



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2012-001

Liquid Dielectric Transformers

*Finding issued
Tuesday, November 20, 2012*

*Reasons issued
Wednesday, December 5, 2012*

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

**THE DUMPING OF LIQUID DIELECTRIC TRANSFORMERS
ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF KOREA**

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping of liquid dielectric transformers having a top power handling capacity equal to or exceeding 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete, originating in or exported from the Republic of Korea has caused injury or retardation or is threatening to cause injury to the domestic industry.

Further to the issuance by the President of the Canada Border Services Agency of a final determination dated October 22, 2012, that the aforementioned goods have been dumped, and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods has caused injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Jason W. Downey
Jason W. Downey
Member

Gillian Burnett
Gillian Burnett
Acting Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: October 22 to 26, 2012

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STATEMENT OF REASONS

1. The Canadian International Trade Tribunal (the Tribunal), pursuant to section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry to determine whether the dumping of liquid dielectric transformers having a top power handling capacity equal to or exceeding 60,000 kilovolt amperes (60 megavolt amperes [MVA]), whether assembled or unassembled, complete or incomplete (power transformers), originating in or exported from the Republic of Korea (Korea) (the subject goods) has caused injury or retardation or is threatening to cause injury.
2. On April 23, 2012, the President of the Canada Border Services Agency (CBSA), following a complaint filed jointly by ABB, Inc. (ABB) of Varennes, Quebec, and CG Power Systems Canada Inc. (CG) of Winnipeg, Manitoba, initiated an investigation into whether the subject goods had been dumped.
3. On April 24, 2012, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping of the subject goods had caused injury or retardation or was threatening to cause injury. On June 22, 2012, the Tribunal made a preliminary determination, pursuant to subsection 37.1(1), that there was evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury or was threatening to cause injury (Member Downey dissenting).
4. On July 23, 2012, the CBSA issued a preliminary determination that the subject goods had been dumped, that the margin of dumping was not insignificant and that the import volumes of the subject goods were not negligible.
5. On July 24, 2012, the Tribunal issued a notice of commencement of inquiry.² The Tribunal's period of inquiry (POI) covered three full years, from January 1, 2009, to December 31, 2011, and two interim periods, from January 1 to June 30, 2011, and the corresponding period in 2012.
6. As part of its inquiry, the Tribunal requested domestic producers, importers and foreign producers of power transformers to complete questionnaires. The Tribunal also requested purchasers of power transformers in Canada to complete a questionnaire on market characteristics. The Tribunal's staff used the replies to questionnaires and other information on the record to prepare public and protected pre-hearing staff reports.
7. On October 22, 2012, the CBSA issued a final determination of dumping.
8. The Tribunal held a hearing, with public and *in camera* testimony in Ottawa, Ontario, from October 22 to 26, 2012.
9. ABB and CG filed written submissions, provided evidence and made arguments in support of a finding of injury or, alternatively, threat of injury. ABB and CG were represented by counsel and presented witnesses at the hearing.
10. Hyundai Heavy Industries Co., Ltd. (HHI), a foreign producer/exporter of the subject goods, and Remington Sales Co. (Remington), an importer/distributor of the subject goods, Hyosung Corporation (Hyosung), a foreign producer/exporter of the subject goods, and HICO America Inc. (HICO), an importer/distributor of the subject goods, filed written submissions, provided evidence and made arguments

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

2. C. Gaz. 2012.I.2241.

opposing a finding of injury or, alternatively, threat of injury. HHI, Remington, Hyosung and HICO were represented by counsel and presented witnesses at the hearing.

11. The Tribunal received a notice of participation from Hydro One Networks Inc. (Hydro One), a Canadian purchaser of power transformers. Moreover, Mr. George Carleton of Hydro One appeared as a witness at the hearing.

12. In its notice of commencement of inquiry, the Tribunal referred to the procedures for filing requests for specific product exclusions. The Tribunal received one request from HHI, and two requests from HICO and Hyosung. These are discussed in more detail in the section on product exclusion requests.

13. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2012-001), replies to questionnaires, public and protected versions of the pre-hearing staff report and revisions, requests for information and replies thereto, witness statements, all other exhibits filed by the parties and the Tribunal throughout the inquiry, and the transcript of the hearing.

14. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed the required declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

15. On November 9, 2012, the Tribunal accepted post-hearing written submissions³ concerning the implications for the present inquiry of revisions that the CBSA made to its import data in the reasons for its final determination of dumping.⁴ On November 16, 2012, the Tribunal issued its decision not to use the revised CBSA data for the reasons set out below.

16. The Tribunal issued its finding on November 20, 2012.

RESULTS OF THE CBSA'S INVESTIGATION

17. On October 22, 2012, the CBSA determined that 100 percent of the subject goods released into Canada from October 1, 2010, to March 31, 2012, had been dumped at a weighted average margin of dumping of 19.5 percent, when expressed as a percentage of the export price.⁵

18. The CBSA concluded that the overall margin of dumping was not insignificant.⁶

PRODUCT

Product Definition

19. The goods subject to this inquiry are defined as follows:

Liquid dielectric transformers having a top power handling capacity equal to or exceeding 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete, originating in or exported from the Republic of Korea.⁷

3. Tribunal Exhibit NQ-2012-001-52, Administrative Record, Vol. 1A at 205-208; Tribunal Exhibit NQ-2012-001-53, Administrative Record, Vol. 1A at 210-15; Tribunal Exhibit NQ-2012-001-54, Administrative Record, Vol. 1A at 217-29.

4. Tribunal Exhibit NQ-2012-001-04A, Administrative Record, Vol. 1A at 87.26.

5. Tribunal Exhibit NQ-2012-001-04, Administrative Record, Vol. 1 at 87.15.

6. *Ibid.* at 87.11.

7. Tribunal Exhibit NQ-2012-001-04A, Administrative Record, Vol. 1A at 87.22.

Additional Product Information⁸

20. Power transformers are capital goods that are made to order in accordance with the customer's specifications and particular needs. Power transformers use electromagnetic induction between circuits to increase, maintain or decrease electric voltage in high-voltage transmission and distribution systems. Induction occurs when the electromagnetic field caused by electricity moving through a conductor crosses a second electrical conductor and generates a voltage in the second conductor, even though the two conductors are not directly connected. This requires a fluctuating magnetic field generated by alternating current entering an input conductor.

21. Power transformers all share certain basic, key physical characteristics. All power transformers have at least one active part where the electromagnetic induction occurs. The active part of the power transformer consists of one or more of the following, when attached to or otherwise assembled with one another: the steel core or shell, the windings, electrical insulation between the windings, a clamping system to hold the internal assembly together, and/or the mechanical frame for a power transformer. The internal assembly is placed into a metal tank that is filled with a cooling medium and has a cooling system attached.

22. Incomplete power transformers are subassemblies consisting of the active part and any other parts attached to, imported with or invoiced with the active part of the power transformer.

23. The product definition encompasses all power transformers regardless of name designation, including but not limited to step-up transformers, step-down transformers, auto-transformers, interconnection transformers, voltage regulator transformers, high-voltage direct current transformers and rectifier transformers.

Production Process⁹

24. Regardless of the customized configuration, all power transformers follow the same basic production process. Larger power transformers typically take a much longer time to produce than smaller power transformers. Power transformer production involves a number of key steps, namely, design, core fabrication, coil fabrication, preparation of the coil-and-core assembly, tanking, testing and delivery.

25. The first step in the production process is the design of the power transformer itself. As a customized product, engineers must set out the electrical and mechanical design of the power transformer, subject to customer approval. The engineer prepares mechanical drawings, detailed and transport drawings, schematics control designs, cabling diagrams and control cabinet diagrams.

26. After the design phase, the manufacturing phase begins. The first step in the manufacturing phase is the creation of the core of the power transformer. The core is made by cutting laminated electrical steel sheets and stacking them one upon the other in a well-defined way. The stacked sheets are then pressed together and positioning equipment is used to set the core in an upright position.

27. The next step is to prepare the windings (coil fabrication) and the coil-and-core assembly. The windings are fabricated from copper wire and covered with insulation paper. They are dried to eliminate all moisture content. The particular winding method employed can vary depending on the particular power transformer design. The core-and-coil assemblies are held together by a specific design system.

8. Tribunal Exhibit NQ-2012-001-04A, Administrative Record, Vol. 1A at 87.22-87.23.

9. *Ibid.* at 87.24-87.25.

28. The tank is usually painted inside and out to prevent corrosion. After assembly, the unit is dried a second time to eliminate any residual moisture. The coil-and-core assembly is then placed into a steel tank, which is equipped with a cooling system. The cooling system used depends on the particular application of the power transformer as specified by the customer. The cooling medium is the electrical insulating fluid.

29. After the manufacturing steps are complete, the power transformer is subjected to rigorous testing in accordance with the applicable standards before final delivery.

DOMESTIC PRODUCERS

30. The Tribunal identified three domestic producers of power transformers in Canada, namely, ABB, CG and Alstom Grid Canada Inc. (Alstom). ABB and CG provided complete replies to the Tribunal's producers' questionnaire. Alstom provided a partial reply to the same questionnaire.

ABB¹⁰

31. ABB is a wholly owned subsidiary of ABB Asea Brown Boveri Ltd., which is, in turn, a wholly owned subsidiary of ABB Ltd., a global manufacturer of power technologies, with its head office in Zurich, Switzerland, and power transformer factories worldwide. ABB's Canadian office is located in Ville Saint-Laurent, Quebec, and its plant is located in Varennes.

32. The Varennes plant opened in 1971 and produced its first power transformers a year later. It was selected in 1998 to be ABB Ltd.'s designated factory to supply power transformers to the Canadian and U.S. markets. In addition to power transformers, which represent the most significant products produced at the plant, the Varennes plant produces other electrical products, such as shunt reactors, rectifier transformers and converter transformers. Moreover, the plant is involved in the repair of power transformers. The Varennes plant is also an important external user of Hydro-Québec's electrical research institute (IREQ), which conducts testing on power transformers.

33. During the POI, ABB exported power transformers to the United States, and imported power transformers from Brazil, Germany, Poland, Spain, Sweden and the United States. It did not export to or import from Korea.

CG¹¹

34. CG is a wholly owned subsidiary of CG Power Systems Belgium NV, with its head office in Mechelen, Belgium. The latter is a global manufacturer of power transformers and other equipment related to the transmission and distribution of electrical power.

35. CG began its operations in 1946 as Pioneer Electric Limited, a manufacturer of distribution transformers, located in Winnipeg. In the 1950s, the company began producing power transformers rated at 60 MVA and above. Over the next decades, the company continued to expand its production. It began exporting power transformers in the late 1950s.

36. A series of acquisitions took place in subsequent years, and the Winnipeg plant was acquired by Pauwels International. In 2005, Crompton Greaves of India purchased Pauwels International, which was officially incorporated as CG Power Systems Canada in 2009.

10. Tribunal Exhibit NQ-2012-001-11.01, Administrative Record, Vol. 3 at 17.

11. Tribunal Exhibit NQ-2012-001-11.02A, Administrative Record, Vol. 3 at 122-23.

37. The current Winnipeg plant produces up to 750 MVA - 525 kV class power transformers. All facets of engineering, procurement and manufacture are executed and controlled at the Winnipeg location.

38. During the POI, CG did not import any power transformers and exported to the United States only.

Alstom¹²

39. Alstom was incorporated in December 2003. Following a series of mergers that took place in 2012, Alstom became a wholly owned subsidiary of Alstom Holdings. Alstom's plant is located in Saint-Jean-sur-Richelieu, Quebec. It began manufacturing power transformers in January 2010 and is currently producing power transformers with a top power handling capacity of 10 to 160 MVA.

40. Alstom did not import or export power transformers during the POI.

IMPORTERS

41. The Tribunal requested 25 potential importers of power transformers to complete the importers' questionnaire. The Tribunal received nine useable replies, as well as six replies from companies which indicated that they did not import power transformers or that their imports were excluded from the product definition. In addition, the Tribunal received one response that was incomplete and, therefore, could not be tabulated.

PURCHASERS

42. The Tribunal requested 40 potential purchasers of power transformers to complete the purchasers' questionnaire on market characteristics. The Tribunal received and tabulated 15 replies, while 6 companies confirmed that they did not purchase power transformers during the POI. In addition, the Tribunal received 1 response that was incomplete and, therefore, could not be tabulated.

FOREIGN PRODUCERS

43. The Tribunal requested two potential foreign producers of power transformers to complete the foreign producers' questionnaire and received a reply from each.

DISTRIBUTION CHANNELS AND PRICING

44. In Canada, imported and domestically produced power transformers are acquired through a procurement process by electrical utilities companies and large industrial customers. The customers usually plan their needs several years in advance of delivery and then solicit bids according to their specifications, which can vary greatly in size and value.

45. The procurement of power transformers is increasingly characterized by blanket requests and multiple shipment agreements.¹³ A blanket request can cover a customer's power transformer needs for a defined period of time, usually three to five years. A blanket may specify the precise quantities for each year

12. Tribunal Exhibit NQ-2012-001-11.03, Administrative Record, Vol. 3 at 141-43.

13. Refers to any bid or request for tenders, proposals or quotations for which more than one shipment or order for power transformers is contemplated. These may include blanket and/or alliance agreements.

of the contract, specify the precise quantities for particular years with non-binding forecasts for additional years, or provide non-binding forecasts for every year under the blanket.¹⁴

ANALYSIS

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

47. Accordingly, the Tribunal must first determine what constitutes “like goods.” Once that determination has been made, the Tribunal must determine what constitutes the “domestic industry” for purposes of its injury analysis. The Tribunal can then assess whether the dumping of the subject goods has caused injury to the domestic industry. Should the Tribunal arrive at a finding of no injury, it will determine whether there exists a threat of injury to the domestic industry.¹⁵ As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.¹⁶

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

Like Goods

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

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

50. In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).¹⁷

51. In its preliminary injury inquiry, the Tribunal accepted that domestically produced power transformers with a top power handling capacity of 60 MVA or greater were like goods in relation to the subject goods.¹⁸ None of the parties to the present inquiry took issue with this finding, and the Tribunal has seen no reason to reach a different determination.

14. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 16; collective Tribunal Exhibit NQ-2012-001-23 (protected) —Protected complaint filed on behalf of ABB and CG in Preliminary Injury Inquiry No. PI-2012-001 at para. 37.

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

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

17. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

18. *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 27. The dissenting member did not disagree with this ruling.

52. Therefore, the Tribunal finds that domestically produced power transformers with a top power handling capacity of 60 MVA or greater constitute “like goods” in relation to the subject goods.

Domestic Industry

53. Subsection 2(1) of *SIMA* defines “domestic industry” as follows:

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods.

54. The record discloses that there are three domestic producers of the like goods: ABB, CG and Alstom. As already mentioned, Alstom did not participate in this inquiry.

55. It is not disputed that ABB and CG collectively represent the vast majority of the total domestic production of the like goods.¹⁹

56. The Tribunal therefore finds that ABB and CG constitute the “domestic industry”.

INJURY

57. Subsection 37.1(1) of the *Special Import Measures Regulations*²⁰ prescribes that, in determining whether dumping has caused injury, the Tribunal consider the volume of the dumped goods, their effect on the price of like goods and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider factors other than the dumping that may have contributed to the injury and to ensure that any injury caused by those other factors is not attributed to the effect of the dumped goods.

58. After having considered all relevant factors, the Tribunal will examine whether any injury found to have been caused by the dumping is “material”, as contemplated by section 42 of *SIMA*.²¹

59. In making this assessment, the Tribunal has taken the special characteristics of power transformers into consideration. That the subject goods and like goods are capital goods raises unique challenges in the analysis of injury. The production of power transformers is typically characterized by high fixed costs and the optimization of plant loading to maintain consistent levels of throughput.²² The Tribunal heard that a consistently high level of plant throughput, by allowing for the realization of production economies associated with the spreading of operating costs over a larger number of units, is critical to the domestic industry’s profitability.²³ Witnesses testified that inadequate throughput and a plant’s inability to fill production slots may necessitate reductions in installed and manned capacity.²⁴ In addition, they added that power transformers, being very expensive pieces of capital equipment with long average useful lives,²⁵ are

19. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 65.

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

21. The term “injury” in section 42 of *SIMA* is defined as “material injury to a domestic industry” in subsection 2(1).

22. *Electric Generators* (14 July 1983), ADT-8-83 (ADT) at 13-14.

23. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 84.

24. *Ibid.* at 131.

25. *Ibid.* at 12.

ordered relatively infrequently. Consequently, the loss of a single order can have severe and long-lasting injurious effects on the domestic industry.²⁶

60. Furthermore, there tends to be a very long time lag between the placement of an order and the delivery of the goods. Witnesses confirmed that this lag is a feature of the power transformer industry.²⁷ The Tribunal heard that a corollary to this time lag is that the domestic producers tend to book gains at the time of delivery, although the impact on certain industry performance indicators may be felt shortly after a bid is lost.²⁸ Consequently, certain price effects of dumping, such as price undercutting and price depression, may materialize one or two years before the actual importation of the subject goods.

61. In view of this time lag, the Tribunal considers that the domestic producers' production and financial data for 2009 are likely to relate predominantly to pricing practices that pre-date the POI. That being the case, the Tribunal, while looking at price effects throughout the POI, will focus on 2010, 2011 and the interim period of 2012 for the purposes of examining the volume of imports of the subject goods and the impact of the dumping on the domestic industry.

62. The Tribunal has conducted its analysis by looking firstly at average prices, together with the volumes of the subject goods and performance indicators as a whole.

63. HHI asked the Tribunal not to conduct its injury analysis on the traditional basis of aggregate or average data. HHI referred to the fact that this inquiry concerns highly complex capital goods which constitute enormous investments.²⁹ HHI also argued that there is no single market, as each customer, industry and province has particular conditions and requirements.³⁰

64. In addition, HHI claimed that there is highly limited price transparency, volatile demand and difficulty in assessing the timing of injury due to the time lag between orders and deliveries.³¹ HHI suggested that the Tribunal should therefore focus on individual transactions to assess whether or not the margin of dumping for each transaction could have contributed either to a lost sale or to adverse price effects, and whether any such injury was material.³²

65. The Tribunal accepts that a transaction-specific analysis is appropriate, given, among other things, the relatively limited number of transactions and, as explained above, the importance of each individual transaction to the performance of the domestic industry.

66. That being said, the Tribunal is of the view that an aggregate assessment of volumes and prices is also probative of the issues before it and would result in a more fulsome injury analysis. In arriving at this conclusion, the Tribunal noted that the domestic industry's case does not rest exclusively on transaction-specific allegations of injury. In particular, the domestic industry also alleged that the dumping has, over time, caused more general problems of price depression and price suppression.

26. Klaus Stegemann, "Special Import Measures Legislation: Deterring Dumping of Capital Goods", *Canadian Public Policy*, 4 (Autumn) (1982) at 575; *Hydraulic Turbines* (19 August 1983), ADT-4B-76 (ADT) at 6.

27. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 17.

28. Manufacturer's Exhibit A-01 at para. 3, Administrative Record, Vol. 11; Manufacturer's Exhibit B-05 at paras. 8-9, Administrative Record, Vol. 11B; *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 17, 86-87, 126, 134-35; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 145, 152.

29. *Transcript of Public Hearing*, Vol. 5, 26 October 2012, at 440.

30. *Ibid.* at 438-40.

31. *Ibid.* at 454.

32. *Ibid.* at 455-56.

67. Accordingly, the Tribunal has decided, by way of analytical modalities, to conduct an aggregate analysis of the relevant data, supplemented by an examination of transaction-specific allegations of price depression and lost sales for which evidence has been provided, with the results of the latter being compared to those of the former.

68. However, the Tribunal was unable to conduct an analysis in relation to transaction-specific margins of dumping, as not enough of this information matched the corresponding information on domestic bids to yield probative results. This is discussed further below.

69. Finally, the Tribunal has decided that, since the sizes of power transformers, which vary widely, are typically expressed on the basis of MVA rating,³³ MVAs, rather than the number of units, represent the more appropriate basis for the analysis of key indicators (e.g. volumes, unit values and production capacity utilization) in this case. The Tribunal notes that there was no objection from the parties to this approach, which the Tribunal understands to be consistent with industry practice.³⁴

Effects of Dumped Imports on Prices

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

71. Power transformers are primarily purchased through open tendering processes, whereby purchasers request quotes from potential suppliers in respect of the customized transformers described in the bid documentation. Witnesses for ABB testified that given that power transformers are made to specification, each procurement process is unique, in that it corresponds to a distinct transformer, with different technical, delivery and service requirements.³⁵ Given the technical complexity of power transformers,³⁶ potential suppliers are typically pre-qualified to bid.³⁷

72. The Tribunal also heard that, in the Canadian market, purchasers appear to be moving from individual purchases towards more comprehensive blanket agreements. This transition is motivated by such factors as the cost efficiencies associated with the production of successive units to similar specifications and the long-term cost reductions that can be realized from the sole-sourcing of multiple units.³⁸ Blanket agreements appear to be particularly suited for utilities whose ongoing needs for power transformers are well known and well defined. This is supported by the testimony of the witness for Hydro One.³⁹

33. An MVA rating reflects the amount of electrical energy being transformed in the electrical circuit.

34. Manufacturer's Exhibit B-07 at para. 32, Administrative Record, Vol. 11B.

35. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 32-33.

36. *Ibid.* at 12-13.

37. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 46.

38. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 63, 123; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 156-58; *Transcript of Public Hearing*, Vol. 4, 25 October 2012, at 380.

39. *Transcript of Public Hearing*, Vol. 4, 25 October 2012, at 367-68.

Importance of Price in Purchasing Decisions

73. The domestic industry submitted that the price/total ownership cost⁴⁰ of a power transformer is usually a fundamental, and often determinative, factor in the final contract award decisions. Although purchasers may choose to assess competing bids on the basis of a number of other evaluative factors, it is only in the most exceptional cases that price is not considered the most important factor.⁴¹

74. In this regard, the domestic industry submitted that, if the price differential between bids exceeds a certain relatively low percentage, price will likely become the decisive factor in a purchasing decision.⁴² In the domestic industry's experience, this is true in the majority of bid assessments, with non-price factors appearing to play a less important role in the decision-making process. However, it was noted by witnesses for CG that, where a customer required a power transformer immediately, the supplier's ability to effect timely delivery of the required unit would figure more prominently in the bidding process.⁴³

75. By contrast, HHI submitted that, according to the responses to the purchasers' questionnaire on market characteristics, while price is a factor in the customer's buying equation, it is not necessarily the determinative factor.⁴⁴ In this regard, HHI submitted that there were several other factors that were taken into account in the buying decision, with price clearly not being the most important factor when analyzed on a bid-by-bid basis.

76. Witnesses for Hyundai Canada Inc. (HCI) testified that non-price factors are more important to purchasers than price and that the price differential would have to be significant in order for customers to discount the non-price factors. Moreover, compliance with technical requirements and delivery terms take precedence over price insofar as they are often evaluated first.⁴⁵

77. Similarly, witnesses for HICO testified that quality, delivery time and a supplier's proven track record are all important non-price factors considered by a purchaser when awarding the contract.⁴⁶

78. Furthermore, witnesses for Hyosung testified that their current efforts to maintain long-term business relationships with their customers require them to focus on non-price factors.⁴⁷

79. The Tribunal accepts that non-price considerations factor importantly into the transformer procurement decision-making process. Indeed the data compiled from the responses to the purchasers' questionnaire on market characteristics indicate that various non-price factors were considered "very important" in transformer purchasing decisions, with all 14 purchasers that responded to the relevant

40. Total ownership cost is calculated using the initial bid price plus the evaluated cost of load and no load losses over the estimated life expectancy of the transformer.

41. Manufacturer's Exhibit A-01 at para. 4, Administrative Record, Vol. 11.

42. Manufacturer's Exhibit A-07 at para. 17, Administrative Record, Vol. 11; Manufacturer's Exhibit B-07 at para. 31, Administrative Record, Vol. 11B.

43. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 169-70.

44. Exporter's Exhibit E-01 at para. 14, Administrative Record, Vol. 13.

45. *Transcript of Public Hearing*, Vol. 3, 24 October 2012, at 265, 304-305, 307.

46. *Transcript of Public Hearing*, Vol. 4, 25 October 2012, at 336.

47. *Ibid.* at 337.

question in the purchasers' questionnaire on market characteristics characterizing "product quality meets industry standards" and "product meets technical specifications" as "very important" factors.⁴⁸

80. That being said, the Tribunal is of the view that, among technically pre-qualified bidders, which include many of the parties to these proceedings, price tends to emerge as the determinative factor in contract awards. The Tribunal notes in this regard that the witness for Hydro One stated that, after the technical specifications and mandatory terms and conditions had been met, total evaluated cost was one of the most important factors.⁴⁹

81. Again, the responses to the purchasers' questionnaire on market characteristics confirm the importance of price in the purchasing process. The Tribunal notes in this regard that 9 of 14 purchasers stated that the lowest lifetime cost is a "very important" factor in purchasing decisions, while 7 of 13 purchasers indicated that the lowest price is also a "very important" factor.⁵⁰ Furthermore, the majority of purchasers indicated that the lowest price and/or evaluated cost offered usually wins the contract of sale and also noted that total evaluated cost/lifetime cost is an important factor that affects their choice of supplier.⁵¹

82. In light of the above, the Tribunal concludes that, although non-price factors do play a significant role in the purchasing decision, price is still a dominant factor. Moreover, the Tribunal notes that, once bidders have been technically prequalified, price acquires even greater prominence in the final purchasing decision.

Price Transparency

83. The domestic industry submitted that, although bids are generally confidential, there is a certain degree of price transparency in the market for power transformers. Witnesses for the domestic industry testified that they were able to obtain some market intelligence and feedback from purchasers on their price positions relative to the prices offered by Korean suppliers.⁵² They added that information obtained from public bid openings in the United States provided them with an additional source of useful information, given the geographical proximity of the two markets.⁵³

84. The domestic industry also claimed that a "lighthouse effect" exists in the Canadian market, whereby the mere presence of Korean bidders leads other market participants to modify their pricing behaviour. Witnesses for the domestic industry testified that the aggressiveness of Korean pricing made it impossible to ignore Korean competition in bidding events, especially in light of feedback received on past Korean pricing on several key accounts.⁵⁴

85. Parties opposed argued that Canadian producers could not have known whether they were competing against Korean suppliers in any given bidding event, nor could they have definitive knowledge

48. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 26.

49. Purchaser's Exhibit G-01 at 2-3, Administrative Record, Vol. 13B.

50. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 26.

51. *Ibid.* at 41, 43.

52. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 23-24, 30, 39-40, 42-43, 56, 65, 96-98; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 150, 154, 161-62, 215-17.

53. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 166-67, 183-84.

54. Manufacturer's Exhibit A-01 at para. 47, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 59-60; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 183.

of the pricing of the subject goods. In this regard, they contended that Canadian producers acted recklessly in unilaterally adjusting their prices on the basis of unreliable and unverifiable information.⁵⁵

86. The witnesses for HICO submitted that, in their experience, there was little or no transparency in the market and that they were never advised of their competitors' pricing. They maintained that, while they did proactively "prospect" for business opportunities rather than wait for the customer to issue a request for quotation or a request for proposal⁵⁶ and held occasional debriefing sessions with customers' representatives to discuss various aspects of their bids, they were always informed that pricing would not be discussed.⁵⁷

87. The Tribunal accepts that there is likely only a limited degree of bid price transparency in the Canadian market, with much of the intelligence only being indirectly available from secondary sources. However, despite these limitations, the Tribunal is of the view that experienced bidders would likely be able to assemble sufficient information to determine with some measure of reliability whether the loss of a tendered contract was attributable to a lower price bid by a particular competitor or to some other factor. Indeed, the evidence on the record supports this conclusion and confirms that the domestic producers were fairly accurate in estimating the prices of the subject goods in various bidding events, with these in fact being lower than the prices quoted by ABB and CG.⁵⁸

88. That being the case, the Tribunal accepts that the domestic industry had access to at least a modicum of market intelligence that allowed it to estimate the prices being quoted by their Korean competitors and to come to the eventual realization that these tended to be significantly lower.

Pricing analysis

89. In accordance with the modalities outlined above, the Tribunal conducted an analysis of average prices, as well as an analysis of the specific allegations of lost sales and price depression submitted by the domestic industry, to determine if, and the extent to which, the subject goods underbid the like goods on a transactional basis.⁵⁹

90. The Tribunal found that, in the vast majority of cases, and regardless of whether the analysis was performed on the basis of average prices or specific allegations, price undercutting by Korean producers was

55. *Transcript of Public Hearing*, Vol. 5, 26 October 2012, at 453.

56. *Transcript of Public Hearing*, Vol. 4, 25 October 2012, at 338-39, 351.

57. *Ibid.* at 355.

58. *Protected Pre-hearing Staff Report*, revised, 26 September 2012, Tribunal Exhibit NQ-2012-001-07A (protected), Administrative Record, Vol. 2.1 at 149-50; Manufacturer's Exhibit A-02 (protected) at 62-65, Administrative Record, Vol. 12; Tribunal Exhibit NQ-2012-001-RI-05A (protected), Administrative Record, Vol. 10 at 2-7; Tribunal Exhibit NQ-2012-001-RI-03A (protected), Administrative Record, Vol. 10 at 52-59.

59. The Tribunal undertook a comprehensive analysis of all available data on specific transactions. Firstly, it analyzed the bidding data submitted by purchasers in their responses to the purchasers' questionnaire on market characteristics. Using the information provided, the Tribunal's staff calculated margins of undercutting, if applicable, in all instances where Canadian producers were competing with Korean suppliers (regardless of who won the bid). The Tribunal notes that, in the vast majority of bidding events examined, the margin of undercutting was present and significant. Secondly, the Tribunal considered all transactions detailed in the injury allegations submitted by the domestic industry. To the extent possible, staff used the data provided by foreign producers and relevant importers in their questionnaire responses to complement the information provided by the domestic industry. As a result, staff calculated margins of undercutting for 23 transactions where data for the base price could be matched reliably. The Tribunal found that, in the vast majority of bidding events, Korean suppliers bid at prices that were significantly lower than the prices of the like goods and that the margins of undercutting were significant. Unfortunately, the Tribunal was not able to compare the margins at which Korean bids undercut the domestic bids to the CBSA's transaction-specific margins of dumping due to inability to match specific transactions across the datasets.

both present and substantial. This finding is consistent with both the domestic industry's claim that, whether on a base price or on an evaluated cost basis, Korean producers underbid the domestic industry by a significant average margin in a substantial number of bids⁶⁰ and the CBSA's finding with regard to the magnitude of the weighted average margin of dumping.

– Price Undercutting

91. ABB submitted that Korean producers have demonstrated a propensity for undercutting the domestic industry's prices and for leading the price of like goods downward to unsustainable levels.⁶¹ In the same vein, witnesses for CG testified that the Korean suppliers have been dumping the subject goods at bottom-level prices.⁶²

92. ABB and CG provided several examples of sales in the domestic market that they had lost to lower-priced bids by suppliers of the subject goods.⁶³ Many of these bids occurred in 2009, but, for the most part, due to the time lag between order and delivery, the subject goods were not imported until later in the POI.

93. The evidence on the record shows that, in 2010, the average price per MVA of the like goods sold in Canada was slightly below the average price per MVA of the subject goods.⁶⁴ However, the situation changed substantially in 2011, when the average price per MVA of the subject goods decreased by 21 percent, while the domestic producers' average price per MVA increased by 49 percent.⁶⁵ As a result, the average price per MVA of the subject goods was significantly lower than that of the like goods. The situation changed once again in the interim period of 2012, when the price per MVA of the subject goods and the like goods decreased by 15 and 63 percent, respectively, resulting in the price per MVA of the latter being somewhat below that of the subject goods.⁶⁶

94. When considering prices in specific market segments (i.e. distributors/contractors, the forestry industry, the mining industry, the petroleum industry, the steel industry and utility companies), the trend in the largest of these market segments is consistent with that in the Canadian power transformer market as a whole. The average price per MVA of power transformers sold by the domestic producers in the largest market segment increased substantially in 2011 compared to 2010, while the price of the subject goods decreased slightly.⁶⁷ As a result, the average price per MVA of the subject goods in the largest market segment in 2011 was significantly lower than that of the like goods.⁶⁸ In line with the trends in this market

60. *Protected Pre-hearing Staff Report*, revised, 26 September 2012, Tribunal Exhibit NQ-2012-001-07A (protected), Administrative Record, Vol. 2.1 at 149-50; Manufacturer's Exhibit A-02 (protected) at paras. 38-47, Administrative Record, Vol. 12.

61. Manufacturer's Exhibit A-03 at para. 46, Administrative Record, Vol. 11.

62. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 145-46, 149.

63. Manufacturer's Exhibit A-02 (protected) at 62-65, Administrative Record, Vol. 12.

64. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 76.

65. *Ibid.*

66. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 76; *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 76.

67. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 79-80.

68. *Ibid.*

as a whole, the price per MVA of the like goods decreased in the interim period of 2012, falling below that of the subject goods.⁶⁹

95. On the basis of the above, the Tribunal therefore finds that the subject goods significantly undercut the price of the like goods in 2011.

96. Furthermore, the transaction-specific margins of dumping determined by the CBSA reveal that, although not all Korean bids were at dumped prices, a great many were.⁷⁰ The margins of dumping were often very high, implying that, in those cases, dumping was a decisive factor in the Korean suppliers' ability to significantly undercut the domestic industry's bid prices.⁷¹

97. The Tribunal considered all sales from HCI, a Canadian distributor for HHI,⁷² to Hydro One⁷³ that were examined by the CBSA⁷⁴ and in which the domestic industry could have participated. The Tribunal found that, in 50 percent of these sales, the subject goods were dumped at margins that were not insignificant and, in fact, above the threshold identified by witnesses for the domestic industry as influencing the purchasers' decisions.⁷⁵

98. The Tribunal concludes that the dumped pricing behaviour of HCI and HHI influenced Hydro One's purchasing decisions and purchasing strategy,⁷⁶ resulting in lost sales to the domestic industry.

99. The Tribunal similarly analyzed the impact of the pricing behaviour of Korean suppliers in the context of several other transformer procurements by other purchasers. In this regard, the Tribunal found that, in the vast majority of these sales, the subject goods were dumped at margins that were not insignificant⁷⁷ and that were above the threshold identified by witnesses for the domestic industry as influencing the purchasers' decisions.⁷⁸ Some of those sales were specifically identified by purchasers as instances where Canadian producers had lost bids to the subject goods.⁷⁹

100. Therefore, the Tribunal finds that significant price undercutting did take place over the relevant period.

69. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 79-80.

70. Exporter's Exhibit E-14 (protected) at 5, Administrative Record, Vol. 14; Exporter's Exhibit C-05 (protected) at 4, Administrative Record, Vol. 14.

71. *Protected Pre-hearing Staff Report*, revised, 26 September 2012, Tribunal Exhibit NQ-2012-001-07A (protected), Administrative Record, Vol. 2.1 at 149-50; Manufacturer's Exhibit A-02 (protected) at 38, Administrative Record, Vol. 12.

72. Exporter's Exhibit E-01 at para. 4, Administrative Record, Vol. 13.

73. Witnesses for HCI testified that Hydro One constitutes the majority of HCI's customer base. *Transcript of Public Hearing*, Vol. 3, 24 October 2012, at 261-62.

74. Exporter's Exhibit E-14 (protected) at 2-5, Administrative Record, Vol. 14.

75. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 109-110; Exporter's Exhibit E-14 (protected) at 2-5, Administrative Record, Vol. 14.

76. *Transcript of In Camera Hearing*, Vol. 4, 25 October 2012, at 502-503, 555-56.

77. Exporter's Exhibit E-14 (protected) at 2-5, Administrative Record, Vol. 14.

78. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 109-110; Manufacturer's Exhibit A-07 at para. 17, Administrative Record, Vol. 11; Manufacturer's Exhibit B-07 at para. 31, Administrative Record, Vol. 11B.

79. *Protected Pre-hearing Staff Report*, revised, 26 September 2012, Tribunal Exhibit NQ-2012-001-07A (protected), Administrative Record, Vol. 2.1 at 149.

– Price Depression

101. Witnesses for ABB testified that, in response to the presence of dumped goods in the market, ABB lowered its price to be competitive with Korean suppliers, while still covering its variable costs with a marginal contribution to its fixed costs.⁸⁰

102. According to the witnesses for CG, the company observed aggressive Korean pricing in 2010, when it was unable to make any sales for a period of several months.⁸¹

103. Witnesses for ABB submitted that the low prices of the subject goods forced bidders to “. . . reduce their pricing on bids where Korean imports were known or believed to be competing, in an attempt to maintain sufficient levels of throughput insofar as possible.”⁸² As a result, the domestic producers lowered their prices with the aim of establishing the point at which they could begin to win orders. Witnesses for the domestic industry believed that other bidders felt equally pressured to lower their prices in the face of low-priced subject goods, thereby causing an overall depression of prices in the Canadian market.⁸³ The witnesses for CG testified that this strategy quickly became unsustainable; even though CG was able to find the bottom of the market in 2011 and began to win orders, it did so at prices that resulted in substantial losses.⁸⁴

104. The Tribunal accepts the domestic industry’s evidence that, in view of its series of unsuccessful bids, it felt compelled to quote unprofitable bid prices in order to compete with Korean suppliers and to maintain plant throughput.

105. The Tribunal further accepts that, in view of the generally confidential nature of the bidding process, the mere presence of the subject goods in the Canadian market was enough to affect the market, regardless of whether Korean bidders were ultimately successful or actually participated in a particular bidding event. HHI argued that, because the CBSA had determined that the subject goods which had been sold and imported into Canada were dumped, the Tribunal should infer that unsuccessful Korean bids (i.e. Korean bids which did not result in a sale or importation into Canada) were not dumped and, consequently, that such bids could not be considered evidence of injurious dumping effects, including price depression.⁸⁵ However, as the Tribunal has found in previous inquiries, firm offers, such as those made by Korean suppliers in the present case,⁸⁶ can indeed yield depressive or suppressive price effects associated

80. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 84-85, 127-28.

81. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 145, 204.

82. Manufacturer’s Exhibit A-03 at para. 54, Administrative Record, Vol. 11.

83. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 10; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 145; Manufacturer’s Exhibit A-03 at para. 54, Administrative Record, Vol. 11; Manufacturer’s Exhibit B-04 (protected) at paras. 50-53, Administrative Record, Vol. 12A.

84. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 145, 149, 152.

85. Exporter’s Exhibit E-01 at paras. 12-14, Administrative Record, Vol. 13.

86. The CBSA calculated the export price of the subject goods, in part, using sale prices pursuant to section 24 of *SIMA*. Subsection 2(1) broadly defines “sale” as follows: “. . . includes leasing and renting, an agreement to sell, lease or rent and an irrevocable tender”. While not all the bids in the present inquiry are necessarily “irrevocable tenders”, it is clear that some certainly were. For example, see Manufacturer’s Exhibit A-19 (protected) at para. 88, Administrative Record, Vol. 12A. Moreover, the Tribunal considers that the broad wording of this definition, particularly the choice of the word “includes” rather than “means” which implies that items listed in the definition constitute a sale for *SIMA* purposes, is illustrative rather than exhaustive. In any event, even if the effect of unsuccessful Korean bids were not considered, the Tribunal is satisfied that the result is material injury nonetheless.

with dumping.⁸⁷ In this regard, the Tribunal is satisfied that a series of successful Korean low-price bids had a significant price-depressive effect on the Canadian transformer market generally and on the price of the like goods specifically.

106. The trends in the data correspond to the testimony of the domestic industry that it reacted to price undercutting and the loss of orders in 2009-2010 by lowering its prices to unsustainably thin margins beginning in 2011 in order to compete with the subject goods and to maintain throughput. As such, they are indicative of a depressive effect on the price of the like goods.

107. The overall value of domestic sales from domestic production⁸⁸ increased by 54 percent in 2010, but decreased by 18 percent in 2011 and by 37 percent in the interim period of 2012.⁸⁹

108. With respect to the values per MVA for power transformers produced domestically, these increased by 24 percent in 2010 and by 49 percent in 2011, but then decreased by 63 percent in the interim period of 2012.⁹⁰

109. The value of sales per MVA of imports of the subject goods increased by 42 percent in 2010, decreased by 21 percent in 2011 and by 15 percent in the interim period of 2012, while the value per MVA of imports of the subject goods followed the same trend.⁹¹

110. The average prices per MVA of the like goods were lower than those of the subject goods, with the exception of one year.⁹² Moreover, the average price per MVA of the like goods in the interim period of 2012 fell below the price of the subject goods, despite the fact that the average price of the subject goods was at its lowest level of the POI.⁹³

111. The evidence on the record shows that, during the POI, the average price per MVA in the Canadian market increased by 15 percent in 2010, but then decreased by 7 percent in 2011 and by 39 percent in the interim period of 2012.⁹⁴

87. For example, *Xanthates* (4 March 2003), NQ-2002-003 (CITT) at 12-15; *Preformed Fibreglass Pipe Insulation* (19 November 1993), NQ-93-002 (CITT) at 5. Even where there has been no firm offer or irrevocable tender *per se*, the Tribunal has found that price depression may take place when the domestic industry has had to lower its prices to retain some business when faced with competing offers from suppliers of dumped goods. See, for example, *Stainless Steel Sinks* (24 May 2012), NQ-2011-002 (CITT) [*Steel Sinks*] at para. 119.

88. In this instance, “domestic sales from domestic production” refers to the deliveries that took place in the specified year.

89. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 74.

90. *Ibid.* at 76.

91. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 70, 76; *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 70, 76.

92. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 76.

93. *Ibid.*

94. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 76.

112. Price depression is most evident in the account-specific injury allegations submitted by the domestic industry. The data confirm that the domestic industry reduced its prices to compete with the prices of the subject goods in an effort to retain some business.⁹⁵

113. Witnesses for ABB and CG testified that while the domestic industry did not win many bids in 2010, it managed to capture new bid orders in 2011 and 2012, albeit at reduced prices.⁹⁶

114. In short, the evidence from ABB shows that, in response to the adverse price effects caused by the subject goods, and in accordance with the production imperative applicable to large producers of capital goods to maintain a steady level of plant throughput,⁹⁷ the domestic industry was compelled to lower its bid prices.

115. The Tribunal therefore finds that the domestic industry experienced significant price depression attributable to the dumping of the subject goods.

– Price Suppression

116. The domestic industry submitted that its ratio of cost of goods sold to net sales clearly shows price suppression.⁹⁸ The witnesses for ABB noted that they carefully tracked the consistently increasing cost of key components required for the material-intensive production of power transformers, given the effects that these increased costs would have on ABB's gross margins.⁹⁹

117. Material costs are a major component of the cost associated with the production of power transformers and, in some cases, as submitted by witnesses for CG, can represent between 50 and 70 percent of the total cost.¹⁰⁰ Accordingly, witnesses for ABB stated that even slight increases in the cost of materials can have a significant impact on the overall cost of a power transformer.¹⁰¹

118. Examining the cost of goods sold as a percentage of the total sales value, the Tribunal notes that there was a slight increase from 2009 to 2011, followed by a substantial increase in the interim period of 2012.¹⁰² Moreover, while the total cost of goods sold in the interim periods of 2011 and 2012 was

95. Tribunal Exhibit NQ-2012-001-12.01 (protected), Administrative Record, Vol. 4 at 43-50; Tribunal Exhibit NQ-2012-001-12.02 (protected), Administrative Record, Vol. 4H at 66-83; Tribunal Exhibit NQ-2012-001-12.03 (protected), Administrative Record, Vol. 4N at 71-80.

96. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 145, 149, 152; Manufacturer's Exhibit A-03 at para. 54, Administrative Record, Vol. 11; Manufacturer's Exhibit B-04 (protected) at paras. 50-53, Administrative Record, Vol. 12A.

97. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 53, 84.

98. Manufacturer's Exhibit A-02 (protected) at para. 50, Administrative Record, Vol. 12.

99. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 88; Tribunal Exhibit NQ-2012-001-12.01 (protected), Administrative Record, Vol. 4 at 30; Manufacturer's Exhibit A-05 at para. 18, Administrative Record, Vol. 11.

100. Manufacturer's Exhibit B-05 at para. 14, Administrative Record, Vol. 11B; *Protected Pre-hearing Staff Report*, revised, 4 October 2012, Tribunal Exhibit NQ-2012-001-07C (protected), Administrative Record, Vol. 2.1 at 158.

101. Tribunal Exhibit NQ-2012-001-12.01 (protected), Administrative Record, Vol. 4 at 30; Manufacturer's Exhibit A-03 at para. 30, Administrative Record, Vol. 11; Manufacturer's Exhibit A-04 (protected) at para. 30, Administrative Record, Vol. 12; Manufacturer's Exhibit A-05 at para. 18, Administrative Record, Vol. 11.

102. *Protected Pre-hearing Staff Report*, revised, 5 October 2012, Tribunal Exhibit NQ-2012-001-07D (protected), Administrative Record, Vol. 2.1 at 161.

virtually the same, the total sales revenue was significantly lower in the interim period of 2012. The evidence on the record clearly shows that the prices of key raw materials increased over the POI.¹⁰³

119. The average cost of goods sold per MVA steadily increased over the POI, until the interim period of 2012, when the average cost decreased, which is consistent with trends observed with respect to the average unit selling price of like goods.¹⁰⁴ As stated, the Tribunal accepts the domestic industry's evidence that it decreased its prices in 2011 in reaction to dumping in order to win orders and maintain an acceptable level of throughput. As a result, the domestic industry was prevented from recovering increased costs of production of the like goods.

120. The Tribunal therefore finds that the dumping significantly suppressed the prices of the like goods in the interim period of 2012.

Conclusion

121. On the basis of its analysis of the price effects prescribed by regulation under *SIMA*, the Tribunal finds that the prices of the subject goods significantly undercut, depressed and suppressed the prices of the like goods.

Volume of Imports of Dumped Goods

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

123. The domestic industry submitted that imports of the subject goods increased from zero in 2006 to their current levels in only five years.¹⁰⁵ It further contended that future imports of the subject goods would be significant because of existing blanket and multiple shipment agreements.¹⁰⁶ Witnesses for the domestic industry testified that, while they had been aware of the presence of the subject goods in the Canadian market prior to the beginning of the POI,¹⁰⁷ they perceived a "dramatic" increase in their presence in the 2008 to 2010 period.¹⁰⁸

124. Parties opposed countered that they had had a long-standing presence in the Canadian market and that their interest in the market had not changed during the POI.¹⁰⁹ Witnesses for the Korean producers

103. Tribunal Exhibit NQ-2012-001-12.01 (protected), Administrative Record, Vol. 4 at 30.

104. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 76; *Protected Pre-hearing Staff Report*, revised, 4 October 2012, Tribunal Exhibit NQ-2012-001-07C (protected), Administrative Record, Vol. 2.1 at 158.

105. Manufacturer's Exhibit A-01 at para. 34, Administrative Record, Vol. 11.

106. Manufacturer's Exhibit A-01 at para. 35, Administrative Record, Vol. 11.

107. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 154-55.

108. Manufacturer's Exhibit A-03 at para. 49, Administrative Record, Vol. 11; Manufacturer's Exhibit B-04 (protected) at paras. 45-46, Administrative Record, Vol. 12A; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 144-45, 154-55.

109. Exporter's Exhibit E-01 at para. 4, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 153-54, 200.

noted that imports of the subject goods during the POI were reflective of orders made in 2008 and early 2009 when Canadian demand for power transformer replacements was quite high.¹¹⁰

125. The evidence on the record indicates that, in absolute terms, the volume of imports of the subject goods decreased by 27 percent in 2010 and by a further 8 percent in 2011.¹¹¹ Similarly, the volume of imports of the subject goods decreased by 14 percent in the interim period of 2012 compared to the interim period of 2011.¹¹²

126. The Tribunal notes however that these changes transpired in the context of a declining apparent market for power transformers in Canada. Notably, the Canadian apparent market shrank by 15 percent in 2010 and by a further 24 percent in 2011.¹¹³ The trend persisted in the interim period of 2012, when the Canadian apparent market declined by 27 percent compared to the same period in 2011.¹¹⁴

127. The evidence shows that, in 2011, the volume of imports of the subject goods increased relative to domestic production and domestic consumption.

128. In particular, in 2011, the ratio of imports of the subject goods to domestic production increased by 5 percentage points, as domestic production decreased by 26 percent compared to 2010, while imports of the subject goods decreased by only 8 percent.¹¹⁵ Comparing 2010 to 2009 and the interim period of 2012 to the interim period of 2011, the ratio decreased by 8 percentage points and 10 percentage points respectively.¹¹⁶

129. Further, in 2011, the ratio of imports of the subject goods to domestic consumption increased by 49 percentage points, as domestic sales¹¹⁷ from domestic production decreased by 45 percent compared to the only 8 percent decrease for imports of the subject goods. Comparing 2010 to 2009 and the interim period of 2012 to the interim period of 2011, the ratio decreased by 51 percentage points and 109 percentage points respectively.¹¹⁸

130. Consequently, the Tribunal finds that, in 2011, there was a significant increase in the volume of imports of the subject goods relative to the production and consumption of the like goods.

110. Exporter's Exhibit E-05 at para. 32, Administrative Record, Vol. 13.

111. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 66; *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 66.

112. *Ibid.*

113. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 72; *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 72.

114. *Ibid.*

115. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 65, 66; *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 65, 66.

116. *Ibid.*

117. In this instance, "domestic sales from domestic production" refers to the deliveries that took place in the specified year.

118. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 66, 72; *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 66, 72.

Impact of the Dumped Imports on the Domestic Industry

131. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the increase in volumes and of the price effects of the dumped goods on the domestic industry.

132. The domestic industry argued that the dumping of the subject goods and the resultant price effects have caused injury in the form of lost sales and revenue, and declines in market share, margins, profits, growth, return on investment, ability to raise capital, capacity utilization, cash flow and employment.

Lost Sales and Revenue, and Decreased Market Share

133. The domestic industry submitted, and its witnesses testified, that the domestic industry lost a significant number of bids and volume of sales to Korean suppliers in 2009 and, to a lesser extent, in 2010.¹¹⁹ Given the substantial time lag between bidding/ordering and delivery, these losses to Korean suppliers in 2009 and 2010 resulted in considerable harm to the domestic industry in the second half of the POI. The data for 2011 show that sales from domestic production decreased by 45 percent in that year.¹²⁰ Furthermore, in 2011, as the size of the domestic market decreased by 24 percent, the domestic producers' share fell by 29 percent.¹²¹

134. In the interim period of 2012, the domestic producers' sales from domestic production increased by 70 percent when compared to the same period in 2011.¹²² Similarly, the market share held by the domestic producers increased by 127 percent in the interim period of 2012.¹²³ Witnesses for the domestic industry testified that these increases were due to the fact that ABB and CG were able to win orders in 2011 onward, albeit at prices that had been negatively adjusted by them and that were unsustainably low.¹²⁴ In fact, witnesses for CG explained that the company was able to win orders only after it "... had started to find the bottom of the market ..." in 2011.¹²⁵

119. Tribunal Exhibit NQ-2012-001-12.01 (protected), Administrative Record, Vol. 4 at 43-50; Tribunal Exhibit NQ-2012-001-12.02 (protected), Administrative Record, Vol. 4H at 66-83; Manufacturer's Exhibit A-02 (protected) at para. 69, Administrative Record, Vol. 12; Manufacturer's Exhibit A-03 at paras. 49-61, Administrative Record, Vol. 11; Manufacturer's Exhibit A-04 (protected) at paras. 49-61, Administrative Record, Vol. 12; Manufacturer's Exhibit B-05 at paras. 24-33, Administrative Record, Vol. 11; Manufacturer's Exhibit B-06 (protected) at paras. 24-33, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 10; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 145; *Transcript of In Camera Hearing*, Vol. 1, 22 October 2012, at 2, 6-9.

120. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 72; *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 72.

121. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 72; *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 72, 73.

122. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 72.

123. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 73.

124. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 10; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 145.

125. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 145.

135. As a result, the domestic industry continued to lose significant revenues despite bidding successfully in the last full year of the POI. In fact, the value of the domestic industry's sales from domestic production in the domestic market decreased by 37 percent in the interim period of 2012.¹²⁶

136. More specifically, witnesses for ABB submitted that, but for the dumping, ABB would have commanded higher prices on its transformers and earned greater revenues on sales during the POI.¹²⁷ Instead, ABB had no option but to reduce gross and net margin levels when submitting bids during the POI, which negatively impacted its orders, throughput, selling prices and profitability.¹²⁸

137. Witnesses for ABB maintained that these adverse effects would likely persist for several years into the future, due to the long-term production schedule and often long-term nature of power transformer contracts.¹²⁹ Similarly, witnesses for CG testified that the company had been able to win new business in 2011, but that it had come at a high cost, since its prices had been depressed and suppressed to unsustainable levels.¹³⁰

Production, Capacity and Capacity Utilization

138. Initially, witnesses for ABB and CG testified that the domestic industry was relatively sheltered from the negative effects of the dumping due to a strong order backlog from sales orders that had been placed prior to the POI.¹³¹ However, in 2011, the domestic industry began to feel the full impact of its substantially reduced order intake from 2009 and 2010.¹³² Dwindling order books had significant repercussions on throughput at Canadian plants.

139. The domestic producers' production of the like goods remained stable in 2010, but fell by 26 percent in 2011.¹³³ Similarly, the domestic producers' capacity utilization decline of 1 percentage point in 2010 was followed by a more significant decrease in 2011, when capacity utilization fell by 13 percentage points.¹³⁴

140. Domestic production and capacity utilization increased in the interim period of 2012.¹³⁵ With respect to this increase, witnesses for CG explained that they reacted to the dumping by dropping prices in 2010 and 2011 in an effort to win more orders to retain throughput.¹³⁶ However, despite this modest

126. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 74.

127. Manufacturer's Exhibit A-06 (protected) at paras. 29-31, Administrative Record, Vol. 12; Manufacturer's Exhibit A-05 at paras. 29-31, Administrative Record, Vol. 11.

128. Manufacturer's Exhibit A-03 at paras. 49, 54, Administrative Record, Vol. 11; Manufacturer's Exhibit A-07 at para. 38, Administrative Record, Vol. 11.

129. Manufacturer's Exhibit A-03 at para. 51, Administrative Record, Vol. 11.

130. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 145.

131. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 131; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 201-202.

132. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 99; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 204.

133. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 65; *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 65.

134. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 103.

135. *Ibid.* at 65, 103.

136. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 145.

increase in the interim period of 2012, capacity utilization remained substantially below 2009 and 2010 levels, with the domestic producers continuing to have significant unused capacity.¹³⁷

Employment and Productivity

141. Gains in direct employment that accrued in 2010 were lost in 2011, with a drop of 13 percent.¹³⁸ This decrease meant that direct employment essentially returned to its 2009 level.¹³⁹ Direct employment decreased further in the interim period of 2012, falling by 4 percent, when compared to the same period in 2011.¹⁴⁰

142. Witnesses for ABB submitted that these decreases are of particular significance, given that employees in this industry must develop very specialized skills to be fully proficient in their positions, with this often requiring substantial training.¹⁴¹ Therefore, reductions in employment have long-term implications for the industry's profitability.¹⁴²

143. The productivity levels of domestic producers fell steadily in each full year of the POI, reaching their lowest level in 2011. There is an indication of conservative gains in the interim period of 2012,¹⁴³ which is consistent with the increase in domestic production and decrease in employment during this time, as discussed above.

144. The Tribunal is of the view that the declines in employment and productivity experienced by the domestic producers in 2011 reflect the decreases in production and sales caused by the increasing presence of the subject goods in the Canadian market.

Financial Results

145. The domestic producers' financial results improved from 2009 to 2010.¹⁴⁴ However, the lost sales volumes at the beginning of the POI and subsequent depressed prices that manifested themselves in 2010 and 2011 led to a significant deterioration in financial performance for the domestic producers in 2011 and in the interim period of 2012.

137. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 103.

138. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 99.

139. *Ibid.*; *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 99.

140. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 99.

141. Manufacturer's Exhibit A-03 at para. 22, Administrative Record, Vol. 11; Manufacturer's Exhibit A-04 (protected) at para. 22, Administrative Record, Vol. 12.

142. Manufacturer's Exhibit A-03 at paras. 22-23, 54, Administrative Record, Vol. 11.

143. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 102.

144. *Protected Pre-hearing Staff Report*, revised, 5 October 2012, Tribunal Exhibit NQ-2012-001-07D (protected), Administrative Record, Vol. 2.1 at 161.

146. Total gross margins increased substantially in 2010 when compared to 2009, which corresponded to an increase in total net profits. However, the situation changed dramatically in 2011, when total gross margins fell significantly, with a corresponding deterioration in the total net profits of domestic producers.¹⁴⁵ The Tribunal notes that these results are consistent with the lower prices of the like goods in the same period. In addition, as submitted by witnesses for ABB, input costs were fixed or rising during the POI, which further exacerbated the domestic industry's situation.¹⁴⁶

147. Witnesses for CG testified that these reduced gross and net margins inflicted a substantial financial hardship on the company.¹⁴⁷ The Tribunal accepts this claim as a logical outcome of the trends discussed above in respect of volumes, prices and industry performance indicators. In this regard, witnesses for CG testified that "... the very existence of [its] business is at stake here in Canada."¹⁴⁸

Return on Investment and Ability to Raise Capital

148. The domestic industry submitted that the subject goods negatively impacted its ability to raise capital and claimed to have experienced negative effects with respect to return on investment and cash flow.¹⁴⁹

149. The evidence on the record¹⁵⁰ indicates a downward trend with respect to investment from 2010 to 2011.¹⁵¹ The dumping forced the domestic producers to operate at unsustainably low margins, while incurring substantial financial losses. This, in turn, had implications for the ability of the domestic producers to raise capital. The Tribunal notes, in this regard, the publicly traded nature of these companies and shareholders' expectations of minimum acceptable levels of return and profitability, as supported by the domestic industry's evidence.¹⁵²

150. On the basis of the above considerations, the Tribunal finds that the subject goods had a negative effect on the domestic industry's return on investment and its ability to raise capital.

Magnitude of the Dumping Margin

151. The weighted average margin of dumping was determined by the CBSA to be 19.5 percent.¹⁵³ Moreover, an examination of the CBSA's data on a transaction-by-transaction basis reveals that the margins

145. *Protected Pre-hearing Staff Report*, revised, 5 October 2012, Tribunal Exhibit NQ-2012-001-07D (protected), Administrative Record, Vol. 2.1 at 161.

146. Manufacturer's Exhibit A-05 at para. 18, Administrative Record, Vol. 11; Tribunal Exhibit NQ-2012-001-12.01 (protected), Administrative Record, Vol. 4 at 30.

147. *Transcript of In Camera Hearing*, Vol. 2, 23 October 2012, at 161; Manufacturer's Exhibit B-06 (protected) at para. 39, Administrative Record, Vol. 12A; Tribunal Exhibit NQ-2012-001-12.02 (protected), Administrative Record, Vol. 4H at 64, 112.

148. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 144.

149. Manufacturer's Exhibit A-02 (protected) at paras. 62, 63, 65, Administrative Record, Vol. 12.

150. The vast majority of the evidence on the record concerning return on investment and ability to raise capital is confidential.

151. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 104.

152. Manufacturer's Exhibit A-01 at para. 63, Administrative Record, Vol. 11; Manufacturer's Exhibit A-02 (protected) at para. 63, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 22; *Transcript of In Camera Hearing*, Vol. 2, 23 October 2012, at 161.

153. Tribunal Exhibit NQ-2012-001-04A, Administrative Record, Vol. 1 at 87.27.

of dumping in relation to the Korean producers' sales to key customers were at times substantially higher.¹⁵⁴ Given the domestic industry's experience and evidence that purchasers "... have based sourcing decisions on price differentials in the range of 2-3% ...",¹⁵⁵ it is reasonable to assume that the magnitude of the margin of dumping in this case has contributed to the deterioration of the state of the domestic industry.¹⁵⁶

Conclusion

152. On the basis of the foregoing analysis, the Tribunal concludes that the dumping has caused material injury to the domestic industry.

Other Factors

153. Subsection 37.1(3) of the *Regulations* directs the Tribunal to consider whether factors other than the dumping have caused injury.

Decreased Demand

154. The size of the Canadian market in terms of volume shrank over the POI, which contributed in part to the decline in the domestic industry's performance. In particular, the Canadian market decreased by 15 and 24 percent in 2010 and 2011, respectively, and by 27 percent in the interim period of 2012.¹⁵⁷ The market share held by the domestic producers increased in 2010, but these gains were lost in 2011, when the domestic producers' market share fell substantially.¹⁵⁸ This decrease meant that, in 2011, the market share held by the domestic producers essentially returned to its 2009 level. In contrast, in 2011, the subject goods managed to increase their market share slightly.¹⁵⁹ Notably, the decrease in the domestic industry's sales

154. Exporter's Exhibit E-14 (protected) at 5, Administrative Record, Vol. 14; Importer's Exhibit C-05 (protected), Administrative Record, Vol. 14.

155. Manufacturer's Exhibit A-01 at para. 68, Administrative Record, Vol. 11.

156. On October 15, 2012, the Tribunal rejected a request made by counsel for HHI on October 10, 2012, for the production of the CBSA's calculations of dumping margins for each exporter, with reasons to follow. The calculation of dumping margins falls under the exclusive jurisdiction of the CBSA to make a final determination of dumping, pursuant to subparagraph 41(1)(a)(ii) of *SIMA*. Moreover, margin of dumping calculations are not among the prescribed factors for determining injury set out in subsection 37.1 of the *Regulations*. Counsel for HHI, in support of this request, relied on the Federal Court of Appeal's decision in *Remington Arms of Canada Limited v. Les Industries Valcartier Inc.*, [1982] 1 F.C. 586, in which the Federal Court of Appeal said that the calculation of the margin of dumping "... is a given fact which the Tribunal *may* consider to be relevant when taken in conjunction with other facts properly found, in reaching its conclusion on the question of material injury ..." [emphasis added]. This decision pre-dated the *Regulations*. At that time, injury factors were not prescribed. Currently, the magnitude of the dumping margin is a prescribed factor under paragraph 37.1(2)(ii.1) of the *Regulations*, but the method by which the CBSA calculated such margins is not prescribed. Moreover, the Tribunal does not consider the information to be relevant for the purpose of this particular inquiry. See Tribunal Exhibit NQ-2012-001-43, Administrative Record, Vol. 1A at 159-61; Tribunal Exhibit NQ-2012-001-44, Administrative Record, Vol. 1A at 164.

157. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 72.

158. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 73.

159. *Ibid.*

from domestic production in 2011 was significantly more pronounced relative to the decline in demand in the Canadian market.¹⁶⁰

155. The value of the Canadian market similarly shrank over the POI. In particular, the value of the total Canadian apparent market decreased by 2 percent in 2010, by 30 percent in 2011, and by 55 percent in the interim period of 2012.¹⁶¹

156. The opposing parties argued that this reduction in the size of the Canadian market had an adverse impact on the performance of the domestic industry.¹⁶² More specifically, the opposing parties submitted that the decline in the domestic industry's gross margins was attributable to the reduction in the market size in Canada and that changes in the market share held by the subject goods were the result of a "timing issue on delivery" and were therefore immaterial.¹⁶³

157. Witnesses for CG testified that there were sufficient bidding opportunities throughout the POI and that the company was busy "every single day responding to RFPs".¹⁶⁴ They maintained that the size of the Canadian market did not affect the availability of business opportunities and that it was the low pricing offered by Korean manufacturers that precipitated a decline in CG's order book.¹⁶⁵

158. The Tribunal concludes that the decline in the Canadian market might have contributed to the deterioration in the state of the domestic industry, though not to such an extent as to sever the causal relationship between injury and the dumping of the subject goods.

Imports From Non-subject Countries

159. Hyosung and HICO argued that the CBSA's revised data demonstrate that non-subject imports played a role in the Canadian market in 2011 and in the first quarter of 2012 that was much more prominent and aggressive than indicated by the estimates provided in the Tribunal's pre-hearing staff report.¹⁶⁶ Furthermore, Hyosung and HICO argued that the adverse effects of non-subject imports were greater than indicated in the pre-hearing staff report, while the adverse effects associated with the subject goods were lower.¹⁶⁷

160. HHI contended that the CBSA's revised import statistics should be utilized by the Tribunal in considering the relative market share of the subject goods and non-subject imports, as well as the veracity of

160. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 73; *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 72.

161. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 74.

162. *Transcript of Public Hearing*, Vol. 5, 26 October 2012, at 534-36.

163. *Ibid.* at 504, 545, 556.

164. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 204. RFP refers to a Request for Proposal.

165. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 204.

166. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 67; Tribunal Exhibit NQ-2012-001-04A, Administrative Record, Vol. 1A at 87.26.

167. Tribunal Exhibit NQ-2012-001-53, Administrative Record, Vol. 1A at 212.

the domestic industry's allegations regarding volumes and price effects of the subject goods during the POI.¹⁶⁸

161. The domestic industry argued that the CBSA's revised data regarding the volume of non-subject imports are not relevant, given that the calculation was based on units and not the accepted industry standard of MVA ratings.¹⁶⁹ Moreover, the methodologies used by the Tribunal and the CBSA differ substantially, which leads to differences between the volume of non-subject imports reported by the CBSA and that contained in the Tribunal's pre-hearing staff report.¹⁷⁰ The domestic industry further argued that it would be inappropriate for the Tribunal to rely on the CBSA's data, due to a number of ambiguities and issues, the limited opportunity for all parties to analyze and understand the CBSA's data, the temporal and measurement limitations of the CBSA's data, and the substantial and compelling evidence on the record developed by the Tribunal's processes.¹⁷¹

162. Notwithstanding any overlap in the factors and evidence that both the Tribunal and the CBSA may consider in rendering their respective decisions, the Tribunal's mandate under *SIMA* is distinct from that of the CBSA, and it conducts an entirely separate process.¹⁷² The Tribunal is therefore not bound by the evidence upon which the CBSA's determination of dumping is based and may give the CBSA's revised data the weight that it considers appropriate for the purposes of the injury inquiry.

163. The Tribunal recognizes that its own data are not perfect; however, it is not convinced that the CBSA's data would provide a better reflection of import trends for the subject goods and non-subject imports in this inquiry. As noted by the domestic industry, the Tribunal applied a well-established methodology to estimate imports and sales from imports of the subject goods and the non-subject goods. This methodology is employed by staff in all injury inquiries when the goods under investigation are part of a broader Harmonized Commodity Description and Coding System (HS) classification at the 10-digit level. The Tribunal's staff used detailed confidential import files from Statistics Canada¹⁷³ for the relevant HS classification codes¹⁷⁴ to select as potential questionnaire respondents those importers whose import values represented a high percentage of the imports, in each year or each partial year within the POI, by country of origin.

164. Recognizing that the HS codes, as provided by the CBSA, reference a range of power handling capacities and, therefore, may include non-subject imports, the Tribunal's staff contacted the vast majority of the importers prior to distributing the importers' questionnaire in an effort to identify those that did not import the subject goods. The questionnaire responses received from importers were verified by staff and then entered into a database for the inquiry.

165. The responses for imports and market sales from domestic producers and importers of the subject goods were used directly in the pre-hearing staff report. There was no need for estimation because these responses represent 100 percent of the known domestic producers and importers of the subject goods.

168. Tribunal Exhibit NQ-2012-001-52, Administrative Record, Vol. 1A at 206.

169. Tribunal Exhibit NQ-2012-001-54, Administrative Record, Vol. 1A at 219; Tribunal Exhibit NQ-2012-001-54A (protected), Administrative Record, Vol. 2 at 49.

170. Tribunal Exhibit NQ-2012-001-54, Administrative Record, Vol. 1A at 222; Tribunal Exhibit NQ-2012-001-54A (protected), Administrative Record, Vol. 2 at 52.

171. Tribunal Exhibit NQ-2012-001-54, Administrative Record, Vol. 1A at 217-18, 224, 227-28.

172. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at paras. 66-68.

173. Volumes and values by importer of record, by year and by country of origin.

174. Tribunal Exhibit NQ-2012-001-04A, Administrative Record, Vol. 1A at 87.25.

166. However, imports and market sales from non-subject countries were estimated because not all importers of power transformers from these countries were surveyed, and not all surveyed importers responded to the questionnaire. The Tribunal followed its standard methodology in arriving at these estimates.¹⁷⁵

167. Accordingly, the Tribunal is of the view that the data presented in the pre-hearing staff report are sound and permit an accurate assessment of import trends. It notes that the CBSA's revised import statistics were based on units and not on MVA ratings, the latter of which have been determined to be the proper unit of measurement for the analysis of key performance indicators (i.e. production, capacity, etc.) in this case. Therefore, the CBSA's data are not comparable, even in terms of the relative shares of the subject goods to non-subject imports, to the data in the pre-hearing staff report which were based on MVA ratings.¹⁷⁶ Furthermore, the CBSA's data cover a shorter time period than the POI because of the different time frames for the CBSA's investigation and the Tribunal's inquiry.

168. Moreover, the Tribunal is of the view that, even if the market share held by non-subject imports is greater than that indicated in the pre-hearing staff report, the weight of the evidence shows that the losses suffered by the domestic industry were a result of the dumping of the subject goods.

169. Witnesses for the domestic industry testified that competition from non-subject countries, including Japan, the People's Republic of China, and countries in Europe and Latin America, has always existed but that imports from these countries always competed on a level playing field, unlike the subject goods which, as a result of the aggressive pricing behaviour of Korean producers, have had a significant negative impact on the domestic industry's performance.¹⁷⁷

170. The Tribunal notes, in this regard, that the market share held by non-subject imports, in terms of value, declined steadily during the POI, falling to its lowest level in the interim period of 2012. The diminishing presence of non-subject imports in the Canadian market supports the view that they are not the cause of injury to the domestic industry.¹⁷⁸

171. In 2009, the market share held by non-subject imports, in terms of value, was significantly larger than that held by the subject goods. However, by 2011, the market share held by non-subject imports had declined to the point where it was only a few percentage points higher than the market share held by the subject goods.¹⁷⁹ The difference in market shares was even less pronounced in the interim period of 2012.¹⁸⁰

175. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 143-47.

176. The Tribunal also collected and analyzed data on the basis of units. The Tribunal notes that the trend between 2010 and 2011, when considered in units as presented in the *Protected Pre-hearing Staff Report - Unit*, also shows an increase in the relative share of imports from non-subject countries. Therefore, both the revised CBSA data and the Tribunal data reported in units show the same trend for this time period. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-09 (protected), Administrative Record, Vol. 2.2 at 67; Tribunal Exhibit NQ-2012-001-04A, Administrative Record, Vol. 1A at 87.26.

177. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 9, 95-96, 99; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 182.

178. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 75.

179. *Ibid.*

180. *Ibid.*

172. In 2011, the CBSA's revised data may have suggested a difference in respective proportions between the subject goods and non-subject imports. However, this neither affects the Tribunal's analysis nor negates its conclusion as to the impact that the subject goods has had on the domestic industry.

Imports by ABB

173. Throughout the POI, ABB imported power transformers from affiliate companies in non-subject countries. However, the volume of these imports and the share of the total imports that they captured over the POI were quite small in comparison to the overall imports of the subject goods.¹⁸¹

174. ABB's imports decreased by 34 percent in 2010 but increased by 54 percent in 2011. This phenomenon was however short-lived and was followed by a drastic decline in the interim period of 2012, when ABB's imports decreased by 48 percent.¹⁸²

175. In addition, witnesses for ABB testified that ABB's decision to import was based, in part, on customer requests, given that certain customers prefer a specific manufacturing facility or technology, or that it may have been an application-driven decision due to a better delivery time or easier accessibility at another location.¹⁸³ They added that these decisions are normally made at the sales and marketing level of the organization and, for the majority of imports, are not based on the production capability of each facility.¹⁸⁴

176. On the basis of the foregoing, the Tribunal concludes that ABB's imports did not affect the domestic industry's performance over the POI and in no way negate the injury caused by dumping.

Exports by the Domestic Industry

177. Parties opposed argued that the domestic industry's loss of export sales has had a significant impact on its throughput and its ability to absorb fixed costs, which in turn have negatively affected its profitability.¹⁸⁵

178. ABB and CG exported power transformers over the POI, and their exports represented a significant proportion of their domestic production during this time.¹⁸⁶ Their export volumes steadily decreased from the beginning of the POI, which would have had negative effects on their employment levels and productivity due to the reduced throughput. The Tribunal notes however that export sales from domestic production managed to remain profitable throughout the POI.¹⁸⁷ This decline in the domestic industry's export performance clearly contributed to the deterioration in the state of the domestic industry, though not to such an extent as to sever the causal relationship between injury and the dumping of the subject goods.

181. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 66-67.

182. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 66.

183. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 45-47, 54-55.

184. *Ibid.* at 47, 54-55.

185. *Transcript of Public Hearing*, Vol. 5, 26 October 2012, at 473-74.

186. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 65, 82.

187. *Ibid.* at 82, 99, 102; *Protected Pre-hearing Staff Report*, revised, 4 October 2012, Tribunal Exhibit NQ-2012-001-07C (protected), Administrative Record, Vol. 2.1 at 157.

CG's Pricing Strategy

179. As indicated earlier, HHI argued that the domestic industry was reckless in its reaction to the declining Canadian market and depressed pricing in the United States.¹⁸⁸ Moreover, parties opposed noted that the domestic industry lowered its Canadian prices on the basis of the market intelligence for Korean pricing that was unreliable and unverifiable,¹⁸⁹ given the non-transparent nature of the market, as alleged by HICO and HHI.¹⁹⁰

180. As previously noted, witnesses for CG testified that, after taking steps to enhance CG's plant's efficiency, CG sought to maintain throughput in the short term by bidding lower prices, despite the detrimental effects that this had on its financial performance.¹⁹¹ In this regard, CG's attempts to test the market at different price levels proved unsuccessful for most of 2010, as it was unable to find the bottom price levels established by the Korean producers.

181. Given the production imperative to maintain high levels of plant throughput, CG's efforts to ascertain where the market price had settled through successive reductions in its prices were not irresponsible in the Tribunal's view, especially in light of the confidential nature of the bidding process and related limitations on the amount and nature of intelligence reasonably available to domestic producers.

Intra-industry Competition

182. Parties opposed argued that a significant portion of the injury suffered by the domestic industry was due to intra-industry competition.¹⁹²

183. Witnesses for ABB and CG acknowledged that they sometimes compete with each other and with Alstom for the same business. However, they asserted that this competition takes place on a level playing field and that their problems resulted from the aggressive pricing behaviour demonstrated by the Korean producers.¹⁹³

184. The Tribunal is of the view that, even though there is competition between ABB, CG and Alstom, it would not have had an impact on its injury analysis. The Tribunal finds, on the pricing evidence discussed above, that the domestic industry's reduction of its prices was a reaction to the aggressive pricing behaviour of suppliers of the subject goods, not to intra-industry competition.

185. The Tribunal therefore concludes that this non-dumping factor did not contribute significantly, if at all, to the injury suffered by the domestic industry.

188. *Transcript of Public Hearing*, Vol. 5, 26 October 2012, at 453. The domestic industry submitted that the United States International Trade Commission found that dumped imports from Korea created downward pricing pressure in the U.S. market. Manufacturer's Exhibit A-01 at paras. 124-25, Administrative Record, Vol. 11.

189. *Transcript of Public Hearing*, Vol. 5, 26 October 2012, at 453.

190. *Ibid.* at 565-66.

191. *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 145, 149, 151-52; *Transcript of In Camera Hearing*, Vol. 2, 23 October 2012, at 147-49.

192. *Transcript of Public Hearing*, Vol. 5, 26 October 2012, at 495.

193. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 9, 72-77, 82; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 185-86.

Suppliers' Ability to Deliver Goods

186. HHI submitted that it reserves production slots prior to the awarding of a contract to ensure that it is able to complete orders within a prescribed time frame.¹⁹⁴ HHI emphasized that pre-slotting was an important factor when allocating plant capacity.¹⁹⁵ Moreover, witnesses for HHI submitted that pre-slotting ensures the availability of production capacity where there exists the possibility of winning a multiple-shipment contract or long-term alliance agreement.¹⁹⁶

187. Witnesses for ABB testified that ABB has available production slots to accommodate emergencies where it could "... add value by a shorter delivery time ..."¹⁹⁷

188. Witnesses for Hyosung submitted that, by continuing to deliver power transformers of very high quality with exceptional lead times, Hyosung will be able to maintain its presence and reputation in the Canadian market, given the importance placed on delivery.¹⁹⁸ Moreover, HICO's witnesses submitted that HICO thoroughly investigates the lead time requirements that are specified by the purchaser in the Request for Quotation, to ensure that its proposal meets or exceeds the purchaser's expectations.¹⁹⁹

189. HHI's witnesses testified that HHI considered delivery requirements as an important factor, given that it was among the first factors on which it was evaluated.²⁰⁰

190. The Tribunal does not consider this argument persuasive or this factor significant. The Tribunal is of the view that price is the primary factor in the purchasing decision and that the delivery performance of domestic and foreign producers is largely comparable. In this regard, the Tribunal notes that domestic producers and importers generally face similar delivery challenges and that pre-slotting does not yield a significant delivery advantage, since the domestic industry is likely to engage in similar production planning. Moreover, given the degree of the domestic industry's unused capacity,²⁰¹ the Tribunal is of the view that it should not be a problem for it to accommodate new orders on a comparable expedited delivery basis.

191. In addressing issues that may arise at the time of delivery, witnesses for CG submitted that CG had never experienced delivery challenges that were significant enough to result in it being taken off a vendor's pre-qualification list and/or to consequentially impact its prospects for qualification.²⁰² While witnesses for CG did acknowledge that, on occasion, CG had experienced delivery problems, which can occur, given the

194. Exporter's Exhibit E-01 at para. 20, Administrative Record, Vol. 13; Exporter's Exhibit E-03 at paras. 21, 24, Administrative Record, Vol. 13.

195. Exporter's Exhibit E-01 at para. 20, Administrative Record, Vol. 13; Exporter's Exhibit E-03 at para. 21, Administrative Record, Vol. 13.

196. Exporter's Exhibit E-03 at paras. 21, 24, Administrative Record, Vol. 13.

197. *Transcript of Public Hearing*, Vol. 1, 22 October 2012, at 86.

198. Exporter's Exhibit D-03 at para. 18, Administrative Record, Vol. 13.

199. Importer's Exhibit C-03 at para. 26, Administrative Record, Vol. 13.

200. *Transcript of Public Hearing*, Vol. 3, 24 October 2012, at 265.

201. *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 103.

202. Manufacturer's Exhibit B-04 (protected) at paras. 41-42, Administrative Record, Vol. 12A.

complexity associated with the production of power transformers, they explained that there might be several different reasons for delays to contracts and that they are not always the fault of the producer.²⁰³

192. The Tribunal notes that, even though delivery issues arising from the complexity associated with the production and transportation of power transformers are possible, these are normally dealt with in a timely matter, especially in view of the serious repercussions²⁰⁴ that may flow from a delay in delivery,²⁰⁵ as explained by the domestic industry's witnesses.

193. On the basis of the foregoing analysis, the Tribunal is of the view that the evidence on the record does not support the claim that Korean producers have a significant delivery advantage over the domestic industry.

Conclusion

194. The Tribunal is of the view that any injurious effects that may be attributable to the above factors, whether taken individually or as a whole, do not negate its conclusion that the dumping itself has caused material injury.

PRODUCT EXCLUSION REQUESTS

195. The Tribunal has discretionary authority under subsection 43(1) of *SIMA* to exclude certain products from its findings.²⁰⁶

196. The Tribunal will exclude a product upon request if the requester has demonstrated that the exclusion will not cause or threaten to cause injury to the domestic industry.²⁰⁷ In general, the Tribunal has granted product exclusions when the domestic industry did not actively supply the particular product, did not produce the product or a substitutable or competing product, or was not capable of producing the product.²⁰⁸

203. Manufacturer's Exhibit B-04 (protected) at paras. 41-42, Administrative Record, Vol. 12A; *Transcript of Public Hearing*, Vol. 2, 23 October 2012, at 189-90.

204. These may include contractually prescribed penalties. See for example, Importer's Exhibit F-03 at para. 22, Administrative Record, Vol. 13B.

205. Manufacturer's Exhibit B-03 at para. 41, Administrative Record, Vol. 11B.

206. *Certain Cold-rolled Steel Sheet* (1994), CDA-93-1904-09 (Ch. 19 Panel) at 54; *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA).

207. See, for example, *Steel Sinks* at paras. 167, 169; *Fasteners* (26 September 2006) NQ-2004-005R (CITT) at para. 17.

208. See *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.

197. HHI requested the exclusion of the subject goods sold to Canadian purchasers prior to the filing of the complaint by the domestic producers and which will be imported following the issuance of the Tribunal's finding.²⁰⁹ HICO and Hyosung made the same request, but only in relation to two particular power transformers.²¹⁰ These requests were conditional on the Tribunal finding a threat of injury.²¹¹ Given that the Tribunal has made no such finding, these requests are moot.

198. HICO and Hyosung also requested the exclusion of power transformers with a top rating of 60 MVA with a shell-form design for the replacement of existing power transformers with a shell-form design.²¹² ABB and CG opposed this request on the basis that their own products are substitutable for power transformers with a shell-form design.²¹³

199. ABB and CG submitted evidence that power transformers with a shell-form design compete with power transformers with a core-form design, including technical specifications in solicitation documents from several purchasers.²¹⁴

200. Responses to the purchasers' questionnaire on market characteristics lend credence to the domestic industry's argument and evidence. Most of the purchasers that responded to the questionnaire indicated that there are no power transformers available only from domestic or foreign producers.²¹⁵ Indeed, even HICO and Hyosung admitted that both power transformers with a shell-form design and those with a core-form design serve the same function.²¹⁶ ABB and CG also submitted evidence of injury, should the exclusion request be granted, as the affected imports constituted a significant portion of the Canadian market during the POI.²¹⁷

201. Accordingly, the Tribunal finds that the domestic industry's power transformers are substitutable for power transformers with a shell-form design and that the importation of the goods for which the exclusion request is made would contribute to the injury caused by the subject goods.

202. Therefore, the Tribunal denies the exclusion requests.

209. Tribunal Exhibit NQ-2012-001-36.01, Administrative Record, Vol. 1.3 at 2-6; Tribunal Exhibit NQ-2012-001-37.01 (protected), Administrative Record, Vol. 2.3 at 2.

210. Tribunal Exhibit NQ-2012-001-36.02, Administrative Record, Vol. 1.3 at 10-17; Tribunal Exhibit NQ-2012-001-37.02 (protected), Administrative Record, Vol. 2.3 at 4-11; *Transcript of In Camera Hearing*, Vol. 4, 25 October 2012, at 395.

211. Tribunal Exhibit NQ-2012-001-36.01, Administrative Record, Vol. 1.3 at 5; Tribunal Exhibit NQ-2012-001-36.02, Administrative Record, Vol. 1.3 at 13.

212. Tribunal Exhibit NQ-2012-001-36.02, Administrative Record, Vol. 1.3 at 19-26; Tribunal Exhibit NQ-2012-001-37.02 (protected), Administrative Record, Vol. 2.3 at 13-20; *Transcript of Public Hearing*, Vol. 5, 26 October 2012, at 562.

213. *Transcript of Public Hearing*, Vol. 5, 26 October 2012, at 411; Tribunal Exhibit NQ-2012-001-38.02, Administrative Record, Vol. 1.3 at 83-84, 90-92.

214. Tribunal Exhibit NQ-2012-001-39.02 (protected), Administrative Record, Vol. 2.3 at 156-57.

215. *Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-06, Administrative Record, Vol. 1.1 at 28; *Protected Pre-hearing Staff Report*, 19 September 2012, Tribunal Exhibit NQ-2012-001-07 (protected), Administrative Record, Vol. 2.1 at 28.

216. Tribunal Exhibit NQ-2012-001-36.02, Administrative Record, Vol. 1.3 at 23.

217. Tribunal Exhibit NQ-2012-001-39.02 (protected), Administrative Record, Vol. 2.3 at 124.

CONCLUSION

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

Serge Fréchette
Serge Fréchette
Presiding Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Jason W. Downey
Jason W. Downey
Member