



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDINGS AND REASONS

Inquiry No. NQ-2008-003

Aluminum Extrusions

*Findings issued
Tuesday, March 17, 2009*

*Reasons issued
Wednesday, April 1, 2009*

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

**THE DUMPING AND SUBSIDIZING OF ALUMINUM
EXTRUSIONS ORIGINATING IN OR EXPORTED FROM 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 and subsidizing of aluminum extrusions produced via an extrusion process of alloys having metallic elements falling within the alloy designations published by The Aluminum Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per metre of 22 kg and a profile or cross-section which fits within a circle having a diameter of 254 mm, originating in or exported from the People's Republic of China, have caused injury or retardation or are threatening to cause injury.

This inquiry is pursuant to the issuance by the President of the Canada Border Services Agency of preliminary determinations dated November 17, 2008, and of final determinations dated February 16, 2009, that aluminum extrusions originating in or exported from the People's Republic of China have been dumped and subsidized.

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

- the dumping and subsidizing in Canada of custom-shaped aluminum extrusions originating in or exported from the People's Republic of China have caused injury to the domestic industry; and
- the dumping and subsidizing in Canada of standard-shaped aluminum extrusions originating in or exported from the People's Republic of China have caused injury to the domestic industry.

The Canadian International Trade Tribunal excludes from its findings the products described in the attached appendix.

André F. Scott
André F. Scott
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Diane Vincent
Diane Vincent
Member

Hélène Nadeau
Hélène Nadeau
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The statement of reasons will be issued within 15 days.

APPENDIX

PRODUCTS EXCLUDED FROM THE FINDINGS

- Aluminum extrusions produced from either a 6063 or a 6005 alloy type with a T6 temper designation, in various lengths, with a powder coat finish on both the interior and the exterior surfaces of the extrusion, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard, “Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels”, for use in exterior railing systems.
- Aluminum extrusions produced from a 6063 alloy type with a T5 temper designation, having a length of 3.66 m, with a powder coat finish, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard, “Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels”, for use as head rails and bottom rails in fabric window shades and blinds where the fabric has a cross-sectional honeycomb or “cellular” construction.
- Aluminum extrusions produced from a 6063 alloy type with a T5 temper designation and forming part of the Vario System™ 20, 30, 40, 45 and 60 series line of profiles, or equivalent, having a length of either 4.5 or 5.8 m and a straightness tolerance of +/-1.5 mm or less per 6.0 m of length, for use in those parts of mechanical systems and automated machinery, such as gantry systems and conveyors, where precise linear movement is required.
- Aluminum extrusions produced from either a 6063 or a 6463 alloy type, having a length of 3 m, with a hand-applied gold and silver leaf finish, for use as picture frame mouldings.
- Aluminum extrusions produced from a 6063 alloy type with either a T5 or a T6 temper designation, having a length of between 20 and 33 ft. (between 6.10 and 10.06 m), with a powder coat finish, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard (“Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels”), for use in window frames.
- Heat sinks imported under tariff item No. 8473.30.90 and weighing 700 g or less.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: February 16 to 20, 2009

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PARTICIPANTS:**Domestic Producers**

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Apel Extrusions Limited
Can Art Aluminum Extrusion Inc.
Extrudex Aluminum
Metra Aluminum Inc.
Signature Aluminum Canada Inc.
Spectra Aluminum Products Inc./Spectra
Anodizing Limited

Importers/Exporters/Others

Artopex Inc.

Asia Aluminum Holdings Limited

Blinds to Go Inc.
Extrude-A-Trim Inc.

Garaventa (Canada) Ltd.
Kam Kiu Aluminum Products (NA) Ltd.

Kam Kiu Aluminium Products Sdn. Bhd.

Kromet International Inc.

Loxscreen Canada
MAAX Bath Inc.

Mallory Industries Inc.

PanAsia Aluminium (China) Limited

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Shining Metal Trading Inc.	Yan Xu
Sinobec Trading Inc.	Richard S. Gottlieb
	Vincent Routhier
Tag Hardware Systems Ltd.	Peter Clark
	Gordon LaFortune
Taishan City Kam Kiu Aluminium Extrusion Co. Ltd.	Peter Clark
	Gordon LaFortune
	Wallis Stagg
	Meagan Rapley
Vitre-Art C.A.B. (1988) Inc.	Sandra Rayes
ZMC Metal Coating Inc.	Darrel H. Pearson
	Jesse I. Goldman
	Jim Karahalios
	Faran Umar-Khitab

Parties that Requested Product Exclusions

Alfa Mega Inc.
Aluminart Products Limited
Aluminum Curtainwall Systems Inc.
Artopex Inc.

C.R. Laurence Co. of Canada
China Square Industrial Ltd.
Concord West Distribution Ltd.
Digi-Key Corporation
Garaventa (Canada) Ltd.

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Hunter Douglas Canada LP	Darrel H. Pearson Jesse I. Goldman Jim Karahalios Faran Umar-Khitab
Independent Contractors and Businesses Association of British Columbia	Philip Hochstein
Knoll North America Corp.	Alan Goffenberg
Kromet International Inc.	Cyndee Todgham Cherniak Corinne Brûlé
Levolor/Kirsch Window Fashions (a Division of Newell Rubbermaid/Newell Window Furnishings Inc.)	Richard G. Dearden Wendy J. Wagner
MAAX Bath Inc.	Peter Clark Gordon LaFortune
Milward Alloys, Inc.	Timothy J. Kosto
Morse Industries	Michael Kaylor
New Zhongya Aluminum Factory Ltd.	Kristin Nakamura
Newell Industries Canada Inc.	Richard G. Dearden Wendy J. Wagner
Newell Window Furnishings Inc.	Richard G. Dearden Wendy J. Wagner
Opus Framing Ltd.	Wyatt Holyk
Pacific Shower Doors (1995) Ltd.	Jules Frederick Wilkins
Proforma Interiors Ltd., dba Aluglass	Thomas Elbanna
R-Theta Thermal Solutions Inc.	Ralph Wickel
Rahul Glass Ltd.	Neeraj Chaturvedi
Regal Aluminum Products Inc.	Peter Clark Gordon LaFortune C. Roy Henning
Ruhlmat North America Ltd.	Remo Bonewitz
Ryerson Canada	Jeff Penz
Silvia Rose Industries	Dawson Wu
Sinobec Trading Inc.	Richard S. Gottlieb Vincent Routhier
Soniplastics Inc.	Flora Cornet

Tag Hardware Systems Ltd.	Peter Clark Gordon LaFortune
Vancouver Framer Cash & Carry Ltd.	Wyatt Holyk
VAP Global Industries Inc.	Peter J. Hill
Zhaoqing China Square Industry Ltd.	Li Li
ZMC Metal Coating Inc.	Darrel H. Pearson Jesse I. Goldman Jim Karahalios Faran Umar-Khitab

WITNESSES:

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Mike Flynn President Apel Extrusions Limited	John Menary Vice-President—Sales Can Art Aluminum Extrusion Inc.
Lothar Steim Controller Can Art Aluminum Extrusion Inc.	Bob Peacock President Almag Aluminum Inc.
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STATEMENT OF REASONS

1. The Canadian International Trade Tribunal (the Tribunal), pursuant to section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry to determine whether the dumping and subsidizing of aluminum extrusions produced via an extrusion process of alloys having metallic elements falling within the alloy designations published by The Aluminum Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per metre of 22 kg and a profile or cross-section which fits within a circle having a diameter of 254 mm (aluminum extrusions), originating in or exported from the People's Republic of China (China) (the subject goods) have caused injury or retardation or are threatening to cause injury to the domestic industry.

2. On August 18, 2008, the President of the Canada Border Services Agency (CBSA), following a complaint filed by Almag Aluminum Inc. (Almag) of Brampton, Ontario, Apel Extrusions Limited (Apel) of Calgary, Alberta, Can Art Aluminum Extrusion Inc. (Can Art) of Brampton, Ontario, Metra Aluminum Inc. (Metra) of Laval, Quebec, Signature Aluminum Canada Inc. (Signature) of Richmond Hill, Ontario, Spectra Aluminum Products Inc. (SAP) of Bradford, Ontario, and Spectra Anodizing Limited (SAL) of Woodbridge, Ontario (collectively known as Spectra) (the complainants), initiated investigations into whether the subject goods had been dumped and subsidized. Extrudex Aluminum (Extrudex) of Woodbridge, Daymond Aluminum (Daymond) of Chatham, Ontario, and Kaiser Aluminum Canada Ltd. (Kaiser) of London, Ontario, provided letters supporting the complaint.

3. On August 19, 2008, 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 and subsidizing of the subject goods had caused injury or retardation or were threatening to cause injury. On October 17, 2008, the Tribunal made a preliminary determination that there was a reasonable indication that the dumping and subsidizing of the subject goods had caused injury.

4. On October 24, 2008, the Tribunal requested that the CBSA provide, in addition to the single class of subject goods as defined at initiation, separate information on the dumping and subsidizing of (1) standard-shaped and (2) custom-shaped aluminum extrusions.

5. On November 17, 2008, the CBSA issued preliminary determinations of dumping and subsidizing. It was satisfied, as a result of its preliminary investigations, that the subject goods had been dumped and subsidized, that the margins of dumping and the amount of subsidy were not insignificant and that the volumes of dumped and subsidized goods were not negligible.

6. On November 18, 2008, the Tribunal issued a notice of commencement of inquiry² pursuant to subsection 42(1) of *SIMA*. The Tribunal's period of inquiry (POI) covers three full years, from January 1, 2005, to December 31, 2007, and an interim period from January 1 to September 30, 2008. As part of its inquiry, the Tribunal sent questionnaires to domestic producers, importers and foreign producers of aluminum extrusions. The Tribunal also sent a questionnaire on market characteristics to purchasers. From the replies to the questionnaires and other information on the record, the Tribunal's staff prepared public and protected staff reports.

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

2. C. Gaz. 2008.I.3071.

7. In its notice of commencement of inquiry, the Tribunal indicated that it would proceed by way of written submissions with respect to requests for product exclusions and would not hear oral testimony and argument on those requests.

8. In its notice of commencement of inquiry, the Tribunal also invited parties to file evidence and submissions in order to come to a definitive decision on the issue of whether there are two classes of goods in this inquiry. The Tribunal also sent a separate questionnaire on substitutability with a reply date of November 28, 2008, and, on December 4, 2008, the Tribunal issued a compilation of responses to its questionnaire on substitutability. Parties had the opportunity to address the information gathered through those questionnaires in their reply submissions of December 11, 2008. The Tribunal received submissions from the complainants and 11 other parties, and reply submissions from the complainants and 7 other parties.

9. On December 18, 2008, the Tribunal informed the parties that it had determined that aluminum extrusion products which have standard shapes and aluminum extrusion products which have custom shapes constitute two separate classes of goods and that, therefore, it would conduct its injury analysis on that basis. For the purposes of classes of goods and for the conduct of this inquiry, standard shapes are defined as including bars and rods, pipes and tubes, angles, channels, tees and beams (H, I, Z), while custom shapes are defined as including all shapes that are not “standard shapes”. In light of the Tribunal’s decision as to the existence of two classes of goods, in addition to a general report, two staff reports were issued in order to report separately production, import, market, pricing, sales data and financial data for each standard and each custom shape.

10. On January 13, 2009, the Tribunal sent a supplementary questionnaire to all domestic producers in order to collect production and sales data for the last quarter of 2008. The response date was January 26, 2009. Addenda to the staff reports were also issued on February 9, 2009, to report this additional information.

11. On February 16, 2009, the CBSA issued final determinations of dumping and subsidizing.

12. A hearing, with public and *in camera* testimony, was held in Ottawa, Ontario, from February 16 to 20, 2008. The domestic producers that supported injury findings filed submissions, provided evidence and made arguments in support of such findings. They were represented by counsel and presented witnesses at the hearing. PanAsia Aluminium (China) Limited, PanAsia Aluminum (Calgary) Limited, PanAsia Aluminum (Toronto) Limited, PanAsia Aluminum (Macao Commercial Offshore) Limited (all four companies collectively, PanAsia), Kam Kiu Aluminum Products (NA) Ltd. (Kam Kiu), Kam Kiu Aluminium Products Sdn. Bhd. (Kam Kiu Sdn.), Taishan City Kam Kiu Aluminium Extrusion Co. Ltd. (all three companies collectively, Kam Kiu), Kromet International Inc. (Kromet), MAAX Bath Inc. (MAAX Bath) and ZMC Metal Coating Inc. (ZMC) were represented by counsel, filed submissions, provided evidence and made arguments in opposition to findings of injury. They also presented witnesses at the hearing. Extrude-A-Trim Inc. (Extrude-A-Trim), Regal Aluminum Products Inc. (Regal Aluminum), Sinobec Trading Inc. (Sinobec) and Tag Hardware Systems Ltd. (Tag Hardware) were represented by counsel, filed submissions, provided evidence and made arguments in opposition to findings of injury. Artopex Inc. (Artopex), Asia Aluminum Holdings Limited (Asia Aluminum), Blinds to Go Inc. (Blinds to Go), Garaventa (Canada) Ltd. (Garaventa), Loxcreen Canada, Mallory Industries Inc., Pingguo Asia Aluminum Co., Ltd. (Pingguo Asia), R-Theta Thermal Solutions Inc. (R-Theta), Railcraft International Inc. (Railcraft), Shining Metal Trading Inc. and Vitre-Art C.A.B. (1988) Inc. (Vitre-Art) were also parties to the inquiry, but did not file submissions on injury or appear at the hearing.

13. Mr. Mark Doig, of Indalex Limited (Indalex), and Mr. Jorge Vazquez, of Harbor Intelligence, appeared as Tribunal witnesses during the hearing.

14. Thirty-four³ parties filed requests for product exclusions, amongst which 28 participated solely for that process.

15. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2008-002), replies to questionnaires, requests for information and replies thereto in accordance with the Tribunal's directions, all documents with respect to the product exclusion process, witness statements, all other exhibits filed by parties and the Tribunal 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.

16. The Tribunal issued its findings on March 17, 2009.

RESULTS OF THE CBSA'S INVESTIGATIONS

17. On February 16, 2009, the CBSA determined that 99.8 percent of the subject goods released into Canada from July 1, 2007, to June 30, 2008, were dumped at an estimated overall weighted average margin of dumping of 72.6 percent, when expressed as a percentage of the export price. The CBSA also determined that 100 percent of the subject goods released into Canada from January 1, 2007, to June 30, 2008, were subsidized at an estimated weighted average amount of subsidy of 47 percent, expressed as a percentage of the export price. The CBSA concluded that the overall margin of dumping and the amount of subsidy were not insignificant.⁴ The CBSA also provided confidential information regarding the dumping and subsidizing for each of custom-shaped and standard-shaped aluminum extrusions.⁵

PRODUCT

Product Description

18. Extrusion is the process of shaping heated material by forcing it through a shaped opening in a die with the material emerging as an elongated piece with the same profile as the die cavity. For greater clarity, the subject goods do not include goods made by the process of impact extrusion or cold extrusion, nor do they include cold-drawn aluminum extrusions.⁶

3. Alfa Mega Inc., Aluminart Products Limited, Aluminum Curtainwall Systems Inc., Artopex, C.R. Laurence Co. of Canada, China Square Industrial Ltd., Concord West Distribution Ltd., Digi-Key, Garaventa, Home-Rail Ltd., Hunter Douglas, Independent Contractors and Businesses Association of British Columbia, Knoll North America Corp., Kromet, Levolor/Kirsch Window Fashions (a Division of Newell Rubbermaid/Newell Window Furnishings Inc.), MAAX Bath, Milward Alloys, Inc., Morse Industries, New Zhongya Aluminum Factory Ltd., Newell Industries Canada Inc., Newell Window Furnishings Inc., Opus Framing Ltd., Pacific Shower Doors (1995) Ltd., Proforma Interiors Ltd., dba Aluglass, R-Theta Thermal Solutions, Rahul Glass Ltd., Regal Aluminum, Ruhlamat North America Ltd., Ryerson Canada, Silvia Rose Industries, Sinobec, Soniplastics Inc., Tag Hardware, Vancouver Framer Cash & Carry Ltd., VAP Global Industries Inc., Zhaoqing China Square Industry Ltd. and ZMC.

4. Tribunal Exhibit NQ-2008-003-02.01B, Administrative Record, Vol. 1A at 106.49, 106.70.

5. Tribunal Exhibit NQ-2008-003-02.01A (protected), Administrative Record, Vol. 2 at 56.43, 56.44

6. Tribunal Exhibit NQ-2008-003-47, Administrative Record, Vol. 1A at 93-94.

19. Alloys are metals composed of more than one metallic element. Alloys used in aluminum extrusions contain small amounts (usually less than 5 percent) of elements, such as copper, manganese, silicon, magnesium or zinc, which enable characteristics, such as corrosion resistance, increased strength or improved formability, to be imparted to the major metallic element, aluminum. Aluminum alloys are produced to specifications in *International Alloy Designations and Chemical Composition Limits for Wrought Aluminum and Wrought Aluminum Alloys* published by The Aluminum Association. These specifications have equivalent designations issued by other certifying bodies, such as the International Standards Organization.

20. All aluminum extrusions are produced as either hollow or solid profiles. Hollow profile extrusions generally cost more to produce and obtain higher prices than solid profile extrusions. Extrusions are often produced in standard shapes, such as bars, rods, pipes and tubes, angles, channels and tees, but they are also produced in custom shapes.

21. In addition to “as extruded” or mill finish, extrusions can be finished mechanically by polishing, buffing or tumbling. Extrusions can have anodized finishes applied by means of an electro-chemical process that forms a durable, porous oxide film on the surface of the aluminum. Also, they can be finished with liquid or powder paint coatings utilizing an electrostatic application process.

22. The ability to produce the full range of profiles is determined by the extrusion and ancillary equipment. The complainants cannot produce extrusions having a wall thickness less than 0.5 mm or a weight greater than 22 kg per metre, or a cross-section larger than would be enclosed within a 254 mm diameter circle.

23. Working or fabricating extrusions includes any operation performed other than mechanical, anodized, painted or other finishing, prior to utilization of the extrusion in a finished product. These can include precision cutting, machining, punching, drilling and bending.

Product Application

24. Aluminum extrusions are widely used in numerous market sectors. The main end-use sectors for aluminum extrusions are building and construction, transportation and engineered products. Uses for aluminum extrusions in the building and construction industry cover a wide range of products, including windows, doors, railings, bridges, light poles, high-rise curtain walls, framing members and other various structures. Uses for aluminum extrusions in the transportation industry include parts for automobiles, buses, trucks, trailers, rail cars, mass transit vehicles, recreational vehicles, aircraft and aerospace. Aluminum extrusions are also used in many consumer and commercial products, including air conditioners, appliances, furniture, lighting, sports equipment, electrical power units, heat sinks, machinery and equipment, food displays, refrigeration, medical equipment and laboratory equipment.⁷

Production Process

25. While details may vary from producer to producer, the process by which extrusions are produced is essentially the same for all.

7. Aluminum Extruders Council (www.aec.org).

26. The intended end use of the final product in which the aluminum extrusion will be applied determines the specifications for the extrusion. Machinability, finish and environment of end-use application of the final product determine the alloy to be extruded. The end-use application of the profile also determines its design and that of the die that shapes it.

27. The extrusion process begins with an aluminum billet. The billet must be softened by heat prior to extrusion. The heated billet is placed into the extrusion press, a powerful hydraulic device wherein a ram pushes a dummy block that forces the softened metal through a precision opening, known as a die, to produce the desired shape. This simplified description of the process is known as direct extrusion, which is the most common method in use today. Indirect extrusion is a similar process. In the direct extrusion process, the die is stationary and the ram forces the alloy through the opening in the die. In the indirect process, the die is contained within the hollow ram, which moves into the stationary billet from one end, forcing the metal to flow into the ram, acquiring the shape of the die as it does so.

28. The aluminum billet may be a solid or hollow form, commonly cylindrical, and is the length charged into the extrusion press container. It is usually a cast product but may be a wrought product or powder compact. Often, it is cut from a longer length of alloyed aluminum known as a log.

29. The billet and extrusion tools are preheated (softened) in a heating furnace. The melting point of aluminum varies with the purity of the metal but is approximately 1,220°F (660°C). Extrusion operations typically take place with billet heated to temperatures in excess of 700°F (375°C), and depending upon the alloy being extruded, as high as 930°F (500°C).

30. The actual extrusion process begins when the ram starts applying pressure to the billet within the container. Various hydraulic press designs are capable of exerting anywhere from 100 tons to 15,000 tons of pressure. This pressure capacity of a press determines how large an extrusion it can produce. The extrusion size is measured by its largest cross-sectional dimension, sometimes referred to as its fit within a circumscribing circle diameter.

31. As pressure is first applied, the billet is crushed against the die, becoming shorter and wider until its expansion is restricted by full contact with the container walls. Then, as the pressure increases, the soft but still solid metal has no place else to go and begins to squeeze through the shaped orifice of the die to emerge on the other side as a fully formed extrusion or profile.

32. About 10 percent of the billet, including its outer skin, is left behind in the container. The completed extrusion is cut off at the die and the remainder of the metal is removed to be recycled. After it leaves the die, the still-hot extrusion may be quenched, mechanically treated and aged.

DOMESTIC PRODUCERS

33. The Tribunal sent a producers' questionnaire to 12 potential producers of aluminum extrusions. Almag, Apel, Can Art, Extrudex, Indalex, Metra, Signature and Spectra provided complete replies. For various reasons, only Kaiser, Kawneer Company Canada Ltd. (Kawneer), Kromet and Daymond provided replies to selected questions identified by the Tribunal's staff.

34. All those domestic producers manufacture aluminum extrusions in both custom shapes and standard shapes, except for Daymond, Kawneer and Kromet that only manufacture custom-shaped aluminum extrusions.

Almag

35. Founded in 1953, Almag is a family-owned and family-operated manufacturer of ornamental door grilles located in Etobicoke, Ontario. In 1959, it began producing aluminum extrusions. Almag now operates three extrusion presses and fabrication facilities in Brampton.

Apel

36. Apel is a privately owned producer of aluminum extrusions located in Calgary. Apel was established in 1972 as a joint venture with Alcan Aluminium Ltd. (Alcan). In 1994, Alcan sold its interest in Apel to the current private ownership group. Apel operates two extrusion presses, as well as a horizontal paint line, and has anodizing capabilities.

Can Art

37. Can Art was incorporated in 1989. In 1996, the only extrusion press line was relocated from Mississauga, Ontario, to a larger facility in Brampton, where a second extrusion press line was added. In 2001, a new facility was established in Lakeshore, Ontario, to house two new extrusion press lines. In 2008, the Lakeshore plant was expanded and a fifth extrusion press line was added.

Daymond

38. Daymond was incorporated in 1939 and was owned by the Daymond family until 1974 when it was purchased by Redpath Industries. Since then, it has been owned by Aluminart Products Limited and Profile Extrusion Company of the United States, before returning to Canadian ownership. It is located in Chatham. Daymond offers in-house anodizing and complex machining, as well as fabrication and assembly.

Extrudex

39. As a privately owned company incorporated in 1981, Extrudex has its head office and main plant, with five extrusion presses, located in Woodbridge. The company expanded its operations in 1994 with a second extrusion plant in the Quebec City area. In 1999, Extrudex expanded to Ohio, United States, and built a plant with two additional extrusion presses.

Indalex

40. The Indalex group was founded in Canada in the early 1960s. With the acquisition of Easco Aluminum and Columbia Pacific Aluminum in 1999 and 2000, Indalex moved its corporate office from Canada to Lincolnshire, Illinois, United States. In 2001, the Indalex group formed Indalex International to provide offshore extrusions from China to supplement the company's North American operations. Indalex's Canadian operations are comprised of plants located in Calgary, Port Coquitlam, British Columbia, Mississauga, as well as Pointe Claire, Quebec.

Kaiser

41. Kaiser was founded in 1946 and gradually became involved in almost all aspects of the aluminum industry. The company was recently restructured and is now focused on developing fabricated aluminum products for major suppliers and manufacturers in the aerospace, general engineering, automotive and custom industrial markets. Kaiser is comprised of 10 U.S. fabrication facilities and a Canadian facility. The Canadian facility is located in London, Ontario, and specializes in soft alloy extrusions.

Kawneer

42. Kawneer was established in 1953 and is headquartered in Toronto, Ontario. It operates manufacturing facilities in Toronto and Lethbridge, Alberta, and two non-manufacturing service centres in Mississauga, and Montréal, Quebec. Kawneer is part of Kawneer North America, which is a major manufacturer of architectural aluminum building products and systems for the commercial construction industry. The product portfolio includes entrances, framing systems and windows and curtain wall systems.

Kromet

43. Kromet is a privately owned producer of aluminum extrusions fabricated to meet the decorative needs of appliance manufacturers. Kromet began in 1967 as a division spun off from Depco Inc. specializing in the fabrication of aluminum extrusions. Kromet operates out of two facilities located in Cambridge and Hamilton, Ontario.

Metra

44. Metra is a privately owned manufacturer of aluminum extrusions located in Laval, Quebec. The company started its operations in 1994 following the acquisition of the current plant and equipment from Alcan. Metra operates two extrusion presses.

Signature

45. Signature, formerly known as Bon L Canada, was formed in 1998 and is comprised of three plants located in Richmond Hill and Pickering, Ontario, as well as in Sainte-Thérèse, Quebec.

Spectra

46. Spectra's aluminum extrusion business is operated by two private, family-owned Ontario corporations: SAP and SAL. SAP began its extrusion operations in 1997 and is located in Bradford. It operates two extrusion presses. SAL was established in 1978 and operates Spectra's aluminum extrusion anodizing and dyeing facilities located in Woodbridge.

IMPORTERS, PURCHASERS AND FOREIGN PRODUCERS

47. The Tribunal sent importers' questionnaires to 50 potential importers of aluminum extrusions. It received 47 replies, of which 2 were unsolicited. There were 41 importers that reported having imported the subject goods. Among them, 22 were importers/distributors and 19 were importers/end users.

48. The Tribunal sent purchasers' questionnaires on market characteristics to 50 potential purchasers of aluminum extrusions. It received 31 replies, of which 2 were unsolicited.

49. The Tribunal sent foreign producers' questionnaires to 29 potential producers/exporters of aluminum extrusions and received 7 replies. The following companies replied to the questionnaire: PanAsia Aluminum (Macao Commercial Offshore) Limited and PanAsia Aluminum (China) Limited, Pingguo Asia, Tai Shan City Kam Kiu Aluminum Extrusion Co. Ltd. and Zhaoqing Asia Aluminum Factory Company Limited. Three replies were also provided by Hunter Douglas companies, whom are located in the United States.

PRODUCT DISTRIBUTION

50. Domestically produced aluminum extrusions are sold either to end users, such as fabricators or equipment manufacturers, or to distributors. Many domestic producers market their products through their own sales forces.

51. The channels of distribution for imported aluminum extrusions are similar to those for domestic aluminum extrusions, with both distributors and large end users directly importing products. In addition, there are brokers and traders that resell imported aluminum extrusions to distributors and end users. Some importers utilize sales agents or a dedicated sales force to contact customers.

SERVICES OFFERED BY DOMESTIC PRODUCERS OF ALUMINUM EXTRUSIONS

52. Domestic producers of aluminum extrusions may offer finishes and fabrication services as part of their aluminum extrusion manufacturing process. Types of finishes primarily include: mechanical, bright dip, anodizing, electrolytic colour, powder coat and liquid paint. Types of fabrication services primarily include: fabrication, assembly and computer numerical control (CNC) machining. These services are offered in-house or are sub-contracted out to another firm that specializes in that particular service.

PRELIMINARY MATTER

53. Prior to the commencement of the hearing, two notices of motion were filed with the Tribunal, pursuant to subrule 24(3) of the *Canadian International Trade Tribunal Rules*,⁸ by certain parties opposed to findings of injury. On February 6, 2009, Kam Kiu filed a notice of motion with the Tribunal requesting that it issue an order determining that the subject goods are limited to aluminum extrusions that have a wall thickness greater than 0.5 mm and excluding aluminum extrusions that do not have walls. On February 9, 2009, MAAX Bath, Tag Hardware and Regal Aluminum filed a notice of motion with the Tribunal requesting that it issue an order determining that the subject goods do not include aluminum parts imported from China.

54. On February 13, 2009, the Tribunal issued two orders dismissing the motions. The following are the Tribunal's reasons for its decisions.

Notice of Motion Filed by Kam Kiu

55. The arguments in support of the motion can be summarized as follows. Kam Kiu submitted that the subject goods are defined by reference to a minimum wall thickness, thereby limiting the definition of the subject goods to aluminum extrusions that have walls with a thickness greater than 0.5 mm and excluding from the definition of the subject goods all aluminum extrusions that do not have walls. It further submitted that the Tribunal must strictly apply the definition of the subject goods set out in the CBSA's preliminary determinations and is not permitted to amend, revise or reinterpret the definition in order to increase or decrease the range of goods that fall within the definition. In Kam Kiu's view, the Tribunal is required to apply the product definition, as it is written (excluding the additional product information provided by the CBSA), and this definition excludes all aluminum extrusions that do not have walls, i.e. solid aluminum extrusions, from the scope of the subject goods.⁹

8. S.O.R./91-499.

9. On February 10 and 11, 2009, Sinobec, ZMC and Kromet filed letters supporting Kam Kiu's motion.

56. The parties in support of injury findings (Almag, Apel, Can Art, Extrudex, Metra, Signature and Spectra) replied that it is not within the Tribunal's jurisdiction to amend the definition of subject goods, as established by the CBSA in its statement of reasons upon the initiation of its investigation and applied throughout its investigation in accordance with *SIMA*. They submitted that Kam Kiu is proposing an interpretation of the definition that effectively amounts to an amendment of the CBSA's definition, an amendment that is not within the Tribunal's jurisdiction to consider. They further submitted that the definition of the subject goods applies to both hollow and solid aluminum extrusions. In their view, the inclusion of solid extrusions in the scope of the subject goods is entirely consistent with the definition set out in the preliminary determinations, and Kam Kiu's interpretation ignores the context of the definition. In the alternative, they submitted that solid aluminum extrusions do in fact have walls and, therefore, have a wall thickness.

57. As it has previously stated,¹⁰ the Tribunal agrees that it cannot modify the CBSA's definition of the subject goods. Under *SIMA*, the CBSA has the exclusive jurisdiction to establish the definition of the subject goods and to determine whether a dumping or subsidizing investigation will be initiated.¹¹ However, subsection 42(1) of *SIMA* stipulates that every injury inquiry conducted pursuant to section 42 involves an examination of whether the dumping or subsidizing of "...any goods to which the preliminary determination applies..." has caused injury or retardation or is threatening to cause injury to a "domestic industry", which is in turn defined as the "...domestic producers... of the like goods..." In order to conduct its inquiry, the Tribunal must therefore ascertain the scope of the goods to which the preliminary determination applies (i.e. the subject goods).

58. For this reason, the Tribunal is of the view that it is within its jurisdiction to interpret the wording of the CBSA's definition of the subject goods in order to determine the goods to which it actually applies. In this regard, the Tribunal notes that it has previously found that, in an inquiry under section 42 of *SIMA*, it has the jurisdiction to clarify the meaning of certain words in the definition where it has difficulty ascertaining the exact scope of the goods to which the preliminary determination applies or where it finds that there is ambiguity in the definition.¹² The Federal Court of Appeal has held that "[t]o do so does not... necessarily result in a redefinition of the class of goods formulated by the [CBSA]."¹³

59. After having considered the parties' arguments, the Tribunal is of the view that there is ambiguity as to whether the definition of the subject goods includes aluminum extrusions that do not have walls. In order to dispose of Kam Kiu's motion, the Tribunal must determine whether the CBSA's preliminary determinations apply to aluminum extrusions that do not have walls. This determination requires a close examination of the text of the CBSA's preliminary determinations and statement of reasons.¹⁴ For the purpose of its analysis, the Tribunal assumes that solid aluminum extrusions do not have walls, as argued by Kam Kiu.¹⁵

60. Kam Kiu maintains that, by expressly referring to aluminum extrusions "having a wall thickness greater than 0.5 mm", the definition implicitly excludes from the scope of the subject goods aluminum

10. See *Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (2 July 1999), NQ-98-004 (CITT) at 17-18.

11. *Structural Tubing* (21 July 2003), PI-2003-001 (CITT) at 3.

12. See procedural order and reasons in *Bicycles and Frames* (3 July 1997), RR-97-003 (CITT) at 5.

13. *DeVilbiss Canada Limited v. Anti-Dumping Tribunal* [1982] F.C.J. No. 175 (F.C.A.) (QL) at para. 14.

14. Pursuant to subsection 38(1) of *SIMA*, the CBSA shall make a preliminary determination of dumping or subsidizing "... specifying the goods to which the preliminary determination applies..."

15. The Tribunal would only have to consider the alternative argument of the parties in support of injury findings, that solid aluminum extrusions do in fact have walls, should it find that the subject goods are limited to aluminum extrusions that have walls.

extrusions that do not have walls or that have a wall thickness of 0.5 mm or less. Since, in Kam Kiu's view, only hollow aluminum extrusions have walls, it concludes that solid aluminum extrusions are excluded from the scope of the subject goods. In other words, Kam Kiu makes an implied exclusion argument.

61. It is important to note that an implied exclusion, as Kam Kiu argues, is merely a presumption which may be relied upon in textual analysis and, like other presumptions, can be rebutted.¹⁶ Taking into account the full context of the CBSA's preliminary determinations, the Tribunal's opinion is that the definition of the subject goods, correctly interpreted, does not exclude aluminum extrusions that do not have walls, i.e. solid aluminum extrusions.

62. The Tribunal notes that it is normal procedure for the CBSA to elaborate upon the definition of the goods to which a preliminary determination applies by providing additional product information in its statements of reasons. This additional product information provides the context necessary to understand the scope of the "... goods to which the preliminary determination applies ...". For example, in this case, while the product definition states that the subject goods are "[a]luminum extrusions produced via an extrusion process ...", the additional product information included in the statement of reasons specifies that "... the subject goods do not include goods made by the process of impact extrusion or cold extrusion."¹⁷ Without considering this additional product information, one could erroneously conclude that aluminum extrusions produced via the process of impact or cold extrusion, which constitute goods produced via an extrusion process, are included in the definition of the subject goods and that, consequently, the preliminary determinations of dumping and subsidizing apply to such goods.

63. Thus, the additional product information contained in the statement of reasons informs the CBSA's definition of the subject goods and provides essential details on the scope of goods to which the preliminary determinations apply or do not apply. In the Tribunal's opinion, this means that, in and of itself, the definition of the subject goods may not adequately circumscribe the precise scope of the "... goods to which the preliminary determination applies ...". The definition should therefore not be read in isolation. For this reason, the Tribunal is unable to accept Kam Kiu's argument that the definition of the subject goods cannot be interpreted by reference to the additional product information. In view of the above, the Tribunal finds that it must take the additional product information contained in the CBSA's statement of reasons into account in order to determine to which goods the CBSA's preliminary determinations actually apply in this inquiry and, specifically, whether they apply to aluminum extrusions that do not have walls, i.e. solid aluminum extrusions.¹⁸ Should the Tribunal fail to do so, it would be improperly ignoring the context of the definition of the subject goods.

64. The additional product information provided by the CBSA indicates that it has interpreted the definition of the subject goods as encompassing solid aluminum extrusions. Indeed, the CBSA includes the following description of the subject goods:

All aluminum extrusions are produced as either hollow or solid profiles. Hollow profile extrusions generally cost more to produce and obtain higher prices than solid profile extrusions. Extrusions are often produced in standard shapes such as bars, rods, pipes and tubes, angles, channels and tees but they are also produced in customized shapes.¹⁹

16. Ruth Sullivan, *Statutory Interpretation*, 2d ed. (Toronto: Irwin Law, 2007) at 193.

17. Tribunal Exhibit NQ-2008-003-01A, Administrative Record, Vol. 1 at 23-24.

18. This finding is consistent with the Tribunal's jurisprudence. See, for example, *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at 10, where the Tribunal interpreted the definition of the goods in light of the additional product information provided by the CBSA in its statement of reasons.

19. Tribunal Exhibit NQ-2008-003-01A, Administrative Record, Vol. 1 at 24.

65. Clearly, this description does not restrict the subject goods to hollow aluminum extrusions. To the contrary, in its description of the subject goods, the CBSA refers specifically to the cost difference between hollow profile extrusions and solid profile extrusions, which, in the Tribunal's opinion, constitutes a clear indication that solid profile extrusions are included in the definition of the subject goods.

66. Furthermore, while it contends that solid aluminum extrusions do not have walls and are therefore not covered by the CBSA's definition of the subject goods, Kam Kiu did not dispute the assertions of the parties in support of injury findings that the CBSA has included both solid and hollow aluminum extrusions when it carried out its dumping and subsidy investigations in accordance with its jurisdiction under *SIMA*. Kam Kiu also agrees that the CBSA has collected information with respect to solid aluminum extrusions. This also provides a clear indication that the CBSA included both solid and hollow aluminum extrusions in the scope of the subject goods and that, as a result, the preliminary determinations apply to both solid and hollow aluminum extrusions.

67. Therefore, the Tribunal is of the view that the definition of the subject goods cannot be reasonably interpreted to exclude solid aluminum extrusions. Such an interpretation would amount to an amendment to the CBSA's definition of the subject goods.

68. Based on the foregoing, the Tribunal's interpretation is that the phrase "having a wall thickness greater than 0.5 mm" in the definition of the subject goods means that the subject goods, *that have walls*, must have walls with a thickness greater than 0.5 mm. In the Tribunal's opinion, had the CBSA intended to exclude aluminum extrusions that do not have walls, including solid aluminum extrusions, from the scope of the subject goods, it would have done so expressly and would not have investigated the dumping and subsidizing of solid aluminum extrusions such as bars and rods.

69. For these reasons, the Tribunal concludes that the definition of the subject goods does not exclude aluminum extrusions that do not have walls and that the preliminary determinations of dumping and subsidizing apply to solid aluminum extrusions.

Notice of Motion Filed by MAAX Bath, Tag Hardware and Regal Aluminum

70. The arguments in support of the motion can be summarized as follows. MAAX Bath, Tag Hardware and Regal Aluminum (the requesting parties) submitted that the definition of the subject goods limits the subject goods to aluminum extrusions produced via an extrusion process, that aluminum parts are distinct from aluminum extrusions and that the CBSA has improperly expanded the scope of the subject goods by including aluminum parts in the definition of the subject goods after the issuance of the preliminary determinations of dumping and subsidizing. In support of their arguments, the requesting parties filed a confidential letter, dated December 29, 2008, which was sent by the CBSA to a Chinese exporter. This letter addresses the issue of whether certain goods are subject to the CBSA's investigation. They also filed an affidavit signed by Mr. Stephen Lawson, President of Tag Hardware, who provided his views on the alleged distinction between aluminum extrusions and aluminum parts. Based on Mr. Lawson's opinion, the requesting parties submitted that an aluminum part is created from an aluminum extrusion at the point where the fabrication of an extrusion results in a cut-to-length product that has a single, specific use. In their view, the definition of the subject goods does not include such aluminum parts.²⁰

20. On February 10 and 11, 2009, Sinobec, ZMC and Kromet filed letters supporting the requesting parties' motion.

71. The parties in support of injury findings replied that the Tribunal does not have the jurisdiction to issue an order determining that the definition of the subject goods does not include aluminum parts imported from China. They submitted that, as is acknowledged by the requesting parties themselves, the Tribunal must apply the definition of the subject goods established by the CBSA and does not have the authority to change the scope of the goods to which the preliminary determinations apply. In their view, the requesting parties are in effect asking the Tribunal to do exactly that under the guise of interpretation.

72. As discussed above, while the Tribunal may, in certain circumstances, interpret the CBSA's definition of the subject goods, it cannot adopt an interpretation that results in a redefinition of the subject goods. The Tribunal does not have the jurisdiction to amend, revise or narrow the scope of the definition of the subject goods. In order to circumscribe the scope of the "... goods to which the preliminary determination applies ...", the Tribunal may also take into account the additional product information provided by the CBSA.

73. The Tribunal notes that the requesting parties' motion is based on a purported clear distinction between aluminum extrusions, on the one hand, and a category of products that they designate as aluminum parts, on the other. Put simply, their position is that aluminum extrusions and aluminum parts, as the latter category is defined in the motion, are two mutually exclusive categories of products and that, since the definition of the subject goods is limited to aluminum extrusions, it does not include aluminum parts.

74. The Tribunal does not share this view. In order to determine whether aluminum products are subject goods, the issue that needs to be resolved is whether any given product meets the definition of the subject goods, not how such a product is labelled or categorized by the requesting parties. In the Tribunal's opinion, goods that are aluminum extrusions and, as such, meet the conditions of the definition of the subject goods could also be considered aluminum parts, as this category of products is defined by the requesting parties. Therefore, the subject goods may include aluminum parts, as this category is described by the requesting parties.

75. This is made clear by the wording of the definition of the subject goods and confirmed by the additional product information provided by the CBSA in its statement of reasons. The definition states that the subject goods are "[a]luminum extrusions produced via an extrusion process . . . with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, *whether or not worked . . .*" [emphasis added]. Thus, aluminum extrusions that are further worked are included in the definition of the subject goods. In this regard, the additional product information provides as follows:

Working or fabricating extrusions includes any operation performed other than mechanical, anodized, painted or other finishing, prior to utilization of the extrusion in a finished product. *These can include precision cutting, machining, punching and drilling.*²¹

[Emphasis added]

76. It is clear from the above that the subject goods may be cut to length. Thus, contrary to the requesting parties' argument, the process of cutting to length does not disqualify such fabricated extrusions from being subject goods. While cut-to-length products may be considered aluminum parts by the requesting parties, they may nonetheless still meet the conditions of the definition of the subject goods.

21. Tribunal Exhibit NQ-2008-003-34 (single copy), public record of Preliminary Injury Inquiry No. PI-2008-002.

77. With respect to the argument that, whereas aluminum extrusions can be used in the production of a range of goods, aluminum parts are distinct because they are limited to a specific use as parts of finished goods, the Tribunal notes that the definition of the subject goods, as clarified by the additional product information, does not limit the scope of the subject goods on the basis of end use. In the Tribunal's opinion, the definition is sufficiently broad to include goods that have a single use. Indeed, custom-shaped aluminum extrusions, which are clearly subject goods, are typically manufactured to serve a specific use. In other words, while aluminum inputs that have a single, specific end use may be considered aluminum parts as opposed to aluminum extrusions by the requesting parties, such goods may still meet the conditions of the definition of the subject goods.

78. In summary, the Tribunal is of the view that the definition of the subject goods includes aluminum extrusions that have been further processed to a certain extent and finds that, as a result, goods generically described as aluminum parts by the requesting parties are not necessarily excluded from the scope of the goods to which the preliminary determinations apply. An order determining that the subject goods do not include aluminum parts imported from China would amount to an amendment to the CBSA's definition of the subject goods because it would effectively restrict the scope of this definition. As discussed above, the Tribunal does not have the authority to make such an amendment.

79. The Tribunal further notes that it will be the CBSA's role to determine, on the basis of all the facts at the time of importation, what goods will ultimately be subject to anti-dumping or countervailing duties in the event of an injury finding. The CBSA's classification and determination at that time could be subject to an administrative review, an objection, a re-determination and, subsequently, an appeal before the Tribunal.²²

80. For these reasons, the Tribunal dismisses the motions filed by the requesting parties.

ANALYSIS

81. In the present case, pursuant to subsection 42(1) of *SIMA*, the Tribunal is required to inquire as to whether the dumping or subsidizing of the subject goods 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 defined 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 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."

82. In order to exercise its jurisdiction under *SIMA*, the Tribunal must therefore first determine what constitutes "like goods" in this inquiry. A related question is whether, within the subject and like goods, there is more than one class of goods. On this issue, as noted above, the Tribunal informed the parties on December 18, 2008, that it had determined that there were two classes of goods in this inquiry, namely, aluminum extrusion products produced in standard shapes and aluminum extrusion products produced in custom shapes. The Tribunal will provide the reasons for this determination in this statement of reasons. In view of the Tribunal's determination that there are two classes of goods in this inquiry, it will then identify the domestic producers that constitute the "domestic industry" for each class in order to conduct a separate injury analysis for each class.

22. See sections 55 to 62 of *SIMA*.

83. Given that the CBSA has determined that the subject goods were dumped and subsidized, the Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effects) in this inquiry.

84. The Tribunal will then determine whether the dumping or subsidizing of the subject goods has caused injury to the domestic industry. In this regard, the Tribunal notes that it must conduct separate injury analyses and make a decision with respect to each class of goods that it has identified.²³ Should the Tribunal arrive at findings of no injury for one or both classes, it will then determine whether there exists a threat of injury.²⁴ If necessary, the Tribunal will consider the question of retardation.²⁵

85. In conducting its injury analyses, the Tribunal will also examine other factors alleged to have had an impact on the domestic industry to ensure that any injury caused by such factors is not attributed to the effects of the dumping or subsidizing of the subject goods.

Like Goods and Classes of Goods

86. Given that the Tribunal must determine whether the dumping or subsidizing of the subject goods has caused, or is threatening to cause, injury to the domestic producers of like goods, the Tribunal must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods.

87. 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.

88. When goods are not identical in all respects to other goods, the Tribunal typically considers a number of factors to determine “likeness”, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.²⁶

89. In its preliminary injury inquiry, the Tribunal found that the aluminum extrusions produced in Canada are “like goods” in relation to the subject goods because they closely resemble the subject goods in terms of physical characteristics, market characteristics and end uses. During the final injury inquiry stage, the parties did not adduce any evidence or file submissions in order to dispute the Tribunal’s preliminary findings on this issue.²⁷ In fact, the vast majority of purchasers that replied to the Tribunal’s questionnaires

23. *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283.

24. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury under subsection 43(1) of *SIMA* unless it first makes a finding of no injury.

25. Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry”. Therefore, should the Tribunal determine that a domestic industry is already established, it will not need to consider the question of retardation.

26. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at 8 [*Copper Pipe Fittings*]; *Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at 7 [*Oil and Gas Well Casing*].

27. As discussed below, in their submissions on classes of goods, the parties opposed to findings of injury argued that there are multiple classes of goods in this inquiry. However, they did not argue that the goods produced in Canada are not like goods in relation to the subject goods.

indicated that aluminum extrusions produced in Canada and the subject goods are physically or functionally interchangeable.²⁸ Moreover, at the hearing, certain parties opposed to injury findings acknowledged that the aluminum extrusions produced by the complainants constitute like goods in relation to the subject goods.²⁹

90. On the basis of the evidence before it, the Tribunal sees no reason to depart from its preliminary determination. The Tribunal is of the opinion that the aluminum extrusions produced in Canada closely resemble the subject goods in terms of physical and market characteristics, are manufactured by methods that also apply to the subject goods, have similar end uses and fulfil the same or similar customer needs. The evidence also indicates that the aluminum extrusions produced by the domestic producers generally compete with the subject goods in the Canadian market.³⁰ Accordingly, for the purposes of this injury inquiry, the Tribunal finds that domestically produced aluminum extrusions, defined in the same manner as the subject goods, constitute like goods in relation to the subject goods.

91. The Tribunal notes that, at the hearing, parties opposed to injury findings argued that, in view of the broad scope of the definition of the subject goods, it is not clear whether the goods produced by the parties that supported injury findings (Almag, Apel, Can Art, Extrudex, Metra, Signature and Spectra) constitute the full range of the like goods in this inquiry. These parties suggested that goods that are not produced by the parties that supported injury findings should also be considered like goods in relation to the subject goods. In particular, the parties referred to aluminum extrusion products that are further processed by finishers and fabricators of aluminum products and to other goods that are produced from aluminum extrusions, i.e. finished aluminum parts or components that use aluminum extrusion products as an input or that integrate aluminum extrusions assembled with other components, such as fasteners, glass, plastics, magnets.

92. Under section 42 of *SIMA*, it is on the basis of the CBSA's description of the imported goods to which the preliminary determination applies that the Tribunal must decide which domestically produced goods are the like goods for the purposes of its injury inquiry. Thus, the CBSA's description of the goods to which the preliminary determination applies will in turn set the scope of the injury inquiry and delineate the Tribunal's jurisdiction. For this reason, as noted above, the Tribunal interprets the wording of the CBSA's definition of the subject goods in order to determine the scope of its inquiry.³¹

93. In this inquiry, the CBSA has defined the subject goods as follows:

Aluminum extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by *The Aluminum Association* commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), **with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked**, having a wall thickness greater than 0.5 mm, with a maximum weight per meter of 22 kilograms and a profile or cross-section which fits within a circle having a diameter of 254 mm, originating in or exported from the People's Republic of China.

[Bold added for emphasis]

28. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 44.

29. *Transcript of Public Argument*, 20 February 2009, at 55-56, 139-40.

30. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 44-46.

31. See procedural order and reasons in *Bicycles and Frames* (3 July 1997), RR-97-003 (CITT) at 5.

94. The CBSA also provided the following additional product information:

...

In addition to 'as extruded' or mill finish, extrusions can be finished mechanically by polishing, buffing or tumbling. Extrusions can have anodized finishes applied by means of an electro-chemical process that forms a durable, porous oxide film on the surface of the aluminum. Also, they can be finished with liquid or powder paint coatings utilizing an electrostatic application process.

...

Working or fabricating extrusions includes any operation performed other than mechanical, anodized, painted or other finishing, *prior to utilization of the extrusion in a finished product*. These can include precision cutting, machining, punching and drilling.³²

...

[Emphasis added]

95. In light of this definition and additional information, the Tribunal is of the view that the subject goods and, therefore, the like goods include aluminum extrusion products that have been further processed, but only to a certain extent. For example, the wording of the definition and the contextual guidance provided by the additional product information make it clear that aluminum extrusion products that have been anodized, painted or otherwise coated, and worked (e.g. precision cut, machined, punched and drilled) are included in the scope of the like goods.

96. However, the Tribunal considers that the definition of the subject goods cannot be reasonably interpreted to include finished aluminum goods that are processed or manufactured to such an extent that they no longer possess the nature and physical characteristics of an aluminum extrusion as such but have become a different product. The additional product information supports this conclusion by limiting the relevant working and fabricating operations to steps that occur prior to the utilization of the extrusions in a finished product. The Tribunal further notes that the fact that the additional product information does not refer to the assembly of aluminum extrusions with other components, also supports this conclusion.

97. Accordingly, the Tribunal is of the view that finished goods that incorporate aluminum extrusion products as an input or that join together aluminum extrusions with other materials are not like goods in relation to the subject goods. In the Tribunal's opinion, such goods are produced from aluminum extrusions by users of aluminum extrusions. As such, they constitute downstream products of a different nature. The evidence on the record does not indicate that such products, which are produced and sold by users or purchasers of aluminum extrusions and, as such, fulfil different customers needs, closely resemble the subject goods in terms of physical and market characteristics.

98. Basing its conclusion on the foregoing, the Tribunal is of the view that the above definition and additional information provided by the CBSA limit the scope of the like goods. The descriptions taken together lead the Tribunal to find that the like goods are limited to goods that can be characterized as aluminum extrusions and that are not manufactured beyond the fabrication and finishing processes referred to in these descriptions, which include anodizing, painting or otherwise coating, precision cutting, machining, punching and drilling.

32. Tribunal Exhibit NQ-2008-003-34 (single copy), public record of Preliminary Injury Inquiry No. PI-2008-002.

99. Concerning the issue of classes of goods, for the purposes of its preliminary injury inquiry, the Tribunal considered that aluminum extrusions constituted a single class of goods. However, the Tribunal stated that the arguments made in support of the existence of more than one class of goods warranted further consideration and that the question as to whether there could exist more than one class of goods was an issue that would need to be fully addressed during an inquiry under section 42 of *SIMA*.

100. Accordingly, on November 18, 2008, in the notice of commencement of inquiry, the Tribunal invited interested parties to file submissions on whether there were two classes of goods in this inquiry. Specifically, the Tribunal requested that interested parties present facts and arguments on whether the following categories of aluminum extrusion products constituted separate classes of goods: (1) aluminum extrusion products produced in standard shapes; (2) aluminum extrusion products produced in custom shapes. The Tribunal defined standard-shaped aluminum extrusions as including bars and rods, pipes and tubes, angles, channels, beams and tees (H, I, Z), while custom-shaped aluminum extrusions were defined as including all shapes that are not standard shapes.

101. The parties in support of injury findings argued in favour of a single class of goods. They submitted that the physical characteristics of the subject goods (namely, the fact that all aluminum extrusions are made from the same material—aluminum) was a factor that weighed in favour of the Tribunal finding only a single class of goods. The parties that supported injury findings also argued for a single class of goods on the basis that standard and custom shapes can have identical physical characteristics (namely, the same alloy, temper, weight per metre, circumscribing circle diameter, etc.). According to the parties that supported injury findings, the only distinguishing feature is geometric shape. This distinguishing feature, they argued, could not be used as a basis to establish separate classes of goods.

102. The parties that supported injury findings also argued for a single class of goods on the basis that all aluminum extrusions are manufactured using the same equipment and press lines. Furthermore, they submitted that, because all aluminum extrusions are marketed and sold through the same channels (i.e. they are marketed and sold either to distributors or to end users directly), they should be considered a single class of goods.

103. The parties that supported injury findings further submitted that, because there is no universally accepted industry catalogue of standard-shaped aluminum extrusions and because different extruders have catalogues covering significantly different sets of standard and custom products, the subject goods should be categorized as one class of goods. With respect to customer needs and the functionality of products, the parties that supported injury findings submitted that, in nearly all applications, aluminum extrusions are used to manufacture other products requiring materials made of aluminum. In their view, this militates in favour of the existence of a single class of goods.

104. The parties opposed to injury findings argued against the existence of a single class of goods. Most parties opposed submitted that the Tribunal should, at a minimum, conduct its inquiry on the basis of the two potential classes of goods that it identified in its preliminary injury inquiry. The parties opposed that made such submissions are the following: Asia Aluminum; Railcraft; Kromet; Regal Aluminum, Tag Hardware; MAAX Bath; Extrude-A-Trim; Tiashan City Kam Kiu Aluminum Extrusion; Kam Kiu Sdn.; Kam Kiu; PanAsia; and Blinds To Go.

105. Certain parties opposed argued that even that option was inappropriate and submitted that the Tribunal should conclude that there are more than two classes of goods in this inquiry based on the specific end uses or finishes of certain aluminum extrusions. In this regard, they proposed potential alternative additional classes for the Tribunal's consideration. Vitre-Art submitted that the Tribunal should divide the

subject goods and like goods into three distinct categories—standard shapes, custom shapes, and custom shapes that are decorative and anodized. Digi-Key Corporation (Digi-Key) submitted that heat sinks for use in electronic products are distinct from other products made of extruded aluminum and constitute a separate class of goods. Hunter Douglas Canada LP (Hunter Douglas) and ZMC submitted that a determination of two classes of goods is too broad for a legal injury analysis in this inquiry and that the Tribunal should conduct a separate injury analysis for the class of goods known as aluminum extrusions for window coverings.

106. The parties opposed to injury findings raised issues and made arguments relating to the physical characteristics, manufacturing method and market characteristics, such as substitutability, channels of distribution, pricing and customer needs.

107. With respect to the physical characteristics of aluminum extrusions, the parties opposed to injury findings argued that physical characteristics are to be determined by both the composition of the goods and their appearance. They also submitted that the fact that all aluminum extrusions are made from aluminum is not a sufficient justification for treating them as a single class of goods because, among the different classes of aluminum extrusions, there are several relevant and meaningful differences in size, weight, width, height, profile, colour, tolerance and wall thickness. According to the parties opposed, many custom shapes are distinguishable from standard shapes on the basis of their specific characteristics and finishes. For example, custom shapes are manufactured to more precise tolerances and have better quality finishes by opposition to mill finish. Standard shapes, however, are products manufactured for a broader range of end uses.

108. The parties opposed also argued that the Tribunal's decision in *Fasteners*³³ to divide the subject goods into separate classes according to material (carbon steel and stainless steel) could not be used to support the complainant's request for a single class of goods. In determining that fasteners were divided into four classes of goods, the Tribunal did not rely solely on the type of steel used in the production of fasteners. The Tribunal considered a broad range of physical characteristics. For instance, the Tribunal distinguished among the fasteners on the basis of how they were designed and how they were used.

109. With respect to the question of the manufacturing method, the parties opposed submitted that there are significant differences in the manufacturing processes of standard-shaped and custom-shaped aluminum extrusions. In their view, standard-shaped aluminum extrusions are made from standard dies that the extruders have in their possession, and they are often completed to a mill finish. In contrast, custom shapes are manufactured using dies and alloys that are created to meet the customer's specific requirements and for which the customer often assumes the costs. In addition, the dies used to produce custom shapes are often subject to proprietary rights.

110. With respect to distribution channels, the parties opposed argued that custom-shaped aluminum extrusions are produced by a limited number of extruders chosen by the customer to produce that shape, typically only one extruder. An extruder decides whether or not it will produce a given custom shape. Parties opposed argued that the evidence indicates that standard shapes are sold predominantly to distributors that may or may not further process the extrusions and then resell them to end users. In contrast, custom-shaped extrusions are profiles made according to the end user's proprietary die and specifications and are therefore primarily sold directly to end users. By comparison, the parties opposed submitted that standard shapes are generally available from a broad range of extruders and are typically held in inventory by distributors.

33. *Fasteners* (7 January 2005), NQ-2004-005 (CITT) [*Fasteners*].

111. With respect to pricing, the parties opposed submitted that, in many cases, custom shapes will have a higher price, reflecting the additional costs associated with designing and producing the custom die and the higher cost of extruding some custom shapes. In contrast with standard shapes, custom shapes do require the agreement of the buyer with respect to the specifications, as well as a custom contract with a buyer contracting for unique specifications.

112. Finally, in terms of customer needs, the parties opposed submitted that standard shapes and custom shapes do not fulfill the same customer needs, as they do not compete with each other in the marketplace. They argued that a custom-shaped aluminum extrusion is a product that is designed and produced to fulfill a particular customer need. A standard-shaped aluminum extrusion, however, is a product that is made available to anyone that can make use of the particular shape. They added that, if a customer could use a standard shape instead of a custom shape, it would not invest the time, effort and added expense in designing and developing the custom shape. In the opinion of the parties opposed, this provides irrefutable evidence that aluminum extrusion products produced in standard shapes and aluminum extrusions produced in custom shapes are not substitutable products and fulfil different customer needs.

113. In view of these facts, the parties opposed submitted that standard-shaped aluminum extrusions and custom-shaped aluminum extrusions are not substitutable.

114. On December 18, 2008, after having considered the submissions and the evidence on the record, the Tribunal informed parties that it had determined that aluminum extrusion products produced in standard shapes and aluminum extrusion products produced in custom shapes constituted two separate classes of goods and that it would conduct its injury analysis on that basis.

115. In addressing the issue of classes of goods, the Tribunal typically examines whether goods allegedly included in separate classes of goods constitute “like goods” in relation to each other. If those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.³⁴

116. Following this approach, the Tribunal considered whether there are sufficient differences between aluminum extrusion products produced in standard shapes and aluminum extrusion products produced in custom shapes, based on an analysis of the above-noted factors, for determining “likeness”, to justify separating those goods into different classes. In other words, the Tribunal examined whether aluminum extrusion products produced in standard shapes and aluminum extrusion products produced in custom shapes are “like goods” in relation to one another.

117. The Tribunal notes that there is some similarity between products classified in two categories, particularly in terms of method of manufacture, physical characteristics and general end use. For example, according to the evidence, both types of extrusions are made of aluminum and are manufactured using the same equipment and according to similar processes. Also, while both types of extrusions have different specific end uses, they appear to serve the same broad purposes, i.e. as components used in the manufacture of other products requiring materials made of aluminum or as materials used in the construction of buildings and other structures.

118. However, the Tribunal is of the view that any resemblance relating to certain physical characteristics and manufacturing methods between aluminum extrusion products produced in standard shapes and aluminum extrusions produced in custom shapes is not sufficient to conclude that they are like goods and therefore constitute a single class of goods.

34. *Fasteners* at 11; see, also, *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

119. In the Tribunal's view, an extrusion process that is common to both categories does not diminish in any way the important differences that exist between standard-shaped and custom-shaped aluminum extrusions in terms of physical characteristics, customer needs and market characteristics, including substitutability, pricing, distribution channels and end uses. This is supported by the responses to the Tribunal's questionnaire on substitutability and the compilation of responses to this questionnaire issued by the Tribunal on December 4, 2008.³⁵

120. The Tribunal first notes that the overwhelming majority of respondents to the Tribunal's questionnaire on substitutability indicated that there are significant differences in terms of physical characteristics between the two categories of aluminum extrusion products.³⁶

121. In that regard, the Tribunal finds that standard-shaped aluminum extrusions are usually common products, while custom-shaped aluminum extrusions are more complex and elaborate products that are typically tailored to the specifications of the one user that orders them. Accordingly, custom-shaped aluminum extrusions are likely to possess unique properties in terms of alloy type, size, weight, width, height, profile, tolerance and wall thickness. In the Tribunal's view, this indicates that a significant distinction should be drawn between standard-shaped and custom-shaped aluminum extrusions.

122. Among other important physical differences, standard-shaped aluminum extrusions are only available in a limited number of very common shapes, while custom-shaped aluminum extrusions can be manufactured in an infinite number of different shapes. The evidence also indicates that, generally, aluminum extrusion products which have a standard shape are produced by more than one manufacturer, are characterized by their relative simple shapes and can be used in more than one application. Generally, in the case of custom shapes, the customer also provides the chosen manufacturer with the specific design and specific desired characteristics. This often entails the use of custom-made dies, whereas standard shapes are made from generally available standard dies.

123. With respect to channels of distribution, the aluminum extrusions products which have a custom shape are also normally sold by the manufacturer directly to the user that orders them, while the products which have a standard shape are generally sold to distributors that resell them to the end users. Thus, custom shapes are not "off-the-shelf" products. The Tribunal notes that only a few respondents to the questionnaire on substitutability indicated that standard-shaped and custom-shaped aluminum extrusions are usually sold through the same channels of distribution.³⁷

124. As for pricing, the Tribunal accepts the arguments according to which the custom shapes are usually sold at higher price points, since they are designed for specific purposes and are therefore usually produced in smaller quantities. The fact that they are likely to have been finished, for example, powder coated or anodized, or fabricated will translate into a higher selling price. In the Tribunal's opinion, it is also reasonable to conclude that the complexity of the dies used to produce custom shapes and the costs associated with the development of such dies would also increase the price of custom-shaped extrusions relative to that of standard-shaped extrusions.

35. Compilation of responses to the questionnaire on substitutability, Tribunal Exhibit NQ-2008-003-42, Administrative Record, Vol. 1.01 at 1-12.

36. Compilation of responses to the questionnaire on substitutability, Tribunal Exhibit NQ-2008-003-42, Administrative Record, Vol. 1.01 at 6.

37. Compilation of responses to the questionnaire on substitutability, Tribunal Exhibit NQ-2008-003-42, Administrative Record, Vol. 1.01 at 7.

125. With respect to the question of substitutability and end use, the Tribunal is of the view that aluminum extrusion products produced in standard shapes and those produced in custom shapes are not interchangeable. In fact, as they are designed for a specific use, custom shapes cannot be substituted, in most cases, with so-called standard shapes. The opposite is also true.³⁸ On balance, the Tribunal is convinced that standard shapes do not usually compete with custom shapes in the marketplace because the two categories of products do not fulfill the same customer needs.

126. In view of the above, the Tribunal has concluded that aluminum extrusion products produced in standard shapes and aluminum extrusion products produced in custom shapes are not “like goods” and, therefore, constitute two separate classes of goods.

127. The Tribunal also considered the arguments advanced by the parties that claimed that it should further separate the subject goods and like goods into more than two classes of goods, on the grounds that goods within each class identified by the Tribunal come in a wide variety of shapes and do not necessarily compete with each other. In this connection, certain parties also argued that aluminum extrusion products designed and manufactured for specific end uses (e.g. aluminum extrusions for use in electronic products, kitchen appliances, window coverings, etc.) are distinct from other aluminum extrusion products and should each constitute a separate class of goods for the purpose of the Tribunal’s injury analysis.

128. In this regard, the Tribunal notes that, in previous cases, it has stated that: (1) the fact that certain goods may not be fully substitutable for each other for some end uses is not, in and of itself, a sufficient basis for determining that there exists multiple classes of goods; and (2) goods can belong to the same class of goods even if they come in numerous styles and varieties.³⁹

129. The Tribunal further notes that, in *Solder Joint Pipe Fittings (Binational Panel)*, the panel stated the following:

...

This need for considering all factors is especially important in this case, in which the definition of like goods is shaped, to some extent, by administrative feasibility. With products such as fittings, there are a large number of distinctions that could be drawn. The Tribunal noted six subgroups within the pressure class and five within the drainage class. And it would be impractical to require the Tribunal to define many hundreds of different specific product categories on the grounds, for example, that tees and elbows do not compete with each other.⁴⁰

...

130. The Tribunal is of the view that this jurisprudence is supportive of a broad rather than a narrow approach to the application of the definition of “like goods” in *SIMA* in order to determine whether there are multiple classes of goods in an inquiry. Following this approach, it has determined that there exist two separate classes of goods in this case. After having considered all the relevant factors, the Tribunal is convinced that, while distinctions could possibly be drawn between specific products within each of the classes of goods that it has defined, these differences are not, in themselves, sufficient to warrant the creation of additional classes of goods.

38. Compilation of responses to the questionnaire on substitutability, Tribunal Exhibit NQ-2008-003-42, Administrative Record, Vol. 1.01 at 8-10.

39. *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT) [*Carbon Steel Welded Pipe*] at para. 45; *Waterproof Footwear and Bottoms* (8 December 2000), NQ-2000-004 (CITT) at 8.

40. *Solder Joint Pipe Fittings (Binational Panel)*, CDA-USA-1904-11 at 11-12.

131. In light of this jurisprudence, the Tribunal is also of the view that, in this case, much in the same way as in *Solder Joint Pipe Fittings (Binational Panel)*, to the extent that there is the possibility of a large number of individual subgroups of like goods, administrative feasibility is a matter that the Tribunal should take into account. In the Tribunal's opinion, it would be impractical and unreasonable to require that it define as many separate classes of goods as there are specific end uses for aluminum extrusions and conduct multiple injury analyses on that basis.

132. For these reasons, the Tribunal is not persuaded by the arguments made by certain parties that there exist other classes of goods beyond the two classes that have already been identified. Accordingly, the Tribunal finds that there are two classes of goods in this inquiry, namely, aluminum extrusion products produced in standard shapes and aluminum extrusion products produced in custom shapes.

Domestic Industry

133. Subsection 2(1) of *SIMA* defines "domestic industry" as follows:

... 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.

134. Given that *SIMA* defines the term "domestic industry" by reference to the domestic producers of the "like goods", the Tribunal must identify such producers in order to determine what constitutes the domestic industry. Pursuant to this definition, the Tribunal must also determine whether there has been injury or retardation or whether there is a threat of injury, against the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods. In this inquiry, since the Tribunal has determined that there are two classes of goods, it must identify the domestic producers that constitute the domestic industry for each class of goods, i.e. aluminum extrusion products produced in standard shapes and aluminum extrusion products produced in custom shapes.

135. The evidence indicates that there are 12 known Canadian producers of aluminum extrusion products. These are Almag, Apel, Can Art, Daymond, Extrudex, Indalex, Kaiser, Kawneer, Kromet, Metra, Signature and Spectra. Within this group, 3 producers manufacture only custom-shaped aluminum extrusions, namely, Daymond, Kawneer and Kromet. The 9 remaining producers manufacture aluminum extrusions in both standard shapes and custom shapes.

136. Only two producers, Kromet and Indalex, indicated that they either opposed or did not support the complaint. Kromet argued that the complainants do not have standing in this inquiry because they do not represent the majority of the domestic production of the like goods. It requested that the Tribunal terminate its inquiry on the basis that the complainants incorrectly stated that their complaint was supported by producers whose total production meets the standing thresholds set out in subsection 31(2) of *SIMA*.

137. On the question of standing, the Tribunal has previously held that whether there existed the level of support necessary for the CBSA to initiate an investigation is not an issue that is properly before the Tribunal. The Tribunal does not have jurisdiction to reconsider the CBSA's determination pursuant to subsection 31(2) of *SIMA*.⁴¹ Therefore, the Tribunal does not accept Kromet's argument that the complainants do not have standing in this inquiry.

41. *Grain Corn* (18 April 2006), NQ-2005-001 (CITT) at 11.

138. As the Tribunal stated in *Grain Corn*,⁴² the reference to “domestic industry” in subparagraph 42(1)(a)(i) of *SIMA* does not require “support” by domestic producers to trigger the Tribunal’s jurisdiction. The definition of “domestic industry” in subsection 2(1), and the thresholds therein, relate to the composition of the domestic industry for the purpose of the injury analysis.

139. On this issue, at the hearing, certain parties opposed to findings of injury argued that other producers or processors of aluminum products should be included in the domestic industry and questioned whether there is evidence that the production of the parties that supported injury findings constitute a major proportion of the total domestic production of the like goods. In particular, they submitted that domestic companies that manufacture parts using aluminum extrusion products, finishers and fabricators of aluminum extrusion products that resell finished and fabricated aluminum products in the marketplace and that assemble aluminum extrusion products with other components should also be included in the domestic industry.

140. As stated above, the Tribunal considers that finished goods produced from aluminum extrusions (e.g. goods that incorporate aluminum extrusion products as an input or that join together aluminum extrusions with other materials) are not like goods in relation to the subject goods. Therefore, the Tribunal is of the view that domestic companies that do not extrude aluminum, but rather manufacture aluminum parts or components using aluminum extrusions that they purchase from producers of aluminum extrusions, or that assemble aluminum extrusion inputs with other goods, do not produce like goods. In the Tribunal’s opinion, these producers transform the extrusions into different downstream products (e.g. car parts, ladders, window frames, etc.) and are not included in the domestic industry for the purposes of the injury analysis.

141. With respect to finishers and fabricators of aluminum extrusion products, the Tribunal heard evidence that, when the domestic producers of aluminum extrusions outsource the fabrication or finishing of aluminum extrusion products, the sub-contractors do those operations on behalf of the extruders and are essentially service providers. The extrusions that are outsourced for finishing and fabrication remain the extruder’s property and are generally returned to the extruders that, in turn, sell the products to their customers. In effect, aluminum extrusion products are provided to finishers and fabricators on a tolling basis.⁴³ In view of this evidence, the Tribunal is not convinced that finishers and fabricators that provide services to the aforementioned domestic producers of aluminum extrusions by performing certain processing steps on their products actually produce like goods. Since the extruders retain ownership of the outsourced products throughout this process and then sell the finished products to their customers, the Tribunal is of the view that the products that are sent to finishers and fabricators and then returned to the domestic producers of aluminum extrusions must be considered as part of the domestic production of the extruders.

142. The Tribunal further notes that, when asked whether any of the finishers and fabricators would in fact be customers of the domestic extruders and themselves resell aluminum extrusion products in the marketplace after they have finished or fabricated them, a witness for the domestic producers stated that such a situation is very rare and estimated that it would represent no more than 3 to 4 percent of the total domestic production of aluminum extrusions.⁴⁴ Based on this evidence, the Tribunal concludes that, even if the production of finishers and fabricators were to be included in the total production of like goods, it would amount to a very small proportion of the total domestic production.

42. *Grain Corn* (18 April 2006), NQ-2005-001 (CITT) at 11.

43. *Transcript of Public Hearing*, Vol. 2, 17 February 2009, at 301-303.

44. *Transcript of Public Hearing*, Vol. 2, 17 February 2009, at 301-303.

143. Therefore, the Tribunal is unable to accept the arguments that other unidentified producers or processors of aluminum products should be included in the definition of the domestic industry.

144. In the Tribunal's opinion, the domestic industry for custom-shaped aluminum extrusions is composed of Almag, Apel, Can Art, Daymond, Extrudex, Indalex, Kaiser, Kawneer, Kromet, Metra, Signature and Spectra. With respect to standard-shaped aluminum extrusions, the Tribunal finds that the following producers constitute the domestic industry: Almag, Apel, Can Art, Extrudex, Indalex, Kaiser, Metra, Signature and Spectra. The preponderant evidence indicates that, together, these producers account for nearly all of the domestic production of like goods in both classes.

145. Upon a careful review of the evidence, the Tribunal is also persuaded that the production of the producers that have claimed injury from dumped and subsidized imports constitute a major proportion of total domestic production of the like goods in both classes in each year of the POI. On this issue, the Tribunal notes that, as was stated by the Federal Court of Appeal in *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*,⁴⁵ the word "major", in this context, is to be construed as meaning "significant" rather than having the more precise mathematical sense of "more than one-half". In light of this precedent, the Tribunal is of the view that the total production of the producers that have claimed injury represents a significant proportion of the total domestic production of like goods throughout the POI.⁴⁶

Cross-cumulation

146. As noted above, the Tribunal must also determine whether it will make an assessment of the combined effect of the dumping and subsidizing of the subject goods, i.e. whether it will cross-cumulate. While subsection 42(3) of *SIMA* addresses cumulation, which is the assessment of the effect of the dumping of goods from more than one country, taken together, or of the subsidizing of goods from more than one country, taken together, there are no legislative provisions that directly address the issue of cross-cumulation.

147. However, as noted in previous cases, subsections 37.1(1) and (2) of the *Special Import Measures Regulations*⁴⁷ prescribe certain factors for the Tribunal to consider in making its findings. These factors have, as their focus, the effect that dumped or subsidized goods have had or may have on a number of economic indices. In this regard, the effect of dumping and subsidizing of the same goods from a particular country (in this case China) is manifested in a single set of effects caused by pricing. It is therefore the Tribunal's view that, in the conduct of an injury analysis, it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, they are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively.⁴⁸

148. Therefore, consistent with its longstanding view on the matter, the Tribunal will cross-cumulate the effects of the dumping and subsidizing of the subject goods in the present case.

45. [1986] F.C.J. No. 652 (F.C.A.).

46. *Staff Report* (Standard Shapes—protected), Tribunal Exhibit NQ-2008-003-07 (protected), Administrative Record, Vol. 2.1 at 59; *Staff Report* (Custom Shapes—protected), Tribunal Exhibit NQ-2008-003-09 (protected), Administrative Record, Vol. 2.2 at 59.

47. S.O.R./84-927 [*Regulations*].

48. See, for example, *Oil and Gas Well Casing* at 12; *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at 8; *Copper Pipe Fittings* at 12-13; *Grain Corn* (7 March 2001), NQ-2000-005 (CITT) at 14.

Preliminary Considerations

149. Before proceeding with injury analysis for each class of goods, the Tribunal deems appropriate to address the preliminary issues raised by the parties during the inquiry. These issues are those of the reliability of the data reported in the staff report, the characterization of the subject goods as “commodity products” and the notion of “margin over metal”, which were raised by the parties supporting the inquiry.

Product Mix and Reliability of Data Reported in the Staff Reports

150. Parties opposed argued that the pricing data reported by the Tribunal in its staff reports were unreliable due to product mix considerations, as they were comprised of a myriad of different products, in distinct market segments, with different alloys, finishes and fabrication.

151. In *Fasteners*, the Tribunal noted that product mix was an issue of concern in most *SIMA* cases, as it is unusual to find either a domestic industry or a group of importers that produces or imports, respectively, the identical assortments of goods year after year. In light of the especially large number of different products that are envisaged in this case, the Tribunal acknowledges the constraints inherent in using averages prices for these types of products. The impact of cost fluctuations in the price of aluminum prevents the Tribunal from comparing trends over the POI, as the movements observed in absolute prices may not necessarily reflect price competition in the market. That having been said, the Tribunal finds that the unit import and selling prices remain a reliable indicator to examine competition in the market for a specific period of the POI.

152. Nevertheless, in order to obtain data that did not raise any potential issues of product mix, the Tribunal conducted a survey of five defined common benchmark products in different product segments for custom shapes and also conducted a survey of five defined common benchmark products in different product segments for standard shapes. The Tribunal takes note of one result that is consistent across virtually all the time periods that it examined, and at both the aggregate and benchmark product levels, namely, the price of imports of the subject goods undercut the domestic industry’s selling prices, and this for both custom- and standard-shaped aluminum extrusions.⁴⁹ This conclusion is also largely corroborated by the results of the survey conducted on several accounts where sales of the subject custom shapes and subject standard shapes were competing against sales from domestic production.

153. In addition, during the course of the hearing, it was brought to the Tribunal’s attention that, because of limitations in its accounting system, one domestic producer had reported the same unit selling prices for both standard-shaped and custom-shaped aluminum extrusions and that the same unit selling prices had also been reported for domestic and export sales.⁵⁰ In order to ensure that the data reported in the staff reports were reliable, the Tribunal examined the market tables, as well as the consolidated financial statements, without this company and is satisfied that the trends reported in the staff reports remain unchanged and that the resulting impact on the unit selling prices is negligible. The Tribunal is therefore of the opinion that the issue regarding the allocation for this particular producer is inconsequential in its overall injury analysis, and this for both standard and custom shapes.

49. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 24; *Staff Report* (Standard Shapes—protected), Tribunal Exhibit NQ-2008-003-07 (protected), Administrative Record, Vol. 2.1 at 30-34; *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 227; *Staff Report* (Custom Shapes—protected), Tribunal Exhibit NQ-2008-003-09 (protected), Administrative Record, Vol. 2.2 at 31-35.

50. *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 397-98.

Commodity Nature of Aluminum Extrusions

154. Parties opposed submitted that, contrary to what was argued by the domestic producers, aluminum extrusions, especially custom-shaped aluminum extrusions, are not commodity products. It was argued that, while there are likely some commodity standard-shaped extrusions, many extrusions are specially designed for specific customers and are consequently not commodity products.

155. The Tribunal does not consider this question as a pre-requisite to examine the effects of the subject goods on prices and finds that there is no need to elaborate on whether it is a true commodity product or not. Suffice it to say that, while price might not be necessarily the most important consideration in the purchasing process of either custom-shaped or standard-shaped aluminum extrusions and may come after other factors such as quality and availability of specifications, the evidence indicates that price remains a very important consideration for most purchasers, and it is in that context that the Tribunal will conduct its analysis.⁵¹

Margin Over Metal

156. The domestic producers applied the concept of “margin over metal” in support of their position that they experienced price depression and price suppression for standard-shaped and custom-shaped aluminum extrusions. The domestic extruders submitted that “margin over metal” isolates the actual price charged for converting aluminum billet into aluminum extrusions (i.e. conversion price) and that, by doing so, it eliminates the effect on price of aluminum cost fluctuations, as well as the effects of any additional finishing or fabricating revenues.

157. The evidence on the record indicates that the price of aluminum extrusions is affected by fluctuations of the cost of aluminum and that the prices of aluminum extrusions reflect these cost fluctuations, as producers apply a pricing component called “margin over metal” above a base level which isolates the price charged for converting aluminum billet into aluminum extrusions.⁵² For domestic producers, the base level is based on the price of aluminum negotiated on the London Metal Exchange, and a rising level of the price of aluminum would normally flow through directly to the final customer, unless a fixed price was guaranteed by way of a long-term contract.⁵³

158. Although the Tribunal notes that “margin over metal” is a widely used method to establish prices of aluminum extrusions in the market, it can hardly rely on this methodology to examine the impact of the subject custom shapes and subject standard shapes on the domestic industry. This is due mostly to the fact that “margin over metal” does not take into account the pricing component of the additional finishes and fabrication, or the revenues generated by these additional processes. In addition, the Tribunal must assess the impact that the subject custom shapes and subject standard shapes have had on prices of comparable “like goods”. However, to restrict the pricing analysis to the “margin over metal” would result in an invalid comparison, as the Tribunal would be assessing the impact of the subject custom shapes and subject standard shapes, which include goods that have undergone additional finishes and fabrication, on extrusions that are mill-finished. This would exclude from the unit selling prices and from the gross margin the amounts that are generated by the additional finishes and fabrication.

51. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 42-43; *Transcript of Public Hearing*, Vol. 1, 16 February 2009, at 148-49; *Transcript of In Camera Hearing*, Vol. 1, 16 February 2009, at 16; *Transcript of In Camera Hearing*, Vol. 3, 18 February 2009, at 651.

52. *Transcript of Public Hearing*, Vol. 1, 16 February 2009, at 36.

53. *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 65, 296, 363-64.

159. Moreover, the amounts of price depression and price suppression for six of the domestic producers that support an injury finding were calculated using 2004 as the base year. The Tribunal finds no justification to use a year that falls outside the POI as a base year and notes that the analysis done by the domestic producers was done for only six producers, as opposed to the totality of the domestic industry.

160. The Tribunal will therefore not assess the impact of the subject custom shapes and subject standard shapes using this methodology and will instead rely on unit values, benchmark products, sales to top accounts and the other evidence found on the record.

CUSTOM-SHAPED ALUMINUM EXTRUSIONS

161. In terms of the relative importance of custom-shaped and standard-shaped aluminum extrusions, the Tribunal notes that the Canadian market for custom-shaped aluminum extrusions accounted for approximately \$895 million in 2007, while the market for standard-shaped aluminum extrusions represented \$230 million in that year. The Canadian production of custom-shaped aluminum extrusions also represented a considerably larger share of the total production of aluminum extrusions, with about 191,000 metric tonnes of custom-shaped aluminum extrusions being produced in 2007, compared to approximately 28,000 metric tonnes of standard-shaped aluminum extrusions. In terms of unit selling prices in the Canadian market, sales of domestically produced custom-shaped aluminum extrusions were able to command a premium of at least 20 percent over the unit selling prices of standard-shaped aluminum extrusions, and this throughout the POI.⁵⁴

Volume of Imports of Dumped and Subsidized Custom-shaped Aluminum Extrusions

162. Pursuant to paragraph 37.1(1)(a) of the *Regulations*, the Tribunal will consider the volume of the dumped and subsidized goods and, in particular, whether there has been a significant increase in the volume of imports of the dumped and subsidized goods, either in absolute terms or relative to the production or consumption of like goods.

163. Parties in support of an injury finding submitted that imports of the subject custom shapes increased every year during the POI. This was not disputed by the parties opposed.

164. The evidence indicates that imports of the subject custom shapes increased from 13,600 metric tonnes in 2005 to 21,200 metric tonnes in 2007. This represents an increase of 56 percent resulting from two consecutive increases of 36 percent in 2006 and 15 percent in 2007. Imports of the subject custom shapes represented a significant portion of total imports throughout the POI. Their share increased from 39 percent in 2005 to 50 percent in 2007. During the interim period from January 1 to September 30, 2008 (hereinafter interim 2008), the subject custom shapes were able to maintain their share of total imports by increasing imports by an additional 3,400 metric tonnes compared with the interim period from January 1 to September 30, 2007 (hereinafter interim 2007).⁵⁵

165. The United States was the other significant source of imports of custom-shaped aluminum extrusions into Canada during the POI. These imports and imports of the subject custom shapes represented about 95 percent of total imports for each year of the POI. While imports from the United States captured

54. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 216; *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06B, Administrative Record, Vol. 1.1 at 211.

55. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 218.

55 percent of total imports in 2005 and 2006, their share declined by 8 percentage points in 2007 and by a further 2 percentage points during interim 2008. Imports from other non-subject countries were very small, oscillating between 3 and 6 percent of total imports between 2005 and September 2008.⁵⁶

166. The ratio of imports of the subject custom shapes to the volume of domestic production increased from 7 percent to 11 percent between 2005 and 2007. A comparison of interim 2008 and interim 2007 shows that the ratio continued to increase, reaching 13 percent, as the volume of imports of the subject custom shapes increased, while domestic production decreased.⁵⁷

167. The ratio of imports of the subject custom shapes to domestic sales of like goods also rose throughout the POI. It increased by 6 percentage points between 2005 and 2007, from 12 to 18 percent. The comparison of the first nine months of 2008 and of 2007 reveals that the ratio increased by 4 percentage points, reaching 21 percent.⁵⁸

168. Basing its conclusion on the foregoing, the Tribunal is of the view that, over the POI, there was a significant increase in the volume of imports of the subject custom shapes in absolute terms, as well as an increase in the relative volume of imports of the subject custom shapes compared to the production and consumption of like goods.

Effects of Dumped and Subsidized Goods on Prices

169. Pursuant to paragraph 37.1(1)(b) of the *Regulations*, the Tribunal must consider the effects of the dumped and subsidized goods on the price of like goods and, in particular, whether the dumped and subsidized goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred.

Price Undercutting, Depression and Suppression

170. Parties in support of an injury finding contended that they experienced significant price undercutting for custom-shaped aluminum extrusions from 2006 to interim 2008.

171. With the exception of 2005, the Tribunal notes that, throughout the POI, the unit selling value of the subject custom shapes was constantly below the unit selling value of sales from domestic production.⁵⁹ Over the POI, the selling prices in the market for custom-shaped aluminum extrusions indicate that the subject custom shapes were undercutting domestic prices by a margin ranging between 11 and 19 percent.

172. This price undercutting is even more significant when examining sales of benchmark products. Indeed, for all the quarters in 2007 and for the three quarters in 2008 for which sales from domestic production and sales of the subject custom shapes by non-domestic producers were reported, there was significant price undercutting taking place for the benchmark products consisting of mullions and split

56. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 218.

57. *Staff Report* (Custom Shapes), Tribunal Exhibit NQ-2008-003-08, Administrative Record, Vol. 1.2 at 14; *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 218.

58. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 218, 221.

59. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 227.

mullions, door and window frames and sashes, hand rails and picture frames. The magnitude of this price undercutting was severe, often above 30 percent, and even reaching 50 percent in the case of picture frames.⁶⁰ An examination of the sales of common accounts to both domestic producers and importers of the subject custom shapes also leads to the conclusion that the prices of the subject custom shapes were constantly undercutting the prices of the domestic producers in the market.⁶¹ This confirms that price undercutting occurred not only in terms of average prices in the market as a whole but also for specific products and accounts that are comparable.

173. Regarding price depression, as noted above, in light of the fluctuations in the cost of aluminum, average unit selling prices are inconclusive in determining if price depression actually occurred. However, there was ample evidence of accounts where the domestic industry encountered competition from the subject custom shapes, whose selling prices were undercutting those of the like goods.⁶² The Tribunal finds that, in most instances, and because of the significant price undercutting in the Canadian market, due largely to the presence of the subject custom shapes, the domestic industry could simply not meet the very low prices of the dumped and subsidized custom-shaped aluminum extrusions. This resulted in lost sales as opposed to price depression.

174. Regarding price suppression, while parties in support of an injury finding submitted that they did experience price suppression during the POI, PanAsia and Kam Kiu argued that the data in the staff report do not support the position that the subject custom shapes had a price-suppressive effect.

175. The Tribunal does not agree with the position taken by PanAsia and Kam Kiu. The evidence clearly shows that, in the case of custom-shaped aluminum extrusions, the domestic industry experienced price suppression and was unable to recover the rising costs of aluminum, as well as other costs for the years 2006 and 2007. On that point, the data show that, while the domestic industry's unit cost of goods sold increased by 11 percent between 2005 and 2006, its unit selling value increased by only 8 percent. The same situation occurred between 2006 and 2007, but to a lesser degree.⁶³

176. Parties opposed argued that it was the presence of low-priced imports from the United States that was the source of the price competition and the resulting injury.

177. The Tribunal agrees that the price competition of imports from the United States cannot be ignored and impacted domestic prices. Indeed, selling prices of imports from the United States were below selling prices from domestic production. In the Tribunal's view, the evidence on the record shows that the U.S. extruders compete on prices in Canada and that the prices of U.S. extruders are generally lower than the prices of their Canadian competitors.⁶⁴ On that very point, the witness for Indalex testified that U.S. competitors are also more likely to target larger Canadian customers and try to penetrate the Canadian

60. *Staff Report* (Custom Shapes—protected), Tribunal Exhibit NQ-2008-003-09 (protected), Administrative Record, Vol. 2.2 at 34.

61. *Staff Report* (Custom Shapes—protected), Tribunal Exhibit NQ-2008-003-09 (protected), Administrative Record, Vol. 2.2 at 36-41.

62. Tribunal Exhibit NQ-2008-003-12.03 (protected), Administrative Record, Vol. 4B at 86; Tribunal Exhibit NQ-2008-003-12.06 (protected), Administrative Record, Vol. 4D at 63-64, 73-74, 82, 88; Tribunal Exhibit NQ-2008-003-12.07 (protected), Administrative Record, Vol. 4D at 473-75, 477-82; Tribunal Exhibit NQ-2008-003-12.08 (protected), Administrative Record, Vol. 4E at 82-84; Tribunal Exhibit NQ-2008-003-12.10 (protected), Administrative Record, Vol. 4F at 59.

63. *Staff Report* (Custom Shapes—protected), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-09B (protected), Administrative Record, Vol. 2.2 at 227-28.

64. *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 224-25.

market by using price as one of the negotiating factors.⁶⁵ In his view, the U.S. extruders would not service the smaller domestic customers which have a premium within the marketplace, but would instead focus on larger customers that can command lower pricing resulting from volume leverage.⁶⁶ This was also corroborated by another witness.⁶⁷ One of the reasons provided to explain the low U.S. pricing in interim 2008 was the strengthening of the Canadian dollar against the U.S. dollar, which made imports from the United States more attractive.⁶⁸

178. This leads the Tribunal to conclude that the domestic producers had to compete with dumped and subsidized subject custom shapes and low-priced imports from the United States. A close look at the evidence on the record reveals that it was the aggressive pricing of the subject custom shapes that led the way. This was supported by the testimony that China was the “real low-price leader”.⁶⁹ The evidence clearly demonstrates that competition from China was much fiercer than competition from the United States.⁷⁰ This conclusion is also supported by information collected through purchasers’ questionnaires where 20 out of 23 purchasers stated that China had an advantage over Canada with respect to the lowest price. In the case of the United States, 10 out of 18 purchasers indicated that U.S. prices were comparable with Canadian prices, while 3 gave an advantage to Canada and 5 to the United States.⁷¹

179. In the Tribunal’s view, while imports from the United States were undercutting domestic prices and some of the price suppression and lost sales could have been caused by imports from the United States, the level of price undercutting and the resulting price suppression observed in the market were magnified by the presence of dumped and subsidized subject custom shapes. Absent the presence of the subject custom shapes in the market, the Tribunal is of the view that the selling prices of both Canadian producers and U.S. importers would have been higher.

180. The Tribunal therefore finds that most of the price undercutting and price suppression that took place over the POI is attributable to the dumping and subsidizing of the subject custom shapes.

Conclusion

181. The Tribunal concludes that the dumped and subsidized goods have significantly undercut and suppressed the prices of like goods in the Canadian market.

Impact of Dumped and Subsidized Imports on the Domestic Industry

182. Pursuant to paragraph 37.1(1)(c) of the *Regulations*, the Tribunal will consider the resulting impact of the dumped and subsidized goods in light of all relevant economic factors and indices that have a bearing on the state of the domestic industry.

183. Parties in support of an injury finding submitted that, as a result of the imports of dumped and subsidized subject custom shapes, they lost orders, which resulted in reduced sales revenues and lost market share and led to a significant deterioration in both the gross margin and net income. They also stated that their unused production capacity led to declines in employment and wages.

65. *Transcript of Public Hearing*, Vol. 4, 19 February 2009, at 551.

66. *Transcript of Public Hearing*, Vol. 4, 19 February 2009, at 552-53.

67. *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 243-46.

68. *Transcript of Public Hearing*, Vol. 4, 19 February 2009, at 552.

69. *Transcript of In Camera Hearing*, Vol. 3, 18 February 2009, at 576.

70. *Transcript of Public Hearing*, Vol. 1, 16 February 2009, at 242; *Transcript of Public Hearing*, Vol. 2, 17 February 2009, at 365-66.

71. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 48.

184. In opposition, PanAsia and KamKiu argued that there is no positive evidence of injury caused by the subject custom shapes. They stated that the domestic producers are linking their claims to the mere existence of imports and production capacity in China, rather than to the very real impact of factors that do not relate to the dumping or subsidizing.

Production, Capacity and Capacity Utilization

185. Parties in support of an injury finding submitted that the capacity utilization fell continuously during the POI. They argued that imports of the subject custom shapes represented a small proportion of the domestic producers' available production capacity during the POI, which means that domestic capacity was sufficient to supply those requirements.

186. Kromet argued that the domestic producers artificially inflated their production capacity in their responses to the producers' questionnaire, which caused the domestic producers' production capacity to be overstated. In response to this argument, the domestic producers pointed out that a conservative practical plant capacity was used as opposed to theoretical capacity and that, even if these numbers were adjusted downward, there would still be unutilized capacity in the domestic industry for every year of the POI.

187. The domestic production for custom-shaped aluminum extrusions fell by 4 percent between 2005 and 2007. After reaching a peak at 210,000 metric tonnes in 2006, an increase of 6 percent over 2005, domestic production contracted by 9 percent in 2007 to 191,000 metric tonnes, below the 2005 level. The decline in production deepened in interim 2008, with a 6 percent decrease compared to the similar period of 2007.⁷²

188. The domestic industry's production capacity increased by 2 percent in 2006 and remained stable in 2007. In interim 2008, it increased by 2 percent from interim 2007 levels.⁷³ In terms of capacity utilization, the rate for custom-shaped aluminum extrusions remained constant in 2005 and 2006 at 58 percent. In 2007, it fell to 53 percent, followed by another decrease in interim 2008 when it reached its lowest point at 50 percent. Even when taking into consideration the production of standard-shaped aluminum extrusions, the Tribunal notes that the domestic industry had significant unused capacity throughout the POI.⁷⁴ This is consistent with the testimony that the domestic producers had overcapacity throughout the POI and the evidence that they had the capacity to meet the demand of the Canadian market.⁷⁵ Therefore, in the Tribunal's view, with respect to capacity utilization, it was the significant presence of the imports of dumped and subsidized subject custom shapes, especially in 2007 and the first nine months of 2008, which had a significant negative impact on the capacity utilization rates experienced by the domestic producers.

189. Regarding the fact that the production capacity may have been overstated, the Tribunal agrees with the domestic producers that, even if it had been slightly inflated because of variations in the calculation methodology used, this would not change its view that there was significant overcapacity, as well as a decline in capacity utilization for custom-shaped aluminum extrusions.

72. *Staff Report* (Custom Shapes), Tribunal Exhibit NQ-2008-003-08, Administrative Record, Vol. 1.2 at 14.

73. *Staff Report* (Custom Shapes—protected), Tribunal Exhibit NQ-2008-003-09 (protected), Administrative Record, Vol. 2.2 at 53.

74. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 53.

75. *Transcript of Public Hearing*, Vol. 1, 16 February 2009, at 41-42, 206-208; *Staff Report* (Custom Shapes), Tribunal Exhibit NQ-2008-003-08B (protected), Administrative Record, Vol. 2.2 at 221; *Staff Report* (Custom Shapes), Tribunal Exhibit NQ-2008-003-08, Administrative Record, Vol. 2.2 at 53.

Sales from Domestic Production and Market Share

190. Parties in support of an injury finding stated that imports of the subject custom shapes increased every year of the POI in both growing and shrinking Canadian markets. They also argued that the market share captured by the subject custom shapes was taken at the expense of the domestic producers' market share, not the imports from the United States.

191. Between 2005 and 2007, the size of the Canadian market for custom-shaped aluminum extrusions increased by about 6 percent, from 148,600 metric tonnes to 157,900 metric tonnes. The Tribunal notes that, during that period, the domestic industry was unable to benefit from this growth, as sales from imports of the subject custom shapes gained 3 percentage points of market share to the detriment of sales from domestic production that declined by exactly the same number of percentage points. During the same period, sales of imports from the United States remained stable at 13 percent, while sales of imports from other non-subject countries were very small, at 1 percent.⁷⁶

192. Between 2005 and 2007, the market share of sales from domestic production decreased from 77 percent to 74 percent. The situation deteriorated further in interim 2008. Although the Canadian market increased by 3 percent in this period compared to the same period in 2007, domestic producers' sales of like goods decreased by 3 percent and reached their lowest level of market share at 71 percent, a decline of 5 percentage points from a share of 76 percent in interim 2007. In contrast, in interim 2008, the market share held by imports of the subject custom shapes did benefit from the growth in the Canadian market, as the subject custom shapes increased and reached 14 percent of market share, their highest percentage over the POI. Sales of imports from the United States gained 2 percentage points of market share during interim 2008, while sales of imports from other non-subject countries remained at 1 percent.⁷⁷

193. The evidence on the record demonstrates that, from 2006 to interim 2008, imports of the subject custom shapes were able to capture market share by constantly undercutting the domestic industry's selling prices, which resulted in a significant number of lost sales.⁷⁸ Although, the Tribunal noted that price undercutting was also experienced by imports from the United States, it did not lead to an increase of their market share.

194. The decline in market share experienced by the domestic industry at the expense of imports of the subject custom shapes over the POI is consistent with the testimony presented during the hearing that the domestic producers were unable to compete with the very low prices of dumped and subsidized goods from China and could simply not reduce their prices further.⁷⁹

195. The Tribunal notes that five domestic producers submitted numerous field reports and injury allegations to show that the presence of the subject custom shapes resulted in price undercutting and lost sales.⁸⁰ The Tribunal notes that some of the specific injury allegations were challenged by opposing parties.

76. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 221, 223.

77. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 221-23.

78. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 221, 223, 227.

79. *Transcript of In Camera Hearing*, Vol. 1, 16 February 2009, at 5-6, *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 281.

80. Tribunal Exhibit NQ-2008-003-12.03 (protected), Administrative Record, Vol. 4B at 84-93; Tribunal Exhibit NQ-2008-003-12.04 (protected), Administrative Record, Vol. 4B at 196-202; Tribunal Exhibit NQ-2008-003-12.06 (protected), Administrative Record, Vol. 4D at 59-88; Tribunal Exhibit NQ-2008-003-12.09 (protected), Administrative Record, Vol. 4E at 338-46; Tribunal Exhibit NQ-2008-003-12.10 (protected), Administrative Record, Vol. 4F at 59-69; Tribunal Exhibit NQ-2008-003-12.07 (protected), Administrative Record, Vol. 4D at 473-82; Tribunal Exhibit NQ-2008-003-12.05 (protected), Administrative Record, Vol. 4C at 329-52; Tribunal Exhibit NQ-2008-003-12.08 (protected), Administrative Record, Vol. 4E at 77-152.

The Tribunal carefully examined these injury allegations and considered only those that related to events that occurred during the POI. In some instances, opposing parties were able to show that some of these allegations were inaccurate or incorrect in some respect. However, on balance, the Tribunal is of the view that a sufficiently large number of these injury allegations are credible and carry enough weight to merit consideration.⁸¹ These injury allegations, in fact, substantiate other evidence on the record that shows that fierce price competition took place between the domestic and imported custom-shaped aluminum extrusions at specific projects and at specific accounts. The fact that most of these allegations related to lost sales rather than discounted sales appears to corroborate the evidence that the domestic industry was unable to meet the competition of the dumped and subsidized subject custom shapes, which resulted in lost sales and a loss of market share.

196. In sum, the Tribunal is of the view that the dumping and subsidizing of the subject custom shapes have caused injury in the forms of lost sales and market share.

Financial Results

197. Parties in support of an injury finding submitted that, during the POI, the subject custom shapes negatively affected their profit levels and that this had a detrimental impact on investment projects and returns on investment. They added that the Tribunal has already established in *Stainless Steel Round Bar*⁸² that the domestic industry does not need to be in a losing position in order to obtain protection against dumped and subsidized imports, as reduced profitability is an indicator of injury.

198. In opposition, PanAsia and Kam Kiu argued that the financial performance data provided by the seven domestic producers should not be used to represent the entire industry. Furthermore, they pointed out that the industry profits increased from \$45 million to \$49 million between 2005 and 2006, while imports of the subject custom shapes increased by 36 percent over the same period. Kromet argued that the data on the record clearly illustrate that the domestic producers were profitable throughout the POI. In addition, it noted that gross margins and sales volumes were relatively stable over the POI, with only minimal fluctuations. Kromet also submitted that, although cost of goods sold increased, the domestic producers were able to recoup a large portion of these increases by increasing their selling prices.

199. The Tribunal finds that, at the beginning of the POI, the domestic industry was relatively healthy. Indeed, the evidence shows that, compared to 2005, the consolidated domestic industry's gross margin and net income for its domestic sales increased in 2006 by 3 percent and 10 percent respectively. However, in 2007, when imports of the subject custom shapes reached their peak, both the gross margin and net income declined sharply by 14 percent and 22 percent respectively.⁸³

81. Tribunal Exhibit NQ-2008-003-12.03 (protected), Administrative Record, Vol. 4B at 86; Tribunal Exhibit NQ-2008-003-12.06 (protected), Administrative Record, Vol. 4D at 63-64, 73-74, 82, 88; Tribunal Exhibit NQ-2008-003-12.07 (protected), Administrative Record, Vol. 4D at 473-75, 477-82; Tribunal Exhibit NQ-2008-003-12.08 (protected), Administrative Record, Vol. 4E at 82-84; Tribunal Exhibit NQ-2008-003-12.10 (protected), Administrative Record, Vol. 4F at 59.

82. (4 September 1998), NQ-98-001 (CITT) [*Stainless Steel Round Bar*].

83. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 229.

200. The data reveal similar trends when examined at the gross margin and net income per-kilogram levels. Indeed, the unit gross margin remained at the same level in 2006, at \$0.71/kg, before declining to \$0.62/kg in 2007. The unit net income was at \$0.43/kg in 2005, increased to \$0.46/kg in 2006, then declined to \$0.36/kg in 2007.⁸⁴

201. For interim 2008, both gross margin and net income increased by 3 percent and 9 percent respectively compared to interim 2007. The gross margin and net income per kilogram also increased, but were still at levels that were lower than in both 2005 and 2006.⁸⁵

202. The Tribunal is of the opinion that the fact that the domestic industry as a whole was profitable throughout the POI does not negate the fact that the subject custom shapes significantly impacted its financial position. Absent the dumped and subsidized imports, the Tribunal is convinced that the domestic industry would have been in a position to generate additional revenues and achieve higher margins and would not have experienced the significant deterioration observed in 2007. Indeed, price undercutting, which translated into lost sales and price suppression, led in turn to lost revenues. This had a significant impact on the domestic industry's gross margins and net income before taxes.

203. In the Tribunal's view, the domestic industry's declining financial profitability and foregone revenues are largely due to the fact that it lost sales volume and experienced price suppression due to the presence of the dumped and subsidized imports in the Canadian market.

Employment and Productivity

204. Parties in support of an injury finding submitted that imports of dumped and subsidized goods caused a decline in consolidated employment.

205. PanAsia and Kam Kiu argued that the evidence submitted by the domestic producers does not establish reduced employment due to the presence of the subject custom shapes. Kromet stated that, given the stability of the domestic producers' market share, reduced employment can be explained by the global economic downturn.

206. The Tribunal notes that the domestic producers' direct employment followed a declining trend throughout the POI. Indeed, the data on the record reveal that direct employment declined from 1,697 employees in 2005 to 1,547 employees in 2007, a decrease of 9 percent. For interim 2008, direct employment reached 1,446 employees, a decrease of 7 percent compared to interim 2007. The Tribunal is of the view that this loss of employment is significant, considering that some domestic producers made investments during the POI that generated new employment.⁸⁶ Wages also followed a similar trend.⁸⁷ Regarding productivity in terms of kilogram per hour worked, the data show that it remained stable throughout the POI.⁸⁸

84. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 229.

85. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 229.

86. *Transcript of Public Hearing*, Vol. 1, 16 February 2009, at 255; *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 145.

87. *Staff Report* (Custom Shapes), Tribunal Exhibit NQ-2008-003-08, Administrative Record, Vol. 1.2 at 51.

88. *Staff Report* (Custom Shapes), Tribunal Exhibit NQ-2008-003-08, Administrative Record, Vol. 1.2 at 51.

207. The Tribunal observes that the domestic producers' level of employment decreased year over year during the POI, as did their market share. In the Tribunal's view, the dumped and subsidized imports were an important cause of the decline in employment.

Inventories, Margins of Dumping and Amount of Subsidy, Return on Investments, Cash Flow, Growth and Ability to Raise Capital

208. As to inventories, the evidence indicates that the domestic producers' ratio of inventories of like goods to the volume of domestic production remained relatively stable at about 4 percent between 2005 and 2007. This ratio increased to close to 7 percent in interim 2008.⁸⁹ The Tribunal finds that the increase in inventories observed during interim 2008 is largely attributable to the declining demand in both domestic and export markets during that period. This conclusion is corroborated by the testimony of one witness, who stated that customers "continue to force inventory out of their own systems and put that onus on the suppliers".⁹⁰

209. Paragraph 37.1(1)(c) of the *Regulations* also prescribes that the Tribunal consider in its assessment "... the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods ...". The Tribunal notes that the CBSA's confidential information for custom-shaped aluminum extrusions revealed that the weighted average margin of dumping, expressed as a percentage of the export price, and the weighted average amount of subsidy, expressed as a percentage of the export price, were significant.⁹¹ The Tribunal is of the view that the negative impact of the dumped and subsidized goods on the state of the domestic industry was heightened by a margin of dumping and amount of subsidy of these magnitudes.

210. Finally, the Tribunal notes that several domestic producers claimed to have experienced negative effects with respect to other indicators of injury, namely, return on investments, cash flow, growth and ability to raise capital.⁹² In light of the Tribunal's conclusions regarding the fact that the presence of the subject custom shapes resulted in a loss of market share, lost sales and deteriorating financial performance, the Tribunal is of the opinion that the subject custom shapes also negatively impacted the domestic industry's returns on investments, cash flow, growth and ability to raise capital.

Conclusion

211. Based on the foregoing analysis, the Tribunal concludes that there exists a causal relationship between the dumped and subsidized imports of custom-shaped aluminum extrusions from China and the injury experienced by the domestic industry over the POI.

212. This injury took the form of decreasing production and capacity utilization, lost market share, lost sales, declining financial performance and reduced employment, and had a negative impact on wages, return on investments, cash flow, growth and the ability to raise capital.

89. *Staff Report* (Custom Shapes), Tribunal Exhibit NQ-2008-003-08, Administrative Record, Vol. 1.2 at 14, 55.

90. *Transcript of Public Hearing*, Vol. 4, 19 February 2009, at 538.

91. Tribunal Exhibit NQ-2008-003-02.01A (protected), Administrative Record, Vol. 2 at 56.43; Tribunal Exhibit NQ-2008-003-02.01B, Administrative Record, Vol. 1 at 106.70.

92. *Staff Report* (Custom Shapes—protected), Tribunal Exhibit NQ-2008-003-09 (protected), Administrative Record, Vol. 2.2 at 56.

213. The Tribunal also concludes that the injury to the domestic industry that is directly attributable to the dumping and subsidizing of the subject custom shapes is material and constitute injury as defined in subsection 2(1) of *SIMA*.

Other Factors

214. Parties opposed made submissions with respect to several factors other than the dumping and subsidizing that, they argued, were responsible for the injury experienced by the domestic industry. The Tribunal carefully considered these factors, as well as other factors prescribed by paragraph 37.1(3)(b) of the *Regulations*, to ensure that any injury caused by those factors is not attributed to the effects of the subject custom shapes. Following is the Tribunal's assessment of the relevant factors.

Level of Integration Regarding the Range of Services Offered by the Domestic Industry

215. The Tribunal notes that numerous opposing parties identified the lack of integration in the range of services such as finishing and fabrication within the domestic producers' companies as the cause of the injury experienced by the domestic industry. PanAsia, Kam Kiu, Extrude-A-Trim, MAAX Bath, Regal Aluminum and Tag Hardware submitted that the domestic extruders have not addressed the impact of the limitations of their production capacity and the inefficiencies associated with outsourcing. PanAsia further submitted that domestic producers are less attractive than those in the United States and China because they are not fully integrated. MAAX Bath also argued that the integration of services results in less handling and less risk of damage to the product, consequently resulting in fewer rejected products.

216. In response, parties in support of an injury finding submitted that they can and do make virtually all the finishes of the like goods. They also noted that most of them can provide hundreds of colours, many varieties of anodizing and limitless types of fabrication, whether in-house or otherwise. They further stated that outsourced finishing is a valuable business option and not a source of injury. They pointed out that even extruders that provide a full range of finishing services outsource certain specialized finishing which, they believe, can be done more effectively by service providers. It was also put forth that the capital investment makes it difficult to further integrate with the presence of the dumped and subsidized subject custom shapes.

217. The Tribunal heard testimony regarding the benefits and drawbacks associated with both extrusion facilities that are fully integrated and those that sub-contract services. The Tribunal examined this testimony, as well as information on the record regarding the domestic market and its demand for finishing and fabrication services.

218. In terms of fully integrated extrusion facilities, the Tribunal heard testimony about the benefits of integration. From a sales perspective, the following advantages of integration were indicated: it facilitates purchasing for customers, as it is one-stop shopping; cost structures are easy to access and easily quoted to customers; there are faster response times for drawings and samples; it is less expensive to test the quality of an extruder; and there are better delivery times and more control over delivery times because product is less subject to third-party capacity limitations.⁹³ From a quality perspective, the advantages of integration were the following: the extruder has full control over quality; less transportation results in less handling; and there is a reduced potential for rejected product.⁹⁴ Finally, from a financial perspective, the advantages of integration were the following: the extruder can re-melt a trial product or faulty product and reduce waste; services are less expensive when done in-house; and in-house finishing and fabrication result in better margins.⁹⁵

93. *Transcript of Public Hearing*, Vol. 3, 18 February 2009, at 436-37, 443-45; *Transcript of Public Hearing*, Vol. 4, 19 February 2009, at 483; *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 436-39.

94. *Transcript of Public Hearing*, Vol. 3, 18 February 2009, at 436-37, 442-45.

95. *Transcript of Public Hearing*, Vol. 3, 18 February 2009, at 443-45; *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 449-50; *Transcript of In Camera Hearing*, Vol. 3, 18 February 2009, at 614.

219. On the other hand, the testimony also indicates that subcontracting work provides other benefits. The benefits from a sales perspective are as follows: it allows customers access to more varied and specialized services because a subcontractor offers expertise that an extruder may not have; the subcontractor would have the specialized equipment; and the subcontractor is able to perform the service in just as timely a manner and does not add time to the process.⁹⁶ From a quality perspective, the following benefits were indicated: subcontractors offer a high-quality product; and customers can work with the extruder to ensure quality with the subcontractor.⁹⁷ From a financial perspective, the benefits include that it can be more economical to subcontract work when there is not sufficient demand to integrate a particular service into an extruder's offerings or when it is beyond economic viability to install a new service line. In addition, subcontracting may ensure that there is less idle machinery when a service is not in demand or when there is a market contraction.⁹⁸ Finally, from a competitive standpoint, the Tribunal heard that, even through subcontractors, extruders are able to remain price competitive in the market and that, if non-integration was such a disadvantage, all extruders would be fully integrated.⁹⁹

220. Although the choice to integrate is a decision undertaken by the extruder, the Tribunal notes that this choice does have an impact on its customer base. The Tribunal heard testimony concerning the weight that a purchaser gives to whether an extruder is fully integrated or not. Depending on the end use of the aluminum extrusion, a purchaser may require additional work to be done by the extruder if it is incapable of doing it itself due to time or ability restrictions.¹⁰⁰ When a purchaser believes that there is a lesser degree of control over quality or delivery time, when numerous services are being provided through many subcontractors, it will opt for an extruder that is fully integrated and this will become a deciding factor in their choice of extruder.¹⁰¹

221. In light of the benefits of integration and the subcontracting of services, as well as purchaser preferences, the Tribunal examined whether or not there was any correlation between an extruder's degree of integration and its financial performance. In its examination, the Tribunal found that there was no correlation between having a higher degree of integration and improved financial performance compared to having a lesser degree of integration.¹⁰² In fact, the domestic producers used the example of the picture frame business to demonstrate that integration is not necessarily the answer when faced with dumped and subsidized imports. The Tribunal notes that Spectra had made the effort to integrate within the picture frame business, but was unable to gain market share in that segment due to the presence of the low-priced dumped and subsidized subject custom shapes.¹⁰³

96. *Transcript of Public Hearing*, Vol. 1, 16 February 2009, at 243-45, 271-72.

97. *Transcript of Public Hearing*, Vol. 1, 16 February 2009, at 128, 243-45.

98. *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 484-85.

99. *Transcript of Public Hearing*, Vol. 1, 16 February 2009, at 243-45, 248-49.

100. *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 152-53.

101. *Transcript of Public Hearing*, Vol. 4, 19 February 2009, at 483; *Transcript of In Camera Hearing*, Vol. 4, 19 February 2009, at 865-66.

102. *Staff Report* (Standard Shapes—protected), Tribunal Exhibit NQ-2008-003-07 (protected), Administrative Record, Vol. 2.1 at 106-115; *Staff Report* (Standard Shapes—protected), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-07B (protected), Administrative Record, Vol. 2.1 at 216; *Staff Report* (Custom Shapes—protected), Tribunal Exhibit NQ-2008-003-09 (protected), Administrative Record, Vol. 2.2 at 104-113; *Staff Report* (Custom Shapes—protected), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-09B (protected), Administrative Record, Vol. 2.2 at 250.

103. Manufacturer's Exhibit G-03 (protected) at paras. 26-28, Administrative Record, Vol. 12.

222. The Tribunal examined the demand for finishes with respect to custom shapes. From a purchaser's perspective, the Tribunal found that demand for a particular finish from all sources ranged from a low of 7 percent of purchasers requesting electrolytic colour to a high of 75 percent of purchasers requesting anodizing. The most popular finishes requested were anodizing at 75 percent and liquid paint at 39 percent.¹⁰⁴ From a domestic producer's perspective, when examining the prevalence of sales of custom-shaped extrusions for which a finish was requested, the Tribunal found that less than a third of the domestic industry's domestic sales required finishes.¹⁰⁵ The most popular finishes requested from domestic producers were anodizing and liquid paint. The Tribunal notes that the most prevalent finishes are the finishes most often integrated by domestic producers, with 38 percent of producers having the ability to anodize in-house and 62 percent having the ability to liquid paint in-house.¹⁰⁶

223. The Tribunal also examined the demand for fabrication with respect to custom shapes. The Tribunal notes that 68 percent of purchasers requested fabrication of their custom-shaped aluminum extrusions.¹⁰⁷ From a domestic producer's perspective, this represented less than one third of their domestic sales of custom-shaped extrusion products.¹⁰⁸ The Tribunal notes that 85 percent of domestic producers possess some degree of fabrication integrated into their in-house offerings.¹⁰⁹

224. In light of the above, the Tribunal is of the view that the domestic industry has integrated to meet purchasers' most frequent requests for custom-shaped extrusions. Due to the infrequency of requests for

104. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 32, 39.

105. *Staff Report* (Custom Shapes—protected), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-09B (protected), Administrative Record, Vol. 2.2 at 220; Tribunal Exhibit NQ-2008-003-12.01 (protected), Administrative Record, Vol. 4 at 22-23; Tribunal Exhibit NQ-2008-003-12.02A (protected), Administrative Record, Vol. 4 at 105; Tribunal Exhibit NQ-2008-003-12.03 (protected), Administrative Record, Vol. 4B at 33; Tribunal Exhibit NQ-2008-003-12.04 (protected), Administrative Record, Vol. 4B at 146; Tribunal Exhibit NQ-2008-003-12.05 (protected), Administrative Record, Vol. 4C at 290; Tribunal Exhibit NQ-2008-003-12.06 (protected), Administrative Record, Vol. 4D at 11; Tribunal Exhibit NQ-2008-003-12.07 (protected), Administrative Record, Vol. 4D at 426; Tribunal Exhibit NQ-2008-003-12.08 (protected), Administrative Record, Vol. 4E at 31; Tribunal Exhibit NQ-2008-003-12.09 (protected), Administrative Record, Vol. 4E at 291; Tribunal Exhibit NQ-2008-003-12.10 (protected), Administrative Record, Vol. 4F at 12; Tribunal Exhibit NQ-2008-003-12.11A (protected), Administrative Record, Vol. 4F at 247; Tribunal Exhibit NQ-2008-003-12.12 (protected), Administrative Record, Vol. 4G at 22; Tribunal Exhibit NQ-2008-003-12.13 (protected), Administrative Record, Vol. 4G at 208.

106. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 24.

107. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 30, 32, 41. Purchasers' questionnaire replies to question 39 found under collective Tribunal Exhibit NQ-2008-003-21 (protected), Administrative Record, Vol. 6.2.

108. *Staff Report* (Custom Shapes—protected), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-09B (protected), Administrative Record, Vol. 2.2 at 220; Tribunal Exhibit NQ-2008-003-12.01 (protected), Administrative Record, Vol. 4 at 22-23; Tribunal Exhibit NQ-2008-003-12.02A (protected), Administrative Record, Vol. 4 at 105; Tribunal Exhibit NQ-2008-003-12.03 (protected), Administrative Record, Vol. 4B at 33; Tribunal Exhibit NQ-2008-003-12.04 (protected), Administrative Record, Vol. 4B at 146; Tribunal Exhibit NQ-2008-003-12.05 (protected), Administrative Record, Vol. 4C at 290; Tribunal Exhibit NQ-2008-003-12.06 (protected), Administrative Record, Vol. 4D at 11; Tribunal Exhibit NQ-2008-003-12.07 (protected), Administrative Record, Vol. 4D at 426; Tribunal Exhibit NQ-2008-003-12.08 (protected), Administrative Record, Vol. 4E at 31; Tribunal Exhibit NQ-2008-003-12.09 (protected), Administrative Record, Vol. 4E at 291; Tribunal Exhibit NQ-2008-003-12.10 (protected), Administrative Record, Vol. 4F at 12; Tribunal Exhibit NQ-2008-003-12.11A (protected), Administrative Record, Vol. 4F at 247; Tribunal Exhibit NQ-2008-003-12.12 (protected), Administrative Record, Vol. 4G at 22; Tribunal Exhibit NQ-2008-003-12.13 (protected), Administrative Record, Vol. 4G at 208.

109. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 27.

certain services, the Tribunal is of the view that it is reasonable to use subcontractors to fulfil special or infrequently requested demands.

225. Nonetheless, the Tribunal notes that there is evidence that certain purchasers have specific requirements that would be better fulfilled by a fully integrated extruder and that a domestic extruder that is not integrated to a certain level may not be suitable. Therefore, the Tribunal does acknowledge that the domestic industry may have lost sales due to service limitations and that these losses would not be inconsequential. However, the Tribunal has not attributed to the dumping and subsidizing of the subject custom shapes any injury resulting from these lost sales and does not consider that any impact of service limitations on the performance of the domestic producers during the POI negates the injury caused by imports of the subject custom shapes.

Competition from Non-subject Imports

226. The parties opposed submitted that the domestic producers have not taken into account the impact of non-subject imports on the Canadian market. Imports from the United States represented a significant market share during the POI, and the unit value of the sales from those imports was lower than that of sales from imports of the subject custom shapes in 2005 and interim 2008. Imports from other non-subject countries, such as the Republic of Korea and Malaysia, were also low-priced, which indicated an injurious impact on the Canadian market. In response, parties in support of an injury finding argued that non-subject imports did not consistently increase in volume and did not gain market share in the same manner as imports of the subject custom shapes over the POI. They also noted that the average price for imports of the subject custom shapes was lower than that of like goods, with the exception of 2005, and that imports of the subject custom shapes usually offered the lowest prices in the market.

227. Imports from the United States accounted for a very important proportion of total imports over the POI. In 2005 and 2006, they were higher than imports of the subject custom shapes, representing 55 percent of the total volume of imports. Starting in 2007, the share of total imports held by imports from the United States continuously declined, to reach 45 percent in interim 2008. Over the POI, the share of imports from the other non-subject countries remained relatively stable, oscillating between 3 and 6 percent.¹¹⁰

228. As previously discussed, the evidence on the record shows that imports of custom-shaped aluminum extrusions from the United States were undercutting prices of domestically produced extrusions and were sometimes sold at lower prices than the subject custom shapes. The Tribunal notes that this was not the case of imports from other non-subject countries, as they were sold at higher prices and accounted for only a single percentage point of the total market.¹¹¹

229. In light of the above, and based on what was discussed previously as part of the pricing section, the Tribunal is of the view that imports from the United States negatively impacted the domestic industry over the POI. However, the Tribunal has not attributed to the dumping and subsidizing of the subject custom shapes any injury resulting from imports from the United States and does not consider that any negative effect resulting from these imports on the performance of the domestic producers during the POI negates the injury caused by imports of the dumped and subsidized subject custom shapes.

110. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 218.

111. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 223, 227.

Exports Sales to the United States

230. As a preliminary matter, the Tribunal notes that parties made extensive submissions on how it should treat the domestic producers' export performance in its assessment of injury. The parties opposed submitted that the domestic extruders were heavily dependent on exports. They mentioned that reduced exports to the United States were largely connected to the general economic downturn because the U.S. and the Canadian markets were generally viewed as one. They further argued that the negative impact of reduced exports cannot be attributable to the subject custom shapes. In response, parties in support of an injury finding submitted that the Tribunal has to assess injury to sales from domestic production and that performance on export sales is not a cause of injury to the domestic market.

231. Consistent with its past practice, the Tribunal has focused its analysis in this case primarily on the impact of the dumping and subsidizing on the domestic market. However, the Tribunal has assessed the materiality of the injury caused by the dumping and subsidizing against the domestic industry's production of like goods as a whole.¹¹²

232. The Tribunal notes that the domestic producers' export sales, which amount to approximately 40-percent of their total production and total sales during the POI, declined by 15 percent in 2007 compared to 2006. In interim 2008, they remained at the level of interim 2007.¹¹³

233. Some witnesses testified that an important market decline in the United States in 2007 and 2008 was responsible for this lower level of export sales.¹¹⁴ Competition for sales of custom-shaped aluminum extrusions became increasingly fierce, and prices for a similar product were lower in the United States than in Canada.¹¹⁵ There was also evidence that, since U.S. customers are large users of aluminum extrusions, they order larger quantities at a time and benefit from some economies of scale.¹¹⁶ Moreover, witnesses testified that the appreciation of the Canadian dollar was also a factor that contributed to the overall deterioration of the domestic producers' export performance during this period.¹¹⁷

234. Regarding any injury caused by a weaker export performance, the Tribunal observes that the financial returns on export sales for domestic producers were lower than the returns on domestic sales during the POI. The Tribunal notes that, although the unit gross margin on exports sales was significantly lower than the unit gross margin on domestic sales, the domestic industry did not incur any loss on its exports. The Tribunal is consequently of the view that the domestic producers' exports may have actually aided their overall operation by contributing to a higher utilization rate and higher productivity and by spreading fixed costs over a larger production volume.

112. See *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 15. [*Flat Hot-rolled Sheet and Strip*].

113. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 221; *Staff Report* (Custom Shapes), Tribunal Exhibit NQ-2008-003-08, Administrative Record, Vol. 1.2 at 14, 28.

114. *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 238; *Transcript of Public Hearing*, Vol. 3, 18 February 2009, at 407-408; *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 249-50; *Transcript of In Camera Hearing*, Vol. 4, 19 February 2009, at 833.

115. *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 238-39.

116. *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 238-39, 358-59.

117. *Transcript of Public Hearing*, Vol. 1, 19 February 2009, at 49-52, 258-60.

235. Nonetheless, it is clear that the domestic industry was impacted by a weaker export performance compared to sales in the domestic market. The Tribunal has therefore not attributed to the dumping and subsidizing of the subject custom shapes any injury resulting from the weaker performance of the export sales and does not consider that this factor negates the injury caused by imports of the dumped and subsidized subject custom shapes during the POI.

Contraction of Demand and Economic Downturn

236. The opposing parties stated that the domestic producers have been affected by the declining demand, which affected first the United States before affecting Canada. Their evidence was supported by the testimony of the domestic producers, as well as by specialized publications that show that demand for extrusions in North America has been declining since 2007.¹¹⁸ A witness for a foreign producer stated that the market was good in 2005 and 2006, but began to decline in 2007 due to the decline in the U.S. housing market, the softening activity in the automotive and other manufacturing sectors and the strengthening of the Canadian dollar. He also stated that the decline continued in 2008 and accelerated in September 2008.¹¹⁹ Kromet submitted that the domestic producers themselves recognized that the economic downturn has resulted in a decrease in demand for aluminum extrusions.¹²⁰

237. Parties in support of an injury finding took the position that the total Canadian market started to decline due to the global recessionary conditions in the last quarter of 2008. They also submitted that the POI was one of the most buoyant periods in the recent Canadian economy and that any problems that they encountered were not due to the global economic downturn, which began in October and November 2008.

238. The Tribunal notes that the total apparent market declined by 3 percent in 2007 and increased by the same percentage in interim 2008 when compared to interim 2007.¹²¹ Although the Tribunal agrees with the domestic producers that the impact on the Canadian demand for extrusions was felt more in the last quarter of 2008, the Tribunal is of the view that the domestic industry, along with the North American industry, has been affected by this economic downturn, starting in specific export market segments, such as the U.S. housing industry in 2007, and spreading to reach all sectors of the Canadian economy in the last quarter of 2008. Indeed, the lack of demand in the United States impacted the price level of imports from the United States, as price became a driving factor in that competition.¹²² The economic downturn in the United States has also greatly impacted the export performance of the domestic industry, as explained in greater detail above.

239. Accordingly, the Tribunal is of the view that, to a certain extent, the contraction in demand and the economic downturn negatively impacted the domestic industry during the POI. The Tribunal has not attributed to the dumping and subsidizing the impact resulting from the contraction in demand and the economic downturn and does not consider that this factor negates the injury caused by imports of the dumped and subsidized subject custom shapes during the POI.

118. Importer's Exhibit O-01 at paras. 116-22, Administrative Record, Vol. 13; Importer's Exhibit W-02 (protected) at paras. 54-55, Administrative Record, Vol. 14; Importer's Exhibit S-03 at para. 51, Administrative Record, Vol. 13A; Importer's Exhibit JJ-03 at para. 31, Administrative Record, Vol. 13A.

119. Importer's Exhibit JJ-03 at paras. 33-36, Administrative Record, Vol. 13A.

120. Importer's Exhibit H-01 at para. 67, Administrative Record, Vol. 13.

121. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 222.

122. *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 227.

Imports of the Subject Custom Shapes by Some Producers

240. The Tribunal has considered the impact of imports of the subject custom shapes by some of the domestic producers over the POI.

241. The ratio of imports of the subject custom shapes by the domestic industry to total imports of the subject custom shapes was not negligible throughout the POI.¹²³

242. The ratio of imports of the subject custom shapes by the domestic industry to domestic production increased during the POI, but the level remained low. At the same time, the ratio of imports of the subject custom shapes by the domestic industry to domestic sales from domestic production also remained small, but the rate did increase over the course of the POI.

243. After examining the data, the Tribunal is of the view that the volume of the subject custom shapes imported by some of the domestic producers has negatively impacted the domestic industry. It is however important to stress that these imports of custom-shaped aluminum extrusions were made by two producers that do not support a finding of injury. Nevertheless, even when excluding the imports of the subject custom shapes by the domestic industry, the Tribunal is of the view that the injury that was caused by the remainder of the imports of the dumped and subsidized subject custom shapes is clearly material.

Intra-industry Competition

244. Several opposing parties have submitted that intra-industry competition was a major source of injury to the domestic industry over the POI. Kromet submitted that the intra-industry competition has been heightened by the new production capacity. Parties in support of an injury finding replied that, while they do compete with each other in the domestic market, this competition has further intensified due to the presence of low-priced imports of dumped and subsidized subject custom shapes that have taken market share from them.

245. The Tribunal accepts that competition between domestic producers is vigorous. As stated in *Carbon Steel Welded Pipe*, even where competition is strong among domestic producers, it does not have an impact on its injury analysis unless the competition has been injurious in some way to the domestic industry as a whole. There was ample testimony of the effect that Indalex was the major domestic competitor in the market.¹²⁴ However, it is clear that the domestic average selling prices remained above those of imports of the subject custom shapes between 2006 and interim 2008 and that the intensified competition was sparked by the reduction in market share resulting from the dumped and subsidized imports of the subject custom shapes.

246. The Tribunal is therefore of the view that the intra-industry competition did not result in injury to the domestic industry as a whole.

123. *Staff Report* (Custom Shapes—protected), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-09B (protected), Administrative Record, Vol. 2.2 at 231.

124. *Transcript of Public Hearing*, Vol. 1, 16 February 2009, at 79-80, 217-22; *Transcript of Public Hearing*, Vol. 4, 19 February 2009, at 525-26, 574-75.

Exchange Rate

247. PanAsia, Kam Kiu, Extrude-A-Trim, MAAX Bath, Regal Aluminum and TAG, submitted that the strengthening of the Canadian dollar has affected a broad range of industries, including that of aluminum extrusions. ZMC put forth that it is difficult to draw conclusions respecting pricing data and its impact on the injury analysis due to the fluctuation in the exchange rate.

248. In response, parties in support of an injury finding argued that, while the appreciation of the Canadian dollar may have affected export sales, it also assisted in offsetting the impact of imports of the subject custom shapes. They further noted that, since aluminum, the predominant input of extrusions, is purchased in U.S. dollars, it has been beneficial in terms of purchases of raw materials.

249. The Tribunal notes that, over the course of the POI, the Canadian dollar appreciated against the U.S. dollar to reach heights not achieved in 30 years. The average annual rate of exchange between the Canadian and U.S. dollars increased from \$0.83 in 2005 to \$0.88 in 2006 to reach \$0.94 in 2007. On a monthly basis, parity was achieved in October 2007, and the average exchange rate from January to September 2008 was \$0.98.¹²⁵ Toward the end of the POI, in August 2008, the Canadian dollar started to depreciate, but the monthly average rate was still \$0.95.

250. The Tribunal heard testimony regarding the effects of the exchange rate on pricing, raw materials and exports. In terms of pricing, the domestic extruders testified that their method of pricing extrusions sold in Canada would not be impacted by fluctuations in the exchange rate. This is explained by the fact that the three pricing methods used by the industry are on the basis of the U.S. value of aluminum converted into Canadian dollars, which eliminates the impact of the exchange rate on the aluminum value, as each is designed to recover the cost of metal. The conversion rate can be priced in U.S. dollars, Canadian dollars or a spot rate that is negotiated with the customer. The testimony was that the combined result of these different pricing methods offsets each other, resulting in no major impact from exchange rate fluctuations.¹²⁶

251. In light of the testimony and on the basis of the evidence on the record, it can be said that the exchange rate affected the aluminum extrusion industry in a number of areas, in the form of both gains and losses. Apart from the negative impact of the exchange rate on export sales that has already been discussed as a separate factor in this section, the Tribunal is of the view that the fluctuation in exchange rates was not a major consideration for the domestic industry as a whole.

252. The Tribunal has not attributed to the dumping and subsidizing the impact of exchange rate fluctuations and does not consider that this factor negates the injury caused by imports of the dumped and subsidized subject custom shapes during the POI.

Allocation of Production to Export Markets

253. The parties opposed submitted that the domestic producers lost opportunities in the Canadian market during the POI by pursuing their sales in the United States where the market conditions and the level of prices were less favourable.

125. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 60.

126. *Transcript of Public Hearing*, Vol. 1, 19 February 2009, at 49-52, 258-60.

254. The Tribunal notes that average unit export selling prices were between 10 and 18 percent lower than average unit domestic selling prices in the Canadian market during the POI.¹²⁷ As seen in the section on exports sales to the United States, the domestic industry was less profitable for its exports sales than for its domestic sales.

255. Although domestic sales may have been more profitable, the Tribunal is not convinced by the arguments that the domestic industry was neglecting or not actively pursuing sales in its domestic market in light of its focus on exports. There is also evidence on the record that indicates that the sales for export were to larger accounts and were made at more competitive prices.¹²⁸ In the Tribunal's view, by deciding to allocate sales to the U.S. export market and by pursuing opportunities on both sides of the border, the domestic industry was simply trying to maximize overall production and sales.

256. Accordingly, the Tribunal does not find that the allocation of sales to the export market negatively impacted the domestic industry.

Various Other Factors

257. The Tribunal also notes that the parties opposed submitted that injury experienced by the domestic industry over the POI could be attributed to a number of other factors, including the volatility of aluminum prices, increasing energy costs and restrictive practices, such as high minimum volume requirements. Although it is possible that some of these factors may adversely affected the domestic industry during the POI, the impact of these other factors has not been attributed to the dumping and subsidizing of the subject custom shapes, and the Tribunal does not consider that these other factors negate the injury caused by imports of the subject custom shapes during the POI.

Conclusion

258. Notwithstanding any of the losses or injury that may be attributable to the above factors, individually or collectively, the Tribunal concludes that the injury caused by imports of the subject custom shapes is, in and of itself, material.

259. In sum, the Tribunal concludes that, during the POI, imports of the subject custom shapes significantly increased and severely undercut and suppressed the prices of like goods in the Canadian market. This resulted in material injury to the domestic industry in the forms of decreasing production and capacity utilization, lost market share, lost sales, declining financial performance, reduced employment, and negative impact on wages, return on investments, cash flow, growth and the ability to raise capital.

260. Accordingly, the Tribunal does not need to consider the question of threat of injury.

127. *Staff Report (Custom Shapes)*, Tribunal Exhibit NQ-2008-003-08, Administrative Record, Vol. 1.2 at 30; *Staff Report (Custom Shapes)*, revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 227.

128. *Transcript of In Camera Hearing*, Vol. 1, 19 February 2009, at 101. *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 237-39.

STANDARD-SHAPED ALUMINUM EXTRUSIONS

Volume of Imports of Dumped and Subsidized Standard-shaped Aluminum Extrusions

261. Pursuant to paragraph 37.1(1)(a) of the *Regulations*, the Tribunal will consider the volume of the dumped and subsidized goods and, in particular, whether there has been a significant increase in the volume of imports of the dumped and subsidized goods, either in absolute terms or relative to the production or consumption of like goods.

262. Parties in support of an injury finding submitted that imports of the subject standard shapes increased every year during the POI. They further noted that the competition from the subject goods was more prominent in the market for standard-shaped aluminum extrusions than for custom-shaped aluminum extrusions.

263. The evidence indicates that imports of the subject standard shapes increased from 7,500 metric tonnes in 2005 to 12,300 metric tonnes in 2007. This represents an increase of 62 percent, resulting from two consecutive increases of 39 percent in 2006 and 16 percent in 2007. As a result, the share of total imports of standard-shaped aluminum extrusions accounted for by the subject standard shapes increased from 26 percent in 2005 to 38 percent in 2007. In interim 2008, imports of the subject standard shapes increased by about 300 metric tonnes and, although their share of total imports fell by 6 percentage points compared to interim 2007, they were still above their 2005 level, both in absolute terms and as a percentage of total imports.¹²⁹

264. The United States was the most important source of imported standard-shaped aluminum extrusions into Canada during the POI. The volume of imports from the United States increased by 8 percent from 2005 to 2007 and by 31 percent between interim 2007 and interim 2008. Their share of total imports increased by 2 percentage points between 2005 and interim 2008 and represented 59 percent during that latter period. From 2005 to interim 2008, imports from other non-subject countries lost 6 percentage points of share of total imports, reaching 11 percent.¹³⁰

265. The Tribunal notes that the volume of imports of the subject standard shapes increased rapidly compared to the volume of domestic production. The ratio of imports of the subject standard shapes to the volume of domestic production increased by 15 percentage points during the period from 2005 to 2007, from 28 to 43 percent. A comparison between interim 2007 and interim 2008 reveals that this ratio remained stable and decreased by 1 percentage point.¹³¹

266. The ratio of imports of the subject standard shapes to domestic sales of like goods also increased throughout the POI. It increased by 31 percentage points between 2005 and 2007, from 45 to 76 percent. The trend continued into interim 2008 when compared to interim 2007, but at a more stable pace, where this ratio increased by 3 percentage points, reaching 69 percent.¹³²

129. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 14.

130. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 14.

131. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 13-14; *Staff Report* (Custom Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-08B, Administrative Record, Vol. 1.2 at 218.

132. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 14.

267. Basing its conclusion on the foregoing, the Tribunal is of the view that there was a significant increase in the volume of imports of the subject standard shapes in absolute terms, as well as increases relative to the production and the consumption of like goods from 2005 to 2007. During interim 2008, imports of the subject standard shapes increased both in absolute terms and compared to domestic sales, but declined slightly compared to domestic production.

Effects of Dumped and Subsidized Goods on Prices

268. Pursuant to paragraph 37.1(1)(b) of the *Regulations*, the Tribunal must consider the effects of the dumped and subsidized goods on the price of like goods and, in particular, whether the dumped and subsidized goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred.

Price Undercutting, Price Depression and Price Suppression

269. Parties in support of an injury finding contended that they experienced significant price undercutting caused by dumped and subsidized imports of standard-shaped aluminum extrusions throughout the POI. PanAsia and Kam Kiu argued that non-subject countries had an influence on prices in the market.

270. The Tribunal notes that, throughout the POI, with the exception of 2005, the prices of the subject standard shapes were consistently lower than the prices of like goods.¹³³ Over the POI, the selling prices in the market for standard-shaped aluminum extrusions indicate that the subject standard shapes were undercutting domestic prices by a margin ranging between 11 and 20 percent.

271. Looking at the benchmark products, data show that, over the seven quarters examined by the Tribunal, there was continuous price undercutting taking place, and this for all the five benchmark products surveyed. Price undercutting by a margin greater than 10 percent, and sometimes reaching 17 percent, took place for four of the five benchmark products.¹³⁴ An examination of the sales of common accounts to both domestic producers and Chinese importers demonstrate the occurrence of price undercutting for six of the seven accounts for which data were collected.¹³⁵ This confirms that price undercutting from imports of the subject standard shapes occurred not only in terms of average prices in the market as a whole but also for specific products and for the same accounts.

272. As previously noted, in light of the fluctuations in the cost of aluminum, average unit selling prices are inconclusive in determining if price depression actually occurred. However, there was evidence of accounts where the domestic industry encountered competition from the subject standard shapes, whose selling prices were undercutting those of the like goods.¹³⁶ The Tribunal finds that, in light of the significant price undercutting in the Canadian market, the domestic industry could simply not meet the very low prices of the dumped and subsidized subject standard shapes. This resulted in lost sales as opposed to price depression.

133. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 24.

134. *Staff Report* (Standard Shapes—protected), Tribunal Exhibit NQ-2008-003-07 (protected), Administrative Record, Vol. 2.1 at 30-34.

135. *Staff Report* (Standard Shapes—protected), Tribunal Exhibit NQ-2008-003-07 (protected), Administrative Record, Vol. 2.1 at 35, 37-41.

136. Tribunal Exhibit NQ-2008-003-12.06 (protected), Administrative Record, Vol. 4D at 83, 85-86.

273. As to price suppression, the evidence shows that, in the case of standard-shaped aluminum extrusions, the domestic industry experienced price suppression and was unable to recover the rising costs of aluminum, as well as other costs, in 2007. On that point, the data show that, while the domestic industry's unit costs of goods sold increased by 3 percent between 2006 and 2007, its unit selling value increased by only 1 percent.

274. Regarding the impact of imports from the United States, the Tribunal notes that they were well above the prices of the subject standard shapes, as well as domestic producers' prices. Several explanations were provided by different witnesses to explain this price difference, such as specialty alloys, larger circle-size shapes, etc.¹³⁷ The Tribunal also notes that data for the five benchmark products clearly demonstrate that imports of standard-shaped aluminum extrusions from the United States were sold at prices higher than those of the subject standard shapes and those of domestically produced standard-shaped extrusions.¹³⁸ The Tribunal therefore concludes that imports from the United States did not contribute to the price undercutting and price suppression observed over the POI.

275. With respect to imports from other non-subject countries, the Tribunal notes that, throughout the POI, with the exception of 2005, they were priced well above imports of the subject standard shapes and were very close to domestic producers' prices in 2006 and were higher by about 20 percent in each of 2007 and interim 2008. Therefore, the Tribunal finds that, with the exception of 2005, imports from non-subject countries other than the United States did not lead the price down over the POI.

Conclusion

276. In summary, the Tribunal concludes that the dumped and subsidized subject standard shapes have significantly undercut and, to a lesser extent, suppressed the prices of like goods in the Canadian market.

Impact of Dumped and Subsidized Imports on the Domestic Industry

277. Pursuant to paragraph 37.1(1)(c) of the *Regulations*, the Tribunal will consider the resulting impact of the dumped and subsidized goods in light of all relevant economic factors and indices that have a bearing on the state of the domestic industry.

278. Parties in support of an injury finding submitted that, as a result of the dumped and subsidized subject standard shapes, they lost orders, which resulted in reduced sales revenues and lost market share. In particular, they noted the significant deterioration in both the gross profit and net income in 2007. They also stated that their unused production capacity led to declines in employment and wages.

279. In opposition, PanAsia and KamKiu argued that there is no positive evidence of injury caused by imports of the subject standard shapes. They stated that the domestic producers are linking their claims to the mere existence of imports and production capacity, rather than the very real impact of factors that do not relate to the dumping or subsidizing.

137. *Transcript of Public Hearing*, Vol. 2, 17 February 2009, at 361-64; *Transcript of Public Hearing*, Vol. 4, 19 February 2009, at 553-54.

138. *Staff Report* (Standard Shapes—protected), Tribunal Exhibit NQ-2008-003-07 (protected), Administrative Record, Vol. 2.1 at 30-34.

Production, Capacity and Capacity Utilization

280. Parties in support of an injury finding submitted that the capacity utilization fell continuously during the POI. Furthermore, they argued that imports of the subject standard shapes represented a small proportion of the available production capacity during the POI, which means that domestic capacity was sufficient to supply those requirements.

281. The domestic production of standard-shaped aluminum extrusions increased by 6 percent between 2005 and 2007. After reaching a peak at 29,700 metric tonnes in 2006, an increase of 12 percent over 2005, domestic production contracted by 5 percent in 2007. Production increased by 9 percent in interim 2008 compared to interim 2007.¹³⁹

282. The domestic industry's production capacity increased during each period of the POI, including the interim periods. In terms of capacity utilization, the rate for standard-shaped aluminum extrusions remained relatively constant throughout the POI at 8 or 9 percent.¹⁴⁰ Even when taking into consideration the production of custom-shaped aluminum extrusions, the Tribunal notes that the domestic industry had significant unused capacity throughout the POI.¹⁴¹

Sales from Domestic Production and Market Share

283. Parties in support of an injury finding stated that imports of the subject standard shapes increased every year of the POI in both growing and shrinking Canadian markets.

284. Between 2005 and 2007, the size of the Canadian market for standard-shaped aluminum extrusions increased by about 3 percent from 45,500 metric tonnes to 46,700 metric tonnes. In contrast, during the same period, domestic producers' sales of like goods decreased by 4 percent, from 16,700 metric tonnes in 2005 to 16,000 metric tonnes in 2007. The Tribunal notes that the domestic industry was unable to benefit from the growth in the market, as sales of the subject standard shapes gained 43 percent and 6 percentage points in market share. Sales of imports from the United States made more modest inroads and gained 8 percent and 2 percentage points in market share. Between 2005 and 2007, the domestic producers' share of the market decreased from 37 to 34 percent, and sales of imports from other non-subject countries decreased from 11 percent to 5 percent.¹⁴²

285. The situation continued to worsen for the domestic industry in interim 2008. Although the Canadian market increased by 21 percent in interim 2008 compared to interim 2007, domestic industry' sales of like goods decreased by 1 percent and reached their lowest level of market share at 30 percent, a decline of 6 percentage points. Unlike the remainder of the POI and similar to what was experienced in imports, there was a change in the composition of the market in 2008. While sales of imports of the subject standard shapes increased by 27 percent, their share remained steady at 22 percent, while the United States and other non-subject countries both made gains.¹⁴³

139. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 13.

140. *Staff Report* (Custom Shapes—protected), Tribunal Exhibit NQ-2008-003-09 (protected), Administrative Record, Vol. 2.2 at 53.

141. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 53.

142. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 18, 20.

143. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 18-20.

286. As can be seen from the above review of the evidence, at a time when the Canadian market was growing, the domestic industry failed to benefit from these gains. Over the course of the POI, the domestic industry experienced smaller growth and declines that were sharper compared to the total domestic market. This can be particularly seen in interim 2008 compared to interim 2007, where the domestic industry's sales volume declined slightly, while the total market gained almost 7,000 metric tonnes.¹⁴⁴

287. As noted previously, although imports from the United States were able to capture market share in interim 2008, they did not do so by undercutting the domestic industry's selling prices. One possible explanation for this higher volume of imports was the appreciation of the Canadian dollar against the U. S. dollar, which made imports from the United States more affordable in 2008.¹⁴⁵

288. The links between the injury sustained by the domestic producers over the POI and the dumped and subsidized subject standard shapes are clear. China has been the price leader in the domestic market, and the fact that its aggressive strategy has been successful is clearly demonstrated in the significant growth of its sales and market share, at the expense of both the domestic industry and other non-subject countries. This was corroborated by some of the field reports and injury allegations filed by the domestic producers.¹⁴⁶

289. In sum, the Tribunal is of the view that the dumping and subsidizing of the subject standard shapes have caused injury in the form of lost sales and lost market share.

Financial Results

290. Parties in support of an injury finding submitted that the dumped and subsidized subject standard shapes in the Canadian market have affected negatively their levels of profits, and this had a detrimental impact on investment projects and returns on investment. They added that the Tribunal has already established, in *Stainless Steel Round Bar*, that the domestic industry does not need to be in a losing position in order to obtain protection against dumped and subsidized imports, as reduced profitability is an indicator of injury.

291. In opposition, PanAsia and Kam Kiu argued that the financial performance data provided by the seven domestic producers represented by counsel should not be used to represent the entire industry.

292. The subject standard shapes had a detrimental impact on the financial performance on the domestic industry. The consistency and extent of the price undercutting and, to a lesser degree, the price suppression caused by the subject standard shapes had a negative impact on the domestic industry's gross margin and net income. This is especially evident when one considers that the domestic market was growing during the POI. On a per unit basis, between 2005 and 2007, the domestic producers' gross margin decreased by 18 percent and their net income decreased by 40 percent. When comparing interim 2008 to interim 2007, the unit gross margin declined by 9 percent, while unit net income increased by 1 percent. The Tribunal notes that this improvement in unit net income is due to a decrease of 18 percent in the domestic industry's unit general, selling and administrative expenses.¹⁴⁷

144. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 18-20.

145. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 44.

146. Tribunal Exhibit NQ-2008-003-12.06 (protected), Administrative Record, Vol. 4D at 83, 85-86.

147. *Staff Report* (Standard Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-06B, Administrative Record, Vol. 1.1 at 213.

293. In the Tribunal's view, the domestic industry's reduced financial profitability is largely due to the fact that it lost sales volume and experienced price suppression caused by the presence of the dumped and subsidized subject standard shapes in the Canadian market.

Employment and Productivity

294. Parties in support of an injury finding submitted that imports of the dumped and subsidized subject standard shapes caused a decline in consolidated employment.

295. PanAsia and Kam Kiu argued that the evidence submitted by the domestic producers does not establish reduced employment due to the presence of the subject standard shapes.

296. The data on the record reveal that the domestic producers' direct employment declined from 194 employees in 2005 to 174 employees in 2007, a decrease of 10 percent. For interim 2008, direct employment reached 184 employees, an increase of 5 percent compared to interim 2007. Wages generally followed a similar trend, with the exception of 2006 when they increased by 1 percent compared to 2005.¹⁴⁸ Regarding productivity in terms of kilogram per hour worked, the data show that it increased by more than 12 percent in 2006, but remained fairly stable throughout the rest of the POI.¹⁴⁹

297. The Tribunal is of the view that employment and productivity were not negatively impacted by the subject standard shapes.

Inventories, Margins of Dumping and Amount of Subsidy, Return on investments, Cash Flow, Growth and Ability to Raise Capital

298. The evidence indicates that the domestic producers' ratio of inventories of like goods to the volume of domestic production was relatively stable between 2005 and 2007. In interim 2008, this ratio almost doubled compared to the period of 2005 to 2007.¹⁵⁰ The Tribunal finds that the increase in inventories observed during interim 2008 is largely attributable to the declining demand in both domestic and export markets during that period. This conclusion is corroborated by the testimony of one witness, who stated that customers "continue to force inventory out of their own systems and put that onus on the suppliers".¹⁵¹

299. Paragraph 37.1(1)(c) of the *Regulations* also prescribes that the Tribunal consider, in its assessment, "... the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods ...". The Tribunal notes that the CBSA's confidential information for standard-shaped aluminum extrusions revealed that the weighted average margin of dumping, expressed as a percentage of the export price, and the weighted average amount of subsidy, expressed as a percentage of the export price, were significant.¹⁵² The Tribunal is of the view that the negative impact of the dumped and subsidized subject standard shapes on the state of the domestic industry was heightened by a margin of dumping and amount of subsidy of these magnitudes.

148. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 51.

149. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 52.

150. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 13; *Staff Report* (Standard Shapes—protected), Tribunal Exhibit NQ-2008-003-07 (protected), Administrative Record, Vol. 2.1 at 55.

151. *Transcript of Public Hearing*, Vol. 4, 19 February 2009, at 538.

152. Tribunal Exhibit NQ-2008-003-02.01A, Administrative Record, Vol. 2 at 56.44; Tribunal Exhibit NQ-2008-003-02.01B, Administrative Record, Vol. 1 at 106.70.

300. Finally, the Tribunal notes that the domestic producers claimed to have experienced negative effects with respect to other indicators of injury, namely, return on investments, cash flow, growth and ability to raise capital.¹⁵³ In light of the Tribunal's conclusions regarding the fact that the presence of the subject standard shapes has resulted in a loss of market share, lost sales and deteriorating financial performance, the Tribunal is of the opinion that the subject standard shapes also negatively impacted the domestic industry's returns on investments, cash flow, growth and ability to raise capital.

Conclusion

301. Based on the foregoing analysis, the Tribunal concludes that there exists a causal relationship between the dumped and subsidized subject standard shapes and the injury experienced by the domestic industry over the POI.

302. This injury took the form of lost market share, declining financial performance and lost sales, and a negative impact on return on investments, cash flow, growth and the ability to raise capital.

303. The Tribunal also concludes that the injury to the domestic industry that is directly attributable to the dumping and subsidizing of the subject standard shapes is material and constitutes injury as defined in subsection 2(1) of *SIMA*.

Other Factors

304. Parties opposed made submissions with respect to several factors other than the dumping and subsidizing that they argued were responsible for the injury experienced by the domestic industry. The Tribunal carefully considered these factors, as well as other factors prescribed by paragraph 37.1(3)(b) of the *Regulations*, to ensure that any injury caused by those factors is not attributed to the effects of the subject standard shapes. Following is the Tribunal's assessment of the relevant factors.

Level of Integration Regarding the Range of Services Offered by the Domestic Industry

305. The position of parties in respect of the level of integration regarding the range of services offered by the domestic industry is set out earlier in the section on custom shapes. The benefits of integration were also discussed in that section.

306. The Tribunal examined the demand for finishes with respect to standard shapes. From a purchaser's perspective, the Tribunal found that demand for a particular finish from all sources ranged from a low of 6 percent of purchasers requesting electrolytic colour to a high of 44 percent of purchasers requesting anodizing. The most popular finishes requested were anodizing at 44 percent and liquid paint at 31 percent.¹⁵⁴ From a domestic producer's perspective, when examining the prevalence of sales of standard-shaped extrusions for which a finish was requested, the Tribunal found that a very small proportion of the domestic industry's domestic sales required finishes. The most popular finishes requested from domestic

153. *Staff Report* (Standard Shapes—protected), Tribunal Exhibit NQ-2008-003-07 (protected), Administrative Record, Vol. 2.1 at 56.

154. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 32, 38.

producers were anodizing and liquid paint.¹⁵⁵ The Tribunal notes that the most prevalent finishes are those most often integrated by domestic producers, with 38 percent having the ability to anodize in-house and 62 percent having the ability to liquid paint in-house.¹⁵⁶

307. The Tribunal also examined the demand for fabrication with respect to standard shapes. From a purchaser's perspective, the Tribunal found that 19 percent of purchasers requested fabrication of their standard-shaped extrusions.¹⁵⁷ From a domestic producer's perspective, when examining the prevalence of sales of standard-shaped extrusions for which fabrication was requested, the Tribunal found that less than a third of the domestic industry's domestic sales required fabrication.¹⁵⁸ The Tribunal notes that 85 percent of domestic producers offer a certain degree of fabrication integrated into their in-house offerings.¹⁵⁹

308. In light of the above, the Tribunal is of the view that the domestic industry has integrated to meet purchasers' most frequent requests for standard-shaped extrusions. Due to the infrequency of requests for certain services, the Tribunal is of the view that it is reasonable to use subcontractors to fulfil special or infrequently requested demands. However, the Tribunal has not attributed to the dumping and subsidizing of the subject standard shapes any injury resulting from these lost sales and does not consider that any effect of service limitations on the performance of the domestic producers during the POI negates the injury caused by imports of the subject standard shapes.

155. *Staff Report* (Standard Shapes—protected), Tribunal Exhibit NQ-2008-003-07 (protected), Administrative Record, Vol. 2.1 at 18; Tribunal Exhibit NQ-2008-003-12.01 (protected), Administrative Record, Vol. 4 at 22-23; Tribunal Exhibit NQ-2008-003-12.02A (protected), Administrative Record, Vol. 4 at 105; Tribunal Exhibit NQ-2008-003-12.03 (protected), Administrative Record, Vol. 4B at 33; Tribunal Exhibit NQ-2008-003-12.04 (protected), Administrative Record, Vol. 4C at 146; Tribunal Exhibit NQ-2008-003-12.05 (protected), Administrative Record, Vol. 4C at 290; Tribunal Exhibit NQ-2008-003-12.06 (protected), Administrative Record, Vol. 4D at 11; Tribunal Exhibit NQ-2008-003-12.07 (protected), Administrative Record, Vol. 4D at 426; Tribunal Exhibit NQ-2008-003-12.08 (protected), Administrative Record, Vol. 4E at 31; Tribunal Exhibit NQ-2008-003-12.09 (protected), Administrative Record, Vol. 4E at 291; Tribunal Exhibit NQ-2008-003-12.10 (protected), Administrative Record, Vol. 4F at 12; Tribunal Exhibit NQ-2008-003-12.11A (protected), Administrative Record, Vol. 4F at 247; Tribunal Exhibit NQ-2008-003-12.12 (protected), Administrative Record, Vol. 4G at 22; Tribunal Exhibit NQ-2008-003-12.13 (protected), Administrative Record, Vol. 4G at 208.

156. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 24.

157. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 30, 32, 40. Purchasers' questionnaire replies to question 39 found under collective Tribunal Exhibit NQ-2008-003-21 (protected), Administrative Record, Vol. 6.2.

158. *Staff Report* (Standard Shapes—protected), Tribunal Exhibit NQ-2008-003-07 (protected), Administrative Record, Vol. 2.1 at 18; Tribunal Exhibit NQ-2008-003-12.01 (protected), Administrative Record, Vol. 4 at 22-23; Tribunal Exhibit NQ-2008-003-12.02A (protected), Administrative Record, Vol. 4 at 105; Tribunal Exhibit NQ-2008-003-12.03 (protected), Administrative Record, Vol. 4B at 33; Tribunal Exhibit NQ-2008-003-12.04 (protected), Administrative Record, Vol. 4C at 146; Tribunal Exhibit NQ-2008-003-12.05 (protected), Administrative Record, Vol. 4C at 290; Tribunal Exhibit NQ-2008-003-12.06 (protected), Administrative Record, Vol. 4D at 11; Tribunal Exhibit NQ-2008-003-12.07 (protected), Administrative Record, Vol. 4D at 426; Tribunal Exhibit NQ-2008-003-12.08 (protected), Administrative Record, Vol. 4E at 31; Tribunal Exhibit NQ-2008-003-12.09 (protected), Administrative Record, Vol. 4E at 291; Tribunal Exhibit NQ-2008-003-12.10 (protected), Administrative Record, Vol. 4F at 12; Tribunal Exhibit NQ-2008-003-12.11A (protected), Administrative Record, Vol. 4F at 247; Tribunal Exhibit NQ-2008-003-12.12 (protected), Administrative Record, Vol. 4G at 22; Tribunal Exhibit NQ-2008-003-12.13 (protected), Administrative Record, Vol. 4G at 208.

159. *Staff Report* (General Report), Tribunal Exhibit NQ-2008-003-04, Administrative Record, Vol. 1.02 at 27.

Competition from Non-subject Imports

309. The parties opposed submitted that the domestic producers have not taken into account the impact of non-subject imports on the Canadian market. Imports from the United States and from other non-subject countries represented a significant market share during the POI. In response, parties in support of an injury finding argued that non-subject imports did not consistently increase in volume and did not gain market share in the same manner as imports of the subject standard shapes over the POI. They also noted that the average price for imports of the subject standard shapes were lower than the price for like goods, with the exception of 2005, and that imports of the subject standard shapes usually offered the lowest prices in the market.

310. Over the POI, imports from the United States were always higher compared to imports of the subject standard shapes. Imports from the United States represented between 54 and 59 percent of the total imports, while imports from other non-subject countries represented between 8 and 17 percent of the total imports during that period.¹⁶⁰

311. As previously discussed in the pricing section, imports from other non-subject countries were usually sold at higher prices in the market and saw their share of the Canadian market reduced over the POI, with the exception of interim 2008 when they gained 3 percentage points and reached 8 percent.¹⁶¹ The Tribunal considers the competition from these other non-subject countries to be very minor.

312. The market share of sales from imports from the United States varied between 35 and 38 percent between 2005 and 2007 and increased to 40 percent during interim 2008.¹⁶² As previously discussed, the unit selling prices for imports from the United States were always the highest, except for one period during the POI. The Tribunal is consequently of the view that imports from the United States did not cause price undercutting or price suppression. Nevertheless, the Tribunal notes that the market share captured by imports from the United States was significant and increased over the POI. Despite the higher prices of imports from the United States, this tends to demonstrate that competition was effectively taking place between domestically produced standard-shaped aluminum extrusions and imports from the United States.

313. The Tribunal has therefore not attributed to the dumping and subsidizing of the subject standard shapes any injury resulting from competition from non-subject imports and does not consider that this factor negates the injury caused by imports of the subject standard shapes during the POI.

Exports Sales to the United States

314. The Tribunal notes that parties made extensive submissions on how it should treat the domestic producers' export performance in its assessment of injury. These arguments were set out in the section on custom shapes.

315. As previously noted, and consistent with its past practice, the Tribunal has focused its analysis in this case primarily on the impact of the dumping and subsidizing on the domestic merchant market. However, the Tribunal has assessed the materiality of the injury caused by the dumping and subsidizing against the domestic industry's production of like goods as a whole.¹⁶³

160. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 14.

161. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 20, 24.

162. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 20.

163. See *Flat Hot-rolled Sheet and Strip* at 13.

316. The Tribunal notes that the domestic producers' export sales represented about 40 percent of their total production and total sales during the POI. The Tribunal also notes that the volume of exports sales increased by 22 percent between 2005 and 2007 and by 27 percent in interim 2008 compared to interim 2007.¹⁶⁴

317. The Tribunal observes that, despite the increased export sales volume, the domestic producers' financial performance on export sales deteriorated during the POI. The gross margins, in particular, decreased significantly and became negative in 2007, and they decreased further in interim 2008. This decline in gross margins was much more abrupt for export than for domestic sales. Moreover, the Tribunal notes that the returns on export sales for domestic producers were lower than the returns on domestic sales during the POI.¹⁶⁵ The decreased performance of exports could be significant with regard to overall product line performance, e.g. in the likely absorption of certain costs on domestic sales of custom-shaped aluminum extrusions, as well as with regard to total hours worked and employment. The Tribunal heard some testimonies confirming that the allocation of costs from export sales had a negative impact on domestic producers' gross margins for domestic sales.¹⁶⁶

318. The Tribunal observes that, at the hearing, some reasons were discussed to explain this decline in export performance. Some witnesses testified that an important market decline in the United States in 2007 and 2008 was responsible for the increasingly fierce competition for sales of standard-shaped aluminum extrusions and that prices for a similar product were lower in the United States than in Canada.¹⁶⁷ Moreover, witnesses testified that the appreciation of the Canadian dollar was also a factor that contributed to the overall deterioration of the domestic producers' export performance.¹⁶⁸

319. In any event, it is clear that the domestic industry was largely impacted by its negative export performance. The Tribunal has therefore not attributed to the dumping and subsidizing of the subject standard shapes any injury resulting from the negative export performance of the export sales. On balance, the Tribunal is of the view that the negative impact of export sales does not negate the injury caused by imports of the subject standard shapes during the POI.

Economic Downturn

320. The position of parties in respect of the economic downturn is set out in the section on custom shapes.

321. Although the Tribunal agrees with the domestic producers that the impact on the Canadian demand for extrusions was felt more in the last quarter of 2008, the Tribunal is of the view that the domestic industry, along with the North American industry, has been affected by this economic downturn starting in specific export market segments, such as the U.S. housing industry in 2007, and spreading to reach all sectors of the Canadian economy in the last quarter of 2008.

164. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 13, 18, 27.

165. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 43; *Staff Report* (Standard Shapes), revised 9 February 2009, Tribunal Exhibit NQ-2008-003-06B, Administrative Record, Vol. 1.1 at 215.

166. *Transcript of In Camera Hearing*, Vol. 3, 18 February 2009, at 587-88; *Transcript of In Camera Hearing*, Vol. 4, 19 February 2009, at 841-45.

167. *Transcript of In Camera Hearing*, Vol. 2, 17 February 2009, at 238-39, 354-59.

168. *Transcript of Public Hearing*, Vol. 1, 19 February 2009, at 49-52, 258-60.

322. As explained above, the economic downturn has greatly impacted the domestic industry's export performance, but had little consequences on domestic sales over the POI, as the impact in the Canadian market was felt during the last quarter of 2008.

323. The Tribunal has not attributed to the dumping and subsidizing the impact resulting from the economic downturn and does not consider that this factor negates the injury caused by imports of the subject standard shapes during the POI.

Imports of the Subject Standard Shapes by Some Producers

324. The Tribunal has considered the impact of imports of the subject standard shapes by some of the domestic producers over the POI.

325. The ratio of imports of the subject standard shapes by the domestic industry to total imports of the subject standard shapes was negligible throughout the POI. The ratios of imports of the subject standard shapes by the domestic industry to domestic production and to domestic sales were also negligible.¹⁶⁹ The Tribunal is therefore of the view that the impact of the volume of the subject standard shapes imported by the domestic industry was inconsequential.

Intra-industry Competition

326. Regarding the impact of intra-industry competition on the domestic industry, the Tribunal is of the view that, for the reasons already explained in the section on custom shapes, it did not result in injury to the domestic industry.

Exchange Rate

327. With respect to the impact of exchange rate fluctuations on the domestic industry, the reasoning found in the section on custom shapes also applies to the subject standard shapes. The Tribunal has therefore not attributed to the dumping and subsidizing the impact of exchange rate fluctuations and is not convinced that the impact of this factor negates the injury caused by imports of the subject standard shapes during the POI.

Allocation of Production to Export Markets

328. Regarding the decision by the domestic producers to allocate sales to the export market, the Tribunal is of the view that, for the reasons already explained in the section on custom shapes, it did not negatively impact the domestic industry.

Various Other Factors

329. The Tribunal also notes that the parties opposed submitted that injury experienced by the domestic industry over the POI could be attributed to a number of other factors, including the volatility of aluminum prices, increases in energy costs, and restrictive practices such as high minimum volume requirements. Although it is possible that some of these factors may have adversely affected the domestic industry during the POI, the impact of these other factors has not been attributed to the dumping and subsidizing of the subject standard shapes, and the Tribunal does not consider that these other factors negate the injury caused by imports of the subject standard shapes during the POI.

169. *Staff Report* (Standard Shapes), Tribunal Exhibit NQ-2008-003-06, Administrative Record, Vol. 1.1 at 13, 18; *Staff Report* (Standard Shapes—protected), Tribunal Exhibit NQ-2008-003-07 (protected), Administrative Record, Vol. 2.1 at 68.

Conclusion

330. Notwithstanding any of the losses or injury that may be attributable to the above factors, individually or collectively, the Tribunal concludes that the injury caused by imports of the subject standard shapes is, in and of itself, material.

331. In sum, the Tribunal concludes that, during the POI, imports of the subject standard shapes significantly increased and severely undercut and, to a lesser degree, suppressed the prices of like goods in the Canadian market. This resulted in material injury to the domestic industry in the form of lost market share, lost sales, declining financial performance and a negative impact on return on investments, cash flow, growth and the ability to raise capital.

332. Accordingly, the Tribunal does not need to consider the question of threat of injury.

EXCLUSIONS

333. As noted previously, the Tribunal proceeded by way of written submissions with respect to requests for product exclusions. In light of the significant number of product exclusions that were expected in this case and the very short time frames within which the Tribunal must issue its findings and reasons, the Tribunal decided not to allocate hearing time to requests for product exclusions. This was made clear at the outset of this inquiry in the notice of commencement of inquiry issued on November 18, 2008.

334. However, in order to ensure that it had in its possession all the information necessary to come to an informed decision on product exclusions, the Tribunal issued detailed instructions, and parties were asked to provide the information requested using the forms designed to meet the unique circumstances of this case. For example, the Tribunal requested precise technical information on the aluminum extrusions for which exclusions were being sought. In addition, the forms clearly indicated the information for which parties had to provide supporting evidence and material, such as attempts to purchase the products for which exclusions were requested or evidence of production of an identical or substitutable product in the case of parties opposing a request.

335. The Tribunal received 119 requests from 34 different entities. Taken together, these requests covered over 2,000 individual products. The parties in support of injury findings consented to 1 request, but opposed all other requests on the basis that the companies produce, or have the capability to produce, products which are identical to or substitutable for the products for which exclusions were requested.

336. In addressing these requests, the Tribunal will first outline the general principles upon which it relied when determining whether or not to grant product exclusions in the context of the current inquiry. In doing so, the Tribunal will also address some of the issues that were common to multiple requests. The Tribunal will then address specific requests, either in groups or individually, as the circumstances require.

General Principles

337. At the outset, the Tribunal recalls that it has indicated in past decisions that exclusions are granted only in exceptional circumstances. The Tribunal further notes that findings of injury do not prohibit goods from being imported from China. They simply require that the goods be imported from China at normal values and that the proper amount of countervailing duties be paid or, if they are not imported at normal values, that the proper amount of anti-dumping and countervailing duties be paid.

338. In *Stainless Steel Wire*,¹⁷⁰ the Tribunal summarized its views on the matter of product exclusions as follows:

It is well established that the Tribunal has the discretion to grant product exclusions under subsection 43(1) of *SIMA*. *The fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry.* The Tribunal has granted product exclusions for particular products in circumstances when, for instance, the domestic industry does not produce those particular products. The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an “active supplier” of the product or whether it normally produces the product or whether the domestic industry has the capability of producing the product.

[Footnotes omitted, emphasis added]

339. Thus, product exclusions are an extraordinary remedy that may be granted only when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry. The Tribunal does not usually consider potential negative effects that requesters or downstream users may experience as a result of higher selling prices following an injury finding to constitute relevant considerations for the purposes of determining whether or not to grant product exclusions. Such effects are usually considered to be normal and logical consequences of anti-dumping and countervailing measures. It is only in the context of a public interest inquiry that the Tribunal may consider the effect that the imposition of anti-dumping and countervailing duties has on producers in Canada that use the goods as inputs in the production of other goods.¹⁷¹ In the present circumstances, after considering all relevant evidence, to the extent that exclusion requests were made on the sole basis of higher selling prices and resulting negative effects, they were not further considered by the Tribunal.

340. As it recently stated in *Carbon Steel Welded Pipe*,¹⁷² when the Tribunal is requested to grant an exclusion, that is to exclude from a finding certain goods that would normally be covered by the finding, the onus is upon the requester to demonstrate that imports of the goods for which the exclusion is requested will not be injurious to the domestic industry. In other words, the requester bears the burden of rebutting the presumption that *all* goods covered by the finding have caused injury.

341. As noted in the cited passage from *Stainless Steel Wire*, factors such as whether the domestic industry produces the products for which exclusions are requested, whether it produces substitutable or competing products, and whether it is an “active supplier” may be considered in determining whether a product exclusion will cause injury to the domestic industry. Under the circumstances of the present case, the Tribunal is of the view that the primary consideration is whether the domestic industry has the capability of producing products which are identical to or substitutable for the products for which exclusions were requested. This is especially true in the case of custom-shaped aluminum extrusions where it is usually the customers or purchasers that provide a given manufacturer with the design and specific desired characteristics of the extrusions. Thus, these custom shapes are not “off-the-shelf products” and often require the use of custom-made dies. In this context, the Tribunal believes that it would be unreasonable to require domestic producers to have produced all shapes for which exclusions are requested. To do so would effectively limit the protection afforded to the domestic industry to those goods which it has already

170. (30 July 2004), NQ-2004-001 (CITT) at 22. This passage was also recently cited in *Thermoelectric Containers* (11 December 2008), NQ-2008-002 (CITT) at 25 and *Carbon Steel Welded Pipe* at 20.

171. See subparagraph 40.1(1)(d)(iii) of the *Regulations*. In addition, Section 45 of *SIMA* and subsection 40.1(1) of the *Regulations* provide that, if the Tribunal makes an injury finding, it can initiate, on its own initiative or at the request of an interested person made within 45 days of the finding, a public interest inquiry if it is of the opinion that there are reasonable grounds to consider that the imposition of an anti-dumping or countervailing duty would not be in the public interest.

172. At 20.

produced. In addition, such an approach would ignore the commercial reality of the market for aluminum extrusions and the fact that domestic producers have the capability of producing a large number of goods, as the dies and other tooling required to produce such goods are either in their possession or readily available in the marketplace with limited investments of capital.

342. As mentioned above, given that the process for exclusions in this case was based exclusively on written submissions and clearly set out in the notice of commencement of inquiry, the Tribunal expected requesters to supply sufficient documentary evidence in support of their claims and requests. Mere allegations or unsupported claims were not sufficient. This was made clear in the Product Exclusion Request Form where it was specifically asked that documentation be provided to support any claim that an attempt has been made to purchase from domestic producers the product for which an exclusion request is filed. The general instructions for completing the Product Exclusion Request Form also clearly stated that a failure to provide the information requested in the form could prevent the parties opposing the request from adequately responding to the request and prevent the Tribunal from making an informed decision, thus possibly resulting in the rejection of the request. The general instructions for completing the Reply to Product Exclusion Request Form also required parties opposing the request to provide the information requested in the form, failing which the request for product exclusion could be granted. However, the Tribunal recognizes that this may only have been possible where the request itself was properly supported with documentary evidence.

343. For the most part, the Tribunal rejected product exclusion requests where there was a lack of documentary evidence in support of the requesters' claims. For example, a requester that indicated that the domestic industry did not produce the goods was expected to provide documentary evidence that domestic producers had been contacted and that they had indicated that they could not produce the goods in question or did not intend to produce them. In this respect, the Tribunal generally did not consider as conclusive information which indicated that only one or two domestic producers were contacted and could not supply the requester, given that, when considering injury, the Tribunal looks at the domestic producers as a whole and not only a few producers. The fact that a few domestic producers may not be able to supply a certain product does not imply that all domestic producers are incapable of doing so.

344. Furthermore, there is no requirement in *SIMA* for the domestic industry to supply the totality of the market's needs. As such, this cannot be considered a requirement for the rejection of an exclusion request. As the Tribunal has stated in past cases, the domestic industry need not serve the entire market, nor does it have to accept every purchase order.¹⁷³ To conclude otherwise would, in the Tribunal's view, impose an extremely high burden on the domestic industry.

345. The Tribunal also generally rejected product exclusion requests which did not permit the identification of distinct characteristics or attributes that made the products distinguishable from other aluminum extrusions available in the market.

346. Some parties submitted that they were unable to properly respond to a request or reply to a request for product exclusion where the information, such as diagrams and drawings, was filed on a confidential basis. The weight given by the Tribunal to documentary evidence provided by both the requesters and the parties opposing the requests was influenced, to a certain degree, by the level of public disclosure of this evidence. In this respect, the Tribunal underlines that it asked requesters as well as parties opposing the requests to make additional efforts to provide public information, for example, by reconsidering the necessity of their confidential designations or by filing non-confidential edited versions of the evidence.¹⁷⁴

173. See *Fasteners* at 37.

174. Tribunal Exhibit NQ-2008-003-65.13, Administrative Record, Vol. 20B.

347. Many product exclusion requests were made on the basis that the domestic producers were not capable of fully fabricating and finishing extrusions in accordance with the requester's demands and that these operations had to be outsourced to third parties. As stated earlier, the Tribunal considers products that are sent to finishers and fabricators, and then returned to the domestic producers, as part of the domestic production of the extruders.¹⁷⁵ The Tribunal is of the view that such practice, on its own, does not constitute a valid basis upon which to grant a product exclusion.

348. Other product exclusion requests were made on the basis that the domestic producers were not capable of producing all goods, subject and non-subject, required by the requester. The Tribunal is of the opinion that the domestic industry's capability to produce goods which are not covered by the findings is of no relevance to the consideration of whether or not to grant a product exclusion. The Tribunal is also of the opinion that a single domestic producer need not have the capability to produce all the subject goods required by a requester. As long as the domestic producers, as a whole, were capable of producing the requested products, the Tribunal rejected the requests. To do otherwise would result in the granting of exclusions for products which the domestic industry produces or is capable of producing and, thus, cause injury.

349. A number of product exclusion requests received by the Tribunal also requested that the products be declared non-subject goods, that is not covered by the definition of the subject goods, on the basis that the products were parts or components of finished goods, parts of a "kit" (i.e. disassembled finished goods), or classified under a tariff item which had not been identified by the CBSA in its statement of reasons for the preliminary determinations. While it belongs to the CBSA to determine, at the time of importation, whether certain goods are subject to the Tribunal's findings, the Tribunal must nonetheless attempt to determine, based on the information provided by the requesters, whether the products for which exclusions are requested would in fact be considered subject goods at the time of their importation considering that products which are not covered by the definition of the subject goods are not covered by the Tribunal's findings and, thus, do not require an exclusion.

350. In the case of products which were alleged to be parts or components of finished goods, the Tribunal took the view, consistent with what it previously stated in the section addressing the notice of motion filed by MAAX Bath, Tag Hardware and Regal Aluminum, that the subject goods include aluminum extrusion products that have been further processed, but only to the extent that they still possess the nature and physical characteristics of aluminum extrusions. As such, the Tribunal considered subject goods to be those goods that could be characterized as aluminum extrusions and that were not manufactured beyond the fabrication and finishing processes referred to in the CBSA's additional information on the subject goods,¹⁷⁶ which include anodizing, painting or otherwise coating, precision cutting, machining, punching and drilling. Therefore, unless parts or components are, at the time of their importation, already parts of finished goods, that is unless the goods being imported are finished goods that incorporate aluminum extrusions, the Tribunal views as irrelevant the fact that these parts or components may be for exclusive use in the subsequent production of finished goods.

175. See paragraph 113, where the Tribunal stated that the extrusions which are outsourced for finishing and fabrication remain the extruders' property and are generally returned to the extruders that, in turn, sell the products to their customers.

176. See Tribunal Exhibit NQ-2008-003-34 (single copy), public record of Preliminary Injury Inquiry No. PI-2008-002.

351. With respect to products which were alleged to be parts of a “kit”, the Tribunal took the view, consistent with what it previously stated in the section addressing like goods and classes of goods, that if, at the time of importation, the kit comprised the necessary parts to assemble finished goods, they were finished goods rather than extrusions and, thus, not covered by the definition of the subject goods.

352. As far as tariff classification is concerned, the Tribunal is of the view that, while it may assist in reaching a decision as to whether or not products constitute subject goods, it is not determinative. The CBSA has expressed itself in similar terms in its statements of reasons for the preliminary and final determinations of dumping and subsidizing, where it stated that the listing of tariff classification numbers is for convenience of reference only and that the definition of the subject goods is authoritative.¹⁷⁷

353. The Tribunal also considered a number of requests for exclusions that involved products for which some form of intellectual property right or protection was claimed. In cases where the requesters owned the rights to the design, drawing, patent or trademark and were not themselves the producers, or related to the producers, the Tribunal was of the view that, barring any constraints relating to the domestic industry’s technical ability to produce the products, it was not appropriate to grant exclusions on the basis that requesters were not prepared to have the domestic industry produce those products under licence.

354. In cases where the producers (or those related to the producers) owned the rights, or where the Tribunal was unable to determine who owned the rights, it considered whether the domestic industry produces, or is capable of producing, products that are substitutable for and compete with the products for which exclusions are requested. The Tribunal, in the *Fasteners* remand,¹⁷⁸ indicated that the fact that a product is patented does not mean that the Tribunal will automatically grant an exclusion and that, even though a patented product may have certain features or physical attributes that make it distinct under patent law, a domestically manufactured product may have the same end uses, fulfil most of the same customer needs and compete in the marketplace with the patented product. The Tribunal is of the view that this reasoning is equally applicable to other forms of intellectual property protection.

355. A number of requesters indicated that some products for which exclusions were requested were used in the production of goods exported to the United States or Mexico. While the payment of anti-dumping and countervailing duties on the subject goods may render finished goods which make use of the subject goods less competitive in other markets, it is not, in and of itself, a sufficient basis for an exclusion. The Tribunal is of the view that, unless the products for which exclusions are requested are imported into Canada on a tolling basis or other similar arrangement and ownership of the products remains with the entity to which they will be re-exported, the importation of such products may cause or threaten to cause injury to the domestic industry.

356. Finally, a number of product exclusion requests included product descriptions which made reference to a specific firm. The Tribunal clearly noted in the general instructions for completing the Product Exclusion Request Form that “[r]equests that seek the exclusion of all products from a specific importer, exporter, foreign producer, etc. will be considered requests for **product** exclusions and will be treated as such.” This reflects the Tribunal’s established view that any exclusion to a finding should normally be defined as generically as possible to avoid potential trade distortions and unfair competitive advantages.¹⁷⁹

177. Tribunal Exhibit NQ-2008-003-34 (single copy), public record of Preliminary Injury Inquiry No. PI-2008-002; Tribunal Exhibit NQ-2008-003-02.01B, Administrative Record, Vol. 1 at 106.37.

178. (26 September 2006), NQ-2004-005R (CITT) at 3.

179. See *Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (17 January 2003), RD-2002-003 (CITT) at 3.

Analysis of Product Exclusion Requests

357. The Tribunal will now address the specific product exclusion requests that it received in this inquiry. Unless stated otherwise, it should be presumed that the Tribunal applied the above general principles in its analysis of the specific product exclusion requests.

358. The Tribunal finds that the single request for product exclusion filed by Morse Industries and the third of five requests filed by Ryerson Canada (Ryerson) are in respect of products which the Tribunal considers to be non-subject goods. Both requests concern what is normally referred to as cold-drawn or hard-drawn tubing. In a letter sent to counsel and parties on December 18, 2008, the Tribunal noted that it considered such products as falling outside the scope of the inquiry.¹⁸⁰ Therefore, the Tribunal is of the view that these products are not covered by its findings and do not require exclusions.

359. The Tribunal also finds that the request filed by Milward Alloys, Inc. (Milward) is in respect of a product which is not covered by the definition of the subject goods. The request concerns aluminum alloy coiled rods which are used as a molten metal additive. Both Milward and the parties opposing the request agree that this product is non-subject. The Tribunal also agrees. Thus, the Tribunal finds that this product is also not covered by its findings and does not require an exclusion.

360. The Tribunal denies the requests for product exclusions filed by Alfa Mega Inc. (Alfa Mega), Aluminum Curtainwall Systems Inc. (Aluminum Curtainwall), C.R. Laurence Co. of Canada (C.R. Laurence), Concord West Distribution Ltd. (Concord West), Hunter Douglas, Independent Contractors and Businesses Association of British Columbia (ICBA), Knoll North America Corp. (Knoll), New Zhongya Aluminum Factory Ltd. (New Zhongya), Opus Framing Ltd. (Opus Framing), Rahul Glass Ltd. (Rahul Glass), Silvia Rose Industries (Silvia Rose), Sinobec and Soniplastics Inc. (Soniplastics). In the Tribunal's view, these requests stated that no attempts were made to purchase, from the domestic producers, the products for which exclusions were requested (Concord West, Hunter Douglas, New Zhongya, Silvia Rose, Sinobec), provided no evidence to support claims that attempts were made to purchase such products (Alfa Mega, C.R. Laurence), failed to provide sufficient information to accurately identify the products for which exclusions were requested or were formulated in terms that were too broad (Alfa Mega, Aluminum Curtainwall, ICBA), or were made on the basis of higher selling prices for the products and of the resulting negative effects on downstream users (Aluminum Curtainwall, ICBA, Knoll, Opus Framing, Rahul Glass, Silvia Rose, Soniplastics). Furthermore, in all but one of the above cases, evidence was provided by the parties opposing the requests which demonstrated that they did produce, or had the capability to produce, products which are identical to or substitutable for the products for which exclusions were requested.¹⁸¹ The Tribunal also notes that most of the above requesters provided no response to the reply to the request for product exclusion.

361. The Tribunal denies the nine requests for product exclusions filed by Aluminart Products Limited (Aluminart), which concern various aluminum extrusions that are used in the production of aluminum storm doors. The requests that were originally filed with the Tribunal were found, with the exception of one, to describe products which had wall thicknesses that were not covered by the definition of the subject goods.

180. Tribunal Exhibit NQ-2008-003-50, Administrative Record, Vol. 1A at 108.

181. No such evidence was provided by the parties opposing the requests in their reply to Concord West's request for product exclusion. However, the Tribunal denied the request because Concord West did not attempt to purchase, from the domestic producers, the products for which exclusions are requested and failed to substantiate any of its claims.

While the wall thicknesses were later corrected by Aluminart,¹⁸² the Tribunal noticed that the cavity tolerances that were specified in some of the requests should have been corrected as well.¹⁸³ As such, the Tribunal did not consider the concessions made by parties opposing the requests that they could not produce goods with the thicknesses¹⁸⁴ and tolerances specified in some of the requests as dispositive of the matter since they were erroneous. In reviewing the technical drawings submitted by the parties opposing the requests, it became clear that they have the capability to produce goods with similar revised thicknesses and tolerances as they likely should have appeared in the request.¹⁸⁵ Furthermore, the Tribunal notes that Aluminart provided no evidence to support its claims that attempts were made to purchase, from the domestic producers, the products for which exclusions were requested.

362. The Tribunal denies the request for product exclusion filed by Proforma Interiors Ltd., dba Aluglass (Aluglass), which concerns aluminum extrusions of proprietary design used in the manufacture of interior furniture components. Aluglass submitted that these products have a finish and are of a quality that exceed standard finishing levels found in the industry. The Tribunal notes that, while Aluglass stated that two domestic producers were unable to satisfy its requirements, these producers are not in support of injury findings.¹⁸⁶ Aluglass provided no evidence which indicates that any of the parties in support of injury findings have been contacted or whether they have the capability to produce the products for which an exclusion is requested. In addition, Aluglass did not file a response to the reply filed by the parties opposing the request. This reply indicates that the domestic producers have the capability to produce the products for which an exclusion is requested.

363. The Tribunal grants the request for product exclusion filed by VAP Global Industries Inc. (VAP), which concerns aluminum extrusions with a powder coat finish for use in window frames. VAP submitted that these products have a powder coat finish in custom colours that must be certified to meet the American Architectural Manufacturers Association AAMA 2603 and 2605 coating standards. In this respect, it provided as evidence a list of AAMA-approved paint applicators, which included the name of its Chinese supplier (only for the AAMA 2603 coating standard) but not those of any Canadian companies. It also provided evidence that indicated that domestic producers advised against having extrusions that are over 20 ft. in length and powder coated by third parties due to potential damage that can occur. Although the parties opposing the request claimed to be able to produce identical or substitutable products with a powder coat finish which meet the above-noted AAMA standards, they provided no evidence to support this assertion. Therefore, the Tribunal grants an exclusion for aluminum extrusions produced from a 6063 alloy type with either a T5 or a T6 temper designation, having a length of between 20 and 33 ft. (between 6.10 and 10.06 m), with a powder coat finish, which finish is certified to meet the AAMA 2603 standard, "Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels", for use in window frames.

364. The Tribunal also grants the request for product exclusion filed by Home-Rail Ltd. (Home-Rail), which concerns aluminum extrusions with a powder coat finish for use in exterior railing systems. Home-Rail submitted that, in order to offer a 20-year warranty on its aluminum railings, the powder coat

182. The wall thicknesses specified in request No. 9 were not corrected and remain outside the scope of the subject goods.

183. The cavity tolerances appeared to have been incorrectly stated and, in the Tribunal's opinion, should have been revised by applying the same correction factor as was applied to the wall thicknesses. The Tribunal is of the view that such a correction would result in tolerances that are in the same order of magnitude as other tolerances specified throughout the exclusion record.

184. The replies to the requests were filed before the wall thicknesses had been revised.

185. Tribunal Exhibit NQ-2008-003-39.29, Administrative Record, Vol. 2.4H at 24-45.

186. The Tribunal notes that one of these producers did however support the complaint.

must meet the AAMA 2603 coating standard and must be applied on both the interior and the exterior surfaces of the extrusion. For the same reason as it granted the preceding exclusion, the Tribunal grants an exclusion in this case for aluminum extrusions produced from either a 6063 or a 6005 alloy type with a T6 temper designation, in various lengths, with a powder coat finish on both the interior and the exterior surfaces of the extrusion, which finish is certified to meet the AAMA 2603 standard, "Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels", for use in exterior railing systems.

365. The Tribunal denies the request for product exclusion filed by Regal Aluminum, which concerns aluminum extrusions for use in railing and fencing systems. These extrusions consisted mainly of items such as rails, posts and pickets. Regal Aluminum initially submitted that these products are not available from and cannot be produced by domestic producers. Regal Aluminum later submitted that these products are not subject goods, as they are parts of finished goods and for exclusive use in these finished goods. Considering that the second argument raises the issue of whether or not an exclusion is required at all, the Tribunal has addressed that question first. As the Tribunal indicated earlier in the section addressing the notice of motion filed by MAAX Bath, Tag Hardware and Regal Aluminum, it considers subject goods to be those goods that can be characterized as aluminum extrusions and that are not manufactured beyond the fabrication and finishing processes referred to in the CBSA's additional product information on the subject goods. Based on the information provided by Regal Aluminum, the Tribunal is of the opinion that the products for which an exclusion is requested do not appear to have been further processed to the extent that they no longer possess the nature and physical characteristics of aluminum extrusions and, as such, they are to be considered subject goods. As for Regal Aluminum's allegation that the products are not available from domestic producers, the Tribunal notes that Regal Aluminum did not provide any evidence of attempts to purchase the products from domestic producers and, instead, simply stated that it had not been approached by the domestic producers. In addition, the evidence indicates that the parties opposing the request have supplied Regal Aluminum in the past.

366. The Tribunal grants the request for production exclusion filed by Levolor/Kirsch Window Fashions (a Division of Newell Rubbermaid/Newell Window Furnishings Inc.) (Levolor), which concerns aluminum extrusions for use as head rails and bottom rails in fabric window shades and blinds. Levolor submitted that its products must be powder coated in 33 colours in accordance with the AAMA 2603 standard and must be coordinated to match specific fabric colours. For the same reason as it granted the exclusion requested by VAP and Home-Rail, the Tribunal grants an exclusion for aluminum extrusions produced from a 6063 alloy type with a T5 temper designation, having a length of 3.66 m, with a powder coat finish, which finish is certified to meet the AAMA 2603 standard, "Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels", for use as head rails and bottom rails in fabric window shades and blinds where the fabric has a cross-sectional honeycomb or "cellular" construction.

367. The Tribunal denies the request for product exclusion filed by ZMC, which concerns aluminum extrusions designed for the production of window coverings. ZMC submitted that its products must be packaged in such a fashion that the individual extrusions are not in contact with each other and do not move or shift while in transit. It submitted that this requires the extrusions to be wrapped in four layers of different materials. However, ZMC only provided evidence regarding an attempt to obtain packaging that met its requirements from one domestic producer. As for the other domestic producers, ZMC simply stated that, to its knowledge, none are able or willing to offer packaging that meet its requirements. The Tribunal is of the view that this does not constitute sufficient evidence of the domestic producers' inability to meet its requirements. Furthermore, the parties opposing the request provided evidence in the form of invoices which demonstrated that they could offer packaging that is similar, if not identical, to that required by ZMC.

Finally, the Tribunal notes that, in its response to the reply to the request for production exclusion, ZMC submitted that the domestic producers were also unable to produce the extrusions that it required. The Tribunal is of the view that these new arguments should have been made in the request for product exclusion and not at a time which did not provide the parties opposing the request an opportunity to respond. Consequently, the Tribunal did not consider these new arguments.

368. The Tribunal denies the request for product exclusion filed by MAAX Bath, which concerns aluminum extrusions that are used in the assembly of shower enclosures. MAAX Bath initially submitted that no single domestic producer has the capability to produce the full range of products that it requires and that this is unacceptable, given that all products must be identical in fit and finish. MAAX Bath later submitted that these products are not subject goods, as they are parts of shower enclosures and have no uses other than as parts of shower enclosures. Considering that the second argument raises the issue of whether or not an exclusion is required at all, the Tribunal has addressed that question first. As the Tribunal indicated earlier in the section addressing the notice of motion filed by MAAX Bath, Tag Hardware and Regal Aluminum, it considers subject goods to be those goods that can be characterized as aluminum extrusions and that are not manufactured beyond the fabrication and finishing processes referred to in the CBSA's additional product information on the subject goods. The evidence submitted in support of the request does not allow the Tribunal to conclude on whether the products for which the request has been made are in fact subject goods. More information would be needed to decide if these products could be considered as having been further processed to the extent that they no longer possess the nature and physical characteristics of aluminum extrusions such that they would not be covered by the Tribunal's findings. The Tribunal notes that this will be a matter for the CBSA to address upon each importation. With respect to those products which may ultimately be determined to be subject goods at the time of importation, the Tribunal considered the allegation of MAAX Bath that no single domestic producer has the capability to produce the full range of products that it requires. In this respect, MAAX Bath provided evidence demonstrating that, out of five domestic producers which were contacted, none were capable of producing the full range of products for which an exclusion is requested. However, as stated earlier, as long as domestic producers, as a whole, are capable of producing the requested products (including products which are sent to finishers and fabricators), the Tribunal should reject the request. No evidence was provided which would indicate that this is not the case. Moreover, the Tribunal notes that the parties opposing the request provided evidence that indicated that they supplied MAAX Bath prior to its sourcing of products from China. In the Tribunal's opinion, there is insufficient evidence to support the request for product exclusion and it is therefore denied, as it applies to those products that may be considered subject goods at the time of importation.

369. The Tribunal denies the two requests for product exclusions filed by Zhaoqing China Square Industry Ltd. (Zhaoqing) (in conjunction with China Square Industrial Ltd.). The first request concerns complete knockdown kits for shower enclosures, which include aluminum extrusions and non-subject components, such as handles, hinges, screws, etc. To the extent that these kits are, at the time of importation, comprised of the necessary parts to assemble finished goods (i.e. shower enclosures), the Tribunal is of the view that they are not covered by the definition of the subject goods and therefore do not require an exclusion. However, the form in which those kits are in fact imported will be a matter for the CBSA to address upon each importation. The second request concerns a large number of aluminum extrusions which are individual components of shower enclosures. Zhaoqing submitted that these products are not covered by the definition of the subject goods because they are parts of shower enclosures and have no uses other than as parts of shower enclosures. However, the Tribunal is of the view, as it was for the request filed by MAAX Bath, that the evidence submitted in support of the request does not allow the Tribunal to conclude on whether the products for which the request has been made are in fact subject goods. More information would be needed to decide if these products could be considered as having been further processed to the extent that they no longer possess the nature and physical characteristics of aluminum extrusions such that

they would not be covered by the Tribunal's findings. This will also be a matter for the CBSA to address upon each importation. With respect to those products which may ultimately be determined to be subject goods at the time of importation, the Tribunal is of the view that Zhaoqing presented no evidence which indicates that the domestic producers are not capable of producing any of those products. For this reason, the Tribunal denies the request as it applies to those products that may be considered subject goods at the time of importation.

370. The Tribunal denies the request for product exclusion filed by Pacific Shower Doors (1995) Ltd. (Pacific Shower), which concerns aluminum extrusions that are used in the assembly of shower enclosures. Pacific Shower submitted that domestic producers are not able to perfectly match the custom fit and finishes required by its customers. It also submitted that the domestic producers are not willing to provide Pacific Shower with the small quantities of products that it needs and that they are also not able to meet its packaging requirements. The Tribunal is of the view that no evidence was provided to support Pacific Shower's claim that the domestic producers are unable to meet its requirements in terms of fit, finish and packaging. While Pacific Shower did provide evidence that one producer, which was not a party in support of injury findings in this case, could not supply one particular product, the Tribunal does not consider this as sufficient to demonstrate that domestic producers are unable to produce identical or substitutable products. The Tribunal recognizes that some domestic producers may have minimum order requirements. However, it finds that such conditions are not unusual and do not constitute, in and of themselves, a sufficient basis to grant an exclusion.

371. The Tribunal grants the first request for product exclusion filed by Digi-Key, which concerns heat sinks imported under tariff item No. 8473.30.90 that are for use in computers and other electronic products and that weigh 700 g or less. Digi-Key submitted that, given the relatively small size of the Canadian market, the domestic producers cannot justify the expense of the dies required to service the very wide range of heat sinks demanded in the electronics market. It also submitted that the heat sinks are proprietary to its suppliers. While the evidence provided by the parties opposing the request indicates that they have produced larger heat sinks in the past, there is no evidence to suggest that they have produced smaller ones which meet the terms of the request. In addition, the Tribunal is of the view that the sheer number of different heat sink designs imported by Digi-Key makes it unlikely that the domestic producers would be willing to make the investments necessary to fully participate in this specialized and narrow segment of the market. Therefore, the Tribunal grants an exclusion for heat sinks imported under tariff item No. 8473.30.90 and weighing 700 g or less. This exclusion automatically covers the products that were the subject of the 38 other requests filed by Digi-Key.

372. The Tribunal denies the request for product exclusion filed by R-Theta, which concerns proprietary aluminum extrusions (heat sinks) developed by R-Theta that provide a thermal solution (i.e. heat dissipation) to end customers. It was noted that these heat sinks are used for many applications, such as in aerospace, medical equipment and wind and solar power systems. R-Theta submitted that, while it does source a portion of its requirements domestically, higher costs render it uncompetitive to its international customers. It also submitted that the domestic producers have not been able to quote on some of the more complex shapes, which are required to meet very high technical standards. In addition, R-Theta provided evidence that indicated that there have been some quality and delivery issues with its domestic purchases. The Tribunal finds that the evidence provided by R-Theta clearly indicates that it has purchased some of the products domestically in the past and that, while there may have been quality and delivery issues with a small percentage of these purchases, this does not indicate that the domestic producers are incapable of meeting its requirements on a consistent basis and, therefore, does not constitute a valid reason for exclusion in light of the particular circumstances in issue. Furthermore, no evidence was provided to support

R-Theta's claim that certain products cannot be manufactured domestically and, in any event, such products were not identified by R-Theta.

373. The Tribunal denies the four requests for product exclusions filed by Ryerson.¹⁸⁷ The first two requests concern heat exchangers and cold plates that are used in thermoelectric coolers. Ryerson submitted that it attempted to purchase these products from domestic producers and provided as evidence e-mails from two domestic producers declining to quote the products. It also provided an e-mail from a third domestic producer that provided a quotation which stated that the products can be produced but that, due to the difficulty of the profile, the tooling would not be guaranteed. The Tribunal finds that the evidence provided by Ryerson and the parties opposing the requests indicates that the domestic producers have the capability to produce these products. The Tribunal is also of the view that a domestic producer's unwillingness to guarantee tooling used for difficult profiles is a pricing issue rather than a capability issue. The other two requests concern aluminum extruded flat bars that are used for charge air coolers in trucks. Ryerson submitted that the domestic producers were unable to meet the tight tolerances required for it to be able to offer a 7-year/1,000,000 mile warranty on the products. These requests were opposed on the basis that the thicknesses specified for the products fell outside the definition of the subject goods. These thicknesses were revised in the responses to the replies to the requests for product exclusion, but the parties opposing the requests did not make any further submissions in this regard. In any event, the Tribunal finds that the sole basis for the requests is the domestic producers' alleged inability to meet the tight tolerances required by Ryerson. However, Ryerson provided no evidence to substantiate its claim that the domestic producers could not produce identical or substitutable products.

374. The Tribunal denies the request for product exclusion filed by Garaventa, which concerns various aluminum extrusions that are used in the production of wheelchair lifts. Garaventa initially submitted that it has attempted to purchase these products domestically, but that no single producer could supply all the products. Garaventa later submitted that these products are not subject goods, as they are parts of wheelchair lifts and have no uses other than as parts of such lifts. Considering that the second argument raises the issue of whether or not an exclusion is required at all, the Tribunal has addressed that question first. As the Tribunal indicated earlier, it considers subject goods to be those goods that can be characterized as aluminum extrusions and that are not manufactured beyond the fabrication and finishing processes referred to in the CBSA's additional product information on the subject goods. Based on the information provided by Garaventa, the Tribunal is of the opinion that the products for which an exclusion is requested do not appear to have been further processed to the extent that they no longer possess the nature and physical characteristics of aluminum extrusions and, as such, are to be considered subject goods. As for Garaventa's allegation that no single producer can supply it with the products that it requires, the Tribunal reiterates what it has previously said. As long as domestic producers, as a whole, are capable of producing the full range of products, the Tribunal should reject the request. While Garaventa did provide evidence that one producer, which was not a party in support of injury findings in this case, could not supply it with the full range of products that it requires, the Tribunal does not consider this as sufficient to demonstrate that domestic producers are unable to produce the products for which an exclusion is sought. Garaventa also submitted that the domestic producers could not meet the tight tolerances that it requires. However, it did not specify what those exact tolerances are and did not provide any evidence that indicated that the domestic producers could not meet these tolerances.

187. The Tribunal has previously determined that a request (the third of five) filed by Ryerson Canada concerned non-subject goods.

375. The Tribunal denies the 19 requests for product exclusions filed by Kromet, which concern custom-designed and manufactured handles for specific kitchen appliances and, with regard to one of the requests, for a specific toolbox. Kromet is itself a domestic producer that has developed customized equipment and processes which allow it to manufacture all products covered by these requests. Kromet submitted that these processes, which are proprietary to Kromet, include material handling and finishing processes that are required to produce a custom-bent handle with a unique Brushed Anodized Stainless Steel (B.A.S.S.) finish. Kromet stated that, while domestic producers obtain Kromet's business on certain products, they cannot, and do not, produce the products for which exclusions are sought. However, the Tribunal notes that Kromet provided no evidence of any attempts to purchase these products from domestic producers. The Tribunal also notes that the parties opposing the requests indicated that they could produce these products with the B.A.S.S. finish either in-house or through sub-contracting. As previously stated by the Tribunal, products that are sent to finishers and fabricators, and then returned to the domestic producers, are considered part of the domestic production of the extruders. While Kromet argued that the evidence provided by the parties opposing the requests pertained to products other than those covered by these requests, the Tribunal observes that, unless Kromet had previously obtained the products that are the subject of these requests from parties opposing the requests, it would be impossible for these parties to provide any evidence in the form of invoices or diagrams pertaining to these exact products.¹⁸⁸ In the Tribunal's view, the overriding consideration for the granting of exclusions in the context of this inquiry is the domestic producers' capability to produce the products for which exclusions are requested. As for the claim that some of the processes that are required to produce the products are proprietary to Kromet, the Tribunal notes that Kromet could have offered these processes to a domestic producer, as it presumably has with a Chinese producer. The Tribunal received no evidence which indicated that an attempt to have these products produced in Canada had been made by Kromet and rejected by the domestic producers.

376. The Tribunal grants the three requests for product exclusions filed by Ruhlamat North America Ltd. (Ruhlamat), which concern aluminum extrusions that form part of the Vario System™ 20, 30, 40, 45 and 60 series line of profiles that are for use in mechanical systems and automated machinery. Ruhlamat submitted that there are no domestic producers that can offer these products in the tight tolerances required for linear applications. It submitted that the products must have a straightness tolerance of +/-1.5 mm or less per 6.0 m of length in order to prevent the systems from jamming. Ruhlamat provided evidence that indicated that it attempted to purchase products that meet these requirements from four domestic producers, but that none could meet the tolerance levels required for straightness. In their replies, the parties opposing the requests indicated that the tolerances required by Ruhlamat are not achievable on a consistent basis. The Tribunal accepts Ruhlamat's argument that the systems in which the products are used may not function properly if the products do not meet the above-mentioned tolerances. It therefore grants an exclusion for aluminum extrusions produced from a 6063 alloy type with a T5 temper designation and forming part of the Vario System™ 20, 30, 40, 45 and 60 series line of profiles, or equivalent, having a length of either 4.5 or 5.8 m and a straightness tolerance of +/-1.5 mm or less per 6.0 m of length, for use in those parts of mechanical systems and automated machinery, such as gantry systems and conveyors, where precise linear movement is required.

377. The Tribunal denies the three requests for product exclusions filed by Tag Hardware. The first and third requests concern various aluminum extrusions that are for use in the production of garment racks, while the second request concerns a closet pole. Tag Hardware initially submitted that these products and their finish are not available from domestic producers. It submitted that the products are hand finished and

188. The Tribunal also notes that the requester failed to provide any technical drawings of the products for which exclusions were requested as part of its requests, thereby limiting the capacity of the parties opposing the requests to respond to these requests.

cannot be finished by an automatic polishing machine. Tag Hardware later submitted that the products covered by the first and third requests are not subject goods, as they are parts for use in its garment racks and have no uses other than as parts of such goods. Considering that the second argument raises the issue of whether or not an exclusion is required at all, the Tribunal has addressed that question first. As the Tribunal indicated earlier, it considers subject goods to be those goods that can be characterized as aluminum extrusions and that are not manufactured beyond the fabrication and finishing processes referred to in the CBSA's additional product information on the subject goods. Based on the information provided by Tag Hardware, the Tribunal is of the opinion that the products for which exclusions are requested do not appear to have been further processed to the extent that they no longer possess the nature and physical characteristics of aluminum extrusions and, as such, are to be considered subject goods. As for Tag Hardware's allegation that the products are not available from domestic producers, the Tribunal notes that Tag Hardware provided no evidence to substantiate its claim that the domestic producers do not have the capability to produce identical or substitutable products. Moreover, Tag Hardware stated that it had not attempted to purchase the products from domestic producers. Therefore, the Tribunal rejects these exclusion requests based on the insufficient evidence provided by Tag Hardware.

378. The Tribunal denies the request for product exclusion filed by Artopex, which concerns specialized aluminum extrusions that are for use in office partition systems. Artopex mentioned that these products are part of a kit that is used to assemble Artopex's "Nano" line of office furniture/partition systems and that this kit also includes plastic extrusions, die cast zinc parts and hardware which are imported in the requisite numbers to assemble office partitions. Based on the information provided, it was not clear to the Tribunal whether the products were, at the time of importation, part of a kit that included all the components necessary to assemble office partitions, which would be considered non-subject goods by the Tribunal, or whether the components were imported individually, but in the requisite numbers, to assemble office partitions. However, this will ultimately be a matter for the CBSA to address upon each importation. Given this lack of clarity, the Tribunal will address the request on the assumption that the products are not imported as part of a kit. Artopex claimed that the products cannot be made by domestic producers and provided evidence in the form of correspondence which indicates that one domestic producer cannot produce the products because the walls are too thin. Artopex also provided correspondence that indicated that another domestic producer required a trial run before making any commitments. Artopex argued that this trial represents a major investment for which there is no assurance of success. However, the Tribunal finds that the requirement for a trial run in the case of thin or complex shapes does not, on its own, constitute a sufficient basis upon which to conclude that the domestic producers are unable to produce such products and therefore is not sufficient to grant an exclusion. The Tribunal notes that the wall thickness required by Artopex is 0.85 mm, which is well within the definition of the subject goods. As such, it is presumed that some of the domestic producers are capable of producing shapes of this thickness.

379. The Tribunal grants the request for product exclusion filed by Vancouver Framer Cash & Carry Ltd. (Vancouver Framer), which concerns aluminum extrusions with a hand-applied gold and silver leaf finish for use as picture frame mouldings. Vancouver Framer submitted that there are no domestic producers capable of manufacturing these products. The parties in support of injury findings conceded that they do not produce, or have the capability to produce, identical or substitutable products and, thus, consented to the request. Under these circumstances, the Tribunal grants an exclusion for aluminum extrusions produced from either a 6063 or a 6463 alloy type, having a length of 3 m, with a hand-applied gold and silver leaf finish, for use as picture frame mouldings.

CONCLUSION

380. Pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that:

- the dumping and subsidizing in Canada of custom-shaped aluminum extrusions originating in or exported from China have caused injury to the domestic industry; and
- the dumping and subsidizing in Canada of standard-shaped aluminum extrusions originating in or exported from China have caused injury to the domestic industry.

381. The Tribunal excludes from its findings the products described in the appendix to the findings.

André F. Scott

André F. Scott
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Diane Vincent

Diane Vincent
Member