

LEGISLATIVE ASSEMBLY

Read 1° 10 September 1986

(Brought in by Mr Cathie and Mr Fordham)

A BILL

to ratify, validate, approve and otherwise give effect to an agreement with Bowater-Scott Limited and for other purposes.

Forests (Bowater-Scott Agreement) Act 1986

Preamble.

The Treasurer, the Minister for Conservation, Forests and Lands, the Forests Commission and Bowater-Scott Limited have agreed to certain arrangements for the supply of softwood for certain operations undertaken by Bowater-Scott Limited:

It is expedient to ratify, validate approve and otherwise give the force of law to the Agreement:

The Parliament of Victoria therefore enacts as follows:

Purpose.

- 5 1. The purpose of this Act is to ratify, validate, approve and otherwise give effect to an Agreement with Bowater-Scott Limited for the supply of softwood for certain operations undertaken by Bowater-Scott Limited.

Commencement.

2. This Act comes into operation on the day on which it receives the Royal Assent.

Definition.

3. In this Act, “**Agreement**” means the agreement a copy of which is set out in the Schedule.

Act to bind Crown.

4. This Act binds the Crown.

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Ratification of Agreement.

5. (1) The Agreement is ratified, validated, approved and given the force of law and takes effect as if its provisions had been expressly enacted in this Act.

(2) The Forests Commission is empowered to carry out the Agreement or the Agreement as amended from time to time.

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Repeal of 1971 Act.

6. The *Forests (Bowater-Scott Agreement) Act 1971* is repealed.



SCHEDULE

Section 3

BOWATER-SCOTT AGREEMENT

THIS AGREEMENT is made the twenty-third day of April, One thousand nine hundred and eighty-six.

BETWEEN:

The Treasurer, State of Victoria, of the first part

AND

The Minister for Conservation, Forests and Lands of the second part

AND

FORESTS COMMISSION incorporated by the provisions of the *Forests Act 1958* of the State of Victoria of the third part

AND

BOWATER-SCOTT LIMITED a Company incorporated in the State of Victoria and having its registered office at Ailsa Street, Box Hill of the fourth part

WHEREAS:

I. The Company has for some time been engaged in large scale operations in connection with the manufacture of veneer, plywood, sawn timber, dressed timber and wood pulp at Myrtleford and ancillary processing at other locations in the State of Victoria.

II. The Company desires to be satisfied that sufficient softwood will be available to it over a period of time which will enable it to improve commercial viability.

III. The Government desires to provide a means by which the Company can be assured of its long term supply of softwood and which also ensures that the public of Victoria receives an adequate return to cover the costs of certain forest production activities.

IV. The supply after 1990 from Government plantations is planned on clear fall at approximate age 30 years until the year 2010, minimum small end diameter under bark of 15 cm. After the year 2010, it is expected that rotation age will gradually move out to 35 year clear fall.

V. The Company will use its best endeavours to source supply of logs from private plantations to supplement volumes supplied by the Commission under this Agreement in a manner which is not inconsistent with law or government policies and without conditions or qualifications or if subject to conditions or qualifications then satisfactory to the Company. Such supply is projected to begin in year 2010 and rise to approximately 65 000 m³ by year 2020. The Company will take steps within the next three years to commence programs which will lead to sourcing at the levels indicated.

VI. The parties hereto desire to enter into this Agreement so that upon an enabling Act being passed by Parliament and coming into operation the provisions hereinafter appearing shall have full force and effect and the *Forest (Bowater-Scott Agreement) Act 1971* shall be repealed as to any future operations from the commencement of the Act.

NOW IT IS HEREBY AGREED as follows:

PART I.—PRELIMINARY

1. In this Agreement unless inconsistent with the context or subject-matter—

“the Act” means the enabling Act of the Parliament of Victoria to be passed to give effect to this Agreement;

“this Agreement” includes this Agreement as from time to time amended;

“CDOB” means centre diameter over bark;

“CDUB” means centre diameter under bark;

“commencement date” means the latest of the date of this Agreement, the day of Royal Assent to the Act and (if any) the day the Act comes into operation as provided in the Act;

“Commission” means the Forests Commission its successors or assigns;

“**Company**” means Bowater-Scott Limited and upon each assignment to any other company in accordance with sub-clause (1) of clause 4 hereof means that assignee company;

“**forest officer**” has the same meaning as in the *Forests Act 1958*;

“**forest produce**” has the same meaning as in the *Forests Act 1958*;

“**the industry**” means the manufacture by the Company of veneer, plywood, sawn timber, dressed timber, wood pulp, round logs for preservation treatment and paper from softwood;

“**minimum annual supply**” means that set out in clause 12;

“**Minister**” means Minister for Conservation, Forests and Lands;

“**month**” means calendar month;

“**person**” and “**persons**” include a body corporate and any association of persons whether or not incorporated as a company or other body corporate;

“**SEDUB**” means small end diameter under bark;

“**veneer log**” means softwood meeting the specification as set out in the first Schedule hereto or such other specification as is determined from time to time by the Commission after consultation with the Company;

“**year**” means a period of twelve months commencing on the first day of July and includes the period between the commencement date and the 30th day of June 1987;

“**Benalla Plantations**” means the State Softwood Plantations existing from time to time within the present Benalla Region of the Department of Conservation, Forests and Lands;

“**Koetong Plantations**” means the State Softwood Plantations existing from time to time within the present Wodonga Region of the Department of Conservation, Forests and Lands;

“**Ovens Plantations**” means the State Softwood Plantations existing from time to time within the present Wangaratta Region of the Department of Conservation, Forests and Lands.

2. (1) In this Agreement unless inconsistent with the context or subject-matter references to any Act shall include all amendments and re-enactments thereof for the time being in force and all supplemental legislation for the time being in force whether by regulation rule proclamation or order made or continuing under that Act or any amendment or re-enactment thereof and references to sections in any Act shall be deemed to include corresponding sections in any amending or re-enacting Act.

(2) The headings and sidenotes shall not affect the interpretation of this Agreement.

3. (1) This Agreement shall not be of any force or effect until the Act has been passed by the Parliament of Victoria and has come into operation and the passing of the Act and its coming into operation are both conditions precedent to this Agreement having any force validity or effect.

(2) Upon and after the commencement date, this Agreement shall supersede all previous Agreements, licences, and arrangements for the supply of veneer log, sawlog and pulpwood to the Company as to the supply of such softwood to the Company from the commencement date but without prejudice to the obligations of either the Company or the Commission under any previous agreements, licences or arrangements for the supply of veneer logs, sawlogs or pulpwood to the Company which have arisen prior to the commencement date. All representations and warranties inducing the Company to enter into this Agreement shall merge into this Agreement.

4. (1) The Company shall be at liberty at any time to assign its rights under this Agreement—

(a) to any company with which pursuant to the Companies (Victoria) Code it is deemed to be related but notwithstanding any such assignment Bowater-Scott Limited shall remain responsible to the Commission for the performance of all the obligations and conditions imposed upon the Company by this Agreement; or

(b) with the prior consent of the Commission to any company, such consent not to be unreasonably withheld, and thereupon Bowater-Scott Limited (whether or not there has been any previous assignment) shall be released totally and forever from all obligations and conditions imposed on the Company by this

SCHEDULE—*continued*

Agreement which are not up to the time of the assignment required to have been fulfilled.

(2) Upon each such assignment the assignee company shall by virtue of the Act be subject to all the obligations and conditions imposed upon the Company by this Agreement so far as they remain in force and are capable of taking effect and, save to the extent the contrary may be agreed, which are not required to have been performed by the Company prior to such assignment.

PART II.—OPERATION OF INDUSTRY**Division A—Duration of Agreement**

5. This Agreement shall remain in force until the 30th day of June, 2026 or until sooner determination in accordance with the provisions hereof.

6. The expiration or determination of this Agreement shall not affect the enforcement of any right obligation or liability theretofore acquired accrued or incurred.

Division B—Softwood Rights

7. Nothing in the Agreement shall affect the rights powers and privileges already acquired by any person under the *Forests Act* 1958 or any other Act.

8. Subject to compliance by the Commission with its obligations under clauses 11 (1) and 12 hereof to make available to the Company certain supply of softwood nothing in this Agreement shall restrict the Commission's rights pursuant to the *Forests Act* 1958 to sell or grant licences and permits to obtain forest produce not detrimental to the Company's rights under this Agreement.

9. (1) Forthwith in respect of the year 1986–87 and not later than the 31st day of December 1986 in respect of the year 1987–88 and not later than the 31st day of December in each year thereafter the Commission in consultation with the Company shall draw up and deliver to the company a plan of utilization for the supply of softwood for the following year and a provisional plan for supply of softwood for the further four following years.

(2) The Company within 60 days after delivery of the plan of utilization under clause 9 (1) may at its discretion request modification of the plan of utilization with respect to supply for the immediately following year and provided that such proposed modification can be shown to be to the commercial benefit of the Company and the Commission and consistent with the principles of proper forest management the Commission will not unreasonably refuse such modification and in the event that the Company considers the Commission has unreasonably refused to consent to such modification the modification shall be referred to arbitration in accordance with clause 28 hereof.

(3) Subject to the provisions of clauses 12 and 13 hereof, the plan of utilization shall set out the locations from which softwood may be obtained during the relevant period and shall specify the specific location area in hectares and the respective species, quantities, qualities and dimensions of softwood including the volume of sawlog and veneer log of each of the size and classes referred to in clause 17 (2) hereof which the Commission estimates will be obtainable in each area, as well as the location and standard of road to be provided by the Commission and/or with the consent of the Company by the Company for each location.

(4) The Commission and the Company may during the currency of any plan of utilization agree to a modification of the plan.

(5) The Company shall conform with each plan or modified plan of utilization.

10. (1) The Company shall comply with the provisions of the *Forests Act* 1958 and with all regulations for the time being in force under the *Forests Act* as if the rights granted by this Agreement had been granted by licence.

(2) Unless inconsistent with specific provisions of this Agreement, the Commission may impose additional covenants terms and conditions (in this clause called "Conditions") as if this Agreement were a licence issued under section 52 of the *Forests Act* 1958. Initially, such Conditions shall be those set out in the Second Schedule hereto. Within one month of the commencement date and within thirty days prior to the first day of July in each year of this Agreement the Commission may deliver to the Company in

SCHEDULE—*continued*

written form changed (including additional) Conditions as if on each first day of July the Company was being granted a further or renewed licence under the said section 52 but such changed Conditions shall be no more onerous on the Company than those the Commission applies generally throughout the State of Victoria in corresponding circumstances of forest management to those being so imposed. Any conditions (whether initially or from time to time changed) shall remain imposed until replaced by some changed Conditions or further changed Conditions.

11. (1) Subject to the provisions of this Agreement, the Company shall have the right to cut and remove softwood by its servants agents or contractors as provided in clause 12 hereof.

(2) Subject to the provisions of clauses 12 and 13 hereof, the Company may be required to obtain softwood suitable from which to satisfy the provisions of this Agreement from—

- (a) standing trees indicated by a forest officer;
- (b) softwood produced in conjunction with a logging operation conducted by a person or persons other than the Company; or
- (c) softwood felled or felled and removed by or on behalf of the Commission.

(3) The Commission may in its discretion if so requested by the Company modify the Company's obligation to take softwood felled or felled and removed by or on behalf of the Commission which has been included in the plan of utilization for that year but any of such softwood not taken by the Company shall for the purposes of clause 12 hereof be softwood made available to the Company by the Commission.

12. (1) Subject to the provisions of clauses 24 and 26 hereof and to the payment of the licence fee as provided in clause 17 hereof and not taking into account any softwood not accepted according to the provisions of clause 13 hereof of the Commission, subject always to the existing entitlement to another person of about 20 000 m³ of softwood sawlogs in the Ovens Plantations, shall make available to the Company from the locations set out below a minimum annual supply of softwood with Radiata Pine as the major species but able to include up to 13 500 m³ of Corsican Pine in any one year and up to 5 000 m³ of Douglas Fir in any one year which unless increased pursuant to the provisions of sub-clauses (3) and (4) hereof shall be—

(a) sawlogs and veneer logs—

(i) for the period year 1986–87 to year 1989–90—

174 000 m³ per annum from the Ovens Plantations and to the extent Ovens Plantations cannot supply from the Koetong Plantations, and 16 000 m³ per annum from the Benalla Plantations;

(ii) for the period year 1990–91 to year 1994–95—

235 000 m³ per annum from the Ovens Plantations and to the extent Ovens Plantations cannot supply from the Koetong Plantations, and 25 000 m³ per annum from the Benalla Plantations;

(iii) for the period year 1995–96 to year 1999–2000—

310 000 m³ per annum from the Ovens Plantations and to the extent Ovens Plantations cannot supply from the Koetong Plantations;

(iv) for the period year 2000–01 to year 2004–05—

360 000 m³ per annum from the Ovens Plantations and to the extent Ovens Plantations cannot supply from the Koetong Plantations;

(v) for the period year 2005–06 to year 2025–26—

400 000 m³ per annum from the Ovens Plantations and to the extent Ovens Plantations cannot supply from the Koetong Plantations;

PROVIDED THAT the Commission gives to the Company the right of first refusal on all volumes of sawlog and veneer log available from the Ovens Plantations and subject always to the existing entitlement hereinbefore referred to—

(b) pulpwood from the Ovens Plantations—

(i) for the year 1986–87—21 500 m³;

(ii) for the year 1987–88—18 000 m³;

(iii) for the year 1988–89—14 000 m³;

(iv) for the year 1989–90—10 000 m³;

(v) for the year 1990–91—6 000 m³;

SCHEDULE—*continued*

(vi) for the year 1991-92—2 000 m³;

(vii) for the years 1992-93 to 2025-26—Nil.

(2) Should the Company take less than the minimum annual supply of sawlog and veneer log or of pulpwood in any one year, it has the right to carry forward the deficiency of that type quantity and quality to any of the five years next following so that such as is carried forward will be used in addition to the minimum annual supply in the year or years of utilization.

(3) The Commission may in its discretion offer the Company in any year a quantity of softwood additional to the minimum annual supply.

(4) The Commission and the Company may from time to time agree that in addition to any other softwood agreed herein to be made available by the Commission and upon such terms and conditions and at such royalty as may be offered the Company shall have the right to cut and remove by its servants agents or contractors softwood in round logs for preservation treatment. The Company may from time to time seek from the Commission the right to cut and remove by its servants agents and contractors softwood in round logs for preservation treatment and upon any such request being made the Commission shall use its reasonable endeavours to reach an agreement with the Company to meet that request.

(5) The Commission may by written agreement with the Company increase for any period commencing from the first day of July next following the date of such agreement the minimum annual supply referred to in sub-clause (1) hereof for that period and any minimum annual supply so agreed upon may likewise be further increased.

(6) The Commission shall ensure that the softwood sawlog or veneer log equal to and greater than 20 cm CDUB of each standard and grade made available to the Company is as good in species, size, and quality in any year as that which is made available by the Commission to any other person or persons in that year from the Benalla Plantations, the Koctong Plantations and the Ovens Plantations.

13. (1) The Company shall not be bound to accept—

- (a) any pulpwood which is not sound, clean and free from rot, doze, blue stain and charcoal;
- (b) any sawlog or veneer log which not being sound, clean and free from rot, doze, blue stain, hail damage and the result of Sirex wasp infestation is beyond the tolerances provided in the Code of Practice Measuring and Allowing for Defect Softwood Sawlogs (Metric Units), a copy of which is set out as the Third Schedule hereto, or such other code as from time to time may be adopted in lieu thereof but should any sawlog or veneer log be accepted by the Company which is not, sound, clean and free from rot, doze, blue stain, hail damage and the results of Sirex wasp infestation then that sawlog and veneer log shall only be accepted when measured and allowed for defect in accordance with that code of practice;
- (c) any sawlog or veneer log which is below the following specification:
 - (i) 15 cm SEDUB;
 - (ii) For size classes 3 and 4—log length of 3.0 m and sweep equal to or less than 20% of CDOB for a 3.0 m log length;
 - (iii) For size classes 1 and 2—log length of 3.0 m and sweep equal to or less than 10% of CDOB for a 3.0 m log length.

(2) Unless inconsistent with the preceding paragraphs (b) and (c) the defect allowance and produce specifications which apply generally to the clients, that is to say the various purchasers and/or licensees and/or persons bound by agreement to the Commission, shall apply with respect to this Agreement.

(3) During the years 1986-87 to 1989-90, the annual volume of sawlog and veneer log equal to or greater than 20 cm CDUB shall be at least 160 000 m³, and of the annual volume less than 20 cm CDUB, the Commission shall endeavour to make supply available such that—

- (i) at least 50% of the volume shall have a sweep of equal to or less than 5% of CDUB for a 3.0 m log length;
- (ii) at least 50% of the volume shall be between 18.0 cm CDUB and 19.9 cm CDUB; and

SCHEDULE—*continued*

- (iii) knot size and frequency does not render the logs unsuitable for the manufacture of lining boards and similar material—

and if the Company declines from time to time in any one year to take any sawlog and/or veneer log below 20 cm CDUB then so declining that sawlog and/or veneer log shall not prejudice the Company's right to continue to take sawlog and/or veneer log above 20 cm CDUB in that year and if the Company declines from time to time in any one year to take any sawlog and/or veneer log above 20 cm CDUB and then so declining that sawlog and/or veneer log shall not prejudice the Company's right to continue to take sawlog and/or veneer log below 20 cm CDUB in that year.

(4) During the years 1990–91 to 2025–26, the annual volume of sawlog and veneer log equal to or greater than 20 cm CDUB shall be at least 90 per cent of the minimum annual supply of sawlog and veneer log as provided for in clause 12 hereof and of the remaining annual volume less than 20 cm CDUB, the Commission shall endeavour to make supply available such that—

- (i) at least 50% of the volume shall have a sweep of equal to or less than 5% of CDUB for a 3-0 m log length;
- (ii) at least 50% of the volume shall be between 18-0 cm CDUB and 19-9 cm CDUB; and
- (iii) knot size and frequency does not render the logs unsuitable for the manufacture of lining boards and similar material—

and if the Company declines from time to time in any one year to take any sawlog and/or veneer log below 20 cm CDUB then so declining that sawlog and/or veneer log shall not prejudice the Company's right to continue to take sawlog and/or veneer log above 20 cm CDUB in that year and if the Company declines from time to time in any one year to take any sawlog and/or veneer log above 20 cm CDUB and then so declining that sawlog and/or veneer log shall not prejudice the Company's right to continue to take sawlog and/or veneer log below 20 cm CDUB in that year.

14. (1) For all softwood obtained by it under this Agreement the Company shall pay—

- (a) as to softwood which the Company by its servants agents or contractors removes or fells and removes the royalty payable from time to time under this Agreement; and
- (b) as to softwood either felled or felled and removed by or on behalf of the Commission the royalty as aforesaid and a charge to be agreed upon from time to time between the Commission and the Company for—
- (i) the cost to the Commission of felling or felling and removal of softwood in or from the particular area; and
- (ii) the overhead expenses of the Commission in connection therewith.

(2) Failing agreement within fourteen days on the charge referred to in paragraph (b) of sub-clause (1) hereof subject to the arbitration provisions in clause 28 hereof the charge shall be determined by the Commission but so that the charge for the cost of felling or felling and removal of softwood in or from any area shall not exceed the actual cost to the Company of or the payment made by the Company to contractors for felling or felling and removal (as the case may be) of softwood at that time in similar form in or from areas which are similar with respect to yield of softwood physical circumstances of extraction and situation in regard to means of transport.

15. (1) Subject to the provisions of clauses 26 and 27 hereof the Company shall be bound in each year in which the minimum annual supply of softwood to which it is entitled in that year is available to it either—

- (a) to take—
- (i) not less than 90% of the minimum annual supply of pulpwood; and
- (ii) not less than 90% of sawlog and veneer log equal to or greater than 20 cm CDUB required to be made available in the plan of utilization; or
- (b) if it takes less than the quantities set out in the preceding paragraph (a) hereof to pay royalty to the Commission on the deficiency at a rate equal to the royalty rate payable in that year under clauses 18 or 19 (as the case may be) hereof.

(2) If the Company during any of the five years next following any year in which there is a deficiency obtains a quantity of softwood in excess of the minimum annual

SCHEDULE—continued

supply the royalty payable on such excess shall be reduced by the amount of royalty paid in respect of the deficiency and interest accrued thereon. Interest shall be calculated from the date of payment of the royalty paid on such excess with daily rests until the date of utilization at a rate equal to 60% of the 90 day bank bill rate from time to time adopted from date of payment until the relevant excess has been utilized by the State Bank of Victoria in Melbourne or failing that by Westpac Banking Corporation in Melbourne and failing both by arbitration as set out in clause 28 hereof.

16. The following provision shall apply with respect to royalty payable under this Agreement:

- (a) Royalty shall be payable at such times and in such manner as the Commission from time to time determines after the amounts have been ascertained by weighing and/or measuring in accordance with this Agreement.
- (b) Without prejudice to the obligations of the Company under clause 15 hereof if any royalty due by the Company remains unpaid for sixty days after the last day of the month following the date of supply the Commission may without limiting the obligations of the Company under clause 15 hereof by notice in writing to the Company suspend its right to obtain softwood under this Agreement until payment is made.
- (c) If the Company disputes the amount of any payment demanded by the Commission it shall make the payment under protest and thereafter shall be entitled to take proceedings for recovery of, and recover, any amount in excess of the amount it was liable to pay, and interest thereon at the rate from time to time provided in the *Penalty Interest Rates Act 1983*.

17. (1) In addition to royalty payable in accordance with clause 14 hereof an annual licence fee shall be paid by the Company to the Commission with respect to the acquisition by the Company of the right to cut and remove sawlog and veneer log as provided in clause 11 (1) hereof.

(2) The annual licence fee shall relate to volumes of sawlog and veneer log size classes 3 and 4, and size class 2 greater than 20 cm CDUB required to be made available in the plan of utilization referred to in clause 9 hereof.

(3) The annual licence fee will be due and payable first on the commencement date as provided in clause 3 hereof or the 30th day of June 1986 (whichever is the later) and in each year thereafter on the 30th day of June with respect to softwood required to be made available from within the minimum annual supply in the following year, but shall not apply to softwood made available under the provisions of clauses 12 (2), 12 (3), 12 (4) and 25 hereof and softwood not taken under the provisions of clause 13 (1) hereof.

(4) The annual licence fee shall be at the rate of \$1 per m³ for the period between the commencement date of this Agreement and the 30th day of June 1987 ("the base fee") and for each of the years commencing on the 1st day of July 1987, 1988, 1989 and 1990, the base fee will be adjusted in the same percentage rate as the rate of change in the royalty rate in the year preceding the 30th day of June 1987 in the case of any adjustment to be made for the year commencing the 1st day of July 1987 and in respect of the remaining years in the same percentage rate as the rate of change in the royalty rate during the preceding twelve months.

(5) The amount of the annual licence fee will be reviewed between the 1st day of April 1991 and the 30th day of June 1991 and thereafter between the 1st day of April and the 30th day of June at five yearly intervals from the 1st day of April 1991 and so that—

- (a) a review is to be conducted by the Commission and the Company jointly;
- (b) the review will establish if a new base fee shall apply and if so at what rate, for the succeeding five years;
- (c) the review will take account of—
 - (i) the ongoing ability of the Company to maintain its competitive position in domestic and international sawn timber and plywood and related products markets taking into account circumstances not of its own making;
 - (ii) changes in the average domestic market price of sawn timber and plywood relative to general cost increases in the community as measured by the consumer price index;

SCHEDULE—*continued*

- (iii) changes in the landed price of imported sawn timber and plywood and related products, relative to economy wide indices of capital and labour costs;
 - (d) the review will last no longer than the 30th day of June in the year in which it commenced. In the event that agreement is not reached between the Commission and the Company, the matter will be referred to arbitration as provided by clause 28 hereof;
 - (e) any new base fee so determined will be adjusted in each of the subsequent four years, similarly as set out in sub-clause (4) hereof.
- (6) In the event of any difference that can touch upon the calculation of the annual licence fee which is referred to arbitration the annual licence fee shall be paid on the 30th day of June as if no such difference had existed; but if the resolution of the difference (whether by agreement between the parties or arbitration) causes a different annual licence fee to become applicable the Company shall pay to the Commission or the Commission shall pay to the Company forthwith an amount being the difference between the amount of the annual licence fee so paid and the amount which would have been paid had the resolution of the difference been achieved on that 30th day of June.

18. (1) During the period between the commencement date pursuant to clause 3 hereof and the 30th day of June 1989 the royalty payable for pulpwood shall be \$13.20 per m³.

(2) The royalty payable for sawlog and veneer log shall be the rate as determined in accordance with the Royalty Equation System and consistent with general sawlog and veneer log pricing from public forests in the State of Victoria.

19. (1) During each successive period of three years or part thereof, from the 1st day of July 1989 the royalty payable for pulpwood shall be at the rate agreed upon by the Commission and the Company or failing agreement not later than fourteen days after publication by the Australian Bureau of Statistics of the figures referred to in paragraphs (a) and (b) hereof at the rate calculated by varying the rate payable during the preceding period of three years in the same proportion as the average of the proportional variation in the figures at the beginning and the end of that period in regard to—

- (a) the Average Weekly Earnings All Males, Weekly Total Earnings Victoria; and
- (b) the Price Index of Materials used in building other than house building Weighted Average of six State Capital Cities, Wood and Wood Products.

(2) If the Australian Bureau of Statistics ceases to publish the figures referred to in either paragraph (a) or (b) of sub-clause (1) hereof a new method of calculating any variation in the royalty rate shall be agreed upon by the Commission and the Company or failing agreement within thirty days shall be determined by the Commission subject to the arbitration provisions in clause 28 hereof.

(3) If any variation in the royalty rate is not determined prior to the commencement of any new three yearly period the Company shall continue to pay royalty at the rate payable during the preceding period and as soon as the new rate has been determined an adjustment shall be made retrospectively to the commencement of the new period.

20. The Company shall not construct within State forest any road track or passage or any chute without the prior written consent of a forest officer and shall not construct within State forest any tramway flume or building or erect any haulage or conversion unit without the prior written consent of the Commission, such consent in each case not to be unreasonably withheld.

21. (1) The quantity of softwood upon which royalty is payable under this Agreement shall be determined in such manner (allowance being made for bark and defect) and at such place as may be agreed upon by the Commission and the Company or failing agreement within thirty days as the Commission may direct subject to the arbitration provisions in clause 28 hereof.

(2) If the royalty so payable is to be determined by mass—

- (a) the Company shall provide at its plant a weighbridge of a pattern which meets the requirements of the *Weights and Measures Act 1958* and shall while this Agreement remains in force have the weighbridge maintained and periodically verified and stamped in accordance with the provisions of that Act;

SCHEDULE—*continued*

- (b) at all times while the weighbridge is in accurate working order the quantity of softwood upon which royalty is payable under this Agreement shall be determined by weighing it on the weighbridge; and
- (c) at all times while the weighbridge is not in accurate working order the quantity of softwood upon which royalty is payable under this Agreement shall be determined in such manner as may be agreed upon by the Commission and the Company or failing agreement within fourteen days as the Commission may reasonably direct subject to the arbitration provisions in clause 28 hereof.

22. The Commission may from time to time give to the Company written notice of reasonable conditions not inconsistent with the provisions and intent of this Agreement which conditions are, having regard to the overall provisions of this Agreement, of a minor nature and which further are of a temporary or passing nature and which shall apply in the areas from which the Company is obtaining softwood under this Agreement. The Company shall comply with the said conditions.

23. (1) The Company shall inform the Commission in writing once in each year of the names of its servants agents and contractors who are engaged in obtaining softwood under this Agreement.

(2) The Company shall supply to each such person for production when required by a forest officer evidence in a form satisfactory to the Commission that such person is engaged in obtaining softwood under this Agreement and the Company shall forthwith inform the Commission in writing whenever any such person ceases to be so engaged.

(3) (a) The Company shall include in every contract by it with a contractor for obtaining softwood under this Agreement provisions requiring the contractor to comply with the *Forests Act* 1958 the regulations made under the Act the conditions referred to in clause 22 hereof which are applicable to that contractor and the conditions referred to in clause 10 (2) hereof which are applicable to that contractor.

(b) The Company shall upon making any such contract forthwith give to the Commission written notice of the contract specifying the name of the contractor, the duration of the contract and the quantity of and location from which softwood is to be obtained thereunder.

24. (1) If any of the softwood plantations upon which supply is dependent are damaged or destroyed by fire disease or other similar cause beyond the control of the Commission to such extent that it is impracticable for the Commission to comply with the provisions of clause 12 hereof or if by reason of any other cause beyond the control of the Commission it is prevented from complying with those provisions—

- (a) the Company shall have no claim against the Commission for the non-fulfilment of its obligations under those provisions as far as non-fulfilment is due to any such cause; and
- (b) the Commission shall use its best endeavours to provide a supply of softwood to the Company which is economically viable to the Company and having regard on the one hand to the obligation of the Commission under this Agreement to make available to the Company certain supplies of sawlog and of veneer log and of pulpwood and on the other hand the duty of the Commission to protect State forests and control and manage State forests throughout the State of Victoria in a manner which is not unduly damaging financially to the Commission or to the revenues of the State of Victoria.

25. If, in the opinion of the Commission, extensive damage occurs to State forest softwood plantations within 250 kilometres road distance from the Company's mill at Myrtleford, softwood as sawlog and/or veneer log salvaged from these plantations may be offered to the Company in addition to the minimum annual supply at a royalty after making allowance as determined by the Commission for additional harvesting, freight and manufacturing costs necessarily incurred.

26. If—

- (a) any of the softwood plantations upon which supply is dependent are damaged or destroyed by fire disease or other cause to such an extent that it is impracticable for the Commission to comply with the provisions of clause 12 hereof or if by reason of any other cause beyond the control of the Commission it is prevented from complying with those provisions;
- (b) the Company's plant or any works used by it for the purpose of the industry are damaged or destroyed by fire or other calamity in such circumstances as

SCHEDULE—*continued*

the Company is not reasonably (as to amount and risk) indemnified under a policy of insurance (which is not avoided by the insurer) having regard to the insurance cover existing at the time of entering into this Agreement;

- (c) by reason of war riot civil commotion strike lockout or action in the nature of a strike or lockout ban or limitation on work or restraint of labour act or restraint of any Government or semi-government or other public or statutory authority (including any amendment to legislation currently in force or to the Act which adversely affects the Company's position under this Agreement) or any other cause substantially beyond the control of the Company the Company is substantially impeded from obtaining softwood or carrying on the industry; or
- (d) by reason of any change in the circumstances which exist at the time of entry into this Agreement, which are substantially beyond the control of the Company, the carrying on of the industry or the continued performance by the Company of its obligations under clauses 14, 15 and 17 hereof become commercially impracticable—

then in any of those events—

- (i) the Company may apply to the Commission for termination, suspension or a reasonable modification of the extent or operation of its obligations under this Agreement or for an extension of time for the performance or observance thereof;
- (ii) the Commission upon any such application by the Company shall decide to grant or refuse termination, a suspension of the said obligations or a reasonable modification of their extent or operation or an extension of time for their performance or observance;
- (iii) if the Company is dissatisfied with the decision of the Commission upon any such application—
- A. arising out of the provisions of the preceding paragraphs (a) and/or (b) and/or (c); or
 - B. with the delay (not being less than seven days) in making the decision arising out of the provisions of the preceding paragraphs (a) and/or (b) and/or (c); or
 - C. with the delay (not being less than thirty days) in making the decision arising out of the provisions of the preceding paragraph (d)—

the matter shall if the Company so elects be determined by arbitration and the arbitrators may determine the matter with reference to considerations of general justice and fairness;

- (iv) if the Company is dissatisfied with the decision of the Commission upon any such application arising out of the provision of the preceding paragraph (d) the Company shall suggest to the Commission that the Company and the Commission should negotiate in good faith to reach a decision acceptable to the Company and the Commission but if the Company and the Commission after negotiating in good faith cannot within a reasonable time (and in any event not less than fifteen weeks) reach a decision acceptable to the Company and the Commission and if it is then after the 1st day of July 1991 the matter shall if the Company so elects be determined by arbitration and the arbitrators may determine the matter with reference to considerations of general justice and fairness.

27. If pursuant to an arbitration founded on the provisions of clause 26 (d) hereof the Company has been awarded a suspension or a modification of this Agreement and if the carrying on of the industry or the continued performance by the Company of its obligations under clauses 14, 15 and 17 hereof are considered by the Commission to have returned to commercial practicability—

then—

- (i) the Commission may apply to the Company for a further reasonable modification of the extent or operation of the Company's obligations under this Agreement but not so as to exceed the obligations of the Company initially imposed by this Agreement;
- (ii) the Company upon any such application by the Commission shall decide to grant or refuse a further reasonable modification of this extent;

SCHEDULE—continued

- (iii) if the Commission is dissatisfied with the delay (not being less than thirty days) in making the decision the matter shall if the Commission so elects be determined by arbitration and the arbitrators may determine the matter with reference to considerations of general justice and fairness;
- (iv) if the Commission is dissatisfied with the decision of the Company upon any such application the Commission shall suggest to the Company that the Commission and the Company should negotiate in good faith to reach a decision acceptable to the Commission and the Company but if the Commission and the Company after negotiating in good faith cannot within a reasonable time (and in any event not less than fifteen weeks) reach a decision acceptable to the Commission and the Company the matter shall if the Commission so elects be determined by arbitration and the arbitrators may determine the matter with reference to considerations of general justice and fairness but the arbitrators shall not make any award by which the obligations of the Company shall exceed those obligations initially imposed by this Agreement nor any award which has an effect prior to the date of the Commission's application made under the preceding paragraph (i) which is referred to arbitration.

28. Wherever it is provided that any matter shall or may be determined by arbitration—

- (a) the matter shall be referred to two arbitrators one to be appointed by the Company and one by the Commission;
- (b) the provisions of the *Commercial Arbitration Act* 1984 shall apply to the reference;
- (c) each party may be represented in the arbitration process by Counsel and Solicitor; and
- (d) the arbitrators or umpire or some other person appointed on their behalf may investigate the Company's or Commission's affairs and accounts so far as may be necessary to assist them to determine any matter referred to them and the Company and the Commission each shall give them full access to all accounts and papers necessary for that purpose and shall afford them full information and assistance having due regard to confidential nature of investigation.

29. (1) If the Company contravenes or fails to comply with the provisions of this Agreement in circumstances where the failure represents a breach capable of remedy, the following shall apply:

- (a) The Commission shall give notice in writing in a prompt manner (but not more than fourteen days) after either the Regional Manager of the Department of Conservation, Forests and Lands or an Assistant Director of the said Department has become aware of the same to the Company (by handing the same personally to a Director or the Secretary of the Company) specifying with specific detail the contravention or failure complained of together with details of the date and form in which the Regional Manager or the Assistant Director (as the case may be) first became aware of the same;
- (b) If the Company fails to remedy the contravention or fails to cease the contravention or failure (as the case may be) within ninety days of receipt of the notice referred to in the preceding paragraph (a), then with the approval of the Minister the Commission by notice in writing under its common seal or over the hand of its Secretary may determine this Agreement.

(2) If the Company contravenes or fails to comply with the provisions of this Agreement in circumstances where such breach is not capable of being remedied, the following shall apply:

- (a) The Commission shall give notice in writing in a prompt manner (but not more than fourteen days) after either the Regional Manager of the Department of Conservation, Forests and Lands or an Assistant Director of the said Department has become aware of the same to the Company (by handing the same personally to a Director or the Secretary of the Company) specifying with specific detail the contravention or failure complained of together with details of the date and form in which the Regional Manager or the Assistant Director (as the case may be) first became aware of the same and requiring it forthwith to desist from repeating the contravention or failure;

SCHEDULE—*continued*

(b) If within a period of ninety days from the service of the aforesaid notice the Company has repeated the breach complained of, then with the approval of the Minister the Commission by notice in writing under its common seal or over the hand of its Secretary may determine this Agreement.

(3) If the Company—

(a) has had a receiver or a receiver and manager appointed over its property who has been in office for not less than sixty days; or

(b) enters into any scheme or arrangement for the benefit of its creditors generally which has not been totally fulfilled within sixty days—

then—

with the approval of the Minister the Commission by notice in writing under its common seal or over the hand of its Secretary may determine this Agreement.

(4) Notwithstanding the provisions of the preceding clauses 29 (1), (2) and (3), if the Company enters into liquidation (other than a voluntary liquidation for the purposes of reconstruction) with the approval of the Minister the Commission by notice in writing under its Common Seal or over the hand of its Secretary may determine this Agreement.

30. (1) The Commission and the Company may from time to time amend this Agreement by such additions deletions and variations of matters of detail as may be necessary or desirable to facilitate the carrying on of the industry.

(2) The Commission and the Company may with the approval of the Minister determine this Agreement upon such terms as they deem fit.

31. The Company shall not be required to obtain any lease licence permit or authority beyond this Agreement to cut and remove softwood as provided in clause 12 hereof.

32. (1) In the last three years of this Agreement the Commission shall if the Company seeks a further Agreement to assure to it supply of softwood for the continuance and/or expansion of the industry investigate the development of the industry and if satisfied that the Company needs to have supplies of softwood assured to it by a further Agreement enter into negotiations with the Company for that purpose.

(2) If a further Agreement has been agreed upon and executed the Commission shall (if necessary) recommend to the Minister that a Bill be introduced into the Parliament of Victoria as soon as possible to ratify validate approve and otherwise give effect to it.

33. Nothing in the Agreement shall be construed or interpreted to require the Company to alter its membership.

34. The Minister sanctions this Agreement.

IN WITNESS WHEREOF the parties hereto have executed as a deed this Agreement the day and year first before written.

SIGNED SEALED AND DELIVERED by
the Honourable, The Treasurer in the
presence of: } R. A. JOLLY (L.S.)
J. KIDDLE }

SIGNED SEALED AND DELIVERED by
the Honourable, The Minister for
Conservation, Forests and Lands in the
presence of: } JOAN E. KIRNER (L.S.)
J. KIDDLE }

THE COMMON SEAL of FORESTS
COMMISSION was hereunto affixed in the
presence of: } (L.S.)

G. GRIFFIN, Commissioner
R. P. SMITH, Commissioner

SCHEDULE—*continued*

THE COMMON SEAL of }
 BOWATER-SCOTT LIMITED was hereto } (L.S.)
 affixed by authority of the Directors in the }
 presence of: }

L. A. WILSON, Director
 B. J. MORLEY, Secretary

SPECIFICATION

FIRST SCHEDULE
SOFTWOOD VENEER LOGS

Logs must exceed 22.5 cm in diameter over bark at the smallest end, be freshly cut, the branches flush trimmed and the ends of each log must be sawn off square.

1. CROSS SECTION

The Cross Section at any point shall be approximately round with maximum ovality such that the least diameter is within 10% of the diameter of a circle of the same girth.

2. STRAIGHTNESS

The distance between the surface of the log and a straight edge 2.1 metre long held against the surface shall not exceed 2.5 cm.

3. TAPER

The difference between the centre diameter over bark and the small end diameter over bark of any 2.1 m length of log shall not exceed 3 cm.

4. DEFECTS

(a) The following defects are not permitted:

- (i) Decay, rot pockets;
- (ii) Crossbreaks, splits, checks;
- (iii) Large loose or partly decayed knots;
- (iv) Insect damage to wood;
- (v) Cone holes and knot holes in the wood;

(b) The following defects are permitted within limits shown:

- (i) Sound knots not exceeding 5 cm in diameter across the shorter axis and encased knots not exceeding 2.5 cm in diameter across the shorter axis, provided that the sum of the diameters of all knots in any 0.3 metre length shall not exceed 20 cm.

NOTE:

- (1) Butt logs are acceptable provided they comply with the specification.
- (2) Logs shall not be rejected for off-centre pith.

SECOND SCHEDULE

SOFTWOOD SAWLOG LICENCE

- | | | | | | | |
|----|---|---|---|---|---|---|
| 1. | * | * | * | * | * | * |
| 2. | * | * | * | * | * | * |

SECOND SCHEDULE—*continued*

LOGGING

3. Logging operations shall—

- (a) be restricted to such parts of the cutting sections as may be determined from time to time and indicated on the ground by a forest officer;
- (b) if so directed by the district forester be carried out in cutting sections of the logging area other than those sections designated in the schedule to the licence; and
- (c) be conducted in a manner satisfactory to the Commission and in accordance with the directions of a forest officer.

4. No logs other than of the type and species specified in the licence may be cut and removed.

5. (a) The licensee shall comply fully with any directions issued by a forest officer restricting or suspending the transport of logs within State forest;

(b) The licensee shall comply fully with any directions issued by a forest officer for the purpose of minimizing soil erosion and siltation or pollution of streams due to the licensee's logging operations.

6. If so required by a forest officer, the licensee shall at his own expense lop the tops off felled trees so that the limbs are left lying reasonably flat on the ground.

LOG GRADES FOR SAWMILLING PURPOSES

7. Log grades are based on diameter classes as specified in the schedule to the licence.

8. The licensee shall utilize all timber 15 cm or more diameter over bark graded as sawlog quality.

9. The licensee shall, if required by the Commission, convert to pulpwood all timber 10 cm or more in diameter over bark graded as inferior to sawlog quality.

10. The Commission may, at its discretion, supply up to 50% of the volumes as shown on the log licence in the form of logs from departmental operations.

11. The licensee shall be responsible for the construction and maintenance of all roads within the logging area, other than main extraction roads.

12. First quality logs suitable for conversion to veneer not exceeding a volume equivalent to 15% of the allocation shall be reserved from utilization by the licensee. The licensee shall, if so required by the Commission, carry out the logging of veneer timber under contract to the Commission in conjunction with and additional to the logging of the allocation.

ROYALTY PAYMENTS

13. Royalty will be charged on all logs cut under this licence. Where in the opinion of the supervising forest officer, timber suitable for logs remains in any tree felled by the licensee royalty will be charged on such timber.

14. Log volumes will be based on measurements made in such a manner and at such locations as are directed by the district forester. If the licensee considers that the defect allowances or measurements recorded in respect of any identifiable log are incorrect, the log concerned may be set aside for inspection by a forest officer, whose decision shall be final.

15. The royalty rates quoted in the schedule are applicable initially but are subject to variation by the Commission at any time. Generally such variations will be made—

- (a) in the course of a general revision of royalty rates;
- (b) because of changes in the basic data on which the rates have been determined; or
- (c) because of changes in the location of logging operations.

16. An account issued for royalty is due for payment immediately it is rendered and becomes overdue if not paid by the last day of the month following the month of supply. An instalment under a Deferred Royalty Agreement is overdue if not paid by the due date specified in the Agreement. An account or instalment not paid within 14 days of the

SECOND SCHEDULE—*continued*

date of becoming overdue is liable for penalty interest from the date that it became overdue at the rate of interest for the time being fixed under section 2 of the *Penalty Interest Rates Act* 1983. Royalty interest will be the first charge met by any payment received with respect to an outstanding account.

If an account remains overdue for more than 60 days, no further logs will be supplied on credit until the outstanding amount has been paid.

THIRD SCHEDULE

CODE OF PRACTICE

MEASURING AND ALLOWING FOR DEFECT SOFTWOOD SAWLOGS

(METRIC UNITS)

This code is intended to cover—

- (a) tree lengths, trimmed and headed off but not crosscut to log lengths;
- (b) logs cut to length for cartage.

NOTE: In reference to (b) above it is assumed that some of the defects present in tree lengths will be docked out by judicious crosscutting into log lengths for cartage.

MEASURING

1. Measuring may take place at stump or at landing at the discretion of the District Forester.

2. All measurements shall be taken over bark. (Rennick forest district excepted).

3. In normal tree length measurement sawlogs shall be measured as successive 6·3 m lengths commencing at the butt except that top lengths may be any length not exceeding 8·4 metres.

Where it is the practice of the sawmiller to mill in 1·5 m lengths, 6·0 m lengths shall be measured in lieu of 6·3 metres.

4. An allowance of 0·1 m for all recorded lengths shall be given for crosscutting.

5. Centre diameter over bark of each log or length shall be measured, using steel diameter callipers, at mid length irrespective of whether a length allowance for defect has been made or not. (Rennick forest district excepted).

6. Where there is a whorl of knots or other enlargement at mid length the diameter shall be measured at a point above or below the whorl or enlargement where the log is of normal conformation.

7. Where it is not practicable to use diameter callipers for a particular measurement the diameter may be measured by tape.

8. Diameters shall be recorded to the backward whole centimetre.

ALLOWING FOR DEFECT

1. In determining allowances for defects, or supervising the docking out of defects, it should be assumed that a wide range of lengths of logs is acceptable to the sawmiller irrespective of the lengths that are actually cut. "Wide range" in this context means 2·1 m and up but also includes lengths shorter than 2·1 m in every case where it is the normal practice of the particular miller to cut such short lengths for any purpose.

2. Allowances shall not be given for falling or snagging damage except where in any particular case the District Forester is satisfied that such damage was completely unavoidable.

3. Allowance for *blue stain*, *fire damage*, *hail damage*, *sirex treatment* etc. shall only be made on specified approval from Head Office following report and recommendation by the District Forester via the Divisional Forester.

4. Where a *fork* occurs the section of the tree affected by twin hoart and vends in the limbs at their junction with the trunk shall be subject to an allowance. The limbs (if

THIRD SCHEDULE—*continued*

merchantable) of the tree above and the bole below the defective section shall be measured as if they were separate trees.

5. A *bend* occurs where the distance between the surface of the bark and a 2·1 m straight edge laid along the log exceeds one-fifth of the diameter of the log. The allowance for bend shall be the length of log affected by bend.

6. *Knots* exceeding 75 mm in diameter, measured across the shorter axis, shall be subject to allowance. The allowance to be given shall be determined by multiplying the length of log affected (angular projection of the knot into the log) by the proportion of the cross-section of the log affected and expressing the result as a length allowance to the nearer 0·1 metre.

7. An allowance of the full length affected shall be given where two or more whorls of *cone holes* occur within any 0·9 m length of log.

For the purpose of this clause whorl of cone holes means three or more cone holes within 0·1 m length of log.

8. Miscellaneous defects subject to allowance are:

- (i) Twisted stem and break resulting from stem. The allowance shall be the length of log visibly affected.
- (ii) Rot, dry side, fire scar and previous mechanical damage. The allowance shall be determined by multiplying the length of log affected by the average cross-sectional area of the log affected and expressing the result as a length allowance to the nearer 0·1 metre.

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