

**NOTICE OF INTENT TO SUBMIT A CLAIM TO ARBITRATION UNDER
CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE AGREEMENT**

RESOLUTE FOREST PRODUCTS INC.,

Claimant/Investor,

v.

GOVERNMENT OF CANADA,

Respondent/Party

Pursuant to Articles 1116, 1117 and 1119 of the North American Free Trade Agreement ("NAFTA"), and with a view toward resolving this dispute amicably, the disputing Investor, Resolute Forest Products Inc. ("Resolute"), respectfully serves this Notice of Intent to Submit a Claim to Arbitration for breach by the Government of Canada ("Canada"), especially (but not exclusively) through the actions of the provincial Government of Nova Scotia ("Nova Scotia"), of its obligations under NAFTA, Chapter Eleven. Resolute requests formal consultations and negotiations, as contemplated by NAFTA Article 1118. Such consultations would continue Resolute's proactive outreach to Canada to address and resolve all issues relating to its Canadian assets and NAFTA investment rights.

I. TYPE OF CLAIM

1. Resolute submits this Notice of Intent under both NAFTA Article 1116 as an investor on its own behalf, and under NAFTA 1117 on behalf of Resolute FP Canada Inc. ("Resolute FP Canada"), a Canadian enterprise that Resolute directly owns and controls.

II. NAME AND ADDRESS OF THE DISPUTING INVESTOR

2. The disputing investor, Resolute, is incorporated in the State of Delaware, United States of America, and thus is an investor of a NAFTA Party pursuant to NAFTA Article 1139. Its registered address is as follows:

Resolute Forest Products Inc.
1209 Orange Street
Wilmington, Delaware 19801
United States of America
Phone: 302-658-7581
Fax: 302-655-2480

III. CLAIM BY AN INVESTOR OF A PARTY ON BEHALF OF AN ENTERPRISE

3. Resolute owns and controls Resolute FP Canada Inc., a Canadian incorporated enterprise whose rights have been affected directly by acts for which Canada is responsible under NAFTA. Resolute FP Canada Inc.'s registered address is:

Resolute FP Canada Inc.
111 Duke Street, Suite 5000
Montréal, Québec H3C 2M1 Canada
Phone: 514 875-2160 or 1 800 361-2888

IV. TYPE OF INVESTMENT

4. This dispute involves the following types of investments, within the meaning of "investment" defined in NAFTA Article 1139:

- an enterprise;
- an equity security of an enterprise;
- an interest in an enterprise that entitles the owner to share in income or profits of the enterprise;
- an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution, other than a debt security or loan;
- real estate or 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 or other resources in the territory of a Party to economic activity in such territory, such as under (i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or (ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise.

V. LEGAL REPRESENTATIVES AND SERVICE OF DOCUMENTS:

5. The following are duly empowered to act on behalf of Resolute in this matter, and correspondence should be served upon them at the addresses listed below:

BAKER HOSTETLER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
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VI. PROVISIONS OF NAFTA CHAPTER ELEVEN BREACHED

6. Canada, through its own actions and the actions of its constituent political subdivision, Nova Scotia, for which it is responsible under NAFTA, has breached its obligations under Section A of Chapter Eleven of NAFTA, including but not limited to Article 1102 (National Treatment); Article 1105 (Minimum Standard of Treatment); and Article 1110 (Expropriation and Compensation).

VII. FACTUAL BASIS FOR THE CLAIM

7. This claim arises out of measures taken by Nova Scotia and Canada that have damaged Resolute and its investments in Canada, including the complete deprivation of Resolute's Laurentide paper mill in Shawinigan, Québec, in violation of the investment protections extended to foreign investors under NAFTA Articles 1102, 1105 and 1110. Canada is responsible for Nova Scotia's acts under NAFTA and applicable principles of international law.

A. Resolute's Background in SC Paper

8. Resolute is incorporated under the laws of the State of Delaware, U.S.A., and was created in 2007 through the merging of two forest products companies, one

a Canadian company (Abitibi-Consolidated Inc.), the other a U.S. company (Bowater Inc.).

9. Resolute is an integrated forest products company that manufactures and markets a diverse range of wood and paper products, including a product known as supercalendered paper, or “SC paper.” SC paper is made thin and smooth from being pressed between rollers, or “calenderers,” and is sold for commercial printing in magazines, catalogs, directories, and newspaper inserts.
10. Resolute owns subsidiary enterprises and plant facilities in Canada that produce SC paper. Resolute owns Resolute FP Canada, which owns three Canadian SC paper mills:
 - the Dolbeau mill located in Dolbeau-Mistassini, Québec;
 - the Kénogami mill located in Jonquière, Québec; and
 - the now-defunct Laurentide mill, which was located in Shawinigan, Québec.
11. The Laurentide SC paper mill was shut down in October 2014 as a consequence of the Nova Scotia measures at issue here and Canada’s failure to address or otherwise offset the unfair competition from Nova Scotia’s direct market intervention.

B. Nova Scotia’s Intervention In The SC Paper Market

12. This dispute arises from measures taken by Nova Scotia to resurrect a nearly bankrupt paper mill located in a rural community near the town of Port Hawkesbury in Nova Scotia, Canada, and measures taken by the Canadian federal government in defense and support of the harmful, discriminatory effects of Nova Scotia’s conduct.

13. In 2007, NewPage Corporation, a U.S. paper company, acquired the Port Hawkesbury paper mill, which produced newsprint and SC paper. Over time, NewPage Corporation found that the Port Hawkesbury paper mill was unable to operate as a viable business due to high operating and transportation costs. The mill was losing over C\$4 million per month by August 2011¹ when NewPage announced that it would be shutting down the mill indefinitely.²
14. Resolute was approached in June 2011 by an investment bank, on behalf of NewPage, to consider purchasing the Port Hawkesbury operations. Resolute concluded that operating and transportation costs would make it economically impossible. Resolute was never offered financial assistance to make a purchase more attractive.
15. On September 6, 2011, NewPage Port Hawkesbury ("NPPH"), the wholly-owned subsidiary of NewPage Corporation that operated the mill, commenced proceedings seeking creditor protection under the Companies' Creditor Arrangement Act of Canada ("CCAA Proceedings") with the objective of securing a going concern sale of NPPH. The Supreme Court of Nova Scotia appointed Ernst & Young as the Monitor to oversee the sale.
16. NPPH had incurred over \$50 million in operating losses for the twelve months preceding the mill's closure.

¹ "Paper Plant Turns Profit Page," Aaron Beswick, *The Chronicle Herald*, Aug. 26, 2013, available at <http://thechronicleherald.ca/business/1150074-paper-plant-turns-profit-page> (last visited September 29, 2015).

² "Paper Mill Sale Finalized," Canadian Press, *The Chronicle Herald*, Sep. 28, 2012, available at <http://thechronicleherald.ca/business/141140-paper-mill-sale-finalized> (last visited September 29, 2015).

17. Nova Scotia was determined to find a new buyer to operate the Port Hawkesbury mill despite the fact that the operation plainly was not viable. The Premier of Nova Scotia, Darrell Dexter, said, "The province has already reached out to potential buyers and will now aggressively work with our partners to attract a new buyer as quickly as possible."³
18. The court-appointed Monitor contacted one hundred ten interested parties about the acquisition of the Port Hawkesbury mill and received eight offers to purchase the company's assets. Four of the eight offerors were invited to continue with the bidding. Bids were submitted in December 2011. Two companies offered to continue Port Hawkesbury as a going concern, while the other two companies proposed liquidation.
19. Vancouver-based Pacific West Commercial Corporation ("PWCC") was chosen on January 4, 2012 by the Monitor over another pulp and paper producer and two scrap dealers as a suitable purchaser for the Port Hawkesbury mill. Nova Scotia negotiated with PWCC to offer various financial incentives for the company to acquire, revive and operate the mill's SC paper line.
20. PWCC made the implementation of the sale contingent upon a wide range of conditions designed to provide the Port Hawkesbury mill with ongoing competitive advantages in the SC paper market. Negotiations between Nova Scotia and PWCC pertaining to the financial incentives that PWCC demanded to

³ "NewPage Port Hawkesbury Mill To Be Sold," CBC News, Sept. 7 2011, available at <http://www.cbc.ca/news/canada/nova-scotia/newpage-port-hawkesbury-mill-to-be-sold-1.1004828> (last visited September 29, 2015).

acquire, revive and operate the mill's SC paper line carried on for more than six months.

21. Nova Scotia decided to pay for maintaining the Port Hawkesbury mill in a "hot idle" condition during CCAA proceedings in order to make it attractive for PWCC. The high costs of operating the Port Hawkesbury mill, however, meant that it would take more than the government's baseline maintenance to render the mill viable for purchase. The Monitor observed that Nova Scotia's "hot idle" funding was an exceptional measure that would enable the completion of a going concern sale to PWCC "on inexpensive commercial terms;" stated that it was "unaware of any other lender" that would provide similar financing; and that it could not anticipate that "any more favorable terms could be achieved with any other lender."
22. PWCC required Nova Scotia to assure, among other things, that the Port Hawkesbury mill would "be the lowest cost operator in North America."⁴ PWCC threatened that "if the 7.5-year load-retention [electricity] rate was not approved it would abandon its \$33-million purchase of the shuttered {Port Hawkesbury} paper mill."⁵
23. By September 2012, Nova Scotia had given in to various demands made by PWCC in the negotiations and provided no less than \$124.5 million in

⁴ "UARB Approves Paper Mill Power Deal," Nancy King, Cape Breton Post, Aug. 20, 2012, available at <http://www.capebretonpost.com/News/Local/2012-08-20/article-3056733/UARB-approves-paper-mill-power-deal/1> (last visited September 29, 2015).

⁵ "UARB Approves Paper Mill Power Deal," *supra*, note 4.

government measures, including cash to purchase land, reduced electricity rates and property tax.⁶

24. News reports captured the extent of Nova Scotia's aid package:

The Nova Scotia government poured \$36.8 million into keeping the mill in a hot idle state and supporting the local forest products sector while NewPage Port Hawkesbury was closed. It also promised a financial aid package to the new owners that included: a \$24-million loan to improve productivity and efficiency, a \$40-million repayable loan for working capital, \$1.5 million to train workers, \$20 million to buy 51,500 acres of land, and \$3.8 million annually, for 10 years, from the forestry restructuring fund to support sustainable harvesting and forest land management.⁷

25. The loans for working capital and to improve productivity were eligible to be forgiven by the province.
26. PWCC made so many requests for assistance, that the Monitor noted "its concern regarding the ongoing conditionality of the [sale]." Nova Scotia accommodated most of them, providing grants, loans, cash to purchase land, reduced electricity rates and property taxes, among other financial contributions and measures, and thus lowered the production costs for Port Hawkesbury relative to those of Resolute's SC paper mills.
27. These measures were designed to vault Port Hawkesbury Paper to the front of the SC paper industry, competing directly with Resolute for sales of SC paper in the same markets: Canada, the United States, and elsewhere.
28. Having secured the measures that it had demanded, PWCC closed the transaction. By way of a Plan of Arrangement concluded under the CCAA

⁶ "Paper Plant Turns Profit Page," *supra* note 1.

⁷ "Nova Scotia Mill Restarts As Port Hawkesbury Paper," Pulp & Paper Canada, Dec. 1, 2012, available at <http://www.pulpandpapercanada.com/news/nova-scotia-mill-restarts-as-port-hawkesbury-paper/1001952406/> (last visited September 29, 2015). The figures reported were in Canadian dollars.

Proceedings, the purchase of NPPH by investors of PWCC became effective on September 28, 2012. PWCC paid C\$33 million, less than the C\$36.8 million that Nova Scotia spent in its effort to keep the mill in a “hot idle” state and support the local forest products sector for nearly a year, and far less than the \$124.5 million that the government committed going forward.⁸ NPPH became a subsidiary of PWCC and was renamed Port Hawkesbury Paper, LP (“Port Hawkesbury Paper”).

29. Nova Scotia Premier Darrell Dexter said, “This government has worked for a year now to restart that mill We didn't do this because it was popular — we did it because it was the right thing to do.”⁹ PWCC CEO Ron Stern explained, “It happened because people on both sides of the table recognized that it was too important to let it fail.”¹⁰
30. Nova Scotia committed to applying its resources to resurrect the Port Hawkesbury mill and endowing it with a premium, competitive advantage over Resolute and the other producers in the SC paper market. Nova Scotia Premier Darrell Dexter stated: “Pacific West is well-positioned to be the most competitive and best supercalendered paper mill in the world.” He added that “[t]he mill has

⁸ “Former NewPage Port Hawkesbury paper mill in Nova Scotia sold to Vancouver firm,” Cumberland News Now, Sept. 28, 2012, available at <http://www.cumberlandnewsnow.com/Canada-World/News/2012-09-28/article-3086046/Former-NewPage-Port-Hawkesbury-paper-mill-in-Nova-Scotia-sold-to-Vancouver-firm/1> (last visited September 29, 2015).

⁹ “Nova Scotia Paper Mill Revived in 11th-Hour Twist,” CBC News, Sept. 22, 2012, available at <http://www.cbc.ca/news/canada/nova-scotia/nova-scotia-paper-mill-revived-in-11th-hour-twist-1.1148136> (last visited September 29, 2015).

¹⁰ “Nova Scotia Paper Mill Revived in 11th-Hour Twist,” *supra* note 9.

the most modern machine in North America and we're helping position it to take advantage of this and become a leader."¹¹

31. PWCC CEO Ron Stern stated, "We're hoping that there is going to be a bottom in the declining use of paper and that we will be, hopefully, the most competitive mill. We will certainly be the highest quality. Our goal is to be the lowest cost mill."¹²

C. Harm To Resolute From The Nova Scotia Measures

32. Resolute competes directly with Port Hawkesbury Paper as one of only four producers in Canada (and one of only six in Canada and the United States combined) for sales in a highly competitive market that is shrinking as a consequence of the shift to electronic and new media.
33. The unforeseen and unforeseeable introduction into the Canadian market of an SC paper mill bankrolled by public funds to become "the lowest cost operator in North America" has had a devastating impact on the viability and competitiveness of Resolute's three SC paper mills in Canada. Nova Scotia's financial assistance lowered the production costs for the Port Hawkesbury mill relative to Resolute's SC paper mills.

¹¹ "Mill Gets Millions in N.S. Cash," Brett Bundale Business Reporter, The Chronicle Herald, August 20, 2012. <http://thechronicleherald.ca/novascotia/128302-mill-gets-millions-in-ns-cash> (last visited September 29, 2015).

¹² "Nova Scotia Paper Mill Revived in 11th-Hour Twist," *supra* note 9.

34. Nova Scotia's measures openly threatened Resolute and other SC paper producers because the resurrection of the Port Hawkesbury mill would put downward pressure on prices and "push higher-cost operators out of business."¹³
35. The substantial production capacity added to a market of declining demand did create downward pressure on the pricing of Resolute's SC paper and has led to losses of sales orders for Resolute. Nova Scotia provided the means for Port Hawkesbury's SC paper to be sold at prices lower than Resolute's prices.
36. The Port Hawkesbury Paper mill restarted in the fourth quarter of 2012. Port Hawkesbury Paper began to sell its high-quality SC paper at prices that undercut its competitors. Port Hawkesbury Paper began to take market share from Resolute and Resolute FP Canada in 2013.
37. The artificially revitalized Port Hawkesbury Paper mill has a production capacity of 360,000 tonnes of paper—nearly double the 190,000 tonne capacity of Resolute's now defunct Laurentide mill.
38. Port Hawkesbury Paper spokesman Marc Dubé wrote that, "The support Nova Scotia and the Strait area have shown for the mill and its employees is unparalleled. From the start, we've said that to be successful, competitive, and in this for the long term, we need to make sure all our costs are the lowest, and we are on the path to achieving this."¹⁴

¹³ "Plant Restart Could Topple Competitors," Brett Bundale Business Reporter, The Chronicle Herald, Aug. 21, 2012, available at <http://thechronicleherald.ca/business/128645-plant-restart-could-topple-competitors> (last visited September 29, 2015).

¹⁴ "Full Steam Ahead for Paper Mill," Marc Dube, The Chronicle Herald, Dec. 6, 2012, available at <http://thechronicleherald.ca/opinion/222523-full-steam-ahead-for-paper-mill> (last visited September 29, 2015).

39. The measures taken by Nova Scotia have inflicted damages on Resolute FP Canada's SC paper mills. Resolute was forced to close its Laurentide mill permanently in October 2014 due principally to the added production capacity of Port Hawkesbury, which has driven prices down while producing at lower costs because of the measures taken by Nova Scotia. The closure of Resolute's Laurentide mill cost 275 people their jobs in Shawinigan, Québec. Nova Scotia's targeted support of Port Hawkesbury Paper has distorted the SC paper market and destroyed Resolute FP Canada's investment in the Laurentide mill.
40. Following the closure of Resolute's Laurentide mill, and the removal of its production capacity from the SC paper market in October 2014, Port Hawkesbury raised its prices. Mr. Dubé "confirmed that the closure of these other mills had allowed Port Hawkesbury Paper to raise its prices and relieve some cost pressure."¹⁵
41. In addition to Resolute's loss of its Laurentide mill, Resolute's investments in its Kénogami and Dolbeau mills have been harmed and are at risk of suffering the same fate as Laurentide. Resolute has lost thousands of tonnes of SC paper sales orders from catalog producers and major retailers, or has been forced to renegotiate purchase orders at discounted prices, all as consequences of the government-funded and fueled resurrection of the Port Hawkesbury mill.

¹⁵ "Brighton: Mill Should Shoulder Power Costs," Rachel Brighton, The Chronicle Herald, Oct. 17, 2014, available at <http://thechronicleherald.ca/business/1244574-brighton-mill-should-shoulder-power-costs> (last visited September 29, 2015).

D. U.S. Countervailing Duty Investigation – Canada Adding Injury To Injury

42. U.S. SC paper producers Verso Paper Corporation and New Page Corporation—the same company that failed to make the Port Hawkesbury paper mill profitable—similarly feeling downward pricing pressure and unfair competition from Nova Scotia's market intervention, prepared to submit a petition to the United States Government seeking the imposition of countervailing duties to offset the unfair Port Hawkesbury advantages.
43. These U.S. companies, producing S.C. paper in the United States, began raising objections in 2013 to their representatives in Congress and in the U.S. Government administration about Port Hawkesbury's unfair competitive advantage provided by Nova Scotia's assistance. Resolute warned officials in the Canadian Embassy in Washington, D.C. as early as July 2014 that a United States-led countervailing duty investigation into Canadian exports of SC paper was on the horizon.
44. The nature of the U.S. countervailing duty law requires that the investigation be brought against all SC paper producers in Canada. Hence, notwithstanding that Resolute's SC paper mills had not received assistance from any government authorities, Resolute was compelled to participate in the expensive and burdensome U.S. countervailing duty investigation to defend itself against the allegations aimed at Port Hawkesbury Paper. The same was true for the other Canadian SC paper producers, Irving Paper in New Brunswick and Catalyst Paper in British Columbia.

45. The countervailing duty investigation posed a risk that Resolute, notwithstanding its innocence, might be subjected to duties that would further harm Resolute's SC paper business.
46. Officials in the Canadian Embassy in Washington D.C. did not respond to warnings from Resolute in July 2014 with any proposals to spare Resolute from the harmful consequences of the Nova Scotia measures.
47. Resolute warned Canadian Embassy officials again in August 2014 and asked for copies of Canada's written submissions to the WTO Subsidies and Countervailing Measures Committee on Port Hawkesbury in order to prepare for a probable investigation and understand Canada's position on the Nova Scotia assistance. Canada declined to provide these documents in response to Resolute's request.
48. Resolute again raised warnings of the probable U.S. Government investigation to the same Canadian Embassy officials in October 2014, who apologized for the delay and promised to "follow up with Ottawa." Despite the apology and promise, Canadian officials continually ignored Resolute's requests.
49. Resolute wrote to Canadian Minister of International Trade Ed Fast in October 2014 raising concerns about the effects of Port Hawkesbury's unfair advantages on Resolute's investments in the SC paper industry and the additional problem of the probable U.S. investigation. Resolute also met with outside U.S. counsel for Canada to discuss the threat of a U.S. trade remedy case and to request again documents pertaining to Canada's representations to the United States and

European Union through the WTO regarding Nova Scotia's assistance to Port Hawkesbury Paper.

50. Throughout these and subsequent meetings in December 2014, January 2015 and February 2015, Resolute expressed its concern about (1) Nova Scotia's bestowal of an unfair competitive advantage on Port Hawkesbury Paper that harmed and continued to harm Resolute; (2) Nova Scotia's actions contravening Canada's commitments and protections to foreign investors under NAFTA Chapter 11; and (3) the risk of an imminent U.S. trade remedy action were Canada to remain passive about the Port Hawkesbury Paper problem. Resolute asked to know the position that Canada had communicated to the WTO and the United States on Nova Scotia's assistance to Port Hawkesbury Paper. In all of these communications, Canadian officials were only superficially responsive.
51. Minister Fast wrote to Resolute on February 6, 2015, claiming "limited scope to intervene" because the measures "are wholly under the purview of the Government of Nova Scotia." He added that Canada, in coordination with Nova Scotia, "has responded to questions from the U.S. Government concerning the Port Hawkesbury paper mill during meetings of the World Trade Organization (WTO) Committee on Subsidies and Countervailing Measures in 2013" and added that "[t]he minutes for this meeting are publicly available on the WTO website."
52. The minutes for the WTO meeting, however, did not include Canada's responses to the U.S. Government's questions and Minister Fast did not provide copies of Canada's official response then, nor in response to subsequent requests.

53. Resolute's CEO, Richard Garneau, met with Minister Fast late on February 24, 2015 to discuss Resolute's concerns. During the meeting, M. Garneau informed Minister Fast that he believed the Nova Scotia measures to constitute a breach of Canada's obligations under NAFTA Chapter 11, and requested that Canada take steps to rectify the problem before the United States might decide to initiate a countervailing duty investigation. Minister Fast did not agree with Resolute's assessment, nor did he agree to take any remedial action. Within a week of that meeting, the U.S. Government initiated its investigation of SC paper from Canada, just as Resolute had predicted and warned for nearly eight months.
54. Canada began working on a defense of the U.S. allegations for the three Canadian companies — Port Hawkesbury, Irving Paper and Catalyst Paper — and entered into a Joint Defense agreement with those companies for that purpose.
55. Canada informed Resolute in March 2015 that it would not enter into a Joint Defense agreement with Resolute in the U.S. investigation because Resolute had advised of a possible intention to file a NAFTA Chapter 11 claim against Canada over the Nova Scotia support for Port Hawkesbury.
56. Hence, Canada proceeded to develop defensive strategies in the U.S. case, meeting with counsel for all producers in Canada except Resolute, the sole U.S.-based SC paper producer in Canada, as a consequence of Resolute privately and discreetly raising concerns about Canada's protection of Resolute's foreign investment under NAFTA Chapter 11.

57. Canada had prepared an initial consultations paper for submission to the U.S. Government providing reasons why the companies producing SC paper in Canada should not be subjected to the investigation, but Canada would not share its draft of this paper with Resolute for comment on the arguments and structure, treating Resolute as an adversary due to the potential that Resolute would submit these issues to arbitration under NAFTA Chapter 11.
58. Resolute submitted an Access to Information request to Canada in April 2015 for Canada's submissions to its WTO partners about Port Hawkesbury. After several months passed, Canadian officials reported that the documents did not exist, notwithstanding Minister Fast's representations, statements by USTR, and the WTO Committee's documentation of the existence of the answers in its minutes.
59. Resolute requested copies of the Canadian responses to the United States on Port Hawkesbury from the Office of the U.S. Trade Representative ("USTR"). USTR provided Resolute with copies of its questions to Canada in April 2015 and would have provided the Canadian responses. USTR reported, however, that Canadian officials had objected to providing that information to Resolute.
60. Canadian officials responsible for answering Resolute's Access to Information Request have stalled and refused to acknowledge the existence of Canada's WTO submission, notwithstanding the contrary acknowledgements of Minister Fast, USTR and the WTO.
61. Meanwhile, in the United States' SC paper investigation, Catalyst and Irving Paper, with whom Canada was cooperating in presenting a joint defense, met

with multiple U.S. government officials and sought their assistance to make special pleadings to the U.S. Department of Commerce on their behalf, always to Resolute's detriment. Prominent among these communications was a May 2015 letter that the two Canadian companies procured from the Governor of Maine to the U.S. Secretary of Commerce, alleging that countervailing duties likely should be imposed on Resolute at the rate of 5%, and that Catalyst and Irving Paper should receive their own special rates so they would not need to be subject to the countervailing duty rates that they hypothesized for Resolute and Port Hawkesbury in the U.S. investigation.

62. Repeatedly, throughout the U.S. investigation, Canadian officials, including the Ambassador and Cabinet Ministers, contacted, communicated with, and met with U.S. officials, including the Secretary of Commerce, pleading on behalf of the Canadian companies to Resolute's detriment.
63. On August 18, 2015, Canada's Ambassador to the United States wrote to the U.S. Secretary of Commerce in which he made special pleadings with respect to the outcome of the United States' SC paper investigation on behalf of each of the Canadian companies to the exclusion of Resolute.
64. The Ambassador particularly defended Port Hawkesbury Paper, arguing that Nova Scotia did not provide the company preferential treatment for its electricity rates, and that other benefits from the province were extinguished through the Canadian bankruptcy proceedings.

65. Canada gave Resolute no advance notice of the letter, nor did it make any attempt to include Resolute in any of the Ambassador's arguments against the unfair trade claims.
66. Canada's treatment of Resolute in the U.S. SC paper investigation has been discriminatory and retaliatory as a consequence of Resolute indicating it might exercise its rights and protect its Canadian investments under Chapter 11.

VIII. ISSUES PRESENTING VIOLATIONS OF NAFTA CHAPTER ELEVEN

67. Canada is responsible for the measures taken by Nova Scotia that are inconsistent with Canada's commitments under NAFTA Chapter 11, as well as its own measures defending and protecting Nova Scotia and Port Hawkesbury to Resolute's exclusion and detriment.
68. Resolute is an investor of a Party as defined in NAFTA Chapter 11 and has incurred damage to its investments in the SC paper industry in Canada by reason of Canada's breach of NAFTA Articles 1102 (National Treatment), 1105 (Minimum Standard of Treatment) and 1110 (Expropriation and Compensation).
69. Resolute must be compensated for Canada's failure to comply with its NAFTA Chapter 11 obligations as described below.

A. Breach Of Article 1110 – Expropriation And Compensation.

70. NAFTA Article 1110 prohibits Canada from directly or indirectly expropriating the investments of a U.S. company in its territory, except (a) for a public purpose; (b) on a non-discriminatory basis; (c) in accordance with due process of law and the minimum standard of treatment under international law; and (d) on payment of compensation:

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.

71. Canada has violated its obligations under NAFTA Article 1110. The measures taken by Nova Scotia to favor Port Hawkesbury Paper over its competitors are tantamount to an unlawful expropriation of Resolute's Laurentide SC paper mill. Nova Scotia has disrupted the market to such an extent that it has neutralized permanently Resolute's investment in the Laurentide mill for the benefit of its champion, Port Hawkesbury Paper.

72. Nova Scotia adopted the measures described above even though it knew or should have known that the resurrection of the Port Hawkesbury mill was likely to push some of Resolute's SC paper mills out of business. By these measures, Nova Scotia destroyed the value of Resolute's Laurentide mill.

73. Port Hawkesbury Paper's continuing state-sponsored competitive advantages threaten to force the closure of Resolute's Dolbeau and Kénogami SC paper mills.

74. Nova Scotia has reallocated the value and market share of the Laurentide, mill to its chosen provincial champion, Port Hawkesbury Paper, and continues to take market share and value from the Dolbeau and Kénogami mills. Resolute

reserves the right to claim compensation from Canada for the fair market value losses of these mills and any consequential damages.

75. Nova Scotia's conduct does not comply with the conditions for lawful expropriation provided under NAFTA Article 1110.
76. First, there is no valid public purpose for the expropriation. Provincial protectionism is not a legitimate public purpose. Any jobs that may have been provided to Port Hawkesbury residents were, in effect, indirectly expropriated from the residents of Shawinigan, Québec who worked at Resolute's Laurentide mill. Nor can the federal or provincial governments claim as a valid public purpose the government-determined establishment of industry champions through financial assistance, designed to make a foreign-owned company in one province compete on grossly unfair terms with a domestically-owned company in another, thereby destroying the investment of an investor of a NAFTA Party.
77. Second, the expropriation was discriminatory in that Nova Scotia favored a domestically-owned, in-province mill over foreign owned out-of-province mills without any regard to principles of fair market competition. For reasons of provincial preference, Nova Scotia decided that the Port Hawkesbury Paper mill should be kept alive despite its inability to remain cost competitive in the SC paper industry. With tens of millions of dollars of assistance from the government and ongoing preferential operational arrangements, Port Hawkesbury Paper was empowered to drive Resolute's SC paper mills in Québec out of business. Resolute's investments in the SC paper sector are

casualties of Nova Scotia's transfer of market value to its own SC paper champion, Port Hawkesbury Paper.

78. Canada's federal officials joined in the effort to promote Port Hawkesbury over Resolute by privately lobbying U.S. Department of Commerce officials in the SC paper investigation in defense of every SC paper producer in Canada except for Resolute.
79. Third, the expropriation has been taken without regard for international standards of due process. Nova Scotia unilaterally decided that the Port Hawkesbury mill in its province should be empowered to undertake predatory pricing measures with respect to Resolute, its competitor in the SC paper industry. Resolute has been afforded no consultations by Canada or Nova Scotia. Canada has initiated no process to protect Resolute's SC paper investments in Canada.
80. Fourth, Resolute has received no compensation from Canada, nor from Nova Scotia, for the losses of its SC paper investments.
81. Resolute is entitled to full reparation for its losses, including restitution of the assets expropriated or compensation at their fair market value, as well as payment for any consequential damages suffered as a result of Canada's breach of Article 1110.

B. Breach Of Article 1105 -- Minimum Standard Of Treatment.

82. NAFTA Article 1105 requires a NAFTA Party provide investors of another Party the minimum standard of treatment under customary international law.

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.
83. The minimum standard of treatment under NAFTA Article 1105 protects investors of a Party from government treatment constituting conduct that infringes a sense of fairness, equity and reasonableness, including conduct that is egregious, arbitrary, unfair, unjust or idiosyncratic, discriminatory or exposes a claimant to sectional prejudice.
84. The minimum standard of treatment also protects investors of a Party from being deprived of their legitimate investment-backed expectations through the unexpected detrimental conduct of the host government.
85. Resolute invested in Resolute FP Canada and its SC paper mills with the reasonable expectation of competing with other SC paper mills in Canada on fair terms driven by the competitive conditions of the private SC paper market.
86. Nova Scotia changed the terms of competition among SC paper mills in Canada when it committed more than \$124.5 million to the Port Hawkesbury mill, as well as a special rate for electricity.
87. Nova Scotia has tilted the SC paper market in Canada by presenting Resolute with a direct competitor that is bankrolled by Nova Scotia's public purse, conduct that clearly infringes a sense of fairness, equity and reasonableness. Resolute is being forced to compete not only with the Port Hawkesbury mill, but with a constituent province of Canada and its taxpayers. It is unfair and discriminatory that Nova Scotia has used its public funds to tip the playing field of the SC paper

market so severely as to put Resolute's Laurentide mill out of business and to threaten its other SC paper mills with a similar fate.

88. Nova Scotia has picked its own provincial mill as a champion in the SC paper industry, and propped it up with benefits and operational advantages to ensure that its costs are lower than those of Resolute and other competitors in the Canadian, U.S. and other markets, thereby creating grossly unfair conditions in an SC paper market in Canada that has very few producers.
89. Resolute and its investments in the SC paper industry have experienced damages as a result of Nova Scotia's grossly unfair, prejudicial conduct, including the closure of Resolute's Laurentide mill, the loss of hundreds of jobs for its employees, the loss of market share and continuing damages to its other SC paper mills.
90. Canada has taken no action to prevent its constituent province from disrupting the SC paper market, and potentially force Resolute out of its Canadian SC paper investments entirely, nor has it provided Resolute with any compensation. To the contrary, Canada has defended Nova Scotia and Port Hawkesbury Paper in the U.S. countervailing duty investigation while rejecting Resolute in response to Resolute's suggestion that it might invoke its NAFTA Chapter 11 rights.
91. Canada has taken measures in the U.S. SC paper countervailing duty investigation adverse to Resolute for seeking to invoke these rights.
92. Canada has supported the interests of other SC paper producers that are not foreign investments of American companies like Resolute, deploying senior-most Canadian officials on their behalf but not on behalf of Resolute.

93. Canada has denied Resolute access to official government correspondence with the United States at the WTO regarding Port Hawkesbury using false and misleading statements about the whereabouts of documents that irrefutably exist.
94. Canada excluded Resolute, uniquely, from a joint defense of Canadian exports of SC paper to the United States, and later conspired with Resolute's Canadian competitors for a strategic plan to benefit them to Resolute's detriment.
95. Canadian officials lobbied the U.S. Department of Commerce for the benefit of Nova Scotia's champion, Port Hawkesbury Paper, and the two other Canadian SC paper producers, Irving Paper and Catalyst, all to the exclusion and competitive detriment of Resolute.

C. Breach Of Article 1102 – National Treatment.

96. NAFTA Article 1102 requires a NAFTA Party to provide national treatment to investors of another Party:

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.

97. Canadian-owned Port Hawkesbury Paper and U.S.-owned Resolute are both investors in a narrow market for SC paper in Canada, a sector that has only four producers in Canada.
98. Port Hawkesbury Paper and Resolute are not treated equally by Canada in Canada's SC paper market and sector. Nova Scotia has implemented an array of measures, now defended by Canada, to give Port Hawkesbury Paper significant competitive advantages over other SC paper mills. By intervening in the market, Nova Scotia has distorted Resolute's competitive position grossly vis-à-vis Port Hawkesbury Paper. These competitive advantages provided to Port Hawkesbury in the SC paper market were, and remain, unavailable to Resolute. They include the injection of a reported \$124.5 million in government funds through various means, reduced electricity rates and discounted property taxes.
99. Nova Scotia provided Port Hawkesbury Paper preferential treatment over **that** received by Resolute to do business in the SC paper industry in Canada, expressly for the purpose of making Port Hawkesbury Paper "the most competitive [...] supercalendered paper mill in the world"¹⁶ and "the lowest cost operator in North America."
100. Nova Scotia's actions were designed specifically to give Port Hawkesbury Paper an unfair competitive advantage over Resolute in the SC paper market in Canada. The measures were implemented precisely to discriminate in favor of Canadian-owned Port Hawkesbury Paper.

¹⁶ "Mill Gets Millions in N.S. Cash," *supra* note 11.

101. Resolute's SC paper mills have been harmed by this preferential treatment. The Laurentide mill was closed permanently in October 2014. Resolute's other investments likewise have experienced and continue to experience damages that threaten the viability of all of Resolute's SC paper investments in Canada.

102. According to the World Trade Organization:

Article 25.1 of the [Subsidies and Countervailing Measures] Agreement requires that all Members submit a new and full notification of all specific subsidies every three years, with updating notifications due in the intervening years. It should be noted that the notification obligation extends to all specific subsidies related to goods, in any sector (including agriculture), and provided by any level of government (e.g., national, regional, state or provincial, local). Members that consider that they provide no specific subsidies should so notify. Article 25.7 clearly states that the notification of a measure does not prejudice the measure's legal status under GATT 1994 and the SCM Agreement, its effects under the SCM Agreement, or the nature of the measure itself; Accordingly, Members are encouraged to err on the side of notification in the interests of transparency.¹⁷

103. Canada reported to the World Trade Organization that Nova Scotia provided no subsidies ("nil") for the period between July 14, 2011 and July 19, 2013 during which Nova Scotia undertook measures to resuscitate the Port Hawkesbury Paper mill and ensure that it would be the lowest cost provider of SC paper in North America.¹⁸

104. Canada has defended Nova Scotia's and Port Hawkesbury Paper's conduct vigorously in the United States Government's countervailing duty investigation of

¹⁷ See "Notifications under the Agreement on Subsidies and Countervailing Measures," available at http://www.wto.org/english/tratop_e/scm_e/notif_e.htm (last visited September 29, 2015).

¹⁸ See WTO Committee on Subsidies and Countervailing Measures, *New And Full Notification Pursuant To Article XVI:1 Of The GATT 1994 And Article 25 Of The Agreement On Subsidies And Countervailing Measures -- Canada*, G/SCM/N/253/CAN 19 July 2013.

SC paper from Canada, denying that Port Hawkesbury Paper received countervailable subsidies.

105. Canada has favored the defense of Port Hawkesbury over a defense of Resolute in the United States Government's countervailing duty investigation of SC paper from Canada.
106. Canada also has rejected a Joint Defense agreement with Resolute, the only American company with a foreign investment in Canada's SC paper market, and Canada's DFATD officials have treated Resolute adversely for asserting its rights under NAFTA Chapter 11.

IX. RELIEF SOUGHT AND APPROXIMATE DAMAGES CLAIMED

107. In the event that these issues are not resolved through amicable consultations, Resolute intends to claim relief for the following incurred damages:
 - damages in the amount of US\$70 million or such other amount to be proven in these proceedings in compensation for the direct losses caused by the measures of Canada and Nova Scotia that are inconsistent with Canada's obligations under Part A of NAFTA Chapter Eleven;
 - additional consequential damages arising as a result of the illegal measures, in an amount to be proven in these proceedings;
 - the full costs associated with these proceedings, including all professional fees and disbursements, as well as the fees of the arbitral tribunal and any administering institution;
 - pre- and post-award interest at a rate to be fixed by the Tribunal;

- such further relief as counsel may advise and the Tribunal may deem just and appropriate.

Dated this 30th day of September, 2015

Respectfully submitted,



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