

IN THE MATTER OF AN ARBITRATION UNDER CHAPTER 11 OF  
THE NORTH AMERICAN FREE TRADE AGREEMENT  
AND THE UNCITRAL ARBITRATION RULES

BETWEEN:

MERRILL & RING FORESTRY L. P.

CLAIMANT

AND

THE GOVERNMENT OF CANADA

RESPONDENT

(ICSID Administered Case)

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**ORDER CONCERNING REQUESTS FOR DOCUMENTS AND  
CERTAIN EVIDENTIARY MATTERS**

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## **PRODUCTION OF DOCUMENTS AND DOCUMENT REQUESTS**

1. Each disputing party shall submit to the Tribunal and the other disputing party together with its written submissions, all documents available to it on which it relies, including public documents and those in the public domain, except for any documents that have been submitted by the other disputing party.
2. In accordance with Agenda Item 15 of the Minutes of the First Procedural Meeting held on November 15, 2007, a disputing party may request documents from the other disputing party.
3. A document request shall contain:
  - a.
    - (i) a description of a requested document or information sufficient to identify it; or
    - (ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of documents that are reasonably believed to exist;
  - b. a description of how the information requested is relevant and material to the outcome of the case; and
  - c. a statement that such document is not in the possession, custody or control of the requesting disputing party and of the reason why that disputing party assumes the documents requested to be in the possession, custody or control of the other disputing party.
4. Within the time agreed to by the parties, or otherwise ordered by the Tribunal, the disputing party to whom the document request is addressed shall produce to the Tribunal and to the other disputing party all the documents requested in its possession, custody or control as to which no objection is made.
5. If the disputing party to whom the document request is addressed has objections to some or all of the documents requested, it shall state them in writing to the Tribunal in the form of a Redfern Schedule. A party may object on the basis of any of the reasons set forth in paragraph 6.
6. The Tribunal shall determine the admissibility, relevance, materiality and weight of evidence, and may exclude from evidence or production any document, statement, oral testimony for any of the following reasons:
  - (a) lack of sufficient relevance or materiality;

- (b) legal impediment or privilege under the legal or ethical rules determined by the Tribunal to be applicable;
- (c) unreasonable burden to produce the requested evidence;
- (d) loss or destruction of the document that has been reasonably shown to have occurred;
- (e) grounds of commercial or technical confidentiality that the Tribunal determines to be compelling;
- (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Tribunal determines to be compelling; or
- (g) consideration of fairness or equality of the disputing parties that the Tribunal determines to be compelling.

7. The established time line for document production in these proceedings is as follows:

<b>Time</b>	<b>Event</b>
7 days after Canada submits its Counter-Memorial	Simultaneous Requests for Document Production (SRDP)
7 days after the SRDP	Counsel of the disputing parties meet to assess objections to document production
21 days after the SRDP	Both disputing parties submit objections to refusal to produce in the form of a Redfern Schedule to the Tribunal
60 days after the decision of the Tribunal on refusals to produce	Reply to be filed by the Investor
60 days after the Reply	Rejoinder to be filed by the Respondent

- 8. If copies of documents are produced, they must conform fully to the originals. At the request of the Tribunal, the original of any document must be presented for inspection.
- 9. Within the time ordered by the Tribunal, the disputing parties may submit to the Tribunal and to the other disputing party together with its Reply or Rejoinder or at any other time

ordered by the Tribunal any additional documents which they believe have become relevant and material as a consequence of the issues raised in the documents, witness statements or expert reports submitted or produced by another disputing party or in other submissions of the disputing parties.

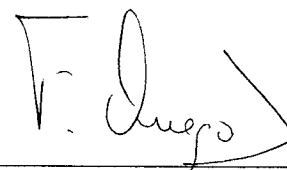
10. For this Order, a document means a writing of any kind, whether recorded on paper, by electronic means, by audio or visual recordings or other mechanical or electrical means of storing or recording information.
11. The Tribunal may provide further specific procedural directions to resolve disputes between the disputing parties about document production.

### **WITNESSES**

12. Any witness statements or expert reports on which a disputing party relies will be filed with the written submissions of that disputing party. Copies of the information on which an expert report relies will be attached to that expert report.
13. Any person may present evidence as a witness, including a disputing party or a disputing party's officer, employee or other representative.
14. A disputing party may also rely on a party-appointed expert.
15. If witness statements or expert reports are submitted, any disputing party may file subsequent witness statements or expert reports with their subsequent written submissions, so long as such subsequent statements only respond to matters contained in another disputing party's witness statement or expert report and such matters have not been previously presented in the arbitration.
16. Each witness who has submitted a witness statement or expert report shall appear for testimony at an evidentiary hearing, unless the disputing parties agree otherwise.
17. If a witness who has submitted a witness statement or expert report does not appear without a valid reason for testimony at an evidentiary hearing, except by agreement of the parties, the Tribunal shall disregard that witness statement unless, in exceptional circumstances, the Tribunal determines otherwise.
18. If the disputing parties agree that a witness who has submitted a witness statement or expert report does not need to appear for testimony at an evidentiary hearing, such an agreement shall not be considered to reflect an agreement as to the correctness of the content of the witness statement.

**INTERROGATORIES**

19. At any time during the Information Production Process, a disputing party may request leave from the Tribunal to deliver written interrogatories to the other disputing party. The interrogatories shall, in addition to the questions posed, list the persons or class of persons (the "person") to whom the questions(s) are targeted. The procedures relating to refusals to respond to document production shall apply with respect to interrogatories. Interrogatories shall be approved by the Tribunal before delivery.
20. Upon receipt of an interrogatory, the responding disputing party shall ensure that an answer be provided to the best of the person's knowledge. The person answering may consult the lawyers representing them in the arbitration for general advice. The person to whom the interrogatories are posed shall not consult other witnesses of the disputing party. In the event that an answer cannot be made without such consultations, the identity of all such consulted persons must be disclosed.
21. The Tribunal reserves the power to make specific procedural directions to resolve any disputes between the disputing parties about interrogatories.



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Francisco Orrego Vicuña  
On behalf of the Tribunal

Dated January 21, 2008