



**COMMISSION OF INQUIRY INTO
ASPECTS OF THE FORESTRY INDUSTRY**

INTERIM REPORT NO 3

**THE FOREST INDUSTRIES COUNCIL
AS THE STATE MARKETING AUTHORITY**

**VOLUME 3
APPENDICES 35 – 48**

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APPENDICES 35 - 48

35. Description of Work Methods		255
.1 Working Table 1		268
.2 Working Table 2		269
.3 Working Table 3		270
.3A Commentary		271
.4 Working Table 4		281
.5 Working Table 5		282
.6 Working Table 6		286
36. Indian Market		287
1 History of FIC Involment		297
2 FIC Shipment 1..Siti Midah	Oct.1986	312
3 FIC Shipment 2..Maratime Gardenia	Nov.1986	322
4 FIC Shipment 4..Cape Cormorin	Nov.1986	339
5 Comments on the Indian Market		348
37. FIC Shipment 3 PNG Trader	Nov.1986	358
38. FIC Shipment 5 Dooyang Guide	Nov.1986	369
39. FIC Shipment 6 Dooyang Brave	Dec.86/Jan.87	
.1 Shipment 6A and 6C (Wawoi Guavi)		384
.2 Shipment 6B (Angus PNG)		398
.3 Comments		420
40. FIC Shipment 7 Regent	Dec.86/Jan.87	427
41. FIC Shipment 8 Jupiter Island	Jan.1987	449
42. FIC Shipment 9,13 & 15		
Wawoi Guavi to Ataka Lumber		454
.1 Shipment 9 Treasurer	Jan.1987	455
.2 Shipment 13 Sun Petrel	Feb.1987	460
.3 Shipment 15 Sea Dragon	Mar.1987	469
43. FIC Shipment 10 Oriental Bear	Feb.1987	475
44. FIC Shipment 11 Maria Pillar	Feb.1987	485

45.	FIC Shipment 12 Doovang Guide	Feb.1987	499
.1	Part A Laki Trading		500
.2	Part B,C,D Santa Investments		509
.3	Part E and F Stettin Bay Lumber Co		530
.4	Comments on Shipment 12		540
46.	FIC Shipment 14 Sanko Maru	Mar.1987	549
47.	Cowan's Misappropriation of Funds		554
48.	National Forest Products		583



APPENDIX 35

Description of Work Method For Analysing Financial Effects of FIC Marketing.

This appendix explains the difficulties facing the Commission in analysing the effects of Marketing on FIC's finances. It then describes the work method adopted by the Commission to solve these problems and compares the commission's methods and results with those of the Auditor General. Finally it compares the financial results with those given to the Commission by F.I.C and with the results as shown in FIC's accounts. The results of these analysis are set out in Section 3 of this Interim Report No:3.

AVAILABLE DATA

The main problem with investigation in this area is the filing system (or lack of it) in FIC files.

The base systems used by FIC are:-

- (a). 36 numbered files said to be on a shipment (or part) by shipment (or part) basis.
- (b). alphabetical and numbered series files said to be on a company by company basis.
- (c). Running files of inward faxsimiles, numbered in running sequence in approximate date of receipt order.
- (d). Running files of outward faxsimiles, numbered in running sequence in approximate date of sending order.
- (e). Running files of inward telexes, numbered in running sequence in approximate date of receipt order.
- (f). Running files of outward telexes, numbered in running sequence in approximate date of sending order.

File sequences (a) and (b) can only be described as an absolute shambles. They are incomplete, documents are filed in wrong files, the contents are loose and filed at random and not in date order. Some files overlap. In the course of the Inquiry we have looked at the shipping records of numerous companies. I have been continually

impressed and my investigative preparation has been facilitated by the neatness, order and comprehensiveness of these files. They are an absolute contrast to FIC's files. The Running Files are in far better order but even here there are numbered documents missing (the files are not complete) in total or in part.

To recreate files from the running files is a mammoth task but one which has been largely necessary to compile shipment (or part) by shipment (or part) histories of FIC's marketing endeavours.

Some of the documents (missing entirely from FIC files) have been able to be completed by reference to the Letter of Credit files obtained on Summons from FIC's bankers the Bank of South Pacific.

Others come from other FIC files. The task has been facilitated somewhat by the investigative work conducted by the team from the Auditor General's Office who have audited FIC's 1986 accounts and carried out some investigative audit work on FIC's 1987 half year accounts. The working summaries of the Auditor General have identified areas for audit query and enquiry, the role of the Auditor General.

A comprehensive search of running files (not the function to the Auditor General Office) has filled some but by no means all of the gaps pointed up by the working summaries.

The work method adopted was as one would expect, that of an auditor. Such a work method does not include identifying the source of a document or explanation but being satisfied the supporting document exists and is produced or that the explanation sought and given is adequate and satisfactory. The method and standard is different from that required of a Lawyer required to produce documentary evidence to the standards required by a Commission of Inquiry.

This difference has lead to a duplication of necessary work in some areas.

WORK METHOD

The public hearing time can be minimised by a documentary presentation supplemented where necessary by oral evidence. The key figure in FIC's marketing endeavours was FIC's former Executive Director Michael Cowan who whilst under Summons elected to flee the country some few days after the Commission began public hearings and to remain outside PNG during the life of the Inquiry. His absence and the limits of knowledge of other persons such as Patrick Tay, Imari Trawa and Andrew Aopo who were involved in assisting him render a documentary examination almost essential. Tay leaving PNG before public examination took place has also made this task the more necessary. The decision was taken to begin with the last and most comprehensive relevant records namely the 36 shipment files and alphabetical numbered series files, to mark documents from them to identify their source and to compile ship by ship files from them in chronological order.

As a second step the gaps in these ship by ships amalgamated files would be filled by recourse to the inward/outward faxsimile and telex running files, documents from such files being marked to identify their source.

Further gaps would be filled from the Bank of South Pacific letter of Credit files (documents again being marked to identify their source). Finally any further gaps would be filled from other identifiable sources to complete the picture so far as possible.

OBJECTIVE

The objective of compiling the files was to present shipment (or part) by shipment (or part) a complete picture susceptible of examination and tabulation and capable of scrutiny for discrepancies or irregularities. Compilation was effected in reverse chronological order to enable preliminary negotiations and arrangements to be omitted where they were not material.

The compiled files attempt to disclose

- (1). NEGOTIATION
 - fixing specification with the producer.
 - fixing price with the producer.
 - fixing the buyer
 - fixing price with the buyer.
 - fixing the vessel and freight rate.
 - fixing agents etc commissions.
 - fixing FIC remuneration.
- (2). BUYER/FIC ARRANGEMENTS
- (3). PRODUCER/FIC ARRANGEMENTS
- (4). OPENING L/C BY BUYER
- (5). NEGOTIATION OF L/C
- (6). ACCOUNTING FOR FUNDS CONVERTED TO KINA
- (7). ACCOUNTING FOR FUNDS DISBURSED FROM USD ACCOUNT
- (8). ACCOUNTING TO THE PRODUCER
- (9). ACCOUNTING FOR FREIGHT/BROKERAGE
- (10). ACCOUNTING FOR FICS RECEIPTS
- (11). ACCOUNTING FOR DISCREPANCIES AND IRREGULARITIES
- (12). RESOLUTION OF CLAIMS
 - QUANTITY OR QUALITY
 - DEMURRAGE
 - DEAD FREIGHT

BASIS FOR INVESTIGATION

A deal of time was spent to ascertain initially just how many shipments had been made and what subshipments they were divided into and which of the established letters of credit had in fact been negotiated and how many times.

A preliminary comparison of FIC's 36 numbered ship (or part) by ships (or part) files with the BSP's 29 letter of credit files showed the absolute confusion in FIC's records

It was thus necessary to prepare separate lists of the files of FIC and BSP and interrelate the two in approximate chronological order according to date of presentation of L/C drafts, this would indicate which part of the running files were relevant to each shipment. This task took a long time but resulted in knowing what shipments had in fact been made by preparation of a table. The table Working (Table 1) tends to show the hotch potch nature of the FIC filing system, there is just no logic to it.

Of the 29 letters of Credit established through BSP the negotiation position was as follows:-

- (a). one (1) was negotiated three times ie: drawn on three times.
- (b). ten (6, 7, 9, 10, 11, 12, 20, 22, 23, and 25) were negotiated (ie: drawn on) twice.
- (c). thirteen (8, 13, 14, 15, 16, 17, 18, 19, 21, 24, 26, 27, and 28) were negotiated (ie: drawn on) once only.
- (d). five (2, 3, 4, 4A, and 5) were not negotiated at all.

Two letters of Credit with substantial balances (1 and 2) were both transferred as at 14 April 1987 by FIC to Wawoi Guavi Timber Company for whose shipments they had been established.

All other letters of Credit had expiry dates which have long since passed and no negotiations would be possible unless the expiry dates were extended as they have not been.

Details of the letters not drawn on are:

L/C File No	Opener	Est Date	Amount	Volume	Expiry
2	Samsung Co Ltd	5.3.87	332,500	3500	20.5.87
* 3	Sanko Co Ltd	7.1.87	450,000	6000	31.5.87
4	Par Even Pty Ltd	16.12.87	18,750	300	21.2.87
4A	Par Even Pty Ltd	16.12.87	37,500	600	28.2.87
5	Par Even Pty Ltd	16.12.87	193,750	3100	28.2.87

*(This L/C requires the invoice to give credit for an advance payment of USD 200,000.00 from the CNF value of the goods).

There is thus a finite body of financial data which would necessarily indicate the extent and limit of the actual marketing endeavours provided, as seems the case:-

- (a). all log shipments were transacted through Letter of Credit.
- (b). all Letters of Credit were established for FIC with BSP.
- (c). BSP has produced all Letter of Credit files for FIC.

Attempted sales which did not eventuate and other activities which arise will be mentioned in overview only. This initial presentation deals only with actual concluded sales and accounting.

In order to test the first point at which irregularities could occur and working backwards the Letters of Credit were perused and documents shipment (or part) by shipment (or part) extracted, identified and where necessary copied. This assumes the amount claimed in the draft at Letter of Credit negotiation is correct (which will be tested later) and seeks to test the manner in which and persons to whom the amount claimed is disbursed.

A summary of the results is in Working Table 2 and it's accompanying commentary. The commentary which is over 100 pages long is entirely superseded by shipment by shipment analyses prepared later. (This commentary is not included in this Appendix).

Beginning with the "money end" was a logical starting point because it enabled perusal of accounting for funds actually received.

It also pointed up, from that accounting, the areas where particular attention needed to be directed in the perusal of the other documentary sources.

How this was achieved is set out in some detail in the commentary to Working Table 2 and the documents extracted from the BSP files, the significance of which follows from the commentary. It should be repeated such commentary is now only a working document and has been superseded.

Having completed Working Tables 1 and 2 it was possible from those two Tables to make comparisons with the Auditor General's dissection sheets for 1986 and 1987 to compare the data. The gaps that could be filled were filled and what was being checked was:-

- (a). completing the dissection sheets as far as possible
- (b). relating each L/C to a shipment
- (c). checking the amounts withheld in USD, the USD conversion deposited in PNG and kina equivalent and the amount deposited into FIC's account.
- (d). adding where possible explanations.

This was done by blue ink on copies of the Auditor General's Dissection Sheets and the L/C file and shipment Nos are shown in the extreme right hand columns.

The following observations are made.

1986 DISSECTION

1. The first two L/C's listed in 1986 have not been drawn on and a third in the same category is added.
2. On shipment 3 the amount withheld in USD altered and the earlier rather than the later and actual figure was "picked up" by the Auditor General's staff. The same figure was picked up FIC's accountants in schedule 3 to the financial statements and is wrong.

3. In shipment 1A there were 2 claims, the Auditor General's figures are on the first component. I have added the second.
4. The Sanko/Angus receipt of K97,646.71 on 26.11.86 represents the converted USD 100,000.00 advance for which credit was given on shipment 6B.
- *5. The Mohuideen/Kumusi receipt of K478,74 on 21.11.86 must be related to shipment 2B. It remains to be explained.
- *6. The Pars Ram/MilneBay Logging receipt of K2903.06 on 21.11.86 must be related to shipment 2 but how it fits in remains to be explained.
- *7. The Angus/Sanko receipt of K191,277.73 on 19.12.86 seems to have been the further advance of USD 200,000.00 by Sanko of Japan on account of ANGUS (PNG). It also seems quite clear that sum was placed on term deposit by FIC with BSP on behalf of Angus (PNG) on 13.1.87 by virtue of cheque No:036650 and pursuant to payment voucher 4623A. This will need to be verified however.
- *8. The receipt of K194,180.79 on an unspecified date remains to be explained. It could be the funds in 7 coming back from term deposit with interest. This will need to be verified as well. The refund of moneys to Sanko which I cannot locate through FIC's cash-book seems to have occurred but needs to be verified.

1987 DISSECTION

9. On the first L/C Listed there was no USD retention. The amount erroneously inserted by the Auditor General's Office represents the difference between the gross claim and the amount for which the L/C was established.
10. Details of L/C 2 from Samsung are inserted and neither this nor L/C 3 were ever drawn on.
11. On the DongAh/Bismark shipment 10A the Auditor General has extracted only the proportion ultimately paid to FIC. I have added in the amount in USD and K transferred to Bismark. This is only a matter of approach.

In overview the figures in Tables 1 and 2 cross check with the Auditor General's Dissection Sheets and where differences occur the explanations are reasonably clear. Importantly the kina amount credited to FIC's account (on the initial claim) cross checks with the Auditor General's "*Credit to FIC Account*" column which the Auditor General's staff have checked to Bank Statements and Cash Receipts records.

The matter of real concern is the receipts in the 1986 dissection shown under comments 5,6,7 and 8 above which will need to be thoroughly checked. They may require additions to Tables 1 and 2.

Having reached this stage it was logical to turn to the various records in manner explained earlier and to make up the amalgamated files from which analysis was possible.

The task proved much more difficult than envisaged but was accomplished with a great deal of time and effort.

Analysis was then undertaken on a part shipment or other logical basis and the analysis reduced to typed form along the lines earlier indicated. The dissection falls under the headings:-

BACKGROUND - where necessary
HISTORY - a chronology of relevant events
LETTER OF CREDIT
NEGOTIATION OF L/C
ACCOUNTING (KINA) BSP TO FIC
FIC TO PRODUCER
ACCOUNTING (USD)
FIC RECEIPTS
COMMENTS

It was hoped this would enable two things to be done:-

(a). prepare a table showing FIC's actual total (as district from original) receipts for each part shipment and its actual direct deductions.

(b). examine (where appropriate) FIC's kina accounting to producers for the moneys credited to FIC's bank account in kina.

This was attempted in Working Table 3. (Schedule 3) The first part (total kina receipts) was compiled using Table 2 and the Commentary from which table 2 is explained. This part ends with the "Who bore initial bank charges" column (as to 2C,2D,2E,2F,2G,2H,3, 6A,8 and 10). These are the only (part) shipments together with part shipment 4A where funds were directly transferred to producers without being brought into FIC's account.

The second part, "Kina accounting to producer" required a search of FIC's files to locate and extract details of FIC's accounting to the producer.

After analysis it was considered difficult to complete this section of Table 3 without substantial further information from FIC. In addition analysis revealed in many instances that there were possible claims or other incomplete matters which unless fully explained and fully resolved would mean table 3 could well be not only inaccurate but quite misleading. Eventually Table 3 was completed and the "uncertain" aspects were described in the Commentary to Table 3 where they may have a financial impact. (Schedule 3A) Such Commentary is in a short summary form which is expanded in the Comments section of the shipment by shipment analysis.

In the course of analysis further Tables were created for convenience.

Table 4 - (Schedule 4) amounts drawn off USD account to pay off Francis Sia's loan with BSP.

Table 5 - USD account residues credited to FIC's account on 4.4.87. (Schedule 5 and attached documents)

Table 6 - (Schedule 6) Interest credited to FIC's account being interest on USD retention funds.

Before further reference back to FIC was made the material in Table 2 as analysed was compared with FIC's.

"LOG SALES ANALYSIS AS AT 30TH APRIL 1987" as presented to the Commission (EXHIBIT 35). The blue lines and writing are used to reconcile the Analysis with the FIC kina receipts as shown in Table 2.

This confirms the kina receipts and suggests FIC can explain the 3 asterisked payments included in it's analysis, which are three of the four payments requiring explanation from the Auditor General's dissection (Items 5,6 and 7 above).

Clearly, FIC's Analysis only deals with actual kina receipts into it's bank account and actual kina payments out of it's bank account then dissects out the differences under various headings to which funds differences have been posted. Some of the postings, such as FIC levy and Customs have nothing to do with FIC's marketing role and should be disregarded. When the detailed analysis undertaken by the Commission is considered a number of errors are manifest and include by way of illustration:-

- (a). On Shipment 4B K818.86 is credited to exchange gains and wrongly so credited. FIC lost on exchange but profited overall.
- (b). On shipment 10B the payments out exceeded the receipts by K14,759.06 but the items are entered separately and incorrectly.
- (c). On shipment 12A the loss resulted from a large demurrage claim and it is not correctly entered as such.

The Analysis of FIC does not regard other direct credits FIC received (eg interest, USD residue funds etc) nor other direct debits (eg: interest, bank charges etc) which FIC bore. It does not, to be fair, purport to do so. More importantly it does not take account of contingencies which FIC may well have to face and which it seems to have "turned a blind eye to" at this stage. The FIC analysis only deals with gross kina actual receipts and only attributes K133,729.03 to commission out of which it seems the reported loss of K18,926.23 would have to be absorbed.

There is no deduction of direct expenses (air fares, accommodation etc) and of apportioned indirect expenses.

The small amount of receipts is of considerable concern when one bears in mind contingencies such as:-

- (a). a large unresolved deadfreight and demurrage claim on Shipment 12.
- (b). a clear but as yet undiscovered claim by Angus arising out of the fraudulent accounting to it on shipment 6B.
- (c). substantial unresolved shortage claims on shipment 11A and 11B.
- (d). the ominous claim of Pars Ram Brothers for breach of contract where the gross loss to Pars Ram alone (without regarding consequential loss claims) could well be in the excess of USD 432,000.00.

These aspects are included in documents produced to this time so that FIC (to whom it is intended to make the produced documents available) is aware of the full thrust of what is being said.

In order to compare the "cash basis" figures under the heading "FIC FINAL RECEIPT" in Table 3 and the figures extracted by FIC into EXHIBIT 35 a further Table (Working Table 7) was constructed and analysed. (not Scheduled)

Differences were expected because Exhibit 35 is a document which looks only at initial kina receipts. Exhibit 35 (unlike Table 3) does not regard bank interest additions and deductions; specific bank charges and subsequent receipts for USD retention funds converted at a later stage to Kina.

Particularly postings shown in Exhibit 35 and relevant to further explanations which are necessary (Note 1); aspects which are understood and taken account of in Table 3 (Note 5 and part of Note 6); aspects which relate to the contingency commentary to Table 3 (Notes 1,2,3,4,5 and part of note 6) and aspects which are not understood (Note 6 as to exchange loss) were noted for future reference and analysis. Table 7 showed the receipts in Exhibit 35 at slightly less than Table 3 which was expected - the difference is within expected parameters.

With Tables 3 and 7 complete attention could be directed to FIC's financial statements prepared in respect of State Marketing Agency activities for

- (a) the three (3) months period ended 31 December 1986
- (b) the six (6) months period ended 30 June, 1987.

The profit and loss statements referable to State Marketing Agency functions show commission incomes as:-

1986	Received	K48,331
	Receivable	K17,396
1987	Received	<u>K68,534</u>
		<u>K134,261</u>

There is a difference between these figures and the figures in both Exhibit 35 and Table 3 and those differences are expected

- (a) as subsequent USD conversions to kina are included as commission (See Note 7 to the 1987 half year accounts)
- (b) because bank interest receipts are not attributed as income from State Marketing Agency activities.

207

- (c) because bank charges of K645 in 1986 and K4204 in 1987 aggregating K4849 are treated in total as expenses whereas in Table 3 they are (to the extent specifically attributable) deducted from receipts.

The proximity of the comparison is well illustrated in this way:-

- i) to the total of Exhibit 35 figures in Table 7
 - add USD conversions which are not included of K10,715.53 to give a total of K132,781.90
 - deduct bank charges assumed in the accounts and which are not included of K4849 to give a total of K127,932.90
- ii) To the total commissions in the accounts of K134,261
 - add interest received (see Table 3) of K195 for a total of K129,607
- iii) Compare the receipts in Table 3 of K130,683.74.

The three figures fall within a very limited range and the differences are so small and explicable as to enable analysis to proceed with confidence.

With this work done it was possible to use all the data generated to assess the impact of FIC's Marketing Activities on its funds. That analysis is Section 3 of this Third Interim Report.

"	D	"	"	"	LC/1330007/86	CORPORATION BANK	BRANK PUTUK	OK	STETTIN BAY	24/11/86	109,657	
"	E	"	"	"	121068623	SYNDICATE BANK	MOHIDEEN SAWMILLS	OK	STETTIN BAY	24/11/86	44,512	
"	F	"	"	"	9635/4001	ANZ (BRISBANE)	PARS RAM	OK	STETTIN BAY	24/11/86	10,792	
"	G	"	"	"	9626/4001	ANZ BRISBANE	PARS RAM	OK	STETTIN BAY	24/11/86	14,372	
"	H	"	"	"	121068626	SYNDICATE BANK	FATHIMA TIMBERS	OK	STETTIN BAY	24/11/86	59,978	
3	-	PNG TRADER	86	NOVEMBER	KOREA	TRANSFERRED LIC	M19186116100331	FIRST INTERZONE ANCHORAGE FOREST PRODUCTS	ERCON INDUSTRIES CO.	WOODLARK	24/11/86	420,022
4	A	CAPE CORMORAN	86	NOVEMBER	INDIA	AC/BOYCE/86/15	INDIAN BANK	CENTRUR EXPORTS	OK	DEU CORP	17/11/86	4,666
"	B	"	"	"	"	"	"	CENTRUR EXPORTS	OK	KUHUSI	21/11/86	332,631
5	-	DOOYANG GUIDE	86	DECEMBER	KOREA	M321861NU00025	BANK OF PUSAN	SAM WON ENTERPRISE CO	OK	WIRWAI GUANUI	8/11/86	533,000
6	A	DOOYANG GRAVE	86	DECEMBER	KOREA	M322616NU00018	BANK OF PUSAN	DONG CHANG TIMBER CO	OK	WIRWAI GUANUI	10/12/86	311,400
"	B	"	"	"	JAPAN	012-1C-108625	BANK OF TOKYO	SANKO CO. LTD	OK	WIRWAI GUANUI	17/11/86	452,000
"	C	"	"	"	JAPAN	M3218612NU00018	BANK OF PUSAN	SAM WON ENTERPRISE CO	OK	WIRWAI GUANUI	10/12/86	598,800
7	A	REGENT	86	DECEMBER	KOREA	TRANSFERRED LIC	M1918612EU00370	FIRST INTERZONE ANCHORAGE FOREST PRODUCTS	ERCON INDUSTRIES CO	ULABO	6/12/86	889,000
"	B	"	"	"	"	"	"	ERCON INDUSTRIES	OK	BOUGHMILLER FOREST ENTERPRISES	"	"
8	-	JUPITER ISLAND	87	JANUARY	KOREA	M1616121NU00040	CHO HUNG BANK	THE SINKS LUMBER CO LTD	OK	WIRWAI GUANUI	10/11/87	396,000
9	-	TREASURE	87	FEBRUARY	JAPAN	GJ 9517410 *	SUNHORO BANK	AFRICA LUMBER CO LTD	OK	WIRWAI GUANUI	24/12/86	510,000
"	A	ORIENTAL BEAR	87	JANUARY	KOREA	M2027101NU00057	SEOL BANK	DONG RH ENR. IND	OK	BISMARK INDUSTRIES	14/11/87	573,500
"	B	"	"	"	"	"	"	ENR. IND	OK	KEYRAC	"	"
11	A	MARIA PILLAR	87	FEBRUARY	TAIWAN	6A/F2/02330	CHANGHUA COMMERCIAL BANK	HO SHING WOOD CO	OK	WIRWAI GUANUI	30/12/86	255,000
"	B	"	"	"	"	"	"	HO SHING WOOD CO	OK	WIRWAI GUANUI	"	"
"	C	"	"	"	KOREA	M2701-701NU00057	WESTPAC BANK	SAMSUNG CO. LTD	OK	WIRWAI GUANUI	14/11/87	410,100
12	A	DOOYANG GUIDE	87	FEBRUARY	KOREA	TRANSFERRED LIC	M0612-701NU00025	FIRST INTERZONE ANCHORAGE FOREST PRODUCTS	ERCON INDUSTRIES CO.	KAPI	23/11/87	250,000
"	B	"	"	"	"	"	"	ERCON INDUSTRIES	OK	STETTIN BAY	6/12/87	340,000
"	C	"	"	"	"	"	"	CHUNGKOD IND CO	OK	STETTIN BAY	17/2/87	114,854
"	D	"	"	"	"	"	"	SAMSUNG CO. LTD	OK	STETTIN BAY	14/11/87	267,000
"	E	"	"	"	"	"	"	SAMSUNG CO. LTD	OK	STETTIN BAY	19/11/87	267,000
"	F	"	"	"	"	"	"	SAMSUNG CO. LTD	OK	STETTIN BAY	19/11/87	267,000
13	-	SUN PETREL	87	MARCH	JAPAN	GJ 9517410 *	SUNHORO BANK	AFRICA LUMBER CO LTD	OK	WIRWAI GUANUI	16/12/87	700,000
14	-	SANKO MARU	87	MARCH	KOREA	KC 003870274VC	BCC HONG KONG LIMITED	HYOSUNG (HK) LIMITED	OK	WIRWAI GUANUI	9/13/87	264,250
15	-	SEA DRAGON	87	APRIL	JAPAN	GJ 9517410 *	SUNHORO BANK	AFRICA LUMBER CO LTD	OK	WIRWAI GUANUI	11/4/87	1,000,000

14 BUYERS

14 PRODUCERS

Line	Altitude	Latitude	Longitude	Time	Speed	Direction	Remarks
1	15	14	13	12	11	10	9
2	14	13	12	11	10	9	8
3	13	12	11	10	9	8	7
4	12	11	10	9	8	7	6
5	11	10	9	8	7	6	5
6	10	9	8	7	6	5	4
7	9	8	7	6	5	4	3
8	8	7	6	5	4	3	2
9	7	6	5	4	3	2	1
10	6	5	4	3	2	1	0
11	5	4	3	2	1	0	-1
12	4	3	2	1	0	-1	-2
13	3	2	1	0	-1	-2	-3
14	2	1	0	-1	-2	-3	-4
15	1	0	-1	-2	-3	-4	-5

25	48,911.84	47,160.55	52.1	40	40,304.75	10,944.51	81.05	PRODUCER	242.87	F.I.C.	K2,752.33	K2,752.33	USD 0.50 per lb	
F	26	10,792.56	10,484.32	41	20	19,443.12	273.33	30.44	PRODUCER	242.87	F.I.C.	K1,849.32	K1,849.32	USD 0.50 per lb
G	27	14,372.91	13,962.88	44	90	13,912.98	368.98	40.33	PRODUCER	328.65	F.I.C.	K823.77	K823.77	USD 0.50 per lb
H	28	59,992.41	58,279.01	393	90	57,885.11	1354.47	107.65	PRODUCER	1246.82	F.I.C.	K3,794.47	K3,794.47	USD 0.50 per lb
3	8	508,016.84	500,768.32	2720	90	279,047.42	2734.27		PRODUCER	2,752.33	PRODUCER	K2,752.33	K2,752.33	USD 0.50 per lb
4	A	7	81,448.23	79,353.36	5417	10	73,935.66	1834.48	PRODUCER	1,849.52	F.I.C.	K55,174.96	K55,174.96	USD 0.50 per lb
5	B	7	61,484.84	60,061.56	4057	56	56,003.82	56,003.82	PRODUCER	56,008.73	F.I.C.	K411,066.67	K411,066.67	USD 0.50 per lb
6	A	17	252,465.71	243,556.68	2001	45	241,555.23	444,027.69	PRODUCER	444,860.64	PRODUCER	K234,252.38	K234,252.38	USD 0.50 per lb
7	A	20	422,983.67	422,983.22	3433	70	399,504.52	228,775.00	PRODUCER	228,775.00	PRODUCER	K235,795.31	K235,795.31	USD 0.50 per lb
8	B	20	422,983.67	422,983.22	3433	70	399,504.52	404,080.78	PRODUCER	404,080.78	PRODUCER	K396,635.68	K396,635.68	USD 0.50 per lb
9	-	15	362,374.46	344,904.91	2392	55	342,512.36	10,347.14	PRODUCER	10,357.14	PRODUCER	K332,165.22	K332,165.22	USD 0.50 per lb
10	-	1	565,408.63	534,460.25	1382	60	532,777.65	532,777.65	PRODUCER	532,777.65	PRODUCER	K532,777.65	K532,777.65	USD 0.50 per lb
11	A	23	114,106.98	109,549.65	924	10	106,635.55	24,641.11	PRODUCER	25,146.83	PRODUCER	K82,305.97	K82,305.97	USD 0.50 per lb
12	B	23	109,003.22	291,127.96	2430	20	208,677.26	208,677.26	PRODUCER	290,016.46	PRODUCER	K303,456.32	K303,456.32	USD 0.50 per lb
13	A	12	65,793.15	64,673.45	488	45	64,185.00	64,185.00	PRODUCER	64,518.50	PRODUCER	K64,185.00	K64,185.00	USD 0.50 per lb
14	B	12	52,009.65	49,000.78	413	05	49,587.93	48,587.93	PRODUCER	48,858.75	PRODUCER	K46,872.90	K46,872.90	USD 0.50 per lb
15	C	13	306,444.89	288,635.47	2485	70	286,138.27	286,138.27	PRODUCER	286,124.08	PRODUCER	K286,138.27	K286,138.27	USD 0.50 per lb
16	A	14	161,615.17	157,634.88	1376	15	155,238.73	156,258.73	PRODUCER	156,238.73	PRODUCER	K143,568.88	K143,568.88	USD 0.50 per lb
17	B	9	160,491.71	152,994.17	1366	30	149,627.87	149,627.87	PRODUCER	151,520.20	PRODUCER	K145,098.05	K145,098.05	USD 0.50 per lb
18	C	9	78,661.47	73,872.91	694	85	73,178.06	73,178.06	PRODUCER	74,308.72	PRODUCER	K70,961.88	K70,961.88	USD 0.50 per lb
19	D	10	98,734.52	92,662.81	887	15	91,725.06	91,725.06	PRODUCER	91,690.96	PRODUCER	K88,947.28	K88,947.28	USD 0.50 per lb
20	E	21	192,498.48	180,766.71	1510	35	179,256.36	179,256.36	PRODUCER	179,199.00	PRODUCER	K173,833.36	K173,833.36	USD 0.50 per lb
21	F	10	219,182.91	204,652.35	1708	45	202,945.90	202,945.90	PRODUCER	202,704.22	PRODUCER	K190,539.77	K190,539.77	USD 0.50 per lb
22	-	1	584,197.59	544,088.34	1727	15	542,321.21	542,321.21	PRODUCER	545,216.13	PRODUCER	K537,624.80	K537,624.80	USD 0.50 per lb
23	-	18	164,597.97	155,096.45	600	10	154,486.35	154,486.35	PRODUCER	154,453.44	PRODUCER	K148,350.79	K148,350.79	USD 0.50 per lb
24	-	1	519,679.28	471,062.71	1250	40	469,812.31	469,812.31	PRODUCER	469,812.31	PRODUCER	K466,472.56	K466,472.56	USD 0.50 per lb

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K295,313.15	K2,752.33	K1,849.32	K823.77	K3,794.47	K234,252.38	K235,795.31	K465,748.03	K226,835.18	K396,635.68	K332,165.22	K15,004.055	K24,825.30	K13,939.86	K323.50	K193.85	K24,194.055	K419,171.055	K3,365.64	K12,306.13	K13,210.17	K5,405.46	K2,865.39	K130,683.74
USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb	USD 0.50 per lb

plus agent

APPENDIX 35.3A

COMMENTARY ON TABLE 3

CONTINGENCY FACTORS

SHIPMENT 1

There are no quantifiable contingency factors.

Vikani was asked to agree to a price addition of USD1.00 per m3 to cover FIC expenses and to cover the interest differential. After the interest differential was taken into account FIC made an aggregate of K10,613.89. The base agreement (FIC telex 18.8.86 (OUT TLX 5059) was that actual expenses would be deducted and any residue would be refunded by credit on the next vessel (Shipment 4)

FIC's actual costs are not quantified but would be unlikely to approach K10,613.89.

Technically FIC is at risk of a claim by Centaur Exports to refund the difference between K10,613.89 and FIC's actual costs (direct and indirect) on this shipment.

SHIPMENT 2

There are a number of aspects requiring explanation which have a direct financial impact:-

- (a) What has happened to Pars Rams clear over invoice claim of USD 249.80 which seems clearly payable but ignored :
- (b) What has happened to Pars Rams demurrage claim - has it been particularised or pressed and does FIC have risk exposure. Should a provision be made.

- (c) What do the two receipts of K478-74 and K2903.06 on 21.11.86 aggregating K3381.80 represent and how do they affect other figures.
- (d) What has happened about the shortfall between FOB prices and MEP value on the Kumusi part shipments. Are further moneys payable to FIC. Are further moneys payable to Kumusi. Was the Department of Forests told lies.
- (e) Did Pars Ram pay the agreed USD2970.00 for stamp duty interest and bank reps fees. We know the stamp duty and interest were paid. What bank fees were payable for a bank rep to travel to Brisbane. Are moneys refundable if these expenses were paid by Pars Ram but not incurred.
- (f) On the part shipments from Kumusi it seems the arrangement was for commission of 3% of the FOB price (see OUT TLX 5162 and 5166 of 17 and 18 September 1986).

In its accounting FIC makes no deduction from the invoiced FOB prices but pays in full. FIC would seem to have a right of recovery for 3% of K25,469.58 or K764.09. Should this not be considered and provided for as receivable and recovery sought.

- (g) On the part shipments from SBLC there was a clear overpayment. Has the requested refund of USD5,869.39 been made and taken into FIC's books. If so the FIC receipts are increased.

If not should this not be considered and provided for as receivable and recovery sought.

- (h) Though not strictly referable to this shipment the possible rights of Pars Ram for breach of the long term contract with FIC must be a contingent liability and some provision should be made. The amount of the claim would probably exceed USD432,000.00.

SHIPMENT 3

Technically on FIC's records shipping brokerage of USD2,660.15 was paid to the wrong person. There is no evidence of complaint but there appears to be a technical misapplication of funds. In theory there is a contingent liability but in all the circumstances a provision is probably not appropriate.

SHIPMENT 5

There are two direct aspects and one indirect aspect which affect FIC's receipts :

- (a) The shipper claimed despatch amounting to USD2,097.92.
- (b) FIC deducted USD1,000 from the freight payment apparently on account of despatch.
- (c) The buyer made a shortage claim settled at USD1,555.96 which was deducted as K1,447.54 from FIC SHIPMENT 13.

Item (c) is carried to Shipment 13.

In respect of items (a) and (b) the facts must be ascertained. If no payments has been made FIC has a contingent liability to the shipper of USD2097.92 to which it could apply the deduction of USD1,000.00. In this case FIC may have lost its rights to the difference against the shipowner.

If the shipowner has paid the producer then FIC has a contingent liability to the shipowner for USD1,000.00. Either way the facts must be ascertained and it seems FIC has a contingent liability for which provision should be made.

SHIPMENT 6

- (a) On part shipments 6A and 6C it seems quite

clear FIC made undisclosed profits of USD1.00 per m3 amounting to USD 3007.92 and USD 6359.40 aggregating USD9,367.32 which were misappropriated by Michael Cowan by telegraphic transfers of funds to Straits Singapore. The prospects of recovery of these sums would have to be gauged and would perhaps be facilitated if FIC carried employee fidelity insurance. The facts would indicate whether a "receivables" entry was appropriate.

- (b) On part shipment 6B it seems quite clear FIC gave a false accounting to Angus PNG on ocean freight and withheld as a result USD14,045.36 of the FOB price. In addition FIC seems to have been entitled to 1.25% shipping brokerage amounting to USD1,439.64. Again it seems quite clear these aggregate funds of USD15,484.00 were misappropriated by Michael Cowan by telegraphic transfers of funds to Straits Singapore. The prospects of recovery would need to be gauged; would be facilitated if FIC carried employee fidelity insurance and the facts would indicate whether a "receivables" entry was appropriate.
- (c) It seems clear on shipment 6B that FIC by false accounting underpaid Angus (PNG) by USD14,045.36. From this FIC would be entitled to deduct 3.5% commission of USD491.59 leaving a net balance due to Angus of USD13,553.77. The amount seems clearly payable and provision should be made.
- (d) In part shipments 6A and 6C the shipper claimed aggregate despatch of USD4,317.36. What occurred must be ascertained. If despatch was paid then there is no problem. If it has not been paid it seem FIC may be liable to the producer and may (if it has not lost them) have recovery or set-off rights against the shipowner. The facts should be ascertained so FIC's contingent or likely liability is known.
- (e) On part shipment 6B the shipowner claimed demurrage of USD1,191.67. If the amount has not been paid or offset (as appears to be the case) FIC may have rights :
 - (i) to offset against despatch (see (d) above)
 - (ii) to claim from Angus or offset (see (c) above)

The facts should be ascertained so the money effect on FIC is known.

(f) As a result of FIC entering a long term contract with Sanko Ltd and its handling of an advance of USD200,000.00 by Sanko Ltd (which was apparently repaid) it seems FIC may have significant legal risk exposure which should properly be regarded as contingent liabilities until the facts on liability of FIC are thoroughly investigated. The risk areas include possible claims.

- (i) by Sanko Limited for damages for breach of the long term contract between FIC and Sanko. This would be for loss of profit and perhaps consequential loss on six shipments each of 6,000 m3 and the claim could be considerable.
- (ii) by Angus (PNG) for interest and exchange control gains on the advance aggregating K13,195.17 which FIC has appropriated to its own use and to which Angus may be entitled if the advance was truly held by FIC as trustee for Angus.
- (iii) by a liquidator of Angus (PNG) by virtue of the doctrine of "relation back" if FIC in refunding the advance preferred Sanko Limited over the general body of unsecured creditors and thus removed from reach funds otherwise available to the general body of unsecured creditors.

SHIPMENTS 7

- (a) On part shipment 7A it seems clear FIC made an apparent "windfall" profit of USD1.00 per m3 because freight turned out to be USD1.00 per m3 less than estimated. The "windfall" amounted to USD4040.24. It seems equally clear that sum was misappropriated by Michael Cowan by telegraphic transfer to Straits Singapore. The prospects of recovery need to be gauged; would be facilitated if FIC carried employee fidelity insurance and the facts would indicate whether a "receivables" entry was appropriate.

- (b) On this whole shipment it seems there was a "fiddle" which is not explicable from FIC's records. The explanation should be sought and may affect FIC's finances in that:-
- (i) FIC may have a further claim against Cowan and/or S.J Park.
 - (ii) FIC may have rights against the buyer
 - (iii) S J Park may have rights against FIC for balance of commission
- (c) The producer claimed and FIC deducted despatch of USD 623.33 on part shipment 7A. The producer is entitled to be paid but has not been paid. A provision should be made to meet this quite clear liability.

SHIPMENT 8

The buyer made a shortage claim of 23 pieces with a volume of 78.683 m3 which was referred by FIC to the producer. At the CNF price of USD86.00 per m3 such claim would amount to USD6,766.74. Whether the claim was pursued and what happened to it should be ascertained because FIC may have a contingent liability to the buyer and may have rights against the producer.

SHIPMENT 9

- (a) The producer claimed despatch of USD3,958.34 which FIC passed on to the buyer and which the buyer later said would be remitted on 6.4.87 in the sum of USD3,527.78. What occurred must be checked. FIC doesn't seem to have remitted funds to the producer. As FIC's records stand FIC has a liability to the producer and may have rights against the shipowner or buyer.
- (b) It seems (INWARD FAX 638 of 21.2.87) that the buyer claimed a shortage of 10 pieces and a volume shortage of 303.556 m3 resulting from remeasurement. The base claim document (a facsimile of 20.2.87) cannot be located. This buyer traditionally makes and presses such claims.

What occurred must be ascertained as FIC may have contingent liability as well as rights against the shipper.

- (c) FIC should check its records to ensure there was no agreement about a commission charge on this shipment. If any agreement exists a "receivables" entry accompanied by a request for payment would appear appropriate.

SHIPMENT 11

- (a) FIC had a written contract with Amazon Bay Sawmills which entitled it to Commission of 3% of the contracted FOB price. That commission amounts to K10,598.70; was not deducted and has neither been claimed nor paid. The payment should be pursued and it seems a "receivables" entry would be appropriate.
- (b) FIC has received shortage claims from the Taiwan and Korean buyers which it has delayed and not dealt with. The Taiwanese claim is for 41 pieces totalling 96.317 with a CNF value of USD16,373.89. The Korean claim is unquantified but for 22 pieces.

FIC is contingently liable and probably has rights against the producers.

These matters must be faced and resolved as they may have a significant impact. In the meantime provisions for the contingency relevant to Angus (PNG) seem appropriate as the company is insolvent.

SHIPMENT 12

- (a) It seems reasonably clear FIC is liable for deadfreight and demurrage on this shipment as follows:-

(i) Bootless Bay Loading

Gross claim	USD 33,493.05
Less paid	<u>USD 18,408.33</u>
	USD 15,084.72

(ii) Stettin Bay Loading USD 15,052.78

(iii) Shortshipment of 681.948
m3 but reduced because of
payments already made to USD 7,735.71
USD 37,873.21

It also seems FIC would not have resource against producers. The shipowner has pressed strongly for demurrage but not for deadfreight. Provision should be made to meet the demurrage liability.

- (b) FIC must establish the true entitlements of SJ Park and FIC and the correct freight rate on Part shipments 12B and 12C. The true position cannot be ascertained from FIC's records. On one possible explanation FIC may have the right to recover USD 3857.40 from Francis Sia. On another possible explanation the liability specified in (a) above may be reduced by USD 3857.40.
- (c) In its accounting to Sopathin Development Corporation (really Santa Investments) on part shipment 12D FIC made a deduction from the producers entitlement of K11,740.31 for what was described as "Our advance to National Forest Products". The so described "advance" must be verified and vouched as to any extent it is not so verified and vouched FIC may well be liable at the suit of either Santa Investments or National Forest Products (depending on the facts).
- (d) On the Stettin Bay part shipment 12F there was a written agreement between FIC and the buyer under which FIC agreed to telegraphic transfer USD8,583.78 to the buyer to cover defect

allowance of 96.447m3 at the CNF price of USD89.00 per m3. The producer made the allowance at the FOB price of USD 72.00 per m3 amounting to USD6,944.19 which converted to K6460.31. This is included in FIC receipts in Table 3. FIC's liability is clear under a written agreement and provision for this clear liability of USD8,583.78 should be made.

SHIPMENT 13

- (a) The amount of USD1,555.96 was retained out of this shipment to meet the shortage claim on FIC shipment 5 (as mentioned above). The payment of K1447.54 was not made to the buyer but to a shipowner because of a directed payment in that way to offset demurrage. Though the vouching is quite inadequate there has been no complaint and the matter is apparently at an end.
- (b) There was a freight saving of USD0.50 per m3 amounting to USD3248.87. It seems BSP credited the amount (converted to K2933.52) to FIC's account on 6.4.87. The same day Tay of FIC tells Wawoi Guavi about it and says the money will be remitted to them. FIC also seems to have directed BSP to credit Wawoi Guavi's account. What occurred must be ascertained. If FIC retained the funds (as is correct) FIC's receipts would be increased in Table 3 by K2933.52. If FIC paid Wawoi Guavi then Table 3 stands but in such event FIC would have recovery rights as the producer had no entitlement to payment and FIC has no power to make ex gratia payments. If the money was paid to Wawoi Guavi it should also be asked to produce records to show if any other person benefited from the payment.
- (c) FIC made a stupid freight contract which it seemingly did not understand and clearly underloaded by 652.249 m3 thus exposing itself to a deadfreight claim of USD13,044.98. It seems the shipowner did not pursue this as a gesture of goodwill to attract further business which it did not get. FIC should ensure no claim has been pressed.
- (d) The shipper claimed despatch of USD2,632.44. It customarily receives despatch because of its loading system. FIC seems to have been

dissuaded from pursuing this when told of its deadfreight exposure. FIC's stupidity in writing contracts does not disqualify the shipper from making a just claim and FIC seems contingently liable for the despatch claim.

- (e) The buyer made a claim for 19 pieces and a substantial volume shortage. The claim was settled at USD23,104.44 and it was said Wawoi Guavi would pay in mid April 1987. Payment must be verified otherwise FIC may have a contingent liability to the buyer with recovery rights against Wawoi Guavi.

TABLE 4USD AMOUNTS DRAWN OFF TO PAY FRANCIS SIA'S LOAN

CHECKED	ITEM NO:	DRAFT (USD)	L/C	USD AMOUNT	SHIPMENT NO:
YES	1.	241,851.81	M6701-702-NU00299	2,588.57	12B
YES	2.	105,312.64	M6701-702-NU00299	1,268.83	12C
YES	3.	219,872.98	M0612-701-NU00025	2,903.32	12A
YES	4.	397,291.10	M2701-701-NU00057	4,786.64	11C
YES	5.	143,271.29	M2027-701-NU00057	1,500.22	10A
YES	6.	387,572.99	M2027-701-NU00057	4,058.35	10B
YES	7.	131,646.02	B\$N 856002	1,828.41	12D
YES	8.	323,219.12	M1918 612 EU000370	<u>2,431.66</u>	7A

USD21,366.00

INTERNATIONAL OPERATIONS
P O BOX 173 ✓
PORT MORESBY

20th March 1987 ✓

The Secretary
Forest Industries Council of PNG
P O Box 1829 ✓
PORT MORESBY
N.C.D

ATTN: PATRICK TAY ✓

Dear Sir ✓

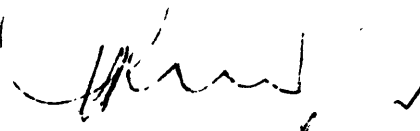
RE: OUTSTANDING BALANCES HELD IN USD UNDER VARIOUS DOCUMENT L/Cs ✓

<u>DRAFT AMOUNT</u> ✓	<u>OUR REF</u> ✓	<u>AMT OUTSTANDING</u> ✓	<u>DATE NEGOTIATED</u> ✓
USD271,515-29	CSB 8039/5367-68 ✓	1000-02 ✓	FM 4-12-86 ✓
USD323,219-12	CSB 8039/5376 ✓	2231-90 ✓	FM 24-12-86 ✓
USD547,619-13	CSB 8039/5383 ✓	1947-22 ✓	FM 6-1-87 ✓
USD143,271-29	CSB 8039/5392 ✓	560-08 ✓	FM 6-2-87 ✓
USD 77,965-57	CSB 8039/5395 ✓	458-63 ✓	FM 9-2-87 ✓
USD 58,944-27	CSB 8039/5396 ✓	346-74 ✓	FM 12/2/87 ✓
USD387,572-99	CSB 8039/5397 ✓	1461-02 ✓	FM 10-2-87 ✓
USD214,851-81	CSB 8039/5402 ✓	2588-59 ✓	FM 24-2-87 ✓
USD105,312-64	CSB 8039/5409 ✓	1268-82 ✓	FM 26-2-87 ✓

Please confirm whether same are outstanding in your records and when final settlement may be expected. ✓

We await your early reply ✓

Yours faithfully

 ✓
H.H. PARSONSON
SUPERVISOR/EXPORTS
INTERNATIONAL OPERATIONS

33/0



**FOREST INDUSTRIES COUNCIL
OF PAPUA NEW GUINEA**

284

PO BOX 1829 PORT MORESBY
LOT 4 SECTION 405
WAIGANI DRIVE

Phone: 256399/256302

256216/256728

Telex: NE22226 FORINCO

Fax: 212911

PT:mek/06041987

06 April 1987

ATTACHMENT 2

Bank of South Pacific
P O BOX 173
PORT MORESBY

Attention: MR M.H. PARSONSON

Dear Sir

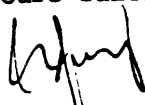
RE: OUTSTANDING BALANCES HELD IN USD

We refer to your letter of 20th March 1987

We are pleased to confirm that the outstanding balances are correct and we would be grateful if you could kindly transfer all the outstanding balances of US\$ 11818.02 to our current account with Bank of South Pacific, Waigani Branch.

Kindly let us have the credit advice as soon as the transfer is made.

Yours faithfully


f
MICHAEL J COWAN
Executive Director

c.c. Accounts - FR

TABLE 5

USD RESIDUES CREDITED 6/4/87

DRAFT AMOUNT (USD)	RESIDUE USD	SHIPMENT NO:	KINA CONVERSION	CROSS CHECKED
271,515.29	1,000.02	5	902.95	YES
323,219.12	2,231.90	7A	2,015.26	YES
547,619.13	1,947.22	7B	1,758.21	YES
143,271.29	560.08	10A	505.72	YES
77,965.57	458.63	11A	414.11	YES
58,944.27	346.74	11B	313.08	YES
387,572.99	1,461.02	10B	1,319.20	YES
214,851.81	2,588.59	12B	2,337.33	YES
105,312.64	1,268.82	12C	1,145.66	YES
USD11,863.02		K10,711.52		

* There is a discrepancy of 1 toea due to rounding - the amount actually credited was K10,711.53.

These are the residues of funds retained in USD drawn to FIC's attention by BSP's letter of 20/3/87. (ATTACHMENT 1) On 6 April 1987 FIC wrote to BSP referring to Attachment 1 and asking that the balances (wrongly said to be USD11,818.02) be credit to FIC's account (ATTACHMENT 2) BSP's credit note of 6 April 1987 shows the credit to FIC's account to a total of USD11,863.02 converted to K10,711.53 (ATTACHMENT 3). Attachment 3 has a typographical error in that the sum "USD560.08" is erroneously typed as USD560.48"

Forest Industries Council of PNG.,
P.O. Box 1820
Port Moresby

9

Bank of South Pacific Limited

Port Moresby
6th April 1987

Office/Branch
Date

ATTACHMENT 3

Credit ADVISE

YOUR REFERENCE	OUR REFERENCE	DATE RECEIVED	DETAILS	CURRENCY AMOUNT	RATE	KINA AMOUNT
			Proceeds of outstanding 11000 hold in USD A/C under following draft No's refer our letter dtd 20th-3-87	USD11,863-02	1.1075	10,711-53
DRAFT AMOUNT	OUR REF	ANT O/STANDING	DATE NEG			
USD271,515-29	CSB8039/5367	USD1000-02	FM 4-12-86	Commission		
USD323,219-12	CSB8039/5376	USD2231-90	FM 24-12-86	Airmail Postage		
USD547,619-13	CSB8039/5383	USD1947-22	FM 6-1-87	Stamp Duty		
USD143,271-29	CSB8039/5392	USD 560-48	FM 6-2-87	Interest		
USD 77,965-57	CSB8039/5395	USD 458-63	FM 9-2-87	Cost of Cable		
USD 53,944-27	CSB8039/5396	USD 346-74	FM 12-2-87	C'dents Charges		
USD347,572-99	CSB8039/5397	USD1461-02	FM 10-2-87	Total Charges		
USD214,851-81	CSB8039/5402	USD2588-59	FM 24-2-87			
USD105,312-64	CSB8039/5409	USD12603-80	FM 26-2-87	ACCOUNT		10,711-53
	credited	credited				

61.381(9/77) Authorised Signature

TABLE 6INTEREST ON FUNDS RETAINED IN USD ACCOUNT

(BSP LETTER 11.12.86)

ITEM	SHIPMENT	RETENTION	DAYS	USD	K
1	1B	63,300	1	10.55	10.21
2	1A	101,500	9	152.25	147.40
3	3	112,006.11	1	18.66	18.06
4	4A	46,006.23	2	15.33	14.84
5	4B	30,470.59	1	<u>5.07</u>	<u>4.91</u>
				USD 201.86	195.42

The discrepancy in kina conversion arises from rounding.

The total USD201.86 converted at 1.0329 to K195.43 which was credited to FIC's account on 11.12.86.

Though BSP stated in its letter of 1/12/86 that interest would be paid on USD retentions it does not seem any payments other than these were made.

APPENDIX 36

SHIPMENTS TO INDIA

SHIPMENT 1.2.4

BACKGROUND

In 1986 there had been a promotional tour to India arranged by F.I.C. This had been aimed at promoting PNG timbers into the Indian market where a survey had shown India's timber resources were far less than had been thought which had led the Indian Government to allow log imports by reducing previous prohibitive tariff/barriers. A new market thus became available to South Seas log producers.

The tour was followed by a visit by Cowan (and his wife who joined him). The concept of promptly arranging shipments to India was obviously dear to Cowan and influenced FIC's entrance into log marketing.

Before FIC's entrance however Vanim Forest Products had been selling to India and it is clear Vanim's agent Ron Gibbs, through his company Quarter Enterprises, had penetrated that market using kwila as the selling tool and had entered an arrangement of mutual convenience with the Indian company, Centaur Exports. Kwila was a good choice as it is a very dense red species - thus having properties which appeal to Indian users.

The essential gist of that arrangement was this:-

- (a) Centaur wanted a monopoly posture so that it was free from competition for the selected species.
- (b) It was prepared to spend time and money promoting the market to create a demand for the selected species - provided it was guaranteed a monopoly. This would mean it would profit from the monopoly eventually.
- (c) Gibbs could use this monopoly and market structure but for his part he had to assure freedom from competition i.e that other PNG producers could not and would not supply Centaur's competitors with the selected species (or substitutes) which Centaur had spent money promoting.

Given such an arrangement Centaur would create a demand and Gibbs would control the supply available to meet that demand. In this way "demand pull" market pressure could be used to control price and, by clever control at both ends, to increase prices.

The Indian end monopoly and PNG end control were crucial features.

Gibbs and Centaur had taken this some way with Kwila as the selected species and as Gibbs explained intended to do the same with other lesser known species thought to be acceptable in the Indian market. Vitex and Malas were obviously suitable.

Two shipments had been made from Vanimo on SONERS ACE and KARKAS. Cowan was aware of Gibbs' work and aware that Kwila was then the key to the arrangement. When FIC became involved in marketing, and the Indian tour was a recent event he turned his attention to India and to Kwila. It must be said for, Vanimo Forest Products (VFP) and Gibbs that they were quite open about what they were seeking to do and quite explicit in explaining their strategy in detail to Cowan.

Three of FIC's first four shipments were to India and there were none thereafter.

It seems clear at least two groups were involved in the first instance - both wanting a monopoly and to exclude the other and both being very concerned with Kwila.

- (a) CENTAUR EXPORTS - HASMUKH VIKANI
- PRAFUL GANATRA

A broad based import/export company - which seems to function on a similar basis to the Japanese trading houses but on a much smaller scale.

(b) PARS RAM BROTHERS - PARS RAM PUNJ

with their various clients

HAJEE TIMBER + INDUSTRY	- SALAM
MOHUIDEEN SAWMILLS	- MOIDEEN
INDIAN PLYWOOD MF6.CO	- REDDY and KUNHI
FATHIMA TIMBERS	-
KARNATAK STATE VENEER	-
MADHAU NAYAK BOLWAR PUTTAR	-

Pars Ram Punj - based in Brisbane Australia seems to be a broad based trader and organiser of various timber using groups. Vikani says the real substance is the MOHUIDEEN family who are similar broad based import/exporters to CENTAUR EXPORTS.

Later a third group based in Sydney PAR EVEN PTY LIMITED entered the scene but even though it opens Letters's of Credits (L.C) this came to nothing.

Cowan initially favour Centaur but then favoured the PARS RAM GROUP and entered a secret agreement with him.

Pars Ram and Cowan realised that for them to corner the Indian market Kwila would have to be the base and a significant supply would need to be assured. As a first step Cowan drafted for Minister Diro's signature, on Ministerial letterhead, a demand to VFP to make kwila available for FIC's marketing (as a base to honour the agreement with Pars Ram).

(Cowans intrigue and treachery in this whole episode is dealt with later in detail).

STRUCTURE OF INDIAN MARKET (From an interview with H.Vikani)

The structure and requirement of the Indian market and means of coping with it are also important background. Vikani says the bulk of the Indian market consists of small buyers who need credit and who have specific requirements.

His method was to select key ports in various areas as discharge ports and then to arrange distribution in areas surrounding these ports by truck - he listed key ports as:

MANGALORE
BOMBAY
TUTICORINE
MADRAS
BHAVANAGAR

He also explained the importance of having small but regular parcels of the same species loaded and designated for specific ports to facilitate distribution. From his description the market seems not unlike the small user Japanese market as described by Ashenden and he with his shipper seeks to have some of the "sorting" done at the PNG end into "job size" lots to facilitate his distribution in India.

Where each shipment goes and how and where it is distributed is very critical to the structure of supply and demand which affects prices. In the early stages he says he has lost money by trucking excessive quantities from one area to another so as to stimulate demand.

The third important factor to which Vikani drew attention is the financing of a log shipment.

Indian buyers want to buy on 180 day credit. (This may be an Indian Government requirement or merely buyers insistence. Either way it seems clearly to be a fact of life).

Is it clearly an Indian Government requirement that interest on "after sight" L/C's is only allowed to be paid from India at the then prevailing Indian Prime Rate - which in mid 1987 was 7.5% per annum. In addition Indian buyers like to buy on a CNF basis. This conflicts with the normal PNG suppliers' method of doing business - he and his banker both want to be paid at sight and they want to contract on an FOB basis.

On Centaur's first shipment with VFP the shipper accepted 180 day terms but had terrible problems with the Bank and Vikani says it became necessary to convert the credit to "at sight" in Hong Kong which cost him a lot of money in interest. He says with VFP this was solved by opening Indian 180 day L/C's to Australia then converting these to "at sight" arrangements with PNG.

To understand what happened with FIC it is necessary to go back in time.

FIC INVOLVEMENT WITH CENTAUR EXPORTS

In about mid to late 1985 India in effect permitted log imports by reducing tariff/barriers. Vikani sent telexes to FIC seeking samples of PNG timbers but got no response. Because of this he came to Port Moresby in December 1985 and saw Gordon Gresham (then the Executive Director of FIC). FIC were not particularly helpful so Vikani contacted some shippers and got a good response and organised some samples from Ron Gibbs. Gibbs sent him samples of species VFP was logging and this enabled him to get started. With his samples Vikani prepared catalogues of PNG timbers (FIC sent 1 copy and he got it printed) and canvassed Indian buyers - he said this cost him USD100,000.00.

He then firmed up arrangements with Gibbs (who he says gave a lot of help and information) and Gibbs persuaded him to commit to a trial shipment in March 1986 (on the SONERS ACE) with about 4,000 m³ from PNG and the balance from the Solomon Islands.

A second shipment on the KARKAS - was then arranged with Gibbs. After the SONERS ACE shipment Vikani was in PNG and met Cowan. He says Cowan was a new man on the scene and was very keen and very enthusiastic about FIC marketing and sought to persuade him to use FIC.

He says he explained to Cowan his two main problems (at the time):-

- (a) that after the first shipment he was concerned about PNG grading - getting the quality and grades promised - and about the expense in sending a grader from India to ensure he got what he ordered.
- (b) that he was concerned about the expense involved in having to convert his Indian 180 day L/C's to "at sight" L/C's through Hong Kong.

He says that Cowan told him these were not problems.

Firstly he says Cowan told him FIC had log graders and would charge only airfares for graders to inspect cargoes - at a rate of about USD1000 - 1500 per shipment. Secondly Cowan told him FIC could organise to accept 180 day L/C's at normal interest which Vikani would have to pay.

When Vikani contacted Cowan to arrange the first shipment (SITI, MIDA) the same two matters were raised. He says Cowan again said he could arrange the grading and inspection of logs and that he could arrange acceptance of a direct 180 day L/C. When Vikani asked him about the cost Cowan said.

- (a) for grading and inspection an allowance would be made of USD1.00 per m³ and whatever the actual cost was would be charged and the balance reimbursed.
- (b) on the L/C he said they were negotiating with the bank but whatever the difference would have to be paid. Vikani explained this in this way. The Indian Government only allows payment from India of the Prime rate (7.5%) p.a) You have to find the market rate (which for VFP was in the range of 8.25% to 8.4% p.a). You then take half the difference (because it is half the year - 180 days) which is about 0.5% and you add that back onto the agreed CNF price. In this way the buyer complies with Indian law and the seller gets his price plus the market rate of interest.

(An example is given to FIC in the documents,) see (UNNUMBERED TLX) GANATRA to COWAN of 1.9.86 REF220.

Vikani says Indian Government regulations only permit ship charter by shipowners or the Government agency. Indian buyers arrange charter through an Indian shipper and normally seek single voyage charters.

He says Cowan was told frankly of the strategy Centaur had arranged with Gibbs - using kwila as the selected species - that Kwila was the promoted species and that Cowan agreed to protect Centaur over competition on kwila and on whatever other species were selected for the same market treatment and promotion.

After the first shipment Vikani says he received bad news. FIC, he heard, were trying to organise a shipment to other Indian buyers (the main buyer was MOHUIDEEN) through an agent PARS RAM (who Mr Vikani thought was based in Melbourne). Vikani says all told there were four agents involved - PARS RAM, two in Bombay and FIC. He believes a total of about 10% Commission was involved and says he told Cowan this. He says he knew these people (MOHUIDEEN, SALAM etc) were interested and coming to PNG. He felt, with Cowan's knowledge and assurances, that Cowan would discourage these buyers particularly so because Cowan knew so many "middlemen" would be involved. (because Vikani had told him)

Vikani regarded this other shipment to Pars Ram as treachery by Cowan and FIC. He said:-

"We felt the kwila prices were basically artificial. There are similar timbers in India which are expensive so we thought we could force a better price. We had total control of the kwila market. Price is always a matter of supply and demand. If we were the only ones involved we could control it. I told FIC this. If others came in the price would come down."

Our first shipment with Vanimo was USD82.00 for Kwila which was not established then. There were no buyers but I felt it was full of potential if promoted. I signed a one year contract with VFP to take 24,000 m³ per year with an increase of USD1.00 on each shipment.

In effect the market developed further and I paid USD86.00 for the second shipment then paid up to USD90.00. With market control I could do it. It is the only timber imported into India where prices are up. The price of all Malaysian timbers dropped by 30% since imports to India opened because they sell to anyone and have not regulated supply.

We told FIC that if you try to break the monopoly the price will fall just like the Malaysians and VFP will lose." VFP produces mainly kwila which hasn't other markets and here it has a good one.

I conveyed to FIC that if they tried to create competition kwila would fall to about USD 70.00 and at that price there would be no profit margins. If that was happening Centaur would pull out.

FIC was a small shipment. We had cornered the Malaysian competitor too so we cornered the market. There should be a telex about AFZELIA. To keep the kwila price up we had to corner this and were prepared to do so if we stayed in the same monopolistic position.

We are spreading PNG timbers to new (Indian) ports. The price is artificial and we must control the flow to control the supply and thus the price.

FIC agreed in principle but what it then did behind our back was to organise another shipment to MOHUIDEEN. It seems FIC promised them more kwila and had an argument over finance and some arrangement with Kumusi which all fell through.

Because FIC shipped to DEEN and tried to destroy our market we could not buy through FIC any more. I considered you (FIC) do not promote but destroy a market that we have spend money to develop".

Vikani was very bitter and angry about FIC's involvement. He also spoke of a (then) recent publication (by FIC in newspapers) over an Indian shipment on OLYMPIC 88 which he says was ignorant and damaging. He says he has no interest in the Company but has had joint shipment arrangements with them at times.

The importer was YENNE POYA (KUNHI + CO) and the publication alleged transfer pricing.

He says these people had the same problems as he did with "at sight" L/C's so like him they routed it through Australia. He says that the half of 8.5 to 9% came off in Australia but it was not transfer priced. Every US cent of the difference was to pay the 180 day interest charges and commission to an agent in Australia. He says these costs came to about USD3 or 4 per m³ depending on negotiated interest rates and far from profiting offshore the Indian importer lost substantially because he had to meet the interest expenses as well as substantial demurrage. In mid 1987 Vikani offered to supply the documents on that shipment and on all shipments to Centaur which he said demonstrate the gross amount of the L/C to Australia and the manner of its disbursement and show that every US cent is accounted for and that not one US cent was transfer priced.

Vikani feels the marketing of PNG timbers in India is still in the development phase - he is spending money as an investment for the future. As examples he cited the following:

At TUTICORINE we estimated a 3000m³ demand - based on the number of delivery trucks per day. The market could not absorb it and sales were slow because buyers considered the market was oversupplied and if they waited they would get cheaper prices. If they bought and the price (bought on credit) fell they would lose. To support the price and those who had bought, we trucked 1000m³ overnight to an established market and sold at established prices there. This cost us USD40.00 per m³ to truck plus the cost of double handling. We lost a lot of money but felt this was a better long term marketing strategy than dropping the price in TUTICORINE to get quick sales.

In MAORAS supply exceeded demand also. Again we subsidised transport to established markets in North Madras (at a loss) to maintain prices. Even then the price in Madras is about USD30/m³ less than North Madras (because Madras was a new market being promoted) but the trucking cost exceeds the difference.

It is was proposed the next shipment (at mid 1987) would be to BHAVANAGAR - the northern most port spreading into North India. This is a new Port for PNG logs so trucks were sent by road to promote PNG timber in advance of the shipment. The cost (which we bore) was USD60.00 per m³ for trucking.

In Bombay kwila was not successful on first promotion. It was to be tried again.

As Vikani put it he regarded his participation as an investment for the future. He says unless Centaur is protected until at least the stage where the market is fully developed and he can recoup his investment and make a profit he feels very uncomfortable. He says he could not stand a repeat of FIC's efforts to destroy what has been built.

He says Centaur did its homework. They did an analysis of Indian imports from Customs figures and gave it to FIC - they did a lot of work to show a market is there for PNG logs. He estimates the total market at 300,000 m³ per year and says they expected 50,000 m³ sales in year 1 (but were in fact looking about 35,000 m³) with a rise to 100,000 m³.

He believes PNG has a better prospect in India than does Malaysia. This is because he says India originally had a multi species resource similar to PNG's diversity of species and far more diverse than the Malaysian's range.

If properly and competently handled he feels PNG could corner up to 50% of the Indian market. The strategy he sees as appropriate is to allow a margin of profit on some species to promote others.

The second species Centaur selected (after Kwila) was VITEX. It was chosen as a minor species with limited production and availability (like kwila in the latter respect).

Centaur entered a contract over vitex (with Tonolei Development Corporation (T.D.C) its main producer). Vikani says TDC could only get USD 50-60 as a maximum in other markets. The contract is for USD75.00 on the first shipment increasing at USD1.00 per shipment to USD82.00. The market is small (200m³/month) but Vikani believes that without competition he could increase it to 2000m³/month.

Against this background the first, second and fourth FIC shipments and the history of endeavours in the Indian market are studied.

APPENDIX 36.1**HISTORY OF FIC INVOLVEMENT IN INDIA**

(Particular aspects are detailed in the histories of shipments 1,2 and 4). In April 1986 the PNG delegation are in India conducting their promotion lead by Miskus Maraleu. 24.4.86 Cowan telexes Vikani and Markos telling them of FIC negotiating direct sales to India and giving them first option of participation.

Vikani tries to start business with a June shipment and then the question of Cowan's follow up trip arises. Vikani says Cowan asked him to write to FIC saying this follow up was necessary.

In May Abdul Salam and T Moideen ask Cowan (IN TLX 6940 of 27.5.86) for invitations to visit PNG in early June with Mr Reddy.

In May (IN TLX 6949) Gibbs asks Cowan if he has Gibbs Indian market ideas given to Maraleu and which he wishes to discuss.

In May (IN TLX 6955) Pars Ram Punj comes on the scene with an enquiry about a 10,000 m³ shipment to which Cowan irresponsibly responds without having commitment from producers. Cowan arranges his trip to India where he meets with Mrs Cowan (who comes from London) and books at the TAJ MAHAL Hotel in Bombay. Vikani is fully informed.

Cowan specifically says (OUT TLX 4714 of 12.6.86) he will visit for 6 days to visit Vikani only and speak to Reddy and Markos and to finalise business of Indian log imports discussed in PNG. He says he is aware of other contacts and asks if Vikani is still interested in an exclusive deal with FIC. If not will cancel visit to you as others want a similar deal. The same day (IN TLX 7036) Vikani expresses keenness to meet and finalise the matter discussed in PNG.

At the same time FIC is keeping Pars Ram "on the boil". On 13.6.86 (OUT TLX 4728) Cowan says Vikani is loading a late June shipment from Vanimo and that "does not conform to prediscussed arrangements". Cowan arrives in India on 20.6.86 and at the same time Reddy arrives in PNG to meet Maraleu, Tay and Aopo.

Ganatra is with Reedy and they travel to Vanimo. On 1.7.86 (OUT TLX 4805) Cowan gives gushing thanks to Vikani; NO WORDS CAN EXPRESS MY TRUE FEELINGS; and asks Vikani to instruct Ganatra and Reddy to stay in PNG until Cowan arrives.

Vikani describes matters in this way:-

"He (Cowan) told us to telex the Chairman of FIC to say follow up on the seminar is required and that he (Cowan) should come over as the competent man.

We sent the telex - it was from Sydney I think. That particular visit he (Cowan) never went outside Bombay; he was not interested; he organised to spend time in India with his wife.

He did not meet anyone and did not speak business. We tried to organise for him to go to Mangalore and other places and to meet people but he wouldn't go - he never went outside Bombay.

Most of the places outside the hotel we (Centaur) paid. We provided transport and sent our people to do the shopping. It should have been a very cheap trip and there should be no expenses outside the airfares and hotel expenses of USD200-250 a day for 5 or 6 days. We paid about USD3,000.00 for his wife's shopping. We also spent about another USD2,000.00 on transport dinners, tours and other shopping".

This perhaps explains Cowans effusive thanks and more seriously suggests any expenses claim by Cowan for this trip should be very carefully scrutinised.

Vikani arranges for Reddy and Ganatra to await Cowans return. In early July Salam and Moideen chase visas and Reddy stays on. On 8.7.86 Vikani telexes Cowan setting out the position with Vanimu and Gibbs and is unhappy at what is going on in PNG witnessed by Ganatra.

In July Markos complains about not seeing or hearing from Cowan and Salam sends a number of unanswered telexes about his visit here.

By 11 July Cowan seems to have made a decision for Vikani and Centaur as he tells a number of Indian buyers to contact Centaur and tells Centaur who he has referred - these include Mr Kirit, Mr Markos and Abdul Salam. Gibbs is accepted as the agent also and he copies communications to Centaur to the FIC. On 18.7.86 (IN TLX 7184) Gibbs asks FIC name of Indian buyer for Malas and Taun; hoping for a mid/end August shipment from V.F.P and SBLC and strategy for less kwila; asks if FIC finalised sale yet, when want vessel and if want kwila; says he is working on memo of understanding between us and will forward next week. A pencil note reveals the position "We are all supposed to be working together and therefore we will not close business without your knowledge." FIC tells Gibbs about the other buyer (Mr Kirit) and his prices and Gibbs tells Centaur.

On 22.7.86 (IN TLX 7202) Vikani tells Cowan trying August Shipment with Gibbs; market is bad and PNG species dear. He indicates the mix he seeks for a shipment with V.F.P for Tuticorin and Bhavnagar; asks of price and availability of Vitex and "regards to Mrs Cowan".

24.7.86 (IN TLX 7206) Gibbs describes late August shipment from V.F.P; discloses prices and Kwila arrangement (USD86.00 this ship and increasing USD1.00 per m³ thereafter) suggests FIC make up the balance and says he will make no commitment till FIC agrees. Also suggests a second shipment follows quickly. Gibbs also advises Centaur and copies his advice to Cowan. On 25.7.86 (IN TLX 7217) Ganatra presses FIC to tie up shipments for end August and end September and says he is "eagerly awaiting the final draft memorandum of understanding between Centaur Exports and Forest Industries Council".

On 29 July Centaur copy a telex to Cheah of Angus where they seek to have Angus involved as a supplier of rosewood.

This is an important event in view of what later occurs. Also on 29 July Cowan tells Centaur he will on 30/7 give offers for August; two for September and one for Salam for August. Cowan adds his best wishes to Vikani and family and "Coco return England 23rd" (a reference to Mrs.Cowan)

On 31.7.86 (IN TLX 7232) TD C offer 6200 m³ end August and 6000m³ end September. Vikani speaks to Cowan; Gibbs sends samples and on 1.8.86 (IN TLX 7242) Gibbs complains to Vikani (copy to Cowan) about lack of finalised arrangements saying Cowan and he have pushed for Centaur; that shippers have closed elsewhere and are watching very critically and that shipments must be committed for August, September, October.

On 5.8.86 (IN TLX 7248) Vikani presses Cowan saying he has 3000m³ from V.F.P for late August and asking detail of balance through FIC. Also asks for visa for Kunhi who intends to visit 19/20 August.

On 5.8.86 (OUT TLX 4948) Cowan tells Vikani of a specific offer from an Indian buyer and of prices; asks Vikani if can arrange Kwila and others and asks for quick answer. The very same day Tay renews contact with Pars Ram who rapidly responds asking for urgent advice to get going and establish the L/c. FIC keeps Gibbs informed and on 6.8.86 Gibbs says (IN TLX 7252) he will tell Ganatra the buyer is BATAVIA EX/IMP. who Centaur fear - "this will really get him moving".

The same day (IN TLX 7254) Gibbs does just that and copies his telex to Cowan - he stresses urgency and problems from lack of response; offers an end August shipment from V.F.P, SBLC and TDC (SBLC and TDC through FIC) and asks for an urgent answer. On 6.8.86 there is argument between Vikani and Cowan about this other order and Cowan says producers are losing interest because of lack of commitment - Cowan asks for a firm order. On 7.8.86 (IN TLX 7259) Vikani puts alternatives for August shipment and deals in detail with what is viable or not. He promises action.

The same day (IN TLX 7261) Pars Ram presses on with a "bush lawyer" argument suggesting there is a contract and seeking to close on 10,000 m³ - the contract is based on Cowan's unwise telex offer.

Also on 7.8.86 (OUT TLX 4967) FIC puts firm offers with prices for SBLC 1750 m³ and TDC 1450 m³ for August - confirm by 11/8. On 8.8.86 (IN TLX 7266) Pars Ram really presses on saying he can immediately open L/C for two 10,000 m³ shipments. On 10.8.86 (IN TLX 7271) Centaur commits to SBLC and TDC.

Cowan then refers other Indian enquiries to Centaur and closes with SBLC and TDC at prices USD1.00 lower than Vikani offered FIC. Pars Ram is advised the same day (OUT TLX 4995 of 11.8.86) that FIC wants until 13.8.86 to reply to him.

Pars Ram continues in the theme that FIC made an offer without time limit; he has accepted and FIC should come up with the product. Arrangements to vary Centaur's shipment and arrange L/C's are then made.

On 14.8.86 (IN TLX 7295) Gibbs tells Praful Ganatra of his discussion with Vikani and Cowan (and copies FIC). He says they will ensure no one else gets Kwila; talks of Pars Ram trying to break control of Indian market and of their strategy of supply and demand being best. Says Salam coming but will get no Kwila.

On 15.8.86 (IN TLX 7298) Vikani tells Cowan of plans and strategies and how monopoly on Kwila is the key - we need your total support and co-operation in making sure that nobody else gets Kwila.

Cowan responds (OUT TLX 5040) in reassuring terms saying FIC will take up all Kwila from new exporters and assuring Centaur of FIC's full support, co operation and assistance.

Even at this time the seeds of treachery are being planted and the events which occur are of real significance. On 18.8.86 these events occur:-

- (a) Cowan faxes Maraleu (OUT FAX 135) the agenda of the FIC meeting to be held in Rabaul on 20.8.86 - agenda items include:
1. Minister for Forests Mr E Diro MP will address Council on Forest Policy and the role of FIC
 7. State Marketing Agency
 8. FIC direct marketing programme.
- (b) Cowan faxes Maraleu (OUT FAX 136) a copy of his (Cowan's) letter to Diro talking about sales agents, MEP prices and downgrading and of revenue losses - downgrading costs K5 million revenue to the Government annually. He refers to an article on natural gas yielding revenue and says *"Against this projected revenue FIC, given suitable authority, is able to commence, within 30/60 days, to increase revenue by about USD500,000 building up to USD10,000,000 over a period of 12 months."* "He seeks an appointment for Maraleu.
- (c) Cowan tells Ganatra (OUT TLX 5059) that Pars Ram is coming to PNG on 21/22 August with Trevendi, Moideen and Salam *"They are coming to buy kwila at any price but do not be concerned no kwila available and if they find a small quantity say 200 m³ FIC will buy even if we have to pay USD 200m³ and no kwila arrive on your market."*
- (d) Pars Ram tells Tay (IN TLX 7309) Cowan is in contact; says he would take the earlier FIC offer of Kwila, Taun, Red mix and Mersawa; asks to arrange a meeting in PNG 22/24 August for long term supply contract. Cowan writes a note on this telex "URGENT". Patrick. Contact immediately Ambogo Mr P. Lai and make 100% sure that no sales go to Pars. If necessary we on behalf of Centaur export will outbuy at any price all logs".
- (e) Imari Trawa of FIC telexes PNG Consulate Brisbane and writes to Migration for visas for PARS RAM PUNJ and his Indian buyers TRIVEDI, MOIDEEN and SALAM who he says will visit logging companies "and make sales contracts with companies on the spot".

On 19.8.86 Cowan has obviously left for the FIC meeting in Rabaul. Gibbs has a message sent through FIC (OUT TLX 5071) He says Bunnings has no contact with Pars Ram who is telling a story to unsettle you; says Bunnings and V.F.P support the arrangements with Centaur. The lynchpin is Kwila and it is imperative they do not get any.

The same day (IN TLX 7313) Pars Ram returns to the fray, asks Cowan to confirm a meeting with Maraleu to discuss future Indian marketing and says he holds FIC to earlier agreement. He also sees Kwila as the key.

There are further exchanges about this meeting which is eventually fixed for the afternoon of 25 August, but not before Cowan gets more assurances from Vikani.

To this point Pars Ram seems to have been "bluffing" his way on the basis he had some contractual rights arising out of Cowan's singularly unwise and stupid offer of 2.6.86 (see shipment 2 History). It also seems no one in FIC had the sense to seek legal advice which would have enabled them to "call the bluff".

Cowan then did a complete "about face" as a result of his and Tays meetings with Pars Ram, Trivedi, Moideen and Salam and it is quite clear Angus figured prominently in what was discussed.

On 26/8/86 a Memorandum of Understanding was signed by Cowan and Tay (of FIC), Pars Ram, Trivedi (of Tri Une Produce Brokers) and Moideen and Salam (Hajee Timber Complex). The agreement is subject to Mr Diro's final approval and covers 60,000 m³ per year. The first shipment in September is without Kwila. The agreement says Punj must return to Australia but the others will remain to see Mr Diro. Punj will return to meet Mr Diro.

Also on 27/8/86 (OUT FAX 140) Cowan faxes Maraleu a press release dated 28.8.86 where Diro announces a sale of 56,870 m³ to India between July and December for USD6.657 million. Also 27.8.86 (OUT FAX 143) Cowan faxes Kasaipwalova an article about M.A. Angs arrest in Singapore.

The very same day 27.8.86 (OUT TLX 5097) Tay tells Punj the draught of Millford Harbour (Angus loading point) and asks about a vessel. On 29.8.86 (IN TLX 7359) Pars Ram says he offers the GENERAL VALDEZ for a shipment from Millport Harbour to Nagoya Japan. There are also telexes from Centaur answering criticisms and regarding continued arrangement of the first shipment.

The stage has now been set for Cowan to begin exerting real pressure to have FIC involved in log marketing. The pressure is applied to Maraleu by Cowan writing letters in his name particularly to Mr Diro and by Cowan on Mr Diro to have FIC move in to curb malpractices in the industry.

Cowan's manipulations and the way he cleverly and ruthlessly exerts pressure are clearly seen in what follows. Cowan would well know that having betrayed Vikani and Centaur and having written the Memorandum in terms that he has there exists a problem. That problem is to make good the promise of 2000 m³ per shipment of Kwila. Only one producer can supply kwila at that rate and that is Vanimo Forest Products - they are linked to Centaur.

On 30.8.87 a telex is apparently sent to V.F.P on the Angus telex machine over Mr Diros name as Minister regarding "States Purchase Option.

On 1.9.87 (OUT TLX 510) Cowan follows up that telex and refers to it; makes a correction and then says " We reconfirm that the telex sent under telex Angus NE23341 was authorised by the Minister for Forests and FIC requested Angus PNG to send as we did not have telex operators available". Vikani of Centaur is not aware of these occurrences and he presses on and on 2.9.86 outlines his ideas for a second shipment at the end of September (IN TLX 7366).

Gibbs is also unaware and offers his suggestions (IN TLX 7367) Cowan apparently obtains Mr Diro's approval to the arrangement with Pars Ram because a contract No 02/0986 is signed between FIC and Pars Ram for about 65,000 m³ to be shipped at about 6,500m³ per month beginning in September, 1986 - the sales are FOB at prices to be agreed and FIC contracts to load all its kwila commencing on the second vessel at a minimum of 2000 m³.

The agreement is supplemented by a letter of 2.9.86 where FIC says it will endeavour to obtain the maximum quantity of kwila from all supply sources and if other species obtain good market position FIC will obtain that species and sell solely to Pars Ram - the letter is said to form part of the agreement.

Cowan arranges a ceremony and Mr Diro attends the signing with press present. The story of this contract and photograph of Pars Ram and Mr Diro at the signing make prominent front page news in the Times of PNG of 5-12 September 1986.

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With Centaur, who are not told, it is business as usual. Where Cowan though he derived the power to enter such a contract must be questioned and the FIC Board could normally have attacked him. He was shrewd enough however to have involved the Minister which virtually immunised him from attack. It would have been virtually impossible for the Minister to resist sharing in the applause for an Agreement which it was boasted would earn so much in foreign earnings.

5.9.86 (OUT TLX 5129) Maraleu says to Gibbs he was to get logs from V.F.P for India and FIC were to obtain the balance cargo from other producers. He tells Gibbs not to contact other shippers supplying through FIC.

5.9.86 (IN TLX 7390) Alexander of Pareven enquires about an India shipment of 7000 m³ with 50% Kwila.

8.9.86 (OUT FAX 154) Cowan faxes the Times article to Pars Ram. Then Pars Ram presses on with a part shipment from SBLC and Kumusi and Vikanis L/C is established and amended. Cowan keeps the pressure on Minister Diro with a letter dated 6.9.86 (signed by him for Maraleu) which he faxes to Maraleu on 9.9.86 (OUT FAX 156).

It encloses draft letters for typing on Ministers letterhead and signing - (see below); speaks of large gains; sends a draft letter for Vanimo speaks of registering agents and of direct L/C's and of the Department of Forests and FIC having *"to come together to work as a team under your leadership to make timber a major industry and revenue earner. This is the moment to act, give us your support and FIC will ensure the job gets done. We have confidence in your leadership."*

This is at the very time that Mr Diro is trying to get to Brisbane with Keith Anderson to address a business gathering. The evidence is that Cowan arranged the tickets (through Angus) and arranged for Pars Ram (see OUT FAX 160 dated 12.9.86 - *"PLEASE DELIVER PACKAGE NO: 1500 TO DIRO AT HOTEL"*) to deliver AUD1500 to Mr Diro at his hotel in Brisbane.

11.9.86 (IN TLX 7411) Gibbs answers Maraleu -- says he did not agree not to approach other shippers but to work with FIC: talks of willingness to share intelligence with FIC and of effort to try to get better prices.

12.9.86 (OUT TLX 5141) Cowan speaks to V.F.P and offers for 3500 m³ for October shipment including 2000 m³ of kwila.

- 15.9.86 (OUT TLX 5153) Cowan tells Ganatra about the first shipment position then argues about the Memo. of understanding (he says drafted by Gibbs) and finally for the first time discloses the contract with Punj, Salam and Moideen - discloses their first shipment and discloses a second shipment is being arranged.
- 16.9.86 (IN TLX 7423) Gibbs complains about inability to contact Cowan; sets the record straight over the Memo. of Understanding and says of the co.-operation agreement with FIC "we believe to be already defunct as a result of FIC entering into an agreement with another party with the concurrence of the Minister". He asks for FIC's comments.

Cowan's treachery is now out in the open but is still to reach full bloom. Having betrayed Centaur, V.F.P and Gibbs, Cowan now uses the levers on VFP which he had previously put in place.

On 15.9.86 (OUT FAX 167) Cowan sends Maraleu copies of the prearranged letters on Ministry of Forests letterhead signed by Mr Diro addressed to Maraleu. The first dated 11.9.86 confers responsibilities on FIC over grading, MEP enforcement, check measurement, transfer pricing and agents. The second dated 12.9.86 authorises FIC to compete in marketing and be paid marketing commission.

ON 17.9.86 (OUT FAX 169) Cowan sends Maraleu a copy letter on Ministry of Forests letter head signed by Mr Diro addressed to Vanimo Forest Products - it says the Government through FIC want to buy 2500 to 3000 m³ per month for 10 months and asks for a reply.

On 17.9.86 (OUT TLX 5154) Cowan talks of receiving a copy of Mr Diro's letter and quotes it.

Pausing here it is plain reading these letters and Cowan's letter of 6.9.86 that these are the draft letters prepared by FIC to be typed on Ministerial letterhead and signed by Mr Diro.

The first two letters authorise the activities that Cowan/FIC want including competitive marketing for commission.

The second is clearly guided by the Indian contract with Pars Ram. The letter of 6.9.86 specifically says this is what the draft letter is for and the quantity for a term of ten months fits squarely with the Pars Ram contract.

18.9.86 (IN TLX 7429) V.F.P tells FIC it cannot offer logs as it has ongoing commitments which can't be disturbed; also it has sales security in the form of market spread which protects against collapse of one or two markets.

Cowan obviously involves Department of Forests as on 19.9.86 (IN TLX 7435) Dike Kari sends a "shocked" telex to V.F.P about refusing the offer when PNG is trying to increase revenue to survive the effect of Australian aid cuts. He says they do not expect to see exports below FIC prices.

Cowan's loyalties are switched and on 22.9.86 (OUT FAX 179) he faxes 3 Indian buyer enquiries to Pars Ram. A fourth is referred on 23.9.86 (OUT FAX 184).

Cowan also begins canvassing suppliers - Lusco, Timbersales and others for supply.

24.9.86 (IN TLX 7460) Vikani asks Cowan if he can throw light on rumours by Salam that he is getting some Kwila.

25.9.86 (OUT TLX 5189) Cowan tells Vikani no sales concluded; Salam has contract with SBLC but no credit received.

It would be an understatement to say this answer is less than frank.

25.9.86 (IN TLX 7468) Moideen sends a very harsh telex to Pars Ram and copies it to FIC.

25.9.86 (NOT NUMBERED) Ian Kuba of Bunnings sends a long 3 page telex to Forests answering Dike Kari's telex; he outlines marketing efforts, putting information in FIC's possession then being GAZUMPED using kwila for which they have achieved a market position. He also explains in detail the sales security in market diversity.

26.9.86 (IN TLX 3473) Gibbs explains strategy to Mamalai and copies it to FIC.

27.9.86 (IN TLX 7476) Vikani presses Cowan for an answer on kwila; he has a big stake in it and if he knows what others are shipping he can avoid competition which will help PNG shippers.

29.9.86 (IN TLX 7841) Gibbs tells Cowan Vikani is concerned Salam is offering Kwila said to be from Wewak Timbers - asks for clarification to avoid a price war which will drop kwila prices.

Pausing at this point it is quite clear Cowan's problem referred to above has really come home to him. Despite the pressure, V.P.F. have not relented, their arguments appear difficult to combat and there is no way Cowan can otherwise get the contracted quantities of kwila. Pars Ram comes to PNG and the meeting "chaired" by Mr Diro takes place at Angus offices on 30.9.86. This where another West Sepik resource was discussed with Angus and Pars Ram with a view to Pars Ram getting the kwila and Angus a benefit. As events turned out this proved not to be a solution and with Angus' collapse Cowan steered Straits and Waiwai Guavi into a position to seek this area in circumstances which require investigation.

1.10.86 (IN TLX 7494) Gibbs telexes Mamalai (Copy to FIC) saying worst fears are realised - Punj has kwila at USDB2.00 FOB USD117.00 CNF and other species at low prices and a price war is a prospect; he asks for efforts for solidarity to preserve prices.

Cowan's treachery reaches new heights when he faxes a copy of this telex to Pars Ram (OUT FAX 193 of 1.10.86). Cowan of course knew all this because he was arranging the sale from Kumusi.

FIC also refers another Indian buyer enquiry to Pars Ram (OUT FAX 194) and Pars Ram thanks Cowan for hospitality in PNG and pursues his earlier enquiry for calophyllum and pencil cedar.

On 2.10.86 Lusco offers Woodlark logs and Cowan offers them to Pars Ram (OUT FAX 196) Also in another fax (OUT FAX 197) Cowan says to Pars Ram "MANY TKS FOR YR COOPERATION TOGETHER WE WILL SHOW THESE BUGGERS WHO IS WHO". Tay joins the treachery (OUT FAX 198) when he sends Pars Ram full details of Vanimos loading on SITI MIDAH for Centaur - very valuable market intelligence.

At the very same time (OUT TLX 5205) Cowan acknowledges Vikani is coming to PNG; feigns confusion over Centaurs next cargo and adds some unnecessary spite aimed at V.P.F, Bunnings and Quarter Enterprise 3.10.86 (IN TLX 7502)

Vikani says he and Kunhi will arrive 7/10; answers the spite deftly and adds "If you dont have any reservations in disclosing we would like to know if Salam is getting any kwila in this shipment ?????????? ...". There are a number of telexes regarding Vikani, Kunhi and Ganatra coming to PNG on about 10/10.

There are also offers come in from Lusco, Ambogo and SBLC for India shipments. Pars Ram delays and Lusco sells elsewhere.

Centaur's first shipment is completed and various producers are arranged by Gibbs to see Kunhi - Gibbs tells Hirata future business will not include FIC.

Pars Ram's L/C problems continue but he eventually engages MARATIME GARDENIA which is discharging grain in Lae for his first (and only) shipment.

From 21-23 October Pars Ram seems to resolve his L/C problems even though more amendments are later necessary.

On 15.10.86 (OUT FAX 209) Cowan sends Maraleu a copy of Mamalais telex of 6.10.86 to all timber Companies advising *"Minister for Forest has authorised the FIC to work as the State Marketing Agent for Export of PNG logs."* He says middlemen agents are to be avoided and *"in the event any company may need the service of any sales agent, service of FIC should be used."* He asks for details of agents.

Cowan tells Maraleu he understands the telex went to all companies in letter form and after 9 days no protests or complaints - some companies have called with request for assistance to sell. Cowan asks SBLC for logs and indications and says buyer is getting 10.15% cheaper from Vanimo (OUT TLX 5277) *"WHAT ABOUT THE PRICE THAT WAS AGREED UPON BETWEEN SBLC IN GIBBS IN INDIA"*.

It is clear Cowan's vendetta against V.F.P (where he tried to get V.F.P's loading details for Centaur for computer analysis (see OUT FAX 204 of 13.10.86) - he already had them and gave them to Pars Ram) and Vanimos' rebuff have also turned him against Gibbs. His trying to make trouble between SBLC and Gibbs in this way is occurring at the same time he is deliberately, and despite a number of telexes from Gibbs, withholding payment of freight on the SITI MIDAH shipments for SBLC and TDC where Gibbs arranged the charter. This delay by Cowan was very nearly disastrous and his explanation to Gibbs a blatant lie.

On 24.10.86 when Centaur's second shipment is being arranged with TDC and Kumusi and Pars Ram is still trying to "get his act together" Pareven Pty Ltd are on the scene again trying to arrange a visa for Mr Paarel to visit PNG.

Details of the frustrations and complications with Pars Ram's shipment and comparative ease of Centaur's second shipment appear from the detailed histories of these shipments.

On 11.11.86 Paarel of Pareven is obviously in PNG at the Travelodge and Pars Ram sends FIC an offer for him of 700m³ with CNF prices including freight; USD1.00 for FIC service charges; USD3.00 Pars Ram Margin and USD4.50 assurance fees.

Pars Ram is having terrible troubles loading his vessel and Vikani is chiding Cowan for lack of response on offers to Woodlark, SBLC, TDC and Kumusi for a December shipment; for future planning and for arranging a long term vessel.

Earlier than this on 14.11.86 (OUT FAX 261) Cowan faxed C Itoh and the document gives an insight into his perception of FIC's role. He says *"We (FIC) represent the Timber Industry and Ministry for Forest an all timber matters. He speaks of the Minister on 6 October 1986 having "authorised the Forest Industries Council to operate as the State Marketing Agent for export of PNG logs. Todate we have sold during October/November 40,000m³ with 37,000 m³ on offer to markets other than Japan."* He then states an intention to visit C. Itoh's office on 1.12.86 to discuss the possibility of marketing/sales in the Japanese market. He says the team will be Tay, Maraleu and Mamalai.

18.11.86 (OUT TLX 5436) Cowan is unable to contact Vikani for a loading proposal; he says he delayed because of problems with Cape Cormorin documents and shippers lack of interest in confirming future business.

Pars Rams problems continue and there are document problems which appear to require Cowan and Moideen to fly to Brisbane so they can be rectified. This problem is raised on 27.11.86 (IN TLX 7889) where Pars Ram adds "secondly the important factor of the discussion on the Vanimo Extension. I have been pressurised by the Indian buyers and the revolving credit for U.S. one million dollars is lying in the banks and in my hand and I want to know what the next move to be done".

It seems that the Vanimo proposal has been pursued. Thereafter Cowan's attention is directed more to Korea and S.J. Park though Pars Rams problems with the first shipment extend into December. This was supposed to have been Pars Rams September shipment.

On 8.12.86 (IN FAX 408) Pars Ram is going to India and "will face lot of pressure for business on Vanimo Ext. plus 2nd ship schedule".

On 8.12.86 (OUT FAX 367) Cowan speaks in detail about Vanimo

Extension saying:-

- (a) copy contract for USD 1 million not sent.
- (b) copy of revolving L/C for USD 1 million with RED CLAUSE not sent.
- (c) We cannot understand your coment "have sold logs under revolving L/C up to USD 1 million"
- (d) *"We have informed that contr. 02/0986 has been sold by you to Moideen under the name of his mothers company on a basis of payment by commission of USD8/m³ on this first ship and USD10.00 m³ on all following shipments".*

What occured after this is not apparent from FIC's files but the fax says Cowan will travel to Brisbane on 15/12.

8.12.86 (IN FAX 411) Pars Ram asks for offer for 6500 m³ and encloses L/C copies.

8.12.86 (IN TLX 7979) Pars Ram says Cowans arrival on 15/12 is unacceptable - Pars flies to India on 12/12; says he awaits log offers; denies sale to Moideen of contract and says he is committed to FIC and FIC is committed to him.

Thereafter Pars Ram presses for further shipments but nothing is concluded. Pars complains (IN TLX 8444 of 30.1.87) of FIC's silence despite its contractual obligation.

In February 1987 Moihuideen is apparently in PNG and Pars Ram suggests FIC is trying to deal direct. He speaks of up holding the long term contract (see IN FAX 593 of 6.2.87) He attaches a copy agreement between Pars Ram and Hajee which specifies 6000 m³ shipments including 2000 m³ Kwila - the document provides for Pars Ram to receive commission loaded into CNF prices at USD10.00 per m³ for kwila and USD7.00 per m³ for other species if the shipment has such a composition.

This is obviously the contract referred to in the above fax and telex of 8.12.96.

The specified shipment of 6,000m³ would on this basis attract commission of USD48,000 for a single shipment and on the contracted quantity of 60,000 m³ would involve commission of at least 9xUSD48,000 = USD432,000.00.

On 7.2.87 (OUT FAX 17) Cowan denies FIC is trying to sell to Mohuideen direct and asks for a full copy of the agreement attached to Pars Rams fax.

Pars Ram faxes the copy (IN FAX 601 of 9.2.87) reminds FIC of its contract asks FIC to confirm it and asks that the copied contract be kept confidential.

Thereafter Pars Ram continues to remind FIC about his contract and though FIC makes some replies it does not offer a shipment of the contracted specification. It cannot do so because it cannot get the specified quantity of Kwila; V.F.P wont supply it and the Vanimo Extension proposal does not eventuate. Pars Ram also asks specifically about 25% of V.F.P Kwila clearly a reference to using States Purchase Option to get quantities of Kwila - a course which Cowan tried to pursue but where he failed dismally despite Mr Diro's assistance.

On 23.3.87 (IN TLX 8826) Pars Ram again asserts his contractual rights and on 21.4.87 (OUT TLX 6216) FIC reply to this saying FIC has ceased marketing temporarily and will keep Pars Ram advised.

On 23/4/87 (In TLX 8959) Pars Ram asks directly how FIC proposes to fulfil its obligations and threatens legal action.

On 5/5/87 (letter) Messrs Warner Shand Wilson Donigi Reiner advise they act on behalf of Pars Ram; briefly state relevant facts; warn that FIC's breach of contract prevents Pars Ram fulfilling his contract and threaten proceedings for specific performance and/or damages for breach of contract. The scene is thus set - Pars Ram claims not only his own loss of profits but also consequential loss out of his breach of his contract with the Indian buyers.

It is understood a similar claim has been advanced to the State arising out of Mr Diro's endorsement of this contract and that the State Solicitor has denied liability on apparently sound legal grounds - the State and Minister were not parties to the contract.

Apparently no proceedings have yet been instituted against FIC but delay is of no relevance to a common law claim and FIC remains at real risk .

Even in October 1987 Pars Ram was pursuing the claim and FIC sought legal advice.

The history and detail of shipments 1,2 and 4 follows and comments are made thereafter.

APPENDIX 36.2SHIPMENT 1

VESSEL SITI MIDAH
OCTOBER 1986

A. HISTORY

- 24.4.86 (OUT TLX 4496) Cowan telexes Vikani through Maraleu offering participation in Indian marketing with FIC.
- 25.4.86 (OUT TLX 4507) Cowan thanks Vikani for helping PNG delegation; WE ARE IN YOUR DEBT; asks him to help out with any last minute expenses.
- 29.4.86 (IN TLX 6808) Vikani expresses interest
- 7.5.86 (IN TLX 6853) Vikani specifies a shipment for early June.

In June Cowan contacts Vikani about his proposed trip; books for he and Mrs Cowan at TAJ MAHAL Hotel Bombay; advises Vikani details Cowan travels on 20.6.87 and returns to PNG in early July where Reddy and Ganatra await his return.

It seems he returned via Singapore when he was the guest of ANGUS.

- 3.7.86 (IN TLX 7131) Vikani tells Cowan he is planning the first FIC consignment in August and can't do it before that.

About 24-25 July there are telex exchanges with FIC and Ron Gibbs seeking to get together a late August shipment. By early August Gibbs starts complaining to Vikani and pressing him to close shipments for August September and October.

- 6.8.86 (IN TLX 7254) Gibbs pressures Vikani and offers an August shipment from Vanimo SBLC and TDC (SBLC and TDC Through FIC) asking for a quick answer.
- 7.8.86 (IN TLX 7259) Vikani puts options for August shipment
- 7.8.86 (OUT TLX 4967) FIC puts firm offers with prices for SBLC 1750m³ for August and asks confirmation by 11 August. Gibbs follows this up and then -

10.8.86 (IN TLX 7271) Centaur accepts:-

<u>SBLC</u> Calophyllum	USD65	<u>TDC</u> Taun	USD64
Malas	USD50	Vitex	USD68
Water Gum	USD55	Terminalia C.	USD56
Yellow Hardwood	USD60	Terminalia B.	USD56
Total	1750m ³	Total	1450m ³

Vikani offers options over the L/C and says Vanimo will charter the vessel.

11.8.86 (OUT TLX 4999 and 5000) FIC closes with SBLC and TDC at unit prices USD1.00 per m³ less than Vikani offered FIC. There are then various telexes about the shipment and L/C and confirmation of prices and over shipping arrangements. SBLC quantity increases. Vikani also seeks a visa to come to PNG.

12.8.86 (IN TLX 7291) Vikani asks FIC interest rate for 180 day L/C and tells FIC their expenses will have to be built into the prices as Centaurs bankers say there are problems with service charges.

15.8.86 (OUT TLX 5034) Cowan advises interest rate for 180 days credit is 10.5% and for FIC charges increase price by USD1.00/m³.

16.8.86 (IN TLX 7302) Vikani describes interest position; asks for better rate and says services estimate of USD1500 is very different from USD1.00 per m³ over 3550 m³ - should we add USD1.00 to some species to total USD 1500.

This clearly confirms Vikani's account of the arrangement as mentioned above in BACKGROUND.

18.8.86 (OUT TLX 5059) Cowan says prime is 10.25% and load interest differential on any species; service charge increased BECAUSE GIBBS INFORMED SHIPPERS OF YOUR BUYING PRICES FORCING US TO GIVE THEM FULL AMOUNT. BEFORE GIBBS DISCLOSED THE PRICES WE WERE TAKING USD1.00 FROM THE SHIPPER. He promises a refund on the next vessel.

1.9.86 (IN TLX 7318) Vikani accepts 10.25% and USD1.00 service charge.

1.9.86 (UNNUMBERED TLX) Ganatra gives an example (for Yellow Hardwood) of how to load FIC commission and the interest rate differential into the CNF price and asks for a firm offer to establish the L/C calculated in this way.

This telex should be seen as it clearly shows the manner of calculation.

- 1.9.86 (IN TLX 7364) Ganatra tells FIC problems with vessel and asks for firm CNF offer including FIC's USD1.00 per m³ and freight at USD39.00 to arrange the L/C.
- 3.9.86 (OUT TLX 5113) FIC gives full details of quantities and CNF prices for L/C as asked for by Ganatra.
- 5.9.86 Centaur establishes its L/C BOM/20/86/2080 - it is long and detailed but structured as FIC detailed.

The L/C is ammended a number of times and the amendments are not detailed in this history.

- 12.9.86 (IN TLX 7413) Gibbs tells Ganatra and FIC he has fixed SITI MIDAH at USD39.00 for 7800 m³ so volumes can be increased - Vanimo 3600 m³; SBLC 2600 m³ and TDC 1600 m³.

The cargo is structured around Vanimo's supply of kwila as the "sweetener" for the balance cargo.

There are then L/C amendements to accommodate the extra cargo.

- 15.9.86 (OUT TLX 5147) FIC reconfirms with TDC

TAUN	500 m ³	USD63	FOB
VITEX	450 m ³	USD67	FOB
YELLOW BROWN TERM	150 m ³	USD55	FOB
BROWN TERM	<u>500 m³</u>	USD55	FOB
	1600 m ³		

and gives full details and instructions.

- 15.9.86 (OUT TLX 5148) FIC reconfirms with SBLC

CALOPHLYLLUM	1400 m ³	USD64	FOB
MALAS	600 m ³	USD49	FOB
WATER GUM	100 m ³	USD54	FOB
YELLOW HARDWOOD	<u>500 m³</u>	USD59	FOB
	2600 m ³		

and gives full details and instructions.

It will be noted this clearly shows Cowans lie to Vikani on 18.8.86. The prices to producers are still USD1.00 per m³ less than the prices Centaur confirmed to FIC on 10.8.86.

By 22.9.86 the vessel is fixed and requirements notified 23.9.86 (letter) BSP confirms that it will discount FIC's drafts and pay proceeds "at sight" but that interest will be to FIC's account.

29.9.86 (IN TLX 7481) SITI MIDA has left Vanimo and sailed for SBLC.

30.9.86 (Letter) FIC gets export licence for Centaurs 4200m³.

1.10.886 (IN TLX 7496) Gibbs gives FIC details for remittance of SITI MIDA freight; date for payment and problems with SBLC loading point.

FIC knew clearly of freight payment requirements as of this date.

3.10.86 (OUT TLX 5212) FIC tell Insurers SBLC loaded 646 pieces for 2595.097 m³.

8.10.86 (OUT TLX 5232) FIC gives full SBLC details to Vikani

10.10.86 (OUT TLX 5237) FIC tells Insurers TDC loaded 372 pieces for 1620.829 m³.

13.10.86 (IN FAX 263) TDC invoice FIC - pencil details showing breakdown for 372 pieces of 1620.829 m³ = USD 99,292.91.

Vitex	645.630 m ³	at	67	=	43,257.21
B Term	522.424 m ³	at	55	=	28,733.32
Y Term	152.805 m ³	at	55	=	8,404.27
Taun	<u>299.970 m³</u>	at	63	=	<u>18,898.11</u>
	1620.829 m ³				USD99,292.91

14.10.86 (IN TLX 7543) Gibbs asks Cowan to remit freight as per earlier telex at USD 39.00/m³ for SBLC 2595.097 m³ and TDC 1620.829 m³ not later than 17/10.

21.10.86 (IN TLX 7581) Gibbs asks for details of freight payment for SBLC and TDC as owners say freight not received.

22.10.86 (IN TLX 7590) Gibbs asks for urgent advice on SBLC/TDC freight.

23.10.86 (OUT TLX 5278) FIC tell Gibbs freight payment instructed 22/10 - delay was in BSP misunderstanding payment arrangements.

As will be seen under ACCOUNTING (USD) below this is another blatant lie - FIC gave no freight payment direction until 23.10.86 - BSP could not pay freight until FIC gave details of how and to whom payment should be made.

29.10.86 (IN TLX 7644) Gibbs tells Cowan owners advise freight is USD 35-01 short and asks reason for book keeping purposes.

This query does not ever seem to be answered.

B. LETTER OF CREDIT

The letter of credit LC/BOM/20/86/20280 is from Bank of Oman Ltd; Bombay, India - applicant Centaur Exports of Bombay. It was increased to USD 460,000 m³ covering.

1	Calophyllum	1400 m ³	at USD 107	CNF
2	Malas	600 m ³	at USD 91	CNF
3	Water Gum	100 m ³	at USD 96	CNF
4	Yellow Hardwood	500 m ³	at USD 101	CNF
5	Taun	300 m ³	at USD 106	CNF
6	Vitex	650 m ³	at USD 110	CNF
7	Term.C	150 m ³	at USD 97	CNF
8	Term.B	500 m ³	at USD 97	CNF

In addition interest at 7.5% for 180 days is payable. It is a direct L/C.

C NEGOTIATION

There are two separate claims - one for TDC and one for SBLC. As indicated above the L/C calls for payment 180 days after sight and provides for interest only at the Indian Prime Rate of 7.5%. The additional interest to make up the commercial rate of 10.25% and FIC charges etc are also loaded into the CNF price. One thus finds for each claim two drafts - one for the "contrived" CNF price and the other for interest at the prime rate of 7.5%. When the BSP claims it arranges to refinance the drafts to an "at sight" basis through its Group Member National Australia Bank Singapore. It is these refinancing figures which are actually paid to FIC and any gains or losses and exchange variations are for the account of the refinancier.

PART 1A - SBLC

On 7.10.86 FIC writes to BSP enclosing various documents including:-

- (a) Draft for USD 263,988.45
- (b) Invoice FIC/CE/OD1 made up as shown in Attachment 1 for this part shipment totalling USD 263,988.45.
- (c) Draft for USD9,899.57
- (d) Invoice FIC/CE/002 as shown in Attachment 1 for interest.
- (e) Eleven bills of lading as listed in Attachment 1 covering 646 pieces for 2595.097 m³.

FIC direct retention of USD 101,500.00 for freight and credit of the residue to FIC's account.

There are obviously documentary delays as it is 13.10.86 before BSP arranges negotiation and seeks refinancing.

PART 1B TDC

On 13.10.86 FIC writes to BSP enclosing various documents including:-

- (a) Draft for USD 168,313.33
- (b) Invoice - of which I cannot locate a copy in FIC's records but which it can safely be surmised from other documents was made up as shown in Attachment 1.
- (c) Draft for USD6,311.75
- (d) Invoice - of which I cannot locate a copy in FIC's records but which it can safely be surmised from other documents was made up as shown in Attachment 1.
- (e) Seven bills of lading as listed in Attachment 1 covering 372 pieces for 1620.829 m³.

FIC direct retention of USD63,300.00 for freight and credit of the residue to FIC's account.

These are delays due to document discrepancies which are ultimately accepted and refinancing takes place.

D. ACCOUNTING (KINA)

PART 1A - SBLC

On 24.10.86 BSP accounts to FIC for the refinancing of the total claim.

- (a) The negotiation amount is USD 273,888.02 (ie the sum of the claims of USD263,988.45 and USD 9899.57)
- (b) USD101,500.00 is retained in USD
- (c) the residue USD172,388.02 is converted to K166,333.48
- (d) Bank etc charges of K11,898-41 including interest of K8,840-81 are deducted.
- (e) the balance K154,433.07 is credited to FIC's account. The conversion rate used is 1.0364.

FIC's cashbook shows that on 13.10.86 a cheque 024654 was drawn to BSP for TT to SBLC for K148,203.88 pursuant to payment voucher 4492.

Attached to the payment voucher is SBLC's Invoice for the part shipment as described in Attachment 1 at the FOB prices described in the tlex of 15.9.86 (OUT TLX 5148). The aggregate price is USD 153,598.51 which at the conversion rate of 1.0364 converts to K148,203.88. The producer is thus paid and FIC retains after this payment USD 6455.93 or K6,229.19 on this part shipment.

In fact BSP made an error in its letter of 24/10/86 when it said the balance of K154,433.07 was credited to FIC's account in separate amounts of K148,203.88 and K6,231.19 (which add to K154,435.07) and FIC gained by this K2.00 error taking its actual receipts to K6,231-19.

PART 1B TDC

On 28.10.86 BSP accounts to FIC for the refinancing of the total claim.

- (a) The negotiation amount is USD174,625.08 (the sum of the claims of USD 168,313.33 and USD6,311.75)
- (b) USD63,300.00 is retained in USD.
- (c) the residue USD 111,325.08 is converted to K107,581.25.
- (d) Bank etc charges of K7,742.03 including interest of K5718.83 are deducted.
- (e) the balance K99,839.22 is credited to FIC's account as separate amounts of K95,953.72 and K3885.50.

The conversion rate used is 1.0348.

FIC's cashbook shows that on 23.10.86 a cheque 024662 was drawn for TT to TDC of K95,953.72 pursuant to payment voucher 4502.

Attached to the payment voucher is TDC's invoice (see in FAX 263 of 13.10.86) for USD 99,292.91 which at the applicable conversion rate of 1.0348 converts to K95,953.72. The producer is thus paid and FIC retains after this payment USD 4020.71 or K3885-50 on this part shipment.

E. ACCOUNTING (USD)

The USD retention sums were as follows

1A - SBLC	USD 101,500.00
1B - TDC	USD <u>63,300.00</u>
	USD 164,800.00

On 23 October FIC instructs BSP by letter to pay freight of USD164,421.11 said to represent freight at USD 39.00/m³ over a total shipment of 4215.926m³. The calculations are correct and apportion as follows.

PART	VOLUME	FREIGHT	BALANCE
1A	2595.097	101,208.78	291.22
1B	1620.829	63,212.33	87.67
	4215.926	USD164.421.11	USD378.89

The freight accords with Gibbs communications and is paid in manner directed by Gibbs though this in not perhaps adequately vouched by charter party or invoice.

The aggregate retention sums remaining of USD 378.89 were credited to FIC's account on 3/7/87 as K339.59 (at a rate of 1.1157) being apportioned at K261.02 and K78.57 respectively.

Additionally the USD retention sums attracted interest credited to FIC's account on 11.12.86 as USD 201.86 (K195.43) with the apportioned sums being

1A	USD 152.25	K147.40
1B	USD 10.55	K 10.21

(see Table 6)

F. FIC RECEIPTS

The total receipts of FIC on these two part shipments was:-

	PART 1A - SBLC	PART 1B - TDC
Initial difference	K6,231-19	K3885.50 (see D above)
Retention residue	261-02	78.57 (see E above)
Retention interest	<u>147.40</u>	<u>10.21</u> (see E above)
	<u>K6,639.61</u>	<u>K3,974.28</u>

When one regards the margins between FOB prices paid by FIC to producers and CNF prices paid by the buyer they were:

<u>SBLC</u>	<u>CNF</u>	<u>FOB</u>	<u>DIFFERENCE</u>
Calophyllum	107	64	43
Malas	91	49	42
Water Gum	96	54	42
Yellow Hardwood	101	59	42

TDC

Taun	106	63	43
Vitex	110	67	43
Terminalia	97	55	42

After deduction of freight at USD 29.00 there was still a margin of USD4.00 per m³ or USD 3.00 per m³ depending on species. This margin was to cover the differential between commercial and Indian prime rate interest charges plus FIC's USD1.00 per m³. In fact Cowan deceived Vikani about the price to producers (blaming Gibbs for disclosing prices) and by this device built in an extra USD1.00 and in addition FIC did well as events turned out on the interest factor. The retention interest was an unforeseen bonus but all in all it one regards FIC's full returns and adds the price paid to producer (disregarding the bank etc charges) then takes FIC's share as a percentage it can be seen FIC received a high rate of "commission"

<u>PART</u>	<u>FIC</u>	<u>PRODUCER</u>	<u>AGGREGATE</u>	<u>FIC%</u>
1A	K6,639.61	K148,203.88	K154,843.49	4.29%
1B	K3,974.28	K 95,953.72	K 99,928.00	3.98%

G. COMMENTS - see below.

SITI MIDAH - Attachment 1

SBLC

BILL/INV	SPECIES	PCS	VOL	UNIT	CNF	TOTAL CNF
FIC001	CALOPHLYLLUM	49	299.315	107		32,026.71
FIC002	CALOPHLYLLUM	41	201.336	107		21,542.95
FIC003	MALAS	38	199.698	91		18,172.52
FIC004	WATER GUM	28	100.177	96		9,616.99
FIC005	YELLOW HARDWOOD	110	299.400	101		30,239.40
FIC006	YELLOW HARDWOOD	80	200.573	101		20,257.87
FIC007	MALAS	91	300.040	91		27,303.64
FIC008	MALAS	26	99.333	91		9,039.30
FIC009	CALOPHYLLUM	54	299.383	107		32,033.98
FIC010	CALOPHYLLUM	58	299.934	107		32,092.34
FIC011	CALOPHYLLUM	71	295.905	107		31,662.16

INVOICE FIC/CE/001

CALOPHYLLUM	273	1395.876	107		149,358.73
Malas	155	599.071	91		54,515.46
Water Gum	28	100.177	96		9,616.99
Yellow Hardwood	190	499.973	101		50,497.27
TOTAL	646	2595.097			263,988.45

INVOICE FIC/CE/002

Interest at 7.5% pa for 180 days = USD9899.57.

TDC

BILL/INV	SPECIES	PCS	VOL	UNIT	CNF	TOTAL CNF
3/86	TAUN	62	299.970	106		31,796.82
4/86	YELLOW TERM	38	152.805	97		14,822.09
5/86	VITEX	93	298.391	110		32,823.01
6/86	Y,B,RED TERM	34	274.882	97		26,663.55
7/86	Y,B,RED TERM	34	247.542	97		24,011.57
8/86	VITEX	38	107.042	110		11,774.62
9/86	VITEX	73	240.197	110		26,421.67

INVOICE BY SURMISE (The actual invoice is USD 168,313.33

VITEX	204	645.630	110		71,019.30
B TERM	68	522.424	97		50,675.12
Y TERM	38	152.805	97		14,822.09
TAUN	62	299.970	106		31,796.82
TOTAL	372	1620.829			168,313.33

INVOICE BY SURMISE

APPENDIX 36.3SHIPMENT 2

VESSEL MARATIME GARDENIA
 NOVEMBER 1986

A. HISTORY

- 27.5.86 (IN TLX 6940) Abdul Salam and T Moideen ask Cowan for invitation to visit PNG with Mr Reddy in early June.
- 30.5.86 (IN TLX 6958) Pars Ram Punj comes on the scene asking for a shipment of 10,000 m³; asks for FOB price and producers names.
- 2.6.86 (OUT TLX 4651) Cowan offers Pars Ram 10,000 m³ at varying CNF prices.

This seems a stupid step as he has no commitment from the named producers yet offers 3000 m³ of Kwila.

- 10.6.86 (IN TLX 7012) Pars Ram asks for FOB prices as he can arrange shipping; specifies a firm order for 6,600 m³ offering USD52.00/m³.
- 13.6.86 (OUT TLX 4717) FIC tell Pars Ram USD52.00 is unrealistic.
- 5.8.86 (OUT TLX 4949) Tay renews contact - will revert tomorrow on 2/6 offer.
- 5.8.86 (IN TLX 7250) Pars Ram says he is serious; asks confirmation to open L/C.
- 7.8.86 (IN TLX 7261) Pars Ram presses on with a "bush lawyer" argument suggesting there is a contract and seeking to close 10,000 m³.
- 7.8.86 (IN TLX 7266) Pars Ram says he can open L/C immediately for two 10,000 m³ shipments.
- 11.8.86 (OUT TLX 4995) FIC asks Pars Ram if FIC can reply by 13/8
- 11.8.86 (IN TLX 7275) Pars Ram presses on in the theme that he has accepted an offer and OK to extend time if favourable reply.

There is further contact on or about 18 August and arrangements are made by FIC for visas for Pars Ram, Trivedi, Moideen and Salam to visit PNG.

19.8.86 (IN TLX 7313) Pars Ram seeks a meeting with Cowan and Maraleu and says "we cannot free you from the offer you made" and which our buyers have accepted.

Pars Ram in fact meets with Cowan on 25 August.

26.8.86 Pars Ram and buyers are in PNG and sign a Memorandum of Understanding. Obviously this shipment is discussed then.

4.9.86 (IN TLX 7380) Pars Ram asks for species, quantities and ports for first and second shipments.

FIC say they will reply tomorrow and regret delay.

5.9.86 (IN FAX 236) Pars Ram sends copy authority from Nissho Iwai for SBLC to sell to him.

5.9.86 (IN TLX 7388) Pars Ram asks FIC to procure a specified 4100m³ from SBLC. He also faxes SBLC and copies FIC.

8.9.86 (IN TLX 7401) Pars asks about progress - he needs to fix a ship.

9.9.86 (IN TLX 7406) SBLC specifies 4100m³ mix and FOB prices for Pars Ram - reference Contract 02/0986

On 9.9.86 or earlier FIC must have spoken with Ambogo Sawmills or Kumusi and have obtained an offer on 2500 m³ because on SBLC's telex Tay writes details of "AMBOGO SAWMILL" 2500 m³ and FOB prices. He then adds a note "Above prices plus USD1/m³ for banking and service charges for FIC" and faxes all to Pars (OUT FAX 155 of 9.9.86).

(but are of course not set out in the fax)

10.9.86 (IN FAX 240) Pars Ram faxes Mohideen through FIC and offers CNF. The margins at this time are set out below.

<u>SBLC</u>	FOB	CNF	MARGIN
MALAS	52	95	43
CALOPHYLLUM	72	115	43
OLD KAMARERE	70	115	45
DILLENIA	65	108	43
YELLOW HARDWOOD	65	108	43
WATER GUM	65	108	43
RED MIX	60	108	48
WALNUT	95	145	50

AMBOGO

MERSAWA	70	112	42
DILLENIA	65	108	43
KWILA	85	128	43
BURCKELLA	68	-	-

Pars Ram builds in USD37.00 for freight and USD4.50 for interest which are disclosed and USD1.00 for FIC which is not disclosed.

12.8.86 (OUT TLX 5142) Tay counter offers SBLC TRYING TO REDUCE THEIR FOB PRICES FOR INDIA SHIPMENT with 3% FIC commission.

Eventually on 12.9.86 there is a written agreement between SBLC, FIC and Moideen for 4100m³ at these FOB prices:-

MALAS	51
CALOPHYLLUM	72
OLD KAMARERE	66
YELLOW HARDWOOD	61
WATER GUM	61
RED MIX	59
DILLENIA	61
WALNUT	95

All prices have been reduced except calophyllum and walnut.

15.9.86 (IN TLX 7416) Pars Ram asks port details SBLC + Ambogo to fix ship.

On 17 and 18 September FIC send two telexes to Ambogo (OUT TLX 5162 and 5166) REDUCING their prices for Indian shipment as follows:

<u>SPECIES</u>	<u>17/9</u>	<u>18/9</u>
KWILA	82	82
DILLENIA	60	59
BURCKELLA	65	64
TAUN	64	63
YELLOW HARDWOOD	60	59

FIC's commission is specified at 3% of FOB price. Why the prices dropped from the 10.9.86 offers should be explained.

- 19.9.86 (OUT FAX 176) Cowan faxes offer to Pars Ram at FOB prices USD1.00 above producer prices and says the prices include USD1/m³ for FIC servicing charges.
- 23.9.86 (IN TLX 7450) Pars Ram asks for Calophyllum and Pencil Cedar as a matter of urgency. He pursues this.
- 3.10.86 (IN TLX 7505) Pars Ram advises L/C 9156/4001 for USD 330,000 covering 5100m³ has been established.
- 10.10.86 (IN TLX 7531) Pars Ram tells SBLC (copy FIC) Indian L/C's have discrepancies, Vessel withdrawn till they are resolved; bear with us.

Pars Ram problems with L/Cs continue but he arranges MARATIME GARDENIA which is discharging grain in Lae.

Between 21 and 23 October Pars Ram seems to resolve his L/C problems - some of the L/C's are from India to Pars Ram and are backed by his L/C's to FIC ie. back to back L/C's.

- 22.10.86 (OUT FAX 213) Cowan tells Pars Ram Wooklark has closed elsewhere; Ambogo are confused at constant changes and no vessel and will not hold logs without L/C; SBLC are ready on 7 days notice. Also says L/C's received need amending and should look at mid November.

Cowan also interferes with Pars Ram vessel arrangements telling the agent (OUT FAX 215) Pars Ram doesn't have 6000m³ and appears he will not load.

- 22.10.86 (IN TLX 7594) Pars Ram says he has covered L/C through ANZ Brisbane; you will have them tomorrow; as far as we know we can load 6000 m³.
- 23.10.86 (OUT FAX 220) Cowan takes to Pars Ram in detail (3 pages) and is highly critical criticising chopping

and changing and delays and failures in providing L/C's.

- 24.10.86 (OUT FAX 223) FIC tell Pars Ram SBLC will not load without L/C for 4100 m³ and there is no L/C for 1600 m³ Malas and Walnut.
- 24.10.86 (IN FAX. NOT NUMBERED) Pars Ram says L/C's for 5385m³ opened today; rest by 27/10; arrange SBLC load for 29/10.
- 25.10.86 (OUT FAX 225) Cowan tells Pars Ram shippers will not load unless L/C's received and accepted and can't accept vessel at short notice. He says SBLC cannot accept vessel on 29/10 and must be after 10/11 He says Pars should cancel this vessel and arrange another.

This is a ridiculous suggestion - Pars has said the vessel is fixed and Cowan is either stupid or ignorant and naive in suggesting cancellation.

- 26.10.86 (IN TLX 7619) Pars Ram (from India) tells Cowan he understands Cowan has told his buyers rep. who is in PNG logs are not available and Cowan wants the shipment delayed. HE explains the vessel is fixed and what that means - is flying to PNG and trusts vessel can load.
- 27.10.86 (IN TLX 7625) SBLC say they are told Maratime Gardenia ETA is 30/10; though it was cancelled as not enough time to amend L/C; please advise name of substitute vessel.
- 27.10.86 (IN FAX 278) Pars Rams office advise L/C details; have to ship 6000 m³ on Maratime Gardenia calling at SBLC 29/10 - the L/C's cover 5305 m³ and balance covered by another L/C to be opened today.
- 28.10.86 (OUT FAX 230) Cowan sets out the position to Pars Ram and repeats no cargo till L/C's arrive and checked and no vessel accepted unless it fits into a loading schedule.
- 28.10.86 (IN TLX 7633) Pars Ram lists in detail various L/C's covering 4100 m³ from SBLC and 1300 m³ from Ambogo and says the 750 m³ unsold from Ambogo will be taken by Hajee. He lists the FOB prices.
- 28.10.86 (IN TLX 7638) SBLC confirm FIC instruction not to load as L/C not received; won't load till FIC says so even though vessel arrives at Buluma.

30.10.86 (IN TLX 7649) Owners agent advises vessel ETA Buluma at 0800 hours 1/11.

There are a number of communications on 30/10 - SBLC want an L/C from FIC; SBLC confirm will not load till FIC instruct and ask ensure SBLC not liable for demurrage.

30.10.86 (OUT FAX NOT NUMBERED) Cowan attacks Pars Ram; vessel rotation is said to be changed and is unacceptable - "We are tired and fed up with your method of business practices, as SBLC and Ambogo have lost confidence. "Cowan goes on to repeat shippers will only load after acceptable L/C's are established and proper loading arrangements are made.

30.10.86 (OUT TLX 5321) Cowan tells Ambogo not to load until FIC advises as L/C's not accepted.

31.10.86 (OUT TLX 5323) Tay tells SBLC same thing.

Even at 31.10.86 there is argument about loading rotation where Cowan says to the ships agent (OUT TLX 5331) "We believe you are mad or sick Do you understand English." He is speaking of a proposal to load Oro Bay first which is reversed. There is real animosity and impatience at this time. The L/C's are checked and handwritten pages are drawn of necessary amendments which include:-

- "1. To avoid stamp duty - change tenor to sight".
- "3. Letters of Credit state FIC will lose \$2 per m³ - not acceptable".
- "7. Pars Ram to give undertaking to FIC and BSP ... any interest payable after negotiation of docs by BSP until receipt of proceeds for account Pars Ram at current rates".

On 3.11.86 (OUT FAX 237) further L/C amendments requested.

On 4.11.86 (OUT FAX 238 (wrongly numbered 237) FIC ask for payment of USD1360 stamp duty and USD700 interest charges because of the way L/C's were opened plus USD 910.00 for fares hotel and allowances for BSP representative to fly to Brisbane to check documents with ANZ Brisbane - the total is USD 2970.00.

4.11.86 (IN TLX 7673) Pars Ram says all is being done and USD2970.00 being remitted today.

4.11.86 (OUT TLX 5348) FIC asks Ambogo to prepare 225m³ kwila and 200m³ burckellia for loading tomorrow - Tay and inspector will arrive tomorrow.

- 4.11.86 (IN FAX 289) ANZ Brisbane send various L/C amendments.
- 5.11.86 (OUT TLX 5350) Tay gives SBLC loading instructions and bill of lading requirements for MARATIME GARDENIA - ETA 7/11/86.
- 6.11.86 (OUT TLX 5353) FIC tells Pars Ram latest problem is SBLC will not accept L/C's and want 100% L/C from FIC before loading.
- 6.11.86 (IN TLX 7693) Department of Forests tell FIC that PFD says 350 m³ is lower than MEP and vessel cant leave Oro Bay till satisfied FIC will meet the shortfall.
- 6.11.86 (OUT TLX 5365) FIC tell Department of Forests buyer has agreed to meet shortfall by cash payment in PNG; will advise details; please allow vessel to proceed to SBLC.
- 6.11.86 ((N TLX 7697) Forests agree to release vessel.
- 6.11.86 (Letter) Kumusi sends FIC documents and its MEP and FOB invoices for a total of 81 pieces for 329.391 m³. FOB details are:-
- | | | | | |
|-----------|-----------|------------------------|-------------|---------------------|
| Kwila | 65 pieces | 248.336 m ³ | at USD 84 = | USD20,860.22 |
| Burckella | 16 pieces | 81.055 m ³ | at USD 64 = | USD 5187.52 |
| | 81 | 329.391 | | <u>USD26,047.74</u> |

The MEP value is shown as USD27,887.32 and the main difference between FOB and MEP is in the kwila prices.

- 7.11.86 (IN TLX 7706) Pars Ram expresses concern at amount loaded; contractis for 5950 m³ committed for 6000m³ - you must come up with a solution acceptable to Moideen. Pars Ram also complains at FIC's treatment of him, about being "brushed off" and says having "contracted a sizeable quantity" he would appreciate an explanation.

Even at 8.11.86 there are still L/C amendments and this continues.

- 10.11.86 FIC negotiates claim for Kumusi part shipment.

- 12.11.86 (IN TLX 7749) Pars Ram says FIC have L/C for 800 m³ extra from SBLC and asks to contact SBLC - in a nutshell he says a 6000 m³ shipment must be made under the Charter party.

There are a number of communications and more L/C amendments as Moideen is on the spot at SBLC seeking to increase the load from SBLC so that 6000 m³ is loaded in total. Pars Ram begins direct communications with SBLC (copies to FIC) towards this end.

To say the whole thing has become an absolute mess would be an understatement.

13.11.86 FIC accounts to Kumusi.

17.11.86 In TLX 7790) Hajee criticises Pars Ram copying FIC and say they will not accept deadfreight; "Why are we paying you such a high commission for"; criticising Pars Ram not having a representative at loading and criticising Pars Ram for unbusinesslike language to Moideen

18.11.86 (OUT FAX 289) FIC tells Pars Ram what has been loaded at SBLC against each of four L/C's for a total 5468 m³ and says the buyers rep has refused to accept more. The ship loaded at SBLC from 8 to 20 November. There are problems with documents and Cowan and Moideen plan to fly to Brisbane to cure the problems. There are significant further delays consistent with past history.

28.11.86 (Letter) BSP accounts to FIC for SBLC part shipment.

10.12.86 (OUT FAX 391) FIC accounts to SBLC and asks for refund

Eventually there is a demurage claim (see IN FAX 504 of 13.1.87) which FIC ignores and an over invoicing claim (see IN FAX 574 of 3.2.87) of USD 249.80 which FIC also apparently ignores.

(B. LETTER OF CREDIT

(C. NEGOTIATION

(B. ACCOUNTING - KINA (BSP TO FIC)

This the most complex of FIC's shipments involving six different L/C's with two different producers and two of the L/C's being subject to two claims - one from each producer.

The sales are fortunately all on FOB bases and there is no USD retention.

Accounting is in aggregate to each producer.

It is therefore convenient to deal with each L/C and each negotiation and each accounting by BSP to FIC and to tabulate the results for each producer (Attachment 1) then to deal separately for each of the two producers with FIC's accounting to him.

1. PART 2A - Kumusi.

The L/C 121068622 is from Syndicate Bank Mangalore - applicant Hajee Timber and Industries of Mangalore India. It is ultimately for USD 163,350 for various specified species and various prices.

It specifically provides for automatic deduction of USD2.00/m³ brokerage for Tri Une Produce Brokers of Bombay at sellers account. It is a direct 180 days after Bill of Lading L/C.

On 14.11.86 FIC writes to BSP enclosing:-

- (a) 180 day draft for USD5,511.74
- (b) Invoice FIC/PRB/02/86 for
16 pieces 81.055m³ Burkella at USD 68.00 = USD 5511.74.
- (c) Other relevant documents

The invoice shows a gross value of USD 5511.74 less brokerage of USD 162.11 for net invoice value of USD 5349.63. A replacement draft is supplied for USD 5349.63

On 21.11.86 BSP accounts to FIC by letter and details are extracted into Attachment 1.

BSP credits FIC's account on 21.11.86 on terms interest will run until actual payment is received.

On 18.12.86 BSP states payment was received on 2.12.86 and interest of K23.36 has been debited to FIC's account as shown in Attachment 1.

2. PART 2B - Kumusi

The L/C 121068623 is from Syndicate Bank Mangalore - applicant Mohuideen Sawmills of Mangalore India.

It is ultimately for USD71,250.00 for various specified species and various prices.

It specifically provides for automatic deduction of USD2.00/m³ brokerage for Tri Une Produce Brokers of Bombay at sellers account. It is a direct 180 days after Bill of Lading L/C.

On 14.11.86 FIC writes to BSP enclosing:-

- (a) 180 day draft for USD21,108.56
- (b) Invoice FIC/PRB/01/.86 for
65 pieces 248.336m³ kwila at USD 85.00 = USD21,108.56.
- (c) Other relevant documents

The invoice shows a gross value of USD21,108.56 less brokerage of USD 496.67 for net invoice value of USD20,611.89. A replacement draft is supplied for USD 20,611.89.

On 21.11.86 BSP accounts to FIC by letter and details are extracted into Attachment 1.

BSP credits FIC's account on 21.11.86 on terms interest will run until actual payment is received.

On 18.12.86 BSP says payment has been received and interest of K90.02 has been debited to FIC's account as shown in Attachment 1.

3. PART 2C - SBLC

The L/C is the same as for Part shipment 2A above. The letter to BSP from FIC is not on file nor are copies of the invoice but a copy of the latter is with IN FAX 574 of 3/2/87.

It covers	999.127 m ³ Calophyllum	at USD75 =	74 934.52
	249.803 m ³ Yellow Hardwood	at USD65 =	16237.19
	249.948 m ³ Dillenia	at USD64 =	15996.67
	121.312 m ³ (unspecified)	at USD64 =	<u>31 636.42</u>
		USD	<u>138,804.80</u>

The invoice shows a gross value of USD138,804.80 less brokerage of USD3,986.40 for net value of USD134,818.40. This is the amount of the claim - USD134,818.40.

On 28.11.86 BSP accounts to FIC for all SBLC part shipments pursuant to FIC's letter of 27.11.86 - details are extracted into Attachment 1. There is an 80t discrepancy as shown in Attachment 1.

Again interest runs until actual payment is received and is quantified by BSP letter of 18.12.86 at K241.85 as shown in Attachment 1.

4. PART 2D - SBLC

The L/C being L/C 133/0005/86 is from Corporation Bank Mangalore applicant MADAV NAYAK BOWLAR PUTTAR of Kamataka State India. It is ultimately for USD105,330.00 for various specified species at various prices.

It specifically provides for automatic deduction of USD2.00/m³ brokerage for Tri Une Produce Brokers of Bombay at sellers account. The letter from FIC to BSP is not on file nor is a copy of the invoice.

It can be surmised from OUT FAX 289 of 18.11.86 (Item 2) and the L/C details are

1498.176 m ³	Malas	at USD 54 =	80,901.50
84.822 m ³	Walnut	at USD 98 =	8,312.56
235.344 m ³	Water Gum	at USD 64 =	15,062.02
1818.342 m ³			USD104,276.08
Less 1818.342 x 2 brokerage =			3636.68
			<u>USD100,639.40</u>

The figures are reasonably correct as the BSP file shows the claim covered 1818.542 m³.

On 21.11.86 BSP accounts to FIC by letter and details are extracted into Attachment 1.

Again interest runs until actual payment received and is quantified by BSP's letter of 18/12/86 at K180.56 as shown in Attachment 1.

5. PART 2E - SBLC

The L/C is the same as for Part shipment 2C above. The letter from FIC to BSP is not on file nor is a copy of the invoice.

It can be surmised from OUT FAX 289 of 18.11.86 (Item 3) and the L/C details are:-

250.000 m ³	Red mix	at USD 62.00 =	15,500
556.743 m ³	Kamarere	at USD 69.00 =	38,415.27
			<u>53,915.27</u>
Less brokerage 806.743 x 2 =			1,613.49
			Nett invoice value USD52,301.76

This does not conform to the claim amount of USD48,511.84 which accordingly is not explicable. On 28.11.86 BSP accounts to FIC for all SBLC part shipments pursuant to FIC's letter of 27.11.86 - details are extracted into Attachment 1.

Again interest runs until actual payment is received and is quantified by BSP's letter of 18.12.86 at K87.05 as shown in Attachment 1.

6. PART 2F - SBLC

The L/C 9625/4001 is from ANZ Bank Brisbane - applicant Pars Ram Brothers (Australia) Pty Ltd. It is ultimately for USD15,600.00 covering specified species at differing prices. The L/C is clearly a back to back L/C providing:-

- (a) "Bill of Lading" bearing "L/C No 0010686/53 dated 13 October, 1986"
- (b) Goods must be as per confirmation note of TRI-UNE PRODUCE BROKERS, BOMBAY.
- (c) Unit price or value not to appear on other than drafts and invoices.

It could be surmised TRI-UNE obtain commission but that is not provided in the L/C.

Again there seems to have been a problem with the draft (why is not clear as there was no commission deduction) and a draft for USD 10,792.56 is provided with payment "at sight" Despite this the Bill seems to be payable at 180 days.

There is no copy of the FIC letter to BSP or invoice on file and it cannot be surmised how the invoice amount was calculated.

BSP accounts to FIC for this (with the other parts of this shipment from SBLC) by letter dated 28 November 1986 - item 3. Details are extracted into Attachment 1

Again BSP credits the amounts less bank charges but again mentions interest will run until the proceeds are credited.

The interest is later (18 December 1986) deducted and amounts to K30.44 as shown in Attachment 1.

7. PART 2G - SBLC

The L/C 9626/4001 is again from ANZ Bank Brisbane - applicant Pars Ram Brothers (Australia) Pty Ltd. It is ultimately for USD 14,400.00 for various species at differing prices. It is clearly back to back -

- (a) Bill of Lading ... to order Bank Indosuez notify Indian Plywood Manufacturing Company"

- (b) As per indent ... TRI UNE PRODUCE BROKERS, BOMBAY
- (c) (Australian) L/C number is not to appear on documentation.
- (d) Unit price or value not to appear on other than drafts and invoices.

It could be surmised TRI UNE obtain commission but that is not provided in the L/C.

Again there seem draft problems (though not clear why as no commission) and a draft for USD14,372.91 is provided with payment at sight.

Despite this the bill seems payable at 180 days.

The BSP accounts of this (with the other part shipments from SBLC) by letter dated 28 November 1986 - item 4. That letter is used to complete Attachment 1. There is no copy of the BSP letter from FIC or of the invoice on file and it cannot be surmised how the invoice amount was calculated.

Again BSP credits the amounts but says interest will run until the proceeds are credited.

The interest is later (18 December 1986) debited and amounts to K40.33 as shown in Attachment 1.

8. PART 2H - SBLC

The L/C 121068626 is from Syndicate Bank Mangalore - applicant Fathima Timbers of Mangalore India.

It does not specify prices or species from which calculations are possible and is ultimately for USD82,000.00 covering on unspecified quantity which is in accordance with an inspection certificate. The L/C is direct with no brokerage deduction provisions and is 180 days after bill of lading.

Again there is an (incomprehensible) draft problem and the draft is for USD 59,992.41 with 180 day tenor.

There is no copy of FIC's letter to BSP or of the invoice on file and it is not possible to know how the invoice amount was calculated. BSP again accounts for this shipment in its 28 November, 1986 letter - item 6. That letter is used to complete Attachment 1.

Again BSP credits the amounts less bank charges and says interest will run until the proceeds are credited.

The interest is later (18 December 1986) deducted and amounts to K107.65. as shown in Attachment 1.

In general terms the documentary vouching particularly on the bulk of SBLC part shipments can only be described from the point of view of FIC's records as absolutely disgraceful - one simply cannot tell how FIC's invoices and claims were calculated. The actual money transactions in terms of cash receipts to the point of BSP accounting to FIC appear from Attachment 1.

These sums are net of the USD 2.00 per m³ brokerage paid to Tru One Produce Brokers where that commission was clearly deducted or one can reasonably surmise it was later added.

The Pars Ram L/C's would require re-invoicing by him and there is potential for transfer pricing in such L/C arrangements.

D. (cont) ACCOUNTING (KINA) - FIC to producer.

1) PARTS 2A AND 2B - Kumusi

FIC's cashbook shows that on 13.11.86 FIC drew cheque No 024690 for K25,479.58 to BSP for TT to Kumusi pursuant to payment voucher 4528. That payment voucher is supported by two Kumusi invoices of 5/11/86 for Kwila at USD84.00 and Burkella at USD64.00 aggregating USD26,047.52 as shown in History - A above.

The conversion rate used is 1.0227 to yield K25,469.58 which when TT fee of K10.00 is added totals K25,479.58. As can be seen from Attachment 1 FIC's total receipts for these two part shipments was K25,276.52 (USD 25,961.52) from which bank charges of K194.60 were deducted to give net receipts credited to FIC's account of K25,081.92

Against this FIC paid out to Kumusi (including the TT fee) K25,479.58 - ie K379.66 more than it received. FIC doesn't seem to have received any commission.

In the Auditor General's Dissection Sheet for FIC's 1986 shipments he shows by notation two receipts both on 21/11/86 being:-

(a) Moideen Sawmills for Kumusi	K478.74
(b) Pars Ram Punj Bros for Milne Bay Logging	<u>K2903.06</u>
	<u>K3381.80</u>

These same two amounts are included in FIC's log sales analysis of 30.4.87 (EXHIBIT 35) where the first item is shown but posted to "receipts" and the second is so shown but posted to "Sundry Creditors".

Against this

- (a) FIC told Department of Forests on 6.11.8 the buyer would meet the shortfall between MEP and FOB on part of this Kumusi shipment by cash payment in PNG.
- (b) Pars Ram agreed on 4.11.86 to remit USD2970.00 as a payment of stamp duty, interest and Bank reps expenses
- (c) Pars Ram got no logs from Woodlark even though he planned to do so - Woodlark sold elsewhere.

As this was Pars Rams only shipment these loose ends must reconcile in some way and FIC will have to explain how and what if any further payments were made to Kumusi.

2. PARTS 2C TO 2H - SBLC

The position here is that FIC appears to have wrongly drawn all the drafts to include the USD2.00 per m³ payable to Tri Une Produce Brokers.

It seems SBLC sent an invoice on 20.11.86 though I am unable to find a copy in FIC's files for 1657 pieces aggregating 5800.671 m³ for an aggregate price of USD 363,089.45.

On 27.11.86 FIC wrote to BSP enclosing six (6) replacement drafts for an aggregate value of USD 369,139.92.

This reconciles with the total claims shown in Attachment 1 for SBLC. The figure is USD 6050.47 more than SBLC's invoice to FIC so obviously an undisclosed "profit" was built in somewhere.

In this 27.11.86 letter FIC directed payment to SBLC of its invoice value of USD 363,089.45 less FIC's 3% commission of USD10,892.68 which amounted to USD 352,196.77. All these figures check and are correct.

Somehow it is quite obvious someone did not know about this secret profit of USD 6050.47 and the figures are recalculated on the basis the invoice value would be USD369,139.92 less 3% commission of USD11,074.20 giving a nett amount payable of USD 358,065.72.

BSP acts on this amended version converts the figures at 1.02959 and

- (a) Sends SBLC K347,775.05 (USD 358,065.72)
- (b) Credits FIC K 10,755.93 (USD 11,074.20)
K358,530.98 (USD 369,139.92)

Out of FIC's K10,755.93 the total bank charges of K2323.75 are deducted so FIC only receives a credit of K8432.18. The 80t discrepancy increases FIC's take to K8432.98.

It will be observed these amended figures check excatly with Attachment 1 and with BSP's letter to FIC of 28.11.86.

Through undisclosed secret profits, lack of communication and incompetence FIC has well and truly overpaid SBLC.

After a lapse of two weeks on 10.12.86 Cowan has worked out what has happened and gives a written accounting to SBLC (OUT FAX 391 of 10.12.86).

He points out the error which has occurred in that SBLC in fact was paid USD358,065.72 (he says USD 358,066.16) whereas it should have been paid USD 352,196.77. He asks for a refund of USD5,869.39. Whether this refund was ever obtained will have to be ascertained from FIC.

E. FIC RECEIPTS

It is not possible to ascertain without further investigation precisely what FIC's receipts were.

1. PART SHIPMENTS 2A and 2B - KUMUSI

As can be seen under D above FIC paid out K379.66 more than it received.

This loss was increased by a further K113.38 through interest charges (see Attachment 1) to K493.04. The resultant loss turns on what the payments of K478.74 and K2903.06 represent; what happened about the FOB/MEP shortfall and what happened about Pars Ram paying the USD 2970.00 and how that money was applied if he paid it.

2. PART SHIPMENTS 2C to 2H - SBLC

As can be seen under D above FIC received K8432,98 after payment of the producer and deduction of bank charges and with the benefit of the 80t discrepancy. This receipt was reduced by the interest charges of K687.88 to K7745.10.

The amount may have been increased further by the refund of USD5,869.39 it that was made.

3. GENERALLY

FIC's receipts would also be affected by three (3) other factors at least:-

- (a) By what happened with Pars Ram's overinvoicing claim which seems clearly well founded and to require payment to him of USD 249.80.
- (b) By what the rights of the parties are regarding Pars Rams claim for contribution to demurrage.
- (c) By the potential and seemingly well preserved claim of Pars Ram for FIC's breach of the long term contract with FIC - this is discussed in comments.

From the producers point of view the margin of USD2.00 per m³ to Tri Une Producers; FIC's undisclosed profits and the margin paid to Pars Ram (the evidence suggests he built in big margins) are matters for concern. Cowan asserts (OUT FAX 367 of 8.12.86) and Pars Ram never denies this that Pars Rams commission was USD8.00 per m³ on this shipment.

F. COMMENTS - see below (Appendix 36.5)

APPENDIX 36.4SHIPMENT 4

VESSEL CAPE CORMORIN
NOVEMBER 1986

A. HISTORY

- 2.9.86 (IN TLX 7366) Vikani outlines his ideas for an end September shipment to Madras.
- 2.9.86 (IN TLX 7367) Gibbs gives Cowan his ideas for end September.
- 19.9.86 (IN TLX 7437) Vikani outlines Madras shipment to Gibbs and copies it to FIC.
- 30.9.86 (IN TLX 7488) Gibbs asks SBLC for about 2100 m³ for October shipment and copies FIC.
- 1.10.86 (OUT TLX 5201/2/3) Cowan asks Lusco, Timbersales and TDC for 2100 m³ as Gibbs asked SBLC.
- 3.10.86 (IN TLX 7506) SBLC offers 2100 m³. Cowan notes hold for Vikani (who is coming to PNG)
- 15.10.86 (IN TLX 7548) TDC offers 1400 m³ for next Indian Shipment.
- 21.10.86 (NOT NUMBERED) Vikani tells his office he is close to closing with SBLC, Kumusi and Vanimo.

In the latter part of October FIC is trying to organise Ambogo 1900m³. SBLC 950 m³ and TDC 1750 m³ - notes show the buyers FOB prices are USD1.00/m³ greater than offered to producers.

- 23.10.86 (IN FAX 274) TDC offers 1650 m³ at a flat USD 61.00/m³.
- 23.10.86 (OUT FAX 219) FIC offers TDC for 1200 m³ at USD58.00/m³.
- 24.10.86 (IN FAX 277) TDC tells FIC Sumitomo have a shipment; market is rising and FIC price unacceptable - they want USD61.00/m³.
- 24.10.86 (OUT FAX 221) FIC go back to TDC with USD 60 for 1200 m³.

24.10.86 (IN FAX 277) TDC accepts USD 60.00 flat for

TAUN	250.
TERM.B.	500
TERM.C.	300
BURCK	50
P.CEDAR	50
VITEX	50
	<u>1200 m³</u>

24.10.86 (OUT TLX 5282) FIC confirms acceptance of offer for shipment about 29/10 from Ambogo (Kumusi).

KWILA	500	USD 84 FOB
DILLENIA	200	45
BURCKELLA	100	59
MERSAWA	100	70
WAU BEECH	<u>50</u>	59
	950 m ³	

24.10.86 (IN TLX 7607) Ambogo say Dillenia maybe 40 m³ short and Wau beech 20 m³ short but can make up with Burckella.

24.10.86 (OUT TLX 5289) FIC asks Ambogo to try to make agreed quantities; says on accept increases in other species but not Burckella

25.10.86 (IN TLX 7612) Gibbs copies loading instruction for TDC to FIC for 1200 m³ on CAPE CORMORIN ETA 1/11 to load at Kieta.

25.10.86 (IN TLX 7613) Gibbs copies loading instruction for Kumusi to FIC for 950 m³ on CAPE CORMORIN ETA 28/10 to load at Oro Bay.

25.10.86 (IN TLX 7616) Gibbs gives Cowan details for CAPE CORMORIN freight remittance at USD37.30 payable for TDC and Kumusi within 3 banking days after TDC loading completed. FIC thus knew full freight obligation details at this time.

27.10.86 (IN TLX UNNUMBERED) Vikanis office tell him (he is in PNG) that L/C BOM/CE/86115 established - routed through ANZ Melbourne.

29.10.86 (letter) Vikani gives FIC loading breakups for Bills of Lading.

31.10.86 (OUT TLX 5326) FIC gives Ambogo loading schedule and bill of lading requirements for CAPE CORMORIN.

6.11.86 (IN TLX 7692) Ambogo say cant take Cape Cormorin on 10/11 as have another vessel to complete loading first.

7.11.86 Cape Cormorin loads at TDC with Bills of Lading:-

26/86 -	40 pieces (Terminalia)	210.800 m ³
27/86 -	59 pieces (Taun)	252.766 m ³
28/86 -	19 pieces (Vitex)	50.656 m ³
28/86 -	16 pieces (Pencil Cedar)	49.559 m ³
28/86 -	11 pieces (Burckella)	51.201 m ³
28/86 -	<u>110 pieces (Terminalia)</u>	<u>618.429 m³</u>
	<u>255</u>	<u>1233.411 m³</u>

There is an argument about loading at Kumusi and Cowan complains about rotation changes. He complains about Gibbs "dictation manner" and says this method of business is not acceptable to FIC's shippers and he will advise them not to load - he copies this to Vikani and Ambogo.

7.11.86 (IN TLX 7705) Gibbs responds; tells Cowan what occurred and believes Ambogo can load before their other vessel arrives.

7.11.86 (OUT TLX 5378) FIC advise insurers shipped 1233.411 m³ being 255 pieces with CNF value USD 122,847.73 from TDC.

12.11.86 (IN TLX 7743) Gibbs asks FIC to ensure freight for 1233.411 m³ TDC loading at USD 37.30 totalling USD 46,006.23 is sent today and asks for news on Oro Bay loading.

There is an argument about "clean bills of lading" which is reasonably promptly resolved.

By 13.11.86 the vessel has loaded at Oro Bay and issued Bills of Lading as follows:-

OB/M1	48 pieces (Kwila)	175.184 m ³
	37 pieces (Dillenia)	186.384 m ³
	<u>8 pieces (Wau Beech)</u>	<u>40.459 m³</u>
	<u>88 pieces</u>	<u>402.027 m³</u>
OB/M2	61 pieces (Kwila)	196.141 m ³
	19 pieces (Burckella)	98.833 m ³
	<u>28 pieces (Mersawa)</u>	<u>119.905 m³</u>
	<u>108</u>	<u>414.879 m³</u>

The total loading was thus 196 pieces for 816.906 m³
The vessel sails for Vanimo to load on 13/11/86.

17.11.86 (OUT TLX 5427) FIC advise insurers shipped
816.906 m³ being 196 pieces with CNF value USD
88,631.74 from Kumusi.

17.11.86 (IN TLX 7789) Gibbs asks for details of TDC
freight TT and also details for Kumusi which is
due on 19/11.

18.11.86 (Letter) FIC makes claim for Kumusi Part
shipment for USD122,847.73 and interest of
USD4606.79.

There are apparently some problems with documents which
cause delays.

19.11.86 (IN TLX 7812) Gibbs asks for freight advice as
may be charged interest on delays and breach of
contract.

Gibbs telexes a number of times warning of problems until
20.11.86 (IN TLX 7821) when he speaks angrily of having
no reply; of chartering on conditions including FIC
remitting freight and asking for remittance details "for
the last time".

20.11.86 (IN TLX 7822) TDC complains BSP still has to
receive documents nearly 2 weeks after shipment - we
have bills and want settlement today.

20.11.86 (IN TLX 7830) Vikani says non payment of
freight is causing real problems with the
shipowner.

Apparently there are document discrepancies and this
causes problems and delays.

26.11.86 (OUT TLX 5495) FIC advise Gibbs freight TT'd
today.

B. LETTER OF CREDIT

The letter LC/BOM/CE/86115 is from Indian Bank Bombay - applicant Centaur Exports of Bombay. It is for USD248,100.00 covering about 2150 m³.

It covers

200 m ³ Dillenia	at USD 84.40
100 m ³ Burckella	at USD 98.60
100 m ³ Mersawa	at USD109.75
500 m ³ Kwila	at USD123.90
50 m ³ Wau Beech	at USD 98.60
1200 m ³ Mixed species	at USD 99.60

It is a direct L/C

C. NEGOTIATION

1. PART 4A - TDC

On 18.11.86 FIC writes to BSP enclosing

- (a) draft for USD4606.79
- (b) Invoice FIC/CE/006/86 for interest on CNF value of USD122,847.73 at 7.5% for 180 days = USD4606.79.
- (c) draft for USD122,847.73
- (d) Invoice FIC/CE/005/86 for 255 pieces 1233.411 m³ mixed species at USD99.60 = USD122,847.73.

This invoice is supported by three subsidiary invoices one for each bill of lading being invoices FIC/CE/26/86, FIC/CE/27/86 and FIC/CE/28/86

- (e) Bills of Lading 26/86, 27/86 and 28/86 with log lists and other related documents.

The letter as typed gives directions as to USD122,847.73 directing retention of USD45,636.20 in USD and credit of USD77,211.53 to FIC's account. The typing is altered in pen to require USD retention of USD46,006.23 and credit of USD76,841.50.

The letter further directs telegraphic transfer of USD74,004.66 to the account of TDC with BSP in Arawa.

2. PART 4B - KUMUSI

On 21.11.86 FIC writes to BSP enclosing:

- (a) draft for USD 3323.69
- (b) Invoice of which I cannot locate a copy on FIC's files but which it could be surmised with certainty was for interest on CNF value of USD88,631.74 at 7.5% for 180 days = USD 3323.69
- (c) draft for USD 88,631.74
- (d) Invoice - as to which see below
- (e) Bills of lading OB/M1 and OB/M2 with log lists and other related documents.

No copy of the invoice can be located on FIC's files but it can be safely surmised from the bills of lading and letter of credit it was constructed as follows:-

Kwila	109 pieces	371.325 m ³	at 123.90 = 46,007.17
Dillenia	32 pieces	186.384 m ³	at 84.40 = 15,730.81
Burckella	19 pieces	98.833 m ³	at 98.60 = 9,744.93
Mersawa	28 pieces	119.905 m ³	at 109.75 = 13,159.57
Wau Beech	8 pieces	40.459 m ³	at 98.60 = 3,989.26
	<u>196 pieces</u>	<u>816.906 m³</u>	<u>USD88,631.74</u>

Again the letter as typed gives directions as to USD88,631.74 directing retention of USD30,225.52 in USD and credit of USD 58,406.22 to FIC's account. Again the typing is altered in pen to require USD retention of USD 30,470.59 and credit of USD58,161.15.

D. ACCOUNTING (KINA)

1. PART 4A - T.D.C

On 25.11.86 B.S.P accounts to FIC (it having then arranged at Sight negotiation through National Australia Bank Singapore:-

- (a) the amount negotiated is USD127,454.52 (being the aggregate of the claims of USD 122,847.73 and USD4606.79)
- (b) USD 46,006.13 is retained in USD.
- (c) the residue USD81,448.29 is converted to K79,353.36.
- (d) bank etc charges of K5417.70 including interest of K4,106.80 are deducted.

(e) K72,101.18 is credited to TDC

(f) the residual K1,834.48 is credited to FIC's account.

The exchange rate is 1.0264

At the exchange rate the K72,101.18 transferred to TDC is equivalent to USD 74,004.65 which is (with a one cent difference) the amount FIC directed BSP to pay to TDC.

I am unable to locate an invoice from TDC to FIC or a written accounting by FIC to TDC in FIC's files.

It is clear from negotiations that the agreement was for a flat price of USD60/m3 over the shipment volume (see IN FAX 277 of 24.10.86)

The shipped volume of 1233.411m3 at USD60 = USD74,004.66. TDC has thus been paid its contracted price; FIC has borne the bank charges including interest and FIC has had credited to its account K1,834.48 and only this sum is brought to account in FIC's books - the payment to TDC is not reflected in FIC's cashbook.

2. PART 4B - KUMUSI

On 26.11.86 BSP accounts to FIC (it having then arranged at sight negotiation through National Australia Bank Singapore).

(a) the amount negotiated is USD91,955.43 (being the aggregate of the claims of USD88,631.74 and USD 3323.69)

(b) USD 30,470.59 is retained in USD

(c) the residue USD61,484.84 is converted to K60,061.38

(d) bank etc charges of K4057.56 are deducted including interest of K3,078.16.

(e) the balance k56,003.82 is credited to FIC's account.

The exchange rate is 1.0237.

FIC's cashbook shows that on 21.11.86 cheque No 024702 for K55,174.96 was drawn in favour of Kumusi Timbers pursuant to payment voucher 4538.

The payment voucher is supported by two Kumusi invoices AS/01B/86 and AS/02B/86 which is aggregate cover

Kwila	109 pieces	371.325 m3	at 84.00 =	31,191.30
Dillenia	32 pieces	186.384 m3	at 45.00 =	8,387.29
Burckella	19 pieces	98.833 m3	at 59.00 =	5,831.15
Mersawa	28 pieces	119.905 m3	at 70.00 =	8,393.35
Wau Beech	<u>8 pieces</u>	<u>40.495 m3</u>	at 59.00 =	<u>2,387.09</u>
	196 pieces	816.906 m ³		USD56,190.18

It will be noted the payment was made FIVE DAYS BEFORE FIC had the covering funds credited to its account.

The exchange rate applied was 1.0184 for K55,174.96.

Had the payment been made on 26.11.86 when FIC received the covering funds at a rate of 1.0237 the payment would have been K54,889.30.

By paying the producer five days early FIC in fact lost K285.66 on exchange differences.

On the actual figures FIC has been paid its contracted price; FIC has paid Kumusi its contracted price; FIC has borne the bank charges including interest and FIC has received K828.86 (being K56,003.82 less K55,174.96) less the cable charge of K10.00 for receipts of K818.86.

E. ACCOUNTING (USD)

As shown above the USD retention's were

4A - TDC -	USD 46,006.13
4B - Kumusi	<u>USD 30,470.59</u>
	<u>USD 76,476.82</u>

There is apparently a direction from FIC confirmed by BSP's letter to FIC of 28.11.86 whereby BSP on 26.11.86 telegraphic transfers USD76,476.82 to Soundview.Shipping of Connecticut USA.

Clearly the part shipments were of 1233.411 m³.(TDC) and 816,906m³ (Kumusi) aggregating 2050.317m³ Equally clearly from the history the freight rate was USD 37.30 per m3.

All the evidence and calculations check and the freight was remitted precisely as Gibbs directed. A copy of the TT instruction is on BSP's files.

F. FIC RECEIPTS

Quite clearly FIC built in a margin between the CNF price to buyer and FOB price to producer which covered the freight and interest rate differentials and also left a profit for FIC

For TDC - the CNF price was USD 99.60/m3
 - the FOB price was USD 60.00/m3
 - the freight was USD 37.30/m3
 - the margin was USD 2.30/m3

For Kumusi the position was:-

<u>Species</u>	<u>CNF</u>	<u>FOB</u>	<u>GROSS</u>
Kwila	123.90	84.00	39.90
Dillenia	84.40	45.00	39.40
Burckella	98.60	59.00	39.60
Mersawa	109.75	70.00	39.75
Wau Beech	98.60	59.00	39.60

When freight is deducted the margin was USD2.60 for kwila; USD2.45 for mersawa; USD2.20 for burckella and Wau Beech and USD2.10 for dillenia.

The planned margins were affected by bank etc charges including interest and in actual receipt terms FIC received K1,834.48 on the TDC part shipment and K818.86 on the Kumusi part shipment.

The USD retention funds attracted interest which was credited to FIC's account on 11.12.86 as follows:-

4A	USD 15.33	K14.84
4B	USD 5.07	K 4.91

(see Table 6)

This boosted FIC's receipts to K1,849.32 on the TDC part shipment and K823.77 on the Kumusi part shipment.

In the result FIC's receipts compared to those of the producers were within the reasonable range.

G. COMMENTS - see below

APPENDIX 36.5

G. COMMENTS - INDIAN MARKET AND SHIPMENTS 1,2 and 41. Indian Market

It seems that India offers the potential of a substantial market for selected species of PNG logs at very competitive prices, if marketing can be arranged on an appropriate basis.

There is demand for dense (heavy) red species which are generally not favoured in PNG's traditional markets - in this respect the Indian market is doubly important. As Ashenden's study of the Japanese market illustrates a detailed knowledge of a market is virtually essential if PNG producers are to obtain and sustain good and increasing prices.

Centaur Exports had done its market research and analysis well and, in combination with Vainimo Forest Products, Quarter Enterprises and Ron Gibbs had evolved a marketing strategy for orderly and continued exploitation of the market.

The Indian market structure is similar in a number of respects to the Japanese market. First the "importer" is not just a buyer and seller but extends credit to a lot of buyers. Secondly with "mixed species" there is scope for "sorting" species into marketable parcels.

Thirdly it is acceptable to construct a saleable parcel by using the "sweetener" of an acceptable quantity of one or two highly desired species to sell a sizeable quantity of lesser known and less desired species.

Though they exist it seems that the trade traditions and loyalties, which are so well and strongly entrenched in Japan, are less strong in India.

The strategy which Centaur and Gibbs developed is not new or revolutionary. It involves creating a market demand and then controlling supply to meet that demand. If demand exceeds supply then there is competition for the available supply and as a result of that competition prices increase with customers attempting to "outbid" each other to obtain the limited available supply - the effect is

described as "demand pull" - increasing prices. Such a basic strategy in marketing has existed for many years and finds its ultimate in supply trusts or cartels which, by express or tacit agreements or collusion, achieve a supply monopoly. The strategy uses and manipulates free market forces.

This practice has been outlawed in some countries (eg. Robinson Patman Anti Trust laws in the United States and Trade Practices legislation in Australia) as such practices tend to restrict competition and to enable the seller to exploit the buyer. Interestingly the strategy is precisely the reverse of that alleged against the traditional buyers of PNG logs said to result in low prices. (It is alleged the traditional Japanese, Korean and Taiwanese buyers meet periodically to agree buying price structures for South Seas (including PNG) logs).

Finally it seems PNG's diversity of species may be a benefit rather than a detriment in the Indian market as India apparently has (or had) a diverse species mix in its own forests.

2. Development of Indian Market

When the Indian Government opened India to log imports in 1985 by reducing previously prohibitive tariff barriers, Centaur Exports took the lead in relation to PNG timbers. According to its Chief Executive Hasmukh Vikani FIC was approached and failed miserably to fulfil its "prime function" of "promoting" PNG forest products. Vikani got such limited assistance from FIC that he turned to the industry and obtained real assistance from Ron Gibbs and Vanimo Forest Products. Subsequent claims by the Department of Forests, FIC and Minister Diro that FIC opened the Indian market are simply not true. Centaur Exports, Vanimo Forest Products and Ron Gibbs opened the Indian market. The FIC promotional tour was to build on that work and in fact Centaur and Vanimo Forest Products had completed their first shipment and Centaur had carried out a lot of market research and promotional work before the FIC delegation ever arrived in India. There is no doubt however that the FIC promotional tour of India (to which Centaur made a large contribution in time, organisation and hard cash) stimulated great interest in PNG timbers and a many trade enquiries resulted.

The marketing strategy of Centaur and Gibbs depended on Centaur being having a monopoly of promotion, supply and distribution of Kwila within India and Gibbs controlling supply from PNG. Clearly Centaur, Vanimo Forest Products and Gibbs were actuated by "profit" motives but an incident of that was increased prices.

The arrangements which Centaur and Gibbs had evolved were comparatively complex:-

- (a) Centaur would order specific lots of specific species for particular discharge ports thus requiring a deal of "sorting" at the PNG end and reasonably detailed ship loading and segregation of cargo at loading points.
- (b) These requirements multiplied paper work with very rigid and detailed letters of credit and multiple bills of lading.
- (c) Purchases were on a CNF basis on 180 day letters of credit and CNF prices (to appear to meet Indian law) were contrived to build in marketing charges and a factor for the differential between commercial interest rates for 180 days credit and the maximum prime rate of interest allowed to be paid by the Indian government.

When FIC showed an interest in marketing to India for other producers Centaur and Gibbs welcomed the idea provided it would be done as an extension of their monopolistic arrangements. To ensure this (and to ensure their own profits) they wanted to act, respectively, as buyer and agent.

3. Fic Involvement

In the initial stages Cowan (FIC) favoured involvement with Centaur, Gibbs, Vanimo Forest Products and other producers adopting the Centaur/Gibbs monopolistic strategy. Cowan's "contrived" trip to India in June 1986 was intended to conclude such an arrangement.

On that trip Cowan obtained improper benefits (for himself and his wife) from Centaur and, on his way back, from Angus in Singapore. His expenses claims should be checked closely to ascertain whether in view of the now known facts they were fraudulent.

In June/July a competitive force emerged in the form of Pars Ram Punj (Pars Ram Bros - Brisbane Australia), Trivedi (Tri Une Produce Brokers - Bombay) and Salam and Moideen (Indian buyers) Cowan sought to resist this force and to remain associated with Centaur but Pars Ram persisted. Cowan sent him a stupid telex offer of a 10,000 m3 shipment. It was made "off the cuff" and with no producers being committed to meet it. Cowan failed to seek legal advice and, by asserting contractual rights, Pars Ram managed to keep the pressure on Cowan.

Vikani was slow in committing to an August 1986 shipment, despite arrangements with, and pressure from, Cowan and Gibbs. Cowan now secretly began supplying Pars Ram with "intelligence" supplied to FIC in confidence by Centaur/Gibbs. Then, despite strong comfort and assurances to Vikani and promises FIC would ensure no competitor would get kwila at any price, FIC in fact relented under pressure. Pars Ram and his team arrived in PNG in the later part of August 1986 to finalise a deal.

By the FIC meeting of 20 August, 1986 FIC had in fact already concluded arrangements for the first shipment to Centaur from SBLC and TDC (without any NEC or Ministerial authority) and treachery was in the air.

Cowan returned from the FIC meeting in Rabaul to meet with Pars Ram and the treachery was completed with the signing of a long term contract based on kwila between Pars Ram and FIC. Cowan "took out insurance" by having Mr Diro join in the signing ceremony which was covered by the media.

With the treachery complete (but not disclosed to Centaur) Cowan orchestrated pressure on Vanimo Forest Products, through Minister Diro and the Department of Forests, to supply Kwila and, through Maraleu, on Ron Gibbs not to contact any producers other than for supply to India. Vanimo Forest Products withstood the pressure and refused to supply FIC and Gibbs also diplomatically preserved his position, by saying he wouldn't conclude shipments without telling FIC. The result was that FIC had a contract it could not fulfil and had seriously and knowingly placed the Centaur/VFP/Gibbs arrangements, based on monopoly, in serious jeopardy.

Cowan's villainy was about to reach new depths (but not the nadir) when it seems he sought to compromise Minister Diro in efforts to extricate himself (and the Minister he had involved) from the situation he created. Cowan arranged free air tickets for Messrs Diro and Anderson to Brisbane. He then arranged for Pars Ram to personally deliver a gift parcel of A\$1500 cash to Diro in his Brisbane hotel. A few days later Cowan, Pars Ram and Mr Diro attended a meeting at the Angus office when the solution to the kwila problem was formulated as being the allocation of a kwila rich resource near Vanimo. Pars Ram was to get the kwila and Angus (PNG) in which Mr Diro had a secret 35 percent beneficial ownership was to get a benefit of approximately USD 1 million. (See Interim Report No 2).

The unauthorised but FIC sales to Centaur and the Pars Ram contract were also used as "the wedge" in "hard sell" submissions to Mr Diro to advance FIC involvement in log marketing. In the result two shipments were achieved to Centaur in part through FIC and went reasonably smoothly and delayed) largely, it seems, because Gibbs did most of the arranging and shipping co-ordination while FIC was still learning.

One shipment was achieved through FIC to Pars Ram and his buyers. Here "amateurism" is the key; the discription reaches saga proportions and if were not so serious would afford Gilbert and Sullivan a story line for a sequel to the "Pirates of Penzance".

Finally a third Australian agent PAREVEN PTY LIMITED sought to become involved in Indian marketing with FIC but although letters of Credit were established, this came to nothing and, after the three shipments described above, FIC had no further successful involvement in the Indian market.

4. Result of FIC Involvement

The results of FIC (Cowan and Maraleu) involvement in Indian marketing can only be described as a disaster, which was counter productive and detrimental to the Papua New Guinea timber industry.

- (a) Centaur Exports which had spent much time, money and effort promoting PNG timbers in India and which had with Vanimo Forest Products and Ron Gibbs, evolved and implemented a monopoly based marketing strategy for PNG timbers was betrayed. They will not deal with FIC and it is doubtful whether they would deal with any PNG government marketing agency in future.

Their promotional efforts, their investment, and their market was placed in jeopardy creating anger, bitterness and resentment.

Fortunately Centaur's dealings with Vanimo Forest Products, TDC and Gibbs have survived FIC's interference but the damage done can only be healed by further lapse of time without further negative interference.

- (b) Pars Ram Bros have a contract with FIC for the supply of 65,000 m3 of logs by shipments at a rate of about 6500 m3 per month commencing in September 1986. A first shipment was achieved in November 1986 and none of the balance shipments (contracted to contain a minimum 2000 m3 each of kwila) have been effected. In circumstances where litigation has been threatened and delayed (because FIC has used this Inquiry as an excuse for delay) it is not appropriate to canvas the merits and demerits of the situation.

It suffices to say FIC faces the real risk of a damages claim for breach of contract and/or breach of warranty of authority (Cowan who was not properly authorised to do so signed the contract) and the State also may have some legal risk exposure arising out of Mr Diro's "endorsement" of the contract, on the grounds of a breach of warranty of authority. Documents before the Commission show that in terms of quantum:-

- i) Pars Ram Bros'. loss of profits for each of the nine residual shipments contracted for would amount to at least USD 48,000.00 - an aggregate claim of USD 432,000.00.
- ii) Pars Ram Bros assert they are liable for consequential loss as a result of breach of buyers contracts with them - damages are not quantified.

This threatened claim cannot be lightly regarded as Pars Ram Bros. have been at pains to preserve their rights (even up to October 1987). If the claim was successful it would be financially ruinous to FIC.

The existence of such a situation is of severe embarrassment and reflects badly on FIC and the country - particularly when FIC's Council were non participants in the whole episode.

- (c) As indicated above Indian shipments appear to be more complicated than shipments to Japan, Korea and Taiwan. They require precision, skilled arrangement and execution and good co-ordination. These three Indian shipments show FIC's lack of experience and lack of responsibility; the sloppiness of its systems and its amateurism. Where Ron Gibbs did the arranging and co ordination in the two shipments to Centaur these deficiencies were not so manifest. In the shipment through Pars Ram which assumes epic proportions and smacks of "the blind leading the blind "they are clearly evident. Really FIC could not have selected a worse target than the Indian market to begin its marketing involvement. It got off to a very bad start.

(d) The "Cowan Effect"

FIC did not have the experienced and competent staff needed to operate in the Indian market. On top of this the personality and actions of its Executive Director made disaster inevitable.

Cowan's intrigue, scheming dishonesty, incompetence, stupidity and arrogance created even greater animosities than did FIC's lack of experience and sloppiness. This can be illustrated by a few examples:

- i) the offer to Pars Ram in June 1986 without committed producers.
- ii) Cowan's lies to Vikani about FIC's charges; his lies about Ron Gibbs disclosing prices to producers eliminating margins and lies to Vikani about refunds.

- iii) Secretly disclosing Centaur/Gibbs confidential information to a competitor Pars Ram.
- iv) his attack and contrived pressure on Vanimo Forest Products.
- v) his devious involvement of Mr Diro
- vi) his (childish) avoidance of telling Vikani whether Salam was getting kwila (in the Pars Ram shipment).
- vii) his spiteful and divisive attack and criticism of Vanimo and Gibbs to Vikani.
- viii) his delay in remitting freight payments on the Centaur shipments which caused serious problems and the untruthful excuse given (blaming BSP).
- x) arrogantly ignoring justified complaints about shipping delays and deferrals and slowness of payment to producers.
- xi) his interference in Pars Ram's shipping arrangements and the arrogant and insulting languages used.
- xii) his failure to obtain legal advice on legal issues.
- xiii) his cavalier attitude towards contracts, or ignorance of contractual rights, by which created real risks for FIC.

SHIPMENT SPECIFIC COMMENTS

6. The manner of construction of contrived CNF prices to "load" service charges and interest differentials into the stated CNF price may be a usual way of doing business to India but really took FIC into areas of the unpredictable. If FIC claimed quickly, didnt have L/C discrepancies, and paid the producer and shipper slowly then it won on the interest variables. This resulted in excessive rates of return on Shipment 1 (4.29% and 3.98%) and returns within the reasonable range on Shipment 4.

On Shipment 2 the rates of return give real cause for concern. Vikani says (he told Cowan) that four

agents were involved - FIC, Pars Ram and two in Bombay and that total commissions amounted to about 10%. It is clear that in the bulk, if not all, of the part shipments a brokerage of USD2.00 per m³ for Tri Une Produce Brokers of Bombay was provided for. Cowan, in the argument about Pars Rams performance in early December 1986, asserts Pars Ram recieved USDB.00 per m³ on the first shipment and that Moideens companies were involved. What profit FIC made depends on what two payments aggregating K3381.80 represent and whether SBLC refunded moneys as requested by FIC. The true amount taken by way of "commissions" cannot be ascertained with certainty but it is clear there were VERY HIGH AND EXCESSIVELY HIGH amounts payable in addition to the FOB price paid to the producer.

7. The aim of FIC to sell direct and avoid unnecessary middlemen is clearly not achieved on shipment 2. As Vikani points out four middlemen were involved and they appear to have taken a "large slice" of the end price by way of commission. It is difficult to see how all these "middlemen" were necessary when one contrasts the strucutre in shipments 1 and 2 where there was one middleman - FIC for SBLC TDC and Kumusi and Gibbs for Vanimo Forest Products.
8. The requirement of FIC to have direct L/C's was not achieved in respect of parts of shipment 2. Third country (Australia) letters of credit were established which not only enabled but required third country invoicing thus enabling "offshore margins" to be incorporated by way of re-invoicing to the true buyer. This is the very sales structure FIC was involved in marketing to avoid.
9. FIC's aim was to obtain best prices for producers and to PNG. In relation to shipment 2 FIC actually went back to the producers and negotiated prices DOWNWARDS with the producers.
10. These shipments show the disorder and chaos of FIC's filing and records systems which are the subject of a deal of comment. Invoices could not be readily located for shipments 4B, 2D, 2E, 2F 2G and 2H and other important documents could also not be located. The files are in absolute disarray, out of date order, incomplete and generally give the impressing of having been "shuffled" like a deck of cards. This causes irritation and a great deal of wasted time in constructing what occurred but more importantly causes one to ask how FIC could possibly

357

have successfully carried on "business" with such a system.

The records are a complete contrast to the like records kept by commercial timber operations and inspected by the Commission.

11. On Shipment 4B, FIC paid out the FOB proceeds to Kumusi FIVE DAYS BEFORE the proceeds of the letter of credit negotiation were credited to its bank account. In so doing it incurred an unnecessary exchange loss of K285.66. On Shipments 2C to H, FIC overpaid SBLC because someone in FIC did not know of an undisclosed differential which had been built into the price.

These occurrences tend to illustrate what happens when a chaotic records system exists but more importantly show a negligent misuse of FIC funds. In analysis FIC has used its general funds to prepay (ie advance moneys) to Kumusi and has extended credit to SBLC.

12. On part of shipments 2A and B the price was below M.E.P. FIC procured the Department of Forests to release the vessel from Oro Bay on the basis that a cash adjustment was to be made by the buyer in PNG. According to Kumusi invoices the MEP value was USD27,887.32 and FOB price was 26,047.74 - a difference of USD 1839.58.

FIC was supposed to enforce sales at or above MEP. If the differential was not received it has sold below MEP and has avoided dispensation by an untruth told to the Department.

13. There are "unknown" factors outlined above in relation to various aspects of these shipments which must be ascertained and there appears to be a clear contingent liability for over invoicing and possible contingent liability for demurrage on shipment 2 which, as seems usual, FIC has simply ignored. The question of payment for and receipts in respect of documentary aspects of shipment 2 should be examined further - who went where to fix the documents and who paid.

358

APPENDIX 37SHIPMENT 3

VESSEL PNG TRADER

NOVEMBER 1986

BACKGROUND

This shipment is significant in that it introduces Mr S.J Park and his involvement in FIC marketing. Park had apparently been in PNG previously with NAM YANG but left that company and returned to Korea in circumstances which Nam Yang's Chairman Mr Chung indicated he did not wish to discuss. It seems from the terms of opening communication that Park probably knew Patrick Tay from those times.

10.10.86 (IN TLX 7532) Park greets Tay - Founded his own company DAIHWA TIMBER MARKETING CO and giving telephone + telex contacts

15.10.86 (OUT TLX 5254) Tay replies. Minister of Forests has authorised FIC to be SMA for log exports. Pleased to co operate with you in marketing. Advise species, requirements + price idea.

16.10.86 (OUT TLX 7553) Park replies. Koreans have emnity to Japanese suppliers and Koreans welcomed my company. Says he would like to serve FIC + gives some details and asks for offers

From 17.10.86 when FIC offers 3 October/November/shipments there is regular contact between Park and FIC.

B.HISTORY

This shipment has its beginnings in October 1986 when FIC was canvassing shippers to make up an Indian shipment. This brought contact with Rex Grattidge of Lusco on behalf of Woodlark.

In the FIC's file on Travelodge notepaper is the species breakup of a shipment of 6300m³.

There is also a handwritten sheet showing species and size (R,S,SS) breakdowns + price breakdowns + calculations which are in great detail + show an average price of USD 57.10 (for 6300m³) or without SCHIZOMERIA USD 55.70 (for 5100 m³)

Park's telex machine is of order and Patrick Tay telephones him

24.10.86 (IN TLX 7605) Park refers to phone call. Under negotiation with two buyers. Asks for suppliers price idea

24.10.86 (OUT TLX 5287) Tay fully specifies the shipment; price idea is USD59 or USD 57 without schizomeria. Asks for best firm price

24.10.86 (IN TLX 7611) Park refers to conversation with Tay and Cowan and confirms price USD 56.00/m³ FOB (USD 55/m³ nett for supplier and USD1.00 for our service charge). He says L/C will be CNF.

This is noted in pen on the pencil note earlier referred to "Confirmed on 24.10.85 (SIC) at USD 55/m³ to shipper USD 56 from buyer." As will be seen it was also apparently confirmed with Woodlark Island Development Corporation. It is also known from the Angus hearings that at this time Angus Group in anticipation of a shipment had committed though the Group member Columbus Navigation Pte Ltd to the vessel "PNG TRADER"; that Angus didn't have the logs to load and that it was seeking someone to take over the Charter.

25.10.86 (IN TLX 7615) Columbus ask FIC if interested to take over PNG Trader.

25.10.86 (OUT TLX 7617) Ocean Maritime of Tokyo contact FIC and describe PNG Trader.

27.10.86 (OUT TLX 5292) FIC refers to telephone conversations and outlines the position with PNG Trader. It says cheap freight may be available; details Angus contacts and says that due to Angus "serious financial problems" FIC will only pay the owner or owner's brokers.

27.10.86 (OUT TLX 5293) FIC confirm 6300m³ at FOB USD 56.00 flat sold on CNF terms with FIC to remit freight as advised by Park.

27.10.86 (OUT TLX 5294) FIC confirm sale to Grattidge at USD 55/m³ flat; Woodlark are to cover Grattidges commission; vessel is PNG Trader or alternate.

27.10.86 (IN TLX 7621) Grattidge asks for definite vessel details as soon as possible.

27.10.86 (IN TLX 7622) FC Cheah tells Angus Columbus Nav. has instructed Ocean Maritime to divert ship - cargo to be provided by FIC.

27.10.86 (IN TLX 7623) Park says the buyer Eagon will accept PNG Trader if laytime commences 4.11.86 - FREIGHT USD 19.00.

27.10.86 (IN TLX 7624) Cheah tells Columbus Navigation that Daihwa is charterer of PNG Trader and says Tay has contacted Park and asks to finalise.

Between this date and 4.11.86 PNG TRADER is fixed and Park leaves for PNG - the vessels ETA at KULUMADAG is 3/4.11.86 Establishment of the L/C is also discussed and amended.

6.11.86 (IN TLX 7701) Parks office confirm L/C M 1918611 EU 00331 is established and amended to cover 6200m³ CNF for a total USD 490,000.00.

There is a real problem with the L/C coming through and the ship is held but eventually all falls into place when the L/C arrives (8.11.86) and amendment arrives (13.11.86)

11.11.86 (IN TLX 7729) Steamships advise loaded 1828 pieces for 5600.306 m³. Log lists and Summaries support this.

13.11.86 (OUT TLX 5407) FIC clears PNG Trader to sail

13.11.86 (OUT TLX 5408) Park gives his office full details of the Woodlark shipment

13.11.86 (IN TLX 7764) Parks office tell Park NAMJEON advises on PNG Trader:-

- (a) Total Freight is 5600.306 M³ x USD 19.00 = USD 106.405.81
- (b) Remit nett freight USD103,745.66 to owner OCEAN MARATIME LTD Tokyo
- (c) Remit 2.5% brokerage of USD2,660.15 to NAMJEON INTERNATIONAL INC, Seoul.

Mr Trawa of FIC with Park were clearly present at loading of the vessel.

B. LETTER OF CREDIT

The letter L/C M1918611EU00331 was originally issued by Hanil Bank Ltd of Seoul Korea in favour of Eagon Forest Products Inc of Washington USA. On 8.11.86 BSP receives cabled advice from First Seattle Bank of Washington USA that on instructions from Eagon Forest Products Inc. it transfers USD250,000 of the Korean L/C in favour of FIC. The transfer covers 3200 m³. The Bill of Lading notify party specified is Eagon Industrial Company Ltd. By cable advice received by BSP on 13.11.86 the transfer is amended to increase the amount to USD 490,000 and volume to 6300m³.

It is clear the true buyer, Eagon Industrial Co of Korea established its L/C in favour of a US affiliate which transferred part of the L/C to FIC. This is Eagons system (see also shipments 7A and 12A). There may be reasons for it but the structure is classical and provides the potential for transfer pricing. This is the type of arrangement FIC was seeking to break by dealing direct.

C NEGOTIATION

On 17.11.86 FIC writes to BSP enclosing

- (a) Draft for USD 420,022.95
- (b) Invoice
- (c) Log List

No copies of the invoice can be located but there are many copies of the log list. One can fairly surmise the invoice was

1828 pieces 5600.306 m³ at USD 75 CNF = USD
420,022.95

The letter directs retention of USD 106,405.81 for shipping freight and USD 5600.30 for service charge

It then directs remittance of USD 305,216.67 to Milne Bay Logging less bank charges and credit of USD 2800.17 to FIC's account.

D. ACCOUNTING (KINA)

On 20 November BSP gives FIC a written accounting.

- (a) The negotiation amount is USD420,022.95
- (b) It is said USD 106,405.81 was retained in USD for freight and service charge. This figure is clearly wrong and the retained amount was USD112,006.11 (ie USD106,405.81 plus USD 5600.30) This is clear when one considers the balance converted which is the next figure
- (c) The balance after retention is USD 308,016.84 which is converted to K300,768.32 (at a rate of 1.0241)
- (d) The converted balance is shown distributed as follows:
 - (i) K295,313.15 to Milne Bay Logging
 - (ii) K2,720.90 to bank etc charges
 - (iii) K2,734.27 to FIC.

There does not appear, to be any written accounting to Milne Bay Logging, Woodlark Island Dev Corp. or Lusco in any of FIC's files.

Clearly in the negotiations FIC agreed to pay Woodlark an FOB price of USD 55/m³ flat. Over a shipment of 5600.306m³ this amounts to USD 308016.83 or in almost exact terms the amount converted of USD 308016.84. Of this sum FIC directed that USD 305,216.67 (less bank charges) be transferred to Woodlark (Milne Bay Logging) and USD 2800.17 to FIC. In round terms USD 2800.17 represents a rate of USD 0.50 per m³ over a shipment of 5600.306m³.

It is known from the investigation of LUSCO (Woodlark Island D.C or Milne Bay Logging's usual agent) that LUSCO received commission of 50t/m³. It is reasonable to expect that FIC agreed to commission of USD0.50/m³ on this shipment but there is no documentary evidence that this is so.

On this expectation the sum directed to be paid to Woodlark (Milne Bay Logging) was the expected agreed FOB price of USD 308,016.84 less FIC commission of USD 2800.17. (ie. USD305,216.67). At the conversion rate (1.0241) these figures convert respectively to K300,768.22 and K2734.27 (ie K298,034.05). If one deducts FIC commission the producer receives a net K298,033.95 and if one further deducts bank etc charges of K2720.90 the producer receives K295,313.05

Though there are minor errors (in the order of cents or toea) this is how the kina conversion was applied as indicated above (see (d) above).

Though the lack of documentary proof of accounting is unsatisfactory it seems quite clear on the evidence what has occurred and that in money terms the accounting was satisfactory. The minor errors are a real irritation and cause a great deal of time to be wasted double checking.

E. ACCOUNTING (USD)

FIC's letter to BSP 17.11.1986 clearly directed USD 106,405.81 be retained for shipping freight and USD 5600.36 for service charge. It is clear (despite the error in BSP's letter of 20/11/86) that USD 112,006.11 was retained (and not USD 106,405.81). On 20 November 1986 FIC writes to BSP directing.

(a) Payment of shipping freight as follows:-

(i) Ocean Maritime Ltd Tokyo
brokerage USD103,745.66

(ii) Keum Seok Chae
Korea Brokerage 2,660.15

USD106,405.81

(b) Payment of services charges of USD 5600.30 as a service charge to SOON JOO PARK of Korea.

(c) In a post script it is said there should be payment of USD 308,016.84 to the shipper - Milne Bay Logging and not USD 305,216.67 as stated in FIC's letter of 17.11.86

It seems clear from the Bank file that the freight of USD103,745.66 and brokerage of USD 2660.15 were TT remitted on 21/11/86 (reference T/T 8039/5086

The commission is noted by pencil note on the bank file as part also of TT8039/5086 but there is no copy telex on file showing the commission T/T'd to Mr S.J Park's credit.

As indicated in the analysis (under D above) the post script is wrong - the original letter was correct and this post script only adds confusion.

The gross freight of USD 106,405.81 over a shipment of 5600.306m³ represents a unit rate of USD19.00 which tallies, with the rate specified in Parks telex of 27.10.86 (IN TLX 7623) and Parks office's telex of 13.11.86 (in telex 7764). The brokerage amount is 2.5% of gross freight which conforms with the 13.11.86 telex.

Though the amounts of freight (gross and nett) and brokerage and person to whom nett freight should be paid conform with the 13.11.86 telex the recipient of the brokerage was not the entity so specified - namely NAMJEON INTERNATIONAL INC but rather one KEUM SEOK CHAE. It was also paid to a different account.

The service charge is at a rate of USD1.00 per m³ over the shipment which is the amount fixed by Park (IN TLX 7611 of 24.10.86) It seems clear (despite the lack of TT telex) that this money was TT remitted to Park.

F. FIC RECEIPTS

The only receipt of FIC (see D above) was the initial deposit of USD 2800.17 (K2734.27). This represented commission at a rate of USD0.50 per m³ over the shipment volume. The bank charges on the full claim were borne by the producer.

The amount of USD 112,006.11 retained in USD attracted interest at 6% for 1 day amounting to USD 18.66 which was part of K195.43 (USD201.86) credited to FIC's account on 11 December 1986. The amount converted to K18.06

(See table 6).

This enhances FIC's receipts to K2752.33.

A further direct expense would be Imari Trawa's travel to Woodlark and his accommodation and sustenance for the period he was there - it was not short. Who paid Park's fares inside PNG and accommodation would need to be checked.

G. COMMENTS

1. There is no charter party in FIC's records though FIC sold on a CNF basis and paid freight and brokerage. The payments are thus not satisfactorily vouched even though it seems Park organised the charter; the freight rate appears reasonable and the freight (nett) was paid to the apparently correct party in Japan. The engaging of PNG Trader was a very significant benefit to the then ailing Angus Group. It was seen in the Angus evidence that the vessel was chartered by Angus Trading (- the charter Party is Angus handup documents A556/5714) but Angus PNG didn't have the requisite cargo ready.

Angus was thus at risk for a very high dead freight claim (USD138,000 according to Angus handup document A649) or a suit for breach of contract. It happened that the availability of the vessel was very timely and convenient and the Angus Group's predicament offered a very real commercial opportunity to load the vessel on very favourable terms. FIC saw this opportunity (see OUT TLX 5292 of 27.10.86) for very cheap freight but "passed on" the opportunity to Park.

At the outset the contract between FIC and the buyer on the one hand and FIC and the producer on the other hand were concluded on an FOB basis. ON 24.10.86 (IN TLX 7611) Park says the L/C will be opened on a CNF basis. On 27.10.86 (OUT TLX 5293) FIC confirms a CNF sale based on the FOB price with freight to be remitted by FIC as advised by Park. On the face of matters freight was paid at USD 19.00/m³. It

is known the charter party for Angus (PNG TRADER was substituted for SUN ISLAND) provided for Japanese discharge Ports and depending on discharge ports varied from USD 21.50 to USD 23.00 per m³. Parks rate of USD19.00 to Korea was favourable but it is not known what the full arrangement with Angus Group was.

There was a real prospect of offshore "profit" in taking over the vessel charter but one could only speculate who may have benefitted. In fairness to FIC it obtained the FOB price it originally negotiated and, subject to 2 below, remitted the freight as advised by Park.

In that light the absence of a charter party and proper vouching of payments may not be as significant as in other cases but clearly the absence of such proper vouching can be validly criticised from an audit view point.

2. FIC said it would remit freight as advised by Park. Though Park was in PNG at the time his office advised twice (12.11.86 IN TLX 7745 and 13.11.86 IN TLX 7764) how freight and brokerage were to be remitted. Both telexes say the brokerage was to be remitted to KOREA EXCHANGE BANK, SEOUL, ACCOUNT NO 029-13-09633-1 IN FAVOUR OF NAMJEON INTERNATIONAL CO. LTD. In fact FIC paid net freight as advised but the brokerage (in the sum advised) was paid to KOREA EXCHANGE BANK, SEOUL, ACCOUNT NO 136-19-00293-2 IN FAVOUR OF KEUM SEOK CHAE. Whilst it seems clear Park had a close relationship with NAMJEON (as can clearly be seen from brokerage payments in Table 2) if it was the broker it is difficult to see how he would have power to divert its brokerage - unless there was a "side deal" over this vessel to which Park was party - but that is speculative. On the face of FIC's records brokerage of USD2,660.15 was paid to the wrong person. This means technically FIC's funds have been misapplied and technically FIC is at risk of a suit for recovery of brokerage by NAMJEON and has a contingent liability to it of USD2,660.15.

The fact there seems to have been no complaint by NAMJEON could well mean the contingency is not likely to materialise but does not disturb the fact that on FIC's records USD 26601.15 has not been properly vouched and has been misapplied. This irregularity must be explained.

3. This is one of a number of FIC sales which merit comment in that FIC appears only to offer them to one buyer or agent. This parcel of logs and some others offered through Park were offered only through him as an agent. Such a practice does not rest easily with what the NEC was told SMA was to do. Park was no more or less than a "middleman agent" so criticised to NEC in the SMA submission and unlike many producers who offer to a number of such "middleman" to have them compete and obtain a buyer at the highest price FIC offered to Park alone. They were thus doing exactly what they had criticised and by using only one agent were operating in an equally uncompetitive way as many operators in the industry severely criticised for the same practice. The first objective of SMA as put to the NEC was to obtain higher prices by improving competition through independent effort by selling directly to end user rather than intermediaries.
4. As indicated under B above this shipment was to Korea. The letter of credit was a transferred letter of credit through the USA and through what is obviously a US affiliate of the Korean buyer. This is a classical structure whereby a price markup can be achieved in the third country. It admits of the potential of transfer pricing. This was a practice well known when SMA was proposed to NEC -- "In many cases letters of credit are processed through a third country (HongKong) with the intention of transfer pricing".

The objective of SMA was said (to NEC) to be

"(i) selling directly to end user rather than through intermediaries"

The functions of SMA were said (to NEC) to included:-

"(i) buy logs from the producers and export directly to buyers ... in the consuming countries"

"(viii) (SMA will not be allowed to export to a country via another country. All export deals should be made directly in the country of destination. The letter of credit (LC) should be processed directly from the consuming country to Papua New Guinea.

This was the background against which NEC approved FIC being appointed State Marketing Agent. In this case haste is apparent in organising the shipment to take advantage of PNG TRADER; the L/C was established after the ships ETA and the ship was held pending arrival of the letter of credit amendments when she was cleared. Despite this the way in which the L/C was established permitted the very things that NEC was told FIC as SMA would be preventing.

This was only FIC's third shipment and its first into PNG's traditional markets - the very same thing occurred again (a third country L/C) on shipments 2F, 2G, 7A, 7B, 12A, 12B and 14.

5. The absence of copy documents in FIC's files is disgraceful and indicative of the sloppy and unprofessional way in which FIC kept records.

In this case no copy can be located of such basic documents as:-

- (i) FIC's invoice to the buyer
- (ii) the Bill of Lading - title to the goods whilst on ship
- (iii) FIC's accounting to the producer
- (iv) the calculation of FIC's commission.

Whilst one can infer from other documents what occurred and whilst the explanations appear satisfactory and the accounting for funds, subject to 2 above, regular the fact remains that crucial records are missing, documentary accounting is not possible and the record system should attract the harshest criticism.

(The Auditor General made similar comments). From the Commission's point of view many hours were wasted seeking unlocatable documents. The record system is a sharp contrast to that of the commercial logging marketers whose records have been inspected - those records are systematic, well ordered and complete - in some cases they are immaculate.

6. The sloppiness in FIC's records is matched by sloppiness in attention to monetary detail. There are numerous minor calculation errors which are seen in relation to this shipment and others which are intensely irritating and which cause a great deal of investigative time to be unnecessarily wasted.

Wherever an investigator finds a monetary discrepancy he must be satisfied the error can be explained. Finding the explanation and reconciling figures is time consuming where the answer turns out to be confusion in the record makers mind or a calculation error.

Again these records are a sharp contrast to there of the commercial logging marketers - it is very rarely one finds a calculation error in their records - these have been no cases seen of multiple errors.

7. Parks sales charge of USD1.00 per m³ is reasonable as it is clear he was the agent and found the buyer. It was clearly at the correct rate and paid to him.
8. The FIC did not disclose to the producer that its gross FOB price was USD1.00 per m³ greater than the disclosed price. In the result the producer paid.
 - (a) USD0.50 per m³ on the FOB price known to him-
USD2800.17
 - (b) USD1.00 per m³ which he was not aware of-
USD5600.30

The rate is USD1.50/m³ which on the full FOB price of USD56.00/m³ is a rate of 2.678%.

Surprisingly however FIC told Rex Grattidge of LUSCO - the producers usual agent - (OUT TLX 5294 of 27.10.86) "As you are his (the shippers) agent your commission will be covered by shipper". We dont know if LUSCO obtained commission but if it did the shipper was paying an additional commission of USD 1.50 per m³ on top of what he usually paid and FIC assumed he would.

Against that the shipper received an apparently full FOB rate whereas he might otherwise have been having his logs sold to Holdcrown Limited of Hong Kong and then transfer priced to the end buyer as that was the system LUSCO and REX GRATTIDGE had in operation at that time.

APPENDIX 38

SHIPMENT 5

VESSEL DOOYANG GUIDE
NOVEMBER/DECEMBER 1986.

BACKGROUND

This is FIC's first shipment of logs from the Wawoi Guavi concession in Western Province. When the Commission conducted hearings into this concession there were proceedings in the National Court which had been argued in full and a judgement was pending. Matters of serious concern to the Commission and of relevance to its terms of reference could not be canvassed as it was said that allegations and counter allegations of cheating were central to the Court proceedings and for the Commission to deal with such allegations would amount to contempt of the National Court.

Some uncontested background can however be given. Timber Permits had been granted (initially over Block 1 then over Block 2) to Wawoi Guavi Timber Company Pty Limited (WGT). WGT had entered into a Marketing Agreement with Straits Contracting (PNG) Pty Limited (STRAITS PNG) which was wholly owned by Straits Engineers Contracting Pte Ltd of Singapore (STRAITS SINGAPORE). This agreement which was approved by the Department of Forests provided for a commission rate of 6% of the FOB value of logs sold. Why the agreement at such a high rate was approved is not known. STRAITS SINGAPORE entered a series of agreements with the Inchcape Group one of which was a marketing subcontract the parties to which were STRAITS PNG and the Inchcape subsidiary FMS (Hong Kong) Ltd (FMS (HK)). The subcontract did not spell out financial details but Inchcape has admitted in its submission this/Commission of Inquiry that FMS received 4% commission and the residual 2% (unearned) went to STRAITS SINGAPORE.

In the conduct of their business under the series of agreements Inchcape Group used another subsidiary, Forest Marketing Services Private Limited (FMS SINGAPORE).

FIC's file on FMS shows it had been supplying Market reports to FIC for some years.

Cowan's (FIC) involvement with Toms (STRAITS) appears to date back to mid 1986 when Cowan was seeking to assist Wawoi Guavi Timber company to obtain a larger log export quota. Cowan's actions in this and other areas are dealt with elsewhere. For a period of time Wawoi Guavi Timber had stopped logging in Block 1 and during the second half of 1986 were logging in Block 2 under a short term permit before their long term permit was issued.

By October 1986 FIC's launch into log sales was gathering momentum and that is where matters begin. The history section is not, in this case; limited to log sales but expanded to show Cowan's role in the differences which arose between STRAITS and INCHCAPE.

A. HISTORY

WGT area was visited by Department of Forests inspectors and on 14/10/86 a telex alleging undergrading, undermeasuring and abandoned logs was sent by the Secretary and responded to.

On 27/10/86 WGT fax a stock list to FMS. There is a copy on FIC's file with pen notes indicating a shipment of 6000m³ for about 20/25 November 1986 is available. This was apparently delivered to FIC. A pencil note on the top of the document reads:-

"OFFERED TO PARK 28.10.86" (The history of FIC meeting Park is dealt with in relation to Shipment 3 - Appendix 37). The offer to Park was apparently by telephone as there is no telex in FIC files. It is clear Park went to the market with this parcel and also clear that INCHCAPE very quickly heard of it with their market intelligence.

28.10.86 (IN TLX 7641) Pert (INCHCAPE) tells FIC that FMS has sole marketing rights from WGT and any enquiries FIC has should go to FMS.

28.10.86 (IN TLX 7645) Park offers USD71.00 FOB for "WAWOI LOGS 6000m³". and asks if 16,000 ton vessel can enter loading point.

29.10.86 (IN TLX 7648) Park confirms USD 72.00 FOB if guarantee 43% MERSAWA. If mersawa is 35-43% price will be reduced by USD3.00

30.10.86 OUT TLX 5315) FIC approach FMS for this shipment and ask for stocklist. Cowan says FIC is confident it can offer a price which cannot be refused.

30.10.86 Toms faxes FMS, sending a copy to FIC.

This effectively shows the beginning of what is happening. Toms is communicating with FMS and FIC gets copies so it has the inside running. Clearly FMS were offering USD67.00 and told Toms it was raised to USD71.00. Toms is worried about marketing clauses in his Block 2 permit and urges FMS to let FIC do some marketing.

Clearly Toms is going behind FMS back and trying to use FIC and in doing so disclosing confidential communications with FMS to FIC.

30.10.86 (In TLX 7657) Park asks position so he can confirm vessel. He also says "FYI, FMS/SAMJIN IS ALSO OFFERING WAWOI LOGS N BYRS ARE WATCHING US WHOSE OFFER IS CORRECT ONE"

Clearly then FIC knows FMS is also in the Korean market offering the same parcel through the agent SAMJIN - ie two agents are competing in the same market for a buyer for the same parcel of logs.

31.10.86 (IN TLX 7658) FMS say negotiating with regular buyers. 30-35% mersawa. ask for FIC firm offer as they expect one.

31.10.86 (OUT TLX 5330) FIC to STRAITS SINGAPORE - offer USD69.00/m3 nett FOB for 6000m3 and ask for answer by 1700 hrs.

It should be noted here that in its telex of 31.10.86, FMS frankly told FIC the position and asked for its offer. FIC did not communicate with FMS but only sent a telex offer of USD69.00/m3 to Straits Singapore. There are pencil notes on the last telex indicating there was a discussion (by phone) with Parks office indicating DAELIM CORP "71.50/70 Flat" and the words "ACCEPT".

31.10.86 (IN TLX 7663) FMS tells FIC their buyer offers USD71.00 and asks for FIC offer.

31.10.86 Toms sends a copy of FMS telex with a note to FMS and copies it to FIC. This makes it clear what happened. Toms says he asked FMS specifically not to do this and to accept USD70.00 per m3 and let FIC have this shipment. Apparently Toms had earlier spoken to FMS and Cowan and had told Cowan that FMS had said they wanted USD70.00. Cowan obviously went back to Parks office and the offer was raised to '71.50/70 flat'.

- 31.10.86 (OUT FAX) Cowan says he closed at USD70 based on TOMS verbal offer. He says FMS it appears "has reneged". on that offer. Cowan says FIC will match FMS price (USD71.00) but asks Toms to hold Inchcape to the original offer. "RUB THEIR NOSE IN IT".
- 1.11.86 (IN TLX 7665) FMS ask FIC to proceed with offer of USD70.00
- 3.11.86 (OUT TLX 5332/5) FIC reconfirms 6000m3 at USD 70.00 FOB to all
- 3.11.86 (IN TLX 7669) FMS ask vessel details and to establish L/C to FMS (HK)
- 4.11.86 (IN TLX 7671) Park is coming to PNG. His office asks for formal offer to BUSAN BANK
- 4.11.86 (OUT TLX 5339/43) FIC confirms to buyer 6000m3 at USD 71.50 and asks establishment of L/C with FIC. Buyer is DAELIM CORP.

The above facts are clear and speak for themselves - they are dealt with in comments.

- 8.11.86 The L/C M3218611 NU 00025 is established by Bank of Busan for USD543,000 covering 6000m3 CNF Pusan
- 10.11.86 (OUT TLX 5392) FIC advise WGT and STRAITS SINGAPORE - vessel is DOOYANG GUIDE
- 10.11.86 (IN TLX 7726) FMS ask for vessel details and L/C arrangements.
- As with the offers Cowan has not bothered to tell them about the vessel.
- 11.11.86 (OUT TLX 5394) FIC ask Parks office for freight rate
- 11.11.86 (IN TLX 7732) Parks office advise DOOYANG GUIDE freight is USD19.00/m³
- 11.11.86 (IN TLX 7764) Parks office say rotation will be UMUDA then VAILALA
- 13.11.86 (Toms writes an anti Inchcape letter to FIC soliciting aid.

- 14.11.86 (OUT TLX 5415) Cowan tells FMS for first time DOOYANG GUIDE ETA 17/11; asks if can do 6500m3, asks for aircraft in Daru on 15.11.86 for buyer and FIC reps. Nomention of L/C.
- 14.11.86 (IN TLX 7776) FMS say cant accept 17/11 as another vessel that day and explain logs are barged and barges must reload. Say they can only do 6000m3 and ask for details of L/C arrangement requested on 3/11.
- 14.11.86 Toms tells FMS that FIC say a factory contacted them saying the FIC shipment will be substandard. Toms warns FMS not to load substandard logs on FIC shipment.

Again this is copied to Cowan by Toms.

- 14.11.86 FMS tells Toms this is rubbish and asks who the source is to investigate it.

Again this is copied to Cowan by Toms.

- 14.11.86 (OUT FAX 277) Cowan's "BEFORE YOU GET YOUR KNICKERS IN A TWIST" fax to FMS about the RUMOURS. Says the threat was from SAMJIN. This fax is rude, arrogant and provocative. Says shippers have copy L/C.
- 17.11.86 (OUT FAX 278) Another arrogant fax from Cowan to FMS
- 17.11.86 (IN TLX 7794) FMS ask about L/C and say shipper not received it.
- 18.11.86 (OUT TLX 5430) FIC tell FMS L/C passed to shipper a week ago
- 18.11.86 (IN FAX 324) Toms faxes Cowan - congratulates him on Fax to FMS; apologises for error and says he knows nothing of early December sale. He also asks about the L/C and says he doesn't have it.
- 18.11.86 (OUT FAX 291) FIC says Mersawa is low and asks Straits to increase.
- 18.11.86 (IN TLX 7809) SAMJIN deny allegations and ask who source was
- 18.11.86 (OUT FAX 288) FIC sent Toms copy of L/C

- 18.11.86 (IN FAX 330) and 19.11.86 (OUT FAX 296) FMS ask for full L/C details and give shipment details and Cowan asks WGT to confirm details
- 19.11.86 (OUT TLX 5437) Cowan talks of L/C, provokes FMS about its authority and asks for a reply on 30,000 m³ proposal.
- 19.11.86 (OUT TLX 5441) 16 minutes later FIC asks immediate reply on 30,000m³.
- 19.11.86 (OUT TLX 5446) FIC says Toms has no knowledge of early December sale; offer USD 76.50 for first and second half December; Pert says maybe FMS sell first half and FIC second.
- 19.11.86 FMS tells FIC price indication is USD80.00; early December USD75.50 confirmed to Toms 17/11; can't confirm 30,000 m³; asks FIC to confirm L/C proceeds to Straits PNG.
- 19.11.86 (OUT FAX 303) FIC confirms payment by TT to STRAITS PNG. (In order to follow the sequence it is probably necessary to regard the history on shipment 6 where events continue)
- 20.11.86 (OUT FAX 306) FIC confirm proceeds to be TT'd to STRAITS PNG.
- 24.11.86 (OUT TLX 5471) Cowan apologises to SAM JIN about rumours.
- 25.11.86 FMS fax asks confirm 6% commission to FMS and asks TT remit.

The vessel loads between 20 and 26 November and there are some problems about whose figures are to be used on Bills of lading.

27.11.86 Straits PNG sends a letter with documents including Invoice. SCPL 019/86 for 1373 pieces 6103.735m at USD 70.00 FOB = USD 427,261.45.

01.12.86 (OUT TLX 5516) FIC tell Park two B/L's

ABE 005.86	656 pieces	3000.169 m ³
006.86	717 pieces	3103.565 m ³

03.12.86 (Letter) FIC writes to BSP for negotiation.

04.12.86 (IN FAX 398) BSP accounts to FIC.

Handwritten draft of FIC's accounting shows FIC's share was USD 0.50 per m³ or USD 3051.87.

04.12.86 (OUT TLX 5524/5) FIC tells FMS payment made to STRAITS PNG " including commission".

04.12.86 (IN TLX 7959) Park says freight 6103.735m at USD 19.00= USD 115,970.96.

(i). Pay brokerage (2.5%) USD2899.27 Namjeon International, Korea.

(ii) Pay net freight USD 113,071.69 Dooyang Line Co, Korea.

(iii) Pay service charge USD 6103.73 to S.J Park, Korea.

A pencil note opposite net freight reads "TT 112.071.69 less charges less USD 1,000.00."

05.12.86 (Letter) FIC account to Straits PNG.

08.12.86 (OUT TLX 5541) FIC tells BSP to retain USD1,000 from freight pending instructions.

22.12.86 (IN TLX 8135) Park says owner received USD112,071.69 when freight was USD 112,202.63 and asks where shortfall of USD 220.94.

HE IS TALKING OF DOOYANG BRAVE (Shipment 6) but FIC confuses it.

29.12.86 (OUT TLX 5686) FIC says will remit USD220,94 but asks for detail.

29.12.86 (IN TLX 8770) Parks says on Dooyang Guide short remittance is USD 1,000.00.

12.01.87 (Letter) Straits Marine claims despatch including USD 2,097.92 on this ship.

23.02.87 (IN FAX 640) Park says buyer claims 5 pieces and 22.228m shortage.

25.02.87 (OUT FAX 667) FIC passes claim to WGT of USD1978.29 and asks deduction from next shipment.

26.02.87 (Letter) WGT asks FIC why bank charges so high unlike FMS.

26.02.87 (IN FAX 657) WGT offer USD 1555.96 for shortage claim and authorise deduction from next shipment.

26.02.87 (IN TLX 8662) Park says settle claim on FOB basis and ask FIC to remit.

The claim was deducted by FIC from shipment 13 - SUN PETREL.

B. LETTER OF CREDIT

The L/C M3218611 NU00025 is from Bank of Pusan - applicant SAM WON ENTERPRISE CO. LTD of Korea. It is for USD 543,000.00 covering 6,000 m³ CNF Pusan, the unit rate is USD 90.50/m³. This is a direct L/C from Korea.

C. NEGOTIATION

On 3.12.86 FIC writes to BSP enclosing documents including:-

- (a) drafts (for USD 280,872.72 and USD 271,515.27 aggregating USD 552,388.01).
- (b) invoices.
- (c) bills of lading.

Copies of the invoices and bills of lading cannot be located in FIC's files but it seems clear there were two bills of lading + two invoices for the respective volumes at USD 71.50 FOB plus freight at USD 19.00 details being:-

BILL	VOLUME	UNIT CNF	TOTAL CNF
ABE 005.86	3000.169	at USD 90.50 =	USD 271,515.29
006.86	<u>3103.565</u>	at USD 90.50 =	USD <u>280,872.63-</u>
<u>6103.734</u>			<u>USD 552,387.92</u>

There is eleven cents discrepancy but the draft figure is used below.

In the letter FIC directs specifically retention of:-

- (a) shipping freight at USD 19.00 of USD 115,970.97 split into net freight of USD 113,071.70 and brokerage of USD 6103.74.
- (b) service charge of USD 6103.74.
The balance USD 430,313.30 is to be credited

377

to FIC's account.

D. ACCOUNTING (KINA)

It seems quite clear FIC obtained a unit price from the buyer of USD 71.50 and held the producer to a unit price of USD 70.00 building in a margin of USD 1.50 per m³. It also seems quite clear FIC assumed a freight rate of USD 19/m³ to give a CNF unit price of USD 90.50. Park subsequently confirmed the freight was USD 19.00 per m³. When one considers the earlier negotiations (Park's usual margin of USD 1.00 per m³ being included) and the handwritten draft of FIC's breakup it is clear Park was to get USD1.00 per m³ (retained in USD) and FIC to get 50c per m (brought onshore) to make up the USD 1.50 margin.

BSP accounts to FIC on 4.12.86 (IN FAX 398).

- (a) of the aggregate negotiations of USD 552,388.01 the sum of USD112,074.71 was retained in USD.
- (b) the residual USD 430,313.30 was converted to K417,577.19.
- (c) bank charges of K3,549.50 were deducted.
- (d) the balance K414,027.69 was deposited to FIC's account.

FIC accounts to WGT by letter of 5.12.86 which is easiest understood by reference to FIC's handwritten calculations and STRAITS PNG invoice.

Straits invoiced (at FOB of USD70.00 per m³)

USD427,261.45

FIC's commission of 50 cents/m³ amounted to

USD 3,051.87

USD430,313.32

Given a two cent discrepancy this is the gross amount converted to kina. In it's accounting to Straits FIC begins with the gross contract price of USD427,261.45 which converts to K414,615.67. It deducts bank etc charges of K3549.50 giving a balance due of K411,066.67. This was paid on 5.12.86 by FIC cheque 024724 drawn pursuant payment voucher 4556.

The balance of the kina conversion (K417,577.19 less K414,615.67) or K2961.52 represents FIC's commission. At the banks conversion rate (1.0305) this converts to USD 3051.85 which accords with FIC's pencil calculation with FIC bearing the two cent discrepancy.

E. ACCOUNTING (USD)

As shown under C above the USD retention was, for specific purposes and aggregated USD 122,074.71.

FIC separately directs payments as follows:-

- (a) By telex of 8.12.86 acknowledged by BSP letter of 8.12.86.
TT to Dooyang Line Co Korea USD112,071.69
- (b) By letter dated 15.01.87.
TT to DAIHWA SIL UP (SJ PARK)
Korea USD 6,103.73
- (c). By letter dated 15.1.87
TT TO SOON JOO PARK KOREA USD 2,899.27
USD121,074.69

This reduces the balance of USD retention to USD 1,000.02. Copies of all three TT Remittance are on BSP's file.

It is clear that from the documents letter that freight was said to be payable (at USD 19.00 per M³) in the sum of USD 113,071.69. For some reason FIC deducted USD 1,000.00 and paid only USD 112,071.69. This was paid as requested in Parks Telex of 4.12.86 (IN TLX 7959).

The brokerage of USD 2899.27 is in the sum specified in Parks telex but instead of being paid to Namjeon International at its bank as specified in Parks telex it is paid to an account apparently in Parks name.

The service charge of USD 6,103.73 is in the sum specified in Park's telex but again instead of being paid to Park as specified in his telex is paid to a different bank account in Parks company name.

Why USD 1,000.00 was deducted from freight is not at all clear and must be explained. The position begins to be confused with Parks telex of 22.12.86 (IN TLX 8135) where Park is speaking of the freight on the Angus portion (shipment 6B) of the Dooyang Brave shipment. In his telex Park makes an error in the amount of freight on shipment 6B which is USD 112,292.63 and when that error is corrected his telex is arithmetically correct. Parks

real error is that he thinks the TT of USD 112,071.69 was Dooyang Brave freight when it was in fact Dooyang Guide freight. When he mentioned the shortfall FIC are confused. Parks telex of 29.12.86 (In telex 8170) clarifies matters and the true facts are established freight was as FIC well knew because it so directed, underpaid by USD1,000.00.

It is clear then the USD residue of USD 1,000.02 consists of the USD1,000.00 freight underpayment and the two cent discrepancy referred to under D above.

That residue is drawn to FIC's attention by BSP on 20.3.87 and directed on 6 April 1987 to be deposited to FIC's account. It is so deposited on 6.4.87 as part of a deposit of USD 11,863.02 (K10,711.53). The kina equivalent is K902,95.

(see Table 5)

F FIC RECEIPTS

FIC received the initial balance of kina conversion amounting to USD 3051.85 converted to K2961.52. This (with a two cents discrepancy) represented a rate of USD0.50 per m over the volume of the shipment. (see D above) In addition FIC underpaid the freight by USD1,000.00 and picked up the two cent discrepancy resulting in payment of USD1,000.02 from the USD retention on 6.4.87 which converted to K902.95.

FIC's total receipts were thus USD 4,051.87 or K3,864.47. The sum of USD1,000.00 does not seem to be deducted for any given reason and there only seems one basis on which it is not paid to the shipowner. That reason is that it was deducted on account of a despatch claim. In fact Straits Marine claimed despatch on this shipment of USD 2,097.92.

Neither the payment of USD1,000.00 to the ship owner the payment of despatch to the shipper appear to have been resolved. It is in FIC's interest to resolve them as it would presumably have or at least have had rights depending on how matters fell out. As matters now stand FIC is at risk of actions for the USD 2,097.92 despatch at the suit of the producer and the USD 1,000 shortfall at the suit of the shipowner. In the former case FIC could offset the USD1,000.00 but it may now have problems obtaining the excess from the shipowner.

This is a contingent liability which would have to be taken into account.

FIC also had further bank charges of K70,00 which reduced its actual receipts to K3,794.47.

As indicated above the shortage claim was met by deduction from Shipment 13 proceeds.

SHIPMENT 5 COMMENTS

1. Shipments 5,6A and C,9,13 and 15 represent a continuum in the sense they are successive shipments from Wawoi Guavi Timber Co Marketed by FIC.

The shipments themselves form only part of the overall sequence of events including:-

- (a) Cowans assistance to Wawoi Guavi in obtaining a long term timber Permit over Wawoi Guavi Block 2 on very preferential terms and in so doing seriously interfering with and eventually usurping Department of Forests functions.
- (b) Cowans assistance to Straits Singapore in "squeezing" Inchcape Group Subsidiaries FMS (HongKong) and Timber Investments Pte Ltd out of marketing and management sub contracts and replacing them with FIC on the marketing and FIC Chairman Miskus Maraleu's company Metepikae Holdings on the marketing and management sides - producing a substantial return to Metepikae and with Cowan as its advisor
- (c) Cowans involvement in what were management aspects of Wawoi Guavi Timber Co's business.
- (d) Cowans use of his contact with Straits Singapore to remit funds which he had misappropriated from FIC via Straits Engineers Contracting Pte Limited in Singapore to his wife in England.

FIC (Cowan) was probably very keen to obtain supply from a large supplier on a regular basis as a cornerstone for FIC's continued involvement in log marketing. Nevertheless to put such a grossly disproportionate amount of attention into assisting a large foreign log marketing company was contrary to the aims of FIC's involvement in State Marketing.

2. As shown in the history section on this shipment and on shipments 6A and 6C.

- (a) Cowan deliberately went to extremes to provoke and irritate FMS and to create a contest between FIC and FMS with FIC having the advantage of introducing the "whip hand" of the Department of Forests at opportune times to made the task of FMS harder.
- (b) Cowan deliberately trampled on and ignored a binding contractual arrangement benefitting FMS as though it did not exist. This was not however peculiar to this shipper. Cowans ignorance of or disregard for contracts is well illustrated in the cases of Pars Ram Bros (India) and Sanko Ltd. In this case it must be said the marketing commission provided of 6% was inordinately high.
- (c) Though in a real sense FIC was to compete with other agents the competition was not "fair" because David Toms kept copying Cowan with FMS communications including "confidential" communications so that he was always "one stepahead" of F.M.S.
- (d) It is clear Toms did not care about obtaining the highest price, his sole concern was with getting the Wavoi Guavi Block 2 Permit on favourable terms. He needed FIC's (Cowan's) help and support for this and was quite prepared to let FIC sell shipments at less than the best obtainable price so as not to "upset" them. He actually instructed FMS to let FIC have shipments at less than the best price FMS could get to appease FIC.

What Toms didn't know is that FIC was in fact getting better prices than it was telling him and "building in" margins to cover S J Parks commission and further undisclosed receipts for itself some of which Cowan misappropriated.

- (e) Cowans conduct in perpetuating "rumours" adverse to FMS and Samjin was nothing less than mischievous and his approach when confronted was nothing short of rude arrogant and provocative. Either no apology or a grudging apology (to SAMJIN) was forthcoming.

- (f) Cowans understanding or representation of market forces and their effect on prices was either ignorant and naive or downright dishonest. He tried to have FMS close sales early on a rising market and offered childish criticisms of their reluctance to do so and then later (perhaps he understood market dynamics by then) extolled FIC's ability on a rising market to obtain a better ultimate price than the initial offer if FIC didn't close until as late as reasonably possible.

3. One of the objectives of FIC marketing was to avoid "middleman" payments and to maximise returns to producers. On shipments 5, 6A and 6B, as will be seen, it seems quite clear FMS took its 6% commission (of which an unearned 2% was paid to Straits Singapore and FIC took in addition:-

5-USD0.50/m³ for itself plus USD 1.00 per m³ for Park.

6A and 6C - 3% of FOB for itself plus USD1.00 per m³ for Park plus an extra USD1.00 per m³ for itself (which Cowan misappropriated).

The resultant "commission" deductions in aggregate are nothing short of ABSOLUTELY STARTLING. More importantly FIC records show they knew that FMS was being paid its 6%.

4. On shipment 5 the shipper (Straits Marine wrote) claimed despatch of USD2,097.92 and FIC deducted USD1,000.00 from the freight payment.

It seems the deduction was made on account of despatch.

I cannot find evidence of whether the shipper was paid despatch and of FIC paying out this USD1,000. The position will have to be established and when the facts are established adjustments to figures made.

5. There was a shortage claim of 5 pieces 22.228 m³ settled in the sum of USD1,555.96 which was deducted by FIC from moneys due to Wawoi Guavi Timber Co on FIC SHIPMENT 13. The kina equivalent was K1,447.54. This matter is left here and pursuit of it continued in relation to FIC SHIPMENT 13.

6. Technically FIC paid brokerage of USD2899.27 to the wrong person according to its records. It also paid commission to Parks company rather than Park as directed. These are technical misapplications which render proper vouching impossible but as there is no complaint and an obvious close relationship between the people concerned it would not seem appropriate to be concerned that contingencies exist or to make provisions.
7. As is the case with many shipments the evidence to support freight payments is not sufficient to adequately vouch the payment for audit purposes.

APPENDIX 39.1

SHIPMENT 6

VESSEL DOOYANG BRAVE

DECEMBER 1986/JANUARY 1987

PART SHIPMENTS 6A AND 6C

A. HISTORY

The history is ultimately linked with that of shipment 5 and represents a construction of that history.

(The following documents are in the file for shipment 5 copied into this file)

13/11/86 (OUT TLX 5415) Cowan asks FMS for 6000 m³ in December and says will advise price within 48 hours.

14.11.86 (IN TLX 7776) FMS say early/mid December committed to regular buyers but may be able to supply in late December and ask for price indication.

17.11.86 (FIC ask for late December - suggest higher price than before and ask of FMS their "lent efforts to date." Also raises the question of a contract for 30,000 m³ for 1987 first quarter.

18.11.86 (IN FAX 324) Toms says he doesn't know of sale of early December shipment.

19.11.86 (OUT TLX 5446) FIC offer USD 76.50 for first and second half December and say Pert says maybe FMS sell first half and FIC second.

19.11.86 FMS tell FIC early December USD 75.50 confirmed to Toms 17/11; second half indication USD 80; can't confirm 30,000m³, asks to confirm L/C proceeds to STRAITS PNG.

19.11.86 (IN FAX 347) Toms tells FMS to confirm FIC price unless can give better price NOW. Says FIC will force USD 80.00 and if don't sell to FIC can't say USD 78.00 later.

Predictably Toms sends a copy of this to Cowan to keep him one step ahead.

19.11.86 (OUT FAX 303) FIC offers USD 76.00 FOB + asks answer by 20/11/ at 1500

20.11.86 (IN TLX 7823) FMS tells Toms they have firm offer of USD 80.00 for 35% mersawa - asks for answer by 1400.

20.11.86 (IN FAX 349) Toms faxes FMS talking of permit negotiation and of not wanting to upset FIC. He complians about an earlier shipment and of a strategy of keep FIC out being alleged. He says it would not surprise him that if FMS takes the sale at USD 80.00 it was later excluded from marketing and management in Block 2. He say he leaves the choice to FMS.

Almost incredibly Toms copies this to Cowan. The covering note makes it clear Toms wishes FIC to get the sale even if it's price is lower than that which FMS is able to obtain.

20.11.86 FMS fax Toms saying want to work with FIC; explaining the earlier shipment and saying Cowan has agreed to USD 80.00 with 35% Mersawa (the documents hereafter mentioned are in the shipment 6 file).

21.11.86 FMS faxes FIC and accepts FIC's offer of USD80.00 put to Pert.

20.11.86 (OUT FAX 307) Cowan confirms USD80.00 for 6000 m³ with 3 5% mersaw. Says he could have got the same for early December and chides FMS.

21.11.86 (IN FAX 353) FMS say market rising and strategy was to hold back late December for better price but as FIC ished to purchase indicator price given.

24.11.86 (IN TLX 7863) Park offers USD 82.00 (G) for Wawoi 6000m³ second half and asks formal offer

25/11/96 (TOM TLX 7870) Park says DOOYANG GUIDE fired for Angus 6,000 m³ at USD 21.00 (trying USD20.50) for 1 loading and 3 discharge ports (in Japan) - he says "1.25 PCT ADD COMM. IN FAVOUR OF FIC". Balance cargo is not fixed - asks FIC to check if

W.G.T can load 6000m³ from it's loading point at Umuda Island.

25.11.86 (IN TLX 7871) FMS say can offer additional 3,000 m³ (45.50% mersawa) mid December.

26.11.86 (OUT TLX 5493) FIC to STRAITS SINGAPORE refer telex and telephone conversation and confirm 3000 m³ (45-50% mersawa) at USD 84.00 FOB shipment 15/12. They suggest vessel loads 3000m³ and remains at Umuda to load 600m³ on 27/12.

26.11.86 (OUT TLX 5494) FIC confirms accept 3000m³ at USD 86.00 and 6000 m³ at USD 82.00.

26.11.86 (OUT FAX 325) same message as in OUT TLX 5493 is faxed to F.M.S.

27.11.86 (IN FAX) FMS - weather may delay 6,000 m³ and confirm mid December concerned about 3000m³ largely Mersawa which deteriorates fast especially under hatch and concern at quality if shipment delayed.

To here, it seems FIC's communications with Park were largely by telepong as there is a paucity of telex or fax communications. It is quite clear however Park was arranging the buyers.

27.11.86 (OUT TLX 5497) FIC sends formatted offer to Park (Att. DAELIM CO) for 6000m³ at USD 598,800 CNF shipping around 27 December.

The CNF unit prices are USD99.00 per m³ and USD 103.00 respectively on these offer.

28.11.86 (OUT FAX 332) FIC tell FMS of surprise at doubts on having 6,000m³; they accept risk with 3,000m³ on these offers.

2.12.86 (OUT FAX 391) FMS say if weather deteriorates whole cargo may not be ready - will confirm next week. Over 3000m³ repeat concern at deterioration under hatch.

3.12.86 (OUT FAX 350) Cowan tells STRAITS PNG will be responsible for marketing its own forest produce. He talks of FIC as SMA having the right to offer the production of STRAITS PNG and asks who to contact.

3.12.86 (IN TLX 7938) FMS say forestry wants destination of 3000m³ for export license

4.12.86 (IN FAX 402) Forests notify objection to exort of 6,300m³ as FIC/SMA offered USD80.00 and must have higher price. Toms asks Pert (FMS) to "GET ON TO THIS" and copies it to Cowan. This is MV HAISENG.

5.12.86 (OUT FAX 354-357) FIC refer to the last fax and ask if FMS are undirectly asking FIC to take over the shipment.

This is nothing short of childish stupidity and Cowan copies the fax to STRAITS PNG, (TOMS) STRAITS SINGAPORE and FORESTS DEPARTMENT.

5.12.86 (IN FAX 407) Toms says mersawa deteriorates less if you debark and Inschape do in fact debark

On 6.12.86 Cowan dispatches a spate of faxes over marketing:-

OUT FAX 364) to TOMS saying Forestry Marketing section say under Block 2 Permit cant have a "sale marketing agreement "must use FIC/SMA where possible lays FIC will contact you from January 1987 over new marketing arrangements.

(OUT FAX 365) Cowan to FMS says told cant make 6000m³. Says why offer extra 3000m³. Says FIC acted in good faith and holds Stratis PNG

(OUT FAX 366) Cowans "RUN OF THE FOREST" offer for 12,000m³ for January/early February. He talks of marketing strategy - visitng soon and then visiting continuously every two weeks.

8.12.86 (OUT FAX 373) Cowan to Toms about "a bond of trust" in marketing - FICs first offer is not a final price, authority to sell is authority to get the best price and at the best price.

8.12.86 (OUT FAX 374) Cowan thanks Toms for conficence and trust and says alrday getting better than offered for January/February and not closed yet. Asks for stock position.

8.12.86 (IN TLX 7982) Park advises detail of L/C for 3000m³ - opined today M 3222612 NU00018

- 8.12.86 (OUT TLX 5546) FIC tell FMS destruction of 3000 m³ is Korea
- 9.12.86 (OUT TLX 5563) FIC tell STRAITS PNG export licence for 3000m³ and 6000m³.
- 9.12.86 (IN FAX 414) FMS ask for L/C to be fixed for shipping documents to be advised to shipper on 3,000m³ and 6,000m³
- 9.12.86 (OUT TLX 5561) FIC ask FMS to confirm HAI SENG price is USD81.00/m³.

On 9 to 10 December there are fax exchanges over the January/February shipments and splitting shipments between FIC and FMS. Toms again gives Cowan ninside advise headed "CONFIDENTIAL".

- 9.12.86 (IN TLX 7994) FMS advise FORESTS HAI SEUNG is at USD81.00/m³
- 10.12.86 (IN TLX 8011) FMS say 3% commission is included in USD81.00.
- 10.12.86 (L/C for 3000m³ + 6000 m³ established
- 10.12.86 (OUT FAX 386) Answering in FAX 414 (9.12.86) FIC says shipper, under new permit, deals direct so requirements as documents advised to shipper.

Clearly FIC did not want to give FMS a copy of the L/C and this is not interesting in light of what follows.

11.12.86 (OUT TLX 8021) Forests tell WGT application for HAI SEUNG export licence is rejectd because price is below FIC/SMA offer.

This assumes a base price of USD 75.50 with an SMA offer of USD 80.00 whergeas clearly FMS have said the price is USD81.00 including 3% commission.

This breakdown in communications should be explained.

- 11.12.86 (IN FAX 427) FMS say shipper still doesnt know document requirements
- 11.12.86 (OUT FAX 397) FIC send 3000m³ L/C to STRAITS PNG 6000m³ later
- 11.12.86 (OUT FAX 406) FIC send L/C send L/C for 3000m³ and 6000m³ to STRAITS SINGAPORE

389

- 12.12.86 (OUT FAX 396) Cowan to TIMPL about "rumours" that S J Park was told by Jan Gransie that if Cowan worked against Inchcape he would see Cowan was put out of PNG. Cowan says twice he has not worked against Inchcape and says Park has not confirmed rumours.
- 12.12.86 (OUT TLX 5611) FIC tells FMS of HAISEUNG export license number.
- 12.12.186 (OUT FAX 415) FIC tells STRAITS SINGAPORE Cowan will arrive 14 December but makes his own way to hotel.
- 12.12.86 FMS Fax Cowan - FIC will market January shipment - indication USD 88.00
- 12.12.86 (letter) STRAITS PNG say 3,000m³ and 6,000m³ are separate even though some shipper and buyer and ask for first 3,000m³ to be cleared first before Christmas then back to load second 6,000m³
- 13.12.86 (OUT FAX 417) FIC tell toms sold January 6,500m³ at USD90.00
- 13.12.86 (OUT FAX 419) FIC CHAIRMAN Tells FMS that from now on FIC will not reply to FMS instructions but deal direct with WGT and STRAITS PNG.
- 15.12.86 (IN TLX 8066) Department of Forests accuses FMS of deliberate underpricing on HAI SEUNG shipment -VERY STRONGLY WORDED; alleges transfer pricing and asks for an explanation.
- 15.12.86 (IN TLX 8676) Gransie responds to Cowan "rumour" fax, says this the second rumour damaging Inchcape and asks him to identify the source.
- 15.12.86 (IN FAX 422) FIC ask STRAITS PNG to load 300 - 350m³ extra to avoid deadfreight from Angus short loading (SHIPMENT 6B)
- 15.12.86 (IN TLX 0859) PFD advises WGT export license for HAISEUNG granted conditional on price of USD81.00.
- 17.12.86 (IN FAX 450) STRAITS PNG give break down of first loading of 3007.925 and say advise detail of record loading of 6300m³ when documents complete.

Cowan obviously departs to Singapore as planned (for what reasons and who paid should be explained) On 17.12.86 (OUT FAX 454) a full fax os shipments is sent to him. Secondly it is sent to Cowan "C/- DAVID TOMS STRAITS CONTRACTING SINGAPORE." This is dealt with in comments.

20.12.86 (OUT FAX 442) MARALEU tells TOMS USD2,000 will be TTD on 22.12.86 to HKSBC Tanqlin for MJ Cowan. (This money was not sent)

On 23.12.86 (IN FAX 461) Toms tells Straits Contracting (copy to FMS and FIC) that Inchape Marketing Agreement will not, it appears, be approved and a national management company will be put in with Cowan as Chief Advisor.

23.12.86 (Letter) STRAITS PNG send FIC documents on the first 3007.925m³ including invoice SCPL 021/86 - no copy of which appears to be on FIC's files.

24.12.86 FIC makes the first negotiaton claim

29.12.86 BSP accounts to FIC

There are interesting pencil notes on these documents.

29.12.86 (IN TLX 8174) Park says as follows regading freight:-
Gross freight is 3007.925m³ x USD17.80 = USD53,541.07. Pay

(a) Nett freight USD 52,202.54 to DDOYANG LINE Co. Korea

(b) Brokerage USD 1,338.53 to NAMJEON INTERNATIONAL. KOREA.

30.12.86 FIC account to STRAITS PNG.

30.12.86 (OUT FAX 471) Cowan tells Toms about FIC visits and clearly is HEAVILY INVOLVED IN MANAGEMENT ARRANGEMENTS

30.12.86 (OUT TLX 472) Cowan asks ...to POM for PRODUCTION/PLANNING meeting with Cowan.

31.12.86 (OUT TLX 5711) FIC tell WGT who will visit and when

31.12.86 (OUT FAX 482) METAPIKAI tells WGT all marketing will be direct with no commissions and FIC will arrange vessel charters.

(This is after the agreement is sent by Cowan to Maraleu, Maraleu denied in evidence he was the author or even knew of this fax).

31.12.86 (OUT TLX 482) STRAITS SINGAPORE ask for charter parties for DESPATCH/DEMURRAGE.

1.1.87 (letter) Straits PNG send FIC documents on the second 6359.402m³ including invoice SCPL Q22/86 for 1365 pieces 6359.402 m³ x USD80.00FOB= USD 508,752.16.

5.1.87 (IN TLX 8227) Park says as follows regarding freight Gross freight is 6359.402m³ x USD17.80 = USD113,197.36; brokerage of 2.5% is USD2,829.02 with nett freight of USD110,367.43; the shipper + broker are as in earlier telex of 29.12.86 (IN TLX 8174)

5.1.87 BSP accounts FIC

6.1.87 FIC makes the negotiation claim

7.1.87 (OUT FAX 527) FIC accounts to WGT.

A telex copy of fund requirements of STraits PNG shows FMS was to receive 3% commission on these two part shipments of K7146.11 and K14, 782.50 respectively.

12.1.87 (IN FAX 501) Toms queries FIC commission of K14,527.47 and asks for review as commission is being paid to FMS.

12.1.87 (LETTER) Straits Marine claims dispatch of USD 54.17 and USD 4,317.36 on the two port shipments.

B. LETTERS OF CREDIT**1. 6A - 3000m³**

The letter M3222612 NU 00018 is from Bank of Busan limited - applicant DONG CHAPNG TIMBER CO. LTD of Korea. It is for USD311,400.00 covering about 3000m³ CNF Pusan. It is a direct L/C.

2. 6C - 6000m³

The letter M321 612 NU00018 is from BANK of BUSan Limited - applicant - applicant SAM WON ENTERPRISE CO. LTD of Korea. It is for USD598,800 covering about 6000m³ CNF Pusan. It is a direct L/C.

C. NEGOTIATION**1. 6A - 3000 m³**

On 24 December 1986 FIC writes to BSP enclosing

- (a) draft for USD 312,222.61
- (b) invoice
- (c) bill of lading.

There is no copy of the invoice on FIC's file or the bill of lading but it seems clear from the evidence the invoice would be

3007.925 m³ at USD 103.80 CNF =USD312,222.61

The CNF rate is the USD86.00 FOB plus freight of USD 17.80. The letter directs (as corrected)

- (i) retention of USD59,566.90
- (ii) of the balance of USD 353,665.71
- (iii) TT USD 245,089.73 less bank charges to Straits PNG.
- (iv) Credit the balance USD7,575.98 to FIC's account

2. 6C - 6000m³

On 2 January 1987 FIC writes to BSP enclosing

- (a) draft for USD 634,668.32
- (b) invoice
- (c) bill of lading

There is no copy of the invoice or bill of lading on FIC's file but it seems clear from the evidence the invoice would be:-

6359.402m³ at USD99-80 CNF = USD634,668.32

The CNF rate is the USD 82.00 FOB plus freight of USD 17.80

The letter directs retention of USD125,916.15 in USD and credit of the converted balance of USD508,752.16 to FICs account.

D. ACCOUNTING (KINA)

It is quite clear in the case of each of the two part shipments 6A and 6C that FIC had negotiated with the buyer an FOB price which was USD2.00 per m³ higher than the FOB price FIC negotiated to pay the producer.

In each case only the FOB price payable to the producer was converted to kina with the USD 2.00 per m³ differential plus freight staying in the USD account.

1. 6A - 3,000 m³

On 29 December 1986 BSP account to FIC by credit rate

- (a) USD 59556-90 is retained in USD
- (b) the residual USD 252.665.71 is split into two parts of USD 245,089.73 and USD 7,575.98
- (c) the USD 245,089.73 is converted to K236,253.83; bank charges of K2001.45 are deducted and the balance K234,252.98 is transferred to Straits Contracting (PNG)'s Westpac account.
- (d) the USD 7575.98 is converted to K7302.85 and deposited in FIC's account.

On 30 December 1986 FIC accounts to Straits PNG.

- (i) gross contract value is 3007.925m³ at USD 84.00 = USD252,665.70
- (ii) this converts to K243,556.69
- (iii) deduct bank charges K2001.45
- (iv) deduct FIC's 3% commission K7302.85
- (v) the balance credited to Straits (PNG) is K234,252.98.

The price FIC contracted to pay was USD 84.00 per m³ and that is the amount converted to kina namely USD 252,665.71.

FIC's commission was 3% of this price or USD 7579.97 FIC made an error in additions and this figure was amended to USD 7575.98. Such amount was converted to K7302.85 and credited to FIC's account.

The balance of the contracted price namely USD245,089.73 was converted and paid to Straits PNG after deduction of bank charges.

The Kina accounting is thus in order.

2. 6C - 6,000m³

On 5.1.87 BSP accounts to FIC by credit rate:-

- (a) USD 125,916.15 is retained in USD
- (b) the balance USD508,752.19 is converted to K484,249.16
- (c) bank charges of K3973.65 are deducted
- (d) the remaining K480,275.51 is credited to FIC's account.

Straits PNG has invoiced FIC by Invoice SCPL 022/86 dated 31.12.86 as follows:-

1365 pieces 6359.402m³ at USD80.00 FOB =
USD5098,752.16

On 6.1.87 FIC accounts to Wawoi Guavi

- (i) gross contract price USD508,752.16
- (ii) this converts to K484,249.15
- (iii) deduct banks charges K3973.65
- (iv) deduct FIC commission K14,527.47
- (v) credit to Wawoi Guavi K465,748.03

The contract price was USD 80.00 perm³ and that is the amount converted to Kina - K484,249.15 FIC commission was 3% of that kina conversion or K14,527.47. After payment of this commission the balance conversion is K469,721.68 from which the bank charges of K3973.65 are deducted to give K465,748.03 which is the amount paid to Wawoi Guavi.

FIC's cash book shows this sum was paid by FIC's cheque 036631 pursuant to payment voucher 4605 on 7.1.87.

The Kina accounting is thus in order.

E. ACCOUNTING (USD)

As sum under D above the part of the negotiated claim converted to Kina was the FOB price FIC agreed to pay the producer. The USD2.00 per m³ differential and freight of USD17.80 this remain in USD as follows:

PART	VOLUME	FREIGHT	DIFF	TOTAL RETENTION
6A	3007.925	53,541.05	6015.85	59,556.90
6C	6359.402	113,197.35	1271.80	125,916.15

This accords exactly with the USD retention sums.

1. 6A - 3000m³

By separate faxed letters of 30.12.86 FIC directs payments

- (a) USD 52,202.54 to Dooyang Line Co Ltd, Korea
- (b) USD 1,338.53 to Namjeon Int. Co Ltd, Korea
USD53,541.07

These payments are precisely in accordance with Parks telex of 29.12.86 (IN TLX 8174) and are paid as (two cents) this accounts for the freight. The residual USD 6015.83 is directed to be paid by separate letters of FIC as follows:

- (i) 1.29.12.86 USD 3007.92 to STRAITS SINGAPORE
- (ii) 15.1.86 USD 3007.91 to DAIHWA SIL UP (SJ PARK)

This accounts (with the two cent discrepancy/for Park clearly earned his commission and was paid his usual commission of USD1.00 per m³).

There is no indication of any agreement with Straits Singapore or anything that would entitle it to any payment. In light of Shipment 6B it seems this represents an undisclosed profit of FIC which was misappropriated by Cowan through Straits Singapore. Cowan signed the letter directing payment and pencil notes on FIC's letter to BSP of 24.12.86 and BSP's credit rate of 29.12.86 assist in understanding what occurred. All TT instructions are on BSP's files.

2. 6C - 6000m³

By separate letters of 6.1.87 FIC directs payments:-

- (a) to Dooyang Line Company, Korea USD 110,367.43
- (b) to Namjeon Int. Co. Ltd, Korea USD 2,829.93
 USD 113,197.36

These payments are precisely in accordance with Parks telex of 5.1.187 (IN TLX 8227) and are paid as directed in that telex. With a one cent discrepancy this accounts for freight.

The residual USD 12,718.79 is directed to be paid by separate letters of FIC as follows:-

- (i) 6.1.87 to STRAITS SINGAPORE USD 6359.40
- (ii) 15.1.87 to S.J.PARK USD 6359.39
 USD12,718.79

This accounts (with the one cent discrepancy) for the USD2.00 perm³ differential.

The same comments on Parks payment and the Straits Singapore payment as are made in respect of 6A above apply equally to these payments. In this case there are pencil notes on the BSP credit note of 5.1.87 which are of assistance in explaining margins. All TT instructions are on BSP's files.

F. FIC RECEIPTS

FIC's actual receipts consist only of the commission charges of 3% deducted from the Kina conversion funds. They were (see D above).

- Part shipment 6A - K7302.85
- Part shipment 6B - K14,527.47

On part shipment 6A there was a delay between BSP crediting and receiving funds and this resulted in the bank debiting interest and other charges of USD867.07 (K832.14). This reduced FIC's receipts from K7302.85 to K64,35.78.

In addition on both part shipments there was an undisclosed differential of USD2.00 per m³ between the price paid by the buyer and the price paid to the producer.

Clearly USD1.00 per m³ of this differential was payable to S J Park as his "service charge" in arranging the sale from the Korean end. That USD1.00 per m³/

The residual USD1.00 per m³ seems clearly to have been an undisclosed profit of FIC which amounted to:-

Part shipment 6A - USD 3007.92
Part shipment 6C - USD 6359.40
USD9,367.32

Both these part shipments were from Wawoi Guavi Timber which was essentially owned or in process of becoming owned by Straits Singapore.

There was however no arrangement or agreement whereby Straits Singapore received a commission share and Straits Singapore did not act as an agent on the sale.

Indeed there was a specific clause of Wawoi Guavi Timbers Permit (Clause 16 (1) (c)) limited commission payments to "the principal marketing agent" - in this case that was clearly FIC or Park.

When one considers the whole of FIC's marketing and particularly part shipments 6B (from Angus) 7A (from Ulabo) and that the payment of USD 300.92 is one of the three on 29 December 1986 mentioned in Cowan fax of 5.1.87 to Toms it is quite clear this aggregate USD9,367.32 was a secret profit made by FIC and that secret profit was misappropriated by Michael Cowan through Straits Singapore. (See Appendix 47)

As Wawoi Guavi Timber sold FOB and received the agreed FOB price it would seem to have no rights against FIC.

G. COMMENTS

See after Shipment 6B.

APPENDIX 39.2PART SHIPMENT 6B**A. HISTORY**

The background of this shipment was dealt with in detail in relation to Angus (PNG). (See Interim Report No.2) Angus had contracted to sell 5500 m³ to SANKO Co. LTD and had set up price transfer arrangements. FIC in effect took over the marketing and control of funds of Angus and rewrote the contract with SANKO in a way which appeared to eliminate transfer pricing. (Schedule.01)

- 6.1.86 (Written contract) FIC, Angus, Sanko enter a written contract for sale of 5500 m³ of logs.
- 14.11.86 (IN TLX 7771) Sanko ask if FIC can arrange 6000m³ with USD100,000 advance and balance by L/C
- 14.11.86 (OUT TLX 5421) FIC agrees.
- 15.11.86 Angus prepares a stocklist which is sent to FIC.
- 17.11.86 (IN TLX 7786) Sanko confirm advance payment of USD100,000.00 and balance by L/C for 6,000m³ and say have arranged TT and will inform L/C details. Ask to fix vessel for 3 port discharge.
- 17.11.86 (IN TLX 7791) Sanko advise TT reference number and say L/C 012 - LC-1086 25 for USD 450,000.00 has been established.
- 18.11.86 (IN FAX 327) BSP advise FIC USD100 000.00 received and credited as K97,646.71
- 19.11.86 (OUT FAX 290) FIC tell Sanko the conditions and ask for Sanko's agreement to conditions and to use K50,000.00 for wages and royalties.
- 18.11.86 (SIC) IN TLX 5459) Sanko in effect agree and await vessel details
- 20.11.86 (OUT TLX 5459) FIC and Park (who is in PNG) ask Park's office to arrange vessel

- 20.11.86 (IN TLX 7828) Sanko advise how cargo to be discharged at 3 ports.
- 21.11.86 (IN TLX 7839) Parks office offer SOUTHERN PEARL at USD 22.50 with a reduction to USD22.00 if there is two port discharge.
- 22.11.86 (IN TLX 7853) Ocean Maratime talked to Sanko and offer AQUA TRADER
- 24.11.86 (OUT TLX 5431) Cowan tells Sanko to keep out of vessel negotiations as that is part of FIC's role. Asks if it can drop one discharge port saying "3 ports of discharge is crazy"
- 24.11.86 (OUT FAX 313) Cowan tells Cheah the position on discharge ports; says he has told Sanko and Ocean Maratime to stay out of vessel negotiations and says prior MEP will apply.
- 24.11.86 (OUT FAX 314) Cowan repeats OUT TLX 5481 as a fax to Sanko
- 24.11.86 (IN TLX 7863) Park says Dooyang Guide needs balance cargo to fix. Asks if can combine Umuda loading. (from Wawoi Guavi Timber Co.)
- 25.11.86 (IN TLX 7668) Sanko agree to drop one discharge port.
- 25.11.86 (IN TLX 7870) Park says Dooyang Guide fixed for Angus 6000m³ at USD 21.00 (trying USD20.50) for 1 loading and 3 discharge ports. says there is a USD 0.50 reduction if one less discharge port.
"1.25 PCT ADD COMM IN FAVOUR OF FIC".
 Balance cargo is not fixed and asks if Umuda 6,000m³ could load.
- 26.11.86 (OUT TLX 5494) FIC asks Park to confirm DOOYANG GUIDE for Millport Harbour and Umuda loadings.
- 26.11.86 Cowan faxes Sanko vessel is fixed - laycan 2-8 December.
- 28.11.86 (IN TLX 1903) Park refers to a conversation with Tay and offers USD90.00 flat for prime species on an FOB basis.

There is a pencil note on this telex which reads "Patrick. This cargo sold to Sanko @ 87. Angus price K85 (2 for FIC) plus 3.5% commission for FIC." The author obviously is Cowan and Patrick is Tay.

29.11.86 (OUT TLX 5507) COWAN offers Sanko additional cargo of prime species "outside contract requirements" at USD85.00 flat FOB. Answer by 1/12.

This is USD5.00 per m³ less than Park was prepared to pay. Tay says the decision was Cowans and he followed Cowan instructions.

1.12.86 (IN TLX 7915) Sanko tell FIC all acceptable except Walnut and talk to Inspectors

2.12.86 (IN FAX 388) BSP fax L/C 012-LC-108625 to FIC.

2.12.86 (OUT TLX 5519) FIC Talk of interest in prime species and ask Sanko how handle with the credit

2.12.86 (OUT TLX 5520) FIC asks amendments to L/C for high value species at USD110.00 CNF

2.12.86 (IN TLX 7923) Sanko say no restrictions in L/C and Inspector can fix it

5.12.86 (OUT TLX 5529) FIC tell Sanko inspector agreed to other Group 1 species at USD85

5.12.86 (IN FAX 409) L/C amendments arrive and include addition of prime species at USD 110.00 CNF

10.12.86 There are further letter of credit amendments.

The ship loads between 8 and 14 December and loads a total of 1481 (706+775) pieces 5618.143m³ (2708.768+2909.375) There are problems with errors in the Bills of Lading which are corrected.

17.12.86 (IN TLX 8100) Park advises on ocean freight

(a) 5618.143m³ x USD 20.50 = USD115,171.93

(b) Pay brokerage (1.25%) of USD 1439.64 to NAMJEON INTERNATIONAL, Korea

(c) Pay brokerage (1.25%) USD 1439.64 to S.J. PARK, Korea

(d) Pay nett freight USD112,292.65 to DOOYANG LINE CO, KOREA

He adds that dead freight can probably be avoided by loading more at Umuda.

18.12.86 Angus Invoice 002.86 is sent to FIC - with CNF prices aggregating USD487,023.30 less an advance of USD100,000 and less 3.5% commission on FOB value of USD12,523.21 with a resultant balance due of USD 374,500.09.

18.12.86 FIC writes to BSP on negotiation of the L/C

19.12.86 BSP accounts to FIC on L/C

19.12.86 DEE of Angus sends produce summaries to "Patrick" and says "Due to our plan not to pay export duty for this shipment but instead we'll pay for previous shipments duty first, we will not be submitting export entry form just yet".
This requires explanation

22.12.86 (OUT FAX 445) FIC directs BSP to pay freight.

2.1.87 FIC accounts to Angus

5.1.87 (OUT FAX 502) Cowan refers to a telephone conversation and details remittances on Monday 29 of USD 3007.92, USD 4040.24 and USD 12,675.92

6.4.87 (Letter) Park asks FIC to check demurrage claim of USD1,791.67 and remit.

10.4.87 (IN FAX 751) Sanko ask if FIC ceased operations and if so to refund USD200,00.00 advance; cancel L/C and advise on future of contract.

16.4.87 (IN TLX 8940) Sanko follow up.

23.4.87 (IN TLX 8967) Sanko acknowledge receipt of USD200,00 and ask how long term contract stands.

24.4.87 (OUT TLX 6237) FIC stall. Maraleu out of town and will advise by 27.4.87 when he returns.

FIC do not advise.

6.5.87 (IN FAX 774) Sanko say Angus has logs and ask about supply as part of long term contract

402

B. LETTER OF CREDIT

The letter 012-LC-108625 is from Bank of Tokyo - applicant Sanko Company Ltd of Tokyo. It is for USD450,000 covering about 6000m² on a CNF basis. It is a direct L/C. It requires the invoice to show deduction of an advance of USD100,000 from CNF invoice price.

C. NEGOTIATION

First on 18/11/86 an advance of USD100,000.00 is received by BSP which credits the converted sum of K97,646.71 to FIC's account.

On 18/12/86 BSP receives FIC's letter of that date with

- (a) draft for USD 387,023.30
- (b) Invoice FIC/ANGUS/1-86

The Invoice is for 1481 pieces 5618.143m² at various CNF prices aggregating USD487,023.30. Credit is given for an advance payment of USD 100,000.00 which leads to a nett invoice value of USD387,023.30.

- (c) Bills of Lading 001/86 and 002/86 which aggregate 1481 pieces and 5618.143m².

The letter directs retention of USD129,217.29 in USD and credit of the converted balance of USD 257,806.01 to the credit of FIC's account.

These two figures are carefully calculated and very important in what follows.

D. ACCOUNTING (KINA)

On 19/12/86 BSP accounts to FIC

- (a) USD 129,217.29 is retained in USD
- (b) the residue USD 257,806.01 is converted to K248,847.50
- (c) bank charges aggregating K964.15 were deducted
- (d) the balance K247,883.35 was credited to FIC's account.

Pencil notes are on FIC's copy of this accounting and in the initial part form a draft of FIC's accounting to Angus.

There are other draft figures dealt with later. The three underlined figures are very important.

On 2 January 1987 FIC accounts to Angus (Schedule.02) as follows:-

- (i) Gross C and F value of invoice USD 387,023.30
 Less ocean freight USD 129,217.29
 Gross FOB value USD 257,806.01
- (ii) Gross FOB value converted at 1.0360 = K248,847.50
- iii) From the conversion sum of K248,847.50 the following deductions are made
- | | |
|---------------------|-------------------|
| Bank etc charges of | K 964.15 |
| FIC commission | K12,088.04 |
| Payment on 19/12/86 | <u>K20,000.00</u> |
| | <u>K33,052.19</u> |

- iv) The resultant balance of K215,795.31 is shown as credited to Angus (PNG) Pty Ltd.

All the figures shown are brought to account in the books of Angus - See Angus handups documents A755I to A755Q. (Interim Report No.2)

All the figures agree on a Kina basis. The figures also cross check with the contract and with the pencil and pen calculations in FIC's files and with the invoice from Angus. (See Schedule.03)

A crime occurs in the slip between the Kina accounting and the US Dollar accounting and it is concerned solely with Ocean freight

The easiest way to explain how what appears to be a serious crime occurred is to show what happened and then to point back to the "clues" which make it obvious and show the careful planning involved.

The starting point is the contract of 6.11.86. The contract though "mentioning" FOB price is quite clearly a CNF contract. In clause 6 it is said "For FOB prices, freight is computed at USD 23 per m³ Clause 10 obliges Angus to bear freight costs.

In the ** note to Annex A of the contract FIC Angus and Sanko, the FOB prices are said to be calculated on the basis of freight charges of USD23.00 for a maximum 3 Japanese ports of discharge. In addition to this the letter of Credit is established for a sale on a CNF basis and Angus invoices FIC and FIC invoices Sanko on a CNF basis.

The key prices in Annex A are thus CNF prices and the FOB prices in that Annex are calculated back from the CNF prices. They are so calculated using AN ASSUMPTION. The assumption was that freight was at USD23.00 per m³.

As mentioned above, both invoices - Angus to FIC and FIC to Sanko are at CNF prices.

FIC's calculations in pencil and in pen just adopt the FOB prices in the contract or as agreed. (in the case of Group 1 regular) or as agreed.

For each separate category the difference between the CNF and FOB unit rates is USD23.00 - i.e. THE ASSUMED FREIGHT RATE.

The total shipment was 5618.143m³ and the unit freight rate was USD 23.00 then the total freight would amount to USD129,217.29. That of course is the exact sum FIC (Tay) directed be retained in USD. Mr Tay claimed in evidence that this was done on Cowan's instructions.

The amount assumes real significance in FIC's accounting to Angus where what has hitherto been assumption is shown as fact in the accounting.

The invoice value less advance of USD 387,023.30 is shown and then.

"Less Ocean Freight USD 129,217-29"

The gross FOB price is then shown as USD 257,806.01.

When one studies this and the way the money was split:-

- (a) The invoice value (USD 387,023.30) is the same as the amount claimed in the L/C negotiation.
- (b) The ocean freight (USD129,217.29) is the same as the amount directed to be and in fact retained in USD.
- (c) The gross FOB price (USD 257,806,01) is exactly the amount directed to be and in fact converted to Kina - K248,847.50

The rest of the accounting in Kina is clear.

- bank charges of the correct amount are deducted;

- FIC commission at the highest disclosed rate of 3.5% is correctly calculated - based on a gross FOB price of USD357,806.01 (because of the USD 100,000 advance and converted at 1.0360.
- a prior payment of K20,000.00 is deducted.

It is only when one takes the next step and examines the evidence and the accounting for the USD "freight" retention of USD129,217.29 that it is plain that this accounting is false accounting and one part of attempting to conceal a well planned fraud.

E. ACCOUNTING (USD)

It must be remembered that payments from the USD retention are not recorded in FIC's accounting records. They begin with the "kina account" which in this instance appears regular on its face.

The USD retention was USD129,217.29

As early as 25.11.87 (IN TLX 7870) Park says what the freight rate is-

- (a) USD21.00 for 1 loading and 3 discharge ports.
- (b) USD20.50 if there is one less discharge port
- (c) there is 1.25% additional brokerage in favour of FIC.

There is of course one less discharge port so the rate is USD20.50. On 17.12.87 Park advises what the actual freight position is (IN TLX 8100)

- (a) the actual rate is USD20.50 per m³ totalling USD115,171.93
- (b) the shipper bears brokerage of 2.5% and is to receive nett freight of USD 112,292.65.
- (c) the brokerage is split into two parts each of USD1439.64 (each 1.25%) and Park says half of each should be paid to NAMJEON INTERNATIONAL and half to himself.

The half to himself is unusual and seems to be the 1.25% he said was *"in favour of FIC"*.

When one looks at what occurred and in fact was paid

- (i) On 22 December 1986 FIC directed BSP by faxed letter to pay USD 112,292.65 to DOOYANG LINE CO. LTD at the Korean Bank account specified in Parks telex

ii) On 29 December 1986 FIC directed BSP by faxed letter to pay USD 1439.64 to NAMJEON INTERNATIONAL Co. LTD at the Korean Bank account specified in Parks telex

iii) No money was paid to SJ Park as requested in his telex

The aggregate thus paid was USD 113, 732.29. The balance funds in USD after these two payments amounted to USD15,485.00

What the balance sum represented is clear:-

1. Difference between the assumed freight (USD23/m³) and the actual gross freight (USD 20.50/m³) is USD 2.50/m³ over the shipment volume of 5618.143m³ which amounts to ... USD14,045.36
2. Half share (1.25%) of the brokerage (2.5%) on the gross freight which amounts to USD 1439.64
USD 15485.00

The former sum appears to belong ultimately to Angus but would, until paid be the property of FIC. The latter sum appears to belong to FIC - Parks telex (IN TLX 78709 25.11.87) says "in favour" of FIC.

What happens then is that the money is split into two irregular amounts and then transferred out of the USD account on separate dates to STRAITS ENGINEERS CONTRACTING PTY,LTD in Singapore.

Instructions for these two transfers are given by FIC to BSP as follows:- (See Appendix 47)

- (i) By letter dated 29 December 1986 (signed by Cowan) as to the sum of USD 12,675.92
- (ii) By letter dated 13 January 1987 (signed by Cowan) as to the sum of USD 2809.08.

The transfers aggregate USD 15,485.00

The instruction telexes for all the above transfers are on BSP's files as is the Exchange Control application (signed by Cowan) for the USD2809.08 payment which describes the payment as "agents Commission"

On 5/1/87 (a Tuesday) Cowan sends OUT FAX 502 to David Toms

"For Mr DAVID TOMS

FURTHER TELEPHONE CONVERSATION SUNDAY FOLLWING DETAILS
AS PROMISED:

TT REFERENCE NO

CSB 8039 - 5381	USD 3007-02
CSB 8039 - 5376	USD 4040.24
CSB 8039 - 5374	USD 12675.92

ALL DESPATCHED MONDAY 29.

REGARDS

MICHAEL

05.01.87"

The payments include the USD12,675.92 from this shipment, USD3007.02 from Part shipment 6A (Wawoi Guavi to Dong Chang Timber) USD 635.40 (Wawoi Guavi to Sam Won Enterprises) and USD 4040.24 from Part shipment 7A (Ulabo to Eagon Forest Products) and lead me to suspect the other payments are also tainted. Subsequent investigation has confirmed this (Appendix 40 and 47)

In order to seek an innocent explantion for these payments it was necessary to make an exhaustive examination of FIC's files.

In this respect the result is most revelatory.

On 5.1.87 (OUT FAX 510) - the very same day he gives Toms the TT details - Cowan faxes Toms asking him to assist GOH KIM SENG (a former employee of Angus) by paying GOH up to S\$11,000 for a computer and hardware. He says FIC will refund by TT.

On 6.1.87 Goh faxes STRAITS SINGAPORE asking for S\$8,000 and STRAITS SINGAPORE note they have paid Goh and request reimbursement.

8.1.87 (OUT FAX 535) KENNEDY AKO (FIC) refers to GOHS fax; says want to TT S\$8,000 and asks for bank details

12.1.87 (IN FAX 502) STAITs SINGAPORE copy FIC's fax and give details

21.1.87 (OUT FAX 581) AKO tells STRAITS SINGAPORE K3632.45 has been TTd - equivalent to invoice value of S\$8,000 (at 2,2115) Behind this fax is a copy of FIC's cheque 036673 for K3632.45 and a note directing the transfer.

21.1.87 (OUT FAX 584) FIC tells Straits to ignore earlier fax - the amount is K3594.54 equivalent to S\$8,000 (at 2.2256)

FIC's cashbook shows cheque 036673 drawn pursuant to payment voucher 4643 for K3632,45 of which K15.00 is debited to "Bank charges" and K3617,45 to "Office Equipment." The payment voucher 4643 and documents supporting it explain what occurred - the kina equivalent S\$8000 was K3594.54; charges were K25,00; the excess of K12.91 was refunded.

Kennedy Ako says this equipment is at FIC consisting of a computer unit; keyboard; screen and printer but is not working (because rats got into it). He also says Goh came to PNG and programmed the computer and was paid for that.

This excludes computer payments as an explanation but the coincidence of the timing of those payments created a "smokescreen" which covered the fraudulent payments. This situation was possibly contrived by Cowan to allay any suspicion about the fraudulently acquired amounts he sending out.

The only other explanation is that Toms complained on 12.1.87 about deduction from Part Shipment 6C of Commission for FIC of K14,527.47- see IN FAX 501 of 12.1.87. Toms asked Cowan to review this.

This cannot explain the transfers on 29.12.86 as

- (a) FIC only faxed its account of Part Shipment 6C on 6.1.87
- (b) Toms only complained for the first time on 12.1.87.

In addition Toms was asked about this on 30.7.87 when he gave evidence. An extract from the transcript is attached as schedule.04.

F. FIC RECEIPTS

The only actual receipt by FIC in the result was the deduction of K12,088.04. This represented FIC's commission on the (false) gross FOB price of USD357,806.01. The commission would amount to USD12,523.21 which (at 1.0360) converts to K12088.04. In addition FIC should have received

- (a) freight differential (USD 23.00 - USD20.50=) USD2.50 per m³ aggregating USD14,045.36

- (b) its 1.25% brokerage amounting to USD1,439.64. It did not do so and it seems clear these funds were misappropriated.

From its K12,088.04 FIC had to pay further bank charges of USD42.00 (K40.31) reducing its actual receipts to K12,047.73 (or USD 12,481.21)

As indicated above it seems quite clear Angus sold on a CNF basis and it clearly invoiced on a CNF basis and was accounted to on a CNF basis. The accounting was false because freight was shown at the rate of USD 23.00/m³ rather than USD20.50 per m³ - Angus was thus entitled to an additional USD 14,045.36 concealed by this false accounting as an addendum to the FOB price. Equally this addendum to give the true FOB price would also attract the 3.5% commission rate which would amount to USD 491.59 which would result in a net amount payable to Angus of USD13,553.77- which appears to have been misappropriated. FIC's brokerage of USD1,439.64 and additional commission of USD 491.59 aggregating USD 1931.23 appear equally to have been misappropriated.

The two apparent misappropriations aggregate USD15,485.00. The problem for FIC exists in that it has not truly accounted to Angus and it seems almost certain that FIC is at risk of a recovery action by Angus for a sum of USD 13,553.77.

Recovery of the misappropriated funds is doubtful and leaves FIC in this position:-

- (a) it has actual receipts of K12,047.73 (USD 12,481.21)
- (b) it has an almost certain contingent liability (for which provision should be made) of USD13,553.77.

When the contingent liability crystallises FIC will have a resultant nett loss on this shipment 6B of USD 1072.56 and not the apparent profit of K12,047.73

G. COMMENTS

1. The gravest matter arising from this part shipment is what appears to have been a carefully planned, implemented and concealed misappropriation by Michael Cowan of FIC funds.

The evidence of the progress of this fraud is clear from the moment a freight rate below the assumed USD 23.00 per m³ is available.

- (a) on 21.11.86 Park offers Southern Pearl at USD 22.00 with 2 port discharge.
- (b) When, on 22.11.86 Ocean Maratime offer the Aqua Trader Cowan overreacts
- he tells Sanko to stay out of vessel negotiations and asks for a reduction of one discharge port - he does this by both telex (OUT TLX 7863) and fax (OUT FAX 314)
 - he tells Cheah (OUT FAX 313) he has told Sanko and Ocean Maratime to stay out of vessel negotiations

He obviously wants no one else involved.

- (c) On 25.11.86 Park offers Dooyang Guide at USD21.00 or USD20.50 if only two port discharge and Park specifies the 1.25% brokerage. The next day the vessel is fixed.
- (d) On 28.11.86 (IN TLX 7903) Park refers to a conversation with Tay of 27.12.86 and offers USD 90.00 for extra Group 1 logs. In the note on the filed telex Cowan says the cargo is sold to Sanko at USD 87. Angus gets USD 85 (he says K85) and FIC gets USD 2 plus 3.5% commission.

The note is simply not true but gives a real insight into what is happening.

It is not until 30.11.86 (OUT TLX 5507 dated 29.11.86 but sent 30.11.86) that Cowan even offers the extra cargo to Sanko and even then he offers it at USD 85.00 FOB - a price USD5.00 perm^a below what Park offered - with an acceptance deadline. FIC then raise the matter again on 2.12.86 (OUT TLX 5519) On 12.12.86 (OUT TLX 5520). Cowan asks Sanko to amend their L/C to permit the Group 1 species at USD 110.00 CNF. It is not until 5.12.86 (OUT TLX 5529) Sanko in fact agree to buy. Cowan says the price to Sanko was USD 87.00 with an FOB to ANGUS of USD 85.00. He then offered it to Sanko at USD 85.00. Clearly he was not thinking the USD 2.00 for FIC was in the FOB price - it must be somewhere else - in the freight. When he comes to the L/C amendment however he adds the assumed freight of USD 23.00 (which he knew was less in fact) and specifies a CNF price of USD 110.00 (ie. USD87 + USD23) and not the invoiced price of USD108.00.

This shows Cowan's mind was alert to the "freight fiddle." Why he pushed the cargo to Sanko at a much lower price can only be explained by awareness that there was more undisclosed (and misappropriated) profit if Sanko bought than if Park's buyer did.

- (e). The real plot emerges from the pen and pencil calculations from CNF to FOB obviously made prior to FIC's letter to BSP of 18 December 1986 which directs the split to be retained in USD and converted to Kina. This step lays the ground for what follows.
- (f). The nett freight was paid on 22/12/86 and handwritten "bank statements for Angus" were made up to 23.12.86 - these are on FIC files. The account to Angus must then have been clearly in mind because the statement speaks of BSP's credit advice of 19.12.87 for K247,888.35. On the bottom of a photocopy of that advice in FIC's files are pencil calculations which begin with the USD257,806.01 converted to Kina and then draft the accounting - these are in Tay's hand prepared on Cowan's instructions. Also on FIC's files is a draft pencil handwritten account to Angus which shows a freight deduction of USD129,217. This is the false freight figure. It is written in Tay's hand on Cowan's instructions.
- (g). Clearly by 29 December 1986 the calculations have all been done. On the files, when assembled, Cowan would have risked exposure - particularly by Tay - on two accounts:-
 - (i) for the 1.25% brokerage because Parks telex said it was "in favour of FIC" ie USD 1439.64.
 - (ii) for the USD2.00 per m³ on the Group 1 species which he said FIC would get in addition to its 3.5% commission ie. $170.376 \text{ m}^3 + 385.698 \text{ m}^3 = 556.074 \text{ m}^3$ at USD2.00 = USD1,112.15 By keeping USD2551.78 in the USD account he was covered if Tay queried either of these two matters.
- (h). On 29 December 1986 Cowan made his move - this was the Monday after Christmas and before new year. On that day a bundle of seven (7) instructions to TT funds from the USD account were faxed to BSP (OUT FAX 463) all with the reference "PT" all signed by Cowan and with the fax cover from "P.TAY/FIC".

They included the three payments specified in Cowans fax 5.1.87 (OUT FAX 502) to Toms and the 1.25% brokerage payment to NAMJEON of USD 1439.64 on this part shipment. The payment to Straits on account of this part shipment of USD 12,675.92 left a residue of USD 2809.08 - more than enough to cover the risk factor mentioned in (g) above.

- (i). The actual account to Angus is dated 2 January 1987 (a Saturday following new years day) and includes the false freight figure of USD 129,217.29 - it is signed by Cowan. (Schedule.02). On the Sunday he phones Toms and on the Tuesday 5.1.87 he sends his fax to Toms (OUT FAX 502)
- (j) At the same time (5.1.87) the money for the computer being advanced by and TT remitted to STRAITS begins and provides a very convenient - if not contrived distraction to an investigator trying to explain these remittances.
- (k) By 13 January 1987 - two weeks have gone by and there has obviously been no query from Tay so the "coast is clear" and the "safety fund" of USD2809.08 is requested to be remitted to Straits Singapore. This request letter to BSP is also signed by Cowan and completes the misappropriation. (See Appendix 39.3 for further comments on Shiment 6 as a whole)

SHIPMENT 6B

NO OF LOGS	SPECIES/ GROUPS	VOLUME	UNIT FOB	TOTAL FOB	UNIT CNF	TOTAL CNF
241	ROSEWOOD	660.108	137	90,434.80	160	105,617.28
54	PIPED ROSEWOOD	164.836	95.90	15,807.77	118.90	19,599.00
61	GROUP1 - SMALL	170.376	60	10,222.56	83	14,141.21
87	GROUP1-REGULAR	385.698	85	32,784.33	108	41,655.38
235	TAUN	755.469	59	44,572.67	82	61,948.46
13	GROUP2A	54.331	58	3,151.20	81	4,400.81
226	GROUP2B	924.151	57	52,676.61	80	73,932.08
257	GROUP2C	1381.486	45	62,166.87	68	93,941.05
307	GROUP3	1121.688	41	45,989.21	64	71,788.03
1481		5618.143		357,806.02		487,023.30

Notes:-

A. The figures above tabulated are from the following sources.

1. Angus Invoice, FIC pencil ~~notes~~, FIC pen ~~notes~~
2. Angus Invoice, FIC pencil ~~notes~~, FIC pen ~~notes~~
3. Angus Invoice, FIC pencil ~~notes~~, FIC pen ~~notes~~
4. FIC pencil ~~notes~~ and by analysis (below) FIC pen ~~notes~~, and Contract
5. Angus Invoice and by analysis (below) FIC pen ~~notes~~ and contract

SHIPMENT_6B

ATTACHMENT 1 (CONT.)

- B Under the the contract there was to be a price reduction of 30% of FOB price on Piped Rosewood.

In Angus Invoice and FIC pencil notes the figures are as shown above.

In FIC pen notes Rosewood is shown in one item with a rebate deducted at the bottom.

There are 295 pieces of Rosewood (824.944m3) of which 54 pieces are piped (164.836m3) leaving 241 solid pieces (660.108m3). The 30% discount (USD41.10 per m3 on an FOB of USD 137.00) amounts to USD 6774.76.

The totals in the pen notes for Rosewood namely

USD 113,017.33 (FOB) and USD 131,991.04 (CNF) when reduced by this amount are USD106,242.57 (FOB) and USD125,216.28 (CNF).

When one adds the solid + piped Rosewood figures in the Table one achieves.

- (a) FOB price USD $(90,434.80 + 15,807.77 = 106,242.57$
(b) CNF price USD $(105,617.28 + 19,599.00 = 125,216.28$

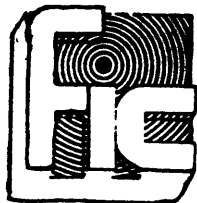
Both sets of figures thus reconcile.

- C. The contract itself in the source for all the CNF and FOB unit prices shown in the Table (see Annex A to Contract and Clause 6 regarding the 30% reduction on piped Rosewood). The contract does not cover the Group 1 small and Regular species - this was the subject of the additional arrangement with a base price of USD 85.00 FOB.

In the pen notes of FIC it seems clear that price was used for regular Group 1 and there was a reduction of USD 25.00 per m3 for small Group 1.

- D. The critical element to note is that the contract itself (of which Angus (cheah) and the buyer knew) contained both FOB and CNF prices and the differential shown in the contract (Clause 6 and the ** rate in Annex A) between those prices was an assumed rate of USD23.00 per metre for freight.

Clause 9 of the Contract provides that Angus (PNG) bears the freight.



SCHEDULE 39.2

415

P.O. BOX 1829 PORT MORESBY
LOT 4 SECTION 405
WAKANI DRIVE

Phone: 25 6399
256302

Telex: NE 22226 FORINCO

**FOREST INDUSTRIES COUNCIL
OF PAPUA NEW GUINEA**

PT:mek/02011987

02 January 1987

Amugs (PNG) Pty Ltd
P O Box 2755
BOROKO

Dear Sir

**RE: PAYMENT OF LOG SHIPMENT FOR MV DOOYANG BRAVE UNDER LETTER OF
CREDIT NO:- 012-LC-108625 FOR ACCOUNT OF SANKO CO, LTD TOKYO**

We confirm having negotiated the abovementioned log shipment.
Details of transaction as follows:-

Gross C and F value of invoice	USD 387023.30
Less Ocean Freight	USD 129217.29
Gross FOB Value	USD 257806.01
USD Exchange Rate into Kina	1.0360
	KINA 248847.50
Less Bank Commission	933.95
Airmail Postage	3.00
Stamp Duty	0.20
Cable Cost	12.00
Courier Cost	15.00
FIC Commission 3.5% FOB Value	12088.04
Payment made on 19.12.86	20000.00
Credited to Angus (PNG) Pty Ltd	<u>K215795.31</u>

Yours faithfully


.....
MICHAEL J COWAN
Executive Director

cc: Accounts

SCHEDULE 39, 3

SALES AND PURCHASE CONTRACT
DATED 6 NOVEMBER, 1986
(REFERENCE : AG/SANKO 02/86)

Contract
 AG/SANKO/02/86

1. **SELLER** : **FOREST INDUSTRIES COUNCIL
OF PAPUA NEW GUINEA**
P.O. Box 1829, Port Moresby, PNG.
2. **PRODUCER** : **ANGUS (PNG) PTY. LTD.**
Ground Floor, Pacific View Apt.
P.O. Box 2755, Boroko, PNG.
3. **BUYER** : **SANKO CO. LTD.**
Ohtemachi Building 4th. Floor
6-1, 1-chome, Ohtemachi,
Chiyoda-ku, Tokyo 100, Japan.
4. **MERCHANDISE** : **Papua New Guinea Round Logs**
5. **VOLUME** : **5,500 M3 plus/minus 10 percent**
6. **SPECIES, DIAMETER, PRICE** : **Per Annex A, and for
Hollow Logs prices will
be reduced by 30 percent.
For FOB prices, freight
is computed at
USD 23 per M3.**
7. **DIAMETER** : **60 cm up - 65 percent minimum
48 - 59 cm - balance (including 48cm
below for Rosewood)**
8. **SHIPMENT** : **From Papua New Guinea to Japan
(Max. 3 ports of discharge per shipment)**
9. **FREIGHT** : **All freight charges per shipment as
mentioned in this contract shall be
borne by Angus (PNG) Pty. Ltd.**
10. **SHIPMENT SCHEDULE** : **5,500 M3 plus/minus 10 percent
around end November 1986.**
11. **PAYMENT TERMS** : **By Letter of Credit to be
established by Buyer to Seller
or another company nominated
by Seller.**

12

12. OTHER TERMS**A. OPTION TO PURCHASE**

During period of contract, Seller must give Buyer the first option to purchase any logs produced by the Producer in excess of volume mentioned in this contract at current market prices.

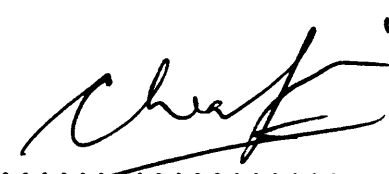
In the event Buyer refuses this option, Seller can market the logs to others except the Japanese market.

B. SHORTFALLS IN PERCENTAGES OF ROSEWOOD EXPORTED

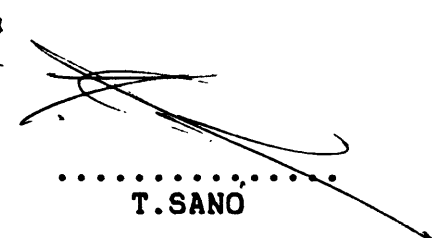
Any shortfall in minimum percentage of Rosewood as mentioned in this contract will be recovered in subsequent shipments to Buyer.


.....
MISKUS MARALEU

**FOREST INDUSTRIES
COUNCIL OF PNG**


.....
F.C CHEAH

**ANGUS (PNG)
PTY. LTD.**


.....
T.SANO

SANKO CO. LTD.

SPECIES, DIAMETER, PRICE AND PERCENTAGE FOR 2ND. SHIPMENT

ANNEX

SPECIES	DIAMETER * SIZE (CM)	FOB ** US\$/M3	CMF US\$/M3	PERCENTAGE OF EACH SPECIE PER SHIPMENT
ROSEWOOD	60 CM + 40-59 CM LESS 40 CM (MAX. 10% OF TOTAL VOLUME OF ROSEWOOD)	137.00	160.00	20% - 25%
TAUN	60 CM + 40-59 CM	59.00	82.00	15% - 20%
GROUP 2A	60 CM + 40-59 CM	58.00	81.00	10% - 15%
GROUP 2B	60 CM + 40-59 CM	57.00	80.00	15% - 20%
GROUP 2C	60 CM + 40-59 CM	45.00	68.00	25% MAX.
GROUP 3	60 CM + 40-59 CM	41.00	64.00	20% MAX.

* DIAMETER SIZE IN PROPORTION OF 65% 60 CM+ AND 35% 40-59 CM

** FOB calculated at freight charges of US\$23 per m3 for maximum 3 Japanese ports of discharge.

Q

SCHEDULE 39.4EXTRACT FROM TRANSCRIPT

- Reeve: Are you able to explain what happened in relation to the payment of Commissions to FIC during the time it was marketing.
- Tom: Now, I mean we paid what they asked for and thats all we know about it, I mean I heard you remark earlier that our rate was different from everybody elses. Well I did hear that we were charged 3% and we objected and the Industry objected and it was dropped across the board to 50 cents per cubic metre for everybody I understood. But I don't know anything else about that I'm sorry.
- Reeve: Do you think it being dropped to 50 cents per cubic metre had anything to do with the fact that you were paying Metapikai under contract.
- Toms: No, as I said quite honestly, that 50 cents was supposed supposed to apply to everybody. There was lot complaints coming and I mean we did get charged for the first a number of 3%(s) and the 50 cents may have been on the volume of the timber, we gave them. We gave them a lot of timber to market. They may have given us a preferential rate on that basis but it wasn't negotiated.
- Reeve: But marketing was one of the obligations of Metapikai wasn't it - under the agreement.
- Toms: Was it under the agreement. I'd have to read the agreement. Did it say that. It only says that the consultant possessing expertise in the running and marketing of forest produce operations. It dosen't say specifically that it is going to market. Just to oversee directly produce inopreparation for market to oversee and assist in marketing and produce to oversee directly loading and operations which they did. If FIC was insisting or SMA was insisting on their 20% quota or whatever they were insisting on I wasn't quite up to date on it then, they would have had first preference and that consultancy company wouldn't have much to do with marketing during the time that FIC was doing it.

APPENDIX 39.36. COMMENTS SHIPMENT 6

1. Part shipments 6A and 6B represent a continuum from Shipment 5 and prelude to shipments 9, 13 and 15.

General comments are made in relation to shipment 5 and not repeated here though much of the basis for such general comments is found in this material on shipments 6A and C.

2. (a) The manipulations of freight and undisclosed built in margins or undisclosed price structuring on this shipment are a matter for the gravest concern.
- (b) As early as 25.11.86 (IN TLX 7870) Park is talking of building in a freight commission of 1.25% for FIC on a DOOYANG GUIDE Charter for 6000 m3 for Angus (PNG).
- (c) On 20.12.86 (OUT FAX 442) when Cowan is in Singapore with Straits Singapore "negotiating" Metapikae's lucrative consultancy and shareholder agreements Maraleu foreshadows a payment of USD2,000.00 being sent to Straits Singapore's bank account for Cowan.

Whether this was sent will need to be ascertained (FIC's cashbook does not disclose it) as it may relate to remittances by Straits Singapore on Cowan's behalf to Mrs Cowan in London. Legitimacy of the payment would also need to be checked if it was made.
- (d) On shipments 6A and 6C FIC had contrived an arrangement where the FOB price payable by the buyer was USD2.00 per m3 greater than the price payable to the producer and where the producer was to pay 3% of the FOB price to FIC out of his share. In addition the producer was to bear the bank charges plus pay an extra 6% commission to FMS and FIC knew this..

From a producers viewpoint the aggregate rate (%) is Extortionate.

- (e) On shipment 6B the contract figures were based on an assumed freight rate of USD23.00 per m³ and both FOB and CNF prices were included. The contracts were CNF contracts with both producer and buyer. The buyer was invoiced and paid on a CNF basis. The producer invoiced and was paid on a CNF basis. What occurred though was that the assumed freight rate of USD23.00 per m³ was not correct.

The actual freight rate was USD21.50 per m³ and by fraudulent false accounting by FIC showing freight at USD 23.00 per m³ the differential of USD2.50 per m³ over the shipment volume of 5618.143 m³, amounting to USD14,045.36, was not paid to the producer.

From the actual moneys paid to the producer FIC deducted 3.5% commission and the bank charges. In addition FIC was to receive (as foreshadowed by Park) 1.25% ocean freight brokerage on part shipment 6B which amounted to USD 1439.64.

- (f) The USD 2.00 per m³ margin on shipments 6A and 6C was not converted to kina but retained offshore in USD. Of this USD1.00 per m³ was paid to S J Park as his commission and the remaining funds were:-

Part 6A - USD 3007.92
Part 6C - USD 6359.40

- (g) On shipment 6B the sums of

Freight differential - USD 14,045.36
Shipping brokerage - USD 1,439.64
USD 15,484.00

were also not converted to Kina but retained offshore in USD.

122

- (h) The aggregate funds referred to in (f) and (g) above were never brought onshore; were not entered or referred to in FIC's books and were misappropriated by Michael Cowan (they can be tied specifically through letter of credit residue and written directions by Cowan) by means of telegraphic transfers to Straits bank account in Singapore as follows:-

Date	TT Ref	Amount	Detail
30.12.86	CSB 8039-5374*	USD12,675.92	Part of 6B
30.12.86	CSB 8039-5381	USD 3,007.92	6A
7.1.87	CSB 8039-5384	USD 6,359.40	6C
16.1.87	CSB 8039-5374*	<u>USD 2,809.08</u>	Balance of 6B
		<u>USD24,852.32</u>	

(See Appendix 47)

- (i) Straits Singapore has confirmed these remittances, saying at first that Cowan told its personnel the moneys were payments for projects and feasibility studies and that he needed the money in Singapore for taxation purposes. Straits also said the funds were all onward remitted to Mrs Cowan in England at Cowans request.
- (j) These matters were then reported to the National Fraud Squad which sought the assistance of the Singapore Corrupt Practices Bureau to whom Straits gave a significantly different explanation which confirmed my suspicions that Cowan had misappropriated this money (See Appendix 47)
3. FIC would need to investigate the prospects of recovery of this aggregate USD24,852.32 (and USD4040.24 similarly misappropriated on Shipment 7A making a total of USD 28,892.56). Recovery may be facilitated if FIC carried employee fidelity insurance. An assessment would need to be made as to whether a "receivables" entry was appropriate.
 4. FIC has a clear contingent liability to Angus PNG arising out of its false accounting on shipment 6B. Angus was entitled to the freight differential of USD14,045.36 as an addition to its FOB price. From this FIC would be entitled to deduct 3.5% commission of USD 491.59 resulting in a net sum due of USD13,553.77. Liability is quite clear and a provision for this liability should be made.

5. On Part shipments 6A and 6C the shipper claimed despatch aggregating USD 4,317.36. It is not able to be ascertained from FIC's records whether the claim was correct and if so whether the shipowner paid it.

It seems the producers despatch calculations are usually correct and that (due to its loading system) it usually earns despatch. If despatch is due it would seem FIC has liability to the producer and would have rights, if it has not lost them, against the shipowner.

6. On part shipment 6B the shipowner has made a demurrage claim of USD1,791.67. FIC does not appear to have paid the claim. If the claim is correct FIC may have rights

- (a) to offset against despatch (see 5 above) as against the shipowner
- (b) to claim from Angus or offset against moneys due to Angus (see comment 4 above)

The facts should be ascertained.

7. An object of FIC was to obtain the best price for producers. Angus PNG had available a quantity of prime species (MEP Group 1) logs which were outside the specifications of FIC's contract with Sanko. It is clear FIC could have obtained an FOB price from Park's Korean buyer for these logs which was USD 5.00 per m³ greater than the price at which Cowan sold them to Sanko. This is a disgraceful state of affairs and the only explanation for Cowan's conduct is that if the logs were sold to Sanko he would benefit personally. His interest was to obtain the USD 2.50 per m³ freight differential on those logs by false accounting to Angus and then to misappropriate that differential. If the logs were sold to Park's buyer FIC would only get its undisclosed price margin of USD1.00 per m³ (which Cowan would also have misappropriated as he did on the balance of the shipment).

He thus sold at USD5.00 per m³ less than the better price offered because in doing so he made by misappropriation an extra USD1.50 per m³ for his own pocket.

8. FIC sold shipment 6 on a CNF basis and paid freight. The freight payment cannot be adequately vouched for audit purposes.

9. Shipment 6B was FIC's last shipment to Sanko and that has caused problems as FIC had entered a long term contract with Sanko for sale of 36,000 m3 of logs by six shipments each of 6,000 m3. The contract and arrangements envisaged Sanko advancing funds to FIC on account of Angus.

- (a) FIC has not honoured the contract. Indeed in making FIC Part Shipment 11B and FIC shipment 14 Angus broke the option provision in the contract at very least and probably the contract itself. Up to May 1987 (when the Commission received FIC's records) Sanko has sought to preserve its rights and to ascertain how FIC would honour this contract. The position must be ascertained as FIC could be at real legal risk of a suit for damages for breach of contract by Sanko.
- (b) FIC received on advance from Sanko of USD200,000.00. It seems the sum was refunded to Sanko in April 1986 but there is no entry in FIC's cashbook which reflects this.

The detail and nature of this advance must be ascertained and its repayment established.

In the 1987 half year financial statements of FIC prepared by Messrs Coopers and Lybrand Note 5 to the accounts reads

"5. Monies Held in Trust - Angus Pty limited

An amount of K191,277.73 was deposited into interest bearing deposit resulting to an interest income of K4,149.79. This interest income was taken up in the profit and loss account as interest income of Forest Industries Council. An amount equivalent to US\$200,000 was paid to Sanko Co. Limited - Tokyo, Japan on 22nd April, 1987. This resulted to a gain from foreign exchange of K9,045.38 which was disclosed in the profit and loss account as other income".

If the arrangement was in the nature of a trust and the beneficiary of the advance was to be Angus (PNG) - as was the case on part shipment 6B - then Angus would clearly have rights against FIC.

Firstly if FIC was a trustee it cannot, as a matter of fundamental law, profit from the trust - any income on the trust fund (interest) and accretion to the trust fund (exchange gains) is for the benefit of the beneficiary not of the trustee. FIC would thus be liable to Angus for the interest of K4,149.79 and exchange gain of K9,045.38, aggregating to K13,195.17, which it has appropriated to its own account.

Secondly in April 1986 it was abundantly clear Angus (PNG) was quite insolvent. If Angus is placed in liquidation FIC may well be at risk of a claim for its conduct in repaying an unsecured advance of USD200,000.00 to a particular unsecured creditor thus preferring that creditor to the general body of unsecured creditors and removing the advance from funds available for pro rata distribution among the general body of unsecured creditors. The claim would be for USD200,000.00.

It is necessary that FIC determines these matters as they could have significant if not ruinous impact on its finances if the facts were adverse to FIC's interests.

10. On 19 December 1986 an Angus (PNG) employee openly told Patrick Tay that contrary to legal requirements Angus did not propose to pay export duty on part shipment 6B and that it proposed to avoid detection by not submitting the export entry form until a later stage. What occurred in this regard will need to be ascertained. One of the reasons put forward for FIC being involved in marketing was to curtail such malpractices and to increase revenue. It would be contrary to this aim if FIC acquiesced in this proposal which involves a contravention of Customs legislation and practices. That contravention would delay the payment of export duty and allow the company to enjoy the use of the funds in the meantime.
11. In general terms part shipment 6B raises the whole question of FIC's involvement in the affairs of Angus (PNG). FIC seems to have been far more involved than its charter would permit. It was involved as a manager (in operations and in

contracting Santa Investments as contractor) as a financial controller (mixing Angus funds with its own funds and paying Angus debts from its own general account) as a marketer and perhaps as a trustee. It entered contracts on behalf of Angus. None of these activities seem to have been disclosed to and were certainly not authorised by the FIC Council. These activities were all authorised by Maraleu and/or Cowan and must at times have been known to if not actually approved by Minister Diro and perhaps even Minister Torato for a short period.

In the result FIC (Cowan) accounted falsely to the ailing Angus and the "offshore" funds which were not accounted for were misappropriated by Cowan.

In light of these events it is absolutely necessary for FIC to conduct a full and segregated accounting for all funds received on account of Angus (PNG) and to double check the vouching of all moneys said to be disbursed to or held on account of Angus (PNG). Such an exercise is not within the terms of reference of this Commission and has thus not been undertaken.

APPENDIX 40SHIPMENT 7VESSEL REGENTDECEMBER 1986/JANUARY 1987A. HISTORY

This shipment arose from the requirement of the Department of Forests that producers make offers pursuant to State Purchase Option Provisions.

- 20.10.86 (IN TLX 7570) Park says for Kieta/Inus Logs - price idea USD 60-61 FOB.
- 20.10.86 (IN TLX 7578) Parks says Sunchang offer USD 61.00 FOB for Kieta/Inus logs.
- 20.10.86 (IN TLX 7273) Groomes offer mid December - Ulabo 4000 m3 and Bougainville Forest Enterprises (BFE) 6000 m3 requesting offers for the total but separate prices for each producer. (Groomes manages both companies)
- 20.10.86 (OUT TLX 5720) FIC offer USD 60.00 for Bougainville Forest Enterprise (BFE) and will offer Ulabo in few days. At this time FIC is in contact with S.J Park and telexes establish that on sales he seeks USD1.00 per m3 "service charge" (see IN TLX 7563 of 17.10.86 IN TLX 7579 of 21.10.86).
- 21.10.86 (IN TLX 7579) Park confirms USD 61.00 for Kieta/Inus and ask acceptance.
- 21.10.86 (OUT TLX 5275) FIC asks for reply for BFE by 22.10.86.
- 21.10.86 (IN TLX 7563) Park say final offer on Kieta/Inus is USD 61.50.
- 22.10.86 (IN TLX 7584) Groomes advise cannot accept USD 60 and ask for offer on Ulabo.
- 22.19.86 (IN TLX 7595) DOF tell BFE should contact FIC unless have better offer than USD 60.00.
- 23.10.86 (IN TLX 7599) BFE tell DOF they offered to four buyers and as market is rising shouldn't have

deadlines. Park offered USD61-63 to be confirmed.

- 23.10.86 (OUT TLX 5279) FIC offer Ulabo's 4000 m3 to Park.
- 23.10.86 (IN TLX 7602) DOF tells BFE aim to get maximum price and if another buyer offer higher price DOF have no objection if sell to him.
- 24.10.86 (OUT TLX 5288) FIC tell Park awaiting BFE acceptance of offer.
- 27.10.86 (IN TLX 7626) Park says Japan Coy offering BFE (4000 m3 ex Kieta/Inus) and asks if his offer still valid.
- 27.10.86 (IN TLX 7630) Park tells FIC he has offer from Groomes of 6000 m3 Ex Dios but prefers to work with FIC - his buyer offers USD 65.00.
- 28.10.86 (OUT TLX 5298) FIC tell Groomes they believe can outbid all but asks for assurance of a reply within 48 hours.
- 28.10.86 (OUT TLX 5302) DOF has confidence in FIC offereing best price and tells Groomes if don't accept FIC offer DOF expect sell at a higher price.
- 28.10.86 (OUT TLX 5303) FIC asks Park to advise on Dios and Ulabo
- 30.10.86 (IN TLX 7648) Park says Sunchang can accept USD 64.00 for Kieta/Inus 4000 m3.
- 30.10.86 (IN TLX 7653) Groomes explain position, they made the same offer of 6000 m3 plus 4000 m3 in mid December on a rising market with BFE as a "sweetener" Ulabo. They want a package deal with "up front" FOB price and no deductions.
- 31.10.86 (IN TLX 7657) Park tells FIC he has a similar telex from Groomes and says buyer confirms Dios 6000 m3 USD 65.00 and Ulabo 4000 m3 at USD 51.50.
- 31.10.86 (OUT TLX 5320) Cowan tells Groomes, offer didn't indicate it was joint offer.

(The Content of this telex shows either naivety or stupidity on Cowan's part.)

31.10.86 (IN TLX 7661) Groomes tell FIC in simple terms that it had been placed as a joint offer, which already was obvious,.

UNDATED PENCIL NOTE: Park offers USD 66.00 but breakup is DIOS 6,00 m3 at USD 68.50 UTC 4000 m3 at USD 58.50, package USD 64.00. It is said this covers Parks and FIC's charges. Pencil notes show the 3 figures as USD 69, USD 59, and USD 65 and an addition of USD 1.50 for the total of USD 66.50.

03.11.86 (OU TLX 5336) FIC offer USD 65.00 package with USD 69.00 for DIOS and USD 59.00 for UTC. Pencil notes show these are all nett prices with the price to buyer marked up USD 1.50 and freight of USD 19.50.

03.11.86 (IN TLX 7667) DOF chides FIC for dealing with Groomes and asks only deal with producers.

06.11.86 (IN TLX 7690) Groomes tell FIC their offer highest and is accepted and others rejected.

06.11.86 (IN TLX 7695) Groomes tell FIC Sumitomo offered USD 70 and USD 60 and Groomes advise them to contact FIC.

S.J Park was in PNG about this time and it is not clear from FIC files how the vessel was arranged and on what terms.

21.11.86 (OUT TLX 5466) FIC advise Groomes MV REGENT nominated ETA 13/14/December. There are communciations about loading points etc and in early December clearly the buyer (Eagon) has it's representative Mr.Kwon on the way. There are also landowner problems which reduce the volume available from DIOS which it is sought to replace by loading from MABIRI.

04.12.86 (IN TLX 7955) Park advises L/C estalbished and gives details.

05.12.86 L/C (transferred L/C M1918612 EU00370) is established for USD 880.000 covering 10,000 m³ CNF INCHON.

- 12.12.86 (IN FAX 431) Groomes advise on Mabiri logs and say will accept USD 84.00.
- 14.12.86 (OUT FAX 418) Cowan tells Groomes of contract and says doubtless the buyer will want to renegotiate and try to "SCREW" (his word) you.
- 15.12.86 (IN FAX 438) Groomes explain position and will accept reviewed price for Mabiri.
- 16.12.86 FIC received a fax from EAGON for it's Inspector Mr.Kwon including a telex from Park recommending to Eagon.
- "2. TO RENEGO PRC.BY USD 1.50 m³ ON BASIS OF FLWG PRICE STRUCTURE."
- DIOS LOGS: SUPPOSED TO BE USD 71/M³
 - ULABO LOGS: SUPPOSED TO BE USD 60/M³
- 16.12.86 (OUT TLX 5632) Park asked for renegotiated price for Mabiri Logs. The vessel loads at Ulabo between 13 and 17 December.
- 22.12.86 (IN TLX 8134) Park asks Ulabo freight 4040.239 m³ at USD 18.50.
- = USD 74,744.42
- to be paid as to USD 73,810.12 to
- Choyang Shipping co Ltd for nett freight and as to USD 934.40 to Namjeon International Co Ltd of Seoul the latter being brokerage at 1.25%.
- 23.12.86 (In TLX 8138) Park says accpet 1000 m³ Mabiri if reduce price from USD 66.50 to USD 64.50 (he is talking gross figures) ie: USD 20,000 less.
- 23.12.86 (OUT TLX 5670) FIC says not keen on USD 20,00 reduction and want to renegotiate separate price on Mabiri 1000 m³.
- 24.12.86 (IN TLX 8159) Park says Eagon will accept USD 15.000 for Mabiri 1000 m³.
- 24.12.86 (OUT TLX 5687) FIC tell Park, Ulabo has a despatch claim of USD 623.33 so freight should be USD 74,744.42 with USD 623,33 despatch USD 73,186,79 to shipper and USD 934.30 to broker. They say nett freight has been TT to shipper.

- 29.12.86 (IN TLX 8171) Park says despatch not agreed and asks not to deduct as expect will be demurrage from Dios. It seems in the end that 6,000 m³ was loaded at Dios as contracted. In early January 1987, Parks is in PNG. It seems there is said to be an over negotiation on the L/C as a result of which Eagon over paid USD 5,159.64.
- 07.01.87 (IN TLX 8264) Parks advises freight increased from USD 18.50 to USD 19.00 and details payments. Also says Eagon claim over-negotiation.
- 08.01.87 (OUT TLX 5154) Tay says how FIC worked the shipment out in detail
- 09.01.87 (IN TLX 8281) Park says only USD 73,143.02 received for Ulabo and is USD 666.90 short.
- 09.01.87 (IN TLX 8287) Park asks to book at Gateway he arrives tomorrow.
- 12.01.87 (OUT TLX 5769) Park tells his office balance freight will be remitted as per USD 1P/m³ basis. Ulabo diff is despatch.
- 15.01.87 (OUT TLX 5792) Park asks for Eagon bank detail to remit the over negotiated amount.
- 15.01.87 Mr Yu of Park's Office telexes Park details of Eagon's Bank.
- 15.01.87 (OUT TLX 5812) Park sends details of TT remittance of ocean freight.
- 22.01.86 A handwritten note shows an amount over negotiated of USD 5159.64. plus advance of USD 3,000 to Mr Kwon with a balance to be remitted to Eagon of USD 2,159.64.
- 23.01.87 (OUT TLX 5854) FIC tells Eagon USD2,159.64 has been remitted and the remaining USD 3,000 was given to Mr Kwon. This settles matters.

B. LETTER OF CREDIT

The original letter of Credit M1918612 EU00370 is a Korean letter of Credit issued by Hanil Bank of Seoul, Korea, presumably the bankers of Eagon Industry Company Ltd of Korea. That L/C is transferred to the extent of USD 880,000 by a United States (Washington) bank at the request of Eagon Forest Products Inc, of the United States. The transfer is to cover 10,000 m³ CNF Inchon. The notify party is Eagon Ind. Co Ltd. As with other shipments to Eagon (Nos: 3 and 12 A) the transfer of a Korean L/C through the USA is seen. There may be innocent reasons for this but the structure is a classical one for transfer pricing.

C. NEGOTIATIONS

7A ULABO TO EAGON

On 19.12.86 BSP receives FIC's undated letter with.

- (a) draft for USD 323,219.12
- (b) invoice
- (c) bill of lading

Copies of the invoice and bill of lading cannot be located. It can be inferred from FIC's records that the part shipment was of 4,040.239 m³ at a CNF price of USD 80,00 per m³ aggregating USD 323,219.12.

The letter directs retention of USD 82,824.89 in USD and credit of the balance USD 240,394.23 to FIC's account. The bank is then directed to TT remit USD 238,374.10 to Ulabo's account with PNGBC Alotau.

7B. BFE TO EAGON

On 2.1.87 BSP receives FIC's letter of that date with:-

- (a) draft for USD 547,619.13
- (b) invoice
- (c) bill of lading

Copies of the invoices and bill of lading cannot be located. It can be inferred from FIC's records that the part shipment was claimed as 6,084.657 m³ at USD 90,00 per m³ aggregating USD 547,619.13.

The letter directs retention of USD 124,735.46 in USD and credit of the balance USD 422,883.67 to FIC's account.

D. ACCOUNTING (KINA)

7A ULABO to EAGON

BSP accounted to FIC by it's credit advice of 23.12.86 as follows:-

- (a) USD 82,824.89 was retained in USD
- (b) The residual USD 240,394.23 was converted to K230,837.55
- (c) Bank etc. charges of K2,061.55 were deducted
- (d) The balance K228,775.00 was credited to FIC's account.

FIC accounted to Ulabo by it's letter of 29.12.86 as follows:

- i) Gross value and contract price 4,040,239 m³ x USD 59.00 = USD 238,374.10 which converts to K228,897.73
- ii) Deduct bank etc charges of K2,062.55.
- iii) Balance due to Ulabo K226,835.18.

The difference between the Ulabo Contract price and converted sum is USD 2,020.13 (USD240,394.23 - USD238,374.10) or K1,939.82 (K230,837.55 - K228,897.73).

This was the net balance which remained in FIC's account. In USD Terms, this is USD 0.50 per m³ over the shipment volume and the kina differential equals the amount shown in kina and due to FIC in pencil notes on FIC's file.

The balance due to Ulabo is said to have been telegraphic transferred. There is no cheque entry in FIC's cashbook but an adjustment at the end of December 1986 as follows:-

"DEC 31 CR NOTES, LOG SALES B/S 226,835.18 ULABO TIMBER"

This is clearly an entry made from Bank Pass Sheets at the end of the month to reflect a payment made on about 29 December, 1986. Though the time differential is short it shows a real deficiency in FIC's bookkeeping system where such a large debit entry, known to have been directed is not entered in the cash book until the end of the month when it is entered from the bank pass-sheet.

The fact of payment requires vouching from BSP's records.

434

7B BFE TO EAGON

BSP accounted to FIC by it's credit advice of 2.1.87 as follows:-

- (a) USD 124,735.46 was retained in USD.
- (b) The residual USD 422,883.67 was converted to K402,938.22.
- (c) Bank etc charges of K3,433.70 were deducted.
- (d) The balance K399,504.32 was credited to FIC's account.

FIC accounted to BFE (and North West Bougainville Development Corporation) by separate letters of 6.1.87 as follows:-

- (i) Gross value and contract price 6,084.657 m3 x USD 69.00 = USD 419,841.33 which converts to K400,039.38.
- (ii) Deduct bank etc charges K3,403.70 (FIC gets the figures wrong and does not pass on courier charges of K30.00)

iii) Balance due to:

BFE	K303,475.88
NWDDC K15,87/m ³	<u>K 93,159.80</u>
	K396,635.68

The difference between the contract price and the converted sum is USD 3,042.34 (USD 422,883.67-419,841.33) or K2,898.84 (K402,938.22 - K400,039.38) In USD terms this is USD 0.50 per m3 over the shipment volume.

The Kina terms after bank charges FIC was credited by BSP with K399,504.22 but paid out (excluding bank charges) K396,635.68 - ie: a difference of K2,868.54. The Kina difference in FIC's initial receipt (K2,898.84) and end receipt (K2,868.54) results from FIC failing to pass on the Bank courier charges of K30.00.

The balance due to BFE and NWBDC aggregating K396,635.68 are said to have been telegraphically transferred on 6.1.87. FIC's cashbook shows Cheque No: 036624 for K396.68 drawn on 5.1.87 pursuant to payment Voucher 4598. The Voucher is supported by a direction to BSP to make the TT's to BFE and NWBDC as specified above.

E. ACCOUNTING USD

As indicated above the USD retentions were:-

7A (ULABO USD 82,824.89
7B (BFE) USD 124,735.46

These residues are dealt with separately and must be analysed separately.

7A ULABO USD 82,824.99

On 29 December 1986, FIC writes three separate letters to BSP directing payments as follows:-

CHOYANG SHIPPING CO LTD	USD 73,186.79 (To Korea)
NAMJEON INT. LTD	USD 934.30 (To Korea)
STRAITS ENGINEERS CONTRACTING PTY LTD.	USD 4,040.24 (Singapore)

USD 78,161.33

Copies of the TT instructions are on BSP's files. It can be seen from Park's telex of 22.12.86 (IN TLX 8134) and FIC's telex of 24.12.86 (OUT TLX 5687) how the amounts paid to Choyang Shipping and Namjeon are calculated. The despatch of USD 623.33 was real. Mr Bob Tate of Ulabo confirms Ulabo claimed despatch of USD 623.33 by letter to FIC dated 17.12.86 in the exact detail set out in FIC's telex to Park of 29.12.86 (OUT TLX 5687). Mr Tate says Ulabo has never been paid this despatch claim.

The payment to Straits Singapore is peculiar. From FIC's files that company had nothing to do with this shipment. It represents a round USD 1.00 per m3 and the payment required explanation particularly when these USD fund payments are not brought to account in FIC's books of account. Subsequent investigation established this sum of USD 4040.24 was misappropriated by Cowan and transferred through Straits Singapore. (See Appendix 47).

These payments reduce the USD balance to USD 4,663.56. One would surmise at this stage from the history, that this consists in round terms of the despatch funds of USD 623.33 and Parks USD1.00 per m3 of USD 4,040.24 which would aggregate USD 4,663.57.

Next, on 27 February 1987 FIC directs BSP that USD retention funds "be drawn to pay off Mr Francis Sias outstanding loan" with BSP. The amount specified in respect of this part shipment is USD 2,431.66 (Item 8). The payment was apparently part of TT transfer of USD 21,366.00 made to BSP, Boroko on 27.2.87.

(See Working Table 4 Appendix 35.4)

This reduces the USD retention to USD 2,231.90. That sum of residue is drawn to FIC's attention by BSP's letter of 20 March, 1987, directed (FIC gets the total wrong) to be credited to FIC's account by FIC's letter of 6 April 1987 and shown in BSP's credit note of 6 April 1987 as part of USD 11,863.02 (K10,711.53) deposited on that date. The Kina equivalent is K2,015.26

(See Working Table 5 Appendix 35.5)

ZB_BFE_USD_124,735.46

On 15 January, 1987, FIC writes two separate letters to BSP directing payments as follows:-

CHOYANG SHIPPING CO LTD	USD 116,158.25 (TO KOREA)
NAMJEON INT. LTD	USD <u>1,470.35</u> (TO KOREA)
	USD 177,628.60

This is an odd figure and it's calculation stems from Park's telex of 8.1.87 (IN TLX 8264) which says freight was USD 19.00/m3.

The calculation is made based on freight of USD 19.00/m3 as follows:

PART SHIP	GROSS FREIGHT	NETT FREIGHT	BROKERAGE
7A	76,764.54	75,804.98	959.56
7B	<u>115,608.48</u>	<u>114,163.37</u>	<u>1,445.11</u>
	USD <u>192,373.02</u>	USD <u>189,968.35</u>	USD <u>2,404.67</u>
Less paid	USD 14121.00	73,186.79	934.30
on 7A	USD 118,251.93	116,781.56	420.37
Less Despatch			
Claim	<u>623.33</u>	<u>623.33</u>	
	USD 117,628.60	116,158.23	
Less			
Despatch			
Claim	<u>623.33</u>	<u>623.33</u>	
	USD <u>117,628.60</u>	USD <u>116,158.23</u>	

(The figures check item by item and in total save that 2 cents is deducted from nett freight and added to brokerage.)

On 22.1.87, FIC writes to BSP requesting transfer to USD 3,000.00 to it's account and advice of exchange rate. Notes on the BSP file suggests the transfer was made 23.1.87 of K2,828.05 (at 1,0608). FIC's cash book shows that on 23.01.87 Cheque No: 636679 "Cash Mr.Kwon" was drawn for K2,828.05 pursuant to payment voucher 4648. The payment voucher shows the Cheque was for cash. Patrick Tay in evidence said be considered there was no valid over negotiation claim but Cowan instructed him to make the payments. There is no clear (advance) authority from Eagon to pay moneys to Mr.Kwon.

This payment reduces the USD retention to USD 4,106.86.

Again on 22.1.86, FIC writes to BSP asking for TT remittance of USD 2,159.64 to Eagon. The amount is remitted and TT telexes are on BSP's files. This is said to be the balance of alleged overnegotiated amount. This reduces the USD retention to USD 1,947.22.

This is credited to FIC's account on 6.2.87 as part of the USD 11,863.02 (K10,711.53) credit on that day resulting from the letters above referred to on 20 March and 6 April 1987.

(See Working Table 5 Appendix 35.5)

The sum of USD 1,947.22 converts to K1,758.21.

F. FIC RECEIPTS

The plan of action on these two part shipments as shown on FIC records appears from the undated pencil note and FIC's telex of 3.1.86 (OUT TLX 5336) referred to under A above.

FIC was asked by Groomes to make an offer with no deductions (see IN TLX 7653 of 30.10.86).

FIC offered Groomes USD 69.00 for BFE 6,000 m³ (USD 414,000.00) and USD 59.00 for Ulabo 4,000 m³ (USD 236,000.00) for an average of USD 65.00 (USD 650,000.00). Pencil notes on the telex show these are nett prices with the prices to buyer marked up USD 1.50 each to USD 60.50, USD 70.50 and USD 66.50 respectively (aggregating USD 665.000) with a further addition to the average USD 66.50 of USD 19.50 (obviously freight) for an average USD 86.00

CNF. When one relates this back to the pencil note it is reasonably clear Parks original offer was USD 66.00 average and from this an offer to Groomes was worked out at USD 68.50 (BFE) USD 58.50 Ulabo for an average USD 64.50. This built in a margin of USD 1.50 "*this covers Parks service charge and ours*". Park then apparently raised each element of his offer by USD 0.50 and this lead to the the offer to Groomes (OUT TLX 5336 of 3.11.86) and notes thereon. That this is so and a margin of USD 1.50 was built in is clear from Patrick Tays much later telex to Park of 8.1.87 (OUT TLX 5754), this confirms the freight rate and FOB prices USD 1.50 greater than offered by FIC to Groomes.

On this premise then FIC proposed to obtain an FOB total of USD 665,000.00 (10,000.00 m3 at USD 66.50 average) and to pay the producers USD 650,000.00 (10,000 m3 at USD 65.00) average.

It would receive USD 15,000 (10,000 m3 at USD1.50) which would cover it's and Park's charge. As events turned out it would also make another USD5,000.00 because the freight turned out to be USD 0.50/m3 less than estimated. (See comments)

In terms of actual receipts FIC received the following:-

7A (ULABO)

a) As shown under D above

a receipt of USD	USD2,020.13	(K1,939.82)
(FIC's USD0.50 per m ³		

b) As shown under E above
the final USD retention

amount of	<u>USD2,231.90</u>	<u>(K2,015.26)</u>
...	USD4,252.03	(K3,955.08)

Freight was paid from the USD account less the despatch claim at a rate of USD 18.50 m3. A sum of USD 4,040.24 was transferred in USD to Straits Singapore. Park was paid (by credit to Francis Sia's account) only USD 2,431.66.

7B (BFE)

a. as shown under D above

<u>receipt of</u>	<u>USD 3042.34</u>	<u>(K2898.84)</u>
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b. as shown under E above

<u>USD retention of</u>	<u>USD 1947.22</u>	<u>(K1758.21)</u>
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<u>USD 4989.56</u>	<u>(K4657.05)</u>
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It seems clear the first sum was FIC's USD 0.50 per m3 on the volume of shipment. The second sum is dealt with under comments Freight at USD 19.00/m3 and the balance 500/m3 on part shipment 7A were paid from the USD account less the despatch claim on 7A. A sum of USD 5,159.64 was paid to the buyer Eagon (USD 3.000 to Mr Kwon and the residue TT'd).

FIC's aggregate receipts on part shipments 7A and 7B were thus USD 9,241.59 (K8,612.13). Extra bank charges of K10,00 were deducted on part shipment 7B reducing the receipts to K4,647.05. Further the K30.00 error in accounting to BFE reduced the receipts to K4,617.05.

In aggregate FIC's on 7A receipts and 7B were reduced to K8,572.13.

G. COMMENTS

1. There are grounds for serious concerns regarding this shipment and the accounting for it by FIC. In terms of analysis it is easiest to treat the shipment as a whole, analyse it and narrow the areas of concern.

- a. There is no dispute over the shipped quantities and CNF prices claimed (see C above).

SHIPMENT	VOLUME	CNF	UNIT PRICE	CLAIMS
7A	4040.239	USD	80.00	USD323,219.12
7B	6084.657	USD	90.00	USD547,619.13
	10124.896			USD870,838.25

- b. There is no dispute over the payment to producers (before deduction of bank etc charge (see D above).

SHIPMENT	VOLUME	FOB UNIT PRICE	GROSS PAYMENT
7A	4040.239	USD 59.00	USD 238,374.10
7B	6084.657	USD 69.00	USD 419,841.33
	10124.896		USD 658,215.43

- c. The difference between the aggregate CNF prices claimed and recieved and the aggregate payment to producers is USD 212,622.82 which is exactly USD 21.00 per m³ over the shipment volume. Thus one would expect it is the USD 1.50/m³ margin plus the estimated freight of USD 19.50 per m³.
- d. Freight is in fact paid at USD 19.00 per m³ (see E Above) which over the shipment of 10,124.896 m³ amounts to USD 192,373.02 but is reduced by Ulabo's despatch claim of USD 623,33 to USD 191,749.69 (See E Above). In nett terms FIC owes Ulabo USD USD 623,33 for the despatch claim and for the moment I disregard that. After payment of freight (disregarding despatch) the difference of USD 212,622.82 (unit rate USD 21.00 per m³) is reduced to USD 20,249.80 (Unit rate USD 2.00 per m³). This again one would expect it is the USD 1.50/m³ margin plus the USD 0.50/m³ profit on actual freight.
- e. How the margin of USD 1.50/m was to be split is not shown in the handwritten calculations but *"this covers Parks service charge and ours."* To this point all is consistent with FIC documents and Patrick Tays under standing as related to Park on 8.1.87 (OUT TLX 5154).
- f. Park's commission has traditionally been USD 1.00 per m³ and it seems safe to surmise the balance was Parks as to half USD 10,124.90 and FIC's as to half. Parks half is USD 1.00 per m³ FIC's half an aggregate of USD 1.00 per m³ (being USD 0.50 per m³ commission and USD0.50 per m³ profit on freight).
- g. It is worth nothing where these funds were located the position is this:-
 - i) In FIC's account' after paying Ulabo (see D a above 7A) USD 2,020.13.
 - ii) In FIC's account after paying BFE (and ignoring the K30.00 Error) USD 3,042.34 (see D above 7B).

These two amounts aggregating USD 5,062.47 converted from USD to kina are put in FIC's account, both are a rounded USD 0.50 per m3 over the volumes shipped and seem to represent FIC's commission.

- iii) In the USD dollar account after payment of Ulabo freight (USD 74,121.09) but before payment to Straits Singapore - USD (82,824.74 minus 74,121.09 =) 8,703.80. (see E above 7A).

In calculating freight the despatch claim of USD 623.33 was deducted and that must be deducted from this amount of USD 8,703.80 because FIC owes that to Ulabo. The resultant amount is USD 8,080.47.

- iv) In the US dollar account after payment of freight for Ulabo (balance) and BFE USD 7,106.86 (see E above 7B).

These sums are thus:-

(i)	USD	2,020.13
(ii)	USD	3,042.34
(iii)	USD	8,080.47
(iv)	USD	<u>7,106.86</u>
	USD	20,249.80

This fits exactly with the above analysis.

- h. As a next step it is worth listing where these funds aggregating USD 20,249.80 were disbursed and the position is this, using the same numbers as in (g) above.

(i)	USD 2,020.13	- appropriated to FIC
(ii)	USD 3,042.34	- appropriated to FIC (and K30 error absorbed).
(iii)	USD 4,040.34	- TT to Straits Singapore.
	USD 2,431.66	- To pay off Francis Sias Loan.
	<u>USD 2,231.90</u>	appropriated FIC
	USD 8,703.80	
	<u>USD 623.33</u>	deducted for Ulabo despatch claim.
	USD 8,080.47	

The despatch deduction reduces FIC's appropriation to USD 1,608.57.

(iv)	USD 3,000.00	Paid in cash to Mr Kwon.
	USD 2,159.64	TT to Eagon
	<u>USD 1,947.22</u>	appropriated to FIC.
	<u>USD 7,106.86</u>	

i Clearly from (h) above amounts appropriated to FIC were

(i)	USD 2,020.13
(ii)	USD 3,042.34
(iii)	USD 1,608.57
(iv)	<u>USD 1,947.22</u>

USD 8,618.26

This falls short of the projected receipt of USD10,124.90 by USD 1,506.64.

None of the other payments appear on the face of it to explain the difference.

j. Clearly from (h) above the only amount said to be appropriated for Parks benefit is:-

(iii) USD 2,431.66 to pay off Francis Sia's loan.

This fall short of the projected receipt of USD 10,124.90 by USD 7,693.24 and cannot be explained.

k. Other payments requiring explanation are:

(iii)	USD 4,050.24	TT to Straits Singapore
(iv)	USD 3,000.00	Paid in cash to Mr Kwon
(vi)	<u>USD 2,159.64</u>	TT to Eagon

USD 9,199.88

There is no basis for the TT to Straits Singapore. This money was misappropriated by Cowan. (See Appendix 47).

As Mr Tay says on 8.1.87 (OUT TLX 5154) there was no over negotiation of L/C claims yet Cowan purports to pay an over negotiation claim of USD 5,159.64.

1. In searching for an explanation for the overnegotiation claim which Patick Tay correctly dismissed but Cowan met attention focusses on Park's telex to Eagon faxed for Eagon Inspector Mr.Kwon on 16.12.86 as quoted in the history (under A above) and the pencil calculations written on the copy. Those suggest the FOB prices were supposed to be USD 71.00 per m3 for BFE and USD 60.00 per m3 for Ulabo with the pencil note indicating freight at USD 19.50 for respective CNF prices of USD 90.50 and USD 79.50.

On these figures the details would be:-

PART	VOLUME	CNF UNIT	CNF TOTAL	FOB UNIT	FOB UNIT
7A	4,040.239	79.50	321,199.00	60	242.414.34
7B	6,084.657	90.50	550,661.46	71	432.010.65
	10,124.896		USD871,860.46		USD674,424.99

The difference between the CNF and FOB totals amounting to USD 197,435.47 represents freight at the projected rate of USD 19.50.

When one seeks to ascertain the basis of Eagon's overnegotiation claim the only ascertainable details are:-

- (i) The claim seems to be FOB based - IN TLX 8264 of 8.1.87 uses the heading "FOB NEGO". The telex goes on to say the CNF prices were USD 80 (Ulabo and USD 99 (BFE). The last figure is an error, the BFE CNF was USD 90.00.
- (ii) The amount claimed was USD 5,159.64 (telex to Park 15.1.87) and that was said to be paid (OUT TLX 5854 of 23.1.87).

What then was Eagon asserting in claiming over negotiation? Clearly it was saying that in negotiating claims under the letter of credit FIC obtained more than it should have. FIC files and Patrick Tays telex indicate clearly what the figures were and that they were correct. The claim is for "overnegotiation" not for volume shortage. The only logical explanation is that Eagon and a combination of Park and Cowan were working on one price structure and FIC (other than Cowan) were working on a different price structure.

If one uses the calculations set out above.

- (a) Eagon expected to pay a FOB price of USD 674,424.99 and a CNF price of USD 871,860.46 if freight was USD 19.50.
- (b) If Eagon allowed profit on the actual freight differential the CNF price would remain USD871.860.46 with freight at USD 19.00 of USD 192,373.02 for an FOB price of USD 679,487.44.
- (c) If Eagon did not allow profit on the actual freight differential the FOB price would remain USD 674,424.99 with freight at USD 19.00 of USD 192,373.02 giving a CNF price of USD 866,798.01.

If on the other hand one looks at the FIC calculations and applies the same possibilities.

- (a) Eagon paid a CNF price of USD 870,838.25 with expected freight of USD 19.50 amounting to USD 197,435.47 resulting in an expected FOB price of USD 673,402.78.
- (b) If Eagon allowed profit on the actual freight differential, the CNF price would remain USD 870,838.25 with freight at USD 19.00 of USD 192,373.02 for an FOB price of USD 678,465.23.
- (c) If Eagon did not allow profit on the actual freight differential the FOB price would remain USD 673,402.78 with freight at USD 19.00 of USD 192,373.02 giving a CNF price of USD 865,577.80.

The above appear to be the logical possibilities. When one compares like with like ie: CNF with CNF or FOB with FOB and even when one adds or subtracts differentials one cannot achieve the answer USD 5,159.64. The same applies even if the despatch claim of USD 623,33 is added or subtracted. The conclusion is that on the available data one cannot see how the over negotiation claim is calculated.

- m. One must also seek to explain the TT to Straits Singapore of USD 4,040.24 on about 29.12.86. As indicated above it does not seem from FIC's files that Straits Singapore was in any way involved in this transaction. It was offered by Groomes, BFE and Ulabo to the Department of Forests who referred the matter to FIC. FIC arranged the sale to Eagon through Park and it seem Park or Namjeon (which was paid 1.25% brokerage) arranged the ship.

Clearly from FIC's files and what Patrick Tay said in his telex of 8.01.87 (OUT TLX 5754) FIC had assumed a freight rate of USD 19.50.

As Tay also says the first intimation that freight was USD 18.50 was Park's telex, meaning Parks telex of 22.12.86 (IN TLX 8134).

The context in which Park's telex was sent was this:-

- a) The vessel had loaded at Ulabo from 13 to 17.12.86 the time sheets show this, she then sailed to Kieta to load BFE logs.

- b) Park then sent his telex about freight for Ulabo.
- c) After 22.12.86 there was debate about how much would be loaded at Dios and some Mabiri loading was debated.
- d) Time sheets show the vessel was still loading BFE logs on at least 31.12.87
- e) The first intimation of a different freight rate was Park's telex of 7.1.87 (IN TLX 8264). In this context it is quite clear that between 22.12.87 and 7.1.87 FIC would have reasonably believed, and Park had lead them to believe, the freight rate was USD 18.50. This was USD 1.00 per m less than FIC had anticipated and thus *FIC clearly would have believed it made an undisclosed profit on the Ulabo Part shipment of 4,040.239 m³ x USD 1.00 or USD 4,040.24.* This is the exact amount FIC (Cowan signed the letter) directed BSP it's letter of 29.12.86 to TT to Straits Singapore and which BSP so transferred on 30.12.86.

In this light the pencil notes on the blue carbon copy of in telex 8134 of 22.12.86 are *highly relevant.*

These notes read:-

USD	82,824.89
Less Freight	74,744.42
S.V	<u>4,040.23</u>
Remaining	4,040.24

Someone has done a calculation!

The amount of USD retention on part shipment 7A was "USD 82,824.89", this was directed by FIC's letter of about 19.12.86 to BSP. (see C above). The amount converted to kina produced exactly enough funds to pay the producer pay the bank charges and leave FIC USD 2,020.13 which was it's 50C/m³ over the shipment volume. The figure of "74,744.42" is the actual freight advised by Park in his telex on which the note appears. The figures "S.V 4,040.23" clearly, and the same expression is used in FIC's documents, refers to Parks commissions.

The clear result is that the USD retention was to cover freight and Parks USD 1.00 per m³. When the actual freight and Parks entitlements are deducted one sees that there is a remainder of USD 4,040.24 the exact amount TT'd to Straits Singapore.

As analysed (under E) above freight was paid less despatch and the money was sent to Straits Singapore. The then USD residue of USD 4,663.56 clearly represented Parks Commission of USD 4,040.24 and the despatch claim of USD 623.33.

A as a result of the "over negotiated" claim and freight rate change readjustments were made and in the result only USD 2,431.66 went to pay Sia's loan and FIC obtained the balance USD 2,231.90 (including the USD 623.33 despatch which it still owes to Ulabo).

2. When this shipment is examined in light of what occurred on other shipments it is obvious that when part shipment 7A was made FIC appeared to have made a windfall profit of USD1.00 per m³ on Freight amounting to USD4040.24 because Park had given erroneous advice about the freight rate. The money would quite clearly belong to FIC and equally as clearly it was misappropriated by Michael Cowan by telegraphic transfer to Straits Singapore.

When the true freight rate became known those funds had already been misappropriated and were no longer available so the balance freight on part shipment 7A had to be made up out of available funds.

3. It also looks as though there was some sort of "fiddle" over prices.

Either

- (a) Cowan and Park had a different price structure agreed with Eagon to that understood (consistent with FIC's records) by Patrick Tay, in which case the "overnegotiation claim" maybe legitimate.

Or

- (b) the price structure understood by Tay was infact correct, in which case the "overnegotiation Claim" maybe fraudulent.

It is just not possible to tell what the truth is from the records and in the absence of Cowan (who fled in the face of this Inquiry). Tay was unable to give any explanation.

Suspicion is heightened by the fact it is now known Cowan was a thief and that part of the "overnegotiated claim" was said to be paid in cash, K2,828.05 cash that must have come very close to Cowan's "sticky fingers". What occurred should be explained if possible because it may affect FIC's finances in that:-

- i) it may have further claim against Cowan and/or Park
 - ii) it may have rights against Eagon.
 - iii) it may be at risk of a claim by S.J. Park for the balance of his USD1.00 per m² commission.
4. It is quite clear that on part shipment 7A Ulabo claimed despatch of USD623.33. It is also clear that FIC deducted from the freight payment a sum of USD623.33 for despatch. Ulabo is entitled to the moneys so deducted. Provision should be made for the Ulabo entitlement.
 5. Severe deficiencies in FIC's accounting system are pointed up in relation to part shipment 7A. The sale proceeds were credited to FIC's account but the payment of K226,835.18 to the producer was made by letter directing telegraphic transfer and not by cheque. A substantial payment was thus not concurrently entered in FIC's cashbook but entered only at the end of the month from Bank pass sheets. In this case the time differential (unlike in another case) was only short but that does not alter the fact that this practice should never been followed.
 6. FIC was established on premises that it would deal direct with destination countries and not permit third country letters of credit. On this shipment a Korean Letter of Credit was transferred through a related company in the United States.

This (with shipments 2F, 2G, 3, 12A, 12B and 14) is an instance of FIC marketing under third country L/C arrangements avoidance of which was one of the bases for it's involvement in marketing. Though there may be reasons for such a structure none are given and it is a classical structure which allows the prospect of transfer pricing.
 7. This shipment (and shipments 5 and 8) illustrates how in the early states of FIC marketing State Purchase Option offers were made to the Department of Forests and referred to FIC. It shows how FIC was able to work with and use the "muscle" of the

Department to ensure that, where a producer refused FIC's purchase offer, his conduct was closely watched by the Department to ensure that he sold for a higher price to his buyer than the price offered by FIC, which he had refused.

8. In the early negotiations of this sale problems arose out of Cowan's inability (real or pretended) to understand the clear terms of Groome's original offer (IN TLX 7273 of 20.10.86). Cowan's stupidity or ignorance apparent in the telex exchanges with Groome's on 30 to 31 October is almost incredible. On is reminded of Cowan's own words to Pars Ram's ship broker on FIC SHIPMENT 2, "*We believe you are mad or sick..... Do you understand English?*".
9. This shipment is the first in order where moneys were "*drawn off*" to pay off Francis Sia's loan account with B.S.P Boroko.

The fact that Cowan, Maraleu and the FIC were involved in this affair was quite improper. (See Working Table 4 Appendix 35.4)

119

APPENDIX 41

SHIPMENT 8

VESSEL JUPITER ISLAND
JANUARY, 1987A. HISTORY

This shipment begins out of the Forestry Department's requirement for producers to make State Purchase Option offers.

14.11.86 (TLX) Open Bay Timber Co.(OBT) offers 6,000m3 at USD58.00 (MEP USD 50.37).

19.11.86 (IN TLX 7813) DOF tells OBT logs sold USD 65.00, 3% commission, contact FIC.

19.11.86 (OUT TLX 5452) FIC tells DOF it offers USD65.00.

Though no telexes or faxes exist on FIC's files (to prove so) it is clear FIC contacted Park who offered a gross FOB of USD66.00 with freight at USD20.00 for a CNF of USD86.00.

20.11.86 (OUT TLX 5458) FIC sends a formatted offer to Park (ATT. TAESUNG) of 6000m3 at USD516,000 CNF.

21.11.86 (IN TLX 7838) Park tells FIC MARIA PILLAR fixed at USD19.50

21.11.86 (OUT FAX 312) FIC sends contract to OBT for 600 m3 at USD 65.00 FOB with FIC commission of 3% of FOB.

21.11.86 (OUT TLX 5468) FIC confirms MARIA PILLAR

24.11.86 (IN FAX 355) OBT sends signed contract back (There is added a clause whereby OBT gets copy fixture note)

26.11.86 (OUT FX 320) FIC sends copy of contract signed by it to OBT

4.12.86 (IN TLX 7956) Park asks FIC to change its offer of 20.11.86 REF 5458 from USD 516,000.00 CNF to USD 396,000.00 FOB. He says L/C will be FOB and vessel changed from MARIA PILLAR to JUPITER ISLAND.

8.12.86 (OUT TLX 5540) FIC cables Park (att Taesung) amending its offer as suggested.

9.12.86 (IN TLX 7984) OBT ask for copy L/C + copy fixture note.

There then follows the exchange between FIC, OBT, Kowa Lumber and Nissho Iwai about the change of vessel. Cowan acts with some vigour perhaps activated by the fact FIC lost an undisclosed 50c /m3 on the freight. As the vessel was changed someone may have made even more and Cowan clearly thinks the buyer got the benefit.

10.12.86 (IN TLX 8004) Park advises L/C established yesterday and gives details.

10.12.86 (IN TLX 8014) Taesung Lumber advise FIC of L/C details.

11.12.86 (IN TLX 8008) OBT explains problems with vessel change and asks earlier loading or protection against demurrage.

11.12.86 (IN FAX 425) BSP sends FIC copy of L/C M1621612 NU 00040 for USD 396,000 covering 6,000 m3 FOB.

FIC refers OBT's loading request to Nissho Iwai - it is resolved by deeming laytime to commence 29/12/86. OBT accepts as long as no claim for deterioration due to delay. This is agreed 16.12.86 (IN TLX 8082) 19.12.86 (IN TLX 8114) OBT press for copy fixture note

24.12.86 (OUT FAX 451) Under OBT pressure FIC assigns USD 378,300 of L/C to OBT.

3.1.86 OBT sends its Invoice No M - 269 to FIC as follows:-

1632 pieces 5582.684m3 at USD63.05= USD 351.988.23

B. LETTER OF CREDIT

The L/C M162612 NU 00040 is from the CHO-HEUNG BANK LTD, Seoul, Korea - applicant TAESUNG LUMBER IND. CO. LTD of Seoul Korea. It is for USD 396,000.00 covering 6000m3 FOB. It is a direct L/C

C. NEGOTIATION

On 8.1.87 B.S.P receives FIC's letter of that date with

- (a) draft for USD 368,457.14
- (b) Invoice - no copy can be found in FIC but detail must have been 1632 pieces 5,582.684 m3 at USD 66.00 FOB = USD 368,457.14
- (c) Bill of Lading HR - 615 for 1632 pieces = 5,582.684

The letter directs retention of USD 5,582.68 in USD; payment to Open Bay of USD 351,988.23 less bank charges and credit of the equivalent of USD 10,886.23 to FIC's account.

D. ACCOUNTING

On 13.1.87 BSP accounts to FIC

- (a) USD 5582.68 is retained in USD.
- (b) the balance USD 362,874.46 is converted to K344,904.91
- (c) bank charges of K2392.55 are deducted.
- (d) the residue is credited

OBT K323.165.22
FIC K 10,347.14
K342,512.36

The conversion rate used was 1.0521

The position is reasonably clear:-

- (i) the price was USD 65.00/m3 as between OBT and FIC
- (ii) FIC's commission was 3% or USD 1.95/m3 at a price of USD 65.00.
- (iii) On a shipment of 5582.684 m3 FIC's commission was USD 10,886.23 (the amount FIC directed be paid to it) which at conversion rate of 1.0521 amounts to K10,347.14.
- (iv) OBT invoiced for a nett USD 351,988.23 which at a conversion rate of 1.0521 amounts to K334,557.77. When one deducts from this bank etc charges of K2392-55 the result is K332,165.22 which is the amount credited by BSP to OBT

E. ACCOUNTING (USD)

The amount retained in USD was USD 5582.68. This is a rounded USD1.00 per m3 over the shipment volume. On 26.2.87 FIC directs BSP to TT reimburse USD 5582.68 to SJ Park at Seoul, Korea.

A copy of the TT instruction on 3.2.87 is on BSP's file. This accounts for the USD retention.

F. FIC RECEIPTS

FIC received USD10,886.23 (K10,347.14) which was 3% of the FOB price agreed by the producer. The bank charges on the full claim were borne by the producer. A cable charge for the TT to Park of K10.00 was later paid by FIC reducing its receipts to K10,337.14

A direct expense would be Andrew Aopo's travel to Open Bay and accommodation and sustenance for the period he was there.

G. COMMENTS

1. The sale was originally on a CNF basis but altered to an FOB basis. Clearly FIC - on the original basis planned to make an undisclosed profit on freight at 50 c/m3 amounting over the shipment to USD3,000.00. This was most questionable. Park asked for the sale to be altered to an FOB basis and advised the vessel change. Cowan queried this and overreacted very badly. Clearly he had lost the secret profit of USD3,000.00 to FIC but more importantly had been caught.
2. Park's sales charge of USD1.00 per m3 is reasonable as it is clear he was the agent and found the buyer. It was paid at the correct rate to Park's bank account.
3. FIC did not disclose to the producer that its gross FOB price was USD1.00 per m3 greater than the disclosed price.

In the result the producer paid.

- (a) 3% of the disclosed price - USD10,886.23
(K10,347.14)
- (b) USD1.00 per m3 of which he was not aware
USD5,582.68.

Overall DBT paid USD2.95/m3 commission on a gross FOB price of USD 66.00 per m3 which amounts to a rate of 4.47%.

This is a very high rate

4. FIC's file for DBT -(File 07) contain two telexes (IN TLX 8524 of 9/2/87 and OUT FAX 628 of 13/2/87) which indicate the buyer complained of short shipment of 23 pieces with a volume of 78.683 m3. At the CNF price of USD86.00 this claim amounts to USD6766.74. It should be explained what happened with this claim as FIC has a contingent liability with presumed rights against DBT.

APPENDIX 42

SHIPMENTS 9,13,15 - Wawoi Guavi to Ataka Lumber Co.

(See Schedules 1-3 below)

APPENDIX 42.1

SHIPMENTS 9,13,15 - WAWOI GUAVI TO ATAKA LUMBER
SHIPMENT 9 - TREASURER
JANUARY, 1987.

A. HISTORY

In December 1986 Cowan and Tay planned to visit to Korea and Japan.

The Korean schedule arranged by Park (see IN TLX 7896) included dining with:-

- Chungkoo
- Eagon
- Taisung
- Samchang

It seems Cowan did not travel but Patrick Tay did and that on 4.12.86 he met in Tokyo with ATAKA LUMBER.

- 08.12.86 (IN TLX 7977) Ataka seek Mersawa percentage and CNF price.
- 08.12.86 (OUT TLX 5550) FIC offers 6000m (including 35% Mersawa) at USD 108.00 CNF based on USD20.00 freight.
- 08.12.86 (IN TLX 7980) ATAKA asks who charters vessel, says their freight (2 port discharge) is USD22.00 and asks confirm FOB price of USD86.00
- 12.12.86 (OUT TLX 5603) FIC says cant firmly commit but USD88.00 FOB is workable even though recently (with similar mersawa) USD 90.00 was fixed .
- 12.12.86 (IN TLX 8049) Ataka refers to telephone conversation and confirms January Shipment (35% Mersawa) of 6000 to 6500m at USD89.00 FOB - two port discharge.
- 13.12.86 (OUT FAX 417) Cowan tells Tays he confirms placement at USD 90.00 per m³.
- 14.12.86 (WRITTEN CONTRACT) FIC draft contract to Ataka at USD89.00 per m³ FOB for 6300 m with two point discharge.
- 18.12.86 (IN TLX 8113) MV Ruby Star is proposed and accepted (IN TLX 8123 of 22.12.87).

- 22.12.86 (IN TLX 8125) Ataka advises L/C established USD 70.00 forabout 6,300m.
- 22.12.86 (IN TLX 8132) Ataka advise minor amendments to contract.
- 23.12.86 (IN TLX 8149) Ataka advise L/C GJ9517410 established for USD 570,000.00.
The L/C is in fact established as advised on 23.12.86.
- 24.12.86 (IN TLX 8154) Straits PNG confirms 6300m - 2 bills of lading - price USD 90.00
- 29.12.86 (OUT FAX 468) FIC confirm RUBY STAR - 2 bill's of lading - Price USD90.00/m FOB.
- 06.01.87 (IN TLX 8234) Ataka advise TREASURER substituted for RUBY STAR.
- 06.01.87 (OUT FAX 519) FIC confirm TREASURER but ask early arrival.
- 14 01.87 (OUT FAX 551) FIC advises STRAITS PNG document requirements.
- 14.01.86 (OUT TLX 5788) FIC asks ATAKA for copy fixture note for TREASURER.
- 14.01.87 (IN TLX 8333) ATAKA advises will fax or mail fixture note.
- 21.01.87 (IN FAX 543) ATAKA send copy of the Charter Party details being:-
- (a). Charter owners - Kee Yeh Maratime Co Taipei.
 - (b). Freight USD22.75/m³ for 6000m and USD20.00/m for excess over 6000 m³.
- 30.01.87 FIC advises Ataka shipped 6353m³ for FOB price of USD 565,408.63.

B. LETTER OF CREDIT

The letter L/C GJ9517410 is from Sumitomo Bank Ltd Tokyo applicant ATAKA LUMBER CO LTD of Tokyo, Japan It is for USD570,000 covering about 6,300m FOB. The notify party is to order of the opening bank. It is a direct L/C.

C. NEGOTIATION

On 30.1.87, BSP receives FIC's letter of that date with:-

- (a). draft for USD565,408.63
- (b). invoice FIC/WG/2-87 for 1369 pieces 6352.906 m³ at USD89.00 FOB = USD 565,408.63.
- (c). bills of lading

RC1/001/87 for 644 pieces	3033.732m
(Wakamatsu discharge).	
RC1/002/87 for <u>725</u> pieces.....	<u>3319.174m</u>
(Omaezaki discharge)	
1369	6352.906

The letter directs credit of the converted balance to FIC's account.

D. ACCOUNTING (KINA)

On 3.2.87 BSP gives an accounting to FIC. USD 565,408.63 is converted to K534,160.25 (at 1.0585). From K534,160.25 Bank and other charges of K1382.60 are deducted and the balance K532,777.65 credited to FIC's account. Wawoi Guavi makes a despatch claim (which FIC passes on to Ataka) claiming USD 3,958.34 and Ataka claims short shipment of 10 pieces and remeasured shortage of 303.556 m³.

Wawoi Guavi accept a shortage of 22.228m at USD 70.00 FOB amounting to USD1,555.96 but this relates to Dooyang Guide (Shipment 5)- documents in this file confuse the matter.

On 4.4.87 (OUT TLX 6173) FIC asks Ataka if it has settled the despatch claim on MV TREASURER.

On 6.4.87 (IN TLX 8903) Ataka says Treasure despatch money of USD3,527.78 will be remitted today.

Whether it was remitted remains to be seen and whether to FIC or Wawoi Guavi remains to be seen.

I am unable to find in FIC's files any accounting for this shipment in writing to Wawoi Guavi. All I have been able to locate through the cashbook and payment vouchers is cheque voucher No: 4668 under which cheque No: 036700 was raised to pay Bank of South Pacific (for the account of Wawoi Guavi) for K532,792.65).

This was an FOB sale where the full claim (USD 565,408.63) was converted to kina as K534,160.25.

The bank made an error of K15.00 when the bank charges of K1382.60 were originally shown as K1367.60

In fact the balance credited was K532,777.65 and not K532,792.65 as originally shown.

In the result FIC paid Wawoi Guavi K15.00 more than it in fact received.

E. ACCOUNTING (USD)

There was no USD retention on this shipment.

F. FIC RECEIPTS

FIC received no commission on this shipment.

The bank charges were borne by the producer (except to the extent of K15.00 due to the error). Wawoi Guavi in fact received K15.00 more from FIC than FIC received. No further direct costs are evident from the file.

G. COMMENTS

1. This is a simple FOB shipment with no retention.
2. The freight documents are of interest only for comparison purposes.
3. The FOB price negotiated was USD89.00 per m³ and that is what was paid in PNG. This is regular on the face of things but at three separate places:-

13.12.86 COWAN TO TOMS (OUT FAX 417)
 24.12.86 STRAITS PNG TLX TO FIC
 (IN TLX 8154)
 29.12.86 FIC TO STRAITS PNG (OUT FAX
 468)

The price is clearly said to be USD90.00 per m³. When one regards the previous history of payments to Straits Singapore on Shipments 6 and 7A there is real prospect that Ataka Lumber did pay USD90.00 per m of which USD 89.00 per m was remitted to PNG and the balance of which was paid offshore. This causes concern particularly as the L/C

established covers a price in excess of USD90.00 per m (USD 570,000 divided 6300 = USD 90.476).

4. The failure of FIC to charge and be paid commission on this shipment is highly unusual, and seems discriminatory. This must be explained as in direct kina terms FIC lost K15.00 in handling this FOB shipment as a direct loss.

APPENDIX 42.2SHIPMENT 13 SUN PETREL
FEBRUARY 1987

When Shipment 9 is being arranged the arrangements for Shipment 13 begin.

A. HISTORY

- 23.12.86 (IN TLX 8148) Ataka ask reserve 6000m (35% mersawa) for February.
- 29.12.86 (OUT FAX 461) Cowan advises 6500m reserved but must finalise price.
He says many things of interest:
- (a). WE ARE HANDLING THROUGH FIC 30,000/35,000 m³ MONTHLY.
 - (b). WE WISH TO DEAL WITH ONLY ONE COMPANY IN JAPAN, ARE YOU INTERESTED
 - (c). WE WILL VISIT JAPAN IN FEBRUARY AND WANT TO SET UP SALES/MARKETING ARRANGEMENTS BEFORE THAT.
 - (d). WE PLAN TO CHARTER ONE LOG VESSEL FOR FULL 1987 YEAR.
- 29.12.86 (IN TLX 8172) Ataka respond, offer USD110.00 CNF for FEBRUARY.
THEY WISH TO CO-OPERATE IN ESTABLISHING STEADY MARKET BUT CAPACITY IS 6,000 TO 9,000 m³ FROM UMUDA (WAWOI GUAVI TIMBER CO.) PER MONTH INCLUDING 35% MERSAWA.
- 29.12.86 (OUT TLX 5694) FIC confirm third week of February about 6500m (35% mersawa) at USD110.0 CNF one port discharge.
- 05.01.87 (IN TLX 8218) Ataka confirm USD110.00 but ask for two port discharge.
- 06.01.87 (OUT FAX 519) For 2 port discharge FIC say incur extra 50 cents ask for USD110.50/m.
- 06.01.87 (IN TLX 8246) Ataka confirms USD110.50 CNF for two port discharge.

- 07.01.87 (IN FAX -NOT NUMBERED) Marine Transport Service offers SUN PETREL for 6500m^a at USD 22.00 (loading port/2 discharge ports) but says the KANSAI STEAMSHIP CO will negotiate on freight level.
- 09.01.87 (OUT FAX 537) FIC to Marine Transport Services, confirm SUN PETREL at USD20.00.
- 12.01.87 (OUT TLX 5763) FIC tell Ataka defer to late February - SUN PETREL fixed.
- 12.01.87 (IN TLX 8295) Ataka accept SUN PETREL.
- 12.01.87 (OUT FAX 541) FIC tells Straits PNG SUN PETREL fixed and loading details.
- 14.01.87 (Written Contract) FIC draft contract to Ataka at USD110.50 CNF for 6300m - 35% mersawa. No pink satinwood.
- 07.02.87 (OUT TLX) FIC confirms to Ataka SUN PETREL unchanged ETA.
- 09.02.87 (IN FAX 600) Marine Transport Service send Charter Party and ask if they are to sign it. Main points are:-
- (a). KANSAI STEAMSHIP CO are charter owners
(Sumitomo Bank, Tokyo).
 - (b). FIC is charterer.
 - (c). Load is 6500 m with freight USD20.00 on one point loading and two point discharge - plus or minus 10%.
 - (d). 2.5% brokerage is payable to Marine Transport Services.
- 16.02.87 (IN FAX 623) Ataka advise loading order and that existing L/C (G/J 9517410) will be increased by USD700.000 to cover 6500m^a.
- 19.02.87 (IN TLX 8610) Ataka agree to increase quantity to 6500m but no more.
- 19.02.87 (OUT FAX 666) FIC sends Wawoi Guavi L/C amendment (16.02.87) increasing L/C by USD700.000 to cover 6500m.

This shipment has a problem which shows FIC's inexperience. The Charter Party is for 6500 m³ plus or minus 10% at owners option. Ataka only contracted for 6300m³ but increased to 6500m³ but no more. The owner insisted it could load 7150m³ (see IN TLX 8660 of 26.2.87) and was perfectly placed to claim deadfreight.

09.03.87 Wawoi Guavi Invoices FIC (INV NO WGTC 001/87) for SUN PETREL 1470 pieces 6,497.751 m³ at USD90.00 = USD 584,797.59.

10.03.87 (OUT TLX 6081) FIC advises Ataka shipped 1470 pieces 6497.751m³ for CNF amount of USD 718,001.48.

B. LETTER OF CREDIT

The same letter of credit as for Shipment 9 (L/C GJ9517410) is used. On 16.02.87, it was amended to increase the amount by USD700,000.00 covering about 6500m on a CNF basis.

C. NEGOTIATION

On 10.3.87, BSP receives FIC's letter of that date with:-

- (a). draft for USD 718,001.48
- (b). Invoice FIC/WG/2-87 (sic) for 1470 pieces 6497.751m³ at USD 110.50
CNF = USD718,001.48.
- (c). bills of lading.
RC1/001/87 for 692 pieces 3193.247m³
(Wakamatsu discharge)
RC1/002/87 for 778 pieces 3304.504m³
(Omaezaki discharge)
1470 6497.751m³

The letter directs retention of USD133,203.89 in USD to pay ocean freight, brokerage and agents commission and credit of the converted residue of USD584,797.59 to FIC's account.

D. ACCOUNTING (KINA)

On 10.3.87 BSP gives an accounting to FIC. USD133,203.89 is held in USD as requested. The residual USD584,797.59 is converted to K544,048.36 (at 1.0749). From K544,048.36 Bank and other charges of K1727.15 are deducted and the balance (K542,321.21) is credited to FIC's account. A note on the bank's accounting (in FIC's file) says the service charge of FIC is K3248.87 (ie: 50t/m³) and that there is a shortage to be remitted of K1447.54.

On 12.3.87 FIC accounts to Wawoi Guavi along these lines

- (a). gross contract price 6497.751m³ at USD90.00= USD584,797.59.
- (b). the gross price (at 1.0749) converts to K544,048.36.
- (c). division.

Bank etc charges	K1,727.15
FIC sales commission (50t/m)	K3,248.87
Shortage of 22.228m ³ at USD70.00/ m ³ = USD 1555.96	K1,447.54
Amount due ... Wawoi Guavi	<u>K537,624.80</u>
	<u>K544,048.36</u>

The letter says the shortage deduction is made in relation to a shortage on Dooyang Guide (Shipment 5). On 23.3.87, (IN TLX 8832) Fark asks that the DOOYANG GUIDE shortage claim funds be remitted to CENTRAL SHOKAI CO LTD to part offset a demurrage claim on that shipment.

It seems clear from the above letter and FIC's letter to BSP of 12 March 1986 that K537,624.80 was transferred to Wawoi Guavi's account on about 12 March, 1987.

This accounts for the kina conversion and means FIC obtained Commission of 50t/m provided FIC accounts to the buyer for the shortage claim on MV DOOYANG GUIDE of USD1555.96 (K1,447.54) which it had retained. Clearly, Wawoi Guavi bore the whole of the Bank etc Charges.

E. ACCOUNTING (USD)

The retention sum was USD 133,203.89.
In 13 March, 1987 FIC directs BSP by letter to pay by TT reimbursement USD 129,955.02 to Kansai Steamships Co Ltd C/- Sumitomo Bank Tokyo. The payment is to the Charter owner at the Bank shown in the charter party.

A copy of the TT remittance instruction is on BSP's file. On 13 March 1987 (OUT FAX 711) FIC advises the broker Marine Transport Services of this TT Remittance.

After this remittance there was a balance of USD 3248.87 in the USD account in respect of this shipment.

On 6.4.87 (OUT FAX 754) Tay advises TMS FIC will credit USD 3248.87 to Wawoi Guavi's account. He says this is 50c freight discount on conditions "we" give first option of refusal on future vessels. He says the freight was originally USD 20.50/m³ but reduced to USD 20.00 on confirmation of charter of the next few ships.

On 6.4.87, FIC writes to BSP requesting credit of USD 3248.87 to Wawoi Guavi's account with BSP.

The BSP credit note suggests however, the money was in fact credited to FIC's account on 6 April 1987 as K2933.52.

FIC has been unable to explain what occurred.

F. FIC RECEIPTS

FIC received commission at the rate of 50t per m³ on the shipment which amounted to K3,248.87. The bank charges were borne by the producer. FIC had to further bank charges:-

13.03.87	K 18.70	(USD 20.00)
16.03.87	K <u>20.00</u>	
	K 38.70	

This reduced FIC's receipts to K3,210.17.
No further direct costs are evident from the file.

Subject to accounting for the DOOYANG GUIDE shortage retention of K1447 54 (USD 1555.96) no other deductions were made for this shipment.

On 2.4.87 (IN FAX 737) Ataka make a calculated remeasurement claim of USD 27,099.68 for a volume shortage of 245.246 m³ Ataka pursue this on 6.4.87 (IN TLX 8903)

On 8.4.87 (OUT FAX 762) Cowan counter offers USD23,104.44 for a volume shortage of 209.090m³.

On 9.4.87 (IN TLX 8917) Ataka grudgingly accept USD 23,104.44.

On 9.4.87 (OUT TLX 6196) FIC tell ATAKA Wawoi Guavi will pay by TT.

On 9.4.87 (IN FAX 746) Ataka accept and advise where to pay. There is no evidence on file to show payment was made

On 8.4.87 (OUT FAX 764) FIC sent a dispatch claim of USD2,632.64 to Marine Transport Service.

On 9.4.87 (IN FAX 747) Marine Transport Services reacted angrily and asked the claim be dropped as the owner was generous in not pursuing a deadfreight claim. The files do not show how this aspect was resolved.

6. COMMENTS

1. Cowans general comments on the Japanese market aims of FIC (OUT FAX 461 of 29.12.86) bear explanation in terms of SMA policy.
2. As the shipment (as between FIC and Ataka) was on a CNF basis the freight aspect bears consideration.

The price originally fixed was USD 110.00 per m³ based on one port discharge. It increased to USD110.50 per m³ on 6.1.87 on the premises two port discharge would involve an extra 50t freight. Only on 7.1.87 did FIC have a negotiable freight price of USD 22.00 which by 9.1.87 was negotiated at USD20.00. The rate is based on two port discharge and the Charter party (In Fax 600 of 9.2.87) confirms this.

The freight paid USD 129.955.02 over a shipment of 6497.751m³ represents the Charter Party rate of exactly USD 20.00 per m³ Wawoi Guavi clearly contracted with FIC on an FOB basis at USD90.00 per m³ that is how they invoiced FIC on 9.3.87 and that is how FIC accounted to them on 12.3.87. All these arrangements are clearly documented and vouched.

In the result FIC by buying FOB and selling CNF made a profit of USD0.50 per m³ because it set it's CNF price on the premise freight would be USD0.50 per m³ more than it turned out to be. That profit amounted to USD 3248.87, the residual sum remaining in the USD account after payment of freight.

As can be seen under E above BSP was directed to credit that sum to Wawoi Guavi account on 6.4.87 but seems to have credited it as K2,933.52 to FIC's account. What happened to this money will have to be checked as Wawoi Guavi had no legal or moral claim to it and Tay's explanation to Tom's (Out Fax 754 of 6.4.87) does not withstand scrutiny. FIC has been unable to provide an explanation.

Wawoi Guavi contracted to sell FOB and got it's contracted price. If there was a mistake by which FIC profited and it wished to make an exgratia payment Ataka Timber should have been the recipient because it suffered as a consequence of the mistake. FIC's cash book to the time it's records were produced do not seem to show any payment of this sum by FIC to Wawoi Guavi.

If these money were paid to Wawoi Guavi, the payment is at best "exgratia" and at worst a misappropriation of FIC funds. FIC has no power to make "exgratia" payments.

3. Still on the freight question this shipment illustrates FIC's inexperience.

The legal effect of the charter party is spelt out by the broker - (IN TLX 8660 of 26.2.87). The owner was technically entitled to dead freight if the load was less than 7150 m³ (ie: 6500m plus (10%) 650m). The owner did not press his rights - dead-freight which would be:-

Contract Quantity	7150.000m
Less Loaded	<u>6497.751m</u>
Short Loaded	652.249m
Freight rate	<u>20</u>
	<u>USD13,044.98</u>

Against this background FIC passed on the Wawoi Guavi claim for despatch of USD 2,632.64 and drew the brokers rebuking response (In Fax 747 of 9.4.87) seeking confirmation the claim would be dropped.

The files produced do not show how this was resolved and it may be important because FIC only made two further shipments and may thus have a contingent liability for a deadfreight claim of USD13,000.00.

4. In it's kina accounting (D above) FIC retained a sum of K1,447.54 (USD 1555.96) from the payment to Wawoi Guavi on this shipment to meet a shortage claim on a Dooyang Guide shipment amounting for a volume shortage of 22.228m. This would be due to Sam Won Enterprise Co, (the buyer of Shipment 5) but Park (IN TLX 8823 of 23.3.87) directs payment (not Dooyang Line Co of Korea to whom freight was paid but) to Central Shokai Co Ltd of Tokyo Japan to offset buy-ers demurrage.

FIC payment vouchers show on 27.3.87 Parks telexed direction was followed and under payment voucher 4752, cheque No: 036787 - a sum of K1404.21 plus charges of K15.00 aggregating K1419.21 was paid to telegraphic transfer USD 1556.10 in accordance with Park's telex.

The vouching of this payment causes concern in that there is only Park's telex, there is no payment directions from the person entitled and the payee is not the entity to whom freight was paid.

FIC gained on the difference in conversion rates on this aspect because it retained K1,447.54 yet paid out a total K1419.21 making a realised exchange profit of K28.33.

5. On this shipment FIC deducted commission at a rate of only 50t/m³ amounting to K3,248.87. This is a preferential and discriminatory rate. FIC's commission was reduced by additional bank charges of K38.70 to K3,210.17. It made the above exchange profit of K28.33 boosting it's total receipt to K3238.50. It may in addition and depending on what happened (see comment 4 above) have made a further profit on freight differential of K2933.52 (USD 3248.87) - this would be an "accidental" profit and if made would boost FIC's total receipts on this shipment to K6,172.02.

6. Resolution of payment of the claim on remeasurement, settle in the sum of USD 23,104.44 should be checked. There were two contracts, one between Ataka Lumber and FIC and the other between FIC and Wawoi Guavi. If Wawoi Guavi paid Ataka timber direct that resolves claims under both contracts. If it did not FIC would have rights against Wawoi Guavi but would also have a contingent liability to Ataka Lumber the sum of USD.23,104.44.

APPENDIX 42.3SHIPMENT 15**SEA DRAGON
MARCH 1987****A. HISTORY**

When shipment 9 is virtually fixed and shipment 13 is being negotiated FIC raises the end of February shipment.

- 6.1.87 (OUT FAX 519) FIC asks acceptance of end February shipment and price idea.
- 6.1.87 (IN TLX 8246) Ataka says will accept and indicate price by 5.2.87
- 12.1.87 (OUT TLX 5763) FIC tell Ataka have to defer to March - production problems.
- 12.1.87 (IN TLX 8295) ATAKA accept deferral and ask when to submit price indication
- 2.2.87 (IN TLX 8459) Ataka ask when can arrange next shipment - they can accept 6000 - 6300 m³ (35% mersawa) around mid March.
- 7.2.87 (IN TLX 5913) FIC tell Ataka Wawoi Gavi offers 6300m³ (35% mersawa) mid March - price idea USD 89.00/m³.
- 9.2.87 (IN TLX 8520) Ataka say they will accept and indicate price in early March.
- 16.2.87 (IN FAX 623) Ataka ask if FOB or CNF - price indication is USD78-79 because market for white species is poor.
- 25.2.87 (OUT FAX 665) FIC says can fix vessel for 6000 m³ only at USD21.50 to give CNF price of USD 101.50 and asks Ataka's confirmation.
- 26.2.87 (IN TLX 8654) Ataka tells FIC they have fixed a vessel for 6400m³.
- 26.2.87 (IN TLX 8654) Ataka ask confirmation of SEA DRAGON for 6400m³ and give loading plan. A note says maximum 5% white species and "FOB USD80/m³".
- 2.3.87 (IN TLX 8684) Ataka ask FIC to confirm SEA DRAGON today

- 4.3.87 (OUT TLX 6054) FIC tell Ataka USD80.00 fined on basis of previous shipments and excluding white species would leave a big white stock.
- 6.3.87 (OUT FAX 692) FIC confirm 5% species would leave a big white stock.
- 6.3.87 (OUT FAX 692) FIC confirm 5% white species and offer April shipment as well.
- 9.3.87 (OUT TLX 6078) FIC ask Ataka to increase L/C for SEA DRAGON shipment
- 9.3.87 (IN FAX 683) Ataka confirm will increase and entered existing L/C.
- 12.3.87 (OUT FAX 707) FIC advises Wawoi Guavi of SEA DRAGON ETA required documents and loading order and attaches copy of L/C amendment increasing the credit by 1,000,000.00 to cover 10,000 m³ on FOB and CNF bases.
- 19.3.87 (OUT TLX 6102) FIC advises Ataka load is ready and asks if can load 6500m³.
- 19.3.87 (IN TLX 8803) Ataka says capacity is 6500m³ and thinks may be can load that.

There is a problem with clearing this vessel even though loading apparantly completed on 24 March and she sailed to Daru. The problem was with documents.

- 27.3.87 (IN FAX 725) Ataka claims a shortage of 19.344m³ (between log list and Bill of Lading. It says freight averages USD22.06 (USD22.30 on 6,000m³ and USD19.30 on residue) and claims the FOB of USD (80.00 - 22.06). The claim amounts to USD 1974.25
- 30.3.87 (Letter) Wawoi Guavi sends documents and its invoice and asks for transfer of funds to its BSP accounts.

The invoice (WGT C002/87) is as follows:

1424 pieces 6,500.078m³ at USD 80.00 FOB =
USD520,006.24.

- 31.3.87 (OUT TLX 6158) FIC advises Ataka shipped 1424 pieces 6514.710 m³ for FOB amount of USD 521,176.80.

- 31.3.98 (OUT FAX 744) FIC ask Ataka to have its bank accept quantity discrepancies
- 31/3/87 (IN TLX 8876) Ataka confirm to accept discrepancies.

B. LETTER OF CREDIT

The same letter of credit as for shipments 9 and 13 (L/C GJ 951 7410) is used. It was amended to increase the creditly USD1,000,000.00 covering about 10,000m³

C. NEGOTIATION

On 31/3/87 BSP receives FIC's letter of that date with:-

- (a) draft for USD521,176.80
- (b) Invoice FIC/WG/3.87 for 1424 pieces 6514.710m³ at USD 80.00 FOB = USD 521,176.80
- (c) Bills of Lading
 - AE 001/3.87 for 750 peices 3,343.456 m³ (Wakamatsu discharge)
 - AE 002/3.87 for 674 pieces 3,171.254 m³ (Hakata discharge)

The letter directs retention of USD 1,547.52 in USD to meet a short laden cargo claim and credit of the converted balance of USD 519,629.28 to FIC's account.

D. ACCOUNTING (KINA)

On 3/3/87 BSP gives an accounting to FIC . USD 1547.52 is held in USD as requested. The residual USD 519,629.28 is converted to K471,062.71 (at 1.1031). Bank and other charges of K1250.40 are deducted.

The bank erroneously shows the balance as K469,881.51 but corrects this by deluting K69.20 to give the correct balance of K469,812.31. On 6/4/87 FIC accounts to Wawoi Guavi along these lines

- (a) Gross contract price 6514.710m³ at USD 80.00 = USD 521,176.80
 (b) The gross price (at 1.1031) converts to K472,465.60.

The converted price is divided:-

Bank etc charges	K 1,250.40
FIC sales commission (50c/m ³ =USD 3257.35)	K 2,952.91
Short laden cargo claim	K 1,789.73
Amount due to Wawoi Guavi	K 466,465.56
	K 472,465.60

The commission deduction is 50 cents US per m³ and converts at the conversion rate (1.1031)

The short laden claim refers to a debit note (obviously Ataka Lumbers debit note - INWARD FAX 725 of 30.3.87). Atakas debit note is for USD1,974.25 - which converts at 1.1031 to K1789.73. The figures thus reconcile.

The accounting is for the total USD claim (including the USD 1547.52 retention).

It seems clear from FIC's letter to Wawoi GUavi and its letter of 6/4/87 to BSP tht K466,472.56 was transferred to Wawoi Guavis BSP account on about 6.4.87

This account for the Kina conversion and means FIC obtained 50 cents US per m³ commission. It leaves FIC to account to Ataka for the short laden claim.

E. ACCOUNTING (USD)

The retention was USD 1547.52

On 7 April 1987 FIC directed BSP to credit that sum by letter to its BSP account.

On the same day BSP converted USD 1547.52 (at 1.1038) to K1,401.99 and credited that sum to FIC's account.

This accounts in full for the USD retention.

F FIC RECEIPTS

FIC received commission at the rate of USD0.50 per m³ on the shipment which amounted to USD3,257.35 and converted to K2,952.91. In fact the original amount credited to FIC's account was K3,339.75 (being the credit after bank charges of K469,812.31 less the amount actually paid to Wawoi Guavi of K466,472.56.

The bank charges were borne by the producer. The difference was due to the fact that only USD 1547.32 was retained to meet the shortage claim of USD 1974.25.

Over the shortage claim FIC only directed BSP to retain in USD 1547.52 which BSP did. This was credited to FIC's bank account as K1401.99. When FIC paid out the claim it paid out K1786.21 (including cable charges), a difference of K384.22. This thus reduced FIC's actual receipts from K3,339.75 to K2,955.53.

FIC had to pay further bank charges on 8 April 1987 aggregating K87.52 reducing its receipts to K2,868.01.

No further direct costs are evident from the file.

G. COMMENTS

1. The shipment was on an FOB basis and ultimately all the claimed funds of USD 521.176.80 found their way into FIC's account as K471,062.71 and K1401.99 aggregating K472,464.70 from which bank charges were deducted and the producer was paid. FIC made a short laden cargo deduction of K1789.73 (USD1,974.25) in it's accounting to Wawoi Guavi.

Ataka Lumber pursued the claim (IN TLX 8903 of 6/4/87). On 14/4/87 FIC's cash book indicates a payment to Ataka Lumber of K1786.21 pursuant to payment voucher 4777 and cheque No 024762.

The voucher shows payment is of K1771.21 and bank charges of K15.00 representing payment to Ataka of this short shipment claim in a sum of USD1,974.25. The claim is thus paid and payment vouched.

2. In this case FIC paid Wawoi Guavi more than it sought. Wawoi Guavi invoiced for 6500.078m³ - USD 520,006.24. FIC paid on the basis of 6514.710m³ - USD 521.176.80.

The difference is not explained by the volume claim for 19.344m³ amounting to USD 1,974.25. This is a minor matter and perhaps not worthy of criticism.

3. The rate of commission charged by FIC on this shipment was USD0.50 per m³ - the difference in which can be seen in the conversion. The commission was USD3,257.35 which converted to K2,952.91.

The FIC receipt was reduced to K2686.01 by further bank charges of K87.22 and after the receipt and payment of the shortage claim was taken into account.

4. The only other aspect of concern is price. FIC gave a price indication (7.2.87) of USD 89.00 - the earlier shipment was at USD90.00.

Ataka countered (16.2.87) at USD 78-79 because the white species market was poor.

The price is fixed at USD80.00 with a maximum of 5% white species.

I was concerned that the price reduction is so large yet only a small part of the shipment was white species. The only explanation Mr Tay could offer was that the market was falling at the time.

APPENDIX 43

475

SHIPMENT 10

Vessel ORIENTAL BEAR
 FEBRUARY, 1987

BACKGROUND

This shipment to one buyer (DONG AH ENVIRONMENTAL IND. LTD, Korea) from two shippers LEYTRAC and BISMARK INDUSTRIES begins with telexes in November 1986 from the Forests Department calling for log offers pursuant to States Purchase Option provisions.

A. HISTORY

Bismark begins with an offer to Forests Department which is accepted for a volume of 1500m³ at USD60.50 per m³ FOB.

Leytrac apparently offers 4000m³

- 8.12.86 (OUT TLX 5586) FIC offers Leytrac USD 82.00/m³ flat.
- 9.12.86 (IN TLX 7990) Leytrac confirms FIC's offer and asks commission at USD2.00/m³ flat.
- 10.12.86 (OUT FAX 385) FIC reconfirms 4000m³ at USD82.00 - Commission USD2.00.
- 17.12.86 (OUT TLX 5640) FIC offer Park (Sung Lim Timber) 4,000m³ for 20 January shipment at FOB of USD332,000.00.
- 23.12.86 (IN TLX 8144) Park says accept Leytrac 4 000m³ and Bismark 1500m³ at USD 77.50 (G) FOB - for DONG AH ENVIRONMENTAL.
- The CNF value is USD525,250 (freight at USD18.00)
- 24.12.86 (OUT TLX 5674) FIC offers to Park (Dong Ah) 5500m³ at USD 525,250.00 CNF.
- 24.12.86 (IN TLX 8156) Park advises DAIYANG fixed for 5500m³ at USD18.00.
- 29.12.86 (OUT TLX 5691) FIC tells Lusco DAIYANG fixed LAYCAN 17-22 JANUARY
- 29.12.86 (OUT TLX 5692) FIC tells Bismark DAIYANG fixed LAYCAN 17-22 January

- 31.12.86 (OUT TLX 5717) FIC tells Bismark DONG AH replaces DAIYANG - NO ETA CHANGE.
Park is in PNG in December/January 1986/7.
- 13.1.87 (OUT TLX 5770) FIC tells Lusco - shipment confirmed; ORIENTAL BEAR; ETA 21/1 - load Bismark first then to Leytrac around 23/1.
- 13.1.87 (OUT TLX 5771) FIC tells Bismark - confirmed; ORIENTAL BEAR, ETA 21/1
- 13.1.87 (NO NUMBER) Parks office advise L/C established M2027-701NU00057 for USD 525,000 covering 5500m³.
- 14.1.87 The letter of Credit is established.
- 14.1.87 (IN TLX 8338) Bismark ask FIC for an L/C rather than T/T.
- 16.1.87 (Letter) FIC assign up to USD88,050 of the L/C to Bismark.

There is a serious problem with the log inspector at Bismark - IMARI TRAWA is on the spot and reports (IN TLX 8388 of 20.1.87). This causes a real war of words but the vessel loads on 23/24 January and the inspector issues a certificate for 433 pieces = 1500.223 m³. The vessel proceeds to Condor and loads Leytrac logs from 26/30 January and the inspector issues a certificate for 1035 pieces = 4058.356m³.

B. LETTER OF CREDIT

The letter of credit M2027701 NU 00057 is from the Seoul Bank, Seoul, Korea - applicant Dang Ah Environmental Ind Ltd.

It is for USD525,250 covering 5500m³ CNF Incheon.
It is a direct L/C.

C. NEGOTIATION

(i) 10A BISMARK INDUSTRIES

On 3 February 1987 BSP receives FIC's letter of that date with

- (a) draft for USD 143,271.29
- (b) Invoice FIC/BIS/1-87 for 423 pieces 1500.223 m³ at USD 95.50 CNF = USD 143,271.29
- (c) Bill of Lading PK-1 for 423 pieces = 1500.223 m³.

The letter directs retention of USD29,064.31 and credit of the converted balance to FIC's account.

(ii) 10B LEYTRAC

On 6 February 1987 BSP receives FIC's letter of that date with

- (a) draft for USD 387,572.99
- (b) Invoice FIC/LYT/1-87 for 4058.356m³ at USD95.50
CNF = USD 387,572.99
- (c) Bill of Lading CPI-1 for 1035 pieces= 4058.356 m³.

The letter directs retention of USD 78,569.77 and credit of the converted balance of USD 309,003.22 to FIC's account.

D. ACCOUNTING (KINA)

(i) 10A BISMARK INDUSTRIES

On 5/2/87 FIC faxes BSP (OUT fax 610) directing transfer of USD88,040.587 to Bismark Industries less bank charges.

On 3/2/87 BSP accounts to FIC

- (a) USD 29,064.31 is retained in the US dollar account.
- (b) USD 88,040.58 is appropriated to Bismark Industries and converted to K82,908.54.
- (c) Bank etc charges of K924.10 are deducted from Bismark's share and the residue K81.984.44 is TT remitted to Bismark.
- (d) The balance of USD 26166.40 is converted to K24,641.11 and credited to FIC's account.

On 24 January 1987 Bismark had sent its invoice (L - 061) to FIC as follows:-

1500.223m ³ x USD 60.50	= USD 90,763.49
Less 3% commission	<u>USD 2,722.90</u>
Balance due	<u>USD 88,040.59</u>

Bismark was TT transferred direct - as mentioned above USD 88,040.58 (K82,908.54) less bank charges.

Bismark are unhappy with the bank charges and on 11.2.87 BSP give them a breakdown.

Armed with this Bismark write to FIC on 17/2/87 in effect saying they should only bear bank charges on the FOB value and asking for a refund of K321.53. In the letter Bismark get the figures right - FIC's CNF at USD95.50 and Bismarks FOB of USD 60.50 but do not query the difference.

On 27.2.87 FIC write to Bismark accepting their calculation and enclosing a cheque for K321.53.

(ii) 10B LEYTRAC

On 9.2.87 BSP accounts to FIC

- (a) USD 78,569.77 is retained in the US dollar account.
- (b) the balance USD 309,003.22 is converted to Kina K291.127.96
- (c) bank charges of K2430.70 are deducted
- (d) the resulting balance of K288,697.26 is credited to FIC's account.

Apparantly documents were said to be lost and Lusco advises (IN TLX 8458 of 2.2.87) proceeds required urgently. Pressure for payment continues and on 7.2.87 (IN TLX 5900) FIC tells Lusco payment will be made on 9.2.87. On 10/2/87 FIC asks BSP to telegraphic transfer K288,697.26 to Leytracs ANZ account in Rabaul.

FIC finally accounts to Leytrac on 13.2.87 (OUT FAX 627) as follows:-

- (a) FOB price to Leytrac (they agreed to USD2.00 per m³ commission)

$$4058.356\text{m}^3 \times \text{USD } 80.00 = \text{USD } 324,668.48$$

- (b) USD 324,668.48 converts to K305,887.02.

- (c) deduct bank charges of K2430.70 giving a balance K303,456.32 due to Leytrac.

As was indicated above K288,697.26 was TTd on about 10.2.87. The balance K14,759.06 was TT'd on 13.2.87 pursuant to FIC's letter of that date to BSP and FIC's cheque No 036711. Clearly Leytrac was angered by delay in payment of the balance due and the way FIC handled the transaction. (see bundle of phone messages).

479

E. ACCOUNTING (USD)

On 2.2.87 Park requests payment of ocean freight on 5558.58m³ at USD18.00 per m³ of USD100,054.44 as follows:-

- (a) nett freight USD 97,553.08 to SEYANG SHIPPING CO. LTD, Seoul.
 - (b) brokerage USD 2,501.36 to NAMJEON INT. Co LTD, SEOUL.
- USD100,054.44

As can be seen from the foregoing the USD retentions were

- (i) 10A - Bismark USD29,064.31 (1500.223m³)
- (ii) 10B - Leytrac USD78,569.77 (4058.356m³)

On 17.2.87 FIC writes to BSP directing payment of freight and brokerage as follows:-

SHIPMENT	TOTAL FREIGHT	BROKERAGE	NET FREIGHT	USD RESIDUE
10A	27,004.01	675.12	26,328.89	2060.30
10B	<u>73,050.40</u>	<u>1826.33</u>	<u>71,224.07</u>	<u>5519.37</u>
	USD100,054.4	2501.45	97,552.46	7579.67

Copies of the TT remittance instructions are on BSP's files.

The USD residues are USD 2060.30 and USD 5519.37 respectively

On 17/2/87 FIC writes to BSP directing that "service charges" be "drawn off to pay off Mr Francis Sia's outstanding loan" with B.S.P."

The amounts specified include

- (i) 10A - Bismark USD 1500.22 (Item 5)
 - (ii) 10B - Leytrac USD 4058.35 (Item 6)
- USD 5558.57

This direction seems to have been effected by TT to BSP Boroko on 27.2.87 of an overall sum of USD 21,366.00. (See Table 4 and Attachments).

The deductions so drawn off are rounded amounts at a rate of USD 1.00 per m³ on each of the part shipments.

The USD residues after these deductions

- (i) 10A Bismark USD 560.08
- (ii) 10B Leytrac USD 1461.02

100

These balances are drawn to FIC's attention by BSP on 20/3/87; directed by FIC to be paid to FIC's account by letter of 6 April 1987 (FIC gets the total wrong) and credited to FIC's account on 6/4/87 as part of an aggregate deposit of USD11,863.02 (K10,711.53).

The credited Kina equivalents are:-

- | | | | |
|------|-----|---------|----------|
| (i) | 10A | Bismark | K 505.72 |
| (ii) | 10B | Leytrac | K1319.20 |

(See Working Table 5 Appendix 35.5)

F. FIC RECEIPTS

THEORETICAL

Bismark offered and accepted 1500m³ at an FOB price of USD 60.50 per m³ with FIC receiving 3% of the total FOB price as commission. Leytrac offered and accepted 4,000m³ at an FOB price of USD 80.00 per m³ with FIC receiving an additional USD2.00 per m³ as commission resulting in a total FOB price of USD82.00 per m³.

Park offered USD77.50 (G) FOB/m³ with a freight rate of USD18.00 per m³ making a gross CNF price of USD 95.50/m³.

Theoretically the result would be this:-

- | | | |
|-----|---|----------------------|
| (a) | FIC sells 5500m ³ at USD 95.50/m ³ receiving | USD 525,250 |
| (b) | FIC pays freight on 5500m ³ at USD18.00 ie | USD 99,000 |
| (c) | FIC thus receives gross FOB proceeds of | USD 426,250 |
| (d) | FIC pays Bismark 1500 x 60.50 = | USD 90,750.00 |
| | FIC pays Leytrac 4000 x 80.00 = | USD320,000.00 |
| | | <u>USD410,750.00</u> |
| (e) | This gives FIC receipts of USD 15,500.00 after paying producers. | |
| (f) | FIC pays Park his commission of USD1.00 perm ³ - USD5,500 reducing its receipts to USD10,000.00. | |
| (g) | In terms of disclosure to producers FIC should receive | |
| | (i) Bismark - 3% of USD90,750.00 = | USD 2,722.50 |
| | (ii) Leytrac - USD 2.00 perm ³ over 4000m ³ | <u>USD 8,000.00</u> |
| | | <u>USD10,722.50</u> |

Parks commission was not disclosed to the producers. Leytracs USD8,000 is included in the USD10,000 (in (f) above) but the payment of commission by Bismark would be additional to the USD10,000.

In theory then FIC privately planned to make USD12,722.50 on this shipment - that this is so is clear from pencil calculations in FIC's files. In fact both shippers supplied slightly more than contracted and as expected the claimed receipts from Bismark subsidised that claimed receipts from Leytrac.

10A - BISMARK

Initially FIC received USD26,166.40 (K24,641.11) Bismark claimed and was paid part bank charges of K321.53 reducing FIC's receipts to K24,319.58. On 6 April 1987 FIC obtained the USD residue of USD560.08 (K505.72) boosting its receipts to K24,825.30.

10B - LEYTRAC

Initially FIC received K288,697.26 after deduction of bank charges. FIC initially paid Leytrac the whole K288,697.26 it received. The ultimate balance due and payable to Leytrac after deducting bank charges and FIC commission was K303,456.32.

FIC paid the balance K14,759.06 giving a deficit in that sum.

On 6 April 1987 FIC obtained the USD residue of USD1461.02 (K1319.20) reducing its deficit to K13,439.86.

When one applies the Bismark receipts against the Leytrac deficit (K24,319.58 - K13,439.86) FIC had nett receipts of K10,879.72. There would be direct costs attributable to IMARI TRAWA being present at loading.

COMMENTS:

1. This shipment tends to illustrate how a shipment to a buyer which consists of part shipments from different producers must be treated as a whole.

On the face of the part shipments it appears Bismark lost and Leytrac gained but examination does not support this.

Superficially:(a) As to Bismark

FIC obtained a gross FOB price of USD 77.50 per m³ (with freight at USD18.00 giving a CNF price of USD95.50 per m³).

FIC paid Bismark only USD60.50 per m³ and Park USD1.00 per m³ aggregating USD61.50 per m³.

FIC thus, it would appear on the surface made a massive undisclosed profit of USD17.00 per m³ at Bismarks expense of which it paid Park USD1.00 per m³ and on top of that deducted 3% commission (USD1.815 per m³) from Bismarks price reducing Bismark's its nett receipt to USD58.685 per m³.

(b) As to Leytrac

FIC obtained a gross FOB of USD77.50 per m³ (with freight at USD18.00 giving a CNF price of USD95.50 per m³).

FIC paid Leytrac USD80.00 per m³; Park USD1.00 per m³ and itself USD2.00 per m³ aggregating USD83.00 per m³.

FIC thus, it would be said, made its USD2.00 per m³ and subsidised the price to Leytrac by USD2.50 per m³. and subsidised the price to Leytrac by USD2.50 per m³ and subsidised Parks commission of USD1.00 per m³.

In fairness it must be said such a superficial analysis does not stand scrutiny and ignores the fact that some producers have better resources and thus obtain better prices than others. Two port shipments can be considered separately and assessed and an average price for the two can be arrived at which does not reflect the value or worth attributed to each the two parts.

In this case it can be seen from the history:-

- (a) Bismarks 1500m³ was offered separately and attracted a gross price of USD61.50 with a gross price to producer of USD60.50. (Parks commission is the difference)

- (b) Leytracs 4000m² was offered separately and attracted a gross price of USD 83.00 with a nett price to producer of USD80.00. (Parks commission is the difference plus FIC's USD2.00 per m²).
- (c) the two parcels aggregating 5500m² were offered together and Park offered USD77.50 (gross) per m².

If one does the calculations (as FIC did in its pencil caculations) they are in theory:-

- | | | | |
|----|-----------|--------------------|-----------------------|
| 1. | BISMARK | 1500 x 61.50 = USD | 92,250.00 |
| 2. | LEYTRAC | 4000 x 83.00 = | <u>USD 332,000.00</u> |
| | | | <u>USD 424,250.00</u> |
| 3. | AGGREGATE | 5500 x 77.50 = USD | 426,250.00 |

The difference is USD 2,000.00 and that is the difference referred to in the analysis in F above (between USD10,000 and USD8,000)

Put in other terms FIC planned in addition to its commission of 3% from Bismark and USD2.00 per m² from Leytrac to make an undisclosed profit of USD2,000.00 from averaging and to pay Park his undisclosed commission of USD1.00 per m² on the shipment. The propriety of these undisclosed aspects is questionable.

- 2. This shipment was sold by FIC on a CNF basis. Freight and brokerage were paid as directed by Park and the freight and brokerage rates appear (subject to what is said below) very reasonable. The freight was paid to a Korean shipper and brokerage to Namjeon. A copy charter party and invoices would vouch the payments but neither appear to be on file.
- 3. Parks sales charge of USD1.00 per m² is reasonable as it is clear he was the agent and found the buyer. Its payment to pay off Francis Sias loan is examined separately.
- 4. From the producers point of view the commissions paid (disclosed and undisclosed) are in aggregate high. Bismark paid 3% of nett FOB plus USD1.00 per m² which on a price of USD61.50/m² amounts to USD2.815/m² or 4.577% of USD61.50.

Leytrac paid a total USD3.00 per m³ (USD2.00 to FIC and USD 1.00 to Park) on a gross FOB price of USD83.00 which is 3.615%. It is not known whether Leytrac paid additional commission to its agent Lusco - Lusco's marketing tables indicate it did not.

5. The shipment illustrates the animosities and suspicions which FIC marketing aroused:

- FIC alleging Bismark was loading "rubbish" for FIC supported to an extent by Mr Trawa's inspection and the log inspectors attitude as well as FIC trying to enlist support from the Department of Forests.
- Bismark alleging FIC caused problems with changes in vessels - the changes may have caused doubts and concerns but in fact the ETA remained almost the same.
- Lusco complaining about delay in payment with justification and about the amount of bank charges.
- Bismark complaining about bank charges and having FIC agree to bear part of the charges
- Bismark making it quite clear it "knew" FIC obtained a CNF price of USD95.50 and paid Bismark an FOB price of USD60.50 but not saying it knew a freight differential of USD35.00 per m³ was ridiculous.

APPENDIX 44SHIPMENT 11

VESSEL MARIA PILLAR
FEBRUARY, 1987

A. HISTORY

The commencement of this shipment is somewhat vague. It seems to commence with specification of a 5000 m³ shipment on Travelodge paper which is presumably relayed by telephone to Park in Korea.

- 11.12.86 (IN TLX 8020) Park says discussing at USD 65 (G) + asks FIC price
- 12.12.86 (OUT TLX 5608) Tay says shipper will accept USD67.00 FOB but expect increase for regular rosewood.
- 12.12.86 (OUT TLX 5609) FIC confirms purchase of 5000 m³ at USD67.00 less FIC commission of 3% of FOB. Regular rosewood rider is added.
- 12.12.86 (IN TLX 8085) Park asks if USD67.00 is nett or gross and if can reduce to 4,500m³.
- 19.12.86 (IN TLX 8124) Constantinou asks for a review - other buyers offering USD72.00.
- 22.12.86 (OUT TLX 5665) FIC suggests better price but asks species and diameter.

There are obviously telephone conversations when it seems quite clear rosewood is dropped out of the original proposed shipment with rosewood to be offered (with Angus rosewood) to a separate buyer Ho Shing Wood Co. Ltd of Taiwan.

- 22.12.86 (IN TLX 8137) Park offers USD65 (G) + asks if 4,500 or 5000 m³.
- 23.12.86 (IN TLX 8141) Park advises Maria Pillar available at USD19.00 for Taiwan and USD18.00 for Korea.
- 23.12.86 (OUT TLX 5671) Tay asks Park who to address cable offer to.
- 23.12.86 (IN TLX 8147) Park answers Kolon, 5000 m³ for USD415,000.00.

This is clearly one offer for Angus and Amazon Bay and becomes part shipments 11A and 11B.

24.12.86 (OUT TLX 5673) FIC offers Kolon (c/-Park) 5,000m³ for USD 415,400 CNF.

24.12.86 (Written Contract) FIC contracts with Amazon Bay to purchase 5500m³ at FOB prices of USD150.00 for rosewood and USD64.00 for other species and FIC's commission rate is fixed at 3% of FOB value.

It is quite clear that at this stage FIC controlled Angus marketing. Clearly the price for rosewood was reckoned at USD170.00 CNF with freight reckoned at USD20.00. On other species the price was USD65 to the buyer and USD64.00 to the producer with Park getting USD1.00 per m³.

30.12.86 Ho Shing Wood Co Ltd establish L/C 60F2/02330 for USD255,000.00 covering 1500m³ of rosewood at USD170.00 per m³ CNF Taiwan.

The vessel Excelsior 2 is fixed but not confirmed

14.1.87 Samsung Co Ltd establish L/C M2701 - 701 NU 00057 for USD 410,100 covering about 5100 m³ CNF Korea.

15.1.87 (OUT TLX 5794) FIC advise Amazon Bay MARIA PILLAR substituted for EXCELSIOR 2.

Between 19.1.87 and 27.1.87 the vessel loads at Amazon Bay and from 28.1.87 to 30.1.87 she loads at Millport Harbour. Bills of Lading (confirmed by log lists etc) show the following loading:-

B/L FIC01 1495 pieces 4786.639 m³ (CNF Inchon - notify Samsung)

B/L FIC02 264 pieces 458.621 m³ (CNF Taichung - notify Ho Shing Wood)

B/L FIC03 119 pieces 346.731 m³ (CNF Taichung - notify Ho Shing Wood)

2.2.87 (IN TLX 8464) Park advises FIC to pay freight on Korean cargo of 4804.639 m³ and Taiwan cargo of 805.352 m³ as follows:-

A) TAIWAN 805.352 x USD19.00 = USD15,301.69

a) Pay brokerage USD 382.54 to Namjeon Int. Korea

- b) Pay nett freight USD14919.15 to Gemini Lines Inc.
Tokyo.

USD15301.69

B) KOREA 4804.639 x USD 18 = USD 86,483.50

- a) Pay brokerage USD 2,162.09 to Namjeon Int. Korea
b) Pay nett freight USD 84,321.41 to Shinsei Kogyo Co.
Ltd, Tokyo

USD 86 483.50

Between 4 and 6 February the negotiations against the two L/C's are made and these are dealt with below.

- 20.2.87 (IN TLX 8617) Ho Shing Wood particularises a short laden claim

Angus	- 7 pieces for	26.912m ³
Amazon Bay	- <u>34</u> pieces for	<u>69.405m³</u>
	41	106.317

- 23.2.87 (IN TLX 8638) Park advises a short laden claim for Korean cargo of 24 pieces

- 24.2.87 (OUT TLX 6006) FIC tells Amazon Bay of Korean claim

- 10.3.87 ((IN TLX 8735) Ho Shing asks for answer on 41 piece shortage claim within two (2) days.

- 10.3.87 (OUT TLX 6085) FIC ask Ho Shing for despatched log list.

B. LETTER OF CREDIT

There are three part shipments against two letters of credit being:

- (i) L/C 6QF2/02330 from Chan Hwa Commercial Bank Ltd, Taiwan - applicant Ho Shing Wood Co. It is for USD255,000 covering 1500 m³ of rosewood at USD170.00 per m³ CNF Taiwan. This is a direct L/C.

It covers Port shipments

11A of 458.621 m³ shipped from Amazon Bay
11B of 346.731 m³ shipped from Angus.

- (ii) L/C M2701-701 NU00057 from Westpac Bank Seoul Korea - applicant Samsung Co. Ltd. It is for USD410,100.00 covering 5100 m³ CNF Incheon. This is a direct L/C.

It covers port shipment 11C of 4786.639 m³ shipped from Amazon Bay.

C. NEGOTIATION

(i) L/C 60F2/02330 - Amazon Bay to Ho Shing Wood - 11A

On 5/2/87 FIC writes to BSP enclosing

- (a) draft for USD77,965.57
- (b) Invoice FIC/ABS/2-87 for
458.621 m³ at USD170.00 CNF = USD77,965.57
- (c) Bill of lading FIC 02 for 264 pieces = 458.621 m³

The letter as amended in pen directs retention of USD9172-42 in USD and credit of the balance USD68,793.15 converted to kina into FIC's account.

(ii) L/C60F2/02330 - Angus to Ho Shing Wood - 11B.

On 6/2/87 BSP receives FIC's letter enclosing

- (a) draft for USD58,944.27
- (b) Invoice FIC/ANGUS/2-87 for
346.731 m³ at USD170.00 CNF = USD58,944.27
- (c) Bill of Lading FIC 03 for 119 pieces = 346.731m³.

The letter directs retention of USD 6934.62 in USD and credit of the balance USD 52,009.65 converted to kina into FIC's account.

iii) L/C M2701 - 701 NU00057 - Amazon Bay to Samsung - 11C

On 6/2/87 BSP receives FIC's letter enclosing

- (a) draft for USD 397,291.10
- (b) Invoice FIC/ABS/1-87 for
1495 pieces 4786.639m³ at USD83.00 CNF =
USD397,291.10
- (c) Bill of Lading FIC 01 for 1495 pieces = 4785.639
m³

The letter directs retention of USD90,946.14 in USD and credit of the balance USD 306,344.96 converted to kina into FIC's account.

D. ACCOUNTING (KINA)

Shipments 11A and 11C from Amazon Bay are dealt with first and Shipment 11B from Angus later.

1) SHIPMENT 11A - Amazon Bay to Ho Shing Wood

BSP accounted to FIC on 9/2/87 as follows:-

- (a) USD9172.42 was held in USD.
- (b) the balance USD 68,793.15 was converted to K64,673.45
- (c) bank charges of K488.45 were deducted and K64,185.00 was credited to FIC's account.

3) SHIPMENT 11C - Amazon Bay to Samsung

BSP accounted to FIC on 9.2.87 as follows:-

- (a) USD 90,946.14 was held in USD
- (b) the balance USD306,344.96 was converted to K288,623.47
- (c) bank charges of K2485.20 were deducted and K286,138.27 credited to FIC's account.

These two part shipments must be considered together and show the absolute confusion of FIC's record system.

A search of

- 1. Amazon Bay Company file
- 2. FIC shipment files 3, 14 and 34
- 3. FIC "Exports" file
- 4. FIC "Shipping" file
- 5. FIC Bank file
- 6. FIC Inward and Outward telex and facsimile files.

Fails to locate any written accounting by FIC to Amazon Bay.

All that can be found on FIC's general file for BSP is a carbon copy letter from FIC to BSP dated 10.2.87 asking BSP to debit FIC's account and TT K350,323.27 to Amazon Bay's PNGBC account.

When one tries to trace this payment into the cashbook there is no specific entry for this payment. What one does find among the last entries for the month of February 1987 which are the entries made in the cash book from Bank statements is an entry Feb 10 B/S Log Sales V/N III B/S 639,040.53

What that clearly means is that on 10/2/87 there appears a debit of K639,040.53 in the bank statements for which there has been no entry made in the cashbook. The debit is entered from the bank pass sheets.

This is absolutely amazing - it means that between 10/2/87 and the end of the month FIC's cashbook did not show a debit entry of K639,040.53. No business could possibly be run successfully with such an irresponsible and inefficient keeping of records.

From the file on shipment 10 and a perusal of the cashbook it could be fairly surmised that the initial payment to Leytrac where TT of K288,697.26 was requested by letter dated 10/2/87 payment is part of this debit entry of K639,040.53.

If one adds these two letter requested TT's

Amazon Bay	K350,323.27
Leytrac	<u>K288,697.26</u>
	<u>K639,020.53</u>

The difference is only K20.00 which is probably charges on the TT's at the standard rate of K10.00 each. This surmise has been verified by TT records kept by BSP and produced to the Inquiry. Thus one can proceed.

The question is how the sum of K350,323.27 transferred to Amazon Bay was calculated and the answer seems reasonably clear from BSP's negotiations on shipments 11A and 11C.

SHIPMENT	USD GROSS	KINA CONV	BNK CHGS	KINA NETT
11A	USD 68,793.15	K 64 673.45	K 488.45	K 64,185.00
11C	<u>USD306,344.96</u>	<u>K288,623.47</u>	<u>K2485.20</u>	<u>K286,138.27</u>
	<u>USD375,138.11</u>	<u>K353,296.92</u>	<u>K2,973.65</u>	<u>K350,323.27</u>

Shipment 11A was of 458.621 m³ of rosewood where FIC contracted to pay Amazon Bay USD 150.00 per m³ FOB. The price was thus 458.621 x 150 = USD 68,793.15 ie the US gross above. Shipment 11C was of 4786.639 m³ of other species where FIC contracted to pay Amazon Bay USD64.00 per m³ FOB. The price was thus 4786.639 = USD 306,344.896 ie the gross above if one accepts a discrepancy of 6 cents.

In short then FIC directed BSP on these two part shipments to bring into PNG and convert to Kina only the agreed FOB price it had contracted to pay Amazon Bay.

After conversion to Kina and deduction of bank charges there was a kina balance of K340, 323.27 which is the exact amount transferred on 10.2.87 to Amazon Bay.

(2) SHIPMENT 11B - ANGUS TO HO SHING WOOD.

BSP accounted to FIC on 9/2/87 as follows:-

- (a) USD 6,934.82 was held in USD.
- (b) the balance USD 52,009.65 was converted to K49,000.98.
- (c) bank charges of K413.05 were deducted and K48,587.93 credited to FIC's account.

There is no statement of account in usual form given by FIC to Angus for this shipment but it must be recalled that at this time FIC was not only doing marketing for Angus but managing its finances. There is a statement consistent with this function dated 12.2.87 which gives, inter alia, an accounting for this part shipment.

The part shipment was simply of 346.731 m³ of rosewood and it seems clear the FOB price was USD150.00 per m³. The price was 346.731 m³ x 150 = USD 52,009.65.

This is the exact amount brought into FIC's bank account and converted to K49,000.98. After bank charges of K413.05 were deducted the nett kina receipt was K48,587.93. This is the sum FIC brings to account in its 12.2.87 statement to Angus as a credit item.

- (a) a debit said to be carried forward from a statement of 6/2/87 of K11,539.91
- (b) a credit resulting from change from cheque No 036651 of 9/2/87 of K39.93.

The result is a 9.2.87 credit balance of K37,087.95 (wrongly typed). From this debits aggregating K37,040.39 are deducted leaving a balance of K47.56

The debits are:-

i)	FIC cheque 036709	K10,000.00
ii)	FIC cheque 036710	K25,239.36
iii)	FIC levy $400 \text{ m}^2 \times 0.215$	K 86.00
iv)	FIC commission 3.5% on FDB of K49,000.98	<u>K 1715.03</u>
		<u>K37,040.39</u>

To vouch and verify the accounting all items must be vouched and verified and the position is as follows:-

- (a) The opening debit balance of K11,539.91 will have to be separately verified. The accounting for shipment 6B was in a statement of 9.1.87 which carried forward a credit balance of K62,535.44 following FIC's cheque No 036636 to Angus on 9.1.87.

Relevant statements will have to be located.

- (b) FIC's cheque 036651 was drawn according to FIC's cashbook for cash in the sum of K294.75. Payment voucher 4624 under which the cheque was raised has evidence of payment of K169.75 for food and vouched payment of K90.07 for drinks and serviettes aggregating K249.82. The additions are correctly added to K259.82 and the difference correctly calculated at K34.93. An extra K5.00 is added into the 12.2.87 statement.

- i)) the Cashbook shows cheques 036709 and
ii)) 036710 drawn to Angus (PNG) Pty Limited for sums respectively of K10,000.00 and K25,239.36. The payment vouchers are 4675 and 4676 and show both cheques paid to Angus (PNG) Pty Limited respectively for

- (i) wages and salaries for fortnight ended 6.2.87
(ii) in part payment of staff and camp wages due and current wages and in payment of Hotel Davara Account of K2421.50

The vouching of the Hotel Davara Account is non existent. The cheque for K10,000.00 may have been cashed and this will need to be checked as there is a cash breakup behind the payment voucher.

iii) The FIC levy payment is small and it needs to be explained why the levy was on 400 m³ when only 346.731 m³ was shipped.

iv) The FIC commission rate is correctly calculated.

Subject to these aspects and to establishing the balance in credit of K47.56 (or if adjustment is made for the error (b) above of K42.56) was paid to Angus there has been a full accounting for the kina funds in respect of part shipment 11B.

The reconciling of moneys paid to and an account of Angus has not been undertaken as it does seem within the terms of reference.

E. ACCOUNTING

i) 11A)
ii) 11B) The amounts respectively retained in USD
iii) 11C) were

11A	USD	9,172.42
11B	USD	<u>6,934.62</u>
	USD	16,107.04
11C	USD	<u>90,946.14</u>
		<u><u>USD107,053.18</u></u>

On 17 February 1987 FIC writes to BSP a single letter dealing with payment of freight on this shipment which directs the amounts payable on each part shipment.

The freight to Taiwan is USD 19.00 per m³ and to Korea is USD18.00 per m³

The calculations have all been checked and are as follows:-

Shipment	USD Retention	Volume	Gross Freight	USD	USD Residue
11A	9,172.42	458.621	8713.79		458.63
11B	6,934.63	346.731	6587.88		346.74
11C	<u>90,946.14</u>	<u>4786,639</u>	<u>86159.50</u>		<u>4,786.64</u>
	<u>USD107,053.18</u>	<u>USD5591.991m³</u>	<u>USD101,461.17</u>		<u>USD5,592.01</u>

The gross freight on shipments 11A and 11B is paid as follows:

Shipment	Nett freight	Brokerage	Gross freight
11A	8,495.95	217.84	8713.79
11B	<u>6,423.19</u>	<u>164.69</u>	<u>6587.88</u>
	<u>USD 14,919.14</u>	<u>USD382.53</u>	<u>USD15,301.67</u>

The combined nett freight of USD 14,919.14 was TT remitted to GEMINI LINES CO of Tokyo on 18.2.87.

The combined brokerage of USD 382.53 was TT remitted to NAMJEON INTERNATIONAL CO. LTD of Seoul on 18.2.87

Copies of the telex instructions are on BSP's files. The brokerage rate is $2\frac{1}{2}\%$ of the gross freight. The gross freight on shipment 11C is paid as to USD 84,033.42 to SHINSIE KOGYO Co.LTD of Tokyo on 18.2.87 by TT and the brokerage of USD2126.08 was TT remitted to NAMJEON INTERNATIONAL CO LTD of Seoul on 18.2.87. Copies of the telex instructions are on BSP's files. The brokerage rate is $2\frac{1}{2}\%$ of the gross freight.

As can be seen from the above the residues of the USD account after payment of freight and brokerage were:

Shipment 11A	USD 458.63
Shipment 11B	USD 346.74
Shipment 11C	USD 4786.64

Clearly this relates to volume and is USD1.00 per m³ on each part of the port shipment.

As to part shipment 11C it is clear from prior events Park negotiated a gross price with a cushion of USD1.00 per m³ as his commission.

On 27 February 1987 FIC wrote to BSP directing that various "service charges" which had been retained "be drawn off to pay off Mr Francis Sia outstanding loan" with BSP.

Item 5 of the letter refers to USD4786.64 residue on part shipment 11C which is part of the aggregate USD21,366.00 dealt with in the letter. Notes suggest the total was TT'd to BSP Boroko on 27.2.87.

(See Working Table 4 Appendix 35.4)

The residues on part shipments 11A and 11B were drawn to FIC's attention by BSP by letter of 20 March 1987.

On 6 April 1987 FIC (gets the figure wrong) but writes to BSP directing credit to its account.

On 6 April 1987 BSP credits a total USD 11,863.02 (K10,711.53) to FIC's account. The kina equivalents are

11A	USD 458.63 = K414.11
11B	USD 346.74 = K313.08

(See Table 5 and Attachments)

F. FIC RECEIPTS

- (1) 11A} These two part shipments to different
 (3) 11C} purchasers from Amazon Bay are conveniently
 dealt with together. As can be seen under D
 above the whole of the funds brought into
 FIC's account initially were, after deduction
 of negotiation bank etc charges, paid to the
 producer. Under its written contract with
 Amazon Bay FIC was entitled to 3% of the FOB
 value as commission.

The amount due is as follows:

Part ship Contracted FOB USD Contracted FOB (Convrt) 3% Comm.

11A	USD 68,793.15	K64,673.45	K 1940.20
11C	USD306,344.96	K288,623.47	<u>K 8658.70</u>
			K10,598.90

FIC thus had a contract entitlement of K10,598.90 which it did not deduct. It must be ascertained whether FIC received this sum and if it did not then that must be explained.

As can be seen under E above there was a differential between the price initially converted plus freight on the one hand and the gross CNF on the other hand of USD1.00 per m³ which was not disclosed to the producer.

On shipment 11A this amount USD 458.63 was drawn off the USD account on 6/4/87 and deposited to FIC's account on the same day as K414.11 - Park played no part in this sale.

On shipment 11C this amount USD4786.64 was clearly SJ Parks sales commission and was used to pay off Francis Sia loan pursuant to letter of 27.2.87. FIC's total receipt was thus K414.11 on shipments 11A and 11C. Against this FIC had to pay additional bank charges:-

11A	USD 85.00	K80.61
11C	USD <u>14.93</u>	<u>K14.19</u>
	USD <u>99.93</u>	<u>K94.80</u>

When these are deducted FIC's result was

11A	Receipts of	K333.50
11C	Deficit of	K 14.19

When one adds the cost of the 10.2.87 TT's the result is

11A	K323.50	Receipts
11C	<u>K 24.19</u>	Deficit
11A + 11C	<u>K299.31</u>	Receipts

11B.

As can be seen under D above FIC deducted its 3 $\frac{1}{2}$ % commission of K1715.03.

As can be seen under E above the differential of undisclosed profit at USD1.00 per m³ amounting to USD 346.74 was drawn off the USD account on 6.4.87 and deposited in FIC's account on that day as K313.08. This boosted FIC's receipts to K2028.11.

Against this additional bank charges of USD 45.00 (K42.26) were debited by BSP reducing FIC's receipts to K1985.85

G. COMMENTS

1. This shipment again illustrates the hopeless nature of FIC's records and accounting systems and more importantly the consequences that inevitably flow from sloppiness and incompetence in these areas.

(a) A search of all apparently relevant records fails to disclose any written accounting to Amazon Bay Sawmills on part shipments 11A and 11C.

(b) Amazon Bay Sawmills was paid, not by cheque entered in FIC's cashbook but, by a letter of direction to BSP requesting telegraphic transfer of funds. Search disclosed that on the same day (10.2.87) another like letter was sent requesting telegraphic transfer of funds to Leytrac on shipment 10B. The two payments plus transfer fees aggregated K639,040.53.

There is no cashbook entry, even though the payments were made on 10.2.87 until the end of the month when payments of this magnitude are entered as debits in the cashbook from the bank pass sheets.

This is an amazing, disgraceful state of affairs, no trading or other business could be successfully run with such an inefficient and irresponsible "system" of accounting and bookkeeping.

2. Sooner or later it was inevitable FIC's sloppiness could have financial repercussions. On shipments 11A and 11C there was a written contract between FIC and Amazon Bay Sawmills entitling FIC to commission at the rate of 3% of the FOB price. That commission (based on the prices disclosed to Amazon Bay Sawmills) amounts to K10,598.70. Payment of the full FOB price was made to Amazon Bay Sawmills without any deduction of Commission and FIC only received the gross undisclosed margin of USD 1.00 per m3 on shipment 11A. On shipment 11C the undisclosed margin was paid to S J Park as his usual commission. Park did arrange the sale and the rate is reasonable.

FIC has a clear entitlement based on a written contract to claim K10,598.70 from Amazon Bay Sawmills.

It seems FIC's records and systems are so bad that no claim as been made and the amount should in the absence of good reasons be included as "receivable".

3. FIC's rate of commission to Angus (PNG) of 3 1/2% of disclosed FOB plus an undisclosed USD 1.00 per m³ is very high. On shipment 11A and 11C the rate of 3% plus an undisclosed USD 1.00 per m³ (the latter being paid to Park on shipment 11C) is also very high.
4. (a) Ho Shing Wood (buyer on shipments 11A and 11B) has made and pressed a shortage claim as follows (the CNF price was USD 170.00 per m³).

PART	PIECES	VOLUME	AMOUNT
11A (Angus)	7	26.912 m ³	USD 4,575.04
11B (ABSC)	34	69.405 m ³	USD <u>11,798.85</u>
			USD 16,373.89

- (b) Samsung Co, (buyer on shipment 11C) has made and pressed a shortage claim for 24 pieces which has not been quantified.

It seems that apart from advising Amazon Bay FIC has done nothing and it is understood has used it's "temporary suspension" of marketing activities to delay dealing with these claims.

Clearly the buyers have right against FIC as the seller to them. FIC may have recovery rights against Angus (PNG) and Amazon Bay. The amounts involved are significant and FIC is at real contingent legal risk. It's recovery rights should be assessed and an appropriate provision made against it's exposure. It would probably have to pay on a CNF basis and would probably only be able to recover on an FOB basis.

5. Though some analysis has been done the comments on shipment 6B regarding Angus (PNG) and a thorough segregated accounting check apply equally here.
6. As is usual on FIC's CNF shipments, it would seem payment of freight and brokerage would not be able to be vouched from FIC records to the standard required for audit purposes.

APPENDIX 45SHIPMENT 12

VESSEL DOOYANG GUIDE
FEBRUARY 1987

On the face of matters this is a complex shipment (see Working Table 1 Appendix 35.1).

On analysis it involves these elements:-

- (1) Shipment by Laki Trading to Eagon (12A)
- (2) Shipment by Santa to Oriental Chemical
 - from Vailala (12B)
 - from Namatanai (12C)
- (3) Shipment to Samsung
 - by Santa from Namatanai (12D)
 - by SBLC (12E)
- (4) Shipment to Sam Chang by SBLC (12F)

Analysis proceeds separately in that general order by producer

APPENDIX 45.1

1. PART SHIPMENT 12A - Producer Laki Trading

BACKGROUND: The Laki Trading Group is a diverse group which it seems was involved in sawmilling and which was publicised as taking over Sabusa Sawmills. The company was operating on Native Timber Authorities (NTA).

If that is so it was contrary to Forest Policy for it to export logs and FIC's involvement causes serious concern. Messrs Jim McPherson and Dennis Hilditch - strongly involved in McDui's efforts to export TA logs figured prominently as employees of Laki. (See Final Report on McDui).

A. HISTORY

In about November 1986 Laki was seeking offers of 3,000m³ December and 3,000 m³ January/February shipments. FIC offered 3,000m³ December to Park.

- 8.12.86 (IN TLX 7978) Park says Eagon awaiting confirmation of Laki 3000m³ and Bismark 1500m³ and also asks for more.
- 9.12.86 (OUT TLX 5556) FIC says Bismark sold but trying for 6000m³ from Laki at USD 72.00 nett. Asks for price.
- 11.12.86 (IN TLX 8009) Park says Eagon accept USD73 excluding spondias
- 16.12.86 (OUT TLX 5629) FIC confirms 6000m³ at USD73(G); advise vessel.
- 15.12.86 (OUT TLX 5628) FIC formatted offer to Park (Eagon) 6000m³ at USD438,000 FOB. Between 15 and 22 December there is a sales agreement Laki to FIC after debate about increasing price because of quality. Laki makes the contract conditional on all necessary approvals as it is against Forestry Policy to export logs taken from NTA. FIC obtains the necessary approvals and the the export license.
- 27.12.86 (IN TLX 8166) Park is working on Dooyang Guide for varying rates and asks FIC to confirm on Japan freight.

There is apparently a communication not by telex or fax.

31.12.86 (IN TLX 8198) Park fixes Dooyang Guide and asks for a CNF cable offer to Eagon of 6,000m³ at USD 540,000.

The earlier (15.12.86) offer was calculated at USD73.00 FOB and this request is at USD90.00 CNF so freight can be inferred at USD17.00.

30.12.86 (OUT TLX 5703) FIC confirm to Laki Dooyang Guide fixed ETA 12/13 Jan

31.12.86 (OUT TLX 5715) FIC give Park (Eagon) formatted offer 6000m³ for USD540,000 CNF.

5.1.87 (IN TLX 8227) Park says Eagon inspector's concerned about log age and quality

6.1.87 (IN TLX 8249) Park conveys Eagon complaint on log age + quality.

The vessel is scheduled to arrive 13 January. There is an ongoing argument about quality and reject logs. The complaint seems to be logs are "old" and that portion the buyer complains about - he also seeks to reject a high proportion. The ship is stopped from loading. This leads to offers and counter offers over price.

An inspection is carried out by Messrs Trawa and Touba (DOF) who say 1938m³ are fresh; 1163m³ old and 1414 m³ are rejects.

17.1.87 (OUT FAX 563) FIC says buyer offers USD65.00 for 1938m³ and USD 32.00 for 1163m³.

There is a protracted argument resulting eventually in Laki introducing their lawyers who rewrite the original agreement between Laki and FIC.

20.1.87 (IN FAX 539) The agreement is faxed to FIC and covers 3,000m³ of specified logs for a price of USD58.00 FOB with all other claims released; the clause entitling FIC to commission at 3% is among those deleted.

21.1.87 (OUT TLX 5844) FIC confirm to Eagon the arrangement to take 1938m³ fresh cut and 1163m³ old logs at a CNF price of USD 76/m³ and asks for L/C to be established.

- 23.1.87 (IN TLX 8415) Park advises L/C established MD 612701 NU 00025 for 3100 m³ at USD250,000. Asks confirm price is USD76.
- 23.1.87 (IN TLX 8414) Eagon advise FIC details of L/C.
- 24.1.87 The L/C is received via Eagon in USA
- 26.1.87 (IN FAX 551) BSP faxes L/C to FIC
- 2.2.87 (OUT FAX 601) FIC say some reject logs loaded and ask for tally sheet and meeting.
- 2.2.87 (IN TLX 8462) Park asks for loaded quantity talks of big demurrage claim and asks FIC to deduct demurrage when negotiate L/C.
- 3.2.87 (IN TLX 8462) Laki say will give tally sheet on complete load today.
- 3.2.87 (OUT FAX 608) FIC say 48 logs 192.636m³ were rejects and were loaded. Buyer proposes reduce price BY USD5.00 to USD 54.00; deduct from B/L quantity so it shows 751 pieces 2710.687m³. If not unload and deduct freight.
- 3.2.87 The ships Statement of Fact shows 2903.323 m³ loaded between 13 January and 3 February.
- 5.2.87 (IN FAX 590) Park sends the lay days statement and asks FIC remit USD33,493.05 demurrage; advise if errors.
- 7.2.87 (OUT FAX 615) FIC send this on to Laki for checking.
- 9.2.87 (IN FAX 598) Laki trading send to FIC:-

(a) Invoice

2708.430m ³	at USD58.00	USD157,088.96
<u>194.893 m³(rejects)</u>	at USD54.00	<u>USD 10,524.22</u>
2903.323		<u>USD167,613.16</u>

(b) Demurrage letter

Laki confirm the lay day statement; admit liability for USD13,493.10 demurrage and say the residual USD19,999.95 is FIC's responsibility

- 9.2.87 FIC negotiate the claim on the L/C.
- 10.2.87 BSP account to FIC for L/C negotiation
- 11.2.87 (IN TLX 8545) Park follows up on freight and asks about demurrage.
- 13.2.87 (OUT FAX 629) FIC accounts to Laki
- 17.2.87 (IN TLX 8584) Park advises on various freight payments and as to this one advises:-
- (a) Gross freight 2903.323 m³ x USD 17.00
= USD49,356.49
 - (b) Pay nett freight USD 48,122.58 to
DOOYANG LINE CO, Korea
 - (c) Pay brokerage USD 1,233.91 to NAMJEON
INTERNATIONAL - Korea
- 30.3.87 (letter) FIC receives Parks letter of 19/3/87 with full demurrage detail from Dooyang Line and asks settle USD33,493.05.
- 30.3.87 (IN FAX 729) Park says should urgently remit USD18,408.33 as provisional demurrage payment; if not owner will stop discharging at Inchon and this will result in more demurrage at FIC's account.
- 30.3.87 (IN TLX 8863) Namjeon say Inchon discharge will not commence till demurrage and dead freight paid.
- 30.3.87 Trawa takes a telephone message from Park who says provisional demurrage must be paid today. Balance will be paid "by adjustment of 3% sales commission of FIC when FIC makes its next shipment on any of Dooyang Line vessels". He asks Tay to advise by phone.
Tay, in evidence acknowledged that further money was payable by FIC but was unable to satisfactorily explain how FIC was going to arrange payment.

31.3.87 (memo) Tay directs K. Ako to TT
USD18,408.33 to CENTRAL SHOKAI CO. LTD for
demurrage.

B. LETTER OF CREDIT

The original letter of credit M0612-701 NU 00025 was established by Korea Exchange Bank. First Interstate Bank of Washington (USA) transfers USD250,000.00 Of that L/C at the request of Eagon Forest Products Inc (USA) in favour of FIC. The transfer covers 3100m³ CNF Inchon.

The notify party is Eagon Industrial Co Ltd and a certificate of inspection is required from the representative of Eagon.

The same system is used by Eagon as for shipment 3,7A, 7B and again the L/C is established at the last minute. This structure admits the prospect of transfer pricing.

C. NEGOTIATION

On 9/2/87 FIC write to BSP regarding the negotiation. The documents are an absolutely incompetent mess so they require some description.

- (a) The letter itself specifies a draft amount of USD167,613.12.

This is clearly wrong as the body of the letter directs that USD52,259.81 be retained in USD and that the remaining USD167,613.12 less bank charges be credited to FIC's account.

- (b) The draft itself is typed as drawn for USD167,613.12 and pencil altered to the correct sum of USD219,872.98

- (c) The invoice (copy on FIC file) FIC/LK1/1/87 which itself has errors shows how the mistakes are made.

It covers CNF

Pieces	M ³	Price USD	
751	7208.430	76.00	USD205,840.68
48	194.893	72.00	USD 14,032.30
			<u>USD219,872.98</u>

It then has a section at the bottom:-

Gross invoice value	USD 219,872.93
Less freight at USD18.00/m ³	<u>USD 52,259.81</u>
Nett invoice value	USD 167,613.12

There are typed errors within the invoice; the freight rate is wrong (it includes Park's commission) but it tends to explain errors in other documents.

The person who prepared the documents either did not understand the transaction or did not know how to prepare the documents correctly. What one sees is a mess.

D. ACCOUNTING (KINA)

Despite all these all these errors BSP manages to correct matters and accounts for its negotiation by credit note on 10.2.87:-

- (a) USD 52,259.81 is retained in USD
- (b) USD 167,613.17 is converted to K157,634.88
- (c) bank charges of K1376.15 are deducted
- (d) the balance K156,258.73 is credited to FIC's account.

On 13.2.87 (OUT FAX 629) FIC accounts to Laki. The gross price payable is as shown in Laki's invoice of 9.2.87 namely USD 167,613.17 - which is precisely the amount converted to Kina.

From this FIC deducts the demurrage accepted by Laki of USD13,493.10 to give a balance of USD154,120.06.

This balance is converted to K144,945.03; bank charges of K1376.15 are deducted and there is a balance due to Laki of K143,568.88. This paid to Laki by FIC cheque No 036715 pursuant to payment voucher 4681 on 13.2.87.

In the result then Laki Trading received the agreed FOB price less total bank charges and the part of the demurrage claim accepted by Laki.

The demurrage allowance of USD13,493.10 (at the applicable rate of 1.0633) converts to K12,689.83. The difference between the amount credited to FIC's account (after bank charges) of K156,258.73 and amount actually paid to Laki of K143,568.88 is K12,689.85.

The figures reconcile (subject to a two toea discrepancy). The K12,689.85 is the amount actually retained by FIC in its bank account.

E. ACCOUNTING (USD)

The amount retained in USD was USD 52,259.81. As is clear from the note at the bottom of FIC's invoice this is a rate of USD18.00 per m³ over the shipment volume.

It is clear the freight was said to be USD17.00 and clear from early negotiations Park was to get USD1.00 per m³ as commission

Parks direction (IN TLX 8584 of 17.2.87) quantifies gross freight and directs payment of nett freight and brokerage.

By separate letters of direction dated 24.2.87 FIC directs BSP to pay.

- (a) USD 48,122.58 to DOOYANG LINE CO. LTD, Korea
- (b) USD1233.91 to NAMJEON INTERNATIONAL CO. LTD, Korea

The payments are in the amounts and paid to the persons and accounts specified in Parks telex of 17.2.87 (IN TLX 8584) Copies of the TT remittance instructions are on BSP files.

These payments leave a residue of USD2,903.32 in the USD account.

On 27 February, 1987 FIC directs BSP that various "service charges" be "drawn off to pay off Mr Francis Sias outstanding loan" with BSP. They include (item 3) the residue of USD2,903.32 which forms part of the total USD21,366.00 so directed to be paid and apparantly paid on 27.2.87.

(See Working Table 4 Item 3 Appendix 35.4)

F. FIC RECEIPTS

The original contract between FIC and Laki (see IN FAX 459 of 22/12/86) provided by clause 8 that FIC obtain commission at 3% of the FOB value. When the agreement was amended (see IN FAX 539 of 20.1.87) clause 8 was deleted so FIC was to receive no commission. This is what in fact occurred. As indicated under D above FIC received into its account the amount Laki agreed to contribute to demurrage - USD13,493.10 - which after the minor two toea discrepancy amounted to K12,689.85. As different exchange rates apply this analysis proceeds in kina.

Though the converted proceeds on this part shipment were credited to FIC's account on 10.2.87 and FIC accounted to Laki on 13.2.87 and despite requests FIC did nothing about paying the demurrage for which it was clearly liable until 30.3.87 and then under circumstances where the shipowner threatened to merely "lay to" and not discharge cargo at Inchon unless payment was made.

Even then only USD18,408.33 of the full amount of USD33,493.05 was paid - short by USD15,084.72.

FIC's cashbook shows that on 31.3.87 cheque No 036792 for K16,867.02 was drawn pursuant to payment voucher 4757. It is payable to BSP and debited as to K25.00 to bank charges and as to K16,842.02 to log sales. The documents supporting the payment voucher show this was in payment of demurrage details being:-

USD 18,408.33 at 1.0930 =	K16,842.02
Cable charges	<u>25.00</u>
	<u>K16,867.02</u>

At this stage FIC's kina receipts of K12,689.85 have been offset by this payment of K16,867.02 and FIC's loss amounts to K4177.17.

Additional bank charges of K20.00 are debited to FIC's account increasing the actual loss to K4197.17.

The lay day statement has been accepted as accurate by Laki and FIC accepted it. It follows axiomatically that demurrage is calculable in a sum certain and calculated at USD33,493.05.

This is unpaid to the extent of USD15,084.72 and liability seems quite clear.

In addition to its actual loss, FIC should make provision for a contingent liability to pay Dooyang Line the balance demurrage of USD15,084.72. (and see below).

Additional direct costs were incurred in inspection of the cargo.

G. COMMENTS

Comments on the shipment as a whole appear at Schedule 45.4.

Appendix 45.2

2. 2. PART SHIPMENTS 12B, 12C, 12D - Santa Investments

BACKGROUND Santa Investments was at this time operating as contractor to Ahia Development in the Vailala District of Gulf Province and as contractor to Sopathin Development in the Namatanai District of New Ireland Province. As will be seen it apparently offered 4,000 m³ from each of the concession areas. One aspect to note is that this shipment appears to have been arranged in the most haphazard and sloppy way and indeed it seems clear the delays at Laki Trading (Shipment 12A) worked to FIC's advantage; enabling it to hurriedly organising the balance cargo. Even this deadfreight and large demurrage claims arose.

A. HISTORY

- 27.12.86 (IN TLX 8166) Park arranges Dooyang Guide for Angus (3-4,000m³) Laki (6000m³) and Kumusi (3000m³) or Vailala (4000m³).
- 29.12.86 (OUT TLX 5616) FIC offer 2500m³ NAMATANAI - 50% Dillenia
- 31.12.86 (IN TLX 8198) Park suggests Dooyang Guide Laki (6,000m³) Vailala (4000m³) Amazon Bay (5,000m³)

This is interesting as the total is 15,000m³ and that is clearly the chartered volume.

There are obviously telephone discussions because of the paucity of telexes and faxes.

- 6.1.87 (OUT TLX 5736) FIC asks for NAMATANAI offer - Kumusi may not be able to load on Dooyang Guide and may have to ship Namatanai.
- 6.1.87 Santa Produces a Summary of shipment of 2588.576m³.
- 8.1.87 (OUT TLX 5745) FIC offers SAMSUNG half of Stettin Bay 6000m³

9.1.87 (IN TLX 9.1.87) Park says approaching confirmation on Namatanai at USD 55.00 (G) but buyer only wants 2000m³, Namatanai - will add on to SBLC L/C.

Park is in PNG at this time and his presence may well explain the lack of telex communications.

Also it seems the loading rotation was going to be Vailala, Bootless Bay then NGI but Santa didn't have enough stock so Bootless Bay loaded first.

12.1.87 (OUT TLX 5769) Park notes SUNG LIM confirmed 2000m³.

13.1.87 (OUT TLX 5772) Park tells his office Vailala 4000m³ should be loaded on Dooyang Guide; hope CHUNG KOO take; dont commit before my indication.

This is the very day Dooyang Guide was ETA for Laki's logs - the sale for its next loading port has not even been closed.

14.1.87 (OUT TLX 5783) Park asks his office to confirm Vailala 4000m³ with Chungkoo but not to work the vessel.

15.1.87 (OUT TLX 5789) Park asks if Vailala confirmed or not and says will be loaded on Dooyang Guide.

fd 15.1.87 (IN TLX 8341) Parks office say Vailala confirmed with Chungkoo and asks to confirm if Dooyang Guide is Laki (2-3,000m³) Vailala (4000m³) Kimbe - SBLC (6000m³) Namatanai (2000m³)

15.1.87 (IN TLX 8343) Park's office ask details for Chungkoo L/C and how to arrange Eagon L/C (for Laki).

15.1.87 (OUT TLX 5798) FIC made formatted offer to Parks office (Changkoo Lumber) for Vailala - 4000m³ at USD340,000 CNF - a CNF unit coverage of USD85/m³.

15.1.87 (OUT TLX 5799) Park tells his office Vailala formatted offer soon, Dooyang Guide will load Laki (4000m³) Vailala (4000m³) Kimbe (6000m³)

- 16.1.87 (IN TLX 8354) Parks office ask for amended offer for SUNGLIM 2000m³ - from Namatanai.
- 18.1.87 Park sends through Santa - Inspection report on Vailala and species breakdown for Namatanai.

This begins what becomes a problem - the inspector argues about log length and this leads to attempts to reduce the price on Vailala logs.

- 19.1.87 (IN TLX 8365) FIC is told by Forests they will recommend against FIC's application to export Vailala 4000m³ as exports are suspended for non compliance with permit conditions.
- 20.1.87 (OUT TLX 5830) Park asks office to tell Chungkoo must accept if 8 m long.
- 20.1.87 (IN 8383) Parks office talk of Park asking Chungkoo for good report and Chungkoo want maximum 10% Pink Satinwood asks if Namatanai original contract stands - USD72.00 CNF.
- 20.1.87 (OUT 5832) Park says maybe more than 10% PS; says Namatanai not changed and confirms USD 72.00 CNF.
- 21.1.87 (OUT TLX 5834) FIC cable for increase USD 144,000.00 for freight to cover NAMATANAI
- 21.1.87 (IN TLX 8403) Parks office tell him Chungkoo dont want to make Vailala shipment - length is main complaint.

Clearly at this stage the Inspector knows the position including shipping and knows the position he is in to pressure a price reduction.

- 22.1.87 (OUT TLX 5848) FIC tell Parks office Chungkoo have no grounds to reject a confirmed offer and asks to impress this.
- 22.1.87 (IN TLX 8410) Parks office say Samsung will increase L/C tomorrow USD144,000 about 2000 m³ (this covers Namatanai 2000m³ at USD72.00 CNF); on Vailala he says Chungkoo want Vailala price down on pretext of poor length-quotes inspectors report and offers USD77.00 CNF.

There is obviously some desperate talking to Korea at this time.

- 23.1.87 (OUT TLX 5853) FIC confirm after various telephone calls that the originally offered price for Vailala is confirmed - USD85.00 CNF and ask that the L/C be established
- 23.1.87 (In TLX 8419) Parks Office say USD85.00 confirmed if 65-70% regular diameter; average length 9.5 m and pink satinwood maximum 5%.
- 24.1.87 (OUT TLX 5857) FIC confirm all conditions and ask L/C details.
- 24.1.87 (IN TLX 8421) Parks office say Chungkoo want to adjust price before negotiation of L/C. If conditions not met and thus will amend L/C to provide for an Inspectors Certificate
- 26.1.87 (IN TLX 8422) Carpenters tell FIC Dooyang Guide will complete Laki loading 27/1; still not confirmed Vailala is next port; ask advise of ports and rotation
- 26.1.87 (IN TLX 8426) Parks office - Chungkoo want guarantee to adjust price before negotiation if conditions not met; they will open L/C on receiving this guarantee.
- 28.1.87 (IN FAX 558) Santa ask for details from FIC.
- 2.2.87 (IN TLX 8461) Park thanks Cowan and Maraleu and assures devotion.
- 2.2.87 (IN TLX 8469) Park tells FIC he heard Dooyang Guide may not be cleared at Vailala for non payment of export duty on prior ship.
- 4.2.87 (IN TLX 8484) Park asks amend 21.1.87 TLX 5843 to increase quantity by 2000 m³ (this is for old Namatanai logs)
- 4.2.87 (IN TLX 8485) Park says buyer has finally accepted to load 1400m³ balance from Namatanai; believe accepted same price as Vailala.

- 5.2.87 (IN TLX 8488) Park says heard from Santa they want to load 1400m³ balance from Namatani; believe accepted same price as Vailala.
- 5.2.87 (IN TLX 8490) Park says Inspector of Chungkoo is OK now and Vailala is OK - offset by better logs from Namatanai.
- 5.2.87 ((IN TLX 8496) Park advises Chungkoo L/C M6701702 NU00299 opened today for 4000m³ at USD340,000 CNF from Vailala and Namatanai.
- 5.2.87 (IN TLX 8497) Park telexes document requirements for Vailala/Namatanai and asks for revised offer for Namatanai old stock by increasing (CNF) value USD144,000 for 2000 m³ being freight at USD17/m³.

From and including 4.2.87 to 7.2.87 the vessel loads 2588.576 m³ at Vailala. The ship was thus loading before the L/C was opened. If there had not been a delay at Laki there would have been very serious problems.

- 9.2.87 (OUT TLX 5917) FIC, in response to a letter from Customs, confirms duties owed by Santa will be deducted and paid pay by FIC.
- 9.2.87 (IN TLX 8521) Park says owner agreed to deduct only FOB value of 117.942 m³ reject logs but freight on total should be paid; CNF price is thus (2588.576 x USD 85 .00 minus 117.942 x USD 66=) USD 212,244.79.

Freight position.

- | | | |
|-----|--|------------------|
| (a) | 2588.576 m ³ x USD19 = USD49,182.94 | 49,282.94 |
| (b) | SVC for DAI HWA 2588.576 x USD1.00= | <u>2,588.57</u> |
| | | <u>51,771.51</u> |

Nett to FIC after these deductions is
160,473.28

He asks the freight be sent, as discussed, to his HONG KONG bank. This is most irregular. The freight rate of USD19.00 is greater than the true rate and the question remains/why pay Park and why pay in Hong Kong?

- 10.2.87 (IN FAX 606) FIC receive L/C from BSP - Oriental Chemical USD340,000.00 for 4000m³

It is known Oriental is always the L/C opener for Chungkoo. By 10.2.87 the vessel has already completed loading at Vailala and has not only sailed for but arrived at RASARIK in New Ireland Province and tendered notice of readiness to load.

On 11.2.87 there are still problems with the L/C and Park faxes a copy (IN FAX 611)

- 12.2.87 (IN TLX 8552) The L/C for Samsung is amended to cover the volume from Namatanai
- 13.2.87 (IN TLX 8554) The export Permit for Namatanai is granted for 3500 m³ and Santa advised (OUT TLX 5932 of 13.2.87)
- 13.2.87 (IN TLX 8560) Santa ask when can expect Vailala payment.
- 13.2.87 (IN TLX 8567) Park asks for quantities to be loaded from Namatanai and loading points for Kimbe (SBLC)
- 15.2.87 (IN TLX 8570) FIC advised cargo loading completed 15/2 but Inspector hasn't signed inspection certificates.

Between 11.2.87 and 15.2.87 the vessel loaded at Namatanai and there were serious problems.

The Master required an indemnity to issue Bills of Lading based on shippers counts, a hatch was damaged in loading; the Inspector required deduction for defects in some logs and the Inspector wouldn't issue inspection certificates. It seems clear the following were loaded.

VAILALA 897 pieces 2588.576 m³ for discharge at Kunsan; RASARIK 340 pieces 1268.827 m³ for discharge at Kunsan; RASARIK 471 pieces 1828.417 m³ for discharge at Busan.

- 15.2.87 Santa Invoice No 001/87 for 340 pieces 1268.827 m³ at USD64 = USD81,204.93

- 16.2.87 (OUT TLX 5938) FIC say to Rober Laurie Carpenter - has a message - loading completed and buyer's inspector refuses to sign Inspection Certificate which is required for bank negotiaton, Ask our Mr ADPO to press for signature but if Inspector will not, clear vessel to Buluma and advise ADPO to return to POM.
- 16.2.87 (IN FAX 622) Santa authorises FIC to deduct and pay export duty for NAMATANAI
- 16.2.87 (OUT TLX 5942) FIC advises Park 3,097.244 loaded at Namatanai and advises SBLC loading points.
- 16.2.87 (OUT FAX 5946) FIC guarantee to pay K14,399.60 export duty from the L/C. Vessel can be held at SBLC if necessary.
- 16.2.87 Santa Invoice No 002/87 for 471 pieces 1828.417 m³ at USD54=USD98,734.52. The vessel was delayed for 1 day to complete documents for Customs clearance.

17.2.87 Santa sends Sopathin invoice SI 02/87 as follows:

471 pieces 1828.417 m ³ (old stock) at	52.00
(old stock) at USD 52.000	USD95,077.68
340 pieces 1268.827 m ³ at USD 64.00	= <u>USD81,204.93</u>
	<u>USD176,282.16</u>

The latter figure checks with Santa's earlier invoice of 15.2.87. The former figure is USD2.00/m³ less than Santa's earlier invoice of 16.2.87.

- 18.2.87 (IN FAX 629) SBLC faxes Inspectors certificate for NAMATANAI loadings
- 18.2.87 (In TLX 8602) Park says buyer (Oriental for Changkoo) wants a decrease of USD2.00 per m³ for L/C quantity due to reject logs. Value of rejects is 117.942 m³ at USD 66.00 = USD7,784.17. If reduce USD2.00 is 3587.403m³ at USD2.00 = USD7,714.81. Park asks if suggestion is acceptable.
- 18.2.87 (IN TLX 8605) Park says buyer has amended L/C to decrease unit price by USD2.00/m³. Asks if can amend documents (presented for negotiation of L/c)

- 19.2.87 (OUT FAX 650) FIC sent telexes to Santa and ask for advices.
- 19.2.87 (IN FAX 635) Santa asks immediate negotiation of L/C and payment of proceeds

It seems clear Santa has a liquidity problem and needs cash.

- 19.2.87 FIC writes to BSP to negotiate for VAILALA loading
- 20.2.87 (IN TLX 8622) Park says Chungkoo confirm will cancel L/C amendment after confirmation on reject compensation at Namatanai. Hold negotiation till Mr Kim arrives tomorrow.
- 20.2.87 (IN FAX 636) Park tells Santa J T Kim signed to FIC. Santa copies to Cowan.
- 20.2.87 (NOT NUMBERED) Santa says price agreed based on USD66, deduct USD2.00 to give USD64.00; Parks commission through FIC is USD1.00 or if direct USD2.00 - therefore it is USD1.00; from this we have to pay FIC besides Park - nett balance will be ours.

There are pencil notes on this fax.

- 20.2.87 (IN FAX 637) Santa asks for proceeds.
- 21.2.87 FIC writes to BSP to negotiate for NAMATANAI loading 1268.827m³.
- 21.2.87 FIC writes to BSP to negotiate for NAMATANAI loading 1828.417 m³.
- 23.2.87 (OUT TLX 5974) FIC tells Park SIA agrees negotiate at USD2.00 reduction
- 24.2.87 BSP accounts for Vailala 2588.576m³
BSP accounts for Namatanai 1268.827m³
- 24.2.87 FIC accounts to Santa for Vailala
- 24.2.87 (In FAX 663) Santa authority to pay K30,959.37 to Ahia Dev. is confirmed.

- 24.2.87 (IN TLX 8648) Park directs on freight for Vailala 2588.576 m³ and Namatanai 1268.827 m³
- (a) freight is 3857.403 m³ x USD19.00 = USD73.290.66
- (b) Pay Nett freight USD73,390.66 - Dooyang Line to Korea Brokerage USD 1,687.61 - Namjeon Int, Korea Additional Commission USD 3,857.40 - S J Park, Korea
- 25.2.87 (letter) FIC pays Customs duty on 3 part shipments from Vailala totalling K38,735,44.
- 25.2.87 FIC accounts to Sopathin for Namatanai 1268.827 m³
- 26.2.87 BSP accounts for Namatanai 1828.417m³
- 27.2.87 (letter) FIC enclose cheque to Customs for Namatanai K14,399.60
- 2.3.87 (Letter) Customs complain export duty not paid.
- 4.3.87 (OUT TLX 6061) FIC advise customs paid 2.3.87 and give details.
- 6.3.87 (IN TLX 8712) Park advises freight for Namatani 1828.417m³ at USD17.00 is USD31,083.09 with nett freight USD30,306.01 and brokerage USD777.08.

B. LETTER OF CREDIT

- a) Part shipments 12B and 12C were both made under the same letter credit - L/C M6701-702 NU00299 which is from Lloyds Bank PLC, Seoul, Korea - applicant Oriental Chemical Industry Co Ltd Korea. The L/C was originally for USD340,000 to cover about 4,000 m³ at USD85.00 per m³ CNF.

The L/C was amended - as shown above - to reduce the cover to USD320,164.45 for 3857.403m³ at USD83.00 per m³ CNF.

The L/C requires an inspection certificate from and log lists to be sent to Chungkoo Industrial Co Ltd.

This, in the Commissions experience, is standard practice for Chungkoo - its L/C is always opened through Oriental Chemical.

- (b) Part shipment 12D was made under L/C BSN 876002 - which is from Hong Kong and Shanghai Banking Corporation, Busan Korea - applicant Samsung Co Ltd. of Busan, Korea. The L/C originally was for USD 267,000 covering 3,000 m³ with the price split into USD216,000 for logs and USD51,000.00 for freight at USD17.00 per m³. The original L/C was to cover a part shipment of 3000 m³ from SBLC (Part shipment 12F). The buyer then agreed to take 2000 m³ from Namatanai and the L/C was amended to increase the value by USD144,000 to USD411,000 with the value split into USD326,000 for logs (up USD110,000) and USD 85,000 for freight (up USD 34,000) at USD17.00 per m³.

C. NEGOTIATION

1 Part Shipment 12B

Initiatlly FIC's letter of 19.2.87 was wrong and was corrected by a substitute letter of the same date (received 23 February 1987)

The first letter showed a claim of USD 220,028.96 with a direction to retain USD59,537.25 in USD and credit USD160,491.71 to FIC's account. As is seen later the L/C amendment prevented pursuit of this.

The second letter referred to the following documents said to have been hand delivered on 17.2.87:-

- (a) draft for USD 214,851.81
- (b) Invoice FIC/SANT/1-87 for 897 pieces 2588.576 m³ at USD 83.00 CNF = USD 214,851.81.
- (c) Bill of Lading VAL 1 for 897 pieces = 2588.576 m³.

This letter directs retention of USD 54,360.10 in USD and credit of the balance USD160,491.71 to FIC's account.

2 Part Shipment 12C

On 21.2.87 FIC wrote to BSP (such letter being marked received 23.2.87) enclosing

- (a) draft for USD 105,312.64
- (b) Invoice FIC/030 for
340 pieces 1268.827 m³ at USD 83.00 CNF = USD
105,312.64.
- (c) Bill of Lading NA.01 for 340 pieces = 1268.827
m³.

The letter directs retention of USD 26,645.37 in USD and credit of the balance USD 78,667.27 to FIC's account.

3. Part Shipment 12D

On 21.2.87 FIC wrote to BSP (such letter being marked received 23.2.87) enclosing

- (a) draft for USD 131,646.02
- (b) Invoice FIC - 021 for
471 pieces 1828.417 m³ at USD 72.00 CNF =
USD 131,646.02
- (c) Bill of Lading NA.02 for 471 pieces =
1828.417 m³.

The letter directs retention of USD 32,911.50 in USD and credit of USD 98,734.52 to FIC's account.

D. ACCOUNTING (KINA)

1. Part Shipment 12B - Vailala

Clearly from the history FIC arranged this sale at USD 85.00 CNF and after arguments that price was confirmed on 23.1.87 on certain conditions. From the history and terms of the L/C that CNF price was premised on a freight rate of USD 17.00 per m³.

It seems that 117.942 m³ of the loaded quantity of 2588.576 were reject logs and from Parks telex of 9.2.87 (IN TLX 8521) it was said the buyer wanted a deduction from the FOB price of those logs - said to be USD 66.00 per m³.

On the figures in Park's telex freight is said to be USD19.00 payable over the whole shipment 12B and Park asks for it to be paid not to the shipowner but to Park's account in Hong Kong - "as discussed". This appears highly irregular - the proposal is that the deduction be made from the FOB price of USD66.00 per m³ and that an extra USD2.00 per m³ above the true freight rate be remitted to Park in Hong Kong "as discussed". According to Park's telex of 18.2.87 (IN TLX 860) the buyer then seeks to reduce the whole price over shipments 12B and 12C by USD2.00 per m³ to cover the rejects and on Parks figures that is preferable.

Before anything could be done that is exactly what the buyer unilaterally did - he amended the L/C to reduce the CNF price and the log price by USD2.00 per m³ to USD83.00 per m³ CNF - the freight component remained USD17 per m³.

The main clue to the arrangement with Santa appears from the facsimile of 20.2.87. That fax says the arrangement was based on USD 66/m³ with a deduction of USD 2.00 per m³ to give USD64.00 per m³. They say if Park sold direct he would get USD2.00 per m³ but if through FIC then USD1.00 per m³.

When one looks at the notes on this fax there are margins of USD2.00 per m³ and freight is shown at USD19.00 (not USD17.00).

The price to Santa is shown at either USD64 or USD62.00.

It seems quite clear that two margins each of USD2.00 had been built in - the FOB price used was USD66.00 per m³ from the buyer and USD64.00 to Santa and the freight of USD17.00 was inflated to USD19.00.

The fact of the rejects being shipped and the action of the buyer in amending the L/C interfered with this. In this context the initial letter and claim of FIC is revelatory.

The initial claim was USD220,028.96 ie for 2588.576m³ at a unit rate of USD 85.00 per m³ CNF. Of this it was directed that USD160,491.71 be converted (ie USD 62.00 per m³) leaving USD 59,537.25 in USD (ie USD 23.00 per m³).

The amendment of the L/C prevented this and in the result the claim was for USD214,851.81 ie at a unit rate of USD83.00 per m³ CNF with the same amount of USD160,491.71 being converted (USD 62.00 per m³) leaving only USD 54,360.10 in USD (ie USD21.00 per m³).

On 24.2.87 BSP accounts to FIC by credit note:-

- (a) USD 54,360.10 is retained in USD.
- (b) the residual USD160,491.71 is converted to K150,994.17.
- (c) bank charges of K1366.30 are deducted.
- (d) the balance K149,627.87 is credited to FIC's account.

(I am unable to locate any invoice from Santa or from Ahia on this part shipment).

On 24.2.87 FIC accounts to Santa

- (a) the contract price is said to be 2588.576 m³ at USD 62.00 = USD160,491.71
- (b) the price converts to K150,994.17
- (c) bank etc charges of K1366.30 are deducted
- (d) FIC commission of K4529.82 is deducted.

After these deductions the balance is K145,098.05

That balance is then split in this way:-

i)	Export duty on 3 shipments back to Dec, 1986	K 38,735.44
ii)	Ahia Development	K 30,959.37
iii)	FIC levies on 3 shipments back to Dec. 1986	K 1,866.66
iv)	Santa Investments	<u>K 73,536.58</u>
		<u>K145,098.05</u>

The levies would be retained by FIC and the FIC cashbook shows the other payments made as follows:-

- i) Cheque 036732 Chief Collector of Customs
K38,735.44-payment voucher 4696
- ii) Cheque 036725 - Ahia Development K30,959.37 -
payment voucher 4705.
- (iii) Cheque 036724 - Sopathin Dev. Corp K73,536.58
payment voucher 4692.

The FIC letter and cashbook are a mess at this time but the accounting is there. The payment to Sopathin can be explained as Santa was using a Sopathin bank account about this time to avoid moneys being seized under a Judgement. The payment of export duty and to Ahia Development were authorised and deduction of FIC levies is reasonable.

2. Part Shipment 12C - Namatanai new logs

From Parks tlexes of 4.2.87 (IN TLX 8485) and 5.2.87 (IN TLX 8488) this part shipment was on the same basis as for Vailala. The history and observations above are thus relevant to this part shipment.

Here however the L/C amendment was known when the claim was first presented.

The claim was USD105,312.64 ie for 1268.827 m³ at USD83.00 per m³. Of this USD 78,667.27 was converted (USD 62.0078 per m³) and USD 26,645.37 (USD21.00 per m³) was retained in USD.

This parallels exactly what happened in relation to part shipment 12B.

Santa originally invoiced this part shipment at USD64.00 (on 15/2/87) and then Sopathin again invoices it (17.2.87) at the same price.

On 24.2.87 BSP accounts to FIC by credit note:-

- (a) USD26,645.37 is retained in USD
- (b) the residual USD 78,667.50 is converted to K73,872.92
- (c) bank charges of K694.85 are deducted
- (d) the balance K73,178.06 is credited to FIC's account.

On 25.2.87 FIC accounts to Sopathin Development.

- (a) the contract price is said to be 1268.827 m³ at USD62.00 = USD 78,667.27
- (b) the price converts to K73,872.91
- (c) bank charges of K694.85 are deducted.
- (d) FIC commission of K2216.18 is deducted.

After these deductions the balance is K70,961.88.
The balance is then split in this way:-

i) Export duty	K 6,561.87
ii) FIC levy	K 272.80
iii) Sopathin Development	<u>K64,127.21</u>
	<u>K70,961.88</u>

The export duty of K6,561.87 together with the duty on part shipment 12D of K7837.73 aggregating K14,399.60 were paid, according to FIC's cashbook by FIC's cheque No 036742 - Collector of Customs K14,399.60 - payment voucher 4707.

The levy would be retained by FIC. According to FIC's cashbook cheque No 036730 - Sopathin Development Corporation K64,127.21 - was drawn on 25.2.87 pursuant to payment voucher 4694. The payment of export duty was authorised and deduction of FIC levies is reasonable.

3. Part Shipment 12D - Namatanai old logs.

Parks original FOB price on this part shipment was quoted (IN TLX 9.1.87) as USD 55.00 (G) for 2,000 m³ to be added on to SBLC's L/C. The CNF price is confirmed on 20.1.87 at USD72.00 (see IN TLX 8383 and OUT TLX 5832).

The L/C is clearly to cover 2000 m³ at USD72.00 and is increased by exactly USD144,000.00. The arrangement is specific in 5.2.87 in TLX 8497.

On 16.2.87 Santa invoices the 1828.417m³ actually shipped to FIC at USD 54.00 or for USD98,734.52.

When Sopathin invoices on 17.2.87 the unit price has reduced to USD 52.00 for USD 95,077.68.

On 26.2.87 BSP accounts to FIC by credit note:-

- (a) USD32,911.50 is retained in USD
- (b) the residual USD 98,734.52 is converted to K92,612.81.
- (c) bank charges of K887.15 are deducted.
- (d) the balance USD 91,725.06 is credited to FIC's account.

(These is an error and discrepancy of 60t in the last calculation by the Bank).

The claimed amount USD 105,312.64 represents a CNF unit rate rate of USD72.00; the retention sum represents a unit rate of USD 18.00 and the converted sum represents a unit rate of USD54.00.

On 27.2.87 FIC accounts to Sopathin.

- (a) the contract price is said to be K1828.417 m³ at USD54.00 = USD98,734.52
- (b) the price converts to K92,612.81
- (c) bank charges of K887.15 are deducted
- (d) FIC's commission of K2778.38 is deducted.

After these deductions the balance is K88,947.28.
The balance is split in this way:-

i)	Export duty	K 7837.73
ii)	FIC levy	K 393.11
iii)	"Our advance to National Provident Fund"	K11,740.31
iv)	Sopathin Development	<u>K68,976.13</u>
		<u>K88,947.28</u>

The export duty was paid as shown under shipment 12C above. The levy would be retained by FIC

FIC's cashbook shows cheque NO 036735 - Sopathin Development Corp. K 68,976.13 was drawn on 27.2.87 pursuant to payment voucher 4699.

It was not possible to locate in FIC's cashbook an entry or entries regarding an advance of K11,740.30. As indicated above the cashbook is a mess between 17.2.87 and 25.2.87 with cheques entered out of order; payment voucher 4688 apparently omitted; no entry for cheque 036723; cheque 036725 entered at the end of the month and cheque 036726 entered as an after thought after the entries from the bank pass sheets are entered.

The deduction of K11,740.31 is explained and accounted for.

E. ACCOUNTING (USD)

1. PART SHIPMENT 12B)

2. PART SHIPMENT 12C)

The USD retentions for these part shipments from Santa to Oriental Chemical (Chungkoo) are dealt with together.

The retention funds, as indicated above, were USD 54,360.10 and USD 26,645.37 respectively aggregating USD81,005.47.

As was seen above on each part shipment this represented a rate of USD21.00 per m³ on the part shipments of 2588.576 m³ and 1268.827 m³ aggregating 3857.403.

After Park's initial direction (IN TLX 8521 of 9.2.87) on part shipment 12B fails, he tries again on the combined volume in his telex of 24.2.87 (IN TLX 8648)

On 25/2/87 FIC writes to BSP its (one for both part shipments) letter directing payments as follows:-

- i) USD 67,745.65 - DOOYANG LINE CO, KOREA
 - ii) USD 1,687.61 - NAMJEON INTERNATIONAL, KOREA
 - iii) USD 3,857.40 - PARK SOON JOO, KOREA
- 73,290.66

These payments accord exactly with Parks telex of 24.2.87 (IN TLX 8468) and are made to the bank accounts specified in that telex - copy instruction telexes are on BSP's files. The amount paid to Park represents a rounded (to the nearest cent) rate of USD1.00 per m³ over the aggregate volume shipped. The aggregate paid to Dooyang Line and Namjeon of USD 69,433.26 represents a unit freight rate of exactly USD18.00 over the shipment volume of 3857.403m³.

Parks telex is transparently dishonest - the freight rate is not USD19.00 and using that figure is a guise to transfer funds to Park - which he describes himself not as brokerage but as "ADD COMM" - additional commission.

When one looks at the facts the position is clear. Initially Park suggested (IN TLX 8166 of 27.12.86) freight for Vailala at USD17.50. If freight on the aggregate 3857.403 was USD17.50 gross freight would be USD67,504.55; brokerage at 2.5% on a freight rate of USD17.50 is exactly what was paid to Namjeon - the broker. If this be the true rate nett freight was overpaid by USD1928.71 or USD0.50 per m³.

Against this the ships manifest for Vailala shows a freight rate of USD 17.00 and this adds to the confusion. At this stage it is quite clear the freight payments were manipulated - this aspect is pursued in comments.

For present purposes USD73,290.66 has been paid from the USD81,005.47 aggregate retention fund leaving a residue of USD7,714.81

As for each part shipment the retention was USD21.00/m² and freight (USD18/m²) + commission (USD1/m²) have been deducted there should, for each part shipment be a residue of USD2.00 per m².

The respective retention's should thus be:

12B	USD2 x 2588.576	= USD 5177.15
12C	USD2 x 1268.827	= USD <u>2537.66</u>
		USD <u>7714.81</u>

The disposal of this residue is peculiar and its timing may be of real relevance to possible explanations.

On 27 February 1987 FIC writes to BSP directing drawing of funds to pay off Francis Sia's loan account with BSP. The funds aggregate USD21,366.00 and include in respect of these two part shipments the following sums:-

12B (Item 1)	USD 2 588.57
12C (Item 2)	USD <u>1 268.83</u>
	USD <u>3,857.40</u>

(See Working Table 4 Appendix 35.4)

The amounts are rateable as between the two part shipment volumes and aggregate USD1.00 m² over the total.

This reduces the aggregate USD retention to USD 3857.41. This balance is subject to the correspondence exchange of 20 March and 6 April 1987 which resulted in an aggregate USD 11,863.02 (K10,711.35) being deposited to the credit of FIC's account on 6/4/87.

The amounts included in respect of these two part shipments:-

12B	USD 2588.59	(K 2337.33)
12C	USD 1268.82	(K <u>1145.66</u>)
	USD <u>3857.41</u>	(K <u>3482.99</u>)

(See Working Table 5 Appendix 35.5)

Again the amounts are rateable as between the two part shipment volumes and aggregate USD1.00 per m² over the aggregate volume.

In summary then on each part shipment and on the aggregate the USD retention of USD 21.00 over the shipment was follows:-

- (a) USD18.00/m³ to pay freight and brokerage
- (b) USD1.00/m³ to pay SJ Park "ADD.COMM."
- (c) USD1.00/m³ to pay of Francis Sias loan account.
- (d) USD1.00/m³ to FIC's kina account.

This and the freight rates require explanation. (See Comments)

3. Part Shipment 12D

The USD retention was USD32,911.50. Clearly Park obtained a CNF price of USD 72.00 based on an FOB price paid by the buyer of USD 55 (G) and a freight rate of USD 17.00. FIC agreed to pay Santa an FOB price of USD54.00.

Only the FOB price to Santa was converted to Kina leaving in USD an amount equal to USD18.00 per m³ over the shipment volume to cover freight and Parks commission.

Park directed freight payment on 6/3/87 (IN TLX 8712).

By separate letters of 10.3.87 FIC requested BSP to make the following payments:-

- i) USD 30,306.01 - DOOYANG LINE CO, KOREA
- ii) USD 777.08 - NAMJEON INT, KOREA
USD 31,083.09

The payments are made exactly as directed in Parks telex. Copies of the TT instructions are on BSP's files.

These payments reduce to USD retention to USD 1828.41 which represents Parks commission of USD1.00 per m³ over the shipment volume of 1828.417m³.

In fact this sum was dealt with even before the freight and the order of priorities and of haste is indicated quite clearly. On 27 February 1987 FIC directed BSP to "draw off" USD balances to pay off Francis Sias loan account. The aggregate USD21,366.00 so drawn off included USD1828.41 in respect of this part shipment. (See Working Table 4)

The haste is evident from the facts BSP only accounted to FIC for negotiation of the L/C on 26.2.87; FIC only accounted to Santa on 27.2.87; the transfer Sias loan was made on 27.2.87; .2.87 yet the freight and brokerage were not paid until 10.3.87.

F. FIC RECEIPTS

Part shipments 12B and 12C can be considered together. There were clear margins between the freight (presumed and actual) and between the FOB price payable by the buyer to FIC and by FIC to Santa. It seems clear Santa knew of the second margin but selling FOB it would not be concerned about the first. When Chungkoo (Oriental) amended the L/C to reduce the price by USD2.00 per m³ FIC persuaded Santa to reduce its FOB price by the same amount thus preserving the second margin of USD2.00 per m³. Santa's understanding of this margin is clear from the fax of 20.2.87. If Park sold direct (which he did not) he got USD2.00 per m³. If Park got his commission through FIC (which he did) he got USD1.00 per m³.

It must be remembered these transactions occur at a time:-

- (a) when Santa is moving out of Vailala and FIC is arranging a convenient shift (as contractor engaged by FIC as manager) to Angus operations in Gadaisu (see Santa's fax of 20.2.87)
- (b) when Francis Sia is trying to get started in New Hanover (Mamirum) where he got so much help from FIC and his lawyer and consultant Miskus Maraleu in getting the contract.
- (c) when the BSP is calling up its advance to Francis Sia obtained as a consequence of FIC's guarantee given by Cowan and doing so by calling up FIC on its guarantee.

On the freight margin it seems reasonable to conclude the freight rate was in fact USD17.50 (or USD17.00) thus giving a margin of USD1.50 (or USD2.00) per m³.

The total margin was thus USD3.50 (or USD 4.00) and was applied by paying USD1.00 to Park (disguised thinly as freight); USD0.50 (USD 1.00) to the shipowner (for reasons apparent) as additional freight; USD1.00 to pay off Sia's loan and USD1.00 later credited to FIC's account. Park was only entitled to USD1.00 per m³ - as Santa understood it and as has been the case on every other shipment as no other explanation has been forthcoming the money paid off Sias loan seems to have been misappropriated from FIC.

Turning to FIC's actual receipts:-

(i) Part Shipment 12B

FIC retained as commission out of the initial kina conversion a sum of K4529.82 (see D above).

FIC also received the residue of the USD retention amounting to USD 2588.59 (K2337.33) (see E above)

FIC's total receipts on part shipment 12B were thus K6867.15.

ii) Part Shipment 12C

FIC retained as commission out of the initial kina conversion a sum of K2216.18 (see D above)
FIC also received the residue of the USD retention amounting to USD 1268.82 (K1145.66)
(See E above) FIC's total receipts on part shipment 12 C were thus K3485.00.

Bank charges of K30.00 were later deducted reducing receipts to K3435.00.

ii) Part Shipment 12D

FIC's only receipt was its commission retained out of the original kina conversion amounting to K2,778.38.

From this bank charges of K14.10 and K20 aggregating K34.10 were later deducted reducing the receipts to K2744.28.

FIC officers appear to have been present at the Namatanai and Vailala loadings and direct expenses would flow from their presence.

APPENDIX 45.3

3 PART SHIPMENTS 12E AND 12F - Producer Stettin Bay Lumber Co. (SBLC)A. History

21.11.86 (Out Telex 5460) FIC offers SBLC USD 72.00 for given species mix.

21.11.86 (In Telex 7846) SBLC say can't do given species mix but offer 6000m³ of normal species mix which is specified.

This must have been conveyed by FIC to Park by telephone.

24.11.86 (In Telex 7863) Park working SBLC 6000m³ at USD67.50 USD69.00 (G) and asks FIC for price indication.

Park is clearly working here on a USD 1.50 margin.

25.11.86 (Out Telex 5484) FIC offer SBLC USD68.00; 3% commission.

26.11.86 (Out Telex 5494) FIC confirm telephone offer and price of SBLC 6,000 m³ at USD 73.00.

26.11.86 (In Telex 7883) Park confirms SBLC 6,000m³ at USD 73.00 and asks for cable offer.

27.11.86 (Out Telex 5496) FIC confirms to SBLC USD72 FOB; 3% Commission.

27.11.86 (Out Telex 5499) FIC sends formatted offer to Park (Attention: DONG CHANG) for 6,000 m³ at USD 558,000 CNF (Unit price USD93 CNF).

22.12.86 (In Telex 8129) Park asks if SEA DRAGON acceptable.

24.12.86 (In Telex 8157) Park asks for separate offers for DONG CHANG and SAMCHANG each 3,000 m³ at USD 276,000.00 based on freight of USD 19.00/m³.

29.12.86 (Out Telex 5688 and 5699) FIC sends requested formatted offers.

31.12.86 (IN TLX 8197) Park now says SAMSUNG and DONG CHANG and asks for two revised offers 3000 m³

at USD 267,000 based on log price of USD 72.00 (G) and freight at USD 17.00.

- 31.12.86 (Out Telex 5741) and 5716) FIC sends requested offers.
- 31.12.86 (In Telex 8200) Park says SMILAX fixed at USD 17. 00.
- 02.01.87 (Out Telex 5726) FIC tells SBLC Smilax Substitutes for EASTERN DRAGON.
- 03.01.87 (In telex 8211) SBLC ask about laytime and problems separating cargo.
- 07.01.87 (In Telex 8257) Park says changed DONG CHANG to SAM CHANG again and the original offer is amended again.
- 09.01.87 (Out Telex 5759) Park says SMILAX grounded, DOOYANG GUIDE is substituted.
- 09.01.87 (In Telex 8282) SBLC says they hear SMILAX grounded and ask for a substitute vessel.
- On 13 January details are fixed with SBLC for ETA 19.20/1.
- 13.01.87 Parks office advise SUNGLIM L/C is BSN 876002.
- 14.01.87 (In Telex 8327) Parks office advise SAMCHANG L/C is M4224701NU00025.
- 14.01.87 (In Telex 8337) SBLC ask pay for first 3000 m³ after loading to assist cashflow.
- 15.01.87 (In Fax 515) BSP fax FIC the Samsung L/C.
- 19.01.87 (In Fax 8374) SBLC complain about delay in vessel as this delay and delay of Indian shipment cause cashflow problems.
- 21.01.87 (Out Fax 580) FIC send SBLC copy Sam Chang L/C; advice ETA now 29/30 January.
- L/C's are sent and amended and there are irritating delays to SBLC.
- 16.02.87 (Out Telex 5935) FIC tells SBLC vessel will clear Rabaul today.
- 16.02.87 (In Telex 8577) SBLC asks for copy of second L/C.

The second L/C is sent and there is a rush for an export license. The L/C and export licences are fixed then SBLC point out the last shipment dates in the L/C's have expired and SBLC cannot load, till they are extended.

The vessel loads 898 pieces for 2,673.590 m³ at Buluma then proceeds to Wagori on 20.02.87.

23.02.87 FIC sends documents to BSP for negotiation.
The vessel is then idle for two days.

24.02.87 BSP accounts to FIC for negotiation.

25.02.87 FIC accounts to SBLC for loading of
2,673.590 m³.

SBLC is justifiably concerned about the L/C extension. The buyer argues about logs being small and low quality and through Park. (In TLX 8669 of 27.02.87) says he will only pay USD 55/m³ (G). FIC have their man Mr. Avosa report and he contradicts the Korean Inspector. Loading stops because the L/C is not amended but is resumed when the amendment comes through. The inspector continues to give trouble and apparently to be unreasonable.

The position is summarized in FIC's fax of 4/3/87 (Out Fax 6 82) Eventually 905 pieces 3,055.319m³ is loaded and an agreement (see In Fax 677 of 4.3.87) is reached whereby the whole amount will be invoiced claimed and paid but there will be a reduction of 96.447m³ at USD 89.00 aggregating USD8,583.78 repaid to the buyer.

The vessel loaded at Wangore between 23 February and 6 March 1987 and was delayed at the end as no FIC man was aboard.

23.02.87 SBLC invoices FIC.

BUL-1-898 pieces 2,673.590m³ at USD 72,00 =
USD192,498.48.

26 and 28 2.87 SBLC invoices FIC.

BUL-2	325 pieces	1024.671 m³	at USD 72.00 =	USD 73,776.31
BUL-3	190 pieces	674.679 m³	at USD 72.00 =	USD 48,576.89
WAG-1	<u>390 pieces</u>	<u>1355.969 m³</u>	at USD 72.00 =	<u>USD 97,629.77</u>
	905	3055.319 m³		USD 219,982.97

06.03.87 (Letter) The ships master informs FIC cargo was short by 681,948m³ that he had space for the contracted 15,000m³ and that FIC is liable for deadfreight and demurrage.

- 06.03.87 (In Telex 8712) Park advises as to freight at USD 17.00 on 2,673.590m³.
- 09.03.87 FIC writes to BSP over negotiation of L/C.
- 10.03.87 BSP accounts to FIC over negotiation of L/C.
- 11.03.87 (In Fax 689) SBLC sends an amended invoice taking account of the defect volume of 96.447m³ which results in 2,958.872m³ at USD 72.00 = USD 213,038.78.
- 12.03.87 (In Telex 8751) Park says freight is 3,055.319m³ x USD 17.00 = USD 51,940.52 and asks not to deduct brokerage and send whole amount to CENTRAL SHOKAI CO LTD OF TOKYO.
- 12.03.87 (Out Fax 709) FIC accounts to SBLC for 2,958.872m³.
- 12.03.87 (Letter) FIC directs BSP to pay SBLC K190,539.77 by TT.

There is then a long and serious argument where the buyer and his bank refuse to accept discrepancies, replacement documents are sent; the opening bank requests a refund and eventually BSP calls their bluff and the matter is at an end.

- 19.03.87 (In Telex 8816) Park says buyer has asked for deduction sum of USD 8,583.78 under 5.3.87 agreement; asks FIC to deduct and hold USD 3,000 in case Inspector caused demurrage.
- 26.03.87 (In Telex 8849) After some communication with FIC Parks says demurrage on the Laki Trading Section should be 9 days 4 hours 54 minutes compared to the owners 16 days, 7 hours, 55 minutes. The owners claim was USD 33,493.05 and Park's figure was USD 18,408.33 which was paid 31.3.87. The difference is 7 days, 13 hours, 1 minute.
- 27.03.87 (In Telex 8862) Park quotes the owner saying his (the owners) calculation is correct and reasonable.
- 07.04.87 Park sends a fax which, cannot be located in FIC's file, wherein it is apparent from (what follows) he reports that the owner is claiming demurrage for SBLC loading at Wangore/Buluma of 7 days, 12 hours, 38 minutes. If one adds this to the difference from Vailala of 7 days, 13

hours, 1 minute aggregate demurrage is 15 days, 1 hour 39 minutes. The total claim seems to be 14 days 16 and half hours so the owner has obviously reduced his Vailala loading claim to some extent.

- 22.04.87 (Out Fax 783/4) FIC tell Park/SBLC four days demurrage should not be claimed out of the total 14 days 16¹/₂ hours. What the fax does in fact is admit 3 days, 12 hours, 38 minutes demurrage and dispute four days at SBLC.

The four days are disputed:-

- a). because 1 day is a Sunday - 1st March.
- b). because for 3 days SBLC refused to load because the L/C had not been extended.

Thus on this further claim of USD15,052.48 the sum of USD8,000 was disputed and USD 7,052.78 admitted.

- 22.04.87 (IN FAX 759) SBLC tell FIC they have made an (FOB) allowance for the defect volume and it is a matter between FIC and the buyer.

- 24.04.87 (In Telex 8963) Park says 1 March has been included and should be included, working on total of USD 9,052.78, will advise outcome.

- 21.05.87 (IN FAX 793) Park tells FIC shipowner is pressing for Bootless Bay demurrage of USD 15,084.72 and SBLC demurrage of USD 15,052.78 and Sungrim is pressing for agreed defect amount of USD 8,583.78.

There were no further documents on FIC files (when handed to the Commission) on this demurrage question or the deadfreight claim for 681,948m³.

B. LETTER OF CREDIT

1. PART SHIPMENT 12E

The letter of credit BSN 876002 is from Hong Kong and Shanghai Banking Corporation, Busan, Korea applicant Samsung Co Ltd of Busan, Korea. As originally established it was for USD267,000.00 covering 3,000m³ with USD 216,000.00 attributed to logs + USD 51,000.00 attributed to freight (at USD 17.00/m³). The L/C was amended to cover the Santa logs from Namatanai (Part Shipment 12D).

On 2/3/87 BSP received advice of extension of the shipping date to 10.03.87, this was confirmed at 3.40pm. The L/C appears direct but is clearly written by Samsung on behalf of SUNGLIM.

2. PART SHIPMENT 12F

The letter of credit M4224701NU00025 is from Shinhan Bank, Seoul Korea applicant Sam Chang Timber Co, LTD, Pusan Korea. It is for USD 267,000.00 covering 3,000m³ at a price of USD 89.00/m³ CNF Pusan. On 26.01.87 the L/C was amended to extend the shipping date to 20.2.87, received by BSP on 27.1.87.

C. NEGOTIATION

1 PART SHIPMENT 12E

On 23.2.87 FIC writes to BSP enclosing:-

- a). draft for USD 237,949.51.
- b). invoice FIC/SBLC/1-87 for 898 pieces 2,673.590 m³ at USD 89.00 = USD 237,949.51.
- c). bill of lading FBU1 covering 898 pieces = 2,673.590m³
The letter directs retention of USD 45,451.03 in USD and credit of the converted balance of USD 192,498.48 to FIC's account.

2 PART SHIPMENT 12F

On 9.3.87 BSP receives FIC's undated letter enclosing:-

- a). draft for USD 271,923.39.
- b). FIC invoice which cannot be located on FIC File but which must have been for 905 pieces 3,055,319 m³ at USD 89.00 = USD 271,923.39.
- c). bill of lading FBU2 covering 905 pieces = 3055.319 m³

The letter directs retention of USD 51,940.42m USD and credit the converted balance of USD 219,982.97 to FIC's account.

D. ACCOUNTING (KINA)

On both these part shipments the arrangements are quite specific. The unit CNF price payable by the buyer is USD 89.00 split into a unit gross FOB price of USD 72.00 with a freight rate of USD 17.00. FIC arranges an FOB price of USD 72.00 with SBLC with FIC to receive 3% commission. Originally Park quoted gross prices with a margin for him but eventually when the two buyers committed there was, on the face of things at least, no margin for Park.

1. PART SHIPMENT 12E

On 24.2.87 BSP accounts to FIC by credit note.

- a). USD 45,451.03 is retained in USD>
- b). the residual USD 192,498.48 is converted to K180,766.71.
- c). bank charges of K1,510.35 are deducted.
- d). the balance K179,256.36 is credited to FIC's account.

The converted sum of USD 192,498.48 represents the FOB price of USD 72/m³ for the shipped volume of 2,673.590m³.

On 25.02.87 FIC accounts to SBLC as follows:-

- a). Contract price USD 72.00 x 5,673.590m³ = USD 192,498.48.
- b). The price converts to K180.766.71.
- c). Deduct bank charges K1,510.35.
- d). Deduct FIC 3% commission K5,423.00
- e). Credit to SBLC K173,833.36.

This sum is shown in FIC's cashbook as paid 25.02.87. Bank of South Pacific K173,833.36 by Cheque No: 030 731 pursuant to payment voucher 4695. The Cheque was paid to BSP as the money was TT'd.

2. PART SHIPMENT 12F

On 10.3.87 BSP accounts to FIC by credit note

- a). USD 51,940.42 is retained in USD
- b). the residual USD 219,982.97 is converted to K204,654.35.
- c). bank charges of K1,708.45 are deducted
- d). the balance K202,945.90 is credited to FIC's account.

The converted sum represents the FOB price of USD 72,00/m³ for the shipped volume of 3,055.319m³.

As indicated in the history all parties agreed on 5.3.87 to a reduction of 96.447m³.

In it's original invoices SBLC (23.2.87) did not allow for this but the amended invoice of 11.3.87 did do so. On 12.3.87 FIC accounts to SBLC.

- a). Contract price 2,958.872m³xUSD 72.00 = USD 213,038.78.
- b). The price converts to K198,194.04.
- c). Deduct bank charges K1,708.45.
- d). Deduct FIC Commission K5,945.82.
- e). Credit to SBLC K190.539.77.

FIC's cashbook shows on 12.03.87 "SBLC/T/T BSP" by cheque 036770 for K190,539.77 pursuant to payment voucher 4735.

FIC's converted claim was for 3,055.319 m³ at USD 72.00 amounting to USD 219,982.97 which converted to K204,654.35.

FIC accounted to SBLC for 2,958.872m³ at USD 72.00 amounting to USD 213,038.78 which converted to K198,194.04.

The difference is 96,447m³, USD6,944.19 (at USD 72,00/m³) which converts to kina as K6,460.31. FIC thus holds in it's account K6,460.31 towards the agreed allowance. It had deducted this from SBLC and it must account to the buyer.

E. ACCOUNTING (USD)

1. PART SHIPMENT 12E

The USD retention was USD 45,451.03 which represents freight at USD 17.00/m³ over the shipped volume of 2,673.590m³. Parks telex of 6.3.87 (In telex 8712) says freight is USD45,451.03 and directs split into (2.5%) brokerage of USD 1,136.28 and nett freight of USD 44,314.75.

By separate letters of 10.3.87 FIC directs BSP to pay

- a). USD 44,314.75 - Dooyang Line Co, Korea
- b). USD 1,136.28 - Namjeon International, Korea.

The payments are in the amounts and to the persons and amounts Park directs. Copies of the TT instructions are on BSP's file.

2. PART SHIPMENT 12F

The USD retention was USD 51,940.42 which represents freight at USD17.00/m³ over the shipped volume of 3,055.319. Parks telex of 12.3.87 (In telex 8751) quantifies freight at USD 51,940.42; directs not to Deduct brokerage and asks to pay to a party other than Dooyang Line, to pay in Japan to "shorten remittance duration".

By letter of 13.3.87 FIC directs BSP to pay USD 51,940.42 to CENTRAL SHOKAI CO LTD, Tokyo. The payment is made exactly as Park directs. A copy of the TT instruction is on BSP's file.

F. FIC RECEIPTS

1. PART SHIPMENT 12E

The only receipt of FIC was it's K5,423.00 commission deducted from the initial kina conversion (see D above). This was reduced by additional bank charges of K57.36 deducted later for total receipts of K5,365.64.

2. PART SHIPMENT 12F

FIC received it's commission of K5,945.82 from the initial kina conversion. In addition it also retained K6,460.31 being the FOB value of the agreed deduction of 96,447.m³.

Under the agreement of 5.3.87 the volume deduction was agreed at the CNF price and was quantified at USD 8,583.78. The buyer pressed for this refund (see in TLX 8816 of 19.03.87) and Park counselled payment subject to withholding funds on account of demurrage caused by the buyers inspector. FIC's aggregate receipts of K12,306.13 are accordingly charged with an obligation to refund to the buyer USD 8,583.78 of which FIC deducted from SBLC and held in it's bank USD 6,944.19. Against the refund FIC may have a claim for demurrage contribution but those matters have not been pursued to a conclusion.

G. COMMENTS

See Below.

APPENDIX 45.46. COMMENTS

1. This shipment illustrates the need to examine properly sourced copies of Charter Parties on all shipments. A Ships Master is and must be well aware of the bases and terms upon which his vessel is chartered.

On that premise the Master's note of 6.3.87 is a critical document because:-

- (a) it is addressed to FIC AS CHARTERERS.
- (b) it claims short shipment by 681.948 despite the vessel being able to load "15,000.00 cubic metres of PNG round logs according to the Charter Party which was contracted between FOREST INDUSTRIES COUNCIL of PNG and DOOYANG LINE CO LTD as the Owners of the vessel"
- (c) it advises FIC "you are fully responsible for deadfreight, demurrage if any, and all expenses caused by ships delay, waiting and shifting under charterers instructions..."

Against this claim part shipment calculations are:-

Part	Volume	Freight paid	Brokerage paid
12 A	2903.323	48,122.58	(17) 1233.91
12 B	2588.576}		
12 C	1268.827}	67,745.65	(18) 1687.61
12 D	1828.417	30,306.01	(17) 777.08
12 E	2673.590	44,314.75	(17) 1,136.28
12 F	3055.319	51,940.42	(17) -
	14,318.052m3	USD242,429.41	USD 4,834.88
	Add brokerage	USD 4,834.88	
		<u>USD 247,264.29</u>	

The above volumes are based, as is vital, on Bill of Lading quantities. If, as seems certain, the vessel was chartered for 15,000 m³ then the Master is exactly correct - there is short shipment of 681.948 m³ for which the charterer is liable for deadfreight.

In the absence of a properly sourced copy of the charter party one can reasonably surmise the true freight rate was USD 17.00 per m³ (the rate on 12A, 12D, 12E and 12F) with perhaps an extra USD 0.50 per m³ (the rate on 12B and C) for two port loading. Put at its best for the Charterer, if one assumes a flat rate of USD 17.00 per m³ over 15,000 m³, the freight is USD255,000 less brokerage of 2.5% (USD6,375) with net freight of USD 248,625.

On the above figures the shippowner was underpaid by USD 6195.59 and the broker by USD 1540.12 aggregating USD 7735.71.

In addition to deadfreight there are very substantial claims for demurrage.

It was sought to reduce the demurrage claim on the LAKI loading initially by recalculation and then by wet weather claims (for which no evidence was provided). The shipowner has not revised that claim.

The last word on FIC's files (IN FAX 793 of 21.5.87) was that the demurrage claim for Laki Trading (12A) was:-

Calculated demurrage	USD 33,493.05
Less provisional payment	<u>USD 18,408.33</u>
Balance due	<u>USD 15,084.72</u>

In the same facsimile the last word was that the demurrage claim for SBLC (12E and 12F) was USD 15,052.78.

The deadfreight claim was not mentioned in this facsimile.

FIC appears to have just ignored and stalled this claim which, if pressed in full, aggregates USD 37,873.21 in addition to the USD 18,408.33 already paid.

2. Comment 1 indicates just what a mess this shipment was. Total deadfreight and demurrage of USD 56,281.54 was incurred. FIC has paid USD18,408.33 of which Laki Sawmills contributed USD 13,493.10.

FIC would seem quite clearly to have no further rights against Laki Sawmills and no rights against SBLC. A sequence of telexes which followed the FIC meeting in February 1987 may be relevant to this.

At the meeting Cowan and Maraleu were questioned about demurrage and about Park being FIC's agent. Both were caught lying when a copy of a DOOYANG GUIDE charter party signed by Park on behalf of FIC was produced. Their apparent lies about demurrage were not fully discovered.

After the meeting Cowan attacked Park (OUT TLX 5953 of 18.2.87) and asked what other documents he had signed.

Park replied the same day (IN TLX 8603) confessing and saying the documents he had signed were:-

- | | |
|--------------------------------------|------------------|
| a) Dooyang Guide Charter Party | - FIC Shipment 6 |
| b) Dooyang Brave Charter Party | - FIC Shipment 3 |
| c) Woodlark sale to Eagon Contract | FIC Shipment 7 |
| d) Ulabo/BFE sale to Eagon Contract | - FIC Shipment 8 |
| e) Open Bay sale to Taesung contract | |

Park says "*signature was made by myself only at time of beginning of FIC's marketing exercise in order to convince buyers and shipowners of FIC's marketing logs because no buyer and shipowner believed it until that time*". He adds he will accept responsibility for what he has signed and that he has signed nothing since 1 January, 1987. MV DOOYANG GUIDE carried not only this shipment 12 but the earlier FIC shipment 5 and it seems likely that earlier shipment is the one for which Park accepts responsibility. Park's pressing of the claim in May 1987 indicates he does not accept responsibility. Amazingly it is after these admissions Maraleu gets a list of buyers and shippers from Park (IN TLX 8633 of 23.2.87) and then circular telexes them all on 24/2/87 that he as FIC Chairman has officially appointed Park as FIC's official agent in Korea; which he had no power to do.

FIC must face the reality of this claim and ascertain the facts and measure of its liability. In the meantime the contingent liability should be provided for.

3. Without labouring the point too much this vessel charter and arrangement was nothing short of irresponsible and really exposed FIC's short comings. The vessel was engaged without producers committed to fully load it; the occurrences at Bootless Bay (Laki Sawmills) and Vailala (Santa Investments) resulted in substantially less than contracted quantities being loaded - the contracted quantities just were not ready - and when the vessel got to Stettin Bay the real professionals quite justifiably would not load until they were satisfied L/C arrangements were in place which would ensure that they got paid. Overall if Laki Sawmills had not delayed the vessel for so long there could have been worse problems.

4. FIC's active involvement in shipments from Laki Sawmills and Santa's operation at Vailala were contrary to Forest policy. Laki was logging under Timber Authority (where exports are not permitted) but FIC actually arranged the sale and the export license. It was a condition of the contract that FIC obtain the necessary approvals to export.

Exports from Vailala had been suspended for non compliance with Permit conditions yet FIC arranged the sale and export and the Department relented. These aspects should be explained.

5. Cowan's weakness (or desperation) in the face of pressure and failure to seek legal advice are well illustrated by his bowing to the pressure of Wayne Cross and his lawyer in rewriting the contract between FIC and Laki Sawmills in terms adverse to FIC and in simply accepting the demurrage contribution offered by Laki Sawmills. The financial result was a loss for FIC which is likely to be increased by the further demurrage claim for Laki's part shipment.

6. The Laki Sawmills part shipment (12A) is another illustration of FIC selling with an L/C transferred through a third country which is an arrangement the State Marketing Agency was to avoid and which admits of the prospect of transfer pricing through third country re-invoicing.

7. The sloppiness of FIC's record keeping and accounting systems is again well illustrated by this shipment.

(a) the invoice originally presented to BSP on part shipment 12A was wrong in so many regards that the person who prepared the documents either wasn't aware of details of the transaction or just did not know how to prepare the documents properly

(b) on part shipment 12B a producer's invoice cannot be located in the relevant files.

(c) the cashbook between 17 and 25 February 1987 is a disorderly mess with cheques entered out of order, voucher 4688 apparently omitted, no entry for cheque 036723, cheque 036725 entered only at the end of the month and cheque 036726 entered as an afterthought after the entries from the bank pass sheets have been made

(d) a copy of FIC's invoice on part shipment 12E cannot be located in the relevant files.

8. The desperate position over freight is illustrated by the manipulations over freight paid on part shipments 12B and 12C where a higher than true amount was remitted to gain the benefit of additional payment (against deadfreight and demurrage) and Park's suggestion (not followed) on shipment 12B that USD 2.00 per m³ above the true freight rate be remitted to his account in Hong Kong rather than to the shipper. I assume in Parks favour this money would have been paid to the shipowner by Park.

9. The manner in which FIC built margins into the price structures on part shipments 12B and 12C must be questioned and gives cause for concern. It seems the original intention was to have a USD2.00 differential on FOB price which Santa was aware of and an additional USD2.00 differential on freight (which turned out to be USD1.50 probably) of which Santa was not aware. When Oriental Chemical (Chungkoo) reduced the price by USD2.00 per m³ and amended the L/C very specifically to achieve this FIC persuaded Santa (which seems to have been in need of cash) to reduce its FOB price by USD2.00 per m³ to preserve margins. Similarly on part shipment 12D the "freight" margin of USD1.00 per m³ (not known to Santa) and FOB price margin of USD 2.00 (known to Santa) must be questioned.

Two aspects of real concern arise:-

(a) the margins that were received in excess of the price paid to the producer.

(b) the manner in which and persons to whom the USD retention funds were disbursed on part shipments 12B and 12C.

As to (a)

On Part Shipments 12B and 12C of the gross proceeds FIC only converted the FOB price payable to the producer into kina and it deducted 3% of that FOB price for its commission.

It retained in USD a rate of USD21.00 per m³.

Freight was either USD17.00 or USD17.50 but was paid at USD18.00. The margin of either USD4.00 or USD3.50 per m³ was disbursed

- as to USD1.00 or USD0.50 per m³ as additional freight.
- as to USD1.00 per m³ to S J Park as "additional commission" under the thin and transparent guise that it was a part payment of freight.
- as to USD1.00 per m³ to "pay off" Francis Sia's loan with BSP Boroko.
- as to USD1.00 per m³ to FIC as additional commission.

In the result 3% of the FOB price to producer plus USD3.50 or USD 4.00 per m³ was deducted and that is an Extortionate rate of "commission".

On Part shipment 12D the full FOB price (USD54.00 per m³) was converted and accounted for to the producer and FIC deducted 3% of that price as commission.

Only USD18.00 per m³ was retained in USD from which freight of USD17.00 per m³ was paid. The balance USD1.00 per m³ (Parks commission) was used to "pay off" Francis Sias loan with BSP Boroko.

In the result 3% of the FOB price to producer plus USD1.00 per m³ was deducted and that is a high rate of "commission".

As to (b)

It was established practice Park received USD1.00 per m³ "service charges". He was paid that by telegraphic transfer on 25.2.87 in the sum of USD 3857.40 - said to be part of freight then described as "additional commission". Another sum of USD 3857.40 was paid on 27.2.87 by transfer to BSP Boroko to pay off Francis Sias loan.

The possibilities seem to be:-

i) Park was in fact to receive USD2.00 per m³ - this is unlikely as it was always USD1.00 and that was Santa's specific understanding.

ii) The extra money sent to Park was sent for him to make a further freight payment - this is possible and if true Park would be able to prove it was so paid by him.

iii) The extra money was sent to Park on account of someone else - Park would be able to show how it was applied if this was so.

iv) The money used to pay off Sia's loan was not Park's money at all but FIC money - this is quite possible as Cowan was under real pressure (because BSP had called up FIC on its guarantee).

One can only speculate as to the true answer but FIC should establish it and have Park give a full and frank explanation because if (iv) above is correct (as it appears to be on the evidence) FIC has rights against Francis Sia and FIC funds have been misapplied in extending credit to him. If (ii) above is correct the exposure to a claim for deadfreight and/or demurrage would reduce accordingly.

Part of the explanation would involve obtaining a copy of the Charter Party and actual freight receipt details from the shipowner.

10. The clear position over payment of export duty by Santa Investments appears in relation to these shipments. At Vailala it was said operations were suspended due to non compliance with Permit conditions. Customs threatened not to clear the ship from Vailala not only to secure payment of Customs duty on shipment 12B but ALSO ON TWO PREVIOUS SHIPMENTS. Again at Namatanai export duty was a problem and FIC gave a GUARANTEE duty would be paid.

In the result FIC deducted and paid total customs duty for three Vailala shipments of K38,857.40 and for the Namatanai shipment of K14,399.60 aggregating K53,257.00 When one considers:-

(a) Maraleu's and Cowan's assistance to Francis Sia over the project on New Hanover (Sia used to work for Santa)

(b) FIC's role in engaging Santa as contractor for Angus in circumstances where a shift from Vailala (where operations were suspended) to Gadaisu was so convenient.

(c) Santa's obvious need for liquid funds

(d) The high rates of deduction from the producer it seems FIC did Santa a real service in marketing these logs and arranging Customs payments out of the proceeds. One is left wondering how Santa would ever have managed to clear a shipment in these circumstances without FIC's assistance.

11. In its accounting on part shipment 12D for the proceeds converted to Kina FIC makes a payment described as:-

"Our advance to National Forest Products K11,740.31"

This unauthorised deduction and it's repayment are described in Appendix 48.

Two aspects arise.

Firstly if FIC was recouping an earlier "advance" by it then such an "advance" would be questionable and would appear to be a misuse of FIC funds. Secondly if FIC was to make a future "advance" and such advance was not made then FIC has a contingent liability to pay either Santa or National Forest Products.

The facts should be ascertained as they may affect FIC's finances.

12. On Part shipments 12E and 12F prices were originally sought to provide FIC commission rate of 3% of the FOB price and Park his usual USD1.00 per m³. When the buyers finalised Park's margin had been eliminated and he was paid nothing. Park probably has no valid claim.

13. On the Stettin Bay volume for Part Shipment 12F for Sungrim there were arguments about a defect allowance which was agreed at 96.447 m³.

On 5 March 1987 there was a written agreement between FIC and the buyer's inspector whereby

(a) L/C payment would be claimed and made for the full amount.

(b) FIC would T/T the deduction difference after it negotiated payment on the L/C.

(c) The difference was 96.447 m³ at USD 89.00 giving a volume deduction amount of USD 8,583.78.

SBLC dealt with FIC on an FOB basis and amended its invoice to deduct the defect volume of 96.447 m³ at the FOB price USD 72.00 per m³ for a deduction of USD6,944.19 (K6460.31).

The buyer pressed the claim and SBLC quite correctly told FIC it was not their concern but a problem between FIC and the buyer.

The claim was still being pressed as late as May 1987 when the Commission obtained FIC records. FIC is clearly liable on a written contract and a provision should be made for this liability.

14. SBLC complained about the delay in the Indian shipment and sought prompt payment on its two part shipments 12 E and 12 F to preserve its cash flow. The complaint was justified as FIC's cavalier attitude to delays would be quite disruptive to the cashflow of a tightly run operation.

APPENDIX 46SHIPMENT 14

Vessel SANKO MARU
MARCH 1987

A. HISTORY

It seems Park had inspected some Angus logs.

10.2.87 (OUT TLX) FIC seeks an offer for 3000m³
 13.2.87 (IN TLX 8562) Park offers USD61.00/m³ (g)
 16.2.87 (IN TLX 8572) Park confirms USD61.00/m³
 19.2.87 (IN TLX 8604) Owners offered MV SOUTHERN
 PEARL - USD 19/ m³.
 20.2.87 (OUT TLX 5968) FIC confirms at USD 61.00/m³.
 25.2.87 (IN TLX 8651) Park offers USD 26.00/m³ (G)
 for 500 m³ selected out of
 800 m³ of old logs
 25.2.87 (OUT TLX 6007) FIC asks buyer take 800m³.
 26.2.87 (IN TLX 8659) Implicity buyer agrees to all
 old logs with certain
 exceptions. . Advises MV. SANKO
 MARU fixed at US\$19.50/m³
 26.2.87 (OUT TLX 6021) FIC offers Park (Lotte Trading)
 3500 m³ at CNF about USD
 264,250.

The indicator is 3000 m³ at US\$61
 (G) + 19.50 freight i.e CNF 80.50
 =241,500 + 19.50 freight i.e. CNF
 USD 80.00 USD 241,500

500 m³ at US\$26 (G) + 19.50 freight
 i.e CNF 45.50 =22,750 USD 264,250
 USD 22,750
 USD 264,250

26.2.87 (letter) FIC advises Angus price is:-
 3000 m³ fresh cut at USD60/m³
 500 m³ old logs at USD 25/m³

4.3.87 (letter) Santa quotes K8.00/m³ to load.
 There are problems with the Export Licence on
 the old logs which are apparently resolved.

11.3.87 (IN TLX 8743) Park advise L/C details saying

*"L/C opening house his Hyosung Corp HK branch-
 like Eagon. L/C which was through Seattle".*

Between 11 and 15 March there were large problems with the log inspector who wouldn't accept even compromises his boss had agreed to :

- 11.3.87 (letter) Mr Parker (Angus) agreed to negotiate price (to a maximum deduction of USD6.00/m³ - low grade logs remaining at USD25/m³).
- 11.3.87 (IN TLX 691) the L/C 003870274 &c is established.

Andrew Aopo of FIC was at Millport HBR. (9-12 March 1987).

- 16.3.87 (Letter) FIC tell Angus (Parker) of renegotiated prices

- 2600m³ 2-3 month old logs USD 54/m³
- 400m³ of fresh logs USD 60/m³
- low grade - about 500 m³ still USD 25/m³

- 15-19.3.87 Vessel loaded 894 pieces for 3,289.255 m³. The vessel had capacity to load the 3500m³ contracted but no logs.

- 23.3.87 (IN TLX 8827) Park directs payment of freight as follows:- SEA BORNE INC (JAPAN) USD19.50x3289.255m³ = USD64,140.47. He also directs Service charge to DAIHWA SIL UP (PARK SOON-JOO) (KOREA). This is shown by notes at USD 3289.26.

B. LETTER OF CREDIT

The letter L/C 003870274 CC is from Bank of Credit + Commerce Hong Kong Limited - applicant HYOSUNG (HK) LIMITED of Hong Kong. It is for USD 264,250.00 covering 3500 m³ CNF Incheon, Korea. The notify party is HYOSUNG CORPORATION, Seoul Korea. The Inspection certificate is from Samchang Timber Co Ltd, inspector.

C. NEGOTIATION

On 24/3/87 BSP receives FIC's letter of that date with

- (a) draft for USD 237,027.40 - dated 23/3/87

(b) Invoice FIC/ANG/3-87 for

613 pieces	2,299.683 m ³	at USD74.50 CNF =	171,326.38
119 pieces	398.835 m ³	at USD45.50 CNF =	18,146.99
162 pieces	590.737 m ³	at USD80.50 CNF =	47,554.33
894 pieces	3,289.255		USD 237,027.70

(c) Bill of Lading ML01 for 894 pieces = 3,289.255 m³

The letter directs retention of USD67,429.73 and credit of the converted balance of USD169,597.97 to FIC's account.

D. ACCOUNTING (KINA)

On 31/3/87 FIC accounts to Angus by letter along these lines :

(a) Gross contract value USD 169,597.97 converts to K155,096.45

(b) Division

Bank etc charges	K	610.10
FIC (overdue levies)	K	707.19
FIC - Sales Commission	K	5,428.37
Amount due to Angus		K148,350.79
		K155,096.45

On 1/4/87 FIC deducts and pays export duty on the shipment of K14,341.92 leaving a balance to Angus of K134,008.87.

E. ACCOUNTING (USD)

On 31/3/87 FIC directs by separate letters payment of:

(a)	to SEA BORNE INC. of TOKYO, JAPAN	USD64,140.47
(b)	to DAIHWA SIL UP (S.J PARK) of Seoul, Korea	USD 3,289.26
		<u>USD67,429.73</u>

Copies of the TT remittance instructions are on BSP's files. This accounts in full for the USD retention.

F. FIC RECEIPTS

FIC received K5428.37 commission from gross converted FOB sales proceeds of K155,096.45. This represents a commission rate of 3.5% of gross proceeds. The bank charges on the full claim were borne by the producer. FIC had to pay further bank charges of K22.91 reducing its receipt to K5,405.46.

A Direct expense would be Andrew Aopo's travel, accommodation and sustenance at Millport from 9-12 March, 1987.

G. COMMENTS

1. Though there is no charter party and Daihwa chartered the vessel the freight rate seems reasonable and was paid in full to a shipper in Japan. A copy charter party would vouch the payment.
2. Parks sales charge of USD1.00 per m³ is reasonable as it is clear he was the agent and found the buyer. It was paid at the correct rate to his company as directed.
3. The FIC did not disclose to the producer that its gross FOB price was USD1.00 per m³ greater than disclosed price.

In the result the producer paid :

- (a) 3.5% of the converted balance K5,428.37
- (b) USD1.00 per m³ he was not aware of USD3,289.26

This is a particularly high rate of commission when the initial price was severely reduced at the Inspectors insistence.

4. The L/C set up was according to a classical structure to enable transfer pricing. This merits comment for although FIC gained no benefit the arrangement could enable others (including Park) to benefit.

This is the type of arrangement FIC was meant to oppose.

APPENDIX 47COWAN'S MISAPPROPRIATION OF FUNDS

A study of the shipment by shipment analyses constructed to examine FIC's marketing activities disclosed five payments from the offshore US dollar account made to Straits Engineers Contracting Pte Limited (Straits) in Singapore.

Each payment was made pursuant to letter of direction to FIC's bankers signed by Michael Cowan (Schedule.01)

Details on a shipment basis are:-

<u>Shipment</u>	<u>Producer</u>	<u>Amount (USD)</u>
6A	Wavoi Guavi Timber	3007.92
6B	Angus (PNG)	12675.92
6B	Angus (PNG)	2809.08
6C	Wavoi Guavi Timber	6359.40
7A	Ulabo	4040.24
		<u>USD28,892.56</u>

In two instances where applications for Exchange Control Approval were filed on letter of Credit files the payments were shown as being for "agents commission" (Schedule 02)

These payments were not able to be justified from FIC's files which clearly showed no entitlement to Straits for commission as an agent.

With my authority and approval a letter was written on 26 August 1988 to Messrs Young and Williams seeking explanation from Straits. (Schedule .03)

Shortly after this I authorised liason with the National Fraud Squad (NFS) to ascertain whether explanations given could be verified through Interpol contacts in Singapore. For that purpose the material generated by the Commission was made available to NFS.

As I understand the position NFS considered that Police investigation was warranted and the Commissioner of Police Mr.Tohian sought assistance from the Corrupt Practices Investigation Bureau in Singapore.

In the meantime Messrs Young and Williams received instructions from Straits and by letter of 2 September 1988 provided an explanation of the payments. (Schedule .04). There were some aspects of the explanation which were unsatisfactory and again with my authority and approval these were pursued by letter of 12 September 1988 to Messrs Young and Williams (Schedule .05).

The only response to this letter was a foreshadowed personal attack on Counsel Assisting the Commission (Schedule .06). The attack is utterly baseless as the paragraph complained of does no more than fairly and frankly inform Straits, in the context of seeking further information from it, that the Commission is aware NFS is pursuing independent enquiries through Interpol. The report foreshadowed in the telex has never been forthcoming.

Mr. Tohian subsequently received a reply from the Corrupt Practices Investigation Bureau in Singapore and a copy was made available to the Commission (Schedule .07).

The explanation given to the Bureau varies in material respects from the earlier explanation given by Straits, in the very respects that were being probed by the follow up letter of 12 September 1988.

Three matters of concern arise:-

- (a). The statement made in the explanation given to the Commission that:-

"The total amount received from Mr. Cowan all of which was onforwarded to his wife in England, amounted to 15,500 pounds sterling".

The plain untruth of this statement is seen from the Bureau's report. S\$12,679.56 of the money was not onforwarded to Mrs Cowan at all but was paid to TAY JIN HUAT otherwise known as PATRICK TAY who was Cowan's junior officer involved with him in FIC log marketing. When FIC was phasing out of log marketing Tay had obtained employment with Hawoi Guavi Timber Company (owned by Straits) as Manager. Tay in fact gave evidence before the Commission regarding Hawoi Guavi's operations. David Toms of Straits clearly knew Tay received this money and sought to suppress the fact by giving a false and misleading explanation to the Commission.

In his statement to the Singapore Corrupt Practises Investigation Bureau Toms said he was *"under the impression that the \$12,679.56 was salary and other allowances due to Tay"*. Tay admits he did receive this amount and it certainly was not for salary and other allowances as FIC records shows he was paid out in full. Tay says he believed the payment was for his assistance given to Cowan in connection with consultancies which Cowan said he had for Madang Timbers and for Weco.

- (b). In the explanation given to the Commission no mention was made of a loan by Straits to Mrs Cowan. Indeed such an occurrence is quite inconsistent with the explanation which was given, which, as the Commission's follow up letter pointed out, was just not consistent with the facts.
- (c). In the explanation to the Commission it was said Cowan needed the remitted funds in Singapore "for taxation purposes" and later directed onforwarding to Mrs. Cowan. Toms told the Bureau the moneys were sent "to be held in trust in Singapore" for Mrs Cowan. He also told the Bureau Cowan did not want FIC to know of his "side income" and that funds were sent through FIC as this facillitated exchange control approvals. The different explanations cannot be reconciled.

FIC funds were clearly misappropriated by Cowan through transmission to Straits. The benefit of these funds was shared by Mrs Cowan and Patrick Tay.

It also seems clear (to the extent evidence can be obtained) that the explanation for the remittances given for exchange control purposes by Cowan was false and knowingly false. I also consider that an incomplete and untrue explanation was given to the Commission by Straits.

I recommend these aspects be formally referred to the Commissioner of Police and Bank of Papua New Guinea for further investigation and if warranted for prosecution (including extradition).

For his part Patrick Tay has given evidence of his receipt of S\$12,679.56 and of what he understood those moneys represented.

I accept Mr Tays explanation.

Now that he knows the true source of the moneys he received Mr Tay is making arrangements to refund his receipts to FIC (Schedule 0.8)

558

Phone 25 6399
258302

Telex: NE 22226 FORINCU

**FOREST INDUSTRIES COUNCIL
OF PAPUA NEW GUINEA**

PT:mek/291286

29 December 1986

Bank of South Pacific
P O Box 173
PORT MORESBY

Attention: MR GEOFF SULLIVAN

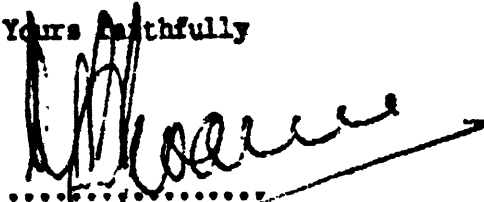
Dear Sir

RE: OUR DRAFT AMOUNT USD 312 222.61 DRAWN UNDER BANK OF PUSAN LTD
DOCUMENTARY CREDIT NO:- M3222612NU00018

We would be please if you kindly TT reimburse USd 3007.92 from the amount of USD 59556.90 retained in US Dollars to The Hong Kong and Shanghai Banking Corp, Tanglin Branch, 6 Claymore Hill, 01-00 Claymore Plaza, Singapore 0922; in favour of Straits Engineers Contracting Pty Ltd Account No:- 143-078764-001.

Kindly advise us of the TT reference number.

Yours faithfully


.....
MICHAEL J COMAN
Executive Director

CSB 8039/3381

559

P.O. BOX 1829 PORT MORESBY
LOT 4 SECTION 406
WANGANI DRIVE

Phone: 25 6388

256302

Telex: NE 22226 FORINCO



FOREST INDUSTRIES COUNCIL OF PAPUA NEW GUINEA

January 6, 1987

PT/DSA

Bank of South Pacific
PO Box 173
PORT MORESBY
N C D

Attention: MR GEOFF SULLIVAN

Dear Sir

RE: OUR DRAFT AMOUNT USD634668.32 DRAWN UNDER
BANK OF PUSAN DOCUMENTARY CREDIT NO:-M3218612NU00018.

We would be pleased if you could TT reimburse USD6359.40 from the amount of USD125916.15 retained in US Dollars to The Hong Kong and Shanghai Banking Corp, Tanglin Branch, 6 Claymore Hill, 01-00 Claymore Plaza, Singapore 0922 Account No:-143-078764-001 in favour of Straits Engineering Contracting Pty Ltd.

Kindly advise us of the TT reference number.

Yours faithfully


.....
MICHAEL J COHEN
Executive Director



**FOREST INDUSTRIES COUNCIL
OF PAPUA NEW GUINEA**

560

P.O. BOX 1829 PORT MORESEY
LOT 4 SECTION 408
WAIGANI DRIVE

Phone 25 6396
256302

Telex. NE 22226 FORINCU

PT:mek/291286

29 December 1986

Bank of South Pacific
P O Box 173
PORT MORESEY

Attention: MR GEOFF SULLIVAN

Dear Sir

RE: OUR DRAFT AMOUNT USD 387023.30 DRAWN UNDER BANK OF TOKYO DOCUMENTARY
CREDIT NO:- 012-LC-108625

We would be please if you kindly TT reimburse USD 12675.92 from the amount of USD 129 217.29 retained in US Dollars to the Hong Kong and Shanghai Banking Corp, Tanglin Branch, 6 Claymore Hill, 01-00 CLAYMORE PLAZA, Singapore 0922; in favour of Straits Engineers Contracting Pty Ltd Account No:- 143-078764-001.

Kindly advise us of the TT reference number.

Yours faithfully


.....
MICHAEL J. GOWAN
Executive Director

CSB 8037/5374

561

P.O. BOX 1829 PORT MORESBY
LOT 4 SECTION 408
WAIGANI DRIVE

Phone: 25 6398
256302

Telex: NE 22226 FORINCO



PT:mg

29 December 1986

Bank of South Pacific
P O Box 173
PORT MORESBY

Attention: MR GEOFF SULLIVAN

Dear Sir

RE: OUR DRAFT AMOUNT USD323219.12 DRAWN UNDER FIRST INTERSTATE BANK
OF WASHINGTON DOCUMENTARY CREDIT NO:- M1918612EU00370.

We would be please if you kindly TT reimburse USD4040.24 from the
amount of USD82824.89 retained in US Dollars to The Hongkong &
Shanghai Banking Corp. Tanglin Branch, 8 Claymore Hill, 01-00
Claymore Plaza Singapore 0922. In favour of Straits Engineers
Contracting Pty Ltd A/C No:- 143-078764-001.

2

Kindly advise us of the TT reference number.

Yours faithfully

CSB 8039/5376

.....
MICHAEL J CONAN
Executive Director



**FOREST INDUSTRIES COUNCIL
OF PAPUA NEW GUINEA**

562

P.O. BOX 1733 PORT
LOT 4 SECTION 15
WAIRANI DRIVE

Phone 338100
328300
Telex NE 22223 CONI

PT:mg

January 13 1987

Bank of South Pacific
PO Box 173
PORT MORESBY
N C D

Attention: MR GEOFF SULLIVAN

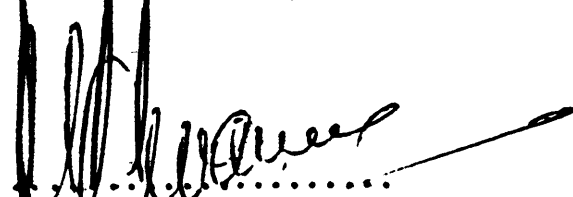
Dear Sir

RE: OUR DRAFT AMOUNT USD387023.30 DRAWN UNDER
BANK OF TOKYO DOCUMENTARY CREDIT NO: 012-LC-108625

We would be pleased if you could TT reimburse USD2809.08 from the amount of USD129217.29 retained in US Dollars to Hongkong and Shanghai Banking Corporation Tanglin Branch, 6 Claymore Hill, 01-00 Claymore Plaza Singapore 0922 in favour of Straits Engineers Contracting Pty Ltd, Account No:- 143-078764-001.

Kindly advise us of the TT reference number.

Yours faithfully


.....
MICHAEL J COWAN
Executive Director



FOREIGN EXCHANGE REGULATIONS
APPLICATION FOR FOREIGN CURRENCY
(Other than for Travelling Purposes)

16 JAN 1987

It is an offence under the Foreign Exchange Regulations to make a false statement in this application.

Name of authorised
dealer and branch.

To BANK OF SOUTH PACIFIC, PORT MORESBY

Full name(s).

I/We FOREST INDUSTRIES COUNCIL OF PAPUA NEW GUINEA

Full address.

of P. O. BOX 1829, PORT MORESBY.

State name and
amount of currency,
in figures only.

hereby apply for Foreign Currency amounting to US DOLLARS 2,809.08

Telegraphic transfer,
mail transfer, draft,
letter of credit, etc.,
and where amount
is to be credited to
an a/c, show name
and address of
banker. State name
and address of
payee.

in the form of TELEGRAPHIC TRANSFER
 HONGKONG AND SHANGHAI BANKING CORPORATION, TANGLIN BRANCH
 IN FAVOUR OF STRAITS ENGINEERS CONTRACTING PTY LTD.

for the purpose of

Give full particulars
of transaction.

AGENT'S COMMISSION

I/We declare that:

- (a) the destination of the said foreign currency is SINGAPORE
- (b) I/we have not made any other application for authority under the Foreign Exchange Regulations with respect to the transaction referred to herein.
- (c) I/we neither own nor have any interest in any foreign currency except as may have been obtained for other purposes under Part II of the Foreign Exchange Regulations or as stated on the reverse hereof.

Dated 14.1.87

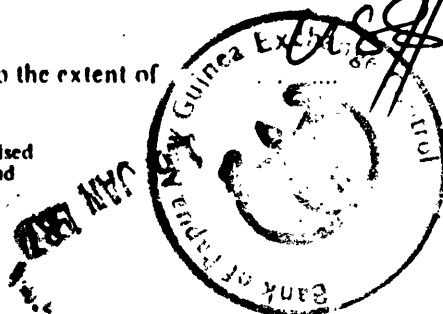
P.O. BOX 1829, PORT MORESBY
 TEL. 256399, 256302
 TELETYPE 256302
 (Signature of Applicant)

FOR OFFICIAL USE ONLY

Application approved to the extent of

Stamp of authorised
dealer, branch and
date.

1171



(Signature of Authorising Officer)

PAPUA NEW GUINEA

FOREIGN EXCHANGE REGULATIONS

APPLICATION FOR FOREIGN CURRENCY
(Other than for Travelling Purposes)Submit in
Duplicate

It is an offence under the Foreign Exchange Regulations to make a false statement in this application.

73 JAN 1987

Name of authorized
dealer and branch.

To...BANK SOUTH PACIFIC LTD, PORT MORESBY.

Full name(s).

I/We FOREST INDUSTRIES COUNCIL OF PNG

Full address.

of ...P.O. BOX 1829, PORT MORESBY.

State name and
amount of currency,
in figures only.

hereby apply for Foreign Currency amounting to USD6,359-40

Telegraphic transfer,
mail transfer, draft,
letter of credit, etc.,
and where amount
is to be credited to
an a/c, show name
and address of
banker. State name
and address of
payee.in the form of TELEGRAPHIC TRANSFER I.F.O. STRAITS ENGINEERING...
CONTRACTING PTY LTD. A/C NO. 143-078764-001 AT THE HONGKONG& SHANGHAI BANKING CORPORATION, ~~XXXXXX~~ TANGLIN BRANCH, 6 CLAYMORE
HILL, 01-00 CLAYMORE PLAZA, SINGAPORE 0922.

for the purpose of

AGENT'S COMMISSION

Give full particulars
of transaction.

I/We declare that:

- (a) the destination of the said foreign currency is SINGAPORE.....
- (b) I/we have not made any other application for authority under the Foreign Exchange Regulations with respect to the transaction referred to herein.
- (c) I/we neither own nor have any interest in any foreign currency except as may have been obtained for other purposes under Part II of the Foreign Exchange Regulations or as stated on the reverse hereof.

Dated 7TH JANUARY, 1987

(Signature of Applicant)

FOR OFFICIAL USE ONLY

FOREST INDUSTRIES COUNCIL
OF PAPUA NEW GUINEA
P.O. BOX 1829, PORT MORESBY
TELEPHONE: 25 6399, 25 6302
TELEX: NE 22226



Application approved to the extent of

USD 6,359-40

1173

3 DEC 1987

(Signature of Authorising Officer)



COMMISSION OF INQUIRY INTO ASPECTS OF THE FOREST INDUSTRY

TELEX NE: 23290

P.O. BOX

PAPUA NEW GUINEA

Messrs Young and Williams
 Lawyers
 United Church Building
 Douglass Street
 PORT MORESBY

DATE: 26 August 1988

OUR REF:

YOUR REF:

TELEPHONE:

Dear Sirs,

STRAITS ENGINEERS CONTRACTING PTE LTD

I refer to my recent discussions with Mr Lay when I asked if you could seek instructions from the above company to discuss with me certain remittances to it by F.I.C.

I note that you are still awaiting instructions; that Mr Toms could not recall remittances from FIC and that Mr Toms is presently making checks.

The remittances I am concerned to have explained were all by way of telegraphic transfer from the Bank of South Pacific International Division in Port Moresby. All were telegraphic transferred to the Hong Kong and Shanghai Banking Corporation Singapore for the credit of Straits Engineers Contracting Pty Ltd Account No 143-078764-001 with HK and SHBC Tanglin Branch. 6 Claymore Hill 01-00 Claymore Plaza Singapore 0922.

The references, dates of remittance and amounts of each remittance are:-

1.	CSB 8039-5374	30.12.86	USD12,675.92
2.	CSB 8039-5376	30.12.86	USD 4,040.24
3.	CSB 8039-5381	30.12.86	USD 3,007.92
4.	CSB 8039-5384	7.1.87	USD 6,359.40
5.	CSB 8039-5374	16.1.87	USD2,809.08
			<u>USD28,892.56</u>

Mr Toms recollection may be assisted by the attached copy of Mr Cowans fax to him of 5.1.87.

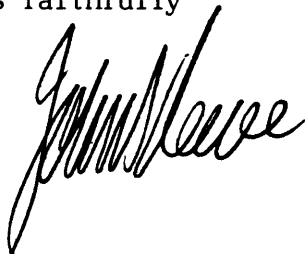
You might also indicate to Straits Singapore that I have, but they might wish to satisfy themselves, eliminated the computer payments to Mr Goh Kim Seng as a possible explanation. That payment (S\$8,000.00) was made to the above described bank account on 21 January, 1987.

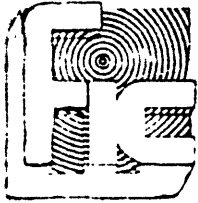
I confirm that what I seek from Straits Engineers Contracting are:-

- (i) its explanation of each of these remittances
- (ii) its advise as to how these remittances were entered in its books
- (iii) whether those remittances were accounted for to any person (and if so to whom and when)
- (iv) its authority to have the explanations given verified by inspection of its records by the relevant Singaporean Police authority arranged through Interpol.

Could I please have your advices as a matter of urgency.

Yours faithfully

A handwritten signature in black ink, appearing to read "John M. Lee". The signature is written in a cursive, flowing style with a large initial 'J' and 'L'.



**FOREST INDUSTRIES COUNCIL
OF PAPUA NEW GUINEA**

Out
502
05/01/87

567 P.O. BOX 1829 PORT MOWSE
LOT 4 SECTION 405
WAIGANI DRIVE

Phone 25 6399
256302

- Telex: NE 22226 FORINLO

FACSIMILE MESSAGE

DATE: 05/01/87 REF NO. 502

NO. OF PAGES INCLUDING THIS ONE TWO (2)

TO: DAVID TOMIS

FROM: M. J. COWAN

SUBJECT: See ATTACHED

MESSAGE:

IMPORTANT: IF YOU DO NOT RECEIVE ALL PAGES PLEASE LET US
KNOW IMMEDIATELY. OUR FAX NO:-

21 2911

FURTHER TELEPHONE CONVERSATION SUNDAY
FOLLOWING, DETAILS AS PROMISED::

IT REFERENCE NO:

CSB. 8039-5381

VSD. 3007.92

CSB 8039-5376.

VSD. 4040.24.

CSB 8039-5374.

VSD. 12675 92.

ALL DESPATCHED MONDAY 29

REGARDS.

MICHAEL

OS. A. 87.

APPENDIX 47.4

Leo G. Williams, B.A., LL.B. (Qld.)
Peter F. Maloney, B.A., LL.B. (Qld.)

Resident Partners:
Gregory J. Lay, LL.B. (P.N.G.)
Royale Thompson, B.A., LL.B. (A.N.U.)

569

Young & Williams

Lawyers

2nd Floor
United Church Building,
Douglas Street,
Port Moresby.

P.O. Box 21,
Port Moresby,
Papua New Guinea.

Telephone: 21 2811, 21 2180, 21 2968
Telex: NE 22258 YOUNGSOLS
Facsimile: 21 4570

Our Reference : 5544:GJL/mahDD17/71

Your Reference:

2nd September 1988

The Commission of Inquiry into
Aspects of the Forests Industry
Central Government Offices
WAIGANI

BY HAND

Attention: Mr. John Reeve

Dear Sir

COWAN REMITTANCES

We refer to your letter of the 26th August, 1988. At your request we have obtained instructions from our client Straits Engineers Contracting Pte Ltd on the contents of your letter.

Mr. Michael Cowan advised employees of our client that he had received payments for project studies and feasibility studies for various companies involved in the timber industry. He said he would need that money in Singapore for taxation purposes and wished to remit it to our client in Singapore to be held for him.

Subsequent to the remittances to our client, Mr. Cowan again contacted staff of Straits Engineers Contracting Pte Ltd and instructed that the monies remitted to them should be onforwarded to his wife, Mrs Maria Clotilde Cowan in England.

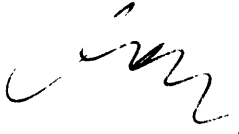
The total amount received from Mr. Cowan, all of which was onforwarded to his wife in England, amounted to 15,500 pounds sterling. We attach copies of our client's banker instructions of the 19th December 1986, the 5th January 1987 and the 19th January 1987 and a photocopy of the Singapore Dollar draft applications to purchase British pounds.

Commission of Inquiry into Aspects
of the Forests Industry

Page 02

If you consider it necessary our client will consider giving you authority to contact our client's bank directly to confirm the authenticity of the documents. However, our client is not prepared to consent to Police enquiries as suggested by you and we think that it is an entirely reasonable attitude for our client to take.

Yours faithfully



YOUNG & WILLIAMS

*Enclosures

CC: Mr David Toms, Straits Engineers Contracting Pte Ltd., C/- PO
Box 1617, Port Moresby.



88-31-88 17:40 T-STRAITS EGRS 9614230 #651 -04

571

STRAITS ENGINEERS CONTRACTING PTE. LTD.

ASSOCIATES :

INDONESIA
AUSTRALIA
MALAYSIA
THAILAND

17, TUAS CRESCENT, JURONG
SINGAPORE 2263
REPUBLIC OF SINGAPORE

POSTAL ADDRESS
MAXWELL ROAD P.O. BOX 3100
SINGAPORE 9000
REPUBLIC OF SINGAPORE
TELEPHONE 062182147
CABLE 'STREL SINGAPORE'
TELEX RS 23444 STREL
RS 23003 NANOAND
FAX RS 14230

OUR REF INBC/02/0187

5th January 1987

BY HAND

The Manager
The HongKong & Shanghai Banking Corpn.
Linglin Branch
6 Claymore Hill #01-00
Claymore Plaza
Singapore 0922

Dear Sir

Please accept this letter as our instruction to telegraphic transfer the sum of GBP10,000.00 (GBP Ten Thousand Only) to:-

Mrs Maria Clotilde Cowan
(Account Number 71053035)
Midland Bank PLC
Branch 40-47-25
1 Warwick Street
Worthing
West Sussex, BN1 3DE
England

and debit our account number 143-07876

Yours faithfully

ORIGINAL SIGNED BY
G.D. KEET

G.D. KEET

ORIGINAL SIGNED BY
S.K. FENG

S.K. FENG

08-31-88 17:38 T-STRAITS EGRS 8614230 #697 -02



STRAITS ENGINEERS CO. ACTING PYE.

ASSOCIATES IN:

INDONESIA
AUSTRALIA
MALAYSIA
THAILAND

17, TUAS CRESCENT, SINGAPORE 221
REPUBLIC OF SINGAPORE

POSTAL ADDRESS:
MAXWELL ROAD P.O. BOX 3889
SINGAPORE 9068
REPUBLIC OF SINGAPORE
TELEPHONE: 8621821/7
CABLE: "STREL SINGAPORE"
TELEX: RS 23814 STREL
RS 23803 NAMDAND
FAX: 8814230

OUR REF: HSEC/212/1286

19th December 1986

BY HAND

The Manager
The HongKong & Shanghai Banking Corpn
Tanjiln Branch
6 Claymore Hill #01-00
Claymore Plaza
Singapore 0922.

Dear Sir

Please accept this letter as our instr to telegraphic transfer
the sum of GBP2000.00 (GBP Two Thousand Only) to:-

Mrs Maria Clotilde Cowan
(Account Number 71053035)
Midland Bank PLC
Branch 40-47-25
1 Warwick Street
Worthing
West Sussex, BN1 3DE
England

and debit our account number 143-078764-001 with you.

Yours faithfully

ORIGINAL SIGNED BY
GAD KEET

ORIGINAL SIGNED BY
S. K. FENG

G.A.S. KEET

S.K. FENG

08-31-88 17:42 T-STRAITS EGRS 8614230 #897 -06

573



STRAITS ENGINEERS CONTRACTING PTE. LTD.

ASSOCIATES IN:

INDONESIA
AUSTRALIA
MALAYSIA
THAILAND

17, TUAS CRESCENT, JURONG
SINGAPORE 2203
REPUBLIC OF SINGAPORE

POSTAL ADDRESS:
MAXWELL ROAD P.O. BOX 3886
SINGAPORE 3038
REPUBLIC OF SINGAPORE
TELEPHONE: 8821821/7
CABLE: "STREL SINGAPORE"
TELEX: RS 23814 STREL
RS 23803 NANGANO
FAX: 8814230

OUR REF HSBC, 12/0187

19th January 1987

BY HAND

The Manager
The HongKong & Shanghai Banking Corpn.
Tanglin Branch
6 Claymore Hill #01-00
Claymore Plaza
Singapore 0922.

Dear Sir

Please accept this letter as our instruction to telegraphic transfer the sum of GBP3,500.00 (GBP Three Thousand and Five Hundred Only) to:-

Mrs Maria Clotilde Cowan
(Account Number 71053035)
Midland Bank PLC
Branch 40-47-25
1 Warwick Street
Worthing
West Sussex, BN1 3DE
England

S\$ 11504.60

and debit our account number 143-078764-001 with you.

Yours faithfully

G.A.E. KEET

S.K. FENG

574

2 175 212017

STRAITS MARINE

64

2E-31-88 17:43 T-STRAITS EGRS 8614230 H697 -07

Hong Kong and Shanghai Banking Corporation Incorporated in Hong Kong with limited liability		TCN		Office, REM DEPT.		ADV	
We have debited your account with the cost of under-mentioned transaction				Date 20/1/88			
		Currency Amount		Rate		Singapore Dollars	
JAN87 00678 120522 141-961367-041 0 GBP #2,500.00+ #2.0756 #11,504.00		CSH 21JAN87		20JAN87 143-078764			
<input checked="" type="checkbox"/> TT <input type="checkbox"/> MT <input type="checkbox"/> DRAFT Favouring: <u>Union Générale de Banque</u> A/c: <u>STRAITS ENGINEERS CONTRACTING P/L</u>		Revenue Stamp Postage Cable Commission		20 20 20		Total \$11,504.00	
Maker		Checked		Authorized Signature		Machine	
2							

Hong Kong and Shanghai Banking Corporation Incorporated in Hong Kong with limited liability		TCN		Office, REM DEPT.		ADVICE	
all your account of under-mentioned				Date 22/1/88			
		Currency Amount		Rate		Singapore Dollars	
30678 153433 141-961367-041 0 GBP #2,000.00+ #3.1581 #6,316.20		CSH 22DEC87		22DEC87 143-078764			
<input type="checkbox"/> MT <input type="checkbox"/> DRA Favouring: <u>Mrs Maria Clotilde Gaxan</u> A/c: <u>STRAITS ENGINEERS CONTRACTING P/L</u>		Revenue Stamp Postage Cable Commission		20 20 20		Total \$6,316.20	
Maker		Checked		Authorized Signature		Machine/Print	
1							

Hong Kong and Shanghai Banking Corporation Incorporated in Hong Kong with limited liability		TCN		Office, REM DEPT.		ADVICE	
all your account of under-mentioned transaction				Date 6/1/88			
		Currency Amount		Rate		Singapore Dollars	
JAN87 00678 153433 141-961367-041 0 GBP #10,000.00+ #3.2155 #32,155.00		CSH 06JAN87		06JAN87 143-078764			
<input type="checkbox"/> MT <input type="checkbox"/> DRAFT Favouring: <u>Mrs Maria Clotilde Gaxan</u> A/c: <u>STRAITS ENGINEERS CONTRACTING P/L</u>		Revenue Stamp Postage Cable Commission		20 20 20		Total \$32,155.00	
Maker		Checked		Authorized Signature		Machine/Print	
1							

575



**COMMISSION OF INQUIRY INTO ASPECTS OF THE
FOREST INDUSTRY**

P.O. BOX 2554 Boroko

TELEX NE: 23290

PAPUA NEW GUINEA

Messrs Young and Williams
United Church Building
Douglas Street
PORT MORESBY

DATE: 12 September 1988

OUR REF:

YOUR REF:

TELEPHONE:

Attention: Mr Lay

Dears Sirs

COWAN REMITTANCES

Thank you for your letter of 2 September, 1988 and for the co-operation of your client company.

The remittances particularised in my letter of 26 August, 1988 were all made by BSP from funds held in BSP's United States Dollar account on behalf of the Forest Industries Council of PNG. The funds represented retentions in USD of part of the proceeds of sales of logs to overseas buyers by the FIC as part of its involvement in log marketing. I believe it is quite conclusively able to be proven that the funds were the property of FIC.

The remittances were made to your client company by written directions on FIC letterhead which each bear signatures appearing to be those of Michael Cowan.

Assuming the above as facts the funds were, it seems misappropriated, unless they were paid to satisfy a lawful debt owed by FIC to your client.

The explanation given by your client tends to make it quite clear the funds were misappropriated by Michael Cowan and applied for the benefit of Maria Clotilde Cowan.

There are however further questions which arise out of the form and substance of your clients explanation.

First the documents provided do not show how the USD remittances particularised in my letter were converted into Singapore dollars and the applicable exchange rates. They only show outward payments as follows:-

<u>DATE</u>	<u>NETT S\$</u>	<u>CHAREGES S\$</u>	<u>CONVERSION</u>	<u>NET GBP</u>
22.12.86	6,336.20	30.00	3.1681	2,000.00
6.1.86	32,155.00	60.19	3.2155	10,000.00
20.1.86	11,464.60	40.00	5.2756	3,500.00

The charges are clearly in addition to the NETT S\$ converted to NET GBP.

It is thus not possible to reconcile the remittances from PNG in USD with the remittances in pounds Sterling from Singapore.

Secondly the explanation given of a request for onforwarding to Mrs Cowan "after remittances" is not consistent with the first remittance being made to Mrs Cowan by your client on 22.12.86 when the first remittance (mentioned in my letter) to your client was not made until 30.12.86.

I am aware of a forshadowed payment, by FIC to your client on account of Michael Cowan as a consequence of Mr Maraleus fax to Mr Toms of 20.12.86 (copy attached). I have not yet checked whether that payment was made but it would seem that at the time a receipt by your client of USD2,000.00 would not have covered a payment by your client of 2,000 pounds sterling.

Please understand that I am not questioning your clients explanation but seeking to illustrate that further co operation and information is necessary and further documents are sought.

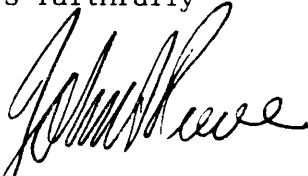
I believe that the available evidence shows that serious and extraditable criminal offences have been committed. I have therefore put that evidence in the hands of the National Fraud Squad. Examination of these matters also fall squarely within the Commissions terms of Reference.

In these circumstances I renew my invitation to your client company to give full and complete disclosure of all relevant facts and documents so that the Commissions task can be satisfactorily completed and the documents can be handed on to the National Fraud Squad so it can complete its investigations and lay appropriate charges.

It is clear from my discussions with Chief Inspector Walker that assistance from the Singapore Police will be necessary and will probably involve obtaining statements from your clients employees and copies of some parts of your clients records. I understand the request for assistance has already been made.

May I please have your further advices .

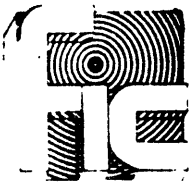
Yours faithfully



JOHN S REEVE
Counsel Assisting the Commission

MEMORANDUM

577



FOREST INDUSTRIES COUNCIL
OF PAPUA NEW GUINEA

DATE:- 20.12.86

FAX:- 4412

FROM:

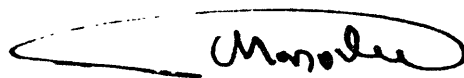
MUSKUS KARALEU
CHAIRMAN

TO:

DAVID TOMS
STREETS CONTRACTING, SINGAPORE

WE CONFIRM AN AMOUNT OF USD 2000 WILL BE TRANSFERRED
ON MONDAY, 22.12.86 FOR A/C IN HONGKONG SHANGHAI
BANKING CORPORATION, TONGLIN BRANCH.

THIS TRANSFER IS FOR OUR MR. M. J. COWAN.



20.12.86.

SEP 21 1988 1708

Ø

PRIDE NE23290

SEP 21 1988 1715

Ø

PRIDE NE23290

STREL RS23644

21/9/88 ST284

ATTN: J. REEVE

RE YOUR CONDUCT

YOU ARE HEREBY ADVISED THAT WE INTEND TO TAKE UP THE NATURE OF YOUR CONDUCT WITH THE OFFICE OF THE PRIME MINISTER AND YOUR SUPERIOR THE HONOURABLE JUDGE BARNETT IN RESPECT TO THE LAST PARAGRAPH OF YOUR LETTER DATED 12/9/88. AS YOU HAVE GONE OUTSIDE THE TERMS OF REFERENCE OF THE INQUIRY TO ASSIST COUNSEL FOR THE PLAINTIFF (INCHCAPE) ONE MR LOWING (B34'9,-) %483,Ø) OF GADENS.

A COPY OF THE REPORT WILL BE SENT TO YOU IN THE NEXT 48 HOURS.

A.D. TOMSØ

PRIDE NE23290

STREL RS23644

VVVV

SEP 21 1988 2017

Ø

PRIDE NE23290

APPENDIX 47.7

Telegraphic Address -
"5110 SINGAPORE"

Your Reference

8-5-7

Our Reference

CPIB IP 1988/1175

Date

20 Oct 88



CORRUPT PRACTICES INVESTIGATION BUREAU

64 Hill Street #06-00

Hill Street Centre

Singapore 0617

REPUBLIC OF SINGAPORE

579

Telephone No

3379610

Mr P Tohian QPM
Commissioner of Police
National Fraud Squad
Winter Street
Port Moresby
Papua New Guinea

Dear Sir

STRAITS ENGINEERS CONTRACTING PTE LTD

I refer to your letter of 2 Sep 88.

2 Mr Alvin David Toms, the General Manager of the above-mentioned company was interviewed by the Bureau on the five payments which were made to his company by the Forest Industry Council (FIC) of PNG. Mr Toms has confirmed receiving the total amount of US\$ 28,892.56 from the FIC, and the details of the telegraphic transfers received from the FIC via the Bank South Pacific are:

	<u>Date</u>	<u>Ref</u>	<u>Amount</u>
a	30.12.86	CBS 8039/5381	US\$ 3,007.92
b	30.12.86	CBS 8039/5376	US\$ 4,040.24
c	30.12.86	CBS 8039/5374	US\$12,675.92
d	08.01.87	CBS 8039/5384	US\$ 6,359.40
e	19.01.87	CBS 8039/5374	US\$ 2,809.08
			<u>US\$28,892.56</u>
			=====

3 Mr Toms claimed that the above sums were sent to his company by Mr Michael John Cowan to be held in trust in Singapore for his wife, Mrs Maria Clotilde Cowan residing in England and who had wanted to stay in Singapore instead of PNG. On 22.12.86, Mr Cowan asked him to advance a loan of GB£ 2000, to his wife and had promised to return the money to him. Mr Toms claimed that he gave the loan to Mrs Cowan and on 30.12.86 he received three telegraphic transfers from the FIC. Mr Toms further claimed that on the advise of Mr Cowan, on 6.1.87 he remitted GB£ 10,000 to the wife of Mr Cowan and another GB£ 3,5000 to her on 20.01.87.



→ 2/01/88

4 Mr Toms also disclosed that from the sums remitted to him by Mr Cowan, he had on the instructions of Mr Cowan deposited a sum of S\$12,679.56 in the account of one Tay Jin Huat, with the Hongkong and Shanghai Banking Corporation in Singapore. Mr Toms claimed that he complied with this as he was under the impression that the S\$12,679.56 was salary and other allowances due to Tay Jin Huat who he knew was employed as an Assistant Executive Director in the FIC.

5 The details of all the money transactions are reflected in the attached annexure.

6 Mr Toms has denied any corrupt motive in agreeing to accept the money from Mr Cowan. Mr Toms stated that he was told by Mr Cowan that he had earned additional income by undertaking consultancy work for various timber companies in PNG but did not want the FIC to know of his side income. According to Mr Toms Mr Cowan had told him that it was easier to obtain foreign exchange control approvals for remittances overseas through the FIC than as individuals and thus he had remitted the various sums through the FIC to his company in Singapore.

7 The Bureau was unable to interview Mr Cowan as he is no longer in Singapore. According to Mr Toms, Mr Cowan did work for his company in Singapore for a short spell as a consultant and was paid a retainer fee of \$3,000 monthly, after he left the FIC. However, he had since resigned and returned to the UK.

8 If you require further assistance on this matter, please feel free to contact me.

Yours faithfully,

YONG SER HIONG
for DIRECTOR
CORRUPT PRACTICES INVESTIGATION BUREAU
REPUBLIC OF SINGAPORE

Enc

Patrick Tay
P O Box 4779
Boroko, NCD
Papua New Guinea

21 November 1988

Commission of Enquiry Into Aspects of Forest Industries
P O Box 2554
Boroko, NCD
Papua New Guinea

Attention: Mr John Reeve

Dear Sir,

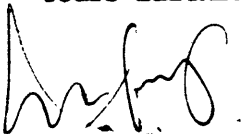
RE: S\$12,679.56 PAYMENT AS INSTRUCTED BY M. COWAN

I wish to advise you that I have no knowledge whatsoever that the abovementioned money which was paid to my account as instructed by M. Cowan through Straits Engineers, Singapore was from FIC.

All the time I thought the money I received was for some consultancy work which M. Cowan had obtained and I was requested by him to assist him. M. Cowan did mention that he would reimburse me for my work but I did not know that he would do it out of FIC funds.

I hope the above clarification is clear and accepted by you I am prepared to return the full amount to FIC. I hope this undertaking is acceptable and I will make arrangements to have the amount returned.

Yours faithfully,



Patrick Tay

APPENDIX 48.

CORRESPONDENCE CONCERNING UNAUTHORISED
FIC LOAN TO NATIONAL FOREST PRODUCTS

584

SANTA INVESTMENTS PTE. LTD.

2nd Floor, Credit House, Musgrave Street, Port Moresby, Papua New Guinea
P.O. Box 88, Tel: 213411 (4 Lines) Telex: NE 23218 SANTA

06 May 1987

Yr ref: PT:mg

Replied by Mr 715187.
Mr Cowan will deal
with.

RECEIVED
7 MAY 1987

Executive Director
Forest Industries Council of PNG
p o box 1829
Port Moresby

Dear Sir

LOG SHIPMENT - MV DOOYANG GUIDE

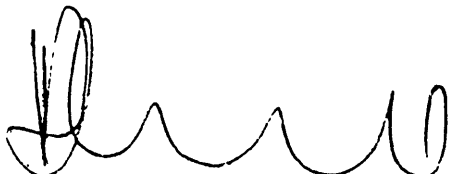
As you are aware, we are the logging contractor for
Sopathin Development Corporation Pty Ltd.

We refer to your letter addressed to our principal dated
27 February 1987, copy herewith, and to your calculations
contained therein.

We are most distressed by the item debited to Sopathin
account by you for "advance to National Forest Products -
11,740.31". This "advance" was made without our knowledge,
authority or consent and we hold you liable for immediate
reimbursement of the total amount.

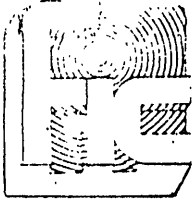
We advise that unless the full amount of K11,740.31 is paid
to Sopathin's account within seven (7) days of the date
hereof, we shall commence legal proceedings against the
Council without further notice.

Yours faithfully
SANTA INVESTMENTS PTE LTD



IR SHEPHERD
Administration Manager

enc



3 .

**FOREST INDUSTRIES COUNCIL
OF PAPUA NEW GUINEA**

PO BOX 1020 PORT MORESBY
LOT 4 SECTION 405
WAIGANI DRIVE

585

Phone: 256309/256302
256216/256728
Telex: NE22226 FORINCO
Fax: 212911

KA/DSA

May 29, 1987

National Forest Products Pty Ltd
PO Box 9212
HOHOLA
N C D

Attn: MR WRIGHT

Re: Outstanding loan of K7111.00

The following are the details of loan made to you.

<u>DATE</u>	<u>CHEQUE NO.</u>	<u>AMOUNT</u>
2nd January 1987	036619	K 4,000.00
9th January 1987	036635	970.29
15th January 1987	036652	667.00
16th January 1987	036662	6,103.02
28th January 1987	Air Ticket	1,802.00
9th January 1987	Air Ticket	1,802.00
28th January 1987	036670	3,507.00
Total Loan		<u>K18,851.31</u>

An amount of K11,740.31 have been deducted from log shipment done by Sopathin Development Corporation on the 21st February 1987.

Amount still outstanding up to this date is our cheque no. 036670 for K3,507.00 and the two air tickets for Mr and Mrs Wright for K1,802 each.

We are hoping to receive a cheque for K7,111.00 as the loan was made to you on trust. FIC still have that trust for National Forest Product Pty Ltd.

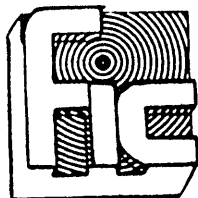
Yours faithfully

Michael J Cowan
EXECUTIVE DIRECTOR

29/JUL/1988

N.F.P. - PAID K11,310.78

To
F.I.C.



**FOREST INDUSTRIES COUNCIL
OF PAPUA NEW GUINEA**

586

P.O. BOX 1829 PORT MORESBY
LOT 4 SECTION 406
WAKANI DRIVE

Phone 25 6399
256302

Telex NE 22226 FORINCO

1st July 1987

IT/ta

The Manager
Santa Investment Pty Ltd
P O Box 58
PORT MORESBY
National Capital District

ATTENTION: MR I.R SHEPHERD

Dear Sir

LOG SHIPMENT PER MR DOOYANG GUIDE.

Reference is made to your letter dated 21st May 1987 and we are aware of the fact that K11,740.31 from the total proceeds of the log sales was paid as our advance to National Forest Products Pty Ltd.

Our Executive Director Mr Michael J Cowan who was involved in this transaction is Overseas and we have no clue as to why this action was taken.

The Executive Director in his actions committed FIC in the transaction and as such we have to reimburse your company the equivalent amount. Due to our financial situation at the moment we are unable to pay you the total amount in lump sum and we have decided to pay you monthly installments of K3,000.00.

We will forward you the first lot of payment as soon as we receive your reply to our proposal.

We apologise for any inconvenience caused.

Yours faithfully

IMARI TRAWA
Acting Executive Director