



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2013-002

Unitized Wall Modules

*Finding issued
Tuesday, November 12, 2013*

*Reasons issued
Wednesday, November 27, 2013*

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

**THE DUMPING AND SUBSIDIZING OF UNITIZED WALL MODULES
ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF
CHINA**

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 and subsidizing of unitized wall modules, with or without infill, including fully assembled frames, with or without fasteners, trims, cover caps, window operators, gaskets, load transfer bars, sunshades and anchor assemblies, excluding non-unitized building envelope systems, such as stick systems and point-fixing systems, originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury.

Further to the issuance by the President of the Canada Border Services Agency of final determinations dated October 10, 2013, that the aforementioned goods have been dumped and subsidized, and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping and subsidizing of the aforementioned goods have not caused injury but are threatening to cause injury to the domestic industry.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Daniel Petit
Daniel Petit
Member

Dominique Laporte
Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: October 7 to 11, 2013

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Inland Glass & Aluminum Ltd.
Oldcastle Building Envelope
Sota Glazing Inc.
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Toro Aluminum/Toro Glasswall Inc.
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STATEMENT OF REASONS

INTRODUCTION

1. The purpose of this inquiry¹ is to determine whether the dumping and subsidizing of unitized wall modules (UWMs) originating in or exported from the People's Republic of China (China) (the subject goods) have caused or are threatening to cause injury to the domestic industry for UWMs.
2. This inquiry stems from a complaint filed on January 14, 2013, by various domestic producers of UWMs, namely, Allan Window Technologies (Allan), Ferguson-Neudorf Glass Inc. (Ferguson), Flynn Canada Ltd. (Flynn), Inland Glass & Aluminum Ltd., Oldcastle BuildingEnvelope, Sota Glazing Inc. (Sota), Starline Architectural Windows Ltd., State Window Corporation (State), Toro Aluminum/Toro Glasswall Inc. (Toro) and Windsor Glass Company (1992) Ltd. (now Contract Glaziers Corp. [CGC]) (the complainants),² and from the subsequent decision of the President of the Canada Border Services Agency (CBSA) to initiate dumping and subsidizing investigations.
3. The decision to initiate investigations triggered a preliminary injury inquiry by the Tribunal, which culminated in the determination of the Tribunal, on May 3, 2013, that the evidence disclosed a reasonable indication that dumping and subsidizing of UWMs had caused or were threatening to cause injury.
4. On July 15, 2013, the CBSA made preliminary determinations of dumping and subsidizing, resulting in the imposition of provisional duties on the subject goods and the commencement of this inquiry. On October 10, 2013, the CBSA made final determinations of dumping and subsidizing.³
5. If the Tribunal determines that such dumping and subsidizing have caused or threaten to cause injury to the domestic industry for UWMs, the CBSA will impose definitive anti-dumping and countervailing duties on imports of the subject goods.
6. The Tribunal's period of inquiry (POI) covers three full years, from January 1, 2010, to December 31, 2012, and two interim periods, from January 1 to June 30, 2012, and the corresponding period in 2013. On this basis, the Tribunal's staff issued questionnaires to domestic producers, importers, purchasers and Chinese producers of UWMs. Staff synthesized the questionnaire replies and prepared public and protected staff reports that were distributed, along with the questionnaire replies themselves, to counsel of record for those entities that had filed notices to participate in the inquiry.⁴ Parties were then afforded the opportunity to file case briefs and evidence.

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1. The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C. 1985, c. S-15 [SIMA].
 2. State participated in the complaint, but subsequently withdrew. On August 16, 2013, the Tribunal was notified by counsel for the complainants that they were no longer representing State in this inquiry. On August 26, 2013, State notified the Tribunal that it was no longer a participant to the inquiry.
 3. Exhibit NQ-2013-002-04, Vol. 1A at 2.
 4. 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. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2012-006), 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.

7. The parties that have actively participated in the inquiry are the following: the complainants; Jangho Curtain Wall Canada Co., Ltd. (Jangho Canada) and Yuanda Canada Enterprises Ltd. (Yuanda Canada), both importers of UWMs; and Guangzhou Jangho Curtain Wall Systems Engineering Co., Ltd. (Guangzhou Jangho) and Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. (Shenyang Yuanda), both exporters of UWMs.

8. From October 7 to 11, 2013, the Tribunal heard oral submissions from counsel for the parties, as well as testimony from their witnesses in public and *in camera* sessions.

RESULT'S OF THE CBSA'S INVESTIGATIONS

9. The CBSA's period of investigation for its dumping investigation covered January 1, 2011, to December 31, 2012. The period of investigation for its subsidizing investigation covered January 1, 2011, to December 31, 2012. The CBSA determined that 100 percent of the subject goods had been dumped at a weighted average margin of dumping of 83 percent and that 100 percent of the subject goods had been subsidized at a weighted average amount of subsidy of 25.8 percent.⁵

PRODUCT

Product Definition

10. The CBSA has defined the subject goods as follows:

Unitized wall modules, with or without infill, including fully assembled frames, with or without fasteners, trims, cover caps, window operators, gaskets, load transfer bars, sunshades and anchor assemblies; excluding non-unitized building envelope systems such as stick systems and point-fixing systems, originating in or exported from the People's Republic of China.

Product Information⁶

11. UWMs are aluminum-framed engineered fenestration products that form the building envelope (or façade) of multi-storey buildings. The two main styles of UWM building envelope systems are referred to as "curtain wall" and "window wall".

12. UWMs are prefabricated segments of the building envelope that interlock with each other when installed. They are manufactured and shipped to customers' building sites in accordance with the installation schedule on the construction plan.

13. Once installed, UWMs separate the outdoors from a building's indoor environment. They are designed to resist extreme wind pressures, limit air infiltration and exfiltration, prevent water infiltration and meet heat loss and energy usage criteria.

5. Exhibit NQ-2013-002-04, Vol. 1A at 34.41.

6. The information in this section is derived, in part, from the CBSA's statement of reasons, responses to Tribunal questionnaires and witness statements.

14. UWMs are generally designed to meet any of the following or equivalent specifications:
- air infiltration/exfiltration to a minimum 0.1 L/s/m² (litres/second/square metre) when tested in accordance with American Society of Testing and Materials (ASTM) standard E283 at 0.3 kPa (kilopascals) negative and positive pressure differential or equivalent proprietary or other internationally accepted standard;
 - no water infiltration when tested under static wind load in accordance with ASTM standard E331 using 205 litres of water per square metre for 15 minutes at a minimum 0.3 kPa negative pressure differential or equivalent proprietary or other internationally accepted standard;
 - no water infiltration when tested under dynamic wind load in accordance to American Architectural Manufacturers Association standard 501.1 using 205 litres of water per square metre for 15 minutes at a minimum 0.3 kPa negative pressure differential or equivalent proprietary or other internationally accepted standard;
 - structural performance when tested to ASTM standard E330 by uniform static air pressure at a minimum 0.5 kPa for 60 seconds without permanent deformation or equivalent proprietary or other internationally accepted standard; or
 - thermal performance calculated in accordance with Canadian Standards Association standard A440.2 to deliver a maximum of 3.0 W/m²C (watt/square metre/Celsius) for vision glass areas and 1.5 W/m²C for opaque areas (including framing) or equivalent proprietary or other internationally accepted standard.
15. UWMs consist of three principal components: extruded pre-finished (mill, alodine, painted or anodized) aluminum frame, hardware and infill materials.
16. The frame is the structural component that provides support for the infill materials. Hardware consists of fasteners, gaskets and sealants used to attach or sit between the frame and the infill materials. Infill materials include but are not limited to insulated glass units, monolithic glass, panels of various materials, such as stone, granite or limestone, aluminum or galvanized steel back pans, insulation, terracotta tiles, ceramic tiles, thin veneer unitized bricks, louvers, grilles and photovoltaic panels. Patio or terrace doors and operable windows are also used as infill materials.

Additional Product Information

17. UWMs are custom-manufactured to exact specifications on a project-by-project basis. Such specifications typically include performance and aesthetic design requirements. While there will be variations in UWMs from one project to another, because UWMs must meet the specific requirements set out in each Request for Proposal (RFP), the products proposed by each bidder in response to a particular RFP will be identical or substantially similar.⁷

LEGAL FRAMEWORK

18. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are 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”.

7. Exhibit NQ-2003-002-A-01 at para. 96, Vol. 11.

19. 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.

20. Given that the CBSA has determined that the subject goods have been dumped and subsidized, the Tribunal, in considering the issue of injury, must also determine whether it would be appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether to cross-cumulate the effects of dumping and subsidizing) in this inquiry.

21. Should the Tribunal arrive at a finding of no injury, it will determine whether there exists a threat of injury to the domestic industry.⁸ As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.⁹

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

LIKE GOODS AND CLASSES OF GOODS

23. In order for the Tribunal to determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.¹⁰

24. 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.

25. 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).¹¹

26. In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially constituting separate classes of goods are in fact “like goods” in relation to each other, in which case they would be regarded as comprising a single class of goods.¹²

8. 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.

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

10. Should the Tribunal determine that there is more than one class of goods, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

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

12. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; see, also, *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

27. In its preliminary injury inquiry the Tribunal found that domestically produced UWMs constituted like goods in relation to the subject goods. However, the Tribunal was unable to conclude whether domestically produced stick systems and point-fixing systems were also “like goods”. In addition, the Tribunal signaled its intention to further examine whether UWMs are comprised of two classes of goods, namely, unitized curtain wall modules and unitized window wall modules.

28. In the notice of commencement of inquiry dated July 16, 2013, the Tribunal invited interested parties to file early written submissions on whether stick systems and point-fixing systems constituted like goods in relation to the subject goods and whether unitized curtain wall modules and unitized window wall modules constituted separate classes of goods. The Tribunal received submissions from the complainants, as well as from Yuanda Canada and Shenyang Yuanda (collectively, Yuanda), and Jangho Canada and Guangzhou Jangho (collectively, Jangho).¹³ On August 14, 2013, the Tribunal notified the parties that, having considered the evidence and arguments, it had determined that domestically produced stick systems and point-fixing systems were not “like goods” in relation to the subject goods. The Tribunal also informed them of its decision that there was a single class of goods and that it would conduct the inquiry accordingly.¹⁴ The Tribunal stated that it would provide reasons for these determinations at the conclusion of the inquiry.

29. In its written submissions on injury, filed on September 20, 2013, Jangho asked the Tribunal to reconsider its determination on classes of goods, claiming that this determination was not supported by purchaser questionnaire responses that were filed and analyzed after August 14, 2013. On October 2, 2013, however, the Tribunal reminded the parties that its determination was final and that it considered itself *functus officio* on the matter.¹⁵

30. With respect to the issue of whether stick systems and point-fixing systems are like goods in relation to UWMs, the complainants claimed that stick systems and point-fixing systems serve different customer needs and are not substitutable for UWMs. They submitted that stick systems are only practically suitable (due to cost, structural, construction time and safety considerations) for forming the building envelope of low-rise buildings, and for lower-level or ground floor applications in medium and high-rise buildings, whereas UWMs are used to form the building envelope of medium and high-rise buildings. The complainants also contended that point-fixing systems are, due to technical limitations, typically used in one-level applications for aesthetic purposes.

31. The parties opposite appear to concede the different end uses of stick systems and point-fixing systems. Jangho, for example, acknowledged that, “. . . in a mixed commercial-residential project, the lower floors, or podium, will be commercial use” and that “[o]ften, fixed-point or stick systems are used there”,¹⁶ while Yuanda, in the same vein, noted that, “[f]or technical reasons and/or some particular locations (such as the podium of a tower), stick built curtain wall is still widely used in buildings.”¹⁷ Moreover, evidence

13. Exhibit NQ-2013-002-26.01, Vol. 1.4; Exhibit NQ-2013-002-26.02, Vol. 1.4A; Exhibit NQ-2013-002-26.03, Vol. 1.4A; Exhibit NQ-2013-002-28.01, Vol. 1.4A; Exhibit NQ-2013-002-29.01, Vol. 2.4; Exhibit NQ-2013-002-28.02, Vol. 1.4B.

14. Exhibit NQ-2013-002-30, Vol. 1A at 35-38.

15. The Tribunal notes that Yuanda came to accept that there is a single class of goods, although it submitted that curtain wall modules are priced higher than window wall modules, with “[t]he price differences [skewing] analyses based on a single class of like goods.” See Exhibit NQ-2013-002-K-01A at paras. 33-35, Vol. 13.

16. Exhibit NQ-2013-002-26.01, Vol. 1.4 at para. 50.

17. Exhibit NQ-2013-002-26.02, Vol. 1.4A at para. 17.

filed by Jangho confirmed that, at least historically, “. . . unitised systems have been selected for large commercial developments, including high-rise, whereas stick systems are more synonymous with smaller and low-rise schemes.”¹⁸

32. The Tribunal notes that, while stick systems and point-fixing systems and UWMs are used to separate the outdoors from the indoor environment of a building, the evidence shows that stick systems and point-fixing systems are distinct methods of cladding a building. In particular, there are considerable differences in their end uses and performance capabilities.

33. Stick systems and point-fixing systems are “a construction technique” involving the onsite construction of a building envelope using a variety of unfinished building materials.¹⁹ UWMs, by contrast, are manufactured off-site and are ready to be installed upon delivery to the construction site. That being the case, the only goods that could be considered for purposes of the like goods analysis for stick systems and point-fixing systems would be the various materials used in the construction of the building envelope, in the form in which they were delivered to the project site. These materials could not, in the aggregate, be considered *like goods*, since they are delivered unassembled to the construction site, are not customized and, as such, would require further processing in order to create the building envelope to the prescribed specifications.

34. The Tribunal’s determination that the scope of the like goods is limited to domestically produced UWMs is consonant with World Trade Organization (WTO) jurisprudence.²⁰ WTO panels have consistently held that the scope of a “like product” (i.e. like goods) must be coextensive with the scope of the “product under consideration” (i.e. subject goods).²¹ Therefore, since the CBSA’s product definition expressly excludes “stick systems and point-fixing systems” from the scope of the subject goods, treating domestically produced stick systems and point-fixing systems as like goods would inappropriately broaden the scope of the like goods beyond that of the subject goods.

35. With regard to classes of goods, the Tribunal accepts that both unitized window wall modules and unitized curtain wall modules are used to envelop (i.e. clad) the tower portion of multi-storey buildings, a point which was uncontested.²² The parties, however, disagreed on several key aspects bearing upon the issue of whether unitized window wall modules and unitized curtain wall modules constitute a single class or two separate classes of goods.

18. Exhibit NQ-2013-002-26.01, Vol. 1.4, tab 6 at 3.

19. Jangho acknowledged in its submissions that stick systems are a site-built solution made essentially from a “kit of parts”. See Exhibit NQ-2013-002-26.01, Vol. 1.4 at para. 45.

20. As stated by the Supreme Court of Canada, to the extent of any ambiguity, *SIMA* should be interpreted in a way that is consonant with Canada’s international trade obligations. See *National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 SCR 1324.

21. See *European Union – Anti-Dumping Measures on Certain Footwear from China* (2011), WTO Doc. WT/DS405/R at paras. 7.302-7.315 (Panel Report); *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China* (2010), WTO Doc. WT/DS397/R at paras. 7.258-7.278 (Panel Report); *United States – Final Dumping Determination on Softwood Lumber from Canada* (2004), WTO Doc. WT/DS264/R at paras. 7.139-7.158 (Panel Report).

22. While stick systems and point-fixing systems are also used in the construction of building envelopes, the Tribunal notes that these have been explicitly excluded from the CBSA’s definition of *subject goods*. As such, these systems do not form part of the Tribunal’s analysis of the classes of subject goods.

36. Yuanda and Jangho submitted that unitized window wall modules and unitized curtain wall modules constitute two classes of goods. They emphasized physical differences, notably that unitized window wall modules are installed between floor slabs, while unitized curtain wall modules are outer coverings, as well as differences in price and end uses. According to them, unitized window wall modules and unitized curtain wall modules are marketed as separate products and cannot be substituted without changing the building design. Yuanda also submitted that the two products are made to different specifications, with unitized curtain wall modules being customized and made to higher standards.²³

37. For their part, the complainants emphasized that unitized window wall modules and unitized curtain wall modules have the same principal components, serve the same application (i.e. the formation of a building envelope), are made using the same methods and using the same basic equipment, are nearly identical in appearance and are sold through the same distribution channels. They acknowledged that a unitized curtain wall module has some additional features and is generally made to a higher performance level, contributing to its higher price. However, they argued that any pricing differential is within a range found acceptable by the Tribunal in previous decisions and that choosing the lower-priced unitized window wall module or the higher-priced unitized curtain wall module is a matter of customer preference. Finally, the complainants submitted that unitized window wall modules and unitized curtain wall modules can be substituted if the building specifications are changed, which can occur any time before construction begins.

38. The Tribunal finds that the differences in appearance, methods of installation and pricing between unitized window wall modules and unitized curtain wall modules are not sufficient to treat them as separate and distinct classes of goods. The Tribunal notes that, in previous cases, it has stated that goods can belong to the same class of goods even if they come in numerous styles and varieties.²⁴ Moreover, the evidence in this case indicates that both unitized window wall modules and unitized curtain wall modules are made using similar input materials, on similar equipment, and are typically sold through the RFP process to builders and general contractors.²⁵

39. With respect to pricing, it is not disputed that a unitized curtain wall module is generally made to higher performance specifications and commands a higher price than a unitized window wall module. However, the Tribunal has previously found that a difference in price between products does not necessarily lead to the conclusion that the products in question are not substitutable.²⁶

40. Turning next to the cross-substitutability of unitized window wall modules and unitized curtain wall modules, and their similarity as to end use, the Tribunal notes that the Federal Court, in *Sarco Canada Limited v. Anti-dumping Tribunal*,²⁷ accepted the Anti-dumping Tribunal's view that "... the question of whether goods are 'like' is to be determined by market considerations." In particular, "[d]o they compete directly with one another? Are the same consumers being sought? Do they have the same end-use functionality? Do they fulfill the same need? Can they be substituted one for the other?"

23. The Tribunal notes that Yuanda subsequently indicated that "Yuanda accepts that there is a single class of goods", adding, however, that there was a risk of skewing arising from the fact that "curtain wall modules are priced higher than window wall modules". Refer to Exhibit NQ-2013-002-K-01A at paras. 33, 35.

24. See, for example, *Aluminum Extrusions* at para. 128.

25. Exhibit NQ-2013-002-28.01, Vol. 1.4A at para. 66.

26. See, for example, *Steel Grating* (19 April 2011), NQ-2010-002 (CITT) at para. 109.

27. [1979] 1 F.C. 247 (F.C.) [*Sarco*].

41. Consistent with the view espoused in *Sarco*, the Tribunal considers the related issues of end-use cross-substitutability of these two types of UWMs and the ability of each to fulfill the same customer needs to be of particular importance to the question of whether or not unitized window wall modules and unitized curtain wall modules constitute one or more classes of goods.

42. Both Jangho and Yuanda submitted that unitized window wall modules and unitized curtain wall modules are not substitutable. Specifically, Jangho claimed as follows:

*Curtain wall is not at all like window wall and window wall cannot be substituted for curtain wall where the design plans call for one or the other. The structural configuration of the building on which they are mounted must be made to accordance to one system or the other.*²⁸

[Emphasis added]

43. Yuanda, in the same vein, asserted as follows:

*Window wall and curtain wall are not substitutable when the building specs have been set. Contracts for curtain wall facades or window wall systems are made before construction begins. If a contactor bids window wall based on the specs in the Request for Proposals (RFP), and the building owner changes the specs to curtain wall, a new bid will be required for curtain wall - based on the changed specifications.*²⁹

[Emphasis added]

44. Jangho and Yuanda emphasized that unitized window wall modules and unitized curtain wall modules differ in how they attach to a building. They submitted that unitized curtain wall modules hang on the outside of the building, covering the floor slabs, while unitized window wall modules are installed between the floor slabs. Jangho also contended that a unitized curtain wall module requires the transfer of dead and live loads back to the floor structure, whereas the load of a unitized window wall module is carried by the floor slabs by virtue of its method of installation. Moreover, Jangho submitted that it is not possible to include doors or balconies in a building clad with unitized curtain wall modules.

45. The complainants submitted that these differences are not sufficient to separate unitized window wall modules and unitized curtain wall modules into different classes of goods. They submitted that, once installed, the two styles of UWMs are essentially identical in appearance, with small variations being visible only to the trained eye. In addition, while the complainants acknowledged that unitized window wall modules are better suited for portions of buildings with balconies, they also submitted that doors and balconies are regularly integrated into unitized curtain wall modules.

46. Further, while acknowledging that a substitution of unitized window wall modules and unitized curtain wall modules would likely require a modification to building design specifications, the complainants added that, in practice, this can occur any time before construction of the building begins. In support of this position, the complainants provided specific evidence of unitized curtain wall modules having been substituted for unitized window wall modules during the RFP bidding process.³⁰

28. Exhibit NQ-2013-002-26.01, Vol. 1.4 at para. 33.

29. Exhibit NQ-2013-002-26.02, Vol. 1.4A at para. 32.

30. Exhibit NQ-2013-002-29.01 (protected), Vol. 2.4 at paras. 1-4.

47. Indeed, it is not in dispute that the substitution of one type of wall module for the other can occur up to the time when the building design specifications have been finalized (factoring in, of course, practical considerations such as the order placement lead time required to ensure the timely delivery of these prefabricated building materials to the project site).

48. On this point, it is the Tribunal's view that a finding of end-use substitutability does not require interchangeability throughout the project cycle (i.e. from project conception to project completion). It is sufficient that the goods are interchangeable during part of the cycle, in this case, until the building is committed by final design specifications to the use of one or the other type of wall module.

49. As noted earlier, there were conflicting views on the issue of whether unitized curtain wall modules could accommodate doors and balconies. While the Tribunal, on the basis of the record, accepts that unitized curtain wall modules can be designed to incorporate these features,³¹ it would not have to consider any such limitations fatal to a finding of substitutability in any event, given the broader interchangeability of the two types of UWMs during the pre-construction stage of the project cycle. In this regard, it is the Tribunal's view that substitutability does not imply perfect interchangeability. As the Tribunal has stated on various occasions, the fact that goods may not be fully substitutable for each other for some end uses is not, in and of itself, a sufficient basis for determining that there are multiple classes of goods.³²

50. On the basis of the foregoing, the Tribunal finds that unitized window wall modules and unitized curtain wall modules have a sufficiently high degree of substitutability and share sufficient commonalities to warrant treatment as a single class of goods.

DOMESTIC INDUSTRY

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

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.

52. The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.

53. The Tribunal collected data for the nine complainants,³³ as well as for six other domestic producers of like goods. The Tribunal received two additional incomplete replies to its domestic producers' questionnaire, which were unusable for the purposes of its analysis. There are other known domestic producers that did not provide responses to the Tribunal's domestic producers' questionnaire; however, the Tribunal is satisfied that the 15 domestic producers, for which data were collected, collectively represent a large majority of the total domestic production of the like goods.

31. Exhibit NQ-2013-002-28.01, Vol. 1.4A, attachment 1 at para. 17; Exhibit NQ-2013-002-26.02, Vol. 1.4A, annex 1 at para. 26.

32. See, for example, *Steel Piling Pipe* (3 July 2012), PI-2012-002 (CITT) at para. 75; *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT) at para. 45; *Aluminum Extrusions* at para. 128.

33. The producers' questionnaire response from Global Architectural Metals received by the Tribunal on August 26, 2013, was combined with Allan's producers' questionnaire response, as both are associated producers of UWMs under common ownership.

CROSS-CUMULATION

54. There are no legislative provisions that directly address the issue of cross-cumulation of the effects of both dumping and subsidizing. However, as noted in previous cases,³⁴ the effects of dumping and subsidizing of the same goods from a particular country are manifested in a single set of injurious price effects, and it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, the effects are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing. Therefore, the Tribunal will make a cumulative assessment of the effects of the dumping and subsidizing of the subject goods in its injury analysis.

INJURY ANALYSIS

55. Subsection 37.1(1) of the *Regulations* prescribes that, in determining whether the dumping or subsidizing of any goods has caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped and subsidized goods, their effect on the price of like goods in the domestic market and the resulting impact on the state of the domestic industry.

56. Subsection 37.1(3) of the *Regulations* also directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping and subsidizing of the goods have caused injury.

57. Any injury that is caused through the effects of dumping or subsidizing must itself be material; it is not sufficient that the dumping and subsidizing be a contributing cause of material injury.³⁵

58. Neither *SIMA* nor the *Regulations* define the term “material”. However, the Tribunal has long held the view that “material injury” means injury to a domestic industry that is more than *de minimis* but not necessarily serious injury.³⁶ When assessing the materiality of injury, the Tribunal considers the extent, timing and duration of the injury.³⁷

Notable Characteristics of UWMs

59. In assessing the effects of the dumping and subsidizing of the subject goods in this case and the materiality of any resulting injury, the Tribunal has borne in mind the nature of UWMs and the conditions of the domestic UWM market.

34. See, for example, *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 76; *Aluminum Extrusions* at para. 147.

35. Although the Tribunal held in *Fresh, Whole, Delicious, Red Delicious and Golden Delicious Apples* (9 February 1995), NQ-94-001 (CITT) at 21, among others, that dumping need only be a cause of material injury, the Tribunal has consistently stated, in more recent years, that in fact the dumping and subsidizing must have in and of themselves caused material injury. For a detailed explanation of the reasons for this approach, see *Oil Country Tubular Goods* (23 March 2010), NQ-2009-004 (CITT) at paras. 207-216, including references.

36. *ABS Resin* (15 October 1986), CIT-3-86. Serious injury is the threshold in safeguard inquiries.

37. The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, “[h]owever, the Tribunal is of the view that, to date, the injury suffered by the industry has not been for such a duration or to such an extent as to constitute ‘material injury’ within the meaning of *SIMA*”.

60. UWMs share many of the characteristics of capital goods. In particular, UWMs are custom-designed, have high unit costs and are ordered rather infrequently. As a result, the loss of a single order may have severe effects on a domestic producer.³⁸

61. Moreover, these injurious effects can be prolonged. UWM orders are akin to executory contracts to sell.³⁹ There is typically a significant lag time between order placement and product delivery. Orders are booked many months before production commences, and several more months may pass before the goods are delivered.⁴⁰ Payment takes place in installments throughout this period. In this regard, invoicing/payment for costs related to engineering design normally occurs as these specific costs are incurred, while invoicing/payment for the UWMs themselves typically occurs at time of delivery, which is when sales volumes and revenues are normally recorded.⁴¹ The entire process may take 12 to 18 months or longer.⁴²

62. Consequently, while injurious price effects can occur immediately upon a UWM supply contract being lost, the economic impact of the lost sale will only be accounted for in a subsequent financial reporting period. For example, a UWM sale lost to price undercutting during the competitive bidding period that preceded the award of a UWM contract can have an immediate adverse impact on such aspects as employment/wages, the ability to raise capital, investment in new technology, etc. In addition, sales lost to the real or perceived aggressive pricing of the subject goods can lead to domestic price depression or price suppression in subsequent UWM bidding opportunities, although, again, these price effects would not become manifest until gains/losses related to the results of these bidding opportunities are recorded some time later.

63. That being the case, while the Tribunal's analysis covers the entirety of the POI, it has focused its analysis of import volumes and the performance of the domestic industry primarily on the data for 2011, 2012 and the interim period of January to June 2013.⁴³

Price Effects of Dumped and Subsidized Goods

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

38. Exhibit NQ-2013-002-A-03 at para. 19, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 7 October 2013, at 21.

39. *Black's Law Dictionary*, 6th ed., defines "executory contract to sell" as a "contract under which something remains to be done by either party before delivery and passing of title".

40. Exhibit NQ-2013-002-A-01 at para. 157, Vol. 11; Exhibit NQ-2013-002-B-03A at para. 12, Vol. 11.

41. Deliveries are typically made to the construction site on a *just-in-time* basis.

42. *Transcript of Public Hearing*, Vol. 1, 7 October 2013, at 18; *ibid.*, Vol. 2, 8 October 2013, at 105.

43. In so doing, the Tribunal is also cognizant that aggregate data in 2012 and 2013 may have been skewed to some extent by the chilling effect that the initiation of the CBSA's dumping and subsidizing investigations, and the prospect and realization of provisional measures, appear to have had in terms of reducing the attractiveness of the subject goods to purchasers in Canada.

Positions of Parties

65. The complainants have taken the position that purchasers of UWMs are price sensitive and that the subject goods have significantly undercut, significantly depressed or significantly suppressed the price of like goods by preventing price increases that would likely have occurred. The parties opposite dispute that the subject goods have caused any significant adverse price effects.

Purchasing and Pricing

66. UWMs are purchased by general contractors and real estate developers for residential and commercial construction projects of various sizes.⁴⁴ Sales typically take place through competitive bidding processes involving numerous bidders, though sole sourcing is not uncommon.⁴⁵

Price Transparency

67. The bid evaluation process may result in changes to specifications and may include negotiations on price.⁴⁶ A purchaser may provide information about the price quotations of other bidders and give a higher-priced bidder an opportunity to propose a lower price,⁴⁷ though this practice is not uniform among purchasers.⁴⁸

68. Nonetheless, there seems to be considerable price transparency in the marketplace in general, with purchasers and suppliers alike broadly aware of price leaders and pricing trends.⁴⁹ Bidders are also sometimes aware of the identity of competing bidders, including whether they are bidding against suppliers of the subject goods.⁵⁰ Mr. Tim Smith of EllisDon explained that purchasers often want bidders to know who else is bidding in order to engender a more competitive environment.⁵¹

Price Sensitivity of Purchasers

69. While UWMs are not commodities, price is nonetheless of considerable importance. With competing bids having to meet a purchaser's performance and aesthetic specifications, the scope for product differentiation is generally narrow, and price may therefore be a decisive consideration in sourcing decisions.

70. In this connection, the Tribunal's survey of purchasers indicates that "lowest price" tends to be "very important" or "important" to them.⁵² Hence, purchasers will "usually" or "sometimes" purchase the lowest-priced product.⁵³ Reasons for purchasing a higher-priced product include quality, reliability of supply, after-sales service, enhanced design and delivery times.⁵⁴

44. The domestic industry competes in all market segments. *Transcript of Public Hearing*, Vol. 2, 8 October 2013, at 107.

45. Exhibit NQ-2013-002-06B, Tables 21, 22, 28, 29, Vol. 1.1B; Exhibit NQ-2013-002-07C (protected), Tables 28, 29, Vol. 2.1B; *Transcript of Public Hearing*, Vol. 3, 9 October 2013, at 185.

46. Exhibit NQ-2013-002-A-01 at para. 38, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 7 October 2013, at 14-15.

47. Exhibit NQ-2013-002-A-01 at para. 105, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 7 October 2013, at 15; *ibid.*, Vol. 3, 9 October 2013, at 288-89; *ibid.*, Vol. 4, 10 October 2013, at 365.

48. EllisDon does not follow this practice. *Transcript of Public Hearing*, Vol. 3, 9 October 2013, at 186.

49. *Ibid.*, Vol. 1, 7 October 2013, at 28.

50. *Ibid.* at 72.

51. *Ibid.*, Vol. 3, 9 October 2013, at 186.

52. Exhibit NQ-2013-002-06B, Table 10, Vol. 1.1B; Exhibit NQ-2013-002-06C, Table 11, Vol. 1.1B.

53. Exhibit NQ-2013-002-06B, Table 24, Vol. 1.1B; Exhibit NQ-2013-002-07C (protected), Table 24, Vol. 2.1B.

54. Exhibit NQ-2013-002-06B, Table 25, Vol. 1.1B; Exhibit NQ-2013-002-07C (protected), Table 25, Vol. 2.1B.

Comparability of the Subject Goods and Like Goods

71. Jangho claimed that some of the subject goods comprise a hybrid form of unitized window and curtain wall modules with aesthetically pleasing flush glazing, with the domestic industry not offering a comparable product.⁵⁵ This was corroborated by the evidence of Mr. Peter Clewes.⁵⁶

72. There is however other evidence on the record that refutes this claim. Specifically, Mr. Juan Speck of Sota and Mr. Danny Neudorf of Ferguson testified that, in fact, the domestic industry has offered and is capable of offering a similar product, although the demand for it has been minimal because it is significantly more expensive than basic unitized window wall modules.⁵⁷ Mr. Smith of EllisDon (one of the largest domestic purchasers of UWMs) testified that the domestic industry has been capable of meeting the company's requirements,⁵⁸ noting that EllisDon has purchased Sota's hybrid product and was satisfied with it.⁵⁹ In the same vein, Mr. D.J. Thomas Dutton of Daniels (a large purchaser in the Toronto residential building sector) expressed the view that the domestic industry was technically astute and "... perfectly capable of doing any kind of design that our architects may yearn for."⁶⁰

73. For their part, purchasers indicated that they consider the subject goods and the like goods comparable in most respects, with the notable exception that, from a logistical perspective, the domestic industry has a significant advantage in delivery times.⁶¹

Price Premium for Like Goods

74. Late delivery poses a significant risk to general contractors as purchasers of UWMs, having regard to the financial penalties that they may incur, should the project fall behind schedule,⁶² and the potential damage to the general contractor's reputation.⁶³ This, in large part, explains why contracts have sometimes been awarded to domestic producers even when their bids were higher than those of a supplier of the subject goods. For example, Mr. Franco Di Marco testified that Toro won a contract to supply UWMs for two towers currently under construction in the Toronto area because Yuanda was behind schedule on an earlier phase of the development.⁶⁴ Mr. Kevin Sexton of Jangho Canada admitted that purchasers were still apprehensive about sourcing the subject goods and that Jangho Canada—which only entered the domestic market in 2011—was delivering late on most of its projects in Canada.⁶⁵

75. Nevertheless, many purchasers seem willing to assume this risk if a price quotation is low enough.⁶⁶ To date, Daniels, according to Mr. Dutton, has not purchased the subject goods, precisely because it has not

55. *Transcript of Public Hearing*, Vol. 4, 10 October 2013, at 330-31, 333-34.

56. *Ibid.* at 402-403, 410.

57. *Ibid.*, Vol. 1, 7 October 2013, at 42-43; *ibid.*, Vol. 2, 8 October 2013, at 111, 134; *ibid.*, Vol. 3, 9 October 2013, at 196. Mr. Clewes also testified that the price sensitivity of purchasers was likely the reason for which demand for such innovative products was low. *Ibid.*, Vol. 4, 10 October 2013, at 410, 422.

58. *Ibid.*, Vol. 3, 9 October 2013, at 170.

59. *Ibid.* at 196.

60. *Ibid.* at 175.

61. Exhibit NQ-2013-002-06C, Tables 8, 9, 14, Vol. 1.1B; Exhibit NQ-2013-002-F-05 at para. 10, Vol. 11.

62. *Transcript of Public Hearing*, Vol. 1, 7 October 2013, at 62, 86; *ibid.*, Vol. 3, 9 October 2013, at 220-22.

63. *Ibid.* at 240.

64. *Ibid.*, Vol. 1, 7 October 2013, at 30; *ibid.*, Vol. 3, 9 October 2013, at 256; Exhibit NQ-2013-002-I-03 at para. 25, Vol. 11A.

65. *Transcript of Public Hearing*, Vol. 4, 10 October 2013, at 347, 370.

66. Exhibit NQ-2013-002-06B, Table 27, Vol. 1.1B; Exhibit NQ-2013-002-07C (protected), Table 27, Vol. 2.1B; Exhibit NQ-2013-002-F-05 at paras. 11-12, Vol. 11; Exhibit NQ-2013-002-B-03A at para. 37, Vol. 11.

been willing to run the risk of late delivery, preferring instead to deal with the tried and tested domestic producers with which it has been doing business for years.⁶⁷ That being said, and in order to stay competitive with other developers, Mr. Dutton testified that he would consider purchasing the subject goods if the price was significantly lower than the price of like goods.⁶⁸

76. The evidence indicates that the domestic industry's superior record of meeting delivery schedules has allowed like goods to command a risk mitigation price premium over the price of the subject goods,⁶⁹ with both Mr. Dutton and Mr. Di Marco of Toro suggesting that the domestic price premium was probably in the order of 10 percent.⁷⁰ While the magnitude of any such premium will vary from purchaser to purchaser and from project to project,⁷¹ the Tribunal accepts that 10 percent is a representative figure.

Magnitude of the Margin of Dumping and Amount of Subsidy

77. The CBSA has found a weighted average margin of dumping of 83 percent and a weighted average amount of subsidy of 25.8 percent. The adverse effects on domestic producers of dumping and subsidizing of this magnitude are exacerbated by the fact that there is limited opportunity to physically distinguish the goods of one supplier from those of another, given that UWMs must conform to the performance and aesthetic specifications prescribed by the customer.

Price Undercutting

78. The average price per square metre of the like goods ranged from a high of \$432 in 2011 to a low of \$386 in the interim period of January to June 2012.⁷² The average price per square metre of the subject goods undercut the average price of the like goods by a low of \$86 in 2010 to a high of \$164 in 2012.⁷³

79. Moreover, price undercutting occurred in respect of both unitized curtain wall modules and unitized window wall modules. In respect of the former, the price undercutting ranged between 38 percent (in 2012) and 49 percent (in both 2010 and in the interim period of January to June 2013). In respect of the latter, the price undercutting ranged from 16 percent (in the interim period of January to June 2013) to 28 percent (in 2012).⁷⁴

67. *Transcript of Public Hearing*, Vol. 3, 9 October 2013, at 222.

68. *Ibid.* at 224.

69. Exhibit NQ-2013-002-06B, Table 27, Vol. 1.1B; Exhibit NQ-2013-002-07C (protected), Table 27, Vol. 2.1B.

70. *Transcript of Public Hearing*, Vol. 1, 7 October 2013, at 16; *ibid.*, Vol. 3, 9 October 2013, at 225.

71. *Ibid.*, Vol. 1, 7 October 2013, at 76.

72. Exhibit NQ-2013-002-06B, Table 68, Vol. 1.1B.

73. *Ibid.*

74. Exhibit NQ-2013-002-19.10A (protected), Vol. 6 at 25; Exhibit NQ-2013-002-19.16 (protected), Vol. 6 at 59, 62; Exhibit NQ-2013-002-19.17 (protected), Vol. 6A at 47, 50; Exhibit NQ-2013-002-19.20A (protected), Vol. 6A at 142; Exhibit NQ-2013-002-16.03C (protected), Vol. 4 at 20.27; Exhibit NQ-2013-002-16.04 (protected), Vol. 4 at 114; Exhibit NQ-2013-002-16.33A (protected), Vol. 4J at 107.4; Exhibit NQ-2013-002-16.05 (protected), Vol. 4A at 189; Exhibit NQ-2013-002-16.06A (protected), Vol. 4B at 232; Exhibit NQ-2013-002-16.07 (protected), Vol. 4C at 68; Exhibit NQ-2013-002-16.08 (protected), Vol. 4C at 226; Exhibit NQ-2013-002-16.09 (protected), Vol. 4D at 74-75; Exhibit NQ-2013-002-16.10 (protected), Vol. 4E at 206; Exhibit NQ-2013-002-16.10B (protected), Vol. 4F at 12; Exhibit NQ-2013-002-16.11B (protected), Vol. 4F at 192; Exhibit NQ-2013-002-16.13C (protected), Vol. 4G at 197; Exhibit NQ-2013-002-16.22A (protected), Vol. 4H at 165.4-165.5; Exhibit NQ-2013-002-16.23 (protected), Vol. 4H at 167; Exhibit NQ-2013-002-16.28 (protected), Vol. 4I at 98; Exhibit NQ-2013-002-16.32A (protected), Vol. 4J at 15.2, 15.11; Exhibit NQ-2013-002-16.34A (protected), Vol. 4J at 150.

80. The Tribunal has however been cautious in its consideration of average prices, having regard to the fact that they mask a product mix within which there is a wide range of UWMs responding to different technical and aesthetic specifications. In this regard, the price of a basic UWM can be hundreds of dollars less than a high-end UWM.⁷⁵ However, the pervasiveness of price undercutting is corroborated by two of the three purchasers that appeared before the Tribunal. In this regard, Mr. Dutton of Daniels stated that, in his experience, the price of the subject goods was 20 to 35 percent less than that of the like goods.⁷⁶ In the same vein, Mr. Smith of EllisDon testified that, in his experience, the degree of price undercutting was in the order of 30 percent.⁷⁷ Although Mr. Mark Andrew Garber of Niche Development stated that the price of the subject goods were 15 percent higher than that of the like goods,⁷⁸ this appears to have been based on a comparison of domestically produced unitized window wall modules with a subject unitized (window wall/curtain wall) hybrid module of higher value.⁷⁹ Mr. Clewes' evidence on this point appears to have involved the same comparison.⁸⁰

81. An overall analysis of transaction-specific prices paints a similar picture. The Tribunal received purchaser questionnaire replies concerning 13 contracts on which a supplier of the subject goods bid. The price of the subject goods undercut the price of the like goods eight times, with the degree of price undercutting ranging from 2 to 45 percent.⁸¹ Likewise, an analysis of bid data provided by the complainants indicates that, during the POI, suppliers of the subject goods won 17 contracts involving both unitized window wall modules and unitized curtain wall modules, with the degree of price undercutting ranging from 9 to 71 percent.⁸² Sixteen of these contracts were won with price undercutting of at least 14 percent, which exceeds the estimated risk-mitigation price premium enjoyed by the domestic industry.

82. On the basis of the foregoing, the Tribunal finds that the subject goods have undercut the price of like goods.

Price Depression

83. The trend in the average price of like goods is also indicative of price depression, with the average domestic price per square metre falling from \$429 in 2010 to \$404 in the first half of 2013, for an overall decrease of 6 percent.⁸³

84. In this regard, Mr. Smith of EllisDon testified that, in his experience, the price of like goods was indeed decreasing.⁸⁴

75. *Transcript of In Camera Hearing*, Vol. 2, 8 October 2013, at 142-43.

76. Exhibit NQ-2013-002-I-05 at para. 5, Vol. 11A.

77. *Transcript of Public Hearing*, Vol. 3, 9 October 2013, at 176.

78. Exhibit NQ-2013-002-M-06 at para. 5, Vol. 13.

79. *Transcript of Public Hearing*, Vol. 4, 10 October 2013, at 461-62.

80. Exhibit NQ-2013-002-M-05 at para. 18, Vol. 13; *Transcript of Public Hearing*, Vol. 4, 10 October 2013, at 401-403.

81. Exhibit NQ-2013-002-25.07A (protected), Vol. 6.2 at 49-51; Exhibit NQ-2013-002-25.08 (protected), Vol. 6.2 at 66-67; Exhibit NQ-2013-002-25.09 (protected), Vol. 6.2 at 89; Exhibit NQ-2013-002-25.13 (protected), Vol. 6.2A at 75, 77-83; Exhibit NQ-2013-002-25.17 (protected), Vol. 6.2A at 125.

82. Exhibit NQ-2013-002-A-08 (protected) at tab 40, Vol. 12B. Much of the data were not controverted by the parties opposite.

83. Exhibit NQ-2013-002-06B, Table 68, Vol. 1.1B.

84. *Transcript of Public Hearing*, Vol. 3, 9 October 2013, at 233-35.

85. Yuanda, for its part, argued that this price depression was attributable to factors other than the dumping and subsidizing of the subject goods, including the lingering effects of the 2008-2009 recession and intra-domestic industry competition.⁸⁵ With regard to the former, the evidence indicates that the recession created a brief period of reduced orders in 2009.⁸⁶ However, although there were fluctuations in demand such as occurred during the 2008-2009 recession, domestic producers enjoyed relatively healthy profit margins until the appearance of the subject goods in the domestic market in 2008.⁸⁷ As to the intensity of intra-domestic industry competition, Mr. Smith of EllisDon testified that it was his experience that domestic producers tended to offer bids that were only a few percentage points apart from one another, with not nearly the magnitude of price undercutting that he had seen from suppliers of the subject goods.⁸⁸

86. The Tribunal is satisfied that the depression of the price of like goods during the POI was attributable to the dumping and subsidizing of the subject goods, with these other factors having played only a minimal role in the depression of prices over the POI. Throughout the POI, the prices of the subject goods were less than those of like goods. Moreover, the average price of the subject goods steadily decreased, by 8 percent in 2011, 19 percent in 2012 and 2 percent in the first half of 2013, compared to the first half of 2012.⁸⁹ These declines were concentrated in the curtain wall segment, which saw the average price of the subject goods per square metre decrease by 10 percent from 2010 to the first half of 2013.⁹⁰

87. While the Tribunal remains cautious in its consideration of these average market price indicators, having regard to potential distortions related to product mix issues, the analysis nonetheless remains relevant insofar as it establishes general pricing trends.

88. The evidence of the complainants demonstrates that the low, and steadily declining, prices of the subject goods is principally what drove down the price of like goods. With pricing being fairly transparent, a low price can quickly affect pricing expectations in relation to other projects.⁹¹ Several witnesses testified that domestic producers responded to the challenge posed by the subject goods by either walking away from

85. Exhibit NQ-2013-002-L-03 at para. 14, Vol. 13.

86. *Transcript of Public Hearing*, Vol. 1, 7 October 2013, at 25-26.

87. *Transcript of In Camera Hearing*, Vol. 2, 8 October 2013, at 208, 214.

88. *Transcript of Public Hearing*, Vol. 3, 9 October 2013, at 177.

89. Exhibit NQ-2013-002-06B, Table 50, Vol. 1.1B.

90. Exhibit NQ-2013-002-19.16 (protected), Vol. 6 at 59; Exhibit NQ-2013-002-19.17 (protected), Vol. 6A at 47; Exhibit NQ-2013-002-19.20A (protected), Vol. 6A at 142. The average price of domestically produced unitized curtain wall modules decreased from \$636 per square metre in 2010 to \$531 in 2012—a decrease of 17 percent in just two years. Some of this decrease was offset by gains in the first half of 2013 when the average price rebounded to \$573. Nevertheless, this represents a 10 percent overall decrease in the average price of domestically produced unitized curtain wall modules over the POI. The average price of domestically produced unitized window wall modules increased from \$298 per square metre in 2010 to \$317 in 2012. The average price in the first half of 2013 was \$308, as compared to \$301 in the same period of 2012. Exhibit NQ-2013-002-16.03C (protected), Vol. 4 at 20.27; Exhibit NQ-2013-002-16.04 (protected), Vol. 4 at 114; Exhibit NQ-2013-002-16.09 (protected), Vol. 4D at 75; Exhibit NQ-2013-002-16.10 (protected), Vol. 4E at 206; Exhibit NQ-2013-002-16.22A (protected), Vol. 4H at 165.5; Exhibit NQ-2013-002-16.28 (protected), Vol. 4I at 98; Exhibit NQ-2013-002-16.32A (protected), Vol. 4J at 15.2, 15.11; Exhibit NQ-2013-002-16.05 (protected), Vol. 4A at 189; Exhibit NQ-2013-002-16.06A (protected), Vol. 4B at 232; Exhibit NQ-2013-002-16.07 (protected), Vol. 4C at 68; Exhibit NQ-2013-002-16.08 (protected), Vol. 4C at 226; Exhibit NQ-2013-002-16.09 (protected), Vol. 4D at 74; Exhibit NQ-2013-002-16.10B (protected), Vol. 4F at 12; Exhibit NQ-2013-002-16.11B (protected), Vol. 4F at 192; Exhibit NQ-2013-002-16.13C (protected), Vol. 4G at 197; Exhibit NQ-2013-002-16.22A (protected), Vol. 4H at 165.4; Exhibit NQ-2013-002-16.23 (protected), Vol. 4H at 167; Exhibit NQ-2013-002-16.33A (protected), Vol. 4J at 107.4; Exhibit NQ-2013-002-16.34A (protected), Vol. 4J at 150.

91. *Transcript of Public Hearing*, Vol. 1, 7 October 2013, at 28-29.

particular bidding opportunities or discounting their own prices in order to win contracts in an effort to maintain capacity utilization and at least cover overhead costs.⁹² The complainants submitted evidence in support of their claims that they were compelled to significantly discount their own prices in order to win against suppliers of the subject goods.⁹³

89. Indeed, witnesses testified that knowledge of the prices of the subject goods changed purchaser expectations (i.e. the “pricing climate”), such that domestic producers were expected to offer significantly lower prices as a matter of course,⁹⁴ this even when suppliers of the subject goods were not bidding. Because of this phenomenon, Mr. Neudorf estimated that Ferguson’s prices on bids against other domestic producers were significantly lower than might otherwise have been the case.⁹⁵ Other witnesses made similar statements about other domestic producers.⁹⁶

90. The pressure on the price of like goods would likely have been even greater but for the *chilling effect* on the market of the CBSA’s initiation of dumping and subsidizing investigations for the first time in July 2012. A recurrent theme was that purchasers were taking a *wait-and-see* attitude before committing to the purchase of the subject goods,⁹⁷ which appeared to have afforded domestic producers a bit of a respite. For example, Yuanda concedes that it has not won any contracts since the initiation of the CBSA’s dumping and subsidizing investigations.⁹⁸

91. On the basis of the foregoing, the Tribunal finds that the dumping and subsidizing of the subject goods has depressed the price of like goods.

Price Suppression

92. To determine whether or not price suppression had occurred, the Tribunal compared the domestic industry’s consolidated cost of goods manufactured per square metre to the average sale prices per square metre of the like goods.

93. In 2011, the cost of goods manufactured rose by 6 percent, while the average sale price increased by only 1 percent. The differential between the cost of goods manufactured and average sale price worsened in 2012. In particular, from 2011 to 2012, the costs of goods manufactured rose by 4 percent, while the average sale price of the goods fell by 4 percent.⁹⁹

94. The Tribunal heard evidence that competition from the subject goods limited the ability of domestic producers to recover their increased cost of goods manufactured¹⁰⁰ and is satisfied that this price suppression is not only coincidental with, but, in fact, resulted from, the dumping and subsidizing of the subject goods and, in particular, from the subject goods having undercut and depressed the price of like goods.

92. *Ibid.*, Vol. 2, 8 October 2013, at 144-45; Exhibit NQ-2013-002-J-03 at para. 22, Vol. 11A; Exhibit NQ-2013-002-B-03A at para. 26, Vol. 11; Exhibit NQ-2013-002-E-03 at para. 28, Vol. 11; Exhibit NQ-2013-002-C-03 at para. 33, Vol. 11.

93. Exhibit NQ-2013-002-A-02 (protected) at para. 143(f), Vol. 12.

94. Exhibit NQ-2013-002-A-01 at para. 6(f), Vol. 11.

95. Exhibit NQ-2013-002-B-04A (protected) at para. 44, Vol. 12.

96. Exhibit NQ-2013-002-E-04 (protected) at paras. 30-31, Vol. 12A.

97. *Transcript of Public Hearing*, Vol. 1, 7 October 2013, at 24; *ibid.*, Vol. 4, 10 October 2013, at 390.

98. *Ibid.*, Vol. 5, 11 October 2013, at 577-78.

99. Exhibit NQ-2013-002-07B (protected), Tables 68, 77, Vol. 2.1B.

100. *Transcript of In Camera Hearing*, Vol. 1, 7 October 2013, at 6; *ibid.*, Vol. 2, 8 October 2013, at 130.

Import Volume of Dumped and Subsidized Goods

95. Paragraph 37.1(1)(a) of the *Regulations* directs the Tribunal to consider the volume of the dumped and subsidized 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.

96. The domestic producers argued that the import volumes of the subject goods significantly increased over the POI. While Yuanda and Jangho have not disputed that the volume of the subject goods has increased, they contended that this increase was minimal and that the domestic producers maintain a “commanding presence” in the domestic market.¹⁰¹

97. The evidence shows that, in absolute terms, imports of the subject goods increased by 133 percent in 2011, although by only 1 percent in 2012. This trend continued in the interim period of January to June 2013, with imports of the subject goods having increased by 98 percent over the same period in 2012.¹⁰²

98. With regard to imports of the subject goods relative to the domestic production of like goods, the evidence shows that import volumes increased from 3 percent in 2010 to 8 percent in 2011, before settling to 6 percent in 2012. The relative volume of imports of the subject goods increased to 8 percent during the interim period of January to June 2013 from 5 percent during the same period in 2012. In short, the imports of the subject goods relative to the domestic production of like goods increased by 5 percentage points during the POI.¹⁰³

99. A similar fluctuation occurred with respect to the imports of the subject goods relative to sales from domestic production. Relative to domestic sales, the import volume of the subject goods rose from 3 percent in 2010 to 9 percent in 2011. Imports of the subject goods, relative to the sales from domestic production, decreased to 7 percent in 2012, but returned to 9 percent in the interim period of January to June 2013. Thus, the volume of imports relative to domestic sales increased by 6 percentage points over the POI.¹⁰⁴

100. On the basis of the foregoing, the Tribunal finds that there was a significant increase in the absolute volume of imports of the subject goods and a moderate increase relative to sales from domestic production of the like goods.

Resultant Impact on the Domestic Industry

101. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.¹⁰⁵

101. Exhibit NQ-2013-002-M-01 at para. 52, Vol. 13; Exhibit NQ-2013-002-M-02 (protected) at para. 56, Vol. 14.

102. Exhibit NQ-2013-002-06B, Table 53, Vol. 1.1B.

103. Exhibit NQ-2013-002-07B (protected), Tables 51, 52, Vol. 2.1B.

104. *Ibid.*, Tables 52, 62.

105. Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (iii) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iv) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme.

Positions of Parties

102. The complainants have taken the position that the dumping and subsidizing of the subject goods have caused material injury in such forms as lost sales and revenue, reduced market share and gross margins, stagnant capacity utilization rates and delayed capital investment. Yuanda and Jangho have taken the opposite position, noting that domestic production and employment have increased and that the domestic industry remains dominant in the market and profitable. They attribute any declines in other performance indicators to factors other than the dumping and subsidizing of the subject goods, including intra-industry competition and the lingering effects of the 2008-2009 recession.

Sales and Revenue

103. The domestic industry's sales volume decreased by 11 percent in 2011 compared to 2010.¹⁰⁶ However, sales volume increased by 26 percent in 2012 and by a further 25 percent in the first half of 2013 compared to the same period of 2012.¹⁰⁷ Overall, the sales volume of like goods during the POI increased significantly.

104. In terms of value, the trend was similar. Despite falling prices, the domestic industry's sales in the apparent market decreased by 11 percent in 2011, but increased by 21 percent in 2012 and by 31 percent in the first half of 2013 compared to the same period of 2012.¹⁰⁸

105. While the domestic industry was able to secure dozens of sales, which contributed to a solid overall performance during the POI,¹⁰⁹ the complainants have alleged that their performance would have been even better had they not lost contracts for 21 projects to suppliers of the subject goods.¹¹⁰ In examining whether the loss of these sales was caused by the dumping or subsidizing of the subject goods, and the magnitude of any such losses, the Tribunal has taken into account the competing bids, the square metres, the 10 percent domestic price premium, the margins of dumping, and the amounts of subsidy.¹¹¹ The outcome of this analysis indicates that, if the subject goods had not been dumped and subsidized, the domestic industry

106. Exhibit NQ-2013-002-06B, Table 63, Vol. 1.1B.

107. *Ibid.*

108. *Ibid.*, Table 66.

109. Exhibit NQ-2013-002-16.04 (protected), Vol. 4 at 140-208; Exhibit NQ-2013-002-16.04C (protected), Vol. 4 at 225-29; Exhibit NQ-2013-002-16.04D (protected), Vol. 4 at 233-37; Exhibit NQ-2013-002-16.05 (protected), Vol. 4A at 39-80; Exhibit NQ-2013-002-16.06 (protected), Vol. 4B at 38-66; Exhibit NQ-2013-002-16.06C (protected), Vol. 4B at 244; Exhibit NQ-2013-002-16.07A (protected), Vol. 4C at 111-29; Exhibit NQ-2013-002-16.07C (protected), Vol. 4C at 138.3; Exhibit NQ-2013-002-16.08A (protected), Vol. 4D at 3-17; Exhibit NQ-2013-002-16.08D (protected), Vol. 4D at 23.13-23.26; Exhibit NQ-2013-002-16.09 (protected), Vol. 4D at 127-43; Exhibit NQ-2013-002-16.09A (protected), Vol. 4D at 173; Exhibit NQ-2013-002-16.09B (protected), Vol. 4D at 176-79; Exhibit NQ-2013-002-16.10 (protected), Vol. 4E at 46-120; Exhibit NQ-2013-002-16.10C (protected), Vol. 4F at 15.3-15.4, 15.6-15.7; Exhibit NQ-2013-002-16.10D (protected), Vol. 4F at 15.14-15.18; Exhibit NQ-2013-002-16.11 (protected), Vol. 4F at 163-83; Exhibit NQ-2013-002-16.11C (protected), Vol. 4F at 201-202; Exhibit NQ-2013-002-16.33 (protected), Vol. 4J at 44-49; *Transcript of Public Hearing*, Vol. 1, 7 October 2013, at 16, 29, 31-32, 60, 66, 80, 84, 98, 113; *Transcript of In Camera Hearing*, Vol. 2, 8 October 2013, at 147, 159, 195, 223.

110. Exhibit NQ-2013-002-A-08 (protected) at tabs 6, 40, Vol. 12B.

111. For each of the seven projects with project-specific export prices, margins of dumping and amounts of subsidy, the Tribunal subtracted the export price from the bid price (to estimate the delivery costs, GS&A expenses and the local markup) and added the project-specific subsidy amount per square metre (using an average exchange rate for the POI) and the project-specific normal value converted to dollars per square metre. This fair bid was compared to the domestic producer's bid to see whether it was within 10 percent of the domestic bid. For the other projects, a ratio between the fair bid price for the first seven projects and the original Chinese bid was applied.

would likely have won 7 of the 21 projects. The analysis also indicates that the domestic industry's bid for 2 other projects would have been priced less than 10 percent higher than the non-dumped and non-subsidized price of the subject goods, which falls within the domestic risk-mitigation premium. In short, but for the dumping and subsidizing of the subject goods, the domestic industry could have won 9 of the 21 projects.¹¹²

106. The revenue that these nine projects could have been expected to generate for the domestic industry would have been equivalent to approximately 7 percent of domestic sales revenue over the POI.¹¹³

107. Jangho argued that, in several instances, the subject goods were not in fact the lowest-priced bids and that, however, they were awarded the contract due to "other factors than simply price."¹¹⁴ On this issue, Mr. Clewes testified that the domestic producers were unable to produce modules with flush-mounted glazing, which he viewed as being superior to what is routinely manufactured by domestic producers.¹¹⁵ As a result, he testified that certain customers were prepared to pay an "aesthetic premium" to acquire the subject product, which he estimated to be "in the range of no more than 20 percent".¹¹⁶

108. The Tribunal notes however that the assertion that the domestic industry was incapable of producing modules comparable to the subject flush-mounted glazing was contradicted by several domestic producers.¹¹⁷ For example, Mr. Dutton of Daniels testified that, in his view, the domestic industry was capable of meeting the aesthetic requirements of its customers.¹¹⁸ Moreover, when informed that several domestic producers had testified that they were indeed capable of producing modules with flush-mounted glazing, Mr. Clewes conceded that he had no reason to doubt that domestic producers were in fact capable of producing such modules.¹¹⁹

109. Even if the Tribunal were to accept that the domestic industry was incapable of producing modules with flush-mounted glazing, the factoring of an aesthetic premium into its analysis does not materially alter the outcome. An examination of the lost sales allegations, when taking into account the competing bids, the square metres, the alleged 20 percent aesthetic premium, the margins of dumping and the amounts of subsidy,¹²⁰ reveals that only two of the nine previously mentioned projects would have fallen from the list of

112. One of the largest of the nine contracts on this list was to supply the Shangri-La project. By including this project, the Tribunal is giving the benefit of the doubt to the domestic industry for the sake of argument. The evidence suggests that the Asian financiers of this project preferred to award the contract to an Asian supplier and told at least one domestic producer not to bother bidding. *Transcript of Public Hearing*, Vol. 1, 7 October 2013, at 53-54. As such, the loss of this particular sale is arguably attributable to a factor other than the dumping or subsidizing of the subject goods.

113. Exhibit NQ-2013-002-06B, Table 65, Vol. 1.1B; Exhibit NQ-2013-002-16.04 (protected), Vol. 4 at 132; Exhibit NQ-2013-002-16.04C (protected), Vol. 4 at 221; Exhibit NQ-2013-002-16.05 (protected), Vol. 4A at 35; Exhibit NQ-2013-002-16.06 (protected), Vol. 4B at 35; Exhibit NQ-2013-002-16.07A (protected), Vol. 4C at 105; Exhibit NQ-2013-002-16.08D (protected), Vol. 4D at 23.7; Exhibit NQ-2013-002-16.09 (protected), Vol. 4D at 110, 114, 118.

114. *Transcript of Public Hearing*, Vol. 5, 11 October 2013, at 538, 553.

115. *Ibid.*, Vol. 4, 10 October 2013, at 403.

116. *Ibid.* at 435.

117. *Ibid.*, Vol. 1, 7 October 2013 at 42; *ibid.*, Vol. 2, 8 October 2013, at 111, 134.

118. *Ibid.*, Vol. 3, 9 October 2013, at 175.

119. *Ibid.*, Vol. 4, 10 October 2013, at 426.

120. For each of the nine projects with project-specific export prices, margins of dumping and amounts of subsidy, if the differential between the bid price of the modules with flush-mounted glazing, adjusted for dumping and subsidization, and the lowest domestic bid price fell within the alleged 20 percent aesthetic premium, the loss of the contract could be attributed to factors other than dumping or subsidizing.

contracts that would likely have been awarded to Canadian producers. In this respect, the lost revenue from the seven remaining projects would have amounted to approximately 6 percent of domestic sales revenue over the POI.¹²¹

110. The complainants also alleged a loss of revenue on 16 other projects due to price depression caused by the dumping and subsidizing of the subject goods, claiming that they were compelled to discount their bids in order to secure these contracts. The Tribunal had sufficient data to examine 13 of these allegations. The Tribunal determined that the lost revenue resulting from the discounts given on these 13 projects amounted to approximately 1 percent of total domestic sales revenue over the POI.

111. Having regard to the dates of these sales and the typical time lag between contract award and UWM delivery, the revenue lost on these sales during the POI is actually less than that amount, with part of these losses likely to accrue in the period immediately thereafter.

Market Share

112. The Tribunal notes that the domestic industry was able to maintain a remarkably high market share throughout the POI.

113. During the 2010 peak year, the domestic industry commanded 97 percent of the apparent market.¹²² In 2011, its market share (based on the apparent market data available) declined to 92 percent.¹²³ This 5 percentage point loss seems to have accrued to the subject goods, whose share of the market concurrently increased by 5 percentage points (i.e. from 3 percent in 2010 to 8 percent in 2011).¹²⁴ However, the Tribunal's assessment of the lost sales allegations, discussed above, indicates that only a small fraction of this loss in market share was attributable to the dumped or subsidized subject goods. Moreover, little changed during the remainder of the POI, with the domestic industry's market share having remained between 92 and 93 percent in 2012 and in the interim period of January to June 2013.¹²⁵ The market share of the subject goods fell to 7 percent in the first half of 2012 before rebounding slightly to 8 percent in the first half of 2013.¹²⁶

114. The complainants filed a report claiming that the data understated the situation and that the market share of the domestic industry had actually decreased significantly.¹²⁷ However, having regard in particular to the fact that the complainants commissioned and contributed to the parameters of this other report, and it being unclear whether the report took into account the performance of other domestic producers, the Tribunal prefers to base its analysis on its own staff report, which it considers more reliable.

121. Exhibit NQ-2013-002-06B, Table 65, Vol. 1.1B; Exhibit NQ-2013-002-16.04C (protected), Vol. 4 at 221; Exhibit NQ-2013-002-16.05 (protected), Vol. 4A at 35; Exhibit NQ-2013-002-16.07A (protected), Vol. 4C at 105; Exhibit NQ-2013-002-16.08D (protected), Vol. 4D at 23.7; Exhibit NQ-2013-002-16.09 (protected), Vol. 4D at 110, 114, 118.

122. Exhibit NQ-2013-002-06B, Table 64, Vol. 1.1B. In fact, the market share was even greater than this amount because the market data on record do not include the sales volume of those domestic producers that did not provide useable information and that are therefore not within the scope of the "domestic industry" for the purpose of the Tribunal's analysis.

123. Exhibit NQ-2013-002-06B, Table 64, Vol. 1.1B.

124. *Ibid.*

125. *Ibid.*

126. *Ibid.*

127. Exhibit NQ-2013-002-A-01 at para. 148, Vol. 11.

115. The evidence suggests that the domestic industry would likely have lost more market share to the subject goods had domestic producers not reacted to the price undercutting of the subject goods by depressing and suppressing their own prices in order to secure new contracts.¹²⁸ The Tribunal is also mindful that the domestic industry's market share may have decreased further had the commencement of CBSA's dumping and subsidizing investigations and this inquiry not chilled demand for the subject goods.¹²⁹

Output/Production

116. Domestic production of like goods in 2010 amounted to 1.028 million square metres.¹³⁰ Consistent with sales volumes and market share trends, output fell in 2011 by 157,000 square metres, or by 15 percent, to 871,000 square metres.¹³¹ While the import volume and market share of the subject goods more than doubled in 2011, the subject goods seem to have accounted for only part of the decrease in domestic production, with much of this 2011 decline seemingly attributable to other factors.

117. In this regard, Mr. Di Marco of Toro acknowledged that part of the decline was attributable to market decline in general.¹³² Similarly, Mr. Arthur Chan of Yuanda testified that his former company, Advanced Glazing Systems Ltd., which was a domestic producer of like goods, went bankrupt in March 2011 due to reduced orders and shrinking profit margins in the wake of the 2008-2009 recession.¹³³ Indeed, the size of the apparent market in 2011 was 63,000 square metres smaller than in the preceding year.¹³⁴ The domestic industry's declining export performance was also a contributing factor in this output decline, as exports decreased by 54,000 square metres in 2011.¹³⁵

118. During the remainder of the POI, the domestic industry's output increased significantly. In 2012, domestic production of like goods rose to 1.148 million square metres, an increase of 277,000 square metres, or 32 percent, compared to 2011.¹³⁶ This increase coincided with an increase in the apparent market size to the tune of 208,000 square metres, as well as a substantial increase in exports.¹³⁷ Production volumes increased by 25 percent in the first half of 2013 compared to the first half of 2012.¹³⁸

128. For example, see Exhibit NQ-2013-002-E-04 (protected) at para. 41, Vol. 12A.

129. Such chilling effect likely began with the initiation of the first UWM preliminary injury inquiry in July 2012 (PI-2012-004), which was subsequently terminated by the Tribunal, and continued through both the second preliminary injury inquiry in March 2013 (PI-2012-006) and the current inquiry. In this respect, and given the temporal lag between contract award and UWM deliveries, importers faced the risk of incurring anti-dumping and/or countervailing duties, of uncertain magnitude, on future deliveries of the subject UWMs.

130. Exhibit NQ-2013-002-06B, Table 49, Vol. 1.1B.

131. *Ibid.*

132. Exhibit NQ-2013-002-I-03 at para. 48, Vol. 11A.

133. *Ibid.* at paras. 6, 12-13, Vol. 13.

134. Exhibit NQ-2013-002-06B, Table 49, Vol. 1.1B.

135. *Ibid.*

136. *Ibid.*

137. *Ibid.*

138. *Ibid.*

Capacity Utilization

119. To meet the increased demand for like goods, the domestic industry steadily increased its practical plant capacity throughout the POI.¹³⁹ The capacity utilization rate also remained stable.¹⁴⁰ The domestic industry likely managed to keep this rate steady partly by lowering the price of like goods in an effort to maintain consistent output volumes. However, that effect was likely offset by rising demand after 2011.

Investment

120. Some of the complainants postponed capital investments as a direct result of competition with the subject goods. However, while investments decreased by 10 percent in 2011, they increased by 64 percent in 2012 and by 157 percent in the first half of 2013 over the same period of 2012.¹⁴¹

Employment and Wages

121. Individual complainants had some lay-offs during the POI.¹⁴² Some of these lay-offs appear to be linked to the loss of contracts to suppliers of the subject goods.¹⁴³

122. However, overall employment increased throughout the POI, even in 2011. Direct employment increased from 1,238 workers to 1,806 workers, an increase of 45 percent.¹⁴⁴ Total employment increased by 70 workers in 2011, 469 in 2012 and 367 in the first half of 2013 over the first half of 2012.¹⁴⁵ Total wages also increased throughout the POI.¹⁴⁶

Productivity

123. Measured in terms of average output per employee (square metres per employee), the domestic industry's productivity decreased sharply in 2011.¹⁴⁷ This coincided with the significant decrease in output due to lower demand and fewer exports. However, when measured in terms of square metres per hour worked, productivity was virtually unchanged.¹⁴⁸

124. Despite the increase in production and sales in 2012, productivity during that year actually fell. Productivity in the first half of 2013 was virtually the same on a per-employee basis.¹⁴⁹ This overall decline in 2012-2013 from the 2011 level coincided with the sharp increase in employment in 2012-2013; therefore, it is likely that productivity declined in large part because many of the workers were new to their jobs. The decrease in investments in 2011 may also have had an impact, but the lack of investment probably played a minimal role, given the spike in new investments in 2012 onward.

139. *Ibid.*, Table 87.

140. Exhibit NQ-2013-002-07B (protected), Table 87, Vol. 2.1B.

141. Exhibit NQ-2013-002-06B, Table 88, Vol. 1.1B.

142. Exhibit NQ-2013-002-E-03 at para. 51, Vol. 11; Exhibit NQ-2013-002-F-03 at paras. 70-73, Vol. 11.

143. Exhibit NQ-2013-002-F-03 at para. 25, Vol. 11.

144. Exhibit NQ-2013-002-06B, Table 80, Vol. 1.1B.

145. *Ibid.*

146. *Ibid.*, Table 84.

147. Exhibit NQ-2013-002-07B (protected), Table 86, Vol. 2.1B.

148. *Ibid.*

149. *Ibid.*

Profitability

125. While the domestic industry was profitable throughout the POI, the effects of the subject goods on the price of like goods appear to have eroded the domestic industry's gross margins and net income.

126. The net value of the domestic industry's domestic sales increased by 18 percent in 2012 compared to 2011 and by 25 percent in the first half of 2013 compared to the first half of 2012.¹⁵⁰

127. Between 2010 and 2011, however, the domestic industry saw its gross margins on domestic sales fall 4 percentage points from 31 percent of net sales value to 27 percent.¹⁵¹ Its net income decreased from 17 percent of net sales value to 11 percent.¹⁵² As 2011 was a year when the subject goods suppressed the price of like goods, it is likely that at least part of these decreases is attributable to the dumping and subsidizing of the subject goods. However, 2011 is also the year when output and productivity were lower largely because of reduced demand that year.

128. Despite the sharp increases in domestic production and sales in 2012, the domestic industry's gross margins on domestic sales fell by an additional 6 percentage points to 21 percent of net sales value, and net income fell by an additional 4 percentage points to 7 percent of net sales value.¹⁵³ Some of these decreases can be explained by the reduction in productivity in 2012 that seems to have stemmed from the rapid expansion of the workforce that year. However, 2012 is also the year when the dumping and subsidizing of the subject goods began to depress the price of like goods. Indeed, witnesses testified that the complainants were willing to accept lower margins in order to win contracts and retain capacity utilization at a rate high enough to cover overhead costs.¹⁵⁴

129. In the first half of 2013, when these proceedings were underway, gross margins and net income increased compared to the first half of 2012.¹⁵⁵

130. Yet, as discussed above in relation to the Tribunal's assessment of the complainants' project-specific allegations, the extent to which the domestic industry lost sales due to the dumping and subsidizing of the subject goods or discounted their bids in order to win contracts can thus far account for only a part of the reduction in the domestic industry's profits.

Summary

131. The dumping and subsidizing of the subject goods, through their effect on the price of like goods, have had a negative effect on the state of the domestic industry, principally in the form of lost sales and revenue, an erosion of gross margins and a reduction in net income, with these performance indicators having exhibited a general downward trend over the POI. Having regard, however, to the limited magnitude of the deterioration in certain price effects and performance indicators, the domestic industry's ability to maintain an overwhelming share of the domestic market throughout the POI, and the fact that the domestic industry remained largely profitable throughout the period, it is the Tribunal's view that any injury incurred

150. Exhibit NQ-2013-002-06B, Table 74, Vol. 1.1B.

151. *Ibid.*

152. *Ibid.*

153. *Ibid.*

154. Exhibit NQ-2013-002-C-03 at paras. 31, 33, Vol. 11; Exhibit NQ-2013-002-G-03 at para. 45, Vol. 11.

155. Exhibit NQ-2013-002-06B, Table 74, Vol. 1.1B.

by the domestic industry through the effects of the dumping and subsidizing of the subject goods is not material as required under *SIMA*.¹⁵⁶

THREAT OF INJURY ANALYSIS

132. The Tribunal will next consider whether the dumping and subsidizing of the subject goods are threatening to cause material injury to the domestic industry. The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.¹⁵⁷ Also of relevance is subsection 2(1.5) of *SIMA*, which indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping and subsidizing of the goods would cause injury are clearly foreseen and imminent. Further, subsection 37.1(3) of the *Regulations* directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2) of the *Regulations*, and whether any factors other than the dumping and subsidizing of the goods are threatening to cause injury.

Time Frame

133. In assessing threat of injury, the Tribunal typically considers a time frame of 12 to 18 months, and no more than 24 months, beyond the date of its finding, although the Tribunal is not necessarily bound by this time frame, as each case is unique.

134. In the present case, because of the 12-to-18-month time lag between contract award and production/delivery of UWMs, the Tribunal considers a period of approximately 12 months to be an appropriate time frame to assess likely prices, and a time frame of up to 24 months to be an appropriate time frame to assess likely volumes and the consequent impact on the state of the domestic industry.

156. The complainants themselves were unsure whether an impact on the domestic industry that had not materialized during the POI in respect of orders that were lost during the POI constituted injury for the purposes of this analysis: *Transcript of Public Hearing*, Vol. 5, 11 October 2013, at 484-85.

157. Subsection 37.1(2) of the *Regulations* reads as follows: "For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the following factors are prescribed: (a) the nature of the subsidy in question and the effects it is likely to have on trade; (b) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; (c) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; (d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; (e) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; (f) inventories of the goods; (g) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; (g.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; (g.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and (h) any other factors that are relevant in the circumstances."

Likely Price Effects

135. The Tribunal has already determined that the dumping and subsidizing of the subject goods have led to price undercutting, price depression and some price suppression. The Tribunal must therefore examine whether these adverse price effects are likely to continue and, if so, what they portend for the domestic industry performance in the near term.

136. As already indicated, the chilling effect created by CBSA's initiation of the dumping and subsidizing investigations has led many purchasers to adopt a *wait-and-see* attitude to the award of new contracts to suppliers of the subject goods. It is also important to note that this market has been "in standby mode" for a longer-than-usual period, as a consequence of two back-to-back investigations by the CBSA.

137. Absent the imposition of anti-dumping and countervailing duties, it is the Tribunal's view that the current *wait-and-see* approach of UWM purchasers will immediately give way to the resumption of contract awards to suppliers of the subject goods at prices that are likely to significantly undercut those of domestic producers of the like goods, with the level of transparency as to the aggressive pricing of currently subject goods likely leading to the further depression and suppression of the prices of like goods. Indeed, there is no indication that the degree of price undercutting would be any less significant than it was during the POI, and the magnitude of the margins of dumping and amounts of subsidy found by the CBSA underscores the extent to which exporters of the subject goods, unfettered by the prospect of anti-dumping and countervailing duties, would be prepared to go in an effort to secure new orders, with lower price points becoming inevitable.

138. The Tribunal also believes that the domestic industry's price premium is likely to shrink over time, as purchasers become more familiar with the subject goods and concerns over late delivery are addressed and allayed.¹⁵⁸ Indeed, there was testimony indicating that the erosion of the domestic price premium had already begun.¹⁵⁹ As this price premium decreases, domestic producers will be under even greater pressure to reduce the price of like goods.

139. In the Tribunal's view, these pressures are likely to be exacerbated by the pricing expectations of major UWM purchasers, which have been shaped by the significant price undercutting discussed earlier and as new purchasers, like Daniels, opt into the new market paradigm. As Mr. Dutton testified, if trends continue and other purchasers switch to the subject goods, Daniels will be pushed in that direction too,¹⁶⁰ and the prices in the marketplace have yet to reach their lowest point.¹⁶¹

140. In the face of these pressures, one can reasonably assume that domestic producers will, over the near term, have to resign themselves to continuing price depression and price suppression, and the prospect of further shrinkage of their gross margins and net profits.

158. *Transcript of Public Hearing*, Vol. 1, 7 October 2013, at 16; *ibid.*, Vol. 3, 9 October 2013, at 253-54.

159. *Ibid.*, Vol. 1, 7 October 2013, at 16-17; *ibid.*, Vol. 4, 10 October 2013, at 358.

160. *Ibid.*, Vol. 3, 9 October 2013, at 235.

161. *Ibid.*

Likely Volumes

Pending Volumes

141. The Tribunal has already determined that there was a significant increase in the absolute volume of imports of the subject goods over the POI. However, the time lag between contract award and UWM delivery/payment allows the Tribunal to reliably forecast imports into the Canadian market.

142. The evidence shows that several contracts were awarded to both Yuanda and Jangho over the course of the POI.¹⁶² While deliveries have started in some cases, as many as 162,000 square metres of the subject goods are due to be imported into Canada over the next 12 to 18 months under existing contracts.¹⁶³ Given that the total production volume of the domestic producers has ranged from 871,000 square metres to 1.148 million square metres over the three full years comprising the POI¹⁶⁴ and that the volume of imports from all countries never surpassed 76,000 square metres per year during the POI,¹⁶⁵ the 162,000 square metres of the subject goods still to be imported represents a major influx of the subject goods into the domestic market. This is independent of any additional contracts that may be awarded to the importers in the near term.

Disposable Capacity

143. During the hearing, there was considerable discussion as to what was an accurate figure for the production capacity of both Yuanda and Jangho, with the complainants contending that these capacity figures had been significantly under-reported. Because both Yuanda and Jangho adopted a policy of designating only one production facility as the manufacturing base for UWMs destined for the Canadian market, the capacity figures provided to the Tribunal reflect only those plants and did not include all the facilities owned by the two companies that were capable of producing UWMs for export to Canada.¹⁶⁶ Both Mr. Chan of Yuanda and Mr. Sexton of Jangho conceded that they were not involved in preparing the responses to the Tribunal's questionnaires and, therefore, had limited knowledge of the production capacity of the facilities operated by their respective companies.¹⁶⁷ Additional evidence on the record in fact suggests that the capacity figures are much higher than reported to the Tribunal.¹⁶⁸ Specifically, information pertaining to Yuanda suggests that it currently has 2.3 million square metres of disposable capacity,¹⁶⁹ making the capacity of this one company alone sufficient to supply the entire Canadian market.

144. In addition, there is evidence that both Yuanda and Jangho plan to significantly increase their installed capacity over the next 12 to 18 months. In particular, Yuanda intends to increase its production capacity by 9.6 million square metres by 2015,¹⁷⁰ while Jangho will complete construction of another new

162. *Ibid.*, Vol. 4, 10 October 2013, at 345; Exhibit NQ-2013-002-A-02 (protected) at paras. 81, 88, Vol. 12.

163. *Transcript of Public Hearing*, Vol. 2, 8 October 2013, at 105; *ibid.*, Vol. 5, 11 October 2013, at 490. The Tribunal recognizes that there was some discussion of the exact figure to be imported during the *in camera* sessions. To respect the confidentiality of the parties, however, the figure used during the public hearing sessions will be used.

164. Exhibit NQ-2013-002-07B (protected), Table 51, Vol. 2.1B.

165. *Ibid.*, Table 49.

166. *Transcript of Public Hearing*, Vol. 5, 11 October 2013, at 500; *Transcript of In Camera Hearing*, Vol. 4, 10 October 2013, at 384; *ibid.*, Vol. 3, 9 October 2013, at 341.

167. *Transcript of Public Hearing*, Vol. 3, 9 October 2013, at 289-94; *ibid.*, Vol. 4, 10 October 2013, at 350.

168. Exhibit NQ-2013-002-A-07 at tabs 1, 10, 11, Vol. 11A; Exhibit NQ-2013-002-A-06 (protected) at tab 18, Vol. 8.

169. *Transcript of Public Hearing*, Vol. 2, 8 October 2013, at 110.

170. Exhibit NQ-2013-002-A-07 at tabs 1, 10, 11, Vol. 11A.

UWM facility in 2014.¹⁷¹ Yuanda and Jangho are also opening new UWM facilities in the Middle East and Mexico in the near future,¹⁷² which could conceivably free up further capacity in their Chinese facilities.

145. Finally, the record indicates that there may be more than 200 other producers of UWMs in China with sufficient capacity to supply the Canadian market 100 times over.¹⁷³ With the Canadian market expected to remain strong,¹⁷⁴ and with the projected stagnation of U.S., European and Chinese markets,¹⁷⁵ a decision not to impose anti-dumping and countervailing duties on UWMs from China would likely prompt an immediate renewed interest in the Canadian market on the part of at least some of these other producers.

146. On the basis of the foregoing, the Tribunal finds that there is significant available UWM production capacity in China, a significant part of which, in the absence of anti-dumping and/or countervailing duties, and under projected market conditions over the next 12 to 24 months, would likely be devoted to production for the Canadian market.¹⁷⁶

Product Shifting

147. The limited evidence on product shifting indicates that the machinery used to produce window wall modules may easily be used to produce curtain wall modules, and vice versa.¹⁷⁷ Therefore, if demand for one type of UWM outweighed another, production could be easily accommodated to provide the necessary capacity.

Inventories

148. The parties did not provide any evidence on the record with respect to inventories of the subject goods.

Trade Remedies in Other Markets

149. The United States currently imposes anti-dumping and countervailing duties on Chinese unitized curtain wall modules on the basis of a November 30, 2012, ruling of the U.S. Department of Commerce that exports of Chinese-produced curtain wall modules fall within the scope of the U.S. aluminum extrusions anti-dumping/countervailing duty order. In this regard, one can reasonably expect that efforts will be made by Chinese producers to divert significant volumes, which would otherwise have been destined for the U.S. market, to other markets, including Canada.

Demand

150. Demand for UWMs in the United States, Europe and China itself appears to be slowing. In particular, Western Europe and the United States, which both have experienced economic crises and uncertainty, are expected to have “little or no growth” over the short to medium term.¹⁷⁸ The evidence

171. Exhibit NQ-2013-002-A-06 (protected) at tab 18, Vol. 8.

172. *Transcript of Public Hearing*, Vol. 3, 9 October 2013, at 292; *ibid.*, Vol. 4, 10 October 2013, at 352, 392.

173. *Ibid.*, Vol. 2, 8 October 2013, at 109.

174. Exhibit NQ-2013-002-K-01A at paras. 91-92, Vol. 13; Exhibit NQ-2013-002-A-01 at para. 237, Vol. 11.

175. Exhibit NQ-2013-002-A-07 at tab 30, Vol. 11B.

176. Exhibit NQ-2013-002-A-07 at tabs 1, 10, 11, Vol. 11A; Exhibit NQ-2013-002-A-06 (protected) at tab 18, Vol. 8; *Transcript of Public Hearing*, Vol. 3, 9 October 2013, at 292; *ibid.*, Vol. 4, 10 October 2013, at 352, 392.

177. *Transcript of In Camera Hearing*, Vol. 1, 7 October 2013, at 36-37.

178. Exhibit NQ-2013-002-A-07 at tab 30, Vol. 11B.

indicates that there has been a slowdown in Chinese economic growth and in the Chinese real estate market in particular,¹⁷⁹ although this slowdown may be at least partially offset by growth in the construction of high-rise buildings.¹⁸⁰

151. In contrast, both the complainants and Yuanda presented independent evidence that the Canadian apparent market is forecasted to continue its growth over the near term.¹⁸¹ While Mr. Smith of EllisDon and Mr. Don Delaney of Flynn expected the domestic market to be flat in 2014,¹⁸² and Mr. Stephen J. Miller of Allan stated that condominium sales were slower, Mr. Michal Chlumecky of CGC expects that there will be a considerable uptick in commercial developments,¹⁸³ with Mr. Garber of Niche Development testifying that there was “quite a bit of work” to do well into the next 18 months.¹⁸⁴ On the balance of the evidence, the Tribunal expects that, over the next 12 to 24 months, the domestic market will remain attractive to exporters of the subject goods.

152. To meet this ongoing demand for UWMs in Canada and facilitate more sales to Canadian purchasers, Yuanda and Jangho employ experienced sales and marketing personnel in Canada who have worked in the domestic industry and are familiar with the domestic market and purchasers.¹⁸⁵

Summary

153. Significant volumes of the subject goods are due to arrive in the domestic market in the next 12 months.

154. In addition, more freely disposable production capacity is set to come online in China—this, in the face of slowing demand for the subject goods in China and other major export markets and while the United States imposes anti-dumping and countervailing duties on the curtain wall modules from that country.

155. By contrast, the Canadian market for UWMs is expected to remain strong, with purchasers in Canada likely to become progressively more inclined to switch to low-cost subject goods, once the risk of the imposition of anti-dumping and/or countervailing duties dissipates and as concerns associated with offshore sourcing are addressed and allayed.¹⁸⁶ As exporters of the subject goods seek out and find more willing purchasers, one can reasonably expect a significant increase in the volume of imports of the subject goods over the course of the next 12 to 24 months.

Likely Performance of the Domestic Industry

156. The volume of the subject imports expected to arrive in 2014 alone, in relation to existing contracts, will constitute a transfer of 10 to 15 percent of market share from the domestic industry to the suppliers of the subject goods, more than doubling the current market share of the subject goods. Numerous domestic producers are forecasting their 2014 sales to decrease by as much as 25 percent compared to 2012.¹⁸⁷

179. *Ibid.* at tabs 13, 22, Vol. 11A.

180. Exhibit NQ-2013-002-A-06 (protected) at tab 9, Vol. 8.

181. Exhibit NQ-2013-002-K-01A at paras. 91-92, Vol. 13; Exhibit NQ-2013-002-A-01 at para. 237, Vol. 11.

182. *Transcript of Public Hearing*, Vol. 3, 9 October 2013, at 249; *ibid.*, Vol. 1, 7 October 2013, at 27.

183. *Ibid.*, Vol. 2, 8 October 2013, at 158.

184. *Ibid.*, Vol. 4, 10 October 2013, at 456.

185. *Ibid.*, Vol. 3, 9 October 2013, at 269, 271; *ibid.*, Vol. 4, 10 October 2013, at 327, 328.

186. *Ibid.*, Vol. 2, 8 October 2013, at 235; *ibid.*, Vol. 1, 7 October 2013, at 16-17, 24; *ibid.*, Vol. 3, 9 October 2013, at 258; *ibid.*, Vol. 4, 10 October 2013, at 358, 390.

187. *Ibid.*, Vol. 2, 8 October 2013, at 161.

157. By 2015, the import volume of the subject goods will likely continue to increase, meaning more losses in sales and market share for the domestic industry.

158. As explained above, because of the time lag between contract award and UWM delivery/payment, domestic producers would have scheduled a significant portion of the production that would have accrued from projects lost to the subject goods for the period immediately after the POI. Instead, the evidence indicates that several domestic producers have thin order books for 2014 and beyond.¹⁸⁸ In an industry in which orders are placed 12 to 18 months prior to UWM delivery/payment, such an order and production backlog is an essential marker of ongoing viability and, in the current circumstances, an indicator of clearly imminent material injury to the domestic industry.

159. As production volumes and capacity utilization rates decrease, individual domestic producers will likely have to lay off workers and postpone capital investments. Mr. Neudorf of Ferguson and Mr. Chlumecky of CGC, among others, testified that, when there is unutilized capacity in this industry, lay-offs are necessary.¹⁸⁹ Having regard to the current order backlog for 2014, witnesses for at least four complainants stated that they anticipate the need for lay-offs.¹⁹⁰

Other Factors

160. The Tribunal has considered whether other market conditions are threatening to cause injury to the domestic industry. The evidence indicates that demand for UWMs in Western European and U.S. markets is forecasted to be stagnant.¹⁹¹ This, combined with the recently imposed U.S. anti-dumping and subsidizing duties on imports from China, suggests that the Canadian market may become an increasingly attractive destination for imports of the subject goods.

161. With regard to both intra-industry competition and fragmentation of the domestic industry, the Tribunal has already determined that these conditions have long existed, but did not cause injury to the domestic industry. In fact, the evidence indicates that domestic producers tend to offer bids that are only a few percentage points apart from each other, and with not nearly the magnitude of price undercutting seen with suppliers of the subject goods.¹⁹² Moreover, as noted earlier, until the appearance of the subject goods in the domestic market, the same core group of domestic producers enjoyed healthy margins.¹⁹³ Neither intra-industry competition nor market fragmentation is a new phenomenon, and there is no evidence to indicate that either factor will significantly intensify over the next 12 to 24 months. Thus, the Tribunal finds that neither intra-industry competition nor market fragmentation is threatening to cause injury.

162. The Tribunal has also considered whether any continuing adverse impacts from the recession of 2009 are threatening to cause injury. On this front, the Tribunal is satisfied that, while the recession created a brief period of reduced orders in 2009,¹⁹⁴ the domestic industry had overcome any negative effects of the recession by 2010.¹⁹⁵ Therefore, the Tribunal is of the view that there are no continuing impacts of the recession that are threatening to cause injury to the domestic industry.

188. *Transcript of In Camera Hearing*, Vol. 1, 7 October 2013, at 6, 48, 78; *ibid.*, Vol. 2, 8 October 2013, at 153, 213, 224, 236.

189. *Transcript of Public Hearing*, Vol. 2, 8 October 2013, at 137.

190. *Ibid.* at 150.

191. Exhibit NQ-2013-002-A-07 at tab 30, Vol. 11B.

192. *Transcript of Public Hearing*, Vol. 3, 9 October 2013, at 177.

193. *Transcript of In Camera Hearing*, Vol. 2, 8 October 2013, at 208, 214.

194. *Transcript of Public Hearing*, Vol. 1, 7 October 2013, at 25-26.

195. *Ibid.* at 25, 26; *Transcript of In Camera Hearing*, Vol. 2, 8 October 2013, at 212, 214; *Transcript of Public Hearing*, Vol. 3, 9 October 2013, at 171, 174.

163. Finally, with respect to the argument that a lack of product innovation in the domestic industry is threatening to cause injury, the Tribunal notes that, in his testimony, Mr. Dutton unequivocally stated that the domestic industry is “. . . perfectly capable of doing any kind of design that our architects may yearn for.”¹⁹⁶ As such, the Tribunal finds that there is no indication that a lack of product innovation is threatening to cause injury to the domestic industry.

164. In summary, the Tribunal is of the view that any injurious effects otherwise due to external market conditions, intra-industry competition, market fragmentation, continuing effects the recession or a lack of product innovation—whether considered separately or in combination—do not negate its conclusion that the dumping and subsidizing of the subject goods are threatening to cause injury to the domestic industry.

Conclusion

165. On the basis of the foregoing analysis, the Tribunal finds that the dumping and subsidizing of the subject goods are threatening to cause material injury to the domestic industry.

CONCLUSION

166. Pursuant to subsection 43(1) of *SIMA*, the Tribunal finds that the dumping and subsidizing of the subject goods have not caused injury but are threatening to cause injury to the domestic industry.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Daniel Petit
Daniel Petit
Member

196. *Ibid.* at 175.