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INTERNATIONAL LAWYERS

Toronto *Washington DC*

Confidential

February 5, 2008

By Delivery

John H. Sims
Deputy Minister of Justice and
Deputy Attorney General of Canada
Department of Justice
284 Wellington Street
Ottawa, Ontario K1A 0H8

Dear Mr. Sims:

Re: NAFTA Investor-State Claim for Georgia Basin Holdings L.P.

We have the pleasure of acting as counsel for Georgia Basin Holdings L.P., an American juridical national which has an investment in Canada.

We are serving you with the confidential Investor's Notice of Intent to Submit a Claim to Arbitration pursuant to Section B of Chapter 11 of the North American Free Trade Agreement.

We will be seeking consultations with the Government of Canada pursuant to NAFTA Article 1118. Please feel free to contact us through our Toronto offices with respect to your obligations under this NAFTA Article and this NAFTA matter.

Yours very truly,

Barry Appleton
Counsel for the Investor

Encl.

cc: Georgia Basin Holdings L.P.

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816 Connecticut Avenue, NW, 12TH Floor, Washington DC 20006 Tel. (202) 293-0900 Fax. (202) 293-0988

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CONFIDENTIAL

NOTICE OF INTENT TO SUBMIT A CLAIM TO ARBITRATION UNDER SECTION B OF CHAPTER 11 OF THE NORTH AMERICAN FREE TRADE AGREEMENT

GEORGIA BASIN HOLDINGS L.P.

Investor

v.

GOVERNMENT OF CANADA

Party

Pursuant to Articles 1116 and 1119 of the North American Free Trade Agreement ("NAFTA"), the Investor, **GEORGIA BASIN HOLDINGS L.P.**, serves on its behalf a Notice of Intent to Submit a Claim to Arbitration for breach of Canada's obligations under the NAFTA.

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A. NAME AND ADDRESS OF THE DISPUTING INVESTOR

Georgia Basin Holdings L.P.

115 Second Avenue North, Suite 200
Edmonds, WA
98020

B. BREACH OF OBLIGATIONS

1. The Investor alleges that the Government of Canada has breached its obligations under Section A of Chapter 11 of the NAFTA, including but not limited to the following provisions:

    1. Article 1102 - National Treatment
    2. Article 1103 - Most Favored Nation Treatment
    3. Article 1105 - International Law Standards of Treatment
    4. Article 1106 - Performance Requirements
    5. Article 1110 - Expropriation

2. These applicable provisions of the NAFTA read as follows:

Article 1102: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.

Article 1103: Most-Favored-Nation Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of investors of any other Party or of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

Article 1105: Minimum Standard of Treatment

1. Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

2. Without prejudice to paragraph 1 and notwithstanding Article 1108(7)(b), each Party shall accord to investors of another Party, and to investments of investors of another Party, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife.

3. Paragraph 2 does not apply to existing measures relating to subsidies or grants that would be inconsistent with Article 1102 but for Article 1108(7)(b).

Article 1106: Performance Requirements

1. No Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory:

(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process or other proprietary knowledge to a person in its territory, except when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement; or

(g) *to act as the exclusive supplier of the goods it produces or services it provides to a specific region or world market.*

2. *A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with paragraph 1(f). For greater certainty, Articles 1102 and 1103 apply to the measure.*

3. *No Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:*

(a) *to achieve a given level or percentage of domestic content;*

(b) *to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;*

(c) *to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or*

(d) *to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.*

4. *Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.*

5. *Paragraphs 1 and 3 do not apply to any requirement other than the requirements set out in those paragraphs.*

6. *Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in paragraph 1(b) or (c) or 3(a) or (b) shall be construed to prevent any Party from adopting or maintaining measures, including environmental measures:*

(a) *necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;*

(b) *necessary to protect human, animal or plant life or health; or*

(c) *necessary for the conservation of living or non-living exhaustible natural resources.*

Article 1110: Expropriation and Compensation

1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:

(a) for a public purpose;

(b) on a non-discriminatory basis;

(c) in accordance with due process of law and Article 1105(1); and

(d) on payment of compensation in accordance with paragraphs 2 through 6.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and be fully realizable.

4. If payment is made in a G7 currency, compensation shall include interest at a commercially reasonable rate for that currency from the date of expropriation until the date of actual payment.

5. If a Party elects to pay in a currency other than a G7 currency, the amount paid on the date of payment, if converted into a G7 currency at the market rate of exchange prevailing on that date, shall be no less than if the amount of compensation owed on the date of expropriation had been converted into that G7 currency at the market rate of exchange prevailing on that date, and interest had accrued at a commercially reasonable rate for that G7 currency from the date of expropriation until the date of payment.

6. On payment, compensation shall be freely transferable as provided in Article 1109.

7. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with Chapter Seventeen (Intellectual Property).

8. For purposes of this Article and for greater certainty, a non-discriminatory measure of general application shall not be considered a measure tantamount to an expropriation of a debt security or loan covered by this Chapter solely on the ground that the measure imposes costs on the debtor that cause it to default on the debt.

C. FACTUAL BASIS FOR THE CLAIM

3. This claim arises out of the arbitrary and unfair application of certain government measures related to the export of logs from Canada. These measures provide the Investor's competitors with improper advantages and raise fundamental issues of fairness.

4. Canada has adopted a protectionist industrial policy of favoring log processors in British Columbia at the expense of timber harvested from privately owned land. This policy is implemented through an export control regime that artificially suppresses the prices of timber harvested from privately owned lands. This regime is administered in an arbitrary and discriminatory manner that allows the Investor's competitors to benefit from exemptions that are denied to the Investor and to abuse export permit procedures.

The Disputing Parties

The Investor

5. The Investor, Georgia Basin Holdings L.P. ("Georgia Basin"), is a limited partnership established under the laws of the State of Washington in the United States of America. Georgia Basin is an enterprise of a NAFTA Party, as defined by NAFTA Article 201. This enterprise owns investments in Canada.

6. Georgia Basin grows, harvests and markets timber from a number of investments in Canada. These investments include timberlands, timber and the intangible rights associated with the harvesting and sale of its timber. These assets are real and other property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purposes and interests arising from the commitment of capital in the territory of Canada to economic activity in such territory. As a result,

Georgia Basin is an investor of the United States of America, in accordance with NAFTA Article 1139.

7. Georgia Basin owns a variety of parcels of land on the coast of the Province of British Columbia. This land was granted by the Federal Crown prior to March 12, 1906 and acquired by Georgia Basin's predecessors at the turn of the twentieth century. Georgia Basin harvests timber from its land for sale to third parties within Canada and for export.

Canada

8. This claim arises out of measures adopted and maintained by the federal government of Canada and the province of British Columbia.

9. The federal government of Canada has acted through its organ, the Department of Foreign Affairs and International Trade ("DFAIT") which is responsible for the administration of the *Export and Import Permits Act*, R.S.C. 1985 c. E-19 (the "*EIP Act*") and the regulations thereunder, including the *Export Control List* SOR/89-202. The *EIP Act* and the *Export Control List* prohibit the export of logs of all species of wood to all destinations without an export permit. DFAIT's administrative practices in granting or denying export permits for logs are described in its *Notice to Exporters Serial No. 102* ("Notice 102").

10. The Province of British Columbia oversees and regulates logs that may be eligible for export from that province through the Ministry of Forests. Pursuant to NAFTA Article 105, the Government of Canada is responsible for the measures taken by the Government of British Columbia.

Forestry Ownership in British Columbia

11. British Columbia is the only province in Canada where DFAIT exercises its authority to control the export of logs through a surplus testing procedure. The surplus testing procedure requires that logs from both private and public land be deemed surplus to provincial needs before they can be exported. This measure regulates investors and their investments in British Columbia by subjecting them to special requirements for the export of logs that result in the forced sale of logs at less than fair market value.

12. Logs harvested in British Columbia are subject to different export permit application procedures based on their category of land ownership. There are four major categories of land ownership for timber in British Columbia:

    a. Provincial Crown land;
    b. Federal Crown land;
    c. Private land granted before March 1906; and
    d. Private land granted after March 1906.

13. Log exports from provincial Crown land in British Columbia and land granted after 1906 are controlled by the provincial government, as complemented by federal export requirements. Log exports from private land granted before 1906, federal Crown lands and aboriginal land are regulated by the federal government. Georgia Basin owns private land granted before 1906, which means it is subject to federal government regulation.

The Surplus Testing Procedure in British Columbia

14. Both the provincial and federal governments apply a form of surplus test to applications for log exports from British Columbia that are within their respective jurisdictions. Depending on the category of land ownership at issue, logs are subject to either the provincial surplus test or the federal surplus test. The federal surplus test is modeled on the provincial one.

15. The basis for the provincial surplus test is set out in the British Columbia *Forest Act*, R.S.B.C. c. 157. The provincial surplus test applies to lands from provincial Crown land or private land granted after 1906. All timber from these lands must be used or manufactured in British Columbia. Timber may be exempted from this requirement where the logs are deemed surplus to provincial needs, where the logs cannot be processed economically, or where an exemption would prevent the waste of or improve the utilization of timber from provincial Crown land.

16. The provincial surplus test requirements are administered by the Timber Export Advisory Committee ("TEAC"). The Ministry of Forests and TEAC administer the provincial surplus test as follows:

a. Logs to be exported must be advertised for sale on a bi-weekly list;

b. Domestic log processors may submit offers to purchase logs for 14 days after notification;

c. TEAC determines whether the offers received from domestic log processors reflect the British Columbia price of the logs. The British Columbia price is substantially below the world price for logs due to the policies and practices of British Columbia; and

d. If no offers are made, or the offers do not reflect the British Columbia price, then TEAC may deem the logs to be surplus to provincial requirements. A finding that the logs are surplus to provincial needs means that the logs may be exported. Final permission to export, however, requires approval by DFAIT.

17. The federal surplus test is set out in Notice 102, which describes DFAIT's administrative practices under the *EIP Act*. Notice 102 requires logs from federal Crown land or private land granted before 1906 to undergo a surplus testing procedure in consultation with the provincial government.

18. The federal log export controls violate Canada's obligations under NAFTA Chapter 11 with respect to national treatment, expropriation and performance requirements. Specifically, Canada violates its obligations under NAFTA Chapter 11 each time that federal export control requirements force Georgia Basin to sell its logs at the artificially reduced British Columbia price. Canada's export control requirements substantially deprive Georgia Basin of its rights to sell logs at international market prices. These requirements oblige Georgia Basin to maintain artificially low levels of exports solely for the purpose of benefitting domestic processing of logs.

Exemptions from the Surplus Testing Procedure in British Columbia

19. Landowners subject to the provincial surplus test benefit from additional exemptions that are not available to federally regulated landowners. Both federally and provincially regulated landowners may receive individual exemptions from the surplus test for harvested logs on a case-by-case basis. However, provincial landowners may also receive two kinds of broader exemptions: standing timber exemptions and blanket standing timber exemptions.

20. A standing timber exemption provides a company or an individual with permission to export logs of a certain species before the trees are even felled for a specified period of time. A blanket standing timber exemption may be granted to a geographical area of the province. Such a blanket exemption permits a certain percentage of logs from standing trees to be exported for a specified period of time. These two exemptions bypass the provincial surplus test.

21. Federally regulated landowners are not entitled to any of the broader exemptions available to their provincial counterparts. The broad exemptions available exclusively to provincial landowners provide them with significant advantages, including longer term contracts, increased revenues, and reduced compliance costs.

22. DFAIT's refusal to allow standing timber exemptions on the same terms as those available to provincially regulated landowners violates NAFTA Chapter 11 provisions on national treatment, expropriation and the international law standard of treatment.

The Administration of the Log Export Regime in British Columbia

23. Several aspects of the log export regime in British Columbia are non-transparent and arbitrary, and have been subject to abuse by the federal and provincial governments. These measures include, but are not limited to, those listed below:

a. There is no transparency or legal security in the FTEAC administrative process. The federal government does not provide exporters with the criteria considered by FTEAC or DFAIT in making their determinations. There is no opportunity for private landowners to make submissions to FTEAC or to observe FTEAC meetings. There is no codified process for appeal or review of an FTEAC recommendation;

b. The composition of FTEAC results in procedural unfairness. Many of the members of FTEAC are domestic log processors. In addition, some of the members of FTEAC are competitors of the potential log exporter. This means that decisions on offers are made in part by individuals who have a direct interest in obtaining lower cost logs or by competitors;

c. The time frame required for FTEAC to administer the federal surplus test is arbitrary and unfair. The federal surplus test procedure can take up to three months, during which time potential log exporters lose some of the value of their logs. Teredo infestation, sun check, stain and weight loss all impact the value of the timber while the log exporter waits for the surplus test procedure to be completed;

d. Domestic purchasers abuse their ability to block the export of logs for their own benefit. The practice of "blockmailing" refers to the process used by a domestic purchaser to gain concessions from the potential log exporter in exchange for a withdrawal of its bids for logs. The concessions range from lower prices to supply guarantees on different private log sorts, and result in a loss to the potential log exporter. FTEAC's administration of the federal surplus test knowingly permits and indeed encourages such "blockmailing"; and

e. Similarly, FTEAC permits domestic purchasers to submit non *bona fide* offers.

24. The arbitrary and unfair administration of the log export control regime violates Canada's obligations under NAFTA Chapter 11 with respect to national treatment, the international law standard of treatment and performance requirements. These practices further suppress the price of harvested timber and the resulting uncertainty has an effect on the volume of Georgia Basin's production.

The Effects of the Log Export Regime in British Columbia

25. The log export control regime in British Columbia has negatively impacted the Investor by increasing costs, while simultaneously decreasing its revenues, the value of its logs, the value of its land, its ability to provide consistent supply, its production volumes and its ability to obtain the highest price for its logs.

26. Canada has acted in a continuous manner inconsistent with at least five provisions of the NAFTA through the perpetuation, operation and administration of the log export control regime for log exports from British Columbia since at least January 2004.

D. ISSUES RAISED

27. Has the Government of Canada taken measures inconsistent with its obligations under Articles 1102, 1103, 1105, 1106 and 1110 of the NAFTA?

28. If the answer to question 1 is yes, what is the quantum of compensation to be paid to the Investor as a result of the failure of the Government of Canada to comply with its obligations arising under Chapter 11 of the NAFTA?

E. RELIEF SOUGHT AND APPROXIMATE AMOUNT OF DAMAGES CLAIMED

29. The Investor claims damages for the following:

1. Damages of not less than $5 million as compensation for the damages caused by or arising out of Canada's measures that are inconsistent with its obligations contained in Section A of Chapter 11 of the NAFTA;

2. Costs associated with these proceedings, including all professional fees and disbursements;

3. Fees and expenses incurred to oppose the effect of the measures;

4. Pre-award and post-award interest at a rate to be fixed by the Tribunal; and

6. Such further relief that counsel may advise and that this Tribunal may deem appropriate.

DATE OF ISSUE: February 5, 2008

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