

Ottawa, Friday, August 30, 2002

Inquiry No. NQ-2002-001

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

**AUTOMOTIVE LAMINATED WINDSHIELDS FOR THE AUTOMOTIVE
REPLACEMENT MARKET, OF ALL SIZES AND SHAPES, WHETHER THEY ARE
CLEAR OR TINTED, WHETHER COATED OR NOT, WHETHER OR NOT THEY
INCLUDE ANTENNAE, CERAMICS, MIRROR BUTTONS, VIN NOTCHES, AND
WHETHER OR NOT THEY ARE ENCAPSULATED, ORIGINATING IN OR
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

FINDING

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 automotive laminated windshields for the automotive replacement market, of all sizes and shapes, whether they are clear or tinted, whether coated or not, whether or not they include antennae, ceramics, mirror buttons, VIN notches, and whether or not they are encapsulated, originating in or exported from 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 Commissioner of the Canada Customs and Revenue Agency of a preliminary determination dated May 2, 2002, and of a final determination dated July 31, 2002, that the aforementioned goods have been dumped and that the margin of dumping of the goods is not insignificant.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods originating in or exported from the People's Republic of China has not caused material injury and is not threatening to cause material injury to the domestic industry.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Patricia M. Close

Patricia M. Close
Member

Zdenek Kvarda

Zdenek Kvarda
Member

Michel P. Granger

Michel P. Granger
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: August 6 to 9, 2002
Date of Finding: August 30, 2002

Tribunal Members: Richard Lafontaine, Presiding Member
Patricia M. Close, Member
Zdenek Kvarda, Member

Director of Research: Réal Roy

Lead Researcher: Don Shires

Researcher: Paul Berlinguette

Economist: Ihn Ho Uhm

Statisticians: Julie Charlebois
Marie-Josée Monette

Counsel for the Tribunal: Michèle Hurteau
Clarissa Lewis

Registrar Officer: Natalie Lowe

Participants:

James McIlroy
for PPG Canada Inc.

(Domestic Producer)

Richard S. Gottlieb
Darrel H. Pearson
Jessie I. Goldman
Peter Collins
for Xinyi Automobile Glass (Shenzhen) Co., Ltd.

Richard S. Gottlieb
for Xinyi Glass (North America) Inc.

Dean Peroff
Peter A. Magnus
Paul Guthrie
Jeremy Robinson
for P.H. Vitres d'Autos Inc.
Greenville Glass Industries Inc.
Fuyao Glass Industry Group Co., Ltd.
TCG International Inc.

(Importers/Others)

Ottawa, Monday, September 16, 2002

Inquiry No. NQ-2002-001

**AUTOMOTIVE LAMINATED WINDSHIELDS FOR THE AUTOMOTIVE
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EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

DECISION

The Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods originating in or exported from the People's Republic of China has not caused material injury and is not threatening to cause material injury to the domestic industry.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	August 6 to 9, 2002
Date of Finding:	August 30, 2002
Date of Reasons:	September 16, 2002
Tribunal Members:	Richard Lafontaine, Presiding Member Patricia M. Close, Member Zdenek Kvarda, Member
Director of Research:	Réal Roy
Lead Researcher:	Don Shires
Researcher:	Paul Berlinguette
Economist:	Ihn Ho Uhm
Statisticians:	Julie Charlebois Marie-Josée Monette
Counsel for the Tribunal:	Michèle Hurteau Clarissa Lewis
Registrar Officer:	Natalie Lowe
Participants:	James McIlroy for PPG Canada Inc. (Domestic Producer)

Richard S. Gottlieb
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Greenville Glass Industries Inc.
Fuyao Glass Industry Group Co., Ltd.
TCG International Inc.

(Importers/Others)

Witnesses:

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PPG Canada Inc.

Antonio P.K. Tam
President
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A. Bruce Christie
Manager, Sales and Marketing Services
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PPG Canada Inc.

Curie Chen
Vice President
Fuyao Glass Industry Group Co., Ltd.

Mark F. Shoemaker
Director, Finance and Human Resources
PPG Canada Inc.

G. Stephen Schober
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A Division of TCG International Inc.

Mario Jutras
President and Chief Executive Officer
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Ottawa, Monday, September 16, 2002

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TRIBUNAL: RICHARD LAFONTAINE, Presiding Member
PATRICIA M. CLOSE, Member
ZDENEK KVARDA, Member

STATEMENT OF REASONS

BACKGROUND

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 automotive laminated windshields for the automotive replacement market, of all sizes and shapes, whether they are clear or tinted, whether coated or not, whether or not they include antennae, ceramics, mirror buttons, VIN notches, and whether or not they are encapsulated, originating in or exported from the People's Republic of China (China), has caused injury or retardation or is threatening to cause injury to the domestic industry.

On December 18, 2001, the Commissioner of the Canada Customs and Revenue Agency (the Commissioner), following a complaint filed by PPG Canada Inc. (PPG), initiated an investigation to determine whether imports from China of automotive laminated windshields for the automotive replacement market had been dumped. On December 19, 2001, 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 had caused material injury or retardation or was threatening to cause material injury to the domestic industry. On February 15, 2002, pursuant to subsection 37.1(1) of SIMA, the Tribunal determined that the evidence disclosed a reasonable indication that the dumping of the aforementioned goods had caused injury to the domestic industry.

On March 11, 2002, the Commissioner gave notice, pursuant to paragraph 39(1)(a) of SIMA, that the period of investigation for making a preliminary determination of dumping had been extended from 90 to 135 days from the date of initiation.

On May 2, 2002, the Commissioner issued a preliminary determination of dumping with respect to the subject goods from China sold or released into Canada. The Commissioner was satisfied, as a result of

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

this preliminary investigation, that these goods had been dumped, that the margins of dumping were not insignificant and that the volume of dumped goods was not negligible.²

On May 3, 2002, the Tribunal issued a notice of commencement of inquiry.³ 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.

On July 31, 2002, the Commissioner issued a final determination that the subject goods originating in or exported from China had been dumped and that the margins of dumping were not insignificant.⁴

Public and *in camera* hearings (collectively, the hearing) were held in Ottawa, Ontario, from August 6 to 9, 2002. PPG, TCG International Inc. (TCGI), P.H. Vitres d'Autos Inc. (PHV), Fuyao Glass Industry Group Co., Ltd. (FYG), and Xinyi Automobile Glass (Shenzhen) Co., Ltd. and Xinyi Glass (North America) Inc. (collectively, Xinyi) made submissions and were represented by counsel at the hearing.

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, as well as 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.

The Tribunal issued its finding on August 30, 2002.

RESULTS OF THE COMMISSIONER'S INVESTIGATION

The Commissioner's investigation into this matter covered imports of ARG⁵ windshields originating in or exported from China during the period from December 1, 2000, to November 30, 2001.

In the past, the Canada Customs and Revenue Agency (CCRA) did not consider China to be a country with a market economy. However, in this investigation, based on information received from the government of China, four Chinese exporters, publicly available information and information retrieved during verification visits conducted in China, the Commissioner concluded that the government of China does not have a monopoly over its export trade in the replacement windshield industry. The Commissioner also found that the government of China does not substantially determine domestic prices and that there is not sufficient evidence that these prices would be different in a competitive market. Consequently, the CCRA considered that China's replacement windshield industry operates under market conditions and that the provisions of section 20 of SIMA do not apply.

Normal values were determined for the four co-operating exporters based on their sales in their domestic market. Export prices were based on sales to unrelated importers in Canada. Margins of dumping for the four co-operating exporters were based on their normal values and export prices. For all other exporters, normal values were determined in accordance with a ministerial specification pursuant to

2. Canada Customs and Revenue Agency, *Preliminary Determination of Dumping*, 2 May 2002, Tribunal Exhibit NQ-2002-001-01, Administrative Record, Vol. 1 at 37.

3. C. Gaz. 2002.I.1379.

4. Canada Customs and Revenue Agency, *Final Determination of Dumping*, 31 July 2002, Tribunal Exhibit NQ-2002-001-04, Administrative Record, Vol. 1 at 75.21.

5. Automotive replacement glass.

section 29 of SIMA and were based on the export price advanced by 114.32 percent. This advance represents the highest margin of dumping found for a co-operating exporter during the investigation.

The percentages of goods dumped and the margins of dumping for imports from China are set out in the following table. For two of the three largest exporters, Shenzhen Benxun Automotive Glass Co. Ltd. (Benxun) and Xinyi, the Commissioner found weighted average margins of dumping of zero. For the largest exporter, FYG, the Commissioner found a weighted average margin of dumping of 24.09 percent, with 58 percent of its exports to Canada having been dumped.

Summary of Final Determination (December 1, 2000, to November 30, 2001)			
Exporter	Percentage of Goods Dumped	Range of Margins of Dumped Goods (% of Export Price)	Weighted Average Margin of Dumping (% of Export Price)
FYG	57.98	0.002 – 114.32	24.09
Benxun	13.80	0.003 – 34.07	0.00
Xinyi	0.02	0.240 – 5.760	0.00
Dongguan Kongwan	4.55	0.200 – 23.92	0.00
Others	100.00	114.32 ¹	114.32
Average for Country	45.70	0.002 – 114.32	21.44

1. Margin of dumping based on the highest margin of dumping found for a co-operating exporter.
Source : Canada Customs and Revenue Agency, *Final Determination of Dumping and Statement of Reasons*, 31 July 2002, Tribunal Exhibit NQ-2002-001-04, Administrative Record, Vol. 1 at 75.24.

PRODUCT

Product Definition and Description

The subject goods are defined as automotive laminated windshields for the automotive replacement market, of all sizes and shapes, whether they are clear or tinted, whether coated or not, whether or not they include antennae, ceramics, mirror buttons, VIN notches, and whether or not they are encapsulated. These goods are commonly known as ARG windshields.

The subject goods do not include: laminated windshields made especially for the original equipment market (OEM windshields); tempered glass used in the automobile industry for the side and rear windows and for sunroofs; and laminated windshields for railway vehicles, aircraft, vessels, armoured vehicles and spacecraft.

OEM windshields are for use in the production of new vehicles. These windshields are produced to specifications that are provided by the automobile manufacturers. By comparison, ARG windshield producers develop specifications for a replacement windshield through a process of reverse engineering, based on their analysis of the OEM windshield that is installed in a given vehicle. OEM windshields are produced under exclusive supply agreements with the automobile manufacturers, whereas ARG windshields can be produced by anyone who can develop the specifications. During the period when ARG windshield producers are developing their specifications from a new OEM windshield, the OEM

windshield producer has a monopoly on the supply of replacement windshields for that particular model or part. This is referred to as having a proprietary part. Once ARG windshield producers enter the replacement market for that part, the price for the replacement windshield declines significantly. This process is known as the product life cycle.

ARG windshields sold in North America are identified by a common specification system known as NAGS.⁶ This standard numbering system is used to specify the windshield for each vehicle model that is sold in North America. While there are in excess of 3,000 NAGS numbers (parts) currently used, approximately 1,350 are supplied to the Canadian market.

Production Process

The production of ARG windshields begins with the development of product specifications. For the vast majority of ARG windshields produced, the ARG windshield manufacturer does not have the original vehicle manufacturer's specifications for the windshield for a specific vehicle model. Accordingly, the ARG windshield producer develops specifications for a replacement windshield based on its analysis of the original windshield installed in a new vehicle. As noted previously, this process is referred to as reverse engineering.

Automotive laminated windshields normally consist of two layers of glass⁷ separated by, and bonded to, a polyvinyl butyral (PVB) sheet. PVB is a high-penetration resistant material that prevents jagged pieces of glass from breaking loose when the windshield breaks. The manufacturing process begins with the cutting of two flat pieces of glass, which are then curved using a mould that passes through a furnace (referred to as a lehr) that is heated to 1,000 degrees Fahrenheit. This step takes a few minutes to complete. The producer has moulds designed to the curvature of each windshield model that it produces. The curved glass pieces are inspected, then removed from the lehr, and a sheet of PVB is inserted between the layers of glass. The PVB sheet has a tinted strip, which is positioned at the top of the windshield. This stage of production is conducted in a dust-free and controlled humidity environment. After most of the air has been removed from between the two layers by passing the windshield through nipper rolls, the windshield is then reheated in an autoclave to remove any remaining air to complete the production process. After a final inspection, the windshields are packed in cardboard for shipping.

ARG windshield production is capital intensive and involves the use of specialized equipment on highly automated assembly lines. Different assembly lines are often, though not necessarily, used for OEM and ARG windshield production. The process for manufacturing ARG windshields is slower than that for producing OEM windshields, but is more flexible, as it can handle several different parts at the same time on the same line.

DOMESTIC PRODUCERS

PPG and Lamiver Inc. (Lamiver) are the domestic producers of ARG windshields. PPG, the complainant in this matter, has production facilities located in Hawkesbury, Ontario. ARG windshields are produced on two medium-speed production lines, while OEM windshields are produced on a separate high-speed line. The second producer, Lamiver, is located in Montréal, Quebec, where it produces a full

6. NAGS is the acronym for National Auto Glass Specifications. This independent body, located in San Diego, California, developed the standard numbering system for automotive laminated windshields sold in North America.

7. According to the complaint, automotive laminated windshields may consist of more than two layers of glass.

range of flat heavy truck ARG windshields and a limited number of ARG curved laminated windshields. Information available to the Tribunal indicated that PPG accounted for the vast majority of domestic production during the Tribunal's period of inquiry (i.e. January 1, 1999, to March 31, 2002).

On August 8, 2002, during the Tribunal's hearing, Pilkington plc, a glass producer based in the United Kingdom, informed the Tribunal by letter⁸ that Pilkington Glass of Canada Limited (Pilkington Canada) produces ARG and OEM windshields at its plant in Collingwood, Ontario. The letter provided Pilkington Canada's average annual production volume of ARG windshields from 1999 to 2001 (in the amount of 500,000 units). The letter also explained that some of the ARG windshields produced in Collingwood were subsequently sold into the Canadian market. The volume of sales of Canadian-produced ARG windshields that were sold into the Canadian market was not provided. The Tribunal's assessment of the implications of this information respecting the definition of the domestic industry is presented in the analysis section of this statement of reasons under the heading "Domestic Industry".

IMPORTERS AND EXPORTERS

The CCRA identified 35 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, as reported by Statistics Canada. Responses to the Tribunal's questionnaires indicate that the top 4 importers of the subject goods from China, in 2001, accounted for over 90 percent of all ARG windshields imported from that country. The top 4 importers were: TCGI; Vanfax, Division of Belron Canada Inc. (Vanfax); Crystal Glass Canada Ltd. (Crystal); and PHV.

The CCRA identified 23 companies that export the subject goods to Canada. The Tribunal sent questionnaires to 13 apparent foreign producers in China. Questionnaire responses were provided by the following companies: FYG; Xinyi; Benxun; and Hebei Tong Yong Glass Industrial Co. Ltd.

MARKETING AND DISTRIBUTION

There are three trade levels involved in the ARG windshield distribution network: the manufacturers, the distributors and the installers. PPG operates a national sales office in Oshawa, Ontario. During the period of inquiry, ARG windshields produced by PPG at its plant in Hawkesbury were shipped to its truckload distribution centre in Alliston, Ontario, for distribution across Canada to its 19 branch offices and to independent distributors. PPG's branches deliver to installers on a just-in-time basis, generally on the date of the installation. On March 21, 2002, PPG announced the closing of its truckload distribution centre in Alliston and the consolidation of the Alliston truckload business into the truckload facility in Chillicothe, Ohio, operated by PPG's parent company, PPG Industries Inc. Thus, ARG windshields produced in Canada are now shipped to Chillicothe for distribution to customers in the United States and Canada.

Independent distributors sell to installers, either directly or through sub-distributors or branch sales offices and warehouse facilities. There is a considerable degree of vertical integration in the distribution system, as the leading distributors own or are affiliated with retail glass installers, as well as sell to independent installers. The distribution networks of TCGI, Vanfax, PHV and Crystal all include both owned and arms-length retail glass installers. Independent distributors purchase from the domestic manufacturer and/or import. In general, the imports enter the market at the wholesale distribution trade level.

8. Tribunal Exhibit NQ-2002-001-36, Administrative Record, Vol. 1 at 143.

POSITION OF PARTIES

Party in Favour of an Injury Finding

PPG

PPG submitted that there are three key factors to be considered with respect to the causation of injury to the domestic industry: the volume of the dumped goods, the price of the dumped goods and, lastly, the domestic industry's economic condition as a result of the ARG windshields imported from China.

PPG submitted that not only had the volume of imports from China tripled between 1999 and 2001 but so had their market share. Although the domestic market had increased, PPG did not partake in this market increase due to the growth in imports from China.

PPG submitted that, in order to get a true picture of the injurious price impact caused by the dumped Chinese ARG windshields, the Tribunal should not rely upon the aggregate data, which incorporate different product mixes, different trade levels and different pricing strategies, but rather should look at specific parts going head-to-head with identical dumped Chinese products. PPG submitted that the dumping of the subject goods has undercut, depressed and suppressed PPG's prices. PPG submitted that evidence showing the causal link between the Chinese price undercutting and the injury to PPG can be seen by comparing two specific high-volume parts⁹ made in Hawkesbury that were going head-to-head in the market with dumped FYG imports. Similarly, PPG submitted that the Tribunal should review the 10 benchmark products for which FYG "led the pack" in price undercutting. PPG declared that "there was no clearer evidence of causal effect than watching two parts go head-to-head in the market place".

PPG also referred to the "target pricing" for a list of products contained in a January 23, 2001, letter from TCGI. PPG submitted that FYG is the major supplier of laminated windshields to TCGI and that it was its price undercutting which led to this "target price" list being sent to the major truckload distributors and to PPG. These companies, including PPG, had to meet this target pricing or lose business, according to PPG. PPG pointed out the deleterious effects on the domestic industry of this price undercutting, as the three top truckload distributors represent 60 percent of the ARG windshield industry's sales at the truckload level. Further, PPG argued, the "lowest price" is the main factor that distributors look for in the vast majority of sales. From the above, PPG concluded that the Chinese prices have undercut, depressed and suppressed PPG's prices.

PPG submitted that there had been a decline in its production, market share, net income before taxes and capacity utilization for ARG windshields during the period of the Tribunal's inquiry. It argued that, during that time, imports of the subject goods from China tripled.

On the issue of the threat of injury, PPG argued that the trend over the last three years will continue. Chinese exports to Canada will continue to increase as the percentage of exports of the subject goods compared to total sales of Chinese ARG windshields continues to grow. While the government of China has joined the World Trade Organization (WTO) and has a new policy with respect to increasing automobile ownership by making financing easier, such policies, PPG pointed out, do not always translate into transformed markets. Furthermore, PPG was not convinced that there would be a sudden demand for either OEM or ARG windshields. It also pointed to the fact that there was bound to be imports of ARG windshields into the Chinese market. On the basis of these factors, PPG predicted that China's ARG

9. For identification of the parts in question, see note 44.

windshield production capacity will remain in excess of its domestic demand. According to PPG, the reliance of the Chinese windshield industry on exports for most of its sales was unlikely to change in the foreseeable future. Nor will its low prices, which are responsible for the tripling of its exports to Canada. Furthermore, given the concentration and vertical integration of the distribution industry in Canada, injury can easily occur, as it did with the target price letter.

If the Tribunal is to believe that there is no future injury, PPG submitted that it would have to be convinced that the Chinese industry will no longer rely on exports for the majority of its sales, that there will be significant domestic demand for OEM and ARG windshields and that there will be no imports in the Chinese marketplace.

PPG also referred to the magnitude of the margin of dumping. While only FYG has a weighted average margin of dumping, PPG submitted that the weighted average margin of dumping for China, as a whole, is significant, at 21.44 percent, and that this margin is driven almost exclusively by FYG. Moreover, some of those Chinese manufacturers with weighted average margins of dumping of zero dumped at margins as high as 34 percent. In reply argument, PPG added that Xinyi, one other of these manufacturers with a weighted average margin of dumping of zero, was found to be dumping in the United States and, because it was in an expansion mode, was likely to dump in Canada in the future.

PPG referred to a recent finding of the United States International Trade Commission (USITC), which resulted in the imposition of anti-dumping duties on ARG windshields from China. PPG pointed to the risk of diversion from the United States to Canada of the Chinese ARG windshields, especially from the exporters given a 124.5 percent margin of dumping in the United States.

PPG also submitted that the Canadian insurance industry plays a role in creating a very price-conscious marketplace for ARG windshields. As deductibles are increasing, so is the demand for more aggressive prices from consumers.

On the issue of how to apply SIMA in the context of cross-border shipments of PPG's ARG windshields potentially originating in the United States and sold in Canada, PPG submitted that Inquiry No. NQ-93-001¹⁰ is a precedent to argue that SIMA should be placed into the "Canadian context", where the consequential impact of the activities of foreign affiliates is potentially much greater than in other industrialized nations. Companies structured to operate under the *North American Free Trade Agreement*¹¹ are similarly part of the Canadian context. PPG argued that it is a "NAFTA company" which conducts its business on a North American basis. PPG further argued that it would be ludicrous to expect it to produce, in Hawkesbury, each and every part that it sells in Canada in order to establish injury.

PPG submitted that it opposed any exclusions to an injury finding by the Tribunal. PPG submitted that the appropriate test to be used is whether the part "can" be made in Canada. PPG also asserted that no exclusions should be made, regardless of where the parts are produced (i.e. in the United States or Canada), as product lines and plants in which they are made are always liable to shift north or south of the border. PPG submitted, in reply argument, that the exporters and importers did not propose a list of product exclusions. Moreover, the Tribunal should not forget about substitutability of the parts and should follow the precedent of Inquiry No. NQ-2001-003,¹² where the Tribunal refused exclusions on the ground that the

10. *Certain Pipe Fittings* (18 October 1993) (CITT) [hereinafter *Pipe Fittings*].

11. 32 I.L.M. 289 (entered into force 1 January 1994) [hereinafter NAFTA].

12. *Leather Footwear* (27 December 2001)(CITT).

producers would be able to supply certain products in the future. PPG also noted Inquiry No. NQ-93-006¹³ in this regard.

In closing, PPG reminded the Tribunal that the Hawkesbury plant made 40 percent of what it sold into the Canadian market and that FYG, the leading exporter, dumped 58 percent of its exports to Canada.

Parties Opposed to an Injury Finding

FYG, TCGI and PHV

FYG, TCGI and PHV (FYG et al.) submitted that no protection should be given to goods originating in the United States, as implied by PPG's argument. FYG et al. argued, in reference to the 1988 Hyundai case¹⁴ and the lack of a statutory amendment following the Canadian Import Tribunal's decision, that Canada is not part of a common market, where protection could be granted to rationalized North American production. Rather, NAFTA is a free trade agreement. There is no common North American tariff under NAFTA. Moreover, for purposes of trade remedies, SIMA does not define the domestic industry in terms of a major proportion of the North American industry, nor is there a requirement to find injury to North American production. A further distinction between a free trade agreement and a common market is the fact that members of a free trade agreement can take trade remedy action against each other, as Canada and the United States have done in many cases. FYG et al. argued that SIMA is designed to protect the Canadian industry and not other countries indirectly.

FYG et al. submitted that SIMA requires that there be proof of the existence of Canadian production so that a causal link can be proven before protective measures are applied. FYG et al. further submitted that PPG could not prove its Canadian production with certainty, as it did not conduct country-of-origin "tracking" of its inventory and, therefore, could not prove loss of sales arising from domestic production. FYG et al. referred to the testimony of a witness for PPG, who stated that PPG could only say where the part was "probably" made and that PPG did not use tracking in its business. Further, FYG et al. argued that *Pipe Fittings* set a different precedent than that argued by PPG. It was that protection could be given if there was not just the capability but also an intention to produce that is clearly foreseen and imminent. The Tribunal has no way of knowing what these intentions are, given that there was no evidence as to the intentions of the PPG production coordinator in Pittsburgh who makes all the production decisions. There were no detailed plans for production or formal commitments. Given that protection cannot be given under SIMA to imports and the fact that the lack of a tracking system means that the Tribunal does not know what was produced domestically for domestic sales, as well as what will be produced in the future, the Tribunal should find neither past nor future injury.

With respect to diversion, FYG et al. submitted that it should already be evident if it were going to occur. Furthermore, there was no evidence of an erosion of gross margins between the first quarter of 2001 and the first quarter of 2002, but there is evidence of displacement of the domestically produced product by imports from the United States by PPG.

As to the effect of the volume of imports from China, FYG et al. argued that the Tribunal ought to deduct the imports from Benxun and Xinyi, given that they were not dumped. Further, recognizing the risk of double counting, PHV's imports, the largest importer at the beginning of the inquiry, should be deducted,

13. *Memorials and Slabs* (20 July 1994) (CITT).

14. *Cars* (23 March 1988), CIT-13-87 (CIT).

as should the “Shat-R-Proof” imports by TCGI from FYG, because PPG declined the opportunity to supply the two distributors.

With respect to the allegations of price erosion/suppression, FYG et al. referred to the testimony of the witness for Autostock International. FYG et al. stated that the testimony showed that such price erosion or suppression did not happen during the period of investigation.

Finally, should the Tribunal find injury, FYG et al. maintained that whatever the domestic industry does not produce in Canada is eligible for an exclusion.

Xinyi

Xinyi agreed with all the arguments stated by FYG et al. Xinyi also referred to the foundations of SIMA and the WTO *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*.¹⁵

With regard to injury, Xinyi argued that PPG in Canada is not privy to the strategic business plans of PPG in the United States. The head office in Pittsburgh allocates where, in North America, and by which plant the different ARG windshield parts will be produced. Xinyi submitted that, ultimately, it is these decisions made in Pittsburgh that determine the profitability of the Canadian operation. Therefore, there are no reliable measures of past, present or future injury to PPG.

With respect to the issue of threat of injury, the injury must be imminent and foreseeable. Goods that may or may not be produced do not meet this test, it was submitted. Xinyi is of the view that there is increased demand for automobile ownership in China. As a result, the market for OEM and ARG windshields should expand rapidly in China.

Xinyi submitted that, should the Tribunal find injury, it should be granted a producer exclusion, given that exceptional circumstances exist to warrant the granting of such an exclusion, and that it is producers, not countries, that dump. Only 2 of 10,000 ARG windshields imported by Xinyi were found to be dumped in the Commissioner’s final determination. However, the 2 windshields were not a part produced by PPG during the period of inquiry. All but these two were highly profitable for Xinyi, a company that has been in the Canadian market for a long time.

ANALYSIS

Like Goods

The Tribunal must determine which domestically produced goods are like goods to the ARG windshields from the named country.

Subsection 2(1) of SIMA defines “like goods”, in relation to any other goods, as follows:

- (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.

15. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm.

In considering the issue 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 goods fulfil the same customer needs.

The subject goods are defined by the Commissioner as ARG windshields.

In its preliminary determination of injury, the Tribunal found that ARG windshields produced in Canada are like goods to ARG windshields from China. No evidence to the contrary was submitted during the injury inquiry. Consequently, the Tribunal's position remains unchanged.

There are two markets for automotive laminated windshields: the OEM market and the ARG market. The complaint concerns only the ARG market.

The definition of the subject goods specifically excludes OEM windshields that are installed on new vehicles. Evidence was submitted by PPG, during the Tribunal's preliminary injury inquiry, that ARG and OEM windshields have different uses, characteristics, manufacturing facilities, production processes, channels of distribution, customers, costs of production and price levels and that, therefore, they are not like goods. No submissions were received by the Tribunal to counter PPG's submissions on this matter. Based on the evidence before it at that time, the Tribunal was of the opinion that OEM windshields produced in Canada are not like goods to ARG windshields from China.

During the Tribunal's injury inquiry, the Chinese producers of ARG windshields that participated in the proceedings submitted that they produce both ARG and OEM windshields on the same production line. The Tribunal notes that no party made specific submissions opposing the Tribunal's preliminary opinion on the question of whether OEM windshields are like goods. Given the above, the Tribunal confirms its preliminary opinion that OEM windshields produced in Canada are not like goods to ARG windshields from China.

Domestic Industry

In conducting an inquiry under section 42 of SIMA, the Tribunal must determine whether the dumping has caused or is threatening to cause "material injury to a domestic industry". The term "domestic industry" is defined in subsection 2(1) as follows:

"domestic industry" means, other than for the purposes of section 31 and subject to subsection (1.1), 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.

As noted previously, the complainant is PPG. Initially, Lamiver supported the complaint and provided the CCRA with evidence of injury to its production, sales and pricing of ARG windshields. Subsequent to the CCRA's preliminary determination of dumping, Lamiver withdrew its support of the complaint. PPG was the only domestic producer that participated in the Tribunal's injury inquiry. The production information obtained by the Tribunal indicates that PPG accounted for the vast majority of the domestic production of ARG windshields by the two known producers during the Tribunal's period of inquiry. Based on the information before it, the Tribunal finds that PPG constitutes the domestic industry.

As described earlier, it was brought to the Tribunal's attention on August 8, 2002, during the course of the hearing, that Pilkington Canada produced ARG windshields at its plant in Collingwood during the period from 1999 to 2001. The late stage of the inquiry at which this information was provided is of concern to the Tribunal. The administrative record indicates that, in May 2002, Pilkington Canada was provided with the Tribunal's notice of inquiry, but did not register as an interested party or contact the Tribunal in connection with its inquiry. Moreover, numerous attempts by the Tribunal's staff to contact an official representative at Pilkington Canada were unsuccessful.¹⁶

The Tribunal sought comments from counsel of record on the implications of this new information. In sum, counsel were of the view that the Tribunal had provided sufficient notice of its inquiry to potential interested parties and that no further action or response was required from the Tribunal.¹⁷ The Tribunal agrees with the views of counsel.

The Tribunal further notes that the production information that was submitted by Pilkington Canada could not be tested nor subjected to scrutiny by counsel and the Tribunal, which is normally the case for information provided in connection with an inquiry. The Tribunal is of the view that, even had the production of ARG windshields by Pilkington Canada been incorporated into the statistical record of the inquiry, PPG would still account for a major proportion of domestic production of like goods and would still, in any event, constitute the domestic industry for the purposes of SIMA. Accordingly, the Tribunal is of the opinion that the information provided by Pilkington plc does not affect the Tribunal's conclusion that PPG constitutes the domestic industry for ARG windshields.

Injury

Subsection 37.1(1) of the *Special Import Measures Regulations*¹⁸ 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 and their effect on prices in the domestic market for like goods and the impact of the dumped goods on a number of relevant economic factors and indices. In the present case, the relevant factors include actual or potential declines in production and sales, market share, financial performance, employment, capacity utilization and investment. Subsection 37.1(3) also requires the Tribunal to consider other factors not related to dumping to ensure that any injury caused by those other factors is not attributed to the dumped imports.

As was discussed earlier, the Tribunal has determined that the domestic industry consists of PPG. Consequently, in its injury determination, the Tribunal focused on the effects of the dumping on PPG.

The Tribunal first turned its mind to the volume of ARG windshields produced by PPG. This production declined by over 30 percent between 1999 and 2001 and declined by 17 percent in the first quarter of 2002 compared to the first quarter of 2001.¹⁹ During this period, the domestic industry's sales from domestic production for domestic consumption also declined, in excess of 35 percent, in a domestic

16. The Tribunal's staff eventually obtained some information from the official representative's secretary, which Pilkington plc submits was incorrect.

17. Counsel submitted that there was no issue of prior notice in view of: the publication of the Tribunal's notice of inquiry in the *Canada Gazette*; the fact that foreign producers' questionnaires were sent to a number of producers in China associated with Pilkington Canada; reports of the injury inquiry in the glass trade press; and Pilkington Canada's participation in a similar anti-dumping investigation conducted by the USITC.

18. S.O.R./84-927 [hereinafter Regulations].

19. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2002-001-07 (protected), Administrative Record, Vol. 2.1 at 18.

market that, between 1999 and 2001, increased by 10 percent, growing from 1.2 million units to 1.3 million units. The domestic industry's market share for sales from domestic production declined by 7 percentage points during this period, while its sales of imports from the United States grew by almost 12 percent, maintaining a stable market share in the growing market.²⁰ These imports from the United States accounted for almost 60 percent of PPG's total sales into the domestic market.²¹

In the first quarter of 2002, the market declined by 15 percent compared to the first quarter of 2001. This decline was largely attributed to mild winter weather in the first quarter of 2002. The industry's market share for sales from domestic production declined by 1 percentage point compared to a drop of 7 percentage points in its market share for sales of imports. The domestic industry's sales from domestic production declined by 23 percent, while its sales of imports from the United States declined by almost 40 percent.

The production capacity at PPG's Hawkesbury plant for ARG windshields remained relatively stable over the inquiry period. Although the Tribunal heard evidence that the Hawkesbury plant was fully loaded, the plant utilization rates for ARG windshields declined by almost 30 percentage points between 1999 and 2001.²² Total utilization rates, including the production of OEM windshields, declined significantly less over the same period.²³ In considering this drop in utilization rates for ARG windshields and also the decline in production, the Tribunal notes that approximately 90 percent of PPG's production of ARG windshields in Hawkesbury was exported over the period of inquiry. Export sales fell by 34 percent between 1999 and 2001, followed by a decline of 14 percent in the first quarter of 2002 from the level in the first quarter of 2001.²⁴

Between 1999 and 2001, there was a significant increase in the volume of imports of the subject goods from China, both in absolute terms and relative to the consumption of like goods. The volume of imports from China more than tripled, increasing from 113,896 units in 1999 to 377,251 units in 2001. These imports also increased by 13 percent in the first quarter of 2002 over the same quarter the previous year.²⁵ The market share accounted for by the subject goods from China increased from 9 percent in 1999 to 29 percent in 2001.²⁶ In the first quarter of 2002, market share of imports from China was 27 percent, down slightly from the 29 percent market share in full year 2001. During the three-year period, imports from the United States and Mexico, the leading non-subject country exporters, declined substantially, and their combined share of the market fell by 17 percentage points. Imports from other non-subject countries increased.

The Tribunal, in considering the increase in the volume of imports of ARG windshields from China, notes that the CCRA determined that four Chinese exporters accounted for approximately 98 percent of the Chinese exports to Canada during the CCRA's period of investigation. The CCRA also determined that three of these four exporters had weighted average margins of dumping of zero.

FYG, the largest Chinese exporter to Canada, accounted for 71 percent of exports during the CCRA's period of investigation. The CCRA found that 57.98 percent of FYG's exports to Canada were dumped at a weighted average margin of dumping of 24.09 percent. Three exporters, Benxun, Xinyi and Dongguan Kongwan were found to have weighted average margins of dumping of zero. Between them,

20. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2002-001-07 (protected), Administrative Record, Vol. 2.1 at 165.

21. *Transcript of Public Hearing*, Vol. 1, 6 August 2002, at 250.

22. *Supra* note 20 at 44.

23. *Ibid.*

24. *Supra* note 20 at 27, 174.

25. *Supra* note 20 at 162.

26. *Supra* note 20 at 165.

they comprised 27 percent of Chinese exports to Canada. Other Chinese exporters that did not co-operate during the CCRA's investigation were prescribed a weighted average margin of dumping of 114.32 percent. These exporters accounted for only 2 percent of the total volume of Chinese subject goods exported to Canada during the CCRA's period of investigation. The CCRA determined that 45.70 percent of the total Chinese goods exported to Canada were dumped, thus leaving some 55 percent of these goods undumped.²⁷

The average price for sales of imports from China increased by 6 percent, from \$52.78 to \$55.93, between 1999 and 2001, then declined by 4 percent to \$53.86 in the first quarter of 2002. The Tribunal heard evidence that the Chinese exporters were, in major part, the price leaders²⁸ throughout the Tribunal's period of inquiry. During this inquiry period, on an aggregate basis, Chinese prices were lower than those of the domestic industry. The average unit value, however, for PPG's like goods sold into the domestic market increased by 17 percent in 2000, by 8 percent in 2001 and by a further 8 percent in the first quarter of 2002 over the first quarter of 2001.²⁹ While some of this increase may be due to product mix, the aggregate pattern does not show that the price undercutting had an effect on PPG's prices in terms of price depression or price suppression. Moreover, the average unit value of the same goods imported from "other countries" was, on average, lower than the Chinese prices for 2000, 2001 and the first quarter of 2002.³⁰ The Tribunal notes that 83 percent of the firms that replied to the Tribunal's "Purchasers' Questionnaire on Market Characteristics" indicated that they usually purchased the lowest-priced product.³¹

In assessing the financial performance of the domestic industry, the Tribunal first considered PPG's gross margins earned on domestic sales. Between 1999 and 2001, PPG's gross margin, as a percentage of domestic sales, dropped by just over 20 percent, although it dropped more in absolute numbers. However, in the first quarter of 2002, its margin, as a percentage of sales, recovered significantly, increasing by over 20 percent compared to the first quarter of 2001.³² Net income before taxes in 2000 increased substantially over 1999, but then fell dramatically in 2001. Net income before taxes in the first quarter of 2002 was comparable to that in the first quarter of 2001. The Tribunal notes that, in 2000, declining sales volume and sales revenue were closely tracked by the decline in the cost of goods sold, on a percentage basis. However, in 2001, while sales volume and sales revenue continued to decline, the cost of goods sold increased, impacting negatively on PPG's profitability.³³ This was the year that PPG was accumulating inventory in preparation for a possible strike.

Having reviewed the trends in the main economic indicators, the Tribunal then considered whether the evidence supports a conclusion that the dumping has caused injury to the domestic industry.

PPG argued that it is a NAFTA company, which, in the context of the current inquiry, the Tribunal understands to mean that it is structured and operationally geared to serving the North American market for ARG windshields. The evidence shows this to be the case. The Hawkesbury plant is one of a number of plants in the PPG group that produces ARG windshields in North America. According to PPG's evidence, the decisions concerning which plants will be assigned the production of which parts are made by PPG's

27. Tribunal Exhibit NQ-2002-001-04, Administrative Record, Vol. 1 at 75.23-75.24; Tribunal Exhibit NQ-2002-001-05 (protected), Administrative Record, Vol. 2 at 17-18.

28. *Transcript of In Camera Hearing*, Vol. 3, 8 August 2002, at 348-49.

29. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2002-001-07 (protected), Administrative Record, Vol. 2.1 at 170.

30. *Ibid.* at 169.

31. *Supra* note 29 at 59.

32. *Supra* note 29 at 49.

33. *Ibid.*

parent company in Pittsburgh, with PPG having no say in the final outcome.³⁴ Plants are mandated by Pittsburgh to produce certain parts based on its view of the cost efficiency of the various North American plants.³⁵ The evidence indicates that plant product mandates are changed regularly, even frequently during a given year. This is shown by the evolution of the list of parts that were assigned for production at Hawkesbury over the Tribunal's period of inquiry.³⁶

While approximately 1,350 ARG windshields are sold into the Canadian market, Hawkesbury only made just over 500 over the last three years.³⁷ Only 65 were produced in each of the years during the period of inquiry.³⁸ In recent years, changes to the product mandate for Hawkesbury have shifted the product mix from lower-volume parts to higher-volume parts, moving from more parts to fewer parts.³⁹ This decision, the Tribunal heard, resulted, on a percentage basis, in a lower-cost product and improved the financial results of the plant with regard to its sales of ARG windshields into the domestic and export markets.⁴⁰ The evidence also demonstrates that the fluctuating nature of the plant's product mandate meant that the actual list of parts produced would differ at various points in time over the inquiry period.⁴¹

Another feature of Hawkesbury's NAFTA profile is that it relies on its sales in the North American market for its success and viability, given that approximately 90 percent of Hawkesbury's production of ARG windshields is exported to the United States, the remainder being sold into the Canadian market. As well, as noted above, 60 percent of the parts sold into the Canadian market are imported in order to complete the range of approximately 1,350 parts required to supply PPG's customers.

While the Tribunal recognizes that PPG operates as a NAFTA company, SIMA does not provide for the protection of NAFTA production.

The domestic industry also argued that the aggregated statistics for the approximately 1,350 different parts that supply the Canadian market did not reveal the full injurious price impact caused by the dumped Chinese ARG windshields, given that the aggregate numbers do not account for product mix, the different trade levels or the buyouts.⁴² In order to get a true picture of what was going on in terms of prices or volumes, the domestic industry submitted that the Tribunal had to examine what was happening when a specific part competed head-to-head in the marketplace with its imported counterpart.⁴³ The domestic industry suggested two specific parts for purposes of assessing the impact of the dumping on its sales and prices.⁴⁴

The Tribunal has carefully examined the two parts that the domestic industry drew to its attention and finds little or no injury that could be attributed to the dumping concerning these parts. One of the parts for which there was a tenfold increase in Chinese purchases by a single distributor was, first of all, not

34. *Transcript of Public Hearing*, Vol. 1, 6 August 2002, at 192-93; *Transcript of In Camera Hearing*, Vol. 1, 7 August 2002, at 55.

35. *Transcript of Public Hearing*, Vol. 1, 6 August 2002, at 194-95.

36. Tribunal Exhibit NQ-2002-001-RI-01D (protected), Administrative Record, Vol. 10.

37. *Transcript of In Camera Hearing*, Vol. 1, 7 August 2002, at 46.

38. *Transcript of Public Hearing*, Vol. 2, 7 August 2002, at 367.

39. *Supra* note 37 at 91.

40. *Ibid.* at 102-103, 152.

41. *Supra* note 36.

42. *Transcript of Public Argument*, 9 August 2002, at 6. Note that "buyouts" occur when one distributor, which is out of stock of a part requested by a customer, buys that part from another distributor, usually at a premium over the normal distributor's price.

43. *Ibid.* at 6-7.

44. To identify the two parts, see *Transcript of In Camera Hearing*, Vol. 2, 8 August 2002, at 227, 250.

dumped in the Canadian marketplace by the Chinese exporter.⁴⁵ Second, PPG's production of this part more than doubled over the period of inquiry and was, by far, its largest produced part in 2001.⁴⁶ Nor did PPG's price for this part decline over the period of inquiry; in fact, it increased both throughout 2000 and again through 2001.⁴⁷ With regard to the second part, the Tribunal is of the view that the price decline of this product was not so much due to imports from China, but to the effect of the product's "life cycle". The part was an OEM proprietary part that was reverse engineered quickly after its introduction by PPG in the United States. Shortly thereafter, it was imported and sold by PPG in Canada at OEM prices until the part was again reverse engineered by another non-subject country supplier and sold, as is usually the case, at a much lower price.⁴⁸ Over the first three quarters of 2000, PPG's price for this part fell by 29 percent.⁴⁹ This decrease in price occurred well before PPG started producing the part in Canada in 2001 and then in a limited volume.⁵⁰ The Tribunal notes that, proportionally, its volume for this part increased significantly in the first quarter of 2002.

The Tribunal also examined the evidence concerning the highest selling parts and 10 benchmark parts⁵¹ purchased by the largest distributor, TCGI, which accounts for nearly 30 percent of the market for ARG windshields, and by Vanfax, another large distributor.⁵² Given the concentration of the distributing industry in Canada and the fact that the domestic industry, in its argument to the Tribunal, used TCGI's purchases as indicative of the market, the Tribunal is of the opinion that an examination of the parts purchased by these distributors, at the micro level, would show a causal effect of the dumped imports from China on the state of the domestic industry.⁵³ The Tribunal found only one incidence of a causal relationship, which is addressed later in the Tribunal's assessment of PPG's injury allegations.

For all the other high-volume and benchmark parts, the Tribunal found no evidence to support a causal link between the dumping and the injury. In some cases, the parts were not dumped and, as a result, no injury could be attributed to dumping.⁵⁴ Some of the parts were not even imported from China by one of these major Canadian distributors.⁵⁵ Some parts were not produced by PPG throughout the period of inquiry, but rather were imported from sister plants or partners; others were not produced during the years when the injury could have occurred.⁵⁶ For other parts, it was quite clear to the Tribunal that the increased purchases of Chinese product by the major distributor, TCGI, came at the expense of previous imports from other non-subject countries whose prices were generally lower than those of PPG.⁵⁷ In the case of one major part, imports by TCGI from a non-subject country displaced PPG's product.⁵⁸ The Tribunal finds that the

45. Tribunal Exhibit NQ-2002-001-05 (protected), Administrative Record, Vols. 2A, 2B, 2C.

46. Tribunal Exhibit NQ-2002-001-RI-01D (protected), Administrative Record, Vol. 10 at 4.

47. Tribunal Exhibit NQ-2002-001-RI-02E (protected), Administrative Record, Vol. 6 at 264.229.

48. Importer's Exhibit K-01A (protected) at 4-5, Administrative Record, Vol. 14.

49. Importer's Exhibit K-02A, Administrative Record, Vol. 13.

50. *Supra* note 46 at 5.

51. The 10 benchmark products were submitted by the domestic industry during the consultation process on the Tribunal's draft questionnaires.

52. The products examined from Vanfax's purchases were limited to those parts which Vanfax both purchased from PPG and imported.

53. Of the two other major distributors, one, PHV, is not relevant to the pricing analysis because PPG was unwilling to sell truckload quantities to it during the period of inquiry. This point is addressed under "Other Factors". The other distributor provided little information to the Tribunal.

54. *Supra* note 45.

55. Tribunal Exhibit NQ-2002-001-16.01 (protected), Administrative Record, Vol. 6 at 48-50.

56. Tribunal Exhibit NQ-2002-001-RI-01D (protected), Administrative Record, Vol. 10; and Importer's Exhibit K-01A (protected), Administrative Record, Vol. 14.

57. Importer's Exhibit NQ-2002-001-K-01A (protected) at paras. 86-90, Administrative Record, Vol. 14.

58. *Ibid.* at para. 91.

loss of sales by PPG of these parts, when they occurred, could not be attributed to the Chinese exports, especially since PPG's production of these parts often increased significantly.⁵⁹

Nor could the Tribunal find much evidence of price erosion when reviewing these parts. PPG's prices fluctuated over the nine quarterly periods for which prices of specific parts were examined. Moreover, PPG was able to maintain or expand its sales for several of these parts, at prices well above those of the import from China.⁶⁰ These were not mere buyouts, but were sales increases which, in one specific case, amounted to nearly 2,000 units.⁶¹

PPG submitted that, in January 2001, TCGI established a list of target prices, by part, for its suppliers, based on the prices of imports from China. The target prices were lower than PPG's selling prices at the time. PPG alleged that it lost sales volume on parts, which it had previously supplied to TCGI, where it did not reduce its prices sufficiently to match or be competitive with the target prices. TCGI's evidence indicates that, in 2000, it revised its approach to price negotiations with its suppliers by replacing the traditional pricing meetings with target prices that were sent to its suppliers requesting their response.⁶² According to the evidence, when setting its target prices, TCGI took into consideration market prices prevailing at the time, as well as assessing its suppliers' strengths in terms of quality, service and prices to which they might agree. TCGI also gave evidence that it examined prices from a multitude of suppliers located in Canada, the United States, Mexico, Indonesia, South America, South Africa and China.⁶³ The target prices that were established were at a premium to prices available from offshore (outside of North America) suppliers. In fact, respecting each of the 10 benchmark parts, the target price that was given to PPG to try to match was higher than the prices available to TCGI from other suppliers at the time.⁶⁴ The Tribunal is convinced by the evidence given by TCGI that the price of a Chinese part was only one price among several other prices taken into account by TCGI when it prepared the list. Furthermore, the evidence indicates that prices lower than TCGI's target prices were available from non-subject countries.

The Tribunal has also examined the 13 injury allegations submitted by the domestic industry and finds that only one indicates a link between the imports from China and the lost sales experienced by PPG.⁶⁵ It appears to involve the loss of sales of approximately 2,000 units, with little or no price erosion. All the other allegations fell, either because the parts were not produced in Canada at the relevant time or because they were not dumped at that account at the time of the injury allegation or because it was a non-subject country that took the sales away from PPG, not China. Two allegations, each of which involved lost sales of one windshield, fell, as they were found not to be materially injurious.⁶⁶

Given the overwhelming lack of evidence of causality in the analysis of the two high-volume parts selected by PPG, as well as in the highest-selling and benchmark parts, and in 12 of the 13 allegations, the Tribunal concludes that there has been no material injury caused by the dumping of the Chinese subject goods. Furthermore, the Tribunal heard evidence from the witnesses for PPG to the effect that they could not accurately track domestic sales from domestic production, although they could track domestic

59. Importer's Exhibit NQ-2002-001-K-01A (protected) at paras. 86-90, Administrative Record, Vol. 14; Tribunal Exhibit NQ-2002-001-RI-01D (protected), Administrative Record, Vol. 10.

60. Importer's Exhibit K-01A (protected) at paras. 86, 89, 93, 94, Administrative Record, Vol. 14.

61. *Ibid.* at para. 93.

62. *Transcript of Public Hearing*, Vol. 2, 7 August 2002, at 372-73.

63. *Ibid.* at 373-75.

64. *Supra* note 62 at 375-76.

65. Allegation referred to as "Christie 4", Tribunal Exhibit NQ-2002-001-10.01B (protected), Administrative Record, Vol. 4C at 159.

66. FYG's *Aid to Argument* (protected), allegations 3.7 and 4.5, Administrative Record, Vol. 18 at 7-8.

production. Given that only 65 parts out of the approximately 1,350 required for the Canadian market were produced by PPG in each of the three years of the period of inquiry and the first quarter of 2002, and given that the Tribunal has concluded that SIMA does not envisage the protection of goods not produced in Canada, the Tribunal is not convinced that injury was caused to PPG's domestic production by the dumping of the Chinese subject goods in the Canadian market. This conclusion is reinforced by the Tribunal's analysis of other factors.

The Tribunal analyzed other factors as prescribed by subsection 37.1(3) of the Regulations. They were principally the following: PPG's unwillingness to supply truckload quantities to PHV, a large Canadian distributor based in Quebec; the allocation of plant loading from Pittsburgh; the weather conditions in Canada over the last three years; the impact of repairs to windshields; the impact of the life cycle of windshields; the impact of imports, both by PPG from its U.S. operations and from other non-subject countries; and the impact of PPG's lost export sales.

The Tribunal discounted several of these "other factors". It is of the view that the impact of the life cycle of ARG windshields on PPG's profitability (i.e. old parts usually carry a lower price) is offset by new entries into the market (at higher prices) and, therefore, is not a significant factor. With respect to customers choosing, in increasing numbers, to have their damaged windshields repaired rather than replaced, the Tribunal is of the view that it has only a moderate negative impact on the size of the ARG windshield market. As for weather conditions, the Tribunal heard evidence that the winters in Canada in 2000 and 2002 were moderate and, therefore, could have had a depressing effect on market sales. The Tribunal is unable to determine the significance of this latter impact, if any, given that the market did grow over this period.

The Tribunal is of the view, however, that imports from other countries, the unwillingness to supply truckload quantities to PHV, the decisions made out of Pittsburgh regarding plant loading of ARG windshields and the loss of export sales have had a considerable impact on PPG's domestic operations.

Over the three full years included in the period of inquiry, although domestic sales from domestic production fell, domestic sales of imports increased by over 11 percent. These increased sales of imports by PPG offset by one third the losses in domestic sales from domestic production. As stated above, the Tribunal finds no basis for the protection of PPG's imports from the United States, which comprise approximately 60 percent of PPG's sales in the domestic market. Furthermore, over half of the Chinese market gains can be offset by a decrease in imports from the United States and Mexico by the distributors. Moreover, half of the market increase over the three full years of the period of inquiry can be accounted for by the increase in imports from other non-subject countries.⁶⁷

The Tribunal notes that PPG missed a business opportunity in not resolutely pursuing the PHV account. From modest beginnings, PHV has become, in the last few years, one of the large distributors of ARG windshields in Canada. By its unwillingness to sell ARG windshields at truckload prices to this account, PPG shut itself out of a significant sales volume. During the period of inquiry, PHV imported a considerable volume of ARG windshields from China. This volume represented well in excess of 30 percent of all Chinese exports over the period. These imports, in the Tribunal's view, have not injured PPG's domestic production, as most of these goods were found not to have been dumped.

As noted previously, the decisions made in Pittsburgh resulted in a significant number of parts being removed from PPG's domestic production over the period of inquiry. In 1999, over 40 percent of

67. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2002-001-07 (protected), Administrative Record, Vol. 2.1 at 164.

PPG's domestic sales came from domestic production.⁶⁸ This was a high in a cycle that has occurred twice in the past decade.⁶⁹ Given decisions in Pittsburgh, this percentage fell to a low of just over 30 percent in 2001.⁷⁰ In the Tribunal's view, decisions made in Pittsburgh regarding the number of parts produced and their volume explain, for the most part, the decline in production for domestic sales at Hawkesbury between 1999 and 2002. These decisions, based on the evidence, were not due to the dumping of imports from China. Other than those relating to efficiency and cost savings, it was not made clear what other considerations went into these decisions. Although there was evidence at the hearing that indicated that China was a factor in these decisions, the Tribunal is not convinced of its significance, given that imports from China were also entering the United States at the time. No supporting evidence was provided, in this regard, by the witnesses for the domestic industry who testified that they were consulted only on matters of production capability by the Pittsburgh office. The Tribunal further notes that the Hawkesbury plant was said to be ranked second or third amongst five or six plants in terms of capability.⁷¹ In light of the evidence, the Tribunal concludes that production decisions during the period of inquiry were made for cost considerations, as Pittsburgh's decisions appear to have been predicated on determining which plant could produce which part most cost efficiently.

PPG's export sales, which amount to approximately 90 percent of its production, decreased significantly during the period of inquiry, more than did the domestic sales. The gross margins, in particular, decreased significantly more for export than for domestic sales. Factors such as decreases in domestic production and capacity utilization must take into account the negative effect of the contribution of such export performance.⁷² This effect, while real, cannot be attributed to the presence of dumped imports from China in the Canadian marketplace.

The impact of these factors cannot be attributed to the dumping. These "other" factors, coupled with the Tribunal's view that the injury allegations submitted by the domestic industry did not support an injury claim, that the benchmark and chosen illustrative products showed no injury, that less than half the imports from China were dumped and that the industry acknowledged that it could not accurately track domestic sales from domestic production, lead the Tribunal to conclude that the dumping of the Chinese subject goods did not cause material injury to the domestic industry.

Threat of Injury

Having found that the dumping of the subject goods has not caused material injury, the Tribunal must consider whether the dumping is threatening to cause material injury. The Tribunal is guided in this task by subsection 37.1(2) of the Regulations, which prescribes factors such as: (1) whether there has been a significant rate of increase of dumped imports of ARG windshields into Canada; (2) whether there is sufficient freely disposable capacity, or an imminent substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped goods, taking into account the availability of other export markets to absorb any increase; (3) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods; and (4) other relevant factors. Moreover, the threat, if one exists, must be clearly foreseen and imminent.

68. *Transcript of Public Hearing*, Vol. 1, 6 August 2002, at 255; *Transcript of In Camera Hearing*, Vol. 1, 7 August 2002, at 47.

69. *Transcript of Public Hearing*, Vol. 1, 6 August 2002, at 250.

70. *Ibid.* at 249-51; *Transcript of In Camera Hearing*, Vol. 1, 7 August 2002, at 47.

71. *Supra* note 69 at 242.

72. Tribunal Exhibit NQ-2002-001-07 (protected), Administrative Record, Vol. 2.1 at 51.

PPG argued that, if the Tribunal is to believe that there is no future injury, it would have to be convinced that the Chinese industry will no longer be relying on exports for the majority of its sales, that there will be significant domestic demand in China for OEM and ARG windshields and that there will be no imports in the Chinese marketplace.⁷³

ARG windshield production in China is concentrated among three major producers, two of whom provided witnesses. The Tribunal notes that the witnesses for PPG admitted to having little knowledge of developments in the Chinese market and that PPG did not produce any witnesses that did. The evidence submitted by the Chinese producers indicates that the government of China is actively promoting the development of the domestic automotive sector.⁷⁴ This includes improving the regulatory environment for individuals to own and operate vehicles.⁷⁵ Forecasts⁷⁶ submitted by the Chinese producers called for major increases in automobile sales in China, thus putting pressure on their domestic OEM and ARG windshield production. One of the exporters testified that, in the first six months of 2002, vehicle production in China grew by 53 percent, a number beyond the industry's expectations.⁷⁷ The exporter explained how the increasing vehicle production in China is leading producers to concentrate on OEM windshield production, which takes priority over ARG windshield production. Another smaller Chinese player in the Canadian market for which the Commissioner found a weighted average margin of dumping of zero, and which traditionally has not participated much in the OEM windshield market, indicated that it has a plan to enter the OEM windshield sector,⁷⁸ though this would not impact on its ARG windshield business.⁷⁹ It further stated that it would remain present in Canada and pursue good opportunities as they present themselves.⁸⁰

After weighing the evidence, the Tribunal was of the opinion that increased vehicle and OEM windshield production in China will have an impact on Chinese ARG windshield production over the near term. As a result, the available capacity for ARG windshield exports worldwide is likely to stabilize.⁸¹ In addition, the development of new automobile markets, such as Russia, means that demand for Chinese ARG windshields should intensify in the future.⁸²

With regard to potential imports of both OEM and ARG windshields into China, the Tribunal notes that, while very little evidence was provided on the subject and considering that China is a low-cost producer, it appears unlikely that imports of windshields into China will play more than a minor role in the Chinese marketplace in the near term and they are, therefore, unlikely to lead to an increase in Chinese exports of ARG windshields.

As indicated in the section dealing with injury, sales of the subject imports from China tripled between 1999 and 2001, displacing substantial volumes of imports from non-subject countries, mostly the United States and Mexico. However, it would appear that the rapidity of import growth may be slowing down. Whereas, imports from China grew in the high double-digit percentages, nearly doubling in 2001, the

73. *Transcript of Public Argument*, Vol. 4, 9 August 2002, at 17.

74. China's 10th Five-Year Plan for Development of the Automotive Industry (2001-2005), Exporter's Exhibit J-08, Administrative Record, Vol. 13.

75. *Supra* note 73 at 677-82.

76. Exporter's Exhibits J-04 to J-07, Administrative Record, Vol. 13.

77. *Transcript of Public Hearing*, Vol. 3, 8 August 2002, at 586. See, also, Tribunal Exhibit NQ-2002-001-RI-04D, Administrative Record, Vol. 9 attachment 4.

78. *Supra* note 75 at 703-704.

79. *Ibid.*

80. *Supra* note 75 at 693-94; *Transcript of In Camera Hearing*, Vol. 3, 9 August 2002, at 430.

81. Tribunal Exhibit NQ-2002-001-RI-04C (protected), Administrative Record, Vol. 10, attachment 10.

82. *Transcript of In Camera Hearing*, Vol. 3, 9 August 2002, at 430-31.

rate of import growth was less than 15 percent in the first quarter of 2002 over that of the previous year.⁸³ The Tribunal is of the view, therefore, that imports from China will likely continue to enter Canada, probably at volumes and prices comparable to those of today.

Having determined that imports of ARG windshields from China will continue to enter the Canadian market, the Tribunal considered whether imports at the levels anticipated would threaten injury to the domestic industry.

The CCRA's final determination indicates that less than 50 percent of the imports examined during its period of investigation were dumped. The Tribunal also notes that three of the four Chinese exporters to Canada that accounted for almost all Chinese exports were found to have weighted average margins of dumping of zero. Consequently, even if these zero-margin exporters increased their share of the Canadian market, such exports would not be injurious to the domestic industry by virtue of the dumping.

In the present case, given the evidence adduced, the Tribunal has difficulty in having any confidence as to what parts will or will not be produced in Canada in the foreseeable future. There was evidence that, on average, 40 percent of PPG's sales in Canada over the period of inquiry were from domestic production. However, the Tribunal notes that the ratio of domestic sales from domestic production over PPG's total domestic sales declined by some 14 percentage points over the period of inquiry.⁸⁴ Production in Canada shifts dramatically and frequently, solely, it seems, on the basis of decisions made by PPG's parent company in Pittsburgh, with very little say in the matter by the domestic industry. The evidence is that Pittsburgh determines what parts will be produced and where in the PPG group of companies they will be produced, based on the plant's cost efficiency. Moreover, the basket of products produced changes regularly and even on a weekly basis.⁸⁵ This is illustrated by the fact that only 65 of the approximately 1,350 parts produced for the Canadian market were produced in Hawkesbury in all the four periods of production reviewed by the Tribunal. In some years, however, PPG produced as many as 358 parts.

Based on the evidence, the Tribunal cannot determine what the composition of domestic production will be in the future, nor can it determine what domestic production for domestic sales will be. The Tribunal received no plans as to future production in Canada, nor did it hear any evidence that these sales would be tracked as to their source. PPG's distribution centre in Alliston was fully closed at the end of June 2002⁸⁶. Currently, all Canadian production is shipped from a distribution centre in Ohio operated by PPG's parent company. The lack of a proper tracking system makes it difficult, if not impossible, to ascertain where this Canadian production will end up and, consequently, whether Canadian domestic production for sales in the domestic market will be injured.

The Tribunal heard argument that the recent injury finding by the USITC respecting ARG windshields from China will cause a significant diversion of dumped Chinese exports to Canada. PPG submitted that, in particular, the Chinese exporters that did not provide the information requested by the U.S. Department of Commerce during its investigation and that, consequently, were assigned the highest margin of dumping (124.5 percent) would be unable to compete in the U.S. market. Consequently, these exporters would shift their exports to Canada. There is no evidence that the alleged diversion is currently

83. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2002-001-07 (protected), Administrative Record, Vol. 2.1 at 162.

84. *Transcript of Public Hearing*, Vol. 1, 6 August 2002, at 251-55; *Transcript of In Camera Hearing*, Vol. 1, 7 August 2002, at 47.

85. *Transcript of Public Hearing*, Vol. 1, 6 August 2002, at 243.

86. *Ibid.* at 267-68.

taking place, nor that it will take place in the future. In fact, the domestic industry itself anticipates an increase in Chinese exports to the United States in 2002.⁸⁷ The five Chinese exporters that are subject to a 124.5 percent margin of dumping appear to have very small volumes compared to the other Chinese exporters to the United States.⁸⁸

In light of the foregoing, the Tribunal finds that the dumping of the subject goods does not threaten to cause material injury to the domestic industry.

CONCLUSION

For the foregoing reasons, the Tribunal hereby finds that the dumping of the aforementioned goods originating in or exported from China has not caused material injury and is not threatening to cause material injury to the domestic industry.

Richard Lafontaine

Richard Lafontaine
Presiding Member

Patricia M. Close

Patricia M. Close
Member

Zdenek Kvarda

Zdenek Kvarda
Member

87. *Transcript of Public Hearing*, Vol. 1, 6 August 2002, at 221-23.

88. Tribunal Exhibit NQ-2002-001-30.01, Administrative Record, Vol. 1 at 108.