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APPLETON & ASSOCIATES

INTERNATIONAL LAWYERS

Washington DC

Toronto

CONFIDENTIAL

**UNDER THE UNCITRAL ARBITRATION RULES AND
THE NORTH AMERICAN FREE TRADE AGREEMENT**

**INVESTOR'S REPLY
TO
CANADA'S POST-HEARING SUBMISSIONS
(DAMAGES PHASE)**

BETWEEN:

POPE & TALBOT, INC.

Claimant / Investor

- and -

GOVERNMENT OF CANADA

Respondent / Party

REPLY POST-HEARING SUBMISSION (DAMAGES PHASE)

PART ONE: INTRODUCTION

1. The Investor files this Reply pursuant to the Tribunal's Procedural Order of November 17, 2001 to reply to issues arising out of Canada's Post-Hearing Submission (Damages Phase).
2. The Investor does not intend to re-argue the Damages Hearing, but seeks to address specific issues addressed by Canada in its Post-Hearing Submissions (Damages Phase) that require further clarification and rebuttal. The Investor continues to rely on its previous written and oral submissions with respect to specific matters not addressed in this reply.
3. In particular, the Investor makes the following arguments:
 - a) Canada asserts that the claims of the Investor for compensation are based largely on "unsupported factual assertions and an untenable economic model". With respect, the Investor submits that its claim for damages is both reasonable and well supported by the evidence.
 - b) Canada is simply incorrect in its assertions regarding the effects of its unlawful Verification Review Episode upon the Investor and its Investments. The evidence is clear that the Verification Review Episode was causally linked to the Investor's decision to take down-time in December, 1999.
 - c) The economic model addressed by both valuation experts provides a sound basis for the Tribunal from which conclusions can be draw. Both experts were able to agree on a range of damage calculations using this model depending on different assumptions. Depending on the specific facts determined by this Tribunal's findings with regard to those specific factual assumptions, this model can be used to determine the quantum of damages.
 - d) Canada's position with respect to the legal and expert expenses is misleading. The evidence provided to this Tribunal clearly demonstrates that the experts retained by the Investor during the Verification Review Episode worked to assist the company to respond to this unlawful behaviour taken by Canada's officials.

PART TWO: ARGUMENT**Causation**

4. Despite the credible and uncontradicted evidence of Mr. Friesen, Canada continues to deny that the December 1999 shutdown was caused by the Verification Review Episode. Canada has taken the position that the Investor contends that the Verification Review Episode was the sole cause of the 1999 mill shutdowns¹. The Investor submits that the record could not be more clear that the proximate cause of Mr. Friesen's decision to take the December 1999 shutdown was the Verification Review Episode.

Methodological Differences

5. Canada's approach to the quantification of damages is not only misguided but it is simply incorrect. Canada claims that the Investor's incremental revenue loss valuation is an "untenable economic model".² Canada has not presented any evidence to refute this model and Canada's own expert witness, Mr. Harder, never provided any evidence to support the contention that a delay model itself could not be applied to these facts based on the assumptions made by Mr. Rosen. The disagreement concerning the model between the experts comes with regard to methodological issues such as:
- a. whether there is causation,
 - b. what prices to apply (Random Lengths or Pope & Talbot actual prices), or
 - c. when the appropriate cut-off date for the valuation should be.

The Investor has already made submissions on each of these issues in its written and oral submissions before this Tribunal and stands by these positions.

6. Canada did not advance any alternative economic model for valuation of these damages. The Investor submits that it should not be overlooked that Mr. Harder did not advocate an alternative means of valuing the loss incurred by Pope & Talbot with respect to the December 1999 shutdown.
7. Canada argues that there is no evidence that Pope & Talbot lost sales due to the December 1999 shutdown and that this translates into a conclusion that Pope & Talbot did not incur loss or injury.³ With respect, by focusing on lost sales, Canada simply

¹ Canada Post-Hearing Submission (Damages Phase) at para. 11.

² Canada Post-Hearing Submission (Damages Phase) at para. 3.

³ Canada Post-Hearing Submission (Damages Phase) at para. 27 - 29, 32, 36.

misses the point and confuses the matter. The crucial element of the Investor's argument is not that Pope & Talbot lost sales, but that the sales it did make were made by incrementally drawing down on inventory during a period of declining prices. This resulted in the incremental revenue loss (not loss of sales) that Pope & Talbot is claiming. Canada's focus on lost sales serves only to confuse the Investor's actual position on these issues. The Investor has been clear throughout the Damages Phase that its claim is for loss of incremental revenue and not lost sales.

8. Canada's own argument supports the Investor's submission that the quantification of this claim is about the loss of incremental revenue. Canada indicates that the Investment's softwood lumber inventory by January 2000 increased to pre-shutdown levels, and to levels higher than at the same time in the previous year⁴. The Tribunal has heard from Mr. Friesen that production is limited by the physical capability of the mills⁵. The only way that Pope & Talbot could have a larger inventory would be if the Investor realized lower sales in January 2000 or if it had manufactured a higher volume of production (a fact that Mr. Friesen confirmed did not occur). Thus, the only conclusion that this Tribunal can draw from Canada's observation is that sales were lower in January 2000, which represented the delay in production arising from the December 1999 mill shutdowns.

The Effect of the December Shutdown on March 2000

9. During the Damages Hearing, Arbitrator Belman raised a concern about the potential effects, if any, of the December 1999 shutdown on production in March 2000.⁶ Mr. Belman's question was answered in full by Mr. Friesen in his testimony. Canada has ignored the clear answers that were provided in Mr. Friesen's testimony.⁷
10. Mr. Friesen testified that Pope & Talbot likely would have run both during December 1999 and during the first quarter of 2000 without taking any significant downtime. He stated:

Yeah. And as it turned out, of course, in the record we actually did run [in the first quarter of 2000]. We didn't take downtime in that quarter, because prices were such that we could afford to pay the duty, and we actually ran. We could have run in December as well.⁸

⁴ Canada Post-Hearing Submission (Damages Phase) at para. 44.

⁵ Damages Hearing Transcript at 60.

⁶ Damages Hearing Transcript at 220.

⁷ Canada Post-Hearing Submission (Damages Phase) at paras. 22, 87-90.

⁸ Testimony of Abe Friesen, Damages Hearing Transcript at 78 - 79.

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11. Moreover, the downtime that they did in fact take in the first quarter of 2000 was limited to their smallest mill which had a high cost structure. On cross-examination by Mr. Evernden, Mr. Friesen stated:

Q: As I understand this material, you also announced and did shut down mills subsequent to December of 1999?

A: Yes, but the quarter in question, where we had been talking about where we were short 25 days or, arguably, 31 days with a quota loss, we did, in fact, run through that period. And the prices, in fact, at that time were identical, if not a little bit lower than at Christmas when we did take the downtime. So during that period we did run, and we paid the \$146 export duty during the first quarter 2000.

Q: So on February the 28th, 2000, you announce a -- Mr. Makortoff announces a shutdown beginning Monday, March 13th, 2000. That's a closing a mill?

A: I think we shut our Grand Forks mill down for two weeks. I think I mentioned in my June affidavit that we were right on what we call the bubble. And so our Grand Forks, our smallest mill, our highest cost structure, and because you're right on that bubble whether you could run or not run, we decided to take two weeks down at that mill. But all our other mills ran, and we paid the \$146 duty. So that should satisfy you that at Christmas we could have run and elected to pay the duty.⁹

12. The Investor submits that the best evidence on this concern is that of Mr. Friesen who has intimate knowledge of the Investment's operations and the criteria that was involved in making production decisions during the Export Control Regime.
13. Canada incorrectly states Mr. Rosen's position on the effect of the December 1999 shutdown decision with respect to the shutdown decisions in March 2000. Canada states "Mr. Rosen agreed that the Investment would have had to shut in March 2000 if it had not shut in December."¹⁰ Mr. Rosen did not take such a position. A closer reading of the transcripts demonstrates that Mr. Rosen took the exact opposite position. Mr. Rosen clearly confirmed that Pope & Talbot would have produced in March 2000 even if they had not taken the December 1999 downtime. Mr. Rosen testified as follows:

ARBITRATOR GREENBERG: That's why you're saying had they not shut for that period of seven days and continued, they would have had to have shut in March of 2001. That's by taking it forward to the end.

MR. ROSEN: Corrects. (Sic)

ARBITRATOR GREENBERG: Not March 2000, which would be the next speed bump.

MR. ROSEN: Sorry, March 2000.

ARBITRATOR GREENBERG: You keep telling me March 2001. I was wondering why. Had they not shut in December '99 and had that loss of production for seven days, they would have hit the speed bump seven days earlier than they otherwise did in March of 2000, which could have engendered a shutdown in March of 2000.

MR. ROSEN: If the pricing was such at that point.

⁹ Testimony of Abe Friesen, Damages Hearing Transcript at 95 - 96.

¹⁰ Canada Post-Hearing Submission (Damages Phase) at para. 20.

ARBITRATOR GREENBERG: All things being equal pricewise. What was the price in March 2000?

MR. ROSEN: *It was still 200. So they would have kept producing. They would have produced until the price would have been too low to produce. I think it was March of 2001.* It might have been as early as July 2000.

ARBITRATOR DERVAIRD: What you're saying is the critical point for measuring the production and whether or not it is economic to close down was the end of that quarter year.

MR. ROSEN: Yes.

ARBITRATOR DERVAIRD: Then what does it matter what the situation was at the end of the following quarter year, which is where you've allowed for the nonproduction? Surely the cut-off point then becomes the end of that quarter year, March 2000.

MR. ROSEN: *But they would have continued to produce in March 2000 because the price was sufficiently high.*

ARBITRATOR GREENBERG: Even hitting the speed bump and pay the full cost?

MR. ROSEN: Yes.¹¹

Mr. Rosen's position is in fact entirely consistent with the testimony of Mr. Friesen with respect to the issue of the hypothetical effect of not taking downtime in December 1999 on production in March 2000.¹² Canada's position, based on an incomplete citation from the hearing transcripts, leaves a misleading impression and should not be relied upon. Further, the speed bump would not have been an issue for the March 2000 production because March 2000 production would be sold thirty days later in April 2000, which would be in a new Export Control Regime quota year.

14. Canada argues that the Investor's claim for damages should be reduced by the amount of 10% to take into account sales Pope & Talbot could have made outside of the United States.¹³ In essence, Canada suggests that the investment should have shut down only 80% or 90% of their mills as a result of the Verification Review Episode rather than 100%. Canada's theory is flawed as it inherently assumes that a "portion" of a mill can be shut down. Mr. Friesen testified at the Damages hearing that it was impossible for the Investment to reduce its production by 10 or 20 percent rather than doing a full mill shutdown.¹⁴ Canada has presented no evidence to counter Mr. Friesen's evidence yet Canada maintains this unreasonable position. If the Tribunal accepts that the down time was a direct result of the Verification Review Episode, then all of the production from the down time period should be considered in the loss calculation.

¹¹ Testimony of Howard Rosen, Damages Hearing Transcript at 211 - 213. [emphasis added]

¹² Testimony of Abe Friesen, Damages Hearing Transcript at 95 - 96.

¹³ Canada Post-Hearing Submission at para. 72.

¹⁴ Damages Hearing Transcript at 60.

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15. Canada has made further submissions regarding the variables in the Joint Summary of Calculations prepared jointly by the valuation experts.¹⁵ The Investor's stands by its position as previously submitted to this Tribunal on these issues.

Damages – Out of Pocket Claims

16. Canada continues to understate the substantial legal and expert costs that the Investor was forced to underwrite as a result of its official's conduct during the Verification Review Episode. Canada maintains an unreasonable position that the Investor should only be compensated for legal expenses in the amount of \$24,031. Canada's position simply does not reflect the evidence presented to the Tribunal and should be rejected.
17. Canada argues that claims related to the services provided by Davis & Co. and APCO represent 'bald assertions' that have not been proven.¹⁶ The Investor submits that there is ample evidence on the record to demonstrate that Canada has overlooked the work that Davis & Co. and APCO completed with respect to the Verification Review Episode.
18. The detailed dockets produced by the Investor from Appleton & Associates International Lawyers provide contemporaneous and probative evidence of the specific activity provided by these professional service firms directly related to the Verification Review Episode. A review of the Appleton & Associates International Lawyers dockets provides evidence that counsel for Pope & Talbot engaged in numerous telephone conference calls with APCO consultants relating to the Verification Review Episode.¹⁷
19. The Appleton & Associates International Lawyers invoices for May and June 1999 contain a number of entries which demonstrate activity performed by APCO related to the Verification Review Episode. These include the following time entries for professional services rendered:

Docket entry 4/29/99 IL- telephone conference with APCO, T. Robson and B. Appleton re audit issue and PR/GR response.

Docket entry 5/4/99 IL - telephone conference with APCO (B. Campbell, T. Robson, A. Wright and Appleton re latest GR & PR issues in particular audit issues and GR action.

Docket entry 5/13/99 IL - telephone conference with A.Lane of APCO to update on GR issues re Clifford George call.

Docket entry 5/18/99 IL - follow up call with A. Lane APCO to discuss verification issues.

¹⁵ Exhibit DC-3. Canada Post-Hearing Submission at para. 64 - 71.

¹⁶ Canada Post-Hearing Submission at para. 119-125.

¹⁷ See Appleton & Associates International Lawyers, May 10, 1999 invoice submitted to Pope & Talbot for professional services rendered. Counsel BA - entry date 4/13/99.

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20. Despite the evidence on the record, Canada claims that it is unable to assess the invoices submitted by APCO. Such a position strains credulity. More specifically, the sense of urgency felt concerning the impact of review letter from Douglas George on the audit is documented in counsel's legal docket where Abe Friesen and Keith Mitchell at Davis & Co. and Barry Campbell of APCO, were all contacted to discuss "an emergency domestic legal matter" directly related to the Verification Review Episode.¹⁸
21. A similar situation occurred for Chris Hicks from Barnes & Thornberg. The Appleton & Associates International Lawyers invoices for May, June and July 1999 contain a number of entries which demonstrate activity performed by Chris Hicks related to the Verification Review Episode. These include the following time entries for professional services rendered:
- 5/19/99 BA - Telephone conference with Abe Friessen, Maria Pope and Mike Flannery authorizing Appleton & Associates to retain Chris Hicks to arrange a meeting with USTR in Washington on the audit Verification issue.;
 - 5/25/19/99 IL- telephone conference with Chris Hicks to discuss US GR issues;
 - 6/1/99 JB - Prepared packages on the case and the audit for Hicks, USTR and World Bank.
 - 6/18/99 BA -Telephone call with Chris Hicks on meetings with USTR and Office of Sen. Daschle.
 - 7/21/99 IL - Telephone call with Chris Hicks re US GR issues and discussion of verification review.

Accordingly, it is difficult to understand how Canada is unable to assess these costs in light of the material available on the documentary record.

22. In addition, a significant amount of legal and government relations work relating to the verification review was performed by the Davis & Co law firm. The Appleton & Associates International Lawyers invoices for May and June 1999 contains a number of entries which corroborate activity done by Davis & Co related to the Verification Review Episode. These include the following time entries for professional services rendered:
- Docket entry 5/4/99 IL -telephone conference with D. Crawford of Davis & Co. re George letter and contacts with Marchi's office.
 - Docket entry 5/13/99 IL - telephone conference with Brian Hiebert of Davis & Co; telephone conference with D. Crawford; pre-call with J. Clifford.
 - Docket entry 5/18/99 IL - telephone conferences re these GR issues with D. Crawford.
 - Docket entry 5/19/99 IL - telephone conference with D. Crawford re his discussion with Bill Ferreira of Minister's Marchi's office re verification review issue.

¹⁸ See Appleton & Associates International Lawyers, May 10, 1999 invoice submitted to Pope & Talbot for professional services rendered. Counsel BA - entry date 4/29/99.

Docket entry 5/26/99 IL - telephone conference with Dean Crawford re developments on the verification review matter- advised that DFAIT was consulting with Department of Justice on legal authority issues.

Docket entry 5/12/99 TW- participated in conference call and debriefing with B. Appleton and I. Laird with EICB officials, Davis & Co. re: verification audit.

23. Dean Crawford was directly engaged in discussions with the Canadian federal government with respect to the Verification Review Episode.¹⁹ In fact, the arrangement regarding the actual holding of the verification review took place through the efforts of counsel at Davis & Co and that the holding of the verification review itself took place at their offices.²⁰
24. Since much of the government relations activity took place directly with Canada, it is simply inaccurate for Canada to now suggest that it is unable to assess the government relations activity that took place by Davis & Co lawyers or by APCO relating to the Verification Review Episode. Simply Canada's assertions with respect to these experts is not credible as they directly contradict the documentary evidence on the record.
25. Canada submits that many of the invoices of Mr. Rosen's firm cannot be assessed totaling some \$37,310.85.²¹ Had Canada compared Mr. Rosen's invoices to the invoices of Appleton & Associates International Lawyers for the same time period, it would have been able to assess these time entries and agree that they were directly related to the Verification Review Episode. For example, in Mr. Rosen's Invoice No. 815, dated November 30,1999, Canada claims that is unable to access Mr. Rosen's time entry relating to a letter from Mr. Appleton and a message from Mr. Laird. Subsequent review of Mr Laird's time docket for the same day indicates that the subject of the conversation was the verification review.²²
26. The Investor submits that Canada has applied an overly rigid standard when it has characterized legal and expert costs as being within the "unable to assess" category. A review of the documentary evidence before this Tribunal indicates that Canada and this Tribunal have the material in their possession to be able to make proper assessments of these legal and expert costs. The Investor submits that this Tribunal must not accept Canada's submissions on the legal and expert cost issues as this improperly reduces the Investor's claim for damages.

¹⁹ See Appleton & Associates International Lawyers, May 10, 1999 invoice submitted to Pope & Talbot for professional services rendered. Counsel IL -entry date 5/19/99.

²⁰ See Appleton & Associates International Lawyers, July 30, 1999 invoice submitted to Pope & Talbot for professional services rendered. Counsel IL -entry date 7/14/99.

²¹ Canada Post-Hearing Submission (Damages Phase) at para. 108 - 110.

²² See Appleton & Associates International Lawyers dockets, December 1, 1999 Invoice, IL- November 30, 1999.

Burden of Proof

27. Canada maintains its argument that Pope & Talbot has not met its burden of proof on a balance of probabilities. The application of the standard of proof that Canada advocates for would surely result in little or no compensation to Pope & Talbot. Canada requires perfection again, just as Mr. George did during the Verification Review Episode. Perfection is not an appropriate legal standard for this Tribunal to apply in this claim. The Tribunal has the best evidence before it, and based on a proper application of the standard of proof, the Investor submits that the damages claimed are both appropriate and reasonable and should be awarded to the claimant.
28. Canada reargues for a higher standard of proof²³ by suggesting that there is no basis to conclude that the expenses claimed by the Investor were caused by the Verification Review Episode. Canada makes this argument in complete disregard of the findings of the Tribunal's *Award on the Merits of Phase 2* (the "*Award*"). This Tribunal has found that during the period from April 1999 to January 2000, the Investor incurred expenses (legal and otherwise) and had its business disrupted in relation to the Verification Review Episode.²⁴ The Investor is only required to show that, on the balance of probability, the expenses incurred resulted from the Verification Review Episode.
29. This Tribunal has already weighed the evidence and found conclusively that the Verification Review Episode caused harm to Pope & Talbot and that damages were incurred. The task of this Tribunal is one of applying a value to that harm based on the evidence before it. This is the essential task for any adjudicative body deliberating on damages issues.
30. Moreover, simply because Canada continues to argue that it is "unable to assess" many expenses²⁵ does not mean that this Tribunal is incapable of assessing those expenses or is unable to apply the proper standard of proof. As demonstrated with Canada's position concerning legal expenses, Canada's sense of what should be included or not falls well outside the reasonable standard of assessing the evidence on a balance of probability standard. The Investor submits that the best evidence has been submitted to the Tribunal from which the Tribunal may determine, on a balance of probabilities, the quantum of damages.

²³ Canada Post-Hearing Submission at para. 138.

²⁴ In the *Award* at para. 181, the Tribunal enumerated the harm incurred by Pope & Talbot for which it is to be compensated, including: "being required to incur unnecessary expense and disruption in meeting SLD's requests for information; and being forced to expend legal fees."

²⁵ Canada Post-Hearing Submission at para. 144.

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31. In a challenge of Mr. Rosen's credibility, Canada restates its argument²⁶ that Mr. Harder had to "correct basic methodological errors" in the model submitted by the Investor. It bears noting that these "errors" Canada addresses in its attempts to discredit Mr. Rosen, such as what prices to apply or the appropriate cut-off date, are legitimate differences of expert opinion, not "errors" as Canada repeatedly has characterized them.
32. As admitted by Canada,²⁷ Mr. Harder also made mathematical errors which had to be corrected by Mr. Rosen. Once the experts were finally permitted to meet, as instructed by the Tribunal without the presence of counsel or clients, Mr. Harder and Mr. Rosen were able to clarify calculation issues in short order and address any mathematical problems. The result of this meeting was the Joint Summary of Calculations which was presented to the Tribunal as Exhibit "DC-3".
33. In its submission, Canada again restates the argument that the Investor "failed or refused to produce evidence of its claim, although it had a capacity to do so."²⁸ The Investor is fully prepared to also make submissions on cost matters, but submits that Canada's arguments on these matters are neither correct nor appropriately made at this time. The fact remains that the Investor provided all relevant documents requested of it by Canada and finds the characterizations made by Canada in its Post-Hearing Submission to be misleading and inflammatory.

NAFTA Article 1116

34. In response to Canada's arguments regarding the proper application of NAFTA Article 1116, the Investor continues to rely on its previous submissions in the Investor's Reply Memorial (Damages),²⁹ and its closing arguments at the Damages Hearing.³⁰ The Investor submits that Canada's novel theory simply does not accord with the plain meaning of NAFTA Articles 1116, 1117 and 1105.
35. In its defence of the Investor's position that Canada is estopped from making this jurisdictional argument at this late date, Canada states that it was "unable to raise this issue at an earlier stage."³¹ Regardless of the facts presented during this Damages Phase of the arbitration, this argument was available to Canada at the time it filed its Statement

²⁶ Canada Post-Hearing Submission at para. 135.

²⁷ Canada Post-Hearing Submission at para. 136.

²⁸ Canada Post-Hearing Submission at paras. 142, 155.

²⁹ Canada Post-Hearing Submission at para. 50-57.

³⁰ Damages Hearings Transcript at 466-473.

³¹ Canada Post-Hearing Submission at para. 153.

of Defence. It did not present this argument at that time and Canada has now waived its right to make such an argument to this Tribunal.

36. Moreover, as counsel for Canada noted in his closing submissions on this issue, this question relates to a plain meaning interpretation of the architecture of the NAFTA in light of its objects and purpose.³² Canada's argument relies on the simple, but manifestly incorrect, contention that a NAFTA Article 1105 claim cannot be brought under NAFTA Article 1116. In Canada's submission, NAFTA Article 1105 could only be brought in a claim made under NAFTA Article 1117. Since NAFTA Article 1117 is restricted in its terms to claims made on "behalf of an enterprise of another Party", rather than an "investment" as defined in NAFTA Article 1139, the result of Canada's position would be an manifestly absurd construction that would eliminate whole categories of claims respecting those "investments" (as defined by the NAFTA's extensive definition) that are not "enterprises". This would dramatically reduce the scope of NAFTA Chapter 11 and render most claims for investments under NAFTA Article 1139 impossible.
37. NAFTA Article 1116 provides that an Investor may submit a claim to arbitration if that Investor has suffered a loss arising out of the imposition of a measure that breaches a provision contained within Section A of Chapter 11. NAFTA Article 1105 is one such provision. If the NAFTA Parties had only intended Investors to be able to make a claim for losses suffered "as Investors" – which would dramatically narrow the scope of investment protection under the NAFTA – they would have specified that Article 1116 claims could only be made in relation to breaches of NAFTA Articles 1102 to 1104, which specifically refer to treatment of Investors.
38. Canada's argument also ignores simple business logic. The Investment is a wholly-owned enterprise of the Investor. As Arbitrator Belman noted in cases where a wholly-owned Investment is harmed by a measure that breaches the standard of treatment owed to that investment, the loss is also incurred directly by the investor:

But where you have a situation where there's a direct cost, let's say Canada goes in and blows up one of the buildings. It costs so much to pay to get it repaired and lost sales and everything else. That's a direct harm to the investment, but in the case of a wholly owned investment, all of those numbers just go right into the investor's financial statements.³³

³² Damages Hearings Transcript at 477

³³ Damages Hearing Transcript at 492.

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39. Finally, as Lord Devaird noted, Canada's argument renders the waiver requirements in Article 1121(1)(b) superfluous.³⁴ There would be no need to file a waiver to prevent an investment from bringing domestic legal action to recover losses it suffered arising out of a breach of a provision such as NAFTA Article 1105(1), if NAFTA Article 1116 did not contemplate recovery of such losses by the Investor.
40. Canada's arguments are contradictory to the objects and purpose of the NAFTA. Accordingly, the Investor submits that Canada's arguments with respect to NAFTA Articles 1116 and 1117 must be rejected by this Tribunal.

All of which is respectfully submitted.

Submitted this 21st day of December, 2001



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for Appleton & Associates International Lawyers
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³⁴ Damages Hearing Transcript at 489.