
**IN THE MATTER OF AN ARBITRATION UNDER CHAPTER ELEVEN OF THE NORTH
AMERICAN FREE TRADE AGREEMENT AND THE 1976 UNCITRAL ARBITRATION
RULES**

between

RESOLUTE FOREST PRODUCTS INC.

Claimant

and

GOVERNMENT OF CANADA

Respondent

(PCA CASE NO. 2016-13)

**PROCEDURAL ORDER NO. 11
ON FURTHER DOCUMENT PRODUCTION**

ARBITRAL TRIBUNAL:

Judge James R. Crawford, AC (President)

Dean Ronald A. Cass

Professor Céline Lévesque

July 9, 2019

Procedural Order No. 11 – Further Document Production

1. PROCEDURAL HISTORY

- 1.1 On October 14, 2016, the Tribunal issued Procedural Order No. 2 dealing with document production.
- 1.2 On January 30, 2018, the Tribunal issued its Decision on Jurisdiction and Admissibility.
- 1.3 Pursuant to an agreed schedule, the Disputing Parties engaged in a first round of document production for the merits and damages phase in August 2018, leading to the issuance by the Tribunal of Procedural Order No. 9, on August 21, 2018. The Tribunal noted that Respondent had flagged possible objections on the ground of cabinet privilege or institutional sensitivity pursuant to Article 9.2 of the IBA Rules. The Tribunal made no findings on any kind of privilege in Procedural Order No. 9 but indicated it would do so upon receipt of separate requests in relation to specific documents or narrow classes of documents (paragraph 4.2). With respect to requests granted by the Tribunal that contain the words “contain, discuss or refer to”, the Tribunal expressed that it understood that formulation to mean “discuss an issue or document substantively, as distinct from merely referencing the issue or document” and to be “limited to discussions by or involving senior management or the Board of Directors.” (paragraph 4.3). The Tribunal also recalled that an additional round of document requests would take place after the first exchange of written submissions, and stated that if a Party had a request denied, it may revert to the Tribunal at that point with a more focused request. Similarly, if a producing Party’s original objections were considered by the Tribunal to be insufficiently specific, that Party may come back to the Tribunal with “more focused objections relating to particular documents and explaining how a privilege or objection arises with respect to a particular document or class of documents.”
- 1.4 The Claimant filed its Memorial on the Merits and Damages on December 28, 2018.
- 1.5 On February 19, 2019, the Tribunal issued Procedural Order No. 10, setting out a revised schedule for the merits and damages phase as agreed by the Disputing Parties.
- 1.6 In accordance with that revised schedule, the Respondent filed its Counter-Memorial on the Merits and Damages on April 18, 2019.
- 1.7 Pursuant to paragraphs 2.1K, 2.1L and 2.1M of Procedural Order No. 10, the Disputing Parties exchanged a second round of document requests, produced some documents responsive to those requests, and maintained objections to the remaining requests.

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- 1.8 On June 28, 2019, the Disputing Parties, pursuant to paragraph 2.1N of Procedural Order No. 10, submitted to the Tribunal their Redfern Schedules for disputed document requests.
- 1.9 Paragraph 9 of Procedural Order No. 2 provides: “the Tribunal shall rule on any dispute relating to document production pursuant to its authority under Articles 24(3) and 25(6) of the 1976 UNCITRAL Arbitration Rules. In doing so, the Tribunal may seek guidance from, but is not bound by, Articles 3 and 9 of the 2010 IBA Rules”.

2. CLAIMANT’S REQUESTS AND OBJECTIONS

- 2.1 The 15 remaining disputed document requests of the Claimant are set out in Annex I to this Order.
- 2.2 **Requests 1 and 2** seek materials related to sources relied upon by Canada’s experts. Canada has objected due to the materials being “work product”, confidential, proprietary or their production being burdensome. Resolute points to conflicting prior positions taken by Canada in other NAFTA arbitrations, and submits the production of documents already relied upon by experts cannot be burdensome.
- 2.3 **Request 5** relates to two prior studies relied upon by Canada which were produced after Resolute filed its Memorial. Resolute submits that it is entitled to the materials to buttress its claims and to rebut Canada’s defenses and expert’s report.
- 2.4 **Request 14** seeks communications between the Government of Nova Scotia (‘GNS’) and Todd Williams, NSPI, or PHP/PWCC relating to the negotiation and approval of the electricity deal received by PWCC for the mill. Canada has objected on the basis that the time period of one year is overly broad. Resolute submits that the time period is necessary to enable Resolute to rebut defenses relating to whether the electricity deal can be attributed to GNS.
- 2.5 **Request 16** seeks 2015-2016 communications relating to the amendment of GNS’s renewable energy regulations, to rebut statements made in the Coolican Witness Statement.
- 2.6 **Request 17** seeks “all documents evidencing estimates or analyses conducted by or on behalf of GNS regarding the potential lifespan of the Bowater Mersey facility” Canada has claimed the request is irrelevant and immaterial. Resolute submits the request goes to whether Resolute was treated fairly. **Request 26** relates to communications between

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the Premier's Office and the interdepartmental government committee relating to the Port Hawkesbury or Bowater Mersey mills.

- 2.7 **Requests 18 and 21** seek GNS documents relating to bids for the reopening of the Port Hawkesbury mill and about its sale. Resolute submits it is entitled to see what the bidders submitted to GNS during this process and related communications in order to rebut GNS's claims about its involvement with choosing the bidder and supporting the mill.
- 2.8 **Requests 22 and 23** seek documents concerning GNS's land ownership and certain renewable energy production benchmarks, which according to Resolute relate to Canada's defenses about the goals of GNS but are not available in public sources.
- 2.9 **Request 24** seeks documents relating to the Port Hawkesbury mill sale exchanged with GNS, Sanabe, and the Monitor. Resolute argues these are relevant communications with relevant actors material to Canada's defense that GNS had no involvement with the sale of the mill.
- 2.10 **Request 25** seeks 2011-2014 contracts and other documents evidencing the scope of services with GNS of █████ and Pöyry, which Canada has relied on extensively and which would, according to Resolute, allow Resolute to refute the reports. Canada has described Request 25, among others, as unreasonably broad and amounting to demands that Canada produce all documents in the possession of the GNS with any connection whatsoever to the Port Hawkesbury CCAA proceeding and the financial assistance provided by the GNS to PWCC. Resolute characterizes Canada's objection as an exaggerated response, which ignores the permissible scope of discovery allowed by the Tribunal in paragraph 4.4 of Procedural Order No. 9 (limiting requests to materials which contain substantive discussions of an issue or document by senior officials, as opposed to documents that merely reference an issue or document).
- 2.11 **Request 27** seeks briefing materials for two time periods provided to certain GNS officials relating to financial assistance provided to PHP/PWCC. Resolute submits it is entitled to rebut Canada's defense that aspects of the relevant transactions were done by private parties with minimal involvement by GNS.
- 2.12 Resolute also seeks confirmation from Canada that it has carried out production in accordance with promises it made during the document production process and consistent with the limitations such as paragraph 4.4 of Procedural Order No. 9.

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2.13 Resolute maintains that the documents it seeks are relevant and material, that they arise from Canada's Counter-Memorial, and that they will enable Resolute to have a fair opportunity to examine and rebut the defences raised there by Canada. In the introduction to the Redfern Schedule, Resolute sets out its general responses to Canada's general objections, namely (i) possession, custody or control, (ii) overbroad scope of document production sought, (iii), unreasonable burden to produce, and alternatives to production via publicly available sources, and (iv) protected third-party information (as to which international law, and not domestic law should apply), (v) irrelevance and immateriality, and (vi) special political or institutional sensitivity. Resolute's responses on these points are also addressed in response to specific requests, as outlined in the Redfern Schedule at Annex I to this Order.

3. RESPONDENT'S REQUESTS AND OBJECTIONS

3.1 The 4 remaining disputed document requests of the Respondent are reproduced in Annex II to this Order.

3.2 **Request 10** seeks documents since September 1, 2012 concerning Resolute's decision to drop its SC paper prices in January 2012 and increase them in July 2013. The documents are said to be relevant and material to Dr Kaplan's view that prices dropped because of PHP. Resolute has objected on the basis that the request is duplicative of documents produced in the first round and is not based on any new information from the pleadings. Canada maintains the documents are relevant to Resolute's damages claims.

3.3 **Requests 14 and 15** seek documents indicating whether "Fixed Costs" reported in Resolute's P&L's may be "Direct Costs"; and documents detailing costs allocated to each of the Laurentide, Dolbeau and Kenogami mills. According to Canada, these are relevant to Dr Hausman's damages calculations are not duplicative of the first round of document requests, especially insofar as they extend beyond December 30, 2015.

3.4 **Request 19** seeks documents indicating Resolute's internal WACC as at January 1, 2018, and since, if changed. Canada explains this is relevant to the discount rate applied by Dr Hausman. Resolute has offered to search for responsive documents subject to privilege. To the extent privilege is raised, Canada seeks Resolute's compliance with Paragraph 7 of Procedural Order No. 2.

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4. **ORDER**

- 4.1 The Tribunal's decisions and directions on the Disputing Parties' remaining requests are set out in the Redfern Schedules appended to this Order as Annexes I and II.
- 4.2 Pursuant to paragraph 2.1P of Procedural Order No. 10, each Disputing Party is ordered to produce the documents and/or to provide the information indicated therein to the other Disputing Party, but not the Tribunal, by **July 31, 2019**.
- 4.3 The Tribunal notes that its decisions on the Disputing Parties' requests are not intended to imply any decision on any issue in dispute between them.

Date: July 9, 2019

For the Arbitral Tribunal



Judge James R. Crawford, AC

ANNEX I – CLAIMANT’S REQUESTS FOR DOCUMENTS

(a)	(b)	(c)			(d)	(e)	(f)
No.	Documents or Category of Documents Requested	Rationale for Document Request			Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments	Proof Canada has Document in its Possession, Custody, or Control			
1	All native versions of spreadsheets/documents created, used by, cited to, or relied on by the Pöyry and Steger Expert Reports, including but not limited to the schedules attached to the Steger Expert Report.	Expert Reports of Pöyry and Steger.	Resolute is seeking the native (i.e., not PDF) versions of the spreadsheets, documents, graphs, etc. used in Canada’s expert reports.	These are Canada’s expert reports.	Canada agrees to search for and produce documents that are responsive to this request, subject to claims under Article 9.2(b), (e) and (f) of the IBA Rules.	Canada made no objections to this request.	The Tribunal takes note of the Respondent’s undertaking to produce documents responsive to this request. Pending such production by <u>July 17, 2019</u> , the Tribunal reserves its decision concerning the need for any further production by Respondent.
2	To the extent not already produced, all documents relied upon by the Pöyry expert report including but not limited to: (1) the documents used to make Figures 2-1, 2-2, 3-1, 3-2, 3-3, 3-4, 3-5, 3-6, 4-1, 4-2, 4-3, 5-1, 5-2, 5-3, 5-4, 5-5, 5-6, 5-7, 6-1, 6-2, and 7-7-2,	Pöyry Expert Report.	Resolute is seeking the documents and data sources relied upon by Pöyry in its expert report. This material should have been produced, per Procedural	This is Canada’s expert report.	Canada agrees to search for and produce documents that are responsive to this request, subject to claims under Article 9.2(b), (e) and (f) of the IBA Rules.	Canada made no objection to this request.	The Tribunal takes note of the Respondent’s undertaking to produce documents responsive to this request. Pending such production by <u>July 17, 2019</u> , the Tribunal reserves its decision concerning the need for any further production by Respondent.

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No.	Documents or Category of Documents Requested	Rationale for Document Request			Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	(2) the documents used to make Tables 3-1, 3-2, and 3-3; (3) the documents used for Section 6-3 and all tables in that section; (4) the documents used for Annex II; (5) all Pulp and Paper Weeklies cited in the report; (6) all documents generated, emanating from, or created from PWCC/PHP relied upon or reviewed for use in the report; and (7) all RISI, PPPC, Pöyrysmart, or other similar documents relied upon in the report.		Order No. 1 ¶ 12.1.				

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No.	Documents or Category of Documents Requested	Rationale for Document Request			Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments	Proof Canada has Document in its Possession, Custody, or Control			
5	All spreadsheets, model inputs and outputs, narratives or other documents, including correspondence and/or internal memoranda regarding model(s) used by Pöyry in developing the documents identified as R-146 and R-161.	Canada Counter Memorial ¶¶ 34, 43, 54, 92 (referencing R-146); <i>id.</i> ¶¶ 109, 142, 151, 350 (referencing R-161); Pöyry Expert Report ¶¶ 23, 28 29, 30, 37, 43, 44, 57, 81; R-146, p. 62.	Pöyry prepared two prior analyses for GNS, both of which are referenced in Canada’s Counter Memorial and in Pöyry’s expert report. Resolute is seeking the underlying spreadsheets, data sets, and documents relied upon by Pöyry for these exhibits.	These documents were prepared for GNS by Pöyry, who is now serving as an Expert in this arbitration for Canada.	Canada objects as follows: (1) <u>General Objection 1 – Documents not in the Possession, Custody or Control of the GOC or GNS</u> : Resolute has failed to establish that either the GOC or the GNS has possession, custody or control over the requested documents. (2) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u> (3) <u>General Objection 3 – Unreasonable Burden to Produce the Requested Evidence</u> (4) <u>General Objection 5 – Irrelevance and Immateriality</u> Resolute is seeking “all ... documents,” including	Resolute responds as follows: <i>First</i> , these documents are within the possession, custody, or control of Canada or GNS. Resolute seeks production of either documents provided by GNS to Pöyry or documents generated by Pöyry in its prior works for GNS (R-146 and R-161). Therefore, GNS has the materials themselves or the sought-after materials are the work product of Pöyry that belongs to GNS. <i>Second</i> , Pöyry is now serving as an expert in this matter, and its expert report explicitly addresses the prior work it did on behalf of GNS. <i>See</i> Pöyry Expert Report ¶¶ 28-29. Given that these prior reports were used by Pöyry in arriving at its conclusions, Pöyry now has an obligation to submit the requested materials under Article 5(2)(e) of the IBA Rules because they constitute “[d]ocuments on which the Party-Appointed Expert relies that have not already been submitted”.	The Tribunal understands this request to refer to material directly relied on in reports on which the Pöyry expert report was based. Assuming this understanding is correct, the request is granted, subject to Respondent having the right to redact any information that it is able to demonstrate compels protection.

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		Reference to Submissions	Comments	Proof Canada has Document in its Possession, Custody, or Control			
					<p>“correspondence” and “internal memoranda” for an undefined period of time, despite having failed to establish that the requested documents are relevant and material to whether the GNS measures breached NAFTA Articles 1102 and 1105 or caused damages to Resolute and its investments. The fact that the GNS provided financial assistance to PWCC and took into account Pöyry’s 2011 and 2012 reports (Exhibits R-146 and R-161) is not in dispute. How Pöyry developed its 2011 and 2012 reports has no bearing on the final outcome of the GNS’ financial support for Port Hawkesbury.</p> <p>(5) <u>General Objection 4 – Protected Third-Party</u></p>	<p><i>Third</i>, the requested documents are not an overbroad scope of collection, do not impose an unreasonable burden to produce, nor are they irrelevant and immaterial to Resolute’s claims. Resolute seeks Pöyry’s materials from its prior reports done on behalf of GNS and not an undefined set of documents. To the extent Resolute is seeking correspondence and internal memoranda relating to Pöyry’s prior reports, Canada is required to produce materials that “discuss an issue or document substantively, as distinct from merely referencing the issue or document. Further, the Tribunal understands these requests to be limited to discussions by or involving senior” GNS officials, including (but not limited to) Canada’s witnesses. This limitation is the same limitation placed on Resolute’s document production, per paragraph 4.4 of Procedural Order No. 9.</p>	

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		Reference to Submissions	Comments	Proof Canada has Document in its Possession, Custody, or Control			
					<p><u>Information:</u> The requested documents may contain confidential third-party information of Pöyry, PWCC, PHP, NPPH, NewPage, and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties</p> <p>Canada does not agree to produce the requested documents.</p>	<p>In addition, the requested documents are relevant and material. Canada represents that it retained Pöyry to “offer an objective overview of the North American SC-paper markets from 2005-2018, with particular focus on SC-paper supply and demand during the periods preceding and following the ownership change and restart of the Port Hawkesbury SC paper line ... in September 2012.” Pöyry Expert Report ¶ 2. Pöyry was also retained to respond to Resolute’s expert reports. <i>Id.</i> Resolute is entitled to rebut Pöyry’s views with documents previously relied upon by Pöyry in these prior reports, which is particularly so when Pöyry is now claiming that its prior work was inaccurate in material ways. <i>See, e.g.</i>, Pöyry Expert Report ¶¶ 28-29</p>	

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		Reference to Submissions	Comments	Proof Canada has Document in its Possession, Custody, or Control			
14	For the time period September 6, 2011 to September 28, 2012, all communications relating to the negotiation and approval of PWCC’s LRR (including the decision to “introduce Ron Stern and his team to NSPI officials,” the retention of Todd Williams, and his NSUARB testimony) between (a) GNS (including members of the interdepartmental government committee or the Nova Scotia Premier’s office) and (b) Todd Williams, NSPI, or PHP/PWCC.	Coolican Witness Statement ¶¶ 13-20; Canada Counter Memorial ¶¶ 117, 167, 171, 183-221.	Canada defends the electricity deal reached for PHP/PWCC by claiming that it was a negotiation between two private entities. For example, Canada defends the hiring of Todd Williams by GNS as not affecting the analysis of whether the electricity measures can be attributed to GNS. Similarly, Canada defends [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Resolute seeks documents exchanged by GNS.	In addition to Canada’s General Comment, Canada objects as follows: (1) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u> (2) <u>General Objection 3 – Unreasonable Burden to Produce the Requested Evidence</u> (3) <u>General Objection 5 – Irrelevance and Immateriality</u> The Tribunal has already rejected a similar request by Resolute, covering the period from September 12 to 28, 2012 as overbroad. ¹ This request also overbroad as it captures more than a year’s worth of communications.	Resolute responds as follows: <i>First</i> , Canada argues that the document request is overbroad, constitutes an undue burden to produce documents, and seeks irrelevant and immaterial documents. Canada cites Resolute’s First Document Request 33, which sought all correspondence between GNS and PWCC for a two-week period without regard to the content of the communication. In contrast, the current document request seeks a specific category of documents—communications relating to the negotiation and approval of PWCC’s LRR. Canada also claims that the current document request overlaps with Resolute’s First Document Requests 18 and 19. The prior document request sought documents relating to PWCC/PHP’s electricity rate. The current document request	The Tribunal regards the request as overly broad and invites the Claimant to formulate a more specific request, by July 17, 2019 , indicating the directness of the connection between the communications and the decisions in question and, if possible, narrowing down the time period. Subsequently, the Tribunal will invite the Respondent, within a short deadline, to express its views on the reformulated request and, if the Respondent maintains its objection, to explain why the reformulated request would still involve an unreasonable burden to produce. In their communications the Parties should insofar as

¹ Procedural Order No. 9, Document request No 33.

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			<p>██████████ ██████████ ██████████ ██████████ ██████████</p> <p>In addition, Canada defends the electricity deal even though GNS had financial incentive to make it. <i>See</i> Canada Counter Memorial ¶ 117. Therefore, Resolute needs the requested documents to rebut Canada’s defense.</p>		<p>Furthermore, there are already thousands of pages of publicly available documents on this subject on the UARB website which Resolute can rely on, and Canada has already produced a number of documents in response to Resolute’s First Document Requests Nos 18 and 19. Resolute has failed to establish why it needs any further documents in addition to what is already publicly available and to what Canada has already produced.</p> <p>(4) <u>General Objection 4 – Protected Third-Party Information</u>: The requested documents may contain confidential third-party information of PHP, PWCC, NSPI, and related parties. Canada is unable to disclose such</p>	<p>seeks a more specific category of documents—the negotiation and approval of PWCC’s LRR. Canada has placed these documents at issue by contending the electricity deal is not attributable to GNS because, among other allegations: (1) Todd Williams’s role had no effect on the electricity deal, Canada Counter-Memorial ¶¶ 183-195; (2) GNS did not ██████████ ██████████ electricity deal, <i>id.</i> ¶¶ 196-197; (3) GNS’s financial interest in the deal was not a factor, <i>id.</i> ¶¶ 198-200; and (4) the RES regulations were passed in the ordinary course of events, but not to satisfy PWCC/PHP, <i>id.</i> ¶¶ 201-221. Resolute is entitled to the requested documents to rebut Canada’s defense.</p> <p>In addition, Canada has not stated its earlier document productions included the documents sought by the current request. Canada has a history of</p>	<p>possible indicate the approximate number of communications covered.</p>

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					<p>information to Resolute without the authorization of such parties.</p> <p>(5) <u>General Objection 6 – Special Political or Institutional Sensitivity</u>: The requested documents contain Cabinet confidences that are protected from disclosure under Canadian law. <i>Prima facie</i> this privilege would apply to most if not all information contained in documents provided to the GNS Cabinet or its individual members for the purpose of making a decision on measures to be adopted in relation to PWCC’s LRR. Canada is unable to disclose such Cabinet confidences to Resolute.</p> <p>Canada does not agree to produce the requested documents.</p>	<p>failing to produce documents timely in this arbitration; for example, CAN0000122 (identified as a Canadian Counter-Memorial exhibit R-161 and responsive to Resolute’s First Document Request 28) was not produced until March 14, 2019—nearly three months after Resolute’s Merits Memorial was filed with the Tribunal.</p> <p><i>Second</i>, Canada’s confidentiality objection is not well-founded. This request does not seek NSUARB documents, and Nova Scotia’s FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. <i>See</i> FOIPOP § 4(3)(a)-(b) (“This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to</p>	

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		Reference to Submissions	Comments	Proof Canada has Document in its Possession, Custody, or Control			
						<p>compel the production of documents”). The Tribunal has issued a confidentiality order to protect this type of information, and Canada has already produced other documents under this confidentiality order that emanated from PWCC [REDACTED].</p> <p><i>Third</i>, the document request does not seek Cabinet-confidential communications because Resolute requests communications that were shared with third-parties. Resolute seeks materials exchanged with Todd Williams, PWCC/PHP, or NSPI. To the extent some materials may be covered by a cabinet privilege, Canada should provide a privilege log so that Resolute can dispute the assertion.</p>	

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16	For the time period 2015 to 2016, all communications relating to the 2016 change to the Biomass portion of the RES Regulations between (a) GNS, including members of the interdepartmental government committee (such as Murray Coolican and Duff Montgomerie) and (b) other GNS officials, NSPI, or PHP/PWCC.	Coolican Witness Statement ¶ 44; Canada Counter Memorial ¶ 317.	Resolute contends that PHP/PWCC received a benefit from the fulltime operation of an on-site Biomass plant at the Port Hawkesbury mill even though PHP needed only 24% of the steam. The fulltime operation was mandated by a GNS regulation that was passed to overcome an objection by the NSUARB. That additional benefit from running the Biomass Plant fulltime was	The sought-after documents seek communications involving GNS.	Canada objects as follows: <u>(1) General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u> <u>(2) General Objection 3 – Unreasonable Burden to Produce the Requested Evidence</u> Resolute has requested “all communications” over a two-year period. <u>(3) General Objection 5 – Irrelevance and Immateriality:</u> The amendments to the RES Regulations that allegedly benefited the Port Hawkesbury mill were enacted on January 17, 2013. ² Resolute has not established how the April 2016 amendments, which	Resolute responds as follows: <i>First</i> , Canada argues that the document request is overbroad and constitutes an undue burden to produce documents. Canada contends this request seeks all communications over a two-year period. However, Canada is required to produce materials that “discuss an issue or document substantively, as distinct from merely referencing the issue or document. Further, the Tribunal understands these requests to be limited to discussions by or involving senior” GNS officials, including (but not limited to) Canada’s witnesses. This limitation is the same limitation placed on Resolute’s document production, per paragraph 4.4 of Procedural Order No. 9. <i>Second</i> , the requested documents are relevant and material. A	The Tribunal declines the request on the ground that sufficient material is already on the record.

² R-225, Order in Council, No. 2013-12 (Jan. 17, 2013).

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			<p>subsequently valued at approximately \$7 million per year; this cost to ratepayers for doing so was confirmed by GNS during an October 2015 hearing. GNS amended the regulation in April 2016 so that the Biomass Plant did not need to run fulltime. Canada contends that running the Biomass Plant full time was for reasons other than overcoming the NSUARB objection. Resolute is entitled to dispute that</p>		<p>ended the alleged benefits to the Port Hawkesbury mill, are relevant to whether the Nova Scotia measure adopted three years earlier breached NAFTA Articles 1102 or 1105 or caused damage to Resolute or its investments.</p> <p><u>(4) General Objection 4 – Protected Third-Party Information:</u> The requested documents may contain confidential third-party information of NSPI, PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties.</p> <p><u>(5) General Objection 6 – Special Political or Institutional Sensitivity:</u> The requested documents contain Cabinet</p>	<p>Biomass Plant adjacent to the Port Hawkesbury mill needed to run full-time to service the mill’s steam needs. <i>See</i> Resolute Memorial ¶¶ 83-84. GNS, to ensure passage of the electricity deal before the Nova Scotia Utility and Review Board (“NSUARB”), promised and did enact regulations to ensure the Biomass Plant would have to run full regardless of whether it was economically sound to do so. <i>See id.</i> ¶ 85.</p> <p>In addition, the added power generation load required by the mill could have required PHP to pay additional amounts to satisfy GNS’s renewable energy standards. <i>See id.</i> ¶¶ 80-81. GNS promised to address these issues during the NSUARB hearing to ensure passage of the electricity deal. <i>See id.</i> ¶ 82; <i>see also</i> Canada Counter-Memorial ¶ 209 (summarizing Resolute arguments). Absent these actions, the electricity deal would not have</p>	

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(a)	(b)	(c)			(d)	(e)	(f)
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		Reference to Submissions	Comments	Proof Canada has Document in its Possession, Custody, or Control			
			contention with the requested documents.		<p>confidences that are protected from disclosure under Canadian law. <i>Prima facie</i> this privilege would apply to most if not all information contained in documents provided to the GNS Cabinet or its individual members for the purpose of making a decision on measures to be adopted in relation to PWCC’s acquisition of NPPH and the Port Hawkesbury mill. Canada is unable to disclose such Cabinet confidences to Resolute.</p> <p>Canada does not agree to produce the requested documents.</p>	<p>passed the NSUARB’s approval process. As the NSUARB said in its August 20, 2012 decision, “{i}t became clear during the course of the proceeding that, without some resolution to these two {Renewable Energy Standard – “RES”} issues, the LRT would not likely recover all its incremental costs,” which would have prevented passage of the electricity plan for the mill. C-184 ¶ 177. Therefore, according to Resolute, these reasons are a basis to attribute the electricity deal to Canada. <i>See</i> Resolute Memorial ¶¶ 168-175.</p> <p>Despite these actions by GNS before the NSUARB, Canada now claims that GNS took these actions in furtherance of its provincial goals relating to the use of renewable energy and biomass. Canada Counter Memorial ¶¶ 24, 203-205. In particular, Canada states that “NSPI had economic and technical reasons to operate the</p>	

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						<p>biomass plant it owned and to meet pre-existing renewable energy standards” that were governed by GNS regulations. <i>Id.</i> ¶ 317. According to the witness statement of Murray Coolican, the former Deputy Minister at the GNS Department of Energy, sufficient renewable supplies were available by 2016 so that GNS could amend its regulations and not require the Biomass Plant to run full-time any more. Coolican Witness Statement ¶¶ 44-45.</p> <p>The documents sought by Resolute will demonstrate why GNS amended its regulations and, more importantly, the effect the changes had on PWCC/PHP. Therefore, the requested documents are relevant and material to Canada’s defenses. <i>Third</i>, Canada’s confidentiality objection is not well-founded. This request does not seek NSUARB documents, and Nova Scotia’s FOIPOP addresses Freedom of Information (i.e.,</p>	

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						<p>Access to Information) requests but not requests for production in litigation. <i>See</i> FOIPOP § 4(3)(a)-(b) (“This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents”). The Tribunal has issued a confidentiality order to protect this type of information, and Canada has already produced other documents under this confidentiality order that emanated from PWCC [REDACTED].</p> <p><i>Fourth</i>, the current document request seeks numerous documents that do not implicate a Cabinet-confidential privilege, including communications involving non-governmental entities (PWCC and NSPI) and communications from GNS officials who are <i>not</i> Cabinet-</p>	

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		Reference to Submissions	Comments	Proof Canada has Document in its Possession, Custody, or Control			
						<p>level personnel. Therefore, these communications are not protected by any privilege. With respect to Cabinet-level communications that were not disclosed beyond GNS (and as addressed in more detail above in the responses to Canada’s General Objections), Resolute is seeking evidence regarding a specific transaction and not “formulation of policy on a broad basis” that would be protected by the Cabinet privilege under Canadian law. Resolute has also demonstrated the importance of the sought-after documents; it alleges (among other things) a breach of the minimum standard of treatment and discriminatory treatment. Indeed, Resolute has put into evidence public statements suggesting that GNS intended PWCC/PHP to take market share away from other SC paper producers. GNS’s handling of the RES regulations was, according to the Resolute, part of those actions.</p>	

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						To the extent Canada has documents responsive to this request that it believes are protected by this privilege, it should prepare a privilege log and make the particularized showing to invoke the privilege so that Resolute can dispute the claim, if appropriate to do so.	
17	For the time period 2011 to 2012, all documents evidencing estimates or analyses conducted by or on behalf of GNS regarding the potential lifespan of the Bowater Mersey facility (with or without financial assistance from GNS).	Montgomerie Witness Statement ¶ 12; Canada Counter Memorial ¶¶ 52, 63-64	Canada contends that Resolute received funding for the Bowater Mersey mill that would have enabled it to remain open for approximately five more years. Canada, before distributing funds, likely analyzed the potential lifespan of the Bowater Mersey mill to determine the	Resolute is seeking Canada's analysis.	In addition to Canada's General Comment, Canada objects as follows: (1) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u> (2) <u>General Objection 3 – Unreasonable Burden to Produce the Requested Evidence</u> (3) <u>General Objection 5 – Irrelevance and Immateriality</u> The commitment to keep the Bowater Mersey mill	Resolute responds as follows: Canada's overbreadth, undue burden, and irrelevancy and immateriality objections are not well-founded. Canada bases its objections on: (1) Resolute's commitment to keep the Bowater Mersey mill open for five years; and (2) publicly-known facts, including the amount of funding offered by GNS to Resolute for Bowater Mersey. But this document request seeks GNS's analyses of the potential lifespan of the facility and <i>not</i> Resolute's supposed analyses or the amount of funding GNS offered. These analyses may demonstrate that GNS did not	The Tribunal declines the request on the ground that sufficient material is already on the record.

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			provincial benefit. Resolute seeks Canada’s analysis to demonstrate that mill lifespan was intended to be short, so that any GNS funding was not seeking to remake Bowater Mersey as the leading paper producer in its sector.		open for five years was recorded in the agreement signed by Resolute’s CEO, Richard Garneau, and was publicly repeated by Mr. Garneau himself. ³ Canada should not be required to search for and produce any documents to support Resolute’s own statements. Furthermore, the benefits provided to Resolute’s Bowater Mersey mill and their amounts are not in dispute. Resolute has not complained about the financial support it received from the GNS. In any event, the facts of the Bowater Mersey deal are publicly known and supported by documents that either have already	expect Bowater Mersey to survive long-term, so that GNS funding was not seeking to remake Bowater Mersey as the leading paper producer in its sector. Canada has not offered any objection that addresses this rationale.	

³ R-149, [REDACTED] p. 2; R-316. The Chronicle Herald, “Resolute boss confident plan will keep Bowater mill running” (Dec. 6, 2011) (“‘I don’t want to run the mill for a year,’ Garneau said in an interview from Montreal, where the company is headquartered. ‘It is structured to basically guarantee that the mill (survives) for five years. I hope that it’s going to run for longer than that. We’re going to do everything that is in our control to make it a success.’”).

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		Reference to Submissions	Comments	Proof Canada has Document in its Possession, Custody, or Control			
					<p>been produced or are in possession, custody or control of Resolute.</p> <p>Canada does not agree to produce the requested documents.</p>		
18	For the time period September 6, 2011 to January 13, 2012, all analyses and materials considered in analyses conducted by or on behalf of GNS relating to the bid/plan submitted by (a) Northern Pulp or (b) PWCC for the re-opening of the Port Hawkesbury mill.	Montgomerie Witness Statement ¶ 22; Canada Counter Memorial ¶ 94.	Canada claims that it met with both PWCC and Northern Pulp (Paper Excellence) representatives in 2011 to discuss their bids and plans for the mill. The sought-after documents would show both entities' requirements and potential for profitability and, in particular, the benefits necessary to	Resolute seeks the materials provided to GNS by Northern Pulp (Paper Excellence) and PWCC.	<p>In addition to Canada's General Comment, Canada objects as follows:</p> <p>(1) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u>: This request calls for documents that may be related solely to measures which the Tribunal ruled were outside its jurisdiction, namely the hot idle funding and the Forestry Infrastructure Fund.</p> <p>(2) <u>General Objection 4 – Protected Third-Party Information</u>: The</p>	<p>Resolute responds as follows:</p> <p><i>First</i>, the request is not overbroad. For the avoidance of doubt, Resolute does not seek the production of documents related solely to measures excluded by the Tribunal (Hot Idle or the Forestry Infrastructure Fund).</p> <p><i>Second</i>, Canada's confidentiality objection is not well-founded. This request does not seek NSUARB documents, and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. <i>See</i> FOIPOP § 4(3)(a)-(b) ("This Act does not . . . limit</p>	The Tribunal declines the request on the ground that the material is insufficiently relevant.

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			make the Port Hawkesbury mill viable despite excessive losses over the prior year.		<p>requested documents may contain confidential third-party information of Northern Pulp, Paper Excellence, PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties.</p> <p>(3) <u>General Objection 5 – Irrelevance and Immateriality</u>: Northern Pulp is not a party to this arbitration and has no relevance to its outcome. Furthermore, the amount and terms of financial assistance provided by the GNS in connection with the purchase of the Port Hawkesbury mill are not in dispute. Furthermore, the GNS was not responsible for selecting between bidders. This was part of a CCAA</p>	<p>the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents”). The Tribunal has issued a confidentiality order to protect this type of information, and Canada has already produced other documents under this confidentiality order that emanated from PWCC [REDACTED].</p> <p><i>Third</i>, the requested documents are relevant and material. PWCC’s Restructuring Plan for the mill provided that the goal was to make the mill [REDACTED] C-163 at CAN00004_0009. Press articles regarding Northern Pulp’s involvement stated that “some pretty good concessions” were needed “to put this thing on</p>	

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		Reference to Submissions	Comments	Proof Canada has Document in its Possession, Custody, or Control			
					<p>court-supervised process. Therefore, Resolute has failed to establish how analyses regarding the bid/plan submitted by Northern Pulp or PWCC would be relevant to whether the Nova Scotia measures breached NAFTA Articles 1102 or 1105 or caused damage to Resolute or its investments.</p> <p>Canada does not agree to produce the requested documents.</p>	<p>a profitable footing to have a hope of survival going forward.” C-143. This pessimism is particularly applicable because the mill had lost \$50 million in the prior year before it sought CCAA administration. C-112 at ¶ 6.</p> <p>Paragraph 94 of Canada’s Counter-Memorial provides that “[i]n November and December 2011, the GNS met with representatives from PWCC and the other bidder (Paper Excellence) that was also proposing to operate the mill as a going concern. The GNS listened to both companies’ plans for the mills and started to think about what, if anything, might be appropriate financial assistance.” Similarly, Duff Montgomerie (who chaired the interdepartmental government task force addressing Nova Scotia’s paper mills and other forestry sector issues) stated that he met with both Northern</p>	

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						<p>Pulp/Paper Excellence and PWCC to consider: “(1) what did the company need to make the mill economically viable; and (2) in light of all the circumstances and on the basis of the best information available, what, if anything, was a reasonable and prudent investment of public funds.” <i>Montgomerie Witness Statement</i> ¶ 22.</p> <p>Therefore, GNS had to make determinations about: (1) which bidder—PWCC or Northern Pulp/Paper Excellence—should receive provincial funding; and (2) the scope and extent of that funding that was needed to make the mill “economically viable,” in the words of Mr. <i>Montgomerie</i>. According to <i>Resolute</i> and based on PWCC’s and GNS’s documentation, [REDACTED]</p> <p>For these reasons, <i>Resolute</i> is entitled to see the analyses of the</p>	

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						<p>bids (from the date the CCAA proceedings commenced until PWCC was named the winning bidder) to rebut GNS’s claims that it had no involvement with choosing the bidder, to show the scope and extent of the support that was required by the potential bidders to make the mill profitable, and to demonstrate what other support GNS would provide to assist with the mill becoming “economically viable.” Montgomerie Witness Statement ¶ 22.</p>	
21	<p>For the period September 6, 2011 to January 13, 2012, all communications relating to the bids submitted by Northern Pulp (Paper Excellence) and by PWCC between (a) members of the interdepartmental government committee (including Murray</p>	<p>Montgomerie Witness Statement ¶¶ 20-22; Canada Counter Memorial ¶¶ 90-110, 308, 310.</p>	<p>Canada contends that the CCAA Monitor selected PWCC as the winning bidder without involvement from GNS. But Canada admits that GNS met with representatives</p>	<p>Resolute seeks documents exchanged by GNS.</p>	<p>In addition to Canada’s General Comment, Canada objects as follows: (1) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u> (2) <u>General Objection 3 – Unreasonable Burden to</u></p>	<p>Resolute responds as follows: <i>First</i>, Canada argues that the document request is overbroad and constitutes an undue burden to produce documents. Canada cites Resolute’s First Document Request 33, which sought all correspondence between GNS and PWCC for a two-week period without regard to the content of the communication.</p>	<p>The Tribunal declines the request on the ground that the offer of assistance to PWCC is already part of the evidence on the record and, for the remainder of the request, the requested material is insufficiently relevant.</p>

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	Coolican and Duff (Montgomerie) or the Nova Scotia Premier’s office (including Premier Darrell Dexter and Paul Black) and (b) other officials of the GNS, PWCC or Northern Pulp (Paper Excellence).		of both PWCC and Northern Pulp to discuss the purchase of the Port Hawkesbury mill. In addition, GNS was meeting with some of the potential bidders in advance of their bids. Canada also indicated that GNS shared the Monitor’s views regarding PWCC’s track record and reputation in the paper industry. See Canada Counter Memorial ¶ 99. Resolute is entitled to		<p><u>Produce the Requested Evidence</u></p> <p>(3) <u>General Objection 5 – Irrelevance and Immateriality</u> The Tribunal has already rejected a similar request by Resolute, covering the period from September 12 to 28, 2012 as overbroad.⁴ Furthermore, the GNS was not responsible for selecting between bidders. This was part of a CCAA court-supervised process.</p> <p>This request also calls for documents that may be related solely to measures which the Tribunal ruled were outside its jurisdiction, namely the hot idle funding and the Forestry Infrastructure Fund.</p>	<p>In contrast, the current document request seeks a specific category of documents—communications relating to the bids exchanged by either Northern Pulp/Paper Excellence or PWCC exchanged between a defined set of individuals for an approximately four-month period.</p> <p>For the avoidance of doubt, Resolute does not seek the production of documents related solely to measures excluded by the Tribunal (Hot Idle or the Forestry Infrastructure Fund).</p> <p><i>Second</i>, the requested documents are relevant and material. PWCC’s Restructuring Plan for the mill provided that the goal was to make the mill [REDACTED] Press regarding Northern Pulp’s involvement stated that “some</p>	

⁴ Procedural Order No. 9, Document request No 33.

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			<p>communications related to bids so that it can rebut Canada’s assertions. Moreover, information relating to the bids is relevant to the magnitude of support that the bidding parties believed was necessary to reopen the mill. Canada argues there was a direction to keep the Port Hawkesbury mill open at all costs, but the level of support required by bidders to reopen a highly unprofitable mill</p>		<p>Moreover, Canada has already produced the initial offer of assistance to PWCC, which is indicative of the “magnitude of support” the GNS considered offering to PWCC should the</p> <p>Monitor and NPPH choose it as a successful bidder.⁵ The amount and terms of financial assistance provided by the GNS in connection with the purchase of the Port Hawkesbury mill are not in dispute. Resolute has failed to establish that the requested documents are relevant and material to whether the GNS measures breached NAFTA Articles 1102 and 1105 or caused</p>	<p>pretty good concessions” were needed “to put this thing on a profitable footing to have a hope of survival going forward.” C-143, which is particularly so because the mill had lost \$50 million in the prior year before it sought CCAA administration. C-112 at ¶ 6.</p> <p>Paragraph 94 of Canada’s Counter-Memorial provides that “[i]n November and December 2011, the GNS met with representatives from PWCC and the other bidder (Paper Excellence) that was also proposing to operate the mill as a going concern. The GNS listened to both companies’ plans for the mills and started to think about what, if anything, might be appropriate financial assistance.” Similarly, Duff Montgomerie (who chaired the interdepartmental government task force addressing Nova</p>	

⁵ C-139, Offer of Assistance from GNS to PWCC (Dec. 2011).

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		Reference to Submissions	Comments	Proof Canada has Document in its Possession, Custody, or Control			
			is central to the allegations in this dispute. Communications regarding the bids are needed to rebut Canada’s contentions on these points.		<p>damages to Resolute and its investments.</p> <p>Finally, Northern Pulp is not a party to this arbitration and has no relevance to its outcome.</p> <p>(4) <u>General Objection 4 – Protected Third-Party Information</u>: The requested documents may contain confidential third-party information of Northern Pulp, Paper Excellence, PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties.</p> <p>(5) <u>General Objection 6 – Special Political or Institutional Sensitivity</u>: The requested documents contain Cabinet confidences which are</p>	<p>Scotia’s paper mills and other forestry sector issues) stated that he met with both Northern Pulp/Paper Excellence and PWCC to consider: “(1) what did the company need to make the mill economically viable; and (2) in light of all the circumstances and on the basis of the best information available, what, if anything, was a reasonable and prudent investment of public funds.”</p> <p>Therefore, GNS had to make determinations about: (1) which bidder—PWCC or Northern Pulp/Paper Excellence—should receive provincial funding; and (2) the scope and extent of that funding that was needed to make the mill “economically viable,” in the words of Mr. Montgomerie. According to Resolute and based on PWCC and GNS’s own documentation, [REDACTED] For these reasons, communications</p>	

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					<p>protected from disclosure under Canadian law. <i>Prima facie</i> this privilege would apply to most if not all information contained in documents provided to the GNS Cabinet or its individual members. Canada is unable to disclose such Cabinet confidences to Resolute.</p> <p>Canada does not agree to produce the requested documents.</p>	<p>regarding the bids of both PWCC and Northern Pulp/Northern Pulp are relevant and material.</p> <p><i>Third</i>, Canada’s confidentiality objection is not well-founded. This request does not seek NSUARB documents, and Nova Scotia’s FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. <i>See</i> FOIPOP § 4(3)(a)-(b) (“This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents”). The Tribunal has issued a confidentiality order to protect this type of information, and Canada has already produced other documents under this confidentiality order that</p>	

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						<p>emanated from PWCC [REDACTED]</p> <p><i>Fourth</i>, the current document request seeks numerous documents that are not protected by Cabinet-confidence privilege, including communications involving non-governmental entities (PWCC and Northern Pulp/Paper Excellence) and communications from GNS officials who are <i>not</i> Cabinet-level personnel. These communications are not protected by any privilege. With respect to Cabinet-level communications that were not disclosed beyond GNS (and addressed in more detail above in the responses to Canada’s General Objections), Resolute is seeking evidence regarding a specific transaction and not “formulation of policy on a broad basis” that would be protected by the Cabinet privilege under Canadian law. Resolute has also demonstrated the importance of</p>	

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						<p>the sought-after documents; it alleges (among other things) a breach of the minimum standard of treatment and discriminatory treatment. Indeed, Resolute has put into evidence public statements suggesting that GNS intended PWCC/PHP to take market share away from other SC paper producers.</p> <p>To the extent Canada has documents responsive to this request that it believes are protected by this privilege, it should prepare a privilege log and make the particularized showing to invoke the privilege so that Resolute can dispute the claim, if appropriate.</p>	
22	Documents sufficient to evidence the amount of land owned by GNS as of: (1) December 31, 2011; and (2) after the purchase of Bowater Mersey and its assets from Resolute for \$1.	Canada Counter Memorial ¶¶ 22-23, 66; Montgomerie Witness Statement ¶¶ 15-16	Canada claims that GNS had a goal to purchase 12% of the land mass in Nova Scotia. Resolute sold approximately 550,000 acres	These are documents held by GNS relating to its land ownership.	Canada objects as follows: (1) <u>General Objection 3 – Unreasonable Burden to Produce</u> : The GNS progress towards meeting the 12% goal is well-documented in publicly	Resolute responds as follows: <i>First</i> , Canada argues that the document request constitutes an undue burden to produce documents. Resolute, however, seeks only “documents sufficient to demonstrate” the requested materials. Therefore, Canada’s production is limited to “any	The Tribunal declines the request on the ground that the requested material is insufficiently relevant.

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(a)	(b)	(c)			(d)	(e)	(f)
No.	Documents or Category of Documents Requested	Rationale for Document Request			Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments	Proof Canada has Document in its Possession, Custody, or Control			
			(and other assets and liabilities) to GNS for \$1. Resolute is entitled to demonstrate this purchase was sufficient to meet any policy concerns of GNS regarding land ownership.		available reports. ⁶ Resolute has failed to establish the need for any additional documents. (2) <u>General Objection 5 – Irrelevance and Immateriality</u> : Resolute has failed to establish that the issue of whether the purchase of land by the GNS from the Bowater Mersey mill was necessary or sufficient to meet the GNS’ environmental and sustainability policy goals is relevant or material to whether the GNS measures breached NAFTA Articles 1102	document demonstrating the requested evidence and may include government certified statements generated in connection with these discovery requests.” Canada should be able to produce documents satisfying this request without an undue burden. In addition, Canada states that public documents demonstrate GNS’s progress to the goal. However, Canada does not contend that these documents answer the specific request made by Resolute. <i>Second</i> , the requested documents are relevant and material. According to Canada’s Counter-Memorial, GNS had a goal of owning 12% of land mass of	

⁶ See Government of Nova Scotia, “Environmental Goals and Sustainable Prosperity Act Progress Report 2011”, <https://novascotia.ca/nse/egspa/docs/EGSPA.2011.Annual.Report.pdf>, p. 8; “Environmental Goals and Sustainable Prosperity Act Progress Report 2012”, <https://novascotia.ca/nse/egspa/docs/EGSPA.2012.Annual.Report.pdf>, p. 4 (“As of December 31, 2011, a total of 8.8 per cent (or 484,800 hectares) of the province was legally protected, up from 8.6 per cent in 2010.”); “Environmental Goals and Sustainable Prosperity Act Progress Report 2012-2014” (December 2014), <https://novascotia.ca/nse/egspa/docs/EGSPA-2012-2104-Progress-Report.pdf>, p. 31; “Environmental Goals and Sustainable Prosperity Act Progress Report 2014-2015” (2016), <https://novascotia.ca/nse/egspa/docs/EGSPA-2014-15-Progress-Report.pdf>, pp. 34-35; “Environmental Goals and Sustainable Prosperity Act Progress Report 2015-2017” (2017), <https://novascotia.ca/nse/egspa/docs/EGSPA-2015-17-Progress-Report.pdf>, p. 3 (in 2015, “designation of 90 new wilderness areas, nature reserves and provincial park sites brought the total to 12.26 per cent”).

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					<p>and 1105 or caused damages to Resolute and its investments.</p> <p>Canada does not agree to produce the requested documents.</p>	<p>Nova Scotia. Canada Counter-Memorial ¶ 23. According to Canada, this goal was a basis for its purchase of land from PWCC. However, Canada’s submissions also stated that GNS purchased 555,000 acres of land from Resolute (Bowater Mersey) for \$1. Canada Counter-Memorial ¶ 66; <i>see also</i> Montgomerie Witness Statements ¶ 16 (“The assets included 224,601 hectares [approximately 555,000 acres] of forest that were transferred to the Province, which was in keeping with Nova Scotia’s goal of increasing its share of Crown land and protecting forest diversity.”). Resolute is entitled to demonstrate that this purchase from Resolute was sufficient to meet any policy concerns of GNS regarding land ownership, based upon GNS’s stated goal of 12% of land ownership.</p>	

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23	Documents sufficient to evidence the percentage of electricity generated in Nova Scotia emanating from (a) Biomass in 2012-2016; and (b) all renewable energy sources in 2012-2016.	Canada Counter Memorial ¶¶ 24, 204-205, 209, 317; Coolican Witness Statement ¶¶ 32-41, 44	Canada contends that NSPI had certain targets for renewable electricity generation under the RES Regulations which could be satisfied by Biomass. Canada also contends that NSPI had its own economic reasons for no longer needing PHP's Biomass boiler to run full time. The	These are documents GNS would have or information GNS would track pursuant to the RES Regulations.	Canada objects as follows: (1) <u>General Objection 3 – Unreasonable Burden to Produce</u> : There is already sufficient information in the public domain, including on the websites of the National Energy Board, ⁷ NSPI, ⁸ and the UARB, ⁹ to answer Resolute's request. Resolute has failed to establish the need for any additional documents.	Resolute responds as follows: <i>First</i> , Canada argues that the document request constitutes an undue burden to produce documents. Resolute, however, seeks only "documents sufficient to demonstrate" the requested materials. Therefore, Canada's production is limited to "any document demonstrating the requested evidence and may include government certified statements generated in connection with these discovery requests." Canada should be able to produce documents	The Tribunal grants this request but only as limited to the minimum documentary evidence sufficient to provide the specific information requested.

⁷ See National Energy Board, "Canada's Renewable Power Landscape 2016 – Energy Market Analysis: Nova Scotia", <https://www.neb-one.gc.ca/nrg/sttstc/lctrc/rprt/2016cndrnwblpwr/prvnc/ns-eng.html>; National Energy Board, "Canada's Renewable Power Landscape 2017 – Energy Market Analysis: Nova Scotia", <https://www.neb-one.gc.ca/nrg/sttstc/lctrc/rprt/2017cndrnwblpwr/prvnc/ns-eng.html>.

⁸ See NSPI, "Renewable Energy on the Rise; Nova Scotia Power Reaches 29% Renewables in 2017" (Apr. 24, 2018), <https://www.nspower.ca/en/home/newsroom/news-releases/renewable-energy-on-the-rise.aspx>; NSPI, "Nova Scotia Power Sets Another Record in Renewable Energy" (Apr. 28, 2017), <https://www.nspower.ca/en/home/newsroom/news-releases/nova-scotia-power-sets-another-record-in-renewable.aspx>; NSPI, "Nova Scotia Power Sets Renewable Energy Record" (Jan. 26, 2016), <https://www.nspower.ca/en/home/newsroom/news-releases/nova-scotia-power-sets-renewable-energy-record.aspx>.

⁹ See **R-379**, Application by Nova Scotia Power Incorporated for Approval of Certain Revisions to its Rates, Charges and Regulations, M04972, Section 1 – Direct Evidence, Appendix A-Q, DE-01 – 04, (May 8, 2012) (NSUARB), pp. 60-63.

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			requested documents will aid Resolute in refuting these allegations.		<p>(2) <u>General Objection 5 – Irrelevance and Immateriality</u>: Resolute has failed to establish why the GNS policies on renewable electricity (i.e. to mandate a certain amount of firm electricity on the grid), and the targets the GNS sets for electricity suppliers, are relevant or material. Similarly, NSPI’s economic reasons to invest in the Port Hawkesbury biomass project and to operate its own biomass plant are irrelevant for proper disposition of Resolute’s claims.</p> <p>Canada does not agree to produce the requested documents.</p>	<p>satisfying this request without an undue burden. In addition, Canada states that public documents demonstrate GNS’s progress to the goal. However, Canada does not contend that these documents answer the specific request made by Resolute.</p> <p><i>Second</i>, the requested documents are relevant and material. A Biomass Plant adjacent to the Port Hawkesbury mill needed to run full-time to service the mill’s steam needs. <i>See</i> Resolute Memorial ¶¶ 83-84. GNS, to ensure passage of the electricity deal before the Nova Scotia Utility and Review Board (“NSUARB”), promised and did enact regulations to ensure the Biomass Plant would have to run full regardless of whether it was economically sound to do so. <i>See id.</i> ¶ 85. In addition, the added power generation load required by the mill could have required PHP to pay additional</p>	

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						<p>amounts to satisfy GNS’s renewable energy standards. <i>See id.</i> ¶¶ 80-81. GNS also promised to address these issues during the NSUARB hearing to ensure passage of the electricity deal. <i>See id.</i> ¶ 82; <i>see also</i> Canada Counter-Memorial ¶ 209 (summarizing Resolute arguments).</p> <p>Absent these actions, the electricity deal would not have passed the NSUARB. As the NSUARB said in its August 20, 2012 decision, “{i}t became clear during the course of the proceeding that, without some resolution to these two {Renewable Energy Standard – “RES”} issues, the LRT would not likely recover all its incremental costs,” which would have prevented passage of the electricity plan for the mill. C-184 ¶ 177. According to Resolute, this concession is a basis to attribute the electricity</p>	

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						<p>deal to Canada. <i>See</i> Resolute Memorial ¶¶ 168-175. Despite these actions by GNS before the NSUARB, Canada claims that GNS took these actions in furtherance of its provincial goals relating to the use of renewable energy and biomass. Canada Counter-Memorial ¶¶ 24, 203-205. For example, Canada states that “NSPI had economic and technical reasons to operate the biomass plant it owned and to meet pre-existing renewable energy standards” that were governed by GNS regulations. <i>Id.</i> ¶ 317. According to the witness statement of Murray Coolican, the former Deputy Minister at the GNS Department of Energy, sufficient renewable supplies were available by 2016 so that GNS could amend its regulations and not require the Biomass Plant to run full-time any more. Coolican Witness Statement ¶¶ 44-45.</p>	

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						The documents sought by Resolute will demonstrate whether GNS has sufficient renewable energy sources, as stated in Canada’s defenses. Therefore, they are relevant and material to rebut Canada’s defenses.	
24	For the period January 1, 2011 to February 27, 2012, documents relating to the Port Hawkesbury mill or the sale thereof exchanged between (a) GNS (including members of the Premier’s office, Premier Dexter, Paul Black, or the interdepartmental government committee) and (b) either the Monitor overseeing the NPPH CCAA Process, Sanabe, or NPPH.	Canada Counter Memorial: ¶¶ 19, 90-110, 308, 310; R-361; Montgomerie Witness Statement ¶¶ 19, 21-22.	<i>First</i> , Canada defends the selection of PWCC as a decision made by the CCAA without input from GNS. But Sanabe had indicated that [REDACTED] and [REDACTED] and GNS—given Canada’s statements regarding the mill’s importance to the Nova Scotia	Resolute seeks documents exchanged by GNS.	In addition to Canada’s General Comment, Canada objects as follows: (1) <u>General Objection 2 – Overbroad Definition of the GNS and Scope of Document Collection Sought by Resolute</u> (2) <u>General Objection 3 – Unreasonable Burden to Produce</u> (3) <u>General Objection 5 – Irrelevance and Immateriality</u>	Resolute responds as follows: <i>First</i> , the request is neither overbroad nor requires an unreasonable burden to produce documents. Resolute seeks documents for fourteen months exchanged between (a) GNS representatives and (b) the CCAA Monitor overseeing the sale of the mill, Sanabe (the investment banker overseeing the sale of the mill), or NewPage-Port Hawkesbury (the former owner of the mill). To the extent Resolute is seeking “all documents” from various GNS officials, Canada is required to produce materials that “discuss an issue or document substantively, as distinct from	The Tribunal partially grants this request, insofar as the ‘relating to’ language is understood to mean ‘pertaining to the Port Hawkesbury Mill or the sale thereof’ in a specific and substantive way (not including passing comments or comments about the Port Hawkesbury Mill that are unrelated to the present arbitration). The Tribunal declines the request for the remainder on the ground that it is overly broad. Moreover, the Respondent has the right to redact any

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			<p>economy—likely engaged with the parties involved with the sale. For example, Canada claims that GNS shared the Monitor’s view that PWCC had an excellent reputation in the industry. <i>See</i> Canada Counter Memorial ¶ 99. <i>Second</i>, once PWCC was selected as the winning bidder, the CCAA process was still ongoing. GNS likely had communications with the parties engaged in the sale regarding the status of negotiations so that the Plan of</p>	<p>Proof Canada has Document in its Possession, Custody, or Control</p>	<p>This request seeks more than a year’s worth of “documents ... exchanged” between undefined groups of individuals.</p> <p>Furthermore, Resolute has failed to establish the relevance of any documents exchanged before the Port Hawkesbury mill went into the CCAA proceedings.</p> <p>This request also calls for documents that may be related solely to measures which the Tribunal ruled were outside its jurisdiction, namely the hot idle funding and the Forestry Infrastructure Fund.</p> <p>Moreover, Canada has already produced the initial offer of assistance</p>	<p>merely referencing the issue or document. Further, the Tribunal understands these requests to be limited to discussions by or involving senior” GNS officials, including (but not limited to) Canada’s witnesses. This limitation is the same limitation placed on Resolute’s document production, per paragraph 4.4 of Procedural Order No. 9. Resolute also agrees to limit the scope of documents to the sale of the mill (as opposed to all documents relating to the mill). <i>Second</i>, the requested documents are relevant and material. Canada claims that GNS was not involved with the sale of the mill. For example, paragraph 31 of Canada’s Counter-Memorial provides that “GNS had little control over the outcome since it needed to wait for the CCAA process to unfold before it could consider engagement with a potential buyer.” Similarly, Canada contends that “GNS did not offer financial assistance to</p>	<p>information that it is able to demonstrate compels protection.</p>

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			<p>Compromise could be effectuated. <i>Third</i>, information exchanged with the parties involved with the mill’s sale (NPPH, the Monitor, and Sanabe) is relevant to the magnitude of support that all believed was necessary to reopen the mill. Canada argues there was no direction to keep the Port Hawkesbury mill open at all costs, but the level of support required</p>		<p>to PWCC, which is indicative of the “magnitude of support” the GNS considered offering to PWCC should the Monitor and NPPH choose it as a successful bidder.¹⁰ The amount and terms of financial assistance provided by the GNS in connection with the purchase of the Port Hawkesbury mill are not in dispute. Resolute has failed to establish that the requested documents are relevant and material to whether the GNS measures breached NAFTA Articles 1102 and 1105 or caused damages to Resolute and its investments.</p> <p>(4) <u>General Objection 4 – Protected Third-Party</u></p>	<p>any of the bidders in the CCAA process” until it knew “the identity of the bidder selected by the monitor.” Canada Counter-Memorial ¶ 276. <i>See also</i> Canada Objection to Resolute Second Document Request 18 & 21 (“Furthermore, the GNS was not responsible for selecting between bidders. This was part of a CCAA court-supervised process.”). But Canada’s witness statements show otherwise. Duff Montgomerie states that he “encouraged Resolute to consider submitting a bid for the Port Hawkesbury mill.” Montgomerie Witness Statement ¶ 20. Mr. Montgomerie also stated that “the Monitor put PWCC in contact with me [Mr. Montgomerie].” <i>Id.</i> ¶ 21. To do so, GNS officials necessarily had discussions with the CCAA Monitor regarding the sale of the</p>	

¹⁰ C-139, Offer of Assistance from GNS to PWCC (Dec. 2011).

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			to reopen a highly unprofitable mill is central to the allegations in this dispute. The sought-after documents are needed to rebut Canada's contentions on these points.		<p><u>Information:</u> The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties.</p> <p>(5) <u>General Objection 6 – Special Political or Institutional Sensitivity:</u> The requested documents contain Cabinet confidences which are protected from disclosure under Canadian law. <i>Prima facie</i> this privilege would apply to most if not all information contained in documents provided to the GNS Cabinet or its individual members. Canada is unable to disclose such Cabinet confidences to Resolute.</p>	<p>mill. In addition, Canada has produced a copy of the Sanabe September 2011 Confidential Information Memorandum with its Counter-Memorial as Exhibit R-361 (this document was not produced by Canada in its prior document production). Canada thus had contact with the Monitor, Sanabe, or NPPH so that it could obtain this document.</p> <p>Resolute had previously requested that Canada produce “[d]ocuments provided to the bidders regarding the purchaser of the PHP mill in 2011.” Canada claimed these documents were irrelevant and immaterial.</p> <p>Now that Canada has produced the Sanabe document voluntarily for the first time with its Counter-Memorial and relies upon it, Resolute is entitled to additional documents relating to Sanabe, which is particularly so given the extensive reliance on</p>	

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					<p>Canada does not agree to produce the requested documents.</p>	<p>Sanabe by Canada in this matter, with Sanabe appearing nearly 50 times just in Canada’s Counter-Memorial.</p> <p>With respect to NPPH, it is undisputed that GNS Premier Darrell Dexter encouraged NPPH to use the CCAA scheme to sell the mill. <i>See</i> C-115.</p> <p>Based upon these communications, Resolute is entitled to obtain evidence regarding GNS’s communications with the interested bidders, the scope and magnitude of potential GNS assistance and the assistance needed to keep the mill open as <i>the</i> lowest-cost producer (as promised by GNS), and GNS’s overall role in the process to rebut GNS’s defenses.</p> <p>For the avoidance of doubt, Resolute does not seek the production of documents related solely to measures excluded by</p>	

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						<p>the Tribunal (Hot Idle or the Forestry Infrastructure Fund).</p> <p><i>Third</i>, Canada’s confidentiality objection is not well-founded. This request does not seek NSUARB documents, and Nova Scotia’s FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. <i>See</i> FOIPOP § 4(3)(a)-(b) (“This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents”). The Tribunal has issued a confidentiality order to protect this type of information, and Canada has already produced other documents under this confidentiality order that emanated from PWCC [REDACTED]</p>	

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25	For the period 2011 to 2014, all documents (including instructions, contractual documents, or other documents relating to the scope of services) exchanged between (a) GNS and (b) either Pöyry or ██████ related to the Port Hawkesbury Mill, the Bowater Mersey Mill, Resolute and/or the paper market and industry.	<i>E.g.</i> , Canada Counter Memorial ¶¶ 34, 54, 91, 92, 109; R-146; R-147; R-161.	GNS hired outside vendors (Pöyry and ██████) to conduct analyses relating to GNS’s paper industry. Canada now relies on these analyses in its Counter Memorial. Resolute therefore seeks the requested documents to refute the analyses relied upon by Canada in these documents.	Resolute seeks documents exchanged with GNS.	In addition to Canada’s General Comment, Canada objects as follows: (1) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u> (2) <u>General Objection 3 – Unreasonable Burden to Produce</u> (3) <u>General Objection 5 – Irrelevance and Immateriality</u> Resolute has failed to establish why it is seeking “all documents” for the period of 2011-2014, even though the sale of the Port Hawkesbury mill was completed on September 28, 2012 and the GNS acquired Resolute’s Bowater Mersey mill on December 10, 2012.	Resolute responds as follows: <i>First</i> , the request is neither overbroad nor requires an unreasonable burden to produce documents. Resolute does not seek the production of “all documents” but, rather, the production of all documents exchanged between (a) GNS and (b) either Pöyry or ██████ related to the Port Hawkesbury Mill, the Bowater Mersey Mill, Resolute and/or the paper market and industry. To the extent Resolute is seeking “all documents,” Canada is required to produce materials that “discuss an issue or document substantively, as distinct from merely referencing the issue or document. Further, the Tribunal understands these requests to be limited to discussions by or involving senior” GNS officials, including (but not limited to) Canada’s witnesses. This limitation is the same limitation placed on Resolute’s document production,	The Tribunal grants this request.

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					<p>Furthermore, Resolute is seeking four years’ worth of “all documents” despite having failed to establish that the possibility that it can now “refute” the analysis conducted by Pöyry and █████ years ago is relevant to its claims and material to the outcome of this case. The fact that the GNS provided financial assistance to PWCC and Resolute’s own Bowater Mersey mill in light of certain analyses conducted by Pöyry and █████ is not in dispute.</p> <p>(4) <u>General Objection 4 – Protected Third-Party Information</u>: The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such</p>	<p>per paragraph 4.4 of Procedural Order No. 9. <i>Second</i>, the sought-after materials are relevant and material. Canada represents that it retained Pöyry to “offer an objective overview of the North American SC-paper markets from 2005-2018, with particular focus on SC-paper supply and demand during the periods preceding and following the ownership change and restart of the Port Hawkesbury SC paper line ... in September 2012.” Pöyry Expert Report ¶ 2. Pöyry was also retained to respond to Resolute’s expert reports. <i>Id.</i> Resolute is entitled to rebut Pöyry’s opinions with the materials it exchanged with GNS in Pöyry’s prior work for the province (R-146, R-161), which is particularly so when Pöyry is now claiming that its prior work was inaccurate in material ways. <i>See, e.g.</i>, Pöyry Expert Report ¶¶ 28-29.</p>	

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					<p>information to Resolute without the authorization of such parties.</p> <p>Canada does not agree to produce the requested documents.</p>	<p>Canada’s Counter-Memorial also relies on the prior reports from ██████ and Pöyry (R-146, R-147, and R-161). Canada states that GNS “commissioned independent studies to examine the state of the market for newsprint and SC paper, the potential future for the forest industry in Nova Scotia, and the potential economic impact of the shutdown of Bowater Mersey and Port Hawkesbury.” Canada Counter-Memorial ¶ 34; <i>see also id.</i> ¶¶ 54, 91, 92, 109 (all citing the reports to justify positions taken by GNS). Canada cannot rely on the ██████ and Pöyry analyses offensively while, at the same time, denying Resolute access to documents, contracts, and instructions related to these reports so that Resolute can attempt to refute these reports. <i>Third</i>, Canada’s confidentiality objection is not well-founded. This request does not seek NSUARB documents, and Nova Scotia’s FOIPOP addresses</p>	

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						Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. <i>See</i> FOIPOP § 4(3)(a)-(b) (“This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents”). The Tribunal has issued a confidentiality order to protect this type of information, and Canada has already produced other documents under this confidentiality order that emanated from PWCC [REDACTED].	
26	For the period 2011 to 2012, all communications between the Premier’s office (including Premier Darrell Dexter) and members of the interdepartmental	Montgomerie Witness Statement ¶¶ 6-34; see, e.g., Canada Counter Memorial ¶¶ 29-37, 68, 89,	Canada defends GNS’s conduct in this action by arguing (among other things) that: (a) there was no direction to save the mills; (b)	Resolute seeks communications involving GNS.	In addition to Canada’s General Comment, Canada objects as follows: (1) <u>General Objection 2 – Overbroad Scope of</u>	Resolute responds as follows: <i>First</i> , Canada argues that the document request is overbroad and constitutes an undue burden to produce documents. Canada cites Resolute’s First Document Request 33, which sought all correspondence between GNS	The Tribunal grants this request, subject to the Respondent having the right to redact any information that it is able to demonstrate compels protection.

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(a)	(b)	(c)			(d)	(e)	(f)
No.	Documents or Category of Documents Requested	Rationale for Document Request			Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments	Proof Canada has Document in its Possession, Custody, or Control			
	government committee (including Murray Coolican and Duff Montgomerie) relating to Bowater Mersey or Port Hawkesbury mills.	98, 110, 190, 253, 298, 302, 310.	GNS met with Resolute to purchase the Port Hawkesbury mill and would have provided assistance; (c) GNS provided assistance to Bowater Mersey; (d) the financial implications of the Port Hawkesbury mill and Bowater Mersey mill closures mandated assistance; (e) GNS was not involved with various parts of the deal, such as the CCAA proceedings, sale of the mill, and		<p><u>Document Collection Sought by Resolute</u></p> <p>(2) <u>General Objection 3 – Unreasonable Burden to Produce</u></p> <p>(3) <u>General Objection 5 – Irrelevance and Immateriality</u></p> <p>The Tribunal has already rejected a similar request by Resolute, covering the period from September 12 to 28, 2012 as overbroad.¹¹ This request is also overbroad as it seeks two years’ worth of “all communications” involving an undefined group of individuals.</p> <p>This request also calls for documents that may be related solely to measures which the Tribunal ruled</p>	and PWCC for a two-week period without regard to the content of the communication. In contrast, the current document request seeks a specific category of documents—communications relating to Bowater Mersey or the Port Hawkesbury mill from a set of GNS officials. To the extent Resolute is seeking communications from GNS officials, Canada is required to produce materials that “discuss an issue or document substantively, as distinct from merely referencing the issue or document. Further, the Tribunal understands these requests to be limited to discussions by or involving senior” GNS officials, including (but not limited to) Canada’s witnesses. This limitation is the same limitation placed on Resolute’s document production, per paragraph 4.4 of Procedural Order No. 9.	

¹¹ Procedural Order No. 9, Document request No 33.

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			the electricity deal. Resolute seeks the requested documents to rebut these allegations.		<p>were outside its jurisdiction, namely the hot idle funding and the Forestry Infrastructure Fund.</p> <p>Furthermore, Resolute has failed to establish that documents concerning its Bowater Mersey mill are relevant and material to whether the GNS measures breached NAFTA Articles 1102 and 1105 or caused damages to Resolute and its investments. The benefits provided to Resolute’s Bowater Mersey mill and their amounts are not in dispute. Resolute has not complained about the financial support it received from the GNS. In any event, the facts of the Bowater Mersey deal are publicly known and supported by documents</p>	<p>For the avoidance of doubt, Resolute does not seek the production of documents related solely to measures excluded by the Tribunal (Hot Idle or the Forestry Infrastructure Fund). <i>Second</i>, the requested documents are relevant and material. Canada makes no argument to support its objection with respect to the Port Hawkesbury mill. Therefore, Canada should be deemed to have waived the issue. Canada has devoted an extensive portion of its Counter Memorial and witness statements to addressing the Bowater Mersey mill. <i>See, e.g.</i>, Canada Counter-Memorial ¶¶ 37-68; Montgomerie Witness Statements ¶¶ 9-17. For example, Canada states that there was not a NAFTA Article 1102 violation because “[t]he fact that the GNS offered a similar financial package to Resolute for its Bowater Mersey mill demonstrates that the GNS was willing to engage with Resolute</p>	

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					<p>that either have already been produced or are in possession, custody or control of Resolute.</p> <p>(4) <u>General Objection 4 – Protected Third-Party Information</u>: The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties.</p> <p>(5) <u>General Objection 6 – Special Political or Institutional Sensitivity</u>: The requested documents contain Cabinet confidences which are protected from disclosure under Canadian law. <i>Prima facie</i> this privilege would apply to most if not all information contained</p>	<p>and that nationality-based discrimination was not a factor.” Canada Counter-Memorial ¶ 253. Canada also claims that there was not a NAFTA Article 1105 violation because GNS offered Resolute a financial aid package for Bowater Mersey. <i>Id.</i> ¶ 302. Canada cannot avoid production of documents pertaining to Bowater Mersey when it relies on evidence relating to that mill to support its defenses.</p> <p><i>Third</i>, Canada’s confidentiality objection is not well-founded. This request does not seek NSUARB documents, and Nova Scotia’s FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. <i>See</i> FOIPOP § 4(3)(a)-(b) (“This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power</p>	

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					<p>in documents provided to the GNS Cabinet or its individual members. Canada is unable to disclose such Cabinet confidences to Resolute.</p> <p>Canada does not agree to produce the requested documents.</p>	<p>of any court or tribunal to compel a witness to testify or to compel the production of documents”). The Tribunal has issued a confidentiality order to protect this type of information, and Canada has already produced other documents under this confidentiality order that emanated from PWCC [REDACTED]</p> <p><i>Fourth</i>, the Cabinet-confidence privilege is inapplicable. Resolute is seeking evidence regarding a specific transaction and not “formulation of policy on a broad basis” that would be protected by the Cabinet privilege under Canadian law. Resolute has also demonstrated the importance of the sought-after documents; it alleges (among other violations) a breach of the minimum standard of treatment and discriminatory treatment. Indeed, Resolute has put into evidence public statements suggesting that GNS</p>	

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						<p>intended PWCC/PHP to take market share away from other SC paper producers.</p> <p>To the extent Canada has documents responsive to this request that it believes are protected by this privilege, it should prepare a privilege log and make the particularized showing to invoke the privilege so that Resolute can challenge the assertion, if appropriate.</p>	
27	<p>For the time periods (a) October 28, 2011 to January 13, 2012 and (b) July 1, 2012 to September 28, 2012, briefing notes, reports, memoranda or similar materials provided to GNS Premier Darrell Dexter, the GNS Cabinet or its individual members, concerning the financial assistance to be given to the PHP/PWCC.</p>	<p>Montgomerie Witness Statement ¶¶ 22, 26, 32-34; Chow Witness Statement ¶ 17; Canada Counter Memorial ¶¶ 91-98, 105, 139, 187, 304-310; see generally Coolican Witness</p>	<p>Canada argues that there was no direction from senior GNS officials to keep the Port Hawkesbury mill open at all costs. In addition, Canada contends that GNS had a minimal role in approving aspects of the deal, such as the electricity rate, passing</p>	<p>Resolute seeks documents provided to GNS.</p>	<p>In addition to Canada’s General Comment, Canada objects as follows:</p> <p>(1) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u></p> <p>(2) <u>General Objection 3 – Unreasonable Burden to Produce</u></p>	<p>Resolute responds as follows:</p> <p><i>First</i>, Canada argues that the document request is overbroad and constitutes an undue burden to produce documents. Canada cites Resolute’s First Document Request 26, but that document request did not seek materials from October 28, 2011 to January 13, 2012. In addition, Canada has not stated its earlier document productions included the documents sought by the current request. Canada also has a history of failing to produce</p>	<p>The Tribunal grants this request, subject to the Respondent having the right to redact any information that it is able to demonstrate compels protection.</p>

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		Statement ¶¶ 21-45.	regulations or entering into contracts with PWCC regarding energy commitments, or other review of the electricity deal. Canada also contends that it had to engage in a review of PWCC’s proposed business case for the mill. In effect, Canada is minimizing the involvement of its political leadership in keeping open Port Hawkesbury while characterizing it largely as the product of dealings between private entities.		<p>(3) <u>General Objection 5 – Irrelevance and Immateriality</u></p> <p>Canada has already produced 19 documents in response to Resolute’s almost identical First Document Request No 26, covering the period between July 1, 2012 and September 28, 2012. Resolute has failed to explain either why it is repeating its earlier document request or why the documents for the additional period of time (July 1 to September 28, 2012) are relevant.</p> <p>Furthermore, this request calls for documents that may be related solely to measures which the Tribunal ruled were outside its jurisdiction, namely the hot idle funding and the Forestry Infrastructure Fund.</p>	<p>documents timely in this arbitration; for example, CAN0000122 (identified as a Canadian Counter-Memorial exhibit R-161 and responsive to Resolute’s First Document Request 28) was not produced until March 14, 2019—nearly three months after Resolute’s Merits Memorial was filed with the Tribunal.</p> <p>For the avoidance of doubt, Resolute does not seek the production of documents related solely to measures excluded by the Tribunal (Hot Idle or the Forestry Infrastructure Fund).</p> <p><i>Second</i>, the requested documents are relevant and material. Canada contends that “there was never a direction from the Premier or anyone else in the GNS that the Port Hawkesbury mill needed to be saved at any cost.” Montgomerie Witness Statement ¶ 22; <i>see also</i> Canada Counter-Memorial ¶ 310.</p>	

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			Resolute is entitled to review the requested documents to rebut Canada's contentions.		<p>Moreover, the amount and terms of financial assistance provided by the GNS in connection with the purchase of the Port Hawkesbury mill are not in dispute. Resolute has failed to establish that the requested documents are relevant and material to whether the GNS measures breached NAFTA Articles 1102 and 1105 or caused damages to Resolute and its investments.</p> <p>(4) <u>General Objection 4 – Protected Third-Party Information</u>: The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute</p>	<p>Canada also argues that GNS had limited involvement in the deal to sell the mill. <i>See</i> Canada Counter-Memorial ¶¶ 91-98 (arguing that GNS was not involved with the CCAA bid process until a winning bid was selected); <i>id.</i> ¶ 187 (contending that Premier Dexter did not intervene in rate negotiations despite calling CEO of NSPI); Chow Witness Statement ¶ 17</p> <p>████████████████████ ████████████████████ ████████████████████ ████████████████████ ████████████████████ ████████████████████; Coolican Witness Statement ¶¶ 21-45 (arguing that GNS changes to renewable energy regulations were not undertaken to assure passage of the electricity deal). Canada cannot invoke these defenses and refuse to produce documents that could rebut them. Therefore, based upon Resolute's allegations and Canada's</p>	

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					<p>without the authorization of such parties.</p> <p>(5) <u>General Objection 6 – Special Political or Institutional Sensitivity</u>: The requested documents contain Cabinet confidences which are protected from disclosure under Canadian law. Prima facie this privilege would apply to most if not all information contained in documents provided to the GNS Cabinet or its individual members for the purpose of making a decision on measures to be adopted in relation to PWCC’s acquisition of NPPH and the Port Hawkesbury mill. Canada is unable to disclose such Cabinet confidences to Resolute.</p>	<p>defenses, the requested materials are relevant and material to those issues and the NAFTA Article 1102 and 1105 claims.</p> <p><i>Third</i>, Canada’s confidentiality objection is not well-founded. This request does not seek NSUARB documents, and Nova Scotia’s FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. <i>See</i> FOIPOP § 4(3)(a)-(b) (“This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents”). The Tribunal has issued a confidentiality order to protect this type of information, and Canada has already produced other documents under this confidentiality order that</p>	

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					<p>Canada does not agree to produce the requested documents.</p>	<p>emanated from PWCC [REDACTED].</p> <p><i>Fourth</i>, the Cabinet-confidence privilege is inapplicable. Resolute is seeking evidence regarding a specific transaction and not “formulation of policy on a broad basis” that would be protected by the Cabinet privilege under Canadian law. Resolute has also demonstrated the importance of the sought-after documents; it alleges (among other things) a breach of the minimum standard of treatment and discriminatory treatment. Indeed, Resolute has put into evidence public statements suggesting that GNS intended PWCC/PHP to take market share away from other SC paper producers.</p> <p>To the extent Canada has documents responsive to this request that it believes are protected by this privilege, it should prepare a privilege log</p>	

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						and make the particularized showing to invoke the privilege so that Resolute can challenge the assertion, if appropriate.	
28	All documents evidencing any analyses of the amended terms of support reflected in C-195, including but not limited to any analyses regarding: (1) the tax benefits provided to PHP/PWCC, <i>see</i> Canada Counter Memorial ¶ 116; (2) [REDACTED] <i>see</i> Canada Counter Memorial ¶ 117; and (3) a comparison of the amended terms of support (C-195) as compared to the original terms of support (C-182), <i>see</i> Canada Counter Memorial ¶¶ 170, 226, 315.	Canada Counter Memorial ¶¶ 116, 117, 170, 226, 315; Chow Witness Statement ¶¶ 9, 10, 16.	Canada defends the amended terms of support offered to PHP as advantageous to GNS, but PHP/PWCC was willing to refuse the deal absent these additional benefits. Therefore, the benefits received by PHP/PWCC were of sufficient magnitude to justify the deal. Prior to providing these benefits, GNS likely conducted an analysis of these amended benefits. Resolute	Resolute seeks analyses conducted by GNS or on its behalf.	Canada objects as follows: (1) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u> (2) <u>General Objection 3 – Unreasonable Burden to Produce</u> (3) <u>General Objection 5 – Irrelevance and Immateriality</u> The analysis of the amended terms of financial assistance reflected in C-195 was made publicly available on September 22, 2012 on the GNS website. Resolute placed it on the	Resolute responds as follows: <i>First</i> , the request is neither overbroad nor constitutes an unreasonable burden to produce documents. Canada claims that “ <i>the analysis</i> ” is found in C-194, which is a September 22, 2012 press statement prepared by GNS to tout its deal with PWCC. GNS’s press release cannot be the sole analysis conducted by the province in determining whether to provide \$104.5 million in direct payments, the use of \$1 billion in tax losses, reduced stumpage costs, silviculture payments to PHP, and other assorted benefits. Resolute is not seeking “all documents” related to such analyses. Instead, Resolute is seeking “all documents	The Tribunal partially grants the request, insofar as it concerns documents that contain significant analysis of the three issues specified in the request. The Tribunal declines the request for the remainder on the ground that it is overly broad.

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			is entitled to these analyses to rebut Canada’s defenses to these benefits and others in the amended terms of support.		<p>record in these proceedings.¹² Furthermore, the amount and terms of financial assistance provided by the GNS in connection with the purchase of the Port Hawkesbury mill are not in dispute.</p> <p>Resolute has failed to establish that any additional documents, let alone “all documents evidencing any analyses,” are relevant and material to whether the GNS measures breached NAFTA Articles 1102 and 1105 or caused damages to Resolute and its investments.</p> <p>(4) <u>General Objection 4 – Protected Third-Party Information</u>: The</p>	<p><i>evidencing</i>” these analyses—<i>i.e.</i>, the analyses themselves. To the extent Resolute is seeking “all documents,” Canada is required to produce materials that “discuss an issue or document substantively, as distinct from merely referencing the issue or document.” This limitation is the same limitation placed on Resolute’s document production, per paragraph 4.4 of PO9. Resolute also agrees to limit the scope of documents to the sale of the mill.</p> <p><i>Second</i>, the requested documents are relevant and material. to rebut GNS’s defenses.</p>	

¹² C-194, Statement and Backgrounder, Nova Scotia Premier's Office (Sep. 22, 2012), pp. 4-8.

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					<p>requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties.</p> <p>Canada does not agree to produce the requested documents.</p>	<div style="background-color: black; width: 100%; height: 150px; margin-bottom: 10px;"></div> <p>Other differences also exist in the original and amended support deals between GNS and PWCC, <div style="background-color: black; width: 100%; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100%; height: 15px;"></div></p> <p>Canada justifies these benefits because they were advantageous to GNS. <i>See</i> Canada Counter-Memorial ¶¶ 116, 117, 315. But PHP, until late in the evening on September 21 (or early morning September 22), 2012 was prepared to walk away from the</p>	

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						<p>deal. The parties had even issued their own press releases explaining the deal would not occur. C-192, C-193, C-196 (press releases). Resolute is entitled to the sought-after documents to demonstrate what PWCC and GNS thought necessary to reopen the mill. These documents would also rebut Canada's defense that the terms of support were entirely advantageous to GNS.</p> <p><i>Third</i>, Canada's confidentiality objection is not well-founded. This request does not seek NSUARB documents, and Nova Scotia's FOIPOP addresses Freedom of Information (<i>i.e.</i>, Access to Information) requests but not requests for production in litigation. <i>See</i> FOIPOP § 4(3)(a)-(b) ("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power</p>	

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						of any court or tribunal to compel a witness to testify or to compel the production of documents”). The Tribunal has issued a confidentiality order to protect this type of information, and Canada has already produced other documents under this confidentiality order that emanated from PWCC [REDACTED] [REDACTED]	

ANNEX II – RESPONDENT’S REQUESTS FOR DOCUMENTS

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10.	Documents from September 1, 2012 to present that contain, discuss or refer to Resolute’s decision to drop its SC paper prices in January 2012 and its decision to increase its SC paper prices in July 2013.	Memorial ¶ 287 RMJ, ¶ 123; Jurisdictional Hearing Transcript, p. 9:23-25; CWS-Kaplan ¶¶ 48-49	Resolute has alleged downward price pressures and lost profits due to PHP’s re-entry and that PHP engaged in predatory pricing, and its expert, Dr Kaplan, cites the substantial price decrease in SC paper that coincided with PHP’s full re-entry in January 2013, and he includes a price graph showing that prices rebounded in July 2013. The documents are relevant and material to Dr Kaplan’s view that prices dropped in January 2013 because of PHP, as well as to Resolute’s claims that PHP engaged in predatory pricing, as	Resolute objects to this request on the following grounds: <i>First</i> , this request is encompassed in part within prior document requests from Canada, including Requests 4, 5, and 16 in Canada’s First Document Requests: Request 4 sought, in pertinent part, documents from June 1, 2011 to September 28, 2012, regarding “the projected or actual impact of the Port Hawkesbury mill’s temporary closure on...Resolute’s SC paper operations” Request 5 sought, in pertinent part,	Resolute’s objections are unfounded for the following reasons: Despite its assertion to the contrary, Resolute has not produced any documents pertaining to its decision on whether and how much to raise prices in July 2013. Such an important decision would likely have garnered attention by senior management and been reflected in contemporaneous documents. Resolute cannot reasonably argue that this request is duplicative and unreasonably burdensome when it has not confirmed whether such documents exist or not. Furthermore, this request pertains to a specific fact that was not addressed at the time	The Tribunal regards the request as overly broad and invites the Respondent to formulate a more specific request by July 17, 2019 , narrowing down the scope and the time period. Subsequently, the Tribunal will invite the Claimant to express its views on the reformulated request within a short deadline.

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			<p>opposed to the contemporaneous views of market commentators who note that this price decrease was taken in anticipation of PHP’s re-opening and that it was followed by a July 2013 price increase of [REDACTED] and \$40 by Resolute (see R-262, p.22; R-415, p.7).</p>	<p>documents from January 4, 2012 through December 30, 2015 regarding the impact of PWCC’s “re-opening of the Port Hawkesbury mill on... Resolute’s SC paper operations”</p> <p>Request 16 sought, in pertinent part, documents regarding “forecasted North American sales information from January 1, 2009 to December 30, 2015” regarding prices and sales of supercalendered paper, both by Resolute and the market generally.</p> <p>In response to these requests, Resolute has produced numerous documents, including “Pulp and Paper</p>	<p>of the jurisdictional hearing. It came to light as a result of the damages claim led by the Claimant in its Memorial and by Dr. Kaplan’s assertion that PHP’s re-entry caused lasting downward price pressures (Kaplan Report ¶49).</p> <p>Dr. Kaplan asserts that a way to illustrate the negative effect of PHP’s re-entry is to look at market prices soon after PHP’s ramp-up in production. The price graph he cites shows a drop in prices of US \$44 in January 2013 and a price increase of US \$43 in July 2013.</p> <p>The evidence submitted by Canada (CM ¶¶ 358-362) demonstrates that:</p> <p>i) producers dropped their prices in January 2013 by locking into long-term contracts in 2012 in anticipation of the effects that</p>	

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				<p>Sales & Marketing” updates to its Board of Directors for the years 2011 to 2015 (<i>see</i>, for example, at RFP0011534 to RFP0011880). Therefore, this duplicative request is unreasonably burdensome (Arts. 3(3)(c)(i) and 9(2)(c) of the IBA Rules; <i>see also</i> Art. 8(2) (referring to the Tribunal’s power to exclude “duplicative” questions)).</p> <p><i>Second</i>, this request is not “the consequence of the pleadings” and is not based on new information “that warrants further discovery”, as called for under Procedural Order No. 7 ¶ 2.1(K). Resolute has alleged “downward pressure on prices” and “predatory pricing” in its Statement of Claim (¶¶ 48, 55, 96), a fact that was reiterated in all subsequent pleadings. Dr. Hausman also extensively explained that “the price and</p>	<p>PHP’s re-entry would have on the market;</p> <p>ii) the surge in demand for SC paper in early 2013 led to SC paper shortages;</p> <p>iii) producers responded by increasing their prices in July 2013; and</p> <p>iv) ██████████ ██████████ followed by Resolute’s decision to raise prices by only \$40.</p> <p>Resolute’s documents pertaining to its decision to raise prices by only \$40 in July 2013 as compared to PHP higher price increase are relevant and material to its damages claim and to Dr Kaplan’s assertion that changes in market prices soon after PHP’s ramp-up in production illustrate the negative effect of PHP’s re-entry.</p>	

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		Reference to Submissions	Comments			
				financial effects of the reopening were not evident until January 2013 or later” in his February 22, 2017 expert report on jurisdiction and admissibility (¶ 14).		
14.	Documents indicating whether any of the “Fixed Costs” reported in Resolute’s P&Ls (C-252 through C-266) may, in whole or in part, be “Direct Costs” (i.e., <i>variable costs</i> – see ** below), or <i>semi-variable</i> (i.e., <i>partly variable and partly fixed costs</i>), particularly the following: <div style="background-color: black; width: 100px; height: 15px; margin: 5px 0;"></div> <div style="background-color: black; width: 50px; height: 15px; margin: 5px 0;"></div> <div style="background-color: black; width: 150px; height: 15px; margin: 5px 0;"></div> <div style="background-color: black; width: 100px; height: 15px; margin: 5px 0;"></div> <div style="background-color: black; width: 80px; height: 15px; margin: 5px 0;"></div> <div style="background-color: black; width: 60px; height: 15px; margin: 5px 0;"></div>	Memorial ¶¶ 297-300; CWS-Hausman II, ¶¶ 26, 30-41	Dr Hausman’s damages calculations reflect the application of projected annual percentage changes to each of Resolute’s three Canadian SC paper mills’ average “Direct Costs” (as indicated in the mills’ respective P&Ls) to calculate Resolute’s But-for Variable Costs in the past loss period (2013 to 2017). Hausman then effectively deducts Resolute’s actual variable costs from these assumed But-for Variable Costs in his	Resolute objects to this request on the following grounds: <i>First</i> , the requested documents are not relevant or material. (Arts. 3(3)(b) and 9(2)(a) of the IBA Rules.) Canada’s request seeks to second-guess how Resolute conducts its own internal cost allocations. But whether Resolute’s “Fixed Costs” could be considered “Direct Costs” or “semi-variable” under a different cost allocation or accounting methodology is neither relevant nor material, provided that Dr Hausman	Resolute’s objections are unfounded for the following reasons: Contrary to Resolute’s first objection that Canada’s request seeks to “second-guess” how Resolute conducts its own internal cost allocations, or that these allocations should be subject to a “different methodology”, Canada rather seeks to obtain Resolute’s description of the bases for which it delineates between the various “Fixed” and “Direct” costs included in its P&Ls. For example, Resolute’s P&Ls do display ■ <div style="background-color: black; width: 100px; height: 15px; margin: 5px 0;"></div>	The Tribunal declines the request on the ground that it is overly broad.

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(a)	(b)	(c)		(d)	(e)	(f)
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	<p>██████████ ██████████ ██████████ ██████████ ██████████ ██████████</p> <p>h) or any other costs</p> <p>** – Variable costs change in proportion to the volume of products manufactured; fixed costs do not change irrespective of the annual volume of products manufactured.</p>		<p>calculation of Resolute’s damages.</p> <p>Resolute relies on Dr Hausman’s calculation of two damages scenarios, reflecting different projections of annual percentage changes in Resolute’s “Direct Costs”, as follows:</p> <ol style="list-style-type: none"> 1) Dr Hausman’s first Scenario applies annual percentage changes based on RISI’s October 2011 Five-Year Forecast for US Uncoated Mechanical Paper “variable” costs; and 2) Dr Hausman’s second Scenario (which 	<p>used Resolute’s methodology in classifying those costs.</p> <p><i>Second</i>, Canada’s Second Document Request No. 1 acknowledges that Resolute has produced its “Scorecards,” which detail Resolute’s cost structure for its mills. Resolute also intends to provide any responsive updates in response to this document request. Therefore, Canada’s duplicative request is unreasonably burdensome and asks for documents that are already in its possession or will be produced in response to other document requests (Arts. 3(3)(c)(i) and 9(2)(c) of the IBA Rules; see also Art. 8(2) (referring to the Tribunal’s power to exclude “duplicative” questions)).</p> <p><i>Third</i>, Canada’s First Document Request No. 7 sought (among other things)</p>	<p>██████████ ██████████ ██████████ ██████████ ██████████ ██████████</p> <p>Separately, Dr Hausman also implicitly assumed without explanation, that the components of “Variable Costs” per RISI’s Forecast are equivalent to “Direct Costs” in Resolute’s P&Ls, even though these are different.</p> <p>Further, on the basis of the names alone of various “Fixed Costs” in Resolute’s P&Ls (as noted at left), several of these may be more accurately described as Variable (“Direct”) Costs. The issue of such costs are relevant and material to Resolute’s damages claim.</p>	

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			<p>represents his “final” conclusion) applies Resolute’s purported expectations of a 2% increase per annum.</p> <p>The documents requested are relevant and material to:</p> <p>a) Dr Hausman and/or Resolute’s assumption that the [REDACTED]</p> <p>b) whether any “Fixed Costs” reported in Resolute’s P&Ls should instead be</p>	<p>documents relating to Resolute’s “labour and overhead costs, product costs segregated between variable and fixed costs, product contribution margin [and] operating income.” This request was denied as overbroad. Resolute also made production in response to Canada’s First Document Request No. 21, which sought documents indicating Resolute’s cost structure, including “the variances between standard costs and actual costs” for its mills. Resolute further made production in response to Canada’s First Document Request No. 28, which sought from January 1, 2009 through December 30, 2015 “details of related [sic] to the costs allocated to or directly incurred by each of the Laurentide, Dolbeau and Kénogami mills, including</p>	<p>Contrary to Resolute’s second objection, the fact that “Resolute also intends to provide any responsive updates in response to this document request” [in the form of its 2018 P&Ls], is not responsive to the “Fixed” versus “Variable” delineation request herein.</p> <p>Resolute’s Memorial claims damages beyond December 30, 2015 (Memorial ¶¶297-300). The expansion of the request after December 30, 2015 is therefore not duplicative nor unreasonably burdensome as it requests similar documents already produced by Resolute for a later time period.</p> <p>The request is no broader or less specific than the allegations and assumptions made by the Claimant at</p>	

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			<p>included in its “Direct Costs”; and</p> <p>c) explaining why Resolute [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>	<p>selling, general and administrative costs and any other overheads.” Similarly, Canada’s First Document Requests Nos. 22-27 and 29 sought extensive documents regarding Resolute’s cost structure. Therefore, Canada’s duplicative request is unreasonably burdensome and asks for documents that are already in its possession (Arts. 3(3)(c)(i) and 9(2)(c) of the IBA Rules; <i>see also</i> Art. 8(2) (referring to the Tribunal’s power to exclude “duplicative” questions)).</p> <p><i>Fourth</i>, this request is not “the consequence of the pleadings” and is not based on new information “that warrants further discovery”, as called for under Procedural Order No. 7 ¶ 2.1(K). As detailed above, Canada sought extensive information regarding Resolute’s cost</p>	<p>¶¶297-300 of its Memorial and Dr Hausman at ¶¶ 26, 30-41 of his second report.</p> <p>Contrary to Resolute’s fourth objection that this request is not a consequence of the pleadings and is not based on new information, Canada reiterates that Dr Hausman’s calculations (that made adjustments to exclude and adjust for certain changes in Resolute’s reporting), represent new information and necessitates further explanation by Resolute to ensure completeness and accuracy regarding its Fixed versus Variable costs that Dr Hausman may or may not have probed and/or Resolute did or did not advise.</p> <p>Canada could not have been aware of the reclassification of costs that would be overridden by Dr Hausman or the implicit</p>	

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				structure in its First Document Requests. Therefore, Canada was aware previously to request the documents sought in this document request.	assumption that Dr Hausman would make that [REDACTED] [REDACTED] [REDACTED]	
15.	Documents from January 1, 2009 to present providing details related to the costs allocated to or directly incurred by each of the Laurentide, Dolbeau and Kénogami mills, including selling, general and administrative costs and any other overheads.	Memorial ¶¶ 297-300; CWS-Hausman II, ¶¶ 30-41	Dr. Hausman’s damages calculations reflect the application of projected annual percentage changes to each of Resolute’s three Canadian SC paper mills’ average “Direct Costs” (as indicated in the mills’ respective P&Ls) to calculate Resolute’s But-for Variable Costs in the past loss period (2013 to 2017). Dr. Hausman then effectively deducts Resolute’s actual variable costs from these assumed But-for Variable Costs in his calculation of Resolute’s damages.	Resolute objects to this request on the following grounds: <i>First</i> , Resolute objects to this request as not relevant or material to the outcome of this case. (Arts. 3(3)(b) and 9(2)(a) of the IBA Rules.) Canada’s request seeks to second-guess how Resolute conducts its own internal cost allocations. But whether Resolute could allocate its selling, general, administrative, or overhead costs in a different fashion under a different cost allocation or accounting methodology is neither relevant nor material, provided that Dr. Hausman	Resolute’s objections are unfounded for the following reasons: Contrary to Resolute’s first objection that Canada’s request seeks to “second-guess” how Resolute conducts its own internal cost allocations, or that these allocations should be subject to a “different methodology”, Canada rather seeks a description of the components and nature of costs in its “SG&A Allocation” line in Resolute’s P&Ls, and to the basis upon which these were allocated to the Laurentide, Dolbeau and Kénogami mills.	The Tribunal takes note of the Claimant’s undertaking to produce responsive updates on the ‘scorecards’ request and, pending such production, reserves its decision concerning the need for any further production by Claimant. For the remainder, the Tribunal denies the request.

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			<p>Dr. Hausman calculated two damages scenarios, reflecting different projections of annual percentage changes in Resolute’s “Direct Costs”, as follows:</p> <ol style="list-style-type: none"> 1) Dr. Hausman’s first Scenario applies annual percentage changes based on RISI’s October 2011 Five-Year Forecast for US Uncoated Mechanical Paper “variable” costs; and 2) Dr. Hausman’s second Scenario (which represents his “final” conclusion) applies Resolute’s purported 	<p>used Resolute’s methodology in classifying those costs.</p> <p><i>Second</i>, Canada’s Second Document Request No. 1 acknowledges that Resolute has produced its “Scorecards,” which detail Resolute’s cost structure for its mills. Resolute also intends to provide any responsive updates in response to this document request. Therefore, Canada’s duplicative request is unreasonably burdensome and asks for documents that are already in its possession or will be produced in response to other document requests (Arts. 3(3)(c)(i) and 9(2)(c) of the IBA Rules; see also Art. 8(2) (referring to the Tribunal’s power to exclude “duplicative” questions).</p> <p><i>Third</i>, Canada’s First Document Request No. 7 sought (among other things)</p>	<p>Contrary to Resolute’s second objection, the fact that “Resolute also intends to provide any responsive updates in response to this document request” [in the form of its 2018 P&Ls], is not responsive to the description of SG&A Allocation costs request herein.</p> <p>Resolute’s Memorial claims damages beyond December 30, 2015 (Memorial ¶¶297-300). The expansion of the request after December 30, 2015 is therefore not duplicative nor unreasonably burdensome as it requests similar documents already produced by Resolute for a later time period.</p> <p>The request is no broader or less specific than the allegations and assumptions made by the Claimant at ¶¶297-300 of its Memorial</p>	

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			<p>expectations of a 2% increase per annum.</p> <p>The requested documents are relevant and material to Resolute’s Fixed versus Variable Costs, the respective components of each, and whether any “Fixed Costs” reported in Resolute’s P&Ls should instead be included in its Direct Costs. Resolute’s P&Ls introduced a new category of expenses entitled “SG&A Allocation” (generally understood to mean selling, general & administrative expenses) starting in 2012 that are unaddressed and, therefore, excluded from the Hausman</p>	<p>documents relating to Resolute’s “labour and overhead costs, product costs segregated between variable and fixed costs, product contribution margin [and] operating income.” This request was denied as overbroad. Resolute also made production in response to Canada’s First Document Request No. 21, which sought documents indicating Resolute’s cost structure, including “the variances between standard costs and actual costs” for its mills. Resolute further made production in response to First Document Request No. 28, which sought from January 1, 2009 through December 30, 2015 “details of related [sic] to the costs allocated to or directly incurred by each of the Laurentide, Dolbeau and Kénogami mills, including selling, general and</p>	<p>and Dr. Hausman at ¶¶ 30-31 of his second report.</p> <p>Contrary to Resolute’s fourth objection that this request is not a consequence of the pleadings and is not based on new information, Canada reiterates that Dr. Hausman’s calculations (that excluded and left unaddressed) the “SG&A Allocation” costs in Resolute’s P&Ls, represents new information and necessitates further explanation by Resolute to ensure completeness and accuracy regarding its Fixed versus Variable costs that Dr. Hausman may or may not have probed and/or Resolute did or did not advise.</p> <p>Further, Canada reiterates that it was Dr. Hausman’s calculations (that made adjustments to exclude and adjust certain changes in</p>	

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			<p>Report II [calculation of Resolute’s But-for Variable Costs in the past loss period]. Further, Resolute has not produced any supporting documents to describe these SG&A Allocation expenses.</p> <p>Despite having made a similar request for documents at Request No. 28 in its May 18, 2018 Redfern, Canada did not receive sufficient information. Since the end date of that request was December 30, 2015, and Resolute has claimed for damages through to 2028, Canada is also extending the timeframe of its request.</p>	<p>administrative costs and any other overheads.” Similarly, Canada’s First Document Requests Nos. 22-27 and 29 sought extensive documents regarding Resolute’s cost structure. Therefore, Canada’s duplicative request is unreasonably burdensome and asks for documents that are already in its possession (Arts. 3(3)(c)(i) and 9(2)(c) of the IBA Rules; <i>see also</i> Art. 8(2) (referring to the Tribunal’s power to exclude “duplicative” questions)).</p> <p><i>Fourth</i>, this request is not “the consequence of the pleadings” and is not based on new information “that warrants further discovery”, as called for under Procedural Order No. 7 ¶ 2.1(K). As detailed above, Canada sought extensive information regarding Resolute’s cost structure in its First Document</p>	<p>Resolute’s reporting) (see Reply to Request #14 above), that represents new information.</p>	

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				Requests. Therefore, Canada was aware previously to request the documents sought in this document request.		
19.	Documents indicating Resolute’s internal weighted average cost of capital (WACC) as at January 1, 2018, as well as up to the present time to the extent there have been any changes in Resolute’s internal WACC after January 2018.	Claimant’s Memorial ¶¶ 297-300; CWS-Hausman II, ¶44	Dr. Hausman applies a 10% discount rate to present value his 2018 – 2028 Future Loss period damages to January 1, 2018, stating that ██████ represents “ <i>Resolute’s internal weighted average cost of capital (WACC)</i> ”. The documents are relevant and material to the discount rate applied by Dr. Hausman.	Subject to any claims for privilege and to paragraph 4.4 of Procedural Order No. 9, Resolute is offering to search for and, if they exist, produce those specific materials Resolute believes to be relevant, material, and responsive to this request.	Canada looks forward to Resolute’s production of documents responsive to Request No. 19. Canada requests that any documents withheld according to ¶7 of Procedural Order No. 2 are identified in a log in accordance with Procedural Order No. 2 or are provided as redacted versions of such documents identifying the grounds for withholding.	The Tribunal takes note of the Claimant’s undertaking to produce documents responsive to this request and, pending such production, reserves its decision concerning the need for any further production by Claimant.