

August 8, 2003

Grant Aldonas,  
Under Secretary for International Trade,  
Central Records Unit, Room 1870,  
U.S. Department of Commerce  
Pennsylvania Avenue and 14<sup>th</sup> Street, NW  
Washington, DC 20230

**Attn: Softwood Lumber Policy Bulletin**

Dear Under Secretary Aldonas:

The BC Coalition for Sustainable Forest Solutions welcomes the opportunity to provide comments on the policy bulletin entitled "*Proposed Policies Regarding the Conduct of Changed Circumstance Reviews of the Countervailing Duty Order on Softwood Lumber from Canada*" (C 122 839) issued by the US Department of Commerce (DOC) on June 24, 2003 in the Federal Register for comment (Federal Register, Vol. 68, No. 121, page 37456).

The BC Coalition for Sustainable Forest Solutions is a broad alliance of concerned citizens, First Nations, labour, environmental and community organizations in British Columbia, Canada. The purpose of the Coalition is to develop sustainable solutions for forestry in British Columbia and a durable resolution to the softwood lumber dispute. For more information, including a member list please see [www.forestsolutions.ca](http://www.forestsolutions.ca).

We submit that policy reforms towards establishing market-based pricing mechanisms in British Columbia, and in other Canadian provinces, can be crafted in a manner that also furthers the long-term public interest in BC's forests and communities. It is our submission that policy reforms that achieve the latter goal will have greater long-term stability as a result.

To this end, over a period of years we have developed a complete package of BC-based reforms that we submit will ensure that full value is paid for timber extracted from BC Provincial Forests, by establishing market driven pricing mechanisms in a manner fully respectful of a) the public land nature of our forest tenure system in BC, and b) the unextinguished Aboriginal Title of indigenous people's in this land. The Coalition's package of reforms is embodied in a piece of draft legislation included as our comment on the policy bulletin.

Highlights include of our Forest Solutions legislation include:

-establishing a desired minimum threshold for tenure redistribution (50% of land or volume under major tenures) that must be met over a specified time period, and restricting corporate compensation for such a redistribution (ss. 1(1), 10, 11,13)

-establishing the BC Timber Market, involving both timber sales and regional log yards (ss. 1(1) 14-23))

-requiring that administrative stumpage be set based on pricing data from the BC Timber Market (consequential amendments 8)

-requiring that major licensees with manufacturing facilities must "go to the market" for at least 50% of their processing requirements (s. 14)



\*

-establishing environmental and social justice safeguards to avoid cost reductions intended to offset tenure and pricing reforms (Parts 2 and 3).

Thank you for your consideration.

Sincerely,

BC COALITION FOR SUSTAINABLE FOREST SOLUTIONS

Jessica Clogg,  
Spokesperson

**BC Coalition for Sustainable Forest Solutions  
Comments**

**on**

**U.S. Department of Commerce Softwood Lumber Policy Bulletin  
(C 122 839) (June 24, 2003)**

---

**I. Standard for a Market-Based Timber Sales System**

**Summary of Comment:** An alternative approach proposed by the BC Coalition for Sustainable Forest Solutions represents a more effective and durable means to achieve the substantive purposes of the policy bulletin in the British Columbia context. The Coalition's proposal, embodied in a draft piece of British Columbia legislation (quoted in full below) should inform a revision to the material presently set out under Part I ("Standards for a Market-Based Timber Sales System") of the policy bulletin.

[NAME OF MEMBER]

**BILL M xxx – 2003  
FOREST SOLUTIONS FOR SUSTAINABLE COMMUNITIES ACT  
[July 18 DISCUSSION DRAFT]**

**Preamble**

WHEREAS BC's rural communities are hard hit by continuing provincial government cutbacks, environmental rollbacks and forest policies that favour corporations at the expense of local economies, community security and self-determination;

WHEREAS only a handful of corporations control BC's public forests despite calls for redistribution of tenure to support First Nations, local communities, workers and small businesses;

WHEREAS BC's public forests are a magnificent resource that belong to all the people of the province, subject to the prior interests of Aboriginal people;

WHEREAS Aboriginal title and rights in BC are recognized and affirmed by the Canadian Constitution;

---

*\*Release of this draft private members bill by the Coalition for Sustainable Forest Solutions should not be taken to imply that each member supports every element of the bill taken individually, but rather that there is broad support for the draft Forest Solutions for Sustainable Communities Act as a package of reforms which, taken together, embody the principles set out in the Forest Solutions Citizens' Declaration.*

WHEREAS poor logging and road building can adversely affect drinking water, fish, wildlife, biodiversity and other ecological and cultural values;

WHEREAS the export of raw logs continues to increase while local mills shut down or stand idle;

WHEREAS British Columbians want full value from their public resources;

WHEREAS fully functioning log markets (many sellers, many buyers) are required to establish fair market value and create the transaction base necessary for attracting investment;

WHEREAS fair access to wood supply is critical to the development of a added value industry that supports jobs and economic activity in all of BC's regions;

WHEREAS democratic local control combined with large, regional log markets that provide a secure and steady supply to local mills will provide a new social contract that keeps jobs in BC communities, minimizing impacts on existing workers and enhancing local employment;

WHEREAS more local sawmilling results in more fibre supply for local pulp and paper producers;

WHEREAS a durable resolution to the softwood lumber dispute must be based on the following principles in the long-term interests of BC's forests and communities:

- (a) Reconcile Aboriginal and Crown title
- (b) Create, implement, and enforce forest management standards that promote the long-term health of BC's forest ecosystems
- (c) Enhance public control and oversight of our forest resources, including rebuilding the public service
- (d) Redistribute a majority of tenure at the lowest taxpayer cost in order to create a new social contract in BC's forests and to provide greater opportunities for First Nations, communities and local jobs
- (e) Ensure the public gets full value for forest resources through transparent log markets and related timber pricing reforms
- (f) Ensure broad access to the timber supply and strengthen raw log export restrictions for the development of a strong, diverse value-added industry

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

## PART 1 INTERPRETATION AND APPLICATION

### Definitions

1(1). In this Act

“arms length” means, in the case of the Government of British Columbia, administered separately from agencies responsible for forest-related planning, regulation and enforcement;

“desired minimum threshold for forests under local control” means 50% of the Provincial allowable annual cut authorized under major licences that are volume-based immediately prior to March 31, 2003, and 50% of the area of Crown land in each major area-based licence immediately prior to March 31, 2003;

“ecological integrity” means the abundance and diversity of organisms at all levels, and the ecological patterns, processes, and structural attributes responsible for that biological diversity and for ecosystem resilience through time;

“fair share of benefits” means financial and other benefits, including ecosystem services and the asset value of forests, to provide a high quality of life for both Aboriginal and non-Aboriginal people, and to support diverse, resilient, well-served communities with the capacity to carry out local management of resources;

“full value” means the market value, or a minimum stumpage rate that reflects all Crown costs including planning, administration, operating costs, reforestation and restoration, road maintenance and the opportunity costs foregone by not retaining the resource to provide ecological services, whichever is greater;

“independent businesses” means a person who qualifies or would have qualified to be registered under categories 1-3 of the small business forest enterprise program set out in the *Small Business Forest Enterprise Regulation*, B.C. Reg. 265/88, and who, except in circumstances set out in section 21, has not entered into any agreement with the holder of a major licence who owns or leases processing facilities in British Columbia with respect to the disposition of timber harvested pursuant to a timber sale licence;

“local buyers” means persons whose residence or place of business is located within commuting distance from the area where wood was harvested or where the log yard is situated, or a First Nation on whose territory the harvesting occurred or the log yard is situated;

“log transactions” means all ways in which logs are transferred from one party to another including bartering, trading, selling, or exchange for benefit, monetary or otherwise;

“log yard” means a site where incoming logs are unloaded, spread out, scaled, bucked if necessary, graded, marked, cleaned, and sorted into the various species and grades of product;

“maintenance and restoration of ecological integrity” means that the biological richness and the ecosystem services provided by natural terrestrial and marine processes are sustained at all scales through time (e.g., species richness, vegetation diversity, soil productivity, water quality, predator–prey interactions, nutrient cycling, hydrology, disturbance regimes, succession, carbon storage), including maintaining the structure, function, and composition of natural ecosystems, and more specifically:

- (a) representing the biological diversity of the region in a system of protection areas according to the principles of conservation biology;
- (b) maintaining the natural diversity of species, ecosystems, seral stages and ecosystem functions including biological legacies (e.g., bear dens, wildlife trees, snags, coarse woody debris) across the landscape;
- (c) restoring damaged or degraded ecosystems;
- (d) ensuring that streamflow, channel characteristics, and water quality are within the range of natural variability;
- (e) protecting and restoring red- and blue-listed species and their habitats;
- (f) protecting and restoring red- and blue-listed and regionally rare ecosystems;
- (g) maintaining and restoring viable populations of all native species, including genetic variants, across their range;
- (h) maintaining the structure, function, and composition of terrestrial, marine and freshwater ecosystems, including those ecosystems of the land–sea interface and hydroriparian system; and
- (i) maintaining and restoring soil productivity and maintaining slope failures within natural rates.

“major licence” has the meaning given to it in the *Forest Act*, R.S.B.C.1996, c. 157 except that for the purposes of this Act, major licences already controlled by communities or First Nations are excluded, including the Mission Tree Farm Licence (No. 26); the Clayoquot Tree Farm Licence (No. 57); and the Revelstoke Community Forest Corporation Licence (No. 56);

“people of British Columbia” means all natural persons resident in the Province of British Columbia;

“precautionary principle” means, when applied in the forestry context, that

- (a) actions that may lead to irreversible changes to ecosystem function and resilience are avoided,
- (b) alternative management strategies are developed and evaluated, including the alternative of no management intervention, to identify

alternatives that are least likely to impair the viability of the species or ecosystem,

- (c) the onus is on the proponent of a development to demonstrate that proposed management activities are not likely to impair ecosystem function and resilience,
- (d) where previously unanticipated threats to ecosystem integrity are identified or knowledge of ecosystem processes increases, timely, efficient and effective corrective actions are taken,
- (e) decisions regarding use of tenured and public forest lands in BC are made with mindfulness to the needs of future generations.

“public trust” means the collective interest of the people of British Columbia in the maintenance and restoration of ecological integrity and biological diversity on tenured and public forest lands in British Columbia for the environmental, social and economic benefit of present and future generations, and includes the rights outlined in section 3 of this Act;

“tenured and public forest lands” are all lands:

- (a) classified as forest land pursuant to the *Forest Act*, R.S.B.C 1996, c. 157, s. 4 prior to May 30, 2002,
- (b) in Provincial forests as of [date Act is introduced];
- (c) Schedule A or Schedule B land referred to in any of the agreement listed in section 12 of the *Forest Act* and entered into under that Act, subject to existing Aboriginal title.

(2) Words and expressions not defined in this Act have the meaning given to them in the *Forest Act*, R.S.B.C. 1996, c. 157 and the *Forest Practices Code of British Columbia Act* R.S.B.C. 1996, c. 159 except where the context indicates otherwise.

## **The Government of British Columbia is bound**

- 2. This Act binds the Government of British Columbia.

## **PART 2 PUBLIC TRUST**

3. In relation to tenured and public forest lands the people of British Columbia, both present and future generations have the right to:

- (a) the maintenance and restoration of ecological integrity;
- (b) clean water and the protection of domestic use watersheds;
- (c) clean air;
- (d) the application of the precautionary principle in the case of imperfect information or uncertainty;
- (e) payment of the full value of forest resources when they are logged;
- (f) a fair share of the benefits from the ecosystems in which they live;

- (g) full disclosure and unfettered public access to information regarding public lands and waters, their biological and physical resources and management thereof, with the exception of sensitive First Nations cultural information;
- (h) be involved in land use decision-making in a manner that is broadly participatory, respects the diverse values, traditions, and aspirations of local and First Nations communities, and incorporate the best of existing knowledge (traditional, local, and scientific).

4(1) The Government of British Columbia shall give effect to the rights set out in section 3 in the allocation, transfer, replacement, designation, planning, management and use of tenured and public forest lands by any person, and in any related legislation or policy.

(2) Without limiting the generality of subsection 4(1), the Government of British Columbia

- (a) shall not privatize or deregulate tenured and public forest lands, and
- (b) shall maintain oversight of transfer, replacement, consolidation and subdivision of tenures through:
  - (i) a requirement for prior consent,
  - (ii) a requirement for public hearings and First Nations accommodation prior to granting consent, and
  - (iii) a power to impose conditions on consent.

### **Right of action**

5. Any natural person resident in the Province of British Columbia may commence a civil action in the Supreme Court of British Columbia on his or her own behalf against any person, or body of the Government of British Columbia, which is alleged to be responsible for an action or failure to act that violates the public trust, including rights outlined in section 3.

### **Common Law Rules**

6(1) No person is prohibited from commencing an action under section 5 by reason only that he or she is unable to show

- (a) any greater or different right, harm or interest than any other person; or
- (b) any pecuniary or proprietary right or interest in the subject matter of the proceeding.

(2) No action under section 5 shall be dismissed on the ground that

- (a) the public trust is not irrevocable or certain;
- (b) the beneficiary cannot be identified; or
- (c) an authority has the power to authorize an act that may impair a right set out in section 3.



## **Remedies**

7(1) In respect of an action under section 5, the Supreme Court may

- (a) grant an interim, interlocutory or permanent injunction;
- (b) grant a declaration;
- (c) award damages;
- (d) award costs; and
- (e) grant such other remedy that the Supreme Court considers just.

(2) In addition to, or instead of, any order or award made under subsection 1, the Supreme Court may

- (a) order the defendant to establish and maintain a monitoring and reporting system in respect of any of its activities;
- (b) order the defendant to restore or rehabilitate any part of the natural environment, or to pay the Minister of Water Land and Air Protection an amount to be used for restoration or rehabilitation;
- (c) order the defendant to take preventative measures specified by the Supreme Court;
- (d) suspend or cancel an agreement, licence or permit issued to the defendant, or the defendant's right to obtain or hold an agreement, licence or permit;
- (e) order that the Minister of Water, Land and Air Protection conduct a review of the environmental impact of a land use decision, designation, plan, objective, target or forest practice;
- (f) order the defendant to provide financial assurance for the performance of a specified action;
- (g) order the defendant to present proof of compliance with the order of the Supreme Court; and
- (h) make any other order that the Supreme Court considers just.

(3) Where the Supreme Court makes an order under subsections (1) or (2) it must direct the Minister of Water Land and Air Protection to monitor compliance with the order.

## **PART 3 RECONCILIATION OF CROWN AND ABORIGINAL TITLE**

8(1) The Government of British Columbia shall give effect to the following principles in the allocation, transfer, replacement, designation, planning, management and use of tenured and public forest lands by any person, and in any related legislation or policy:

- (a) Crown title must be reconciled with Aboriginal title;
- (b) Aboriginal laws and tenure systems define Aboriginal title, which is held collectively by a First Nation;

- (c) the process of allocating resources and the actual allocation of the resource must reflect the prior interest of First Nations with Aboriginal title to the land;
- (d) the Government of British Columbia must consult with affected First Nations in good faith, with the intent of substantially addressing their concerns, and endeavour to seek workable accommodations, regardless of the existence of judicial recognition of their rights or a treaty;
- (e) first priority must be given to avoiding infringement of Aboriginal title and rights, not justifying infringements;
- (f) Aboriginal title has an inescapable economic component, thus, in keeping with the duty of honour and good faith on the Crown, remuneration must be provided to First Nations for resources extracted from their territories;
- (g) where Aboriginal title has been infringed, fair compensation will ordinarily be required;
- (h) Aboriginal title is subject to an inherent limit that does not allow uses of the land that would prevent the land from sustaining future generations of Aboriginal people; this limit must be respected by both Aboriginal and non-Aboriginal people;
- (i) based on recognition of Aboriginal title, the Government of British Columbia and First Nations will develop new mechanisms to share at least equal decision-making authority regarding lands and resources on First Nations territories, including but not limited to determination of allowable annual cut, tenure allocation and land use planning;
- (j) the Government of British Columbia must:
  - (i) respect, preserve, and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity;
  - (ii) promote the wider application of such knowledge, innovations and practices with approval and involvement of the holders;
  - (iii) encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices; and,
  - (iv) in accordance with the Decision VI/10 of the Parties to the Convention on Biological Diversity, Annex 2 ensure that full and informed consent from First Nations has been provided regarding resource activities on their territories.

(2) The principles outlined in subsection 8(1) shall be interpreted consistently with judicial precedent regarding constitutional protection of Aboriginal title and rights.

## **PART 4**

### **MEASURES TO ENHANCE LOCAL SELF-DETERMINATION**

#### **Local democratic control of forests**

9. In addition to the reductions set out in section 2 of the *Forest Revitalization Act*, S.B.C. 2003, c.17, the minister must cancel one or more agreements held by major licence holders who:
- (a) export raw logs;
  - (b) close or reduce production at a timber processing facility that they operate or own in whole or in part;
  - (c) demonstrate a pattern of recurring non-compliance with the *Forest Practices Code of British Columbia Act*, R.S.B.C. 1996, c. 15 ; the *Fisheries Act*, R.S.C. 1985, c. F-14; the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, or other relevant federal or provincial legislation, or are responsible for harm to persons or the environment arising from a single serious act of non-compliance;
  - (d) exceed maximum cut control requirements, including species specific cut levels for high value species such as cedar;
  - (e) do not meaningfully consult with First Nations and seek workable accommodations of their constitutionally protected title and rights; or,
  - (f) are in violation of the rights set out in section 3 of this Act.

10(1) If, within 5 years of the coming into force of this Act, the additional land or volume made available pursuant to section 9 of this Act totals less than the desired minimum threshold for forests under local control, then the area of Crown land in tree farm licences and timber licences and the volume authorized in other major licences are reduced to meet or exceed that threshold.

(2) Additional reductions to meet or exceed the desired minimum threshold for forests under local control shall be proportionally distributed amongst all major licensees unless a local management authority referred to in section 12 officially requests an alternative approach.

11. In entering into an agreement under the *Forest Act* granting rights to harvest Crown timber in relation to land or volume made available through reductions under sections 2, 3 and 5 of the *Forest Revitalization Act*, or made available pursuant to section 9 of this Act, the minister or a person authorized by the minister, on behalf of the government, shall prioritize the following in reallocating such land or volume:
- (a) long-term area-based tenures designed to accommodate First Nations;
  - (b) community forest agreements that require the holder to sell all or a representative portion of logs harvested through a log yard;
  - (c) timber sales licences of volumes less than 10,000 cubic metres to independent businesses who do not hold major licences;
  - (d) timber sales licences structured as harvest and haul contracts in which the Crown retains its title to the trees after harvesting;
  - (e) woodlot licences that require the holder to sell all or a representative portion of logs harvested through a log yard.

## **Local Management Authorities**

12. Local management authorities may be established in order to give effect to the Government of British Columbia's public trust obligations and its fiduciary obligations to First Nations.

- (1) Local management authorities shall:
  - (a) provide for a government-to-government role for First Nations in their respective territories;
  - (b) include a number of First Nations appointees from their respective territories at least equal to the number of Provincial Government appointees;
  - (c) undertake jurisdictional and management responsibilities within the context of the public trust and the constitutionally protected rights of First Nations; and
  - (d) be subject to the right of action set out in section 5 of this Act.
- (2) The Provincial Government appointees to the local management authority must:
  - (a) be drawn from sectors of interest that are broadly representative of the full range of forest values to present and future generations;
  - (b) commit themselves to operating within the parameters of the rights and principles outlined in sections 3 and 8 of this Act; and
  - (c) include representatives of local government.
- (3) The Aboriginal appointees to the local management authority must:
  - (a) be appointed by the relevant First Nation; and,
  - (b) include traditional land users and traditional knowledge holders.
- (4) The Lieutenant Governor in Council may make regulations regarding:
  - (a) the process for establishing local management authorities;
  - (b) the jurisdictional and management responsibilities that may be undertaken by local management authorities, or any particular local management authority;
  - (c) the rules of procedure, decision-making structures and operations of local management authorities; and
  - (d) stumpage revenues or other funds to be allotted for the operations of local management authorities.
- (5) In making regulations under subsection 12(4) the Lieutenant Governor in Council must take into account proposals made by proponents of local management authorities.

## **No Compensation**

- 13(1). It is conclusively deemed for all purposes, including for the purposes of the *Expropriation Act*, that no expropriation or injurious affection occurs as a result of
- (a) the enactment of this Act or a regulation made under this Act, or
  - (b) anything done or omitted in the exercise or performance or purported exercise or performance of a power or duty conferred under this Act, or the regulations.

- (2) If damages or compensation is precluded by this section in respect of a matter, a person must not commence or maintain proceedings in respect of that matter
- (a) to claim damages or compensation of any kind from the government, or
  - (b) to obtain a declaration that damages or compensation is payable by the government.
- (3) This section applies despite any other enactment including the *Expropriation Act*.
- (4) For greater clarity, non-monetary compensation, including tenure enhancements on or privatization of tenured and public forest lands, is also precluded.

## **PART 5**

### **MARKET-BASED PRICING**

#### **The BC Timber Market**

14. (1) No major licensees with manufacturing facilities shall have allowable annual cut under tenure that exceeds 50% of their total BC processing capacity, or their actual processing averaged over the previous five years, whichever is less.

(2) The Minister of Forests, by written notice, must require the holder of a major licensee with manufacturing facilities to take such steps as are necessary to meet the requirements of subsection 14(1).

15(1) The BC Timber Market is hereby established, and is comprised of

- (a) a Timber Sales Exchange
- (b) a Log Exchange

(2) The BC Timber Market shall be arms length from any person who sells logs to, or buys logs from the Log Exchange, and from any tenure holder.

16. The purposes of the BC Timber Market include

- (a) providing transparent, credible values for all grades and all species of logs in a manner appropriate for calculating stumpage for non-market wood;
- (b) maximizing the value of the timber supply, including providing broad access to the timber supply for non-tenured processors;
- (c) encouraging a profitable, competitive, forest industry in BC;
- (d) supporting a variety of tenure types across BC;
- (e) providing access to markets, marketing expertise and distribution channels for primary wood producers;
- (f) encouraging the value-added utilization of logs of all qualities; and,
- (g) securing reliable markets and supply.

17 (1) To ensure values provided by the BC Timber Market are accurate the Ministry of Forests shall retain responsibility for all scaling.

- (2) With respect to log yards established as part of the Log Exchange:
- (a) scalers are responsible for scaling, sort coding and determinations with regard to bucking or cutting to maximize the value of the log;
  - (b) a minimum of one scaler at each log yard must be trained in the Scribner system;
  - (c) a random selection of representative logs in each market must be scaled according to both the BC scaling system and the Scribner system and resulting sales prices tracked separately.

### **Timber Sales Exchange**

18(1) The Timber Sales Exchange is responsible for the management of an orderly competitive market in timber sales licences made available by the Ministry of Forests on tenured and public forest lands.

- (2) The functions of the Timber Sales Exchange include, but are not limited to
- (a) setting minimum bids;
  - (b) advertising sales;
  - (c) collecting bids;
  - (d) awarding sales to the highest bidder;
  - (e) tracking all sales information, including price, and timber characteristics;
  - (f) collecting and reporting sales and pricing data;
  - (g) ensuring all bidders and sellers abide by prescribed rules of the exchange.

### **Log Exchange**

19(1) The Log Exchange shall establish one or more log yards in each region of the province.

(2) Regional log yards must be located as locally as possible in relation to where the timber is harvested, taking into account: the need to have many sellers and many buyers, regional logging activity, geographic concentrations of processing activity, demand for logs from tenured and non-tenured processors, transportation and other similar factors.

(3) The Log Exchange shall

- (a) ensure that packages put up for log market sales are offered in a variety of volumes, sorts and grades which meet processors' requirements, including sort sizes that accommodate the participation of small processors;
- (b) ensure that logs sold through the market reflect the timber profile in the region;
- (c) ensure that log yards have the capacity to fulfill chain of custody requirements for Forest Stewardship Council certified logs that pass through the market;
- (d) establish web-based log marketing functions where the volume and/or grade of logs, or transportation limitations renders the use of log yards impracticable;

(e) award logs to the highest bidder, subject to a right of first refusal for local buyers.

20(1) All log transactions between major licensees must flow through the Log Exchange on a monetary basis.

(2) For greater clarity, section 20(1) means that all wood not processed in a licensee's own manufacturing facilities must be sold through the Log Exchange.

21. Nothing in this Part derogates from the terms of existing fibre supply agreements related to the supply of wood residue from primary breakdown mills.

### **Offence**

23. Any person who deliberately attempts to manipulate the functioning of the BC Timber Market such that the people of BC are not receiving full value for forest resources commits an offence and is liable on conviction to a fine not exceeding \$1,000,000.

## **PART 6 FAIR AND JUST TRANSITION**

24 (1) Given major changes ahead in British Columbia's forestry industry that cannot be fully predicted or addressed through this Act, the Government of British Columbia is responsible for the development, and where necessary, implementation of a proactive strategy for just and fair transition for forest communities, both Aboriginal and non-Aboriginal, and workers.

(2) Principles that shall inform the development and implementation of the strategy for just and fair transition include:

- (a) all relevant levels of government must be involved, according to the relevant mandates of their various ministries and agencies;
- (b) an active role in the development and implementation of the strategy must be available to:
  - i) workers and their unions;
  - ii) communities, including local elected officials, non-governmental organisations, community service providers, community economic development organisations, local management authorities under this Act; and,
  - iii) other interested parties affected by the transition strategy;
- (c) components of a just and fair transition strategy may include:
  - i) reinvestment of forest revenues back into the forest, consistent with the rights set out in section 3 of this Act, to create enhanced employment and forest sustainability;

- ii) use of new and existing human resource and labour adjustment agencies to provide support to any displaced forest workers (e.g., support for reemployment; job placement in comparable employment; training and education for career development; income support; bridging to pension);
  - (d) any specific components of the strategy must be adaptable enough to accommodate a wide variety of needs;
  - (e) workers and communities should not bear the costs of transition alone.
- (3) The transition strategy must address approaches to implementation funding from sources that may include, but are not limited to the BC Forestry Revitalization Trust, Employment Insurance, programs of Human Resources Development Canada, employers, and revenues from stumpage or log market sales.

## **PART 7 CONSEQUENTIAL AMENDMENTS**

### *Forest Act*

#### *1 Section 8 of the Forest Act, R.S.B.C. 1996, c. 157 is amended*

##### *(a) by adding the following subsection*

(5.1) In determining an allowable annual cut under subsection (1) the chief forester must specify portions of the allowable annual cut attributable to each commercially valuable species within a timber supply area or tree farm licence area, including private land within a tree farm licence area.

(5.2) Agreements granting rights to harvest Crown timber, or where applicable management plans approved under them, must specify portions of the allowable annual cut for the licence available to be harvested from specified species of timber, including high value species such as cedar.

##### *(b) in subsection (8) by adding the following paragraph*

(a)(v.i) maintenance and restoration of natural forest composition, structure and functioning,

##### *(c) in subsection (8) by repealing paragraph (b) and substituting the following*

(f) the short and long term implications to British Columbia of alternative rates of timber harvesting from the area, including an assessment of environmental risks associated with rates of harvesting that will result in conditions outside historical natural ranges,

#### *2 Section 12 is amended by adding the following paragraph*



(e.2) a long-term, area-based tenure designed to accommodate a specific First Nation's Aboriginal title and rights,

**3 Section 20 is amended by replacing the words “regional or district manager” or “regional manager” wherever they appear with the words “official of the Timber Sales Exchange.”**

**4 Section 21 is amended by replacing the words “minister or a person authorized by the minister” wherever they appear with “official of the Timber Sales Exchange.”**

**5 Section 23 is amended by replacing the words “regional or district manager” or “regional manager” wherever they appear with the words “official of the Timber Sales Exchange.”**

**6 Section 69 is repealed**

**7 Section 80 is amended**

**(a) in subsection (1) by adding the following paragraph**

(d) any provision of the *Forest Solutions for Sustainable Communities Act*, S.B.C 2003, c.x.

**8 Section 105 is amended**

**(a) by adding the following paragraph**

(c) using price data generated through the BC Timber Market

**(b) by repealing subsection (6) and substituting the following**

(6) A stumpage rate must not be lower than a prescribed minimum that reflects all Crown costs, including planning, administration, operating costs, reforestation and restoration, road maintenance and the opportunity costs foregone by not retaining the resource to provide ecological services.

**(c) by repealing subsection (7)**

**9 Section 107 is repealed**

**10 Sections 127- 129 are repealed and the following substituted:**

127. Timber that is harvested from Crown land, from land granted by the government after March 12, 1906 or from land granted by the government on or before March 12, 1906 in a tree farm licence area, and wood residue produced from the timber, must be

(a) used in British Columbia, or

(b) manufactured in British Columbia into, at a minimum,

(i) lumber,

- (ii) sawn wood products, other than lumber, manufactured to an extent required by the minister of forests,
- (iii) shingles or fully manufactured shakes,
- (iv) veneer, plywood or other wood-based panel products,
- (v) pulp, newsprint or paper,
- (vi) peeled poles and piles having top diameters less than 28 cm and fence posts,
- (vii) Christmas trees, or
- (viii) sticks and timbers having diameters less than 15 cm, ties and mining timbers

***Forest Practices Code of British Columbia Act***

***11. Section 18 of the Forest Practices Code of British Columbia Act, R.S.B.C. 1996, c. 159 is amended by adding the following subsection***

(2.1) A forest development plan referred to in subsection 18(1) includes a previously approved forest development plan, or portion thereof, for an area deleted from or affected by an allowable annual cut reduction pursuant to sections 9 and 11 of this Act.

***12 Section 22.1 is amended by adding the following subsection***

22.1(1.1) A silviculture prescription referred to in subsection 22.1(1) includes a previously approved silviculture prescription for an area deleted from or affected by an allowable annual cut reduction pursuant to sections 9 and 11 of this Act.

***Forest Revitalization Act***

***13 Section 3 of the Forest Revitalization Act, S.B.C. 2003, c. 17 is amended by adding the following subsections***

3(7) In making an order under this section, the Minister must take into account the rights and principles outlined in sections 3 and 8 of the *Forest Solutions for Sustainable Communities Act*; S.B.C. 2003, c. x.

3(8) In making orders under this section the Minister must prioritize licensees who have undertaken any of the actions set out in section 9 of the *Forest Solutions for Sustainable Communities Act*

***14 Section 6 of the Forest Revitalization Act is amended***

***(a) deleting subsections 6(1), 6(2) and 6(3)***

***(b) by replacing subsection 6(4) with the following***

6(4) Each holder of an ungrouped licence, a timber licence or a licence in a group of licences is entitled to compensation from the government in amount equal to the value, determined under regulations, of improvements made to Crown land that

- (a) are, or have been authorized by the government,
- (b) are not improvements to which section 174 of the *Forest Practices Code of British Columbia Act* applies, and
- (c) are not, or have not been, paid for by the government under the *Forest Act* or the former Act as defined in the *Forest Act*.

**(c) by adding the following subsection**

6(5) No holder an ungrouped licence, a timber licence or a licence in a group of licences is entitled to compensation of any kind unless public hearings have been held on the subject.

**15 Section 9 of the Forest Revitalization Act is repealed**

**16 Section 10 of the Forest Revitalization Act is amended by repealing subsection 10(4) and substituting the following:**

In the 2003-2003 fiscal year of the government, the minister must pay \$275 million out of the consolidated revenue fund to implement the strategy for just and fair transition set out in section 25 of the *Forest Solutions for Sustainable Communities Act*, S.B.C 2003, c.x.

***Forest (Revitalization) Amendment Act, 2003***

**17 The Forest (Revitalization) Amendment Act, S.B.C. 2003, c. 30 is repealed, with the exception of sections 8, 13 (75.41 and 75.51 only), and 14.**

**18 Section 8 of the Forest (Revitalization) Amendment Act is repealed and the following is substituted:**

(8) Sections 64 to 67 are repealed and the following is substituted

**Highgrading**

64.1 Maximum cut control limits set out in subsections 75.41 and 75.51 also apply on per species basis in relation to portions of the allowable annual cut available to be harvested from specified species of timber as provided for in subsection 8(5.2).

**No overharvesting during transition to democratic local control**

64.2 Until the tenure redistribution set out in sections 9-11 of the *Forest Solutions for Sustainable Communities Act*, S.B.C. 2003, c.x is accomplished

(a) the holder of a replaceable agreement, other than a tree farm licence or community forest agreement must ensure that the volume of timber harvested during a calendar year under the agreement is not more than 100% of the of the allowable annual cut authorized in or for the agreement;

(b) the holder of a tree farm licence must ensure that the volume of timber harvested during a calendar year under the licence is not more than 100% of the allowable annual cut available to the holder during that calendar year.

### **Excess Harvesting**

64.3 (1) If the volume of timber harvested under an agreement

(a) exceeds the maximum limit under section 75.41 or 75.51 as the case may be,

(c) exceeds the maximum limit specified in section 64.2, or

(d) exceeds species specific maximum limits as specified in section 64.1

then

(c) in respect of the volume harvested in excess of the maximum limit, the holder of the agreement must pay to the government, in addition to other stumpage payable under this Act or any other penalty under this Act, a penalty at the rate or rates required by subsection (2).

(2) A penalty payable under subsection (1) (c) is to be at a rate that is twice the average stumpage rate that was applicable to timber harvested under the agreement during the last year of the cut control period.

### **19 Section 14 of the Forest (Revitalization) Amendment Act is amended by adding the following subsection**

80.1(4) For greater clarity, the combined effect of Parts 1-6 of the *Forest Solutions for Sustainable Communities Act*, S.B.C. 2003, c.x constitutes a new “appurtenancy.”

### ***Forest (Revitalization) Amendment Act (No. 2), 2003***

### **20 The Forest Amendment Act, S.B.C. 2003, c. 31 is repealed.**

*Forest Statutes Amendment Act, 2003*

*21 The Forest Amendment Act, S.B.C. 2003, c. 32 is repealed.*