



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## DETERMINATION AND REASONS

Preliminary Injury Inquiry  
No. PI-2012-005

Galvanized Steel Wire

*Determination issued  
Friday, March 22, 2013*

*Reasons issued  
Monday, April 8, 2013*

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IN THE MATTER OF a preliminary injury inquiry, pursuant to subsection 34(2) of the *Special Import Measures Act*, respecting:

**GALVANIZED STEEL WIRE ORIGINATING IN OR EXPORTED FROM THE  
PEOPLE'S REPUBLIC OF CHINA, THE STATE OF ISRAEL AND THE  
KINGDOM OF SPAIN**

**PRELIMINARY DETERMINATION OF INJURY**

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping of cold-drawn carbon or alloy steel wire, of solid cross section with an actual diameter of 1.082 mm (0.0426 inch) to 12.5 mm (0.492 inch), plated or coated with zinc or zinc alloy, whether or not coated with plastic, excluding flat wire, originating in or exported from the People's Republic of China, the State of Israel and the Kingdom of Spain and the subsidizing of the above-mentioned goods from the People's Republic of China have caused injury or are threatening to cause injury.

This preliminary injury inquiry follows the notification, on January 21, 2013, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods have caused injury or are threatening to cause injury.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Ann Penner  
Ann Penner  
Member

Daniel Petit  
Daniel Petit  
Member

Eric Wildhaber  
Eric Wildhaber  
Secretary

The statement of reasons will be issued within 15 days.

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Sacks Industrial Corp. Structa Wire Corp.	Kimberley L.D. Cook Rosemary J. Anderson Jeremie D. Beitel
Uniwire International, Ltd. Uniwire Trading LLC	Christopher J. Kent Andrew M. Lanouette
Moreda Riviere Trefilerias	Victoria Bazan
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## STATEMENT OF REASONS

### BACKGROUND

1. On January 21, 2013, following a complaint filed on March 23, 2012, by Tree Island Steel Ltd. (Tree Island), the President of the Canada Border Services Agency (CBSA) initiated investigations into the alleged injurious dumping of galvanized steel wire originating in or exported from the People's Republic of China (China), the State of Israel (Israel) and the Kingdom of Spain (Spain) and the alleged injurious subsidizing of galvanized steel wire originating in or exported from China (the subject goods).
2. On January 22, 2013, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.<sup>1</sup>
3. Two importers of the subject goods, Quincaillerie A. Karpas Ltd. (Karpas) and Structa Wire Corp. (Structa), and one producer of the subject goods, Moreda Riviere Trefilerias (MRT) of Spain, filed submissions opposing the complaint.
4. Other parties to this preliminary injury inquiry include ArcelorMittal Montreal Inc., Sacks Industrial Corp., Uniwire International Ltd., Uniwire Trading LLC, the Delegation of the European Union to Canada, MAX USA Corp. and Yehuda Welded Mesh Ltd. These parties did not file submissions with the Tribunal indicating their positions with respect to the complaint.
5. On March 22, 2013, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,<sup>2</sup> the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury.

### CBSA'S DECISION TO INITIATE INVESTIGATIONS

6. In accordance with subsection 31(1) of *SIMA*, the CBSA decided that there was evidence that the subject goods had been dumped and subsidized, as well as evidence that disclosed a reasonable indication that the dumping and subsidizing had caused injury or were threatening to cause injury.
7. The CBSA's period of investigation with respect to the alleged dumping was from October 1, 2011, to September 30, 2012. The following table shows the estimated margin of dumping and volume of dumped goods for each of the subject countries.<sup>3</sup> The CBSA was of the opinion that the estimated margins of dumping were not insignificant and that the estimated volumes of dumped goods were not negligible.<sup>4</sup>

<b>CBSA's Dumping Estimates</b>		
<b>Country</b>	<b>Estimated Margin of Dumping (as a percentage of export price)</b>	<b>Estimated Volume of Dumped Goods (as a percentage of total imports)</b>
China	28.2	29.5
Israel	43.1	4.1
Spain	49.4	7.5

1. C. Gaz. 2013.I.151.
2. R.S.C. 1985, c. S-15 [*SIMA*].
3. Tribunal Exhibit PI-2012-005-05, Administrative Record, Vol. 1D at 129.
4. *Ibid.*

8. The CBSA's period of investigation with respect to the alleged subsidizing was from January 1, 2011, to September 30, 2012. The CBSA was of the view that 100 percent of the subject goods from China had been subsidized with an estimated amount of subsidy equal to 19.1 percent of the export price.<sup>5</sup> Furthermore, the estimated amount of subsidy was not insignificant and the estimated volume of subsidized goods was not negligible.<sup>6</sup>

## **SUBMISSIONS ON INJURY**

### **Tree Island**

9. Tree Island submitted that the dumping and subsidizing of the subject goods had caused and were threatening to cause injury to the production of like goods in Canada. To support its claims, it provided evidence of increased volumes of imports of the subject goods, lost sales and market share, price erosion and suppression, capacity underutilization, reduced employment and a decline in revenues, margins and profits due to the dumping and subsidizing of the subject goods. Tree Island also submitted that the subject goods threatened to cause injury, but did not make detailed submissions on the matter.

### **Parties Opposed to the Complaint**

10. MRT focused on evidence from 2010 onwards, noting that, if the Tribunal were to proceed with an injury inquiry, the period of inquiry would not extend back to 2009. It submitted that the evidence on the record did not disclose a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury to the domestic industry. Indeed, MRT characterized the vast majority of the evidence provided by Tree Island as inadequate, in that the causal link between Tree Island's situation and the subject goods was far from evident. According to MRT, the only factor showing injury was the domestic producer's decline in financial performance—a decline that was due to other unrelated factors.

11. In addition, MRT argued that the evidence of injury provided by Tree Island was not representative of the domestic industry's overall performance and, therefore, was insufficient for the purposes of making a preliminary determination of injury. MRT also suggested that the Tribunal should not consider price erosion and lost sales allegations submitted by Tree Island that occurred outside the CBSA's periods of investigation, as there was no evidence that the subject goods were dumped and subsidized.

12. In its submissions, Structa argued that the subject goods should be divided into the following two classes: a "lower gauge product"; and "17/18 gauge product". For Structa, there was no indication that any dumped or subsidized "17/18 gauge product" had caused injury or retardation or was threatening to cause injury to the domestic industry.

## **ANALYSIS**

### **Legislative Framework**

13. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine whether there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to

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5. *Ibid.* at 134.

6. *Ibid.*

cause injury. In making its determination, the Tribunal takes into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*.<sup>7</sup>

14. The “reasonable indication” standard that applies in a preliminary inquiry is lower than the evidentiary threshold that applies in final injury inquiries under section 42 of *SIMA*. The evidence in question need not be “. . . conclusive, or probative on a balance of probabilities. . . .”<sup>8</sup> Nevertheless, simple assertions are not sufficient and must be supported by relevant evidence.<sup>9</sup>

15. In the present case, Tree Island alleged that the dumping and subsidizing have caused injury or are threatening to cause injury. No allegations were submitted with regard to retardation.<sup>10</sup>

16. Before examining the allegations of injury and threat of injury, the Tribunal must identify the domestically produced goods that are like goods in relation to the subject goods and the domestic industry that produces those goods. This preliminary analysis is required because subsection 2(1) of *SIMA* defines “injury” as “material injury to a domestic industry” and “domestic industry” as “. . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods . . . .”

### **Like Goods and Classes of Goods**

17. The Tribunal must conduct its preliminary injury inquiry on the basis of the CBSA’s product description. In this case, the CBSA defined the subject goods as cold-drawn carbon or alloy steel wire with certain characteristics, including a specific diameter range and excluding flat wire, originating in or exported from China, Israel and Spain. However, in order to assess whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or threaten to cause injury to domestic producers of like goods, the Tribunal must define the scope of the like goods in relation to the subject goods. It may also consider whether the subject goods constitute one or more classes of goods.

18. 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 characteristics of which closely resemble those of the other goods.

19. On the issues of “like goods” and “classes of goods”, the CBSA opined that galvanized steel wire produced by the domestic industry competes directly with, has the same end uses as, and can be substituted for the subject goods. In its view, the subject goods and like goods constitute only one class of goods.<sup>11</sup>

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7. S.O.R./84-927.

8. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

9. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* and Article 11 of the WTO *Agreement on Subsidies and Countervailing Measures* require an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping and subsidizing complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, to reject a complaint or terminate an investigation as soon as the investigating authority is satisfied that there is not sufficient evidence of either dumping or subsidizing, or injury to justify proceeding with the case and not to consider unsubstantiated assertions as sufficient evidence.

10. Subsection 34(2) of *SIMA* allows for a finding of a reasonable indication of “retardation”, which, according to subsection 2(1), is defined as “. . . material retardation to the establishment of a domestic industry.” Because, as will be discussed below, a domestic industry for galvanized steel wire already exists in Canada, “retardation” is not an issue in this preliminary injury inquiry.

11. Tribunal Exhibit PI-2012-005-05, Administrative Record, Vol. 1D at 124.



20. In determining the like goods and whether there is one or more classes of 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).<sup>12</sup>

21. Tree Island submitted that domestically produced galvanized steel wire, defined in the same manner as the subject goods, is identical or similar to the subject goods and, therefore, like goods in relation to the subject goods. Furthermore, Tree Island submitted that the subject goods constitute one class of goods.<sup>13</sup>

22. The opposing parties did not dispute that domestically produced galvanized steel wire, defined in the same manner as the subject goods, constitutes like goods in relation to the subject goods. In fact, there is no evidence on the record that would call into question either Tree Island's assertion or the CBSA's conclusion that galvanized steel wire produced in Canada and the subject goods are substitutable for one another and compete against one another in the marketplace. Accordingly, in the context of this preliminary injury inquiry, the Tribunal finds that galvanized steel wire produced in Canada that is of the same description as the subject goods is like goods.

23. On the issue of classes of goods, however, Structa submitted that the goods should be divided into two separate classes of goods, namely, the "17/18 gauge product" and the "lower gauge product".<sup>14</sup> Structa argued that the two categories have different physical characteristics, price, marketing methods, distribution channels, end uses and performance characteristics.

24. Specifically, Structa stated that the tensile break strength of the 17/18 gauge product is significantly lower due to its smaller diameter and requires a different and more costly production process than the lower gauge product. Moreover, the lower gauge product is considerably more expensive, on a price per length basis, than the 17/18 gauge product, and there is effectively no domestic distribution of the 17/18 gauge product because it is primarily produced for export to the United States. Structa further submitted that there is virtually no substitutability between the two categories, given that the lower gauge product has a multitude of end uses, whereas the 17/18 gauge product is used almost exclusively for the production of welded wire stucco laths.

25. Tree Island replied that the 17/18 gauge product referred to by Structa should not be treated as a separate class of goods. As a preliminary matter, Tree Island pointed out that, if Structa imports flat wire, as stated in its submission,<sup>15</sup> then these products are not subject goods.

26. Tree Island went on to argue that, if Structa does actually import the subject goods, there should be a single class of goods on the basis that galvanized steel wire products fall along a continuum of products ranging in size, chemistry and end use. In other words, Structa submitted that all products are manufactured through essentially the same production process with the same equipment.

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

13. Tribunal Exhibit PI-2012-005-03.01 (protected), Administrative Record, Vol. 2 at 13, 14.

14. Tribunal Exhibit PI-2012-005-06.03, Administrative Record, Vol. 3 at 1.

15. *Ibid.* at 4.

27. Contrary to Structa's claims, Tree Island pointed to evidence on the record showing that it produces goods within the size range<sup>16</sup> for which Structa seeks separate treatment. It also noted that the 17/18 gauge product is not limited to use in welded wire stucco laths but, in fact, has several end uses. Furthermore, Tree Island argued that the price levels for the 17/18 gauge product asserted by Structa corroborate the injurious price levels for thicker galvanized steel wire reported in the complaint, which Structa characterized as less costly to produce.

28. In order to decide whether there is more than one class of goods, the Tribunal must determine whether the alleged separate classes of subject goods constitute "like goods" to each other. If they do, they will be regarded as comprising one class of goods.<sup>17</sup> In considering this issue, the Tribunal typically looks at the same factors for determining like goods under subsection 2(1) of *SIMA*, as described above.

29. Notwithstanding Structa's submissions and on the basis of the existing record, the Tribunal is unable to conclude, at this preliminary stage, that there is more than one class of goods. Accordingly, for the purposes of determining whether there is a reasonable indication of injury, the Tribunal will consider that galvanized steel wire constitutes a single class of goods.

30. However, the Tribunal is of the view that there is evidence on the record which suggests that there may be more than one class of goods. The question of whether there could be more than one class of goods is an issue that will need to be fully addressed during an inquiry under section 42 of *SIMA*, should the CBSA conclude, in its preliminary determination, that the subject goods have been dumped or subsidized. In particular, the Tribunal considers that, in the context of an inquiry under section 42, there may be merit in assessing injury on the basis of the following two classes of goods: (1) 17/18 gauge product (diameter ranging from 1.082 mm to 1.41 mm); and (2) the remainder of the subject goods.

31. Consequently, the Tribunal will collect information on the above-noted potential classes of goods and will ask for additional submissions from parties on this issue in the context of an inquiry under section 42 of *SIMA*.

32. The Tribunal has also requested the CBSA to collect separate information on the dumping and subsidizing of the above two potential classes of goods.

### **Domestic Industry**

33. In its decision to initiate the investigations, the CBSA indicated that Tree Island accounted for a major proportion of known domestic production of like goods for the purposes of subsection 31(2) of *SIMA*.<sup>18</sup> The CBSA identified ArcelorMittal Dofasco Inc. (AMD), Bekaert Canada Ltd. (Bekaert), Davis Wire Ltd. (Davis) and Sivaco Wire Group (Sivaco) as other known domestic producers of like goods.<sup>19</sup> With the exception of Bekaert, which has chosen to remain neutral, all other producers confirmed to the CBSA that they support the complaint.

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16. In its reply, Tree Island submitted that confusion will arise should the Tribunal decide to rely on gauge to describe the subject goods because there is a wide range of gauge standards which tend to overlap. In particular, Tree Island noted an apparent discrepancy in the measurement system being employed in Structa's submission, since the suggested diameters to demarcate 17- and 18-gauge wire do not match the standards for these gauges under the American Steel & Wire Gauge system (i.e. 17 and 18 gauge range from 1.21 mm to 1.27 mm) as referred to by Tree Island in Tribunal Exhibit PI-2012-005-02.01, Administrative Record, Vol. 1 at 184.

17. *Leather Footwear* (27 December 2001), NQ-2001-003 (CITT) at 9.

18. Tribunal Exhibit PI-2012-005-05, Administrative Record, Vol. 1D at 124.

19. *Ibid.* at 120.

34. Tree Island identified itself as the largest domestic producer of galvanized steel wire.<sup>20</sup> Tree Island identified the following five other domestic producers of like goods: AMD, Bekaert, Davis, Sivaco and Oval International. For the purposes of the complaint, Tree Island included its production of galvanized steel wire for market sales only.

35. In opposing the complaint, MRT submitted that Tree Island is not representative of the domestic industry. Tree Island responded that its share of the domestic market was larger than that submitted by MRT. It suggested that the Tribunal's total apparent market estimate should be based on production for market sales only.

36. On the basis of the evidence on the record in the preliminary injury inquiry, the Tribunal finds that Tree Island, AMD, Bekaert, Davis Wire, Sivaco and Oval International constitute the domestic industry. In terms of volume production, Tree Island accounts, by itself, for a major proportion of the production of like goods in Canada.<sup>21</sup>

37. In this regard, the term "major" is construed as meaning "significant" rather than having the more precise mathematical sense of more than 50 percent.<sup>22</sup>

38. Applying this standard to the case at hand, the Tribunal finds that Tree Island's production amounts to a significant proportion of the total domestic production of like goods.<sup>23</sup> In other words, on the Tribunal's review of the evidence, Tree Island's production for market sales represents a sufficiently large share of the total domestic production of like goods. Therefore, its performance can reasonably be deemed representative of the domestic industry's performance as a whole, at least for purposes of the preliminary injury inquiry.

### Cumulation

39. In the context of a final injury inquiry under section 42 of *SIMA*, subsection 42(3) provides that the Tribunal must make a cumulative assessment of the injurious effects of both dumped and subsidized goods that are imported into Canada if the Tribunal is satisfied that certain conditions are met. Specifically, the Tribunal must be satisfied that the volume of dumped goods imported into Canada is not negligible and that an assessment of the cumulative effect of the subject goods would be appropriate taking into account the conditions of competition between the goods from any of the named countries, the other dumped or subsidized goods, and like goods.

40. While subsection 42(3) of *SIMA* deals with final injury inquiries, the Tribunal considers that it would be inconsistent not to cumulate the subject goods in a preliminary injury inquiry when the evidence available appears to justify cumulation.<sup>24</sup> In this case, the Tribunal is satisfied that there is sufficient evidence that the subject goods compete with each other and with the like goods in the domestic market. Moreover, the imports from each subject country are not negligible, as they have accounted for more than 3 percent of the total imports of galvanized steel wire into Canada since 2010. The Tribunal also notes that the parties opposed to the complaint have not requested that the Tribunal assess the effect of the imports from each subject country separately.

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20. Tribunal Exhibit PI-2012-005-03.01 (protected), Administrative Record, Vol. 2 at 9.

21. *Ibid.* at 90, 91; Tribunal Exhibit PI-2012-005-03.02 (protected), Administrative Record, Vol. 2B at 16.

22. *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (F.C.A.).

23. Tribunal Exhibit PI-2012-005-03.01 (protected), Administrative Record, Vol. 2 at 90-91; Tribunal Exhibit PI-2012-005-03.02 (protected), Administrative Record, Vol. 2B at 16.

24. See, for example, *Corrosion-resistant Steel Sheet* (2 February 2001), PI-2000-005 (CITT) at 4, 5.

41. Therefore, the Tribunal is satisfied that, taking into account the conditions of competition, there is sufficient evidence to conduct its preliminary injury analysis on the basis of a cumulative assessment of the impact of the subject goods.

### **Volume of Dumped and Subsidized Goods**

42. According to Tree Island, the absolute volume of imports of the subject goods from China increased by almost 60 percent from 2009 to 2011. During the first seven months of 2012, the absolute volume of Chinese imports exceeded the total volume of imports in 2010. Imports of the subject goods from Israel increased by over 70 percent from 2009 to 2010, but declined in 2011 as a result of Chinese competition. Imports of the subject goods from Spain increased by over 650 percent from 2009 to 2011.

43. MRT argued to the contrary, submitting that, from 2010 to 2011, there was only a small increase in the volume of subject goods, which did not negatively impact the domestic industry.

44. The import data compiled by the CBSA appear, at this preliminary stage, to support Tree Island's claim that there has been an increase in the volume of imports of the subject goods since 2009. The CBSA found that the absolute volume of imports of the subject goods increased in both 2010 and 2011. Imports from Spain and Israel declined in 2011, while imports from China continued to increase. Imports of the subject goods in the first nine months of 2012 exceeded total imports in each of 2009, 2010 and 2011. Overall, the volume of imports of the subject goods increased significantly since 2009.<sup>25</sup>

45. The CBSA also found that imports of the subject goods increased relative to the domestic production and domestic consumption of domestically produced goods. When expressed as a percentage of domestic production, the volume of imports of the subject goods increased from 2009 to 2010 and remained steady in 2011. In the first nine months of 2012, the relative volume of imports of the subject goods was greater than in each of the preceding three years.<sup>26</sup>

46. When considering the volume of subject goods relative to the consumption of like goods, the Tribunal compares imports of the subject goods to domestic sales of domestically produced goods. The Tribunal did not include galvanized steel wire produced by Tree Island for further internal processing in its estimate of sales of domestically produced goods, as this galvanized steel wire does not enter the Canadian market prior to being used in the production of other products.

47. When expressed as a percentage of domestic consumption, or sales, of domestically produced goods, the relative volume of imports of the subject goods increased from 2009 to 2010 and then declined in 2011, albeit to a relative volume greater than in 2009. In the first nine months of 2012, the relative volume of imports of the subject goods was greater than in each of the preceding three years.<sup>27</sup>

48. In light of the above, the Tribunal finds that the evidence discloses a reasonable indication that, from 2009 to the first nine months of 2012, the absolute volume of imports of the subject goods increased significantly. In addition, the volume of imports of the subject goods increased significantly relative to both the volume of domestic production and the volume of domestic consumption of the domestically produced goods.

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25. Tribunal Exhibit PI-2012-005-03.02 (protected), Administrative Record, Vol. 2B at 18.

26. *Ibid.* at 16, 18.

27. *Ibid.* at 16, 18, 20.

### Effect on the Price of Like Goods

49. Tree Island submitted that prices of the subject goods declined in 2009 and 2010 as a result of reduced prices for steel wire rod, the major input in galvanized steel wire production. It noted, however, that average import prices of the subject goods in 2011 were similar to those in 2010, despite a significant increase in the cost of steel wire rod in 2011. Tree Island also submitted that from 2009 to 2011, the average prices of the subject goods were consistently below the average prices of galvanized steel wire from non-subject countries, including the United States.

50. Tree Island submitted that it experienced price erosion and price suppression as a result of the prices of the subject goods. More specifically, it submitted that it had to lower prices in order to maintain sales in the face of import competition and was unable to raise prices in response to increasing costs for steel wire rod and zinc, particularly in 2011. Tree Island submitted four specific injury allegations of price erosion caused by the subject goods.

51. MRT submitted that Tree Island failed to demonstrate a declining trend in the average prices of the subject goods. MRT noted that, between 2010 and 2011, the average prices of imports from China and Israel increased, while the average prices of imports from Spain declined by only 1 percent.

52. In addition, MRT submitted that, contrary to claims of price erosion, Tree Island's average unit prices for sales from domestic production have increased since 2010. With respect to price suppression, MRT argued that the increase in Tree Island's average cost of goods sold per tonne between 2010 and 2011 was only slightly higher than the increase in its unit selling price. Therefore, MRT submitted that any degree of price suppression that Tree Island might have suffered was immaterial.

53. Finally, MRT submitted that Tree Island's evidence did not include the data on price suppression relating to the remaining domestic producers that accounted for a substantial portion of sales of like goods and was therefore not indicative of price suppression suffered by the domestic market as a whole.

54. The Tribunal notes that the preliminary import unit values of the subject goods estimated by Tree Island<sup>28</sup> do not include delivery costs to Canada. Further, in the case of imports by distributors that are sold in competition with domestically produced goods, an additional markup would be applied by distributors prior to selling the goods. Although the import unit values are not directly comparable to the domestic producers' selling prices, there is a reasonable indication that prices of the subject goods may have been lower than prices of the domestically produced goods.

55. Data submitted by Tree Island on the average cost of wire rod<sup>29</sup> show that the average cost increased dramatically from 2010 to 2011. The average unit value of imports of the subject goods, however, increased by only 5 percent.<sup>30</sup> Similarly, Tree Island's selling prices increased only slightly from 2010 to 2011.<sup>31</sup> The Tribunal recognizes that the price of inputs varied greatly over the period from 2010 to 2011 and that it is unknown at which prices inputs were acquired. Indeed, the evidence does not demonstrate that Tree Island's direct material costs on a per tonne basis increased to the extent of the increase in the price of wire rod.<sup>32</sup> The Tribunal finds however that the evidence demonstrates that the cost of wire rod increased

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28. Tribunal Exhibit PI-2012-005-2.01A, Administrative Record, Vol. 1A at 18.

29. Tribunal Exhibit PI-2012-005-3.01A (protected), Administrative Record, Vol. 2A at 92, 98-100.

30. Tribunal Exhibit PI-2012-005-2.01A, Administrative Record, Vol. 1A at 18.

31. Tribunal Exhibit PI-2012-005-3.01 (protected), Administrative Record, Vol. 2 at 90.

32. Tribunal Exhibit PI-2012-005-3.01A (protected), Administrative Record, Vol. 2A at 92, 98-100, 167.

from 2010 to 2011 and provides a reasonable indication that prices of the subject goods may have prevented Tree Island from raising its prices, resulting in price suppression.

56. Tree Island provided a number of price erosion and lost sales allegations, all of which claimed that prices of the subject goods undercut those of Tree Island's domestically produced goods. In the allegations of price erosion, Tree Island reduced its selling prices following offers of the subject goods that undercut its own offers.<sup>33</sup>

57. The Tribunal notes that there is little evidence to support the claims of price undercutting and price erosion made by Tree Island in its injury allegations. However, given that import values of the subject goods were lower than those of goods from non-subject countries, it is reasonable to expect that the subject goods were a price leader in the market and would have also undercut prices of domestically produced goods. Therefore, the Tribunal considers that there is a reasonable indication that the subject goods undercut the domestically produced goods resulting in price erosion. The Tribunal notes that it will be better able to test the validity of Tree Island's price erosion allegations in the context of an inquiry under section 42 of *SIMA*.

58. On the basis of the foregoing, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have resulted in price erosion and price suppression.

### **Impact on the Domestic Industry**

59. Tree Island claimed that it had been injured in the form of lost sales and reduced market share, which, in turn, resulted in a decline in revenues and gross and net margins, capacity underutilization and the subsequent closure of one of its three coating lines. More specifically, Tree Island alleged that, despite a considerable improvement in Canadian demand for galvanized steel wire since 2009, sales from domestic production were only marginally above 2009 levels and that domestic producers were losing market share to the subject goods. Tree Island submitted that, as a result, its gross margins fell, notwithstanding its efforts to reduce costs associated with producing the like goods.

60. To support its claims of lost sales, Tree Island submitted a number of specific injury allegations resulting from price undercutting by the subject goods.

61. MRT submitted that the evidence on the record does not disclose material injury in the form of lost sales or declining market share. It noted that there was an increase in sales from domestic production in 2011 compared to 2010 and that the domestic industry experienced a slight gain in market share. MRT also argued that the increase in market share for the subject goods appeared to have occurred at the expense of non-subject goods.

62. MRT also argued that there was no correlation between the subject goods and Tree Island's financial performance, since the latter was at its worst in 2009, when import volumes of the subject goods were the lowest, and improved in 2010 despite an increase in imports.

63. Finally, MRT noted that Tree Island's capacity utilization and direct employment had improved since 2010. Therefore, it submitted that the evidence on the record did not disclose a reasonable indication of injury in the form of reduced capacity utilization or decreased direct employment.

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33. *Ibid.* at 111-36.

64. The preliminary data show that domestic production of galvanized steel wire has declined since 2009, although production improved in 2011 compared to 2010.<sup>34</sup> The Tribunal notes however that Tree Island's production for domestic market sales increased in each year since 2009. The loss in sales from domestic production is primarily attributed to other domestic producers, as estimated by the CBSA.

65. The Tribunal did not include Tree Island's domestic production for further internal processing in the total apparent market for galvanized steel wire, as these goods do not enter the Canadian market as galvanized steel wire.

66. The preliminary data show that the apparent market for galvanized steel wire has increased since 2009, as have sales from domestic production.<sup>35</sup> The Tribunal observes however that, when the market recovered in 2010, sales from domestic production continued to decline, while sales of the subject goods increased substantially. The preliminary data also show that the domestic producers have lost market share since 2009, while the subject goods have gained market share.

67. Tree Island provided a number of examples of lost sales and alleged that the losses occurred due to the prices of the subject goods.<sup>36</sup> The Tribunal notes that only 3 of 34 lost sales allegations were supported by documentary evidence. On the basis of its preliminary estimate of the apparent market for galvanized steel wire, however, the Tribunal finds it reasonable to conclude that Tree Island would have lost sales to the subject goods, given that imports of the subject goods were increasing, while sales from domestic production were declining.

68. With respect to MRT's submissions concerning the lack of documentary evidence to support Tree Island's injury allegations with respect to price erosion and lost sales, while it is true that there is little documentary evidence to support the account specific allegations, the Tribunal notes that, in a preliminary injury inquiry, it need not be convinced that the evidence is conclusive or probative on a balance of probabilities in order to conclude that there is a reasonable indication of injury. As such, the Tribunal finds that, on balance, the injury allegations submitted by Tree Island, along with other preliminary evidence on the record, are sufficiently supported to warrant further investigation in the context of an inquiry pursuant to section 42 of *SIMA*.

69. MRT also submitted that the Tribunal should not consider injury allegations that occurred prior to the CBSA's periods of investigation. MRT referred to the Tribunal's determination in a previous preliminary injury inquiry to support its argument.<sup>37</sup> The Tribunal notes however that the paragraph referenced by MRT discusses the fact that certain projects included in the complainant's injury allegations in that previous case were not submitted to the CBSA for use in determining project-specific margins of dumping and amounts of subsidy. According to the Tribunal, this resulted in an evidentiary gap, since there was no evidence on the record that the subject goods, in the case of certain injury allegations, were dumped or subsidized.

70. However, the referenced paragraph does not indicate that, as a matter of law, injury allegations occurring outside the CBSA's periods of investigation or for which there is no evidence that the subject goods were dumped or subsidized are irrelevant and cannot be considered by the Tribunal in a preliminary

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34. Tribunal Exhibit PI-2012-005-3.01 (protected), Administrative Record, Vol. 2 at 90-91; Tribunal Exhibit PI-2012-005-3.02 (protected), Administrative Record, Vol. 2B at 16.

35. Tribunal Exhibit PI-2012-005-3.02 (protected), Administrative Record, Vol. 2B at 20; Tribunal Exhibit PI-2012-005-3.01 (protected), Administrative Record, Vol. 2 at 90, 91.

36. Tribunal Exhibit PI-2012-005-3.01A (protected), Administrative Record, Vol. 2A at 111-36.

37. *Unitized Wall Modules* (14 September 2012), PI-2012-004 (CITT).

injury inquiry. Indeed, in *Unitized Wall Modules*, the Tribunal went on to analyze the injury allegations under a second approach which *assumed* that the subject goods proposed in each of the projects included in the injury allegations were dumped and subsidized. In other words, the Tribunal ignored the aforementioned evidentiary gap and proceeded to examine whether the injury allegations supported the domestic industry's claim of lost sales and price depression caused by the dumping or subsidizing of the goods.

71. Moreover, as submitted by Tree Island in its reply submission, there is authority for the proposition that the Tribunal's inquiry is not limited to the examination of injury caused by dumping found during the period of investigation.<sup>38</sup> The Tribunal, therefore, finds that it is not precluded from considering the injury allegations submitted by Tree Island that occurred outside the CBSA's periods of investigation. While, in themselves, these allegations may not be sufficient to disclose a reasonable indication of injury, they are generally consistent with the other evidence on the record which suggests that the domestic industry experienced injury as a result of the dumped and subsidized goods.

72. Tree Island's capacity utilization and productivity for galvanized steel wire declined in 2010, but increased again in 2011 to be above 2009 levels. Capacity utilization in the first half of 2012 was slightly lower than in the first half of 2011, while productivity in the first half of 2012 exceeded that observed in the first half of 2011.<sup>39</sup>

73. Tree Island's direct employment, hours worked and wages paid all declined in 2010, but improved in 2011. With the exception of total wages paid, however, these indicators remained below 2009 levels. Performance with respect to these indicators in the first half of 2012 was below that in the first half of 2011.<sup>40</sup>

74. Tree Island's financial performance on galvanized steel wire produced for domestic market sales improved in 2010, then declined in 2011. Its financial results in the first half of 2012 also deteriorated relative to the first half of 2011.<sup>41</sup>

75. Although Tree Island's performance has varied since 2009, the evidence shows that Tree Island experienced a decline in a number of performance indicators in 2010, the year that coincided with the greatest increase in import volumes of the subject goods. The Tribunal finds that the evidence discloses a reasonable indication that the domestic industry has experienced injury as a result of the dumped and subsidized goods.

### **Other Factors**

76. Tree Island submitted that the recession commencing at the end of 2008 was a factor in the decline in Canadian demand for galvanized steel wire in 2009 and 2010 and a corresponding reduction in prices by the importers of the subject goods. However, it submitted that, while the market had improved since that time, prices remained depressed because of the low-priced imports of dumped and subsidized goods.

77. Structa and Karpat submitted that the injury experienced by Tree Island was due to a number of other factors, such as the costs of transporting domestically produced galvanized steel wire across Canada compared to the cost of importing and Tree Island's method of production and product mix. Moreover, MRT submitted that Tree Island's claim that the recent finding of no injury on imports of Chinese

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38. *Japan Electrical Manufacturers Association v. Anti-dumping Tribunal*, [1982] 2 F.C. 816.

39. Tribunal Exhibit PI-2012-005-3.01A (protected), Administrative Record, Vol. 2A at 171-72.

40. *Ibid.* at 171.

41. *Ibid.* at 165-66.



galvanized steel wire in the United States will enhance Chinese access to the Canadian market was questionable.

78. For the purposes of this preliminary injury inquiry, the Tribunal finds that the limited evidence on the record regarding the impact that other factors might have had on the domestic industry is insufficient to negate the Tribunal's conclusion that the overall evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury. In the context of an inquiry under section 42 of *SIMA*, the Tribunal will be in a position to examine these specific questions or other factors and their relative importance.

## CONCLUSION

79. On the basis of the foregoing analysis, the Tribunal determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Ann Penner  
Ann Penner  
Member

Daniel Petit  
Daniel Petit  
Member