult to predict in general, but then when

20 you add in the factors of can we get it out, how
21 much will we have to give up in this process to the
22 domestic guys to satisfy their needs or their

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09:31:18 1 perceived needs. That's kind of what--those are all
2 factors that weigh in, and so a lot of times in the
3 timing of the harvest.

4 So, when do we want to harvest this? It is
5 oftentimes a backwards economic analysis, so when do
6 we think the slowest demand will occur in Canada?
7 And the weakest market in Canada, that's when we
8 decide to harvest more because oftentimes in almost
9 all cases, the highest price in Canada is
10 considerably worse than the lowest price on the
11 international market. So--

12 Q. Is that generally true?

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

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

18 A. Right.

19 Q. What do you mean by that?

20 A. Well, again, in Washington we are looking
21 at supply and demand. You want to try and harvest

22 when the market prices are the best. In Canada, we

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09:32:21 1 are trying to anticipate, and it again becomes a bit
2 of a guessing game as to when we can get the most
3 wood through the system into the world market, and
4 that oftentimes means when the Canadian market--even
5 though we might log 30 percent of our volume
6 when--30 percent of our volume is traditionally sold
7 in the Canadian market, 35 percent, even though that
8 market may be weak, and we know we will sacrifice
9 there, a weak market in Canada means it might be
10 easier for us to run the gauntlet of the blocking
11 that we are going to encounter.

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

09:34:10 1 decisions.

2 Can you elaborate upon that and explain
3 what you mean by that.

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

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

20 So, with Mr. Kurucz and myself, we say,
21 okay, how are we going to sort these trees? So, in
22 the U.S. side, we just--we go out, and we sort them

09:35:19 1 according to their quality and their diameter, their
2 length as to what our customers' going to want.

3 In Canada, we kind of do the same thing,
4 but at the same time we are somewhat restricted
5 by--sometimes more than somewhat--restricted by the
6 rules that the Province says this is the package we
7 have to make. Doesn't fit our customer, but it fits
8 the rules and regulations that we have to abide by
9 in order to get it through the system. That's kind
10 of the first hurdle.

11 And the second hurdle is we have to
12 anticipate what some of the domestic customers and
13 generally we know that three, four, or five
14 customers or domestic mills in Canada and what
15 they're going to want from us, what they're going to
16 say, what they're going to block us on.

17 So, these mills understand that the logs
18 that we're getting to Japan, that lower cut log, we
19 are making it a very substantial profit, oftentimes
20 twice the value of a log that we will sell to them.

21 So, we know that if--they know that they
22 can basically hold us for ransom to block those logs

09:36:30 1 so that they can get some of those logs or some of
2 the other logs at a cheaper price. So,
3 basically--and that process occurs in a number of
4 ways. Basically, the four or five guys, it's like
5 four or five dance partners. They all have a
6 different way of approaching that some of them want
7 to talk before the music starts. Some of them want
8 to wait until everything is in the ad, and then they
9 call up and lay this, well, you know, I'm going to
10 need some of those logs at a very cheap price, you
11 know.

12 And then--or, if we can't come to an
13 agreement, then they throw in a block, and then we
14 talk with them afterwards.

15 So--and we are trying to anticipate when
16 we're doing the planning process, how much wood do
17 we have to cut to their needs that we have to use as
18 basically this is what we'll give up in order to get
19 this over here so we can get the higher value?

20 So, yesterday, Tony, Mr. Kurucz, talked
21 about, you know, getting the Canadian value, the
22 fair market value. Well, there is two parts. Tony

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09:37:42 1 is talking about can I get the fair Canadian market
2 price on the wood that gets offered on? Well, the

3 offers always tend to be on the low end of the
4 Canadian market price because that's what--I mean,
5 the goal of those mills is to buy logs at the
6 cheapest possible price, and my goal is to get the
7 most money for those logs, and so they're going to
8 offer at the low end of the range. So, Tony is
9 trying to get just market price on that piece that
10 we have to give up in order to get this other piece
11 over here out at a much higher profit.

12 Unfortunately, they hold all the cards
13 because if they--if we don't settle with them here,
14 they'll just continue to block the higher priced
15 logs over here.

16 So, we lose twice. If we sell below
17 Canadian market, we lose on the Canadian market.
18 And, of course, every boom of higher value that we
19 sell within the Canadian market is lost opportunity
20 on the other side. Whereas differently in the U.S.,
21 we can just take that log to the best market without
22 the cost, the expense, the aggravation, and the

313

09:38:50 1 guesswork of going through that process.

2 Q. What is the extent to which this what has
3 been called blocking and blockmail and this whole
4 system play in your thinking in terms of your

5 marketing planning, your sales, the way you go about
6 getting logs to market from British Columbia?

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

21 So, the process is what size of the boom do
22 we make. Of course, what logs do we put into this

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09:40:02 1 sort. Yesterday, again Mr. Kurucz referred to the
2 fact that we've kind of given up on making an 8- to
3 11-inch Japan sort because Itochu always blocks it
4 anyway, so we just put it in there. We try to
5 appease them on the front end.

6 It becomes day-to-day business for us, but

7 it's not really day-to-day business in the way that
8 we do business in the U.S. It's like the bully
9 shows up at the end of the street, and you go by
10 with your lunch bag, and he takes your cookies every
11 day. And if you give him any trouble, he takes your
12 sandwich, too. The problem is you can't go back
13 home because your mother says you have to go to
14 school. My boss says and Norm says, we have to take
15 this wood to market. We have to sell it, and your
16 job is to get the best price. And the job isn't
17 just getting--you know, I have a full-time job
18 working with my customers, finding out what the
19 market is, listening to what's going on in that
20 environment, and then I have to listen also. You
21 know, I operate in Canada. I listen to my
22 competitors. I listen to other suppliers that I do

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09:41:11 1 business with. What's the blocking environment
2 like? Who is blocking this month? We may actually
3 start logging in October or, excuse me, in April,
4 and we may not bring logs to market until July
5 sometimes because we'll just make them and put them
6 in inventory because we know we're going to get
7 60 percent of them blocked.

8 So, we defer until we see more wood flow

9 into the marketplace.

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

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

22 And so, we have to decide, okay, we lose

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09:42:14 1 this guy. Maybe he will take hemlock instead of
2 Douglas fir because that will only cost us five
3 bucks a meter or 40 bucks a meter instead of 60
4 bucks a meter. Whatever the numbers are.

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

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

8 A. Well, again, before the block comes in,
9 we're trying to communicate with those that will
10 communicate. Oftentimes they don't communicate

11 because they don't have to. They know the wood is
12 coming in the advertisement. They know all about
13 your business. They know what you're producing.
14 Anything that you want to sell export, they know
15 that.

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

22 Q. And a block is an offer?

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09:43:23 1 A. An offer letter, yes.

2 Q. Okay.

3 A. And so when we receive an offer, then we
4 have to decide how we deal with the offer.

5 Generally speaking, the argument I have
6 always made, you know, this is a supply test, so
7 theoretically this advertisement list is a test of
8 whether there is a supply shortage, so--which again
9 is again contradictory.

10 If the market price within Canada is \$70,
11 and they put in a 65-dollar offer, my argument has
12 always been when I've talked to Mr. Jones or

13 Ms. Korecky, if it's a supply shortage, generally
14 supply means, you know, if you go to the store and
15 you need something and it's short, you don't care if
16 the price is \$2 a pound and the normal price is a
17 buck 50. You pay \$2.

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

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09:44:26 1 And so, that--so, you know, it--so
2 that's--so that we evaluate the price, but we know
3 the price is not close to what we're going to get on
4 the export market, but then we evaluate it compared
5 to the domestic market. And then we begin a
6 negotiation with those people, okay, I see you
7 blocked this boom. What do you really want? What
8 do you really need? How much can we really provide?
9 Because oftentimes they will block a high value boom
10 that they really don't want, but it's more of a shot
11 across the bow, so to speak. Hey, we're here. We
12 need some of your wood, and so, you know, here it
13 is. What are you going to sell us now.

14 And so as oftentimes you will see, we'll

15 get wood blocked and then--or offered on, and then
16 it will get released shortly thereafter, means
17 we--and offer times the letters say in replacement
18 of other volume, so they get what they want. We get
19 what we want, except we just gave up a huge amount
20 of money upside because we had to do it.

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

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09:45:35 1 There's a delay between the end of that 14 days and
2 the TEAC meeting--

3 A. Right.

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

6 A. Right.

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

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

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

13 A. Right.

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

15 A. Right.

16 So, what you need to understand is

17 that--and then I have--if we cannot negotiate our
18 way out of it or feel we can't negotiate our way out
19 of it, or we have an offer that's so unfair that we
20 think we can appeal to the Federal Government, then
21 we start that process, and we still may be
22 negotiating along the way with those people because

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09:46:25 1 we are not sure how long that process is going to
2 take, and if we will win in that, so we start that
3 process.

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

17 So, in the meantime--so, the process is if
18 you waited every time you go to TEAC or FTEAC for

19 relief, it just is not very workable in terms of
20 just normal business.

21 Q. And what about an appeal to Ms. Korecky,
22 for example, from an FTEAC decision? Is that a

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09:47:34 1 workable, practical process from your standpoint?

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

21 Q. What's the relationship between CIPA and
22 Itochu?

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09:49:04 1 A. I believe they're a wholly owned subsidiary
2 of Itochu.

3 Q. And Itochu has logging operations in
4 British Columbia?

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

15 Q. So, what does CIPA do?

16 A. Well, CIPA peels veneer, which means they
17 take a log and they make sheets of veneer, the thin
18 sheets that you see in plywood. I don't think CIPA
19 lays up any plywood. I think they may, but a lot of
20 their veneer goes to another Itochu subsidiary in
21 Washington State that lays up LVL, laminated veneer

22 lumber.

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09:50:06 1 Q. So they're wood processers--CIPA is?

2 A. Correct.

3 Q. So what is the complaint that you've made
4 to Ottawa about CIPA and Itochu?

5 A. Well, they are basically owned by the same
6 company. It would be like an arm of Merrill & Ring
7 starting a sawmill and then blocking everyone's wood
8 while the other arm was exporting logs. It violates
9 the principle of Notice 102.

10 Q. If you go to your statement at the bottom
11 of Page 5, Paragraph 25, you refer at the last
12 sentence on the bottom of the page there starting
13 three lines up at the far right-hand side, "For
14 example, many of our Japanese clients want 40-foot
15 Douglas fir logs. If we cut our logs to this length
16 to meet this need, we are at risk of domestic lumber
17 processors blocking the export. If a lumber
18 processor wants 34-foot logs or just does not want
19 us to sell to Japan, it can offer us a price that
20 reflects that shorter length. As a result, we can
21 be forced to sell the 40-foot logs at a 34-foot
22 price."

09:51:14 1 First of all, does that happen? Has that
2 happened in your experience?

3 A. That has happened.

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

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

17 And so--but we sometimes say, well, let's
18 roll the dice. Let's think they are going to be
19 filled up. We will just make Japanese sorts out of
20 all the good logs, and then they will block that
21 boom, and there has been a time where we
22 couldn't--we couldn't satisfy their needs or there

09:52:12 1 were too many people to satisfy, and eventually we
2 had--they offer on the logs, and they will offer
3 less than they're paying in the domestic market.
4 Then the reason they give is because the logs don't
5 meet their lengths.

6 And so, and we say 34-foot logs, Canadians
7 say 35-foot logs. It's basically the same log.
8 It's just a terminology issue.

9 Q. So, what then happens to the other 6 feet?

10 A. Well, I think they--I don't know exactly
11 what they do with it. They say they chip it.

12 Q. Will they pay you for it?

13 A. Well, we get paid for it, but at a very
14 reduced rate.

15 Q. How do you feel that the Regime treats you
16 vis-à-vis other log manufacturers in British
17 Columbia? And I want to just first turn to one
18 thing and ask you: Are you familiar with standing
19 exemptions?

20 A. Yes.

21 Q. Do you know what they are?

22 A. Yes.

09:53:06 1 Q. Can you explain to the panel what they are
2 and how they work.

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

13 The Province can, at its discretion, decide
14 when and how it wants to feed its logs into the
15 market. We have no discretion. All of our wood has
16 to go through the process, has to go in a public
17 offering, all under the guise that there's a supply
18 shortage, and there really is no supply shortage.
19 It is--I think since I have been doing this, there
20 is no supply shortage of timber in British Columbia.
21 All of the major, and often the major companies that
22 are blocking our wood, Interfor, Western Forest

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09:54:24 1 Doman, and then Western Forest Products, they all
2 have timber licenses with the Government of Canada

3 to cut certain volumes. And in their timber
4 license, and I'm not an expert on this, but they
5 have a certain annual cut that they get to cut every
6 year, and all of those--almost all of those
7 companies--and I know for a fact Interfor because
8 they're one of our blockers--is behind on their
9 annual cut. So, their annual cut is--they may be
10 behind in their cut a million or 2 million meters.
11 Logs that are on the stump, all they have to do is
12 go out and harvest them and bring them into their
13 mill. But they can block our logs and hold us
14 hostage and buy our logs cheaper so they don't go
15 and cut their own logs. They don't need to. And
16 not just ours. I'm talking about Federal timberland
17 owners.

18 So, they use this as a way to create a
19 shortage. We don't have to log our timber. It's
20 maybe wintertime, and it's expensive logging, so we
21 will just use the export list, as Tony said, as a
22 shopping list to feed the mill, and then if the

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09:55:31 1 markets don't come along and we don't need the wood,
2 well, we don't need to buy it.

3 So it's--and then I know at times when
4 Doman blocked our wood, I did make the case with

5 Thomas Jones at the time that this was unfair, and
6 he actually upheld that decision.

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

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

19 A. No, it's not.

20 Q. It's not eligible to get any kind of a
21 standing application? We hear the term standing
22 application, standing advertisement. It is not able

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09:56:48 1 to export its product without cutting it first?

2 A. Correct. It has to be cut, put into the
3 form that the Government approves, put in the
4 location that the Government approves, and wait for
5 the advertising period to run its case.

6 Q. And those standing exemptions are not
7 available to any South Coast operator?

8 A. Not with Federal timberland marks--timber
9 marks.

10 Q. And your North Coast competitors can get
11 them?

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

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

17 A. Of course.

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

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09:57:56 1 A. I would say that it's not a very clear
2 process. There's very limited rules. When you make
3 an appeal to FTEAC, there's no defined process.
4 Even the fair market price that they develop, that
5 the FTEAC develops, is made by, as you've heard, a
6 group of sawmillers and a few industry people. No
7 private timberland owners, and so they make the

8 decision about what the market price is.

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

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

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09:59:13 1 of the market is doing. They know what every one of
2 those other people in the room know. They know
3 everything about the blocking process. I know
4 nothing--I mean, the blocking status. I know
5 nothing. I have requested from the Federal
6 Government a number of times, can you tell me who is
7 being blocked and at what price? They've said, no,
8 I can't tell you that. That's confidential
9 information. People wouldn't want their prices out.

10 I said, no problem, don't tell me the
11 price. Just tell me who is being blocked. I just
12 want to know who is being blocked because there are
13 several occasions where I know we may have been the
14 only person blocked. There may be 200,000 meters on
15 an ad or 150,000 meters, and we may have six or
16 eight or 10,000 meters. We are the only ones
17 blocked.

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

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10:00:12 1 are relatively the same.

2 So, you know, I have made that argument.
3 It basically just falls on deaf ears, and so, you
4 know, I still don't know. I'm certain--I'd bet next
5 month's paycheck on it because I don't know the
6 information, is that our percentage of blocks in the
7 last 10 years relative to the volume offered far
8 exceeds anyone else's. Which means a number of
9 things. It means that, number one, we don't have
10 some abilities that other of the big players have to
11 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.

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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.

14 And the only reason that these mills actually let us
15 get wood out, I think, at times is because they know
16 if they block everything, we'll just stop logging,
17 and/or we'll be forced to stop logging or we'll sell
18 it to somebody else at the Canadian price that's
19 higher than theirs.

20 But anyway, basically--so, I think the
21 Government knows that all this prenegotiating goes
22 on. I mean, again, these other companies just don't

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10:02:29 1 put all the wood in the advertisement and say, boy,
2 I hope we get this all out. I mean, I have to
3 because I'm relatively small, but they can just plow
4 ahead knowing they'll just have to pay that ransom
5 as they're going along, and they can oftentimes pay
6 it with logs that are--it's less of a ransom for
7 them, so that's why at times we are the only one
8 targeted.

9 It's not a shortage of supply. It's we can
10 get cheap logs on this list. You have to pay your
11 due. Everybody else does. And we spend a lot of
12 time--you know, there was a reference to not so many
13 of your logs get blocked. We spend a lot of time
14 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

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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

17 what happens there, unless basically we try to find
18 out by asking people around the industry, and
19 sometimes we find out.

20 Q. Are the FTEAC decisions published?

21 A. The only--

22 Q. Do you get notice of what's happened to all

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10:04:38 1 of the other blocks and offers being considered?

2 A. No, no.

3 Q. Do you get notice about your blocks?

4 A. Yeah, basically we get a letter, and so the
5 letter comes to us and to the Federal Government at
6 the same time that says an offer is made on your
7 boom.

8 Q. Do you know how FTEAC comes to a fair
9 determination of price, whether the offer is fair?

10 A. Well, no. I don't know how they do it. I
11 hear about it.

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

18 Q. Is there an exchange for Vancouver logs

19 like a price of oil you can find that out in a given
20 day? Is there price for hemlock on a given day?

21 A. No, you find out the price by again talking
22 to your other competitors, talking to your

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10:05:39 1 customers, what are they buying from so-and-so.

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

4 So, what happens is these guys sit around
5 there and they say, well, I think I have been
6 selling this sort for this much. Hemlock gain for
7 50 bucks. I have been getting 52, and I'm getting
8 48. And again, what you need to understand is a lot
9 of them are buying it, so they are motivated to keep
10 the price low, and oftentimes those guys around the
11 table are also participating in British Columbia's
12 timber sales, so they have timber sales that they
13 put up, and they bid on those sales to supply their
14 mills.

15 So, if--so as they buy those logs, they
16 don't want to know their competitors are sitting
17 around the table as well, so they're just saying to
18 their competitors they don't want to tell them if
19 they get a high price. So, we may bring a price
20 where we say, we are getting \$90 for this or 95, as

21 Tony described. If--there may be one of them
22 getting 95, but it's not to their benefit to tell

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10:06:51 1 the rest of their competitors around the table they
2 have a market that they get 95 on because they're
3 bidding on a timber sale next week. I mean, it's
4 just--there is so much conflict of interest about
5 what these people are doing that I would want to
6 keep it secret too if I was there.

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

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

22 are--require more differences to be fair than

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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.

10:09:15 1 And again, no disrespect to Ms. Korecky. I
2 wouldn't expect her to be a log expert, but she's
3 at--he has to depend on and rely on this group of
4 people I think completely appointed by the Province
5 to help her in her Federal decision making.

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

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

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

12 A. Yes, they are.

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

15 A. Yes.

16 Q. And they have sawmills in British Columbia?

17 A. Yes.

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

20 A. Correct, yes.

21 Q. And you've encountered them on more than
22 one occasion being a blocker of your wood?

10:10:13 1 A. Yes.

2 Q. Of what kind of frequency? How often are
3 they interfering? In one way or the other, either
4 in advance or after the offer is made.

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

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

14 Q. Do you know the name John McCutcheon?

15 A. Yes, I know Mr. McCutcheon.

16 Q. Who is Mr. McCutcheon?

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

21 Q. And he was the Chair of TEAC for about 10
22 years?

10:11:16 1 A. That's what I hear. I have never seen a
2 list of the members.

3 Q. You've never seen a list of the members?

4 A. No.

5 Q. Are you advised who the members are?

6 A. No.

7 Q. When you say that they're--

8 A. I just hear about who they are.

9 Q. You hear about it through the grapevine?

10 A. Right.

11 Q. You say that there are no minutes made of
12 these meetings. In fact, there are minutes, but are
13 they published to the industry? Do you ever hear of
14 them?

15 A. I believe they're confidential.

16 Q. You have never--other than through this
17 case, have you ever seen one?

18 A. No.

19 Q. Not in the industry--

20 A. Actually, I haven't seen any in this case.

21 Maybe I missed those. I would like to have read
22 them.

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10:11:59 1 Q. Mr. Stutesman, thank you. Those are my
2 questions.

3 PRESIDENT ORREGO VICUÑA: Thank you so
4 much, Mr. Nash, for your direct interrogations.

5 So, would you like to proceed right now?

6 Break for five minutes?

7 MS. TABET: Yes.

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

10 (Brief recess.)

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

13 MR. WATCHMAKER: I believe we are ready.

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

17 MR. WATCHMAKER: Thank you, members.

18 CROSS-EXAMINATION

19 BY MR. WATCHMAKER:

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

22 Members, as a preliminary matter, I just

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10:29:02 1 want to say that as I said yesterday, I do have some
2 questions for Mr. Stutesman that are on the
3 restricted record. I've made sure that those
4 questions are at the end of my examination, and at

5 that point I will indicate that they are restricted,
6 and I'd ask Mr. Cook to leave the Chamber at that
7 point, but right now I will continue in public.
8 Thanks.

9 (End of confidential session.)

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10:29:26 1

OPEN SESSION

2 BY MR. WATCHMAKER:

3 Q. Now, Mr. Stutesman, I understand that you
4 are Vice President and General Manager of Merrill &
5 Ring Forest Products L.P.; is that correct?

6 A. Correct.

7 Q. And you have been in this position since
8 1998?

9 A. Yes.

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

14 A. Correct.

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

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

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

22 A. Correct.

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10:30:08 1 Q. And for its Provincial Lands it's subject
2 to the B.C. Forest Act; is that right?

3 A. Correct.

4 Q. Now, yesterday I heard Mr. Appleton
5 introduce you to the members, and I assume you were
6 here for the testimony of your colleague,

7 Mr. Schaaf?

8 A. Correct.

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

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

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10:31:13 1 A. Yes, I do.

2 Q. Now, subsequently in response to a question
3 from the President on whether there was legal
4 recourse in Canada before Canadian courts, your
5 colleague responded that, "We were not aware of
6 avenues of appeal that we would have within the
7 Canadian court system in a dispute relative to the
8 way in which the Regime was managed." And that's at
9 Page 207, Lines 14 to 17.

10 Now, Mr. Stutesman, could you please turn
11 to Tab 1 of the Core Bundle that's been handed to
12 you.

13 A. I don't have that.

14 Q. My apologies.

15 (Document handed to the witness.)

16 A. Okay.

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

22 Your counsel here, Mr. Davis, refers to the

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10:32:23 1 K. F. Evans case at the Federal Court Trial
2 Division.

3 Do you see that, sir?

4 A. Yes, I do.

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

8 A. Yes.

9 Q. Okay. And if you turn the page, I will
10 just note for you at the bottom there your
11 colleague, Mr. Schaaf, is copied on this letter.

12 Do you see that?

13 A. Is this--it's the same letter, but just no
14 page numbers. Okay, yes, I see that.

15 Q. Mr. Stutesman, are you aware of the case
16 that your competitor TimberWest took against Canada
17 at the Federal Court of Canada in 2006?

18 A. Yes, I am aware.

19 Q. And this was a complaint to the Canadian
20 courts about Notice 102; isn't that right?

21 A. Yes, it was.

22 Q. And you know this because you were a

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10:33:14 1 witness in that case, weren't you?

2 A. Yes, I was.

3 Q. Okay. Now, what about the Island
4 Timberland case that was launched last year at
5 Federal Court by Mr. Ringma's company I believe?

6 A. I really don't know any details about that
7 case. I just have heard that it's ongoing. I
8 haven't had any discussions with Mr. Ringma or any
9 Island Timberlands people about the case. I don't
10 really know what their basis is. I mean, I don't
11 know what their basis is for the case.

12 Q. You're aware it's a challenge of the Log
13 Expert Control Regime?

14 A. Actually, I didn't know that.

15 Q. All right. Fair enough.

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

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

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10:33:54 1 CONFIDENTIAL SESSION

2 BY MR. WATCHMAKER:

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

6 A. Reply?

7 Q. Yeah.

8 A. Okay.

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

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

15 THE WITNESS: The Reply?

16 BY MR. WATCHMAKER:

17 Q. It's also on the screen.

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

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

22 Number 16?

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10:35:33 1 BY MR. WATCHMAKER:

2 Q. 16, yes.

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

7 Is that right, Mr. Stutesman?

8 A. Yes.

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

14 Is that right?

15 A. Yes, it's what it says.

16 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

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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

19 just trying to sell them to the best price. So, if
20 the Canadian marketplace can pay the price and be
21 competitive, it's easier for us. It's closer to
22 home, get our money quicker, love to do that. So

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10:37:28 1 it's not really about where it's going. It's about
2 or who is getting the good ones or who is getting
3 the bad ones. It's the people with the most money
4 get what they want.

5 Q. Okay. But the first phrase here is that
6 you'd like to prepare higher quality sorts
7 exclusively for export, but you can't actually do
8 that in British Columbia; is that correct?

9 A. Well, we do some parts of it, but generally
10 we can't take the risk of doing all of that because
11 then they're in a form that, as we described
12 earlier, they're in a 40-foot log form and we are
13 blocked by a 34- or 35-foot peeler mill, and then we
14 lose twice in that process.

15 Q. Right. I see that you say at the fourth
16 and fifth statement sentence of Paragraph 17 that
17 it's "too risky to prepare higher quality sorts
18 exclusively for export because you never know when
19 your logs are going to be blocked."

20 Is that right?

21 A. Correct.

22 Q. Okay. So the Log Expert Control Regime

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10:38:28 1 prevents you from preparing higher quality sorts for
2 logs exclusively for export from B.C.; is that
3 right?

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

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

18 A. Correct. We generally make the same sorts
19 in Washington as we do in Oregon--I mean, excuse me,
20 Washington and in Canada, so when we do make an HC
21 sort in Canada, it's comparable to our HC sort in
22 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

10:42:07 1 business decision is to sacrifice these logs over
2 here at a lower price. So, you know, Tony was here,
3 and Tony works very hard, and he takes his business
4 very personally, so he's very upset and concerned
5 when he can't get the Domestic Market Price. And my
6 decision--and it's my responsibility to say, Tony,
7 we are going to give up \$2 a meter, we are going to
8 give up \$3 a meter. Yeah, it's going to cost us 15
9 or 20,000, but we are going to make \$150,000 or
10 \$200,000 or \$250,000 on these booms over here
11 because we get them into the world market.

12 So, Tony's concerned about the 10. I have
13 to look at the big picture. So, basically, these
14 logs we gave up \$2 or \$3 in the domestic market.

15 We also probably gave up another \$40 or \$50
16 if we could take them to the export market. So it's
17 not--when you say it's a business decision, it's a
18 business decision that we have to make in order to
19 keep operating, as does every other Federal
20 landowner in the Province.

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

10:43:24 1 A. Correct.

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

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

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

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

21 A. Well, I said I know who they are kind of
22 through what I hear from people.

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10:44:18 1 Q. Okay. Well, could you turn to 129,
2 Paragraph 129 of your Memorial in this matter.

3 A. So, back to my original statement?

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

6 A. 129?

7 Q. It's Paragraph 129.

8 A. I'm there.

9 Q. I believe the paragraph spans two pages.
10 If you could look it's the second page of the
11 paragraph.

12 A. Okay.

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

15 A. Yes.

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

18 A. I am aware of members.

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

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

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10:45:33 1 they change.

2 MR. NASH: I just raise--to raise a point
3 that I understand that this document is restricted
4 access, and I understand that Mr. Stutesman has not

5 seen the document because it was restricted to the
6 Investor in this case.

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

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

11 Mr. Stutesman is a representative of
12 Merrill & Ring. Merrill & Ring is not allowed to
13 see restricted access information. That means the
14 information that we would put in that we would have
15 available to us that Mr. Stutesman would not be able
16 to see, and therefore Mr. Stutesman has not seen
17 that list because we have not provided it. We have
18 been very careful to be totally compliant with the
19 orders of this Tribunal, which said that it's
20 confidential, and therefore this confidential
21 version has been blocked out, and he hasn't seen
22 that. This is the first time he's seen this

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10:46:29 1 information. We just thought it was appropriate
2 that the Tribunal be aware of that.

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

6 THE WITNESS: I hadn't seen it before, but

7 my statement was pretty accurate, but I think he put
8 that in there. The list I hadn't seen.

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

11 THE WITNESS: Yeah, right.

12 BY MR. WATCHMAKER:

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

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

17 MR. APPLETON: Don't answer the question.

18 If the question is that Mr. Watchmaker
19 would like to ask the question with the public
20 version, we're happy to give him the public version
21 and then he can ask any questions he likes. But we
22 should do it on that. But if the witness wants to

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10:47:34 1 speculate or talk about this version that he hasn't
2 seen, I think we should make sure we know what the
3 question is. That's all. So we are all very clear.

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

7 MR. APPLETON: Apparently there is. This
8 came from Canada, and the way that we got this

9 information was from--

10 ARBITRATOR ROWLEY: That cannot be true.

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

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

22 MR. APPLETON: As long as we understand

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10:48:21 1 this is his first chance to see it.

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

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

9 (Pause.)

10 PRESIDENT ORREGO VICUÑA: Do you have with

11 you, Mr. Watchmaker, the public version?

12 MR. WATCHMAKER: I'm sorry, Mr. President.

13 I didn't quite hear your question.

14 PRESIDENT ORREGO VICUÑA: Do you have with
15 you the public version?

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

18 ARBITRATOR ROWLEY: Would it be useful for
19 all further witnesses first to have their Witness
20 Statements with them, as was not the case here.

21 And secondly, for the future to have all
22 versions of the pleadings here in this room at all

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10:50:21 1 times so we not be delayed this way?

2 MR. WATCHMAKER: We will make sure of that.

3 Thank you, members. This is the public
4 version up on the screen now.

5 I'd just ask you to note that this is the
6 public version, and these are members of FTEAC.

7 BY MR. WATCHMAKER:

8 Q. Are they not, Mr. Stutesman?

9 A. They look like--I know that at least four
10 or five of them are, or were as of 2006, as it says
11 there.

12 Q. Okay. Thank you very much, sir. Those are
13 my questions.

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

18 MR. NASH: No questions in redirect.

19 QUESTIONS FROM THE TRIBUNAL

20 ARBITRATOR ROWLEY: Mr. Stutesman, what
21 percentage of the raft of timber or lots of timber
22 that you--for which you seek an Export Permit are

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10:52:36 1 granted export licenses? My terminology may be
2 inaccurate, but you know what I mean.

3 THE WITNESS: Yeah, I think I know what you
4 mean. Generally speaking, we get a fairly high
5 percentage. I don't know exactly what the
6 percentage is, but it's--I would say of the total
7 booms that we try to export, we might get 70 percent
8 of them out, but that's--or 65, so a lot of times by
9 the time we get them into the advertisement, we have
10 already kind of worked our way through the system
11 with someone. We've paid our ransom, so that number
12 actually that's in the list might be in the high
13 eighties or something.

14 ARBITRATOR ROWLEY: Well, there is some
15 evidence, and I won't have it exactly right, and I
16 think it's Ms. Korecky's evidence that it's in the
17 area of 96, 97 percent of the timber for which you
18 seek export licenses, you are granted export
19 licenses. Just accept that for a moment for our
20 discussion.

21 THE WITNESS: Okay.

22 ARBITRATOR ROWLEY: Is there any reason,

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10:53:49 1 assuming that Ms. Korecky is telling the truth, why
2 their records would be inaccurate?

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

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

8 THE WITNESS: Yeah.

9 ARBITRATOR ROWLEY: But there is no
10 disagreement, I think, between Merrill & Ring and
11 Canada that a high percentage of product for which
12 you seek export licenses you are granted export
13 licenses, albeit perhaps you have to make some
14 business decisions or put in your language you may
15 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

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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

18 because that's the ransom we are paying. That
19 36 percent--now, some volume would stay in Canada
20 anyway, but our volumes in Canada would be much
21 smaller, you know, if we didn't have--make sure I
22 can explain this well.

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10:56:27 1 That 36 percent, we would love to export
2 parts of that volume out into the world market, but
3 when we get blocked or threatened to be blocked by
4 these sawmills, we have to capitulate and give them
5 what they require in order to get what we want out.
6 So, that's why there is the significant difference
7 between the percentage we get out, which is very
8 high, and the percentage that we sell within Canada
9 seems high relative to what I said about value.

10 So, I think it--I think it reflects--this
11 is what I tell my boss--we are doing a damn good job
12 of navigating the system relative to the strength
13 and size of our company. We still give up a lot of
14 dollars, but relatively speaking, we do a good job.

15 You know, they don't always view it that
16 way. They say what about that 30 percent times this
17 many dollars that we should have had in? And, of
18 course, I say, I didn't make the rules. I just live
19 by them.

20 ARBITRATOR ROWLEY: I have to say every
21 case I do, I learn a little bit about an industry,
22 but so far you're the best witness in terms of

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10:57:41 1 teaching me because I hadn't really figured out
2 about the three portions the three, the "buck" cut,
3 the second cut, and the top cut, and I probably will
4 exhibit that I haven't got it right.

5 THE WITNESS: You did good.

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

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

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

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

21 market.

22 ARBITRATOR ROWLEY: That was one of my

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10:58:42 1 questions, whether you exported from the U.S. into
2 Canada.

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

6 THE WITNESS: Right.

7 ARBITRATOR ROWLEY: One final question.
8 We've talked about sawmills in British Columbia, and
9 we've talked about a number of people in the timber
10 market and in British Columbia that own sawmills,
11 and you have named a few to us: Interfor, Doman,
12 Western Forest Products.

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

15 THE WITNESS: It's a corporation, yes.

16 ARBITRATOR ROWLEY: U.S. corporation?

17 THE WITNESS: It's a Canadian corporation.
18 Fairly--size-wise, I wouldn't consider it huge, but
19 it's a medium to small-sized corporation.

20 ARBITRATOR ROWLEY: Is it Doman or Doleman?

21 THE WITNESS: Yeah, Doman has actually been
22 sold to Western Forest Products, and now it's, I

10:59:58 1 think, a privately--actually, Western Forest
2 Products is a publicly held company.

3 ARBITRATOR ROWLEY: And is that a Canadian
4 corporation?

5 THE WITNESS: Yes, a Canadian corporation.

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

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

9 ARBITRATOR ROWLEY: That's an acronym.

10 THE WITNESS: Yes.

11 ARBITRATOR ROWLEY: And that's a Japanese
12 corporation?

13 THE WITNESS: Yeah, or Japanese-owned
14 corporation.

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

19 THE WITNESS: Yes, um-hmm.

20 ARBITRATOR ROWLEY: I think those are my
21 questions. My colleagues may have one or two.
22 Thank you.

11:00:59 1 PRESIDENT ORREGO VICUÑA: I have just one
2 question, Mr. Stutesman. And perhaps a follow-up
3 which is that you explained about the penalty box in
4 the process.

5 THE WITNESS: Right.

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

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

18 PRESIDENT ORREGO VICUÑA: Now, tell me a
19 bit about the practical side of it. Is it possible
20 for a Canadian sawmill who is blocking theoretically
21 to supply his own line of production to do something
22 else with the timber he's blocking, say, for

11:02:25 1 example, turn it over to a third party, export it,
2 or do something else than bringing it into the
3 sawmill and making whatever it is he's going to do?

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

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

20 So, generally speaking, they could, I
21 think, exporting those logs after they bought them
22 would be very rare and very difficult, but they

12:50:56 1 could sell them to another mill if they said

2 suddenly their excess, their needs are excess. So,
3 once they buy them, their ownership.

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

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

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

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

15 (Pause.)

16 REDIRECT EXAMINATION

17 BY MR. NASH:

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

22 A. Yes. Generally, yes.

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12:52:00 1 Q. And why is that?

2 A. Well, it--as the tree grows in the forest,
3 it starts out--you know what a Christmas tree looks

4 like. It's got limbs all the way down to the
5 bottom, and as it gets bigger, the forest gets
6 thicker, the trees--the limbs lose light, and the
7 limbs fall off, and so then the tree loses its limbs
8 and the limbs basically grow over, so--and the limbs
9 are fairly small, or when they stop growing they
10 stop altogether.

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

20 So, generally depending on how big it is
21 and how old it is, you developed the quality that
22 you get from that tree, the highest quality's in the

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12:53:33 1 butt cut.

2 As in the middle cut, if you're cutting
3 lumber, the grades of lumber are not--if you're just
4 using construction, two-by-fours behind the walls,
5 you put sheetrock over, they don't have to have

6 clear portion, recollect.

7 Q. And the top cut?

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

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

21 A. Correct, yeah.

22 Q. And it goes up in a triangular?

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12:54:32 1 A. Cone type.

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

4 A. Correct.

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

7 A. Generally in the butt cut if you cut a 40,

8 a 36 or a 40-foot log off the butt contains around
9 50 percent of the volume of the tree or 50 to 55,
10 60 percent, depending on the age of the stand.

11 Q. In the butt cut?

12 A. In the butt cut.

13 Q. And the other 45 or 50 percent would be
14 from the top two-thirds?

15 A. Correct.

16 Q. And what would be the volume approximately
17 of the top third, roughly speaking?

18 A. Roughly speaking, 20 percent, 15 to 20.

19 Q. Thank you. Those are my questions.

20 PRESIDENT ORREGO VICUÑA: Thank you,

21 Mr. Nash.

22 Mr. Stutesman, you are excused now. Thank

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12:55:32 1 you.

2 THE WITNESS: Thank you.

3 (Witness steps down.)

4 PRESIDENT ORREGO VICUÑA: So I suggest that
5 we proceed right ahead with Mr. Ringma.

6 (Pause.)

7 PRESIDENT ORREGO VICUÑA: Good morning,

8 Mr. Ringma.

9 THE WITNESS: Good morning.

10 RICHARD RINGMA, INVESTOR'S WITNESS, CALLED
11 PRESIDENT ORREGO VICUÑA: Would you care
12 please to read the Witness Statement that you have
13 before you.
14 THE WITNESS: I solemnly declare upon my
15 honor and conscience that I shall speak the truth,
16 the whole truth, and nothing but the truth.
17 PRESIDENT ORREGO VICUÑA: Thank you,
18 Mr. Ringma.
19 Mr. Nash will examine you now.
20 MR. NASH: Thank you, Mr. President.
21 DIRECT EXAMINATION
22 BY MR. NASH:

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11:35:40 1 Q. Mr. Ringma, you're employed by Island
2 Timberlands?
3 A. That's correct.
4 Q. And it's a forestry company operating in
5 British Columbia?
6 A. That's correct.
7 Q. And you're the Director of Marketing and
8 Distribution?
9 A. That's correct?
10 Q. And how long have you held that post?
11 A. Since the inception of company, since May

12 of 2005.

13 Q. And you're responsible for selling logs for
14 Island Timberlands?

15 A. Yeah, as Director of Marketing
16 Distribution, I'm responsible for all the sales and
17 distribution of all our product, all our forest
18 products.

19 Q. Both domestically and for export?

20 A. That's correct.

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

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11:36:16 1 A. Island Timberlands has about 600,000 acres
2 of land located predominantly on the Southeast Coast
3 of Vancouver Island, also some areas on the mainland
4 side, and up to as far as the north of Queen
5 Charlotte Islands, Bangor island, basically from
6 Campbell River south on the east side, some areas as
7 well on the mainland side, and then also some
8 property up in Charlotte Islands right up by there.

9 Q. Just one Procedural Matter, Mr. President,
10 Mr. Ringma is in exactly the same position as
11 Mr. Stutesman in terms of the evidence that he's
12 going to be giving here this morning. He will
13 include evidence about his company's strategies with

14 respect to blocking, marketing, and the problems

15 around that.

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

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

21

22

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11:37:40 1 CONFIDENTIAL SESSION

2 BY MR. NASH:

3 Q. Mr. Ringma, you have been involved in the
4 forestry industry for 35 years?

5 A. That's correct.

6 Q. Can you give me just a brief outline--give
7 the panel, the Tribunal a brief outline of what you
8 have done during that period.

9 A. Since entering the forest industry, most of
10 my career has been related to logs, the harvest of
11 logs, the manufacturing and sorting of logs, and the
12 distribution of logs all in the Pacific Northwest,
13 predominantly in British Columbia, but I also spent
14 five years--predominantly in British Columbia, but I

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.

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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.

17 Q. Can you explain briefly, and then we will
18 get into a bit more detail about your understanding
19 of those terms and how they impact what you do in
20 your business.

21 A. Within the world of the surplus criteria, a
22 domestic sawmill has an ability to put an offer on

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11:39:35 1 our booms when we post them on the surplus list. It
2 is our intent to obviously try the booms that we've
3 prepared for export to have them export it. From
4 the time the offer is made, we've got approximately
5 14 days to make an attempt to have the offeror
6 remove their block or their offer on our
7 domestic--on our export wood. In doing so, we will
8 try to offer them substitute volume and have them
9 remove their offer.

10 We also get blockmail or an opportunity for
11 them to purchase our wood, which is not done under
12 the actual offer process. Best way I can explain
13 that would be we are very well-known for being
14 exporters. They see us every week put up or every
15 two weeks put up wood. What they can then do is
16 phone us and tell us we have a need, and if you
17 don't fulfill our need, we will put an offer on your
18 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

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11:40:56 1 committee, which would be an offer that stands to
2 test and goes to the committee level for fair market
3 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

21 their ability to offer an advertise price as
22 leverage against us into supplying them with logs or

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11:42:14 1 to leverage price. What blockmailers do is threaten
2 to place official offers on our export logs if we do
3 not supply them with the logs they want. Since they
4 know they can get better prices on the export market
5 than on the domestic market, they know we have an
6 incentive to deal with them."

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

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

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

22 smaller company that may only have five or seven,

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11:43:27 1 can maybe only have two or three, but what we do get
2 is multiple companies at different times, so we may
3 get five offers from this guy over here, five offers
4 from this guy over here, so we will get multiple
5 offers.

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

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

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

22 A. We've actually got three opportunities for

11:44:34 1 loss. The first would--if we have to sell
2 domestically, it would be the value difference
3 between the domestic price as offered and the
4 opportunity value of the international price if we
5 were able to export it. So, that's the first and
6 largest loss.

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

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

21 Q. Going on to Paragraph 11, you state in your
22 statement, "As a result, we at Island Timberlands

11:45:49 1 have developed a strategy to help mitigate the
2 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

11:47:01 1 opportunity as well to leverage price because he
2 knows we have a strong need or demand to get our
3 export volume out.

4 And so, by doing that, there is far more
5 opportunity for them, and so what we need to try to
6 do is to make it as difficult as possible for them
7 to participate, so we will be intentionally drag out
8 the negotiations, offer some substitute volume which
9 is a little bit more difficult for them to achieve
10 because we don't have anything else to protect
11 ourselves.

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

17 Q. You mentioned that you have in excess of
18 600,000 acres of timberland in British Columbia?

19 A. That's correct.

20 Q. And Merrill & Ring has approximately
21 10,000, including the Georgia Basin Holdings
22 property. Are you able to avail yourself of

11:48:10 1 strategies that a smaller player will not be able to
2 avail themselves of?

3 A. I believe we have two opportunities. We
4 are a larger company. Our harvest level is higher.
5 We've also got a higher percentage of provincially
6 regulated volume, so we probably have a better
7 opportunity to defend ourselves by having more
8 substitute volume and access to substitute volume.

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

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

19 I can go into the open market and buy
20 replacement volume from the open market and use that
21 as a substitute volume. Or I can go to my
22 provincially regulated lands and take logs from my

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11:49:19 1 provincially regulated lands which has a lower
2 return and use that. So, I can use that or any
3 combination thereof, depending on who it is who's
4 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.

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11:50:56 1 A. So, if these are pyramids of volume during
2 an application list, and these are the dollars, so
3 this, the value of this is \$60, and the value of
4 this is \$200, I may at a time get an offer from
5 somebody on some volume that is in this category, so

6 what I would do is perhaps try to find some volume
7 in here as substitute and use it to unblock this.

8 My costs don't change on my logs, but my
9 value does, so I will always try to use the lowest
10 quality wood that's barely adequate to remove the
11 block that's in front of me. So, in doing this, I
12 can use some of this.

13 I will also go to the open market, the
14 Vancouver market, and buy volume that I can also
15 offer in to help relieve this. And that I can use
16 my Provincial Land which again it normally has a tax
17 applicable to it called a fee-in-lieu, so my margin
18 improvement is lower than my Federal. So I have
19 three strategies that I'll use, open market,
20 provincial, and then lowest or least lost, this
21 value which is the least lost strategy of trying to
22 satisfy this particular offer that's been offered on

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11:52:14 1 my logs, so it's a minimize my loss rather than
2 maintain my margin. It's minimize my loss by using
3 whatever I can find to find substitute opportunity
4 for the person who's maybe offering my logs.

5 Q. And the part in the bar graph that you have
6 shown, that could already be available for export
7 but you said is the lower quality and the lowest

8 quality that you can use in order to accomplish that
9 objective?

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

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

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

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

22 Q. When you say every second Friday, why is

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11:53:17 1 that? Can you describe the process that happens on
2 a Friday.

3 A. The Bi-Weekly List goes out, and it's
4 posted for 14 days and offer writers have until 4:30
5 of the business close on Friday to get their offers
6 in. We sit patiently at the fax machine waiting for
7 these offers to come in, and this is--triggers then
8 our next response, which is to deal with these
9 people to have them virtually try to give our 14

10 days to remove their current offers.

11 Q. Do you try to deal with these people as you
12 referred to them in advance of the 14-day list
13 coming up?

14 A. That's the second part of the unblocking
15 strategy that we have, is if somebody repeatedly is
16 offering on our wood, we will sometimes even enter
17 into negotiation of what is it that you're really
18 need? What is it that I can offer you to make you
19 go away, knowing the game, though, that I'm in, the
20 submersive position because they hold the cards
21 because if I don't meet their needs ultimately in
22 terms of price and/or volume, 14 days later I've got

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11:54:26 1 the block. You could be rest assured that they are
2 in control. I have no opportunity other than to
3 appease their needs or I will not get my export
4 volume out.

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

7 A. Interfor, in 2007, in the first six months,
8 sent us over 200 offer letters, and we managed--out
9 of the 200 offer letters, I think only one or two of
10 them actually ever went to FTEAC committee, and that
11 brings up a real interesting opportunity, is that

12 FTEAC lots of times only sees the very tip of the
13 iceberg, so at the committee level they only review
14 the offers that remain in place. So if you actually
15 think of it a bit as an iceberg, at the very top, a
16 few letters have made it all the way to the
17 committee level. A whole bunch of letters have been
18 removed, and then beneath that is all this other
19 unblocking that takes place for which letters have
20 never been given, and I would refer that to as the
21 unblocking or the blockmill process iceberg, where a
22 very, very low percentage actually makes it to FTEAC

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11:55:47 1 for review.

2 The next is the middle where offers have
3 been written, but they have been removed before the
4 14 days permits went in, and then down underneath
5 the dangerous part are all those other discussions
6 that take place that are a preventive measure to
7 stop the blocking.

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

12 A. That's the one where I would use, for
13 example, the Interfor example of 200 offers written

14 and only one or two of them ever made it to the
15 FTEAC example and the committee meeting.

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

19 A. That's correct.

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

22 A. Yeah, DFAIT.

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11:56:42 1 Q. DFAIT.

2 Department of Foreign Affairs and
3 International Trade?

4 A. Sorry.

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

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

10 Q. Right.

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

15 A. No, this is where all the letters arrive,

16 and these were the only ones that make it to FTEAC.

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

20 A. That's correct.

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

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11:57:29 1 A. That's correct.

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

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

9 Q. Have you ever been told that?

10 A. No.

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

14 A. No, it's very much shrouded in a veil of
15 secrecy. The minutes are not available to the
16 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

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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

19 blocking letter that's under consideration, do you
20 ever find out how that offer was dealt with by
21 FTEAC?

22 A. No.

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

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

12 Q. Do you know Mr. John McCutcheon?

13 A. Yes, I do.

14 Q. And where do you know him from?

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

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

20 A. That's correct.

21 Q. And was Mr. McCutcheon on FTEAC at that
22 time?

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12:00:11 1 A. Yes, he was.

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

6 A. No, we're not.

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

10 A. A standing exemption would be where we
11 would make an application to have our timber
12 advertised in its standing form rather than in its
13 harvested form, so what we would be asking to go
14 through the surplus criteria while the timber is
15 still standing. The reason we would be looking to
16 do that is so that we could make decisions on the
17 manufacturing, sorting, and the marketable
18 allocation prior to making our investment.

19 So, it would be a good advantage for us to
20 ensure both the salability and the margin
21 opportunity of our stands when they reach maturity,
22 but we have been told that although the Federal

12:01:16 1 Government has allowed it to happen in the Interior,
2 they will not grant it on the Coast, and we are
3 still discussing that with them further, but at this
4 point in time we have got a fairly blanket reply
5 that's not applicable to the Coastal area.

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

8 A. Yes, I did.

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

12 And Tab 74 was Ms. Sabatino's response.
13 Ms. Sabatino was filling in for Ms. Korecky while
14 she was on leave; is that correct?

15 A. That's correct.

16 Q. As the Federal FTEAC Committee Member?

17 A. That's correct.

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

20 A. That was not permitted.

21 Q. Were reasons given at that time?

22 A. No, they were not.

12:02:16 1 Q. On your provincially regulated lands on the
2 South Coast, are you eligible for standing
3 exemptions?

4 A. No, I'm not.

5 Q. Why is that?

6 A. The rule applies to all private land, and
7 whether it's Private/Federal or Private/Provincial
8 regulated, and neither are applicable for standing.

9 Q. Do you have competitors that own
10 properties, timberlands in the North Coast?

11 A. Yes, we do.

12 Q. And do the competitors on the North Coast,
13 are they eligible for standing exemptions?

14 A. You have a Province in the North Coast
15 issued an OIC.

16 Q. What's an OIC?

17 A. Order in council.

18 Q. Thank you.

19 A. So the Province made a surplus declaration
20 in both the North Coast and the Mid-Coast, so that's
21 kind of from the tip of Vancouver Island to this
22 area here is referred to as the Mid-Coast, and from

12:03:09 1 there to just below Alaska is the North Coast. So,
2 there are two current active OICs allowing this wood
3 from the Province to go out without being
4 advertised, and meanwhile I've got property located
5 here in Queen Charlotte Islands which is federally
6 regulated, and I still have to go through the
7 advertising process.

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

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

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

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

22 A. That's correct. Their wood is declared

12:04:18 1 surplus on production.

2 Q. And their wood is declared surplus while
3 you're meeting a surplus requirement test?

4 A. That's correct.

5 Q. I see.

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

10 If you had an exemption on those lands,
11 where would you transport your logs to?

12 A. I would have three options. I could still
13 bring the volume down to the Vancouver area and load
14 my vessels there, but I would have certainty of
15 sale, or I could go straight across the coast of
16 Prince Rupert, which is only about 50 miles across,
17 or can go up into Ketchikan and load ships right up
18 in there.

19 The most important part about the standing
20 green is it gives me the freedom and the ability to
21 load direct because I too would be able to then make
22 an arrangement with my customer, and he could

12:05:18 1 arrange his vessel to be timed with my harvest, but
2 today I have to take all my volume down, put it into
3 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 Q. Why can't you leave your logs in salt water
9 for that period of time?

10 A. Well, we've got a little sea insect called
11 toredo which actually bores into the wood when it's
12 in salt water and does damage to the outer surface
13 and the quality of the wood.

14 Q. Is there a risk of loss of your logs in
15 that trip down from the Queen Charlottes to the
16 Fraser River south of Vancouver?

17 A. Normally only a catastrophic loss if the
18 entire barge tips over. We've had that happen
19 several times in past history. Normally once it's
20 on the barge, the higher level of loss comes from
21 the sorting grounds and how sound into the Fraser
22 River and the duration of storage in the Fraser

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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

5 comes down. The bigger loss by far is from the
6 sorting grounds and the duration of wood while it's
7 in the process of being advertised.

8 Q. Do I take it, then, that your competitors
9 who have standing exemptions on the North Coast
10 could pursue the options you would like to pursue if
11 you had that flexibility to go to Ketchikan in
12 Alaska or Prince Rupert?

13 A. Yeah, most of the ones in the North Coast
14 are heading out of Prince Rupert. That wood is
15 competing with us directly in Asia.

16 The Mid-Coast, they're bringing their wood
17 also to Vancouver, but from Mid Coast they bring it
18 to Vancouver, they can load on receipt, so they come
19 down the same channel that I do, but they go
20 straight into the Fraser River and straight on board
21 the ship, no waiting time.

22 Q. No waiting time. And that's if you've got

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12:07:38 1 an exemption?

2 A. That's correct.

3 Q. And you're not eligible for that?

4 A. No.

5 Q. There is an appeal process apparently with
6 respect to FTEAC decisions. Are you familiar with

7 that and is that a satisfactory process from your
8 standpoint?

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

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12:08:37 1 Q. Where are your logs sitting when you go

2 through the process of trying to get an Export
3 Permit?

4 A. Predominantly in the Fraser River but I
5 also have some wood stored in Alberni Canal on the
6 west side of Vancouver Island, but usually on this
7 side here, if it's the East Coast, again because of
8 the time delay, I will usually go into one of the

9 fresh river estuaries and store it for that period
10 of time in the estuary.

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

13 A. Absolutely not. There is a couple of real
14 key indicators that between the committee and the
15 DFAIT, they just haven't seemed to use for the best
16 of their information. Number one, the Province
17 allots a harvest level every year. It's referred to
18 as the AAC, the annual allowable cut. In the last
19 10 years, that cut has not been fulfilled on the
20 Coast and in B.C. in general, and so the cumulative
21 difference between what was allowed be cut and what
22 actually has been harvested is in excess of

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12:09:51 1 75 million cubic meters.

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

7 Also, in the last six years, more than 60
8 sawmills have disappeared out of British Columbia.
9 So, capacity has gone down. Standing trees are
10 still available to cut. And yet here we are a

11 private company with less than 5 percent of the
12 total harvest done in the entire British Columbia
13 land base, and we are being forced to go through
14 this silly surplus criteria. It makes no sense to
15 us at all. So, we've challenged that, provided them
16 with information saying why do you guys still do
17 this to us? To which we get a blank response or oh,
18 the Minister still feels it's necessary, and that's
19 the frustration for us. Why should we be held to an
20 extortive practice when in actuality there is a
21 surplus. We've got information out there. The
22 Government gets told what the allowable cut is. The

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12:11:02 1 Government knows what actually was harvested, and

2 DFAIT has a responsibility to be aware of that and
3 act appropriately. But in our mind, they're not
4 doing that by forcing us to continue to do this.

5 Q. And meanwhile, the Government is issuing
6 standing exemptions orders in council?

7 A. That's a sheer conflict. The government
8 owns 95 percent of the forests. They're in through
9 TEAC recommending that we continue to advertise our
10 wood, and meanwhile they let their wood go out on
11 surplus. It makes no sense to me at all.

12 Q. Does the B.C. Government have an auction of
13 timber on a relatively regular basis?

14 A. About 20 percent of the current annual
15 provincial cut is put out on what one calls the B.C.
16 timber sales. It's the avenue of open market
17 bidding on standing timber, and that too is an
18 undercut position, which means open market buyers of
19 wood have access to not only wood that's been
20 harvested, but they have an ability through the
21 Government to bid on standing timber. And again,
22 because of the surplus situation today and the

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12:12:18 1 economy today, that program is undercut. In other
2 words, BCTS's has got standing volume as well so
3 that they have what is called no bid sales, been
4 putting up blocks of timber that nobody is bidding
5 on. So, there is clear indicators that there is a
6 surplus.

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

9 A. CIPA and Interfor probably in the past five
10 years have been the two most aggressive blockers.
11 CIPA runs the veneer mill. There's actually only
12 three veneer mills on the Coast. The other two
13 veneer mills have never sent us a letter. It's only

14 been CIPA that has ever written on our wood. So
15 again, I'm really concerned that if there was a
16 shortage of plywood logs or veneer logs, why aren't
17 all three mills offering? Why is only one mill
18 consistently offering?

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

21 A. Probably between about 1 million and 1.4 or
22 5 million cubic meters.

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12:13:32 1 Q. Do you have an estimate of what level of
2 volume of cubic meters you have to deal with by way
3 of this blocking process to achieve that export
4 volume?

5 A. Well, in 2007, to get 1.3 million cubic
6 meters out on the export with permits, it took me
7 about 300,000 cubic meters of volume to unblock my
8 1.3 million.

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

11 A. It's multiple, and it starts right from the
12 harvesting. Because there is the Regime and because
13 I have to go to the surplus, I have no opportunity
14 to take forward sales position with any of my
15 international customers, so immediately I'm putting

16 wood out on spec, which is a financial disadvantage
17 to me because again, I need to go thank you the
18 process. On the harvesting side, it probably starts
19 on the sorting and manufacturing. Again, if I had a
20 predetermined customer, I can be more definitive on
21 my manufacturing specifications, so then I have to
22 also sort into the B.C. domestic end use sort

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12:14:56 1 categories, which are again--isn't a customer-driven

2 sort, so it's not what the customer wants. It's
3 what the Provincial Government wants me how to buck
4 it up my logs into their categories to make it
5 available for these domestic sawmills, so there is
6 an extra cost in that.

7 I have to dual scale my logs--in other
8 words, I have to measure them in two different ways.
9 I have to measure them in my customer scale and in
10 the provincial scale because again if it goes on the
11 export list, it has to have a metric scale.

12 I have to transport my wood further because
13 instead of going directly from the bush to my
14 customer's ship or to my barge, I have to go into
15 the Fraser River for storage.

16 I could incur log loss from both that extra
17 transportation and from the prolonged storage in the

18 water.

19 And I could have damage to my wood from
20 excessive river sill, from sun checking, from any
21 other smaller items that could also create
22 degradation.

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12:15:56 1 Q. Is there a rule on where your logs have to
2 be before they can be put on the 14-day advertising
3 list?

4 A. There is a rule that they must be
5 accessible. That's referred to as remote rule. In
6 other words, from remote areas, you have to have a
7 reasonable volume, I think it's 2,800 cubic meters
8 of volume to warrant someone to go have a look at
9 your wood if it's in a remote area.

10 Q. Has the definition of remoteness ever been
11 communicated to you?

12 A. Not definitively. I've heard expressions
13 from the representative from the Province saying it
14 can't be too expensive and it cannot be too far, but
15 I have never seen a written documentation expressing
16 the terms of reference.

17 Q. And is one of the motivations behind that
18 rule to make it worth the purchaser's while to go
19 and take a trip to a remote area and see what the

20 quality of the logs and the size, their sort and so
21 on, and to inspect the logs? Is that the idea?

22 A. My understanding is they want to have

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12:17:05 1 adequate volume to warrant the cost of travel or the
2 time of travel.

3 Q. Is visual inspection sometimes an important
4 part of assessing the quality of a log?

5 A. Generally, visual is the most important
6 part because depending on who saw the logs or
7 manufactured the logs, to see them physically gives
8 you a better feel for how well they were sorted or
9 how well they have been manufactured.

10 Q. To your knowledge, do the TEAC and FTEAC
11 Committee Members go out and inspect the logs that
12 they're determining fair price on in the course of
13 their deliberations?

14 A. To the best of my knowledge, they do not.

15 Q. Thank you, Mr. Ringma. Those are my
16 questions.

17 PRESIDENT ORREGO VICUÑA: Thank you,
18 Mr. Nash.

19 We will proceed, then, to the
20 cross-examination, please.

21

CROSS-EXAMINATION

22

BY MS. TABEL:

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12:18:07 1 Q. Hello, Mr. Ringma. I'm counsel for Canada,

2 and I will have a few brief questions.

3 A. Thank you.

4 Q. Thank you.

5 Mr. Ringma, is Island Timberlands--I

6 understand it's a Canadian company, isn't it?

7 A. It's a privately held company.

8 Q. It's owned by two Canadian partners, as I

9 understand it?

10 A. No, more than two.

11 Q. But they are Canadian?

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

13 correct.

14 Q. Okay, thank you.

15 And we've heard your testimony say today

16 that you had to go through the surplus test just

17 like Merrill & Ring; is that correct?

18 A. That's correct.

19 Q. And that you're also not able to advertise

20 standing timber on the Coast, just like Merrill &

21 Ring?

22 A. That's correct.

12:19:01 1 Q. And that with respect to your remote lands,
2 you were also subject to a minimum volume
3 requirement?

4 A. In some of our areas.

5 Q. Where it's remote?

6 A. Yes.

7 Q. Thank you.

8 Now, I had a few questions on your
9 strategies to satisfy to try to get around the
10 system or to be able to export your logs. And you
11 said you had three strategies. I will try to recall
12 them correctly, but if I don't, please correct me.
13 You said one of the strategies was to give them a
14 lower quality of boom than what you were
15 advertising.

16 A. That's correct.

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

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

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

22 A. If you have the wood available.

12:20:04 1 Q. Okay. So, that brings me to your second
2 strategy, and you said the other strategy that you
3 use is to buy on the open market to satisfy the
4 buyer that is interested in the logs you're
5 advertising, so I assume Merrill & Ring could also
6 do that; isn't that true?

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

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

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

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

21 And then you talked about the third
22 strategy, and you said that it was to use your

12:21:00 1 provincially regulated logs because they have a
2 lower return to satisfy a buyer that's interested in
3 your logs.

4 A. That's correct.

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

8 A. It's about a 15 percent discount.

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

12 A. Why would you say that?

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

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

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

12:22:06 1 landowners don't have to pay that fee-in-lieu of

2 manufacture.

3 A. That's correct.

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

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

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

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

22 Q. Well, but you don't have to pay the fee for

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12:23:07 1 the Federal logs?

2 A. I don't have to pay the fee on the Federal
3 logs.

4 Q. All right. Thank you. I think that's my
5 questions.

6 MR. NASH: No questions in redirect.

7 PRESIDENT ORREGO VICUÑA: Do you have a
8 question?

9 QUESTIONS FROM THE TRIBUNAL

10 ARBITRATOR DAM: I did have a question,
11 just to make sure I understand this and help me
12 organize the material which you explain very well,
13 but I just want to make sure how the system works.

14 And putting aside the standing of
15 exemption, talking about the normal situation, I
16 wanted to understand whether the problem with the
17 advertising and all the things that go with that is
18 the same for all of the areas in which you operate.
19 You pointed to quite a number of different areas in
20 which you operated, southern Coastal area, northern
21 Coastal area, some Inland areas. Is it the same
22 everywhere?

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12:24:04 1 THE WITNESS: In terms of our response of
2 what we have to do?

3 ARBITRATOR DAM: Yes.

4 THE WITNESS: Yes, it is.

5 ARBITRATOR DAM: No differences. I just

6 want to be clear about that. There is a
7 different--there are geographical differences,
8 though, with regard to the standing exemption.

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

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

22 THE WITNESS: The standing exemption is

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12:24:51 1 that the current Crown has got is the North Coast,
2 which comes down to about here and the Mid-Coast
3 that comes to almost the tip of Vancouver Island, so
4 it's that area from south of the Alaska panhandle
5 and to the top of Vancouver Island and inland to
6 Hydaland (ph.).

7 ARBITRATOR DAM: And the blocking problem

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

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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

10 would say we are in the 95 percent or higher club.

11 Probably even 97.

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

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

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

22 THE WITNESS: The 300,000 was just to the

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12:27:27 1 ones who interfere with our process. I also have
2 domestic sales that are noninterfered, but just the
3 300,000 are just people who have approached us and
4 said, if you don't do this, we will do that. Or to
5 the ones who actually wrote letters, so 300,000 is
6 specific to the unblocking activity. But I also
7 have other domestic wood that I sell into the market
8 in an unconstrained fashion.

9 ARBITRATOR ROWLEY: Yes, but the 300,000
10 that you describe as interference with your process,
11 that is--it reflects, does it not, an appetite for

12 300,000 cubic feet of timber in British Columbia?

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

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12:28:47 1 There's lots of opportunity for them to get wood,
2 but they're using what I call the easy street, the
3 Friday afternoon fax at my expense because I have to
4 appease them. If I don't appease them, I have
5 problems the next 14 days.

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

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

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

11 PRESIDENT ORREGO VICUÑA: Okay.

12 I have two questions to put to you.

13 If my maths are not awfully bad as they
14 are, 300,000 cubic feet in 1.3, which was the
15 example you used, would amount virtually to
16 25 percent.

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

19 PRESIDENT ORREGO VICUÑA: Would that be an
20 appropriate figure to say out of my exports,
21 25 percent--I mean, out of the volume I could have
22 exported, 25 percent goes into the blockmailing

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12:30:03 1 solution to get rid of it? Would that be a fair
2 estimate?

3 THE WITNESS: Partially, but be aware that
4 I don't always use just export quality wood, so that
5 300,000 could be a combination of some export
6 quality wood.

7 The other thing that happens is, because we
8 know the surplus Regime exists, it sometimes limits
9 us what we will even put up for export, so the
10 20 percent is a fairly ballpark number, but I
11 wouldn't say if we didn't have the Regime that I
12 could export 20 percent more. It could or could
13 not, depending on international appetite and where
14 the real domestic marketplace exists, because from

15 time to time there is a domestic need, and if the
16 domestic price is a better alternative, I'm not
17 necessarily in the game of having to export. I'm in
18 the game of optimizing my value into which whichever
19 country gives me that price. That could be
20 domestically on some sorts.

21 PRESIDENT ORREGO VICUÑA: I understand.

22 Now, in connection with the question that

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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.

5 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

17 because of going through the Federal Export Permit
18 procedure, you will be having to send off this
19 300,000 cubic feet to settle the problem of the
20 blocking? Can you compare the two things so as to
21 come to the conclusion in relation to which
22 Ms. Tabet asked you? Is it better for you to export

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12:32:56 1 from Federal Land or from Provincial Land? In one
2 you have to pay the fee; on the other one you don't
3 have the fee, but you have these other effects. You
4 see the point?

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

12 PRESIDENT ORREGO VICUÑA: Correct.

13 THE WITNESS: So, the real net difference
14 is that if the log is worth a hundred dollars, and I
15 have to pay the tax, I'm going to pay a 10-dollar
16 cubic meter tax to the Provincial Government for the
17 privilege of exporting that log off our private
18 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

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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

21 lower opportunity, then it becomes marginally, you
22 might say ah, you might be better off to pay the tax

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12:35:09 1 or you may not be better off to pay the tax and just
2 get the blocks stand.

3 PRESIDENT ORREGO VICUÑA: Okay.

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

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

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

20 THE WITNESS: Um-hmm.

21 PRESIDENT ORREGO VICUÑA: You also mention

22 in Paragraph 20 that sawmills, let me read exactly,

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12:36:33 1 most domestic log processors are simply inefficient
2 and uncompetitive.

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

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

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

18 PRESIDENT ORREGO VICUÑA: Okay.

19 So sorry, please.

20 ARBITRATOR DAM: You know, the conditions
21 are different in different economic regions, but
22 you're saying that even similarly situated Canadian

12:37:41 1 sawmills differ in their efficiency, apparently,
2 because calling it a subsidy does perhaps not have
3 legal consequences, but it certainly has economic
4 implications. It wouldn't follow Canadian sawmills
5 are inefficient simply because prices are higher in
6 the export market. But you're saying even within
7 Canada, these particular B.C. sawmills are less
8 efficient than other Canadian sawmills?

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

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

19 THE WITNESS: Pardon me?

20 ARBITRATOR DAM: Are you making any
21 implication with regard to why they are inefficient,
22 why they have not kept up?

12:38:47 1 THE WITNESS: I think it's been a lack of
2 Investor confidence to put more money into the Coast
3 in the conversion capacity.

4 ARBITRATOR DAM: I see. Thank you.

5 PRESIDENT ORREGO VICUÑA: Mr. Nash?

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

8 REDIRECT EXAMINATION

9 BY MR. NASH:

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

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

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

17 A. That is correct.

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

21 A. That's correct.

22 Q. They can automatically export.

12:39:37 1 A. Yes, and not only that, but they can also
2 take the residual volume, the volume that they did
3 not put out in the OIC they can also advertise that
4 as well, so they get a double benefit. They can
5 take the best 35 percent of that and put it out of
6 the country without advertising it, and then still
7 take the residual and put it out under advertised.

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

10 A. Hugely advantaged.

11 MR. NASH: Thank you.

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

15 (Witness steps down.)

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

18 (Tribunal conferring.)

19 PRESIDENT ORREGO VICUÑA: Yes. Well, there
20 is for the afternoon Mr. Cook and Ms. Korecky.

21 How long do you envisage? Do you have any
22 sort of outlook of how long would it take,

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12:40:55 1 approximately? I mean, not precisely.

2 MS. TABET: I think we should be able to

3 finish by 5:00.

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

8 PRESIDENT ORREGO VICUÑA: Okay.

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

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

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

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1 AFTERNOON SESSION

2 PRESIDENT ORREGO VICUÑA: Good afternoon,
3 Mr. Cook.

4 JOHN COOK, RESPONDENT'S WITNESS, CALLED

7 interruption. We have to know the session is open
8 or closed?

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

12 PRESIDENT ORREGO VICUÑA: Thank you.

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

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1 CONFIDENTIAL SESSION

2 BY MS. TABET:

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

6 A. The Timber Export Advisory Committee and
7 also to the Federal Timber Export Advisory
8 Committee, which are commonly known as TEAC and

9 FTEAC.

10 Q. And you are the one that makes
11 recommendations to the Minister?

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

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

19 A. Yes. The Regime is the timber manufacture
20 in B.C. It requires that all timber cut from
21 Provincial Lands and for private lands granted after
22 March of 1906, that all of the timber removed from

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1 those lands must be either used or manufactured
2 within the Province of B.C. That is the first
3 section of the Act.

4 The second section of part 10 deals with
5 potential for exemptions from that requirement of
6 which there are three opportunities. The first one
7 being the surplus exemption; the second being an
8 economic exemption, which is generally used for
9 standing timber; and, the third is a utilization
10 exemption which is used to try and make sure you

11 gain the maximum value from a stand before any
12 potential values are lost.

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

17 A. Once an exemption has been obtained you
18 then have to further apply for an Export Permit from
19 the Province, and that permit would only allow you
20 to move that timber from the Province within Canada.
21 And in the process of acquiring that permit, you are
22 required to pay a fee-in-lieu of manufacture. That

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1 net fee is only paid when you apply for the permit.

2 So, once a person has paid the fee,
3 received the permit, they then proceed to the
4 Federal Government to obtain a further permit from
5 Canada to allow it to be exported from the country.

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

9 A. The surplus exemption is a process by which
10 the timber is advertised on a Bi-Weekly List, so
11 every two weeks the timber in a boom form for
12 harvested surplus is put onto this list. It is

13 advertised for a period of two weeks when any
14 potential buyers have the opportunity to place an
15 offer on that advertised timber.

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

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

4 Q. So, often offers--in some cases logs are
5 advertised but don't receive any offer?

6 A. In reality, in most cases, most of the wood
7 that is advertised, average of around 98 percent of
8 the wood that is advertised never receives an offer.

9 Q. Okay. And then for those that receive an
10 offer, you said that the committee will
11 determine--look at them to see--make a
12 recommendation as to whether they're fair. How do
13 they do that?

14 A. So, for the 2 percent of the offers that do

15 come before the committee, or all of the offers come
16 before the committee, the committee must first
17 review activities from their previous meeting, any
18 follow-up business, review of earlier minutes, and
19 then they proceed on to a section of the meeting
20 referred to as market review.

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

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

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

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

14 A. That's correct. It's for the Coast it's
15 two pages of information. The Interior is much more
16 succinct.

17 Q. And who are the members of this committee?

18 A. We have X--

19 Q. Without you necessarily telling me the
20 names, I mean what I'm curious is how can they make
21 this determination?

22 A. Okay. The Members of the Committee, one of

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1 the requirements is that they have an expertise in
2 the log business, in log trading. They have to have
3 a good idea of what the marketplace is. They have
4 to be well versed in typical logging costs and
5 milling and manufacturing issues. They're well
6 experienced individuals in the industry.

7 Q. So, they're not only log buyers?

8 A. No, there is a breakdown of log buyers, and
9 there are log sellers there. There are some that
10 are involved on a peripheral basis more as
11 consulting, but there are a mix of people on that
12 committee.

13 Q. Okay. And do they go and look at the logs
14 that are being advertised?

15 A. No, they have not. In my experience, not
16 normally on a meeting basis, but once a year we
17 would do a field trip out to look at situations in

18 the field, not specific to an offer necessarily, but
19 to look at things generally.

20 The offer and the advertising process
21 provides the committee a considerable amount of
22 information that they can use to assess what the

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

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

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

16 A. Yes, we always consider additional
17 information when it becomes available, and it's
18 welcomed by the committee because it often is,
19 especially in a situation where you have you timber

20 that is perhaps a little unusual that's on the
21 market, it gives us an opportunity to truly
22 understand what that timber is.

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

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

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

20 A. Okay. An economic exemption is one where
21 the Applicant is trying to demonstrate to the

22 Government or to the Minister that to operate in the

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1 area in question is not economic without an element
2 of export being applied. What that means is they
3 have to provide their costs of operating to the
4 point of delivery, and also their expected values of
5 that timber they anticipate getting off of that
6 site, which is a fairly significant review process
7 of that information. Admittedly, quite a bit of it
8 becomes subjective.

9 Do you want me to do the utilization?

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

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

19 A good example is in the northeastern
20 component of the Province, we have an area where the
21 oil and gas industry is quite effective, and they
22 have been clearing land at a great rate at times and

1 then wasting the timber. There was an ability to
2 make that timber available to a market outside of
3 B.C. through a utilization exemption.

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

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

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

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

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

18 A. Yes, there are. The Coast is from a
19 transportation perspective, is much more mobile
20 because of water access. You're able to move wood a
21 great distance for reasonable costs, whereas the
22 Interior tends to be primarily truck transport,

1 which is much more expensive; therefore, shorter
2 distances involved.

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

5 A. Over the next slide.

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

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

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

1 Q. And where is the Vancouver Log Market
2 again?

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

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

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

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

19 A. The Mid-Coast North Coast areas really do
20 not have any sawmills to speak of. They're a great
21 distance from the primary marketing area of
22 Vancouver. The expense of getting those logs to

1 that market is extreme. The quality of the timber
2 generally in those areas is not as good as further

3 south.

4 Q. And what's the effect of having that
5 exemption?

6 A. The exemption that exists there allows them
7 under the exemption to export up to 35 percent of
8 what they harvest, so they have to harvest. They
9 can't just harvest for export. They have to harvest
10 more than what they want to export. The idea is to
11 generate some industrial activity in those areas as
12 best they can. It also helps to supply the market
13 further south with the timber that hasn't been
14 exported.

15 Q. And do they usually export that 35 percent
16 that they're allowed to export?

17 A. Most times they do not. On average, it's
18 been 15 percent, maybe 20 percent in some years. So
19 although they have the ability to export 35, they
20 very rarely reach that level.

21 Q. Why is that?

22 A. The market isn't there to support it, or

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1 the quality of the log isn't there to support the
2 buyer.

3 Q. I take it that logs further south are of
4 better quality?

5 A. As you move south in the Province, the
6 quality tends to improve, yes. That's our
7 approximation.

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

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

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

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

4 Q. So, it could--

5 A. It could be for any market.

6 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

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1 Export Advisory Committees. An offer that takes
2 place in the industrial marketplace, I would have no
3 knowledge of what it is or what levels it's at. But
4 the offers that come before the committee are always
5 viewed for their market level. Are they at the
6 market level.

7 So, if an offer were to be in there that
8 was below the market level, the committee would not

9 accept that offer as being relevant to stop export.

10 Q. So, if they waited and have their logs go
11 through the surplus process, then, in your view,
12 they would at least get the fair market value, the
13 domestic fair market value?

14 A. They would get the fair domestic market
15 value, yes.

16 Q. The Investor's witnesses also said that
17 sometimes they are forced to cut logs or to make
18 particular sorts for domestic mill in order to avoid
19 an offer being placed on some of their other logs.
20 For example, they say that in some instances they
21 are forced to sell 40 feet log at 34 feet price.

22 Does the surplus test allow that?

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1 A. If that were to occur, and the boom that
2 was in front of the committee for review was a
3 40-foot log boom, that boom would be reviewed as if
4 it was to be sold into the standard sawmill market,
5 which that boom would normally go to. It has to be
6 valued on what it is, not what the buyer wants it to
7 be.

8 Q. I'm not sure I understand.

9 A. They would value it based on a sawlog boom
10 value, depending on the sorts and the species and

11 whatever particular grades happened to be in that
12 boom.

13 Q. But they would get then a value for the
14 40 feet or for 34 feet?

15 A. They would definitely be judged on the
16 value of a 40-foot log. Would not be judged on the
17 value of a 34-foot log.

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

20 PRESIDENT ORREGO VICUÑA: Thank you,
21 Ms. Tabet.

22 Mr. Nash will cross? Yes, please.

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1 CROSS-EXAMINATION

2 BY MR. NASH:

3 Q. Mr. Cook, you have been the Export Policy
4 Forester since 2005; is that correct?

5 A. That's correct.

6 Q. What month were you appointed to that
7 position?

8 A. Repeat that, please.

9 Q. What month were you appointed to that
10 position?

11 A. I believe it was March of that year.

12 Q. And you're employed by the British Columbia

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

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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?

15 Was that one of your responsibilities when you were
16 working in private industry?

17 A. Yes, it was.

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

21 A. I was involved in both to some degree. I
22 had a peripheral involvement in the log supply ends

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1 of things in my later years with the company.

2 Q. That was back in the eighties?

3 A. Late eighties, early nineties.

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

5 A. No, I'm not.

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

9 A. No, I did not.

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

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

15 Q. And so you've never been actually
16 responsible for marketing logs?

17 A. No, I have not.

18 Q. Or selling logs to customers?

19 A. No, I have not.

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

21 from A to B?

22 A. I did get involved in the transportation on

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1 a peripheral basis, yes.

2 Q. Have you ever been involved in organizing

3 the harvesting of timberlands?

4 A. Yes, I have.

5 Q. Have you been involved in preparing logs

6 for market, getting them ready to be sold?

7 A. Are you asking about the physical

8 preparation?

9 Q. Yes.

10 A. No, I have not.

11 Q. In your experience that we have just

12 touched on was all prior to 1992, when you joined

13 the Government; is that right?

14 A. That's correct.

15 Q. Ms. Korecky is currently the Federal

16 representative on TEAC/FTEAC?

17 A. That's right.

18 Q. And when was she appointed to that

19 position?

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

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

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1 September 2005, and on a permanent basis in
2 November 2005, would that about ring true to you?

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

4 Q. You were there before she was there?

5 A. From my recollection, we arrived about the
6 same time. Certainly, from the committee meeting
7 perspective, she had some involvement pretty much
8 from the first day I was there.

9 Q. Now, you have a forestry background; that's
10 been your career?

11 A. That is correct.

12 Q. Did you come to know that Ms. Korecky had
13 no forestry background before she was appointed to
14 FTEAC?

15 A. I'm aware of that, yes.

16 Q. And what were you aware of her background
17 when she was appointed in terms of her professional
18 experience either in Government or in private
19 industry?

20 A. I was not aware, and it was not relevant to

21 my questions.

22 Q. It was relevant to you that she had no

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1 experience in forestry because you helped explain to
2 her the lay of the land in the British Columbia
3 forestry market, if I can put it that way?

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

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

10 A. That's fair.

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

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

18 Q. I'd like to turn to the procedures for
19 advertising and procedures for presenting offers.
20 As I understand it, if an exporter wants to sell a
21 boom or many booms of logs, they give notification
22 to somebody that they want to advertise on what's

1 been referred to as the 14-day list; is that right?

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

4 Q. And they apply to whom to do that?

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

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

11 A. Yes, that would be the procedure.

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

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

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

20 A. That's correct.

21 Q. So, there is a 10-day period from the time
22 that they have decided to apply, at least a 10-day

1 period, to the time that the advertisement will
2 actually appear; is that right?

3 A. That's correct, yes.

4 Q. And then there is the 14-day period when
5 the logs are advertised on the list.

6 A. That's right.

7 Q. And I believe it used to be that at some
8 point that the logs that were to be advertised had
9 to be transported to a marshaling point where they
10 could be advertised for sale; is that right? And
11 before they could actually apply to get advertising.

12 A. No. A boom can be advertised from any
13 number of locations as long as--prior to
14 approximately two years ago it had to be stationary
15 during the time of advertising. Since that time we
16 have allowed transport of that boom during the
17 advertising period.

18 Q. So, until two years ago the rule was that
19 the boom had to be stationary, and you changed that
20 rule two years ago so that the boom could be
21 actually in transit to a location?

22 A. That's correct. It was an attempt to speed

1 up the process for the log sellers, yes.

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

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

7 Q. And who changed that rule?

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

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

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

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

18 A. That would have been in the 1999
19 procedures.

20 Q. And has the 1999 procedure been amended?

21 A. There has been a document put forward to
22 all of the provincial operators to advise them that

1 the wood can now be moved--advertised in transit.

2 Q. So, that was a decision that was made by, I
3 think you said, after discussion but was made by
4 TEAC and FTEAC; is that right?

5 A. They helped in the deliberations and
6 provided advice that this was a sensible thing to
7 do. That decision was made within my office.

8 Q. So, do you have authority to make those
9 decisions?

10 A. On a decision like that, yes, I would.

11 Q. And that would be you could exercise that
12 authority unilaterally?

13 A. Yes, I can.

14 Q. To go back to the procedure for
15 advertising, during the 14-day period offers may or
16 may not come in to purchase the booms being
17 advertised; is that fair?

18 A. That's fair, yes.

19 Q. And if the offers--as I understand it, the
20 offers go to three places. The first place it goes
21 to is to you, the second place it goes to is
22 Ms. Korecky's division, and the third place would be

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1 to the owner of the logs; is that right?

2 A. Not quite.

3 Q. Okay.

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

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

12 A. No, I do not.

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

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

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

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

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

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1 A. The provincial representative receives only
2 provincial offers.

3 Q. So, are you saying that not a copy of the
4 Federal offer goes to the provincial representative?

5 A. It did in past. It does not anymore.

6 Q. When did that rule change?

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

9 Q. And who changed that procedure?

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

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

15 A. All offers still go to the Federal
16 Government as far as I'm aware.

17 Q. So the Federal Government receives all
18 offers, both provincial and federal?

19 A. That's correct.

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

22 A. Perhaps I need to clear this up.

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1 Q. Certainly.

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

7 granting of the land.

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

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

16 A. I would, yes.

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

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

22 Q. I just to want clear that up because

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

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

7 Q. Yes.

8 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

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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

11 would you normally have, both Federal and
12 provincial?

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

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

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

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1 yes.

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

5 A. Correct.

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

8 A. Correct.

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

11 A. Someone within the Federal Government would
12 monitor those that have been made and those that

13 were withdrawn, yes.

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

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

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

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

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

7 A. Yes, they do.

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

10 A. Yes, they do.

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

13 A. One or two days.

14 Q. And they're expected to review the offers

15 and other material or the summary sheet of the
16 offers prior to the meeting; is that right?

17 A. It's my expectation that they would do
18 that, yes.

19 Q. And the--so, when you arrive at the FTEAC
20 meeting, wherever it is in British Columbia, and I
21 gather it goes around British Columbia.

22 A. Generally in the Vancouver area.

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1 Q. And are the members from different parts of
2 British Columbia?

3 A. Yes, they are.

4 Q. Does it take some time to assemble
5 everybody in one spot to get them all there?

6 A. That's up to them, but they all know when
7 the meeting time will be, and they make arrangements
8 to arrive on time.

9 Q. So, when the TEAC/FTEAC meeting begins, I
10 think you indicated you do a market review; is that
11 right? The members do?

12 A. That's correct, yes.

13 Q. And that market review is against the
14 backdrop of the offers that have been made on the
15 booms that are up for consideration at that given
16 meeting; correct? Is that fair?

17 A. They would be knowledgeable of it, yes.

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

22 A. Once they have determined what the domestic

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1 prices are, then they will review each of the offers
2 on its own relative to the application and determine
3 the validity, yes.

4 Q. And that part--that part of the process, is
5 there adjudication over the merits of the offer as
6 against the domestic price; is that correct?

7 A. That's correct.

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

10 A. No, it does not.

11 Q. That's an irrelevant consideration?

12 A. It's not relevant to the mandate of the
13 committee.

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

17 A. No, it would not see those.

18 Q. And, of course, it is unaware if there have

19 been other "negotiations," if I can use that term,
20 between parties, log sellers and buyers, which have
21 avoided offers being made; is that fair?

22 A. I don't think it's fair to say they are not

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1 aware of it, but they're not aware of any specifics
2 relative to any that may have been withdrawn, no.

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

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

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

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

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

19 A. It's fair to say that I'm aware that that
20 does happen, yes.

21 Q. And it's a concern to you that it happens,
22 isn't it?

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1 A. It is a concern, yes.

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

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

9 Q. It's the balancing in the marketplace?

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

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

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

21 Q. And can you elaborate upon that.

22 First of all, what was it intended for, and

1 how is it being used in a way that it wasn't
2 intended for?

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

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

14 A. I don't understand your question.

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

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

21 Q. Under the Export Control Regime, the system
22 of TEAC and FTEAC; correct?

1 A. This would go back a hundred years.

2 Q. The Notice 102 was brought in April 1st,
3 1998; is that correct?

4 A. That's correct.

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

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

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

18 A. Perhaps.

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

1 and so on. Isn't that part of the problem?

2 A. The standing exemption is an entirely
3 different issue.

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

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

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

12 A. The one that you just described to me.

13 Q. Pardon me?

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

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

20 A. If a person chooses to use the Advisory
21 Committee process for what it was intended, they
22 would be getting a fair hearing. These are people

1 that choose not to use that.

2 Q. And if there are people who want to use the
3 system for other purposes, like to their own
4 commercial advantage, that's not what it was
5 intended to do; isn't that fair?

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

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

12 A. Correct. I'm aware of them.

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

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

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

21 A. If I'm provided with factual and written
22 evidence of the situation, then I would look into

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1 it. I have yet to be actually provided that
2 evidence. I cannot act on circumstantial evidence.

3 Q. Is it part of the industry knowledge, at

4 least to your knowledge, that this process goes on
5 that these deals are negotiated and block offers are
6 made? Is that fair?

7 A. The log market in Vancouver is extremely
8 large. How, why, and where offers on timber are
9 made is not something I'm party to.

10 Q. Have you ever heard of circumstances where
11 a particular log exporter has sold other logs at a
12 lower price to a domestic purchaser in order to free
13 up his logs for export, the logs that he wants to
14 get out?

15 A. Through these proceedings, I've heard of
16 that, yes.

17 Q. And that would concern you?

18 A. Not greatly as those people have chosen to
19 take that route.

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

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

6 It's not anything to do with the committee.

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

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

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

14 A. Absolutely nothing on the domestic market.

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

18 A. Yes, I would.

19 Q. But you're not an economist?

20 A. No, I'm not.

21 Q. Just to confirm, TEAC--the membership and
22 composition of TEAC is identical to the composition

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1 of FTEAC except for one member; is that correct?

2 A. That is correct.

3 Q. And that would be currently Ms. Korecky?

4 A. That's correct.

5 Q. And previously Mr. Jones?

6 A. I believe it was Mr. Jones, yes. He was
7 not there while I have been involved.

8 Q. That's one of my other questions.
9 Mr. Jones retired from the public service in 2004;
10 is that right, or do you know that?
11 A. I do not know.
12 Q. When you came on FTEAC/TEAC, was there a
13 Federal representative actually on FTEAC?
14 A. Yes, there would have been. I don't recall
15 the person who the person was at the moment but
16 there was certainly somebody there.
17 Q. There was a person there after Mr. Jones
18 retired?
19 A. Not physically. They were by conference
20 call.
21 Q. Do you know Mr. John McCutcheon?
22 A. Yes, I do.

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1 Q. And he most recently worked in the industry
2 for Interfor?
3 A. That was the last logging company that he
4 worked for, that's correct.
5 Q. And he was previously with Primex; is that
6 right?
7 A. That's correct.
8 Q. And Primex was bought out by Interfor?
9 A. That's right.

10 Q. He worked for Primex in the nineties and
11 then Interfor in the 2000s?

12 A. I don't know the dates, but it's
13 approximate.

14 Q. In that range.

15 And he was--Mr. McCutcheon was Chair of
16 TEAC for how many years? He left in 2006; isn't
17 that right?

18 A. He left in 2006. Exactly how many years he
19 was Chair, I'm not sure, but it was quite a few.

20 Q. If I was to say eight to 10, would that be
21 within the range?

22 A. It's probably in that range, yes.

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1 Q. And prior to that he had been a member for
2 another 10 or 12 years?

3 A. I believe he had been a member from the
4 instigation of the TEAC committee itself.

5 Q. A long serving member of the committee?

6 A. Yes.

7 Q. And an influential member of the committee;
8 fair enough?

9 A. As the Chair he would be an influential
10 member, yes.

11 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 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

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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

14 document that is circulated prior to the meeting
15 giving market information. What is that document?
16 Did I get that right?

17 A. No.

18 Q. Okay.

19 A. The only information circulated prior to
20 the meeting to the Committee Members is an agenda, a
21 summary of the applications that will be reviewed so
22 they know what they're facing, any other issues that

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1 may come up that we require advice on. That's what
2 they would be provided.

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

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

9 Q. That's what the committee does.

10 A. That's correct.

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

13 A. They exchange information and their
14 exposure to the market to decide what is the

15 appropriate value on the domestic market at the
16 time.

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

21 A. They do not have the offer details. They
22 have nothing more than the summary sheet, but

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1 understand that the committee operates on a
2 completely confidential basis to the Minister. This
3 is not anything they share with anybody else other
4 than the committee.

5 Q. I'm just referring really to what knowledge
6 they have as they're sitting in the committee room.

7 They've got a summary sheet and the summary
8 sheet sets out the part of the offeror?

9 A. Yes, it does.

10 Q. The log seller?

11 A. Yes, it does.

12 Q. The boom?

13 A. The boom number would be there, yes.

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

16 A. A summary description, yes.

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

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1 Q. And some of the offerors may or may not be
2 competitors of theirs in the marketplace; is that
3 correct?
4 A. There is a chance they are in some cases,
5 yes.
6 Q. And some of those offerors may, in fact,
7 have a common interest with certain members of the
8 committee; fair enough? Not in practice--
9 A. Perhaps.
10 Q. Not noncompetitors, sort of friends in the
11 industry.
12 A. They're all friends generally.
13 Q. And their companies may be in a similar
14 position in terms of their--what they do in the
15 market at a particular time; isn't that fair?
16 A. It varies, but they're in the log market.
17 Their business is buying and selling logs.
18 Q. And how long do the meetings last?

19 A. Generally two to three, sometimes four
20 hours.

21 Q. So, just to take Mr. McCutcheon as the
22 example, in the period while he was Chair--he left

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1 in 2006; right?

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

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

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

7 Q. When did he stop working for Interfor?

8 A. December of 2005.

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

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

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

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

20 A. They harvest their own and they buy logs,

21 yes.

22 Q. And they also log?

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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, they--so, Mr. McCutcheon being
7 the Chair of the committee and an employee of
8 Interfor would receive all of the information about
9 every single offer that you've described coming
10 before the committee; that's correct?

11 A. That's correct.

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

16 A. He would have that information, yes.

17 Q. And all of the other Members of the
18 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.

1 If you go to Paragraph 76, Page 21.

2 A. I'm there, yes.

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

12 A. They adjudicate review, yes. Yeah.

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

15 A. Repeat that, please.

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

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

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

22 A. No, they're not.

1 Q. Does TEAC or FTEAC have a Web site?

2 A. No, they do not.

3 Q. Is any notice given to the industry of the
4 offers being considered at the meeting?

5 A. No, that would be third party private
6 information.

7 Q. So that no notice is given to the industry
8 on even a no names basis about the offers being
9 considered; that's correct?

10 A. No, it is not.

11 Q. That is correct?

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

13 Q. Is any notice of a meeting agenda ever sent
14 to the industry either before or after the meeting?

15 A. No, it is not.

16 Q. Is there a set of rules governing the
17 procedures at the meeting?

18 A. There is a Terms of Reference that the
19 committee works by, yes.

20 Q. And how long is that Terms of Reference?

21 A. How long?

22 Q. Yes. How many paragraphs is that?

1 A. It's about three pages.

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

6 A. No, there is not.

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

11 A. No, there is not, no.

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

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

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

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

22 Q. Could you turn to the Investor's Core

2 A. Is that the white binder?

3 Q. We will put it in front of you.

4 ARBITRATOR ROWLEY: Sorry, I'm not sure I

5 know which Core Bundle he should be looking at.

6 (Binder shown to the Tribunal.)

7 ARBITRATOR ROWLEY: Yes, thanks.

8 BY MR. NASH:

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

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

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

21 A. If there is an offer, then that offer would
22 go before the Timber Export Advisory Committee for

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1 review to see what the fairness of that offer was.

2 Q. Is it anywhere published the criteria that
3 will be used by the committee in the course of

4 applying that procedure? In its determination and
5 adjudication on market value?

6 A. The publication that is out there says that
7 the committee must review to the domestic market
8 level. It compares to a domestic market level.

9 Q. And my question is more specific, that in
10 determining that--coming to its determination on
11 that issue, is there anywhere where it is set out
12 what criteria will be applied in order for the
13 committee to come to that determination how it will
14 be measured, how they will establish how they've
15 arrived at the domestic market value?

16 A. I'm not aware that that is written down,
17 no.

18 Q. Is it written down anywhere, either
19 publicly or privately?

20 A. I'm not aware of it, no.

21 Q. And if it was written down, you would be
22 aware of it; that's fair?

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1 A. I would think so.

2 Q. Does the committee give prior notice to the
3 industry of the prices for various species and
4 grades that it considers to be reflective of the
5 domestic market value?

6 A. No, it does not. Not from this department.

7 There are prices published but not through us.

8 Q. Well, there are prices published, but it's

9 not like a price exchange or a stock exchange?

10 A. No.

11 Q. Or a commodity exchange?

12 A. No.

13 Q. There is no commodity exchange for B.C.

14 logs; correct?

15 A. Not that I'm aware of.

16 Q. And prices for logs just like most

17 commodities can fluctuate over time?

18 A. Yes, they would.

19 Q. So, is the industry given any notice as to

20 how those price fluctuations will be taken into

21 account when the committee determines the fairness

22 of a particular offer?

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1 A. No, they are not.

2 Q. So, essentially what the committee looks at

3 is its own information as derived from its members

4 most of whom, almost all of whom, come from private

5 companies involved in the industry; that's fair?

6 A. They glean it from the marketplace as a

7 whole.

8 Q. What they do is they look at it from their
9 perspective at the table and bring their information
10 to the table for consideration by the committee?

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

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

17 A. That's correct.

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

21 A. They would not always be, no.

22 Q. They're generally higher than domestic

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1 prices, aren't they?

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

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

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

8 Q. Generally international prices would be

9 higher than domestic prices; that's correct?

10 A. For some particular sorts and grades of
11 logs, but not all.

12 Q. Most of the time is it fair that
13 international prices will be higher than domestic
14 prices?

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

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

21 A. They provide a reasonableness kind of test,
22 understanding that no boom logs is exactly the

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

8 Q. So, they don't have a range like a plus
9 10 percent or minus 10 percent?

10 A. They have ballpark.

11 Q. Ballpark?

12 A. Ballpark kind of range, and I have seen and
13 heard of roughly 5 percent. It's not an absolute,
14 though.

15 Q. Who have you seen and heard that from?

16 A. I have seen that recorded in the TimberWest
17 case a couple of years ago.

18 Q. Well, you're sitting in on these meetings,
19 every meeting, unless you're away from work, but
20 every meeting you're sitting in.

21 A. Yes.

22 Q. And do they apply a plus or minus

502

1 5 percent, or do they not?

2 A. They do if it becomes necessary. Very
3 rarely are offers anywhere close to that margin.

4 Q. So they have applied it plus or minus
5 5 percent?

6 A. If it's a close offer, they will look at it
7 carefully and mentally do the math. Is it within
8 5 percent, yes, no, what other factors are there,
9 and decide accordingly.

10 Q. And is the industry notified that in
11 certain circumstances the committee will apply a
12 plus or minus 5 percent range on an offer?

13 A. Did you say is the industry advised?
14 Q. Is the industry advised of that?
15 A. No, they're not.
16 Q. The industry isn't advised of any criteria
17 that the committee takes into account in determining
18 whether offer meets domestic fair value; isn't that
19 fair?
20 A. They're advised that the offer must be at
21 domestic levels.
22 Q. That's all they're advised?

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1 A. That's correct.
2 Q. And they're not advised as to any aspect of
3 the procedure that the committee will apply in
4 coming to that determination; that's fair?
5 A. That's fair.
6 Q. At the end of the meeting decisions have
7 been made, and just actually on that point, how are
8 decisions made? Is there a vote?
9 A. The committee does not make decisions. The
10 committee provides advice to the Minister who will
11 eventually make the decision.
12 Q. Well, let's not get up hung up on decision
13 or recommendation. The committee decides whether an
14 offer meets domestic fair value. They make that

15 decision?

16 A. They go through that recommendation
17 process, yes.

18 Q. They come to a determination, if you will,
19 as to whether a particular offer meets fair domestic
20 value; isn't that fair?

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

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

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

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

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

11 Q. Right.

12 A. How that decision is used is different.

13 Q. I understand.

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

16 A. Correct.

17 Q. Is there unanimity?
18 A. Most of the time. Not always.
19 Q. And what happens if there is a dissent?
20 How is that dealt with?
21 A. They argue around until they finally reach
22 consensus.

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1 Q. And then at the end of the meeting, you
2 have all the determinations, if you will, that have
3 made, decisions that have been made, and you go and
4 write minutes; is that correct?
5 A. That's correct.
6 Q. And you record what has been decided in the
7 meeting?
8 A. That's correct.
9 Q. Is there any record of what the discussion
10 was in the meeting?
11 A. That's the minutes.
12 Q. There is actually a record of the
13 discussions that occurred leading up to the
14 conclusion?
15 A. No, there is not a record of the discussion
16 necessarily. It's only a record of what the
17 recommendation is.

18 Q. And then you send the minutes to the Chair;
19 is that correct?

20 A. That's correct.

21 Q. And the Chair reviews them for accuracy?

22 A. That's correct.

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1 Q. And then you also send them to Ms. Korecky
2 currently?

3 A. If there's issues in there of concern for
4 her, she would be reviewing, yes.

5 Q. And the minutes are finally finalized; is
6 that fair?

7 A. That's correct.

8 Q. And then are they then sent to Committee
9 Members?

10 A. The Committee Members would receive those
11 members, that's correct.

12 Q. Are those minutes posted anywhere?

13 A. No, they're not.

14 Q. They're considered to be secret?

15 A. They're confidential to the Minister of
16 Forests.

17 Q. And so, when Mr. McCutcheon, just to take
18 an example, goes back out into the market, back to
19 his--puts on his Interfor hat, he's got the minutes;

20 right? He's got a record of all the decisions made;
21 correct?

22 A. If he has his Interfor hat on, then no, he

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1 does not have the minutes in his disposal.

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

4 A. He would, yes.

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

7 A. That's correct.

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

10 A. I would assume he would, yes.

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

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

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

19 A. No, I do not.

20 Q. Let me make that clear. That was perhaps
21 unclear.

1 example. Merrill & Ring has booms of logs for sale,
2 the 14-day period comes in, an offer is received, it
3 goes to TEAC. And what happens after that? Does
4 Merrill & Ring get notice that--of the outcome of
5 the determinations to the adjudications of the
6 committee?

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

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

18 A. Definitely not.

19 Q. And those are secret as well?

20 A. The offers are confidential to the
21 committee.

22 Q. Now, there has been discussion in this

1 matter of an appeal process. Is there an appeal
2 process laid out anywhere with respect to trying to
3 have TEAC's decisions either overturned or rejected?

4 A. Well, as TEAC doesn't make the decision,
5 there is no appeal there. However, if somebody
6 wishes to appeal the decision of the Minister, they
7 have the right under the Forest Act to do that.

8 Q. That's for the British Columbia Forest Act?

9 A. For British Columbia, yes.

10 Q. What is the comparable Federal regulation?

11 A. I would not know that.

12 Q. Do you know if one exists?

13 A. I would gather there is because there have
14 been some challenges there, yes.

15 Q. So you believe that there is a procedure
16 laid out for the Federal applications?

17 A. There is apparently a process. I don't
18 know the specific procedure.

19 Q. Could you go to the exhibit--we are going
20 to leave the Investor's Core book of documents for
21 one minute and go to something else. Please turn to
22 the exhibits to your Affidavit.

1 A. My first Affidavit?

2 Q. Yes.

3 Turn to first to Tab 12?

4 A. This would be order in council 161.

5 Q. That's order in council 161.

6 We have heard reference to exemptions.

7 This is an example of an exemption; correct?

8 A. This is a blanket exemption, yes.

9 Q. And this is a blanket exemption that

10 applies to certain lands on the North Coast;

11 correct?

12 A. This is the Mid-Coast area.

13 Q. Mid-Coast area.

14 And is it you that would recommend that an

15 exemption be granted of this nature, or is it

16 someone else?

17 A. The committee would have had an application

18 brought to them, in this case probably by their

19 regional manager or a number of participants

20 harvesting in that locale. Then they would have

21 reviewed to see what the nature of the process that

22 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?

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1 A. Their advice is included with my own
2 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?

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1 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.

5 You maintain the records of TEAC as the Secretary?

6 A. I have access to them, yes.

7 (Comment off microphone.)

8 MR. NASH: Is it a restricted document?

9 She says it is.

10 THE WITNESS: I wrote them.

11 MR. NASH: Not quite these ones.

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

14 (Pause.)

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

20 PRESIDENT ORREGO VICUÑA: How long will--

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

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1 (Pause.)

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

4 MS. TABET: Sorry, the document at issue,
5 and maybe this is only an issue for this one
6 document, but the document at issue is minutes from

7 the TEAC committee that had been designated as
8 restricted so that Merrill & Ring cannot have access
9 to that information. So, the only issues that we
10 would--I see that they have--

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

13 MS. TABET: Thank you.

14 MR. NASH: No more issue.

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

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

20

21

22

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1 CONFIDENTIAL SESSION

2 BY MR. NASH:

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

5 A. Correct.

6 Q. And it shows that Mr. McCutcheon is Chair,
7 and then there is a series of members who are
8 present, including Mr. Ruhl; right?

9 A. That's correct.

10 Q. And Mr. Ruhl was your predecessor?

11 A. That's correct.

12 Q. He was the Secretary.

13 And who is the--do you know, is there any

14 Federal representative identified here?

15 A. On this particular meeting, no.

16 Q. No? So, you take it from that that

17 the--your understanding of the way the Minister had

18 done that the Federal representative would have been

19 absent from this meeting; is that right?

20 A. They would have been absent, yes.

21 Q. Okay. And I see that it's identified as

22 the Timber Export Advisory Committee. Are there

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1 separate minutes done for the Federal Timber Export

2 Advisory Committee, the Federal arm of this?

3 A. No, there are not.

4 Q. So, this would be the minutes for both

5 sides of the committee, if you will?

6 A. That's correct, yes.

7 Q. If you go over to, just to get a sense of

8 how the meeting works, you do business arising out

9 of the minutes, the bottom part of the page, and

10 then you go over to the next page, number three,

11 harvested surplus applications. This market review
12 is done, and today you know that at that point that
13 the market review is done all of the Committee
14 Members have all of the offers that have not been
15 withdrawn and are going to be considered at the
16 meeting; that's correct?

17 A. They should have had, yes.

18 Q. And they should have reviewed them?

19 A. I hope they reviewed them.

20 Q. You hope in the best of all worlds.

21 You then go over to--at the very bottom of
22 the page you will see under B offers, Coast,

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1 October 17, 2003 Bi-Weekly List, and then you will
2 see over on the next page that there is a series of
3 applications identifying the application number, and
4 Comox Timber would be the seller or the buyer?

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

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

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

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

12 A. I may have.

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

20 A. That's correct.

21 Q. And so, if you go down all of those offers,
22 they're all from CIPA, and they're--the

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1 application--and what's the exact application that's
2 being made here?

3 A. This is an application to export harvested
4 timber.

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

8 A. Correct.

9 Q. And if you go down to you see Merrill &
10 Ring about mid-page fir standard sawlogs an offer
11 was received from CIPA Lumber. The committee
12 considered the offer to represent fair market value
13 and recommended that the application be rejected.

14 And the same below, the next--actually,

15 there is a point here that I would like to raise.
16 J. McCutcheon relinquished the chair and excused
17 himself from the meeting citing possible conflict of
18 interest.

19 Do you see that?

20 A. Yes, I do.

21 Q. Are there conflict of interest standards
22 and rules that the committee adopts to be sure that

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1 there can be no conflict?

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

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

10 A. No, there is not.

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

14 A. Correct.

15 Q. The difference is that the next offer being
16 made on Merrill & Ring's logs is received from

17 Interfor, International Forest Products LTD;

18 correct?

19 A. Correct.

20 Q. And he being an employee of International

21 Forest Products LTD leaves the room?

22 A. That's correct.

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1 Q. And for those two offers he's away from the

2 room. The next one is Merrill & Ring, and then he

3 comes back to the room, and he assumes the Chair.

4 Is that what happens?

5 A. That's correct.

6 Q. And then the process continues.

7 So, exempt for those two international

8 Forest Products offers there, everyone on that page

9 is from CIPA; right?

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

11 Q. If you go over to the next page, you will

12 see that CIPA's name appears in every single one all

13 the way down that page; right?

14 A. Yes.

15 Q. And then each and every one of those

16 applications for export is rejected; is that right?

17 A. Yes, that appears they were.

18 Q. And then under offer--under the one just

19 about mid page it says "offer withdrawn," what's
20 happened there?

21 A. I can only surmise as this predates my
22 time, but it would assume that the offer was

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1 reviewed legitimately at the meeting. Subsequent to
2 the meeting but before the minutes were prepared,
3 the offer was withdrawn, so it would be recorded as
4 such, meaning that the offer had no standing, the
5 wood was free to go.

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

7 A. Yeah.

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

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

17 Q. So, they are active in the market?

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

20 Q. And what that offer being withdrawn means

21 to you is that a deal has been struck, whereby that
22 wood could go and other wood is being sold off to

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1 CIPA in exchange for that benefit.

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

6 Q. You assume that the seller and CIPA have
7 reached a--or that the Applicant for the Export
8 Permit and CIPA have reached a mutually satisfactory
9 understanding?

10 A. They have reached an agreement of some
11 sort, yes.

12 Q. That's what you assume?

13 A. That's all I could assume.

14 Q. And it seems to be on many offers that this
15 was done, about 10 of them out of the whole page
16 here and the next page there is about 10 where the
17 offer is withdrawn.

18 Do you suspect perhaps there is a
19 negotiation where CIPA has said, "I want your logs,
20 give me your logs and your export logs can go"? Do
21 you have any suspicion of that?

22 A. I wouldn't know that offhand, no.

1 Q. Do you have any sort of in-the-air
2 understanding that that might be what's going on?

3 A. There is a possibility of that, but it's
4 not a business part that I'm routinely aware of.

5 Q. And if there is a possibility of that in
6 these circumstances, you would be concerned about
7 that?

8 A. The issue here is that CIPA obviously
9 reached an arrangement with any one of the number of
10 sellers to buy some logs. That's a free-market
11 arrangement.

12 Q. If there is a possibility these logs that
13 those sellers wanted to export were being held
14 hostage so that CIPA could get the logs at a cheaper
15 price domestically, that would concern you, would it
16 not?

17 A. I don't know that that would be the case.
18 I know that--

19 Q. Assume that's the case for a moment,
20 please.

21 A. I can't do that.

22 Q. Take my hypothetical and assume that these

1 logs are being paid off as ransom to get the hostage
2 free.

3 A. Okay.

4 Q. Okay. Would that concern you?

5 A. My concern from a TEAC level and certainly
6 from a Minister's level is that the manufacturing
7 plants in B.C. have access to timber. This would
8 seem to show me that they've reached an agreement
9 whereby they could purchase logs from the various
10 sellers, nothing more than that.

11 Q. If you accept my assumption that the logs
12 were being held as hostage, would that concern you?

13 A. If they were being held as hostage, that I
14 only had to lead them into the marketplace for TEAC
15 to do a proper review.

16 Q. It would not concern you if there was this
17 dynamic going on between CIPA and the sellers of all
18 these logs whereby CIPA was using the export logs as
19 hostage to get cheaper logs domestically? That
20 wouldn't concern you?

21 A. If they're offering a fair price on the
22 domestic market for the logs that are being

1 advertised, that's what they should pay.

2 Q. What if the exporters have got a gun to his
3 head, he wants to get these logs out for export and
4 he's got to pay this ransom? Would that concern
5 you?

6 A. I don't view it that way.

7 Q. You don't view it that way at all, from
8 where you sit, your perspective, that's not
9 happening?

10 A. I can't say that it's not happening, but
11 it's not of my general concern.

12 Q. It's not of your general concern?

13 A. It's not something I have any position to
14 do anything about.

15 Q. And nobody has done anything about it. If
16 it happens, nobody has done anything about it;
17 correct?

18 A. From the provincial level, I have never had
19 anybody bring the case to me that required that, no.

20 Q. But if you were aware of it happening
21 generally in the industry, you would think something
22 should be done about it, wouldn't you?

1 A. I would be concerned about fairness in the

2 marketplace, but not being involved in the
3 day-to-day activity of the marketplace itself.

4 There is any number of processes involved in
5 negotiating a price for a boom of logs. I don't
6 know what they would all be.

7 Q. If you could go to Tab 20, Exhibit 20 of
8 your Affidavit--and this is a minute of the Meeting
9 Number 276, dated August 9, 2004. Mr. McCutcheon is
10 chair; we have covered him. Interfor operates
11 sawmills.

12 Mr. Cross. Who is he?

13 A. Jim Cross is a member of the committee.

14 Q. And who did he work for?

15 A. He's retired. Prior to this worked for a
16 number of logging companies mostly in the northern
17 section of the Province, northwest.

18 Q. Mr. Takhar worked for Terrace Lumber; is
19 that correct?

20 A. Yes, that's correct.

21 Q. And Terrace Lumber runs a sawmill and buys
22 logs; right?

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1 A. They did, yes.

2 Q. And Mr. De Visser works for Coastland;
3 correct?

4 A. Currently, he workes for Coastland, but at
5 the time of these minutes he worked for another
6 firm.

7 Q. He currently works for Coastland?

8 A. That's correct.

9 Q. And Coastland operates a veneer plant; is
10 that right?

11 A. That's correct.

12 Q. We have been told that there are three
13 veneer plants in British Columbia. One run by CIPA;
14 correct?

15 A. Correct.

16 Q. And Coastland runs another one?

17 A. That's correct.

18 Q. And Richmond Plywood operates the other;
19 that's correct?

20 A. That's correct, yes.

21 Q. And then Mr. Probyn operates a sawmill in
22 Squamish?

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1 A. He has a small sawmill there, I understand,
2 yes.

3 Q. So, he buys logs?

4 A. Yes, but he's also a log broker.

5 Q. And Coastland also buys logs?

6 A. Coastland buys logs, yes.

7 Q. And Mr. Allison works for Richmond Plywood;
8 correct?

9 A. That's correct.

10 Q. And he operates or works for a company that
11 operates a plywood mill, the veneer mill we have
12 referred to?

13 A. It's a plywood mill in this case, yes.

14 Q. And they buy logs?

15 A. They do. And they also sell logs.

16 Q. Right.

17 And absent from this meeting shows that
18 Mr. Jones, the Deputy Director of DFAIT. He's the
19 Federal representative; right?

20 A. That's correct.

21 Q. And he was absent from the meeting?

22 A. Apparently.

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1 Q. Was not there as part of this adjudication,
2 apparently?

3 A. Apparently, no.

4 Q. The minutes would indicate that the meeting
5 went ahead without him?

6 A. That's correct.

7 Q. And the last minutes we looked at, there

8 was no Federal representative, and the meeting went
9 ahead without Mr. Jones; correct?

10 A. Correct, yeah.

11 Q. If you go to Page 3 of the minutes, here is
12 another example where Mr. McCutcheon left the chair,
13 excused himself from the meeting for the two offers
14 that were being made on the provincial Bi-Weekly
15 List by Progressive Timber and Merrill & Ring.

16 Do you see that?

17 A. Yes, I do.

18 Q. And then Mr. McCutcheon returned to the
19 meeting, and then there is a whole series of offers
20 by CIPA.

21 Do you see that?

22 A. Yes, I do.

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1 Q. And that list goes down over--down that
2 page and over the top of the next page, and all of
3 the applications in that case were rejected;
4 correct?

5 A. Yes, it appears that they were all
6 rejected, yes.

7 Q. And Coastland and Richmond Plywood, who did
8 Mr. De Visser work for before Coastland?

9 A. It was a company called Mill and Timber.

10 Q. Mill and Timber. Are they a log processor?

11 A. They mill mostly cedar logs, yes.

12 Q. So, they buy logs?

13 A. Yes, they do.

14 And they also operated small timber sales
15 and sold logs, as well.

16 Q. And Mr. Allison, working for Richmond
17 Plywood, is deliberating upon the fairness of an
18 offer that is being made by one of his competitors,
19 CIPA Lumber; correct?

20 A. Correct, yes.

21 Q. And wouldn't it be fair to say that
22 Mr. Allison, in the same market as CIPA Lumber, has

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1 an interest in seeing that the log price is lower
2 for his mill?

3 A. Well, as Mr. Allison also sells logs, no,
4 that would not be the case.

5 Q. Well, he's both buying and selling, isn't
6 he?

7 A. Yes, he is.

8 Q. If he's buying, he would be interested for
9 his plywood mill--that's what he's works for--in
10 having cheaper logs?

11 A. You would think that that would be common
12 nature for somebody to buy something as cheaply as
13 possible, yes.

14 Q. Fair enough.

15 And then if you finally go to Tab 22--and
16 this is a minute of a Meeting Number 310--I see that
17 the minutes are now--I'm sorry, actually go to
18 Tab 21. My mistake.

19 These are minutes of the meeting on
20 June 1st, 2007, and Mr. De Visser is still there;
21 correct?

22 A. Correct.

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1 Q. And Mr.--who is Mr. Hynes?

2 A. Mr. Hynes is a representative from DFAIT.

3 Q. And who is Ms. Sabatino?

4 A. Ms. Sabatino is also from DFAIT.

5 Q. Okay. So, he was sitting in for
6 Ms. Sabatino?

7 A. At that time, correct, yes.

8 Q. Who was sitting in for Ms. Korecky?

9 A. Ms. Sabatino at that time, I believe, was
10 sitting in for Ms. Korecky.

11 Q. Right.

12 Do you have any idea what Ms. Sabatino's

13 experience is in the forestry industry in British
14 Columbia?

15 A. I would think her experience in the
16 industry is fairly small.

17 Q. Do you have any idea what Mr. Hynes's
18 experience is in the forestry industry in British
19 Columbia?

20 A. It would be limited, yes.

21 Q. And in any event, she was absent, and he
22 was sitting in for her at that meeting?

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1 A. That's correct.

2 Q. Now, is the industry notified when there
3 are these changes in the composition of the
4 committee?

5 A. No, they're not.

6 Q. Is the industry notified about the
7 composition of the committee at all? Is there a
8 list posted somewhere?

9 A. It is not posted, but it is public
10 knowledge who the Members of the Committee are.

11 Q. How is that public knowledge--how is that
12 public knowledge disseminated?

13 A. Anyone who asks is provided it.

14 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
19 of the members of TEAC from time to time?

20 A. Due to the nature of the committee, no,
21 that's not what's done.

22 Q. And so with Merrill & Ring--if you go to

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1 Page 3 of that minute--you will see about the fifth
2 application down Merrill & Ring Canadian Properties?

3 A. I see it, yes.

4 Q. There is reference to the "offer:" "The
5 committee considered the offer to be fair and
6 represented the domestic market value of the logs.
7 The logs under application are not considered
8 surplus to domestic needs. It therefore recommended
9 that the Minister refuse to approve the proposed
10 export."

11 Now, would Merrill & Ring be notified that
12 Ms. Korecky was not at this meeting?

13 A. As this was a Federal issue, I would not
14 know that.

15 Q. You have no idea?

16 A. I have no idea.

17 Q. You have a hunch?

18 A. Probably not.

19 Q. Probably not.

20 Would they be notified that Ms. Sabatino
21 was not present at committee?

22 A. No, they would not.

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1 Q. Would they be notified that--formally
2 notified that Ms. Sabatino, in fact, was now
3 standing in for Ms. Korecky on certain--for a
4 certain duration?

5 A. I don't know why that would be important.

6 Q. You don't know why?

7 Well, isn't one of the purposes of
8 Ms. Korecky's participation on the committee is to
9 have somebody whose knowledgeable about the forestry
10 industry in British Columbia so that she can
11 understand, listen to, and come to a determination
12 on her own, independently, as to whether or not this
13 committee is acting in a fair manner? Isn't that
14 part of her function?

15 A. Her function--and I will get her to clarify
16 it clearly in her section, but her function would
17 not be to do that. It would be to determine,
18 subject to what the committee recommended, any

19 further issues that may affect those applications.

20 Q. So, she has a role in determining what
21 further may happen?

22 A. Yes, she would.

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1 Q. She would.

2 And so Merrill & Ring, in their application
3 here, as the adjudication, as you termed it, is
4 going on, doesn't even know that the Federal
5 representative who may have an impact on their
6 application isn't at the meeting; is that fair?

7 A. That's fair to say that, yes.

8 Q. Okay. Or, in fact, she's actually been
9 replaced on a leave basis for a period of time by
10 some other representative; is that fair?

11 A. I don't know what advice Ottawa may have
12 provided, but it's fair to assume that, I think.

13 Q. And then if you go to the next tab, Tab 22,
14 Exhibit 22, you will see that many people are absent
15 at this meeting, and that's a meeting that you
16 attended as secretary; correct?

17 A. That's correct.

18 Q. What happens when people are absent? Are
19 their views canvassed in their absence?

20 A. There is occasion when they will provide

21 information ahead of time regarding market issues.

22 Q. And is there occasion when that doesn't

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1 happen?

2 A. Well, it's is not always that they are
3 around at the time when it's appropriate get those
4 numbers, yes.

5 Q. So, we have two, four, six Members of the
6 Committee absent, two Government representatives,
7 yourself and Mr. Ruhl, who, when you became the
8 secretary, became the chair; correct?

9 A. Correct.

10 Q. And five other people who are the ones
11 actually making the decisions in this case; correct?

12 A. Four others.

13 Q. Four others.

14 And again, Mr. Hynes appears to be sitting
15 in for Ms. Sabatino, who is sitting in for
16 Ms. Korecky; correct?

17 A. That's correct.

18 Q. If a member retires from the committee, as
19 Mr. McCutcheon did, is there a formal process for a
20 reappointment or an appointment of another
21 alternative to the committee?

22 A. There is not a formal process other than

1 through the normal administration of government
2 processes to advise the Minister.

3 Q. How does that actually work?

4 A. Essentially, the committee will pull names
5 or people that they know, individuals who are
6 generally understanding and a good sort within the
7 industry that they feel can have an impartial view.
8 They are polled to see if they are
9 interested--number one, to see if they are
10 interested in sitting on the committee. If they do
11 have that interest, we would take it steps further
12 to do a bit of research on their background--I would
13 be doing this research generally--research into
14 their background and presentation of a briefing to
15 the Minister for the Minister to eventually decide
16 whether he agreed or didn't agree with the person
17 that we put forward.

18 Q. Does the Minister ever disagree with a
19 recommendation on an offer, a recommendation made by
20 the committee with respect to an offer?

21 A. I'm not aware of any in the normal course
22 of business, no.

1 Q. And there could be on average 20 or 25 of
2 these applications every month or six weeks?

3 A. Well, there is many more applications, but
4 there is not that many offers.

5 Q. I'm actually talking about the offers that
6 are considered by TEAC.

7 About 25 every six weeks?

8 A. There wouldn't be that many today. When we
9 look at the earlier minutes here. There certainly
10 were more, but today they are nowhere near that.

11 Q. Today mthe markets is changed and the
12 markets are down, but in those days--let's call it
13 the more "normal days"--prior to the financial
14 turbulence of last fall, would it be about 20 or 25
15 applications per meeting that each meeting would
16 consider?

17 A. It could be in that range, yes.

18 Q. And that would be about every month or six
19 weeks?

20 A. Every month, yeah.

21 Q. And so we've got about 300 applications a
22 year on that rough analysis, approximately?

1 A. Roughly, yes.

2 Q. And does the Minister--and you don't know
3 one instance in which the Minister has rejected a
4 recommendation of TEAC with respect to those offers?

5 A. I'm only aware of one situation on the
6 Coast recently in the last two to three years, where
7 the committee had reviewed an offer and found the
8 offer to be fair. I was subsequently provided some
9 factual documentation from the Applicant, suggesting
10 that the market was a little different than we as a
11 committee had thought it was.

12 I reviewed that information and put my
13 recommendation in contradiction to the committee,
14 recommending that there would be declared surplus.

15 Q. And other than that--well, I take it your
16 recommendation was accepted by the Minister?

17 A. My recommendation was accepted, yes.

18 Q. And all of the other recommendations that
19 the committee has made, in your experience, have
20 been accepted by the Minister?

21 A. In the time that I have been there since
22 2005, that's correct.

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1 Q. In the last four years?

2 A. That's correct.

3 Q. Have you heard of the term the "penalty
4 box"?

5 A. I've heard the term, yes.

6 Q. And as I understand it, if a company has
7 exported logs within the last 90 days, they're not
8 permitted to put an offer on other logs that have
9 being exported; is that correct?

10 A. That's correct.

11 Q. And where is that rule found?

12 A. It's found in both Notice 102 and the
13 Procedures for the Province.

14 Q. And they're supposed to be either directly
15 or indirectly. In other words, as a company entity
16 or through a subsidiary or related company.

17 A. That's correct. It's a direct or a
18 indirect relationship, yes.

19 Q. And the reason is to try and prevent unfair
20 practices in the system; correct?

21 A. That's correct.

22 Q. Is there an enforcement mechanism to

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1 determine whether this is happening? In other
2 words, do you have like an investigation arm that
3 you could turn to?

4 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

1 are keenly aware of the people that are out there in
2 the marketplace doing the exporting. They're also
3 very aware because the offers are coming in front of
4 them, who is making the offers, so they help in
5 making the identification of problem situations,
6 yes.

7 Q. Is there a circumstance where Interfor has
8 been put in the penalty box?

9 A. Yes, they have.

10 Q. On how many occasions has Interfor been put
11 in the penalty box?

12 A. Only once that I'm aware of on the
13 provincial level.

14 Q. When was that?

15 A. I believe it was 2006. It may have been
16 2007. I'm not certain of the year.

17 Q. And in that circumstance, is there a
18 notification to the industry that a company who is
19 engaging in this unfair practice is in the penalty
20 box? Do you issue a bulletin to the industry?

21 A. This gets into very difficult territory in
22 that if you were to announce that to the industry as

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1 a whole, you're stepping into third-party business
2 areas directly affecting the impact of that
3 company's ability to negotiate in the marketplace,
4 so it's taken seriously as to how it is advised.
5 Certainly from the committee level, they are aware
6 of it. If any offers do come in, they are
7 determined to be invalid, and they would have to go
8 through the process.

9 Q. So, the answer to my question is that there
10 is no notice given to the industry that a delinquent
11 exporter is in the penalty box?

12 A. Generally, no.

13 Q. So, if they're going to find out, they're
14 going to find out independently of their own
15 resources?

16 A. That would be the case.

17 Q. Is there a specified procedure dealing with
18 complaints about that practice?

19 A. No, there would not be a specified
20 procedure.

21 Q. Is there a document which lays out anywhere
22 what the consequence will be for breaking the rules?

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1 A. Yes, there is. They have the procedures
2 for both Federal and Provincial dictate the 90-day
3 period if you choose to make an offer after you
4 export or choose to export after the offer. It's
5 stipulated in the policy.

6 Q. Does the offender get served time? When
7 does the 90 days start?

8 A. It's slightly different. I would have to
9 refer to the document directly to tell you what that
10 would be.

11 Q. Okay, we won't do that.

12 And what opportunities are allowed to the
13 person, the company that reports it to you to make
14 submissions on whether or not the penalty should be
15 imposed?

16 A. Can you rephrase your question? I'm not
17 sure what you mean.

18 Q. I will try to.

19 Is the party that reports the infraction to
20 you given an opportunity to make submissions as to
21 why the penalty should be imposed?

22 A. Definitely they would be as part of their

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1 complaint to us.

2 Q. So, a competitor of Merrill & Ring's could
3 be in the penalty box, and Merrill & Ring wouldn't
4 know it?

5 A. That would be the case, yes.

6 Q. If you turn now to the Investor's Core
7 Bundle of Documents, which I think you should have
8 in front of you, and go to Tab 5, there is in
9 Paragraph 1.4 a statement, a requirement: "In
10 remote areas of the Coast, applications may be made
11 for a minimum export of 2,800 cubic meters of logs."

12 Do you see that?

13 A. Yes, I see that.

14 Q. And you're familiar with that Remoteness
15 Rule?

16 A. Yes, I am.

17 Q. And "remoteness" is not defined in Notice
18 102, is it?

19 A. The definition of "remote" is not, no.

20 Q. There is no definition of "remote" in
21 Notice 102?

22 A. No, there is not.

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1 Q. Is there a definition of "remote" anywhere?

2 A. Yes, there is.

3 Q. Written?

4 A. Yes, there is.

5 Q. Where is that?

6 A. I believe it's Exhibit 28 in my Affidavit.

7 Q. We will come to that in a moment.

8 Well, actually let's go to Exhibit 28.

9 So, this is the definition of "remote"?

10 A. This is the definition that was discussed
11 at the time it was done, yes.

12 Q. Discussed at the time, which preceded your
13 involvement?

14 A. Much preceding my involvement.

15 Q. And it says, "The minimum volume of 2,800
16 cubic meters combined total of all species and sorts
17 for timber located in remote areas is required in
18 order for inclusion on the Bi-Weekly Export List.
19 An area will be considered remote if one or more of
20 the following conditions applies: One, the normal
21 method of transport to the domestic market is by
22 barge; two, access to view the timber is restricted

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1 to flying when the flight time exceeds two hours
2 return." And then there is three and four which are
3 other criteria.

4 Has this document, Exhibit 28, to your
5 Affidavit ever been published anywhere?

6 A. Yes, it was.

7 Q. Where was it published?

8 A. It was published to the industry at large
9 at that time.

10 Q. This was published to the industry at large
11 at that time?

12 A. That's correct.

13 Q. Was it republished after April 1st, 1998,
14 when Notice 102 came into effect?

15 A. Not that I'm aware of.

16 Q. And you would be aware of that, wouldn't
17 you?

18 A. Not for Notice 102, no, I wouldn't.

19 Q. Would you be aware of it being published
20 for any purpose after April 1st, 1998?

21 A. I would only be aware after 2005 when I
22 started.

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1 Q. Okay. And it hasn't been republished after
2 2005?

3 A. No, it has not.

4 Q. When did you first become aware of this
5 document?

6 A. Somewhere in the last couple of years.

7 Q. Might it be around April 2nd of 2008, about
8 last year?

9 A. Ah, it would have been before that.

10 Q. Are you sure of that?

11 A. It's within that range. I'm not sure of
12 the precise date.

13 Q. You think it was before April of last year?

14 A. It was last year sometime. I don't know if
15 it was April, March, or February, but it was
16 somewhere in there.

17 Q. If you turn to--we will come back to

18 Exhibit 28, but I just want to turn to the
19 Investor's Schedule of Documents, Document Number
20 80.

21 Document Number 80, if you go to Page 3.

22 Now, you understand this was a request made

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1 by the Investor for production of certain documents?

2 A. Yes, I do.

3 Q. Have you seen this document before?

4 A. I believe I have, yes.

5 Q. If you go to Page 3, number 17, it reads,

6 "Documents evidencing the definition of the term

7 'remote' as used in 102 having been communicated to

8 private forest landowners in B.C. since January 1st,

9 1998."

10 Do you see that?

11 A. Yes, I do.

12 Q. And you swore a certificate on August 13,

13 2000. Do you remember? Did you not?

14 A. I don't remember the exact date, no.

15 Q. It's at Tab 103, and you swore that you

16 completed a comprehensive, extensive and thorough

17 search for records of all media types related to

18 this action, and no relevant records were found in

19 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

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1 possession of the Province of British Columbia that
2 you could find which defined "remote" and had been
3 communicated to private forest landowners in B.C.
4 since January 1st, 1998?

5 A. That's correct.

6 Q. The effect of this remoteness provision is
7 to require log suppliers to tow their logs to a
8 nonremote location so that advertisers--sorry,
9 offerors can come out and review the logs; isn't
10 that fair?

11 A. Well, the offeror can review the logs at
12 any location, but the intention was to bring it to a
13 location that was not exceptionally expensive or
14 difficult to reach.

15 Q. Because it was important for purchasers of
16 logs to be able to--prospective purchasers to be
17 able to assess the quality of the logs by going and
18 seeing them?

19 A. That's the intention, yes.

20 Q. And I think you have already said to the
21 committee that FTEAC does not go and see the logs in

22 its deliberations in adjudications; is that correct?

552

1 A. That's correct.

2 Q. Are you aware of any notice of a definition
3 of "remote" that the Government of Canada has
4 published to define what "remote" means for the
5 purpose of Paragraph 1.4 in Notice 102?

6 A. Am I aware?

7 Q. Are you aware?

8 A. No, I'm not.

9 Q. Are you aware of any document which has
10 been published either by the Province or the Federal
11 Government which sets out how that definition, any
12 definition, will be applied in a certain
13 circumstance? In other words, where the line will
14 be that demarcates remote and nonremote.

15 A. No, I'm not aware of one, no.

16 Q. There is no such document?

17 A. No, there isn't.

18 Q. And no notice of the definition of "remote"
19 for purpose of Notice 102 has been formally
20 communicated to the industry generally or to the
21 applicants in particular; is that right?

22 A. Since Notice 102?

1 Q. Right.

2 A. No, not that I'm aware of. There may have
3 been from Ottawa, but...

4 Q. Now, until you were involved in the
5 preparation of your Affidavit for this proceeding,
6 you did not know actually, yourself, whether the
7 minimum volume requirement is 2,800 cubic meters was
8 written down anywhere; isn't that right?

9 A. I knew it was written down, but I had not
10 found the source of the rating.

11 Q. You had never seen the document?

12 A. I had not, no.

13 Q. Until you started preparing your Affidavit
14 for this proceeding?

15 A. That's correct.

16 Q. Did you have an understanding as to what
17 the meaning of "remote" was?

18 A. I had a general understanding of it, yes.

19 Q. What was your understanding?

20 A. As stated in my Affidavit, generally an
21 area that required barging would be automatically
22 within a remote area, and also something of a fairly

1 lengthy distance from Vancouver by plane if it was
2 the only way of access. Generally, I think we
3 referred to half a day as the kind of common rough
4 judgment.

5 Q. And that understanding had come from your
6 years of experience in the Ministry?

7 A. No, it came from my experience within the
8 committee and the discussion that arose when the
9 question came up.

10 Q. And when you were preparing your Affidavit,
11 which I recall was sworn on May 7th, 2008, you had
12 been on the committee at that point now for
13 approximately three years?

14 A. At that point it would have been two years.

15 Q. You came on in 2005?

16 A. Did you say 2007 or 2008?

17 Q. I thought I said 2008.

18 A. Three years.

19 Q. Three years if it was 2008?

20 A. Yes.

21 Q. And you're saying you came to an
22 understanding what remote was from your experience

1 on the committee; right?

2 A. Correct.

3 Q. Just the discussions around the table from
4 the way people viewed it?

5 A. And reviews with Don Ruhl, who was my
6 predecessor and certainly was very aware of the
7 issue and probably was part of the drafting of it.

8 Q. If you go to your Affidavit, again
9 Paragraph 76. Now, you say in the second
10 sentence--we covered this; I just want to go back:
11 "The concept of remote areas of the B.C. Coast is
12 roughly defined as any location."

13 Let's just stop there.

14 Where is it roughly defined? Actually, my
15 first question, what does "roughly define" mean?

16 A. It's an approximate thing. It's not
17 absolute.

18 Q. Are these your words?

19 A. These are my words, yes.

20 Q. "As any location requiring an inordinate
21 amount of time."

22 What is an "inordinate amount of time"?

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1 A. You're asking me to define what "an
2 inordinate amount of time" is?

3 Q. I'm asking you to advise the Tribunal what
4 you mean by "requiring an inordinate amount of
5 time." What does that mean?

6 A. Generally, a person going to view logs for
7 purchase is on a day-by-day basis reviewing the
8 number of booms. Is it way out of their way? Is it
9 a day's travel, half a day's travel? What is it?
10 Is it outside of the normal day-to-day business
11 practice?

12 Q. That's as close a definition as you have
13 come up with?

14 A. At this stage of the game, yes.

15 Q. And then it goes on to say, "Adjudications
16 by TEAC/FTEAC suggest that anything over half day
17 return travel time and/or couple of hours air
18 charter cost would be considered remote."

19 And those are your words? That's your
20 definition?

21 A. That's based on the definition that I was
22 hearing from Mr. Ruhl and others that I talked to,

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1 yes.

2 Q. And has that definition of remote ever been
3 circulated to the industry, the players so that they
4 understand here is the line, here is the

5 circumstance, here are the criteria, here is how
6 they will be applied, to define whether I have got
7 to tow my logs to another location or I can
8 advertise them at the location where I want to,
9 let's say Theodosia. Is that published anywhere?
10 A. They were certainly public in 1986. Beyond
11 that date I don't know.
12 Q. Are you aware of any document since 1998
13 which laid out what an owner would need to do to
14 understand whether his logs were remote or
15 nonremote?
16 A. Other than the policy documents themselves
17 which suggest that you check with the policy makers,
18 no.
19 Q. So, there is no definition? You check with
20 the policy makers; right?
21 A. There was no published definition at that
22 time, no.

558

1 Q. Or even now?
2 A. The one from '86 still stands.
3 Q. The one from '86 still stands?
4 A. Yes, it does.
5 Q. And are you saying that this embodies the
6 1986 document?

7 A. My statement in 76?

8 Q. Yes.

9 A. I had not found that document by that time,
10 but that is essentially what it means, yes.

11 Q. That's your interpretation.

12 And so, 1986. You're operating on the 1986
13 document, Exhibit 28.

14 Now, has anybody since 1998 said to the
15 industry, "This is the document that we are relying
16 upon" or "even these are the criteria we are relying
17 upon to determine whether you have got to tow your
18 logs at some expense from a remote location to a
19 nonremote location"?

20 A. If I had been asked, we would have gone
21 into it. I was never asked.

22 Q. Has anything been published? That's all

559

1 I'm asking.

2 A. No, not that I'm aware of.

3 Q. Okay, thank you.

4 If you go to your Supplemental Affidavit,
5 please.

6 MR. NASH: I just say that at this stage
7 and further, I don't plan on referring to any TEAC
8 minutes, which were the restricted access documents,

9 and so in that case I would ask that our clients and
10 other representatives that left be allowed back in
11 the room.

12 ARBITRATOR ROWLEY: It's open to the
13 public?

14 MR. NASH: It's open to the public. Thank
15 you.

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

18

19

20

21

22

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1 CONFIDENTIAL SESSION.

2 BY MR. NASH:

3 Q. If you go to Page 10 of your Affidavit at
4 Paragraph 31.

5 A. Yes.

6 Q. Now, this Affidavit was sworn a little
7 later on the 19th of March 2009, just this year. I
8 gather, sometime between May 7th and March 19, 2009,
9 you became aware of Exhibit 28, the 1986 document;
10 is that right?

11 A. That would be correct, yes.

12 Q. So, when you swore your first Affidavit,
13 you weren't aware of the document, and when you
14 swore your second Affidavit you became aware of it;
15 correct?

16 A. No, I misrepresent. It was in my initial
17 Affidavit. I had to have known it was there.

18 Q. Well, there is no reference--okay, I will
19 accept that.

20 First of all, you say the top of the
21 headline on the Page H, "BCMoF has a clear and
22 consistent Remoteness Rule," and then you cite the

561

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
6 consistent Remoteness Rule has never been circulated
7 to the industry.

8 A. Other than at that time as I'm aware of, it
9 was certainly--at that time.

10 Q. And you're aware of that second-hand; is
11 that right?

12 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

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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.

15 Q. And was that minute produced in these
16 proceedings?

17 A. I'm not sure.

18 Q. Okay. So, going back, then, to
19 Paragraph 76 and your rough definition and your
20 words "requiring an inordinate amount of time" at
21 Paragraph 76 of your first Affidavit, I would like
22 to turn you to document 106 from the Claimant's

563

1 Schedule of Documents.

2 And that's an e-mail?

3 MS. TABET: Sorry, Mr. Nash, could you
4 direct us to where this is on the record, please.

5 MR. NASH: I'm sorry, it's Tab 106 of the
6 Claimant's Schedule of Documents.

7 MS. TABET: That's not on the record.

8 Oh, I thought that the agreement was that
9 documents that were going to be referred in these
10 proceedings were going to be the documents that were
11 produced with submissions.

12 MR. NASH: There may be some confusion. It
13 may be the Reply Schedule.

14 MR. APPLETON: My understanding is that
15 this is Tab 106 of the Claimant's Schedule of

16 Documents that was filed with the Memorials.

17 MR. NASH: It's the Reply Schedule, yeah.

18 My apologies.

19 BY MR. NASH:

20 Q. So, this e-mail starts with an e-mail last
21 April 2nd, 2008, from you to Mr. Walders, and the
22 subject line is "Log Export," two question marks:

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1 "Do you recall when the 2,800 cubic meter minimum
2 volume for advertising in remote locations was put
3 into place? Was it written down anywhere that would
4 describe the areas considered to be remote?"

5 "I would describe what we used today to be
6 those areas that require barging of logs."

7 So, you wrote that e-mail to Mr. Walders?

8 A. I wrote that as part of a question, yes.

9 Q. To Mr. Walders?

10 A. To Mr. Walders, yes, because he was very
11 involved in the industry and--or with the Ministry
12 but with the export part at that time.

13 Q. And he had been involved with the Ministry
14 on the export side for a long time.

15 A. A number of years. I don't know how many.

16 Q. He's quite experienced in the area?

17 A. I would say so, yes.

18 Q. And he was the guy that you would think
19 would be the go-to guy to find out what that policy
20 was?

21 A. He was certainly a point of first contact,
22 yes.

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1 Q. And this is three years after you have been
2 on TEAC. You just told us that you got your
3 knowledge through your involvement in TEAC. Do you
4 want to correct the record that you didn't know from
5 TEAC what the policy was and that you had a general
6 consideration that it would require barging of logs?

7 A. To tell you the truth, this has probably
8 not come up in TEAC at all.

9 Q. It had not come up?

10 A. No.

11 Q. I could have sworn you told me five minutes
12 ago that you had been on TEAC for three years and
13 that your understanding of what remote was had come
14 from the discussions about--around the table at
15 TEAC.

16 A. I believe there was one application that
17 had come up where remote was an issue. That
18 particular operation was a barge operation. I asked
19 the general question, you know, what is this defined

20 as, and I received a general, very general,
21 discussion or description of what it was.

22 Q. Very general description from the members

566

1 of TEAC?

2 A. That's correct.

3 And Mr. Ruhl, who was a prior policy
4 forester.

5 Q. And that's what you were going with?

6 A. At that time, yes.

7 Q. Right.

8 So, in any event, on April 2nd, you didn't
9 know whether it was written down or what exactly it
10 involved, so you wrote to Mr. Walders, and he wrote
11 back to you the same day: "John, the 2,800 cubic
12 meter minimum was originally put in place based on a
13 recommendation from the old LEAC, the constraint was
14 subsequently reviewed by TEAC around 15 years ago,
15 and the minutes of that meeting reaffirmed that
16 requirement."

17 Now, if you just for a moment track the
18 words of your Paragraph 76 to the next words in that
19 e-mail--do you have both documents in front of you?

20 A. This is from my original Affidavit?

21 Q. Yes, Paragraph 76.

22 A. Okay.

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1 Q. And then the second sentence, your
2 Affidavit starts, "The concept of remote areas of
3 the B.C. Coast is roughly defined," and from that
4 point on the wording is virtually identical to
5 Mr. Walders's e-mail back to you: "Remote was
6 roughly defined as any location requiring an
7 inordinate--roughly defined, any location requiring
8 an inordinate amount of time or cost to access from
9 the lower mainland log market. Previous
10 adjudications by TEAC suggest that anything over a
11 half day return travel time and/or a couple of hours
12 air charter cost would be considered remote."

13 I'm going to suggest to you that you
14 essentially cut and paste what was in Mr. Walders's
15 e-mail, and you put it into your Affidavit. Isn't
16 that true?

17 A. Yes, that would be true. That's
18 information I had available.

19 Q. Okay. And yet you say this has been a
20 clearly defined policy for many, many years, applied
21 since 1986.

22 A. I said the policy has been applied where

1 needed. It has not been needed.

2 Q. Mr. Walders goes on: "In my view, there
3 are a fair number of locations that are remote where
4 barging is not required, i.e. the Head of Knight's
5 Inlet."

6 So, there seems to be a debate going on
7 between you and Mr. Walders. You think that remote
8 areas are those areas that require barging of logs,
9 and he thinks that they are areas where barging may
10 not be required or may include areas that may not be
11 required.

12 A. I actually--certainly an area that's
13 barging requires some consideration of remoteness,
14 but as the wording there says, other areas that
15 don't require barging also have to have
16 consideration.

17 Q. And how was that debate resolved, barging
18 versus nonbarging, between you and Mr. Walders?

19 A. There is no debate on the barging.

20 Q. Well, your position seems to be that it
21 requires areas that require barging of logs are
22 remote?

1 A. Clearly they are, yes.

2 Q. Yes.

3 And his view there are a number of
4 locations that are remote where barging is not
5 required.

6 A. That's true, yes.

7 Q. Right.

8 So, it could be towing?

9 A. That would be the case, yes.

10 Q. And that might be what he might tell a
11 member of the public or a member of the industry if
12 the industry called him; right?

13 A. I suppose. At this time what I was
14 referring to him he was not in that role.

15 Q. So, did you think towing was included as a
16 criteria for determining what was remote and
17 nonremote, after this exchange of e-mails?

18 A. Well, certainly I did.

19 Q. And are you maintaining a position here
20 today that this policy was clear, and it was clear
21 from 1986?

22 A. Clear to who?

1 Q. Clear to anyone who wanted to know, any
2 member of the industry who wanted to have a
3 definition of is this remote, do I have to tow, or
4 can I advertise at my location?

5 A. I was not absolutely clear other than these
6 references as you can see with Mr. Walders and what
7 I eventually found in the document research process.
8 What I view the knowledge in the industry as being
9 clear, the issue very rarely, if ever, came up.

10 Q. So, to answer my question, it was never
11 clearly laid out to the public, to the industry as
12 to what the definition of "remote" was. And, in
13 fact, there was a debate within the Ministry of
14 Forests as to exactly the nature of that definition;
15 correct? Is that fair?

16 A. No, I don't believe there was a debate. I
17 believe what you see here is approximating what that
18 policy was.

19 Q. What is your understanding of what the
20 Federal definition of "remote" is? Is it the same
21 as the Provincial?

22 A. I don't--I do not know that.

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1 Q. So, you sit on this TEAC/FTEAC committee.
2 You prepare all the materials for the committee,

3 you're the secretary of the committee, and you're
4 telling me you don't know whether the Federal
5 Government has a definition of "remote" that it
6 uses?

7 A. I can't speak to them having a different
8 one than this one, no.

9 Q. Do you believe that they use this one?

10 A. I believe they do, yes.

11 Q. Okay. Can you turn to Ms. Korecky's
12 Affidavit. This is a restricted access document, I
13 see. It's on the issue of remoteness. The meeting
14 will remain open to the public.

15 If you could look at Ms. Korecky's
16 Affidavit, her first Affidavit, Page 21.

17 A. Yes.

18 Q. Paragraph 85, second sentence: "'Remote
19 area' is defined in the industry as areas from which
20 logs must be barged rather than towed."

21 Is that your understanding of the Federal
22 definition of "remote"?

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1 A. I see what I have read. I don't know that.

2 Q. I don't know one way or the other.

3 Mr. President, I see the time is moving on.

4 What I'm going to offer up as a suggestion is that

5 we break now, and I will review my notes, and if I
6 have any further questions, come back after the
7 break and ask those, if that pleases the Tribunal.

8 PRESIDENT ORREGO VICUÑA: Yes, that's quite
9 reasonable, but I'm concerned not just about ending
10 the examination of Mr. Cook, but what is likely to
11 happen next.

12 MR. NASH: Yes.

13 PRESIDENT ORREGO VICUÑA: Do you have any
14 thought? Because after 5:30 we are not going on,
15 and the next witness would have to be rolled over to
16 Wednesday and whatever else. Are you all aware of
17 that?

18 MR. NASH: Yes, and I tried to take that
19 into account in considering the questions I may have
20 for Ms. Korecky, which will be a much shorter
21 cross-examination.

22 PRESIDENT ORREGO VICUÑA: Okay. It's your

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1 time and leveled to your own distribution, so we
2 break until 4:30.

3 MR. NASH: Thank you.

4 (Brief recess.)

5 PRESIDENT ORREGO VICUÑA: Mr. Nash, you may
6 proceed, please.

7 MR. NASH: Thank you, Mr. President.

8 BY MR. NASH:

9 Q. How are TEAC members and FTEAC members
10 paid?

11 A. Members of TEAC receive an honorarium.

12 Q. Are they all paid the same honorarium?

13 A. The members paid one rate, and the chair is
14 paid slightly more.

15 Q. And is that the same for FTEAC?

16 A. The only payment comes from the Province.

17 Q. Are all members of TEAC and FTEAC
18 representatives of the Canadian companies?

19 A. I believe they are, yes.

20 Q. Now, in the Forest Act, Forestry Act, if
21 you turn to Tab 6 of the Investor's Core Bundle of
22 Documents, you will see there, if you turn to Page 1

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1 of the Act, after the Table of Contents...

2 A. Yes, I've got it, yeah.

3 Q. This is a handout that is distributed by
4 the Province of British Columbia?

5 A. That's true.

6 Q. It's just a handout?

7 A. This policy document was a handout by the
8 Government in 1999.

9 Q. Right.

10 And the Act provides in Section 127,
11 "Unless exempted under this part, timber that is
12 harvested from Crown Land from land granted by the
13 Government after March 12, 1906, or from land
14 granted by the Government on or before March 12,
15 1906, in a tree farm licensed area and with residue
16 produced from the timber must be"--and then there is
17 "use in British Columbia or manufacture."

18 The words start out "unless exempted," and
19 there is the March 12, 1906, demarcation line.
20 Before March 12, 1906, it seems to be these are
21 referred to as "Federal Lands."

22 A. Right.

575

1 Q. Post-March 12, 1906, are referred to as
2 "Provincial Lands."

3 A. That's correct.

4 Q. Now, do you know the reason for that
5 distinction between pre-March 12, 1906, and
6 post-March 12, 1906?

7 A. Yes, I do.

8 Q. What is the reason for that?

9 A. On March the 12th of 1906, the Timber
10 Manufacture Act in the Province was proclaimed,

11 which changed the provincial desire of how they
12 wanted to manage timber.

13 Q. So they--so, this Act which was passed, the
14 Forestry Act which was passed, Forest Act passed
15 much later, simply continued that demarcation line?

16 A. That was a key demarcation in history that
17 set out a different standard of ownership of timber.

18 Q. Now, it's an arbitrary line, though, isn't
19 it? You could choose any date, couldn't you?

20 A. No, this was the day the Act was enforced,
21 enacted.

22 Q. So, the--what are federally regulated or

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1 Federal Lands in British Columbia? What are
2 Federal/Private Lands in British Columbia?

3 A. Federal/Private--other than lands granted
4 prior to 1906, or are you referring to the lands
5 granted--

6 Q. I'm referring to--when you used the term
7 "Federal Lands," what are they?

8 A. When I refer to "Federal Lands," they're
9 referring to lands granted to private interests
10 prior to March of 1906.

11 Q. They're actually Provincial Lands, aren't
12 they?

13 A. The lands are within the Province.

14 Q. And they're in all respects regulated by
15 the Province. They're lands located in the
16 territory of British Columbia are under Provincial
17 jurisdiction; correct?

18 A. In most issues and manners, yes.

19 Q. Other than Federal parks or things like
20 that; right?

21 A. Correct. And reserves would be different,
22 as well.

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1 Q. So, the lands that Merrill & Ring owns are
2 not only Federal Lands. They're not in a land--they
3 aren't lands in Federal jurisdiction; they're lands
4 that are simply regulated federally; is that it?

5 A. They're Provincial, they're lands within
6 the Province of B.C. that were granted prior to
7 March of 1906, which gives them a different
8 designation for the timber that's on them.

9 Q. For timber purposes only?

10 A. Timber is the one I'm most aware. There
11 may be others; I'm not clear on what those would be,
12 but they are not my concern.

13 Q. So, it appears there is an information
14 circular, if you go to the next page, timber not

15 covered by the Forest Act in this handout in
16 Paragraph 1.4, that the Province is advised owners
17 of those lands granted prior to March 12, 1906,
18 except when such land is in a tree farm license
19 under Federal jurisdiction. Right?

20 A. Right.

21 Q. And that is the document relied upon to
22 determine Federal jurisdiction over Merrill & Ring's

578

1 lands; correct?

2 A. This is a document used generally for
3 Provincial Lands. This is just pointing
4 somebody--if they are Federal Lands, they're subject
5 to a different set of policy.

6 Q. So, this is the advisory to those owners;
7 that's what that is. This is simply an advisory?

8 A. This would be in the nature of an advisory
9 to them, right.

10 Q. Could you turn to the Investor's Request
11 for Documents from Canada, and turn to, if you will,
12 to number 37, which reads: "Documents since
13 April 1st, 1998, evidencing the TEAC/FTEAC rule that
14 an offer is considered fair if it is within
15 5 percent of the current domestic market value of
16 the logs."

17 A. I'm sorry, I don't know what document
18 you're referring to.

19 Q. I'm sorry. I'm sorry, I thought you had it
20 in front of you.

21 Number 37, Page 5.

22 A. Okay.

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1 Q. The request was for documents since
2 April 1st, 1998, evidencing the TEAC/FTEAC rule that
3 an offer is considered fair if it is within
4 5 percent of the current domestic market value of
5 the logs.

6 Do you see that?

7 A. Yes, I do.

8 Q. And in response to that request, you swore
9 a certificate on the 13th day of August 2008.

10 A. That's correct.

11 Q. Certifying that there were no records after
12 a comprehensive, extensive, and thorough search;
13 correct?

14 A. I could find no documents discussing the
15 5 percent, no.

16 Q. And you were tasked with trying to find the
17 5 percent rule for both TEAC and FTEAC?

18 A. I reviewed it from what records I had in

19 the Province. I believe there was a comparable
20 search going on for the FTEAC in Ottawa.

21 Q. Thank you, Mr. Cook. Those are my
22 questions.

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1 PRESIDENT ORREGO VICUÑA: Thank you,
2 Mr. Nash.

3 Are there other redirect questions?

4 MS. TABET: Yes.

5 REDIRECT EXAMINATION

6 BY MS. TABET:

7 Q. Mr. Cook, I won't be long. I know you have
8 been very patient.

9 Mr. Nash took you through a few of the
10 minutes where there were examples of offers that had
11 been withdrawn.

12 Would you know why an offer was withdrawn?

13 A. I would not know directly, no.

14 Q. Now, Mr. Nash also referred to several
15 cases where--not cases. He referred to the fact
16 that companies felt, like his client felt, they were
17 being held with a gun to their head.

18 Were you ever provided any evidence of that
19 kind of blackmailing, what they call blockmailing,
20 that kind of behavior by private companies?

21 A. It was raised in discussion or phone calls
22 occasionally, but no evidence was ever provided of

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1 it, no.

2 Q. So, general allegations?

3 A. That's all.

4 And not frequently, either.

5 Q. I think Mr. Nash also took you through a
6 few of the TEAC minutes, and I won't go through this
7 because we are in an open session, but generally
8 speaking, is it your sense that both log buyers and
9 log sellers are represented at those meetings?

10 A. Generally they are, short of the occasional
11 absence of a member, but otherwise, yes, they are.

12 Q. And since you have been the Secretary to
13 TEAC, has there always been a Federal representative
14 attending the meetings?

15 A. Since I have been the Secretary, I can't
16 recall any meetings where there was not a Federal
17 representative in attendance or on a conference
18 call.

19 Q. Now, we spent quite a bit of time on the
20 issue of "remoteness" today. You said, I think,
21 that it came up once. Can you give me a sense of
22 why that issue wouldn't come up more than once?

1 A. I would only have to surmise that either it
2 wasn't an issue to people or they understood it.

3 MS. TABET: Just give me a moment.

4 (Pause.)

5 BY MS. TABET:

6 Q. Let me take you back to Tab 12 of your
7 first Affidavit. I think Mr. Nash took you to this
8 document. It's on standing exemption.

9 A. That's correct, yeah. I only see 161.

10 Q. Could we go back maybe to the map that you
11 were showing us earlier, and you can show us where
12 this exemption--I think there was a map in the back
13 of that document.

14 A. Next page.

15 Q. You're right, you're right.

16 Is there anywhere near where Merrill &
17 Ring's lands are situated?

18 A. It's quite a bit north of their lands, yes.

19 Q. And can you tell me why an exemption was
20 granted for that area?

21 A. This area has quite high costs relative to
22 the need to barge any timber out of the area. The

1 costs of operating in there are extremely difficult.
2 The quality of the timber is not the greatest.
3 Generally there's pockets, but generally not the
4 greatest.

5 The harvesting in the area was quite down
6 as a result of various situations within the
7 marketplace. There was no mills in the area at all,
8 not that there had ever really been mills in that
9 immediate area.

10 The participants that were requesting the
11 exports made a reasonable case for a blanket export,
12 and the Minister accepted it.

13 Q. Thank you. I think those are all my
14 questions. The Tribunal may have some questions for
15 you.

16 PRESIDENT ORREGO VICUÑA: Thank you,
17 Ms. Tabet.

18 QUESTIONS FROM THE TRIBUNAL

19 ARBITRATOR DAM: Yes, I had a question.

20 My recollection is that, during the morning
21 proceedings, there was a discussion of how someone
22 might complain who wished to export logs about the

1 way in which the rules worked or the way in which
2 the committees worked, and the question was what the
3 remedy was, and my recollection is there was
4 allusion or reference to complaining.

5 Did any complaints come before you or the
6 committee, the two committees, about the fairness of
7 the procedures or fairness of the rulings? You said
8 something about that in your testimony just at the
9 end, in general, but if there were complaints that
10 came to you or came to your attention, how were they
11 handled?

12 THE WITNESS: Complaints do occasionally
13 come in, quite correct. If there is some evidence
14 to back up what the complaint is, I will certainly
15 attempt to take some action on it, and if it
16 requires it, further review through committee. If
17 it doesn't require it through committee, I have some
18 latitude to act to make recommendations towards the
19 Minister on my own, if that's what it requires. But
20 certainly most of the people in the industry know
21 who I am. I'm only a phone call away or e-mail away
22 if they have a question, and they are prepared to do

1 that.

2 ARBITRATOR DAM: And you have done so?

3 THE WITNESS: I have done so, yes. It
4 doesn't happen often, but it does come up.

5 ARBITRATOR DAM: I don't wish to pursue
6 that, but I was wondering what your practice was.

7 THE WITNESS: My practice is to at least
8 react to something if there is something concrete.

9 I mean, if I get a complaint of just a very
10 general nature with no real facts to back it up,
11 it's pretty difficult to do anything about it. I
12 may ask around to see what I could find out, but
13 without anything factual to work from, I really have
14 no grounds to do it.

15 ARBITRATOR DAM: And there are no rules or
16 regulations or written documents about how to handle
17 it. You just handle this and certain matters as an
18 administrative matter?

19 THE WITNESS: Yes.

20 ARBITRATOR DAM: All right. Thank you very
21 much.

22 ARBITRATOR ROWLEY: Mr. Cook, I don't have

1 an exact reference, so please, I'm not trying to put
2 words in your mouth. But at the beginning of your
3 testimony, you spoke about the meetings of TEAC and

4 FTEAC and that one of the first things that occurred
5 once the fiscal meeting was underway was that the
6 market valuation component of the meeting took
7 place. Am I right?

8 THE WITNESS: That's right, yes.

9 ARBITRATOR ROWLEY: And perhaps I've got
10 this wrong--my notes aren't helping me as much as I
11 would like--I have some recollection you said
12 something about a two-page document with a series of
13 classes or something of the sort, but I don't want
14 to put words in your mouth. Tell me about the
15 valuation component of the meetings. How did you
16 and the other Members of the Committees come to
17 market valuations, and specifically were you seeking
18 to value timber generally under its various classes
19 and grades and sorts that you normally saw, or were
20 you seeking to value timber only with respect to the
21 applications for which there were offers before you?

22 THE WITNESS: No, in every case we reviewed

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1 the whole marketplace. I'd probably sent a two-page
2 document for the Coast. It's approximately that.
3 We would review for each species each for things
4 like Douglas-fir, hem-bal, and cedar, there is
5 probably six or seven sorts that were normally

6 reviewed and given a price to so there is some
7 continuity to it so we could look at trends over
8 time, if need be.

9 So, they're fairly common sorts that are
10 showing up in the marketplace and often are ones
11 that show up in the export marketplace as well, so
12 the ones we commonly have to deal with.

13 So, every specie that is traded generally
14 and every sort that is commonly traded is reviewed
15 on an individual basis. A price is created based on
16 evidence in the marketplace for at individual
17 species and individual sort.

18 ARBITRATOR ROWLEY: So, presumably you have
19 some sort of a laundry list of types and sorts?

20 THE WITNESS: Yes, I basically have a copy
21 page and form and away we go. Here are the common
22 ones we do, and there are occasions when sorts will

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1 go out of favor and we will adjust and readjust to
2 whatever the new particular sort might be.

3 ARBITRATOR ROWLEY: And that form that you
4 commonly use, sometimes adjusted, would be used from
5 meeting to meeting, the same form?

6 THE WITNESS: The same form is used, and
7 it's refilled with numbers for the next month, yes.

8 ARBITRATOR ROWLEY: And that each meeting
9 is a price filled into a blank in the form for each
10 of the sorts and grades?

11 THE WITNESS: That's right. That's what
12 happens, yes.

13 ARBITRATOR ROWLEY: And you keep a record
14 of this on a running basis, do you?

15 THE WITNESS: I keep a summary of it, yes.

16 ARBITRATOR ROWLEY: And then once that is
17 done--and here I am leading, and I hate to do it,
18 but I just want to move along--do you then look at
19 the applications that are before you for which there
20 are offers and compare the offer to the market
21 valuation on your form?

22 THE WITNESS: That's what we do. We line

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1 it up with the appropriate spot and on the form and
2 compare that price that we've established to see how
3 and where it balances out.

4 ARBITRATOR ROWLEY: Thank you.

5 PRESIDENT ORREGO VICUÑA: One additional
6 question which is related to this last line, how do
7 you determine, say, the open market price for logs
8 generally? Is there a kind of Stock Exchange where
9 all the transactions are listed, or is it based

10 on--what sort of source? I have no idea. It's out
11 of ignorance, and I thought you may be able to--

12 THE WITNESS: The Vancouver Log Market is
13 an amazing place. The sorts that are generally
14 traded on the market are the ones that we are
15 dealing with, so the day-to-day market of virtually
16 all of the volume that's traded within--for the
17 mills in the local area are running through that
18 marketplace. We are seeing a very small component
19 of it. But the Members of the Committee are part of
20 that marketplace or they are individuals who are
21 active in it, and very, very conversant on what the
22 day-to-day goings-on of the market are and what its

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1 values are. That's one of the criteria of them
2 being in the committee, is to have that good base of
3 knowledge.

4 PRESIDENT ORREGO VICUÑA: And is that
5 objective? Is that a price that you can see in the
6 newspaper, or is it something that someone might
7 say, "Look, I heard that the boom was sold for 10.
8 When I look, it went for 15." How does it work?

9 THE WITNESS: Most of the Vancouver Log
10 Market works on a verbal basis. There certainly are
11 periodicals, various newspapers related to the

12 market that do come out. We have--I have those
13 generally as a cross-reference to see where things
14 balancing, and by and large they are the same thing.

15 The issue on those is the publication of
16 some of those documents has lagged a bit to when we
17 are holding the meetings, so I don't always have
18 them in time for the meeting if I was relying on

19 something on paper, so it's much more immediate to
20 be able to use the committee members themselves and
21 their knowledge of the marketplace.

22 PRESIDENT ORREGO VICUÑA: Okay. But just

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1 to figure it out in my mind, is it a sort of fish
2 market, that someone will come, I have a basket
3 here--

4 THE WITNESS: I would say almost, yes.

5 PRESIDENT ORREGO VICUÑA: Just to clarify
6 in my own mind.

7 THE WITNESS: I believe another one of our
8 witnesses may be able to answer that a little bit
9 better for you.

10 PRESIDENT ORREGO VICUÑA: That's perfect.

11 Thank you, Mr. Cook.

12 Oh, sorry, you had a question?

13

FURTHER REDIRECT EXAMINATION

14

BY MS. TABEL:

15

Q. Just as a follow-up on Mr. Rowley's

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questions, it's difficult to understand how the

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market-review process, how the individual

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application, how you then measure it to the

19

market-review process.

20

So, can you just explain that a little bit

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how you fit that individual application in the

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market-review process. Is there like--in your

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1

market-review process, is there a specific number,

2

or is it a range, and how do you see where the

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application--how do you know where the application

4

fits in?

5

A. Well, the sorts, of course, are a

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definition; say, Douglas-fir gang is a good example.

7

Douglas-fir gang in the marketplace will be

8

receiving it, and at some point in time perhaps \$80,

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or maybe we have a range from 80 to \$85 because

10

there has been a number of transactions that sort of

11

span that range that had gone on in the period of

12

concern.

13

We then would look at the applications,

14

that applications have had an offer from somebody

15 for a fir gang boom and the offer is provided at
16 perhaps \$70, or perhaps it's \$90. It could be
17 anywhere. That offer is known to the committee.
18 It's written down in the same terms as the review is
19 done or the market review is done. We literally
20 compare those numbers. If there is some deviation
21 from the price, we will look at the data in front of
22 us to see if there is some reason that we can

593

1 determine why the price is different, and basically
2 we balance all of those factors out in determining
3 the final market and whether the offer is fair or
4 not.

5 Q. Now, I think you've talked about some of
6 those factors, but can you be more specific because
7 what makes the difference--we heard earlier the tree
8 is a tree, but obviously not if some of them are
9 sold at \$50 and some at 150, so there is the sort,
10 and there are some other factors that will affect
11 the price.

12 A. Certainly. Within the sort, there is
13 variation. You could have a fir gang sort that is
14 approaching the higher end of the dimension average,
15 the log diameters. You could have a sort that's at
16 a lower end of the dimension average because there

17 is bounds for the sort itself for what fits in it.

18 So, if you have a boom that contains a
19 predominance of smaller trees, it will have a lower
20 price. There is also log grade considered. If you
21 have in the B.C. Coastal market, "J" grade is
22 certainly a gang log primarily. However, you may

594

1 also have "U" grade, you may also have "I" grades.
2 Those grades have a bearing on the values, so those
3 have to be adjudicated to determine where the proper
4 value is.

5 Q. Thank you, Mr. Cook.

6 FURTHER QUESTIONS FROM THE TRIBUNAL

7 ARBITRATOR DAM: I admit to being somewhat
8 confused about the discussion of the 5 percent rule
9 or whatever it is, 5 percent of the market price
10 that if it's within 5 percent of THE market--if the
11 offer is within 5 percent of the market price, A
12 certain conclusion is made. But is that market
13 price a point, or is it a spread so it's 5 percent
14 from the edge of the spectrum or the spread or
15 5 percent from the mean, or is this more of a
16 seat-of-the-pants judgment as to whether it's
17 basically in the same range as prior transactions?
18 Because, of course, all transactions will be prior

19 to the decision being made. So, I just didn't
20 understand the status of the 5 percent rule and how
21 it's applied in the sense of 5 percent from what
22 mean or three standard deviations or what.

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1 THE WITNESS: Most of us there aren't
2 mathematicians.

3 Most of the prices are a single number for
4 the average, whether it's \$80 or it's a hundred
5 dollars. There are some that you will get it's 95
6 to a hundred dollars, so it is a range. The
7 5 percent, is it below the lowest range? Is it
8 5 percent below the 95?

9 But remembering that the 5 percent is not
10 an absolute; it's an approximation; it's a
11 reasonableness test. Very rarely am I aware it's
12 been anywhere close to that in most cases. So, it's
13 very infrequently that the 5 percent rule really
14 needs to be considered. The offers are usually very
15 obviously fair or clearly well beyond a level that
16 would be considered, you know, below the level of
17 fair.

18 ARBITRATOR DAM: Thank you.

19 Please remind me where the 5 percent rule
20 is written down.

21 THE WITNESS: It is not written down.

22 ARBITRATOR DAM: It is not written down.

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1 THE WITNESS: Because it is not an
2 absolute.

3 ARBITRATOR DAM: But it is a general
4 understanding that there is a 5 percent rule. Is
5 that what you're saying?

6 THE WITNESS: It's a ballpark figure within
7 the committee that we work with, yes.

8 ARBITRATOR DAM: Thank you.

9 PRESIDENT ORREGO VICUÑA: Okay, Mr. Cook,
10 thank you very much for your participation. You are
11 excused now.

12 (Witness steps down.)

13 PRESIDENT ORREGO VICUÑA: What would you
14 like to do? Call in Ms. Korecky?

15 MS. TABET: We don't have time to get
16 through the direct examination, so I suggest we do
17 it tomorrow.

18 PRESIDENT ORREGO VICUÑA: So, you will have
19 to accommodate that situation tomorrow, and you will
20 have to take into account the three witnesses that
21 are on for tomorrow, as well. How do you plan to
22 handle that?

1 MS. TABET: Could Ms. Obadia remind us of
2 the time used by the parties today.

3 MR. APPLETON: Before we do that,
4 Mr. President, I would just remind everyone that I
5 think we should try to use what time we have. To
6 the extent we can do it, there would be--if we could
7 get a start on this, I think we would get a good
8 chunk of this underway, and then that way we would
9 be in a position--there would be no--we certainly
10 won't start our cross-examination tonight, so there
11 will be no issue of breaking the witness in that
12 type of way, but I think we could get this underway,
13 and I think that would be the most effective thing,
14 if we could do it. But it's up to the Tribunal, of
15 course.

16 PRESIDENT ORREGO VICUÑA: But if I
17 understood you rightly, Ms. Tabet, you won't be able
18 to finish your direct examination in 20 minutes?

19 MS. TABET: Yes.

20 PRESIDENT ORREGO VICUÑA: Is that right?

21 MS. TABET: That's correct.

22 (Tribunal conferring.)

1 PRESIDENT ORREGO VICUÑA: Fine. The
2 Tribunal has considered the situation, and thinks
3 that it's better to start right now with

4 Ms. Korecky, go as far as it will go by 5:30 and
5 break there and then continue on tomorrow. But I
6 must mention to you that we would not like to have
7 much of a rollover because there is the situation of
8 Friday in which Mr. Howse will allow to participate,
9 but the parties want to have Friday off to prepare
10 for Saturday. So, if we start rolling, then on
11 Thursday at 5:30 you will ask for rolling on someone
12 to Friday, and that will be a problem for you. Is
13 it not right?

14 MS. TABET: Mr. President, I believe we
15 have been fairly short to date, and we haven't
16 abused your patience in terms of direct or redirect,
17 so--and I am prepared to certainly try to do that
18 again.

19 PRESIDENT ORREGO VICUÑA: Okay. So, we
20 will start now with Ms. Korecky.

21 MS. TABET: May I ask Ms. Obadia to give us
22 a time count, please.

1 SECRETARY OBADIA: Two days for witnesses
2 and expert: For the Investor we have had six hours
3 and three minutes, and for Canada one hour and
4 forty-three minutes.

5 JUDY KORECKY, RESPONDENT'S WITNESS, CALLED

6 DIRECT EXAMINATION

7 BY MS. TABEL:

8 Q. Ms. Korecky, I understand you're the Deputy
9 Director at the Export Control Division?

10 I'm sorry, please read the Witness
11 Declaration first.

12 A. Certainly.

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

16 Good afternoon, all.

17 Q. Thank you, Ms. Korecky.

18 So, I was going to ask you to explain your
19 responsibility as Deputy Director of the Export
20 Control Division.

21 A. Certainly.

22 As Ms. Tabet mentioned, I'm the Deputy

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1 Director of the Export Control Division responsible

2 for policy and regulatory matters. The Export--

3 ARBITRATOR ROWLEY: Would you move the
4 microphone closer to you.

5 THE WITNESS: As the Deputy Director of the
6 Export Controls Division, Policy and Regulatory, I'm
7 responsible for managing all policies and
8 regulations related to the export side of the Export
9 and Import Permits Act. The items that we control
10 for export are found on our Export Control List,
11 which you have a copy in my exhibits. It is
12 actually a list that is some 200 pages long which
13 logs are one line item.

14 With respect to logs, I'm the Federal
15 representative on FTEAC. I'm also responsible for
16 administering Notice 102, and for making some of the
17 decisions with respect to log export controls.

18 Q. So I understand that part of your functions
19 are to make recommendations to the Minister?

20 A. I act--in certain instances I make
21 recommendations to the Minister because the
22 decisions of those that would be required to be made

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1 by the Minister, and other instances I act as the
2 Minister's delegate and make certain decisions at my
3 own level.

4 Q. And Ms. Korecky, can you tell me who
5 Ms. Sabatino and Mr. Heinz are.

6 A. Certainly.

7 Ms. Sabatino is a Senior Officer in our
8 Division, and she was the Acting Deputy Director
9 while I was away on my year-long maternity leave.

10 Blair Heinz is one of my senior officers.
11 He is intimately involved with me in log export
12 controls, and has been for two-and-a-half years.

13 Q. And, Ms. Korecky, what do you know about
14 the log industry?

15 A. I have a general understanding of the log
16 industry. In my role at DFAIT, I'm not required to
17 be a subject matter expert, and that is precisely
18 why we have a consultative committee.

19 And I would point out that we have--in the
20 log export control process, we engage in
21 consultations on most of those areas in which a
22 permit is required. We certainly cannot be subject

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1 matter experts over the wide range of items and the
2 different considerations that are required.

3 So, the consultative process is something
4 that is not--slow down? Certainly.

5 The consultative process is not something

6 that is limited to logs but is something that we do
7 on a regular basis with respect to all Export
8 Permits.

9 Q. Ms. Korecky, I will ask you to slow down
10 because I know David cannot take notes--

11 A. Where did you lose me? You've got me now,
12 good.

13 Q. I believe you were talking about the
14 consultative process, so with respect to logs, is
15 there a consultative process?

16 A. Certainly. We have an Advisory Committee
17 called the FTEAC, the Federal Timber Export Advisory
18 Committee, which is made up of a group of industry
19 experts who provide us advice with respect to the
20 adjudication of individual offers, with respect to
21 general market practices, with respect to the
22 general state of the industry at a given point in

603

1 time.

2 And as you will see from Notice 102, they
3 also assist us in making certain assessments with
4 respect to the validity of offers.

5 Q. You've referred to Notice 102, and we have
6 discussed it, but in your own words, can you tell us
7 what Notice 102 is.

8 A. Certainly.

9 Notice 102 is a policy statement that was
10 issued by the Minister of Foreign Affairs in 1998
11 which sets out the procedures that are applicable to
12 the export of all logs harvested in B.C. The Notice
13 deals principally with the procedures related to the
14 export of logs that fall under Federal jurisdiction.

15 There is a brief mention of the linkage to
16 where one ought to go for the specific procedures
17 related to Provincial log exports as well as the
18 process to be followed for the export of logs from
19 aboriginal lands. But for the first part, the
20 six-page notice--I would say five pages--relates
21 directly to the process relating to the export of
22 logs that fall under Federal jurisdiction.

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1 Q. And can you tell us what logs under Federal
2 jurisdictions are.

3 A. Could you please reframe your question.

4 Q. What are logs that are under Federal
5 jurisdiction? You said "Federal jurisdiction."

6 A. Those are the logs that were granted by the
7 Crown to private individuals prior to March 12,
8 1906.

9 Q. And--

10 A. As well as those logs that fall under--on
11 aboriginal lands.

12 Q. And why this date of 1906?

13 A. There was obviously a jurisdictional shift
14 on that date.

15 Q. Can you explain that.

16 A. I do not know the specific reason for which
17 a jurisdictional shift took place at that point in
18 time, but certainly lands that were granted by the
19 Federal Crown were granted those before March 12,
20 1906, and those that were granted afterwards fell
21 under Provincial jurisdiction.

22 Q. Fair enough. You're not an constitutional

605

1 expert?

2 A. I'm not a constitutional expert.

3 I wasn't aware that the jurisdiction of
4 Federal Lands and Provincials Lands were under--at
5 issue in this case.

6 Q. Now, what was the situation before Notice
7 102?

8 A. Prior to Notice 102, Notice 23 was in
9 place, and that dated from 1986 to 1998. Prior to
10 that time, there was another policy in place dating
11 back to 1967. Prior that, there were quota

12 restrictions. But I would state that from the
13 outset starting--there was 42 of 43 log export
14 controls have been in place with respect to the
15 export of all logs from Canada.

16 Q. Now, with respect to the situation in
17 British Columbia and the process for log exports
18 from British Columbia, has there been any
19 substantial changes from Notice 23 to Notice 102?

20 A. From the industry perspective, not really.
21 Under both of those notices, companies are obligated
22 to advertise their logs for export for a two-week

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1 period. Companies that choose to make offers on
2 those logs must do so within that two-week period,
3 and then those offers are considered by FTEAC. A
4 recommendation is provided.

5 The distinction is, from a procedural
6 perspective which is internal to us, that under
7 Notice 23 the committee would provide a
8 determination. Under Notice 102, the committee
9 provides a recommendation. And the mandate of the
10 committee is narrower to the extent that they are
11 looking solely at the fair market value assessment
12 of that particular offer and certain narrow areas
13 related to the validity that are set out in

14 Section 4 of Notice 102. At which point in time if
15 there is no offer, a boom is declared surplus--it's

16 the same under both processes--and that boom would
17 be issued a Surplus Letter, and then a company who
18 owns that boom would be free to apply or not for a
19 permit for a four-month period after that point in
20 time. And there is a possibility of a limited
21 extension on that surplus validity period.

22 If an offer has been received and FTEAC has

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1 reviewed that offer, determined that it is a valid
2 fair market value offer, if I then look at that
3 recommendation along with other factors, make a
4 determination that that boom is not surplus to
5 domestic need, then that Surplus Letter is issued to
6 the company with respect to that boom.

7 If, on the other hand, a determination is
8 made by DFAIT that that boom is surplus to domestic
9 need, they will receive a Surplus Letter.

10 Q. And the next step after that for them to
11 obtain to be able to export their logs is what?

12 A. If they have a Surplus Letter, in some
13 60 percent of instances, they will actually apply
14 for a permit.

15 Q. So, they don't apply for permits every time

16 their logs are declared surplus?

17 A. No, I think that consistently over the
18 industry standard on the Federal side they only
19 apply for permits 60 percent of the time that
20 they're granted surplus status.

21 Q. Now, how long does this process take?

22 A. The process takes--are you--just to clarify

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1 because we did automate our system two years ago.

2 Would you like me to speak to the current process?

3 Q. Would you describe both, please, because I
4 think the period of issue in this arbitration
5 straddles potentially both.

6 A. Certainly.

7 Prior to April 1st, 2006, we were running a
8 paper process, and companies would apply to
9 advertise their logs directly to British Columbia.
10 There would be a 10-day period during which time the
11 application was processed, and I think the example
12 came forward on a Tuesday, so it's a good thing we
13 are speaking on a Tuesday, so I would say for this
14 Tuesday the application to advertise would be
15 received. Next Friday the boom would be advertised
16 for two-week period. And if no offer had been
17 received by the following Monday--Tuesday,

18 typically--we have given us a service pledge of
19 three days. After the close of the advertising
20 period, a Surplus Letter would be issued.

21 Before automation, this Surplus Letter
22 would then be either faxed or mailed to the company,

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1 and the company would then come in by a paper again
2 for that Export Permit application, and that Export
3 Permit application would be processed manually.

4 So, that process would have taken 10 days
5 to get into the advertising system, a two-week
6 advertising period, and then within a few days a
7 Surplus Letter would be issued. And from our
8 perspective, that is the process.

9 Q. So--

10 A. I will add that up for you.

11 So, 10 days plus another two weeks, that's
12 24 days, that makes 28 days on average.

13 And again, from our perspective, that is
14 where our time line begins and ends because
15 companies are then free to choose to apply for a
16 permit or not--and again, they only apply for permit
17 in 60 percent of instances, and they may apply for a
18 permit on the day after they receive the surplus
19 status like they may apply for a permit a month

20 later, two months later, three months later, and we
21 are not responsible for that portion of the time
22 line.

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1 Q. I see.

2 A. Now, under the automated system--

3 (Simultaneous conversation.)

4 Q. So, you were going to describe the new
5 process in place since 2006.

6 A. Since 2006, we have put in place what we
7 called the EXCOL system, the Export Control On-line
8 system, to deal with all of our Export Permits. We
9 have a specific section. We have spent a fair
10 amount of time and energy to create a system for log
11 export controls only.

12 As a result of that system, companies now
13 submit their application to advertise to DFAIT, and
14 they must do this by a Tuesday, so again they would
15 then advertise the following Friday. They will
16 advertise for a two-week period, and then their
17 Surplus Letter would be issued the following Monday
18 or Tuesday, at the latest Wednesday. So, there
19 again you have about a 28-day period.

20 Now, the distinction for the industry lies
21 in the fact that the Surplus Letter is now sitting

22 in their e-mail system when they link into the EXCOL

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1 so they could self-generate their own permit within
2 seconds.

3 I would also point out that from a
4 technical perspective--and John Cook refers to this
5 in his Affidavit--that the Provincial Government is
6 also seeking to automate their systems; and, when
7 that comes on line, that front-end 10 days will be
8 shortened, so the process at that point in time
9 should take around three weeks from start to finish
10 when no offers have been received.

11 Q. And in addition to this automation process
12 in 2006, you have also over time sought to find ways
13 to speed up the process?

14 A. Certainly.

15 One example which has been mentioned
16 earlier today relates to our decision to allow
17 companies to move their booms of logs during the
18 advertising period. As was mentioned, previously to
19 the end of 2006, beginning of 2007, companies had to
20 place their logs in one place for the two-week
21 period so that any interested buyers could go to
22 that location and find those logs.

1 We realized, as the industry was changing,
2 that we ought to change as well, and that we decided
3 to allow companies to move those booms or logs
4 during that advertising period as long as everyone
5 acted in good faith, and a company seeking to view
6 that boom of logs could call the advertising company
7 who then informed them who was towing that boom of
8 logs, and they could contact the towing company and
9 go and view those logs.

10 And that system, by and large, has worked
11 very well. We have had very few instances where
12 companies have had difficulties with this system to
13 date.

14 Q. Are you in frequent contact with the
15 industry?

16 A. Oh, certainly. The industry contacts me on
17 an ongoing basis--e-mails, faxes, telephone calls,
18 letters--and both from the logging side of the
19 industry as well as the milling side of the industry
20 and the offering companies.

21 Q. Now, we've talked about log export controls
22 being in place with respect to all the logs in

1 Canada, but why does the surplus test only apply to
2 British Columbia then?

3 A. The surplus test only applies to British
4 Columbia because of the unique situation of British
5 Columbia. It is distinct from the other Provinces.
6 The reality is that some 90 percent of logs that are
7 exported from Canada are exported from British
8 Columbia, and this is a pretty consistent figure.

9 Q. What was that percentage?

10 A. Ninety percent.

11 Q. And why does the Federal Regime not have
12 some of those standing exemptions like the
13 Provincial Government?

14 PRESIDENT ORREGO VICUÑA: Ms. Tabet, I'm
15 afraid this is going to be your last question.

16 MS. TABET: My last question today?

17 PRESIDENT ORREGO VICUÑA: Today, certainly,
18 so please finish the question or the answer.

19 THE WITNESS: Certainly.

20 The Federal Government--let me step back.

21 I think everyone needs to understand that
22 these are two separate regimes that intersect. The

1 Provincial Government has a broader force management
2 mandate of which log export controls or their
3 domestic manufacturer rule is one element. Our
4 system is limited to log export controls. We have
5 two different constitutional mandates, two different
6 legislative mandates, and the focus of those two
7 regimes is very distinct.

8 Our Regime is predicated on determining
9 adequate supply and distribution in Canada. That is
10 the limit of our mandate.

11 BY MS. TABET:

12 Q. Thank you, Ms. Korecky. We will continue
13 tomorrow.

14 A. Thank you.

15 PRESIDENT ORREGO VICUÑA: Yes, we shall do
16 that, and you continue to be a witness under oath
17 until you are over, please.

18 Great. So, thank you so much, and we meet
19 again tomorrow morning at 9:00.

20 (Whereupon, at 5:30 p.m., the hearing was
21 adjourned until 9:00 a.m. the following day.)

22

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.

DAVID A. KASDAN