

**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF
THE NORTH AMERICAN FREE TRADE AGREEMENT**

BETWEEN:

MERRILL & RING FORESTRY L.P.

AND:

GOVERNMENT OF CANADA

APPLICATION TO FILE A WRITTEN SUBMISSION

by the

**UNITED STEELWORKERS,
COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,
and the BRITISH COLUMBIA FEDERATION OF LABOUR**

September 26, 2008

THE APPLICANTS

1. The British Columbia Federation of Labour represents more than half a million workers through affiliated unions in more than 800 locals, working in every aspect of the B.C. economy. Approximately 14% of the entire B.C. workforce is employed directly or indirectly by the forestry industry.
2. The Communications, Energy and Paperworkers Union of Canada (CEP) represents more than 150,000 workers in Canada, including some 40,000 in the forest industry. 6000 of these forest industry workers are employed in British Columbia, the province in which Merrill & Ring Forestry L.P. ("Merrill & Ring") operations are located. As is true for CEP members in other provinces, these workers are employed in sawmills, pulp and paper mills and converting plants.
3. The United Steelworkers (USW) represents more than 280,000 Canadian workers, including approximately 55,000 in the forestry industry. USW is Canada's largest forestry union. Historically, the majority of these forest industry workers were members of the Industrial Wood and Allied Workers of Canada, which merged with the USW in 2004. Many USW members are loggers, but 85% of the Union's members working in the forest sector are employed in sawmills, wood product manufacturers, and other wood related industries.

THE APPLICANTS' INTEREST IN THESE PROCEEDINGS

4. The British Columbia Federation of Labour, CEP and USW (hereinafter the "Applicants") represent workers in all sectors of the Canadian forest industry, but by far the largest majority are employed in sawmills, pulp and paper plants, wood product manufacturers, and other companies which can be described as "value-added processing" industries. For the reasons described below, the jobs and job security of these workers depends upon a steady flow of logs to the mills, plants and industries in which they work. Log export controls are vital to ensure that flow is maintained.

Value-added Processing is Critical to the Viability of the British Columbia Forest Sector

5. The existence and economic viability of sawmills operating in British Columbia obviously depends upon the availability of logs that allow sawmill companies to sell their products at competitive prices to Canadian and international markets. For the overwhelming majority of mills operating in British Columbia the only feasible source for logs are those harvested in the Province.
6. In addition to the primary produce of dimensional lumber, on average, about 33 per cent of each log milled in British Columbia results in residual by-products such as wood chips, sawdust and hog fuel (saw mill waste products that are not suitable for pulp or other wood products production). These by-products are primarily used by the pulp and paper industry – wood chips are the raw material for pulp production, and sawdust is used as hog fuel to power the mills. Other wood processing industries similarly rely on sawmill by-products as primary or secondary inputs to production. The sale of these by-products is also an important income generator for sawmill companies.
7. Sawmills, pulp mills and other wood product industries are thus dependent on each other for their economic survival. When a sawmill shuts down, its by-products are no longer available, or at the very least, become more expensive for pulp mills and other wood products industries to buy. This can put enormous pressure on secondary producers trying to compete in a global marketplace.
8. Logs exported from Canada obviously reduce the number milled in Canada. When logs leave the country in sufficient volumes the result is supply shortfalls to existing sawmills. Furthermore, the right to export logs from Canada creates a disincentive for investment in the modernization of existing sawmills or the establishment of new ones. Fewer sawmills mean fewer inputs to pulp mills and secondary producers, which ultimately means less pulp and other production, and ultimately fewer mills and processing plants. Without a viable sawmilling industry, there is no viable pulp and paper industry for Canada, and a much diminished wood products sector.
9. The forestry industry contributed CDN \$36.3 billion to Canada's GDP in 2006, and some 294,100 jobs in 2007. Of this economic total, pulp and paper products and wood-

fabricated materials accounted for well over 95%.¹ In other words, Canadian value-added forest sector industries are the backbone of its forest economy, the viability which depends upon Canadian logs being milled at Canadian mills.

Log Export Controls are Key to Sustainable Resource Management

10. The lack of access to hog fuel for power generation forces the pulp and paper industry dependent on this fuel source to supplement power generation with fossil fuels. This significantly increases product costs and adds to the carbon footprint associated with this industry.
11. Present proposals for Canada to meet its international treaty obligations to reduce greenhouse gas emissions would impose a direct (carbon tax) or indirect (cap and trade) cost on companies related to the greenhouse gas emissions from their operations. The recycling of waste products from logging and sawmill operations represents a critical opportunity for these companies to reduce the carbon intensity of production, thereby contributing to the reduction of greenhouse gas emissions in an efficient and cost-effective manner. Reducing the distance between primary resource extraction and resource processing further reduces the greenhouse gas emissions caused by exporting logs.
12. Log export controls are also essential to managing forest resources in a sustainable manner because weakening export controls creates real pressure to increase harvesting to maintain revenues even beyond sustainable harvest levels. The Applicants recognize the need to integrate economic and environmental policies, and this is reflected in the working relationships they have established with environmental groups to promote sustainable resource policies, including those that ensure that value is added to Canadian forest resources before they are exported.

The Impacts of Log Exports on the British Columbia Forest Sector

13. Indeed, increased log exports from British Columbia during recent years has resulted in sawmill closures, and this has given rise to a domino effect of pulp mill closures in British Columbia. For example, two mills in Mackenzie and the mill at Harmac (Nanaimo) are casualties of this dynamic. While a number of factors contributed to these mill closures, the lack of fibre from sawmills was critical. The result has been a loss of over 1000 good pulp mill jobs in the past few months, and the loss of another 600 jobs at a mill in Campbell river is anticipated to occur late this year. When logs leave British Columbia, jobs go with them.

¹ Canada's Counter-Memorial, paras 32-38.

14. In fact log exports from British Columbia have increased significantly in recent years and this has resulted in a significant loss of jobs across the industry with employment in the forest sector declining by 12.5% percent from 2001 to 2005.²
15. As Canada points out, a disproportional volume of such exports are logs subject to federal, not provincial, regulation.³ Contrary to Merrill & Ring's assertions, Canada's log export regime is not too onerous, but too lenient.

The Applicants Are Committed to Preserving Log Export Controls

16. Because of their commitment to a robust and diversified forest industry, the Applicants have been actively engaged in Canadian public policy debate about forest management in general, and log exports in particular. Their representatives have appeared at federal and provincial parliamentary committees, and met routinely with elected officials and civil servants to express their support for not only maintaining but strengthening Canada's log export regime at both the provincial and federal levels. Most recently the Steelworkers have made presentations to the BC Forest Round Table, and participated in a similar federal process.
17. The Applicants believe that the present claim by Merrill & Ring would, if successful, lead to similar claims by other companies, which in turn could ultimately lead to the abandonment of federal log export controls. Moreover, depending on how the issues in this case are resolved, the consequences could readily spill over and provoke NAFTA-based investor challenges to provincial log export controls.
18. The Federal Surplus Test, at issue in these proceedings, is fundamental in ensuring that the Canadian forestry industry does not collapse into merely an industry of raw commodity production, and that logs harvested in Canada enter into the value-added processing sectors which employ tens of thousands of workers and members of the Applicants' unions and labour federation.

ISSUES OF FACT AND LAW ADDRESSED BY THE APPLICANTS' SUBMISSIONS

19. The Applicants support the position taken by Canada in this proceeding, as presented by the Counter-Memorial of May 13, 2008 that it has filed in this proceeding, but if given leave to intervene would raise further and important grounds for dismissing the Merrill & Ring claim. The Applicants are advised by counsel that these are as set out in the attached Submissions raising the following grounds:

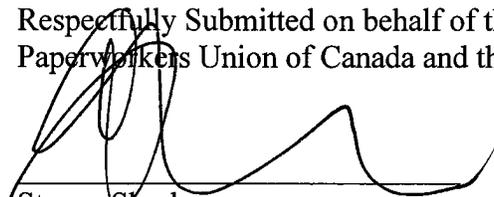
² See for example Garry Horne, BC Stats: http://www.bcstats.gov.bc.ca/pubs/econ_dep/forest.pdf

³ Canada's Statement of Defense, para. 15

- (i) the authority of the Canadian governments to establish and maintain log export controls is explicitly preserved under Annex 301.3 of NAFTA. In the event of any inconsistency between the provisions of NAFTA concerning trade in goods, and those concerning investment, as arise in the instant case, Article 1112 provides that the former will prevail to the extent of the inconsistency. Accordingly, Merrill & Ring's claims concerning the consequences of export controls, which Canada has explicitly preserved the right to maintain, must be dismissed; and
- (ii) the provisions of the *British Columbia Forest Act* and administrative procedures related thereto which are impugned by the disputing investor are reserved under Annex I of NAFTA as non-conforming measures that have been in place since the negotiation of NAFTA, and for this reason are not amenable to challenge on the grounds that they fail to comply with Articles 1102, 1103, and 1106. Accordingly, those aspects of the Merrill & Ring engendering such challenges must be dismissed on this ground as well.

- 20. The Applicants have no affiliation, direct or indirect, with any disputing party, and have received no financial or other assistance from any government, person or organization in preparing this Application or attached submissions.
- 21. The Applicants submit that the Tribunal should grant the Applicants leave to file a non-disputing party submission, and accept the attached submission because these submissions: will assist the Tribunal in the determination of factual and legal issues related to this arbitration by bringing a perspective, particular knowledge and insight that is different from that of the disputing parties; and address matters within the scope of the dispute. Moreover, the Applicants have a significant interest in the arbitration, and there is also a public interest in the subject matter of the arbitration.

Respectfully Submitted on behalf of the United Steelworkers, the Communications, Energy and Paperworkers Union of Canada and the British Columbia Federation of Labour.



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