



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2009-002

Mattress Innerspring Units

*Finding issued
Tuesday, November 24, 2009*

*Reasons issued
Wednesday, December 9, 2009*

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

**THE DUMPING OF MATTRESS INNERSPRING UNITS, WITH OR WITHOUT
EDGEGUARDS, USED IN THE MANUFACTURE OF INNERSPRING
MATTRESSES, ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S
REPUBLIC OF CHINA**

FINDING

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping of mattress innerspring units, with or without edgeguards, used in the manufacture of innerspring mattresses, originating in or exported from the People's Republic of China, has caused injury or retardation or is threatening to cause injury to the domestic industry.

Further to the issuance by the President of the Canada Border Services Agency of a final determination dated October 26, 2009, that the aforementioned goods have been dumped, and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods has caused injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

Ellen Fry
Ellen Fry
Member

André F. Scott
André F. Scott
Member

Dominique Laporte
Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: October 26 to 30, 2009

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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 (SIMA)*,¹ has conducted an inquiry to determine whether the dumping of mattress innerspring units, with or without edge guards, used in the manufacture of innerspring mattresses, originating in or exported from the People's Republic of China (China) (the subject goods) has caused injury or retardation or is threatening to cause injury to the domestic industry.
2. On April 27, 2009, the President of the Canada Border Services Agency (CBSA), following a complaint filed by Globe Spring & Cushion Co. Ltd. (Globe Spring) of Toronto, Ontario, initiated an investigation into whether the subject goods had been dumped.
3. On April 28, 2009, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping of the subject goods had caused injury or retardation or was threatening to cause injury. On June 26, 2009, the Tribunal made a preliminary determination that there was a reasonable indication that the dumping of the subject goods had caused injury.
4. On July 27, 2009, the CBSA issued a preliminary determination that the subject goods had been dumped, that the margin of dumping was not insignificant and that the volume of dumped goods was not negligible.²
5. On July 28, 2009, the Tribunal issued a notice of commencement of inquiry.³ The Tribunal's period of inquiry (POI) covers three full years, from January 1, 2006, to December 31, 2008, and two interim periods from January 1 to June 30, 2008, and the corresponding period in 2009. As part of its inquiry, the Tribunal sent questionnaires to domestic producers, importers and foreign producers of mattress innerspring units. 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 both public and protected versions of the staff report.
6. On October 1, 2009, the Tribunal sent a supplementary questionnaire to domestic producers that import mattress innerspring units and to all other identified importers in order to collect import data by mattress innerspring coil type for the POI. An addendum to the staff report was issued on October 22, 2009, containing this additional information.
7. On October 26, 2009, the CBSA issued a final determination of dumping.
8. A hearing, with public and *in camera* testimony was held in Ottawa, Ontario, from October 26 to 30, 2009. Globe Spring and Simmons Canada Inc. (Simmons) filed written submissions and documentary evidence, presented witnesses and made arguments in support of an injury finding. The parties opposed, consisting of Keynor Spring Manufacturing Inc. (Keynor Spring), Pacific Bedspring Assemblies Ltd (Pacific), Springwall Sleep Products Inc. (Springwall), Restwell Sleep Products (Restwell), Spring Air Sommex Corporation (Spring Air) and Owen & Company Limited o/a Kingsdown (Owen), filed written submissions and documentary evidence, presented witnesses and made arguments opposing a finding of injury. Keynor Asia & I/E Co. Ltd. (Keynor Asia) was also a party to the inquiry, but it did not file a submission or appear at the hearing.

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

2. Tribunal Exhibit NQ-2009-002-01B, Administrative Record, Vol. 1 at 24.

3. C. Gaz. 2009.I.2310.

9. Mr. John Spence, of Mattress Mart, Mr. J. David Hunt, of The Bay, and Mr. Michel Lapensée, of Les Matelas Lapensée manufacturier, appeared as Tribunal witnesses during the hearing.

10. Two parties, Keynor Spring and Owen, filed requests for product exclusions. The requests for product exclusions on behalf of Keynor Spring were withdrawn during the course of the hearing.

11. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2009-001), replies to questionnaires, requests for information and replies to requests for information, 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.

12. The Tribunal issued its finding on November 24, 2009.

RESULTS OF THE CBSA'S INVESTIGATION

13. On October 26, 2009, the CBSA determined that 71.7 percent of the subject goods released into Canada from April 1, 2008, to March 31, 2009, were dumped at an estimated weighted average margin of dumping of 57.0 percent, when expressed as a percentage of the export price. The CBSA concluded that the overall margin of dumping was not insignificant.

PRODUCT

Product Description

14. The subject goods are defined as follows:⁴

Mattress innerspring units, with or without edge guards, used in the manufacture of innerspring mattresses, originating in or exported from the People's Republic of China.

Additional Product Information

15. Innersprings comprise the basic core used in the production of innerspring mattresses. A mattress innerspring is comprised of coils attached with wire spirals (helicals). The top and bottom of the innerspring are framed with border rods, and side support is provided with flat springs called edge guards that are clipped to the border rods. Certain innersprings have individual steel wire coils wrapped in a fabric pocket, and these pockets are glued or sewn together to produce the innerspring unit.

16. There are four basic types of innersprings:

- Bonnell or Open coil. The coil has an hourglass shape that tapers towards the middle of the coil, and each coil is attached to adjacent coils by helicals.
- Offset or Lura-Flex (LFK) coil. This is similar to the Bonnell, but has a squared/flat head (top and bottom) and is more cylindrical in shape.
- Continuous coil. Continuous coils have irregular shapes, but each row of coils or a lattice work of coils is made from a single piece of wire, with each row attached to another row by helicals.

4. Tribunal Exhibit NQ-2009-002-01B, Administrative Record, Vol. 1 at 20.

- Pocket or Marshall coil. This is a cylindrical steel wire coil, with each individual coil enclosed in its own fabric pocket. The individual coils are then glued or sewn together to form the shape of the innerspring unit.

17. The basic mattress innerspring unit sizes are single (or twin), double, queen and king, though there are a wide range of variations available, including extra long units, different thicknesses or heights of coils, different coil count/wire gauge combinations, and other custom specifications.

Production Process⁵

18. In the first stage, wire is fed into a machine by means of steel feed wheels which push the wire against a pin that is controlled by a mechanical cam that bends the wire into a spiralled coil. This spiralled coil is then moved mechanically to a forming or knotting station for processing. Once completed, the finished coil is either automatically fed into an assembly machine or manually placed into a container or another machine.

19. For non-pocketed innerspring units, the coils are fed into an assembler where they are held in a fixture that allows the helical to lace or sew a specific number of coils together. The assembler then indexes the completed row of coils in preparation for the next row to be fed and attached to the previous row. Once the finished size of an innerspring unit is reached, the assembled coils are ejected from the machine.

20. For pocketed innerspring units, the individual coils are inserted into non-woven or woven fabric “pockets”. The pocketed coils are then glued or sewn together to obtain the finished size required.

21. To form the border, heavy gauge wire is mechanically straightened, cut to length and then bent, either manually or mechanically, into a rectangular shape. The ends of the wire are either welded or held together using a metal ring. The border is attached to the assembled coils using a metal clip, metal ring or large-diameter helical. Finally, the innerspring is often tempered according to manufacturer or customer requirements in large tempering ovens, although some manufacturers electrically temper innersprings during the forming process. Tempering allows the formed wire to retain its shape and removes the stresses set during the manufacturing process.

22. The degree of support provided by an innerspring is a function of the number of coils and of the wire gauge. The number of coils, or coil count, in a mattress generally ranges from 300 to 800, depending on the mattress size and firmness desired.

23. The gauge of the wire used to produce coils is also a factor in the firmness of a mattress; the higher the gauge, the thinner the diameter of the coil wire and the softer the mattress. Wire gauges tend to range between 12.5 gauge (2.52 mm) and 15.5 gauge (1.70 mm). Thus, different coil count and wire gauge combinations may be employed to attain the same or various levels of support.

24. Border rods (also referred to as border wires) are used to connect coils at the top and bottom edges of the innerspring to help retain shape and reduce sagging. Edge guards are flat springs that attach to border rods to prevent edge breakdown. Mattress manufacturers can and do purchase border rods and edge guards separately. For most innersprings sold in the Canadian market, border rods are in the range of 6 gauge (4.88 mm) to 9 gauge (3.77 mm).

5. *Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-06A, Administrative Record, Vol. 1.1A at 16-18.

25. When innersprings must be transported long distances, they are typically compressed to maximize the use of container space. The compressed innersprings may be crated (typically 12 to 20 to a crate) or, for pocket coil innersprings, packed in rolls of 8 to 10. When a mattress manufacturer receives crates or rolls of innersprings, it must install the edge guards (and in some cases, the border rods) itself.

26. Edge guards are a critical structural component of a finished mattress innerspring. Because of cost advantages to shipping compressed innersprings, most mattress manufacturers have the capacity to affix edge guards on mattress innersprings. Single- and double-sized innerspring units require 12 edge guards, while 14 edge guards are used for a queen-sized innerspring and 16 for a king-sized innerspring unit.

DOMESTIC PRODUCERS

27. The Tribunal sent a producers' questionnaire to the two principal producers of mattress innerspring units in Canada, Globe Spring and Simmons, as well as to seven other potential producers of mattress innerspring units. Globe Spring and Simmons provided complete replies. Les Ressorts Alpha Inc. (Alpha), Literie Giddings (Giddings), Les Ressorts Primeau inc. (Primeau), Marshall Ventilated Mattress Company Limited (Marshall) and Park Avenue Furniture (Park Avenue) provided partial replies only. Regal Spring Company Ltd. sent a letter indicating that it went out of business in July 2008, and Piquage Rapide Inc. indicated that it was not a producer of mattress innerspring units.

Globe Spring

28. Globe Spring's production facilities are located in Downsview and Concord, Ontario. Globe Spring is a 100 percent owned subsidiary of Leggett & Platt Incorporated, a U.S. company (Leggett & Platt). Leggett & Platt acquired an interest in Globe Spring in 1977 and purchased full control in 2003.

29. Globe Spring started producing mattress innerspring units in 1952. In 1977, it began supplementing its Canadian production with imports of mattress innerspring units from Leggett & Platt.

30. A small proportion of Globe Spring's production is sold for export to Leggett & Platt. The rest of its production is sold in the Canadian market. Globe Spring does not produce finished mattresses.

Simmons

31. Simmons' production facilities are located in Montréal, Quebec, Calgary, Alberta, and Vancouver, British Columbia, with its headquarters in Mississauga, Ontario. Simmons is a 100 percent owned subsidiary of Simmons Bedding Company, a U.S. company.⁶ Simmons and its predecessor companies have produced mattress innerspring units since 1891. All three of its current factories manufacture pocket coil mattress innerspring units for use in its finished mattresses.

32. For the production of certain finished mattresses, Simmons also purchases domestically produced mattress innerspring units. Simmons does not import mattress innerspring units. With the exception of a very small quantity of niche product sales, Simmons does not sell mattress innerspring units.

6. On September 25, 2009, the Board of Directors of Simmons Company and Simmons Bedding Company approved a restructuring plan under which Simmons Bedding Company and all its subsidiaries (including Simmons), as well as its parent, Bedding Holdco Incorporated, would be acquired by certain affiliates of Ares Management LLC and Teachers' Private Capital, the private investment firm of the Ontario Teachers' Pension Plan. Under the plan, Simmons would operate and compete as a separate and distinct entity.

Alpha

33. Alpha's production facility is located in Saint-Narcisse de Champlain, Quebec. The company started production of mattress innerspring units in March 1979. It sells all its mattress innerspring units in the Canadian market. The company does not import mattress innerspring units or produce finished mattresses.

Giddings

34. Giddings' production facility is located in Granby, Quebec. Giddings has been a manufacturer of finished mattresses since 1888 and has been producing mattress innerspring units for its own internal consumption since 2004. Giddings does not sell mattress innerspring units in the domestic market. It does not import or export mattress innerspring units.

Primeau

35. Primeau was founded in Montréal in 1945. Its production facility is located in Saint-Leonard, Quebec, where it produces mattress innerspring units that it sells primarily in Ontario and Quebec. It does not import or export mattress innerspring units.

Marshall

36. Marshall's production facility is located in Toronto, Ontario. The company has been a manufacturer of finished mattresses since 1900. Marshall is the creator of the pocket or "Marshall" coil which it produces solely for incorporation into its own finished mattresses. It does not sell its pocket coil mattress innerspring units in the domestic market and does not import mattress innerspring units.

Park Avenue

37. Park Avenue was incorporated in 1982 in Calgary. The company manufactures mattress innerspring units for its own internal consumption. After 2000, Park Avenue started to import mattress innerspring units from China.

IMPORTERS, PURCHASERS AND FOREIGN PRODUCERS

38. The Tribunal sent importers' questionnaires to 29 potential importers of mattress innerspring units. It received 15 replies. Three of these replies included information on behalf of 5 associated importers that had received importers' questionnaires. The Tribunal received 2 responses indicating that the firms were not importers of mattress innerspring units and 1 response stating that the importer was in receivership.

39. The Tribunal sent purchasers' questionnaires on market characteristics to 15 potential purchasers of mattress innerspring units. These purchasers included 1 company that had also received a producers' questionnaire and 12 companies that had received importers' questionnaires.

40. The Tribunal received 11 replies from purchasers. Of those replies, 1 purchaser replied on behalf of 2 associated companies that had received purchasers' questionnaires.

41. The Tribunal sent foreign producers' questionnaire to 33 potential producers/exporters of mattress innerspring units in China. It received 3 replies, from Foshan Jingxin Steel Wire & Spring Co., Ltd., Keynor Asia and Zibo Senbao Furniture Co., Ltd.

DISTRIBUTION CHANNELS

42. The domestic producers generally sell mattress innersprings units directly to mattress manufacturers. Mattress innerspring units from China are imported directly by mattress manufacturers or distributed through Canadian agents to be sold to mattress manufacturers. Mattress innerspring units from the United States are imported directly by mattress manufacturers for their own use or by domestic producers of mattress innerspring units for re-sale in the Canadian market.

ANALYSIS

43. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping of the subject goods has caused injury or retardation or is threatening to cause injury, with “injury” being defined, in subsection 2(1), as “. . . material injury to a domestic industry”. In this regard, “domestic industry” is defined in subsection 2(1) by reference to the domestic production of “like goods”.

44. Accordingly, the Tribunal must first determine what constitutes “like goods”. It can then determine what constitutes the “domestic industry” for purposes of its injury analysis.

45. Finally, the Tribunal will determine whether the dumping of the subject goods has caused injury to the domestic industry. Should the Tribunal arrive at a finding of no injury, it will then determine whether there exists a threat of injury.⁷ Because the domestic industry already exists, the Tribunal will not consider the question of retardation.⁸

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

Like Goods and Classes of Goods

47. Given that the Tribunal must determine whether the dumping 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.

48. 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.

49. When goods are not identical in all respects to other goods, the Tribunal typically considers a number of factors to determine “likeness”, such as the physical characteristics of the goods (e.g. their composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.⁹

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

8. Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry”.

9. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at 8; *Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at 7; *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT) at 6.

50. In its preliminary injury inquiry, the Tribunal found that mattress innerspring units produced in Canada are “like goods” in relation to the subject goods. During the final injury inquiry, the parties did not adduce evidence or make submissions to dispute the Tribunal’s preliminary determination on this issue.

51. 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 mattress innerspring units produced in Canada closely resemble the subject goods in terms of physical and market characteristics and can generally be substituted for them, since they have the same end use and compete directly with them in the Canadian market. Accordingly, for the purposes of this injury inquiry, the Tribunal finds that domestically produced mattress innerspring units constitute like goods in relation to the subject goods.

52. Concerning the issue of classes of goods, the Tribunal must consider whether there are sufficient differences based on an analysis of the above-mentioned factors for determining “likeness” to justify separating the goods into different classes. In other words, the Tribunal must consider whether the individual types of products within the range of goods are “like goods” in relation to one another.

53. In its preliminary injury inquiry, the Tribunal considered, but did not accept, submissions from parties opposed to the complaint that mattress innerspring units should be divided into separate classes of goods. Accordingly, based on the evidence and argument presented at that stage, it found that mattress innerspring units constituted a single class of goods. The Tribunal received no submissions during the final injury inquiry that challenged this preliminary determination.

54. Therefore, on the basis of the evidence now before it, the Tribunal sees no reason to depart from this preliminary determination. The Tribunal is satisfied that, overall, while not identical in all respects to each other, all types of mattress innerspring units have similar physical and market characteristics. In this regard, the Tribunal notes that the evidence indicates that different types of mattress innerspring units can compete with one another at the same price points in the marketplace.¹⁰ Accordingly, for the purposes of this injury inquiry, the Tribunal concludes that there exists a single class of goods.

Domestic Industry

55. The Tribunal must now consider which domestic producers constitute the domestic industry. 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.

56. There are six known producers of mattress innerspring units in Canada. These are Globe Spring, Simmons, Primeau, Alpha, Marshall and Park Avenue. Globe Spring, Primeau and Alpha produce mattress innerspring units for the merchant market only. Simmons, Marshall and Park Avenue produce mattress innerspring units almost exclusively for further internal processing. Together, these firms produce the totality of the like goods. Consequently, the Tribunal finds that these producers constitute the domestic industry for the purpose of its injury analysis.

10. *Transcript of Public Hearing*, Vol. 2, 27 October 2009, at 178-79, 189-90; *Transcript of In Camera Hearing*, Vol. 2, 27 October 2009, at 247, 253-54; *Transcript of Public Hearing*, Vol. 4, 29 October 2009, at 540-41.

57. On this issue, parties opposed to an injury finding argued that Simmons should be excluded from the domestic industry on the basis that it is a mattress manufacturer and that its production of mattress innerspring units is used exclusively for further internal processing, as it does not sell like goods in the merchant market. In this regard, the Tribunal notes that there is nothing in *SIMA* which suggests that merchant market sales are a *sine qua non* for the inclusion of a producer in the domestic industry. Subsection 2(1) of *SIMA* does not require the Tribunal to make a distinction between producers of like goods on the basis of the usage or destination of their production. Thus, the Tribunal does not consider that the domestic industry should be restricted only to those producers that sell like goods in the merchant market.

58. This conclusion is consistent with the Tribunal's finding in *Certain Flat Hot-rolled Carbon Steel Sheet Products*.¹¹ In that case, the Tribunal found that the domestic industry was defined in terms of production of like goods and that this definition did not include consideration of the market or distribution channels for the goods. Accordingly, the Tribunal concluded that both internally transferred like goods and those sold in the merchant market had to be considered part of the production in Canada subject to an injury inquiry. However, as is discussed in greater detail below, the Tribunal may focus its injury analysis on the impact of dumping on the merchant market.

59. The Tribunal further notes that Globe Spring does not produce like goods for further internal processing and that, during the POI, its production accounted for well over half of the total domestic production of like goods.¹² Therefore, on its own, Globe Spring's production constitutes a major proportion of the total domestic production of like goods.

Preliminary Consideration

60. Before proceeding with its injury analysis, the Tribunal will address a preliminary issue raised on behalf of Keynor Spring, Springwall, Restwell, Spring Air and Pacific.

Evidence on Finished Mattresses

61. Keynor Spring, Springwall, Restwell, Spring Air and Pacific objected to the Tribunal proceeding with the inquiry on the basis of a record that is "tainted" by the presence of evidence concerning finished mattresses and requested that the Tribunal either (i) remove from the record the evidence submitted by Simmons and Marshall and the *Pre-hearing Staff Report*, and allow parties a reasonable period of time to review and respond to the revised evidence or (ii) terminate its inquiry.

62. The Tribunal disagrees with the assertion that its administrative record is "tainted" by the presence of evidence concerning finished mattresses. In the Tribunal's opinion, the *Pre-hearing Staff Report* contains ample and reliable information on the subject goods and the like goods. The mere presence of some evidence relating to finished mattresses does not affect the reliability of the data contained in the *Pre-hearing Staff Report*. The Tribunal also notes that the evidence on the record clearly allows information on finished mattresses to be separated from information on mattress innerspring units. In conducting its injury analysis, the Tribunal is permitted by law to accept evidence on the record liberally and to assign to it the weight that it deserves. Consequently, the Tribunal will not remove the evidence submitted by Simmons and Marshall and will not terminate its inquiry as certain parties opposed have requested.

11. (31 May 1993), NQ-92-008 (CITT) at 20.

12. *Protected Pre-hearing Staff Report*, revised 20 October 2009, Tribunal Exhibit NQ-2009-002-07B (protected), Administrative Record, Vol. 2.1A at 229.

INJURY

Background

63. Subsection 37.1(1) of the *Special Import Measures Regulations*¹³ prescribes certain factors that the Tribunal may consider in determining whether the dumping of goods has caused material injury to the domestic industry. These factors include the volume of dumped goods, their effect on prices in the domestic market for like goods and the impact of the dumped goods on the domestic industry, including actual or potential declines in domestic sales, market share, profits and financial performance. Subsection 37.1(3) also requires the Tribunal to consider other factors not related to the dumping to ensure that any injury caused by these other factors is not attributed to the dumped imports.

64. Before examining these factors, the Tribunal notes that the parties all made representations as to the manner in which the Tribunal should assess the alleged injury to the domestic industry in this inquiry, given that certain domestic producers produce mattress innerspring units exclusively or almost exclusively for their own further processing purposes and do not sell like goods in the merchant market. In particular, Simmons submitted that the Tribunal possesses the discretion to determine injury with respect to combined production destined for the merchant market and captive production or production destined for the merchant market exclusively. Globe Spring generally agreed with Simmons' submissions in this regard and submitted that, should the Tribunal wish to assess injury on the basis of the effect of dumping on the portion of the production of like goods sold in the merchant market, the evidence on the record is sufficient in law to support a finding of injury or threat of injury. Owen submitted that the focus of the Tribunal's inquiry should be on mattress innerspring units produced in Canada and sold in the merchant market.

65. The Tribunal does not consider it necessary to revisit this issue, since it has already been addressed clearly in previous cases.¹⁴ In this case, as it has done in previous cases, the Tribunal chooses to focus its injury analysis on the impact of dumping on the merchant market. However, the materiality of any injury caused by the dumping will be assessed against the domestic industry's production of like goods as a whole.

Volume of Imports of Dumped Goods

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

67. The Canadian market for mattress innerspring units was relatively stable throughout the POI, with a marginal decline recorded in 2008 and a somewhat more pronounced decrease of 6 percent in the first half of 2009 (hereinafter interim 2009) compared to the first half of 2008 (hereinafter interim 2008).¹⁵ The evidence indicates that these reductions are undoubtedly a by-product of the 2008-2009 recession. However, this economic downturn, which commenced around the fall of 2008,¹⁶ was preceded by several years of solid economic growth, including in 2006 and 2007, during which there was a strong demand for the

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

14. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 13; *Re Refrigerators, Dishwashers and Dryers*, (2002), CDA-USA 2000-1904-04 (Ch. 19 Panel), at 17-23.

15. *Pre-hearing Staff Report*, revised 20 October 2009, Tribunal Exhibit NQ-2009-002-06B, Administrative Record, Vol. 1.1A at 202.

16. Tribunal Exhibit NQ-2009-002-33.05, Administrative Record, Vol. 1 at 196.

mattress innerspring units.¹⁷ Witnesses who testified in this case, as well as respondents to the Tribunal's purchasers' questionnaire, also described the market for mattress innerspring units as exhibiting low price elasticity of demand,¹⁸ another feature of a market with relatively stable aggregate demand.

68. While there were no strong trends in overall market demand during the POI, the patterns of supply of mattress innerspring units from various sources were in fact changing. In terms of domestic sources, both the volume of domestic production and the volume of sales from domestic production declined by 8 and 12 percent in 2006 and 2007 respectively. Domestic production and sales volumes remained at this reduced level through 2008, before showing a small increase between interim 2008 and interim 2009. On an annualized basis, the volumes from domestic sources at the end of the POI were still 8 to 10 percent below the levels achieved in 2006.¹⁹

69. On the other hand, the subject imports increased sharply, by about 80,000 units, or some 28 percent, between 2006 and 2007, and essentially remained at this significantly higher level in 2008. Although there was a small reduction of some 4 percent between interim 2008 and interim 2009, the subject imports remained substantially above the levels in 2006. In contrast, throughout the POI, imports from the United States, the only other significant source of imports, declined steadily, reaching a level at the end of the POI, on an annualized basis, about 20 percent below the level in 2006.²⁰

70. In short, over the POI, despite the recession, the subject goods were the only significant source of supply that increased or maintained its level of sales in the Canadian marketplace. The other sources of supply ended the POI at substantially reduced levels of sales volumes. This translated into a market share gain of 5 percentage points for the subject imports between 2006 and 2008, and a further 1 percentage point gain in interim 2009. The market share gains realized by imports from China between 2006 and 2008 correspond exactly to the market share losses experienced by the domestic industry over the same period. Although the domestic industry's market share recovered in interim 2009, almost reaching the 2006 level, this gain is the result of the weakness in imports from the United States rather than any loss of market share by imports from China.²¹

71. The above analysis of aggregate market trends reveals a significant increase in market presence by imports from China generally. It is also useful to analyze the developments in the market by principal coil segment, namely, Bonnell, offset, continuous and pocket coils. The Tribunal notes that, while there is some

17. *Transcript of Public Hearing*, Vol. 1, 26 October 2009, at 37.

18. *Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-06A, Administrative Record, Vol. 1.1A at 33; *Transcript of Public Hearing*, Vol. 1, 26 October 2009, at 38, 70-72, 75-76; *Transcript of Public Hearing*, Vol. 4, 29 October 2009, at 569; *Transcript of Public Argument*, 29 October 2009, at 647.

19. *Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-06A, Administrative Record, Vol. 1.1A at 48; *Pre-hearing Staff Report*, revised 20 October 2009, Tribunal Exhibit NQ-2009-002-06B, Administrative Record, Vol. 1.1A at 202. The most updated figures are confidential and are available in *Protected Pre-hearing Staff Report*, revised 20 October 2009, Tribunal Exhibit NQ-2009-002-07B (protected), Administrative Record, Vol. 2.1A at 207-208, 229.

20. *Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-06A, Administrative Record, Vol. 1.1A at 43. The most updated figures are confidential and are available in *Protected Pre-hearing Staff Report*, revised 20 October 2009, Tribunal Exhibit NQ-2009-002-07B (protected), Administrative Record, Vol. 2.1A at 204.

21. *Pre-hearing Staff Report*, revised 20 October 2009, Tribunal Exhibit NQ-2009-002-06B, Administrative Record, Vol. 1.1A at 202; *Protected Pre-hearing Staff Report*, revised 20 October 2009, Tribunal Exhibit NQ-2009-002-07B (protected), Administrative Record, Vol. 2.1A at 209.

overlap between segments,²² Bonnell coils are generally considered to be at the lower end of the market and continuous and pocket coils at the higher end.²³ The data show that there was a distinct up-market shift in coil sales over the POI. Specifically, the sales of Bonnell coils, while remaining the dominant coil type in the market, declined by more than 40 percent, while the sales of continuous and pocket coils increased by more than 50 percent and more than 80 percent respectively (on an annualized basis).²⁴

72. Some witnesses testified that this shifting pattern of coil sales reflects changing consumer mattress preferences.²⁵ This may be so, but, in the Tribunal's opinion, another consideration may be the increased use of dumped Chinese innerspring units in these mattresses. More particularly, the data show that, over the POI, the distribution of sales of the subject goods evolved from being equally divided between the high and low ends of the market to being predominantly in the high end of the market. This change has been dramatic. At the beginning of the POI, sales of the subject goods were about 40 percent higher than domestic sales in the high end of the market; by the end of the POI, sales of imports from China were about 60 percent higher than those of the domestic industry in the continuous and pocket coil market segments.²⁶

73. In both the low and high ends of the market, the Tribunal notes that domestic goods are available on a national basis and compete with the subject goods in all regions where the subject goods are present.²⁷ The evidence also shows that the domestic industry can access even the most distant markets in British Columbia at reasonable freight costs that are lower than the cost of ocean freight from China to Vancouver.²⁸ The evidence further shows that the subject goods are distributed through the same distribution channels²⁹ and marketed to substantially the same customers as domestic goods.³⁰ Indeed, many mattress manufacturers purchase mattress innerspring units from China at the same time as they continue to purchase from the domestic industry.³¹

74. Accordingly, the Tribunal finds that the increase in the sales volume and market share of the subject goods has come at the expense of domestic sales and production for the merchant market and that this has caused injury to domestic producers.

22. *Transcript of Public Hearing*, Vol. 2, 27 October 2009, at 178-79, 189-90; *Transcript of In Camera Hearing*, Vol. 2, 27 October 2009, at 247, 153-54; *Transcript of Public Hearing*, Vol. 4, 29 October 2009, at 540-41.

23. *Transcript of Public Hearing*, Vol. 1, 26 October 2009, at 111-13; *Transcript of Public Hearing*, Vol. 2, 27 October 2009, at 189, 248; *Transcript of Public Hearing*, Vol. 3, 28 October 2009, at 357, 408; *Transcript of Public Hearing*, Vol. 4, 29 October 2009, at 497, 499-500, 549.

24. *Protected Addendum to Staff Report*, revised 22 October 2009, Tribunal Exhibit NQ-2009-002-07D (protected), Administrative Record, Vol. 2.1B at 5, 21, 29.

25. *Transcript of Public Hearing*, Vol. 4, 29 October 2009, at 499, 561.

26. *Protected Addendum to Staff Report*, revised 22 October 2009, Tribunal Exhibit NQ-2009-002-07D (protected), Administrative Record, Vol. 2.1B at 21, 29.

27. *Protected Pre-hearing Staff Report*, revised 20 October 2009, Tribunal Exhibit NQ-2009-002-07B (protected), Administrative Record, Vol. 2.1A at 223.

28. Tribunal Exhibit NQ-2009-002-15.03 (protected), Administrative Record, Vol. 6 at 170; Manufacturer's Exhibit A-15 (protected), Administrative Record, Vol. 12 at 4; *Transcript of Public Hearing*, Vol. 2, 27 October 2009, at 218.

29. *Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-06A, Administrative Record, Vol. 1.1A at 25.

30. Tribunal Exhibit NQ-2009-002-12.03 (protected), Administrative Record, Vol. 4 at 119-56.

31. Tribunal Exhibit NQ-2009-002-12.03E (protected), Administrative Record, Vol. 4 at 221.5; Tribunal Exhibit NQ-2009-002-15.04 (protected), Administrative Record, Vol. 6 at 251-53, 259; Tribunal Exhibit NQ-2009-002-15.08 (protected), Administrative Record, Vol. 6A at 66-68, 72; Tribunal Exhibit NQ-2009-002-15.20 (protected), Administrative Record, Vol. 6B at 8-10..

Effects of Dumped Imports on Prices

75. Pursuant to paragraph 37.1(1)(b) of the *Regulations*, the Tribunal must consider the effects of the dumped goods on the price of like goods and, in particular, whether the dumped 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.

76. According to the aggregate market value data, there was a steady increase in the average unit selling value of Chinese mattress innerspring units over the POI. In addition, the average unit selling values of the subject goods increased above the average unit selling values of domestic sales from domestic production, as the period progressed.³²

77. Parties opposed argued that these average value data support their proposition that Chinese pricing has not injured the domestic industry. The Tribunal does not accept this argument, as it does not consider that average aggregate pricing, in this case, constitutes a sound basis for comparing Chinese and domestic prices. As discussed above, the evidence shows that the mix of products imported from China changed considerably over the POI, moving from a concentration in the generally lower-priced Bonnell coils to a significant presence in the generally higher-priced continuous and pocket coils.³³ In the Tribunal's view, while the domestic products are present in all market segments, the majority of domestic sales, throughout the POI, were of the Bonnell variety.³⁴ Thus, price comparisons based on average sales values may reflect no more than differences or changes in product mix and reveal little about real head-to-head price competition in the market.

78. To get a clearer picture of comparable domestic and Chinese pricing, the Tribunal considered pricing information broken down by the major coil segments in the market. These data show that, over the POI, in almost every period examined, and in every coil segment where Chinese mattress innerspring units were competing, Chinese prices were lower than domestic prices.³⁵ The margins of price undercutting were often significant, ranging as high as 40 percent. While the evidence shows that some buyers are prepared to pay more for Canadian-sourced mattress innerspring units, many of the reported margins of price undercutting substantially exceed the premium that purchasers that responded to the Tribunal's questionnaire reported that they were prepared to pay before switching from domestic suppliers to imports from China.³⁶ They also exceed the premiums that some witnesses indicated they were prepared to pay for the advantages of domestic supply.³⁷

32. *Protected Pre-hearing Staff Report*, revised 20 October 2009, Tribunal Exhibit NQ-2009-002-07B (protected), Administrative Record, Vol. 2.1A at 213-14.

33. The subject goods were absent in the offset coil market segment. *Protected Addendum to Staff Report*, revised 22 October 2009, Tribunal Exhibit NQ-2009-002-07D (protected), Administrative Record, Vol. 2.1B at 5, 13, 21, 29.

34. *Protected Addendum to Staff Report*, revised 22 October 2009, Tribunal Exhibit NQ-2009-002-07D (protected), Administrative Record, Vol. 2.1B at 5.

35. *Ibid.* at 11, 27, 35.

36. *Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-06A, Administrative Record, Vol. 1.1A at 33.

37. *Transcript of Public Hearing*, Vol. 3, 28 October 2009, at 329, 398-400; *Transcript of Public Hearing*, Vol. 4, 29 October 2009, at 479-81; *Transcript of In Camera Hearing*, Vol. 1, 26 October 2009, at 102; *Transcript of In Camera Hearing*, Vol. 3, 28 October 2009, at 361-65, 383-84; *Transcript of In Camera Hearing*, Vol. 4, 29 October 2009, at 491-92.

79. The pattern of price undercutting revealed by the above data is also confirmed by the data on “benchmark” pricing.³⁸ These data compare Chinese and domestic prices on comparable mattress innerspring unit models. They show that the subject goods undercut the prices for sales from domestic production in 21 of 22 time periods for the three benchmark products where direct comparisons could be made. Although certain mattress manufacturers testified that a Canadian product and a Chinese product at exactly the same price point would generally be expected to have the same features,³⁹ the evidence shows instances of a Chinese innerspring unit with a high coil count selling for less than a domestic innerspring unit of the same coil type, with a lower coil count.⁴⁰ Normally, the higher coil count product would be priced higher. Indeed, the down-pricing of high-end products was alluded to by witnesses who testified that imports from China of pocket and continuous coils were so aggressively priced that they competed, in some cases, with Bonnell coils at the lower end of the market.⁴¹

80. The Tribunal has also examined the injury allegations at specific accounts submitted by Globe Spring.⁴² This information is not as precise as some of the above pricing information, in that Globe Spring’s pricing is generally based on price lists less discounts⁴³ and some import pricing is FOB China (i.e. export basis) rather than landed in Canada (i.e. import basis). Nevertheless, when these data are adjusted using reasonable assumptions to arrive at comparable prices for Chinese and domestic goods, the comparisons also show a clear pattern of price undercutting by Chinese goods.⁴⁴

81. The Tribunal notes that the above evidence on price undercutting is consistent with the responses to the purchaser’s questionnaire on market characteristics. Nine out of 10 questionnaire respondents indicated that Chinese prices were lower than domestic prices.⁴⁵ It is important to underline that there is almost unanimity on this issue, even though the majority of questionnaire respondents are participants in these proceedings as parties opposed to the complaint.

82. In addition to undercutting domestic prices, the evidence shows that the imports from China led to a strong price-suppressive effect on the domestic industry. According to the evidence, Globe Spring’s prices were under pressure not only from mattress manufacturers that were purchasing or importing Chinese mattress innerspring units but also from some of its own customers that did not import but that were aware

38. *Protected Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-07A (protected), Administrative Record, Vol. 2.1A at 71-79.

39. *Transcript of Public Hearing*, Vol. 4, 29 October 2009, at 481-82.

40. *Protected Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-07A (protected), Administrative Record, Vol. 2.1A at 71-73, 78-79.

41. *Transcript of Public Hearing*, Vol. 1, 26 October 2009, at 113; *Transcript of In Camera Hearing*, Vol. 2, 27 October 2009, at 253.

42. In the proceedings, parties opposed contended that, for allegations affecting them, insufficient disclosure was provided by Globe Spring to allow for a reasonable opportunity to respond. The Tribunal notes that the allegations in question represent a small number of the allegations made and considers that even if they were found not to be credible, the Tribunal’s analysis would not change. Tribunal Exhibit NQ-2009-002-12.03 (protected), Administrative Record, Vol. 4 at 119-20, 124-42, 151-56.

43. Tribunal Exhibit NQ-2009-002-11.03, Administrative Record, Vol. 3A at 28-47; Tribunal Exhibit NQ-2009-002-12.03 (protected), Administrative Record, Vol. 4 at 163-64; *Transcript of In Camera Hearing*, Vol. 1, 26 October 2009, at 33-34.

44. Domestic pricing was adjusted for discounts offered and Chinese pricing was adjusted to account for freight and duties. Tribunal Exhibit NQ-2009-002-12.03 (protected), Administrative Record, Vol. 4 at 145, 150; *Transcript of In Camera Hearing*, Vol. 3, 28 October 2009, at 264.

45. *Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-06A, Administrative Record, Vol. 1.1A at 29.

of Chinese pricing and used it to obtain price concessions from Globe Spring.⁴⁶ On three occasions in 2008, Globe Spring attempted to increase its prices to its customers.⁴⁷ Although some gains were realized, they fell far short of the minimum needed to recover cost increases over the same period, as will be discussed in the next paragraph.

83. The Tribunal notes that there was some improvement in domestic prices in interim 2009 compared to interim 2008. However, domestic prices, on average, remain at suppressed levels, often not exceeding prices that prevailed in 2006, despite the significant increases in costs that Globe Spring has experienced since that time.

84. Concerning the issue of price depression, while the evidence indicates that there have been instances of price reductions,⁴⁸ there is nothing to indicate an overall pattern of price declines during the POI.⁴⁹

85. Finally, the Tribunal is mindful that some of the parties opposed to the complaint are sourcing some of their requirements from Chinese manufacturers that have received zero net dumping margins. However, the fact remains that the volume of dumped goods from China and the margins of dumping, as found by the CBSA in its final determination, are substantial.⁵⁰ Also, it must be noted that there was some evidence of price undercutting by importers sourcing from the manufacturers with zero and low dumping margins,⁵¹ and since dumping margins are an aggregate calculation, it does not necessarily mean that all shipments from these manufacturers were not dumped.

86. In summary, the Tribunal finds that, on the basis of the evidence before it, dumped Chinese mattress innerspring units have benefited from a substantial price advantage over domestic mattress innerspring units. In particular, the subject goods have significantly undercut the price of like goods, as well as suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred.

Impact of Dumped Imports on the Domestic Industry

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

46. Tribunal Exhibit NQ-2009-002-12.03 (protected), Administrative Record, Vol. 4 at 119-20, 124-42, 151-56; Tribunal Exhibit NQ-2009-002-21.08 (protected), Administrative Record, Vol. 6.2 at 71.

47. Manufacturer's Exhibit A-04 at para. 53, Administrative Record, Vol. 11; Manufacturer's Exhibit A-05 (protected) at 37-39, Administrative Record, Vol. 12.

48. Tribunal Exhibit NQ-2009-002-12.03 (protected), Administrative Record, Vol. 4 at 119-56.

49. *Protected Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-07A (protected), Administrative Record, Vol. 2.1A at 71-79; *Protected Addendum to Staff Report*, revised 22 October 2009, Tribunal Exhibit NQ-2009-002-07D (protected), Administrative Record, Vol. 2.1B at 11, 27, 35.

50. Tribunal Exhibit NQ-2009-002-04A, Administrative Record, Vol. 1 at 78.29, 78.40.

51. Tribunal Exhibit NQ-2009-002-15.03 (protected), Administrative Record, Vol. 6 at 68; Tribunal Exhibit NQ-2009-002-15.03C, Administrative Record, Vol. 5.2 at 239; Tribunal Exhibit NQ-2009-002-15.04 (protected), Administrative Record, Vol. 6 at 254; Tribunal Exhibit NQ-2009-002-15.04A (protected), Administrative Record, Vol. 6 at 278; Tribunal Exhibit NQ-2009-002-20.05A, Administrative Record, Vol. 5.2 at 121; Tribunal Exhibit NQ-2009-002-RI-05 (protected), Administrative Record, Vol. 10; *Protected Addendum to the Pre-hearing Staff Report*, revised 22 October 2009, Tribunal Exhibit NQ-2009-002-07D (protected), Administrative Record, Vol. 2.1B at 11, 27, 35.

88. As discussed earlier, the Tribunal will focus on the performance indicators of the domestic producers which produce for the merchant market. The only domestic producer that provided a full questionnaire response on all performance indicators is Globe Spring.⁵² Nonetheless, since Globe Spring's production and sales comprise more than 90 percent of domestic production and sales in the merchant market,⁵³ the Tribunal considers it to be a reliable representation of the effect of the dumped imports on the domestic industry's performance, as a whole, in the merchant market.

89. The domestic industry's production, sales volumes, sales revenues and market share all declined between 2006 and 2007 before increasing in 2008 and showed some further signs of recovery in the first half of 2009.⁵⁴ However, 2009 levels for these performance indicators remain at or below levels achieved at the beginning of the period in 2006.⁵⁵ Moreover, the evidence shows that, throughout the POI, the domestic industry operated at low levels of capacity utilization.⁵⁶ Employment levels also dropped, though productivity (output per employee) increased, as production did not fall as fast as employment.⁵⁷

90. However, the most telling indication of the injury suffered by the domestic industry is in Globe Spring's financial performance. The evidence shows that Globe Spring's financial condition deteriorated steadily and significantly over the POI.⁵⁸ Unlike some of the other performance indicators, which, as discussed above, show some positive indications in 2009, the company's financial performance continued to deteriorate in 2009. The principal reason for Globe Spring's poor financial performance is the increasing discrepancy between its manufacturing costs and revenues. An important factor behind these cost increases, especially in 2008, has been the rising cost of steel wire, the major material input in the manufacturing cost of mattress innerspring units.⁵⁹

91. According to the evidence, Globe Spring sources its steel wire requirements from its parent company in the United States. Globe Spring has indicated that these steel wire purchases are based on transfer values derived from prevailing market prices.⁶⁰ Parties opposed have raised questions about whether such inter-company transfers actually reflect fair market value. While it may be true in some instances that inter-company transfers do not necessarily reflect fair market value, the Tribunal considers that the evidence does not indicate that Globe Spring paid an artificially inflated price for its steel wire requirements.⁶¹

52. Alpha and Primeau only provided information on their production and sales.

53. *Protected Pre-hearing Staff Report*, revised 20 October 2009, Tribunal Exhibit NQ-2009-002-07B (protected), Administrative Record, Vol. 2.1A at 229.

54. On a disaggregated basis, the performances of Alpha and Primeau are worse than the industry's performance as a whole.

55. *Protected Pre-hearing Staff Report*, revised 20 October 2009, Tribunal Exhibit NQ-2009-002-07B (protected), Administrative Record, Vol. 2.1A at 201, 207, 210, 229.

56. *Protected Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-07A (protected), Administrative Record, Vol. 2.1A at 183.

57. *Protected Pre-hearing Staff Report*, revised 20 October 2009, Tribunal Exhibit NQ-2009-002-07B (protected), Administrative Record, Vol. 2.1A at 271, 277.

58. *Protected Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-07A (protected), Administrative Record, Vol. 2.1A at 82.

59. *Ibid.* at 91; Manufacturer's Exhibit A-05 (protected) at 5, Administrative Record, Vol. 12.

60. *Transcript of Public Hearing*, Vol. 1, 26 October 2009, at 149-50; *Transcript of In Camera Hearing*, Vol. 1, 26 October 2009, at 78-80, 102-103.

61. On the contrary, Globe Spring's rate of increase on steel wire was less than the reported rate of increase experienced in the market, over the relevant period, for steel rod, the basic input material in the formation of steel wire. *Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-06A, Administrative Record, Vol. 1.1A at 36; *Protected Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-07A (protected), Administrative Record, Vol. 2.1A at 91; Manufacturer's Exhibit A-05 (protected) at 5, Administrative Record, Vol. 12.

92. Parties opposed have also raised issues about certain increases in the charges assigned to factory overhead, in 2008, resulting from allocations made by Globe Spring in reporting its financial results on like goods in the producers' questionnaire. The evidence on the record does not indicate any errors of allocation. Moreover, even if the factory overhead expenses in question were held at 2007 or 2006 levels, Globe Spring would still not have been able to operate at satisfactory levels in 2008, unless it had been able to increase prices to cover other cost increases, such as those of carbon steel wire.⁶²

93. In sum, the Tribunal is satisfied from the evidence that the domestic industry in the merchant market has experienced significant injury due to the price and volume effects of the dumped goods.

Other Factors

94. Subsection 37.1(3) of the *Regulations* directs the Tribunal to consider factors other than the dumping to ensure that any injury or threat of injury caused by those other factors is not attributed to the effect of the dumped imports. Parties opposed have alluded to numerous other factors that they allege are responsible for the domestic industry's poor performance during the POI.

Recession

95. Parties opposed argued that Globe Spring's poor performance is caused by the severe recession that began in the last quarter of 2008. However, as discussed earlier, overall aggregate demand for mattress innerspring units was more or less constant from 2006 to 2008, before declining somewhat in the first half of 2009. Moreover, there is considerable evidence of domestic sales losses, market share losses and Chinese price undercutting prior to 2008. In other words, the evidence shows that the domestic industry began to experience the price and volume effects of the dumped Chinese goods before the recession began. Thus, while the recession may have had some effect, the Tribunal finds that, after accounting for this factor, the effects of the dumping of the subject goods are still material.

Bonnell Coil

96. Parties opposed argued that Globe Spring's poor performance is largely attributable to the fact that it is the dominant market player in a rapidly declining segment of the market, namely, the lower end Bonnell coil segment. In support of their contention, they noted, among other things, that a new product called Verticoil is being introduced in the United States and Canada and that Globe Spring's parent, Leggett & Platt, is advertising this product as a replacement for Bonnell coils.⁶³

97. While it is evident that the market for Bonnell coils declined steadily over the POI, as did Globe Spring's sales in this market segment, the evidence shows that Bonnell coils remain an important market segment and a significant part of Globe Spring's sales and sales of imports from China.⁶⁴ Indeed, one of the Tribunal's witnesses, whose family-run business has manufactured mattresses with Globe Spring's Bonnell coil mattress innerspring units for decades, testified to the continuing distinctness and utility of this coil type in today's market.⁶⁵ Furthermore, in the Tribunal's opinion, even if there is an underlying long-term shift in demand from Bonnell coils to other coil types, this does not alter the fact that the domestic industry suffered material injury due to dumped imports over the POI.

62. *Protected Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-07A (protected), Administrative Record, Vol. 2.1A at 87.

63. *Transcript of Public Hearing*, Vol. 1, 26 October 2009, at 108-10, 128-30, 154.

64. Imports of Bonnell coils from China declined in interim 2009. Prior to that, these imports comprised around 20 percent of the Bonnell coil market segment between 2006 and 2008. *Protected Addendum to Staff Report*, revised 22 October 2009, Tribunal Exhibit NQ-2009-002-07D (protected), Administrative Record, Vol. 2.1B at 5-7.

65. *Transcript of Public Hearing*, 30 October 2009, at 625, 657.

Imports from the United States

98. Parties opposed argued that Globe Spring is a major importer of mattress innerspring units from the United States and that it would not suffer injury if, instead of importing from the United States, it produced these goods in its own facilities in Canada. Concerning this argument, the Tribunal notes that the evidence shows that the vast majority of the U.S. goods imported by Globe Spring are manufactured by its parent, Leggett & Platt, under the name Miracoil, and are shipped to Serta, a Canadian subsidiary of Serta, United States, under the terms of an agreement between the two U.S. parent companies.⁶⁶ On the basis of the evidence on the record, the Tribunal accepts Globe Spring's argument that, as the middleman in this transaction, it makes money on these sales.⁶⁷

99. According to Globe Spring, the Miracoil innerspring units are produced in the United States by Leggett & Platt because it has facilities in the United States that are highly efficient and largely dedicated to the production of Miracoil innerspring units.⁶⁸ In the Tribunal's opinion, if these products could be produced in Canada, it might well benefit Globe Spring by allowing its manufacturing costs to be spread over higher production volumes. However, regardless of this possibility, the fact remains that the injury due to the dumped imports was material.

100. Concerning the effect of imports from the United States by others,⁶⁹ the Tribunal notes that there has been no evidence that U.S. import prices are undercutting, suppressing or otherwise having a negative impact on market prices in Canada. On the contrary, the largest wholesaler distributor of mattress innerspring units from China testified that U.S. prices were generally too high for him to import and turn a profit.⁷⁰

Simmons' Bramalea Closure

101. Parties opposed submitted that the closure of Simmons' mattress manufacturing plant in Bramalea, Ontario, in September 2008 was another cause of injury to Globe Spring. Globe Spring had supplied open coil mattress innerspring units to Simmons at Bramalea, and these sales were lost as a result of the plant closure.⁷¹ The Tribunal notes that this event happened towards the latter end of the POI. In other words, well prior to the Bramalea closure, Globe Spring was experiencing the adverse volume and price effects of dumped imports from China. In any event, decreased sales to Simmons do not reduce or offset the materiality of the injury caused by dumping, in the Tribunal's estimation.

Innovation and Differentiation

102. Parties opposed argued that Globe Spring's injury is self-inflicted because it is a company with little interest in innovation and little or no capacity or responsibility for research and development. In this regard, the evidence shows that Globe Spring has the capacity for, and produces and sells into, all major market

66. *Transcript of Public Hearing*, Vol. 1, 26 October 2009, at 104-105.

67. Tribunal Exhibit NQ-2009-002-12.03E (protected), Administrative Record, Vol. 4 at 221.5.

68. *Transcript of Public Hearing*, Vol. 1, 26 October 2009, at 105.

69. The vast majority of these imports are destined exclusively to meet the special needs of one major mattress manufacturer in Canada. Tribunal Exhibit NQ-2009-002-15.18 (protected), Administrative Record, Vol. 6A at 298.

70. *Transcript of Public Hearing*, Vol. 2, 27 October 2009, at 284-85.

71. Globe Spring is still a major supplier of mattress innerspring units to Simmons. In addition, Simmons has relocated its Bramalea production capacity to its facilities in Quebec and Alberta. It has resumed its Bramalea production at these facilities. Tribunal Exhibit NQ-2009-002-12.02 (protected), Administrative Record, Vol. 4 at 38; *Transcript of Public Hearing*, Vol. 1, 26 October 2009, at 135; *Transcript of Public Hearing*, Vol. 2, 27 October 2009, at 156-57, 176-77, 192.

segments;⁷² it has recently introduced a new continuous coil product, Superlastic, that is being well received in the market;⁷³ and it invested substantial sums in new and refurbished innerspring production equipment over the POI.⁷⁴ Although Globe Spring's U.S. parent, Leggett & Platt, retains most of the responsibility for technical innovation and research and development,⁷⁵ this does not mean that Globe Spring is necessarily unresponsive to market trends or the particular needs of its customers.

103. On the contrary, as noted earlier, the evidence shows that Globe Spring supplies and can meet the demands of the largest mattress manufacturers in the country.⁷⁶ Indeed, the evidence shows that domestic purchasers generally consider domestic mattress innerspring units as, at least, comparable to Chinese mattress innerspring units on technical, product quality and reliability factors.⁷⁷ Thus, in the Tribunal's opinion, even if it is true that Globe Spring is less innovative in some respects than some Chinese producers, this does not render the injury by dumping non-material.

104. Another aspect of this argument by parties opposed concerning innovation is that Globe Spring could not meet their clients' needs for product differentiation. They submitted that the principal way for their clients to differentiate themselves in the marketplace was to offer their customers different types and constructions of mattress innerspring units from their competitors. They could not achieve this if they all sourced from the same supplier, namely, Globe Spring. In their view, Globe Spring's innerspring product range was unresponsive to their need for differentiation.

105. In considering this issue, the Tribunal notes that the mattress innerspring unit comprises, on average, about 30 percent of the cost of a finished mattress. While the mattress innerspring unit is certainly important, there is upholstery, padding and many other components in a finished mattress that differentiate one manufacturer from another.⁷⁸ This is confirmed by the testimony of the Tribunal retailer witnesses who stated that the nature and composition of the mattress innerspring unit was not foremost in their minds or the minds of most of their customers who came into their stores to buy mattresses.⁷⁹ This evidence is also reflected in the testimony of a witness for one of the mattress manufacturers who stated that, when marketing product to retailers, the mattress innerspring unit was not an important consideration.⁸⁰

106. The Tribunal also considers it relevant to note that, according to the market segment pricing data, the price undercutting by imports from China tends to be greater at the higher end of the market (pocket and continuous coils) than at the lower end (Bonnell coils). In the Tribunal's opinion, such price undercutting would not seem to be necessary if the Chinese products in the higher end of the market were as highly differentiated, as claimed by parties opposed to the complaint.

72. *Protected Addendum to Staff Report*, revised 22 October 2009, Tribunal Exhibit NQ-2009-002-07D (protected), Administrative Record, Vol. 2.1B at 5, 13, 21, 29.

73. Manufacturer's Exhibit A-04 at para. 31, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 26 October 2009, at 107-108.

74. *Protected Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-07A (protected), Administrative Record, Vol. 2.1A at 186; *Transcript of In Camera Hearing*, Vol. 1, 26 October 2009, at 42-43, 70-73.

75. *Transcript of Public Hearing*, Vol. 1, 26 October 2009, at 148.

76. Tribunal Exhibit NQ-2009-002-12.03E (protected), Administrative Record, Vol. 4 at 221.5.

77. *Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-06A, Administrative Record, Vol. 1.1A at 29.

78. *Transcript of Public Hearing*, Vol. 1, 26 October 2009, at 22-23, 118-22; *Transcript of Public Hearing*, Vol. 2, 27 October 2009, at 185; *Transcript of Public Hearing*, 30 October 2009, at 637-38; *Transcript of In Camera Hearing*, Vol. 2, 27 October 2009, at 153.

79. *Transcript of Public Hearing*, Vol. 4, 29 October 2009, at 517-18, 565-66, 569.

80. *Transcript of In Camera Hearing*, Vol. 4, 29 October 2009, at 429.

107. Accordingly, on the basis of the evidence on the record, the Tribunal is of the view that parties opposed have overstated the importance of the physical attributes of the mattress innerspring units in achieving differentiation and considers that the domestic and Chinese goods are highly substitutable, on the whole.

108. Based on the foregoing, the Tribunal is satisfied that, while other factors may have contributed in some measure to the injury suffered by the domestic industry, after accounting for the collective effect of these other factors, the injury experienced by the domestic industry in the merchant market from the effects of the dumped subject goods is still material.

Conclusion

109. Having regard to the foregoing, the Tribunal is satisfied that the dumped imports from China caused injury to domestic production for sales in the merchant market. Over the POI, production for the merchant market comprised over 70 percent of total domestic production.⁸¹ In the Tribunal's view, the extent of injury in the merchant market is sufficiently great to be material when considered in relation to domestic production as a whole.⁸²

110. Therefore, the Tribunal does not need to consider the question of threat of injury.

EXCLUSIONS

111. The Tribunal received requests for product exclusions from Keynor Spring and Owen. Globe Spring and Simmons opposed all of these requests. At the hearing, Keynor Spring informed the Tribunal that it had decided to withdraw all of its requests for product exclusions.⁸³ Therefore, the Tribunal will only address Owen's requests for product exclusions.

112. At the outset, the Tribunal notes that it has indicated in past decisions that product exclusions are granted only in exceptional circumstances.⁸⁴ In *Stainless Steel Wire*,⁸⁵ 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]

113. The Tribunal recently confirmed these principles in *Aluminum Extrusions*.⁸⁶

81. *Protected Pre-hearing Staff Report*, revised 20 October 2009, Tribunal Exhibit NQ-2009-002-07B (protected), Administrative Record, Vol. 2.1A at 203.

82. That is, domestic production for sales in the domestic market, domestic production for export sales (that were relatively insignificant over the POI) and domestic production destined for internal consumption.

83. *Transcript of Public Hearing*, 30 October 2009, at 661.

84. *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at 30; *Cold-rolled Steel Sheet* (13 September 1999), NQ-99-001 (CITT) at 33.

85. (30 July 2004), NQ-2004-001 (CITT) at 22.

86. (17 March 2009), NQ-2008-003 (CITT) at 57.

114. Owen requested exclusions for two products that it described as follows: (1) pocket coil mattress innerspring units, made with tempered coils, with heavier gauge coils in the mid-section, and with a foam spacer running lengthwise down the middle on all sizes except twin; and (2) pocket coil mattress innerspring units, made with tempered coils, with heavier gauge coils in the mid-section and around the perimeter, and with a foam spacer running lengthwise down the middle on all sizes except twin.

115. Both requests are based on similar evidence and arguments. Owen submitted that these innerspring units, which are manufactured by Zhao Gang Furniture Industry Co. Ltd. (Zhao Gang), have not caused and would not cause injury because the CBSA concluded that the innerspring units manufactured by Zhao Gang and exported to Canada were not dumped. Owen also submitted that the innerspring units described in both of its exclusion requests are not available from the domestic industry. In this regard, it argued that these units are assembled by hand in China and that the customized features that they include make them ill-suited to automated assembly. In Owen's view, the facility of the only domestic producer that offers pocket coils for sale on the merchant market, that is, Globe Spring, is fully automated. For this reason, Globe Spring focuses its production on mattress innerspring units that are well-suited to automated production. Owen also submitted that a review of the evidence on the record reveals that Globe Spring's statement that it can produce substitutable products is simply inaccurate. In this regard, Owen stated that it has asked Globe Spring to manufacture the products for which exclusions are requested and has been advised that Globe Spring was unwilling or unable to manufacture these mattress innerspring units. Finally, Owen submitted that it holds the exclusive patent rights to these mattress innerspring units and that, as a result, the domestic industry does not have the right to produce them and cannot be injured by the imports of these products from China.

116. Globe Spring submitted that it can produce substitutable products and has the capacity to produce identical products, but not at the price reportedly available from the Chinese producer. It also submitted that it routinely produces "foam-encased" mattress innerspring units and that it has produced mattress innerspring units with different gauge coils within the same unit for the domestic market. Simmons submitted that all mattress innerspring units have identical end uses and that, in that sense, they are substitutable products that compete with one another in the marketplace. Simmons further submitted that Owen did not provide evidence that the products for which it is seeking exclusions would not compete with mattress innerspring units which are either produced or capable of being produced by the domestic industry. Simmons also submitted that, in other cases, the Tribunal has not granted exclusions for the sole reason that a particular exporter obtained a zero margin of dumping from the CBSA. Finally, concerning the Owen's patent rights, Simmons submitted that numerous Tribunal determinations have confirmed that domestically produced products may have the same end uses, fulfil most of the same consumer needs and compete in the same marketplace with an imported patented product even though an imported product may have features that make it distinct as a matter of patent law.

117. On the basis of the evidence before it, the Tribunal denies Owen's requests for product exclusions. With respect to the proprietary character of the products imported by Owen and for which it is seeking exclusions, the Tribunal notes that nothing in the evidence submitted by Owen demonstrates that these products could not be produced in Canada under commercial arrangements (e.g. a licence) that would protect the proprietary nature of the products imported by Owen.

118. Moreover, as the Tribunal stated in *Certain Fasteners*,⁸⁷ the key question that must be answered by the Tribunal in deciding whether to grant a product exclusion in the case of a patented product is not whether the patented product is unique or if the domestic industry can, without infringing patent law,

87. (26 September 2006), NQ-2004-005R (CITT) at 4.

manufacture this product. Rather, it is whether the domestic industry manufactures or is capable of manufacturing a substitutable product that, while it may not have all the attributes of the patented product, still competes with the patented product and fulfils most of the same customer needs.⁸⁸

119. In this regard, the Tribunal is not persuaded by the evidence submitted by Owen that the products for which it is seeking exclusions are so specialized that they serve distinct markets or do not compete with the products offered or that they could not be manufactured by the domestic producers. While the patented products imported by Owen do have some differentiating characteristics, the Tribunal finds that these variations do not create innerspring units that are so unique that they would not compete with innerspring units that the domestic industry produces or is capable of producing. On this issue, the evidence indicates that, while Globe Spring may not produce identical products, it does produce innerspring units for the higher end of the market, including pocket coil units with different gauge coils within the same units, and is capable of producing other substitutable products.⁸⁹ The evidence also indicates that an Owen finished mattress model that incorporates an imported mattress innerspring unit for which an exclusion is requested competes with a Simmons finished mattress model which incorporates a domestically produced mattress innerspring unit.⁹⁰ The patented products imported by Owen thus compete with the high end mattress innerspring units that the domestic industry produces or is capable of producing.

120. For the foregoing reasons, the Tribunal concludes that granting exclusions for Owen's patented products would likely cause injury to the domestic industry and, therefore, denies both requests for product exclusions that were filed by Owen.

CONCLUSION

121. Pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that the dumping of the subject goods has caused injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

Ellen Fry
Ellen Fry
Member

André F. Scott
André F. Scott
Member

88. *Certain Fasteners* (26 September 2006), NQ-2004-005R (CITT) at 4.

89. Globe Spring's public replies to product exclusion requests, Tribunal Exhibit NQ-2009-002-27.01, Administrative Record, Vol. 1.3 at 118-26; *Transcript of Public Hearing*, Vol. 1, 26 October 2009, at 14, 19-25; *Transcript of Public Hearing*, Vol. 3, 28 October 2009, at 359-60.

90. *Pre-hearing Staff Report*, revised 23 September 2009, Tribunal Exhibit NQ-2009-002-06A, Administrative Record, Vol. 1.1A at 19; Manufacturer's Exhibit B-04 (protected) at para. 11, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 4, 26 October 2009, at 505.