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

BETWEEN:

MERRILL & RING FORESTRY L. P.

CLAIMANT

AND

THE GOVERNMENT OF CANADA

RESPONDENT

(ICSID Administered Case)

CONFIDENTIALITY ORDER

WHEREAS, Claimant Merrill & Ring Forestry L.P. and Respondent Government of Canada take note of the *NAFTA Free Trade Commission Note of Interpretation of certain Chapter 11 Provisions* of July 31, 2001 which calls for arbitrations under Chapter 11 of the North American Free Trade Agreement ("NAFTA") to be transparent to the maximum extent possible.

The Tribunal has issued the following Confidentiality Order

1. For the purposes of this Order:

    (a) "disputing party" means, in the case of the Investor, Merrill & Ring Forestry L.P. ("Merrill & Ring"), and in the case of the Respondent, the Government of Canada, collectively the "disputing parties";

    (b) "confidential information" means any information designated by a disputing party as confidential. A disputing party may designate as confidential, and protect from disclosure, any information that may otherwise be released under the terms of this Order on any of the following grounds:

        (i) business confidentiality;

        (ii) business confidentiality relating to a third party; and

        (iii) information otherwise protected from disclosure by legislation, including Canada's *Access to Information Act*, *Privacy Act*, *Customs Act* and the *Competition Act*.

        (iv) confidential information is deemed to be financial, commercial, scientific or technical information supplied by third parties that has been treated as confidential information by those third parties.

    (b) "business confidentiality" includes:

        (i) trade secrets;

        (ii) financial, commercial, scientific or technical information that is confidential business information and is treated consistently in a confidential manner by the disputing party to which it relates, including pricing and costing information, marketing and strategic planning documents, market share data, or detailed accounting or financial records not otherwise disclosed in the public domain;

        (iii) information the disclosure of which could result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, the disputing party to which it relates;

        (iv) information the disclosure of which could interfere with contractual or other negotiations of the disputing party to which it relates; and

        (v) and other communications treated as confidential in furtherance of settlement between the disputing parties.

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PART I. Confidential Information

2. A disputing party may designate information as confidential as set out in paragraph 1. The disputing party shall clearly identify on each page of the document containing such information the notation *"Confidential"* or *"Confidential Information – Unauthorized Disclosure Prohibited"*, and shall take equivalent measures with respect to information contained in other material produced in electronic and similar media.

3. Confidential information shall not be disclosed except in accordance with the terms of this Order or with the prior written consent of the disputing party that claimed confidentiality with respect to the information and, in the case of materials from third parties, the owner of such confidential information.

4. Except as otherwise provided herein, when a disputing party files with the Tribunal material containing confidential information, it shall provide a copy of that material with the confidential information redacted within fifteen (15) business days of production.

5. Material already exchanged by the disputing parties before the execution of this Order can be designated as Confidential by notifying the other disputing party of such designation within fifteen (15) days of the execution of this Order. A redacted version of the materials shall also be provided to the other party at that time.

6. Disputes related to a disputing party's designation of confidential information may be submitted to the Tribunal for determination.

7. Except as otherwise provided in this Order, information and materials containing confidential information may be used only in these proceedings and may be disclosed only for such purposes to and among:

    (a) counsel to a disputing party (and their support staff) whose involvement in the preparation or conduct of these proceedings is reasonably considered by the disputing party to be necessary;

    (b) officials or employees of the disputing parties to whom disclosure is reasonably considered by a disputing party to be necessary;

    (c) independent experts or consultants retained or consulted by the disputing parties in connection with these proceedings; or

    (d) witnesses who in good faith are reasonably expected by a disputing party to offer evidence in these proceedings but only to the extent material to their expected testimony.

8. All persons receiving material in this proceeding containing confidential information shall be bound by this Order. Each disputing party shall have the obligation of notifying all persons receiving such material of the obligations under this Order. The obligations created by this Order shall survive the termination of these proceedings.

9. It shall be the responsibility of the disputing party wishing to disclose material containing confidential information to any person pursuant to paragraphs 7(c) or (d) to ensure that such person executes a Confidentiality Undertaking in the form attached before gaining access to any such material. Each disputing party shall maintain copies of such Confidentiality Undertakings and shall make such copies available to other disputing party upon order of the Tribunal or upon the termination of this arbitration.

10. Where material containing confidential information is to be disclosed to a firm, organization, company or group, all employees and consultants of the firm, organization, company or group with access to the material must execute and agree to be bound by the terms of the attached Confidentiality Undertaking.

PART II. Additional Safeguards concerning Access to Restricted Information

11. Where a disputing party wishes confidential information, as described in paragraph 1(b) to be kept confidential from the other disputing party, the disputing party shall clearly identify on each page of the material containing such information the notation – "Restricted Access – Dissemination Prohibited".

12. (1) A person is entitled to receive access to information described in this Order only if that person:

    a) is legal counsel employed or retained by Canada or Merrill & Ring Forestry, L.P. and their support staff; or
    b) is an expert or consultant retained by a disputing party in connection with this proceedings; and, in either case
    c) their access to the information is necessary for the preparation of the conduct of the case.

    (2) Information provided under this section shall only be used for the purpose of these proceedings and shall only be given to persons referred to in subsection (1) if such persons:

    a) execute a Confidentiality Undertaking in the form attached;

    b) undertake not to disclose the information or permit to be disclosed the information in whole or in part, except for the purposes of use during the course of this proceeding; and

c) return the information and file a certificate to the effect that any notes or copies, in paper or electronic format, have been sealed or destroyed.

Part III. Disclosure of Material Pursuant to Law

13. Nothing in this Order shall be construed as abrogating from the legal requirements binding either disputing party in respect of privilege, ground for exemption or non disclosure or public interest immunity arising under common law or national legislation.

14. Each disputing party shall provide prompt written notice to the other disputing party of any request to disclose confidential information.

15. Any request to the Government of Canada for documents under the *Access to Information Act*, including documents produced to Canada in these proceedings, shall be subject to that Act.

16. Notice pursuant to this Order shall be provided to the Investor by sending notice by fax to the counsel of record for Merrill & Ring, while these proceedings are pending, (or to the General Counsel for the Investor, after the completion of the proceedings) and to the Government of Canada by fax to the Senior General Counsel of the Trade Law Bureau of the Department of Foreign Affairs and International Trade (or his or her successor or designate). Notice to a third party to whom the confidential information relates shall be sent by fax and/or registered mail.

17. No disputing party shall file any confidential material covered by this Order in any Court without first bringing this Order to the attention of the Court and seeking directions concerning the filing of such material in a manner that protects its confidentiality.

18. Notwithstanding any other provision in this Order, the disputing parties may make such disclosure of documents or information as is required by law, including disclosure pursuant to Articles 1127 and 1129 of the NAFTA.

19. For greater certainty, the Government of Canada shall be entitled to share confidential information with provincial or territorial governments to the extent necessary to defend this claim. Canada will notify any provincial or territorial government receiving confidential information of the terms of this Confidentiality Order. A provincial or territorial government receiving confidential information shall treat this information as if it were a disputing party under this Order.

20. Once information protected under this Order has been properly released to a member of the public pursuant to legal requirements, that information shall be deemed to be public and shall no longer be subject to the obligations of this Order.

PART IV. Conduct of Article 1118 Consultations

21. The disputing parties agree that this Order governs all aspects of this dispute, including any consultations or negotiations conducted pursuant to NAFTA Article 1118. This Order shall apply to the convening of the consultations, all correspondence related to the consultations and any post-consultations communications.

22. All statements made in connection with or during the consultations are confidential and privileged settlement discussions. All such statements are made without prejudice to either disputing party's legal position, and shall be inadmissible for any purpose in any legal proceeding. Any information disclosed by or on behalf of a disputing party shall be confidential and shall not constitute a waiver of any privilege. Any files or notes created or maintained by the disputing parties are solely for their own use and shall be destroyed following the termination of the consultations.

23. Either disputing party to this Order may obtain injunctive relief to prevent disclosure of any confidential information in violation of this Order.

PART V. Conduct of Proceedings and Public Disclosure of Documents

24. The hearings shall be open to the public except when necessary to protect confidential information. Where proceedings are held *in camera*, the Tribunal shall make appropriate orders respecting witness exclusion from the hearings.

25. Subject to terms of this Order, and any agreement between the disputing parties, the disputing parties agree that either disputing party shall be free to disclose to the public, including by posting on the internet, the following materials:

    > pleadings, and submissions of any disputing party or NAFTA Party, together with their appendices and attached exhibits, including the notice of intent, notice of arbitration, statement of claim, statement of defence, memorials, affidavits, responses to tribunal questions, transcripts of public hearings, and any awards, including procedural orders, rulings, preliminary and final awards.

    Any material disclosed to the public pursuant to this paragraph shall not contain any information designated by a disputing party as confidential.

26. Except as permitted by this Order, neither disputing party shall publicly disclose material produced by the other disputing party in the course of this dispute.

27. A disputing party has thirty (30) days from the date of notice by the other disputing party of its intent to publicly disclose the material referred to in this Order, to object to disclosure on the basis that it contains confidential information. Such material may not be released prior to the end of this period unless both disputing parties have

confirmed that they do not object to such release or agree on the redaction of the material containing confidential information.

28. Where counsel for either disputing party reasonably expect that information, whether documentary or oral, designated by a disputing party as confidential information shall be referred to during the course of any hearing held by the Tribunal, then such portion of the hearing as is reasonably necessary to protect that confidential information shall be conducted *in camera* and may only be attended by those persons designated in this Order.

29. The proceedings shall not be recorded in any way, except by a court reporter, and shall not be broadcast, unless the disputing parties jointly agree otherwise.

30. Transcripts of the proceedings containing any information designated by a disputing party as confidential information shall be redacted.

31. At the conclusion of these proceedings, all material produced hereunder, or otherwise submitted to the Tribunal, and any copy of those materials and any materials containing any confidential information, are to be returned to the disputing party who supplied the materials, together with certification that no duplicate has been retained. Returning material from the files of the Tribunal or the administering institution shall require the prior approval of the Tribunal.

32. This Order shall be effective and binding upon a disputing party upon the signature of the Order by the Tribunal.

Francisco Orrego Vicuña
On behalf of the Tribunal

Dated January 21, 2008

Signed by both parties in acknowledgement of and obligation to abide by this Order

Dated:_____ _____

The Government of Canada
Trade Law Bureau (JLT)
Lester B. Pearson Building
Tower C, Seventh Floor
125 Sussex Dr.
Ottawa, ON K1A 0G2

Dated:_____ _____

Appleton & Associates International Lawyers
816 Connecticut Avenue, Suite 1200
Washington, DC 20006

77 Bloor Street West, Suite 1800
Toronto, ON M5S 1M2

APPENDIX

CONFIDENTIALITY UNDERTAKING

TO: The Government of Canada (and its legal counsel); and Merrill & Ring Forestry L.P. ("Merrill & Ring") (and its legal counsel)

FROM:

1. IN CONSIDERATION of being provided with confidential information or Restricted Access Material in connection with an arbitration between Merrill & Ring and the Government of Canada, over which claims for confidentiality or restricted access has been advanced, I hereby agree to maintain the confidentiality of such material. It shall not be copied or disclosed to any other person who has not signed a Confidentiality Undertaking nor shall the material so obtained be used by me for any purposes other than in connection with this proceeding.

2. I am aware of the Tribunal's Confidentiality Order a copy of which is attached as Schedule "A" to this Undertaking, and agree to be bound by it.

3. I will promptly return any confidential information or restricted access materials received by me to the disputing party that provided me with such materials or the information recorded in those materials, at the conclusion of my involvement in these proceedings. All material containing information from confidential information or restricted access material will be destroyed.

4. I acknowledge and agree that either of the disputing parties to this arbitration is entitled to relief to restrain breaches of this Confidentiality Order, to enforce the terms and provisions hereof in addition to any other remedy to which any disputing party to this arbitration may be entitled at law or in equity.

5. I agree to submit to the jurisdiction of the courts of the Province of Ontario (in the case of residents of Canada) or the District of Columbia (in the case of residents of the United States of America) to resolve any disputes arising under the Order.

SIGNED, SEALED AND DELIVERED before a witness this ____ day of

_____, 200____.

_____	_____
(Print Name)	*(Print Witness Name)*
_____	_____
(Signature)	*(Witness Signature)*