



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDINGS AND REASONS

Inquiry No. NQ-2003-003

Wood Venetian Blinds and Slats

*Findings issued
Friday, June 18, 2004*

*Reasons issued
Friday, July 2, 2004*

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IN THE MATTER OF an inquiry, under section 42 of the *Special Import Measures Act*, respecting:

**WOOD VENETIAN BLINDS AND SLATS ORIGINATING IN OR EXPORTED
FROM MEXICO AND THE PEOPLE'S REPUBLIC OF CHINA**

FINDINGS

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping in Canada of wood venetian blinds and slats originating in or exported from Mexico and the People's Republic of China has caused injury or retardation, or is threatening to cause injury to the domestic industry.

This inquiry is pursuant to the issuance by the President of the Canada Border Services Agency of a preliminary determination dated February 19, 2004, and of a final determination dated May 17, 2004, that the aforementioned goods have been dumped and that the margins of dumping of the goods are not insignificant.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that:

- the dumping in Canada of stock wood venetian blinds originating in or exported from the People's Republic of China has not caused injury, is not threatening to cause injury and has not caused material retardation to the establishment of a domestic stock wood venetian blind industry; and
- the dumping in Canada of wood slats originating in or exported from the People's Republic of China has caused injury to the domestic wood slat industry.

Furthermore, in accordance with subsections 43(1) and (1.01) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that:

- the dumping in Canada of custom wood venetian blinds originating in or exported from Mexico has not caused injury and is not threatening to cause injury to the domestic custom wood venetian blind industry; and
- the dumping in Canada of wood slats originating in or exported from Mexico has caused injury to the domestic wood slat industry.

Richard Lafontaine
Richard Lafontaine
Presiding Member

Pierre Gosselin
Pierre Gosselin
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	May 17 to 21, 2004
Tribunal Members:	Richard Lafontaine, Presiding Member Pierre Gosselin, Member Meriel V. M. Bradford, Member
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Vincent Routhier

Importers/Exporters/Others

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STATEMENT OF REASONS

BACKGROUND

1. The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry to determine whether the dumping in Canada of wood venetian blinds and slats originating in or exported from Mexico and the People's Republic of China (China) (the subject goods) has caused injury or retardation or is threatening to cause injury to the domestic industry.

2. On November 21, 2003, the Commissioner of the Canada Customs and Revenue Agency (CCRA), following a complaint filed by Stores de bois Montreal Inc. (SBM), initiated an investigation into whether the subject goods were being dumped. On November 24, 2003, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping of the subject goods had caused material injury or retardation or was threatening to cause material injury to the domestic industry. On January 20, 2004, pursuant to subsection 37.1(1), the Tribunal determined that the evidence disclosed a reasonable indication that the dumping of the subject goods had caused injury to the domestic industry.

3. On February 19, 2004, the Canada Border Services Agency (CBSA) (formerly the CCRA) issued a preliminary determination of dumping with respect to the subject goods. The CBSA was satisfied, as a result of this preliminary investigation, that the subject goods had been dumped, that the margins of dumping were not insignificant and that the volume of dumped goods was not negligible.²

4. On February 20, 2004, the Tribunal issued a notice of commencement of inquiry.³ The period of inquiry covered a three-year period, from January 1, 2001, to December 31, 2003. As part of the inquiry, the Tribunal sent questionnaires to domestic producers, importers, purchasers and foreign producers. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

5. On May 17, 2004, the CBSA issued a final determination that the subject goods had been dumped and that the margins of dumping were not insignificant.⁴

6. A hearing, with public and *in camera* testimony, was held in Ottawa, Ontario, from May 17 to 21, 2004. SBM, a domestic integrated producer, made submissions and was represented by counsel at the hearing. Shade-O-Matic Ltd. (Shade-O-Matic), a domestic fabricator of blinds and an importer of the subject goods, made submissions and was represented by counsel at the hearing. Royal Group Technologies Limited, Royal Window Coverings México S.A. de C.V. (Royal México) and Royal Group Technologies Window Coverings (Quebec) Inc. (Royal Quebec) (collectively called Royal) also made submissions and were represented by counsel at the hearing. Springs Window Fashions LP and Springs Window Fashions de Mexico, S. de R.L. de C.V. (collectively called Springs) made a request for product exclusions and were represented by counsel at the hearing. Omni Decorative Products made submissions and testified in support of Springs, while Abbey Blinds Inc. (Abbey Blinds) made only a written submission. The Tribunal also heard testimony from witnesses from Blinds to Go Inc. (Blinds to Go) and Sears Canada Inc. (Sears) who were both subpoenaed by the Tribunal.

1. R.S.C. 1985, c. S-15 [*SIMA*].

2. Tribunal Exhibit NQ-2003-003-01, Administrative Record, Vol. 1 at 11.

3. C. Gaz. 2004.I.470.

4. Tribunal Exhibit NQ-2003-003-04, Administrative Record, Vol. 1 at 73.10.

7. The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, requests for information and replies thereto, witness statements and all exhibits filed by the parties throughout the inquiry and the transcript of the hearing. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

8. The Tribunal issued its findings on June 18, 2004.

RESULTS OF THE CBSA'S INVESTIGATION

9. The CBSA's investigation covered imports of the subject goods from October 1, 2002, to September 30, 2003.

10. Only one exporter in Mexico provided a complete response to the CBSA's request for information. During the period of investigation, 76 percent of Royal México's exports to Canada were dumped by a weighted average margin of dumping of 28 percent. The margins of dumping ranged from 1 percent to 41 percent when expressed as a percentage of the export price. No complete submissions were received from any party involved in the export of wood venetian blinds and slats from China during the period of investigation.

11. The exporters in Mexico and China that were not asked to complete questionnaires were given a margin of dumping based on the weighted average margin of dumping for Royal México. As a result, 100 percent of the subject goods exported to Canada by these exporters were determined to be dumped by a margin of 28 percent when expressed as a percentage of the export price.

12. The normal values of the subject goods, from the exporters in Mexico and China that were requested to provide a complete response but did not respond, were determined pursuant to a ministerial specification under section 29 of *SIMA*. The normal values were based on the weighted average of the highest estimated margin of dumping established for each importer that had provided a properly documented response during the first phase of the CBSA's investigation. As a result, 100 percent of the subject goods exported to Canada by these companies were determined to be dumped by a margin of 120 percent when expressed as a percentage of the export price.

PRODUCT

Product Definition

13. For the purposes of this inquiry, the subject goods are defined as wood venetian blinds and slats originating in or exported from Mexico and China.

Product Information

Wood Venetian Blinds

14. Wood venetian blinds⁵ are used to cover windows of varied dimensions. The blind consists of a head rail made of metal, PVC or other material that houses the mechanisms for positioning the slats and activating the cords. Then the blind is made up of ladders, any number of wood slats and a bottom rail that contains pins to hold the cords. Finally, a valance covers the head rail to enhance its appearance. The slats,

5. There are several terms for this product: wood venetian blinds, wooden blinds, basswood or other wood blinds, or simply blinds.

the bottom rail and the valance are manufactured from the same kind of wood, then they are dyed and varnished in the same way as the slats to offer a uniform finish. The cords that are used to open and close the blind or to change the position of the slats have a tassel decoration at each end. Wands are sometimes supplied to control the tilting operation of the slats.

Stock Wood Venetian Blinds

15. Stock wood venetian blinds (stock blinds), also called “ready-made” blinds, are blinds made in large quantities in a process that is highly automated and are only available in a limited range of sizes and colours. Stock blinds are imported only from China. The standard dimensions are 48 and 72 inches in height by 23, 30, 37, 44, 51, 58, 65 and 72 inches in width. Stock blinds are exported from China in container lots.

16. Stock blinds are maintained in inventory by the importer and may be adjusted at the point of sale, with the use of cut-down machines, to meet the needs of the consumer by reducing their width by up to 3.5 inches at each end. Some retailers offer written instructions to customers so they can adjust the height themselves.

Custom Wood Venetian Blinds

17. Custom wood venetian blinds (custom blinds) are produced only to customer order. They are not maintained in inventory. Custom blinds are available in widths ranging from 12 to 96 inches and are available up to 120 inches in height. They are produced in a large number of colours, and they offer optional accessories and refinements, such as choice of valances, head rail types, ladders, wand or cord, left or right side controls, etc. Custom blinds are manufactured by Canadian producers and fabricators and imported from Mexico and the United States in small quantities. Custom blinds are sold primarily through specialty shops and interior decorators. They are also offered through design centres of large retailers. Custom blinds usually come with a longer warranty, and they are significantly more expensive than stock blinds.

Wood Slats

18. Wood slats⁶ (slats) are the main component of wood venetian blinds. The type of wood most commonly used to manufacture slats is basswood. Other types of wood, such as cherry, white ash, beech, poplar, ramin,⁷ samba, red oak and red cedar, may also be used. The wood can be bare, stained, varnished or painted. Usually, slats are 1 inch or 2 inches wide and 1/8 inch thick.

Production Process

Stock Blinds

19. Stock blinds are manufactured in a limited range of sizes, finishes and colours. This permits the manufacturing of these blinds in large quantities using highly automated processes. For example, large quantities of slats, bottom rails or head rails can be cut at one time. Similarly, large numbers of slats or rails can be simultaneously punched to receive ladders. Furthermore, the manufacturing process used to make stock blinds is often highly integrated. Some manufacturers make their own cords, ladders, metal and plastic

6. The following terms are synonyms of slats: strips and laths.

7. Ramin products imported into Canada must be accompanied by a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) export permit issued by the exporting country, if the wood is from a nation that has included ramin on the list of protected species, or by a CITES export permit, a CITES certificate of origin or a CITES re-export certificate, if the specimen is from another nation.

parts. In addition, some manufacture their own slats starting from green logs. This level of integration requires considerable investment in equipment. China is the only known producer of stock blinds.

Custom Blinds

20. Custom blinds are manufactured in five steps: (1) the head rail is prepared—it is cut to the desired size, drilled and many components are added; (2) the slats, the valance and the bottom rail are made ready—they are selected and cut to the appropriate width; (3) these various parts are then assembled mechanically—the head rail is placed on a machine, the slats are drilled in order to thread the cords that will hold the blind, the bottom rail is installed and the cords are attached thereto; (4) the finished blind is then sent for inspection of the following—the width of the blind, its mechanical functions and the positioning of the slats to ensure the best possible uniform colour; and (5) the finished blind is sent for packing and shipping.

Slats

21. Slats are manufactured in five steps: (1) the wood planks are put on a planer to size them and cut them to the required size and thickness; (2) the wood planks are cut to make wood blocks of specific widths; (3) a handsaw is used to remove knots and imperfections in the wood; (4) the wood blocks are made into slats using a moulding machine; and (5) the slats are machine-sanded.

22. The unfinished slats are then dyed, painted or varnished. The slats are dyed mechanically and dried quickly, generally with the use of ultraviolet rays. The slats can also be dyed by hand when certain finishes or colours are required.

DOMESTIC PRODUCERS

23. The Tribunal identified 27 producers⁸ of wood venetian blinds and subdivided them into three categories: (1) integrated producers;⁹ (2) fabricators¹⁰ that import either the blinds or the slats from non-subject countries or buy the slats from Canadian distributors; and (3) fabricators that import either the blinds (almost exclusively stock blinds) or the slats from the subject countries.

24. Besides SBM, there are three other integrated producers. They are Trans UV Inc. (Trans UV), Les Stores A.T.S. Enr. (ATS) and Les Industries La Belle. The largest fabricators are: Abbey Blinds, Blinds To Go, Hunter Douglas Canada Inc. (Hunter Douglas), Levolor Home Fashions Canada (Levolor) and Shade-O-Matic. In addition to the above, other fabricators of wood venetian blinds include: Ameuriq Inc. (Ameuriq), Benmar Industries, Blinds by Vertican Inc., Caroflex Inc., Delor Window Coverings Inc. (Delor), Elite Window Fashions, Finecraft Custom Shutters Ltd., Forever Window Screens and Blinds Manufacturing (Forever Window), George N. Jackson Limited, HeeShade Blinds Inc., Innovatex Inc. (Innovatex), Les Industries l'Avant-Garde Inc. (Avant-Garde), MERA Industries, Polar Home Fashions Inc. (Polar), SOHJI-CO Inc., Trico Window Coverings Co. Ltd., Tri-Sol Shutters & Blinds, Inc. and VP Fabricant de Stores.

IMPORTERS AND EXPORTERS

25. The CBSA identified 43 importers of the subject goods during its period of investigation. The Tribunal sent questionnaires to importers that accounted for well over 90 percent of imports from China and

8. There are other producers, but they are very small.

9. Integrated producers manufacture their slats and use them in the manufacture of their blinds.

10. Identified as producers/fabricators in the Tribunal's *Pre-hearing Staff Report*.

Mexico, as reported by Statistics Canada. The responses to the Tribunal's questionnaire indicated that Sears, Bouclair Inc. (Bouclair), Shade-O-Matic, Ikea Wholesale Limited Partnership (Ikea) and Polar were the most significant importers of wood venetian blinds from the subject countries.¹¹ Together, these companies accounted for over 80 percent of imports of wood venetian blinds during the Tribunal's period of inquiry. The responses also indicated that the largest fabricators identified above and one distributor were the most significant importers of slats during the Tribunal's period of inquiry.

26. The CBSA identified 31 companies that exported the subject goods to Canada during the period of investigation. The Tribunal sent foreign producers' questionnaires to exporters that represented over 75 percent of imports from China and Mexico, as reported by Statistics Canada. Questionnaire responses were provided only by the following companies: Yeo Long Wooden Ware Company Ltd. (Yeo Long) of China, and Royal México of Mexico.

MARKETING AND DISTRIBUTION

Stock Blinds

27. Stock blinds are imported from China and sold by department stores, big box retail stores, large specialty shops and, in some cases, fabricators. Among the department stores and large retailers that sell stock blinds are Sears,¹² Ikea and, to a lesser degree, Canadian Tire Corporation, Limited. The main specialty shop that sells stock blinds is Bouclair and the main fabricators are Shade-O-Matic and Polar.¹³ Shade-O-Matic sells stock blinds to department stores, some big box home improvement stores¹⁴ and certain large regional home decorating retail chains,¹⁵ while another importer sells them to Royal Quebec who resells them to retailers across Canada.

Custom Blinds

28. Custom blinds are manufactured almost exclusively by Canadian producers, be they integrated producers or fabricators. The producers sell them mostly to specialty shops, decorators or consumers, either directly or through manufacturers' agents. A few large fabricators also sell to department stores and large retailers. Finally, there is a limited volume of custom blinds from Mexico and the United States that is imported and sold by fabricators and retailers.

Slats

29. Integrated producers manufacture their own slats and use them in the manufacture of their blinds. Large-scale fabricators¹⁶ import their slats directly, mainly from the United States.¹⁷ Small fabricators also import their slats directly, in a few instances, or purchase them from distributors. Slats have no purpose or commercial use other than being part of wood venetian blinds.

11. Shade-O-Matic and Polar are importers and fabricators.

12. Sears is the importer of record for all stock blinds that it imported from China. However, it buys them from Shade-O-Matic.

13. Blinds to Go also sells stock blinds, but in smaller quantities.

14. Such as Home Depot, Rona/Revy and Reno-Depot.

15. Such as Verti Store and Window & Bed Covers.

16. Fabricators do not manufacture slats; they assemble blinds mainly from imported slats.

17. The CBSA advised the Tribunal on April 30, 2004, that rough and unfinished slats exported from China and further processed in the United States, before being imported into Canada as goods of NAFTA origin, are considered goods originating in China and, therefore, are subject goods. Tribunal Exhibit NQ-2003-003-01B, Administrative Record, Vol. 1 at 43.2.

POSITIONS OF THE PARTIES¹⁸**SBM**

30. SBM argued that slats and blinds, custom and stock, constitute a single class of goods. Slats, being the major component of blinds, according to SBM, should, therefore, in accordance with the Tribunal's and its predecessors' jurisprudence, be considered part of the same class of goods as the finished product, notably in order to prevent circumvention. As for stock and custom blinds, it was submitted that they serve the same end use, have identical physical characteristics and methods of manufacture, and compete head-to-head in the marketplace.

31. SBM submitted that the domestic industry consists only of the integrated producers because they are the sole producers of both blinds and slats. SBM was of the view that its production, along with that of Trans UV, accounts for a major proportion of total domestic production. However, were the Tribunal to include fabricators in the domestic industry, SBM argued that those fabricators that are related to an exporter or importer of dumped goods, or that are themselves importers of such goods, should be excluded in accordance with the definition of "domestic industry" set out in subsection 2(1) of *SIMA*.

32. Furthermore, according to SBM, the evidence in this inquiry is such that the Tribunal should assess the cumulative effect of the dumping of wood venetian blinds and slats from both China and Mexico.

33. SBM argued that the dumping of the subject goods enabled the commoditization of wood blinds; this is one indication of dumping having caused injury to the domestic industry. It is submitted that the decimation of the U.S. blind industry was caused, in part, by the same phenomenon. In SBM's view, this commoditization has caused a disruption in the normal competitive mix of products in the window coverings category to the detriment of domestic producers.

34. SBM indicated that the injury suffered by the domestic industry is evidenced by repeated calls for discounts or by the absence of orders from its usual clients. It is alleged that the wood blind market is growing, but that the domestic industry has been unable to receive its fair share of this growth. SBM submitted that domestic fabricators have been able to benefit from the aforementioned market disruption by making up lost sales of custom blinds with sales from imported stock blinds or other non-subject window coverings. However, in order to be a player in the stock blind market, SBM argued, it is necessary to have cut-down machines that provide the ability to customize to the customer's requirements. SBM submitted that it does not produce unadjusted blinds in the way that the Chinese producers do. The dumping of stock blinds from China, SBM argued, has precluded the domestic industry from entering the stock blind category and, consequently, the domestic industry has idle capacity for both slats and blinds. SBM argued that the domestic industry's sales have been cannibalized by value-for-money-conscious customers resorting to dumped blinds, to products made from dumped slats, or to other alternative window covering products instead of custom wood blinds made by integrated domestic producers. To the extent that there is intra-industry competition, SBM submitted, the integrated producers are fighting amongst themselves because there is little left to fight over.

35. Alternatively, SBM submitted that the domestic industry is faced with the threat of injury because of excess Chinese and Mexican capacity. It also submitted that the product exclusion based on trademark and price point requested by Springs is not warranted. In this respect, SBM also pointed to excess Mexican

18. This portion of the text is intended to outline a number of key submissions made by the parties. It is not intended to be exhaustive.

capacity to produce and ship to Canada and to the fact that Springs' imports compete head-to-head with products offered by SBM and other domestic producers.

Shade-O-Matic

36. Shade-O-Matic submitted that the assembly of wood venetian blinds using imported slats constitutes domestic production. It also argued that parties related to importers or exporters of dumped goods, as well as those that are themselves importers of such goods, should not be excluded from the realm of those domestic producers that constitute the domestic industry for the purposes of subsection 2(1) of *SIMA*. For those reasons, in Shade-O-Matic's submission, the parties claiming injury in this inquiry do not account for a major proportion of domestic production of like goods.

37. In Shade-O-Matic's contention, the subject goods comprise three classes of goods: slats, stock blinds and custom blinds. Blinds and slats do not look alike, are manufactured using different machinery, serve different purposes, and have very different pricing and channels of distribution. Blinds, it was argued, are a collection of low-value components of which slats are not a major value component. Furthermore, since blinds sold by the fabricators are more expensive than those sold by SBM, it follows, according to Shade-O-Matic, that there is no evidence of dumped slats allowing the fabricators to better compete on price. With respect to stock blinds and custom blinds, Shade-O-Matic stated that the overwhelming body of evidence on the record supports a determination that they constitute two classes of goods; among others, they present notable differences in features, quality and appearance, production processes, distribution channels, consumers, warranty and price. Moreover, comparisons should not be made between the domestically produced custom blinds and the imported blinds after they have been cut down. Stock wood blinds should be compared as imported, Shade-O-Matic argued. It further submitted that blinds that are modified after importation and that are in the market cannot injure Canadian production.

38. Shade-O-Matic argued that any injury suffered by SBM was caused not by dumping but rather by its lack of planning or early recognition of changing customer demands, intra-industry competition in the Quebec market and its lack of understanding of certain aspects of the marketplace, notably that the custom wood blind market is mature, that domestic blind fabricators would not buy slats from a custom blind competitor, that historical U.S. volume pricing for slats was substantially lower than that upon which SBM based its decision to enter slat production, and that SBM failed to recognize that it could not compete on the foreign or domestic slat or stock blind markets.

39. Shade-O-Matic submitted that SBM's decision to pursue vertical integration of custom blind manufacturing did not succeed because of a lack of economies of scale and that, in total contrast, the structural set-up of Chinese slat and stock blind manufacturers has allowed for the harnessing of such benefits. In this regard, Shade-O-Matic pointed to company-specific productivity data on file as a demonstration that the horizontal integration and distribution model of the domestic blind fabricators is preferable to the vertical integration model followed by SBM or Trans UV.

40. Shade-O-Matic submitted that SBM cannot point to usual indicia of injury, since its pricing has stayed the same, it has experienced no decline in market share, and its gross margins and employment levels have not been affected. Along with Trans UV, it has continued to make capital investments, productivity and cash flow have not been adversely impacted, and macro-economic conditions do not point to injury. Finally, in Shade-O-Matic's submission, there is no evidence of a threat of injury in this matter. Without the domestic industry having access to patented cut-down machines, there is no evidence that stock blinds can be sold to Shade-O-Matic customers from Canadian production. Furthermore, there is no evidence of a custom wood blind market in China, nor could China produce custom blinds for export to Canada, given the delays and shipping costs involved in individual orders. Volumes of custom blinds from Mexico have been

negligible. As to slats, Shade-O-Matic argued, there is no opportunity to displace U.S. finished slats. Regardless of dumping, they will remain extremely price competitive. These elements are not likely to change in the foreseeable future.

Royal

41. Royal adopted Shade-O-Matic's submissions on the existence of three classes of goods.

42. It further submitted that the Tribunal should not cumulate the effects of dumping from the subject countries because: (1) there has been no determination that the volume of goods imported from Mexico is not negligible; and (2) the conditions of competition between imports from Mexico and China are different, such that a cumulative assessment of the effects of the subject goods is not appropriate.

43. Royal questioned certain aspects of the statistical methodology used by the Tribunal's research staff with respect to the lack of a proper determination of volumes. On conditions of competition, Royal argued that there are significant differences in physical characteristics between imports of blinds from China and Mexico, since those from Mexico are custom blinds, whereas those from China are exclusively stock blinds. Further, Mexican slats are of a higher quality than those from China; slats and custom blinds from Mexico are destined to specific customers, whereas Chinese slats and stock blinds are destined to the market at large; the subject goods are sold through different channels of distribution; and Mexico is part of an integrated North American market.

44. Royal reiterated Shade-O-Matic's view that the domestic industry was not being injured or under a threat of injury and pointed to the absence of many of the same factors analysed by Shade-O-Matic. In addition, Royal underlined that SBM's premise that there had been a recent explosion in the demand for wood blinds was ill-founded; rather, the evidence shows that sales remained stable or declined slightly over the period of inquiry. Royal also indicated that Canadian sales of Mexican blinds have always been low and have decreased in both absolute and relative terms over the same period. To the extent that the Tribunal is willing to recognize the existence of a real domestic industry for slats, Royal submitted that it does not show any evidence of injury, since demand for domestic slats remains steady. Moreover, even in the face of an injury finding against Chinese slats, the price of U.S. slats will remain below the domestic industry's average cost of production. Royal underlined the importance for the Tribunal of considering the overall good health of the domestic industry; it may not be doing as well as it would like, but it does not show any of the recognized signs of injury caused by dumping, and SBM testified, *in camera*, to promising export opportunities.

45. Royal listed a number of factors other than dumping that, it submitted, have caused injury with respect to wood blind producers, including shifting consumer demand in the wood venetian blind market, where window covering products are subject to the vagaries of fashion and to product life cycles and the inability of the integrated producers to satisfy the criteria specified by retailers such as Sears.

Springs

46. In the event that the Tribunal were to make an injury finding, Springs requested an exclusion for premium wood venetian blinds, made-to-order for specific customers, such as those sold under its Nanik, Nanik/Timberline and Graber brands, which are not sold through big box retailer stores, such as Home Depot and Rona, or large retailers, such as Sears.

47. Springs based its request on the allegation that its brands do not compete with domestic like goods. It pointed to differences in quality, price, warranty, target market and brand loyalty. It claimed that its

request for exclusion, if granted, could be administered by establishing a high enough base price point over and above that of the domestic industry's products.

ANALYSIS

48. Pursuant to section 42 of *SIMA*, the Tribunal is required to make inquiry as to whether the dumping of the goods to which the preliminary determination applies has caused injury or retardation or is threatening to cause injury. "Injury" is defined in subsection 2(1) as "material injury to a domestic industry". "Domestic industry", in turn, is described, in part, as "the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods". Injury and threat of injury are distinct findings, and the Tribunal does not need to make a finding relating to threat under subsection 43(1) unless it first makes a finding of no injury.

49. The Tribunal must, therefore, first determine what are the like goods and which domestic producers constitute the domestic industry. The Tribunal will then determine if the prerequisite conditions are met in order to make a cumulative assessment of the impact of the dumping from the subject countries on the domestic industry. Next, the Tribunal will proceed to determine the effects of the dumping of the subject goods on the domestic industry, for individual countries and for the cumulated countries, as appropriate. The Tribunal will then determine whether those effects amount to injury, retardation or threat of injury. In its injury analysis, the Tribunal will examine other relevant factors to ensure that it does not attribute to the dumping any injury caused by other factors.

Like Goods and Classes of Goods

50. Subsection 2(1) of *SIMA* defines "like goods", in relation to any other goods, as:

- (a) goods that are identical in all respects to the other goods, or
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

51. In its preliminary determination of injury into this matter, the Tribunal found "that the question of whether there should be more than one class of goods merit[ed] further consideration." The Tribunal therefore requested the CBSA to collect information on the dumping of wood venetian blinds, wood slats, and wood venetian blinds and slats combined.¹⁹

52. In considering both the issue of classes of goods and of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods (such as appearance), their method of manufacture, their market characteristics (such as substitutability, pricing and distribution) and whether the domestic goods fulfill the same customer needs as the imported goods. If the Tribunal finds that there is more than one class of goods, the question of whether dumped goods have caused or are threatening to cause injury to a domestic industry producing each corresponding class of like goods must be considered separately for each class.

53. SBM claimed that there is a single class of like goods, based on what it argued to be the Tribunal's and its predecessors' consistent past practice of finding major components of a finished product to be part of

19. In confidential worksheets provided to the Tribunal with its final determination of dumping dated May 17, 2004, the CBSA provided some information for blinds and slats separately. Tribunal Exhibit NQ-2003-003-05 (protected), Administrative Record, Vol. 2 at 18.2-18.59.

the same class of goods as the finished product in issue. Among others, it cited *Bicycles*, *Paint Brushes* and *Photo Albums*.²⁰ Shade-O-Matic and Royal questioned the applicability of those matters to the case of slats and blinds.

54. Because they appear to have been chiefly motivated by a desire to prevent circumvention issues, the Tribunal does not view those cases as authority to address the appropriate criteria under *SIMA*. Rather, the Tribunal views *SIMA* as directing it to define like goods as one of only two things: goods that are identical or goods whose uses and other characteristics closely resemble each other.²¹

55. The Tribunal finds that there are three classes of goods: stock blinds, custom blinds and slats. The Tribunal is also of the view that domestically produced custom blinds are like goods to the subject custom blinds and that domestically produced slats are like goods to the subject slats.

Stock Blinds Are Not Like Custom Blinds

56. The Tribunal is of the view that the evidence shows that stock blinds are not like custom blinds because they differ significantly in terms of physical characteristics, manufacturing processes, quality, price, substitutability and methods of marketing.²²

57. With respect to physical characteristics, the evidence shows that custom blinds come in a wide range of colours (more than 200), stains and finishes (hand or machine painted) and wood types.²³ The exact widths and lengths are dictated by each individual order.²⁴ Furthermore, options and features made available by custom blind manufacturers are designed to enhance the fashion element and are far more numerous than those offered by stock blind manufacturers.²⁵ On the other hand, stock blinds come in only a limited range of industry-standard widths and lengths.²⁶ Some evidence indicates differences in wood quality and finish.²⁷

58. With respect to differing manufacturing processes, the Tribunal notes that orders for custom blinds are not grouped according to either size, colour or features nor to any combination of such requirements. Indeed custom blinds are manufactured on an individual basis, one order at a time.²⁸ While the Tribunal has heard evidence of increased mechanization of production processes in Canada, it notes that custom blind

20. *Bicycles, Assembled or Unassembled, and Bicycle Frames, Forks, Steel Handlebars and Wheels (not Including Tires and Tubes)* (8 November 1977), ADT-11-77 (ADT); *Paint Brushes Using Natural Hog Bristle as the Filament Material, and the Components Thereof Known as "Heads"* (20 June 1984), ADT-6-84 (ADT); *Photo Albums With Self-adhesive Leaves, Imported Together or Separately, and Self-adhesive Leaves* (2 January 1991), NQ-90-003 (CITT) [*Photo Albums*]; see also Manufacturer's Exhibit A-01, paras. 42-47, Administrative Record, Vol. 11.

21. The Tribunal notes Member Trudeau's separate reasons in *Photo Albums* at 16-17.

22. The Tribunal acknowledges certain similarities in end use; both are intended to cover windows.

23. Manufacturer's Exhibit A-01, para. 19, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 17 May 2004 at 16-17.

24. *Transcript of Public Hearing*, Vol. 1, 17 May 2004 at 225-27; *Transcript of Public Hearing*, Vol. 2, 18 May 2004 at 286-93.

25. Manufacturer's/Importer's Exhibit B-03, para. 28, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 3, 19 May 2004 at 563-64.

26. *Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-06A, Administrative Record, Vol. 1.1B at 16.

27. *Transcript of Public Hearing*, Vol. 3, 19 May 2004 at 625; Foreign Producer's Exhibit E-01, paras. 18, 20, Administrative Record, Vol. 13.

28. *Transcript of Public Hearing*, Vol. 1, 17 May 2004 at 225-27; *Transcript of Public Hearing*, Vol. 2, 18 May 2004 at 286-93.

manufacture involves a degree of craftsmanship (e.g. manual application of specialty colour offerings, specific finishing adjustments to ensure colour uniformity) not found in stock blind manufacture; the Tribunal has no reason to believe that this situation is any different in the Mexican custom blind manufacturing industry.²⁹ Stock blinds, on the other hand, are mass produced in certain limited standard sizes and colours,³⁰ which are then sold to importers or large retailers and shipped in container lots. In the Tribunal's view, for the foregoing reasons, there are resulting marked differences in appearance, in manufacturing process and quality between stock blinds and custom blinds that make it difficult to affirm that they closely resemble each other.

59. As well, substantial and uncontested evidence on file indicates that price is a defining difference between stock blinds and custom blinds.³¹ The Tribunal heard evidence that, beyond a certain price point, the demand for stock blinds tapered off considerably in favour of other window-covering options, most of which are lower in price (including curtains and aluminum or faux-wood blinds), rather than in favour of custom blinds.³² This leads the Tribunal to accept the view that custom blinds are in a high-end niche market geared to fashion-conscious, somewhat price-insensitive, consumers³³. On the other hand, consumers of stock blinds are looking for a utilitarian window covering that is priced right, and fashion is not their primary concern.³⁴

60. Finally, the Tribunal notes that points of sale and marketing methods for stock blinds and custom blinds are, in many respects, different.³⁵ While there is some overlap in this respect, custom blinds are mainly sold in specialized shops or through interior designers, whereas stock blinds are found largely in big box and department stores, where they are marketed differently from custom blinds and where the width can be adjusted at no additional charge.³⁶ The Tribunal notes that there is very little evidence, if any, of similar marketing methods. Rather, the Tribunal is convinced that the marketing methods are specifically geared at capturing either, on the one hand, mass-market, price-sensitive consumers of stock blinds or, on the other hand, the niche custom blind market that is motivated by fashion, quality, warranty and service expectations.

Slats Are Not Like Blinds

61. Notwithstanding that slats are a major component of the finished product to which they are destined, namely, stock blinds or custom blinds, the Tribunal is of the view that slats and blinds do not share the same physical characteristics or any of the aforementioned indicators of "likeness". Put simply, slats do not look like blinds and are not substitutable for blinds. Blinds are a finished consumer product, while slats are a component of blinds. Slats are either imported in a finished state or made domestically by integrated producers for their own use or for sale to distributors or, occasionally, to fabricators. In all cases, slats and finished blinds are distributed and sold through different channels.

29. Foreign Producer's Exhibit H-03, para. 9, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 4, 19 May 2004 at 663-65.

30. *Transcript of Public Hearing*, Vol. 1, 17 May 2004 at 81; Manufacturer's/Importer's Exhibit B-03, paras. 28(a), 28(c), Administrative Record, Vol. 13.

31. *Protected Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-07A (protected), Administrative Record, Vol. 2.1B at 46; *Transcript of Public Hearing*, Vol. 1, 17 May 2004 at 189; *Transcript of Public Hearing*, Vol. 2, 18 May 2004 at 394-395.

32. *Transcript of Public Hearing*, Vol. 3, 19 May 2004 at 494-501.

33. Tribunal Exhibit NQ-2003-003-37, Administrative Record, Vol. 1 at 111; *Transcript of Public Hearing*, Vol. 3, 19 May 2004 at 462-63; Foreign Producer's Exhibit E-01, para. 21, Administrative Record, Vol. 13.

34. Foreign Producer's Exhibit E-01, para. 21, Administrative Record, Vol. 13.

35. *Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-06A, Administrative Record, Vol. 1.1B at 18; Manufacturer's/Importer's Exhibit B-03, paras. 36-39, Administrative Record, Vol. 13.

36. *Transcript of Public Hearing*, Vol. 3, 19 May 2004 at 609.

Domestic Production and Domestic Industry

62. Subsection 2(1) of *SIMA* reads, in part, as follows:

“domestic industry” means, . . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

Domestic Production

63. The Tribunal finds that the assembly of custom blinds using imported components constitutes domestic production³⁷ of custom blinds. However, in the Tribunal’s view, the modification of imported stock blinds using cut-down machines in Canada does not constitute domestic production of stock blinds nor additional domestic production of custom blinds. For the most part, such minor modifications are carried out by the retailer at its own location at no additional charge, as noted above.³⁸ In some instances, the end user will carry out some modifications, according to the vendor’s written instructions.

Domestic Industry

– Stock Blinds

64. The Tribunal notes that there is no Canadian mass production of blinds in limited standard sizes and therefore no domestic stock blind industry.

– Custom Blinds

65. The Tribunal finds that the integrated producers, along with the fabricators, are all engaged in the domestic production of like goods and would therefore normally comprise the domestic custom blind industry. In the Tribunal’s view, however, the narrowing of the domestic industry for any of the reasons mentioned in subsection 2(1) of *SIMA* is warranted only with respect to Levolor because it is a domestic fabricator that also imports dumped custom blinds, in this instance, from Mexico. Consequently, in accordance with the discretion provided for in subsection 2(1), the Tribunal finds that the domestic custom blind industry comprises those producers and fabricators identified on the record,³⁹ with the exception of Levolor.

66. Because the Tribunal must assess injury against domestic production as a whole or, in this case, against at least a major proportion of domestic production, the Tribunal examined whether SBM and its

37. For example, see *Women’s Leather and Non-leather Boots and Shoes* (2 May 1995), RR-94-003 (CITT); *Colour Televisions* (29 October 1975), ADT-4-75 (ADT); *Bicycles, Assembled or Unassembled, and Bicycle Frames, Forks, Steel Handlebars and Wheels (not Including Tires and Tubes)* (8 November 1977), ADT-11-77 (ADT).

38. Occasionally, the modification is made by an importer/fabricator when the stock blinds are on special order from the fabricator’s inventory, in which case a surcharge is applied. *Transcript of Public Hearing*, Vol. 3, 19 May 2004 at 599-600; *Transcript of Public Hearing*, Vol. 3, 19 May 2004 at 638-39.

39. SBM, Trans UV, ATS, Abbey Blinds, Blinds To Go, Hunter Douglas, Shade-O-Matic, Ameuriq, Delor, Forever Window, Innovatex, Avant-Garde, VP Fabricant de Stores. *Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-06A, Administrative Record, Vol. 1.1B at 18.

supporters⁴⁰ that claim injury account for a major proportion of domestic production. The Tribunal notes that there is no yardstick measurement to determine precisely at what level a producer's or a group of producers' output can be regarded as constituting a major proportion of total domestic production. By inference, it is also recognized that there must be a point where a producer (or producers) would be so small as to be not truly representative of an industry in Canada.⁴¹

67. The Tribunal notes that SBM and its supporters' share of domestic production (excluding production by Levolor) rose just slightly above the 20 percent mark for only one of the three years of the period of inquiry. For the remaining two years, their share was several percentage points lower, as was, consequently, their average share of domestic production for the whole period.⁴² In the Tribunal's view, this share of the production of custom blinds cannot reasonably be characterized as a major proportion of the domestic production. Rather, in the Tribunal's view, SBM and its supporters' share of domestic production is comparatively small and constitutes a minor portion of total domestic production.

– Slats

68. Finally, with respect to slats, the Tribunal finds that the domestic slat industry is comprised of the producers identified on the record.⁴³ The Tribunal notes that there are no domestic slat producers that are related to importers or exporters of dumped goods nor any that are themselves importers of such goods for the purposes of subsection 2(1) of *SIMA*. The Tribunal also finds that SBM, Trans UV and ATS account for all known domestic slat producers.

Cumulation

69. Pursuant to subsection 42(3) of *SIMA*, the Tribunal shall, when conducting an inquiry under subsection 42(1), make an assessment of the cumulative effect of the dumping or subsidizing of the goods that are imported into Canada from more than one country if it is satisfied that the following conditions are met:

(a) the margin of dumping or the amount of the subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and

(b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and

(i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or

(ii) like goods of domestic producers.

40. Trans UV, ATS, Ameuriq Inc., SOHJI-CO Inc., Blinds by Vertican, Tri Sol Shutters & Blinds, Inc., Les Industries La Belle and Mera Window Fashions. Manufacturer's Exhibit A-02 (protected), paras. 35-36, Administrative Record, Vol. 12; Manufacturer's Exhibit A-09, Administrative Record, Vol. 11.

41. *Solid Urea* (1987), 15 C.E.R. 277 (CIT).

42. *Protected Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-07A (protected), Administrative Record, Vol. 2.1B at 241; Tribunal Exhibit NQ-2003-003-10.03 (protected), Administrative Record, Vol. 4 at 130.

43. They are: SBM, Trans UV and ATS. While ZMC Metal Coating Inc. further processed (i.e. by applying paint) a certain volume of unpainted slats supplied by a domestic producer, this volume is not counted as production. Tribunal Exhibit NQ-2003-003-06A, Administrative Record, Vol. 1.1B at 18.

70. Taking into consideration the relevant provisions of *SIMA* and basing its finding on the CBSA's final determination of dumping, the Tribunal finds that the margins of dumping in relation to the imports from each of the subject countries are not insignificant.⁴⁴ Therefore, the first condition under paragraph 42(3)(a) has been met.

71. Paragraph 42(3)(a) of *SIMA* contains an additional requirement, i.e. that the volume of the goods from each of the countries not be negligible. Subsection 2(1) defines "negligible", in part, as follows:

"negligible" means, in respect of the volume of dumped goods of a country,

(a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods.

72. Furthermore, subsection 42(4.1) of *SIMA* reads as follows:

If the Tribunal determines that the volume of dumped or subsidized goods from a country is negligible, the Tribunal shall terminate its inquiry in respect of those goods.

73. The Tribunal notes that there are no imports of custom blinds from China and no imports of stock blinds from Mexico. Those volumes being nil, the Tribunal determines that they are therefore negligible. Accordingly, pursuant to subsection 42(4.1) of *SIMA*, the Tribunal terminates its inquiry in respect of custom blinds from China and stock blinds from Mexico.

74. The Tribunal finds that the volume of dumped slats from China or Mexico is not negligible.⁴⁵

75. Accordingly, the issue of cumulation only arises in the context of the class of goods of slats.

76. With respect to paragraph 42(3)(b) of *SIMA*, Royal argued that it is not appropriate for the Tribunal to assess the cumulative effects of dumped slats from China and Mexico, given differing conditions of competition between those goods in the Canadian market.⁴⁶ The Tribunal is of the view that the evidence on file does not support such a finding. Rather, the Tribunal finds that all the subject slats serve the same market and compete with one another and with domestic like goods, for the most part, under similar conditions of competition. Accordingly, the Tribunal will assess the cumulative effects of the dumping of the subject slats from China and Mexico.

44. Subsection 2(1) of *SIMA* defines the term "insignificant", in part, to mean, "in relation to a margin of dumping, a margin of dumping that is less than two per cent of the export price of the goods".

45. *Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-06A, Administrative Record, Vol. 1.1B at 28. Royal questioned certain aspects of the statistical methodology used by the Tribunal's research staff with respect to the lack of proper determination of volumes from Mexico. The Tribunal is of the view that these concerns are unwarranted. The Tribunal is satisfied that the standard methodology applicable to similar situations was followed by its staff; furthermore, the sample of importers to whom an importers' questionnaire was sent was very large, thereby ensuring that all important importers were canvassed for information on their imports, thus rendering unnecessary the use of estimates to round off the import data. The Tribunal believes that the volume data determined by its staff are the best available information. Foreign Producer's Exhibit E-01, paras. 42-51, Administrative Record, Vol. 13.

46. *Ibid.*

Injury

77. Subsection 37.1(1) of the *Special Import Measures Regulations*⁴⁷ prescribes certain factors that the Tribunal may consider in determining whether the dumping of goods has caused material injury to the domestic industry. These factors include the volume of dumped goods, their effect on prices in the domestic market for like goods and the impact of the dumped goods on the domestic industry, including actual or potential declines in domestic sales, market share, profits and financial performance. Subsection 37.1(3) also requires the Tribunal to consider factors other than the dumping to ensure that any injury caused by those other factors is not attributed to the dumped imports.

78. In the present case, the Tribunal has identified three distinct classes of goods: stock blinds, custom blinds and slats. The Tribunal must, therefore, conduct three separate injury analyses. The Tribunal must inquire into: (1) whether the dumping of stock blinds from China has caused injury or retardation or is threatening to cause injury to the domestic industry of stock blinds; (2) whether the dumping of customs blinds from Mexico has caused or is threatening to cause injury to the domestic industry of customs blinds; and (3) whether the dumping of slats from China and Mexico has caused or is threatening to cause injury to the domestic slat industry.

Stock Blinds

– Injury and Threat of Injury

79. As indicated above, there is no stock blind industry in Canada. Therefore, the dumping of stock blinds in Canada has not caused injury and is not threatening to cause injury.

– Retardation

80. In the circumstances, the Tribunal will inquire into whether the dumping of the subject stock blinds in Canada has caused material retardation of the establishment of a domestic stock blind industry.⁴⁸

81. The Tribunal finds, based on past practice,⁴⁹ that, for there to be retardation, a substantial commitment to establish a domestic industry must have been materially frustrated by dumping. In this instance, the Tribunal is not convinced that any domestic custom blind or slat producers, essentially those very producers that might potentially be in a position to establish domestic stock blind production, have seriously attempted to enter stock blind production in the past or can demonstrate any tangible capability of doing so now or in the foreseeable future. Indeed, SBM, the largest domestic integrated producer, testified that it produces only one quality of blinds, custom blinds, and that it does not offer stock blinds.⁵⁰ Trans UV, another integrated producer, testified that it was never its intention to mass produce standard blinds.⁵¹

47. S.O.R./84-927.

48. Subsection 2(1) of *SIMA* defines “retardation” as “material retardation of the establishment of a domestic industry”. The Tribunal is directed by *SIMA* to examine the possibility of retardation, as is appropriate in the circumstances, irrespective of any allegation to this effect by any party to this inquiry.

49. *Preformed Fiberglass Pipe Insulation with a Vapour Barrier* (19 November 1993), NQ-93-002 at 21 (CITT); *Fresh Garlic* (21 March 1997), NQ-96-002 at 18 (CITT); *Oil and Gas Well Casing* (4 July 2001), RR-2000-001 at 11 (CITT).

50. *Transcript of Public Hearing*, Vol. 1, 17 May 2004 at 131; *Transcript of Public Hearing*, Vol. 2, 18 May 2004 at 317-18.

51. *Transcript of Public Hearing*, Vol. 2, 18 May 2004 at 359-60.

82. Stock blinds are intended for a separate, low-end market with different needs. The need for discrete, low-cost and, sometimes, short-term window-covering solutions is at the heart of the demand for stock blinds. For stock blinds, features, customer relationships, price, manufacturing processes and inventory management requirements are different. The viability of stock blind production is largely predicated upon a large capital commitment to vertical integration to generate the economies of scale and, at the marketing end, access to cut-down machines that allow stock blinds to be cut to the width required by the customer prior to sale. The Tribunal is convinced that SBM and its supporters have taken few initiatives, if any, to successfully acquire such technology. In any event, SBM's ability to mass produce stock blinds at low cost is, at best, dubious, given its target cost for producing slats. Furthermore, SBM has not yet the proven capability to produce the quantities required by big box and chain stores, such as Home Depot and Sears,⁵² and Trans UV is still in a start-up mode. In short, none of the potential domestic stock blind producers has demonstrated to the Tribunal that it has a credible production or marketing strategy to address the stock blind market. Most importantly, none of these potential producers appears to have made any serious or recent effort to convince the big box and chain stores, particularly Sears⁵³ and Home Depot, in any tangible way that it is willing and able to gear up production in order to service the stock blind segment of the market. Accordingly, the Tribunal is not convinced that there exists, in Canada, any substantial commitment to establish a domestic stock blind industry.

83. For these reasons, the Tribunal finds that the dumping in Canada of stock blinds from China is not causing material retardation of the establishment of a domestic stock blind industry.

Custom Blinds

84. As indicated above, SBM and its supporters' production does not account for a major proportion of total domestic production of custom blinds. Therefore, the dumping of custom blinds in Canada has not caused injury and is not threatening to cause injury to the "domestic industry", as defined in subsection 2(1) of *SIMA*.

Slats

– Effects of the Volume of Dumped Goods

85. In this section, the Tribunal will examine the effects of the volume of dumped slats on domestic production and sales. The Tribunal notes that all slats imported from the subject countries during the period of inquiry were finished slats. Therefore, all references to slats in this section are to finished slats, unless otherwise indicated.

86. During the period of inquiry, the subject slats entered Canada both directly, from China and Mexico, in smaller volumes, and indirectly, from the United States, in larger volumes. In the latter instance, these slats were, in large part, unfinished slats exported from China and further processed in the United States. The CBSA has determined that these slats are considered goods originating in China and, therefore, subject goods.⁵⁴ While it is impossible to determine the exact volume of slats reported as U.S. origin slats that were, in fact, Chinese slats, the evidence shows that a high and growing proportion of slats

52. Tribunal Exhibit NQ-2003-003-10.05 (protected), Administrative Record, Vol. 4A at 176; Tribunal Exhibit NQ-2003-003-19-15 (protected), Administrative Record, Vol. 6 at 236; *Transcript of Public Hearing*, Vol. 3, 19 May 2004 at 503-505.

53. *Transcript of Public Hearing*, Vol. 3, 18 May 2004 at 504-505.

54. Tribunal Exhibit NQ-2003-003-01B, Administrative Record, Vol. 1 at 43.2.

imported from the United States during the period of inquiry were, indeed, of Chinese origin.⁵⁵ The evidence shows that almost all the imports from the United States were sold to fabricators. The Tribunal is of the view that the domestic slat industry has not lost significant sales due to dumped imports of Chinese slats further processed in the United States, since fabricators are reluctant to purchase slats from potential competitors.⁵⁶ Therefore, the Tribunal concludes that the imports from the United States, independently of their origin, did not have any significant impact on the volume of slats sold by the domestic slat industry during the period of inquiry.

87. However, in the Tribunal's view, the competitiveness of the domestic slat industry's production for internal use (i.e. custom blind production) was materially impacted. But for the low cost of imported slats used to fabricate custom blinds, the integrated producers would have been significantly more competitive. The volumes of their slat production would have likely increased, thus reducing costs and increasing profitability both in the internal captive and external merchant markets that they serve.

88. Regarding the subject goods that entered Canada directly from China and Mexico, the Tribunal notes that they were sold either to distributors of blinds components or directly to fabricators. While it is unrealistic for the domestic slat industry to hope to sell slats directly to blind fabricators in any significant quantity, for the reasons explained above, the Tribunal also observes that, during the period of inquiry, the slats produced by the domestic industry were sold in significant quantities in the market place. The volumes of slats sold by the integrated producers in 2002 attest to that. The Tribunal notes that, between 2001 and 2003, most of the imports that entered Canada directly from China and Mexico were sold to distributors.⁵⁷

89. Between 2001 and 2003, sales of direct imports from China increased almost threefold, while sales of imports from Mexico, which were absent from the market in 2001, increased almost six fold in 2003 over the previous year.⁵⁸ Combined, the volume of these sales increased by 80 percent in 2002 over 2001, and by 122 percent in 2003 over 2002.⁵⁹ Between 2001 and 2003, sales from domestic production decreased, both in absolute terms and relative to the sales of the subject goods.⁶⁰ It is clear to the Tribunal that the rise in direct imports from the subject countries captured all the growth available in the domestic market for sales to distributors and that the imports reduced domestic producers' sales and held back domestic production.

90. In sum, the Tribunal finds that, over the period of inquiry, there was a surge in the volume of subject slats that entered Canada directly from China and Mexico. In the Tribunal's view, the subject slats competed with the like goods and have taken market share from the domestic producers, reduced their sales and restrained domestic production.

55. Manufacturer's/Importer's Exhibit B-11 (protected), paras. 34, 68, Administrative Record, Vol. 14.

56. *Transcript of In Camera Hearing*, Vol. 2, 19 May 2004 at 191; *Transcript of Public Hearing*, Vol. 4, 20 May 2004 at 709, 710. In any event, the witness from Trans UV testified that he was not looking to sell slats to large blind fabricators, but to other buyers. *Transcript of Public Hearing*, Vol. 2, 18 May 2004 at 360, 361.

57. Tribunal Exhibit NQ-2003-003-19-04 (protected), Administrative Record, Vol. 6 at 6; Tribunal Exhibit NQ-2003-003-19-07A (protected), Administrative Record, Vol. 6 at 99.

58. *Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-07A (protected), Administrative Record, Vol. 2.1B at 33.

59. *Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-06A, Administrative Record, Vol. 1.1B at 33.

60. Tribunal Exhibit NQ-2003-003-10.05 (protected), Administrative Record, Vol. 4A at 176; *Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-07A (protected), Administrative Record, Vol. 2.1B at 33.

– Effects of Dumped Goods on Prices

91. The Tribunal will now examine the effect on domestic prices of dumped imports that entered Canada directly from China and Mexico. The following analysis will compare mainly import prices paid by the distributors with prices at which the domestic slat industry sold its slats.

92. The Tribunal first notes that there is no evidence that demonstrates that the subject slats and domestic products are not generally of comparable quality. In this respect, the Tribunal is of the opinion that the subject slats compete directly with domestically produced slats.

93. The Tribunal notes that, between 2001 and 2003, the average unit values of imports that entered Canada directly from China and Mexico were significantly lower than SBM's average unit value of sales.⁶¹ The evidence also indicates that, during the same period, the average unit values of these imports decreased slightly, while the average unit value of sales by SBM remained stable.⁶² Finally, the average unit values of indirect imports from the United States were also lower than the unit value of sales by SBM.⁶³

94. The Tribunal is of the opinion that, given the size of direct import flows from the subject countries relative to the volume of domestic production, the subject slats have established a price ceiling that domestic suppliers must meet if they are to be successful in selling their slats. The Tribunal heard evidence to the effect that SBM made investments to reduce its production costs, with some success, but not enough to lower its selling price sufficiently to achieve sales gains in the domestic market.⁶⁴ The price data clearly show that SBM cannot meet these dumped prices. The Tribunal is of the view that low import prices have resulted in lost sales and reduced competitiveness for the domestic slats producers.

95. The evidence clearly shows that, during most of the period of inquiry, SBM could not compete successfully in the domestic slats market, especially for sales to distributors. However, the Tribunal notes that the integrated producers sold a significantly larger volume of slats in 2002 compared to 2003. The witness for SBM testified that, while he had many discussions with Royal Quebec in 2000, they did not result in any sales because SBM's prices were too high. The witness indicated that, in his view, instead, Royal decided to subcontract to and then purchase a slat manufacturing plant in Mexico that competes directly with SBM in the Canadian market.⁶⁵ The evidence indicates that the second distributor preferred to import slats from the subject countries, since their cost is very low,⁶⁶ and will purchase Canadian slats only when there is a delay in shipments from China.⁶⁷ Finally, the third major distributor imported its slats from

61. Tribunal Exhibit NQ-2003-003-19-04 (protected), Administrative Record, Vol. 6 at 6; Tribunal Exhibit NQ-2003-003-19-07A (protected), Administrative Record, Vol. 6 at 99; Tribunal Exhibit NQ-2003-003-10.05 (protected), Administrative Record, Vol. 4A at 176. SBM was the sole Canadian producer that sold finished slats in the domestic market during the period of inquiry.

62. Tribunal Exhibit NQ-2003-003-19-04 (protected), Administrative Record, Vol. 6 at 6; Tribunal Exhibit NQ-2003-003-19-07A (protected), Administrative Record, Vol. 6 at 99; Tribunal Exhibit NQ-2003-003-10.05 (protected), Administrative Record, Vol. 4A at 176.

63. *Protected Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-07A (protected), Administrative Record, Vol. 2.1B at 47; Tribunal Exhibit NQ-2003-003-10.05 (protected), Administrative Record, Vol. 4A at 176.

64. *Transcript of Public Hearing*, Vol. 1, 17 May 2004 at 140, 141.

65. *Transcript of Public Hearing*, Vol. 1, 17 May 2004 at 233-35; *Transcript of Public Hearing*, Vol. 4, 20 May 2004 at 656.

66. Tribunal Exhibit NQ-2003-003-19-04 (protected), Administrative Record, Vol. 6 at 5.

67. Tribunal Exhibit NQ-2003-003-19-04 (protected), Administrative Record, Vol. 6 at 5; Tribunal Exhibit NQ-2003-003-18-04, Administrative Record, Vol. 5 at 102.

the United States at prices that cannot be met by the industry.⁶⁸ It is clear to the Tribunal that the price differential between the subject slats and the slats produced by domestic producers also provides a greater margin for distributors when marketing their slats to fabricators. This bigger margin offers distributors the option of reducing their prices if they wish to improve their sales opportunities, therefore adding to the competitive pressures experienced by domestic producers.

96. In sum, the Tribunal finds that price is the main driving factor behind the surge in imports from the subject countries. The Tribunal also finds that the prices of the dumped “direct” imports caused lost sales to the domestic slat industry. Also, the significant price differential applied downward pressure on the pricing of slats used internally for the production of custom blinds, thus preventing the domestic integrated producers from achieving better returns on their slat production. With regard to the dumping of “indirect” imports, the Tribunal notes that, while the share of the market represented by their sales may, for the most part, be inaccessible to domestic slat producers, it remains that they entered Canada at low prices, which allowed domestic fabricators to market custom blinds with good profit margins in competition with SBM.

– Impact on the Domestic Industry

97. The Tribunal will now address how the increasing volumes of slats from China and Mexico sold at dumped prices have affected the performance of the domestic slat industry.

98. Although the domestic slat industry increased its production during the period of inquiry,⁶⁹ the Tribunal notes that this added production was consumed internally as an input for the production of custom blinds. This raised the industry’s rate of utilization of capacity by a few percentage points. However, the evidence also indicates that the capacity utilization rate of the domestic slat industry was still very low at the end of the inquiry period.⁷⁰

99. The Tribunal notes that, during the period of inquiry, the domestic slat producers were able to increase their productivity appreciably⁷¹ and decrease their unit cost of goods manufactured.⁷² However, the Tribunal is of the view that, if the domestic slat industry had captured a fair share of the market, it could have achieved better economies of scale, which would have reduced its cost of production further and allowed it to lower both its selling prices and its input costs. The Tribunal sees proof of this in the fact that SBM forecasts, in light of strong slat export sales already achieved in 2004, that its cost of slats will decrease by more than 10 percent in 2005.⁷³

100. The Tribunal is of the opinion that the presence of dumped slats in the market also had a negative impact on the level of inventory, on revenues, on returns on investment and on growth. The Tribunal notes that the consolidated inventories of slats by the domestic slat industry increased almost threefold between 2001 and 2003.⁷⁴ The Tribunal is of the view that loss of market share and forgone revenues prevented domestic slat producers from achieving financial returns that would normally be expected for operations of

68. Tribunal Exhibit NQ-2003-003-19.06 (protected), Administrative Record, Vol. 6 at 37.

69. *Protected Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-07A (protected), Administrative Record, Vol. 2.1B at 132.

70. *Ibid.* at 76.

71. *Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-06A, Administrative Record, Vol. 1.1B at 72.

72. *Protected Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-07A (protected), Administrative Record, Vol. 2.1B at 161, 169.

73. *Transcript of In Camera Hearing*, Vol. 1, 18 May 2004 at 67.

74. *Protected Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-07A (protected), Administrative Record, Vol. 2.1B at 82.

this nature. The Tribunal notes that domestic slat producers have made significant recent investments to develop their production capacity,⁷⁵ but that the returns on investment are low since they are not able to expand their sales due to dumped slats.⁷⁶ The Tribunal is also of the view that the industry's ability to raise capital and generate cash flow has been negatively impacted, thereby reducing its growth potential.⁷⁷ Finally, the Tribunal is of the view that, at the rapid rate at which the subject slats have displaced domestic sales, there is a high likelihood that the relatively new slats industry in Canada is unsustainable if this price competition from dumped slats persists.

101. In sum, the Tribunal concludes that the domestic slat industry has underutilized its capacity, lost market share and revenues, experienced low returns on investment, and suffered other negative impacts on inventory and its financial performance. Accordingly, the Tribunal considers that the increasing volumes of imports at dumped prices from China and Mexico caused injury to the domestic slat producers.

– Other Factors

102. The Tribunal also examined other factors to ensure that any injury caused by such factors is not attributed to the dumped imports.

103. Shade-O-Matic argued that any injury suffered by SBM was caused not by dumping but, rather, by its lack of planning or early recognition of changing customer demands, intra-industry competition in the Quebec market and its lack of understanding of certain aspects of the market place. Notably, these aspects are that the custom blind market is mature, that non-integrated domestic blind fabricators would not buy slats from a custom blind competitor, that historical U.S. volume pricing for slats was substantially lower than that upon which SBM based its decision to enter slat production and that SBM failed to recognize that it could not compete on the foreign or domestic slat markets.

104. The Tribunal gives some credence to the fact that other factors appear to have impacted the domestic slat industry, but is not convinced that, in the aggregate, they explain the current state of the industry. While it is true that the market for wood blinds is evolving and that other types of window coverings may take some market share away from wood blinds, the market for wood blinds is still strong and likely to remain so for the foreseeable future⁷⁸ and, consequently, so will the demand for slats. With regard to the effects of intra-industry competition, there is no evidence that the domestic slat producers compete extensively against one another for sales.⁷⁹

105. The Tribunal also heard evidence that SBM's and Trans UV's decisions to vertically integrate their operations was bound to fail, as it had in the United States, and that domestic slat production could not

75. *Ibid.* at 78.

76. Manufacturer's Exhibit A-04 (protected), paras. 30-32, Administrative Record, Vol. 12; Manufacturer's Exhibit A-07 (protected), para. 24, Administrative Record, Vol. 12.

77. *Protected Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-07A (protected), Administrative Record, Vol. 2.1B at 114.

78. *Pre-hearing Staff Report*, revised 10 May 2004, Tribunal Exhibit NQ-2003-003-06A, Administrative Record, Vol. 1.1B at 29; Manufacturer's Exhibit A-01, para. 76, Administrative Record, Vol. 11; Tribunal Exhibit NQ-2003-003-37, Administrative Record, Vol. 1 at 111-112; the evidence shows that the decrease in sales from domestic production, shown in the *Protected Pre-Hearing Staff Report* at 29, was caused by a major fabricator that moved an important part of its manufacturing operations outside Canada. Without this particular event, the Tribunal notes that the total apparent market would have been relatively stable between 2001 and 2003. Tribunal Exhibit NQ-2003-003-10.09A, Administrative Record, Vol. 4B at 215; and *Transcript of In Camera Hearing*, Vol. 2, 18 May 2004 at 107.

79. SBM was the sole Canadian producer that sold finished slats in the domestic market during the period of inquiry.

succeed in light of Chinese low-cost production. The Tribunal does not believe that the U.S. model is directly applicable to Canada. While there was a scarcity of evidence to fully explain the demise of integrated blinds manufacture in the United States, it appears to the Tribunal that the decline in U.S. domestic integrated production was, to a certain extent, coincident with a significant increase in imports from China and that the U.S. market's lack of protection against dumping may be a significant explanatory factor. Furthermore, the witness for Royal denied that his Mexican operation was doomed to failure because it was an integrated producer.⁸⁰ With regard to the low cost of Chinese production, this is a fact that cannot be denied; however, normal values will ensure that slats enter Canada at undumped prices, thereby providing a level playing field.

106. Finally, the Tribunal heard argument to the effect that an injury finding would have no impact on the volume of slats currently imported from the United States because U.S. exporters, instead of using unfinished slats from China in their production process, would, instead, use U.S. unfinished slats, thereby producing 100 percent U.S.-origin, non-subject slats, for exports to Canada.⁸¹ It was argued that this switch in the source of unfinished slats would raise prices only moderately. While the Tribunal has little doubt that some switching by exporters to U.S.-origin slats will take place, it appears to the Tribunal that the forecast price increase is probably too small.⁸² The Tribunal is of the view that, even if the forecast price increase proved accurate, it would still have a positive impact on the domestic slat industry, as it would make its production more competitive with the imports.

107. In conclusion, the Tribunal is not convinced that these other factors have materially contributed to the domestic slat industry's loss of market share and declining profitability. The Tribunal is of the view that, but for the presence of the dumped slats imported directly from China and Mexico, and indirectly from the United States, the domestic industry would not have suffered injury in the form of reduced competitiveness and profitability, and lost sales and market share.

REQUEST FOR EXCLUSION

108. Springs requested that certain premium-priced custom blinds from Mexico be excluded in the event of an injury finding. In light of the Tribunal's decision that Mexico has not caused and is not threatening to cause injury to the domestic custom blind industry, it is not necessary to address this matter further.

CONCLUSIONS

109. The Tribunal hereby terminates its inquiry with respect to custom blinds from China and stock blinds from Mexico, as it has determined that the volumes of such dumped goods originating in or exported from the subject countries are negligible.

110. Furthermore, the Tribunal finds that:

- the dumping in Canada of stock blinds originating in or exported from China has not caused injury, is not threatening to cause injury and has not caused material retardation to the establishment of a domestic stock blind industry; and
- the dumping in Canada of slats originating in or exported from China has caused injury to the domestic slat industry.

80. *Transcript of Public Hearing*, Vol. 4, 20 May 2004 at 670.

81. *Transcript of Public Argument*, Vol. 4, 21 May 2004 at 119-20.

82. *Transcript of In Camera Hearing*, Vol. 1, 18 May 2004 at 84; Tribunal Exhibit NQ-2003-003-19-04 (protected), Administrative Record, Vol. 6 at 5.

111. In addition, the Tribunal finds that:

- the dumping in Canada of custom blinds originating in or exported from Mexico has not caused injury and is not threatening to cause injury to the domestic custom blind industry; and
- the dumping in Canada of slats originating in or exported from Mexico has caused injury to the domestic slat industry.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Pierre Gosselin

Pierre Gosselin
Member

Meriel V. M. Bradford

Meriel V. M. Bradford
Member