



Ottawa, Friday, June 27, 1997

Inquiry No.: NQ-96-004

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

**CONCRETE PANELS, REINFORCED WITH FIBERGLASS MESH, ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA AND PRODUCED BY OR ON BEHALF OF CUSTOM BUILDING PRODUCTS, ITS SUCCESSORS AND ASSIGNS, FOR USE OR CONSUMPTION IN THE PROVINCE OF BRITISH COLUMBIA OR ALBERTA**

**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 of a preliminary determination of dumping dated February 27, 1997, and of a final determination of dumping dated May 27, 1997, respecting the importation into Canada of concrete panels, reinforced with fiberglass mesh, originating in or exported from the United States of America and produced by or on behalf of Custom Building Products, its successors and assigns, for use or consumption in the province of British Columbia or Alberta.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned goods originating in or exported from the United States of America and produced by or on behalf of Custom Building Products, its successors and assigns, for use or consumption in the province of British Columbia or Alberta has caused material injury to the domestic industry.<sup>1</sup>

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Charles A. Gracey

Charles A. Gracey  
Member

Susanne Grimes

Susanne Grimes  
Acting Secretary

The Statement of Reasons will be issued within 15 days.

1. In coming to this finding, the Canadian International Trade Tribunal found that British Columbia and Alberta are a regional market and that Bed-Roc Industries Limited, a producer in Surrey, British Columbia, constitutes the domestic industry within that market.

Place of Hearing: Vancouver, British Columbia  
Dates of Hearing: May 28 to 29, 1997  
Date of Finding: June 27, 1997  
Tribunal Members: Arthur B. Trudeau, Presiding Member  
Raynald Guay, Member  
Charles A. Gracey, Member  
Director of Research: Peter Welsh  
Research Manager: Ken Campbell  
Economist: Simon Glance  
Statistical Officer: Nynon Pelland  
Counsel for the Tribunal: Heather A. Grant  
Registration and Distribution Officer: Joël J. Joyal

**Participants:**

James P. McIlroy  
for Bed-Roc Industries Limited

**(Domestic Producer)**

Jeffrey S. Thomas  
for Custom Building Products of Canada Ltd.  
Custom Building Products

**(Importer/Exporter)**

Riyaz Dattu  
John W. Boscarior  
for CGC Inc.

**(Importer)**

Ottawa, Monday, July 14, 1997

**Inquiry No.: NQ-96-004**

**CONCRETE PANELS, REINFORCED WITH FIBERGLASS MESH, ORIGINATING  
IN OR EXPORTED FROM THE UNITED STATES OF AMERICA AND PRODUCED  
BY OR ON BEHALF OF CUSTOM BUILDING PRODUCTS, ITS SUCCESSORS AND  
ASSIGNS, FOR USE OR CONSUMPTION IN THE PROVINCE OF  
BRITISH COLUMBIA OR ALBERTA**

*Special Import Measures Act* - Whether the dumping of the above-mentioned goods has caused material injury or retardation or is threatening to cause material injury to the domestic industry.

**DECISION:** The Canadian International Trade Tribunal hereby finds that the dumping in Canada of concrete panels, reinforced with fiberglass mesh, originating in or exported from the United States of America and produced by or on behalf of Custom Building Products, its successors and assigns, for use or consumption in the province of British Columbia or Alberta, has caused material injury to the domestic industry.

Place of Hearing: Vancouver, British Columbia  
Dates of Hearing: May 28 to 29, 1997

Date of Finding: June 27, 1997  
Date of Reasons: July 14, 1997

Tribunal Members: Arthur B. Trudeau, Presiding Member  
Raynald Guay, Member  
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**(Domestic Producer)**

for Jeffrey S. Thomas  
Custom Building Products of Canada Ltd.  
Custom Building Products

**(Importer/Exporter)**

for Riyaz Dattu  
John W. Boscarol  
CGC Inc.

**(Importer)**

**Witnesses:**

Sukhbinder Dhami  
President  
Bed-Roc Industries Limited

Avtar Dhami  
Secretary  
Bed-Roc Industries Limited

L. (Les) Odell  
Vice-President, Operations  
Custom Building Products of Canada Ltd.

Garett Shandler  
Sales and Marketing Manager  
Custom Building Products of Canada Ltd.

Griffith J. Williams  
President  
Custom Building Products of Canada Ltd.

M.T. (Tim) Creech  
Manager, Dealer Sales - B.C. Division  
CanWel Distribution Ltd.

Martin Torgerson  
Purchasing - Lumber & Building Materials  
Revelstoke Home Centres Ltd.

Rob Bridge  
Buyer  
Pacific West Systems Supply Ltd.

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Ottawa, Monday, July 14, 1997

**Inquiry No.: NQ-96-004**

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

**CONCRETE PANELS, REINFORCED WITH FIBERGLASS MESH, ORIGINATING IN OR EXPORTED FROM THE UNITED STATES OF AMERICA AND PRODUCED BY OR ON BEHALF OF CUSTOM BUILDING PRODUCTS, ITS SUCCESSORS AND ASSIGNS, FOR USE OR CONSUMPTION IN THE PROVINCE OF BRITISH COLUMBIA OR ALBERTA**

TRIBUNAL:           ARTHUR B. TRUDEAU, Presiding Member  
                          RAYNALD GUAY, Member  
                          CHARLES A. GRACEY, Member

**STATEMENT OF REASONS**

**BACKGROUND**

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*<sup>1</sup> (SIMA), has conducted an inquiry following the issuance by the Deputy Minister of National Revenue (the Deputy Minister) of a preliminary determination of dumping<sup>2</sup> dated February 27, 1997, and of a final determination of dumping<sup>3</sup> dated May 27, 1997, respecting the importation into Canada of concrete panels, reinforced with fiberglass mesh, originating in or exported from the United States of America and produced by or on behalf of Custom Building Products, its successors and assigns, for use or consumption in the province of British Columbia or Alberta.

On February 28, 1997, the Tribunal issued a notice of commencement of inquiry.<sup>4</sup> As part of the inquiry, the Tribunal sent detailed questionnaires to Canadian manufacturers, importers, purchasers and a distributor of concrete panels. Respondents provided production, financial, import, sales, pricing and market information, as well as other information relating to concrete panels, for the years from 1994 to 1996. From replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports. In addition, parties exchanged interrogatories with respect to matters relevant to the inquiry. These interrogatories, and the responses thereto, also form part of the record for this inquiry.

Public and *in camera* hearings were held in Vancouver, British Columbia, on May 28 and 29, 1997. A domestic producer, Bed-Roc Industries Limited (Bed-Roc), was represented by counsel at the hearing. Custom Building Products of Canada Ltd. (Custom Canada) and its parent company, Custom Building Products (Custom US), were also represented by counsel at the hearing, as was CGC Inc. (CGC), an importer of non-subject goods. As well, witnesses for Pacific West Systems Supply Ltd. and Revelstoke Home Centres Ltd. appeared at the request of the Tribunal.

1. R.S.C. 1985, c. S-15, as amended.
2. *Canada Gazette* Part I, Vol. 131, No. 11, March 15, 1997, at 847.
3. *Ibid.* No. 23, June 7, 1997, at 1664.
4. *Ibid.* No. 10, March 8, 1997, at 754.

## **DOMESTIC MANUFACTURERS**

Bed-Roc, a small privately owned company located in Surrey, British Columbia, is the sole domestic producer of concrete panels in the provinces of British Columbia and Alberta. Bed-Roc began production of concrete panels in 1987 and markets the goods under the trade name "Super Panel." Concrete panels are the only products produced by Bed-Roc, which markets the panels primarily to building supply retailers which, in turn, sell to contractors and the general public. The company maintains warehouse facilities at its Surrey plant, as well as in Calgary and Edmonton, Alberta.

Bed-Roc produces concrete panels by placing a metal frame on a fiberglass form and then laying the fiberglass mesh inside the frame. A thin layer of cement slurry is spread evenly over the fiberglass mesh, and the mesh is cut to length. The core mix, consisting of formulated amounts of aggregate, cement and water, is troweled onto the panel, and a second layer of fiberglass is laid on top of the mixture. Finally, cement slurry is spread over the fiberglass, and the fiberglass is cut to length. Throughout the production process, the panels are subjected to various quality control procedures to ensure that any defects are eliminated and that the required thickness is produced. The finished panels are cured overnight in a drying room, stamped with product identifiers and strapped in pallets of 20 or 40 sheets. Bed-Roc manufactures the panels in various sizes and thicknesses, although panels measuring 3 ft. x 5 ft. and 7/16 in. thick account for the bulk of production.

Unifix Inc. (Unifix), of Bromont, Quebec, is 51 percent owned by Placements Beaudier Inc. of Montréal, Quebec. Unifix, the only other producer of concrete panels in Canada, commenced production in 1986 and sells under various trade names, including "Unipan." The company markets its panels through distributors that, in turn, sell to building supply retailers. Unifix panels are sold in Eastern Canada. The company does not sell concrete panels into either British Columbia or Alberta.

## **IMPORTERS**

Custom Canada, CGC and Olympia Tile International Inc. (Olympia Tile) were the only known importers of concrete panels reinforced with a fiberglass mesh during the period from 1994 through 1996. The three companies sold panels in British Columbia and Alberta, as well as in the rest of Canada, during that period.

Custom Canada, located in Surrey, is jointly owned by Custom US and Custom Building Partners II of Seal Beach, California. In 1994, Custom US acquired Roc-Crete Industries Limited (Roc-Crete), a Vancouver-based company that had been producing concrete panels under the trade name "WonderBoard." By mid-1994, Custom US had terminated Roc-Crete's production, sold off the assets and began to export concrete panels to its Canadian subsidiary. Custom Canada imports concrete panels from its parent's Bakersfield, California, plant for sales in British Columbia and Alberta. Sales in these provinces are primarily made through distributors that, in turn, sell to retail outlets or wholesalers. Sales of concrete panels into the rest of Canada are made from imports from its parent's Bridgeport, New Jersey, plant. Custom Canada markets various thicknesses of concrete panels, including 7/16 in. Original WonderBoard, 1/2 in. Multi+WonderBoard and 1/4 in. WonderBoard.

CGC, in Mississauga, Ontario, is wholly owned by USG Corporation (USG) of Chicago, Illinois. CGC imports concrete panels from USG plants for resale to dealers and distributors. The company began selling concrete panels in British Columbia and Alberta in 1994. Sales are made primarily to national account buying groups from CGC warehouses located in Vancouver and Edmonton. CGC markets 1/2 in. thick concrete panels under the trade name "Durock."

Olympia Tile, in Toronto, Ontario, imports concrete panels from Clear Corporation of Hamilton, Ohio. The concrete panels are marketed under the trade name "Util-A-Crete." Olympia Tile markets a full line of ceramic tiles and accessories, and sales are made from its national branch locations.

## **RESULTS OF DEPUTY MINISTER'S INVESTIGATION**

The Deputy Minister's investigation covered shipments of concrete panels made from January 1 to September 30, 1996. Normal values were determined for each type of WonderBoard exported to Canada by Custom US during the period of investigation in accordance with section 15 or 19 of SIMA and the relevant provisions of the *Special Import Measures Regulations*<sup>5</sup> (the Regulations). Normal values were determined using domestic market sales under section 15 of SIMA for all but one type of WonderBoard. Export prices were determined under section 24 of SIMA based on Custom US declared selling prices.

The Deputy Minister's preliminary and final determinations of dumping define the subject goods as concrete panels, reinforced with fiberglass mesh, originating in or exported from the United States of America and produced by or on behalf of Custom Building Products, its successors and assigns, for use or consumption in the province of British Columbia or Alberta. Included among the subject goods are "seconds," commonly referred to as "contractor board."

Concrete panels, commonly referred to as "tile backer board," are used mainly in the construction industry as a backing board for ceramic tile installations around showers, tubs and other wet areas and as an underlayment for ceramic tile, slate and marble floors and countertops. The panels are also used for exterior sheathing and for wall shields and floor protectors around fireplaces, wood stoves and heaters.

There are other products which can be used in the same applications as concrete panels reinforced with a fiberglass mesh. Such products include concrete panels reinforced with cellulose fibre and gypsum board with a water-resistant surface. The characteristics, specifications and price ranges of these products are substantially different from concrete panels reinforced with a fiberglass mesh. The Department of National Revenue (Revenue Canada) has determined that these products are a different class of goods that do not compete directly with the subject goods. Accordingly, such products did not form part of Revenue Canada's dumping investigation.

During the period of investigation, 100 percent of the subject goods imported into British Columbia and Alberta were found to be dumped. The margins of dumping ranged from 26.8 percent to 53.8 percent, with a weighted average margin of dumping of 35.72 percent, when expressed as a percentage of normal value.

Although the dumping complaint was specific to concrete panels produced by Custom US for use or consumption in British Columbia or Alberta, Revenue Canada also reviewed exports from Custom US into the rest of Canada in order to determine whether there was a concentration of dumped imports into British Columbia and Alberta. Exports by Custom US to the rest of Canada were shipped from its plant in Bridgeport. In the absence of information on production in that plant, the normal values determined for the plant in Bakersfield were used to calculate the margins of dumping in the rest of Canada. It was determined that imports from Custom US into the rest of Canada were dumped by a margin similar to that for imports into British Columbia and Alberta.

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5. SOR/95-26, December 20, 1994, *Canada Gazette* Part II, Vol. 129, No. 1 at 80.

## **POSITION OF PARTIES**

### **Domestic Producer**

#### **Bed-Roc**

Counsel for Bed-Roc submitted that there is a clearly defined regional market in British Columbia and Alberta and that concrete panels produced by Bed-Roc, the only domestic producer in that market, constitute “like goods” to the subject goods. Counsel also submitted that the dumping of the subject goods has caused material injury and is threatening to cause material injury to Bed-Roc.

With respect to injury, counsel for Bed-Roc submitted that Bed-Roc’s earnings took a turn for the worse in the fiscal year ending April 30, 1997, relative to its 10-year satisfactory business history, resulting in a significant net loss for that year. Although Bed-Roc’s sales volume increased, its sales revenues decreased because it had to sell its product at a lower price. While the market for concrete panels grew, Bed-Roc was unable to participate in the growth and lost market share. Bed-Roc was also unable to invest, as it had done in the past, in order to reduce its manufacturing costs. Counsel noted that, during this period, the volume of the subject imports increased significantly relative to Bed-Roc’s production of like goods and that the injury to Bed-Roc coincided with CanWel Distribution Ltd.’s (CanWel) unleashing of its sales force with the subject imports in the spring of 1996.

Counsel for Bed-Roc further submitted that there exists a clear causal link between the dumping of the subject goods and the injury. Counsel argued that this is evidenced by the effects on Bed-Roc of the commencement of transfer pricing for the subject goods by Custom US to Custom Canada in 1995. Counsel submitted that this transfer pricing, which was found to constitute dumping by the Deputy Minister, allowed Custom Canada to offer low prices which had the effect of eroding Bed-Roc’s prices. In support of this argument, counsel referred to lost sales, as well as price erosion and price suppression, at specific accounts during the Deputy Minister’s period of investigation.

Counsel for Bed-Roc submitted that a threat of injury is also clearly foreseen and imminent. The rapid increase in imports of the subject goods between 1994 and 1996 demonstrates a likelihood of substantially increased imports. Custom US has, moreover, the capacity to increase its production. Counsel argued that Custom US has targeted Canada as an export market and that no other export markets are available to absorb the goods because of high transportation costs.

### **Importers and Exporters**

#### **Custom Canada and Custom US**

Counsel for Custom Canada and Custom US submitted that, if Bed-Roc has suffered any injury, it has not been caused by the dumping of the subject goods. In particular, counsel submitted that Bed-Roc has failed to establish a causal link between the landed values of the subject imports and the competing prices faced by Bed-Roc in the marketplace. Counsel submitted that the average price for the subject goods in the marketplace was always higher than Bed-Roc’s prices during the period of inquiry.

Counsel for Custom Canada and Custom US further submitted that, during the period of inquiry, Custom Canada’s market share, in terms of volume and value, has remained virtually unchanged and that its increase in imports has been more modest than asserted by counsel for Bed-Roc. By contrast, CGC’s



imports have increased significantly, as has its market share. Moreover, CGC had a significantly lower average price than Bed-Roc in 1995. In counsel's view, it is also unfair to compare CGC's and Bed-Roc's average prices at the retail level to those of Custom Canada because Custom Canada is selling to distributors.

Counsel for Custom Canada and Custom US argued that Bed-Roc has made no allegations of price undercutting and that its allegations in respect of lost sales, price suppression and erosion relate solely to the activities of CanWel. Accordingly, Bed-Roc's allegations in terms of the pricing effect of offers in the market for contractor board are not relevant because CanWel did not sell contractor board. Counsel submitted that Bed-Roc's loss of the CanWel account was not price related, but resulted from CanWel's corporate decision to look for national suppliers for all of its goods, which requirement was not met by Bed-Roc. In terms of CanWel's sales in the market, counsel submitted that CanWel's prices were significantly higher than Bed-Roc's prices and that CanWel was still able to take customers away from Bed-Roc. Counsel attributed these lost accounts to factors such as CanWel's superior service, its offer of a full line of products and its computerized inventory control.

Counsel for Custom Canada and Custom US submitted that, if Bed-Roc has suffered injury, it is not material, but more importantly, if such injury has been suffered, it was self-inflicted. Counsel cited Bed-Roc's poor corporate and marketing decisions, the fact that it is only producing one product, namely, 7/16 in. thick panels, its lack of business and marketing experience, and its lack of a dedicated sales agent as supporting this conclusion. Counsel further submitted that the most significant factor in terms of any injury to Bed-Roc was the loss of The Home Depot Canada (Home Depot) account to CGC.

With respect to threat of injury, counsel for Custom Canada and Custom US argued that there is no evidence to support such allegations. Custom US is running at effective full capacity. However, if it were to increase production, counsel questioned why it would choose to dump product in Canada at a lower profit margin than it could get in the United States, given the growing US market.

### CGC

In response to the suggestion of counsel for Custom Canada and Custom US that any injury suffered by Bed-Roc is attributable to CGC, counsel for CGC submitted that the Home Depot account was lost by Bed-Roc for reasons other than price. Furthermore, the evidence shows that CGC did not compete against Bed-Roc on the basis of price and that CGC, unlike Bed-Roc, sells to national accounts and national buying groups.

### ANALYSIS

In conducting an inquiry under section 42 of SIMA, the Tribunal is required to determine whether the dumping of the goods to which the preliminary determination applies has caused injury or is threatening to cause injury. "Injury" is defined in subsection 2(1) of SIMA, as "material injury to a domestic industry." "Domestic industry" is defined, in part, as "the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods."

Accordingly, in arriving at its decision, the Tribunal must, first, determine what are the "like goods" to the subject goods and, second, determine which producers of the like goods constitute a "domestic industry." The Tribunal must then determine whether the domestic industry has suffered injury and whether there is a causal link between the injury suffered by the domestic industry and the dumping of the subject

goods. In the event that the Tribunal makes a finding of no injury, it must go on and consider the evidence relating to threat of injury and make a finding in respect of that question.<sup>6</sup>

### Like Goods

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

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

In this case, the Tribunal finds that concrete panels, reinforced with fiberglass mesh, are like goods to the subject goods. Although not identical to the subject goods, domestically produced concrete panels, reinforced with fiberglass mesh, have physical characteristics similar to those of the subject goods and generally have the same end uses. The testimony of a variety of witnesses, moreover, suggests that domestically produced concrete panels, reinforced with fiberglass mesh, compete, at the discretion of the consumer, with the subject goods.

### Domestic Industry/Regional Market

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

“domestic industry” means, other than for the purposes of section 31 and subject to subsection (1.1), the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

Subsection 2(1.1) of SIMA provides that:

In exceptional circumstances, the territory of Canada may, for the production of any goods, be divided into two or more regional markets and the domestic producers of like goods in any of those markets may be considered to be a separate domestic industry where

- (a) the producers in the market sell all or almost all of their production of like goods in the market; and
- (b) the demand in the market is not to any substantial degree supplied by producers of like goods located elsewhere in Canada.

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6. As a result of amendments to SIMA resulting from the *World Trade Organization Agreement Implementation Act*, S.C. 1994, c. 47, the Tribunal has interpreted its obligation under subsection 43(1) of SIMA in making a finding in respect of injury in an inquiry under section 42 to mean that it is required to consider whether the domestic industry either has suffered injury or is threatened with injury. In other words, unless the Tribunal first makes a finding of no injury, it does not need to make a finding relating to both injury and threat of injury under subsection 43(1) of SIMA. See *Caps, Lids and Jars Suitable for Home Canning, Whether Imported Separately or Packaged Together, Originating in or Exported from the United States of America, Finding*, October 20, 1995, *Statement of Reasons*, November 6, 1995.

Where the conditions in paragraphs 2(1.1)(a) and (b) of SIMA are met, the Tribunal may find that a regional market exists and that the producers in that market may be considered to be a regional industry. If a regional industry is found to exist, subsection 42(5) of SIMA provides, in part, that:

the Tribunal shall not find that the dumping or subsidizing of [the subject] goods has caused injury ... or is threatening to cause injury unless

(a) there is a concentration of those goods into the regional market; and

(b) the dumping or subsidizing of those goods has caused injury ... or is threatening to cause injury to the producers of all or almost all of the production of like goods in the regional market.

With respect to the first part of the analysis, the Tribunal notes that Bed-Roc is the sole producer of like goods in British Columbia and Alberta and that it sells its entire production of like goods in those two provinces. The Tribunal further notes that there is only one other producer of like goods in Canada, namely, Unifix, and that Unifix does not sell any of its production of like goods in either British Columbia or Alberta. Accordingly, the Tribunal is of the view that a regional industry for concrete panels, reinforced with a fiberglass mesh, exists in British Columbia and Alberta and that, for purposes of this inquiry, Bed-Roc constitutes the “domestic industry.”

For the second part of the analysis, the Tribunal agrees with the application of the “distribution” test and the “ratio” test, as was done by the Tribunal in Inquiry No. NQ-91-002,<sup>7</sup> in order to determine whether there is a concentration of dumped imports into the regional market. The “distribution” test compares the volume of imports into the regional market to the volume of imports into the national territory as a whole. The record shows that in both 1994 and 1995, 94 percent of the total subject imports into Canada were consumed in British Columbia and Alberta.<sup>8</sup> In 1996, 74 percent of the total subject imports into Canada were consumed in the two provinces. The “ratio” test compares the regional market’s share of the subject imports into Canada to its share of total concrete panel consumption in Canada. In applying this test, the data indicate that, in 1994, British Columbia and Alberta’s share of the total subject imports was 10.4 times British Columbia and Alberta’s share of total Canadian consumption of concrete panels. In 1995, this ratio was 7.2, while in 1996, it was 6.2.<sup>9</sup> In the Tribunal’s view, the results of both of these tests indicate that there is a concentration of dumped imports into the regional market.

As Bed-Roc has been found to constitute the domestic industry for purposes of this inquiry, if the Tribunal finds that the dumping has caused injury to Bed-Roc, then it will meet the test for finding injury to domestic producers of all or almost all of the production of the like goods in the regional market.

## Injury

Subsection 37.1(1) of the Regulations prescribes various factors that the Tribunal may consider when determining whether a regional industry is being materially injured by dumped or subsidized imports. These factors include the volume of the dumped imports and their effect on prices in the market for like goods and the consequent impact of these imports on a number of economic factors, such as actual or potential declines in output, sales, market share, profits and return on investments.

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7. *Certain Beer Originating in or Exported from the United States of America by or on Behalf of Pabst Brewing Company, G. Heileman Brewing Company Inc. and The Stroh Brewery Company, Their Successors and Assigns, for Use or Consumption in the Province of British Columbia, Finding*, October 2, 1991, *Statement of Reasons*, October 17, 1991, at 15.

8. British Columbia and Alberta’s share of the total Canadian market was 9 percent, 13 percent and 12 percent in 1994, 1995 and 1996 respectively, *Public Pre-Hearing Staff Report*, April 23, 1997, Tribunal Exhibit NQ-96-004-6, Administrative Record, Vol. 1 at 74.

9. *Public Pre-Hearing Staff Report*, *ibid.* at 74.

During the inquiry period from 1994 to 1996, there were a number of significant changes in the regional market. Demand for concrete panels, as noted below, steadily increased. In addition, Roc-Crete's production was terminated and replaced by imports of concrete panels from Custom US. As well, CGC began importing concrete panels into the regional market in 1994. It was also during this period that prices for concrete panels began to decline, particularly in the latter part of the period.

The apparent market for concrete panels expanded sharply over the inquiry period, from roughly 800,000 sq. ft. in 1994 to 1.20 million sq. ft. in 1995, a 46 percent increase.<sup>10</sup> The market volume continued to increase in 1996, to 1.35 million sq. ft., for a 13 percent increase over 1995. The apparent market value over the three years exhibited similar growth, from \$580,000 in 1994 to \$915,000 in 1996, an increase of 57 percent.

Within this expanding market, sales of US imports by CGC made major inroads. Between 1994 and 1996, it more than tripled its sales, which resulted in the company gaining the majority of market growth and a large gain in market share. Although Custom Canada did not enjoy a similar increase in market share, it too experienced excellent sales growth over the three-year period.<sup>11</sup>

Despite growing market demand, average net selling prices for both suppliers of US concrete panels fell over the course of the inquiry period.<sup>12</sup> Over this period, Custom Canada's average prices fell 4 percent in 1995 and a further 11 percent in 1996. Similarly, CGC's average selling prices fell by 13 percent over the three-year period. In 1995, Bed-Roc's average prices increased slightly, only to fall back to their 1994 level in 1996.

The evidence suggests that Bed-Roc, in spite of its transportation advantage, participated in this robust growth in demand only marginally. While the company was able to maintain sales volumes, it did so at a considerable cost. The company's market strength had been its lower prices, but it was forced to lower prices further in order to maintain its market share, which resulted in a significant negative effect on the company's financial performance.

The Tribunal also reviewed prices for specific large volume products in order to minimize product mix influences. In this regard, the Tribunal looked at pricing trends for the 3 ft. x 5 ft. panels in both 7/16 in. and 1/2 in. thicknesses.<sup>13</sup> The sales of these panels account for the majority of sales in the regional market.

On the basis of this review, it is clear to the Tribunal that prices for the 3 ft. x 5 ft. panels began to decline in the fourth quarter of 1995 and continued a steady decline throughout 1996. This decline was fuelled by Custom Canada which had introduced its 1/2 in. Multi+WonderBoard, as well as contractor board. Between the third quarter of 1995 and the fourth quarter of 1996, Custom Canada's average square foot price for 3 ft. x 5 ft. panels fell by 19 percent. In an apparent response to these lower prices, in the first quarter of 1996, CGC lowered its prices and, by the fourth quarter of the year, its average square foot price had fallen by 11 percent.

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10. The data do not include Roc-Crete's sales of concrete panels from its own production. Roc-Crete ceased operations in the second quarter of 1994. As a result, market growth between 1994 and 1995 is somewhat overstated, Tribunal Exhibit I-2A (protected – single copy), Administrative Record, Vol. 12.1 at 5.

11. *Protected Pre-Hearing Staff Report*, revised May 23, 1997, Tribunal Exhibit NQ-96-004-7A (protected), Administrative Record, Vol. 2 at 49-50.

12. *Protected Pre-Hearing Staff Report*, April 23, 1997, Tribunal Exhibit NQ-96-004-7 (protected), Administrative Record, Vol. 2 at 44.

13. *Ibid.* at 25-26 and 43-44.

In the Tribunal's view, Bed-Roc got caught in the crossfire of the price reductions initiated by Custom Canada, to which CGC responded. Bed-Roc had been the low price supplier in the regional market, but was forced to lower its prices even further in response to Custom Canada. Between the fourth quarter of 1995 and the fourth quarter of 1996, Bed-Roc lowered its average square foot price by 5 percent. However, in spite of this price decrease, by the end of 1996, Bed-Roc's average square foot price was virtually identical to that of Custom Canada.

The effect of this price erosion and price suppression is clearly shown in the financial results reported by Bed-Roc for its 1997 fiscal year.<sup>14</sup> Although sales volumes were up slightly, net revenue earned on sales was down 5 percent from the 1996 fiscal period, which reflects Bed-Roc's lower selling prices. While revenues were declining, production costs continued to rise, which severely squeezed gross margins.

The net effect of this cost/price squeeze has, in the Tribunal's opinion, severely hindered the company owners' ability to obtain a reasonable return on its efforts and investments. In fiscal 1997, the company incurred a significant net loss, despite a 20 percent reduction in management's compensation over fiscal 1996.

The evidence also persuades the Tribunal that Bed-Roc has been injured in its ability to invest in new equipment and systems which would allow the company to further increase its production efficiencies. The Tribunal notes the significant financial investments made by the owners, given the relatively small size of the company. The evidence shows that new investments planned for 1997 have been postponed and are in jeopardy unless the financial results for the company are reversed.<sup>15</sup>

In summary, it is clear from the evidence that Bed-Roc has suffered injury, which the Tribunal considers to be material, primarily in the form of price erosion and price suppression which has severely impacted the company's financial results and its ability to invest. In the Tribunal's opinion, this injury commenced in late 1995 and continues to date.

### **Causation**

Having determined that Bed-Roc has been materially injured, the Tribunal must determine whether there is a causal link between the injury and the dumping of concrete panels by Custom US. The Tribunal must also examine other factors to ensure that injury caused by such factors is not attributed to the dumping.

In brief, counsel for Bed-Roc argued that there was a clear causal link between the commencement of transfer pricing by Custom US to Custom Canada in 1995 and the injury suffered by the domestic producer. The result of this new pricing, which was subsequently found to be dumping by the Deputy Minister, caused price erosion and price suppression, financial injury and the postponement of investments by Bed-Roc. Counsel for Custom Canada and Custom US, however, argued that any injury suffered by Bed-Roc was self-inflicted and was not related to the prices offered by Custom Canada and Custom US. In particular, counsel saw Bed-Roc's product limitations, its lack of marketing and customer support and the activities of CGC as major factors which limited Bed-Roc's ability to compete and which caused it injury, if any.

The Tribunal notes that, while the regional market has shown strong growth over the period of inquiry, this is a relatively small market with annual sales of less than \$1 million. It is clear that Bed-Roc does not enjoy large automated production facilities, financial resources or Canadian and US marketing presence

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14. Manufacturer's Exhibit A-5 (protected), Administrative Record, Vol. 14.

15. *Transcript of In Camera Hearing*, May 28, 1997, at 23-24.

as is the case with Custom US/Canada and USG/CGC. However, it is equally clear that Bed-Roc, prior to the commencement of dumping by Custom US, had gained a strong position in the regional market. The evidence shows that Bed-Roc, shortly after starting production in 1987, quickly established a growing presence in the regional market, which saw its sales increase sharply in the ensuing years.<sup>16</sup>

With steady sales growth and an expanding market, it appears that Bed-Roc had reason to be optimistic about its future. In 1994, the company moved from leased premises into a newly built production facility owned by the company.<sup>17</sup> Shortly thereafter, Bed-Roc made significant investments to semi-automate its production process, improve production efficiency and expand production capacity. The Tribunal notes that Bed-Roc was able to achieve these goals even though it was, and continues to be, a single product company. The evidence suggests that Bed-Roc's marketing strategy was based on offering its customers a quality product at a competitive price.<sup>18</sup> The fact that the company produced and marketed only concrete panels did not appear to restrict its success in British Columbia and Alberta nor its ability to compete with the WonderBoard panels produced by Roc-Crete.

In 1995, events began to change when Custom US took certain corporate steps which allowed it to become more aggressive in the regional market. Having terminated Roc-Crete's production in 1994, Custom US began exporting the concrete panels to Crest Cements of Canada Ltd. in which it acquired 100 percent ownership in mid-1995. With this acquisition, Custom US was now in a position to transfer price to Custom Canada and, in September 1995, began to sell to Custom Canada at cost plus 5 percent.<sup>19</sup>

The second stage of Custom Canada's pricing strategy and, in the Tribunal's opinion, the major factor which ultimately led to Bed-Roc's injury occurred in the last quarter of 1995. With the new pricing arrangements in place, Custom Canada began importing both the WonderBoard and Multi+Board at prices some 25 percent below the previous prices paid to Custom US. In the words of a witness for Custom Canada, "we had definitely lost a lot of market share and we needed to re-evaluate our prices and come in at a competitive price."<sup>20</sup> These favourable prices now placed Custom Canada in a position to price more aggressively and, in October 1995, the company announced a price reduction to the market for concrete panels.<sup>21</sup> In addition to lower prices, Custom Canada also began to pay freight costs on a considerable portion of its truckload shipments from Bakersfield, to its customers in British Columbia and Alberta,<sup>22</sup> which effectively eliminated the freight cost advantage enjoyed by Bed-Roc. Given the heavy weight and mass of concrete panels, freight is a major cost element in determining price.

In addition, shortly after the new pricing arrangements were in place, Custom Canada began to import contractor board. Although these concrete panels were not prime quality, it is clear from the evidence that Custom Canada's very low prices for this product were appealing to a number of purchasers. In fact, the evidence reveals that 9 percent of Custom Canada's imports of panels in the first nine months of 1996 consisted of this low-priced product.<sup>23</sup> Given the small size of the regional market, there can be no doubt that the contractor board prices not only gained sales for Custom Canada but also, to some extent, served to restrain prices in the market as a whole.

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16. Manufacturer's Exhibit A-6, Administrative Record, Vol. 13.

17. *Transcript of In Camera Hearing*, May 28, 1997, at 14.

18. *Transcript of Public Hearing*, May 28, 1997, at 22.

19. *Ibid.* at 140.

20. *Ibid.* at 142.

21. *Ibid.* at 140-41; and Manufacturer's Exhibit A-6, Administrative Record, Vol. 13.

22. Tribunal Exhibit I-2A, (protected – single copy), Administrative Record, Vol. 12.1 at 11-12.

23. *Transcript of Public Hearing*, May 28, 1997, at 95.

In the Tribunal's view, the downward market price spiral had now begun and continued throughout 1996 when Custom Canada's prices were found to be dumped prices. In late 1995, Custom Canada approached CanWel and, in the spring of 1996, successfully concluded an agreement with CanWel to act as its distributor for concrete panels.<sup>24</sup> As the Deputy Minister's final determination makes clear, these sales to CanWel, as well as Custom Canada sales to other customers, were made at weighted average margins of dumping of 36 percent. Witnesses for Custom Canada candidly acknowledged that, without these advantageous prices, CanWel would have had great difficulty selling in competition with Bed-Roc.<sup>25</sup>

It appears to the Tribunal that these arrangements with CanWel were the "straw that broke the camel's back" as far as Bed-Roc was concerned. Bed-Roc had started to sell to three CanWel locations in British Columbia in 1995 and had reason to believe that its sales to CanWel would likely increase in the future.<sup>26</sup> However, as a result of the distributor arrangement with Custom Canada, CanWel was now competing directly with Bed-Roc on sales to building supply retailers.

Bed-Roc's market intelligence indicated that CanWel and Custom Canada had been "targeting [Bed-Roc's] customers pretty hard<sup>27</sup>" and, rather than lose further sales, the company acted quickly in an attempt to protect its market share. In July 1996, Bed-Roc announced an across-the-board price decrease for BC customers, which amounted to lower prices in the range of \$1.00 to \$1.50 per 3 ft. x 5 ft. panel. In August, similar price decreases were offered to customers in Alberta. In addition, to counter Custom Canada's free freight policy, Bed-Roc extended free freight to all customers in the lower mainland of British Columbia.<sup>28</sup>

The Tribunal has carefully reviewed the evidence with respect to the pricing activities of Custom Canada and CanWel in 1996, the year in which dumping was found by the Deputy Minister. As previously noted, the evidence clearly shows the large average price declines by Custom Canada which commenced with the new advantageous price arrangements with its parent company in the United States. These price declines continued throughout 1996. Indeed, Bed-Roc found its prices under further attack in late 1996 when Custom Canada provided CanWel with "short-term special pricing" and also offered CanWel a significant credit for existing inventory "[b]ecause that stock is what they need to go out and compete with Super Panel."<sup>29</sup>

The Tribunal also looked at Bed-Roc's allegations that it had suffered price erosion or lost sales at a number of specific accounts. A review of these accounts indicates that these allegations are largely borne out.<sup>30</sup> Although Bed-Roc's total sales losses at these accounts were not large, such losses for a small producer contributed significantly to the injury suffered by the company. More importantly, Custom Canada's

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24. *Ibid.* at 141-42.

25. *Ibid.* at 144-45; and *Transcript of In Camera Hearing*, May 28, 1997, at 186.

26. *Transcript of Public Hearing*, May 28, 1997, at 16-17; and *Manufacturer's Exhibit A-3*, Administrative Record, Vol. 13.

27. *Transcript of In Camera Hearing*, May 28, 1997, at 32.

28. *Ibid.* at 25-27; and Tribunal Exhibit NQ-96-004-10.1 (protected), Administrative Record, Vol. 4 at 19-20.

29. *Transcript of In Camera Hearing*, May 28, 1997, at 175.

30. *Ibid.* at 215-27; and Tribunal Exhibit NQ-96-004-28.1 (protected), Administrative Record, Vol. 6.3 at 17-25. Among the accounts reviewed were the following: Coe Lumber & Building Supply Ltd., Curtis Lumber Co. Ltd., Comox Builders Supply Ltd., Dick's Lumber & Building Supplies Ltd., Mountain Building Centres Ltd., Pioneer Building Supplies Ltd. and Port Coquitlam Building Supplies Ltd.

dumped prices to CanWel allowed CanWel to lower its prices to these accounts, which had a broader impact on Bed-Roc's overall prices and forced the company to lower its prices to other customers.

### Factors Other Than Dumping

Counsel for Custom Canada and Custom US argued that any injury suffered by Bed-Roc was self-inflicted and was caused by factors other than dumping. Included among these other factors were the claims: that Bed-Roc is a single product company and that it is producing the wrong product demanded by the marketplace; that Bed-Roc does not offer the same level of marketing and customer support as is the case with Custom Canada and CanWel; that CGC's market gains have been a major contributor to any injury suffered by Bed-Roc; and that the loss of the Home Depot account and the selling prices of Home Depot have been major influences on Bed-Roc's performance.

With respect to the claim that Bed-Roc only produces a single product and that it is not what the market demands, the Tribunal notes that Bed-Roc has been a single product company since its inception in 1987 and, apparently, had done very well in satisfying customer requirements in British Columbia and Alberta with its single product. Although the majority of Bed-Roc's sales have been the 7/16 in. thick panels, the evidence suggests that the company could successfully compete with Custom Canada's 1/2 in. Multi+WonderBoard panels prior to the commencement of dumping by Custom US. Although the Multi+WonderBoard panels use a lower-cost fiberglass mesh than is used in the Bed-Roc panels, the evidence is clear that these products are in direct competition with each other. Indeed, the president of Custom Canada stated that the Multi+WonderBoard panels can be used in 97 percent of the applications in which the 7/16 in. thick panels are used.<sup>31</sup>

As to Bed-Roc's inferior marketing and customer support, it is evident that Bed-Roc does not have the financial resources available to employ a large marketing and sales force. However, as noted, the regional market is not large, and Bed-Roc has been successfully servicing that market for several years. The evidence indicates that Bed-Roc actively marketed its panels through frequent contacts with its customers, whether through personal visits or telephone and written contact.<sup>32</sup> Similarly, Bed-Roc provides a range of marketing and promotional materials to its customers. The testimony of the witness for Pacific West Systems Supply Ltd. does not lend credence to the allegation that Bed-Roc has somehow done an inferior job in promoting its product.<sup>33</sup>

With respect to the presence of CGC, it is clear from the evidence that this company has been very successful in gaining sales and market share since entering the regional market in 1994. The Tribunal notes that, in 1987, CGC reached a price undertaking with Revenue Canada on its sales of concrete panels in Eastern Canada. In 1990, Revenue Canada terminated the agreement, having found that CGC had met or exceeded all the terms of the agreement. In spite of the price undertaking, Revenue Canada noted the large market gains made by CGC over the three-year period.<sup>34</sup> With regard to this inquiry, the evidence suggests that CGC's success in the regional market has not been at the expense of Bed-Roc. With the exception of the loss of the Home Depot account, it appears that, for the most part, Bed-Roc and CGC do not compete for the

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31. *Transcript of Public Hearing*, May 28, 1997, at 83.

32. *Ibid.* at 69-70; and *Transcript of In Camera Hearing*, May 28, 1997, at 54-59.

33. *Transcript of Public Hearing*, May 29, 1997, at 180.

34. Manufacturer's Exhibit A-6, Administrative Record, Vol. 13.



same accounts. CGC sells to national accounts and national buying groups and, consequently, does not generally meet Bed-Roc competition in the regional market.<sup>35</sup>

Finally, with respect to Home Depot, it is clear from the evidence that Bed-Roc lost significant sales to CGC in 1994 when the Aikenhead's Home Improvement Warehouse (Aikenhead) chain was acquired by Home Depot. Bed-Roc had been supplying concrete panels to Aikenhead for about six months prior to the acquisition.<sup>36</sup> However, as a result of a decision at Home Depot's corporate headquarters in the United States to maintain only one supplier for both the US and Canadian markets, no further sales were made by Bed-Roc. The evidence clearly indicates that the loss of these sales was due to non-price factors.<sup>37</sup> Furthermore, the Tribunal is not persuaded by the evidence that Home Depot's prices have suppressed retail prices in the regional market. Testimony by witnesses for Bed-Roc suggests that Home Depot sells its CGC panels at a "middle of the road price."<sup>38</sup>

On the whole, the Tribunal recognizes that these other factors have played a role on the performance of Bed-Roc during the period of inquiry. However, their effects have been minimal in comparison to the materially injurious effect of the dumping.

## CONCLUSION

Based on the foregoing, the Tribunal finds that the dumping in Canada of concrete panels, reinforced with fiberglass mesh, originating in or exported from the United States of America and produced by or on behalf of Custom Building Products, its successors and assigns, for use or consumption in the province of British Columbia or Alberta, has caused material injury to the domestic industry.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Raynald Guay

Raynald Guay  
Member

Charles A. Gracey

Charles A. Gracey  
Member

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35. *Transcript of Public Hearing*, May 28, 1997, at 56-57; *Transcript of In Camera Hearing*, May 28, 1997, at 111-12; and *Transcript of Public Hearing*, May 29, 1997, at 270.

36. *Transcript of In Camera Hearing*, May 28, 1997, at 43-44 and 80-81.

37. *Ibid.* at 119-20.

38. *Ibid.* at 45.