

Ottawa, Wednesday, January 20, 1993

Inquiry No.: NQ-92-004

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

**GYPSUM BOARD ORIGINATING IN OR EXPORTED FROM
THE UNITED STATES OF AMERICA**

FINDING

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry following the issuance by the Deputy Minister of National Revenue for Customs and Excise of a preliminary determination of dumping dated September 22, 1992, and of a final determination of dumping dated December 14, 1992, respecting the importation into Canada of gypsum board, composed primarily of a gypsum core, with paper surfacing bonded to the core, originating in or exported from the United States of America.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of gypsum board, composed primarily of a gypsum core, with paper surfacing bonded to the core, with the exception of:

- i) gypsum board panels with a raised surface;
- ii) gypsum board panels with bevelled edges in a thickness of 5/8 in. and in a width of 23 in., 24 in., 29 in. or 30 in.; and
- iii) plain or vinyl-faced gypsum board panels with squared edges in a thickness of 3/8 in. or 5/16 in.;

originating in or exported from the United States of America, has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

Kathleen E. Macmillan
Kathleen E. Macmillan
Presiding Member

Sidney A. Fraleigh
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Member

Michèle Blouin
Michèle Blouin
Member

Michel P. Granger
Michel P. Granger
Secretary

The statement of reasons will be issued within 15 days.

Inquiry No.: NQ-92-004

Place of Hearing: Ottawa, Ontario
Dates of Hearing: December 14 to 18, 1992

Date of Finding: January 20, 1993

Tribunal Members: Kathleen E. Macmillan, Presiding Member
Sidney A. Fraleigh, Member
Michèle Blouin, Member

Director of Research: Selik Shainfarber
Research Manager: Richard Cossette
Research Officer: Doug Allen

Statistical Officer: Margaret Saumweber

Counsel for the Tribunal: Gilles B. Legault

Registration and Distribution Officer: Pierrette Hébert

Participants:

Riyaz Dattu
Brian Pel
David I.W. Hamer
for CGC Inc.

Lawson A.W. Hunter, Q.C.
Nick J. Schultz
Paul K. Lepsoe
for Domtar Inc.

Denis Gascon
Simon V. Potter
for Westroc Industries Limited

(Complainants)

Peter A. Magnus
James H. Smellie
for National Gypsum Company
(Gold Bond Building Products)

J. Christopher Thomas
Greg A. Tereposky
Thomas M. Boddez
for James Hardie Gypsum (U.S.A.) Inc.

Richard A. Wagner
for Georgia-Pacific Corporation

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Paul D. Burns
for United States Gypsum Company

Frank Guy
General Manager
Pittcon Industries

Harry W. Jeffries
President
Howard L. Brenhouse
Vice-President
Okaply Industries Ltd.

Bert Kilbride
President
CanRay Incorporated

(Importers/Exporters)

Ottawa, Thursday, February 4, 1993

Inquiry No.: NQ-92-004

**GYPSUM BOARD ORIGINATING IN OR EXPORTED FROM
THE UNITED STATES OF AMERICA**

Special Import Measures Act - Whether the dumping of the above-mentioned goods has caused, is causing or is likely to cause material injury to the production in Canada of like goods.

DECISION: The Canadian International Trade Tribunal hereby finds that the dumping in Canada of gypsum board, composed primarily of a gypsum core, with paper surfacing bonded to the core, with the exception of:

- i) gypsum board panels with a raised surface;
- ii) gypsum board panels with bevelled edges in a thickness of 5/8 in. and in a width of 23 in., 24 in., 29 in. or 30 in.; and
- iii) plain or vinyl-faced gypsum board panels with squared edges in a thickness of 3/8 in. or 5/16 in.;

originating in or exported from the United States of America, has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

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Date of Finding:

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Date of Reasons:

February 4, 1993

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Sidney A. Fraleigh, Member
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President
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Vice-President
Okaply Industries Ltd.

Bert Kilbride
President
CanRay Incorporated

(Importers/Exporters)

Witnesses:

Peter R. Andersen, A.M. Ph.D.
Andersen Economic Research Ltd.

Roland B. Horn
Vice-President and General Manager
CGC Inc.

D.R. Lowes
Director of Finance
CGC Inc.

Michael Adams, C.A.
Administration
Domtar Gypsum

Peter S. Walton
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Reg. D. Macleod
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Atlantic Canada
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Domtar Gypsum

Larry G. Farmer
Area Sales Manager
Westroc Industries Limited

Rika Simmons
Area Sales Manager
Westroc Industries Limited

Guy W. Trudel
Representative
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Barrie J. Sali
President and Chief Executive Officer
Tim-BR-Marts Ltd.

John M. Duncanson
President
Duncanson Investment Research Inc.

J.C. MacKay
Director National Accounts
CGC Inc.

J.B. (Jim) Holmes
Vice-President and General Manager
Builders' Supplies Limited

Richard A. Killips
Product Management
Domtar Gypsum

Kenneth (Ken) S. Sims
Marketing and Business Development
North America
Domtar Gypsum

E.L. Rack
Sales Co-ordinator
Ontario
Domtar Gypsum

Brent R. Thomson
Vice-President
Finance and Treasurer
Westroc Industries Limited

David J. Hull
Sales Manager
British Columbia
Westroc Industries Limited

Keith C. Campbell, C.A.
Controller
Westroc Industries Limited

Daniel Lamarre
Sales Manager
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Director
Price Administration
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National Gypsum Canada

Harry Jeffries
President
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Garry Nelson
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James Hardie Industries (U.S.A.) Inc.

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CanRay Incorporated

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Ottawa, Ontario
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Ottawa, Thursday, February 4, 1993

Inquiry No.: NQ-92-004

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

**GYPSUM BOARD ORIGINATING IN OR EXPORTED FROM
THE UNITED STATES OF AMERICA**

TRIBUNAL: KATHLEEN E. MACMILLAN, Presiding Member
SIDNEY A. FRALEIGH, Member
MICHÈLE BLOUIN, Member

STATEMENT OF REASONS

CONDUCT OF THE INQUIRY

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*¹ (SIMA), has conducted an inquiry following the issuance by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister) of a preliminary determination of dumping dated September 22, 1992, respecting the importation into Canada of gypsum board, composed primarily of a gypsum core, with paper surfacing bonded to the core, originating in or exported from the United States of America. A final determination of dumping respecting the subject goods was issued on December 14, 1992.

The notices of preliminary and final determinations of dumping were published in Part I of the October 3 and December 26, 1992, editions of the Canada Gazette, respectively. The Tribunal's notice of commencement of inquiry issued on September 25, 1992, was published in Part I of the October 3, 1992, edition of the Canada Gazette.

As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian producers and importers of the subject goods, requesting production, financial, pricing, import and market information, as well as other information, covering the period from January 1, 1989, to August 31, 1992. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports covering that period.

1. R.S.C. 1985, c. S-15.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, all exhibits filed by the parties at the hearing, as well as the transcript of all proceedings. All public exhibits were made available to the parties, while protected exhibits were made available only to independent counsel who had given undertakings.

Public and *in-camera* hearings were held in Ottawa, Ontario, starting on December 14, 1992. The complainants, CGC Inc., Domtar Inc. and Westroc Industries Limited, were represented by counsel at the hearing, as were four exporters.

On January 20, 1993, the Tribunal issued its finding that the dumping in Canada of gypsum board, composed primarily of a gypsum core, with paper surfacing bonded to the core, with the exception of:

- i) gypsum board panels with a raised surface;
- ii) gypsum board panels with bevelled edges in a thickness of 5/8 in. and in a width of 23 in., 24 in., 29 in. or 30 in.; and
- iii) plain or vinyl-faced gypsum board panels with squared edges in a thickness of 3/8 in. or 5/16 in.;

originating in or exported from the United States of America, has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

PRODUCT

The product that is the subject of this inquiry is described by the Deputy Minister in the preliminary determination of dumping as gypsum board, composed primarily of a gypsum core, with paper surfacing bonded to the core, originating in or exported from the United States of America.

Gypsum board has long been used as a building material for various applications, including interior walls, partitions and ceiling construction. It provides a durable, economical, non-combustible and easily decorated surfacing material for construction use. As well, it has excellent compressive-strength properties and a relatively low density compared to other cement-type products.

Canadian standards for this product identify nine product types.² Each type of gypsum board may also be produced in standard form, "type X" (i.e. fire resistant) or in foil-backed configuration (i.e. with aluminum, lead or other metallic foil bonded to the surface). Gypsum wallboard is, by far, the most important of these types in terms of production and market demand.

2. National Standard CAN/CSA-A82.27-M91, Gypsum Board, identifies the following types of gypsum board: gypsum wallboard, vinyl-faced gypsum board, gypsum backing board, water-resistant gypsum board, gypsum coreboard, gypsum sheathing, gypsum base for veneer plaster, gypsum lath and exterior gypsum soffit board.

Gypsum board is generally produced in standard 4-ft. widths, or the metric equivalent, and in varying lengths. The most common length is 8 ft. Gypsum board is manufactured in different thicknesses ranging from 1/4 in. to 1 in., although 1/2-in. gypsum board is, by far, the most common. Gypsum board of greater thicknesses is usually used in applications where there may be high traffic, where sound absorbency is significant or where fire regulations require a greater thickness. In addition, gypsum board may be produced with squared, bevelled or tapered edges.

The most common gypsum board is 1/2-in. standard tapered-edge gypsum board, representing approximately 75 percent of the total Canadian production, while the next most common product is 5/8-in. fire-resistant gypsum board, which accounts for approximately 15 percent of production and is used almost exclusively in commercial applications. All other thicknesses and types of gypsum board account for the other 10 percent of Canadian production of gypsum board.

Historically, gypsum board has been sold within specific regional markets because of high unit weight, high transportation costs and relatively low unit price. Friability³ has also been a limiting factor. These circumstances have generally dictated that markets be supplied by the nearest producer.

Functionally, gypsum board competes with other wall or ceiling construction materials, such as wood panels and plaster. However, these alternatives are more expensive and/or less fire resistant, and, therefore, they are effectively not in the same market as the subject goods. In fact, these functional substitutes for gypsum board have very specific applications and do not represent, according to industry estimates, more than 3 percent of the gypsum board market.

DOMESTIC INDUSTRY

The Canadian gypsum board industry consists primarily of the three complainants: CGC Inc. (CGC), Domtar Inc. (Domtar) and Westroc Industries Limited (Westroc), which together represent about 98 percent of the gypsum board produced in Canada. The balance is made up of secondary manufacturers⁴ that purchase plain squared-edge gypsum board and apply a laminate to the surface.

Until recently, the industry also included Atlantic Gypsum (A Division of Lundrigans Limited) in Newfoundland and Eastern Gypsum in New Brunswick. Atlantic Gypsum was a small, privately owned company operating a plant in Corner Brook to serve the Newfoundland market. It went into receivership in late 1991, and the receivers closed the production plant in June 1992. Eastern Gypsum began operations in 1990 with a plant located in McAdam and operated for a brief period before closing in February 1991.

3. The core of the gypsum board is easily crumbled.

4. Secondary manufacturers include Designboard Industries Inc., Envirowall Partitions Systems Ltd., Giamberardino Nick & Bros. Ltd., PSL Partitions Systems Ltd. and Vipco International Inc.

The subject gypsum board is marketed nationally by Domtar and Westroc, while CGC markets the goods only east of the Manitoba border. The marketing of gypsum board products by Canadian producers occurs through two distribution channels. On one side are building supply dealers, which sell gypsum board to retail customers, including home-owners and smaller applicators and contractors. The second distribution channel is comprised of gypsum specialty dealers, which possess special delivery equipment and sell primarily gypsum board and related products almost exclusively to large-scale applicators and general contractors. Building supply dealers and gypsum specialty dealers do not stock large inventories and, therefore, require quick delivery from suppliers.

The producers serve the Canadian market from 11 production facilities located in five provinces⁵ across Canada. In addition, there also exist two dormant production lines. One line, owned by Westroc, is located in Quebec and was mothballed in November 1990. A Domtar line, located in Ontario, was idled in February 1991.

POSITION OF PARTIES

Complainants

The complainants submitted that the dumping of the subject gypsum board in Canada has caused, is causing and is likely to cause material injury to the production in Canada of like goods. The injury that they had each suffered was reflected primarily in substantially reduced revenues, gross margins and net incomes since 1989. This poor financial performance was not the result of rising costs, as they had each implemented cost-control measures that had enabled them to lower their average unit costs over the period. What had caused these financial declines, which were clearly material in magnitude, was a sharp drop in gypsum board prices since 1989, amounting to about 30 percent for 1/2-in. standard wallboard and 26 percent for all gypsum products.

The complainants conceded that there were factors besides dumping, such as the recession, which had exerted a downward pressure on prices. Insofar as the effects of the recession were concerned, the complainants asserted that the contraction in demand during the current economic downturn was not as severe as that which had occurred in the recession of the early 1980s. Nevertheless, prices for 1/2-in. standard wallboard had declined by only about 5 to 8 percent during the slump 10 years ago, as compared to the present 30-percent fall. Clearly, there was "something out there" besides the recession that was having a severe depressing effect on prices over the past 4 years. In their view, that "something" was the effects of dumping.

According to the complainants, they had no option but to meet dumped U.S. prices, or lose market share. This is precisely what they did - they protected their market share at the expense of sharply lower prices and increasing financial losses. This protective action had contained the growth of the U.S. share of the Canadian market. However, the size of the U.S. market share belied the large effect that U.S. imports were having on domestic prices. This strong price effect was the result of the highly price-sensitive nature of the subject goods, combined with the easy access that

5. Quebec, Ontario, Manitoba, Alberta and British Columbia.

U.S. exporters had to the Canadian market and the huge surplus gypsum board production capacity in the United States.

To support its contention that dumped U.S. prices were eroding and suppressing prices in the Canadian market, each of the complainants submitted detailed evidence, broken down by region, on the scope and nature of U.S. price competition over the past several years. The complainants also submitted that, on product lines and in geographical regions where there was no competition from dumped U.S. imports, prices had declined only modestly, as for example, the price of gypsum joint compound and the price of gypsum board in Newfoundland.

The margins of dumping found by the Deputy Minister, in this case, were substantial, at a weighted average of over 27 percent. The elimination of dumping following the Deputy Minister's preliminary determination has already had a stabilizing effect on domestic prices, which had already begun to turn upward.

Looking to the future, counsel for the complainants argued that all indications were that the dumped U.S. imports would continue to disrupt the Canadian market in the absence of a positive injury finding. Forecasts predicted a slow economic recovery, and the huge surplus in U.S. production capacity, which had hung over the North American market, was expected to persist for some time into the future.

Exporters and Importers

Counsel for National Gypsum Company (Gold Bond Building Products) (National Gypsum) and James Hardie Gypsum (Washington) Inc. (James Hardie) argued, in separate submissions, that the dumping of the subject gypsum board has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods.

National Gypsum

Counsel for National Gypsum argued that a number of factors unrelated to the dumping needed to be stripped away in order to avoid attributing, to the dumped imports, injury caused by such factors.

One such non-attributable factor was the decline in the Canadian producers' productivity, which was due to the recession, as well as a decline in export sales. Lower sales volumes meant reduced ability to absorb the industry's fixed costs. Two other factors not related to dumping were the variation in currency exchange and the drop in tariff rates. These accounted for 9.3 percent of the drop in prices of U.S. imports between 1988 and 1991. Furthermore, if the decline in U.S. market prices, which also occurred during the period, were added to the calculation, this would bring the drop represented by these non-attributable factors to close to 30 percent, in Canadian dollar terms, between 1988 and 1991. This explained the drop in Canadian market prices over the period of inquiry.

Additional factors which had a negative effect on the industry's performance included: (1) the domestic producers' marketing practices (such as heavily discounting off listed prices and offering rebates to the professional applicator trade); (2) the increased purchasing power of buying groups, resulting from the loss of the oligopolistic control

that Canadian producers had had over the market; (3) the scramble for market share by Canadian producers following the end of plant strikes; and (4) the disruption caused by a change in Westroc's distribution method in Atlantic Canada.

Counsel noted that there had been no loss of market share to imports. In fact, there was an actual decline in the volume of U.S. imports into Canada. Therefore, U.S. imports have had no effect on Canadian capacity utilization. Furthermore, in counsel's view, the two-month period of investigation gave a distorted view of the relative price levels of sales in the United States and sales to Canada. A comparison of the domestic industry's prices with National Gypsum's landed import prices into Canada, at normal values, showed no significant price undercutting of the Canadian producers' prices.

Regarding future injury, counsel contended that the real problem which confronted the industry was one of capacity utilization caused largely by declining export sales, which led to reduced profitability. The recent weakening of the Canadian dollar was making Canadian exports increasingly competitive in the U.S. market. As export performance increased, profitability would be improved. Concerning future shipments, National Gypsum planned to compete for a relatively small share of the Canadian market.

In conclusion, counsel for National Gypsum suggested that a clear distinction should be made between responsible producers, such as National Gypsum, and second-tier U.S. producers, such as Boral Industries. If, contrary to counsel's submissions, the Tribunal were to make a positive injury finding, then National Gypsum should be excluded from the finding.

James Hardie

Counsel for James Hardie argued that, pursuant to the GATT Anti-Dumping Code⁶ (the Code) the conditions for the imposition of anti-dumping duties are strict. The Tribunal is required to analyze and eliminate all factors unrelated to dumping before determining whether material injury has resulted from the dumping itself.

Counsel for James Hardie argued, as had counsel for National Gypsum, that there were several non-attributable factors which had caused the injury suffered by domestic producers. A major one was the recession, which had depressed market demand and Canadian prices. Decreased exports to the United States and changes in pricing practices by Canadian producers had also contributed to the decline in prices, as had the increased competitiveness of U.S. gypsum board, resulting from tariff reductions under the *Canada-United States Free Trade Agreement*⁷ (the FTA), a low U.S. dollar and freight deregulation in the United States.

However, with respect to James Hardie, the most important non-attributable factor was the injury that Canadian producers had inflicted upon themselves in British Columbia through intra-industry competition. More particularly, in 1991, one of

6. *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*, signed in Geneva on April 12, 1979.

7. *Canada Treaty Series*, 1989, No. 3 (C.T.S.), signed on January 2, 1988.

the Canadian producers had lost most of its sales at a major B.C. account to another Canadian producer. This precipitated intense competition in the B.C. market, as the displaced producer sought to recapture market share at other accounts. Canadian producers had also had certain quality problems in the B.C. market, and this had also contributed to their injury.

In the event of a positive injury finding, counsel also requested an exclusion for James Hardie, which served the specialty professional applicator market. This was a more stable segment of the market than the retail segment because professionals did not buy solely on price. In addition, James Hardie sold most of its product through only one Canadian buying group and had been a stable and responsible player in the marketplace.

United States Gypsum Company

Counsel for United States Gypsum Company (United States Gypsum) argued for an exclusion on the grounds of *de minimus* presence in the Canadian market. Counsel also requested that the Tribunal exclude certain products imported by Designboard Industries Inc., namely, 5/8-in. gypsum board with bevelled edges in a width of 23 in., 24 in., 29 in. or 30 in., because domestic producers did not make a bevelled-edge product in the widths required.

Others

A number of product exclusions were requested by various parties. Okaply Industries Ltd., an importer and laminator of gypsum board, requested an exclusion for plain gypsum board in thicknesses of 3/8 in. and 5/16 in. with squared edges, on the basis that the Canadian producers were unable or unwilling to supply the product in the quality, sizes and thicknesses required. A similar request was made by General Eastern Homes Limited, a manufacturer of modular houses and mini-homes, to exclude the above squared-edge gypsum board in the same thicknesses, but with vinyl facing. Pittcon Industries requested an exclusion for gypsum board with a raised surface, on the basis that this product is not supplied by the complainants. Finally, CanRay Incorporated, a Canadian manufacturer using gypsum panels in heating systems, requested an exclusion for standard 1/2-in. gypsum board with squared edges for use in heating systems. This firm currently buys Canadian gypsum board and would like the opportunity to purchase the U.S. product at competitive prices.

ECONOMIC INDICATORS

Industry Performance Indicators

Key industry performance indicators for the Canadian gypsum board industry are summarized in the following table.

CANADIAN GYPSUM BOARD INDUSTRY					
ECONOMIC INDICATORS					
	1989	1990	1991	Jan. 1 to Aug. 31, 1991	Jan. 1 to Aug. 31, 1992
Production (MSF)	3,130,118	2,816,551	2,175,567	1,388,473	1,609,528
Market (MSF)	2,961,757	2,843,188	2,428,468	1,567,097	1,736,805
Producers' Market Share from Production ¹ (%)	92	92	91	91	92
Net Sales ^{1,2} (\$000)	322,422	268,188	219,132	126,313	127,991
Net Income or (Loss) ^{1,2} (\$000)	58,125	20,901	742	3,315	(5,541)
Net Sales per MSF from Production ^{1,2} (\$)	120.54	107.24	99.78	100.78	89.70
Cost of Goods Sold per MSF from Production ^{1,2} (\$)	90.96	88.29	87.96	85.77	82.69
Gross Margin per MSF from Production ^{1,2} (\$)	29.58	18.94	11.82	15.01	7.01
Net Income or (Loss) Before Taxes per MSF from Production ^{1,2} (\$)	21.73	8.36	0.34	2.64	(3.88)
Employment ¹	728	638	479	486	506
Utilization of Capacity ¹ (%)	86	76	57	54	64
Imports (Market Share - %)	8	8	9	9	8
<hr/>					
MSF = Thousand square feet.					
1. Complainants only.					
2. Individual company data are unadjusted for fiscal year ends.					
Source: Pre-hearing staff report.					

The apparent market for gypsum board declined by about 500,000 MSF over the 1989-91 period, a drop of 18 percent. However, the market rebounded by 11 percent in the eight-month 1992 period, as compared to the eight-month 1991 period. Production levels and sales revenues also declined over the 1989-91 period, before recovering slightly in the eight-month 1992 period. Following the same trends, total industry employment declined by 34 percent over the 1989-91 period, before increasing modestly in the 1992 interim period, and the rate of utilization of capacity decreased by 29 percentage points over the 1989-91 period, but recovered partially in the 1992 interim period.

Gross margins on an MSF basis decreased by 76 percent over the period, even though there were reductions in unit costs. Net income per MSF fell from \$21.73 in 1989 to only \$0.34 in 1991. Substantial net losses per MSF were incurred in the interim 1992 period, despite an increase in sales volume.

The share held by Canadian producers and by U.S. imports remained relatively constant over the period at about 92 and 8 percent, respectively. About two to three of the eight percentage points of the market share held by U.S. imports was comprised of imports by Canadian producers. Broken down by product type, some 92 to 96 percent of total imports was comprised of gypsum wallboard.

Pricing

Net realized average prices for the domestic producers for all gypsum board products declined by \$30.84 per MSF over the 1989-92 period, which represents a drop of almost 26 percent, while average prices for 1/2-in. standard wallboard declined by about 30 percent over this same period.

The domestic producers' prices generally began to firm in the third quarter of 1992, although this trend was not apparent in all Canadian regions. For the most part, prices for imported gypsum board followed a similar pattern of change over the period.

The timing and extent of the price decline varied between regions. For example, although the downward trend in prices in British Columbia did not occur until early 1991, the domestic producers' prices in that province declined by an average of about 23 percent between January 1991 and the first quarter of 1992, somewhat less than average national prices.

According to available data, U.S. market prices for gypsum board also showed a declining pattern over the 1989-92 period, decreasing from \$85.10 in 1989 to \$69.81 in 1992, a drop of 18 percent.

REASONS FOR DECISION

Pursuant to section 42 of SIMA, the Tribunal must determine whether the dumping of the subject gypsum board has caused, is causing or is likely to cause material injury to the production in Canada of like goods. It is not in dispute, in this case, that the Canadian industry has suffered significant declines in its financial performance as the result of sharply lower gypsum board prices since 1989. What is in dispute is the effect that dumping has had on domestic prices and, accordingly, whether any injury caused to Canadian production by dumping is material. It is this issue that is at the heart of this case.

Market Characteristics and Developments in Canada and the United States

The Tribunal notes that gypsum board has the characteristics of a commodity product in the sense that, within each product type, gypsum board is physically undifferentiated and virtually fully interchangeable between suppliers. This means that customers will have a marked tendency to switch from one supplier to another on the basis of price alone, even where price differences may be relatively small. It also means that, over time, the prices of all suppliers in the market will tend to converge on the lowest priced offerings, where such offerings are backed by ample supply. Suppliers that fail to lower their prices run a high risk of losing their market share.

According to the evidence, up until the past five years or so, U.S. suppliers of gypsum board have not had an important presence in the Canadian market. The high cost-per-unit value of transporting gypsum board over long distances was one of the factors which helped to keep the Canadian market somewhat isolated from the U.S. market. Indeed, largely because of freight considerations, gypsum board markets generally had developed on a geographically circumscribed basis, with regional demand being served principally by local or regional suppliers. Thus, market disturbances in one region would tend not to extend far beyond that region.

In the absence of any meaningful U.S. presence, the Canadian market absorbed changes in economic circumstances in a relatively stable and predictable way. This was a reflection of the fact that the Canadian gypsum board market was divided among three producers of roughly equal size and strength and that they exhibited a market behaviour known as "conscious parallelism." A salient characteristic of this behaviour is that producers track each other's pricing policies very closely. Price increases or decreases announced by one producer are generally followed in short order by other producers, more or less ensuring that market prices move in an orderly way and in the direction and to the extent accepted by all the producers. Since prices move in tandem, price is generally not seen as an effective instrument to win market share from a competitor. Price wars among domestic producers are avoided because they only serve to lower the floor price without providing any clear long-term gains in market share. In this way, producers following parallel marketing strategies can modulate downward swings in the price of gypsum board.

A further disincentive for the producers, in this case, to lower prices sharply is the knowledge that the market demand for gypsum board is not very responsive to price changes. Hence, lower prices are not compensated by increased sales for the industry as a whole. This is because the demand for gypsum board is a "derived demand" that is driven by the level of residential housing and commercial building activity. Another important aspect of the behaviour of Canadian producers, which also has had the effect of reinforcing the price stability of the Canadian market, is the way in which they react to situations where there is an excess of supply over gypsum board demand. Specifically, rather than create a glut in a weak market, Canadian producers have tended to rein in supply by shutting down production lines and "mothballing" plants.

As a result of the foregoing considerations, in the past, the Canadian market characteristically has exhibited relatively stable prices. However, this traditional stability has increasingly disappeared, in recent years, in conjunction with the rise of U.S. imports in the Canadian market.

There are a number of factors which underlie the increased penetration in the Canadian market by U.S. producers in recent years. According to evidence adduced by the Canadian industry, which included analyses of U.S. industry developments as reported by National Gypsum in documentation prepared for bankruptcy proceedings, the U.S. industry has been undergoing a period of intense competition for more than six years, with many producers operating at inefficient levels. Generally, U.S. producers were not achieving prices that allowed them to generate adequate returns. According to the reports presented, there are few signs of relief in the immediate future.

In elaborating on these points, the National Gypsum report stated that a U.S. construction boom in the first half of the 1980s had resulted in strong U.S. gypsum board capacity expansion, principally in the south central region of the United States, in states such as Texas and Arkansas. This boom was reversed in the second half of the decade, as the recession hit the south central region sooner than other parts of the United States. Many of the newer south central producers were single plant operations for which "mothballing" was not an option. They had to either find markets or go out of business.

The onset of deregulation in the U.S. trucking industry, in the mid-1980s, caused U.S. freight rates to decline substantially, bringing distant markets within reach. With the removal of freight rates as an obstacle, the south central producers began shipping to the northeastern United States, causing prices to decline even before the recession took hold in the northern states. When the recession finally became nation-wide, prices became even more depressed, and further capacity became idle as U.S. producers saw their major home markets shrink. The data available indicate that the present size of the surplus capacity in the United States is much greater than the size of the entire Canadian market even in peak years.

Another important factor influencing the competitive situation in the United States is the fact that, in the period following 1986, major U.S. producers incurred heavy indebtedness resulting primarily from takeover attempts and diversification costs. The ensuing debt-servicing obligations and related credit restrictions have combined to make the generation of cash flow an imperative for these companies. In these circumstances, these producers find themselves under pressure to sell their goods to meet fixed cash obligations, even though prices may be unprofitably low.

Within the context of the foregoing pressures, U.S. gypsum board began to flow across the border into Canada in increasing volume in late 1987 and early 1988. These incursions of U.S. product occurred through direct sales by U.S. producers, as well as through sales by agents and commodity brokers. Moreover, U.S. suppliers did not respect traditional channels of distribution in the Canadian market. Specifically, in many cases, they circumvented buying groups, which account for a substantial proportion of domestic sales, and sold directly to the members of the buying groups themselves.

The involvement of brokers was new to the Canadian market and was particularly disruptive. They solicited Canadian customers through telecopier communication and telephone calls and sold U.S. gypsum board exclusively on the basis of price. According to the evidence, the gypsum board that they offered came from a wide spectrum of U.S. producers, including those from the south central United States, as well as from the major national producers. It would appear that, in some cases, they obtained their gypsum board, not through direct purchases from manufacturers, but through open market purchases from third parties. In this way, brokers were able to offer gypsum board for sale in Canada from producers such as National Gypsum that did not, as a rule, deal with the broker trade.

Over the last four years, the volume of sales in Canada from U.S. imports, as a proportion of the Canadian market, has not been large. The U.S. market share currently stands at about 5 percent, after eliminating U.S. imports by Canadian producers. The Tribunal notes that, according to the aforementioned documentation pertaining to National Gypsum's bankruptcy proceedings, in 1986, Canadian imports held a

proportionately similar share of the then still buoyant U.S. gypsum board market, about 4 percent, and this was considered significant. Be that as it may, in the opinion of the Tribunal, the real importance of the U.S. sales lies not in the measurement of volumes sold, but in their effect on domestic prices. As noted earlier, in a commodity market, price undercutting by a supplier that is backed by ample supply can depress prices in a major way even though the actual sales consummated by that supplier may be limited because of the price-matching responses of competing suppliers.

Effects of U.S. Imports

The Tribunal has no doubt, based upon the evidence, that the prices of U.S. goods were undercutting the prices of Canadian producers, thereby destabilizing the Canadian market. Looking first at overall market indicators, evidence adduced by the domestic industry shows that Canadian gypsum board prices started their steep decline in 1987. This correlates closely in time with the increased presence of U.S. imports in the Canadian market. It also follows that these declines were not precipitated by the onset of the current recession, which only took hold in Canada in early 1990. Indeed, the volume of goods shipped by the domestic industry increased from 1987 through 1989, reaching record levels at the end of this period. Nevertheless, despite buoyant demand in Canada during this time, prices declined in conjunction with increased U.S. imports.

According to the evidence, the price declines which began about five years ago continued their downward trajectory until some time in the second quarter of 1992. The recent upturn in prices correlates closely in time to the onset of the Deputy Minister's investigation of dumping of U.S. imports. The uncontradicted testimony of industry witnesses, as well as that of witnesses from major buying groups, reinforces the conclusion that the recent upturn in prices is a result of the anti-dumping action and the consequent discipline that has been imposed on the prices of the subject U.S. goods. It is also relevant that there was an upturn in prices in 1992, despite levels of demand in Canada that continue to be low because of the lingering effects of the recession. In other words, the observed recent price increases are not explained by any marked resurgence in demand.

While the post-1989 recession did not precipitate the decline in Canadian gypsum board prices, the Tribunal has no doubt that it had some price-depressing effect. In order to estimate the magnitude of the effect of the recession and of other non-dumping factors, the industry commissioned experts to do an econometric study. In reply, another expert prepared a counterstudy and was called by opposing counsel to interpret and comment on the results of the industry study. Although this generated an interesting debate, in the end, the Tribunal finds that the results of the studies do not allow any definitive conclusions to be drawn.

Despite this, the Tribunal is of the view that, in terms of broad orders of magnitude, certain conclusions can be drawn about the effects of the post-1989 recession on Canadian prices by comparing the recession of the early 1980s to the current downturn. According to the evidence, in the earlier recession, despite precipitous drops in housing starts and construction activity, and consequently in demand for gypsum board, prices for 1/2-in. standard wallboard declined by only about 5 to 8 percent. This stands in sharp contrast to what has happened in the most recent recession, during which prices for the subject goods were seriously destabilized, falling about 30 percent in the case of 1/2-in. standard gypsum board since 1989. The magnitude of this

30-percent price decline is even more significant considering the fact that the demand for gypsum board during the post-1989 recession was not as severely depressed as in the early 1980s.

It is apparent to the Tribunal that, in the recession of 10 years ago, when U.S. competition was not a factor in the market, the three Canadian producers were able to minimize price declines by following parallel marketing strategies, as described earlier. It is equally apparent that the advent of increasingly aggressive competition from the United States, over the past 5 years, substantially reduced the ability of the three Canadian producers to limit price declines in the Canadian market, as they had done in the past.

The above conclusions about the destabilizing effects of U.S. imports are further reinforced by evidence adduced by the industry on prices in Newfoundland, a market in which U.S. imports have not participated. In the absence of U.S. goods, gypsum board prices declined significantly less in Newfoundland than the national average of 26 percent. Moreover, the better price performance in Newfoundland occurred despite the presence of recessionary conditions that were, if anything, worse than those prevailing in eastern Canada.

At the other end of the country, in British Columbia, the recession came later and was milder than in the rest of Canada. Accordingly, prices would have been expected to show a modest decline compared to the national average. However, the evidence shows that gypsum board prices have declined on average about 23 percent, almost as much as in the rest of the country. In contrast to Newfoundland, suppliers of U.S. goods, including brokers and major U.S. producers, are very active in the B.C. market. Thus, it may be deduced from the foregoing that U.S. imports, which later were found to be dumped, have a strong influence on the direction of prices.

Finally, the Tribunal notes that, according to the evidence of industry witnesses, gypsum board sales have clearly lagged behind the performance of other construction-related products, such as drywall joint compound and wall systems. While all sales of gypsum board and construction-related products have been affected by the recession, the evidence indicates that it is primarily gypsum board that has been the subject of concerted competition from U.S. imports. This suggests to the Tribunal, once again, that the difference in performance between gypsum board and other products is attributable to the price-depressing effects of the subject U.S. imports.

In addition to the above evidence, which establishes numerous general correlations between price declines in the Canadian market and the presence of U.S. imports, the industry filed an extraordinarily voluminous amount of specific evidence on the scope and nature of U.S. price competition over the past several years. This evidence includes testimony and hundreds of pages of written statements, by industry officials responsible for regional marketing decisions, which document scores of examples of how, because of price undercutting by U.S. imports, the industry had lost sales, had lowered prices to customers, had introduced discounts and rebates of various kinds, or had to defer or cancel announced price increases, often replacing them with price decreases. To corroborate this evidence, the industry filed numerous contemporaneous internal memoranda and field reports by sales staff, memoranda from customers and invoices showing actual prices of U.S. suppliers at particular accounts that the industry had been able to obtain.

The industry also called two witnesses representing major regional buying groups by the name of TORBSA and Tim-BR-Marts Ltd. (Tim-BR-Marts). The former comprised 27 members located throughout Ontario and Quebec, and the latter consisted of 125 members in British Columbia, Alberta, Saskatchewan, Manitoba and northwestern Ontario. According to these witnesses, in the late 1980s, and particularly since 1990, U.S. gypsum board had been disrupting the Canadian market. They testified that U.S. gypsum board was constantly on offer to buying groups and to buying group members from most major U.S. producers, as well as from brokers and agents.

The witnesses stated that U.S. gypsum board was sold essentially on the basis of price and that U.S. prices were regularly below Canadian prices, by \$10 to \$15 per MSF on 1/2-in. standard gypsum board. Their members were continually pressuring them to extract price concessions from domestic producers to enable members to compete with building suppliers and gypsum specialty dealers that were carrying U.S. gypsum board. However, in their experience, whenever Canadian producers lowered their prices to remain competitive with U.S. gypsum board, the price of U.S. imports fell even further. Indeed, U.S. pricing practices had brought Canadian prices down to such low levels that some industry players would have had difficulty surviving, in the estimation of one of the witnesses. In short, the evidence of these witnesses substantiates, in all material respects, the case presented by the industry.

In the opinion of the Tribunal, the substance of the industry's case, that U.S. imports precipitated and sustained the downward spiral in Canadian prices, has not been contradicted, to any meaningful extent, by the arguments and evidence of counsel representing U.S. exporters. The Tribunal notes that counsel for U.S. exporters have indicated many instances from the record where a Canadian producer is, or appears to be, reacting to the price changes of a Canadian competitor rather than a U.S. competitor. They offer this as proof that, to a large extent, Canadian producers have injured themselves through aggressive intra-industry competition.

In the opinion of the Tribunal, when prices are falling under the disorderly conditions which have prevailed in the Canadian market, especially since 1989, it is difficult to discern who is leading whom by looking at what is essentially a moving picture, on a frame-by-frame basis. For example, one frame may show producer A responding to producer B's price change. However, another frame may show that producer B did not initiate the change, but was responding to the actions of producer C. The picture must be looked at as a whole, and a judgment must be formed on that basis.

Furthermore, the issue is not whether Canadian producers sometimes initiated price changes or whether they were engaged in competition amongst themselves. The Tribunal takes this as a given fact. At issue is the cause of the price chaos in the Canadian market. On the basis of the picture that emerges from all the evidence outlined above, the Tribunal is left with no doubt that the origin of the unstable and declining prices in the Canadian marketplace is imports from the United States.

Dumping and Other Factors

Counsel for U.S. exporters pointed to factors other than dumping which could have contributed to the decline in Canadian prices, and, in some cases, they attempted to quantify their effects. For example, counsel for National Gypsum submitted that, since 1989, Canadian tariffs on U.S. imports of gypsum board have declined by

three percentage points under the FTA. In addition, from 1988 through 1991, the Canadian dollar increased in value against the U.S. dollar so that the landed cost of U.S. goods declined, in Canadian dollar terms, by 6.9 percent. Over the same 1988-91 period, the U.S. market price of U.S.-produced gypsum board declined by about 21 percent. All told, these changes added up to about 30 percent which, counsel submitted, accounted for virtually all of the decline in prices which was allegedly caused by dumping.

The Tribunal does not find that the above analysis leads to the conclusion suggested by counsel. In the first place, as the analysis reveals, most of the price decline is attributable to the steep decline in U.S. home-market prices. It is clear from the Deputy Minister's investigation that a significant proportion of U.S. home-market sales by U.S. producers does not fully recover costs, within the meaning of SIMA. This means that U.S. sales made at similar prices in Canada would be considered to be dumped and basically confirms that the root of the problem in Canada originates from the chaotic conditions in the United States.

In the second place, while the Canadian dollar rose against the U.S. currency, on an average annual basis, between 1988 and 1991, the Tribunal sees no reason for focusing on this period to evaluate the effects of exchange rate movements, other than for the fact that it happens to coincide with a large swing in currency values. As far as the Tribunal is concerned, a more relevant period for comparison is the period of inquiry covered by the Tribunal's staff, that is, January 1, 1989, to August 31, 1992, since it is during this period that the bulk of the decline in Canadian prices occurred. Over this period, there is almost no change in exchange rates on an average annual basis, indicating little correlation between exchange rate movements and price declines in this interval. However, it is clear from the foregoing that the assessment of the importance of the exchange rate factor is very dependent on the selection of time periods for comparison. This is simply one more reason for the Tribunal not to assign much weight to counsel's argument on this issue.

Another factor cited by counsel for U.S. exporters, as having played an important role in the injury suffered by Canadian producers, is their loss of export sales to the United States. Counsel's theory was that the strong Canadian dollar had priced Canadians out of the U.S. market and created substantial excess capacity in Canada. This surplus capacity had intensified domestic competition, driving prices down, while at the same time causing unit costs to rise as fixed costs were spread over lower sales volumes.

The Tribunal notes that the increase in Canadian exports to the United States in the mid-1980s coincided with booming demand conditions in the northern United States. The later withdrawal of Canadian goods from the United States coincides with the subsequent decline in demand in the United States. With this in mind, it is clearly an oversimplification to attribute the rise and fall of Canadian exports to the United States on movements in exchange rates alone. Be that as it may, the question remains as to what were the effects of the decline in exports.

In this connection, the Tribunal notes that the demand for gypsum board is cyclical, following the peaks and valleys of the construction cycle. Cyclical industries, predictably, will always have periods of excess capacity, and ways must be found to cope with this. As noted earlier, in Canada, producers have tended to shut down some

production in response to declining foreign or domestic demand, thereby alleviating, to some extent, the downward pressure on prices. For example, since 1989 alone, two sizeable plants have been "mothballed" by domestic producers, one in Saint-Jérôme, Quebec, and the other in Caledonia, Ontario, both of which had largely been serving export markets.

Furthermore, the Tribunal does not consider that the injury suffered by Canadian producers can be attributed to rising costs. Far from rising, the evidence shows that Canadian producers have implemented cost-control measures in the face of deteriorating market conditions and, in fact, have managed to lower their unit costs. It follows that the decline in their margins is due to the fact that prices have fallen more rapidly than reductions in costs. Thus, counsel's argument that the loss of export markets underlies, in large part, the difficulties of Canadian producers is not accepted by the Tribunal.

In addition to the recession, the decline in tariffs, movements in exchange rates and the effects of overcapacity from reduced exports, counsel for U.S. exporters raised a panoply of other factors whose cumulative effect, they argued, had caused prices to fall in Canada. Among the numerous factors mentioned were the effect that certain strikes had had on domestic pricing; the quality problems that domestic producers had encountered; certain changes in marketing arrangements and pricing practices by Canadian producers which, allegedly, had confused customers; and the increasing ability of large buying groups to exert market power and lever down producer prices. Counsel submitted that when the injury accruing from all the various factors at play in this case was "stripped away," any residual injury from dumping could not be found to be material.

The Tribunal is cognizant of the requirement of paragraph 4, Article 3 of the Code that injury caused by other factors may not be attributed to the effects of dumping. Moreover, it comes as no surprise to the Tribunal that the list of factors at play in this complex marketplace is long. As noted by the Federal Court of Appeal in the *Sacilor Aciéries*⁸ case, it was a matter of "common sense" that there were almost always other factors causing injury to Canadian production. In elaborating on this point, the Court stated:

*Such matters as efficiency, quality, cost control, marketing ability, accuracy in forecasting, good luck and a host of other factors come to mind. It is the function of a specialized expert tribunal such as this one to weigh and balance those factors and to decide the importance to be given to each.*⁹

In the opinion of the Tribunal, the "weighing and balancing" of the various factors at play in this case, as in most cases, comes down to an exercise in judgment, based on all the evidence which has been adduced. This process cannot be reduced to a precise mathematical function, as many factors simply are not readily quantifiable, if at all.

8. *Sacilor Aciéries v. The Anti-dumping Tribunal et al.*, 9 C.E.R. 210.

9. *Ibid.* at 214.

The Tribunal has examined the evidence pertaining to all the factors mentioned by counsel for U.S. exporters. In the Tribunal's view, the most important of the "other factors," by far, is the recession. As noted earlier, the industry attempted, unsuccessfully, to isolate, through econometrics, the effects of the recession from the effects of dumping. However, it seems fair to conclude that the effects of the current recession on prices should, in all likelihood, be less than the effects of the recession of the early 1980s, since volume losses were greater in the earlier downturn. This would suggest price effects from the current recession of less than 8 percent. The Tribunal attaches far less significance to the combined effect of tariff declines, exchange rate movements and the decline in export sales, for the reasons already given. As far as sundry other factors are concerned, such as strikes, quality problems, changes in marketing or pricing practices, and the role of buying groups, in the opinion of the Tribunal, none of these are extraordinary occurrences in this market and, for the most part, any effects that they had were transient and of little overall significance.

In sum, the Tribunal finds that the various factors mentioned by counsel for U.S. exporters, individually and collectively, fall far short of explaining the scope and depth of the decline in Canadian prices over the past five years. In the Tribunal's judgment, the only compelling explanation for this situation, which is consistent with the preponderance of the evidence, is that U.S. imports of the subject goods drove Canadian floor prices to ever lower levels through the effects of dumping. The Tribunal notes that the weighted average margin of dumping, for those exporters that cooperated with the Department of National Revenue, is slightly over 27 percent, according to the final determination. In the Tribunal's opinion, this is a huge margin of underpricing in a commodity market where even small differences in prices can lead to large shifts in purchases by customers.

The Tribunal notes that counsel for U.S. exporters have argued that the Tribunal should attach little weight to the margins of dumping found by the Deputy Minister. According to counsel, these margins did not fairly represent U.S. market prices because they were based on an extraordinarily short two-month period of investigation, namely, March and April 1992. As counsel know, the Tribunal has no authority to look behind and reevaluate the Deputy Minister's dumping calculations. The Tribunal, however, does have discretion to decide how much weight is to be given to dumping margins in conducting its injury analysis.¹⁰

On the basis of the information before it, the Tribunal has no reason to give the dumping margins in this case less than full weight. It is clear from the Deputy Minister's final determination that much, if not most, of the dumping found did not stem from a direct comparison of U.S. market prices and prices of export sales to Canada. Rather, in a high proportion of cases, the Deputy Minister determined normal values on the basis of costs of production because U.S. market sales were made at a loss. In these cases, export sales to Canada at equivalent U.S. market prices would be found to be dumped by, in effect, the margin between U.S. market prices and U.S. production costs.

10. *Remington Arms of Canada Limited v. Les Industries Valcartier Inc.*, [1982] 1 F.C. 586 at 594.

The Tribunal has no reason to believe that the margin between U.S. market prices and U.S. production costs varied greatly in the months immediately preceding, during and after the period of investigation. On the contrary, the evidence before the Tribunal suggests that U.S. prices have been unprofitably low for a prolonged period of time and that they continue to be so. Since, according to counsel, U.S. exporters have normally sold to Canada at these low U.S. market prices, it is not apparent to the Tribunal that the selection of a longer time period by the Deputy Minister would have led to a substantially different dumping determination.

Material Injury

Having regard to the foregoing conclusion, the Tribunal has no doubt that the effects of dumping on prices have caused and are causing material injury to Canadian producers of gypsum board. Canadian producers had the unpleasant choice of matching dumped U.S. prices or of relinquishing substantial market share. The evidence shows that they have chosen to match prices and that, as a consequence, they have experienced progressively deteriorating financial performance since 1989. Specifically, their total revenues have declined by about one third and their gross margins by about 76 percent over the period. Correspondingly, their combined net income has steadily declined to a loss position of approximately \$5.5 million over the first eight months of 1992.

It is clear that the dumping is not responsible for all of the above-noted injury. However, it is equally apparent to the Tribunal that a significant proportion of this injury is directly attributable to the effects of dumping. More particularly, the Tribunal estimates, from average sales data, that for every percentage-point drop in average gypsum board prices, the industry loses millions of dollars in annual revenues. Thus, a decline in average gypsum board prices of as little as 10 percentage points would cost the industry tens of millions of dollars in lost annual revenues. Revenue declines of this order of magnitude reflect financial injury of a material nature, in the Tribunal's opinion. Based on the evidence, the Tribunal considers it highly probable that dumping has caused prices to decline by well in excess of 10 percentage points. It follows that dumping has adversely affected the industry's performance by an amount which is greater than any minimum threshold for a finding of material injury in this case.

Furthermore, the Tribunal considers that the industry's material injury will continue in the foreseeable future, unless the discipline imposed on U.S. imports by a positive injury finding is put in place. According to the evidence, the conditions which prevail today in North American gypsum board markets are not about to change soon. Within the U.S. market, the forecast is for continued soft demand, substantial overcapacity and continued downward pressure on prices. In short, all the conditions which have given rise to the industry's material injury from U.S. dumping are likely to persist in the foreseeable future.

Producer Exclusions

Finally, National Gypsum, James Hardie and United States Gypsum, the three U.S. exporters that participated in the hearing, each asked for an exclusion in the event of a positive injury finding by the Tribunal. The Tribunal notes that exporter exclusions are generally granted only in narrow circumstances, such as when an exporter is shipping a specific product that is not produced in Canada. However, it is not on the

basis of such grounds that the exclusions are requested by the above-noted exporters. Although the particulars of each case are different, the requested grounds for exclusion all boil down to the common submission that any disruption to the Canadian market was caused by others.

The Tribunal can find no basis on which to grant the requested exclusions. In the first place, the Tribunal notes that the Deputy Minister's dumping determination applies to all the subject goods originating in or exported from the United States. It is not directed against any one or more exporters in particular. In the same sense, the Tribunal's injury finding is not directed against any individual U.S. producers, but rather against dumped U.S. imports which are causing material injury to Canadian production. As has been found by the Tribunal, this injury stems from the distressed market conditions which prevail nation-wide in the United States. Since U.S. producers are subject, more or less, to the same general market conditions, they generally all pose a risk of injurious dumping to Canadian production. This holds equally true for U.S. producers that participated in the Tribunal's proceedings, as well as for those that did not, including producers that made little or no shipments to Canada during the period surveyed by the Tribunal's staff, that is, January 1, 1989, to August 31, 1992.

In addition to the foregoing general considerations, there are specific reasons for not granting the requested exclusions. In the case of National Gypsum, the evidence shows that this producer is responsible for a substantial proportion of total U.S. gypsum board imports over the period reviewed by the Tribunal's staff. According to the Deputy Minister's final determination, a high proportion of these imports were dumped at a significant weighted average margin. Moreover, there is considerable evidence on the record which shows that National Gypsum played a major role in the downward price spiral in Canada.

James Hardie has been a regional player in Canada with most of its exports directed into the lower B.C. mainland market. This U.S. producer first entered the B.C. market about three years ago, and, since then, it has seen its regional market share rise to a respectable level. The vast bulk of its exports is comprised of gypsum board which is sold to one B.C. customer, the buying group BYCO Inc. (BYCO), which is one of the most important buying groups in western Canada. In addition to sales to BYCO, James Hardie sells laminated gypsum board to a number of other customers within British Columbia.

As in the case of National Gypsum, a high proportion of James Hardie's exports to Canada have been found to be dumped at a significant weighted average margin. The Tribunal notes that, although James Hardie sold primarily to one customer, BYCO, the effect of its sales was spread throughout the lower mainland of British Columbia through the many BYCO member supply yards. For example, a witness for the buying group Tim-BR-Marts testified that his members in British Columbia were regularly pressuring him to seek lower prices from Canadian producers in order to allow them to compete against BYCO yards using James Hardie gypsum board.

There was also testimony from the industry that the prices that it charged to domestic laminators for plain, standard squared-edge gypsum board had to be reduced to allow domestically produced laminated gypsum board to compete with dumped James Hardie laminated gypsum board. While counsel for James Hardie argued that

their client was a price follower and not a price leader, it is clear to the Tribunal from the foregoing that dumping by James Hardie helped to fuel and sustain the downward spiral in prices which occurred in British Columbia with almost the same intensity as in the rest of Canada.

As to the last request for exclusion, the Tribunal notes that United States Gypsum is the largest U.S. producer of gypsum board. While United States Gypsum has had only a marginal presence in the Canadian market up until now, the witness from Tim-BR-Marts testified that United States Gypsum gypsum board, among others, had been regularly offered to him and his members by brokers and others throughout western Canada at very low prices. The Tribunal notes that United States Gypsum also has been found to be dumping, albeit at a much smaller margin than either National Gypsum or James Hardie. However, the Tribunal still considers the margin significant in a commodity-type market such as gypsum board.

Product Exclusions

A number of product exclusions were sought by various parties. A request was made to exclude gypsum board panels with a raised surface design (also referred to as embossed panels) from any finding of injury. The Tribunal notes that these goods are not produced in Canada and that an exclusion for such goods was agreed to by the complainants. Therefore, the Tribunal finds that this exclusion from the injury finding is warranted.

An exclusion was also sought for gypsum board panels with bevelled edges in a thickness of 5/8 in. and in a width of 23 in., 24 in., 29 in. or 30 in. Having reviewed the evidence, the Tribunal concludes that the complainants either do not make or have not readily supplied bevelled-edge gypsum board panels in a width of 30 in. or less and, therefore, finds that this exclusion is warranted.

The Tribunal received requests for exclusions regarding gypsum board panels with squared edges in a thickness of 3/8 in. or 5/16 in. that have a plain or vinyl finish. The evidence shows that the complainants do not produce or readily supply squared-edge gypsum board in the above thicknesses in plain, vinyl or any other kind of finish. Therefore, these requests for exclusions are also granted.

The Tribunal denies the request for exclusion for plain gypsum board with squared edges in a thickness of 1/2 in., on the basis that such gypsum board is readily available from Canadian production.

CONCLUSION

In light of the foregoing, the Tribunal concludes, for the reasons stated above, that the dumping in Canada of gypsum board, composed primarily of a gypsum core, with paper surfacing bonded to the core, with the exception of:

- i) gypsum board panels with a raised surface;
- ii) gypsum board panels with bevelled edges in a thickness of 5/8 in. and in a width of 23 in., 24 in., 29 in. or 30 in.; and

- iii) plain or vinyl-faced gypsum board panels with squared edges in a thickness of 3/8 in. or 5/16 in.;

originating in or exported from the United States of America, has caused, is causing and is likely to cause material injury to the production in Canada of like goods.

Kathleen E. Macmillan

Kathleen E. Macmillan

Presiding Member

Sidney A. Fraleigh

Sidney A. Fraleigh

Member

Michèle Blouin

Michèle Blouin

Member