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

between

RESOLUTE FOREST PRODUCTS INC.

Claimant

and

GOVERNMENT OF CANADA

Respondent

(PCA CASE NO. 2016-13)

PROCEDURAL ORDER NO. 9
ON DOCUMENT PRODUCTION

ARBITRAL TRIBUNAL:

Judge James R. Crawford, AC (President)

Dean Ronald A. Cass

Dean Céline Lévesque

August 21, 2018

Procedural Order No. 9 – Document Production

1. PROCEDURAL HISTORY

1.1 On October 14, 2016, the Tribunal issued Procedural Order No. 2 dealing with document production.

1.2 On January 30, 2018, the Tribunal issued its Decision on Jurisdiction and Admissibility.

1.3 Following an invitation by the Tribunal to consult on next steps, the Disputing Parties informed the Tribunal on March 16, 2018 that they had agreed on a schedule for the merits and damages phase.

1.4 On March 23, 2018, the Tribunal issued Procedural Order No. 7 on the schedule for the Merits and Damages Phase.

1.5 The Disputing Parties agreed on a revised schedule on July 24, 2018, which the Tribunal confirmed in Procedural Order No. 8 on August 15, 2018. They have exchanged document requests, produced some documents responsive to certain requests, and maintain objections to the remaining requests.

1.6 Pursuant to paragraph 2.1F of Procedural Order No. 8, the Disputing Parties submitted their Redfern Schedules for disputed document requests on July 27, 2018.

1.7 Pursuant to paragraph 9 of Procedural Order No. 2: "the Tribunal shall rule on any dispute relating to document production pursuant to its authority under Articles 24(3) and 25(6) of the 1976 UNCITRAL Arbitration Rules. In doing so, the Tribunal may seek guidance from, but is not bound by, Articles 3 and 9 of the 2010 IBA Rules".

2. CLAIMANT'S REQUESTS AND OBJECTIONS

2.1 The 17 remaining disputed document requests of the Claimant are set out in Annex I to this order. According to the Claimant in its letter to the Tribunal of July 27, 2018, its requests were specific and in many instances uniquely precise, yet Canada's production "has been deficient". The Claimant draws attention in particular to Canada's (1) failure to produce specific categories of documents related to Port Hawkesbury Paper's ("PHP") electricity deal; (2) failure to produce specific correspondence between the Government of Nova Scotia ("GNS") and Pacific West Commercial Corporation ("PWCC") sought by Resolute for the two week period between September 12-23, 2018; (3) incomplete production of "Conditions Precedent" necessary to complete agreement, loan forgiveness documents, grant payments, and financial statements; (4) failure to produce

single specified documents sought by Resolute; (5) failure to produce other categories of documents sought by Resolute.

2.2 The Claimant considers Canada's requests to have been overbroad (spanning many years and subject-matters), insufficiently specific (especially with regard to electronic documents), and unduly burdensome and vague, especially at this stage of proceedings, being only the first of two rounds of document production.

3. RESPONDENT'S REQUESTS AND OBJECTIONS

3.1 The 30 remaining disputed document requests of the Respondent are reproduced in Annex II to this order. In its letter to the Tribunal of July 27, 2018, Canada explained that it is a crucial time to request substantive details regarding the Claimant's SC Paper operations and business planning and to ask Resolute to substantiate certain claims in its Statement of Claim relating to renegotiation of SC paper purchase orders. Canada submitted that by virtue of Resolute's participation in the countervailing duty investigation initiated against Canadian SC Paper producers by the U.S. Department of Commerce in 2015, Resolute already has access to many documents requested, which was a useful tool in narrowing the Claimant's requests, but an advantage unavailable to the Respondent. Canada further set out reasons why it believed its requests to be relevant and material, formulated in narrow and specific categories, and not unduly burdensome. It considers the date ranges set for Resolute's financial information to be appropriate. Canada observed that it had made numerous concessions as to scope and specificity but Resolute had self-selected documents in a way that deprives Canada access to critical context.

3.2 In a second letter to the Tribunal of July 27, 2018, Canada provided five confidentiality undertakings that impact Canada's ability to produce documents responsive to numerous requests made by Resolute in connection with the PWCC-NPSI load retention rate proceedings before the Nova Scotia Utility and Review Board ("NSURB") in 2012, relevant to the Claimant's requests. It also recalled that many of the documents responsive to Requests No. 5 and 26 contain "confidences of the Cabinet of the Government of Nova Scotia which qualify for protection" under Article 9.2 of the IBA Rules. Canada is still in the process of reviewing appropriate redactions. Canada noted that there is no need to decide on that issue until Canada actually produces the documents to the Claimant, it sought to raise an important issue of principle for the Tribunal's attention. Canada disagrees with Resolute that the Confidentiality Order displaces the need to invoke cabinet confidence privilege. Resolute considers it does so because the Confidentiality Order ensures non-disclosure to the general public. However, Canada asserts that Cabinet confidence is "an issue of privilege, not confidentiality", and the Confidentiality Order is "wholly inadequate to address the type

of concerns engaged by the disclosure of Cabinet confidences and the deliberative process."

4. TRIBUNAL'S GENERAL OBSERVATIONS

4.1 The Tribunal's decisions with respect to specific requests and objections are set out in the Annexes to this order, but it considers it appropriate to make some preliminary observations of a general character.

4.2 The Tribunal notes that the Respondent has flagged possible objections on the ground of cabinet privilege or institutional sensitivity pursuant to Article 9.2 of the IBA Rules. However, Canada is still reviewing documents as to which such objections might be raised, and no request to rule is currently before the Tribunal. The Tribunal makes no findings on any kind of privilege in the present order but will do so upon receipt of separate requests in relation to specific documents or narrow classes of documents.

4.3 Second, with respect to Resolute's claims that Canada has waived certain privileges (see for example in relation to Requests nos. 4, 12, 13 and 17), the Tribunal does not accept that a failure to particularise a privilege defense in relation to specific documents equates to a waiver of any such privilege.

4.4 Third, with respect to requests granted by the Tribunal that contain the words "contain, discuss or refer to" (see, e.g., Canada's Requests 2, 6, 17, 30, 31, 32, and 33), the Tribunal understands that formulation to mean discuss an issue or document substantively, as distinct from merely referencing the issue or document. Further, the Tribunal understands these requests to be limited to discussions by or involving senior management or the Board of Directors.

4.5 Finally, in accordance with the agreed structure of proceedings, the Tribunal recalls that there will be an additional round of document requests after the first exchange of written submissions. If a Party has had a request denied, it may revert to the Tribunal at that point with a more focused request. Similarly, if a request has been granted, and the producing party's original objections were considered by the Tribunal to be insufficiently specific, that Party may come back to the Tribunal with more focused objections relating to particular documents and explaining how a privilege or objection arises with respect to a particular document or class of documents.

5. ORDER

5.1 The Tribunal's decisions on the Disputing Parties' remaining requests are set out in the Redfern Schedules appended to this Order as Annexes I and II.

5.2 Pursuant to paragraph 2.1G of PO8, each Disputing Party is ordered to produce the documents and/or to provide the information indicated therein to the other Disputing Party, but not the Tribunal, by **September 28, 2018**.

5.3 The Tribunal notes that its decisions on the Disputing Parties' requests are not intended to imply any decision on any issue in dispute between them.

Date: August 21, 2018

For the Arbitral Tribunal

Judge James R. Crawford, AC

ANNEX I – CLAIMANT'S REQUESTS FOR DOCUMENTS

(a)	(b)	(c)			(d)	(e)	(f)
No.	**Documents or Category of Documents Requested**	**Rationale for Document Request**			**Objections to Document Request**	**Reply to Objections to Document Request**	**Decision of the Arbitral Tribunal**
		Reference to Submissions	**Comments**	**Proof Canada has Document in its Possession, Custody, or Control**			
4	The documents provided by PHP to GNS as a condition precedent before the disbursement of any portion of the financial assistance provided to PHP.	Resolute Statement of Claim ¶ 43; GOC Statement of Defence ¶¶ 48-52.	Responsive documents should include information regarding requirements and/or conditions that PHP needed to satisfy before receiving any financial assistance from GNS. These conditions precedent are stated in the August 14, 2012 Letter of Offer from the GNS. *See* First Supplemental Response of PHP at 22-23.	*See* NS-SUPP1-22, NS-SUPP1-23, NS-SUPP1-48 to GNS's Supplemental Questionnaire Responses; First Supplemental Response of PHP at 22-23 and Exhibits 29-1 and 30-1; *id.* at 26 Response 31 (citing G-24a, b, and c to PHP Initial Questionnaire Response); First Supplemental Questionnaire Responses of GNS, Narrative Response at 19 and 38.	Canada objects as follows: (1) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u> (2) <u>General Objection 3 – Protected Third-Party Information:</u> The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (3) <u>General Objection 4 – Irrelevance and Immateriality:</u> The request contains no time limitation, and is vague as to what is included in the scope of "financial assistance". The only relevant and material documents are those in relation to disbursements made pursuant to the offers referred to in Request Nos. 2 and 3.	<u>Overbreadth</u>: Resolute has identified a specific category of documents within the possession of the GNS. According to PHP's First Supplemental Responses at 22-23, PHP/PWCC provided nine (9) pieces of information to GNS. The request, therefore, is not overbroad. <u>Protected Third-Party Information</u>: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). The parties have a confidentiality order, and this document was provided in the CVD Proceeding.	Canada's offer in column (d) ["to search for and produce documents provided by PHP to GNS as a condition precedent before the disbursement of any portion of the financial assistance provided to PHP pursuant to the measures referred to in Request Nos. 2 and 3, subject to claims under Article 9.2(a), (b), (e) and (f) of the IBA Rules"] is a sufficient response to the request. Beyond the scope of that offer, the **<u>request is denied</u>**.

(a)	(b)	(c)			(d)	(e)	(f)
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		Reference to Submissions	**Comments**	**Proof Canada has Document in its Possession, Custody, or Control**			
					Notwithstanding the above, Canada agrees to search for and produce documents provided by PHP to GNS as a condition precedent before the disbursement of any portion of the financial assistance provided to PHP pursuant to the measures referred to in Request Nos. 2 and 3, subject to claims under Article 9.2(a), (b), (e) and (f) of the IBA Rules.	Relevance and Materiality: As detailed above, there was a specific set of documents that PHP/PWCC provided to GNS as conditions precedent to receiving the financial assistance. These are in relation to the disbursements at issue in this dispute. Canada, however, should produce any similar documents also provided to GNS as a condition precedent to receiving the financial assistance in this matter. Other: Canada has not identified any specific rationale under IBA Rules 9.2(b), (e), and (f) that prohibits this disclosure. Canada has not identified any specific privilege, has not provided any specific grounds of commercial or technical confidentiality, and has not provided any specific political or institutional bases upon which to withhold production. This is especially so because Resolute has provided a specifically identified set of documents where Canada could have addressed all these issues. Therefore, these defenses have been waived. To the extent GNS received similar documents as a condition precedent	

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						relating to the financial assistance provided to PHP beyond that specified in Requests Nos. 2 and 3 that is readily identifiable, Canada should make that production, as well.	
7	PWCC's Offer in October 2011 to purchase the mill.	Resolute Statement of Claim ¶¶ 27-31; GOC Statement of Defence ¶¶ 32-35.	Responsive documents should establish whether PWCC had any conditions for purchasing the site at an early stage; if so, it would identify the conditions and assistance PWCC believed were necessary to be profitable. These documents will also demonstrate how early the terms of PWCC's offer may have changed, thereby highlighting the importance of different elements of PWCC's offer during negotiations.	GNS should be expected to have seen PWCC's offer or at least have access to it. *See* Exhibit 8-4 to PHP's Supplemental Questionnaire Responses; per Schedule A of the September 9, 2011 Order Approving NPPH Sales Process, Qualified Bidders were to submit an "Offer in the form of a Template APA	Canada objects as follows: (1) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u> (2) <u>General Objection 3 – Protected Third-Party Information:</u> The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (3) <u>General Objection 4 – Irrelevance and Immateriality:</u> For the same reasons as stated in paragraph 3 of Canada's Objection to Request No. 6, Resolute has failed to establish that the requested documents are sufficiently	<u>Overbreadth</u>: Resolute has identified a specific document within the possession of the GNS. This document was identified specifically as Exhibit 8-4 to PHP's supplemental questionnaire responses. The request, therefore, is not overbroad. <u>Protected Third-Party Information</u>: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of	This is a specific request for a potentially relevant document. The **<u>request is granted,</u>** subject to any particularized confidentiality concern (and consequential redaction).

(a)	(b)	(c)			(d)	(e)	(f)
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				by October 14, 2011."	relevant and material to the case. As with the September 2011 letter of intent referred to in Request No. 6, the October 2011 offer referred to in this request was superseded by the subsequent final offer referred to in Request No. 8. Resolute has not explained how this non-binding offer exchanged between third parties is relevant and material to whether the Nova Scotia Measures breached NAFTA Articles 1102, 1105 or 1110, or caused damage to Resolute and its investments. **Canada does not agree to produce the requested documents.**	documents"). The parties have a confidentiality order, and this document was provided in the CVD Proceeding. Relevance and Materiality: Canada contends that the document is irrelevant and immaterial because the offer to purchase the mill (and other offers) does not show a relationship between GOC/GNS and PWCC/PHP. However, PHP's October 2011 offer should establish whether PHP thought, from an early stage, that support from GNS or GOC was needed to resurrect a mill that was losing $4 million per month at the time it went into bankruptcy. The requested document should also reveal what PHP/PWCC thought the mill was worth, indicating the gap GNS would have to make up for PHP to buy and operate the mill. Resolute, in its Statement of Claim (for example, at ¶¶ 9, 42-45, 56, 90, 95, 96, 104, 106-109) stated that the mill could not have restarted absent Governmental support—something a letter of intent from PWCC/PHP would demonstrate at the earliest stage, even if the letter of	

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						intent were not binding and ultimately superseded by more specific conditions. Therefore, the offer is relevant and material to demonstrating that governmental support was needed to make PHP a profitable enterprise.	
9	Initial Draft Letter of Offer in December 2011 from GNS to PWCC/PHP.	Resolute Statement of Claim ¶¶ 27-31; GOC Statement of Defence ¶¶ 32-35, 48-52.	According to PHP's Supplemental Questionnaire responses (at 60), this draft details an offer by GNS to purchase land from PHP in December 2011 and should provide details regarding the evolution of the ultimate financing package provided to PHP.	*See* Exhibit 84-1 to PHP's Supplemental Questionnaire Responses.	Canada objects as follows: (1) General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute (2) General Objection 3 – Protected Third-Party Information: The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (3) General Objection 4 – Irrelevance and Immateriality: Even if the documents "provide details regarding the evolution of the ultimate financing package	Overbreadth: Resolute has identified a specific document within the possession of the GNS. This document was identified specifically as Exhibit 8-4 to PHP's supplemental questionnaire responses. The request, therefore, is not overbroad. Protected Third-Party Information: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or	This is a specific request for a potentially relevant document. The **request is granted**, subject to any particularized confidentiality concern (and consequential redaction).

(a)	(b)	(c)			(d)	(e)	(f)
No.	**Documents or Category of Documents Requested**	**Rationale for Document Request**			**Objections to Document Request**	**Reply to Objections to Document Request**	**Decision of the Arbitral Tribunal**
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					provided to PHP", as Resolute asserts, this Initial Draft Letter of Offer would not form part of the final package of measures adopted by Nova Scotia. Any initial offers of assistance are irrelevant in light of Canada's agreement to produce, subject to claims under Article 9.2(b),(e) and (f) of the IBA Rules, the August 14, 2012 letter of offer and September 22, 2012 amendment referred to in Requests No. 2 and 3. **Canada does not agree to produce the requested document.**	tribunal to compel a witness to testify or to compel the production of documents"). The parties have a confidentiality order, and this document was provided in the CVD Proceeding. Relevance and Materiality: Canada contends that the document is irrelevant and immaterial because the sought-after document was not the final offer agreed to by the parties. Resolute, in its Statement of Claim (for example, at ¶¶ 9, 42-45, 56, 90, 95, 96, 104, 106-109) could not have restarted absent Governmental support—something a letter of intent from PWCC/PHP would demonstrate at an early stage, even if the letter of intent were not binding and ultimately superseded by more specific conditions. GNS's initial offer to PWCC/PHP will likely demonstrate that the GNS believed that governmental financial assistance was needed to make the mill profitable. Therefore, the initial offer is relevant and material to demonstrating that governmental support was needed to make PHP a profitable enterprise.	

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						In addition, it is known that changes in the agreement between GNS and PWCC/PHP occurred in September 2012. SOD ¶ 52 (discussing revised agreement). Other changes are likely to have taken place, as well. As an agreement changes, different support can be placed into different categories, so that the ultimate financial support may remain similar to the initial offer. For example, more forgivable loans may be provided whereas less payment for other categories such as working capital, land purchases, or marketing categories could be provided. How GNS initially valued these items is thus relevant and material to determining the different valuations of support from the GNS, especially in light of later changes.	
10	The August 27, 2012 Preparatory Activities Agreement ("Ramp Up Agreement").	*See* Resolute Statement of Claim ¶¶ 41, 43; Statement of Defence ¶¶ 48-52.	According to PHP's Supplemental Questionnaire Responses (at 12-13), this Agreement details the activities which were required to get the mill back in operation	*See* Exhibit 15-22 of PHP's Supplemental Questionnaire Responses.	Canada objects as follows: (1) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u> (2) <u>General Objection 3 – Protected Third-Party Information:</u> The	<u>Overbreadth</u>: Resolute has identified a specific document within the possession of the GNS. This document was identified specifically as Exhibit 15-22 to PHP's supplemental questionnaire responses. The request, therefore, is not overbroad.	This is a specific request for a potentially relevant document. **<u>The request is granted</u>**, subject to any particularized confidentiality concern

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			as quickly as possible after the sale. GNS advanced these costs to PHP. These activities were distinct from hot idle activities.		requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (3) General Objection 4 – Irrelevance and Immateriality: Even if the requested documents detail "the activities which were required to get the mill back in operation as quickly as possible after the sale", as Resolute alleges, the Tribunal has already determined that pre-sale measures adopted by the GNS during the CCAA proceedings of NPPH do not relate to Resolute or its investments and therefore cannot form part of Resolute's claim.[1] The Ramp Up Agreement was among the "Nova Scotia measures taken during the period of	Protected Third-Party Information: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). The parties have a confidentiality order, and this document was provided in the CVD Proceeding. Relevance and Materiality: Canada states this request is irrelevant and immaterial because the Tribunal has determined that pre-sales measures adopted by GNS do not relate to Resolute. However, the Ramp Up Agreements (according to page 12-13 of	(and consequential redaction).

[1] Decision on Jurisdiction and Admissibility, ¶ 244.

(a)	(b)	(c)			(d)	(e)	(f)
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					administration of the company,"[2] which are outside of the Tribunal's jurisdiction. Resolute has not explained how the Ramp Up Agreement is relevant to whether the Nova Scotia Measures within the Tribunal's jurisdiction breached NAFTA Articles 1102, 1105 or 1110, or caused damage to Resolute and its investments. **Canada does not agree to produce the requested document.**	PHP's Supplemental Questionnaire Responses), was "distinct from the hot idle activities and were funded separately." And as of August 27, 2012, the date of the Ramp Up Agreements, PWCC/PHP and GNS were not simply in a pre-sale measure but, rather, had executed already an agreement for governmental assistance (the August 14, 2012 letter of offer described in Document Request No. 2). These payments are direct assistance provided by GNS to PWCC/PHP. Therefore, the Ramp Up Agreements are relevant and material of the governmental assistance provided by GNS to PWCC/PHP and desire to get the mill back up and running as quickly as possible.	
12	Correspondence from PWCC and/or PHP to GNS Requesting Forgiveness of any loan,	Resolute Statement of Claim ¶¶ 37-38; GOC Statement of Defence ¶¶ 48-52;	According to Responses 24 and 27 of PHP's First Supplemental Questionnaire Responses, PHP provided letters to	*See, e.g.*, Exhibits 24-1 and 27-1 to PHP's Supplemental	Canada objects as follows: (1) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u>	<u>Overbreadth</u>: Resolute has identified a specific category of documents within the possession of the GNS. Examples were identified specifically as Exhibit 24-1 and 27-1 to PHP's supplemental questionnaire responses. The request, therefore, is not overbroad.	Canada's offer in column (d) ["to search for and produce the March 17, 2014 and May 22, 2015 letters, subject to claims under Article 9.2(b), (e) and

[2] *Ibid.*

(a)	(b)	(c)			(d)	(e)	(f)
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	including the March 17, 2014 and May 22, 2015 letters from PWCC and/or PHP.	Resolute Counter-Memorial on Jurisdiction, ¶¶ 18, 21.	GNS seeking forgiveness of loans. These documents will show the bases upon which GNS provided loans, the conditions PHP was required to meet, and any associated documentation PHP was required to submit to justify the forgiveness of the loans.	Questionnaire Responses.	(2) General Objection 3 – Protected Third-Party Information: The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (3) General Objection 4 – Irrelevance and Immateriality: Resolute's request is vague and overbroad, covering all correspondence requesting forgiveness of "any loan" during an unlimited time period, without reference to the specific loans which are at issue as measures within the Tribunal's jurisdiction. **Notwithstanding the above, Canada agrees to search for and produce the March 17, 2014 and May 22, 2015 letters, subject to claims under Article 9.2(b), (e) and (f) of the IBA Rules**.	Protected Third-Party Information: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). The parties have a confidentiality order, and some of the documents were provided in the CVD Proceeding. Relevance and Materiality: Canada claims the requested documents are irrelevant and immaterial because they are vague and overbroad, seeking all correspondence relating to the forgiveness of any loan. But according to pages 21 and 23-24 of PHP Supplemental Questionnaire Responses,	(f) of the IBA Rules"] is a sufficient response to the request. Beyond the scope of that offer, the **request is denied.**

(a)	(b)	(c)			(d)	(e)	(f)
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						PHP generated letter to provide to GNS seeking loan forgiveness. All similar letters, not just the two examples cited herein, should be produced. Other: Canada has not identified any specific rationale under IBA Rules 9.2(b), (e), and (f) that prohibits this disclosure. Canada has not identified any specific privilege, has not provided any specific grounds of commercial or technical confidentiality, and has not provided any specific political or institutional bases upon which to withhold production. This is especially so because Resolute has provided a specifically identified category of documents where Canada could have addressed all these issues. Therefore, these defenses have been waived.	
13	Correspondence from GNS to PHP regarding loan forgiveness, including the June 12, 2015	Resolute Statement of Claim ¶¶ 37-38; GOC Statement of Defence ¶¶ 48-52;	According to Responses 24 and 27 of PHP's First Supplemental Questionnaire Responses, GNS responded to the	*See, e.g.*, Exhibits 24-2, 24-3, and 27-2 to PHP's Supplemental	Canada objects as follows: (1) General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute	Overbreadth: Resolute has identified a specific category of document within the possession of the GNS. Examples were identified specifically as Exhibit 24-2, 24-3, and 27-2 to PHP's supplemental questionnaire responses. The request, therefore, is not overbroad.	Canada's offer in column (d) ["to search for and produce the June 12, 2015 letter, subject to claims under Article 9.2(b), (e) and (f) of the IBA Rules"] is

(a)	(b)	(c)			(d)	(e)	(f)
No.	**Documents or Category of Documents Requested**	**Rationale for Document Request**			**Objections to Document Request**	**Reply to Objections to Document Request**	**Decision of the Arbitral Tribunal**
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	letter from GNS.	Resolute Counter-Memorial on Jurisdiction, ¶¶ 18, 21.	letters from PHP seeking forgiveness of loans. These documents will show the bases upon which GNS provided loans, the conditions PHP was required to meet, and any associated documentation PHP was required to submit to justify the forgiveness of the loans.	Questionnaire Responses.	(2) General Objection 3 – Protected Third-Party Information: The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (3) General Objection 4 – Irrelevance and Immateriality: Resolute's request is vague and overbroad, covering all correspondence at any time regarding "loan forgiveness" during an unlimited time period, without reference to the specific loans which are at issue as measures within the Tribunal's jurisdiction. **Notwithstanding the above, Canada agrees to search for and produce the June 12, 2015 letter, subject to claims under Article 9.2(b), (e) and (f) of the IBA Rules**.	Protected Third-Party Information: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). The parties have a confidentiality order, and some of the documents were provided in the CVD Proceeding. Relevance and Materiality: Canada claims the requested documents are irrelevant and immaterial because they are vague and overbroad, seeking all correspondence relating to the forgiveness of any loan. But according to pages 21 and 23-24 of PHP Supplemental Questionnaire Responses,	a sufficient response to the request. Beyond the scope of that offer, the **request is denied.**

(a)	(b)	(c)			(d)	(e)	(f)
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						GNS generated response letters to give to PHP. All similar letters, not just the three examples cited herein, should be produced. <u>Other</u>: Canada has not identified any specific rationale under IBA Rules 9.2(b), (e), and (f) that prohibits this disclosure. Canada has not identified any specific privilege, has not provided any specific grounds of commercial or technical confidentiality, and has not provided any specific political or institutional bases upon which to withhold production. This is especially so because Resolute has provided a specifically identified category of documents where Canada could have addressed all these issues. Therefore, these defenses have been waived.	
14	All contractual documents setting forth the terms and conditions of loans granted to PWCC and/or	Resolute Statement of Claim ¶¶ 37-38; GOC Statement of Defence ¶¶ 48-52;	According to Responses 24 and 27 of PHP's First Supplemental Questionnaire Responses, PHP provided letters to	*See, e.g.*, Exhibits 24-1, 24-2, 24-3, 27-1, and 27-2 to PHP's Supplemental	Canada objects as follows: (1) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u>	<u>Overbreadth</u>: Resolute has identified a specific category of document within the possession of the GNS. These are the contractual documents setting forth terms and conditions of forgiveable (in whole or in part) loans granted to PWCC/PHP. This request thus seeks	Canada's offer in column (d) ["to search for and produce contractual documents for the loans relating to the requests for forgiveness which

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	PHP whose repayment was fully or partially forgiven by GNS.	Resolute Counter-Memorial on Jurisdiction, ¶¶ 18, 21.	GNS seeking forgiveness of loans. These documents will show the long-term cost of the loans whose repayment was forgiven by GNS, and the related value of the assistance provided by GNS in loan forgiveness.	Questionnaire Responses.	(2) General Objection 3 – Protected Third-Party Information: The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (3) General Objection 4 – Irrelevance and Immateriality: Resolute's request for documents "setting forth the terms and conditions of loans granted to PWCC and/or PHP" is vague and overbroad without any limitation as to the time period. **Notwithstanding the above, Canada agrees to search for and produce contractual documents for the loans relating to the requests for forgiveness which Canada has agreed to produce pursuant to Requests # 12 and 13, subject to claims under Article 9.2(b), (e) and (f) of the IBA Rules**.	contractual documentation and not a large set of correspondence or other documents. Examples of these documents are identified as Exhibits 24-1, 24-2, 24-3, 27-1, and 27-2 to PHP's Supplemental Questionnaire Responses. The request, therefore, is not overbroad. Protected Third-Party Information: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). The parties have a confidentiality order, and some of the documents were provided in the CVD Proceeding.	Canada has agreed to produce pursuant to Requests # 12 and 13, subject to claims under Article 9.2(b), (e) and (f) of the IBA Rules "] is a sufficient response to the request. Beyond the scope of that offer, the **request is denied.**

(a)	(b)	(c)			(d)	(e)	(f)
No.	**Documents or Category of Documents Requested**	**Rationale for Document Request**			**Objections to Document Request**	**Reply to Objections to Document Request**	**Decision of the Arbitral Tribunal**
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						Relevance and Materiality: Canada claims the requested documents are irrelevant and immaterial because they are vague and overbroad, seeking all correspondence relating to the forgiveness of any loan. But according to pages 21 and 23-24 of PHP's Supplemental Questionnaire Responses, GNS generated response letters to give to PHP. All similar letters and contractual documents, not just the examples cited herein, should be produced. Other: Canada has not identified any specific rationale under IBA Rules 9.2(b), (e), and (f) that prohibits this disclosure. Canada has not identified any specific privilege, has not provided any specific grounds of commercial or technical confidentiality, and has not provided any specific political or institutional bases upon which to withhold production. This is especially so because Resolute has provided a specifically identified category of documents where Canada could have addressed all these issues. Therefore, these defenses have been waived.	

(a)	(b)	(c)			(d)	(e)	(f)
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16	All documents submitted by PWCC and/or PHP to GNS for funds under the Outreach Agreement.	Resolute Statement of Claim ¶¶ 37-38; GOC Statement of Defence ¶¶ 48-52; Resolute Counter-Memorial on Jurisdiction, ¶¶ 18, 21.	Responsive documents should contain information regarding requests for fund disbursements and conditions related to assistance provided to PHP by GNS. Resolute has identified this assistance as part of a bundle of benefits necessary to make PHP viable and competitive.	PHP is required to file quarterly reports detailing the services undertaken in the quarter and expenses incurred under the Outreach Agreement. *See, e.g.*, Exhibits 2-2a through 2-2h of PHP's Initial Questionnaire Responses.	Canada objects as follows: (1) General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute (2) General Objection 3 – Protected Third-Party Information: The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (3) General Objection 4 – Irrelevance and Immateriality: Even if the requested documents contained "information regarding requests for fund disbursements and conditions related to assistance provided to PHP", as Resolute alleges, Resolute has not explained how these submissions from PWCC/PHP to Nova Scotia are relevant and material to whether the Nova Scotia Measures breached NAFTA	Overbreadth: Resolute has identified a specific category of documents within the possession of the GNS, the quarterly reports detailing the services undertaken and expenses incurred under the Outreach Agreement that PHP was required to file. The request, therefore, is not overbroad. Protected Third-Party Information: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). The parties have a confidentiality order, and the some of these documents were provided in the CVD Proceeding.	This is a specific request for potentially relevant documents. **The request is granted**, subject to any particularized confidentiality concern (and consequential redaction).

(a)	(b)	(c)			(d)	(e)	(f)
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					Articles 1102, 1105 or 1110, or caused damage to Resolute and its investments. It has also failed to indicate any time limitation, when the only relevant time period could be September 27, 2012 to October 15, 2014. **Canada does not agree to produce the requested documents.**	Relevance and Materiality: According to page 21-23 of PHP's Initial Questionnaire Responses, The Outreach Agreement requires PHP to undertake certain activities for GNS. What PHP did to receive that compensation is thus relevant and material in determining whether this measure of support was fairly provided to PHP by GNS, whether PHP received any benefit from those services, whether those services would have been provided in any event by PHP, and to determine what PHP actually did to receive the funding. In addition, the time period need not be so limited, as Resolute is claiming damages for all of its Canadian SC paper mills, not just Laurentide. *E.g.*, SOC ¶¶ 7, 53, 56, 91, 92, 104, 106, 108, 116.	
17	For the time period 2012 to present, documents sufficient to evidence	Resolute Statement of Claim ¶¶ 37-38; GOC Statement of Defence	GNS has a schedule of payments it has generated regarding the payments it has made under the Outreach Agreement,	*See* NS-OUT-9 to GNS's Initial Questionnaire Responses.	Canada objects as follows: (1) General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute	Overbreadth: Resolute has identified a specific category of documents within the possession of the GNS, the documents sufficient to evidence payments made by GNS to PWCC/PHP in connection with the Outreach	Canada's offer in column (d) ["to search for and produce for the time period 2012 to October 15, 2014, documents sufficient to

(a)	(b)	(c)			(d)	(e)	(f)
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	payments and/or reimbursements made to PWCC and/or PHP in connection with the Outreach Agreement.	¶¶ 48-52; Resolute Counter-Memorial on Jurisdiction, ¶ 21.	which should detail the amount of funds received by PHP. Resolute has identified funds provided by GNS to PHP as material to Resolute's claims that the GNS measures were necessary to make PHP viable and competitive.		(2) General Objection 3 – Protected Third-Party Information: The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (3) General Objection 4 – Irrelevance and Immateriality: Resolute's request is overly broad as to the date range. The only relevant time period for this request would be from 2012 to the closure of the Laurentide mill on October 15, 2014. **Notwithstanding the above, Canada agrees to search for and produce for the time period 2012 to October 15, 2014, documents sufficient to evidence payments and/or reimbursements made to PWCC and/or PHP in connection with the Outreach Agreement, subject to**	Agreement. The request, therefore, is not overbroad. Protected Third-Party Information: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). The parties have a confidentiality order, and one similar document was provided in the CVD Proceeding. Relevance and Materiality: Canada objects that the time period in question should be more limited. But Resolute is claiming damages for all of its Canadian SC paper mills, not just Laurentide. *E.g.*, SOC ¶¶ 7, 53, 56, 91, 92, 104, 106, 108,	evidence payments and/or reimbursements made to PWCC and/or PHP in connection with the Outreach Agreement, subject to claims under Article 9.2(b), (e) and (f) of the IBA Rules"] is a sufficient response to the request. Beyond the scope of that offer, the **request is denied.**

(a)	(b)	(c)			(d)	(e)	(f)
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					claims under Article 9.2(b), (e) and (f) of the IBA Rules.	116. Therefore, the broader time scope sought by Resolute past October 15, 2014 is relevant and material. Other: Canada has not identified any specific rationale under IBA Rules 9.2(b), (e), and (f) that prohibits this disclosure. Canada has not identified any specific privilege, has not provided any specific grounds of commercial or technical confidentiality, and has not provided any specific political or institutional bases upon which to withhold production. This is especially so because Resolute has provided a specifically identified category of documents where Canada could have addressed all these issues. Therefore, these defenses have been waived.	
18	For the time period September 6, 2011 through December 31, 2012, all documents related to	Resolute Statement of Claim ¶¶ 39-40; GOC Statement of Defence ¶ 54.	An important portion of the assistance provided by GNS to PHP/PWCC was the negotiation and adoption of a discounted electricity rate, the LRR. GOC	*See* NS-SUPP1-32A GNS's Supplemental Questionnaire Responses and at Exhibits 41-1, 41-2, and 41-3 to PHP's	Canada objects as follows: (1) General Objection 2 – Overbroad Definition of GOC and GNS (2) General Objection 3 – Protected Third-Party Information: The requested documents may	Overbreadth: Resolute has identified a specific category of documents within the possession of the GNS, communications between it and either PWCC/PHP and/or NSPI. Examples of such documents would be found at NS-SUPP1-32A, 41-1, 41-2, and 41-3. The request, therefore, is not overbroad.	This is a specific request for potentially relevant documents. **The request is granted**, subject to any particularized confidentiality concern

(a)	(b)	(c)			(d)	(e)	(f)
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	PWCC/PHP's electricity rates exchanged between (a) GNS and (b) PWCC/PHP and/or NSPI.		has claimed that the negotiation for this rate was done between two private entities. *See* GOC Statement of Defence ¶ 54 ("PWCC and NSPI negotiated a Load Retention Tariff . . . ."). Responsive documents should demonstrate the extent of GNS involvement in that rate setting and/or dispute GOC's contention.	Supplemental Questionnaire Responses.	contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (3) <u>General Objection 4 – Irrelevance and Immateriality:</u> The electricity rate payable by PWCC/PHP under the LRR negotiated by PWCC and NSPI is a matter of public record set out in the decisions of the NSUARB.[3] The requested documents are not relevant or material to whether the LRR breached NAFTA Articles 1102, 1105 or 1110, or caused damage to Resolute and its investments. Documents for the time period September 28, 2012 to December 31, 2012 are particularly irrelevant. The NSUARB approved the LRR on September	<u>Protected Third-Party Information</u>: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). The parties have a confidentiality order, and some of these documents were provided in the CVD Proceeding. <u>Relevance and Materiality</u>: Canada has contested the electricity benefits provided to PWCC/PHP because those benefits allegedly were conferred by a private party, NSPI. *See* GOC Statement	(and consequential redaction).

[3] *See* **R-062**, *Re Pacific West Commercial Corporation*, 2012 NSUARB 126; **R-063**, *Re Pacific West Commercial Corporation*, 2012 NSUARB 144.

(a)	(b)	(c)			(d)	(e)	(f)
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					27, 2012. The LRR established PWCC/PHP's electricity rates going forward and it did not change after that date. **Canada does not agree to produce the requested documents.**	of Defence ¶ 54 ("PWCC and NSPI negotiated a Load Retention Tariff . . . ."); *id.* ¶ 75 ("[T]he electricity rate negotiated between PWCC and NPSI – is not a measure 'adopted or maintained by a Party' as contemplated by Article 1101(1)."). The requested documents should demonstrate the extent of GNS's involvement in the negotiations and process (which would not be reflected solely by the public record from the NSUARB proceeding), thereby rebutting Canada's contention that the agreement was entirely between two private entities. Canada also objects that the time period in question should be more limited and cut off at September 28, 2012. To the extent there is correspondence in the limited time (3 months) sought by Resolute after the approval by the NSUARB of the electricity rate at issue, such documents would demonstrate GNS's involvement in the electricity rate determination.	

(a)	(b)	(c)			(d)	(e)	(f)
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19	For the time period September 6, 2011 through December 31, 2012, all documents relating to PWCC/PHP's electricity rates exchanged between (a) Todd Williams (or personnel at Navigant) and (b) GNS, PWCC/ PHP, NSUARB, and/or NSPI.	Resolute Statement of Claim ¶¶ 39-40; GOC Statement of Defence ¶ 54.	Todd Williams was a consultant hired by GNS to ensure passage of the LRR and testified in support of the LRR at a hearing before the NSUARB. Responsive documents should demonstrate the extent of GNS involvement in the rate negotiations and/or dispute GOC's contention in ¶ 54 of its Statement of Defence.	Mr. Williams should have correspondence he sent or received in connection with his work for GNS related to the LRR. Because he was hired by GNS, such information is within the possession, custody, or control of GOC.	Canada objects as follows: (1) <u>General Objection 2 – Overbroad Definition of GOC and GNS</u> (2) <u>General Objection 3 – Protected Third-Party Information:</u> The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. Moreover, some documents may have been provided to the NSUARB on a confidential basis and cannot be disclosed by Canada. (3) <u>General Objection 4 – Irrelevance and Immateriality:</u> For the same reasons as stated in paragraph 3 of Canada's Objection to Request No. 18, Resolute has failed to establish that the requested documents are sufficiently relevant and material to the case.	<u>Overbreadth</u>: GNS hired Todd Williams as its consultant to ensure passage of the LRR. Resolute has identified a specific category of documents within the possession of the GNS, communications between Mr. Williams and either GNS, PWCC/PHP, NSUARB, or NSPI. In PHP's Supplemental Questionnaire Responses (at 31-32), for example, it identified documents PHP exchanged with NSPI; Mr. Williams may have received or sent some of these documents. The request, therefore, is not overbroad. <u>Protected Third-Party Information</u>: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or	This is a specific request for potentially relevant documents. **<u>The request is granted</u>**, subject to any particularized confidentiality concern (and consequential redaction). The Tribunal notes that Claimant is not seeking internal documents of the NSUARB of a deliberative nature, but rather documents submitted to the NSUARB.

(a)	(b)	(c)			(d)	(e)	(f)
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					(4) General Objection 5 – Special Political or Institutional Sensitivity: The members of the NSUARB possess privileges and immunities that make it impossible for the GOC and the GNS to compel them to communicate documents. **Canada does not agree to produce the requested documents.**	to compel the production of documents"). The parties have a confidentiality order, and some of these documents may have been provided in the CVD Proceeding. Relevance and Materiality: Canada has contested the electricity benefits provided to PWCC/PHP because those benefits allegedly were conferred by a private party, NSPI. *See* GOC Statement of Defence ¶ 54 ("PWCC and NSPI negotiated a Load Retention Tariff . . . ."); *id.* ¶ 75 ("[T]he electricity rate negotiated between PWCC and NPSI – is not a measure 'adopted or maintained by a Party' as contemplated by Article 1101(1).").The requested documents should demonstrate the extent of GNS's involvement (via Mr. Williams) in the negotiations and process (which would not be reflected solely by the public record from the NSUARB proceeding), thereby rebutting Canada's contention that the agreement was entirely between two private entities. Canada also objects because the time period in question should be more	

(a)	(b)	(c)			(d)	(e)	(f)
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						limited and cut off at September 28, 2012. To the extent there is correspondence in the limited time (3 months) sought by Resolute after the approval by the NSUARB of the electricity rate at issue, such documents would demonstrate GNS's involvement in the electricity rate determination. Special Political or Institutional Sensitivity: The documents requested do not implicate any special political or institutional sensitivity because Resolute seeks communications between Mr. Williams and the NSUARB. Mr. Williams would have such documents in his possession, custody, and control.	
21	For the time period January 1, 2012 to September 28, 2012, analyses conducted by or on behalf of GOC, GNS, NSUARB and/or CRA of	Resolute Counter-Memorial on Jurisdiction, ¶¶ 15-20.	Responsive documents should contain information and data that will support Resolute's claims in identifying governmental expectations and objectives for facilitating the re-	These are analyses generated by GOC, GNS, NSUARB, and/ or CRA.	Canada objects as follows: (1) General Objection 2 – Overbroad Definition of GOC and GNS (2) General Objection 3 – Protected Third-Party Information: Some of the documents requested by Resolute constitute taxpayer information, the disclosure of	Overbreadth: Resolute has identified a specific category of documents within the possession of GOC and GNS, providing for a limited and relevant time period of nine months, a specific type of relevant documents ("analyses"), and a narrow subject matter (the proposed funding package(s) to facilitate the re-opening of the PHP mill). The request, therefore, is not overbroad.	This is a specific request for potentially relevant documents. **The request is granted**, subject to any particularized confidentiality concern and legal impediment or privilege, especially as regards the CRA (and

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	the proposed funding package(s) to facilitate the re-opening of the PHP mill, including analyses of the proposed ATR arrangement that was rejected by the CRA on September 12, 2012.		opening of the PHP mill, and assist Resolute's experts in conducting damages assessments and calculations.		which is prohibited by subsection 241(1) of Canada's *Income Tax Act*. In addition, the requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. Finally, some documents may have been provided to the NSUARB on a confidential basis and cannot be disclosed by Canada. (3) <u>General Objection 4 –Irrelevance and Immateriality:</u> For the same reasons as set out in paragraph 2 of Canada's Objection to Request No. 20, analyses of the proposed ATR arrangement that was rejected by the CRA on September 12, 2012 are irrelevant and immaterial to this dispute.	<u>Protected Third-Party Information</u>: Canada's confidentiality objection is not well-founded. Resolute requests tax-related information (such as analyses conducted by CRA) because Resolute has reason to believe that the CRA and PWCC/PHP submitted the requested analyses to GNS for the purpose of negotiating the terms of the government support being sought by PWCC/PHP. Subsection 241(10) of Canada's *Income Tax Act* and subsection 96(1) of Nova Scotia's *Income Tax Act* apply only to information "obtained by or on behalf of the [Minister of National Revenue] for the purpose(s) of this Act." Therefore, confidential tax-related information obtained by government officials who do not act as representatives of the Minister of National Revenue or that is obtained for purposes other than the administration or enforcement of the *Income Tax Act* does not fall under the purview of the prohibitions provided under ss. 241(10) and 96(1) of the federal and provincial *Income Tax Acts*, respectively. Information provided by PWCC/PHP as part of negotiations	consequential redaction).

(a)	(b)	(c)			(d)	(e)	(f)
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					(4) General Objection 5 – Special Political or Institutional Sensitivity: The members of the NSUARB possess privileges and immunities that make it impossible for the GOC and the GNS to compel them to communicate documents. **Canada does not agree to produce the requested documents.**	aimed at providing multiple forms of government support to a private corporation would not be covered by this objection. In any event, Canada is obligated to produce similar analyses not involving tax authorities that are sought by this document request. Further, Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). The parties have a confidentiality order, and some of these documents may have been provided in the CVD Proceeding. With respect to analyses conducted by or on behalf of NSUARB, this request covers only the materials that were provided or obtained by GNS (as a party to the NSUARB proceedings) or by	

(a)	(b)	(c)			(d)	(e)	(f)
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						GOC, not internal deliberative documents of the NSUARB. In addition, Canada has not addressed any of the four Wigmore factors to establish case-by-case privilege and, therefore, has not overcome the presumption that the NSUARB confidential records are discoverable. Because the parties in the NSUARB proceeding filed documents pursuant to a confidentiality order (signed by GNS) does not mean those same documents are privileged. And given the Tribunal's Confidentiality Order, Canada will not suffer any injury by producing those documents because Resolute is obligated to preserve that confidentiality. Therefore, Canada cannot satisfy the final Wigmore balancing factor, and this Tribunal should deny Canada's objection. <u>Relevance and Materiality:</u> Prior to agreeing to the benefits package in this case, GNS, GOC, and/or NSUARB likely analyzed the benefits and tradeoffs in doing so. Those analyses are likely to contain financial information, the impact of giving PHP/PWCC the benefits, and the impact on the SC Paper	

(a)	(b)	(c)			(d)	(e)	(f)
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						market generally. This is particularly so when GNS and PHP/PWCC representatives stated their intent in reaching this agreement was ensuring that PHP would be the lowest cost producer. Resolute's experts can also use the requested documents in their analyses. Special Political or Institutional Sensitivity: As stated previously, this request seeks analyses conducted by or on behalf of NSUARB that were provided or obtained by GNS (as a party to the NSUARB proceedings) or by GOC. Therefore, the NSUARB's internal deliberative materials are not requested.	
22	All documents provided to and/or generated by the NSUARB related to the LRR that are not otherwise	Resolute Statement of Claim ¶¶ 39-40; GOC Statement of Defence ¶ 54.	A number of documents in the publicly-available record of the NSUARB proceeding (*see* NSUARB file # M04862) are redacted or confidential.	*See e.g.*, NSPI's May 30, 2012 responses to an information request which reference compilations of documents	Canada objects as follows: (1) General Objection 2 – Overbroad Definition of GOC and GNS (2) General Objection 3 – Protected Third-Party Information: The requested documents may contain	Overbreadth: The GNS participated in the NSUARB proceeding. Resolute has identified a specific category of documents, which would be the unredacted documents provided to the NSUARB. GNS should have these documents within its possession, custody, or control because it was a	**Request denied.** It is not demonstrated that unredacted versions of the documents are required.

(a)	(b)	(c)			(d)	(e)	(f)
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	public (including un-redacted versions of documents filed with NSUARB by NSPI, and PWCC, PHP and/or other parties for which the publicly available versions of the documents are fully or partially redacted).		Responsive documents, in particular should show the basis for the LRR and could be used by Resolute's expert(s) in conducting their analyses.	identified as "Confidential Attachment 1," "Confidential Attachment 2," and "Confidential Attachment 3." Revised versions of these attachments were filed on July 9, 2012, as part of Exhibit P-39; NSPI Evidence was filed with NSUARB on April 27, 2012. NSPI has also filed other documents with NSUARB in response to information requests (*see, e.g.*, NSUARB file # M05803). Additionally,	confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. Moreover, some documents may have been provided to the NSUARB on a confidential basis and cannot be disclosed by Canada. (3) <u>General Objection 4 – Irrelevance and Immateriality:</u> Resolute has requested the entirety of the confidential record in NSUARB proceeding no. M04862, without specifying which of the requested documents it believes are relevant and material to this dispute, and why. Moreover, Resolute does not need the requested documents in order to understand the basis for the LRR. As explained in Request No. 18, the basis for the LRR negotiated by PWCC and NSPI is a matter of public record set out	participant. Therefore, this request is not overbroad. <u>Protected Third-Party Information</u>: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). With respect to analyses conducted by or on behalf of NSUARB, this request covers only the materials that were provided or obtained by GNS (as a party to the NSUARB proceedings) or by GOC, not internal deliberative documents of the NSUARB. In addition, Canada has not addressed any of the four Wigmore factors to establish	

(a)	(b)	(c)			(d)	(e)	(f)
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				NSUARB has PWCC's "Responses to Avon Information Requests" and April 30, 2012 "Responses to Small Business Advocate Information Requests."	in the relevant NSUARB decisions. (4) <u>General Objection 5 – Special Political or Institutional Sensitivity:</u> The members of the NSUARB possess privileges and immunities that make it impossible for the GOC and the GNS to compel them to communicate documents. **Canada does not agree to produce the requested documents.**	case-by-case privilege and, therefore, has not overcome the presumption that the NSUARB confidential records are discoverable. Because the parties in the NSUARB proceeding filed documents pursuant to a confidentiality order (signed by GNS) does not mean those same documents are privileged. And given the Tribunal's Confidentiality Order, Canada will not suffer any injury by producing those documents because Resolute is obligated to preserve that confidentiality. Therefore, Canada cannot satisfy the final Wigmore balancing factor, and this Tribunal should deny Canada's objection. <u>Relevance and Materiality</u>: Canada presumably contests the economic impact of the electricity benefits provided to PWCC/PHP on profitability. The requested documents should assist Resolute's experts in determining the effect of the electricity rate on PHP and Resolute. For example, the direct evidence of Todd Williams (the consultant hired by GNS to ensure passage of the LRR)	

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						stated that "The alternative natural gas price forecast was based [redacted] and approved by PWCC and the Government of Nova Scotia for the confidential Strategist system simulation modeling runs undertaken by NSPI to forecast the Mill's actual incremental costs through 2022. It is my understanding that the Strategist run results using this natural gas price forecast helped to inform PWCC's financial projections for the Mill." The three line redaction could aid Resolute's experts, and this information is not publicly available (as Canada claims). Similarly, PWCC's rebuttal evidence includes numerous redactions that obscure the financial benefits related to the tax deal PWCC sought, the ten year financial overview (presumably of PHP) (at 26), and other statements from PHP regarding its financial prospects (*see, e.g.*, at 29). PWCC also provided responses to questions from the Small Business Advocate, some of which were redacted (such as IR-7), which sought PWCC's	

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						financial information and analyses for the electricity rate. Other exhibits submitted to the NSUARB are confidential in their entirety, so that Resolute cannot even examine these documents to examine redactions. Special Political or Institutional Sensitivity: The documents requested do not implicate any special political or institutional sensitivity because Resolute seeks only the documents in the possession, custody, or control of GNS—the unredacted documents versions of redacted filings made with the NSUARB. Resolute does not seek communications and documents solely internal to the NSUARB.	
25	Financial Statements of PHP, PWCC, and NPPH for FY 2011 to present.	Resolute Statement of Claim ¶¶ 27-28, 31-45; GOC Statement of	These documents will demonstrate the improvements made by PHP as a result of the assistance provided, and could be used by Resolute's	To the extent these materials were provided to GNS or GOC relating to securing the assistance or for	Canada objects as follows: (1) General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute	Overbreadth: Resolute has identified a specific category of documents within the possession of the GNS or GOC: the financial statements for PHP, PWCC, and NPPH. The request, therefore, is not overbroad.	Canada's offer in column (d) ["to search for and produce Financial Statements of PHP and PWCC for FY 2012 to 2015, subject to claims under Article

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		Defence ¶¶ 48-52, 54.	expert(s) in conducting their analyses.	any other reasons, they would be in the possession custody, or control of GOC.	(2) General Objection 3 – Protected Third-Party Information: The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (3) General Objection 4 – Irrelevance and Immateriality: Resolute has requested financial statements of NPPH, which owned the Port Hawkesbury mill prior to its acquisition by PWCC/PHP. However, the Tribunal's jurisdiction does not extend to measures adopted during NPPH's ownership of the mill (see Canada's Objection to Request No. 10). Resolute has not explained why the financial statements of the mill's former owner are relevant and material to whether the Nova Scotia measures breached NAFTA Articles 1102, 1105 or 1110, or	Protected Third-Party Information: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). The parties also have a confidentiality order. Relevance and Materiality: Canada claims that NPPH's financial statements are not relevant and material. NPPH was losing $4 million per month, so its financial statements will provide a baseline for Resolute and its experts to evaluate the profitability (or lack thereof) of the mill prior to the financial support GNS provided to PHP.	9.2(b), (e) and (f) of the IBA Rules."] is a sufficient response to the request. Beyond the scope of that offer, the **request is denied.**

(a)	(b)	(c)			(d)	(e)	(f)
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					caused damages to Resolute and its investments. Resolute has also requested financial statements from irrelevant time periods including before the relevant measures were adopted and after the dispute was submitted to arbitration. The only relevant fiscal years for the purposes of this request are 2012 to 2015. **Notwithstanding the above, Canada agrees to search for and produce Financial Statements of PHP and PWCC for FY 2012 to 2015, subject to claims under Article 9.2(b), (e) and (f) of the IBA Rules.**	Canada also objects that the time period in question should be more limited. But Resolute is claiming damages for all of its Canadian SC paper mills, not just Laurentide. *E.g.*, SOC ¶¶ 7, 53, 56, 91, 92, 104, 106, 108, 116. Therefore, the broader time scope sought by Resolute past October 15, 2014 is relevant and material. Other: Canada has not identified any specific rationale under IBA Rules 9.2(b), (e), and (f) that prohibits this disclosure. Canada has not identified any specific privilege, has not provided any specific grounds of commercial or technical confidentiality, and has not provided any specific political or institutional bases upon which to withhold production. This is especially so because Resolute has provided a specifically identified category of documents where Canada could have addressed all these issues. Therefore, these defenses have been waived.	

(a)	(b)	(c)			(d)	(e)	(f)
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27	Tax filings of PHP, PWCC and NPPH submitted to GNS or GOC for FY 2011 to present.	Resolute Statement of Claim ¶¶ 27-28, 31-45; GOC Statement of Defence ¶¶ 48-52, 54.	These documents could demonstrate the improvements and profits made by PHP as a result of the assistance provided, and could be used by Resolute's expert(s) in conducting their analyses.	Tax returns are in the possession, custody, and control of the respective governments.	Canada objects as follows: (1) General Objection 3 – Protected Third-Party Information: The documents requested by Resolute constitute taxpayer information, the disclosure of which is prohibited by subsection 241(1) of Canada's *Income Tax Act*. To the extent that the GNS may have a copy of the requested documents, their disclosure is prohibited by section 96 of Nova Scotia's *Income Tax Act*. In addition, the requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (2) General Objection 4 – Irrelevance and Immateriality: Resolute has requested tax filings of NPPH, the Port Hawkesbury mill's former owner. For the same reasons as set out in Canada's Objection to Request No. 25 in relation to the Financial Statements of NPPH,	Protected Third-Party Information: Canada's confidentiality objection is not well-founded. Resolute requests tax filings because it has reason to believe that PWCC, PHP and NPPH submitted their tax filings to GNS or GOC as part of a continuing obligation to report to GNS as a consequence of the financial and other support received from GNS. Subsection 241(10) of Canada's *Income Tax Act* and subsection 96(1) of Nova Scotia's *Income Tax Act* apply only to information "obtained by or on behalf of the [Minister of National Revenue] for the purpose(s) of this Act." Therefore, confidential tax-related information obtained by government officials who do not act as representatives of the Minister of National Revenue or that is obtained for purposes other than the administration or enforcement of the *Income Tax Act* does not fall under the purview of the prohibitions provided under ss. 241(10) and 96(1) of the federal and provincial *Income Tax Acts*, respectively. Information provided by PWCC/PHP as part of negotiations aimed at providing multiple forms of government support to	The Tribunal notes that Respondent reported by letter dated July 26, 2018 that a diligent search had failed to identify the requested items within the possession of the Government of Canada or the Government of Nova Scotia that would have been provided for purposes other than the administration or enforcement of the federal or provincial Income Tax Acts. Unless there is a request from Claimant associated with reason to believe that the search undertaken by Canada was insufficient in some specified respect, the Tribunal does not find it fruitful

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					the tax filings of NPPH have no relevance or materiality to this dispute. Resolute has also requested tax filings from irrelevant time periods including before the relevant measures were adopted and after the dispute was submitted to arbitration. The only relevant fiscal years for the purposes of this request are 2012 to 2015. **Canada does not agree to produce the requested documents.**	a private corporation would not be covered by this objection. Further, Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). The parties have a confidentiality order, and some of these documents may have been provided in the CVD Proceeding. <u>Relevance and Materiality</u>: Canada claims that NPPH's tax filings are not relevant and material. NPPH was losing $4 million per month, so its tax filings will provide a baseline for Resolute and its experts to evaluate the profitability (or lack thereof) of the mill prior to the financial support GNS provided to PHP.	to enter a further order on this matter.

(a)	(b)	(c)			(d)	(e)	(f)
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						Canada also objects because the time period in question should be more limited. But Resolute is claiming damages for all of its Canadian SC paper mills, not just Laurentide. *E.g.*, SOC ¶¶ 7, 53, 56, 91, 92, 104, 106, 108, 116. Therefore, the broader time scope sought by Resolute past October 15, 2014 is relevant and material.	
31	March 2, 2012 agreement between GNS and NPPH for the purchase of land.	Statement of Claim ¶¶ 36-37, 41; Statement of Defence ¶¶ 48-52; Resolute Counter-Memorial on Jurisdiction, ¶¶ 21, 175 n.232.	Responsive documents should demonstrate a potential agreement between GNS and NPPH for the purchase of land owned by the mill. Such information should provide support for Resolute's claims and information can assist Resolute's experts in conducting their damages analyses and calculations.	*See* NS-LA-2 to GNS's Initial Questionnaire Responses.	Canada objects as follows: (1) <u>General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute</u> (2) <u>General Objection 3 – Protected Third-Party Information:</u> The requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (3) <u>General Objection 4 – Irrelevance and Immateriality:</u> Even if the	<u>Overbreadth</u>: Resolute has identified a specific documents within the possession of the GNS, which can be found at NS-LA-2. The request, therefore, is not overbroad. <u>Protected Third-Party Information</u>: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding	This is a specific request for potentially relevant documents. The **<u>request is granted</u>**, subject to any particularized confidentiality concern (and consequential redaction).

(a)	(b)	(c)			(d)	(e)	(f)
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					requested documents demonstrate "a potential agreement between GNS and NPPH for the purchase of land owned by the mill", as asserted by Resolute, this potential agreement would not form part of the final package of measures adopted by Nova Scotia. Any "potential agreement" on the sale of land is irrelevant in light of Canada's agreement to produce, subject to claims under Article 9.2(b),(e) and (f) of the IBA Rules, the final purchase agreement in response to Request No. 32. **Canada does not agree to produce the requested documents.**	[or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). The parties have a confidentiality order, and the document was provided in the CVD Proceeding. Relevance and Materiality: The requested document will aid in determining the value of the land which was sold to GNS. Resolute's experts can also use the requested documents to assist with their analyses.	
33	For the time period September 12, 2012 through Sept 28, 2012, all correspondence between GNS	Resolute Counter-Memorial on Jurisdiction, ¶¶ 17-20.	Responsive documents should provide details as to what level of assistance PWCC would require to finalize the purchase of PHP.	Resolute is seeking correspondence involving GNS.	Canada objects as follows: (1) General Objection 2 – Overbroad Scope of Document Collection Sought by Resolute (2) General Objection 3 – Protected Third-Party Information: The	Overbreadth: Resolute has identified a specific category of documents for a period of less than three weeks—the correspondence between GNS and PWCC/PHP. Resolute agrees that the most likely departments, boards, commissions, organs, and agencies of GNS (collectively, "instrumentalities")	**Request denied** as overbroad.

(a)	(b)	(c)			(d)	(e)	(f)
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	and/or PWCC and/or PHP.		Correspondence between these parties should provide evidence in support of Resolute's claims and is likely to also contain information relevant to Resolute's experts' damages analyses and calculations.		requested documents may contain confidential third-party information of PWCC, PHP and related parties. Canada is unable to disclose such information to Resolute without the authorization of such parties. (3) General Objection 4 – Irrelevance and Immateriality –Resolute has requested "all correspondence" without any limitation as to subject matter. Resolute also requests correspondence between PWCC and/or PHP. Even if such correspondence would show "what level of assistance PWCC would require to finalize the purchase of PHP", Resolute has not explained why communications between third parties, to which Nova Scotia was not party, are relevant and material to whether the Nova Scotia measures breached NAFTA Articles 1102, 1105 or 1110, or caused damages to Resolute and its investments.	should be required to search for such information. Resolute is amenable to discussing with Canada which instrumentalities of GNS and/or persons would have the responsive information. Protected Third-Party Information: Canada's confidentiality objection is not well-founded. This request does not seek taxation information and Nova Scotia's FOIPOP addresses Freedom of Information (i.e., Access to Information) requests but not requests for production in litigation. *See* FOIPOP § 4(3)(a)-(b)("This Act does not . . . limit the information otherwise available by law to a party to litigation including a civil, criminal, or administrative proceeding [or] affect the power of any court or tribunal to compel a witness to testify or to compel the production of documents"). The parties also have a confidentiality order. Relevance and Materiality: As detailed in Resolute's Memorial on Jurisdiction (at ¶¶ 17-20), the sale of the mill to PWCC nearly fell apart after CRA failed to provide a favorable advance tax	

(a)	(b)	(c)			(d)	(e)	(f)
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					Canada does not agree to produce the requested documents.	ruling. However, the deal was revived after Premier Darrell Dexter said negotiations had ended. The communications between PWCC/PHP and GNS during this limited time period—less than three weeks—are relevant and material for determining what levels of support were necessary to consummate the ultimate deal, particularly in light of the parties' inability to reach a final deal after the ATR denial and the revival of the deal shortly thereafter. Resolute's experts can use these documents to aid in their economic analyses.	

ANNEX II – RESPONDENT'S REQUESTS FOR DOCUMENTS

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments			
A.	**The 2007 Merger between Abitibi-Consolidated Inc. and Bowater Incorporated and Alleged Expectations Relating Thereto**					
2.	Documents from January 1, 1994 to December 30, 2015 that contain, discuss or refer to: (a) financial support provided by a Government to the Claimant in respect of its paper mills in Canada, including in the form of subsidies, loans, grants, cash to purchase land; (b) reduced electricity rates negotiated by the Claimant with electricity service providers, in respect of electricity supplied to its paper mills in Canada; or	SOC ¶¶ 101-105, 112-115	Resolute alleges that the expectation referred to in Request No. 1 was based on NAFTA Articles 1102 and 1105, which came into force on January 1, 1994. The requested documents are relevant and material to assessing whether that expectation was reasonable in light of any financial support, reduced electricity rates or reduced property taxes received by Resolute's predecessors after the entry into force of NAFTA and before Resolute was established through the merger of Abitibi and Bowater in 2007. Resolute also alleges that the Nova Scotia Measures breached	Request 2(a) Resolute objects to this request on the following grounds: • *First*, Canada's first stated ground for seeking the requested documents is untenable at law, and therefore irrelevant and immaterial to Resolute's claims or Canada's defenses. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) The fact that the Canadian or provincial governments would have provided other support can in no way serve to minimize foreign investors' reasonable expectation that such governments should uphold their binding commitments. defenseCanada has not otherwise explained why the requested documents would be relevant and material to the claims and defenses at issue. • *Second*, Canada has possession, custody and control of responsive documents that would be relevant to the second rationale for this request (Art. 3(3)(c)(i) of the IBA Rules) because Canada has control over its representatives – or can obtain relevant information from provincial representatives – who accorded treatment to Resolute. Many of these details may also exist in public records from various governmental entities. The details of any	Request 2(a) Resolute's objections are unfounded for the following reasons: The requested documents are relevant and material to Resolute's allegation that it is being treated unequally, with respect to financial support. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 101-105, 112-115. The requested documents are necessary for Canada to defend against Resolute's 1102 claim, as they will provide information relevant and material to: (1) the treatment that Resolute was accorded by government; (2) whether Resolute was "in like circumstances" with other SC paper producers; and (3) whether the treatment accorded to Resolute was "less favourable" than the treatment accorded to other SC paper producers. As Resolute made clear during the hearing on whether to bifurcate this arbitration, its Article 1102 case	Request 2(a) The documents sought by Canada in its revised request [narrowed to "documents from October 29, 2007 to December 30, 2015 and [limited to] the documents to financial support (including subsidies, loans, grants, cash to purchase land) from the Governments of Canada, Québec and Nova Scotia for this time period"]. are prima facie relevant to issues in the arbitration. Claimant may however elect to provide Canada with written authorization to enable the release of responsive documents under applicable law.

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	(c) reduced property taxes negotiated by the Claimant in respect of its paper mills in Canada.		NAFTA Article 1102 by according less favourable treatment to Resolute and its SC paper operations than that accorded, in like circumstances, to PWCC, PHP and their SC paper operations. The requested documents are relevant and material to assessing whether Canada did in fact accord less favourable treatment in like circumstances.	financial support that would be relevant to identify treatment to Resolute are therefore readily accessible to Canada. • *Third*, the breadth of this request is overly expansive (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking documents regarding unspecified Government financial support obtained or negotiated by Resolute over a period of 22 years (including 13 years *prior to* the 2007 Merger, to which Canada claims this request is relevant) would require collection and review thousands of documents relating to Resolute's interactions with any Government officials. This inefficient use of resources is unheard of in international arbitration. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214	"turns on like circumstances, and like circumstances in this case is not restricted to an intra-provincial analysis."[1] According to Resolute, Nova Scotia "is a province that clearly is deciding to treat its own investor in a way that is different from the treatment that is accorded to other investors in Canada and is doing so in a way that is not necessarily limited to its territorial jurisdiction".[2] Resolute specifically asked that the Tribunal not make a determination "in the abstract",[3] yet it is refusing to disclose the documents demonstrating the treatment that it is accorded. The requested documents are also relevant and material to Canada's defence against Resolute's Article 1105 claim. Resolute argues that Canada has violated Article 1105 because it expected that it would be able to "compete with other SC paper mills in Canada on fair terms, driven by the competitive conditions of the	

[1] Bifurcation Hearing Transcript, November 7, 2016, p. 45:5-7.
[2] Bifurcation Hearing Transcript, November 7, 2016, p. 45:16-21.
[3] Bifurcation Hearing Transcript, November 7, 2016, p. 45:23-24.

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				("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify the specific instances of Government support for which Canada is interested in obtaining evidence, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.)	private SC paper market" and that "it is unfair and discriminatory that Nova Scotia has used its public funds to rearrange the SC paper market" and that using the "public purse" to "bankroll" a competitor "clearly infringes a sense of fairness, equity and reasonableness." [4] If Resolute has also benefitted from government funding and taxpayer support for its paper mill operations in Canada in ways similar to the GNS' support for Port Hawkesbury, it would be relevant and material to Canada's defences. For example, during the same period Resolute complains about Nova Scotia's financial support for Port Hawkesbury, Resolute itself received millions of dollars of public funds in financial support in 2011 and 2012 from the Government of Nova Scotia in connection with Resolute's Bowater Mersey paper mill in Nova Scotia. The Government of Nova Scotia not only provided a $50 million rescue package in December 2011 through the same government	

[4] Statement of Claim, ¶¶ 104, 106.

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					program that was used to support Port Hawkesbury (Nova Scotia Jobs Fund), including through forgivable loans, the purchase of land and training of workers (for which Resolute CEO Richard Garneau praised Nova Scotia Premier for his "leadership" and "quick response" in order to "improve the competitive position of [Resolute's] paper mill in Nova Scotia" [5]), but the Government of Nova Scotia eventually agreed to purchase Resolute's assets and liabilities, taking on millions of Resolute's debt in order to reduce the impact on the local community from Resolute's decision to shut down the mill in June 2012. [6] While there is publically available information regarding Resolute's receipt of	

[5] "Province Acts to Protect Rural Jobs," Nova Scotia Premier's Office, December 1, 2011, available at: https://novascotia.ca/news/release/?id=20111202005. See also "Resolute Boss confident plan will keep Bowater mill running," The Chronicle Herald, December 6, 2011, available at: http://thechronicleherald.ca/novascotia/40013-resolute-boss-confident-plan-will-keep-bowater-mill-running (quoting Resolute CEO as saying that Nova Scotia's financial support "basically guarantees that the mill (survives) for five years" and helps its mill become a "low cost operation").

[6] See for example: "Province Acts to Protect Rural Jobs," Nova Scotia Premier's Office, December 1, 2011, available at: https://novascotia.ca/news/release/?id=20111202005; "NS makes $50 million deal to keep Bowater mill open", The Chronicle Herald, December 1, 2011, available at: http://thechronicleherald.ca/novascotia/38484-ns-makes-50m-deal-keep-bowater-mill-open; "Bowater gets $50M boost from NS," December 2, 2011, available at: http://www.cbc.ca/news/canada/nova-scotia/bowater-gets-50m-boost-from-n-s-1.1006998; "Nova Scotia offers $50 million package for Bowater Mersey paper mill", Global News, December 2, 2011, available at: https://globalnews.ca/news/184821/nova-scotia-offers-50-million-package-for-bowater-mersey-paper-mill/; "Legislation to enact Pulp and Paper Mill agreement introduced," Nova Scotia Premier's Office, December 6, 2011, available at: https://novascotia.ca/news/release/?id=20111206005.

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					millions of dollars in financial support from Nova Scotia's "public purse", Resolute must provide its written consent to allow the Government of Nova Scotia to release non-public information regarding Resolute's receipt of financial support in connection with its former Bowater Mersey paper mill. The same would apply to any other financial support received by Resolute from other Governments. Canada is not seeking the production of documents that are already in the public domain. Canada is seeking non-public documents that are in the possession, custody or control of Resolute. However, the fact that "many of these details may also exist in the public records from government entities", does not provide a justification not to produce a document. It would be unreasonably burdensome for Canada to seek out the requested documents from Government departments when Resolute has ready access to them and can identify and produce the requested documents with precision. Furthermore, federal and provincial	

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					law precludes Canada from unilaterally obtaining the requested documents from Government departments without Resolute's specific authorization. Unless Resolute agrees to provide Canada with written authorization to enable the release of such documents under applicable domestic law, Canada maintains its request. . Canada requests that the Claimant produce the requested documents, but agrees to narrow the request to documents from October 29, 2007 to December 30, 2015 and to limit the documents to financial support (including subsidies, loans, grants, cash to purchase land) from the Governments of Canada, Québec and Nova Scotia for this time period. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce its three questionnaire responses from the *Supercalendered Paper from Canada* countervailing duty investigation before the U.S.**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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					Department of Commerce, subject to any redactions necessary to protect the Business Proprietary Information of third parties (which Resolute cannot produce by law). Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing. **For the reasons set out above, Canada respectfully requests that the Tribunal make an order granting the request, as redrafted in Canada's reply to Resolute's objections.**	
				Request 2(b) Resolute objects to this request on the following grounds: • *First*, Canada's first stated ground for seeking the requested documents is untenable at law, and therefore irrelevant and immaterial to Resolute's claims or Canada's defenses. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) The fact that the Canadian or provincial governments would have provided other support can in no way serve to minimize foreign investors' reasonable expectation that such	Request 2(b) Resolute's objections are unfounded for the following reasons: The requested documents are relevant and material to Resolute's allegation that Canada has accorded it unequal treatment, with respect to electricity rates. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 101-105, 112-115.	Request 2(b) **Request granted.** The documents sought by Canada in its revised request [narrowed to "documents from October 29, 2007 to December 30, 2015, and [limited to] reduced electricity rates for its paper mills within Nova Scotia and Québec during this time period"] are prima facie relevant to

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				governments should uphold their binding commitments. defenseCanada has not otherwise explained why the requested documents would be relevant and material to the claims and defenses at issue. • *Second*, Canada has possession, custody and control of responsive documents that would be relevant to the second rationale for this request (Art. 3(3)(c)(i) of the IBA Rules) because Canada has control over its representatives – or can obtain relevant information from provincial representatives – who accorded treatment to Resolute. Many (if not all) of these documents would also be publicly available in utility rate board proceedings held in each province. The details of electricity discounts that would be relevant to identify treatment to Resolute are therefore readily accessible to Canada. • *Third*, the breadth of this request is overly expansive (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking documents regarding unspecified electricity rate reductions obtained or negotiated by Resolute over a period of 22	The requested documents are necessary for Canada to defend against Resolute's 1102 claim, as they will provide information relevant and material to: (1) the treatment that Resolute was accorded by Government; (2) whether Resolute was "in like circumstances" with other SC paper producers; and (3) whether the treatment accorded to Resolute was "less favourable" than the treatment accorded to other SC paper producers. As Resolute made clear during the hearing on whether to bifurcate this arbitration, its Article 1102 case "turns on like circumstances, and like circumstances in this case is not restricted to an intra-provincial analysis."[7] According to Resolute, Nova Scotia "is a province that clearly is deciding to treat its own investor in a way that is different from the treatment that is accorded to other investors in Canada and is doing so in a way that is not necessarily limited to its territorial	issues in the arbitration and should be produced.

[7] Bifurcation Hearing Transcript, November 7, 2016, p. 45:5-7.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				years (including 13 years *prior to* the 2007 Merger, to which Canada claims this request is relevant) would require collection and review of thousands of documents relating to Resolute's interactions with any Government officials or with any utilities company. This would be unheard of in international arbitration. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify the specific instances of electricity discounts for which Canada is interested in obtaining evidence, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both	jurisdiction".[8] Resolute specifically asked that the Tribunal not make a determination "in the abstract",[9] yet it is refusing to disclose the documents demonstrating the treatment that it is accorded. Furthermore, Resolute claims that Canada has violated Article 1105 because it expected that it would be able to "compete with other SC paper mills in Canada on fair terms, driven by the competitive conditions of the private SC paper market" and that "it is unfair and discriminatory that Nova Scotia has used its public funds to rearrange the SC paper market" and that using the "public purse" to "bankroll" a competitor "clearly infringes a sense of fairness, equity and reasonableness." [10] If Resolute has also benefitted from reduced electricity rates for its paper mill operations in Canada, it would be relevant and material to Canada's defenses and the outcome of the dispute.	

[8] Bifurcation Hearing Transcript, November 7, 2016, p. 45:16-21.
[9] Bifurcation Hearing Transcript, November 7, 2016, p. 45:23-24.
[10] Statement of Claim, ¶¶ 104, 106.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.)	For example, as noted above, during the same period Resolute complains about Nova Scotia's financial support for Port Hawkesbury, Resolute itself received millions of dollars of public funds in financial support in 2011 and 2012 from the Government of Nova Scotia in connection with Resolute's Bowater Mersey paper mill in Nova Scotia. Not only did the Government of Nova Scotia provide Resolute with a $50 million rescue package in December 2011, Resolute received a discounted electricity rate through an LRR that was approved through the NSUARB in the same way as it was for Port Hawkesbury.[11] While there is publically available information regarding the discounted electricity rate received by Resolute's paper mill in Nova Scotia, unless Resolute provides its written consent	

[11] Nova Scotia Utility and Review Board Decision, 2011 NSUARB 184, available at: https://www.canlii.org/en/ns/nsuarb/doc/2011/2011nsuarb184/2011nsuarb184.pdf. See for example: "NS makes $50 million deal to keep Bowater mill open", The Chronicle Herald, December1, 2011, available at: http://thechronicleherald.ca/novascotia/38484-ns-makes-50m-deal-keep-bowater-mill-open; "Bowater gets $50M boost from NS," CBC News, December 2, 2011, available at: http://www.cbc.ca/news/canada/nova-scotia/bowater-gets-50m-boost-from-n-s-1.1006998; "Nova Scotia offers $50 million package for Bowater Mersey paper mill", Global News, December 2, 2011, available at: https://globalnews.ca/news/184821/nova-scotia-offers-50-million-package-for-bowater-mersey-paper-mill/; "Government Investment, electricity concession for Bowater Mersey mill," Pulp and Paper Canada, December 6, 2011, available at: https://www.pulpandpapercanada.com/news/government-investment-electricity-concessions-for-bowater-mersey-mill-1000742912.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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					to allow the Government of Nova Scotia and the NSUARB to release non-public information regarding Resolute's receipt of its discounted electricity rate in connection with its former Bowater Mersey paper mill, Canada will not have access thereto. Canada is not seeking the production of documents that are already in the public domain. Canada is seeking non-public documents that are in the possession, custody or control of Resolute. Contrary to what Resolute asserts, Canada is not in a position to obtain relevant information from Hydro Québec, a third party that is not controlled by Canada. Canada requests that the Claimant produce the requested documents, but agrees to narrow the request to documents from October 29, 2007 to December 30, 2015, and to limit the request to reduced electricity rates for its paper mills within Nova Scotia and Québec during this time period. **JULY 27 ADDITIONAL COMMENTS**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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					On July 13, 2018, Resolute advised that it would only produce its three questionnaire responses from the *Supercalendered Paper from Canada* countervailing duty investigation before the U.S. Department of Commerce, subject to any redactions necessary to protect the Business Proprietary Information of third parties (which Resolute cannot produce by law). Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing. **For the reasons set out above, Canada respectfully requests that the Tribunal make an order granting the request, as redrafted in Canada's reply to Resolute's objections.**	
				Request 2(c) Resolute objects to this request on the following grounds: • *First*, Canada's first stated ground for seeking the requested documents is untenable at law, and therefore irrelevant and immaterial to Resolute's claims or	Request 2(c) Resolute's objections are unfounded for the following reasons: The requested documents are relevant and material to Resolute's allegation that Canada has accorded it unequal treatment with respect to property	Request 2(c) **Request granted.** The documents sought by Canada in its revised request [narrowed to "documents from October 29, 2007 to December 30, 2015, and [limited to]

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				Canada's defenses. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) The fact that the Canadian or provincial governments would have provided other support can in no way serve to minimize foreign investors' reasonable expectation that such governments should uphold their binding commitments. defense Canada has not otherwise explained why the requested documents would be relevant and material to the claims and defenses at issue. • *Second*, Canada has possession, custody and control of responsive documents that would be relevant to the second rationale for this request (Art. 3(3)(c)(i) of the IBA Rules) because Canada has control over its representatives – or can obtain relevant information from provincial representatives – who accorded treatment to Resolute. Many of these documents would also be publicly available in relevant real estate tax assessment databases. The details of property tax assessments that would be relevant to identify treatment to Resolute are therefore readily accessible to Canada. • *Third*, the breadth of this request is overly expansive (Arts. 3(3)(b), 9(2)(a) of the	taxes. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 101-105, 112-115. The requested documents are necessary for Canada to defend against Resolute's 1102 claim, as they will provide information relevant and material to: (1) the treatment that Resolute was accorded by Government; (2) whether Resolute was "in like circumstances" with other SC paper producers; and (3) whether the treatment accorded to Resolute was "less favourable" than the treatment accorded to other SC paper producers. As Resolute made clear during the hearing on whether to bifurcate this arbitration, its Article 1102 case "turns on like circumstances, and like circumstances in this case is not restricted to an intra-provincial analysis."[12] According to Resolute, "[t]his is a province that clearly is deciding to treat its own investor in a way that is different from the	reduced property taxes within Nova Scotia and Québec during this time period"] are prima facie relevant to issues in the arbitration and should be produced.

[12] Bifurcation Hearing Transcript, November 7, 2016, p. 45:5-7.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments			
				IBA Rules), and producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking documents regarding unspecified property tax reductions obtained or negotiated by Resolute over a period of 22 years (including 13 years *prior to* the 2007 Merger, to which Canada claims this request is relevant) would require collection and review of thousands of documents relating to Resolute's interactions with any Government officials. This would be unheard of in international arbitration. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified	treatment that is accorded to other investors in Canada and is doing so in a way that is not necessarily limited to its territorial jurisdiction".[13] Resolute specifically asked that the Tribunal not make a determination "in the abstract",[14] yet it is refusing to disclose the documents demonstrating the treatment that it is accorded. Furthermore, Resolute claims that Canada has violated Article 1105 because it expected that it would be able to "compete with other SC paper mills in Canada on fair terms, driven by the competitive conditions of the private SC paper market" and that "it is unfair and discriminatory that Nova Scotia has used its public funds to rearrange the SC paper market" and that using the "public purse" to "bankroll" a competitor "clearly infringes a sense of fairness, equity and reasonableness." [15] If Resolute has also benefitted from government funding and taxpayer support for its	

[13] Bifurcation Hearing Transcript, November 7, 2016, p. 45:16-21.
[14] Bifurcation Hearing Transcript, November 7, 2016, p. 45:23-24.
[15] Statement of Claim, ¶¶ 104, 106.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments			
				issues and events].'")). By failing to identify the specific instances of property tax reductions for which Canada is interested in obtaining evidence, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.)	paper mill operations in Canada in ways similar to the GNS' support for Port Hawkesbury, it would be relevant and material to Canada's defenses and the outcome of the dispute. For example, as noted above, during the same period Resolute complains about Nova Scotia's financial support for Port Hawkesbury, Resolute itself received millions of dollars of public funds in financial support in 2011 and 2012 from the Government of Nova Scotia in connection with Resolute's Bowater Mersey paper mill in Nova Scotia. Not only did the Government of Nova Scotia provided Resolute with a $50 million rescue package in December 2011, Resolute received discounted property taxes from the municipality in which its Mersey Bowater mill was located. [16] While there is publically available information regarding the discounted property taxes received by Resolute's paper mill in Nova Scotia, unless	

[16] Bowater Mersey Pulp and Paper Investment (2011) Act, c. 32, s. 1, available at: https://nslegislature.ca/sites/default/files/legc/statutes/bowaterm.htm ; "Government investment, electricity concessions for Bowater Mersey mill", Pulp and Paper Canada, December 6, 2011, available at: https://www.pulpandpapercanada.com/news/government-investment-electricity-concessions-for-bowater-mersey-mill-1000742912.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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					Resolute provides its written consent to allow the Government of Nova Scotia and Queens County to release non-public information regarding Resolute's receipt of its discounted electricity rate in connection with its former Bowater Mersey paper mill, Canada will not have access thereto. Canada is not seeking the production of documents that are already in the public domain. Canada is seeking non-public documents that are in the possession, custody or control of Resolute. Contrary to what the Claimant asserts, Canada is not in a position to obtain relevant information from federal, provincial or municipal representatives. Domestic laws prevent Canada from obtaining third party tax information. Canada requests that the Claimant produce the requested documents, but agrees to narrow the request to documents from October 29, 2007 to December 30, 2015, and to limit the request to reduced property taxes within Nova Scotia and Québec during this time period.	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	**Comments**			
					<u>JULY 27 ADDITIONAL COMMENTS</u> **On July 13, 2018, Resolute advised that it would only produce its three questionnaire responses from the *Supercalendered Paper from Canada* countervailing duty investigation before the U.S. Department of Commerce, subject to any redactions necessary to protect the Business Proprietary Information of third parties (which Resolute cannot produce by law). Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **For the reasons set out above, Canada respectfully requests that the Tribunal make an order granting the request, as redrafted in Canada's reply to Resolute's objections.**	
B. The Closure of the Port Hawkesbury Mill in 2011						
3.	Documents from June 1, 2011 to September 28, 2012 that contain, discuss	SOC, ¶ 26 CMJ, ¶ 168	Resolute alleges that it was approached by an investment bank in June 2011 to consider	Resolute objects to this request on the following grounds:	Resolute's objections are unfounded for the following reasons:	Pending the requested confirmation that Resolute has not withheld relevant

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	or refer to the approach made to Resolute by an investment bank, on behalf of NewPage, to consider purchasing the Port Hawkesbury operations, including: (a) communications between Resolute and the investment bank; (b) analyses of the opportunity to purchase the Port Hawkesbury operations, including analysis of the operating and transportation costs involved; or (c) Resolute's decision not to invest in the Port Hawkesbury operations.		purchasing the Port Hawkesbury operations from NewPage but decided not to due to operating and transportation costs and because it was not offered any financial assistance. The requested documents are relevant and material to assessing the impact of the Port Hawkesbury mill's exit and re-entry into the SC paper market on Resolute's SC paper operations, Resolute's decision not to make an SC paper investment in Nova Scotia, whether Resolute's Canadian SC paper operations are "in like circumstances" with PWCC and its SC paper operations for the purposes of	• *First*, Canada has not explained why the requested documents would be relevant and material to the claims and defenses at issue. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) In addition, assessing Resolute's decision not to make an investment in Nova Scotia has nothing to do with whether the Nova Scotia Measures adopted one year later provided competitive advantages to PHP in violation of NAFTA Articles 1102, 1105 or 1110. • *Second*, the requested documents are not relevant and material to Canada's stated rationale for this request. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) Whether Resolute was actually in "like circumstances" at the time the Measures were adopted is a factual – not a hypothetical – question, which cannot be evidenced by Resolute's decision not to pursue the purchase of the Port Hawkesbury facility one year before the Nova Scotia Government came to its rescue. Further, Canada has not articulated in what way the June 2011 approach by NewPage's investment bank could shed light on the impact of PHP's re-entry into the market in or about September 2012, which neither Resolute	The documents are relevant and material to Resolute's statement that it assessed the operating and transportation costs of the Port Hawkesbury mill when it was approached by an investment bank to purchase it, and to whether the alleged competitive advantages available to PHP were available to Resolute. The request is no broader or less specific than the allegations made by the Claimant at SOC, ¶ 26. After having put this matter at issue, Resolute cannot sidestep its obligation to produce documents on the excuse that there are too many, particularly if it has not looked into whether there are in fact thousands of relevant documents. However, even if there are thousands of documents, producing them would not be unduly burdensome, given the allegation it has made. The requested documents are also relevant and material to Canada's defences to Resolute's Article 1102 and 1105 claims. The fact that Resolute decided not to seek to acquire the Port Hawkesbury mill is relevant and material both the	documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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			Resolute's Article 1102 claim and the merits of Resolute's Article 1105 and 1110 claims.	nor Canada have alleged was influenced by Resolute's assessment of its viability. • *Third*, the breadth of this request is overly expansive (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking documents regarding the approach by NewPage's investment bank to consider purchasing the Port Hawkesbury operations over a period of 16 months, including all communications with said investment bank, this request would require collection and review of thousands of documents, none of which are even tangentially related to Canada's stated rationale, as mentioned above. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified	purported unfairness of Nova Scotia's assistance to the buyer who eventually did purchase the mill, but will also provide insight into Resolute's reasoning on how the Port Hawkesbury mill would fit into its SC paper operations portfolio. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce the documents that were provided to Resolute when it was considering whether it should purchase the Port Hawkesbury operations, as well as its analyses of the opportunity to purchase the Port Hawkesbury operations (which provide the basis of Resolute's decision not to invest in the Port Hawkesbury operations). Resolute produced**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				issues and events].'")). By failing to identify a narrow time frame or communications with specific custodians or about a specific subject matter, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Fifth*, this request calls for documents that may include materials containing legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Notwithstanding and without waiving the foregoing objections, Resolute will review potentially responsive documents and determine whether approval might be obtained under a Confidentiality Agreement to which Canada is not a party. Resolute will determine whether approval can be obtained to produce the documents.	**documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
4.	Documents from June 1, 2011 to September 28, 2012 that contain, discuss	SOC ¶¶ 26-36, 48-56, 106-108, 112-116	Resolute alleges that the production capacity added to the SC paper market	<u>Request 4(a)</u> Resolute objects to this request on the following grounds:	<u>Request 4(a)</u> Resolute's objections are unfounded for the following reasons:	<u>Request 4(a)</u> Pending the requested confirmation that Resolute has not withheld relevant

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	or refer to the projected or actual impact of the Port Hawkesbury mill's temporary closure on: (a) the SC paper market in North America, including with respect to supply, demand and price of SC paper or coated groundwood paper; or (b) Resolute's SC paper operations at the Laurentide, Dolbeau, Kénogami and Catawba mills.	CMJ ¶ 30	through the re-opening of the Port Hawkesbury mill after September 28, 2012 created downward pressure on SC paper prices. Resolute alleges that the relevant geographic market to analyze in this regard is all of North America, which includes not only the Laurentide, Dolbeau and Kénogami mills in Québec, but also Resolute's Catawba mill in South Carolina, which also produced SC paper. Resolute alleges that by causing the re-opening of the Port Hawkesbury mill, the Nova Scotia Measures caused Resolute damages in the form of lower prices and lost sales.	• *First*, the requested documents are irrelevant and immaterial to Resolute's claims or Canada's defenses. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) Resolute has not claimed that its damages were caused by the Port Hawkesbury closure in 2011, but rather by the 2012 "introduction into the Canadian market of an SC paper mill bankrolled by public funds" that "lower[ed] the production costs for the Port Hawkesbury mill relative to Resolute's SC paper mills" (SOC ¶ 47). The closure of the Port Hawkesbury mill was not prompted by the Nova Scotia Measures and had no impact on the damages claimed by Resolute; instead, it was the introduction of such measures in September 2012 that unfairly tipped the scale in favour of Nova Scotia's chosen national champion, on which requested documents may provide no evidence. Further, this case is not about the market for "coated groundwood paper". • *Second*, Canada's stated rationale for this request is either irrelevant and immaterial, or unrelated to the requested documents. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) Market conditions for SC paper should be evidenced through an analysis of publicly	Resolute's documents related to the temporary exit of the PHP mill are relevant to Resolute's allegation of market size and loss, to whether Resolute's assessment of lower prices and lost sales assumes PHP's presence in the market, and to establishing a possible benchmark to compare to Resolute's damages in its but-for world. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 26-36, 48-56, 106-108, 112-116, and CMJ ¶ 30. Relevant documents will include Resolute's forward business planning which takes into account Port Hawkesbury's exit from the market on its strategic planning for its SC paper mills in the short and medium term. In the circumstances, producing thousands of documents, which the Claimant has not in fact established given that it has objected to undertaking a search, would not be unduly burdensome. Grade substitution between SC grades and lightweight coated groundwood paper is common in the market. The Claimant alleges that	documents, no order is called for at this stage.

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			The requested documents are relevant and material to determining the market conditions for SC paper for the period during which the Port Hawkesbury mill was closed, the impact of the closure on Resolute's SC paper operations and to assessing the value of the Laurentide mill prior to its closure in October 2014.	available market data, which Canada has not done. • *Third*, the breadth of this request is overly expansive (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking documents regarding the impact of the Port Hawkesbury mill's closure over a period of 16 months, this request would require collection and review of thousands of documents, none of which would even be material to the outcome of this case, as mentioned above. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have	Resolute is PHP's primary competitor[17] in a market that it defines as North American,[18] while at the same time arguing in the ITC SC paper proceedings that Resolute's "primary product" is lightweight coated paper."[19] This is an admission from Resolute that documents related to Resolute's groundwood coated paper are relevant and material. Whether market conditions can be evidenced through public data does not obviate the need for Resolute to produce documents that it possesses which are relevant to its allegation that PHP's exit and re-entry had an effect on the market. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on	

[17] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 18: ("Resolute was Port Hawkesbury's leading competitor").
[18] Claimant's Rejoinder Memorial on Jurisdiction, May 3, 2017, ¶ 132: ("as Professor Hausman has demonstrated, North America defines the relevant market for this case"); ¶ 145: ("Nova Scotia accorded Resolute treatment, in the broad sense in which the term applies in NAFTA, when it expressly preferred one competitor in the North American market").
[19] **R-083**, United States International Trade Commission, Investigation No. 701-TA-530, Transcript of Staff Conference (Mar. 19, 2015) ("March U.S. ITC Transcript"), p. 130:7-9.

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				either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify a narrow time frame or specific types of documents or custodians, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Fifth*, this request seeks materials that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce: (1) its Cost and Production Analyses for its Kénogami, Laurentide, and Dolbeau mills that contain Resolute's pricing and cost analyses (including any forecasted data contained in these documents); and (2) a document detailing the monthly prices and volumes for supercalendered paper. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				Request 4(b) Resolute objects to this request on the following grounds: • *First*, the requested documents are irrelevant and immaterial to Resolute's claims or Canada's defenses. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) As stated in the first ground of objection in response to Request 4(a), Resolute has not claimed that its damages were caused by the Port Hawkesbury closure in 2011, but rather by the 2012 "introduction into the Canadian market of an SC paper mill bankrolled by public funds" that "lower[ed] the production costs for the Port Hawkesbury mill relative to Resolute's SC paper mills" (SOC ¶ 47). • *Second*, Canada's stated rationale for this request is either irrelevant and immaterial, or unrelated to the requested documents. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) As mentioned above, the impact of the 2011 closure of the Port Hawkesbury mill on Resolute's SC paper operations is irrelevant to Resolute's damages, which were caused instead by the introduction of unfair Government advantages to Resolute's competitor in 2012. *Third*, the breadth of this request is overly expansive (Arts. 3(3)(b), 9(2)(a) of the IBA Rules),	Request 4(b) Resolute's objections are unfounded for the following reasons: Resolute's documents related to the temporary exit of the PHP mill are relevant to Resolute's allegation of market size and loss, to whether Resolute's assessment of lower prices and lost sales assumes PHP's presence in the market, and to establishing a possible benchmark to compare to Resolute's damages in its but-for world. Whether market conditions can be evidenced through public data does not obviate the need for Resolute to produce documents that it possesses which are relevant to its allegation that PHP's exit and re-entry had an effect on the market. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 26-36, 48-56, 106-108, 112-116, and CMJ ¶ 30. In the circumstances, producing thousands of documents, which the Claimant has not in fact established given that it has objected to undertaking a search, is not unduly burdensome.	Request 4(b) Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				and producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking documents regarding the impact of the Port Hawkesbury mill's closure across four different mills over a period of 16 months, this request would require collection and review of thousands of documents, none of which would even be material to the outcome of this case, as mentioned above. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify a narrow time frame or specific types of documents or custodians, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be	A document may not be withheld from production on the grounds that it contains confidential commercial information. Such information may be designated and treated in conformity with the rules set out in the Confidentiality Order. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce: (1) its Cost and Production Analyses for its Kénogami, Laurentide, and Dolbeau mills that contain Resolute's pricing and cost analyses (including any forecasted data contained in these documents); and (2) a document detailing the monthly prices and volumes for supercalendered paper. Resolute produced**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Fifth*, this request calls for documents that contain confidential commercial information about Resolute's business operations and strategy (Art. 9(2)(e) of the IBA Rules), including internal and highly sensitive discussions about its investment approach in North America, as well as numerous materials containing legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents**	
C. The Re-opening of the Port Hawkesbury Mill in 2012						
5.	Documents from January 4, 2012 to December 30, 2015 that contain, discuss or refer to the projected or actual impact of PWCC's purchase of and the re-opening of the Port Hawkesbury	See submissions cited in Request No. 4 above. See also Exhibit R-031, ¶ 19.	PWCC was announced on January 4, 2012 as the sole bidder with which a sale of the Port Hawkesbury mill would be negotiated. The requested documents are relevant and material to Resolute's	<u>Request 5(a)</u> Resolute objects to this request on the following grounds: • *First*, this request seeks documents that may include documents protected by attorney-client and litigation work product privilege. (Art. 9(2)(b) of the IBA Rules.) • *Second*, all internal discussions and analyses are not relevant and material to	<u>Request 5(a)</u> Resolute's objections are unfounded for the following reasons: Resolute's documents related to the re-opening of the PHP mill are relevant and material to Resolute's allegation of market size and loss, issues that it made relevant through its statements and allegations. The request is no broader or less specific	<u>Request 5(a)</u> Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	mill or the Nova Scotia Measures on: (a) the SC paper market in North America, including with respect to supply, demand and price of SC paper or coated groundwood paper; and (b) Resolute's SC paper operations in North America including at the Laurentide, Dolbeau, Kénogami and Catawba mills.		allegation that the re-opening of the Port Hawkesbury mill by PWCC, facilitated by the Nova Scotia Measures, caused Resolute lower prices and lost sales for SC paper, to determining the market conditions for SC paper once the Port Hawkesbury mill reopened, and to assessing the value of the Laurentide mill prior to its closure in October 2014.	Resolute's claims or Canada's defenses. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), • *Third*, evidence on the market for "coated groundwood paper" is similarly irrelevant and immaterial to the outcome of this case, as Resolute's NAFTA claims concern the intervention of the Government of Nova Scotia in the SC paper market, and Canada has not otherwise demonstrated the importance of the coated groundwood paper market for its defenses. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) Further, none of Resolute's claims relate to the Catawba Mill. • *Fourth*, the requested documents relating to the impact of the January 2012 announcement that PWCC was the sole bidder are also irrelevant and immaterial to Resolute's claims or Canada's defenses (Art. 3(3)(b), 9(2)(a) of the IBA Rules) because this announcement does not form part of the alleged breaches – completed in September 2012 – under Resolute's NAFTA claims (which are limited to the Nova Scotia Measures over which this	than the allegations made by the Claimant at SOC ¶¶ 26-36, 48-56, 106-108, 112-116, and CMJ ¶ 30. The fact that the deal was not finalized until September 2012 does not mean that Resolute was not factoring in the potential reopening of PHP into its strategic planning before then. In the circumstances, producing thousands of documents, which the Claimant has not in fact established given that it has objected to undertaking a search, is not unduly burdensome. Grade substitution between SC grades and lightweight coated groundwood paper is common in the market. The Claimant alleges that Resolute is PHP's primary competitor[20] in a market that it defines as North America,[21] while, at the same time arguing in the ITC SC paper proceedings that its "primary product" is lightweight coated	

[20] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 18: ("Resolute was Port Hawkesbury's leading competitor").
[21] Claimant's Rejoinder Memorial on Jurisdiction, May 3, 2017, ¶ 132: ("as Professor Hausman has demonstrated, North America defines the relevant market for this case"); ¶ 145: ("Nova Scotia accorded Resolute treatment, in the broad sense in which the term applies in NAFTA, when it expressly preferred one competitor in the North American market").

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				Tribunal asserted jurisdiction in its January 30, 2018 Decision), because Canada has already admitted that losses could not have occurred prior to September 2012, and because the final agreement between PWCC and Nova Scotia was at risk of falling apart even in September 2012. • *Fifth*, the breadth of this request is overly expansive (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking documents regarding the broad subject matters of "projected or actual impact of PWCC's purchase of and the re-opening of the Port Hawkesbury mill or the Nova Scotia Measures" on the paper market (emphasis added) over a broad period of 48 months, this request would require collection and review of tens of thousands of documents. Canada has not provided a rationale for how this vast universe of documents is material to the outcome of this case. • *Sixth*, this request's formulation fails to specify a "narrow and specific . . . category of Documents" to be produced.	paper."[22] There is therefore no doubt that documents related to Resolute's groundwood coated paper are relevant and material. Resolute's contemporaneous internal discussions and analyses are relevant to its market assessment and business decisions, which may provide alternative explanations for any purported loss of sales and profits allegedly resulting from the Nova Scotia measures. **JULY 27 ADDITIONAL COMMENTS** **On July 13, 2018, Resolute advised that it would only produce: (1) its Cost and Production Analyses for its Kénogami, Laurentide, and Dolbeau mills that contain Resolute's pricing and cost analyses (including any forecasted data contained in these documents); and (2) a document detailing the monthly prices and volumes for supercalendered paper. Resolute produced**	

[22] **R-083**, March U.S. ITC Transcript, p. 130:7-9.

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				(Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify a narrow time frame or specific types of documents or custodians, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
				<u>Request 5(b)</u> Resolute objects to this request on the following grounds: • *First*, this request seeks documents that may include documents protected by	<u>Request 5(b)</u> Canada maintains that Resolute's objections are unfounded but accepts Resolute's offer to produce	<u>Request 5(b)</u> Pending the requested confirmation that Resolute has not withheld relevant

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				attorney-client and litigation work product privilege. (Art. 9(2)(b) of the IBA Rules.) • *Second*, all internal discussions and analyses are not relevant and material to Resolute's claims or Canada's defenses. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), • *Third*, evidence on Resolute's Catawba mill is irrelevant and immaterial to the outcome of this case, as Resolute's claims under NAFTA do not relate to its Catawba mill, and thus the operations of Resolute's Catawba mill are not a material issue of fact. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) • *Fourth*, the requested documents relating to the impact of the January 2012 announcement that PWCC was the sole bidder are also irrelevant and immaterial to Resolute's claims or Canada's defenses (Art. 3(3)(b), 9(2)(a) of the IBA Rules) because this announcement does not form part of the alleged breaches – completed in September 2012 – under Resolute's NAFTA claims (which are limited to the Nova Scotia Measures over which this Tribunal asserted jurisdiction in its January 30, 2018 Decision), because Canada has already admitted that losses could not have occurred prior to	documents that are responsive to this request. Resolute's objections are unfounded for the following reasons: Resolute's documents related to the re-opening of the PHP mill are relevant and material to Resolute's allegation of market size and loss, issues that it made relevant through its statements and allegations. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 26-36, 48-56, 106-108, 112-116, and CMJ ¶ 30. The fact that the deal was not finalized until September 2012 does not mean that Resolute was not factoring in the potential reopening of PHP into its strategic planning before then In the circumstances, producing thousands of documents, which the Claimant has not in fact established given that it has objected to undertaking a search, is not unduly burdensome. Resolute's contemporaneous internal discussions and analyses are relevant to its market assessment and business	documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				September 2012, and because the final agreement between PWCC and Nova Scotia was at risk of falling apart even in September 2012. • *Fifth*, the breadth of this request is overly expansive (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking documents regarding the broad subject matters of "projected or actual impact of PWCC's purchase of and the re-opening of the Port Hawkesbury mill or the Nova Scotia Measures" on the operations of four paper mills (emphasis added) over a broad period of 48 months, this request would require collection and review of thousands of documents, none of which would even be material to the outcome of this case, as mentioned above. • *Sixth*, this request's formulation fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or	decisions, which may provide alternative explanations for any purported loss of sales and profits allegedly resulting from the Nova Scotia measures. Resolute has argued that the relevant market is North America. As Catawba is part of that SC Paper market, the impact that the measures had on Catawba are relevant to Resolute's allegation of market loss and downward pressure on prices, including whether Resolute decided to shift SC paper production from its Québec mills to its Catawba mill. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **JULY 27 ADDITIONAL COMMENTS** **On July 13, 2018, Resolute advised that it would only produce: (1) its Cost and Production Analyses for**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify a narrow time frame or specific types of documents or custodians, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**its Kénogami, Laurentide, and Dolbeau mills that contain Resolute's pricing and cost analyses (including any forecasted data contained in these documents); and (2) a document detailing the monthly prices and volumes for supercalendered paper. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
6.	Documents from September 28, 2012 to December 30, 2015 that contain, discuss or refer to the price of SC paper sold by PHP	See submissions cited in Request No. 4 above. See also	The requested documents are relevant and material to Resolute's allegation that the purchase and re-opening of the Port	Resolute objects to this request on the following grounds: • *First*, this request seeks documents that may include documents protected by	Resolute's objections are unfounded for the following reasons: Resolute's documents related to the price of paper sold by PHP are relevant and material its allegation that it caused Resolute to lower its	**<u>Request granted.</u>** Resolute has the obligation to produce responsive documents, notably with respect to the allegation of 'predatory pricing'

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	or the Port Hawkesbury mill or PHP's SC paper pricing strategy, including alleged "predatory pricing".	SOC ¶ 96 CMJ ¶ 155 RMJ fns 194, 196; ¶ 123	Hawkesbury mill by PWCC, facilitated by the Nova Scotia Measures, caused Resolute lower prices and lost sales. The requested documents are also relevant and material to Resolute's allegation that PHP engaged in "predatory pricing", and its argument that the damages allegedly caused to Resolute and its investments by this pricing strategy are attributable to Canada.	attorney-client and litigation work product privilege. (Art. 9(2)(b) of the IBA Rules.) • *Second*, all internal discussions and analyses are not relevant and material to Resolute's claims or Canada's defenses. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), • *Third*, the information that is relevant to Canada's stated rationale for this request is already available to or in the possession, custody, or control of Canada (Art. 3(3)(c)(i) of the IBA Rules). Indeed, PHP's SC paper prices during the period from September 28, 2012 to December 30, 2015, and its predatory pricing strategy has been adopted as a result of the Government of Nova Scotia's stated objective of making PHP the "lowest cost and most competitive producer" (SOC ¶¶ 89, 96). The Government of Nova Scotia –sponsor of PHP that receives information, reports, and even profits from PHP – is reasonably expected to have been informed of PHP's pricing strategy. • *Fourth*, the breadth of this request is overly expansive (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking documents regarding	prices and lose sales. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 26-36, 48-56, 96, 106-108, 112-116, and CMJ ¶¶ 30, 155, and RMJ fns 194, 196; ¶ 123. In the circumstances, producing thousands of documents, which the Claimant has not in fact established given that it has objected to undertaking a search, is not unduly burdensome. Furthermore, the request is relevant and material to how Resolute itself reacted to PHP's alleged predatory pricing strategy and reacted accordingly through its own pricing strategy of SC paper. Such information is highly relevant to Resolute's claim and Canada's defences are is not in the possession of the Government of Nova Scotia. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request.	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				the broad subject matter of "the price of SC paper sold by PHP or the Port Hawkesbury mill or PHP's SC paper pricing strategy" (emphasis added) over a broad period of more than 39 months, this request would require collection and review of thousands of documents, none of which would even be material to the outcome of this case, as mentioned above. • *Fifth*, this request's formulation fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify a narrow time frame or specific types of documents or custodians, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be	**JULY 27 ADDITIONAL COMMENTS** **On July 20, 2018, Resolute advised that this request would require an email review across multiple years and that it was not required, nor prepared, to conduct such an email search.** **Resolute's objection is unacceptable in light of the specific allegation it has made with respect to PHP's alleged predatory pricing. Contemporaneous documents discussing this allegation go the heart of Resolute's claim against the Nova Scotia measures. The date range of the request is limited and the scope is fair given that Resolute has said it intends to claim damages with respect to all three of its Quebec mills (not just Laurentide).** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it has raised for objecting to this request. In the absence thereof, Canada respectfully**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents**	
D. Resolute's Operations at its SC Paper Mills						
7.	Documents containing internal financial information used to report internally and to prepare Consolidated Financial Statements from 2009 to 2015 for each of Resolute's Laurentide, Dolbeau and Kénogami mills, including: (a) Unconsolidated Statements of Financial Position and Statement of	SOC ¶¶ 42-48, 53, 91, 106, 108, 116	Resolute alleges that the Nova Scotia Measures led to the closure of the Laurentide mill, and that they threaten to force the closure of the Dolbeau and Kénogami mills by undermining their competitiveness in the SC paper market. The requested documents are relevant and material for an assessment of the competitiveness of Resolute in the SC paper market, the Laurentide mill's	Resolute objects to this request on the following grounds: • *First*, the formulation of this request is so overly broad and unspecific that it could in theory cover the entire universe of financial information available with respect to Resolute's Laurentide, Dolbeau and Kénogami mills, which would be unheard of in international arbitration. (Arts. 3(3)(a), 3(3)(b), 9(2)(a) of the IBA Rules.) Indeed, virtually all financial data exchanged in the respective mills are "used to report internally" and would therefore be responsive. Producing all documents "containing internal financial information used to report internally and to prepared Consolidated Financial Statements" over a seven-year period (including four years *prior to* the impact of the Nova Scotia measures hitting market	Resolute's objections are unfounded for the following reasons: Resolute's internal financial information for the Laurentide, Dolbeau and the Kénogami mills is relevant and material to its allegation that their competitiveness was undermined, and damages allegedly suffered. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 42-48, 53, 91, 106, 108, 116. In the circumstances, producing documents containing financial information is not unduly burdensome, even if it means producing thousands of documents, which the Claimant has not in fact established given that it has objected to undertaking a search.	**Request denied as overbroad.**

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	Comprehensive Income; (b) Trial balances for the months-ended and years-ended; (c) Trial Balance groupings, adjusting journal entries or other documents used to prepare Consolidated Financial Statements from Unconsolidated Financial Statements and trial balances; and, (d) All mill reports, prepared on GAAP/IFRS or non-GAAP bases, indicating monthly actual and projected		historical financial performance (measured three years prior to the re-opening of the Port Hawkesbury mill and up to the date of filing of the SOC), the relationship between the Laurentide, Dolbeau and Kénogami mills regarding their SC paper production and Resolute's strategic planning for SC paper at those mills, as well as on an assessment of the value of the Laurentide mill. Documents relating to Resolute's other SC paper mills are relevant and material to assessing Resolute's strategic plans for balancing SC paper production	prices in 2013) would indeed be unduly burdensome (Art. 9(2)(c) of the IBA Rules) because it would require the collection and review of all financial data circulated internally within Resolute's respective mills. • *Second*, for the same reasons, this request fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")) • *Third*, the expansive scope of this request is not warranted by Canada's stated rationale This is particularly true given that: (a) the SC paper market is tantamount to a commodity market where price is the most important factor in buyers' purchasing decisions (Hausman Report, Feb. 22, 2017, para. 36); and (b) all	The Claimant cannot allege, on the one hand that it has incurred damages as a result of its competiveness being undermined, and on the other, prevent access to the financial information necessary for Canada to mount a defence with respect to the extent of Resolute's damages. Whether or not the SC paper market is tantamount[23] to a commodity market does not alter Resolute's obligation to produce the documents relevant to allegations it has made. The prices of Resolute's products are determined by numerous factors, including material, labour and overhead costs, which are contained in the requested documents. In its efforts to avoid bifurcation, the Claimant argued that "detailed evidence" is required to determine an Article 1102 breach, given that the Tribunal "must consider the factual circumstances of the North American market for producing supercalendered paper and Nova Scotia's attempts to vault Port	

[23] Note that Prof. Hausman did not state that the SC market was "tantamount" to a commodity market. He stated that "SCP is close to a commodity product".

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	product volumes and prices, product costs segregated between materials, labour and overhead costs, product costs segregated between variable and fixed costs, product contribution margin, operating income, and inventory volumes.		with its Laurentide operations and optimizing its SC paper asset base.	financial information for the years 2009, 2010 and 2011 is not relevant because "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). Canada has not offered any other bases for determining whether this request is relevant and material. • *Fourth*, many of the listed examples of financial information requested by Canada are neither used nor produced by Resolute in its internal reporting or operations, and therefore do not exist. Resolute is unaware of how Canada has identified these various examples, which can only show that this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests on specifically identified items will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.)	Hawkesbury to the forefront of the competition."[24] Having agreed that detailed evidence is required, it cannot object to its disclosure. Given that it alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. Canada has identified examples of commonly used financial documents. Understandably, Canada does not know exactly how Resolute organizes and records its financial information, which is why the request asks for "internal financial information used to report internally and to prepare Consolidated Financial Statements".[25] It is unlikely that	

[24] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 30.
[25] See, Nathan D. O'Malley, "The Procedural Rules Governing the Production of Documentary Evidence in International Arbitration – As Applied in Practice" in *The Law and Practice of International Courts and Tribunals 8 (2009) 27-90*, p. 45: ("Obviously, referring to the proper name of a requested document is preferred, but as business practices can vary between jurisdictions or by company to company, tribunals should not expect parties to be able to give the exact title of a document.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				• *Fifth*, this request calls for documents that may include materials containing legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	Resolute does not use or prepare financial statements, trial balances and mill reports (by these or any other names) to record and track its financial activities. These documents are foundational to any business enterprise. Resolute's contemporaneously-prepared summary financial statements (including internally-prepared and audited), trial balances and mill reports provide corroboration and validation to any other mill-specific detailed data provided by Resolute. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce: (1) its Cost and Production Analyses for**	

Nevertheless, a party should give a functional description (e.g. an "environmental impact study" or "report on soil conditions") of the documents or category of documents … which is sufficient to allow both the opposing party and the tribunal to distinguish the requested documents from other less relevant records").

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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					its Kénogami, Laurentide, and Dolbeau mills that contain Resolute's pricing and cost analyses (including any forecasted data contained in these documents); and (2) a document detailing the monthly prices and volumes for supercalendered paper. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing. **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
8.	Minutes of Resolute's Board of Directors meetings and other documents submitted to the Board from January	See submissions cited in Request No. 7.	Resolute alleges that the Nova Scotia Measures led to the closure of the Laurentide mill, and that they threaten to force the closure of	Resolute objects to this request on the following grounds: • *First*, minutes of Resolute's Board of Directors meetings and documents submitted thereto are highly confidential commercial information and internal	Resolute's objections are unfounded for the following reasons: The Board of Directors' minutes and other documents submitted to the Board that contain, discuss or refer to any financial assessments, valuations	**<u>Request denied</u> as overbroad.**

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	1, 2009 to December 30, 2015 that contain, discuss or refer to any financial assessments, valuations and strategic plans for Resolute's SC paper operations at the Laurentide, Dolbeau, Kénogami and Catawba mills.		the Dolbeau and Kénogami mills by undermining their competitiveness in the SC paper market. The requested documents are relevant and material for an assessment of the competitiveness of Resolute in the SC paper market, the Laurentide mill's historical financial performance (measured three years prior to the re-opening of the Port Hawkesbury mill and up to the date of filling of the SOC), the relationship between the Laurentide, Dolbeau, Kénogami and Catawba mills regarding their SC paper production and Resolute's strategic	deliberations about Resolute's business operations and strategy (Art. 9(2)(e) of the IBA Rules). As Canada is aware, such documents are part of Resolute's administrative and operational books and records and are for the use of Resolute's directors in office only, not of its shareholders or other constituents. These are among the most sensitive materials of Resolute's records, many of which contain legal advice from counsel and are protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules), and their relevance and materiality has not been demonstrated by Canada, as discussed below. • *Second*, the formulation of this request is so overly broad and unspecific that it could in theory cover the entire universe of documents submitted to Resolute's Board of Directors over a period of seven years, which would be unheard of in international arbitration. (Arts. 3(3)(a)-(b), 9(2)(a) of the IBA Rules.) Indeed, virtually all materials provided to Resolute's Board refer one way or another to strategic plans for its operations at the Laurentide, Dolbeau, Kénogami or Catawba mills. Producing all documents	and strategic plans related to Resolute's SC paper mills are relevant and material to Resolute's reasons for closing the Laurentide mill and the allegation that its Dolbeau and Kénogami mills were threatened. Resolute's contemporaneous Board minutes are relevant to its market assessment and business decisions, which may provide alternative explanations for any purported loss of sales and profits allegedly resulting from the Nova Scotia measures. Whether or not the SC paper market is tantamount[26] to a commodity market does not alter Resolute's obligation to produce the documents relevant to allegations it has made. In its efforts to avoid bifurcation, the Claimant argued that "detailed evidence" is required to determine an Article 1102 breach, given that the Tribunal "must consider the factual circumstances of the North American market for producing supercalendered paper and Nova Scotia's attempts to vault Port	

[26] Note that Prof. Hausman did not state that the SC market was "tantamount" to a commodity market. He stated that "SCP is close to a commodity product".

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			planning for SC paper at those mills, as well as on an assessment of the value of the Laurentide mill. Documents relating to Resolute's other SC paper mills are relevant and material to assessing Resolute's strategic plans for balancing SC paper production with its Laurentide operations and optimizing its SC paper asset base.	submitted to the Board that "contain [or] discuss or refer to any financial assessments [or] valuations [or] strategic plans for Resolute's SC paper operations at the Laurentide [or] Dolbeau [or] Kénogami [or] Catawba mills" over a seven-year period (including four years *prior to* the impact of the Nova Scotia measures hitting market prices in 2013) would indeed be unduly burdensome (Art. 9(2)(c) of the IBA Rules) (and almost all, if not all, would be irrelevant and immaterial) • *Third*, for the same reasons, this request fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")) The absence of any reference to specifically relevant Board meetings can only show that this request	Hawkesbury to the forefront of the competition."[27] Having agreed that detailed evidence is required, it cannot object to its disclosure. As for the Catawba mill, minutes of the Board of Directors and other documents submitted to the Board are relevant and material given that Resolute has argued that the relevant market is North America. As the Catawba mill is part of that market, the impact that the measures had on that mill are relevant to Resolute's allegation of market loss and downward pressure on prices. It is also possible that some of the sales that the Laurentide mill allegedly lost were transferred to the Catawba mill. It is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. This is particularly the case here since the period of 2009-2012 includes the exit	

[27] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 30.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests on specifically identified items will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Fourth*, the expansive scope of this request is not warranted by Canada's stated grounds of relevance and materiality (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). Indeed, meeting minutes spanning a six-year period cannot prove or disprove whether the Nova Scotia Measures led Resolute's damages. This is particularly true given that: (a) the SC paper market is tantamount to a commodity market where price is the most important factor in buyers' purchasing decisions (Hausman Report, Feb. 22, 2017, para. 36); (b) all financial information for the years 2009, 2010 and 2011 is not relevant because "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178); (c) evidence on Resolute's Catawba mill is irrelevant and immaterial to the outcome of this case, as Resolute's claims under NAFTA do not relate to its Catawba mill, and thus the operations of Resolute's Catawba mill are	and re-entry of the Port Hawkesbury mill. The Confidentiality Order provides a means to protect against the disclosure of Business Confidential Information to the public and Resolute's shareholders. The fact that the requested documents contain highly sensitive business information does not give Resolute the right to withhold them from production in this arbitration. The Board of Directors' minutes and other documents submitted to the Board that contain, discuss, or refer to any financial assessments, valuations and strategic plans related to Resolute's SC paper mills amount to an identifiable category of documents that is sufficiently narrow and specific. Its breadth is defined by Resolute's allegation of a loss of competitiveness between 2012-2015, and, as stated above, it is reasonable to assess against an equivalent prior period. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 42-48, 53, 91, 106, 108, 116. In the	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				not a material issue of fact. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) Canada has not offered any other bases for determining whether this requests is relevant and material.	circumstances, producing documents containing financial information is not unduly burdensome, even if it means producing thousands of documents, which the Claimant has not in fact established would be necessary given that it has objected to undertaking a search. Resolute cannot, on the one hand, argue that these documents are the most tightly held, sensitive documents, while on the other, accuse Canada of not referring to a specifically relevant Board meeting. In sum, the fact that Resolute has confirmed that its Board of Director minutes and supporting documentation contain its internal deliberations about Resolute's SC Paper business operations and strategy establishes their critical relevance and materiality to Resolute's claims and Canada's defences. Notwithstanding the above, Canada agrees to limit the time period for this request to between January 2011 (based on when Resolute apparently	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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					started to consider reopening Dolbeau[28]) and November 2014 (the closure of the Laurentide mill). **<u>JULY 27 ADDITIONAL COMMENTS</u>** **Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all documents that are responsive to the request, as redrafted in Canada's reply to Resolute's objections.**	
9.	Communications from January 1, 2009 to December 30, 2015 amongst Resolute senior management that contain, discuss or refer to any financial assessments, valuations and strategic plans for Resolute's SC paper operations at	See submissions cited in Request No. 7.	Resolute alleges that the Nova Scotia Measures led to the closure of the Laurentide mill, and that they threaten to force the closure of the Dolbeau and Kénogami mills by undermining their competitiveness in the SC paper market. The requested documents are	Resolute objects to this request on the following grounds: • *First*, the formulation of this request is so overly broad and unspecific that it could in theory cover the entire universe of communications amongst Resolute's senior management over a period of seven years, which would be unheard of in international arbitration. (Arts. 3(3)(a)-(b), 9(2)(a) of the IBA Rules.) Indeed, virtually all communications amongst Resolute's senior management refer one way or another to strategic plans for	Resolute's objections are unfounded for the following reasons: Communications amongst Resolute senior management that contain, discuss or refer to any financial assessments, valuations and strategic plans for Resolute's SC paper operations are relevant and material to Resolute's reasons for closing the Laurentide mill and the allegation that its Dolbeau and Kénogami mills were threatened. The request is no broader or less specific than the	**<u>Request denied</u> as overbroad.**

[28] *See* Claimant's Counter-Memorial on Jurisdiction, February 22, 2017, pp. 42-43.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	the Laurentide, Dolbeau, Kénogami and Catawba mills.		relevant and material for an assessment of the competitiveness of Resolute in the SC paper market, the Laurentide mill's historical financial performance (measured three years prior to the re-opening of the Port Hawkesbury mill and up to the date of filing of the SOC), the relationship between the Laurentide, Dolbeau, Kénogami and Catawba mills regarding their SC paper production, as well as on an assessment of the value of the Laurentide mill. Documents relating to Resolute's other SC paper mills are relevant and material to assessing	Resolute's operations at the Laurentide, Dolbeau, Kénogami or Catawba mills. Producing all such communications amongst an unidentified class of "senior management" that "contain [or] discuss or refer to any financial assessments [or] valuations [or] strategic plans for Resolute's SC paper operations at the Laurentide [or] Dolbeau [or] Kénogami [or] Catawba mills" over a seven-year period (including four years *prior to* the impact of the Nova Scotia measures hitting market prices in 2013) would indeed be unduly burdensome (Art. 9(2)(c) of the IBA Rules). • *Second*, for the same reasons, this request fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")) Because Canada fails to specifically identify any member of Resolute's senior management, any	allegations made by the Claimant at SOC ¶¶ 42-48, 53, 91, 106, 108, 116. In the circumstances, producing documents containing financial information is not unduly burdensome, even if it means producing thousands of documents, which the Claimant has not in fact established would be necessary given that it has objected to undertaking a search. It is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. This is particularly the case here since the period of 2009-2012 includes the exit and re-entry of the Port Hawkesbury mill. The Confidentiality Order provides a means to protect against the disclosure of Business Confidential Information to the public and Resolute's shareholders. The fact that the requested documents contain	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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			Resolute's strategic plans for balancing SC paper production with its Laurentide operations and optimizing its SC paper asset base.	narrow and relevant time window, and any and relevant subject-matter, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests on specifically identified items will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Third*, the expansive scope of this request is not warranted by Canada's stated grounds of relevance and materiality (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). This is particularly true given that: (a) the SC paper market is tantamount to a commodity market where price is the most important factor in buyers' purchasing decisions (Hausman Report, Feb. 22, 2017, para. 36); (b) all financial information for the years 2009, 2010 and 2011 is not relevant because "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178); and (c) evidence on Resolute's Catawba mill is irrelevant and immaterial to the outcome of this case, as Resolute's claims under NAFTA do not	highly sensitive business information does not give Resolute the right to withhold them from production in this arbitration. Whether or not the SC paper market is tantamount[29] to a commodity market does not alter Resolute's obligation to produce the documents relevant to allegations it has made. The prices of Resolute's products are determined by numerous factors, including material, labour and overhead costs, which are contained in the requested documents. In its efforts to avoid bifurcation, the Claimant argued that "detailed evidence" is required to determine an Article 1102 breach, given that the Tribunal "must consider the factual circumstances of the North American market for producing supercalendered paper and Nova Scotia's attempts to vault Port Hawkesbury to the forefront of the competition."[30] Having agreed that detailed evidence is required, it cannot object to its disclosure.	

[29] Note that Prof. Hausman did not state that the SC market was "tantamount" to a commodity market. He stated that "SCP is close to a commodity product".
[30] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 30.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				relate to its Catawba mill, and thus the operations of Resolute's Catawba mill are not a material issue of fact. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) • *Fourth*, this request calls for documents that may include communications containing legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules).	Since Resolute has put at issue the entire North American SC market,[31] it is obliged to produce information from the three Canadian mills as well as Catawba. As Prof. Hausman admitted, "the problem with looking at only one mill or company is that prices tend to jump around so there is a fair amount of variation, which is a problem for the regression. If you look at the market data where you have 100% of the market, that errors in measurement or variables problem is minimized." Notwithstanding the above, Canada agrees to limit the time period for this request to between January 2011 (based on when Resolute apparently started to consider reopening Dolbeau[32]) and November 2014 (the closure of the Laurentide mill). **JULY 27 ADDITIONAL COMMENTS**	

[31] Claimant's Rejoinder Memorial on Jurisdiction, May 3, 2017, ¶ 132: ("as Professor Hausman has demonstrated, North America defines the relevant market for this case"); ¶ 145: ("Nova Scotia accorded Resolute treatment, in the broad sense in which the term applies in NAFTA, when it expressly preferred one competitor in the North American market").
[32] *See* Claimant's Counter-Memorial on Jurisdiction, February 22, 2017, pp. 42-43.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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					On July 20, 2018, Resolute advised that this request would require an email review across multiple years and that it was not required, nor prepared, to conduct such an email search. **Resolute's objection is unacceptable given the limited date range and that the communications are limited to senior management. Internal communications amongst Resolute's decision makers are highly probative as to how it planned to act in the SC paper market with multiple mills.** **For the reasons set out above, Canada respectfully requests that the Tribunal make an order granting the request, as redrafted in Canada's reply to Resolute's objections.**	
10.	Documents from January 1, 2009 to December 30, 2015 that contain, discuss or refer to studies or assessments of the	See submissions cited in Request No. 7.	Resolute alleges that the Nova Scotia Measures led to the closure of the Laurentide mill, and that they threaten to	Resolute objects to this request on the following grounds: • *First*, the expansive scope of this request is not warranted by Canada's stated grounds of relevance and materiality (Arts.	Resolute's objections are unfounded for the following reasons:	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	efficiency or financial performance of the Laurentide mill by Resolute or its consultants, including any recommendations to improve the competitiveness of the Laurentide mill.		force the closure of the Dolbeau and Kénogami mills by undermining their competitiveness in the SC paper market. The requested documents are relevant and material for an assessment of the competitiveness of Resolute in the SC paper market, the Laurentide mill's historical financial performance (measured three years prior to the re-opening of the Port Hawkesbury mill and up to the date of filing of the SOC), the relationship between the Laurentide, Dolbeau and Kénogami mills regarding their SC paper production, as	3(3)(b), 9(2)(a) of the IBA Rules). This is particularly true given that: (a) the SC paper market is tantamount to a commodity market where price is the most important factor in buyers' purchasing decisions (Hausman Report, Feb. 22, 2017, para. 36); (b) all financial information for the years 2009, 2010 and 2011 is not relevant because "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) Canada has not offered any other bases for determining whether this requests is relevant and material. • *Second*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). • *Third*, the breadth of this request is overly expansive (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking documents regarding unspecified	Whether or not the SC paper market is tantamount[33] to a commodity market does not alter Resolute's obligation to produce the documents relevant to its allegations that the Nova Scotia measures caused it to close its Laurentide mill. In its efforts to avoid bifurcation, the Claimant argued that "detailed evidence" is required to determine an Article 1102 breach, given that the Tribunal "must consider the factual circumstances of the North American market for producing supercalendered paper and Nova Scotia's attempts to vault Port Hawkesbury to the forefront of the competition."[34] Having agreed that detailed evidence is required, it cannot object to its disclosure. Given that it alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding	

[33] Note that Prof. Hausman did not state that the SC market was "tantamount" to a commodity market. He stated that "SCP is close to a commodity product".
[34] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 30.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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			well as on an assessment of the value of the Laurentide mill. Documents relating to Resolute's other SC paper mills are relevant and material to assessing Resolute's strategic plans for balancing SC paper production with its Laurentide operations and optimizing its SC paper asset base.	"studies or assessments of the efficiency or financial performance of the Laurentide mill by Resolute or its consultants" over a seven-year period (including four years *prior to* the impact of the Nova Scotia measures hitting market prices in 2013), this request would require collection and review of thousands of documents. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific study or assessment for which Canada is interested in obtaining evidence, any narrow time window, or any specific custodian, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second	3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. Documents that contain, discuss or refer to studies or assessments of the efficiency or financial performance of the Laurentide mill are relevant and material to Resolute's argument that the Nova Scotia measures caused it to close. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 42-48, 53, 91, 106, 108, 116. In the circumstances, producing documents containing financial information is not unduly burdensome, even if it means producing thousands of documents, which the Claimant has not in fact established would be necessary given that it has objected to undertaking a search. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request.	

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				phase of discovery. (Art. 9(2)(g) of the IBA Rules.) Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it will produce its supercalendered paper business plan and its 2011-2015 capital expenditures reports. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
11.	Documents between January 1, 2009 and December 30, 2015 that contain, discuss or refer to any assessment of the Laurentide, Dolbeau, Kénogami and Catawba mills'	See submissions cited in Request No. 7. See also RMJ ¶ 124 Exhibit R-83 (130: 12-21)	Resolute alleges that the Nova Scotia Measures led to the closure of the Laurentide mill, and that they threaten to force the closure of the Dolbeau and Kénogami mills by	Resolute objects to this request on the following grounds: • *First*, Canada mischaracterizes Resolute's allegation that Resolute does not "and cannot make the quality of SC paper that's made by" PHP (RMJ ¶ 124). Taken in context, this allegation is not about Resolute's ability to produce different	Resolute's objections are unfounded for the following reasons: Documents that contain, discuss or refer to any assessment of Resolute's SC paper mills' ability to produce different grades of SC paper are relevant and material to Resolute's reasons for closing the Laurentide	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	ability to produce different grades of SC paper.		undermining their competitiveness in the SC paper market. Resolute also alleges that it is unable to make the same grade of paper as PHP, which affects the extent to which Resolute competes with PHP. The requested documents are relevant and material for an assessment of the competitiveness of Resolute in the SC paper market, the Laurentide mill's historical financial performance (measured three years prior to the re-opening of the Port Hawkesbury mill and up to the date of filing of the SOC), the relationship between the	grades of SC Paper in absolute terms (as suggested by this document request), but rather its ability to produce the *same* quality of paper for the *same* costs relative to PHP, which the Nova Scotia Measures "intended to make … the lowest cost SC Paper producer" (*id.*). Therefore, requested documents are irrelevant and immaterial to Resolute's claims or Canada's defenses. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) • *Second*, the expansive scope of this request is not warranted by Canada's stated grounds of relevance and materiality (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). Indeed, assessments of Resolute's mills' ability to produce different grades of SC paper and documents referencing or discussing any such assessments cannot prove or disprove whether the Nova Scotia Measures led to price disruption and to a decline of Resolute's market share that resulted in the closure of its Laurentide mill, or whether these were caused by Resolute's lack of competitiveness, as implied in Canada's stated rationale. This is particularly true given that: (a) the SC paper market is tantamount to a commodity market where price is the most	mill and the allegation that its Dolbeau and Kénogami mills continue to be threatened. Resolute's contemporaneous assessments (however titles) are relevant to its market assessment and business decisions, which may provide alternative explanations for any purported loss of sales and profits allegedly resulting from the Nova Scotia measures. As Resolute argued in the ITC SC paper proceedings, "there's an overall decline when accounting for both supercalendered paper and lightweight coated paper, and […] a wave of substitution away from [Resolute's] primary product in the United States of lightweight coated paper to a quality of supercalendered paper beyond [Resolute's] capabilities."[35] Resolute's statement refers to "capabilities" not "costs". Canada is merely requesting the documents assessing what those capabilities are.	

[35] **R-083**, March U.S. ITC Transcript, p. 130:7-11.

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			Laurentide, Dolbeau and Kénogami mills regarding their SC paper production, as well as on an assessment of the value of the Laurentide mill. Documents relating to Resolute's other SC paper mills are relevant and material to assessing Resolute's strategic plans for balancing SC paper production with its Laurentide operations and optimizing its SC paper asset base.	important factor in buyers' purchasing decisions (Hausman Report, Feb. 22, 2017, para. 36); (b) all financial information for the years 2009, 2010 and 2011 is not relevant because "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178); and (c) evidence on Resolute's Catawba mill is irrelevant and immaterial to the outcome of this case,as Resolute's claims under NAFTA do not relate to its Catawba mill, and thus the operations of Resolute's Catawba mill are not a material issue of fact. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) Canada has not offered any other bases for determining whether this requests is relevant and material. • *Third*, the breadth of this request is overly expansive (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By	The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 42-48, 53, 91, 106, 108, 116 with respect to the competitiveness of its mills. The Claimant alleges that Resolute is PHP's primary competitor[36] in a market that it defines as North America,[37] while, at the same time arguing in the International Trade Commission's SC paper proceedings that its "primary product" is lightweight coated paper."[38] Documents assessing Resolute's ability to produce different grades of SC paper are therefore relevant and material to the case. Whether or not the SC paper market is tantamount[39] to a commodity market does not alter Resolute's obligation to produce the documents relevant to allegations it has made. In its efforts to avoid bifurcation, the	

[36] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 18: ("Resolute was Port Hawkesbury's leading competitor").
[37] Claimant's Rejoinder Memorial on Jurisdiction, May 3, 2017, ¶ 132: ("as Professor Hausman has demonstrated, North America defines the relevant market for this case"); ¶ 145: ("Nova Scotia accorded Resolute treatment, in the broad sense in which the term applies in NAFTA, when it expressly preferred one competitor in the North American market").
[38] **R-083**, March U.S. ITC Transcript, p. 130:7-9.
[39] Note that Prof. Hausman did not state that the SC market was "tantamount" to a commodity market. He stated that "SCP is close to a commodity product".

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				seeking documents regarding unspecified "assessment[s] of the Laurentide [or] Dolbeau [or] Kénogami [or] Catawba mills' ability to produce different grades of SC paper" over a seven-year period (including four years *prior to* the impact of the Nova Scotia measures hitting market prices in 2013), this request would require collection and review of thousands of documents. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific assessment for which Canada is interested in obtaining evidence,	Claimant argued that "detailed evidence" is required to determine an Article 1102 breach, given that the Tribunal "must consider the factual circumstances of the North American market for producing supercalendered paper and Nova Scotia's attempts to vault Port Hawkesbury to the forefront of the competition."[40] Having agreed that detailed evidence is required, it cannot object to its disclosure. Given that it alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. Since Resolute has put at issue the entire North American SC market,[41] it is obliged to produce information	

[40] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 30.
[41] Claimant's Rejoinder Memorial on Jurisdiction, May 3, 2017, ¶ 132: ("as Professor Hausman has demonstrated, North America defines the relevant market for this case"); ¶ 145: ("Nova Scotia accorded Resolute treatment, in the broad sense in which the term applies in NAFTA, when it expressly preferred one competitor in the North American market").

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				any narrow time window, or any specific custodian, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Fifth*, this request may include communications containing legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	from the three Canadian mills as well as Catawba.As Prof. Hausman admitted, "the problem with looking at only one mill or company is that prices tend to jump around so there is a fair amount of variation, which is a problem for the regression. If you look at the market data where you have 100% of the market, that errors in measurement or variables problem is minimized." In the circumstances, producing documents containing financial information is not unduly burdensome, even if it means producing thousands of documents, which the Claimant has not in fact established would be necessary given that it has objected to undertaking a search. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **JULY 27 ADDITIONAL COMMENTS**	

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					On July 13, 2018, Resolute advised that it would only produce (1) its supercalendered paper business plan and its questionnaire responses referenced in Document Request no. 2; and (2) sales and operation documents detailing its paper operations, pulp operations, and downtime ("sales and operation reports"). Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing. **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
12.	Documents between January 1, 2009 to December 30, 2015 that contain, discuss or refer to any analyses or	CMJ ¶¶ 47-48, Exhibits R-10, R-96, R-97	Resolute alleges that it made capital improvements at the Laurentide mill to improve uniform paper production,	Resolute objects to this request on the following grounds: • *First*, evidence on Resolute's Catawba mills is irrelevant and immaterial to	Resolute's objections are unfounded for the following reasons: Resolute has put its overall competitiveness in the SC Paper market at issue in this dispute, a	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	assessments and the itemization of upgrades to machinery or other significant capital expenditures planned or undertaken at the Laurentide, Dolbeau, Kénogami and Catawba mills.	CER-Hausman ¶ 10	reduce waste and improve efficiency and that Laurentide machine #11 operated profitably after the Port Hawkesbury mill reopened. The requested documents are relevant and material for assessing the merits of this claim, the effect of such capital improvements on the efficiency of the Laurentide mill and its market value. Documents relating to Resolute's other SC paper mills are relevant and material to assessing Resolute's strategic plans for balancing SC paper production with its Laurentide	Resolute's claims. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) • *Second*, Canada's stated grounds of relevance and materiality do not warrant production of materials beyond documents sufficient to show that "Resolute undertook a multi-million dollar capital improvement to replace the dilution flow head box at Laurentide #11 in order to improve uniform paper production, reduce waste and improve efficiency" (CMJ ¶¶ 47-48), which Resolute will search for and provide (subject to its other objections). (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) • *Third*, the breadth of this request is overly expansive (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking documents regarding unspecified "analyses or assessments and the itemization of upgrades to machinery or other significant capital expenditures planned or undertaken at the Laurentide [or] Dolbeau [or] Kénogami [or] Catawba mills" over a seven-year period (including	market that it defines as "North American",[42] As Prof. Hausman admitted, "the problem with looking at only one mill or company is that prices tend to jump around so there is a fair amount of variation, which is a problem for the regression. If you look at the market data where you have 100% of the market, that errors in measurement or variables problem is minimized." Resolute's capital expenditures at each of its mills may provide alternative explanations for any purported loss of Laurentide's sales and profits allegedly resulting from the Nova Scotia measures. Accordingly, documents that contain, discuss or refer to any analyses or assessments and the itemization of upgrades to machinery or other significant capital expenditures at all three of its Canadian mills as well as Catawba are relevant and material. The request for documents is no broader or less specific than the allegations made by the Claimant at	

[42] Claimant's Rejoinder Memorial on Jurisdiction, May 3, 2017, ¶ 132: ("as Professor Hausman has demonstrated, North America defines the relevant market for this case"); ¶ 145: ("Nova Scotia accorded Resolute treatment, in the broad sense in which the term applies in NAFTA, when it expressly preferred one competitor in the North American market").

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			operations and optimizing its SC paper asset base.	four years *prior to* the impact of the Nova Scotia measures hitting market prices in 2013, and three years *prior to* Resolute's Line #11 investments in the summer of 2012), this request would require collection, review and production of thousands of documents. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific analysis or assessment for which Canada is interested in obtaining evidence, any narrow time window, or any specific custodian, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be	SOC ¶¶ 42-48, 53, 91, 106, 108, 116. After having put the matter of its competitiveness at issue, Resolute cannot sidestep its obligation to produce documents based on the excuse that there are too many, particularly if it has not looked into whether there are in fact thousands of relevant documents. However, even if there are thousands of documents, which the Claimant has not in fact established given that it has objected to undertaking a search, producing them would not be unduly burdensome. Given that it alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on	

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				allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Fifth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it will produce its supercalendered paper business plan and its 2011-2015 capital expenditures reports. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
E. Resolute's Sales of SC Paper						
14.	Documents from January 1, 2009 to December 30, 2015 that contain, discuss or refer to the gross	See submissions cited in Requests	The requested documents are relevant and material to Resolute's allegation that the re-	Resolute objects to this request on the following grounds: • *First*, the expansive scope of this request is not warranted by Canada's stated	Resolute's objections are unfounded for the following reasons: Grade substitution between SC grades and lightweight coated	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

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	and net pricing (i.e., gross price less third party commissions or fees, rebates and other price concessions, freight and shipping costs) for each grade of SC paper and any other grades of paper, monthly and annually, at each of the Laurentide, Kénogami and Dolbeau mills, including the country of sale (Canada and United States), with tons sold and average basis weight provided for the monthly and annual data, and any USD/C$ exchange rate used for such prices.	Nos. 4 and 7 above.	opening of the Port Hawkesbury mill by PWCC, facilitated by the Nova Scotia Measures, caused Resolute lower prices and lost sales for SC paper, to determining the market conditions for SC paper before and after the Port Hawkesbury mill reopened, and to assessing the value of the Laurentide mill prior to its closure in October 2014. The requested documents are also relevant and material for an assessment of Resolute's historical financial performance with respect to SC paper (measured three years prior to the re-opening of the	grounds of relevance and materiality (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). For example, the following information is not relevant and material to the outcome of this case: (a) third party commissions or fees, rebates and other price concessions, freight and shipping costs, none of which has been put at issue; (b) grades of paper other than SC Paper, which have not been put at issue by either Resolute or Canada; and (c) the countries of sale, which have not been put at issue by either Resolute or Canada; and (d) all sales data for the years 2009, 2010 and 2011, given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). Canada has not offered any other bases for determining whether this requests is relevant and material. • *Second*, the formulation of this request is so overly broad and unspecific that it could in theory cover the entire universe of financial information available with respect to Resolute's Laurentide, Dolbeau and Kénogami mills, which would be unheard of in international arbitration.	groundwood paper is common in the market. By identifying the relevant market as all of North America, Resolute has put at issue the competitiveness of its SC and groundwood coated paper products[43] in comparison to those of PHP. Since prices are affected by third party commissions or fees, rebates and other price concessions, as well as shipping and freight costs, which Resolute has alleged to be prohibitive for PHP,[44] documents containing this information are relevant and material. Country of sale is also relevant given the emphasis that Resolute has placed on the SC paper market being a North American market. Given that it alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world.	

[43] In the ITC SC paper proceedings, Resolute argued that its "primary product" is lightweight coated paper; see **R-083**, March U.S. ITC Transcript, p. 130:7-9.
[44] Hearing on Jurisdiction Transcript, August 15, 2017, p. 30:6-17.

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			Port Hawkesbury mill and up to the date of filing of the SOC), the relationship between the Laurentide, Dolbeau and Kénogami mills regarding their SC paper production and Resolute's strategic planning for SC paper at those mills.	(Arts. 3(3)(a)-(b), 9(2)(a) of the IBA Rules.) Indeed, virtually all financial information about the respective mills would "refer" one way or another to the sale of paper, and producing all responsive documents would therefore be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking documents that generally "contain, discuss or refer" to the broad list of subject matters described as "the gross and net pricing (i.e., gross price less third party commissions or fees [or] rebates [or] other price concessions [or] freight [or] shipping costs) for each grade of SC paper and any other grades of paper, monthly and annually, at each of the Laurentide [or] Kénogami [or] Dolbeau mills …, [and] tons sold and average basis weight provided for the monthly and annual data, and any USD/C$ exchange rate used for such prices" over a seven-year period (including four years *prior to* the impact of the Nova Scotia measures hitting market prices in 2013) without identifying any specific custodian, this request would require collection and review of thousands of documents. • *Third*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced. (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary	The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 26-36, 48-56, 106-108, 112-116, and CMJ ¶ 30. In the circumstances, producing thousands of documents, which the Claimant has not in fact established would be necessary given that it has objected to undertaking a search, would not be unduly burdensome. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **ADDITIONAL COMMENTS JULY 27** **On July 13, 2018, Resolute advised that it would only produce: (1) its Cost and Production Analyses for its Kénogami, Laurentide, and Dolbeau mills that contain Resolute's pricing and cost analyses (including any forecasted data contained in these documents); and (2) a document detailing the monthly prices and**	

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				B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any narrow and limited type of sales data, any narrow time window, or any specific custodian, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Fourth*, this request calls for that may include legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**volumes for supercalendered paper. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	

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15.	Copies of all contracts and purchase orders, and any modifications thereto, between January 1, 2009 and December 30, 2015 with SC paper buyers who agreed to purchase, in any calendar year, over 1,000 tons of SC paper from any SC paper mill (Laurentide, Dolbeau, Kénogami and Catawba), and any documents that list or summarize the particulars of those sales (for example, date of sale, customer, paper grade, product code, delivery location, volume in tonnage, price, discounts, other terms, etc.) Purchase orders	See submissions cited in Request No. 4 above.	The requested documents are relevant and material to Resolute's allegation that the purchase and re-opening of the Port Hawkesbury mill by PWCC, facilitated by the Nova Scotia Measures, caused Resolute lower prices and caused Resolute to lose "thousands of tonnes of SC paper sales orders from catalog producers and major retailers". The requested documents are relevant and material to establishing alleged lost sales orders and the extent to which such lost sales orders were caused by the re-opening of the Port Hawkesbury mill or other factors.	Resolute objects to this request on the following grounds: • *First*, the scope of this request is overbroad because it is not warranted by Canada's stated grounds of relevance and materiality (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). • *Second*, the scope of this request is also overbroad because the following information is not relevant and material to the outcome of this case (Arts. 3(3)(b), 9(2)(a) of the IBA Rules): (a) contract terms such as product codes, delivery locations, and discounts are irrelevant because they have not been put at issue; (b) all sales data for the years 2009, 2010 and 2011 are similarly not relevant, given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178); and (c) evidence regarding the Catawba mill is irrelevant and immaterial. Canada has not offered any other bases for determining whether this request is relevant and material. • *Third*, Canada has failed to precisely articulate how the requested documents would be relevant and materialto show	Resolute's objections are unfounded for the following reasons: Resolute has put at issue the competitiveness of its SC paper products in comparison to those of PHP in the North American market. Some contracts will have dried up naturally given the downward trend of using SC paper, while others may have been picked up by its competitors, including but not limited to PHP, or other mills owned by Resolute. Resolute's actual sales and purported lost sales are clearly at issue. Resolute's accounting system would be expected to track such information in the normal course. The contracts and purchase orders of its four SC paper mills in North America, including Catawba, are therefore relevant and material. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 26-36, 48-56, 106-108, 112-116, and CMJ ¶ 30. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of	**<u>Request denied</u>** as overbroad, but Canada may, preferably by agreement with Claimant, seek to reformulate scope of request so that it is more specific and less burdensome and/or to provide indication of number of documents involved.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	from SC paper buyers that do not have contracts, which total over 1,000 tons in any calendar year, are included in this request.			whether other factors than the Nova Scotia Measures had an effect on Resolute's sales and prices (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that it is undisputed that the Nova Scotia Measures had an impact on SC paper prices and the SC paper market is tantamount to a commodity market where price is the most important factor in buyers' purchasing decisions (Hausman Report, Feb. 22, 2017, para. 36). • *Fourth*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking contracts, purchase orders, modifications thereto, and documents listing *or* summarizing the particulars of sales with SC paper buyers who agreed to purchase over 1,000 tons of SC paper in any given year over a seven-year period (including four years *prior to* the impact of the Nova Scotia measures hitting market prices in 2013), Resolute will be required to search, review and compile thousands of documents for which Canada has failed to articulate materiality to the outcome of this case.	the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. In the circumstances, producing thousands of documents, which the Claimant has not in fact established would be necessary given that it has objected to undertaking a search, would not be unduly burdensome. Whether or not the SC paper market is tantamount[45] to a commodity market does not alter Resolute's obligation to produce the documents relevant to allegations it has made. Even if Resolute were able to undisputedly prove that the Nova Scotia measures had an impact on SC paper prices, its damages depend on the extent of that impact. Contracts and purchase orders are documents that show its "loss of customers" as alleged at NOA ¶ 48. ~~Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it~~	

[45] Note that Prof. Hausman did not state that the SC market was "tantamount" to a commodity market. He stated that "SCP is close to a commodity product".

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				• *Fifth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules), because it does not identify – among other missing items – any specific SC Paper purchaser or any narrow time window. This request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Sixth*, this request calls for documents may include communications containing legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules).	~~has not withheld any documents on the improper grounds it has raised for objecting to the request.~~ **JULY 27 ADDITIONAL COMMENTS** **For the reasons set out above, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all documents that are responsive to the request.**	
16.	Documents that contain, discuss or refer to forecasted North American sales information from January 1, 2009 to December 30, 2015 (including budgets, projections, reforecasts) with respect to:	See submissions cited in Request No. 4 above.	The requested documents are relevant and material to Resolute's allegation that the re-opening of the Port Hawkesbury mill by PWCC, facilitated by the Nova Scotia Measures, caused Resolute lower prices and caused Resolute	Request 16(a) Resolute objects to this request on the following grounds: • *First*, the scope of this request is overbroad because it is not warranted by Canada's stated grounds of relevance and materiality (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). Forecasted sales information on market price and sales for SC Paper cannot prove or disprove whether the Nova Scotia Measures led to price	Request 16(a) Resolute's objections are unfounded for the following reasons: Resolute has put at issue the competitiveness of its SC paper products in comparison to those of PHP in the North American market, and the alleged loss of thousands of tonnes of SC paper orders. Sales information with respect to its market	Request 16(a) **Request denied** as overbroad, but Canada may, preferably by agreement with Claimant, seek to reformulate scope of request so that it is more specific and less burdensome.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	(a) market price and total market sales for each grade of SC paper; (b) price and total sales for each grade of SC paper sold by Resolute; and (c) Resolute's SC paper sales by mill.		to lose "thousands of tonnes of SC paper sales orders from catalog producers and major retailers". The requested documents are relevant and material to establishing alleged lost sales orders and the extent to which such lost sales orders were caused by the re-opening of the Port Hawkesbury mill or other factors.	disruption resulting in lost sales and profits for Resolute, or whether these were caused by other factors, as suggested in Canada's stated rationale. Indeed, forecasted sales information on market price and sales for SC Paper will not reflect their *actual* market price and sales for SC Paper (information that is publicly available). For purposes of this case, it is only the *actual* impact of the Nova Scotia Measures that is relevant to determine the scope of Resolute's losses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and such impact can be more adequately and economically assessed by the *ex post* analysis of the market price and total market sales. (Art. 9(2)(g) of the IBA Rules). • *Second*, the scope of this request is also overbroad because all forecasts of prices and sales for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). Canada has not offered any other bases for determining whether this requests is relevant and material.	price and total market sales is therefore relevant and material to this case, and, in particular, its historical forecasted sales information is relevant to determine what impact the Nova Scotia measures had on its business as compared to the general downward trend in the market, and would shed light on its decision to close down its Laurentide mill. Resolute's contemporaneous sales forecasts (however titled) are relevant to its market assessment and business decisions, which may provide alternative explanations for any purported loss of sales and profits allegedly resulting from the Nova Scotia measures. An e*x post* analysis of market data as Resolute suggests will not demonstrate that orders were lost to a competitor or to another mill owned by Resolute, rather than being the result of a dwindling market. Besides, the Claimant's obligation to produce documents is not determined by what is the most economical approach, but by the statements and claims that it has made and defences that Canada has raised.	The Tribunal understands that Canada is seeking Resolute's <u>own</u> assessments.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments			
				• *Third*, Canada has failed to precisely articulate how the requested documents would be relevant to show whether other factors than the Nova Scotia Measures had an effect on Resolute's sales and prices (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that it is undisputed that the Nova Scotia Measures had an impact on SC paper prices and the SC paper market is tantamount to a commodity market where price is the most important factor in buyers' purchasing decisions (Hausman Report, Feb. 22, 2017, para. 36). • *Fourth*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all "[d]ocuments that contain [or] discuss [or] refer to forecasted North American sales information … including budgets [or] projections [or] reforecasts) with respect to … market price and total market sales for each grade of SC paper" over a seven-year period (including four years *prior to* the impact of the Nova Scotia measures hitting market prices in 2013) without identifying any specific custodian, Resolute will be required to search and thousands of documents, none	The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 26-36, 48-56, 106-108, 112-116, and CMJ ¶ 30. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. In the circumstances, producing thousands of documents, which the Claimant has not in fact established would be necessary given that it has objected to undertaking a search, would not be unduly burdensome. Whether or not the SC paper market is tantamount[46] to a commodity market does not alter Resolute's obligation to produce the documents relevant to allegations it has made. Even if Resolute were able to undisputedly prove that the Nova	

[46] Note that Prof. Hausman did not state that the SC market was "tantamount" to a commodity market. He stated that "SCP is close to a commodity product".

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments			
				of which are even material to the outcome of this case, as described above. • *Fifth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any narrow and limited type of document requested, any narrow time window, or any specific custodian, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Sixth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules).	Scotia measures had an impact on SC paper prices, its damages depend on the extent of that impact. Contracts and purchase orders are documents that show its "loss of customers" as alleged at NOA ¶ 48. ~~Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request.~~ **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce (1) a valuation report prepared by Deloitte for the bankruptcy and its supercalendered paper business plan; and (2) its sales and operation reports. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **For the reasons set out above, Canada respectfully requests that the Tribunal make an order**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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					confirming that Resolute has the obligation to produce all documents that are responsive to the request.	
				Request 16(b) Resolute objects to this request on the following grounds: • *First*, the scope of this request is overbroad because it is not warranted by Canada's stated grounds of relevance and materiality (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). Forecasted sales information on market price and sales for SC Paper) cannot prove or disprove whether the Nova Scotia Measures led to price disruption resulting in lost sales and profits for Resolute, or whether these were caused by other factors, as suggested in Canada's stated rationale. Indeed, forecasted information on Resolute's SC Paper sales and prices will not reflect their *actual* sales and prices. For purposes of this case, it is only the *actual* impact of the Nova Scotia Measures that is relevant to determine the scope of Resolute's losses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and such impact can be more adequately and economically assessed by the *ex post*	Request 16(b) Resolute's objections are unfounded for the following reasons: Resolute has put at issue the competitiveness of its SC paper products in comparison to those of PHP in the North American market, and the alleged loss of thousands of tonnes of SC paper orders. Sales information with respect to its price and total sales of all of its grades of SCP paper is therefore relevant and material to this case, and, in particular, its historical forecasted sales information is relevant to determine what impact the Nova Scotia measures had on its business as compared to the general downward trend in the market, and would shed light on its decision to close down its Laurentide mill. Resolute's contemporaneous sales forecasts (however titled) are relevant to its market assessment and business decisions, which may provide alternative explanations for any	Request 16(b) **Request denied** as overbroad, but Canada may, preferably by agreement with Claimant, seek to reformulate scope of request so that it is more specific and less burdensome. The Tribunal understands that Canada is seeking Resolute's own assessments.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments			
				analysis of the price and sales. (Art. 9(2)(g) of the IBA Rules). • *Second*, the scope of this request is also overbroad because all of Resolute's SC Paper sales and prices for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). Canada has not offered any other bases for determining whether this requests is relevant and material. • *Third*, Canada has failed to precisely articulate how the requested documents would be relevant to show whether other factors than the Nova Scotia Measures had an effect on Resolute's sales and prices (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that it is undisputed that the Nova Scotia Measures had an impact on SC paper prices and the SC paper market is tantamount to a commodity market where price is the most important factor in buyers' purchasing decisions (Hausman Report, Feb. 22, 2017, para. 36).	purported loss of sales and profits allegedly resulting from the Nova Scotia measures. An e*x post* analysis of market data as Resolute suggests will not demonstrate that orders were lost to a competitor or to another mill owned by Resolute, rather than being the result of a dwindling market. Besides, the Claimant's obligation to produce documents is not determined by what is the most economical approach, but by the statements and claims that it has made and defences that Canada has raised. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 26-36, 48-56, 106-108, 112-116, and CMJ ¶ 30. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. In the	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments			
				• *Fourth*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all "[d]ocuments that contain [or] discuss [or] refer to forecasted North American sales information … including budgets [or] projections [or] reforecasts) with respect to … price and total sales for each grade of SC paper sold by Resolute" over a seven-year period (including four years *prior to* the impact of the Nova Scotia measures hitting market prices in 2013) without identifying any specific custodian, Resolute will be required to search and review thousands of documents, none of which are even material to the outcome of this case, as described above. • *Fifth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or	circumstances, producing thousands of documents, which the Claimant has not in fact established would be necessary given that it has objected to undertaking a search, would not be unduly burdensome. Whether or not the SC paper market is tantamount[47] to a commodity market does not alter Resolute's obligation to produce the documents relevant to allegations it has made. Even if Resolute were able to undisputedly prove that the Nova Scotia measures had an impact on SC paper prices, its damages depend on the extent of that impact. Contracts and purchase orders are documents that show its "loss of customers" as alleged at NOA ¶ 48. ~~Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request.~~	

[47] Note that Prof. Hausman did not state that the SC market was "tantamount" to a commodity market. He stated that "SCP is close to a commodity product".

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				required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any narrow and limited type of document requested, any narrow time window, or any specific custodian, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Sixth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules).	**<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce (1) a valuation report prepared by Deloitte for the bankruptcy and its supercalendered paper business plan; and (2) its sales and operation reports. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **For the reasons set out above, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all documents that are responsive to the request.**	
				<u>Request 16(c)</u> Resolute objects to this request on the following grounds: • *First*, the scope of this request is overbroad because it is not warranted by Canada's stated grounds of relevance and materiality (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). Forecasted sales information	<u>Request 16(c)</u> Resolute's objections are unfounded for the following reasons: Resolute has put at issue the competitiveness of its SC paper products in comparison to those of PHP in the North American market, and the alleged loss of thousands of	<u>Request 16(c)</u> **<u>Request denied</u>** as overbroad, but Canada may, preferably by agreement with Claimant, seek to reformulate scope of request so that it is more specific and less burdensome.

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				on market price and sales for SC Paper) cannot prove or disprove whether the Nova Scotia Measures led to price disruption resulting in lost sales and profits for Resolute, or whether these were caused by other factors, as suggested in Canada's stated rationale. Indeed, forecasted information on Resolute's SC Paper sales by mill will not reflect their *actual* sales. For purposes of this case, it is only the *actual* impact of the Nova Scotia Measures that is relevant to determine the scope of Resolute's losses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and such impact can be more adequately and economically assessed by the *ex post* analysis of the sales. (Art. 9(2)(g) of the IBA Rules). • *Second*, the scope of this request is also overbroad because: (a) all forecasted prices and sales data for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178); (b) forecasted prices and sales related to Catawba mill is irrelevant and immaterial to the outcome of this case,as Resolute's	tonnes of SC paper orders. Sales information by mill is therefore relevant and material to this case, and, in particular, its historical forecasted sales information by mill is relevant to determine what impact the Nova Scotia measures had on its business as compared to the general downward trend in the market, and would shed light on its decision to close down its Laurentide mill. Resolute's contemporaneous sales forecasts (however titled) are relevant to its market assessment and business decisions, which may provide alternative explanations for any purported loss of sales and profits allegedly resulting from the Nova Scotia measures. The information, separated out by mill, will also show whether sales were forecasted to be taken over by another Resolute-owned mill. An *ex post* analysis of market data will not demonstrate that orders were lost to a competitor or to another mill owned by Resolute, rather than being the result of a dwindling market. Besides, the Claimant's obligation to produce documents is not determined	The Tribunal understands that Canada is seeking Resolute's <u>own</u> assessments.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				claims under NAFTA do not relate to its Catawba mill. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) Canada has not offered any other bases for determining whether this requests is relevant and material. • *Third*, Canada has failed to precisely articulate how the requested documents would be relevant to show whether other factors than the Nova Scotia Measures had an effect on Resolute's sales (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that it is undisputed that the Nova Scotia Measures had an impact on SC paper prices and the SC paper market is tantamount to a commodity market where price is the most important factor in buyers' purchasing decisions (Hausman Report, Feb. 22, 2017, para. 36). • *Fourth*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all "[d]ocuments that contain [or] discuss [or] refer to forecasted North American sales information … including budgets [or] projections [or] reforecasts) with respect to … Resolute's SC paper sales by mill" over a seven-year period (including four years *prior to* the impact of	by what is the most economical approach, but by the statements and claims that it has made and defences that Canada has raised. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 26-36, 48-56, 106-108, 112-116, and CMJ ¶ 30. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. In the circumstances, producing thousands of documents, which the Claimant has not in fact established would be necessary given that it has objected to undertaking a search, would not be unduly burdensome. Whether or not the SC paper market is tantamount[48] to a commodity market does not alter Resolute's	

[48] Note that Prof. Hausman did not state that the SC market was "tantamount" to a commodity market. He stated that "SCP is close to a commodity product".

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				the Nova Scotia measures hitting market prices in 2013) without identifying any specific custodian, Resolute will be required to search and review of thousands of documents, none of which are even material to the outcome of this case, as described above. • *Fifth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any narrow and limited type of document requested, any narrow time window, or any specific custodian, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.)	obligation to produce the documents relevant to allegations it has made. Even if Resolute were able to undisputedly prove that the Nova Scotia measures had an impact on SC paper prices, its damages depend on the extent of that impact. Contracts and purchase orders are documents that show its "loss of customers" as alleged at NOA ¶ 48. ~~Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request.~~ **JULY 27 ADDITIONAL COMMENTS** **On July 13, 2018, Resolute advised that it would only produce (1) a valuation report prepared by Deloitte for the bankruptcy and its supercalendered paper business plan; and (2) its sales and operation reports. Resolute produced documents that it argues are responsive to this request on**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				• *Sixth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules).	**July 20, 2018, which Canada is currently reviewing.** **For the reasons set out above, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all documents that are responsive to the request.**	
17.	Documents from January 4, 2012 to December 30, 2015 that contain, discuss or refer to any renegotiation of SC paper purchase orders from Resolute's Laurentide, Dolbeau and Kénogami mills.	See submissions cited in Request No. 4 above.	The requested documents are relevant and material to Resolute's allegation that the purchase and re-opening of the Port Hawkesbury mill by PWCC, facilitated by the Nova Scotia Measures, caused Resolute lower prices and lost sales and "forced [it] to renegotiate purchase orders at discounted prices". The requested documents are relevant and material to establishing what	Resolute objects to this request on the following grounds: • *First*, the scope of this request is overbroad because it is not warranted by Canada's stated grounds of relevance and materiality (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). Specific instances of renegotiated purchase orders will provide only a partial view of Resolute's lost profits and will not reflect Resolute's overall sales of SC Paper. For purposes of this case, it is only the impact of the Nova Scotia Measures on Resolute's overall SC Paper sales (and profits therefrom) that is relevant to determine the scope of Resolute's losses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and such impact can be more adequately and economically assessed by the *ex post* analysis of the data. (Art. 9(2)(g) of the IBA Rules).	Resolute's objections are unfounded for the following reasons: Resolute has put at issue the competitiveness of its SC paper products in comparison to those of PHP in the North American market, and its forced renegotiation of SC paper purchase orders at discounted prices. Documents that contain, discuss or refer to such renegotiation are therefore relevant and material to this case. An *ex post* analysis of market data will not demonstrate that Resolute was "forced to renegotiate purchase orders at discounted prices." Besides, the Claimant's obligation to produce documents is not determined by what is the most economical	The matter having been put in issue by Resolute's pleading, the request **as reformulated is granted.**

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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			purchase order renegotiations Resolute conducted and the extent to which such renegotiations were caused by the re-opening of the Port Hawkesbury mill or other factors.	• *Second*, Canada has failed to precisely articulate how the requested documents would be relevant to show whether other factors than the Nova Scotia Measures had an effect on Resolute's sales (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that it is undisputed that the Nova Scotia Measures had an impact on SC paper prices and the SC paper market is tantamount to a commodity market where price is the most important factor in buyers' purchasing decisions (Hausman Report, Feb. 22, 2017, para. 36). • *Third*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all documents "that contain [or] discuss or refer to any renegotiation of SC paper purchase orders from Resolute's Laurentide [or] Dolbeau [or] Kénogami mills" over a four-year period (including one year *prior to* the impact of the Nova Scotia measures hitting market prices in 2013) without identifying any specific custodian or any specific purchaser with whom renegotiations took place, Resolute will be required to search and review thousands of documents, none of which are even material to the outcome of this case, as described above.	approach, but by the statements and claims that it has made and defences that Canada has raised. An *ex post* analysis of market data will not demonstrate that Resolute was "forced to renegotiate purchase orders at discounted prices". Besides, the Claimant's obligation to produce documents is not determined by what is the most economical approach, but by the statements and claims that it has made and defences that Canada has raised. The request is no broader or less specific than the allegations made by the Claimant at SOC ¶¶ 26-36, 48-56, 106-108, 112-116, and CMJ ¶ 30. Resolute's allegation makes a general statement about purchase orders; it does not identify any specific purchasers. It would be patently unfair to oblige Canada to identify purchasers to justify its document request, when the Claimant has put the matter at issue without identifying any of those purchasers itself. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				• *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any narrow and limited type of document requested, any narrow time window, any specific custodian, or any specific purchaser of SC Paper with whom renegotiations took place, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Fifth*, this request calls for documents that may contain legal advice from counsel and	Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period. In the circumstances, producing thousands of documents, which the Claimant has not in fact established would be necessary given that it has objected to undertaking a search, would not be unduly burdensome. Whether or not the SC paper market is tantamount[49] to a commodity market does not alter Resolute's obligation to produce the documents relevant to allegations it has made. Even if Resolute were able to undisputedly prove that the Nova Scotia measures had an impact on SC paper prices, its damages depend on the extent of that impact. Contracts and purchase orders are documents that show its "loss of customers" as alleged at NOA ¶ 48. ~~Notwithstanding the above, Canada looks forward to Resolute's~~	

[49] Note that Prof. Hausman did not state that the SC market was "tantamount" to a commodity market. He stated that "SCP is close to a commodity product".

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules).	~~production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request.~~ **JULY 27 ADDITIONAL COMMENTS** **On July 5, 2018, Canada agreed to merge Requests 17 and 18, so that Request 17 reads "Documents from January 4, 2012 to December 30, 2015 that contain, discuss or refer to any renegotiation of SC paper purchase orders from Resolute's Laurentide, Dolbeau and Kenogami mills, including price exemption forms or equivalent documents."** **On July 20, 2018, Resolute advised that this request would require an email review across multiple years and that it was not required, nor prepared, to conduct such an email search.** **The objection is unacceptable in light of the explicit allegation made by Resolute. The date range is appropriately limited and the reasons as to why Resolute's SC paper contracts were allegedly**	

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					renegotiated is highly probative in this dispute. **For the reasons set out above and in relation to Request 18 below, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all documents that are responsive to the request.**	
F. Resolute's Costs to Manufacture and Transport SC Paper						
21.	Documents from January 1, 2009 to December 30, 2015 providing Resolute's bill of materials for SC paper produced at each of the Laurentide, Dolbeau and Kénogami mills, along with cost reports indicating the breakdown of materials, labour and overhead components of product cost and	SOC ¶ 47	Resolute alleges that Nova Scotia's measures lowered production costs for the Port Hawkesbury mill relative to Resolute's SC paper mills, undermining Resolute's ability to compete with PHP. The requested documents are relevant and material to assessing the merits of this allegation.	Resolute objects to this request on the following grounds: • *First*, Resoute's individual cost components are not relevant or material to this case and the scope of this request is, therefore, overly broad. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). • *Second*, the scope of this request is also overbroad because all cost data for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). Canada has not	Resolute's objections are unfounded for the following reasons: Resolute has put production costs at issue for PHP relative to Resolute's paper mills. Its cost components are therefore relevant and material to the claims it has made. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

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	segregating variable and fixed costs. If Resolute uses a standard cost approach to product costing for its SC paper, then also provide, from January 1, 2009 to December 30, 2015, the standard cost reports for SC paper produced at each of the Laurentide, Dolbeau and Kénogami mills, and documents indicating the variances between standard costs and actual costs for each of the Laurentide, Dolbeau and Kénogami mills.		Specifically, the requested documents are relevant and material to determining Resolute's production costs for SC paper in Québec, including (i) the different elements comprising Resolute's total production costs; (ii) assess changes in these costs over time and reasons for such; and (iii) how each of these costs impacted the profitability of each of Resolute's SC paper mills. The requested documents are relevant and material for assessing the merits of Resolute's claims under Articles 1102, 1105, 1110 and its claim for damages.	offered any other bases for determining whether this requests is relevant and material. • *Third*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all bills of materials and all cost reports generated in three mills over a seven-year period (including four years *prior to* the impact of the Nova Scotia Measures hitting market prices in 2013), this request would require many months and considerable efforts to collect and review thousands of documents that are not even tangentially relevant or material, as explained above. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules). By failing to identify any specific bills of materials or cost reports for which Canada is interested in obtaining evidence, any narrow time window, or any specific custodian, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.)	benchmark to compare to Resolute's damages in its but-for world. Canada's request for documents is no broader or less specific than the Claimant's allegation. In the circumstances, undertaking discovery for, and reviewing thousands of documents, which the Claimant has not in fact established would be necessary, given that it has objected to undertaking a search, would not be unduly burdensome. ~~Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request.~~ **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce its Cost and Production Analyses for its Kénogami, Laurentide, and Dolbeau mills that contain Resolute's pricing and cost analyses (including any forecasted data contained in these**	

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				• *Fifth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules).	**documents). Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
22.	Documents from January 1, 2009 to December 30, 2015 that contain, discuss or refer to fibre costs at the Laurentide, Dolbeau and Kénogami mills, including: (a) On a monthly basis, summaries of fibre usage and	SOC, ¶¶ 47, 53, 91, 108 Exhibits R-003 and R-016	When it announced the closure of the Laurentide mill in September 2014, Resolute stated that the "high cost of fiber" was a factor that affected the Laurentide mill's competitiveness. The requested documents are relevant and material for assessing whether Resolute and PHP are "in like	Resolute objects to this request on the following grounds: • *First*, this case does not turn on the cost of fibre at any of Resolute's mills, but on the Nova Scotia Measures. Indeed, as part of its defenses, Canada has not alleged that the cost of fibre was materially different for Resolute in comparison to PHP, nor has Canada alleged that that the Nova Scotia Measures affected the cost of fibre for any SC Paper producer. Instead, it is undisputed that the Measures impacted SC paper prices and that they provided benefits that lowered production costs for	Resolute's objections are unfounded for the following reasons: Resolute has put at issue the costs of PHP relative to Resolute's paper mills, which include fiber costs. The News Release accompanying the closure of the Laurentide Mill cites "the high cost of fiber" as a reason affecting Resolute's competitiveness. Fiber costs are therefore relevant and material to the claims it has made. Resolute's claims are not limited to its loss of aggregate profits, but to its	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	cost by machine and/or mill; (b) Fibre agreements with third parties which outline prices and terms of Resolute's fibre purchases; (c) communications with third parties to either negotiate or renegotiate prices for fibre; and (d) assessments of the financial impact of fibre costs on the performance of those mills.		circumstances" in accordance with NAFTA Article 1102, the reasons for the closure of the Laurentide mill, how such fibre costs impacted Resolute's strategic plans for SC paper production at all three Québec mills and the alleged ongoing damages to the Dolbeau and Kénogami mills.	PHP and from which Resolute did not benefit. As such, responsive documents are not relevant to any of Resolute's claims or to any of Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). • *Second*, the scope of this request is overbroad (Arts. 3(3)(b), 9(2)(a) of the IBA Rules) because fibre costs at Resolute's mills cannot be used to assess the aggregate profits that Resolute lost as a consequence of the Measures. • *Third*, the scope of this request is also overbroad because all cost data for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). Canada has not offered any other bases for determining whether this requests is relevant and material. • *Fourth*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all documents "that contain [or] discuss or refer to fibre costs" in three	competitiveness, which requires an assessment of costs, including fiber costs. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. Canada's request for documents is no broader or less specific than the Claimant's allegation that the Nova Scotia measures caused it to be less competitive. In its efforts to avoid bifurcation, the Claimant argued that "detailed evidence" is required to determine an Article 1102 breach, given that the Tribunal "must consider the factual circumstances of the North American market for producing supercalendered paper and Nova Scotia's attempts to vault Port Hawkesbury to the forefront of the	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				mills over a seven-year period (including four years *prior to* the impact of the Nova Scotia Measures hitting market prices in 2013), including a long list of vaguely defined examples, this request would require many months and considerable efforts to collect and review thousands of documents that are not even tangentially relevant or material, as explained above. • *Fifth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific and narrow type of document (rather than providing examples), any narrow subject matter, any narrow time window, any specific custodian, or any reasonable search parameters, this request amounts to	competition."[50] Having agreed that detailed evidence is required, it cannot now object to the disclosure of its costs, including fibre costs. In the circumstances, undertaking discovery for, and reviewing thousands of documents, which the Claimant has not in fact established would be necessary, given that it has objected to undertaking a search, would not be unduly burdensome. Contrary to Resolute's position, Canada does not have possession, custody and control of documents that contain, discuss or refer to Resolute's fibre costs. Moreover, Canada is not in a position to obtain relevant information from provincial representatives and the Claimant is better placed to provide the requested documents. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request.	

[50] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 30.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Sixth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). • *Seventh*, Canada has possession, custody and control of responsive documents that would be relevant to this request (Art. 3(3)(c)(i) of the IBA Rules) because Canada has control over its representatives – or can obtain relevant information from provincial representatives – regarding fibre pricing. Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**JULY 27 ADDITIONAL COMMENTS** **On July 13, 2018, Resolute advised that it would only produce its Cost and Production Analyses for its Kénogami, Laurentide, and Dolbeau mills that contain Resolute's pricing and cost analyses (including any forecasted data contained in these documents). Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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23.	Documents from January 1, 2009 to December 30, 2015 that contain, discuss or refer to fuel costs at the Laurentide, Dolbeau and Kénogami mills, including: (a) On a monthly basis, summaries of fuel usage and cost by machine and/or mill; (b) Fuel agreements with third parties which outline prices and terms of Resolute's fuel purchases; (c) communications with third parties to either negotiate or renegotiate prices for fuel; and	SOC, ¶¶ 47, 53, 91, 108 Exhibit R-016	When it announced the closure of the Laurentide mill in September 2014, Resolute stated that "higher transportation and fuel costs" were factors that affected the Laurentide mill's competitiveness. The requested documents are relevant and material for assessing whether Resolute and PHP are "in like circumstances" in accordance with NAFTA Article 1102, the reasons for the closure of the Laurentide mill, how such fuel costs impacted Resolute's strategic plans for SC paper production at all three Québec mills and the alleged ongoing damages to the Dolbeau and Kénogami mills.	Resolute objects to this request on the following grounds: • *First*, this case does not turn on the cost of fuel, but on the Nova Scotia Measures. Indeed, as part of its defenses, Canada has not alleged that the cost of fuel was materially different for Resolute in comparison to PHP, nor has Canada alleged that that the Nova Scotia Measures affected the cost of fuel for any SC Paper producer. Instead, it is undisputed that the Measures impacted SC paper prices and that they provided benefits that lowered production costs for PHP and from which Resolute did not benefit. As such, responsive documents are not relevant to any of Resolute's claims or to any of Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). • *Second*, the scope of this request is overbroad (Arts. 3(3)(b), 9(2)(a) of the IBA Rules) because fuel costs cannot be used to assess the aggregate profits that Resolute lost as a consequence of the Measures. • *Third*, the scope of this request is also overbroad because all cost data for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's	Resolute's objections are unfounded for the following reasons: Resolute has put at issue the costs of PHP relative to Resolute's paper mills, which include fuel costs. The News Release accompanying the closure of the Laurentide Mill cites "higher transportation and fuel costs" as a reason affecting Resolute's competitiveness. Fuel costs are therefore relevant and material to the claims it has made. Resolute's claims are not limited to its loss of aggregate profits, but to its competitiveness, which requires an assessment of costs, including fuel costs. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world.	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	(d) assessments of the financial impact of fuel costs on the performance of those mills.			defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). Canada has not offered any other bases for determining whether this request is relevant and material. • *Fourth*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all documents "that contain [or] discuss or refer to fuel costs" in three mills over a seven-year period (including four years *prior to* the impact of the Nova Scotia Measures hitting market prices in 2013), including a long list of vaguely defined examples, this request would require many months and considerable efforts to collect and review thousands of documents that are not even tangentially relevant or material, as explained above. • *Fifth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial*	Canada's request for documents is no broader or less specific than the Claimant's allegation that the Nova Scotia measures caused it to be less competitive. In its efforts to avoid bifurcation, the Claimant argued that "detailed evidence" is required to determine an Article 1102 breach, given that the Tribunal "must consider the factual circumstances of the North American market for producing supercalendered paper and Nova Scotia's attempts to vault Port Hawkesbury to the forefront of the competition."[51] Having agreed that detailed evidence is required, it cannot now object to the disclosure of its costs, including fuel costs. In the circumstances, undertaking discovery for, and reviewing thousands of documents, which the Claimant has not in fact established would be necessary, given that it has objected to undertaking a search, would not be unduly burdensome. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it	

[51] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 30.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				Arbitration (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific and narrow type of document (rather than providing examples), any narrow subject matter, any narrow time window, any specific custodian, or any reasonable search parameters, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Sixth*, this request calls for documents may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	has not withheld any documents on the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce its Cost and Production Analyses for its Kénogami, Laurentide, and Dolbeau mills that contain Resolute's pricing and cost analyses (including any forecasted data contained in these documents). Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments			
24.	Documents from January 1, 2009 to December 30, 2015 which contain, discuss or refer to costs to transport and ship in raw materials to each of the Laurentide, Dolbeau and Kénogami mills, and to transport and ship out finished SC paper from each of these mills to its customers, including the following: (a) Summaries of all transportation and freight costs related to the transportation of fibre and raw materials to each of the mills and the quantities (i.e. tonnage) of	SOC, ¶¶ 47, 53, 91, 108 Exhibit R-016	When it announced the closure of the Laurentide mill in September 2014, Resolute stated that "higher transportation and fuel costs" were factors that affected the Laurentide mill's competitiveness. The requested documents are relevant and material for assessing whether Resolute and PHP are "in like circumstances" in accordance with NAFTA Article 1102, the reasons for the closure of the Laurentide mill, how such transport costs impacted Resolute's strategic plans for SC paper production at all three Québec mills and the alleged ongoing damages to	Resolute objects to this request on the following grounds: • *First*, this case does not turn on shipment costs, but on the Nova Scotia Measures. Indeed, as part of its defenses, Canada has not alleged that the shipment costs were materially different for Resolute in comparison to PHP, nor has Canada alleged that that the Nova Scotia Measures affected shipment costs for any SC Paper producer. Instead, it is undisputed that the Measures impacted SC paper prices and that they provided benefits that lowered production costs for PHP and from which Resolute did not benefit. As such, responsive documents are not relevant to any of Resolute's claims or to any of Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). • *Second*, the scope of this request is overbroad (Arts. 3(3)(b), 9(2)(a) of the IBA Rules) because shipment costs cannot be used to assess the aggregate profits that Resolute lost as a consequence of the Measures. • *Third*, the scope of this request is also overbroad because all cost data for the	Resolute's objections are unfounded for the following reasons: Resolute has put at issue the costs of PHP relative to Resolute's paper mills, which include PH's allegedly prohibitive transportation and shipping costs.[52] The News Release accompanying the closure of the Laurentide Mill cites "the high cost of fiber" as a reason affecting Resolute's competitiveness. Transportation and shipping costs are therefore relevant and material to the claims it has made. Resolute's claims are not limited to its loss of aggregate profits, but to its competitiveness, which requires an assessment of costs, including transportation and shipping costs. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

[52] Hearing on Jurisdiction Transcript, August 15, 2017, p. 30:6-17.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments			
	materials shipped; and, (b) Monthly summaries of all transportation and freight costs related to the selling and shipping of SC paper and the quantities (i.e. tonnage) of materials shipped; (c) communications with third parties to either negotiate or renegotiate prices for transport; and (d) assessments of the financial impact of transport costs on the performance of those mills.		the Dolbeau and Kénogami mills.	years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). Canada has not offered any other bases for determining whether this request is relevant and material. • *Fourth*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all documents "that contain [or] discuss or refer to costs to transport and ship in raw materials … and to transport and ship out finished SC paper" in three mills over a seven-year period (including four years *prior to* the impact of the Nova Scotia Measures hitting market prices in 2013), including a long list of vaguely defined examples, this request would require many months and considerable efforts to collect and review thousands of documents that are not even tangentially relevant or material, as explained above.	3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. Canada's request for documents is no broader or less specific than the Claimant's allegation that the Nova Scotia measures caused it to be less competitive. In its efforts to avoid bifurcation, the Claimant argued that "detailed evidence" is required to determine an Article 1102 breach, given that the Tribunal "must consider the factual circumstances of the North American market for producing supercalendered paper and Nova Scotia's attempts to vault Port Hawkesbury to the forefront of the competition."[53] Having agreed that detailed evidence is required, it cannot now object to the disclosure of its costs, including transportation and shipping costs. In the circumstances, undertaking discovery for, and reviewing thousands of documents, which the Claimant has not in fact established exist, given that it has objected to undertaking a	

[53] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 30.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				• *Fifth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific and narrow type of document (rather than providing examples), any narrow subject matter, any narrow time window, any specific custodian, or any reasonable search parameters, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Sixth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules).	search, would not be unduly burdensome. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce its Cost and Production Analyses for its Kénogami, Laurentide, and Dolbeau mills that contain Resolute's pricing and cost analyses (including any forecasted data contained in these documents). Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
		Reference to Submissions	Comments			
				Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
25.	Documents from January 1, 2009 to December 30, 2015 providing details of Resolute's electricity costs at the Laurentide, Dolbeau and Kénogami mills, including: (a) On a monthly basis, summaries of electricity usage and cost by machine and/or mill; (b) Electricity agreements with third parties that were in effect, which outline prices and terms of Resolute's	SOC ¶¶ 41 and 112	Resolute alleges that the advantages to the Port Hawkesbury mill with respect to electricity allowed it to engage in predatory pricing and damage Resolute's SC paper mills. The requested documents are relevant and material for comparing electricity costs in Québec and Nova Scotia and assessing whether Resolute and PHP are "in like circumstances" in accordance with NAFTA Article 1102.	Resolute objects to this request on the following grounds: • *First*, the scope of this request is overbroad (Arts. 3(3)(b), 9(2)(a) of the IBA Rules) because electricity costs cannot be used to assess the aggregate profits that Resolute lost as a consequence of the Measures. • *Second*, the scope of this request is also overbroad because all cost data for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). Canada has not offered any other bases for determining whether this request is relevant and material. • *Third*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c)	Resolute's objections are unfounded for the following reasons: Resolute has put at issue the costs of PHP relative to Resolute's paper mills, which include electricity costs. Resolute's claims are not limited to its loss of aggregate profits, but to its competitiveness, which requires an assessment of costs, including electricity costs. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world.	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	electricity purchases; (c) communications with third parties to either negotiate or renegotiate prices for electricity; and (d) Assessments of the financial impact of electricity costs on the performance of those mills.			of the IBA Rules). By seeking all documents relating to "details of Resolute's electricity costs" in three mills over a seven-year period (including four years *prior to* the impact of the Nova Scotia Measures hitting market prices in 2013), including a long list of vaguely defined examples, this request would require many months and considerable efforts to collect and review thousands of documents that are not even tangentially relevant or material, as explained above. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific and narrow type of document (rather than providing examples), any narrow subject matter, any	Canada's request for documents is no broader or less specific than the Claimant's allegation that the Nova Scotia measures caused it to be less competitive. In its efforts to avoid bifurcation, the Claimant argued that "detailed evidence" is required to determine an Article 1102 breach, given that the Tribunal "must consider the factual circumstances of the North American market for producing supercalendered paper and Nova Scotia's attempts to vault Port Hawkesbury to the forefront of the competition."[54] Having agreed that detailed evidence is required, it cannot now object to the disclosure of its costs, including electricity costs. In the circumstances, undertaking discovery for, and reviewing thousands of documents, which the Claimant has not in fact established would be necessary, given that it has objected to undertaking a search, would not be unduly burdensome. Contrary to Resolute's position, Canada does not have possession,	

[54] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 30.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				narrow time window, any specific custodian, or any reasonable search parameters, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Fifth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). *Sixth*, Canada has possession, custody and control (or can locate ones publicly available) of responsive documents that would be relevant to this request (Art. 3(3)(c)(i) of the IBA Rules) because Canada has control over its representatives – or can obtain relevant information from provincial or local representatives – regarding electricity rates. Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	custody and control of documents providing details of Resolute's electricity costs. Moreover, Canada is not in a position to obtain relevant information from the third party electricity provider, or from provincial or local representatives, and the Claimant is better placed to provide the requested documents. Canada is not seeking the production of documents that are already in the public domain. However, Resolute must produce documents that are responsive to Canada's document request if they are not public. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **JULY 27 ADDITIONAL COMMENTS** **On July 13, 2018, Resolute advised that it would only produce its Cost and Production Analyses for its Kénogami, Laurentide, and Dolbeau mills that contain Resolute's pricing and cost**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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					analyses (including any forecasted data contained in these documents). Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing. **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
26.	Documents from January 1, 2009 to December 30, 2015 providing details of Resolute's property taxes paid at each of the Laurentide, Dolbeau and Kénogami mills, including: (a) Schedule or general ledger	SOC ¶¶ 41 and 112	Resolute alleges that the advantages to the Port Hawkesbury mill with respect to property taxes allowed it to engage in predatory pricing and damage Resolute's SC paper mills. The requested documents are relevant and material for comparing	Resolute objects to this request on the following grounds: • *First*, details of Resolute's property taxes paid at each of the Laurentide, Dolbeau and Kénogami mills – including property assessments and amounts of taxes actually levied – are already publicly available, and therefore Canada has possession, custody and control of responsive documents (Art. 3(3)(c)(i) of the IBA Rules). • *Second*, the scope of this request is overbroad (Arts. 3(3)(b), 9(2)(a) of the	Resolute's objections are unfounded for the following reasons: Resolute has put at issue the costs of PHP relative to Resolute's paper mills, which include property taxes. Canada is not requesting publicly available information, but rather tax payments, assessments/reassessments, agreements and communications on negotiations and renegotiations that are not available publicly.	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	printout of property tax payments made; (b) Property tax assessments and reassessments; (c) Any property tax agreements between Resolute and the municipal and/or provincial governments; and (d) Any communications by Resolute to negotiate or renegotiate the terms of its property tax agreements.		property taxes in Québec versus Nova Scotia and assessing whether Resolute and PHP are "in like circumstances" in accordance with NAFTA Article 1102.	IBA Rules) because property taxes cannot be used to assess the aggregate profits that Resolute lost as a consequence of the Measures. • *Third*, the scope of this request is also overbroad because all cost data for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). Canada has not offered any other bases for determining whether this request is relevant and material. • *Fourth*, producing all responsive documents – aside from those documents that are already publicly available – would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all documents relating to "details of Resolute's property taxes" in three mills over a seven-year period (including four years *prior to* the impact of the Nova Scotia Measures hitting market prices in 2013), including a long list of vaguely defined examples, this request would require many months and considerable efforts to collect and review	Resolute's claims are not limited to its loss of aggregate profits, but to its competitiveness, which requires an assessment of costs, including property taxes. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. Canada's request for documents is no broader or less specific than the Claimant's allegation that the Nova Scotia provided PHP "reduced … property taxes… and thus lowered the production costs for Port Hawkesbury relative to those of Resolute's SC paper mills." In its efforts to avoid bifurcation, the Claimant argued that "detailed evidence" is required to determine an Article 1102 breach, given that the Tribunal "must consider the factual	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				thousands of documents that are not even tangentially relevant or material, as explained above. • *Fifth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific and narrow type of document (rather than providing examples), any narrow subject matter, any narrow time window, any specific custodian, or any reasonable search parameters, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second	circumstances of the North American market for producing supercalendered paper and Nova Scotia's attempts to vault Port Hawkesbury to the forefront of the competition."[55] Having agreed that detailed evidence is required, it cannot now object to the disclosure of its costs, including property taxes. In the circumstances, undertaking discovery for, and reviewing thousands of documents, which the Claimant has not in fact established would be necessary, given that it has objected to undertaking a search, would not be unduly burdensome. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 20, 2018, Resolute advised that it was only producing**	

[55] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 30.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Sixth*, this request calls for documents – aside from responsive documents that are already publicly available – that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**property tax records for the Kénogami, Laurentide and Dolbeau mills. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
27.	Documents from January 1, 2009 to December 30, 2015 providing details of Resolute's water costs at the Laurentide, Dolbeau and Kénogami mills, including: (a) On a monthly basis, summaries	SOC ¶¶ 47, 53, 91, 108	Resolute alleges that the Nova Scotia Measures led to the closure of the Laurentide mill, and that they threaten to force the closure of the Dolbeau and Kénogami mills. The requested documents are relevant and material for an assessment of the	Resolute objects to this request on the following grounds: • *First*, this case does not turn on water costs, but on the Nova Scotia Measures. Indeed, as part of its defenses, Canada has not alleged that the water costs were materially different for Resolute in comparison to PHP, nor has Canada alleged that that the Nova Scotia Measures affected water costs for any SC Paper producer. Canada cannot either point to any allegation made by Resolute regarding	Resolute's objections are unfounded for the following reasons: Resolute has put at issue the costs of PHP relative to Resolute's paper mills, which include water costs. Specifically, It has argued that Resolute was forced to close its Laurentide due to "the added production capacity of Port Hawkesbury, which has driven prices down while producing at lower costs." Resolute's water costs are	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	of water usage and cost by machine and/or mill; (b) Water agreements with third parties that were in effect, which outline prices and terms of Resolute's water purchases; and (c) Any communications with third parties to either negotiate or renegotiate prices for water.		competitiveness of Resolute in the SC paper market (water costs are significant in the paper manufacturing sector), the Laurentide mill's historical financial performance (measured three years prior to the re-opening of the Port Hawkesbury mill and up to the date of filing of the SOC), the relationship between the Laurentide, Dolbeau and Kénogami mills regarding their SC paper production, as well as an assessment of the value of the Laurentide mill. Documents relating to Resolute's other SC paper mills are relevant and material to assessing Resolute's strategic	water costs affecting its competitiveness, because it was simply not the case. Instead, it is undisputed that the Measures impacted SC paper prices and that they provided benefits that lowered production costs for PHP and from which Resolute did not benefit. As such, responsive documents are not relevant to any of Resolute's claims or to any of Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules). • *Second*, the scope of this request is overbroad (Arts. 3(3)(b), 9(2)(a) of the IBA Rules) because water costs cannot prove or disprove the aggregate profits that Resolute lost as a consequence of the Measures and the value of the Laurentide mill. • *Third*, the scope of this request is also overbroad because all cost data for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). Canada has not offered any other bases for determining	relevant to assess alternative explanations for any purported loss of sales and profits allegedly resulting from the Nova Scotia measures. All of the relative costs of the mills are therefore relevant and material. Resolute's claims are not limited to its loss of aggregate profits, but to its competitiveness, which requires an assessment of costs, including water costs. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. Canada's request for documents is no broader or less specific than the Claimant's allegation that the Nova Scotia measures caused it to be less competitive. In its efforts to avoid bifurcation, the Claimant argued that	

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			plans for balancing SC paper production with its Laurentide operations and optimizing its SC paper asset base.	whether this request is relevant and material. • *Fourth*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all documents relating to "details of Resolute's water costs" in three mills over a seven-year period (including four years *prior to* the impact of the Nova Scotia Measures hitting market prices in 2013), including a long list of vaguely defined examples, this request would require many months and considerable efforts to collect and review thousands of documents that are not even tangentially relevant or material, as explained above. • *Fifth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request]	"detailed evidence" is required to determine an Article 1102 breach, given that the Tribunal "must consider the factual circumstances of the North American market for producing supercalendered paper and Nova Scotia's attempts to vault Port Hawkesbury to the forefront of the competition."[56] Having put at issue all of it and PHP's costs, and having agreed that detailed evidence is required, it cannot now object to the disclosure of its costs, including water costs. In the circumstances, undertaking discovery for, and reviewing thousands of documents, which the Claimant has not in fact established would be necessary, given that it has objected to undertaking a search, would not be unduly burdensome. Contrary to Resolute's position, Canada does not have possession, custody and control of documents providing details of Resolute's water costs. Moreover, Canada is not in a position to obtain relevant information from provincial (or local)	

[56] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 30.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				covers all documents relating to [specified issues and events].'")). By failing to identify any specific and narrow type of document (rather than providing examples), any narrow subject matter, any narrow time window, any specific custodian, or any reasonable search parameters, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Sixth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). • *Seventh*, Canada has possession, custody and control of responsive documents that would be relevant to this request (Art. 3(3)(c)(i) of the IBA Rules) because Canada has control over its representatives – or can obtain relevant information from provincial representatives – regarding water pricing. Without prejudice to these objections, Resolute is offering to produce those specific	representatives and the Claimant is better placed to provide the requested documents. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it was attempting to procure its water bills for Kénogami, Laurentide and Dolbeau. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the**	

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				materials Resolute believes to be relevant and responsive to Canada's requests.	**obligation to produce all responsive documents.**	
28.	Documents between January 1, 2009 and December 30, 2015 providing details of related to the costs allocated to or directly incurred by each of the Laurentide, Dolbeau and Kénogami mills, including selling, general and administrative costs and any other overheads.	SOC ¶¶ 47, 53, 91, 108	Resolute alleges that the Nova Scotia Measures led to the closure of the Laurentide mill, and that they threaten to force the closure of the Dolbeau and Kénogami mills. The requested documents are relevant and material for an assessment of the competitiveness of Resolute in the SC paper market, the Laurentide mill's historical financial performance (measured three years prior to the re-opening of the Port Hawkesbury mill and up to the date of filing of the SOC), the relationship between the Laurentide, Dolbeau and Kénogami mills	Resolute objects to this request on the following grounds: • *First*, the formulation of this request is so overly broad and unspecific that it could in theory cover the entire universe of financial information available with respect to Resolute's Laurentide, Dolbeau and Kénogami mills, which would be unheard of in international arbitration. (Arts. 3(3)(a)-(b), 9(2)(a) of the IBA Rules.) Indeed, virtually all financial information exchanged in the respective mills provides details one way or another on the mills' costs and would therefore be responsive. Producing all documents "providing details of related to the costs allocated to or directly incurred" in three mills over a seven-year period (including four years *prior to* the impact of the Nova Scotia measures hitting market prices in 2013) would indeed be unduly burdensome (Art. 9(2)(c) of the IBA Rules), because it would require many months and considerable efforts to collect and review all financial information on the mills (literally hundreds of thousands of documents), which are not even	Resolute's objections are unfounded for the following reasons: Resolute has put at issue the costs of PHP relative to Resolute's paper mills, which include selling, general and administrative costs and other overheads. Specifically, It has argued that Resolute was forced to close its Laurentide due to "the added production capacity of Port Hawkesbury, which has driven prices down while producing at lower costs." All of the relative costs of the mills are therefore relevant and material. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world.	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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			regarding their SC paper production, as well as an assessment of the value of the Laurentide mill. Documents relating to Resolute's other SC paper mills are relevant and material to assessing Resolute's strategic plans for balancing SC paper production with its Laurentide operations and optimizing its SC paper asset base.	tangentially relevant or material, as explained below. • *Second*, the scope of this request is also overbroad. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) • *Third*, the scope of this request is also overbroad because all cost data for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). Canada has not offered any other bases for determining whether this request is relevant and material. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have	Canada's request for documents is no broader or less specific than the Claimant's allegation that the Nova Scotia measures caused it to be less competitive. In its efforts to avoid bifurcation, the Claimant argued that "detailed evidence" is required to determine an Article 1102 breach, given that the Tribunal "must consider the factual circumstances of the North American market for producing supercalendered paper and Nova Scotia's attempts to vault Port Hawkesbury to the forefront of the competition."[57] Having put at issue all of it and PHP's costs, and having agreed that detailed evidence is required, it cannot now object to the disclosure of its costs, including the costs of selling, administrative costs and other overheads. In the circumstances, undertaking discovery for, and reviewing thousands of documents, which the Claimant has not in fact established would be necessary, given that it has objected to undertaking a search, would not be unduly burdensome.	

[57] Claimant's Opposition to Bifurcation, October 13, 2016, ¶ 30.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific and narrow type of document (rather than providing examples), any narrow subject matter, any narrow time window, any specific custodian, or any reasonable search parameters, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Fifth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce its Cost and Production Analyses for its Kénogami, Laurentide, and Dolbeau mills that contain Resolute's pricing and cost analyses (including any forecasted data contained in these documents). Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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					obligation to produce all responsive documents.	
29.	Documents between January 1, 2009 and December 30, 2015 that contain, discuss or refer to any measures and/or indicators of financial and operational performance that Resolute used in its monitoring, review and benchmarking of Resolute's SC paper operations at the Laurentide, Dolbeau and Kénogami mills, including the following information on a monthly (or quarterly) basis and actual, budget, and variance analyses for all such information: (a) Production;	SOC ¶¶ 47, 53, 91, 108	Resolute alleges that the Nova Scotia Measures led to the closure of the Laurentide mill, and that they threaten to force the closure of the Dolbeau and Kénogami mills. The requested documents are relevant and material for an assessment of the competitiveness of Resolute in the SC paper market, the Laurentide mill's historical financial performance (measured three years prior to the re-opening of the Port Hawkesbury mill and up to the date of filing of the SOC), the relationship between the Laurentide, Dolbeau and Kénogami mills	Resolute objects to this request on the following grounds: • *First*, the formulation of this request is so overly broad and unspecific that it could in theory cover the entire universe of information available with respect to Resolute's Laurentide, Dolbeau and Kénogami mills, which would be unheard of in international arbitration. (Arts. 3(3)(a)-(b), 9(2)(a) of the IBA Rules.) Indeed, virtually all information exchanged in the respective mills relates to "indicators of financial and operational performance" at the mills. Producing all such documents with respect to three mills over a seven-year period (including four years *prior to* the impact of the Nova Scotia measures hitting market prices in 2013), including documents relating to a long litany of eight indicators, would indeed be unduly burdensome (Art. 9(2)(c) of the IBA Rules), because it would require many months and enormous efforts to collect and review all information on the mills (literally hundreds of thousands of documents), which are not even tangentially relevant or material, as explained below.	Resolute's objections are unfounded for the following reasons: Resolute has put at issue the financial and operational performance of PHP relative to Resolute's paper mills. Specifically, It has argued that the Port Hawkesbury has become "the lowest cost operator in North America". As a result, the relative financial and operational performance of Resolute's mills is relevant and material. Canada's request for documents is no broader or less specific than the Claimant's allegation that the Nova Scotia measures caused it to be less competitive. In the circumstances, undertaking discovery for, and reviewing thousands of documents, which the Claimant has not in fact established would be necessary, given that it has objected to undertaking a search, would not be unduly burdensome. Given that Resolute alleges to have incurred damages from 2012-2015, it	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	(b) Wastage; (c) Scrap; (d) Yield; (e) Recovery; (f) Proportion and tonnage of inputs used (timber fibre, wood fibre, recycled fibre); (g) Idle time; and (h) Machine capacity, utilization and efficiency.		regarding their SC paper production, as well as an assessment of the value of the Laurentide mill. Documents relating to Resolute's other SC paper mills are relevant and material to assessing Resolute's strategic plans for balancing SC paper production with its Laurentide operations and optimizing its SC paper asset base.	• *Third*, the scope of this request is also overbroad. (Arts. 3(3)(b), 9(2)(a) of the IBA Rules.) *Fourth*, the scope of this request is also overbroad because all cost data for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178). Canada has not offered any other bases for determining whether this request is relevant and material. • *Fifth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific and narrow type of document (rather than providing	is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce its Cost and Production Analyses for its Kénogami, Laurentide, and Dolbeau mills that contain Resolute's pricing and cost analyses (including any forecasted data contained in these documents), and its supercalendered paper business plan and its sales and operations reports. Resolute produced**	

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				examples), any narrow subject matter, any narrow time window, any specific custodian, or any reasonable search parameters, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Sixth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
G. Resolute's Re-opening of the Dolbeau Mill						
30.	Documents between January 2010 and December 30, 2015, including any business plans, assessments, studies, considerations or evaluations, that contain, discuss or	CMJ ¶ 43-51 RMJ ¶ 69	Resolute stated that the re-opening of the Dolbeau mill in August 2012 would result in the closing of capacity elsewhere within Resolute as Resolute considered how to "optimize and solidify [its] asset	Resolute objects to this request on the following grounds: • *First*, all internal discussions are not relevant and material to Resolute's claims or Canada's defenses because they can only reflect Resolute's limited perception of the impact of the Nova Scotia Measures at the time rather than reflecting their *actual* impact (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), and such impact can be more	Resolute's objections are unfounded for the following reasons: Contrary to the position put forward by Resolute, the documents are relevant and material not because they will show the impact of the Nova Scotia measures, but rather, they will be used to assess the impact of the re-opening of Dolbeau on	**Request granted**. .

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	refer to Resolute's planned re-opening of the Dolbeau mill, as well as its subsequent operation, and the projected or actual impacts of that re-opening on the Laurentide mill.		base in Québec". The requested documents are relevant and material for assessing the impact of Resolute's re-opening of the Dolbeau mill on its plans for maintaining the Laurentide mill in operation and for comparing the relative efficiencies of the Laurentide and Dolbeau mills.	adequately and economically assessed by the *ex post* analysis of the relevant factors. (Art. 9(2)(g) of the IBA Rules). • *Second*, the scope of this request is also overbroad because all data for the years 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178), and given that Resolute's decision to shut down Laurentide was announced in September 2014. Canada has not offered any other bases to demonstrate this request is relevant and material. • *Third*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all documents relating to "Resolute's planned re-opening of the Dolbeau mill, as well as its subsequent operation, and the projected or actual impacts of that re-opening on the Laurentide mill" over a six-year period (including three years *prior to* the impact of the Nova Scotia Measures hitting market prices in 2013) without specifying any particular custodian or other narrow search parameters, this request would	Resolute's plans for maintaining the Laurentide mill in operation. The Claimant has put this matter at issue, along with the relative efficiencies of the Dolbeau and Laurentide mills, making the requested documents relevant and material to the case. An *ex post* analysis of market data as Resolute suggests will not demonstrate the effects that the re-opening of the Dolbeau mill would have on Laurentide, as compared to the re-opening of PHP's mill. Besides, the Claimant's obligation to produce documents is not determined by what is the most economical approach, but by the statements and claims that it has made and defences that Canada has raised. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to measure Resolute's alleged loss of competitiveness over the 3-year period between the date of the measures to its NOA against its market position during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world.	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				require many months and considerable efforts to collect and review thousands of documents that are not even tangentially relevant or material, as explained above. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific and narrow type of document (rather than providing examples), any narrow subject matter, any narrow time window, any specific custodian, or any reasonable search parameters, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.)	Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce its supercalendered paper business plan. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Resolute's production appears to be deficient. The reopening of Dolbeau is at the heart of this case not only because Resolute has confirmed it intends to claim damages with respect to that mill, but because it's reopening had a substantial impact on the viability of the Laurentide mill. Resolute's strategic plans for the Dolbeau mill are highly probative in this dispute.**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				• *Fifth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
H. Resolute's Closure and Sale of Laurentide Mill						
31.	Documents from January 1, 2011 to December 2012 that contain, discuss or refer to Resolute's decision to close Laurentide machine #10, including assessments and studies on the relationship between Laurentide machines #10 and #11.	CMJ ¶¶ 49, 51, 102-103, 107, 114	Resolute claims that it shut down Laurentide machine #10 as a consequence of its re-opening of the Dolbeau mill. The requested documents are relevant and material for assessing the relationship between the Dolbeau and Laurentide mills with respect to SC paper production as well as the relationship between Laurentide machine #10 and machine #11, as well as to determining the value	Resolute objects to this request on the following grounds: • *First*, Canada misrepresents the nature of the expropriation claim asserted by Resolute under NAFTA Art. 1110. • *Second*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all documents relating to "Resolute's decision to close Laurentide machine #10" over a 24 months without specifying any particular custodian or other narrow search parameters, this request would require many months and considerable efforts to collect and, review thousands of documents that are not even tangentially relevant or material, as explained above.	Resolute's objections are unfounded for the following reasons: Canada's request for documents is no broader or less specific than Resolute's claim that its decision to close Laurentide machine #10 was solely due to the reopening of Dolbeau. The requested documents are relevant and material to understanding the rationale in Resolute's decision to shut down machine #10 and to instead invest in machine #11, both of which Resolute has stated were part of its strategic review of its SC paper asset base in Québec. The decision-making process behind how Resolute intended to operate the two SC paper machines at Laurentide during this	**Request granted.**

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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			of the Laurentide mill.	• *Third*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific and narrow type of document (rather than providing examples), any narrow subject matter, any narrow time window, any specific custodian, or any reasonable search parameters, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Fourth*, this request calls for documents that may contain communications containing legal advice from counsel and	time period is highly relevant and material to Canada's defences. Given the breadth of Resolute's claim, undertaking discovery for, and reviewing thousands of documents, which the Claimant has not in fact established exist, given that it has objected to undertaking a search, would not be unduly burdensome. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce its supercalendered paper business plan. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing. Resolute's production appears to be deficient. The closure of the two**	

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				protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**machines at Laurentide go to the heart of this dispute and understanding the relationship between #10 and #11 is highly probative in this dispute, especially in light of the alleged investments made in #11 by Resolute in 2012.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
32.	Documents from January 1, 2009 to November 24, 2014 that contain, discuss or refer to any actual or potential temporary shutdown of Laurentide machine #11.	RMJ ¶ 79	Resolute claims that it shut down Laurentide machine #11 in December 2012 as a result of seasonality. The requested documents are relevant and material for assessing the historical performance and efficiency of Laurentide machine	Resolute objects to this request on the following grounds: • *First*, this case does not turn on temporary shutdowns of Laurentide machine #11 and is thus not relevant to the case and material to its outcome (Art. 3(3)(b), 9(2)(a) of the IBA Rules). In addition, Canada misrepresents the nature of the expropriation claim asserted by Resolute under NAFTA Art. 1110. • *Second*, internal discussions and analyses of temporary shutdowns are irrelevant and	Resolute's objections are unfounded for the following reasons: Temporary shutdowns and the historical performance of the Laurentide mill are relevant and material to the cause for shutting it down, as well as with respect to its value. As Resolute has argued, "restructuring, with a single machine,	**Request granted.**

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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			#11, the relationship between the Laurentide mill and Resolute's other SC paper mills and to determining the value of the Laurentide mill.	immaterial to Resolute's claims or Canada's defenses. • *Third*, the scope of this request is also overbroad because all data for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178), and given that Resolute's decision to shut down Laurentide was announced in September 2014. Canada has not offered any other bases for determining whether this request is relevant and material. • *Fourth*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all documents relating to "<u>any</u> actual <u>or</u> potential temporary shutdown of Laurentide machine #11" over a six-year period (including four years *prior to* the impact of the Nova Scotia Measures hitting market prices in 2013) without specifying any particular custodian or other narrow search parameters, this	is absolutely necessary to this plant to be profitable in the long term."[58] Understanding the reasons for any temporary shutdown of machine #11 is relevant and material to understanding Resolute's strategic planning at the Laurentide mill, the investments Resolute made to improve the efficiency and performance of machine #11 and the impact of Port Hawkesbury's reopening to Resolute's SC paper operations in Québec. For example, Resolute has claimed that a temporary shutdown of machine #11 in December 2012 was due to low seasonal demand (but without having every produced internal documentation evidencing the veracity of this statement) and was used to "find the right solutions for its employees" during the restructuring of the Laurentide SC paper operations.[59] Given that Resolute alleges to have incurred damages from 2012-2015, it	

[58] Claimant's Rejoinder Memorial on Jurisdiction, May 3, 2017, ¶ 79.
[59] Claimant's Rejoinder Memorial on Jurisdiction, May 3, 2017, ¶ 79.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				request would require many months and considerable efforts to collect and review hundreds of documents that are not even tangentially relevant or material, as explained above. • *Fifth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific and narrow type of document, any narrow subject matter, any narrow time window, any specific custodian, or any reasonable search parameters, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.)	is reasonable to compare the value of Resolute's mill over the 3-year period between the date of the measures to its NOA against the value during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. Canada's request for documents is no broader or less specific than the Claimant's allegation that the Nova Scotia measures caused it to shut down the mill at Laurentide. In the circumstances, undertaking discovery for, and reviewing hundreds of documents, which the Claimant has not in fact established exist, given that it has objected to undertaking a search, would not be unduly burdensome. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **JULY 27 ADDITIONAL COMMENTS**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				• *Sixth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**On July 13, 2018, Resolute advised that it would only produce its Cost and Production Analyses for its Laurentide mill that contain Resolute's pricing and cost analyses (including any forecasted data contained in these documents). Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Resolute's production appears to be deficient. The shutdown of Laurentide machine #11 goes to the heart of this dispute, especially in light of the alleged investments made in #11 by Resolute in 2012.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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33.	Documents from January 1, 2009 to November 24, 2014 that contain, discuss or refer to Resolute's plans and decision to close the Laurentide mill, including assessments and studies on the relationship between Resolute's Laurentide, Dolbeau, Kénogami and Catawba mills and future plans for these mills.	SOC ¶¶ 47, 53, 91 and 108	Resolute alleges that it was forced to close the Laurentide mill in November 2014 because of Nova Scotia's support for the Port Hawkesbury mill. The requested documents are relevant and material for assessing the reasons for Laurentide's closure and for assessing the value of the Laurentide mill.	Resolute objects to this request on the following grounds: • *First*, Canada misrepresents the nature of the expropriation claim asserted by Resolute under NAFTA Art. 1110. • *Second*, the scope of this request is also overbroad because all data for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178), and given that Resolute's decision to shut down Laurentide was announced in September 2014. Canada has not offered any other bases for determining whether this request is relevant and material. • *Third*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all documents relating to "Resolute's plans and decision to close the Laurentide mill" over a six-year period (including four years *prior to* the impact of the Nova Scotia Measures hitting market prices in 2013) without specifying any particular custodian or other narrow search	Resolute's objections are unfounded for the following reasons: Resolute's plans and decision to close the Laurentide mill are relevant and material to the case. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to compare the value of Resolute's mill over the 3-year period between the date of the measures to its NOA against the value during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world. Canada's request for documents is no broader or less specific than the Claimant's allegation that the Nova Scotia measures caused it to shut down the mill at Laurentide. In the circumstances, undertaking discovery for, and reviewing thousands of documents, which the Claimant has not in fact established exist, given that it has objected to undertaking a search, would not be unduly burdensome.	**Request granted.**

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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				parameters, this request could potentially cover an exceedingly wide scope of strategy-related documents and would require many months and considerable efforts to collect and review thousands of documents that are not even tangentially relevant or material, as explained above. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific and narrow type of document, any narrow subject matter, any narrow time window, any specific custodian, or any reasonable search parameters, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second	Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 20, 2018, Resolute advised that it was only producing Resolute's Audit Committee Minutes. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Resolute's production appears to be deficient. It has given no reason for why the Audit Committee documents are fully responsive and why it omitted other responsive documents from its production.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof,**	

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				phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Fifth*, this request calls for documents that may contain legal advice from counsel and protected by attorney-client privilege (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
34.	Documents from January 1, 2009 to November 24, 2014 that contain, discuss or refer to any attempt by Resolute to sell the Laurentide mill or its assets to any third-party purchaser, including prospectuses, internal valuations, valuations prepared by third-parties, marketing materials and offers by Resolute to sell the	SOC ¶¶ 108 and 121	Resolute alleges that it was forced to close the Laurentide mill in November 2014 because of Nova Scotia's support for the Port Hawkesbury mill. The requested documents are relevant and material for assessing the reasons for Laurentide's closure and the value of the Laurentide mill.	Resolute objects to this request on the following grounds: • *First*, Canada misrepresents the nature of the expropriation claim asserted by Resolute under NAFTA Art. 1110. • *Second*, the scope of this request is also overbroad because all data for the years 2009, 2010 and 2011 are not relevant to Resolute's claims or Canada's defenses (Arts. 3(3)(b), 9(2)(a) of the IBA Rules), given that "it has not been established that [Resolute] did actually suffer loss … by December 2012" (Decision on Jurisdiction and Admissibility, para. 178), and given that Resolute's decision to shut down Laurentide was announced in September 2014. Canada has not offered any other	Resolute's objections are unfounded for the following reasons: Resolute's attempts to sell the Laurentide mill or its assets, and corresponding valuations, are relevant and material to the case. Given that Resolute alleges to have incurred damages from 2012-2015, it is reasonable to compare the value of Resolute's mill over the 3-year period between the date of the measures to its NOA against the value during the preceding 3-year period to establish a possible benchmark to compare to Resolute's damages in its but-for world.	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	Laurentide mill or offers to buy the Laurentide mill by a third party.			bases for determining whether this request is relevant and material. • *Third*, producing all responsive documents would be unduly burdensome (Art. 9(2)(c) of the IBA Rules). By seeking all documents relating to "any attempt by Resolute to sell the Laurentide mill or its assets to any third-party purchaser" over a six-year period (including four years *prior to* the impact of the Nova Scotia Measures hitting market prices in 2013) without specifying any particular instance of attempted sale in which Canada is interested in obtaining evidence, this request would require many months and considerable efforts to collect and review thousands of documents that are not even tangentially relevant or material, as explained above. • *Fourth*, this request fails to specify a "narrow and specific . . . category of Documents" to be produced (Art. 3(3)(a)(ii) of the IBA Rules; *see also* Gary B. Born, *International Commercial Arbitration* (2d ed.), Kluwer Law International 2014, at 2360 & n.214 ("Where requests have been phrased in general, expansive terms, tribunals have either denied requests to disclose or required reformulation of them, . . . 'in	Canada's request for documents is no broader or less specific than the Claimant's allegation that the Nova Scotia measures caused it to shut down the mill at Laurentide. In the circumstances, undertaking discovery for, and reviewing thousands of documents, which the Claimant has not in fact established exist, given that it has objected to undertaking a search, would not be unduly burdensome. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **<u>JULY 27 ADDITIONAL COMMENTS</u>** **On July 13, 2018, Resolute advised that it would only produce its request for offers to sell the mill, which includes a form asset purchase agreement, a form of offer, and a confidentiality agreement. Resolute produced documents that it argues are responsive to this request on July**	

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				particular to the extent that [a request] covers all documents relating to [specified issues and events].'")). By failing to identify any specific and narrow type of document (other than by providing examples), any narrow subject matter, any narrow time window, any specific custodian, or any reasonable search parameters, this request amounts to nothing more than a fishing expedition launched prior to having reviewed both parties' memorials, after which narrow requests will be allowed in the second phase of discovery. (Art. 9(2)(g) of the IBA Rules.) • *Fifth*, this request calls for documents that may contain legal advice from counsel, which information is protected by attorney-client and litigation work product privilege. (Art. 9(2)(b) of the IBA Rules). Without prejudice to these objections, Resolute is offering to produce those specific materials Resolute believes to be relevant and responsive to Canada's requests.	**20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.**	
36.	All agreements between and amongst Resolute, the City of Shawinigan,	SOC ¶¶ 108 and 121	Resolute alleges that it was forced to close the Laurentide mill in November 2014 because of Nova	Resolute objects to this request on the grounds that Canada has possession, custody and control of documents that would be responsive to this request (Art. 3(3)(c)(i) of the IBA Rules) because Canada has control	Resolute's objections are unfounded for the following reasons: Canada is not in possession, custody and control of documents held by the City of Shawinigan, Société de	Pending the requested confirmation that Resolute has not withheld relevant documents, no order is called for at this stage.

No.	Documents or Category of Documents Requested	Rationale for Document Request		Objections to Document Request	Reply to Objections to Document Request	Decision of the Arbitral Tribunal
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	Société de développement Shawinigan Inc., Nemaska Lithium, the Government of Québec and any other party related to the sale of the Laurentide mill in October 2014, including asset purchase and sale agreements, swaps, financing agreements, and any agreement relating to remediation obligations by Resolute.		Scotia's support for the Port Hawkesbury mill. The requested documents are relevant and material for assessing the reasons for Laurentide's closure and the value of the Laurentide mill.	over its representatives – or can obtain relevant information from city representatives who executed agreements. Notwithstanding and without waiving the foregoing objection, Resolute will conduct a reasonable search for, and produce any responsive documents that may have been executed with private parties.	développement Shawinigan Inc., Nemaska Lithium, the Government of Québec and any other party related to the sale of the Laurentide mill. Québec law precludes Canada from obtaining the requested documents from Government departments without Resolute's specific authorization. Notwithstanding the above, Canada looks forward to Resolute's production, and confirmation that it has not withheld any documents on the improper grounds it has raised for objecting to the request. **JULY 27 ADDITIONAL COMMENTS** **On July 20, 2018, Resolute advised that it was only producing the contractual documents for the sale of the Laurentide mill. Resolute produced documents that it argues are responsive to this request on July 20, 2018, which Canada is currently reviewing.** **Canada requested confirmation that Resolute has not withheld documents on the improper**	

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					grounds it raised for objecting to this request. In the absence thereof, Canada respectfully requests that the Tribunal make an order confirming that Resolute has the obligation to produce all responsive documents.	