

PCA Case No. 2016-13

UNDER THE RULES OF ARBITRATION OF THE UNITED
NATIONS COMMISSION ON INTERNATIONAL TRADE LAW AND
CHAPTER ELEVEN OF THE NORTH AMERICAN FREE TRADE
AGREEMENT

BETWEEN:

RESOLUTE FOREST PRODUCTS INC.,
Claimant/Investor

- and -

GOVERNMENT OF CANADA
Respondent/Party

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE JUDGE JAMES CRAWFORD, DEAN RONALD CASS,
PROFESSOR CÉLINE LÉVESQUE,
held via Arbitration Place Virtual
on Thursday, November 12, 2020, at 8:05 a.m. EST

RESTRICTED ACCESS - VOLUME 4

REVISED TRANSCRIPT

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1 Arbitration Place Virtual

2 --- Upon resuming on Thursday, November 12, 2020,

3 at 8:05 a.m. EST

4 JUDGE CRAWFORD: Good morning

5 to everyone. This is the fourth day of the

6 hearings in the case between Resolute Forest

7 Products and Canada. Today we are to hear expert

8 testimony from both parties and some factual

9 witnesses from the respondent. The first witness

10 to be heard is Professor Seth Kaplan, who produced

11 two reports for the respondent, the first dated

12 28th of December 2018, the second dated 6th of

13 December 2019. And I invite him first to take the

14 oath, which he has on a piece of paper in front of

15 him, and then take questions on the reports.

16 Professor Kaplan, you're

17 welcome.

18 MR. KAPLAN: Thank you. I

19 just spoke to a representative of the Tribunal who

20 was going to put the oath on screen for me.

21 JUDGE CRAWFORD: Can we get it

22 on the screen, please?

23 MS. D'AMOUR: Just one moment,

24 Mr. Kaplan.

25 MR. KUUSKNE: If I could just

1 take one moment, please, and ensure that this
2 session is a restricted access session, so the
3 necessary procedures should be followed in that
4 regard. Thank you.

5 MS. D'AMOUR: Thank you. All
6 the restricted access people have already been
7 removed.

8 MR. KUUSKNE: Thank you very
9 much.

10 --- Whereupon Restricted Transcript Commences

11 JUDGE CRAWFORD: You're
12 welcome to start.

13 MS. AMBAST: I'm sorry. This
14 is the Tribunal secretary here. Would you like me
15 to put the declaration on the screen?

16 JUDGE CRAWFORD: Yes, please.

17 MR. KAPLAN: Should I read
18 the --

19 JUDGE CRAWFORD: Yes,
20 Professor Kaplan.

21 MR. KAPLAN: I solemnly
22 declare upon my honour and conscience that I shall
23 speak the truth, the whole truth and nothing but
24 the truth, and that my statement will be in
25 accordance with my sincere belief. No one else is

1 present in the room where I am testifying. I do
2 not have any notes or annotations on any hard copy
3 or electronic documents, except notes and
4 annotations prepared to facilitate my initial
5 presentation to the Tribunal. I confirm that I am
6 not receiving communications of any sort during my
7 testimony, other than my participation in the main
8 hearing room in Zoom.

9 EXPERT WITNESS: SETH KAPLAN

10 JUDGE CRAWFORD: Thank you
11 very much. You will be cross-examined by counsel
12 for the respondent.

13 If there are any problems,
14 technical problems in the course of giving
15 testimony, they will be indicated to you, and we
16 will probably stop proceedings while they are
17 fixed. There have been a few technical problems,
18 but there haven't been very many.

19 So, Mr. Kuuskne.

20 MR. KUUSKNE: Kuuskne, Judge
21 Crawford, thank you. It's an Estonian name.

22 DEAN CASS: We will be
23 starting with the expert presentation?

24 JUDGE CRAWFORD: The expert
25 presentation. Professor Kaplan.

1 PRESENTATION BY MR. KAPLAN:

2 THE WITNESS: Thank you.

3 Good morning. I am Seth
4 Kaplan of International Economic Research, and I
5 have been asked to analyze any liabilities arising
6 from the benefits package and the consequent
7 reopening of the PHP mill as a low-cost producer
8 of SC paper.

9 As shown on Slide 1 -- the
10 next slide, please -- I will be dividing my
11 presentation into four parts, as seen on the
12 slide.

13 Next slide.

14 As seen on Slide 1, the former
15 NewPage facility was a British Columbia high-cost
16 shuttered mill that two of the final four bidders
17 considered best used for scrap.

18 Next slide.

19 As shown in the second slide,
20 the Government of Nova Scotia and the new owner
21 agreed to make the mill the low-cost producer of
22 SC paper.

23 Next slide.

24 Slide 3 shows that the new
25 owner stated they required all of the benefits

1 package to reopen the mill or they would walk
2 away. Both parties had strong and obvious
3 incentives to reopen the mill as a low-cost
4 producer. I leave the quotations on the first
5 three slides as takeaways. Now I will move on to
6 the next slide.

7 Now let me turn to methodology
8 of measuring the effects of the reopening. This
9 slide shows the logic behind a but-for analysis
10 and the predicate for the ubiquitous use of
11 comparative statics by economists to approach the
12 but-for question.

13 The but-for, by definition, is
14 designed to isolate the effects of, in this case,
15 of the reopening from other exogenous factors and
16 avoid conflating the actions of things other than
17 the reopening with the effects of the reopening
18 itself.

19 The method can be
20 characterized as a "with and without" rather than
21 a before and after. This is key and can be
22 observed on the slide. The effects of the
23 reopening on price, for example, is the difference
24 between the observed price and the price that
25 would exist, the prices at a point in time with

1 and without the reopening.

2 So what you are trying to
3 measure from the but-for is the point in the
4 bottom slide to -- bottom line to the point above
5 it on the red arrow on the top line. And it is
6 that difference that is the but-for difference in
7 prices.

8 Some people try to look at
9 movements along the bottom line and to explain
10 those by a multitude of factors, but the genesis
11 and the genius of the but-for in comparative
12 statics is it eliminates or attempts to eliminate
13 these other factors and isolate the factor in
14 question.

15 This is opposed to the
16 but-fors explaining the path of the observed price
17 over time. Notice especially that observed prices
18 can actually increase, but there could be large
19 negative but-for effects.

20 Next slide.

21 This is well exemplified by

22 the [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED],

1 proceeding to its capacity, it actually enters at
2 high levels of capacity. So the low-cost mill is
3 in the lower left. It enters production when
4 prices are above variable cost. And you could see
5 that the vertical black line on the lower left is
6 the supply curve of the first firm. As prices
7 proceed or increase, they will then reach the
8 point of the variable cost of the second mill, and
9 output jumps from the first mill to the second
10 mill in the market, and it produces. And, as
11 prices increase, finally you see the third mill
12 enter.

13 So instead of the typical
14 upwards sloping supply curve, you have a step
15 supply curve. This characterizes the supply in
16 this market.

17 Next slide.

18 Now we add a demand curve.
19 And the demand curve is downward sloping. This is
20 the demand curve for the market. What is critical
21 to understand about the demand curve, inherent in
22 the demand curve is that the elasticity or slope
23 of the demand curve characterizes substitutes
24 outside of the market.

25 So substitutes are built into

1 the demand curve. The more elastic, the more
2 substitutes there are. The more inelastic, the
3 less substitutes or the less sensitive they are.
4 But this mechanism here of supply and demand does
5 not isolate this market from the effects of
6 substitution outside the market; it's inherently
7 built in. And as you see, the equilibrium price
8 is P^* , the equilibrium quantity is Q^* .

9 Next slide.

10 What happens when the PHP mill
11 enters? Well, it enters as the lowest-cost mill.

12 So you could see the supply
13 curve is going to shift to the right, and now on
14 the new supply curve, that vertical line at the
15 new bottom left of that curve is Port Hawkesbury.
16 It's identified below. As prices increase above
17 the variable cost of the second producer, it
18 enters, and as you can see, the whole curve shifts
19 right. The intersection of the existing demand
20 curve with the new supply curve is at a quantity
21 moving from Q^* to Q' , and the increase in this
22 case is equal to the full production of the PHP
23 mill. Notice the price goes down.

24 If the supply curve was your
25 classic upward sloping supply curve, this is

1 something from about the second or third week of
2 introductory economics. Something happens to
3 cause the supply curve to shift out. You enter
4 into the new producer. You move down along the
5 existing demand curve. The quantity demanded
6 increases, and the price falls along the downward
7 sloping demand curve. Q goes up, P goes down,
8 that is what happens but for the reopening of the
9 mill.

10 Now let's move on to the next
11 slide.

12 This result, this very
13 conventional result was the result that happened
14 in [REDACTED]

[REDACTED]

24 [REDACTED] and this is shown in
25 my report. In the supply and demand curve I had

1 shown previously, there wasn't exit. I show it in
2 my report, but this is -- their results are the
3 same as my explanation, a very conventional result
4 from the entry of a new firm.

5 Next slide, please.

6 Now, I admonished against
7 looking at before and after, but that is the
8 natural instinct. And if you get close enough to
9 the event, it is likely that there are less things
10 happening other than the event. But you always
11 need to be careful because there usually are.
12 Which is why looking at the time series rather
13 than the but-for could be a problem. But in this
14 case, you could see that, immediately before the
15 reopening, prices were [REDACTED] and then afterwards,
16 they fell to [REDACTED] I look at a period over time.
17 You will hear from Pöyry, and they concentrate on
18 that narrow six-month period from July to January
19 in '13 as saying prices don't fall. They actually
20 do, but they fall from the previous high. They
21 fall, they rise, they fall again. So prices did
22 decline afterwards, if you want to look at the
23 before and after.

24 Next slide, please.

25 Now let's turn to rebuttal.

1 What is wrong with my analysis? And they said,
2 well, you got the market wrong, it's really not SC
3 paper, it's a broader market. And I just want to
4 give you some background on what people have said
5 about this market.

6 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

12 The next slide shows that --
13 the next slide, please.

14 That the ITC looked at this
15 issue as well when they did the like product.
16 People asked to expand the like product to include
17 CM paper. The commission, looking at a
18 confidential record of all the trade, financial
19 and employment data of all American producers,
20 foreign producer questionnaires, importer
21 questionnaires and purchaser questionnaires,
22 decided, no, that the like product was SC paper.

23 Next slide.

24 The industry analysts define
25 an SC paper market in general. RISI presents

1 forecasts for SC paper separately from other paper
2 products. Internal communications show that SC
3 paper market is viewed separately by industry
4 producers.

5 Next slide.

6 Part of the argument they make
7 is that since there is substitution, the market is
8 broader, and that's simply incorrect. As we
9 talked about in the demand curve, substitutes
10 outside of the market are built into the market
11 demand for the product in question. And let's
12 talk about substitution. Let me give you an
13 example from passenger flights.

14 Let's say there's one flight
15 going from a city, two cities 400 kilometres
16 apart. Airlines have to fill up all seats, so
17 like it's a mill, they price to fill up the seats.
18 Now there's a new entrant flying the same flight
19 at the same time with the same number of seats.
20 How do they fill up that plane? Well, the market
21 price has to fall. The old price got 100 people
22 and filled up the seats. The new price, lower
23 price, gets 200 people. Where did those people
24 come from? Well, some of them came from buses,
25 and some of them came from trains. And some of

1 them who used to drive hopped on the plane, and
2 someone doing the Zoom call decided, at the lower
3 price, I will fly there.

4 Substitution occurred from
5 outside the market to get the plane full. So
6 there's a market for passenger air travel between
7 the two cities, and yet there's substitution from
8 outside the market when the price falls, built
9 into the demand curve.

10 Similarly, you could think of
11 products you think are maybe closer, in beers.
12 Well, it turns out that anti-trust authorities
13 view craft beers as a separate market from regular
14 beers because of the conditions of competition in
15 those two markets.

16 Next slide, please.

17 So that's kind of the story
18 and the history of what people do in an
19 explanation, but there are measures of how you
20 could define a market. One way is to look at
21 price movement correlations to see if they are
22 similar in two markets. If they are two -- if
23 they are, you cannot reject that they are in a
24 single market. It doesn't prove that they are in
25 one market, but you can't reject it. But if there

1 is no correlation, you can reject that they are in
2 the same market.

3 I conducted this test. I
4 understand that Dr. Hausman conducted this test as
5 well, and we found that there are separate markets
6 for SC paper and lightweight coated mechanical.
7 Pöyry, who is pushing this argument, has provided
8 no meaningful evidence that they are in separate
9 markets other than they are a substitution. But
10 substitution, as we have seen, does not mean the
11 products are in the same markets.

12 Next slide, please.

13 Now let's turn to imports.
14 Imports are considered in the market and
15 comparative statics. There is no island. Things
16 are moving all over the place. That's a method
17 used by everyone. Who's it used by? It's used in
18 international trade to look at the effects of
19 quotas, to look at the effects of tariffs, to look
20 at the effects of domestic content legislation.
21 These are complicated markets and complicated
22 issues; they use a but-for, they use comparative
23 statics. Where else? Anti-trust, with or without
24 a merger. Mergers could be very complicated. The
25 markets aren't competitive; yet but-for and

1 comparative statics are used. What about public
2 finance? Study after study, what if we increase
3 the cigarette tax, what if we increase a beer tax,
4 what if we increase an income tax, with and
5 without are measured in the context of comparative
6 statics usage.

7 So the idea that comparative
8 statics is something that only works in simple
9 arrangements where nothing is going on is
10 incorrect. In fact, the whole point of the
11 exercise of comparative statics is to isolate on
12 the variable being changed and to try to hold
13 other things constant. Just like scientists do
14 this physically with experiments, we do this
15 conceptually with the use of comparative statics
16 models, which is why it's the bread and butter of
17 economics.

18 Next slide.

19 If you could look, you could
20 see that imports did not move significantly before
21 and after. In fact, when the mill closed in 2012,
22 imports fell. When the mill opened in 2013,
23 imports increased.

24 The next slide shows this in
25 terms of total consumption, and as you can see,

1 the same effect holds. So I did consider imports,
2 they do not offset the increase in production by
3 Port Hawkesbury. And I looked at the market as a
4 whole, and the substitution outside the market did
5 not increase demand but actually moved us down
6 along the demand curve.

7 Thank you very much. That
8 concludes my direct presentation.

9 JUDGE CRAWFORD: Now it is for
10 respondent's counsel to cross-examine.

11 MR. KUUSKNE: Thank you, Judge
12 Crawford, thank you, Tribunal. It's an honour to
13 be before you.

14 CROSS-EXAMINATION BY MR. KUUSKNE:

15 Q. Good morning, Dr. Kaplan.
16 How are you?

17 A. Good morning, thank you,
18 how are you?

19 Q. I am well, thank you. I
20 hope all is well where you are.

21 A. I appreciate that, and I
22 hope you and yours are well also.

23 Q. Thank you very much.

24 My name is Stefan Kuuskne, and
25 I will be asking you a series of questions

1 regarding your testimony in connection with this
2 arbitration, including your expert reports and
3 their contents.

4 So, again, I just wanted to
5 ensure that we are in a restricted access session.

6 MS. D'AMOUR: Yes, I can
7 confirm we are in the restricted access session.

8 MR. KUUSKNE: Thank you.

9 BY MR. KUUSKNE:

10 Q. So throughout this
11 process, it's important that we understand one
12 another, and so if at any time you don't
13 understand me, please interrupt me and I will
14 clarify.

15 So in line with custom here,
16 for the sake of clarity, if the answer to my
17 question is a yes or no, I would really appreciate
18 it if you could answer in that way for the record,
19 and then you can offer additional context or
20 further explanation as you see necessary.

21 So I assume that you have
22 access to your expert reports and certain exhibits
23 available to you or the record?

24 A. I have my two expert
25 reports in front of me.

1 Q. Thank you. And we will
2 be pulling up some exhibits. I will be referring
3 you to specific sections of exhibits. We have the
4 ability, and we are going to be pulling them up on
5 our screen here, so you will see them here. And
6 to the extent that they are available to you
7 separately, could you acknowledge that, if at all
8 possible?

9 A. Yes, I understand.

10 Q. Thank you. Thank you.
11 Thank you.

12 So do you have any questions
13 at this point?

14 A. I do not.

15 Q. Okay. Thank you very
16 much.

17 So let's turn to your first
18 report, please. And we are going to be reading
19 separate sections of it. If we could look at
20 paragraph 34 of your first report, please.

21 So here, you state that:

22 "The conditions of
23 competition distinctive
24 to the SCP industry made
25 Resolute's SCP operations

1 particularly vulnerable
2 to economic harms caused
3 by the large-scale market
4 entry of the Port
5 Hawkesbury mill." [as
6 read]

7 Correct?

8 A. Yes, you have read that
9 correctly.

10 Q. Thank you.

11 You then go on to enumerate or
12 describe these conditions of competition that are
13 relevant for your analysis. These are listed as
14 first:

15 "Both Resolute and Port
16 Hawkesbury compete in the
17 North American market for
18 SCP; the demand for SCP
19 is in secular decline;
20 SCP is a commodity-like
21 product that competes
22 primarily on the basis of
23 price; and SCP mills need
24 to operate at or full
25 capacity." [as read]

1 Correct?

2 A. At or near full capacity;
3 correct.

4 Q. Thank you, yes.

5 May we turn to paragraph 47,
6 please. And so I will just read this again. You
7 state that:

8 "Based on the conditions
9 of competition laid out
10 above, it is easy to
11 understand how PHP's full
12 re-entry had significant
13 negative effects for SCP
14 producers, including
15 Resolute's three SCP
16 mills, Kénogami,
17 Laurentide and
18 Dolbeau."[as read]

19 Correct?

20 A. Yes.

21 Q. And pardon me for jumping
22 around here, but I am going to just flip to your
23 second report quickly. At paragraph 5, you note
24 that you used a conventional parsimonious model of
25 the North American SC paper market fully informed

1 by the conditions of competition in that market;
2 correct?

3 A. Yes.

4 Q. Thank you.

5 So let's have a look at the
6 first condition of competition that you refer to,
7 that Resolute and Port Hawkesbury compete in the
8 North American market for SCP.

9 Staying on your second report,
10 at paragraph 17, you state that:

11 "First, there is a North
12 American market for
13 SCP." [as read]

14 Correct?

15 A. Yes, and I will also note
16 that, in the first Pöyry report, they state that
17 multiple times as well. So there appears to be no
18 disagreement that there is a North American market
19 for SC paper between the two experts.

20 Q. Sure. I just want to
21 focus on your definition of it, and we will talk
22 about Pöyry's in a moment.

23 So at paragraph 22 of this
24 report, you state that:

25 "The but-for world is

1 properly characterized as
2 a North American SCP
3 market that excludes
4 PHP's SCP capacity." [as
5 read]

6 Correct?

7 A. I am sorry. Paragraph?

8 Q. 22. The but-for world is
9 North American --

10 A. Yes, that's correct.

11 Q. Okay. And you state
12 that -- at paragraph 35, that:

13 "Canadian and US SCP
14 producers regularly
15 compete for the same
16 customers." [as read]

17 Correct?

18 A. Yes, that's my
19 understanding from being a participant in the
20 USITC investigation where there was an extensive
21 confidential record identifying US producers,
22 customers, Canadian customers, purchaser
23 questionnaires and importer questionnaires, and
24 there was testimony to that effect.

25 Q. Okay. So looking at that

1 sentence in paragraph 35, do you mention that
2 European suppliers also compete for the same
3 customers in that sentence?

4 A. I do not. But the
5 proceeding at the ITC and my recognition of
6 imports here note that, while it is a North
7 American market, there are imports present in the
8 market, and that was part of my direct
9 presentation.

10 I will also note that it is
11 customary to have regional markets with imports in
12 them from outside of the regional markets, and
13 that is, in fact, the foundation of commercial
14 policy in international trade. Imports entering
15 the market with potentially tariffs or quotas,
16 there's a national or regional market with imports
17 in them.

18 So the answer is, yes, I
19 recognize imports in this market and their
20 competition with the same customers.

21 Q. Sure. So as you said,
22 you relied partly on the USITC and their
23 definition in the supercalendered paper from
24 Canada investigation.

25 So --

1 A. The definition of --
2 excuse me, definition of.

3 Q. The North American SCP
4 market.

5 A. Yeah, I mean, the, the --
6 yes.

7 Q. Okay.

8 A. Yes. That the market --

9 Q. This is at Footnote 62 of
10 your first report. If we could just look at that,
11 please.

12 A. Sure.

13 Q. Thank you.

14 A. Yes.

15 Q. Okay. And so you state
16 that:

17 "In 2015, the USITC
18 identified six North
19 American SCP
20 producers." [as read]

21 Correct?

22 A. Yes.

23 Q. And you also stated that:

24 "I am not aware of any
25 Mexican SCP

1 producers." [as read]

2 Correct?

3 A. Yes.

4 Q. So because Mexico is part
5 of North America; correct?

6 A. Yes.

7 Q. Yes. And, again, you do
8 not mention European producers in this footnote;
9 do you?

10 A. I do not. The context of
11 the footnote is who the ITC identified, and it's a
12 footnote to 62 where it talks about production in
13 North America.

14 Q. Okay, thank you.

15 So now we are going to be
16 pulling up an exhibit. Let's turn to R-247,
17 please.

18 So, for the record, this is
19 Resolute's Form 10-K for 2012 filed with the
20 United States Securities and Exchange Commission;
21 correct?

22 A. I believe so, yes.

23 Q. Doctor, you know what
24 this form is; right, Dr. Kaplan?

25 A. Yes.

1 Q. It's a publicly available
2 document; correct?

3 A. Yes, it is.

4 Q. That's filed every year;
5 correct?

6 A. Yes.

7 Q. Annually.

8 And it's filed under the
9 Securities Act of 1934; correct?

10 A. Yes, it is, and it's
11 stated on that as well.

12 Q. Thanks. Thank you.

13 And so this document provides
14 a comprehensive overview of the company's business
15 and financial conditions and includes audited
16 financial statements; correct?

17 A. Yes, public companies
18 need to file these, as well as quarterly
19 statements as well.

20 Q. 10-Qs, as I understand;
21 right?

22 A. Yes, in the United
23 States, and then there's a whole series of other
24 forms that need to be filed for specific events.

25 Q. Thank you.

1 A. Can I finish reading that
2 paragraph, please?

3 Q. Sure.

4 A. Thank you.

5 Q. And then we will just be
6 moving on to page 9.

7 A. Thank you.

8 Q. No problem.

9 So can we look at the third
10 paragraph of page 9, please. It begins "in 2012".

11 And just the third sentence,
12 it says, "in addition". If you could, could you
13 please read that sentence for me?

14 A. Sure. Well, I will read
15 the first one. It says:

16 "We produced
17 approximately 31 percent
18 of North American -- "[as
19 read]

20 It didn't say US or Canadian:

21 " -- uncoated mechanical
22 paper."[as read]

23 Which is consistent with the
24 definition of North America:

25 "In addition, imports

1 from overseas represented
2 approximately 10 percent
3 of North American demand
4 in 2012 and were
5 primarily concentrated in
6 the supercalendered paper
7 market where they
8 represented approximately
9 20 percent of North
10 American demand." [as
11 read]

12 And I would like to note that
13 the word "demand" here means quantity or
14 consumption. It doesn't mean "demand" in the
15 sense of a demand curve. The way businesses talk
16 about demand and economists are slightly
17 different. There's a footnote in my first report
18 going to that point, and it can create confusion
19 when doing analysis. But here it is used, as it
20 is sometimes in a business sense, to represent the
21 quantity in the market or the consumption in the
22 market. So, yes.

23 Q. Understood. Thank you
24 very much.

25 So imports supplied

1 approximately 20 percent of the North American SCP
2 market?

3 A. According to them in that
4 report, yes.

5 Q. Thanks.

6 So let's look at paragraph 41
7 of your first report, please.

8 A. Yes.

9 Q. So at paragraph 41, you
10 state that:

11 "PHP has accounted for
12 about 20 to 25 percent of
13 the North American
14 capacity since 2013." [as
15 read]

16 Correct?

17 A. Yes.

18 Q. And could we look up
19 at -- I am sorry, just bear with me. Flip to,
20 again, to a little bit above paragraph 17.

21 You describe this amount of
22 capacity as "significant"; correct?

23 A. Yes.

24 Q. So 20 to 25 percent of
25 the market is significant; correct?

1

[REDACTED]

11

[REDACTED]

15

Q. Thank you.

16

And you do not mention

17

European imports as a condition of competition in

18

your analysis; correct?

19

A. I do not. I would guess

20

that the -- that's correct.

21

Q. Thank you.

22

So may we please turn to

23

R-236.

24

A. Although I do analyze

25

imports in my second report and discuss them, they

1 are not included in the list that you had
2 previously read of the conditions of competition.

3 Q. I appreciate that. Thank
4 you.

5 So R-236 is a [REDACTED]

[REDACTED]

20 You cite to C-216?

21 A. Footnote 51...

22 Q. Can we actually bring up
23 C-216, please?

24 A. Could you please repeat
25 your question?

1

[REDACTED]

15

A. Yes, he is one of three

16 editors.

17

Q. Great, thanks.

18

So we will just flip back to

19

R-236, please. Sorry -- yes, R-236. Could we

20

look at page 77 of this document, please.

21

[REDACTED]

1

[REDACTED]

1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9 Q. If you don't mind, we
10 will move along, and maybe you can turn to that
11 afterwards.

12 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] from memory from my last two slides in my
21 direct presentation.

22 Q. Fair enough.
23 Let's move on and explore your
24 first report a bit more.
25 So could we turn to

1 paragraph 51 of your first report, please.

2 A. I am following along in
3 hard copy, just to let you know, that's why I am
4 looking down.

5 Q. No problem. I prefer --
6 I prefer paper myself.

7 A. Yeah, that's why, I mean,
8 you know, I am sure all the -- everyone in the,
9 all the clients would prefer that as well, but
10 everything seems to be moving digital. But I have
11 a house filled with paper based on this
12 proceeding, so...

13 Q. There's usually paper
14 everywhere, and now we only have laptops and
15 iPads.

16 A. What is this world coming
17 to, sir?

18 Q. Right.

19 So, yes, at paragraph 51, you
20 assume that GNS's actions impacted adversely the
21 profitability of Resolute's three mills; correct?

22 A. Yes.

23 Q. Thank you.

24 And you state that this is
25 because the GNS provided assistance to a direct

1 competitor; correct?

2 A. Yes. The market for SC
3 paper comprises SCA and SCB. Over the period from
4 2012 to at least 2018, the prices moved in
5 lockstep about [REDACTED] a tonne apart. There were no
6 independent movements of A relative to B during
7 that period. So matters that affected A affected
8 B because they are in the same market, and,
9 similarly, matters that affected B affected A
10 because the prices moved simultaneously. I did
11 the same type of test between A and B that I did
12 between A and lightweight coated and found that A
13 and B were in the same market, and their price
14 movements were highly correlated, or at least I
15 couldn't reject they were in the same market.

16 Q. Thank you, understood.

17 Let's turn to R-272.

18 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

[REDACTED]

11

[REDACTED]

[REDACTED]

21

[REDACTED]

[REDACTED]

1

[REDACTED]

[REDACTED]

8

Q. Thank you very much.

9

May we please turn to R-273.

10

[REDACTED]

[REDACTED]

21

[REDACTED]

[REDACTED]

1

[REDACTED]

[REDACTED]

20

[REDACTED]

22

Q. Thanks.

23

So I am just going to take us

24

to R-228 now, please. Actually, let's switch

25

that. We will go to R-427. My apologies. R-427.

1 Thank you. Sorry about that, Chris.

2 So this is a news release from
3 Resolute from earlier this year; correct?

4 A. Yes.

5 Q. Thank you. Jan 15th,
6 2020.

7 Can we look at the fifth
8 paragraph, please. I will read it out if that's
9 okay with you. It says:

10 "Resolute will also
11 invest 11 million to
12 enhance Kénogami paper
13 mill's short-term
14 competitiveness by
15 modernizing equipment in
16 order to produce
17 high-grade SCA+
18 supercalendered paper,
19 allowing the mill to
20 access more favourable
21 markets." [as read]

22 Correct?

23 A. Yes, that's what it says.

24 Q. Thank you.

25 So Kénogami is still in

1 operation; correct?

2 A. That's my understanding.

3 Q. Thanks.

4 And this sentence notes that:

5 "The investment will be
6 used to undertake the
7 modernization of
8 equipment." [as read]

9 Correct?

10 A. Yes, in 2020.

11 Q. Right --

12 A. Or beyond.

13 Q. Right. So it can produce
14 SCA+ paper?

15 A. That's correct.

16 Q. At a capacity or -- you
17 know, they have a capacity of 133,000 metric tons;
18 correct?

19 A. That's what I read it to
20 say, yes.

21 Q. Thank you.

22 And allowing it to access
23 "more favourable markets" and presumably --

24 A. In -- go ahead, I am
25 sorry.

1 Q. No problem, thank you.

2 -- that it presumably wasn't

3 competing in before; correct?

4 A. That's correct, in 2020.

5 Q. Okay, thank you so much.

6 So we are going to be moving

7 on now to discuss another condition of competition

8 in your analysis.

9 So you state that SCP is a

10 commodity-like product that competes primarily on

11 the basis of price; correct?

12 A. Yes, and price connects

13 the -- all the products within the SC market,

14 connecting A and B, and transmitting price changes

15 in A to B and vice versa, as demonstrated by their

16 near-perfect correlation between -- in price

17 changes and in levels between 2012 and 2018 that I

18 analyzed, supporting the notion that there is

19 inter-grade substitution disciplining the prices

20 and that there is a single market.

21 Q. Thank you.

22 So this is in line, I guess,

23 with what you just said with paragraph 37 of your

24 first report where you state:

25 "SCP products from all

1 North American producers
2 are commodity-like
3 products but are highly
4 substitutable and sold
5 primarily on the basis of
6 price."[as read]

7 Correct?

8 A. Yes.

9 Q. Okay. So quality, you
10 don't -- it's not mentioned here as a
11 differentiating factor in terms of SCA paper
12 competition at paragraph 37; correct?

13 A. There are different
14 grades, and those are mentioned in my report. I
15 do not specifically mention those in this
16 paragraph.

17 Q. Okay. So let's look at
18 the 10-K again. R-247, please. I will be looking
19 at page 9 again, please. And it's just the -- the
20 previous paragraph we were looking at discussing
21 the 20 percent of imports, the last sentence of
22 that paragraph, please. The third paragraph,
23 Chris. Thanks.

24 Could you just read to me the
25 last sentence, if you could?

1 A. "We compete on the basis
2 Of price, quality,
3 service and breadth of
4 product line." [as read]

5 Q. Thanks so much.
6 So let's turn to R-237,
7 please. [REDACTED]

[REDACTED]

16 [REDACTED]

1

[REDACTED]

12

[REDACTED]

22

[REDACTED]

1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

10 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

20 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

24 Q. Thank you.

25 If we could quickly look at

1 R-230. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

10 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

19 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

24 Q. Understood, thank you.

25 Chris, may we please pull up

1 Figure 2-1 of the first Pöyry report prepared in
2 this arbitration, on page 10. Please. Thanks.

3 So I think you're familiar
4 with this, with this chart. I am just going to
5 describe it quickly. [REDACTED]

[REDACTED]

15 [REDACTED]

25 [REDACTED]

1

[REDACTED]

11

[REDACTED]

12

A. No.

13

Q. Okay. Can we turn to

14

paragraph 45 of your second report, please?

15

A. Sure. And let me add,

16

the [REDACTED]

[REDACTED]

23

Q. Okay. So -- and please

24

forgive me, I just wanted to cite part of your

25

report in this regard, that you state that:

1 "The gerrymandered
2 categories put forth by
3 Pöyry and Steger
4 contradict long-held
5 industry conventions.
6 And SC paper is
7 recognized by industry
8 publications and industry
9 experts as distinct from
10 coated paper and other
11 mechanical papers."[as
12 read]

13 Correct?

14 A. I would say typically, I
15 would say there are exceptions, but the way
16 forecasts are made, it is for SC paper, the way
17 it's typically discussed is for SC paper, the way
18 it's done internally is for SC paper, the way the
19 ITC looked at it is SC paper, the titles of the
20 reports are for SC paper, [REDACTED]

[REDACTED] Are there
22 exceptions? Yes.

23 Q. Okay. So -- so -- right.
24 You relied on the USITC's finding of:

25 "A clear dividing line

1 between coated mechanical
2 5 and SC paper because of
3 their different physical
4 characteristics,
5 manufacturing processes,
6 prices, and perceptions
7 in the marketplace."[as
8 read]

9 This is at paragraph 41, I
10 believe, of your second report.

11 A. Yes, that's one of the
12 many things I used, and as well as technical
13 analysis, all of which is described, I believe, in
14 my direct presentation --

15 Q. Yes.

16 A. -- on my section entitled
17 "Market Definition".

18 Q. I don't mean to belabour
19 the point. I am just reading your description
20 of -- there are multiple factors, multiple factors
21 involved, so I just want to enumerate some of
22 them. And at paragraph 45 of your second report,
23 when you're discussing these gerrymandered
24 categories, you cite to a RISI publication in this
25 regard; correct?

1 A. Yes, I do.

2 Q. Okay. So let's turn to
3 R-512, please.

4 So this is a RISI Global Pulp
5 & Paper Fact & Price Book; correct?

6 A. Yes, it is.

7 Q. Thank you. And just for
8 the record, this document is from 2006; correct?

9 A. Yes, that's what it says.

10 Q. Thank you.

11 And we are looking at the
12 title, it says "uncoated mechanical papers".

13 So it sets out a description
14 of uncoated mechanical papers as opposed to coated
15 mechanical; correct?

16 A. Yes.

17 Q. Okay, so let's look at
18 the second paragraph of the second page, please.

19 Sorry, Chris, could you take
20 it to the second page? Thanks. Thank you very
21 much.

22 Actually, could you just read
23 the first two sentences for me, please?

24 A. Sure:

25 "The grade structure

1 covers a very broad
2 spectrum. At the very
3 upper end are the high
4 gloss, super bright, SCA+
5 (supercalendered plus)
6 papers that are virtually
7 indistinguishable from
8 light weight
9 mechanical."[as read]

10 I am sorry -- yeah, "Light
11 Weight Coated".

12 Q. Thanks. So -- you can
13 stop there for the moment.

14 A. I can read the rest of
15 it.

16 Q. No, no, that's okay,
17 thank you.

18 So LWC stands for lightweight
19 coated. And as you just said, this is another
20 name for coated mechanical or coated groundwood;
21 correct?

22 A. Yes, which encompasses
23 Number 5 and some of Number 4.

24 Q. Right, so this RISI
25 publication notes that SCA+ papers are virtually

1 indistinguishable from LWC; correct?

2 A. That's what it says.

3 Q. Right. So could we
4 now -- could you continue reading, "there is
5 also"?

6 A. "These grades were
7 developed in Europe and
8 are now also made in
9 North America." [as read]

10 Q. Right, and if you could
11 just continue on, please?

12 A. "There is also SCA,
13 SCB+, SCB and SNC. SNC
14 is not truly
15 supercalendered, but the
16 calendering is done in
17 line with a soft-tip
18 calendar to reduce damage
19 to the sheet. It
20 produces a softer gloss.
21 But -- " [as read]

22 Q. Thank you --

23 A. I am sorry.

24 Q. No, no, my apologies.

25 

1 [REDACTED]
[REDACTED]; correct? I think we looked at this at

3 R-272.

4 A. I will take your word for
5 that.

6 Q. Do you know offhand how
7 much SNC as opposed to SCB paper Resolute
8 produces?

9 A. I do not.

10 Q. All right, because --

11 A. Offhand.

12 Q. -- because SNC isn't
13 actually SC paper, and, in fact, SNC is actually
14 quite closer to standard mechanical grades of
15 paper than it is to SCA+ paper; correct? On that
16 graph, or the chart that we were looking at
17 before.

18 A. [REDACTED]
[REDACTED] it might be classified that way.

20 Q. Right. Thank you,
21 Dr. Kaplan.

22 May we turn back to the first
23 page of this document, please. And I am just
24 looking at the second paragraph. If you could
25 blow that up, Chris. Thank you.

1 So I will just read here for a
2 minute. This paragraph provides that:

3 "There is an historic and
4 rather archaic definition
5 that defines any grade of
6 mechanical if it has more
7 than 10 percent
8 mechanical pulp in the
9 furnish. With the advent
10 of BCTMP pulps (bleached
11 thermomechanical) and the
12 increased use of recycled
13 fibres with a mixture of
14 fibre types, the use of
15 the 10 percent limit is
16 fading in practice, but
17 one of the areas where
18 the 10 percent limit
19 continues to be used is
20 in the reporting of
21 international trade
22 statistics." [as read]

23 So would you not agree that
24 you and the USITC are tying yourselves to this,
25 what's referred to here as an arcane and archaic

1 categorization of paper that reflected the way
2 paper was produced but no longer applies?

3 A. It's my understanding
4 that, at the U.S. International Trade Commission,
5 and at the Department of Commerce, when a case is
6 filed, it has a very specific scope, and the scope
7 is defined by the petitioner, and the ITC tries to
8 match the data to the scope. So off the top of my
9 head, I am not sure if the scope matches the trade
10 statistics. And this is -- this might sound
11 archaic and obscure as well, but there are many
12 cases where the scope will include a series of HTS
13 codes and codes that might be a basket category of
14 which there are products in and outside the scope
15 based on the scope definition.

16 So I am not sure, at the top
17 of my head, exactly what the ITC case was. But I
18 will take as correct the -- this reporting to the
19 extent that definitions are often put in place at
20 one time and then stay in that same format until
21 amended. And, potentially, they need to be
22 amended earlier.

23 I hope that's a helpful
24 answer.

25 Q. Thank you, yes, no, it

1 is. So they can change based on what's actually
2 happening in practice, is what you mean?

3 A. Typically, they start
4 subdividing and adding more, more categories. But
5 sometimes there are basket categories where the
6 product is in a category with products that are
7 not part of the investigation or scope. And other
8 times they are in multiple categories that the
9 product being investigated is -- includes multiple
10 HS codes, and it's broader than a single trade
11 statistic category.

12 JUDGE CRAWFORD: Can I
13 interrupt. Professor Kaplan, we are due to have a
14 break this morning for coffee, and you have been
15 cross-examined now for about an hour. I think
16 that's about halfway through the
17 cross-examination. This would be a good moment
18 for a break if it suits you.

19 THE WITNESS: I am happy to
20 continue or happy to take a break. If people
21 would like to stretch their legs, I would be more
22 than happy to. If people would like to continue,
23 I am more than happy to as well.

24 JUDGE CRAWFORD: We will have
25 a 25-minute break, which means we will resume at

1 10 to the hour.

2 MR. KUUSKNE: Thank you, Judge
3 Crawford. Thank you, Doctor.

4 THE WITNESS: Thank you very
5 much.

6 --- Upon recess at 9:24 a.m. EST

7 --- Upon resuming at 9:55 a.m. EST

8 DEAN CASS: We still have our
9 current witness and not our next witness.

10 MR. KUUSKNE: I think we --
11 you can hear me, members of the Tribunal,
12 Dr. Kaplan? Thank you.

13 JUDGE CRAWFORD: Counsel.

14 BY MR. KUUSKNE:

15 Q. Thank you. Dr. Kaplan, I
16 just want to make sure that you are not muted. It
17 appears as though there is a red mute button. I
18 cannot hear you. I am sorry.

19 A. How's that?

20 Q. Thank you. Thank you,
21 kindly.

22 So if I may pick up where we
23 left off at R-512, the RISI publication. So just
24 to remind ourselves, you agreed that SNC is not
25 supercalendered paper per se.

1 A. I believe you read me a
2 definition, and I read the definition, but it is,
3 I believe, considered in the market.

4 Q. Right, and so the USITC
5 uses this combined SC paper with non-SC paper,
6 what we are referring to as potentially archaic --
7 archaic definition; correct?

8 A. At this moment, I am
9 unclear whether SNC is also used by RISI in total
10 shipment and production data.

11 Q. Okay. May we go to
12 C-218, please. Actually, we will stay on 512.
13 Could you hold on second, please? I am just
14 having a little technical difficulty. My battery
15 seems to not be charging. Just one second,
16 please.

17 Thank you for your indulgence.

18 Yes, so I just wanted to take
19 us back to the second page of this document,
20 please, Chris.

21 And in the second paragraph,
22 it says that:

23 "There are also SCA,
24 SCB+, SCB and SNC." [as
25 read]

1 And that if we could just
2 highlight "SNC is not truly supercalendered".
3 Sorry, that's on the second page, Chris. The
4 grade structure. Thanks. Right.

5 Okay. So you see that there;
6 right, Dr. Kaplan?

7 A. Yes. I also see further
8 down, if you highlight the next sentence for me --
9 no, highlight beginning with "in addition", two
10 lines down, that sentence.

11 Well, I will just read it.
12 Maybe you can catch up. It's:

13 "In addition, there are
14 some newer products made
15 with a soft-nip calendar
16 that can produce high
17 gloss sheets that qualify
18 as SCB or SCA sheet even
19 though they are not
20 technically
21 supercalendered." [as
22 read]

23 Q. Right, so these
24 categories --

25 A. So, yes, so they are

1 reported as SCA and SCB. And SCA is, you know,
2 the higher-quality product. So this sounds as if
3 the definition goes to the calendering process and
4 not the quality of the sheet. But that's just my
5 reading. Thank you.

6 Q. Right. And also a bit
7 above, if we spend just one more moment on this
8 paragraph, that SCA+ is virtually
9 indistinguishable from lightweight coated;
10 correct? Just picking up on where we left off.

11 A. That's what this says,
12 yes.

13 Q. Thank you. Thank you
14 very much.

15 So we will move on, now, to
16 C-218, please. Are you there, Dr. Kaplan?

17 A. It's up now.

18 Q. Thank you.

19 So this is a Reel Time Report
20 by Verle Sutton. It is an independent industry
21 analyst from March 2013, that's the date; correct?

22 A. Yes.

23 Q. May we please look at
24 page 2 of this report?

25 And the first sentence after

1 the word [REDACTED] just the very first sentence on
2 this page, it begins with [REDACTED]

3 Can you read from [REDACTED]
4 please, just until the period?

5 A. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

12 Q. Thank you very much.
13 And so just if we could zoom
14 out from that paragraph and look at the
15 conclusion, it's on the same page.

16 A. Sure. Could you give me
17 the -- I am going to pull up the hard copy of
18 the -- of this document. Could you give me the
19 exhibit number, please?

20 Q. Yes, of course. It is
21 C-218.

22 A. Give me one moment. I
23 have four binders of exhibits. I will try to find
24 this one. Did you say 218? Excuse me, did you
25 say 218?

1 Q. Thank you, Dr. Kaplan. I
2 am just trying to solve my own technical issue
3 here with electricity. Thank you.

4 DEAN CASS: I think the short
5 answer is yes.

6 THE WITNESS: 218.

7 MR. KUUSKNE: Sorry, I missed
8 that.

9 THE WITNESS: It's
10 respondent's Exhibit 218?

11 MR. KUUSKNE: I am having
12 trouble hearing you, Dr. Kaplan.

13 THE WITNESS: I am sorry. Is
14 it respondent's Exhibit 218? Is there still a
15 problem?

16 MR. KUUSKNE: Now you are
17 good.

18 THE WITNESS: Okay.

19 MR. KUUSKNE: Okay. Thank
20 you.

21 THE WITNESS: Sure.

22 I'm sorry, respondent's
23 Exhibit 218?

24 MR. KUUSKNE: I am sorry.
25 This is claimant's Exhibit 218.

1 THE WITNESS: Ah, okay, one
2 moment. Thank you. I do have -- I do have this
3 before me now.

4 BY MR. KUUSKNE:

5 Q. Can you just move a bit
6 closer to your microphone. I believe there may be
7 an issue.

8 A. Is that better?

9 Q. Still a little bit of
10 trouble, but it may just be Wi-Fi related. When
11 you were sitting there, it's fine, and when you
12 move away, it gets a little bit fuzzy. So I think
13 if we re-establish our positions, it should be
14 okay.

15 A. I will turn up the
16 volume -- no, it's at 100 percent.

17 Q. Now we are okay, thanks.

18 You have the exhibit there
19 with you, Dr. Kaplan?

20 A. I do.

21 Q. I just want to look at
22 the last sentence -- sorry, the first sentence of
23 this conclusion, please. It reads:

24

██
██

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5 We see that there?

6 A. Yes.

7 Q. Okay. So let's look at
8 what happened the next year.

9 Could we look at R-416,
10 please. Chris, you can open up R-416, please.
11 Thank you.

12 So I just want to look now at
13 page 3 of this. This is a Reel Time Report --

14 A. Okay, I am moving back
15 now to the Rs.

16 Q. Now it's in the Rs.

17 So, for the record, this is a
18 Reel Time Report dated April 3rd, 2013.

19 A. Yes, I have it in front
20 of me.

21 Q. That's R-416. And I am
22 just looking at the first paragraph of the third
23 page, please.

24 A. Yes.

25 Q. And what is the title of

1 this, this section?

2 A. "The SCA/coated

3 groundwood market".

4 Q. Thank you. And let's

5 look at the first paragraph. I was just wondering

6 if you could read this paragraph in its entirety

7 for me, please?

8 A. "There are times when it

9 is most helpful to think

10 of SCA and coated

11 groundwood as two markets

12 that impact each other on

13 the margins, similar to

14 the relationship between

15 coated groundwood and

16 coated free sheet, or

17 between newsprint and

18 directory. However, most

19 of the time - especially

20 when there is a great

21 deal of substitution

22 occurring between the two

23 grades - it is best to

24 consider them as one

25 market. That is

1 certainly the case in
2 2012 and 2013."[as read]

3 Q. Thank you.

4 So I just want to switch to a
5 different exhibit now. Could we look at R-377,
6 please. For the record --

7 A. I just want to comment, I
8 didn't see any evidence there, just a statement,
9 and as I suggested earlier, when there is an
10 increase in capacity and they have to operate at
11 full capacity, the product's price is lowered and
12 it's moved to a substitute, and one of the
13 substitutes it would move to is coated mechanical
14 paper. Thank you.

15 Q. As part of this, what's
16 referred to there is the coated, SCA/coated
17 groundwood market; right? Within that market?

18 A. Right, which -- and my
19 understanding -- yeah, no, go ahead, I'm sorry.
20 Coated groundwood includes 5s and part of 4s for
21 mechanical and actually goes higher for 3s, 2s, 1s
22 and premiums, where those are chemical really and
23 mechanical pulps used -- and would also --

24 Q. I appreciate --

25 A. -- and would also go well

1 beyond the overlap, I believe, of the chart you
2 showed earlier with the overlaps, just for
3 clarification for the Tribunal.

4 Q. Thank you, no, I
5 certainly appreciate your clarifications.

6 Turning to this exhibit now,
7 R-377, please. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

11

[REDACTED]

18

Q. Thank you very much.

19

So I am going to be looking at

20

a different exhibit [REDACTED]

[REDACTED]

1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

11

12 So let's have a look at the
13 USITC report, please. This is at Exhibit C-237.
14 Let's look at page 7, please. I am sorry, this is
15 page 7 of the actual document itself. Great. And
16 could we look at Footnote 29.

17

18 So midway through, do you see
19 the sentence where it reads:

19

20

21

22

23

24

25

"Most purchasers
confirmed that coated
groundwood Number 5 was
substitutable only with
the highest grades of SC
paper (SCA++ and
SCA+)." [as read]

1 Correct?

2 A. Yes.

3 Q. And may we please turn --
4 continuing on -- to page 15 of this report? Of
5 the actual document, please.

6 And so we are looking at the
7 quote:

8 "Coated groundwood paper
9 was also reported to be
10 substitutable with the
11 higher grades of paper,
12 SCA+ and SCA++." [as read]

13 Correct? That's the very last
14 sentence of the last paragraph.

15 A. I do read that. Could I
16 also just see the document again? If you could
17 pull that. I acknowledge that that was written in
18 the report.

19 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

11

[REDACTED]

21

[REDACTED]

1 Q. I am going to be
2 switching gears a little bit now. Could we turn
3 to paragraph 54 of your second report, please.

4 A. Excuse me, there was
5 almost a binder cascade involving coffee. Tragedy
6 was avoided.

7 What paragraph of my second
8 report, please?

9 Q. Thank you, Doctor, it's
10 paragraph 54.

11 A. Sure. Thank you.

12 Q. My pleasure.

13 In this paragraph, you are
14 responding to Pöyry's criticism that you cannot
15 explain why the price of SCP did not increase more
16 following the closure of the PHP mill in 2011,
17 which removed supply from the market; correct?

18 A. Yes.

19 Q. So according to supply
20 and demand, when PHP left the market in 2011, this
21 would have removed supply; correct?

22 A. Yes. And the effect, all
23 things being equal but-for everything else would
24 have been that.

25 Q. Right.

1 A. And what this paragraph
2 talks about is the fact that all things weren't
3 equal and goes to the notion of why but-for and
4 comparative statics is the framework economists
5 use and the inherent dangers of looking at trends
6 over time, even in the short run, when multiple
7 factors might be influencing the variable you are
8 concerned with.

9 Q. Multiple factors could
10 affect this. And you, you describe this as --
11 well, you say that the price of SCP held steady
12 during 2012 until the reopening of the PHP mill;
13 correct?

14 A. Yes.

15 Q. Held steady. And so --
16 and you agreed with Pöyry that, in late 2011 and
17 for much of 2012, the price of bleached softwood
18 kraft pulp, or BSKP, trended lower; right?

19 A. Yes.

20 Q. So these lower prices
21 allowed the prices to hold steady during 2012;
22 correct?

23 A. That's my understanding.

24 Q. All right, so would you
25 agree that the cost of BSKP is a significant cost

1 item potentially affecting prices?

2 A. I'm, I am -- off the top
3 of my head, don't know the cost share.

4 Q. Fair. But at
5 paragraph 54, you also attribute the price
6 increase in 2013, in part, due to the increase in
7 raw material costs; correct?

8 A. Well, you know, if you
9 are parsing this week by week and month by month,
10 '13 prices, in fact, fell at the beginning of '13.
11 Then they rose for a while, not reaching the
12 levels that they were before, and then they fell
13 again continuously for the next six years. And
14 this, again, points to the fact that, when you are
15 looking at a time series, many factors can be
16 affected. And I did not attempt to disentangle
17 all the factors that affected the observed price
18 on a yearly basis. In fact, I warned that -- that
19 relative to the but-for of looking at the effect
20 of the re-entry, that that could be a conceptual
21 issue.

22 I will also note [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 [REDACTED]

[REDACTED]

[REDACTED]

4 So --

5 Q. Right.

6 A. -- so that's my concern

7 is the but-for effect, and I have spent less

8 energy tracing the granular day-to-day,

9 week-to-week, month-to-month, or year-to-year

10 changes in prices due to all the supply and demand

11 factors that could be shifting over those periods.

12 Q. Right, and you're

13 referring back to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 A. I do. I will note that

19 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 Q. Right, and so just
2 turning back to this topic on the pulp, at
3 paragraph 54 of your second report, you also
4 attributed, just to reiterate, the price increase,
5 that price increase that you're referring to,
6 that's, in part, due to the increase in raw
7 material costs; correct?

8 A. It appears that it may
9 have. I did not do an econometric examination;
10 neither did the other side. The problem with
11 looking at granular data without all the supply
12 and demand drivers present, without doing a
13 statistical analysis, is that you could get a
14 casual empiricism and pick and choose which
15 variables and which changes as your explanation
16 ex-post of the events.

17 Q. Right, but here, we're
18 focusing on one of those possible factors --

19 A. Yes.

20 Q. -- on the cost of BKSP.
21 And so that cost could have affected prices so
22 much that it allowed prices of SCP to remain flat
23 when supply decreased due to PHP's exit; correct?

24 A. That, and other things.

25 Q. Right. And so increased

1 BKSP prices force SC paper prices to increase
2 after 2013 after PHP re-entered the market
3 potentially as well; correct?

4 A. That may have been a
5 factor. But what you saw --

6 Q. Okay.

7 A. -- was an immediate price
8 decline, a blip up that did not reach the former
9 prices, and then a steady decline for the next six
10 years.

11 Q. Right, so the price of
12 BKSP was relevant -- or could be relevant both
13 before and after PHP re-entered the market?

14 A. It could be relevant to
15 the pattern of observed prices. And what I said
16 for purposes of this investigation is looking at
17 the difference between the observed prices and the
18 unobserved but-for price. And I kind of, at the
19 beginning, you know, talked about the, the
20 difficulties sometimes in thinking that way, that
21 people trace things over time and try to explain
22 that when the real, the real conceptual issue is
23 the difference between the unobserved price and
24 the observed price in the but-for exercise.

25 Q. Right, but in your second

1 report, you point to this, you point to this
2 pulp --

3 A. I do, and I did it in my
4 direct and there was a -- I warned that other
5 things could be happening, and I warned against
6 relying too much on that kind of analysis without,
7 you know, a full statistical analysis, and, even
8 then, you know, there's issues of misspecification
9 and identifying all the supply and demand drivers
10 and their movement over that period.

11 Q. Complicated. Thank you.

12 So at paragraph 49 of your
13 second report, you state that margin compression,
14 not any exogenous increase in costs, is the source
15 of damages to Resolute; correct?

16 A. Yes, yes, it's the --
17 it's the difference between the observed and
18 unobserved, just like [REDACTED]
[REDACTED]

20 Q. And this BKSP price would
21 be one of those exogenous factors; right?

22 A. Yes.

23 Q. Okay, thank you.

24 So I promised we would go back
25 to the slides on imports, so let's do that now.

1 We can open up your slide. I
2 am not sure if, Chris, if you have that ready.
3 Could you please call up Dr. Kaplan's slide on
4 imports, and we will compare it to the PPPC
5 statistics on imports. Okay?

6 So, Dr. Kaplan, would you
7 agree that the PPPC is the industry authority on
8 volumes?

9 A. I do.

10 Q. Okay, thank you.

11 A. They do collect volumes,
12 and they are a well-recognized association.

13 Q. So if we're looking at
14 Figure 3-1 in Pöyry 1, this is based on PPC data,
15 if we look at the bottom, it cites to PPPC.

16 So let's compare this graph
17 with Slide 20 that you just presented.

18 Your Slide 20 shows paper
19 volume coming down in 2013 and imports about
20 stable; correct?

21 A. Yes.

22 Q. Thank you.

23 But in Figure 3-2, the PPPC
24 data, in fact, shows that volumes went up;
25 correct? In 2013.

1 A. They do.

2 Q. So your slide is not
3 correct?

4 A. The comparison of the two
5 is different, yes.

6 MR. KUUSKNE: Dr. Kaplan, I
7 greatly appreciate your comradery in this, and
8 that's all the questions I have for now.

9 THE WITNESS: Thank you, and
10 stay safe.

11 MR. KUUSKNE: You too. Thank
12 you very much.

13 JUDGE CRAWFORD: Redirect?

14 MR. FELDMAN: Yes, if you're
15 ready and want to proceed, Judge Crawford, yes.

16 JUDGE CRAWFORD: Yes.

17 MR. FELDMAN: Thank you.

18 RE-EXAMINATION BY MR. FELDMAN:

19 Q. Good morning, Dr. Kaplan.

20 A. Good morning.

21 Q. I have a number of
22 questions I'd like to follow up on, if I may.
23 They are not necessarily in a terribly
24 well-organized order.

25 A lot has been said now about

1 imports and about light coated mechanical, and the
2 main question, it seems to me, you have been asked
3 is did they not absorb the 395,000 tonnes -- and
4 we now have been told in a document that the
5 number is 395,000 -- did they not absorb that
6 tonnage that was added to the market so that there
7 was no significant impact or certainly no
8 significant impact for supercalendered paper when
9 Port Hawkesbury re-entered the market?

10 MR. KUUSKNE: If I may -- my
11 apologies, Mr. Feldman. Just to the Tribunal, I
12 just wanted to remind colleagues about our
13 considerations concerning leading questions from
14 yesterday. Thank you.

15 MR. FELDMAN: I always
16 appreciate being instructed.

17 BY MR. FELDMAN:

18 Q. So the question is was
19 there an impact from these 395,000 tonnes added to
20 the market given what's now been said about
21 imports and light coated mechanical papers
22 absorbing this addition to the market?

23 A. Yes. The standard supply
24 and demand analysis anticipates that increased
25 quantities can be absorbed into the market, and

1 that absorption is a movement of the supply curve
2 down the demand curve. So the answer is, yes, via
3 lower prices. And that fit with the example I
4 gave of the second plane having to do lower prices
5 to get passengers being absorbed by former
6 commuters on other types of transportation. It's
7 the typical functioning of a market, increased
8 supply is absorbed as you move down the demand
9 curve, lowering prices.

10 Q. Does SCB compete with SCA
11 paper?

12 A. Yes. People do move
13 between them, but, more importantly, the prices
14 have remained relatively constant such that the
15 gap -- such that any, any change involves an
16 incipient price increase or decline of the other
17 product to keep them in the same market and with a
18 price differential that remains the same.

19 Q. And does SCA compete with
20 mechanical, coated mechanical paper?

21 A. There is substitution
22 between the products as recognized in all the
23 reports and also recognized implicitly in the
24 demand curve. But competition and substitution
25 does not mean they are in the same market, as we

1 discussed earlier with the airplanes and the
2 trains and the craft beers and the regular beers.

3 Q. Ricky, could you pull up
4 document C-237 at page 14, please? And then could
5 you blow up the second paragraph. Thank you.

6 Dr. Kaplan, do you recognize
7 this? This is from the ITC's final report?

8 A. Yes, I do.

9 Q. And could you tell us
10 what you understand from this paragraph that's now
11 highlighted on the screen as to what constitutes
12 the market and where the dividing lines may be?

13 A. Well, first, the
14 commission found no clear dividing line between
15 SCA and SCB. And, as I had mentioned earlier,
16 there were no established industry standards
17 distinguishing the grades, which share similar
18 characteristics and uses, were made in the same
19 facilities, and were sold in the same channels of
20 distribution at roughly the same prices, about \$30
21 a tonne.

22 It found a clear dividing line
23 between SC paper and coated groundwood Number 5 in
24 light of different physical characteristics,
25 manufacturing processes, prices, and perceptions

1 in the marketplace. It similarly found a clear
2 dividing line between SC paper on the one hand and
3 high bright and newsprint.

4 This is consistent with both
5 the idea that there can be substitutability and
6 with the idea they are in different markets and
7 consistent with the statistical tests that showed
8 that SCA and lightweight coated were not in the
9 same market but SCA and SCB might very well be in
10 the same market.

11 And that concludes my
12 statement on this issue.

13 Q. So notwithstanding the
14 anecdotal phrases that were taken out of various
15 publications this morning, the International Trade
16 Commission concluded that these were distinct
17 markets between coated mechanical paper and the SC
18 grades?

19 A. They found different like
20 products between the coated mechanical papers
21 above and the high bright and newsprint papers
22 below.

23 Q. And this is the
24 outcome -- you are very familiar with the
25 International Trade Commission. This is the

1 outcome of a very detailed analysis and study?

2 A. Yes. This issue was
3 joined in the preliminary phase of the
4 investigation. And, as I had mentioned earlier,
5 unlike this investigation or this matter, the
6 Commission had certified questionnaires from all
7 the domestic producers, foreign producers,
8 importers and, in the final phase of the
9 investigation, purchasers that were in the market.

10 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

10 Q. There doesn't seem to be
11 a dispute that the product from Port Hawkesbury is
12 a superior product made on a superior machine.

13 How important is that, in your
14 view, to the competitive disadvantage that
15 Resolute appears to have with Port Hawkesbury?

16 A. Well, those, those
17 differences will be realized in price
18 differentials if there are grades. But,
19 typically, in those situations, especially where
20 the products are commoditized, the, the party
21 with -- the entrant will create price
22 disadvantages to the existing party.

23 But I might add, if the
24 products were identical, they would also create a
25 price-lowering effect discussed and illustrated in

1 the supply and demand curves.

2 Q. One implication of the
3 questions this morning seems to suggest that Port
4 Hawkesbury and Resolute are not really competing
5 with one another, that Port Hawkesbury's competing
6 with coated mechanical producers and Port
7 Hawkesbury is -- and Resolute is in some different
8 market for lower grades of SC paper; is that
9 right? Are they competing with each other and, if
10 so, in what sense?

11 A. They're competing with
12 each other in the sense that the introduction of
13 quantities of the Port Hawkesbury product affects
14 the price of all SCA and SCB products. And so, in
15 an economist's sense, if you are looking at a
16 market, you could say, would it increase the
17 supply of that product, affect the price of the
18 other products in that market? And the answer --
19 at a high rate, you know, intensely. And the
20 answer is, yes, they do.

21 Q. Did you leave imports out
22 of your analysis of the conditions of competition?

23 A. In the list given that
24 was read to me, I don't believe imports were
25 listed, but imports were discussed in my first

1 report and extensively in my second report and
2 extensively in my direct. They are part of the
3 market and -- but they did not have an offsetting
4 effect on the entry of Port Hawkesbury, which did
5 not offset the but-for price effects.

6 Q. We've had a lot of
7 discussion of what happened in 2012 and in 2013
8 and that the prices went up instead of down when
9 Port Hawkesbury entered the market, which would
10 appear to be counterintuitive from your assessment
11 of an addition of so much volume to the market.

12 So could you explain what the
13 longer-term picture is of the prices and,
14 therefore, how you measure, in fact, the impact of
15 Port Hawkesbury's entrance into the market?

16 A. Well, I would like to, if
17 it's helpful, to call up two slides.

18 Q. Sure.

19 A. The first is my slide
20 that shows that period with the two red lines.

21 Q. Ricky, can you find that?
22 I am taking silence as a "yes". You don't recall
23 Dr. Kaplan -- oh, here we go.

24 A. Yes, that's the slide.

25 Q. Very good.

1 A. So what it shows, in
2 fact, is prices did fall. You can see that, in
3 January '13, there was a start-up time when the
4 mill opened, and then it had to make these
5 shipments and have price effects, and they were
6 realized. The prices went up for a short period
7 of time, at which point they started falling
8 again, and they continue to fall through 2018.

9

[REDACTED]

13 But, more importantly -- and
14 if you can put up the [REDACTED]

15 Q. Ricky, that request is of
16 you.

17 A. Yes, it might be the one
18 immediately before or after. It's the [REDACTED]

[REDACTED]

21 No, go backwards. I will stop you. Keep going.

22 Q. Back again.

23 A. There we go.

24 Q. That's it.

25 A. There we go.

1

[REDACTED]

7

So it turns out, actually,

8

[REDACTED]

15

So I hope those two references

16

to the slides address your question.

17

Q. Thank you.

18

This discussion's been mostly

19

about the volume added to the market. Does it

20

matter that Port Hawkesbury is the low-cost

21

producer?

22

A. It matters over the

23

development of the market. Over the longer run.

24

In that with an industry in secular decline,

25

demand is decreasing as consumers substitute of

1 the paper toward digital advertising. And, as
2 demand decreases, the equilibrium price is going
3 to fall, and it's going to start being below the
4 marginal cost of the high-cost producer. And that
5 guy leaves the market. [REDACTED]

[REDACTED]

[REDACTED]

8 Being the low-cost producer
9 means that you're definitionally the last man
10 standing. As demand falls and price declines,
11 since you have the lowest marginal cost, you are
12 in a position to, to remain in the market.

13 But if, if you can remain
14 below marginal cost -- equilibrium marginal cost
15 as the price falls, then the quantity will -- new
16 quantity will lower the price.

17 As an aside, [REDACTED]

[REDACTED]

[REDACTED] For the purchaser, of course
20 you're more profitable if there's an equilibrium
21 price and your costs are lower. But for the, for
22 the seller, for the government, you don't want to
23 have to come back again as prices fall and ask for
24 more money. You have arranged a situation where
25 you are the last man standing in the market; and,

1 therefore, not only the increase in quantity and
2 the price decline consequent causes damages, but
3 over time, the exit is of other players and not of
4 you if you're the low-cost producer.

5 So there's economic incentives
6 to make sure that the new entrant from both the
7 government and the purchaser is the low-cost
8 producer.

9 Q. When NewPage went
10 bankrupt, they had this machine to which -- about
11 which we've heard a great deal, that it's a
12 superior machine, produces a superior product.

13 To your knowledge what, then,
14 happened that turned them from bankruptcy to the
15 low-cost producer with the same machine?

16 A. Well, there were
17 considerable capital investments and training to
18 lower costs that were driven by the benefits
19 package that allowed for the recapitalization,
20 capital investment and training to allow the costs
21 to fall.

22 MR. FELDMAN: Thank you.

23 Judge Crawford, would you
24 allow me maybe 90 seconds to check with folks as
25 to whether they have other questions in another

1 room?

2 JUDGE CRAWFORD: Two minutes.

3 MR. FELDMAN: More than I
4 asked. Thank you very much.

5 THE WITNESS: I have heard
6 this is a generous forum, and this is yet another
7 illustration.

8 MR. FELDMAN: I didn't need
9 two minutes. I didn't even need 90 seconds. That
10 was my last question. Thank you very much.

11 JUDGE CRAWFORD: Thank you
12 very much.

13 The next item on the agenda is
14 the expert presentation by Dr. Timo Suhonen from
15 Pöyry followed by his cross-examination. We had a
16 break fairly recently. My inclination would be to
17 have the expert presentation now and then have a
18 break and have the cross-examination after the
19 break. People happy with that?

20 PROFESSOR LÉVESQUE: Maybe a
21 quick question before we release Dr. Kaplan.

22 JUDGE CRAWFORD: Yes, of
23 course.

24 QUESTIONS FROM THE TRIBUNAL:

25 PROFESSOR LÉVESQUE: Thank

1 you.

2 I will say just a quick
3 personal note because I saw in your CV you taught
4 international economics at GW in the 1990s. And I
5 was a student at the Elliott School in those
6 years, and I took international trade economics
7 and international finance economics but not with
8 you, so I didn't have the pleasure of that.

9 THE WITNESS: Oh, no.

10 PROFESSOR LÉVESQUE: Professor
11 Dunn.

12 THE WITNESS: Professor Dunn,
13 yes.

14 PROFESSOR LÉVESQUE: Yes. So
15 if my question makes no sense, you blame him.

16 All right, so I would just
17 like to pick up on the last question. Mr. Feldman
18 asked, what was the difference in making with this
19 efficient machine becoming a low-cost producer,
20 and you mentioned capital investments and
21 training. So we looked -- we heard from
22 Mr. Garneau that if you are going to be a low-cost
23 producer, you need to control the cost of
24 electricity, fibre, and labour, labour costs. So
25 just focus on electricity for a minute.

1 So when the deal was
2 negotiated between PWCC and the electricity
3 company, PH -- well, I will say -- PWCC negotiated
4 a variable rate where they assumed the risk of
5 fuel cost variation, which meant that the actual
6 benefit could not be determined in advance.
7 Right? So some years, the cost of electricity are
8 very high; some other years, it's lower. And they
9 also -- anyway, negotiated a variable rate that
10 gave them more flexibility of when also they would
11 use the electricity.

12 So with that in mind, how do
13 you think the package actually guarantees this
14 low-cost status in the sense that key costs like
15 electricity and cost of fibre to a degree can
16 vary?

17 THE WITNESS: Well, it's --
18 first, I did not do a cost study of the mill. But
19 I noted that [REDACTED]

[REDACTED]
[REDACTED] Also, as I
22 had mentioned to Mr. Feldman, both parties had a
23 strong incentive that the finalized package
24 created a -- not only a profitable but the
25 lowest-cost producer given the incentives for the

1 province to not have to revisit the agreement and
2 for the purchaser to, to guaranteed a long-run
3 profitable income stream.

4 So you're correct that the
5 program did, and the package did address all the
6 variable costs, some of the capital costs, and
7 through other incentives regarding tax costs, I
8 think Mr.(sic) Chow and others recognized that the
9 complete package was what made the deal possible,
10 and that package was renegotiated multiple times,
11 and finally, at the last minute, where the
12 purchaser said that without the last constraints
13 guaranteeing what he believed would be the
14 low-cost producer, it would not go forward.

15 PROFESSOR LÉVESQUE: Thank
16 you.

17 THE WITNESS: You're welcome.

18 JUDGE CRAWFORD: Any further
19 questions arising from that?

20 DEAN CASS: I have just two
21 quick questions.

22 First, Dr. Kaplan, you've
23 emphasized in your report that your model is built
24 on basically a but-for analysis on relatively
25 parsimonious factors.

1 Can you once again explain why
2 you chose a model that uses relatively few factors
3 rather than one that pushes more in the direction
4 of general equilibrium model, something that is
5 much more complicated?

6 THE WITNESS: Well, first, my
7 analysis is to show a direction of change and an
8 existence of an effect. So I was not calculating
9 damages in measuring the effect.

10 A second reason is that the
11 less moving parts, the clearer the chain of
12 causation. The complicated bits are, in fact,
13 incorporated into the model. It's not as if they
14 aren't there. So you -- the substitution with
15 other markets is always incorporated into the
16 demand curve. You could get more complicated by
17 modelling the adjacent markets, but I see no
18 benefit here since the shape of the demand curve
19 does incorporate the substitution. And, further,
20 the experts on both sides affirm that the demand
21 curve was downward sloping. In fact, the
22 elasticity arguments are relatively narrow bounds.

23 So for me to model the
24 substitution when it's built into the demand
25 curve, and the experts from both sides agree with

1 what it looks like is, is a distraction and avoids
2 directly addressing in, I think, the most clear
3 way the effects of the entry.

4 And the results wouldn't be
5 any different, either. But it would, it would
6 probably create a nightmare for some of the
7 panelists with flashing back to Mr. Dunn and their
8 graduate education. Simpler is better, especially
9 if it incorporates the complications implicitly
10 and gives the same results.

11 DEAN CASS: My second
12 question -- thank you, Dr. Kaplan. My second
13 question: In looking at market definition, in the
14 anti-trust world, they tend to use a look at
15 cross-price elasticities to make their market
16 definition. In the ITC world and the trade world,
17 often this is done by looking at particular sorts
18 of factors that could be put in other terms.

19 Can you just quickly
20 distinguish the benefit or the risk of following
21 one or the other approach?

22 THE WITNESS: Well, I think
23 the good news here is that they're consistent in
24 their conclusion. The tests that are done, the
25 co-integration tests that Dr. Hausman talked about

1 and that I conducted as well, distinguishing the
2 two markets, as well as the ITC information which
3 incorporates comments by all the parties.

4 I'd like to add one more thing
5 as a technical note. My results in terms of
6 direction of change and negative price effects do
7 not change if the Number 5 is included in the
8 broader market. I think it's wrong. But if you
9 go to paragraph 55 of Pöyry's second report, they
10 size that market, they include Number 5 along with
11 the SCP market, and it shows that Port
12 Hawkesbury's entry increased capacity by
13 10 percent. A 10 percent increase in supply with
14 a demand elasticity in the range discussed by the
15 experts causes a negative price effect, a but-for
16 price effect of well over 6 percent. So I think
17 the market definition is right, I think it's true
18 based both on the ITC analysis and the DOJ
19 analysis, which, by the way, has moved more toward
20 the ITC in certain respects in respecting what the
21 industry thinks, but it doesn't matter, even, in
22 terms of the direction of change and the fact it
23 would be in effect.

24 DEAN CASS: Thank you very
25 much.

1 THE WITNESS: You're welcome.

2 JUDGE CRAWFORD: Other

3 questions?

4 We will now have a -- I think
5 a long break would be excessive. There will be a
6 15-minute break for coffee and watering and -- no,
7 sorry, we were going to have the expert
8 presentation by Professor Suhonen. Is it possible
9 to have that now?

10 DEAN CASS: Can we take just a
11 very short five-minute break? That would be
12 useful.

13 JUDGE CRAWFORD: Five minutes,
14 and then we will have the expert presentation.

15 --- Upon recess at 11:01 a.m. EST.

16 --- Upon resuming at 11:12 a.m. EST

17 JUDGE CRAWFORD: I will
18 introduce the panel and have you make your
19 declaration. The plan is you to make a short
20 presentation of about 15 minutes and then be
21 cross-examined by the other party and then be
22 re-examined by your own party. The declaration
23 sheet you have been given for expert witness, it
24 states your position alone in an empty room
25 without extensive access to materials. Could I

1 ask you to make that declaration, please.

2 MR. SUHONEN: I just want to
3 make sure that I am heard.

4 JUDGE CRAWFORD: Yes, I can
5 hear you.

6 MR. SUHONEN: Very good. So,
7 first, is the declaration for expert witness.

8 I solemnly declare upon my
9 honour and conscience that I shall speak the
10 truth, the whole truth, and nothing but the truth
11 and that my statement will be in accordance with
12 my sincere belief.

13 No one else is present in the
14 room where I am testifying. I do not have any
15 notes or annotations on any hard copy or
16 electronic documents except notes and annotations
17 prepared to facilitate my initial presentation to
18 the Tribunal. I confirm that I am not receiving
19 communications of any sort during my testimony
20 other than my participation in the main hearing
21 room in Zoom.

22 JUDGE CRAWFORD: Thank you
23 very much.

24 EXPERT WITNESS: TIMO SUHONEN

25 JUDGE CRAWFORD: You have, no

1 doubt, given other expert evidence in other
2 arbitration proceedings. You will be aware there
3 is a pendency in electronic hearing on the
4 continuation of the technology. If you have
5 problems, if, for example, you go offline for some
6 reason, just be patient. The people from
7 Arbitration Place will help. And so far the
8 experience has been that there haven't been any
9 major difficulties. But I don't want to say that
10 because, as I said, if I mention it, it will prove
11 that I am wrong.

12 Proceed with your
13 presentation, please.

14 THE WITNESS: Thank you. Can
15 I have the presentation slides.

16 PRESENTATION BY MR. SUHONEN:

17 THE WITNESS: Thank you.
18 Judge Crawford and Deans Lévesque and Cass,
19 respectable representatives of the claimant and
20 defendant, my name is Timo Suhonen. It is an
21 honour to be invited to this Tribunal as an expert
22 witness.

23 My employer, ÅF Pöyry, or
24 AFRY, is an international engineering, design, and
25 advisory company formed in 2019 through the merger

1 of two firms, Swedish ÅF and Finnish Pöyry. Today
2 the group has approximately 17,000 employees and
3 \$2.2 billion US turnover with over a century of
4 history.

5 AFRY is reportedly the number
6 one engineering company in the world serving the
7 pulp and paper industry.

8 Can I have the next page,
9 please.

10 Today our Helsinki office is
11 supporting our client, the Government of Canada,
12 in the arbitration commenced by Resolute Forest
13 Products. We are here to provide expertise and
14 knowledge on SC paper market and the economics of
15 the industry. Our assignment consists of the
16 following, to provide an independent expert report
17 of North American SC paper market and support the
18 Government of Canada in this arbitration and to
19 provide response to the expert reports of doctors
20 Seth Kaplan and Jerry Hausman.

21

24 First in my presentation, I
25 will provide an overview of the paper products at

1 issue in this arbitration and the relevant
2 markets. Then I highlight the key flaws in
3 Dr. Kaplan's and Dr. Hausman's analysis before
4 commenting on [REDACTED]

6 Can we turn page 3.

7 The term "SC paper" stands for
8 supercalendered paper, which is a technology
9 largely developed by European paper firms and
10 machinery suppliers in the 1980s. The
11 manufacturing process is somewhat unique, as the
12 paper is run through a series of vertically
13 stacked rows or super calendars, which smooth out
14 the paper and enhance its printing properties.
15 This is what makes SC papers different to coated
16 mechanical papers, which, as opposed to uncoated
17 supercalendered papers, are coated with minerals
18 such as clay and calcium carbonate to improve
19 printing performance.

20 In this figure, you can see
21 typical product uses and the middlemost position
22 of SC papers within the family of graphic paper
23 grades. The X axis depicts the quality of paper
24 in terms of its brightness or smoothness while the
25 Y axis shows the relative price of the product

1 groups.

2 The graphic paper continuum
3 starts from newsprint in the southwest corner of
4 the graph and ends in coated Number 1 in the
5 northeast. As one can see, the competitive domain
6 of SC paper encompasses coated mechanical papers.

7 I raise the important point of
8 substitutability partly in response to the
9 Tribunal's first written question about the
10 complexity of the market. SCA and A+ and coated
11 mechanical number 5 are direct substitutes and so
12 are soft-nip calendared, or SNC paper, as well as
13 SCB paper to standard uncoated mechanical paper.
14 However, coated mechanical number 5 and SCB are
15 not. Further, one could not change from SCA+ or
16 A++ to SCB without significantly changing the end
17 product appearance, feel, or characteristics.

18 This leads to important
19 conclusions about the relevant market. The idea
20 that SC paper is a standalone market, as
21 Resolute's experts claim, is incorrect. The
22 relevant market includes SC paper, but also lower
23 grades of non-SC paper like soft-nip calendar
24 paper and standard uncoated mechanical paper
25 produced by Resolute and other mills, but not by

1 Port Hawkesbury. The market also includes higher
2 grades of paper such as coated mechanical number
3 5, which Port Hawkesbury competes with directly,
4 but Resolute mills do not.

5 This upper end of the market
6 also includes SC paper imports from Europe.

7 Resolute's experts ignore this
8 correct market definition and consider Port
9 Hawkesbury's high quality SCA, A+ paper to have a
10 direct effect on all of Resolute's paper prices;
11 yet Resolute's product mix is clearly lower
12 quality than that of Port Hawkesbury.

13

14 [REDACTED]
15 [REDACTED]
16 [REDACTED], which their vice
17 president of North American sales has described as
18 average:

19 "Resolute did not make
20 SCA+ paper, which has
21 been a sore point for its
22 business." [as read]

23 So, in January 2020, Resolute
24 announced an investment of around \$11 million US
25 dollars to Kénogami which would allow it to

1 produce high-grade SCA+ paper.

2 Although Resolute counsel said
3 in his opening statement that the upgrade was the
4 only way Resolute could compete with PHP, the
5 better explanation is that an investment of this
6 kind, which, in my experience, requires at least
7 one year of setup time, was made based on the
8 record high prices that the market has recently
9 experienced. Only very recently because of the
10 pandemic we will see a massive drop in paper
11 volumes as well as in paper prices.

12 Now moving to Dr. Kaplan's
13 comparative statics analysis. Dr. Kaplan
14 undertook a comparative statics analysis of the SC
15 paper market to attempt to prove that Port
16 Hawkesbury's re-entry caused injury to Resolute by
17 depressing SC paper prices.

18 Can we turn to the next page,
19 please.

20 Dr. Kaplan assumes that Port
21 Hawkesbury's re-entry expanded the supply curve of
22 SC paper, and, as demand has held constant, this
23 leads to a lower equilibrium price as shown on the
24 left-hand side of this figure. In our view,
25 though, the shift in supply caused by Port

1 Hawkesbury's re-entry coincided with a shift in
2 demand. The re-entry directly or indirectly
3 induced a demand pull from coated mechanical
4 papers to high-end SCA papers as shown on the
5 right hand panel of the figure.

6






10 Can we turn the next page,
11 please.

12 We will see what the
13 substitution means in practice. Let us focus on
14 the years 2012 and 2013 and especially on columns
15 change in demand for SCA paper and coated
16 mechanical.

17 From 2012 to 2013, 282,000
18 metric tons less SCA paper was purchased due to
19 Port Hawkesbury's exit. At the same time, coated
20 mechanical paper demand decline was just 83,000
21 metric tons, which is two to three times less than
22 normal.

23 In my view, the SCA+ buyers,
24 for the most part, simply shifted up the paper
25 continuum to coated mechanical paper. This is

1 demonstrated by the fact that 2013 was the best
2 year for coated mechanical demand over the past
3 decade.

4 To summarize, the correct way
5 to examine the relevant market for the purposes of
6 Port Hawkesbury needs to consider both SCA paper
7 and coated mechanical paper as they are
8 substitutes to one another. At the same time, a
9 proper analysis of the market for the purposes of
10 Resolute sales would consider standard uncoated
11 mechanical paper as they are substitutes for
12 soft-nip calendared and SCP papers.

13 Dr. Kaplan's but-for test is
14 invalidated as it ignores the shift in SC paper
15 demands, which was caused by substitution and
16 affected by Port Hawkesbury's re-entry and,
17 therefore, is not suitable to analyze the dynamic
18 market in question.

19 Then I will move to
20 Dr. Hausman's but-for world. AFRY finds
21 Dr. Hausman's analysis untenable due to the misuse
22 of the forecasting approach and lack of clarity on
23 assumptions behind damages calculations.

24 Dr. Hausman states that he
25 decided not to use an economic model given its

1 necessary complexity. Instead, he seeks to
2 quantify lost profits caused by Port Hawkesbury's
3 re-entry using a price erosion approach that
4 relies on price forecast made by RISI before the
5 market entry, that is to say, in 2011. In my
6 view, a before-the-event forecast of prices is not
7 the appropriate forecasting approach and,
8 therefore, should not have been used to quantify
9 damages.

10 A more acceptable way of
11 employing a forecasting model would have been to
12 specify and test the model covering a period prior
13 to Port Hawkesbury's re-entry that uses actual
14 values of the models, explanatory variables for
15 the period after Port Hawkesbury's re-entry to
16 forecast but-for prices. One problem remains,
17 though, unsolved, and that is the reaction of
18 other suppliers should Port Hawkesbury have not
19 re-entered.

20 Furthermore, RISI's price
21 forecasting model is not transparent. We haven't
22 had a chance to simulate it with actual values of
23 explanatory variables or to review the model
24 diagnostics for its possible weaknesses. However,
25 we do have enough information to conclude that the

1 old RISI forecast relies on partly false and
2 deficiently reported assumptions.

3 In addition, Dr. Hausman's
4 updated 2019 damage calculations equally rely on
5 unclear assumptions, particularly regarding price
6 elasticity of demand. Dr. Hausman's changed his
7 elasticity estimate from minus 2.1 in his first
8 report to minus 1.5 in his second report, but did
9 not justify why he changed this parameter.

10 AFRY conducted its own
11 economic estimation of elasticities, and we find
12 long-run demand elasticities of SC paper to range
13 from minus 2 to minus 3; thus we believe that the
14 current elasticity value of minus 1.5 is
15 understated.

16 Dr. Hausman revised his
17 damages estimates after finding out that, due to
18 the business upcycle and improved financial
19 performance of Dolbeau and Kénogami in 2018, the
20 damages for that year were actually negative for
21 both mills. This implies that Resolute was better
22 off with PHP in the market. The model results do
23 not inspire confidence.

24 In his yesterday's testimony,
25 Dr. Hausman considered SC and coated mechanical

1 papers separate markets on the basis of price
2 correlations of the two. Correlation is very much
3 dependent on the time period chosen for the
4 analysis and subject to significant random
5 disturbances at some point of time. Therefore a
6 low correlation coefficient is not a watertight
7 argument for two separate markets.

8 Further, in his but-for world
9 analysis, Dr. Hausman said that, without PHP's
10 re-entry, SC paper prices would have been even
11 higher. In our view, coated number 5, other
12 things being equal, sets a natural price ceiling
13 for SCA paper. Since Port Hawkesbury's restart
14 through 2014, the price gap between SCA and coated
15 mechanical number 5 narrowed, and in Quarter 1 of
16 2014, their prices in fact converged.

17 One could say that the price
18 of SC paper was relatively high after PHP's
19 restart. In Dr. Hausman's but-for world, in other
20 words, without PHP in the market and SC and coated
21 publication paper markets being separate, SCA
22 prices should have clearly exceeded the prices of
23 coated mechanical number 5.

24 Finally, let me say a word
25 about the [REDACTED]

1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

10

[REDACTED]

20

[REDACTED]

1 [REDACTED]
[REDACTED]
[REDACTED]

4 Further, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

14 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

23 Thank you very much for your
24 attention.

25 JUDGE CRAWFORD: Thank you.

1 Who is counsel for cross-examination?

2 MR. LEVINE: I am, Judge
3 Crawford. I think you had indicated before the
4 last break you would want to do a lunch break soon
5 after the expert presentation. I'm happy to move
6 forward with the cross-examination and take the
7 lunch break or dinner break for you whenever you
8 would like.

9 JUDGE CRAWFORD: Let's proceed
10 for a while and see how the cross-examination
11 goes.

12 MR. LEVINE: Absolutely.
13 Thank you very much.

14 CROSS-EXAMINATION BY MR. LEVINE:

15 Q. Good afternoon,
16 Mr. Suhonen. My name is Paul Levine. I am an
17 attorney with Resolute. Thanks for appearing here
18 today. I'm going to ask you some questions
19 regarding your expert reports and your testimony.
20 If you have any trouble understanding my questions
21 or you don't understand something I ask, just
22 please ask me to rephrase on the record, and I
23 will try to do so. And if we can avoid talking
24 over each other, that would be very good the court
25 reporter. She can only take us down one at a

1 time.

2 The other thing is, if I refer
3 to a page number in your expert report, we have
4 put little stamps on the bottom left-hand corner
5 of your expert report, and that's what I will be
6 referring to, and I will try to point you to a
7 specific paragraph as well just so everybody knows
8 we are talking about the same thing.

9 With that, I just heard your
10 initial testimony there, and I think, just to be
11 clear, Dr. Kaplan and [REDACTED]
[REDACTED] they both applied a but-for analysis with
13 respect to the reintroduction of Port Hawkesbury;
14 is that correct?

15 A. I wouldn't call [REDACTED]

[REDACTED]

22 Q. Okay. [REDACTED]

[REDACTED]
[REDACTED]; correct?

25 A. [REDACTED]

1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

10 Q. All right. And then I
11 think you say in your rejoinder expert report,
12 your [REDACTED] -- your 2020 report that the but-for
13 methodology is a timeless analysis applied in
14 economics; correct?

15 A. Sorry, can you repeat
16 that?

17 Q. Sure. You say the
18 but-for methodology is a timeless analysis applied
19 in economics?

20 A. Did I say that?

21 Q. Yeah. If we can pull up
22 the 2020 Pöyry report at page 17, paragraph 48.
23 You say here that:

24 "Dr. Kaplan emphasizes
25 the great virtues of

1 comparative statics,
2 which nobody can
3 deny."[as read]

4 And then later on you say:

5 "Static analysis is
6 timeless analysis, one in
7 which the passage of time
8 does not play an
9 essential role and in
10 which the new
11 equilibrium, once
12 achieved, remains
13 unchanged period after
14 period."[as read]

15 A. Yeah. I recognize that,
16 yes.

17 Q. And we will get into this
18 later, and I understood this from your opening
19 presentation too, but you don't have a problem
20 with a but-for analysis in general and the
21 concept. You have a problem with its application
22 in this case; correct?

23 A. Yeah. In a way. But-for
24 in this context and as presented here has
25 basically only one moving part, and that is, that

1 is the re-entry of PHP to the market.

2 Q. Okay. And --

3 A. And let me continue.

4 Q. Yes.

5 A. But it doesn't take into
6 consideration the likely following factors that
7 relate to PHP's re-entry. And that is the
8 problem.

9 Q. Okay. And would it be
10 fair to say you do not apply a but-for comparative
11 statics approach in your expert reports; is that
12 correct?

13 A. We are not doing that in
14 our expert report, no.

15 Q. All right. So your
16 reports do not provide a computation of what
17 prices would have been for supercalendered paper
18 in the absence of PHP's return to the market in
19 2012; is that correct?

20 A. We are not doing that,
21 but I must say that I also acknowledge some of the
22 weaknesses of such an analysis, at least based on
23 the tools that we are using.

24 Q. Okay.

25 A. And that is, that is I

1 must emphasize the estimation of the supply curve
2 in the first place. There are many ways to -- or
3 many assumptions behind it. And, therefore, it
4 depends on the analyst what kind of results you
5 get out of it.

6 Q. Okay. If we could look
7 at page 6 of this rejoinder report and
8 paragraph 13, and we will put that on the screen
9 for you.

10 A. Okay.

11 Q. And if we can blow that
12 up. And I don't want to read this whole thing
13 here, but these are the -- in here, you provide
14 three reasons why the but-for test is not suitable
15 in this case. And one is imports from Europe.
16 Another one is substitution. And another one is
17 actions of other North American paper firms. Is
18 that a fair statement of why you don't think the
19 but-for test is applicable to this case?

20 A. Yes, exactly.

21 Q. Okay. And in your first
22 expert report, you wrote that North America is a
23 natural geographic definition for the SC paper
24 market in this case; is that correct? You recall
25 saying that?

1 A. Yeah. North America is a
2 natural geographic for this, yes.

3 Q. And I think you also said
4 in your first report that it's one of your
5 opinions that one of the main shock absorbers for
6 PHP's supply upon its return to the market in 2013
7 was European supercalendered paper imports; is
8 that correct?

9 A. That is one of the shock
10 absorbers. Another one, definitely, is the coated
11 mechanical paper market, so to speak, if you wish
12 to say it that way.

13 Q. Okay. And I just want to
14 take a look at the [REDACTED] that you
15 referenced earlier. And if we could take a look
16 at R-161.17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

[REDACTED] "[as read]

3 Do you see that?

4 A. Yes.

5 Q. Okay. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 A. Yeah. No, I can see
11 that. Yes.

12 Q. Okay. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 [REDACTED]

20 Is that correct?

21 A. Yes.

22 Q. Okay. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED].

2 It says:

3 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [as

9 read]

10 That's what's written there;
11 correct?

12 A. Yes.

13 Q. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [as read]

19 Is that correct?

20 A. Yes.

21 Q. So after Port Hawkesbury
22 closed, there wasn't really a big increase of SC
23 paper imports as a result of the closure of the
24 Port Hawkesbury mills is what you are saying in
25 your expert report here?

1 A. Yes.

2 Q. Okay. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12 [REDACTED]

[REDACTED]

[REDACTED] correct?

15 A. Yes.

16 Q. Okay. And so now let's
17 take a look now back at the 2019 Pöyry report,
18 your first expert report, and page 18. And if we
19 could blow up Figure 3.3.

20 All right. So it looks like
21 here that Figure 3.3 has the SCA deliveries and
22 imports to North America. So if I get this right,
23 the dark blue on here is the North American
24 produced SCA; correct?

25 A. Yes. It equals the SCA

1 shipments from North America to North American
2 markets, right.

3 Q. Right. That would
4 include the Canadian products as well since Canada
5 is in North America?

6 A. Canada and US, yes.

7 --- Reporter appeals

8 THE WITNESS: You have to
9 allow me to pull myself a little bit backwards
10 than the visuals are. It may be more pleasant if
11 I am more far away from you, but now I am close to
12 mic.

13 BY MR. LEVINE:

14 Q. All right. So as I was
15 saying, the dark blue is the North American
16 shipments, you just said.

17 And then the light blue are
18 the imports coming into North America?

19 A. Yes.

20 Q. Of SCA and SCA+; correct?

21 A. Yes.

22 Q. All right. And so,
23 Ricky, if you could bring up the cross slides I
24 provided and I have transmitted to everyone, and
25 if you can just bring up the first cross slide

1 there.

2 MR. NEUFELD: I'm sorry, Judge
3 Crawford. Can I interrupt, please. This is
4 Rodney Neufeld, counsel for Canada. We don't know
5 what these are. Can counsel please introduce
6 this?

7 MR. LEVINE: Yes. I sent
8 these over to you and I will explain. As you see
9 here, this is a chart.

10 MR. NEUFELD: Can I interrupt
11 you already? When did you send these?

12 MR. LEVINE: I sent these at
13 the beginning of this cross-examination at 11:46
14 a.m.

15 MR. NEUFELD: I'm looking at
16 my e-mail, 11:47. So you started this
17 cross-examination before 11:46 a.m. You didn't
18 send them at the beginning.

19 MR. LEVINE: Okay. So the
20 procedural order says you provide the slides
21 immediately before they are used, so I provided
22 them before they are used so --

23 MR. NEUFELD: But counsel
24 isn't to provide slides here. Slides can be
25 provided by experts, but if we go to the

1 procedural order in 8.2, it's very clear that new
2 evidence cannot be provided at this point in time.
3 So we have no idea. We haven't reviewed this. We
4 have no idea what it is. And counsel is providing
5 this evidence. You are the counsel. You are not
6 a witness. You are not an expert witness to be
7 providing slides.

8 MR. LEVINE: This is a
9 demonstrative of the numbers in his expert report
10 at Figure 3-3. And if you want to just compare
11 the numbers there, and I have done this so that we
12 can do the math. In 2005, the dark blue, it's
13 North American SCA. It's 1579. And the SCA
14 imported to North America is 373.

15 MR. NEUFELD: Yes.

16 MR. LEVINE: And you can just
17 go across and see all those numbers line up
18 perfectly with the numbers in this chart.

19 MR. NEUFELD: So my objection,
20 then -- what you're saying is that, because I am
21 objecting to this slide -- I have no right to
22 object to this slide because it is actually his
23 report. If it's his report, why don't we use his
24 report?

25 MR. LEVINE: Because I don't

1 want to do the math that we are going to have to
2 show on the next other slides. And, like, you
3 know, you guys can take a look at the mathematics
4 another time --

5 MR. NEUFELD: So there is new
6 information in this slide.

7 MR. LEVINE: What?

8 MR. NEUFELD: So there's new
9 information in this slide is what you are telling
10 me?

11 MR. LEVINE: Just a
12 mathematical analysis. If you want to do the math
13 here, we can. I mean, like, I don't think this is
14 going to be useful for us to crosstalk back and
15 forth, Mr. Neufeld.

16 We would like to be able to
17 use this demonstrative slide to illustrate the
18 next point here, Judge Crawford.

19 JUDGE CRAWFORD: Yes. So the
20 Tribunal has a concern as to the use based on the
21 record actually reflect the record. Your
22 assertion is that that is the case here. But it's
23 not actually marked-up on the slide?

24 MR. LEVINE: Correct. This is
25 reflecting of the record, and the additional

1 slides that accompany it are just adding up
2 numbers on here and then dividing numbers on here.
3 So we are just doing mathematics. And we can sit
4 here, and we can get a calculator out and add all
5 this up and do all the division, but it's just the
6 mathematics of the number here to illustrate the
7 next point.

8 JUDGE CRAWFORD: It would be
9 helpful if you could provide us with a revised
10 version of this graphic which contains footnote
11 references to the places where the data come from.

12 MR. LEVINE: Sure. And I will
13 state for the record that this slide here is
14 derived from Figure 3-3 on page 2019-04 of the
15 expert report of Pöyry, page 18.

16 JUDGE CRAWFORD: If you do
17 that for the other information as well.

18 MR. LEVINE: Sure. All right.
19 So --

20 JUDGE CRAWFORD: Does that
21 satisfy you, Mr. Neufeld?

22 MR. NEUFELD: Thank you, Judge
23 Crawford. I think it does. Just a very quick
24 comment that it would have been helpful to avoid
25 this entire hiccup. Had we received this even,

1 even as Mr. Levine said, before the
2 cross-examination started and not during the
3 cross-examination, we would have had the ten
4 minutes to review this and say that it was okay.
5 But we didn't. And we could have avoided this
6 whole conversation. The claimant didn't need to
7 put us in this awkward position, and I didn't need
8 to put the Tribunal in a position to have to rule
9 something here. Advance notice is all that we are
10 requesting here, so thank you. We are satisfied
11 that this can proceed.

12 JUDGE CRAWFORD: Thanks for
13 that. Counsel should be careful to ensure that
14 any data which is not in the record is properly
15 referred to in graphics and other materials
16 presented to the Tribunal.

17 MR. LEVINE: Absolutely, Judge
18 Crawford. My apologies for any delay to
19 Mr. Neufeld.

20 BY MR. LEVINE:

21 Q. If we can turn to the
22 next page on this slide here, Ricky.

23 So -- and I did some math
24 here. And so what I did at the top here, you can
25 see that I have added up all the North American

1 SCA capacity in those rows there and the top here.
2 If I just go like -- here, if I just draw this
3 line here. I took all these things here; right?
4 And I added that up. And the sum total of those
5 numbers are 9,161, which is in thousands of
6 tonnes, as you report in your graph. Do you see
7 that?

8 A. I can see that, yes.

9 Q. And then I did the same
10 thing here for the imported numbers on the second
11 row for 2005 through 2011. And that came to 2,862
12 tonnes.

13 And then in the third box
14 there, I just added up those two numbers, 9,161
15 and 2,862, and I got the total SCA that was
16 delivered into North America from the North
17 American producers and the importers was 12,023.
18 So that's going to be 12,023,000 for the years
19 2005 to 2011. Okay?

20 A. I can see that, yes.

21 Q. And then I just repeated
22 the process in the bottom half for 2013 to 2018.
23 And I got -- you will end up getting 5,020,000
24 tonnes of North American production. You will end
25 up getting 1,692,000 tonnes for imported

1 productions. And then you will get
2 6,712,000 tonnes as the combined SCA for 2013
3 through 2018; do you see that?

4 A. I can see that, but I
5 don't see the point.

6 Q. Okay. That's fine. We
7 will get to the point in a second.

8 But -- and if you disagree
9 with any of these numbers or any of my arithmetic
10 at some point throughout this process, you let me
11 know, and you can deal with that at a break, and
12 you can calculate these numbers yourself, and you
13 can come back to me and tell me that I did it
14 wrong somehow.

15 A. I trust that you have
16 summed up correctly.

17 Q. Hopefully my Excel -- my
18 ability to use an Excel spreadsheet is pretty
19 good.

20 All right. So if we go to the
21 next one, Slide 3. Ricky, can you go to the next
22 slide.

23 So what I did on this slide
24 is, if you see the 23.8 percent and the
25 25.2 percent, I just divided the amount of imports

1 in each period by the total supercalendered paper
2 deliveries into North America; do you see that?

3 A. I can see that, yes.

4 Q. Okay. So from 2005 to
5 2011, the percentage of the imports into North
6 America was 23.8 percent. Will you accept my math
7 on that?

8 A. Yes.

9 Q. And from 2013 through
10 2018, the percentage of the imports into North
11 America was 25.2 percent. Will you accept my math
12 on that?

13 A. I hope that you have
14 calculated them correctly, and I trust that this
15 is a correct, correct percentage.

16 Q. Okay. So it appears that
17 the imports of SCA into North America actually
18 grew after the return of PHP from the prior period
19 when PHP was already in the market; correct?

20 A. The change has not been
21 substantial, but, yes, you are correct. It is
22 higher, a bit higher, by 1.4 percent units.

23 Q. Which means that the
24 European supply, that wasn't a shock absorber for
25 the additional supply coming from PHP's re-entry;

1 correct?

2 A. No. The result that you
3 see here is, to my understanding, very much the
4 result of a weakening Euro and the
5 competitiveness -- improved competitiveness of
6 European players on the North American soil.

7 Q. Okay. So but that means
8 there's still more imports coming into North
9 America as a percentage of the market with PHP
10 having returned in its second iteration; correct?

11 A. Yes. But, again, we have
12 to acknowledge the fact that you are looking at
13 SCA as a market, and you do not take into
14 consideration in this calculation the overall
15 picture covering coated mechanicals and SCB, for
16 example. It's only for SCA.

17 Q. Okay. Well, if we can go
18 back to your report, from your rejoinder report,
19 at paragraph 13. I think that's on page 6.

20 A. Rejoinder report.

21 Q. Yes. And if we can look
22 at that first bullet point again.

23 A. Yes.

24 Q. In this bullet point, you
25 focused on SCA supply too?

1 A. Yeah, sure. Yes, I did.

2 Q. Okay.

3 A. But, again, you have to
4 admit that, on the second bullet, it is not on SCA
5 alone. It says that there's substitution that has
6 occurred on the market, and SCA has been one of
7 the beneficiaries of this strength.

8 Q. So let's go to that
9 second bullet point since that's the second shock
10 absorber you have talked about in your reports;
11 correct?

12 A. Yes.

13 Q. Okay. If we can look at
14 page 10 of your first report, and I think that has
15 that chart that you put up -- actually page 11 of
16 that first report. Excuse me.

17 If we can just zoom in on that
18 chart.

19 A. Yes.

20 Q. And so I think you talked
21 about this earlier, but this is -- this chart
22 suggests, as you move up in quality among the
23 products, the relative price you're going to have
24 to pay is going to go up too; correct?

25 A. No, it doesn't. No,

1 definitely. No. This is like the devil reading
2 the Bible. One should not take it like that. It
3 just shows that, okay, they are in different
4 positions on average, CM5 being a bit more
5 expensive than SCA.

6 Q. Right. But --

7 A. That's all it says. It
8 doesn't, it doesn't say that one has to have some
9 kind of dynamics here, down and up.

10 Q. Okay. But I am just
11 saying you have got relative price on the Y
12 axis --

13 A. Yeah.

14 Q. -- and quality on the X
15 axis. And as you increase in the quality, the
16 price tends to go up?

17 A. Yes. You can say so that
18 the -- allow me to explain. If you take SCA, for
19 example, there's a range of prices. And those --
20 that range can be a result of the differences in
21 quality in SCA grade. And that's fine. It kind
22 of depicts how the market works. You pay for the
23 quality, and that's it. Yes.

24 Q. Okay. And then depending
25 on how competitive a price is, a customer can move

1 up the scale or down the scale to get a better
2 product or maybe get one of lesser quality,
3 depending on how much they want to pay?

4 A. Now, I didn't get your
5 point.

6 Q. A customer can -- the
7 customer can shift up from SCB to SCA, and they
8 will pay a higher price for that --

9 A. Yes.

10 Q. -- but then you can shift
11 down from SCB to uncoated mechanical, and you will
12 pay a lower price for that; correct?

13 A. Yes.

14 Q. So just kind of, you are
15 taking into account price versus quality on this
16 chart?

17 A. Yes. Yes.

18 Q. Okay.

19 A. This is a simple, simple
20 expression of the quality-price relationship.

21 Q. Okay. And I think you
22 said before earlier that SCA+ grades offer
23 qualities comparable with coated mechanical number
24 5; right?

25 A. Yes. As you can see in

1 this graph, it looks like Olympic rings. You
2 know, each grade adjacent to each other are kind
3 of having a having a common area, and that's it.
4 Yes. Yes.

5 Q. Okay. And then at the
6 opposite end is true. An SCB buyer can upgrade to
7 SCA; correct?

8 A. But, again, I have to
9 emphasize the fact that, over the past 20 years or
10 so, the publication paper market -- be it
11 catalogue, publishers, or magazine publishers, et
12 cetera, et cetera -- they have been suffering from
13 the digitalization. And, therefore, to remain on
14 the positive, they have a tendency to downgrade,
15 and that is because of the savings needs of the
16 customers. And, therefore, the traffic typically
17 has been from the top qualities to down, but with
18 reasonable declining in terms of quality.

19 Q. Okay. So a purchaser of
20 SCA+ previously could also go down to SCA to
21 downgrade in quality and save price; correct?

22 A. Can do, yes, yes. The
23 same way a coated mechanical end user can go to
24 SCA because of the difference in price.

25 Q. Okay. And, now, nothing

1 in your reports state exactly how many tonnes of
2 SCA+ paper or higher were bought by prior
3 purchasers of coated mechanical number 5. You
4 don't have that computation in there directly;
5 correct?

6 A. No direct evidence. But
7 we can have a look at the volumes that have been
8 experienced in the market, and all that data
9 implies to the direction that there has been
10 substitution between SCA and coated mechanical
11 number 5.

12 Q. Okay.

13 A. Or coated mechanical in
14 general, because it includes also Number 4.

15 Q. If we could turn to
16 page 29 of your report and take a look at [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] correct?

22 A. Yeah. Right.

23 Q. And then --

24 A. [REDACTED]

[REDACTED]

1

[Redacted text block containing multiple lines of blacked-out content]

1

3

2 [REDACTED]

3 A. They are competing on the

4 same, same markets. Let me explain a bit. The

5 key market areas or end users that these two

6 grades are being used in include inserts and

7 flyers, magazines and catalogues. If you take

8 magazines, for example, it was at that time -- I

9 mean, during the restart of Port Hawkesbury, it

10 was a good 2 million tonne market. And SCA was

11 taking maybe 10 percent of the total, total whilst

12 90 percent or 85 percent of the total was coated

13 grades.

14

14 In the same way, if you take

15 catalogues, the share of SC paper was a bit higher

16 than in magazines, but most of the consumption was

17 in coated papers.

18

18 So these are the common end

19 users for both coated paper and SCA. So, in that

20 sense, they are playing on the same -- very same

21 markets. And, therefore, they are, more or less,

22 more or less in -- kind of can be defined as a

23 single market.

24

24 Q. Okay.

25

25 A. That's the choice of the

1 end user whether they use coated paper or
2 supercalendered high gloss papers.

3 Q. All right. So if we can
4 bring up your 2020 report at page 15 and look at
5 paragraph 41.

6 I think you disagree with the
7 import of these reports, but all these reports
8 here that -- the RISI reports and the PPC reports
9 and other industry experts treat coated mechanical
10 and supercalendered paper separately; is that
11 correct?

12 A. Yes. But the way here,
13 it is convenient for the industry analysts, and
14 this convenience comes from the fact that the
15 technologies are different. You have
16 supercalendered following the SC paper machine,
17 where SC coated paper machines, you have other
18 online or/and offline coating. So in that sense,
19 they enter into different statistics. So it is
20 convenient to use those numbers to depict the
21 market, the market size, et cetera. But if you
22 added here another element in the matrix, and that
23 is the end users of paper, you can use these
24 grades interchangeably in various end users, and
25 that is the meaning of the term here but improper.

1 Q. So I just understood what
2 you said, coated mechanical and supercalendered
3 paper are made in -- through different processes;
4 is that; correct?

5 A. Yes.

6 Q. And you need
7 supercalendered machines to make the
8 supercalendered paper; right?

9 A. You need a paper machine
10 plus a supercalendered stack to produce
11 supercalendered paper, yes.

12 Q. Okay. And with coated
13 mechanical, you need to be able to add clay or
14 some other minerals to the paper; right?

15 A. Yeah. In a coating
16 machine, which is other on-machine coating or
17 off-machine coating or both. You have both in
18 medium-weight coated papers, which are -- I would
19 compare them with coated Number 4 and 3 rather
20 than coated number 5.

21 Q. All right. So different
22 processes.

23 And then are you aware that
24 they don't make coated mechanical paper in Canada?

25 A. I can't remember that by

1 heart who is making, but it has been made in
2 Canada.

3 Q. But are you aware that
4 they currently don't make it now?

5 A. Uh... It's what you say.
6 I am not sure about that.

7 Q. Okay. Mr. Garneau
8 testified earlier in the week, and he said they
9 don't make coated mechanical in Canada. You are
10 not sure about that?

11 A. I can check that easily,
12 but what is your point?

13 Q. I just wanted to ask you.
14 If we can pull up the ITC
15 report. It's C-237.14. And pull up that second
16 paragraph. And I think we have all seen this here
17 earlier today.

18 The U.S. International Trade
19 Commission studied this issue, and it said in the
20 middle of this paragraph:

21 "It found there was a
22 clear dividing line
23 between SC paper and
24 coated groundwood paper
25 number 5 in light of

1 [REDACTED] R-146. [REDACTED]

[REDACTED]

[REDACTED]

4 A. Yes.

5 Q. [REDACTED]

[REDACTED]

[REDACTED]

8 A. Yes.

9 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 A. Yes.

16 Q. If we can turn to

17 page 10, and focus in on paragraph 19. All right.

18 Here it says, at the top:

19 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19

[REDACTED]

[REDACTED]

[REDACTED]

22

A. Was that a question?

23

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

11

[REDACTED]

1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 MR. LEVINE: Okay. Judge

1 Crawford, this would be an opportune time for a
2 break for me, if you wanted to take a break now,
3 or I could keep going. It's up to the Tribunal.

4 JUDGE CRAWFORD: Twenty-minute
5 break.

6 MR. LEVINE: Thank you, Judge
7 Crawford.

8 THE WITNESS: Can I ask how
9 long a break we are having?

10 PROFESSOR LÉVESQUE: I think
11 it was 20 minutes.

12 MR. LEVINE: I think it was a
13 20-minute break.

14 THE WITNESS: Okay. Thank
15 you.

16 MR. LEVINE: Thank you.

17 --- Upon recess at 12:26 p.m. EST

18 --- Upon resuming at 12:53 p.m. EST

19 JUDGE CRAWFORD: Welcome back.
20 If you were expecting a three-course meal, you
21 would have been disappointed, but hopefully you
22 will have a little more time at the end of the day
23 to engage in revelry. What we now have is not
24 revelry, but cross-examination.

25 MR. LEVINE: Thank you, Judge

1 Crawford. I don't remember the last time I had a
2 three-course meal, unfortunately, thanks to this
3 pandemic. Hopefully I will get one in April when
4 that vaccine shows up and things can open back up.
5 Cross our fingers.

6 BY MR. LEVINE:

7 Q. Hope you had a nice
8 break, Mr. Suhonen.

9 A. Yes. Thank you.

10 Q. In your rejoinder report
11 and your presentation today, you talked about this
12 demand curve shift. Do you recall that, your
13 testimony about that?

14 A. Yes.

15 Q. And you said Dr. Kaplan
16 did not take into account this demand curve shift;
17 is that correct?

18 A. Yes. He did not present
19 such a new demand schedule as the economists would
20 say.

21 Q. Okay. If I can bring up
22 your first expert report at page 39. I will have
23 Ricky put that on the screen once he gets it
24 going.

25 And the second-to-last bullet

1 point there, and it says there:

2 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12 [REDACTED]

[REDACTED]

14 Is that correct?

15 A. Yes.

16 Q. And so then if we could
17 turn to your rejoinder report and look at
18 paragraph 5 -- page 5, paragraph 7.

19 You say:

20 "SC paper demand has
21 shifted upward as PHP
22 introduced a high-quality
23 SCA+/A++ to the
24 market." [as read]

25 So I can show you other places

1 where you say something else, but it's your
2 position that PHP's introduction of this product
3 in 2013 when they fully re-entered into the market
4 caused the demand curve to shift at that time;
5 correct?

6 A. That is partly true. Of
7 course, it remains, in a way, unproved because
8 nobody can tell. But the availability of SCA+
9 from a domestic producer definitely would lead to,
10 to increased demand. And in the absence of PHP,
11 this kind of an increased demand opportunity would
12 have been occupied by someone else, such as
13 exporters from Europe or other SCA+ producers in
14 North America.

15 Q. Okay. So we already
16 talked about the importers, so I don't want to do
17 that again.

18 I want to look at Table 3-1 on
19 page 19 of your first expert report.

20 A. Yes.

21 Q. Ricky, can you bring that
22 up.

23 So this table here has, has
24 the sales of SCA and A+ grouped together, and then
25 it has the total coated mechanical sales grouped

1 together in it. Do you see that?

2 A. Yeah. Those are, if you
3 allow, they are demand numbers or consumption
4 numbers that we are referring, not only sales by
5 someone but total sales.

6 Q. Okay. And if we turn to
7 the next page --

8 A. Yes.

9 Q. -- you do the same type
10 of chart for the period of 2012 through 2018 --

11 A. Yes.

12 Q. -- with the same
13 information; correct?

14 A. Yeah. Of course,
15 different years.

16 Q. Okay. And so if we could
17 bring up the cross slides again. And what I did
18 is I put on these slides, if we can look at Slide
19 4, I put the total SCA, including the A+, and
20 coated mechanical in this graph. And so if you
21 want to crosscheck that against your report and
22 those two tables to verify those numbers are
23 accurate, go ahead and do so. But that's what I
24 did. This comes from tables 3-1 and 3-2 of your
25 reports that we just looked at.

1 A. You are missing the year
2 2012.

3 Q. We will get to 2012
4 later, but I just want to look at it while we were
5 dealing with PHP around. Is that -- is that
6 accurate representation of your numbers for the
7 2008 through 2011 period and then the 2013 through
8 2018 period?

9 A. Yeah. The numbers look
10 very similar, and I would say exactly the same as
11 in our report.

12 Q. Okay. Can we go to the
13 next slide, Slide 5. I added up all the numbers
14 for the SCA and the coated mechanical markets
15 across. So for the period 2008 through 2011,
16 there's 6,205,000 tonnes of SCA; 16,728,000 tonnes
17 of coated mechanical. And when you add those two
18 numbers up, you get this total SCA, coated
19 mechanical market of 22,933,000 tonnes. Do you
20 see that?

21 A. Yes.

22 Q. And then I repeated the
23 exercise for 2013 through 2018, and for 2013
24 through 2018 you get the total SCA of
25 6,721,000 tonnes, a total coated mechanical of

1 16,940,000 tonnes, and then a total combined
2 market there of 23,670,000 tonnes. So you accept
3 that math is correct, and if I get it wrong,
4 someone will let me know later on?

5 A. Well, I cannot -- my
6 brain is not good enough to calculate them
7 together, but the first question that I have: Why
8 on earth have you counted together four years in
9 the past and then from PHP entry onwards six
10 years? These numbers are not comparable as such.

11 Q. These are the numbers you
12 gave us in your report, and you didn't give us
13 2006 and 2007. You gave us 2005. And that seems
14 to be a couple years removed but --

15 A. Yeah.

16 Q. And then we can go to the
17 next slide. What I did was divide the SCA number,
18 the total, the total tonnage there by the total
19 combined SCA coated mechanical market that you
20 contend exists. And for 2008 through 2011, that's
21 27.6 percent of the market is filled by SCA. And
22 from 2013 through 2018, 28.39 percent of the
23 market is filled by SCA.

24 A. Um-hmm.

25 Q. Is that right?

1 A. Yes.

2 Q. And you stated this shift
3 occurred when PHP returned to the market in 2013;
4 is that correct?

5 A. Um-hmm.

6 Q. But this is just a
7 1.3 percent increase in the total consumption of
8 SCA paper in the 2013 through 2018 time period;
9 correct?

10 A. Yeah. Quite unorthodox
11 way of presenting some numbers. But, yeah, I
12 understand your math.

13 Q. Okay. So there's just --
14 that's the market. The same percentage of SCA
15 roughly, approximately, existed in PHP's prior
16 iteration and PHP's renewed iteration; correct?

17 A. Well, more or less, yes.
18 With a little bit, little bit SCA being on the
19 winning side here.

20 Q. Okay.

21 A. Um-hmm.

22 Q. But it's your position
23 the demand curve shifted when PHP was reintroduced
24 into the market?

25 A. Yeah. That definitely is

1 the case.

2 Q. Okay. Let's talk about
3 coated mechanical prices. If we could bring up
4 your 2019 report at page 14 at paragraph 31.

5 You talk about here of this
6 value proposition of SCA+ papers as it relates to
7 coated mechanical papers; correct?

8 A. Um-hmm.

9 Q. You got to say yes or no,
10 sorry.

11 A. Yes.

12 Q. Okay. The court
13 reporter -- sorry, the court reporter can't take
14 down "uh-huh" or something like that when you
15 agree. She has got to take down a yes or no.

16 A. Sorry for that.

17 Q. No problem. No problem.
18 It happens a lot.

19 So there has to be a spread
20 between the price between coated mechanical and
21 SCA+, the same curve just downshifting. Would you
22 agree with that?

23 A. Yes, partly. But, again,
24 there are two issues here which you need to
25 acknowledge. When we are comparing SCA and coated

1 mechanical number 5 and the price series that
2 relate to these, in SCA, we are talking about
3 34-pound product, whereas in, in coated
4 mechanical, the price series is 40-pound product.
5 And this is a funny American way of expressing the
6 grammages, but if you wish to put them into
7 grammage terms, you multiply them by 1.48, and you
8 get the grams per square metre.

9 So, in any case, if you
10 compare 34 and 40, the difference here is 6
11 over -- about 1/6th, so meaning that if you buy
12 one tonne of SCA, you get a total of, of 15 to
13 20 percent more area to print compared to coated
14 mechanical. So, in that sense, the price
15 difference, as it is per tonne basis, it doesn't
16 really tell the actual price difference of these
17 products on an area basis, which the printer
18 appreciate. They are printing area. So in that
19 sense, there is a bigger difference here in terms
20 of price. And the, the attractiveness of SCA in
21 this set up is much bigger than as one could
22 imagine just looking at the per tonne, per tonne
23 price basis.

24 Q. Fair enough. But there
25 still has to be a price differential between those

1 two products to cover quality differential between
2 the two?

3 A. Yeah. Yeah. Right.
4 Right.

5 Q. Okay. And then if we can
6 just bring up [REDACTED] on page 29 of this
7 report, your first report. And we looked at this
8 earlier about pricing here.

9 But, Ricky, if you could zoom
10 in on the top part of the graph around the little
11 bucket area and just cover up that whole graph
12 portion of it? Yeah, that's right.

13 So if I put a little stamp
14 right about here, that's roughly when PHP came
15 back into the market, sometime around then. It's
16 not exact, because it's a graph, but sometime
17 around there right. It's right at the corner of
18 that bucket area; is that correct?

19 A. Yes.

20 Q. Okay. And at that point,
21 the price of SCA continues to drop further upon
22 PHP's re-entry; is that correct?

23 A. Yes, I can see that.
24 Yes.

25 Q. And so, for coated

1 mechanical producers to avoid losing customers to
2 shift to SCA, they eventually have to lower their
3 prices to kind of protect against that
4 substitution; is that right?

5 A. Well, that created a
6 situation where the substitution would occur
7 because the price differential increased a bit in
8 the early part of 2013.

9 Q. Okay. The second half of
10 2013, we see the price is going up there on
11 supercalendered paper.

12 A. Yes.

13 Q. In your expert report,
14 this first one, you attribute that increase in
15 prices to an improvement in the economy in 2013,
16 in the second half of 2013; is that right?

17 A. Part of the story, yes,
18 but not all of it. Of course, one has to
19 understand the bucket here, as you mentioned it by
20 that name. It could have been, but I cannot prove
21 it, but it could have been, let's say, a temporary
22 situation driven by the price expectation of the
23 market because PHP was coming to the market. But
24 then, due to the substitution, it kind of -- this
25 was kind of a very temporary situation in the

1 market, that the prices declined a bit over the
2 period first -- during the first quarter of 2013.

3 Q. Okay. So --

4 A. And the situation
5 recovered by the third quarter of 2013.

6 Q. Well, let's just read
7 paragraph 72 together on page 30 of your report.

8 It says here -- I should
9 remove the little star I put in here.

10 It says:

11 "The improvement to the
12 economy in the third
13 quarter of 2013, general
14 downgrading from coated
15 paper to SCA A+, and
16 consequent boost in SCA
17 paper demand helped
18 restore prices of SCA
19 paper to the two-year
20 average level of
21 2011-2012 and clearly
22 above the 2010 level." [as
23 read]

24 Correct?

25 A. Yes.

1 Q. Okay. So part of that
2 boost came from the improvement to the economy,
3 and then also, you say, from people dropping from
4 coated to SCA because the SCA prices were lower;
5 right?

6 A. That is correct. Though,
7 it doesn't say anything, and I cannot claim that
8 so and so much was due to economy and so and so
9 much was due to other factors. But these are the
10 potential factors that helped the prices in the
11 later part of 2013.

12 Q. Okay. And we can go back
13 to [REDACTED] again on page 29.

14 A. The previous one --

15 Q. Yes. Yes. And if we can
16 put that on one side and then look at paragraph 53
17 of your rejoinder report, on page 18. You will
18 kind of get this all there. No, not that graph.
19 Paragraph 53, please. There, you go.

20 Okay. You say:

21 "In fact, after a
22 temporary price dip in
23 early 2013, the price of
24 SC paper completely
25 recovered to pre-entry

1 levels." [as read]

2 And then you say after that:

3 "Prices of coated number
4 5 continued to decline in
5 line with the demand so
6 that the price difference
7 between coated number 5
8 and SCA diminished from
9 US dollar 64-metric ton
10 in 2012, quarter 4, to
11 zero in 2014, Quarter
12 1." [as read]

13 Is that correct?

14 A. Yes.

15 Q. So basically the coated
16 mechanical producers keep lowering their prices to
17 avoid the grade shifting caused by SCA; correct?

18 A. Yeah, if you like to put
19 it this way. But in a similar fashion, as shown
20 in the shifting demand upwards for SC paper, the
21 coated mechanical demand shifted downwards, and
22 that created a situation that resulted in the
23 price -- on a relative price decline of coated
24 mechanical paper.

25 Q. All right. And down at

1 the bottom of [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

15 Q. Okay. And you called
 16 Resolute an SCB manufacturer. That's how your
 17 report primarily describes Resolute; is that
 18 correct?

19 A. Yes. Following the
 20 Resolute's own, own business plans and
 21 descriptions, that is correct. Yes.

22 Q. Okay. And if we could
 23 turn to page 17 of your first report and look at
 24 paragraph 39. It says here:

25 "Prior to 2012, SCA/A+

1 paper demand was
2 declining three times
3 faster than SCB/SNC+ in
4 percentage terms, but
5 since the re-entry of
6 PHP, the trend has
7 reversed: SCB demand has
8 been dropping
9 precipitously compared to
10 SCA demand." [as read]

11 A. Yes.

12 Q. Did I get that correct?

13 A. Yes.

14 Q. So what's happened since
15 PHP's re-entry is that SCB demand has been
16 dropping, dropping, dropping; correct?

17 A. It has been dropping,
18 yes, in a similar way as SCA has been dropping.

19 Q. Right.

20 A. These are kind of
21 comparisons that have been presented here, yes.

22 Q. But the SCA drop is less;
23 correct?

24 A. You are referring to a
25 period of, from 2012 or '13 onwards, I guess?

1 Q. Correct.

2 A. Yeah. There has been a
3 slighter decline in terms of demand for SCA+
4 compared to SCB and SNC.

5 Q. I think -- you say here
6 that there was a switch. I mean, SCA was dropping
7 a lot heavily prior to PHP's return, and SCB was
8 not dropping as much. But since the re-entry of
9 PHP and its 360,000-metric ton capacity of
10 low-cost production, you now get a lot bigger drop
11 in SCB, whereas SCA is holding much more steady?

12 A. Yes. Yes. I think --

13 Q. And SCA's price has
14 lowered to the point of where it matches almost
15 SCB exactly?

16 A. This is exactly how we
17 read the statistics here, yes.

18 Q. Okay. Let's go back to
19 your rejoinder report on paragraph 13, on page 6.
20 And there's that third bullet there, and it talks
21 about the actions of other North American paper
22 firms.

23 A. Yes.

24 Q. And it says:

25 "In the absence of SCA

1 supply from PHP, some
2 other market participants
3 would have taken
4 advantage of the supply
5 situation."[as read]

6 And you list out four
7 different firms there. And if I add all that up,
8 I think the capacity we get there is about 810,000
9 metric tons per year; is that correct?

10 A. Yeah. I think roughly
11 that. Roughly that, yes.

12 Q. And if we go back to
13 Figure 3.3, and we can leave this up on one side,
14 Ricky, and pull up Figure 3.3 from the first
15 report, on page 18, on the other side.

16 A. Yeah.

17 Q. And focus on the year
18 2012. It shows there that there was 775,000
19 metric tons delivered into North America; correct?

20 A. Um-hmm, yes.

21 Q. So that means these four
22 producers took care of approximately 96 percent,
23 95/96 percent of that 770 -- of their total
24 tonnage they were able to sell into North America;
25 correct?

1 A. Yes.

2 Q. Okay. So what did you

3 mean there by:

4 "The other market
5 participants would have
6 taken advantage of the
7 supply shortage situation
8 absent PHP's return to
9 the market." [as read]

10 A. Well, they could have
11 increased their capacity utilization. They could
12 have made some shifts in terms of product mix.
13 They could have invested in the production
14 efficiency. They could have done this and that to
15 be able to meet that demand. But many of them
16 didn't. And much of the, much of the balance
17 comes from imports.

18 Q. Okay. So they were
19 already selling 96 percent of their capacity, so
20 they could have also raised prices in response to
21 a supply shortage situation; correct?

22 A. Umm, one has to remember
23 that it's not so simple. Everything depends on
24 the location of the suppliers and their kind of
25 relative competitiveness via exchange rates, et

1 cetera. And definitely the importers or the
2 western European producers are also, here, the
3 possible players and action-takers as far as the
4 market is concerned, assuming that PHP did not
5 enter the market.

6 Q. Okay. But assuming PHP
7 did not enter the market, a North American
8 supplier selling paper into North America could
9 have also raised their prices to address this
10 supply shortage situation and made more money as a
11 result of it?

12 A. Possibly. But you cannot
13 be so -- say so waterproofly this because there's
14 also the import supply that is a part player of
15 the whole game. But, again, very difficult to say
16 who is the -- or how the supply -- or the cost --
17 what is the cost structure of the following years
18 in this hypothetical situation, as you made, that
19 PHP did not enter the market.

20 Q. Did you listen to
21 Dr. Hausman's testimony yesterday?

22 A. Yes, I did.

23 Q. He called the import
24 supply a residual supply. Do you agree with his
25 testimony?

1 A. The connotation of
2 residual can be understood in a different way. I,
3 I understood his term "residual" as the balance,
4 not that it would be a minuscule amount. It is
5 just a balance.

6 Q. Okay. So it's -- it
7 fills up the remaining demand sought by the North
8 American purchaser?

9 A. Yeah. Of course, of
10 course. The exporters and local producers -- by
11 "local" I mean North American -- are competing
12 head-to-head with each other. So in that sense,
13 it's true, yes.

14 Q. Okay. One of the things
15 you testified to in your presentation earlier
16 today was the 2018 price increase, which you said
17 shows there's been no damage as a result of the
18 reintroduction of PHP; is that correct?

19 A. Yes.

20 Q. And Dr. Hausman testified
21 that this was going to be -- this price increase
22 was a temporary price increase; you recall that?

23 A. I remember that he has
24 written so, that it has been a temporary one, yes.

25 Q. Okay. Do you agree with

1 that, that the price increase in 2018 is a
2 temporary price increase?

3 A. Not really, because if
4 we, if we look at how the prices have developed in
5 2018, '19 and '20, we can see that we are still on
6 a higher level than earlier.

7 Q. Okay.

8 A. There was an increase up
9 to the first quarter of 2020, and after that,
10 there has been a decreasing price due to -- as we
11 know, this COVID situation is treating the
12 industry in a difficult way. But the prices, the
13 current prices, are still relatively high.

14 Q. All right. So if we can
15 take a look at your 2019 report, at page 29, and
16 look at paragraph 71. You say there:

17 "Based on our review of
18 pulp prices and the
19 secular decline of the SC
20 market, we do not expect
21 the 2018 price rise to be
22 a lasting phenomenon." [as
23 read]

24 This was in your 2019 report;
25 did I get that correctly?

1 A. Yes.

2 Q. So just like Dr. Hausman,
3 you thought the 2018 price increase was not going
4 to be lasting; correct?

5 A. Yes.

6 Q. And you also see that --

7 A. It doesn't say when it's
8 going to go down. This is a cyclical industry.
9 When the peak, peak took place in 2019. And
10 thereafter, in 2020, there has been a kind of a
11 downcycle starting again in the industry.

12 Q. Okay. So at the bottom
13 here, you say:

14 "SC paper prices tend to
15 follow the pulp price
16 cycles with some lag, so
17 we expect, also, SC paper
18 prices to decline towards
19 summer 2019." [as read]

20 Correct?

21 A. Yeah.

22 Q. Okay. Now, in here, you
23 also mention that there's secular decline of the
24 SC market. You agree with that, that there's
25 secular decline in the SC market obviously?

1 A. Nobody denies that.

2 Please appreciate that this is a forward-looking
3 statement; that, of course, in retrospect, it may
4 be, may be also -- it's obvious that, based on
5 these drivers, as presented here, the situation
6 has been much more, let's say, or much better than
7 estimated at the time of writing this report.

8 Q. If you could bear with me
9 for one moment. If we can turn to your 2020
10 report and look at page 9, paragraph 24. Go to
11 the next page, actually, Ricky, and zoom in on
12 Table 2-2. I think you talked about this earlier
13 in your presentation, but you disagree with
14 Dr. Hausman's minus 1.5 price elasticity figure;
15 is that correct?

16 A. Yes.

17 Q. And so that minus
18 1.5 figure is kind of, not roughly, but it's kind
19 of in the average, somewhere in the middle of the
20 numbers that you see in Table 2-2; is that
21 correct?

22 A. Yes. But, again, why
23 would you on earth take an average of those? I am
24 asking you: Why do you take an average of those?

25 Q. Listen, I'm --

1 A. Let me explain. Short
2 run is the immediate reaction of the market while
3 long run is a long enough time to let supply and
4 demand clear each other so that the market is
5 cleared. It doesn't refer to any time period, as
6 such. It doesn't mean that it's one year or two
7 years. It is just long enough to make the market
8 clear. So the only relevant point here is the
9 long-run elasticity, not the short run. So why on
10 earth would one take an average out of this? This
11 makes me a little bit hilarious.

12 Q. I'm a lawyer, and I will
13 leave the economics to Dr. Hausman and other
14 people, so --

15 A. Yeah. Okay.

16 Q. But, I mean, you also say
17 that there's a negative elasticity in your
18 figures; right?

19 A. Sure. It's -- demand
20 elasticity is, by definition, a negative
21 elasticity.

22 Q. Okay. And so by implying
23 a negative elasticity, you're essentially implying
24 that there's going to be some measure of damage as
25 a result of the SC paper demand, but you just --

1 you have an issue with how we quantify all that;
2 is that correct?

3 A. Well, this relates to the
4 demand curve and the slope of it. But what we are
5 saying is that the demand curve didn't remain in
6 its position. It shifted due to substitution
7 effect. And the main demand shifters are economic
8 developmental income of the buyers. It can be the
9 prices of substitute products. It can be the
10 change in tastes. It can be whatsoever, except
11 the price itself. So this is basic economics.
12 And this is, as Dr. Hausman said, it is learned in
13 the third class of economics at a preliminary
14 stage. So in that sense, it's very well
15 understood also by Mr. Hausman -- or Dr. Hausman
16 that he is interpreting these numbers in a false
17 fashion.

18 Q. If we could look at
19 paragraph 55 of this report on page 19. You write
20 here:

21 "According to AFRY
22 estimates, the deliveries
23 from PHP over the period
24 2013 to 2016 averaged
25 [REDACTED] per

1 year. This accounts for
2 about 20 percent of the
3 high-gloss, uncoated
4 mechanical SCA/SCB/SNC
5 deliveries and about
6 9 percent of the total
7 high-gloss, uncoated
8 mechanical and coated
9 number 5 deliveries in
10 North America during the
11 four-year period." [as
12 read]

13 Did I read that correctly?

14 A. Yes.

15 Q. Okay. Now, I notice a
16 couple times in your report you reference this
17 [REDACTED] per year figure. You don't
18 provide any sources in your reports for that
19 calculation; is that correct?

20 A. There is no source
21 indicated here, but there are, there are sources
22 that show that this estimate is not far from the
23 truth.

24 Q. Okay. And you say that,
25 if we have this, this combined market here that

1 you have put in here of SCA/SCB/SNC deliveries and
2 coated number 5 deliveries, PHP represents
3 9 percent of that total volume; is that correct?

4 A. Yes. But it doesn't
5 include coated Number 4 at all. So, in that
6 sense, one should not look at this 9 percent so
7 seriously. It just shows what the share is.

8 Q. I'm just going by what's
9 in your report here.

10 A. Yeah.

11 Q. And you said 9 percent.

12 A. Yeah.

13 Q. You'd agree with me that
14 the increase of capacity caused by PHP's return to
15 the market of even just 9 percent in this combined
16 SCA, SC coated number 5 market would cause prices
17 to drop?

18 A. Well, I said the shift in
19 demand did not suggest such a decline. As the
20 price at the end of 2012, it was something like
21 928. By the end of 2013, it was 915. So there
22 was an obvious \$9 decline, which could have been
23 caused by other factors than the entry of PHP.

24 Q. But that's just the SC
25 price. You didn't have the combined coated/SC

1 price for this hypothetical market you are talking
2 about here?

3 A. Well, if you are buying
4 wheat flour and barley flour, you don't combine
5 the prices. I mean, the combined barley and wheat
6 flour price is what should -- it doesn't really
7 make any sense. So that's why it cannot be said
8 here. Of course, one could say that the, the
9 weighted average price is this and that. But in
10 this case, we haven't gone into that extent.
11 That's rather questionable.

12 MR. LEVINE: Judge Crawford, I
13 can confer with my colleagues for a few minutes.
14 I might be finished with the cross-examination.
15 I'm not making a promise that I am, but I would
16 like to have 90 seconds to 2 minutes to confer.

17 JUDGE CRAWFORD: You can have
18 two minutes.

19 MR. LEVINE: Thank you very
20 much, Judge Crawford.

21 Judge Crawford, thank you very
22 much, for the time to confer.

23 Mr. Suhonen, I appreciate your
24 time very much. Thank you very much. I will pass
25 the witness back to Canada for any further

1 examination, and thank you again. Stay safe,
2 please.

3 THE WITNESS: Thank you.

4 MR. LEVINE: You're welcome.

5 JUDGE CRAWFORD: Canada.

6 MR. NEUFELD: Thank you.

7 Thank you very much, Judge Crawford. You will be
8 very happy to know that we have no further
9 questions for Mr. Suhonen, and I will leave it to
10 the Tribunal to see whether they have any
11 questions of their own.

12 JUDGE CRAWFORD: Do either of
13 my colleagues have questions to ask?

14 DEAN CASS: I have just a
15 couple of questions.

16 QUESTIONS FROM THE TRIBUNAL:

17 DEAN CASS: Mr. Suhonen, your
18 chart, [REDACTED]

[REDACTED]

25 THE WITNESS: [REDACTED]

1 THE WITNESS: Yes.

2 DEAN CASS: Is the price
3 elasticity particularly important in damages
4 calculation in the magnitude of damages, or is it
5 more important in the composition of the damages,
6 whether more damage flows from lost sales or from
7 price erosion? So as the elasticity increases,
8 wouldn't there be more lost sales relative to the
9 price erosion?

10 THE WITNESS: If price
11 elasticity increases, the damage -- would I say it
12 this way because we are talking about profits, but
13 not prices. The price impact would be smaller,
14 the higher is the elasticity. Because if the
15 elasticity is high, we can see the demand curve as
16 a horizontal curve. And there, any shift in, in
17 supply would not cause any change in price;
18 whereas, if it's close to zero, we can see that
19 the demand curve is, in fact, a vertical line.
20 And, there, that would maximize the, let's say,
21 the, the impact on price. So that is one of the
22 critical input elements in any kind of a model
23 that would calculate the damages because the
24 damage calculation is a direct function of that
25 assumption. And what I am criticizing here, maybe

1 indirectly, is that one can enter whatever number
2 there to get a satisfactory damage estimate and
3 make afterwards some sort of, some sort of a
4 justification for the used demand elasticity. So
5 it is very sensitive to that kind of an
6 assumption. And I would say that this kind of
7 model -- we call it -- in the consulting business,
8 we call it garbage in, garbage out models. It is
9 so sensitive to the inputs that you create for the
10 model.

11 DEAN CASS: Let me just make
12 sure I have stated the question correctly.

13 I understand the impact of
14 different price elasticities on the price as you
15 shift the supply or as you shift the quantity and
16 demand. But if you have a relatively price
17 elastic demand for a product, as you change the
18 supply, would you not have a greater impact on the
19 number of sales?

20 THE WITNESS: Yeah. There
21 would be a bigger, let's say, sales volume.
22 Right.

23 DEAN CASS: Thank you. I have
24 no other questions from me.

25 THE WITNESS: Thank you.

1 JUDGE CRAWFORD: This
2 concludes the schedule for today. Tomorrow
3 morning we start with the expert presentation of
4 Peter Steger at two o'clock The Hague time, 9
5 o'clock Montreal time, I think. And he will be
6 cross-examined with redirect.

7 DEAN CASS: Do we start at
8 eight clock Montreal time?

9 JUDGE CRAWFORD: Eight o'clock
10 EST. What is EST?

11 DEAN CASS: That's eastern
12 time, eastern standard. So that would be -- I
13 think we are at eight o'clock.

14 JUDGE CRAWFORD: Right.

15 PROFESSOR LÉVESQUE: Yes,
16 eight.

17 JUDGE CRAWFORD: Eight o'clock
18 your time, two o'clock our time.

19 DEAN CASS: I just don't want
20 to show up late.

21 JUDGE CRAWFORD: Then, in the
22 afternoon, we have the closing statement of
23 Canada -- I'm sorry. I am looking at Saturday.
24 Once we have heard Peter Steger and redirect, that
25 finishes for tomorrow.

1 And then, on Saturday, we have
2 the closing statement of the claimant and the
3 closing statement of Canada and their respective
4 rebuttals, which will bring us to an end of the
5 proceedings.

6 I would just say in relation
7 to closing statements that you should focus on the
8 key arguments, substantive arguments, and
9 particularly the arguments that relate the
10 economic material we have heard, to the extent
11 it's capable of objective assessment, and the
12 legal arguments relating to the application of the
13 treaty, because that's a matter of which
14 relatively little attention has been paid. There
15 are also some points about attribution and so on,
16 which will be taken up in the course of that
17 discussion.

18 But tomorrow we have only
19 Mr. Steger, which will conclude the witnesses.

20 Are there any questions?

21 MR. NEUFELD: No questions
22 from Canada.

23 MR. LEVINE: No questions from
24 claimant. And thank you very much to the
25 Tribunal.

1 JUDGE CRAWFORD: Thank you to
2 the parties for their continued cooperation. The
3 Tribunal is adjourned for the day. We will start
4 again at the relevant times tomorrow morning or
5 afternoon, as the case may be. Thank you very
6 much.

7 --- Whereupon matter adjourned at 1:51 p.m., to be
8 resumed Friday, November 13, 2020, at 8:00 a.m.
9 EST.

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