



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2012-006

Unitized Wall Modules

*Determination issued
Friday, May 3, 2013*

*Reasons issued
Tuesday, May 21, 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:

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

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 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 are threatening to cause injury.

This preliminary injury inquiry follows the notification, on March 4, 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.

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.

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Flynn Canada Ltd.
Inland Glass & Aluminum Ltd.
Oldcastle Building Envelope
Sota Glazing Inc.
Starline Architectural Windows Ltd.
State Window Corporation
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STATEMENT OF REASONS

BACKGROUND

1. This preliminary injury inquiry concerns a complaint filed by 10 domestic producers¹ of unitized wall modules.²
2. The complainants alleged that 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 (the subject goods), have caused or are threatening to cause material injury to the domestic industry.
3. The President of the Canada Border Services Agency (CBSA) initiated dumping and subsidy investigations in respect of the subject goods on March 4, 2013. On March 5, 2013, the Canadian International Trade Tribunal (the Tribunal) commenced this preliminary injury inquiry.³
4. This is the second time that the Tribunal has conducted a preliminary injury inquiry in respect of unitized wall modules. On September 14, 2012, the Tribunal concluded that the evidence in a first complaint by domestic producers of unitized wall modules did not disclose a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or retardation or were threatening to cause injury.
5. As with the first complaint, the present complaint is opposed by Jangho Curtain Wall Canada Co., Ltd. (Jangho), an importer, and Yuanda Canada Enterprises Ltd. and Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. (collectively, Yuanda), an importer and exporter respectively.
6. On May 3, 2013, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,⁴ 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

7. In accordance with subsection 31(1) of *SIMA*, the CBSA was of the opinion 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. Accordingly, the CBSA initiated dumping and subsidy investigations on March 4, 2013.

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1. Allan Window Technologies (Allan), Ferguson Neudorf Glass Inc. (Ferguson), Flynn Canada Ltd. (Flynn), Inland Glass & Aluminum Ltd. (Inland), Oldcastle Building Envelope (Oldcastle), Sota Glazing Inc. (Sota), Starline Architectural Windows Ltd. (Starline), State Window Corporation (State), Toro Aluminum/Toro Glasswall Inc. (Toro) and Windsor Glass Company (1992) Ltd. (Windsor) (the complainants).
 2. Tribunal Exhibit PI-2012-006-02.01, Administrative Record, Vol. 1 at 116-26, 237-38; Tribunal Exhibit PI-2012-006-05, Administrative Record, Vol. 1D at 117. The complainants are supported by 10 additional domestic producers. Three other domestic producers of unitized wall modules, Aluminum Window Designs Ltd., Basic Structures Engineering and Zimmcor are identified in the complaint as also supporting the complainants, but did not provide letters of support.
 3. C. Gaz. 2013.I.550.
 4. R.S.C. 1985, c. S-15 [*SIMA*].

8. The CBSA's period of investigation (POI) with respect to the alleged dumping and subsidizing was from January 1, 2011, to December 31, 2012.

9. The CBSA was of the view that all the subject goods imported into Canada during the POI had been dumped, with an estimated overall margin of dumping of 28 percent, expressed as a percentage of the export price of the subject goods.⁵

10. With respect to the alleged subsidizing, the CBSA was of the view that 72 percent of the subject goods imported into Canada during the POI had been subsidized, with an estimated overall amount of subsidy equal to 18 percent, expressed as a percentage of the export price of the subject goods.⁶

11. Further, the CBSA was of the opinion that the estimated margin of dumping and amount of subsidy were not insignificant and that the estimated volumes of dumped goods and subsidized goods were not negligible.⁷

12. The CBSA also was able to estimate margins of dumping and amounts of subsidy in respect of several specific projects on which the complainants had submitted bids in competition with suppliers of the subject goods. These project-specific estimates ranged from well below to well above the overall estimates.

SUBMISSIONS ON INJURY AND THREAT OF INJURY

Complainants

13. In support of their claim that the dumping and subsidizing of the subject goods had caused injury, the complainants provided evidence of increased volumes of imports of the subject goods; lost sales and market share; price depression and suppression; and reduced capacity utilization, employment, revenue, gross margin and profits. The complainants emphasized allegations of project-specific price undercutting and price depression rather than allegations derived from aggregate import and price data.

14. To support their claim that the dumping and subsidizing of the subject goods threatened to cause injury, they alleged that import volumes of the subject goods would continue to increase and that declining profitability would continue to be reflected in their financial results due to a time lag between contract award and delivery. The complainants also contended that expected increases in capacity for the production of the subject goods would result in the availability of disposable capacity for export markets, including for Canada, which would be attractive in view of its relatively strong construction market.

Parties Opposed to the Complaint

15. Jangho and Yuanda argued that the evidence did not establish a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury.

16. In particular, Jangho submitted that:

- the evidence showed an increase in domestic production, despite the presence of the subject goods in the market;

5. Tribunal Exhibit PI-2012-006-05, Administrative Record, Vol. 1F at 126.

6. *Ibid.* at 139.

7. *Ibid.* at 126, 139.

- the value of sales of the subject goods and of domestically produced unitized wall modules had increased throughout the period of inquiry, with the total value of sales of the domestic product growing faster than that of the subject goods; and
- the lost sales claimed by individual complainants could not be considered as injury to the domestic industry as a whole, as many of the individual complainants were not invited or qualified to tender bids on the contracts.

17. Yuanda submitted that the complainants' evidence as it related to market data was unreliable and that there were numerous discrepancies between the evidence submitted in the first complaint⁸ and the current preliminary inquiry. In particular, Yuanda identified changes to the data related to the imports from the United States. Yuanda further submitted that the complainants' evidence did not accurately capture the total Canadian market, as there is a lack of evidence relating to the domestic producers' own imports of the subject goods, as well as imports of unitized wall modules from third countries, and the domestic producers' exports.

18. As to the complainants' submissions regarding threat of injury, Jangho submitted that there is little evidence supporting the complainants' forecast that the demand for the subject goods would decline in the near future. Yuanda submitted that there has been an economic recovery since 2011 and questioned the lack of evidence regarding market data from mid-2012 onwards.

ANALYSIS

Legislative Framework

19. 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 the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury."

20. In the present case, it is alleged that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury; retardation is not alleged.

21. Subsection 2(1) of *SIMA* defines "injury" as "material injury to a domestic industry". The expression "domestic industry" means "... 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..." The expression "like goods", in relation to dumped or subsidized goods, means goods that are identical in all respects to the dumped or subsidized goods or, in the absence of any such goods, goods the uses and other characteristics of which closely resemble those of the dumped or subsidized goods.

22. Subsection 2(1.5) of *SIMA* provides that "... the dumping or subsidizing of goods shall not be found to be threatening to cause injury or to cause a threat of injury unless the circumstances in which the dumping or subsidizing of goods would cause injury are clearly foreseen and imminent."

8. *Unitized Wall Modules* (14 September 2012), PI-2012-004 (CITT) [*Unitized Wall Modules I*].

23. It is not sufficient that dumping or subsidizing contribute to material injury to a domestic industry or to a threat of material injury. The dumping or subsidizing itself must have caused, or be threatening to cause, material injury.⁹

24. The expression “reasonable indication” is not defined in *SIMA*, but it is understood to mean that the evidence need not be “. . . conclusive, or probative on a balance of probabilities”¹⁰ Rather, the evidence must sufficiently support the alleged injury, retardation or threat of injury to warrant investigation.¹¹ This test is passed where:

- the evidence is relevant, accurate and adequate; and
- in light of the evidence, the allegations stand up to a somewhat probing examination, even if the theory of the case might not seem convincing or compelling.¹²

25. In making its preliminary determination, the Tribunal takes into account the injury and threat of injury factors that are prescribed in section 37.1 of the *Special Import Measures Regulations*,¹³ including the import volumes of the dumped and subsidized goods, the effects of the dumped or subsidized goods on the price of like goods, the resulting economic impact of the dumped or subsidized goods on the state of the domestic industry, and—if injury or threat of injury is found to exist—whether a causal relationship exists between the dumping or subsidizing of the goods and the injury or threat of injury.

Preliminary Issue—Overlap of Product Definitions

26. Jangho submitted that the CBSA’s product definition overlaps with the Tribunal’s findings in *Aluminum Extrusions*¹⁴ insofar as those findings concern unassembled unitized wall modules, which are derived from aluminum extrusions. Jangho also submitted that the reference to unitized wall modules “with or without fasteners” in the CBSA’s product definition potentially overlaps with the Tribunal’s findings in *Certain Fasteners*.¹⁵

27. The application (or “stacking”) of multiple dumping or subsidy findings to the same goods would not be permissible, as any injurious price effects would be presumed to have been remedied by the initial application of antidumping and/or countervailing duties to those goods.

9. *Oil Country Tubular Goods* (23 March 2010), NQ-2009-004 (CITT) at paras. 210-16; *Xanthates of All Grades in Dry or Liquid Forms, Excluding Cellulose Xanthates* (4 March 2003), NQ-2002-003 (CITT) at 11; *Thermoelectric Containers* (11 December 2008), NQ-2008-002 (CITT) at para. 144; *Machine Tufted Carpeting* (7 April 1993), CDA-92-1904-02 (Binational Panel).

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

11. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (WTO *Anti-dumping Agreement*) 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 injury to justify proceeding with the investigation, and not to consider unsubstantiated assertions as sufficient evidence.

12. *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 86.

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

14. (17 March 2009), NQ-2008-003 (CITT).

15. (7 January 2005), NQ-2004-005 (CITT), as continued with amendment in *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) [*Fasteners*].

28. However, the *Aluminum Extrusions* finding excludes goods that have been further processed (e.g. precision-cut, machined, punched and drilled), to such an extent that they no longer retain the nature and physical characteristics of an aluminum extrusion, but have become a different finished product.¹⁶ The Tribunal is satisfied that unitized wall modules are further processed to the extent that they are not covered by the *Aluminum Extrusions* finding. Furthermore, the Tribunal is confident that a customs officer would not confuse a unitized wall module for a fastener or levy *SIMA* duties on fasteners affixed to unitized wall modules. Indeed, Jangho submitted no evidence that the CBSA has been levying *SIMA* duties on unitized wall modules in relation to either the *Aluminum Extrusions* or *Fasteners* findings.¹⁷

Like Goods and Classes of Goods

29. While the Tribunal must conduct its preliminary injury inquiry on the basis of the CBSA's product definition, the Tribunal must define the scope of the like goods in relation to the subject goods 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 the domestic producers of like goods. For this purpose, the Tribunal may also consider whether the subject goods constitute one or more classes of goods.

30. 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.

31. 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).¹⁸

32. There appeared to be no dispute among the parties that domestically produced unitized wall modules constitute like goods in relation to the goods in the CBSA's product definition.

33. Yuanda and Jangho submitted that unitized wall modules comprise two classes of goods: unitized curtain wall modules and unitized window wall modules. In addition, Yuanda submitted that "stick curtain wall and fixed-point curtain wall" were like goods to unitized curtain wall modules¹⁹ notwithstanding the exclusion of such systems from the CBSA's definition of the subject goods.

34. On the first point, Yuanda and Jangho emphasized physical differences, notably, that curtain walls are outer coverings while window walls are installed between floor slabs, as well as differences in prices, end uses and the manner in which the industry is structured. According to them, there is a domestic curtain wall industry and a domestic window wall industry, and only some domestic producers make both, but there is no "unitized wall modules" industry as such.

35. On the second point, Yuanda argued that stick and fixed-point systems and unitized curtain walls are manufactured by many of the same domestic producers and many projects call for a mix of these goods.

16. *Aluminum Extrusions* at paras. 95-96.

17. The *Aluminum Extrusions* findings have been in place for over four years. The *Fasteners* findings have been in place for almost a decade.

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

19. Tribunal Exhibit PI-2012-006-08.01, Administrative Record, Vol. 3 at para. 22.

36. For their part, the complainants emphasized that curtain walls and window walls have the same principal components, serve the same application (i.e. envelop buildings), are made using the same methods, are nearly identical in appearance and are sold through the same distribution channels. They submitted that, unlike unitized wall modules, stick and fixed-point systems could not be used in medium or high-rise buildings due to installation limitations.

37. Given the limited information available at this preliminary stage, the Tribunal is unable to conclude that there are one or two classes of subject goods or that the like goods are limited to domestically produced unitized curtain wall modules and unitized window wall modules. Therefore, for the purposes of determining whether there is a reasonable indication of injury or threat of injury, the Tribunal will treat unitized wall modules as constituting a single class of goods, with stick and fixed-point systems not being like goods.

38. However, the arguments made in support of two classes of goods (i.e. curtain wall and window wall modules), as well as the arguments for treating stick and fixed-point systems as like goods, merit further consideration during an inquiry under section 42 of *SIMA* and, should the CBSA make a preliminary determination of dumping or subsidizing, the Tribunal will collect data and solicit submissions from parties on these issues. The Tribunal therefore asks the CBSA to collect separate information in respect of the two potential classes of goods, being curtain wall and window wall modules.

Domestic Industry

39. While Yuanda and Jangho have raised some doubt as to whether the complainants have downplayed the importance or activities of certain other domestic producers, on the basis of the evidence filed in this preliminary inquiry the Tribunal is satisfied that the complainants' share of domestic production of unitized wall modules constitutes a major proportion of the total production of like goods in Canada.²⁰

40. The Tribunal will further examine this issue during any inquiry under section 42 of *SIMA*, especially if the Tribunal concludes that there are in fact two classes of goods, which would imply the existence of two domestic industries rather than one.

Cross-cumulation

41. Yuanda submitted that the impact of the dumping should be assessed separately from the impact of the subsidizing. However, *SIMA* does not prohibit such "cross-cumulation". Moreover, it is the Tribunal's longstanding view that it is not realistically possible to isolate the effects caused by dumping from those caused by subsidizing as they are too closely intertwined to reasonably allocate discrete portions to the dumping and the subsidizing respectively.²¹

20. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2, Attachment 19 at 117.

21. See, for example, *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at paras. 75-77; *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at 8; *Copper Pipe Fittings* at para. 72; *Certain Grain Corn* (7 March 2001), NQ-2000-005 (CITT) at para. 48.

Volume of Dumped and Subsidized Goods

42. According to the CBSA's FIRM data,²² the absolute value of imports from China increased by 45 percent from 2010 to 2011 and 16 percent over the 2010 to H1 2012 period.²³ However, the value of imports decreased by 20 percent in 2012.

43. The value of subject imports, which increased from 3 percent in 2010 to 5 percent in 2011, and then declined to 3 percent in 2012, was stable relative to the value of production of like goods.²⁴ The value of subject imports relative to the value of consumption of the like goods followed a similar trend, beginning and ending the period at approximately 3 percent.

44. While the evidence indicates that there was a significant absolute increase in the value of imports of the subject goods from 2010 to H1 2012, the trend seems to have reversed in the most recent portion of that period. Furthermore, the increase was modest relative to the value of domestic production and consumption.²⁵

Effect on the Price of Like Goods

45. The complainants' estimates of the average unit price of like goods and the average unit price of subject goods²⁶ show that the average unit price of subject imports was 33 percent below the average unit price of like goods in 2009 and 2010. However, the evidence discloses that the average unit price of subject imports was 38 percent above the average unit price of like goods in 2011 and 27 percent above the average unit price of like goods in H1 2012.

46. With respect to price erosion, the CBSA concluded that the complainants' allegations were well supported and that the price erosion was reasonably linked to the allegedly dumped and subsidized imports.²⁷ The Tribunal finds no reason to conclude differently.

47. The complainants submitted that they had experienced price suppression due to increased costs of raw materials and cost increases resulting from the decline in shipment volumes (i.e. losses of economies of scale), which have not been recovered through price increases.²⁸ However, the evidence discloses that the complainants' per-unit costs of goods sold actually declined by 3 percent between 2009 and H1 2012. Therefore, the Tribunal shares the CBSA's view that the claim of price suppression is not adequately supported.

22. Tribunal Exhibit PI-2012-006-03.02 (protected), Administrative Record, Vol. 2B at 18.

23. H1 refers to the first half (January to June) of the indicated year.

24. Paragraph 37.1(1)(a) of the *Regulations* prescribes examination of the "volume of dumped or subsidized goods . . . relative to the production or consumption of like goods." The Tribunal has compared the value of imports provided by the CBSA to the value of production as reported by the complainants.

25. There appeared to be certain inconsistencies in the reporting of production, capacity utilization and sales data on a value and per-metre-squared basis.

26. These estimates were reported to be based upon industry market intelligence. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2, Attachment 6.

27. Tribunal Exhibit PI-2012-006-05, Administrative Record, Vol. 1F at 140.

28. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2 at paras. 206, 238-40, Attachment 7 at 115.

48. That said, the complainants submitted that, given the customized nature of unitized wall modules, average selling prices are not the most reliable basis for assessing the price effects of the subject goods. Jangho concurred.²⁹

49. These assertions are supported by the significant unit price differences between curtain wall and window wall modules, as discussed above in the context of potential classes of goods. These differences in unit prices, along with potential differences in product mix, can distort comparisons of aggregate average prices.

50. Indeed, the complainants' case is largely based on project-specific allegations of lost sales through price undercutting and price depression. These injury allegations are examined more closely below.

Project-specific Allegations and Causation

51. The complainants alleged that, during the POI, they lost 21 projects and had to lower their prices to win seven other projects, due to the dumping or subsidizing of the subject goods. They estimate the value of these lost sales at almost 20 percent of gross sales over the 2009 to 2011 period.³⁰

52. Jangho and Yuanda submitted that the allegations of lost sales are flawed because they lack basic information and contain fatal discrepancies. In addition, Jangho contended that, these allegations should only be considered with respect to the individual companies.³¹

53. In reply, the complainants argued that the information submitted in the complaint was more than sufficient to provide a reasonable indication of injury. The complainants further noted that, notwithstanding the fact that the vast majority of the lost sales allegations related to sales by Jangho and Yuanda, neither provided any evidence to refute the allegations made.

54. In examining the allegations of lost sales made by the complainants, the Tribunal applied three analytical approaches (discussed in greater detail below) to two categories of projects: 10 projects for which the CBSA estimated project-specific margins of dumping and amounts of subsidy, and projects for which the CBSA did not estimate margins of dumping and amounts of subsidy.

Lost Sales Projects Examined by the CBSA

55. With respect to the 10 projects for which the CBSA estimated project-specific margins of dumping and amounts of subsidy, the Tribunal, under the first analytical approach, considered the normal value of the exports of the subject goods from China, as estimated by the CBSA. The Tribunal added estimates of shipping and selling costs in Canada³² to this FOB China normal value and compared the total to the value of the lowest initial domestic bid.³³ Where the initial quotation provided by a domestic producer was lower than the estimated "normal value" bid by the supplier of the subject goods, the Tribunal considered this to

29. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2 at 15-16; Tribunal Exhibit PI-2012-006-08.02, Administrative Record, Vol. 3A at para. 10.

30. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2 at para. 236, Attachment 7 at 115.

31. Tribunal Exhibit PI-2012-006-08.02, Administrative Record, Vol. 3A at para. 91.

32. Shipping and selling costs in Canada were estimated as the difference between the FOB export value of the goods reported by the CBSA and actual selling value in Canada reported by the complainants.

33. Several projects were bid upon by multiple domestic producers. This approach therefore considers the most competitive initial bid of any of the complainants. Where request for proposal specifications were revised by the developer or architect, the revised bids were used.

constitute a reasonable indication that the domestic producer would have likely won the contract but for the dumping and subsidizing of the subject goods.

56. Using this approach, only one of the 10 lost sales allegations seems supportable.³⁴

57. The second analytical approach applied by the Tribunal differs from the first only in that the amounts of subsidy by project, as estimated by the CBSA, were also added to the “normal value” bid values calculated under the first approach. Under this second approach, if the initial quotation by a domestic producer was lower than the adjusted bid value of the subject goods, the Tribunal considered that there was a reasonable indication that the domestic producer would likely have won the contract but for the dumping and subsidizing.

58. According to this approach, only three of the 10 allegations seem supportable.³⁵

59. The third analytical approach applied by the Tribunal mirrored the approach used in *Unitized Wall Modules I* in respect of the projects for which the CBSA had estimated a project-specific margin of dumping and amount of subsidy.

60. Under this approach, the reported bid value of the subject goods was multiplied by the combined project-specific margin of dumping and subsidizing and the resultant amount was compared to the lowest initial Canadian bid value.

61. This approach is the most generous to the complaints,³⁶ but considering that the margins of dumping and amounts of subsidy are just estimates and the applicable standard is a “reasonable indication” rather than a balance of probabilities, the Tribunal is comfortable applying it at this preliminary stage.

62. Under this approach, if the initial quotation by a domestic producer was lower than the Chinese bid multiplied by the margin of dumping and subsidizing, the Tribunal considered that there was a reasonable indication that the domestic producer would have likely won the contract but for the dumping and subsidizing. Under this third approach, three additional projects might have been won³⁷ for a total of 6 out of 10.

63. Relying on the more rigorous approaches, one and two alone, the lost sales with respect to these three projects represented 4 percent of total production and 4 percent of total gross revenue.

34. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2 at 161-63.

35. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2A at 40-41, 160.

36. The approach is considered to be more generous to the complainants because it involved an application of the percentage of the margin of dumping to the selling value of the subject goods, which overstates the “normal value” selling price of the subject goods in Canada by including costs in addition to the FOB export value, such as freight and reseller markups. Similarly, this approach involved an application of the weighted average amount of subsidy expressed as a percentage of the export price to the selling value in Canada (which assumes the subsidization of freight and other costs) as opposed to an application of a fixed dollar amount of subsidy per unit of export as was done by the Tribunal under the second approach.

37. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2A at 5-6, 70-71, 231-32.

Lost Sales Projects not Investigated by the CBSA

64. The Tribunal similarly used three approaches in the assessment of allegations of lost sales relating to projects for which the CBSA did not calculate project-specific margins of dumping and amounts of subsidy.³⁸

65. Under the first approach, the weighted average margin of dumping of 28 percent was added to the reported bid value of unitized wall modules from China. This upward adjusted bid value was then compared to the lowest initial bid value of the domestic producers to determine if the Canadian bid would have been successful had the subject goods not been dumped and subsidized.

66. Applying this approach, it is possible that three additional projects may have been won by domestic producers.³⁹

67. Under the second approach, the reported bid value of the subject goods was multiplied by the CBSA's estimated weighted average margin of dumping. An estimate of the amount of subsidy⁴⁰ was then added to the amount based on the supply of the subject goods, and the resultant amount compared to the lowest initial Canadian bid value. Under this approach, if the quotation by a domestic producer was lower than the reported bid value of the subject goods, increased by the estimated margin of dumping and estimated subsidy value, the Tribunal considered this a reasonable indication that the domestic producer would have likely won the contract but for the dumping and subsidizing.

68. Applying this approach, it is possible that two additional projects may have been won by domestic producers.⁴¹

69. Under the third approach, the reported bid value of the subject goods was multiplied by the CBSA's combined estimated weighted average margin of dumping and weighted average amount of subsidy and the resultant amount was compared to the lowest initial Canadian bid value.

70. The application of this approach indicates the possibility of two additional projects having been lost due to the dumping and subsidizing of the subject goods.⁴²

71. Relying on the more rigorous approaches one and two alone, the lost sales with respect to these five projects represented 2 percent of total production and 2 percent of total gross revenue.

Project-specific Allegations of Price Depression

72. The complainants submitted seven project-specific allegations of price depression, that is, they alleged that they had to lower their prices in order to win the contract from a competing bid by a supplier of the subject goods.

38. The CBSA has determined that 100 percent of the goods had been dumped, but that only 72 percent of the subject imports had been subsidized. Of the 11 lost sales allegations not investigated by the CBSA, two allegations contained insufficient information to evaluate the bids.

39. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2A at 105-107, 161, 235.

40. The amount of subsidy was estimated by multiplying the average dollar amount of subsidy per square metre as determined by the CBSA by the number of square metres in the project.

41. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2A at 7-8, 159.

42. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2 at 163-64; Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2A at 159.

73. Five of these project-specific allegations did not contain sufficient information for the Tribunal to probe whether there was in fact price depression. These allegations simply stated that the respective quotations had been lowered to meet the competing quote from a supplier of subject goods, but did not indicate by how much the quotation was lowered.⁴³

74. Of the remaining two projects, the domestic producer who bid for the work allegedly reduced its bids by a significant amount in order to win the contract.

Summary

75. Relying upon the more rigorous analysis in approaches one and two, the evidence reasonably indicates that 8 of the 21 lost sales were caused by the dumping and subsidizing of the subject goods, representing 6 percent of the complainants' total production and 9 percent of their gross sales.⁴⁴

76. The domestic industry appears to have suffered price depression in respect of at least two other sales.

77. The total value of these price depression allegations and the eight lost sales allegations represented losses amounting to approximately 9 percent of the complainants' gross sales.

Resultant Impact on the State of the Domestic Industry

78. In considering the effects of the alleged lost sales and price depression, the Tribunal notes that unitized wall modules possess many of the characteristics of capital goods, a type of good that can raise unique challenges in the analysis of injury and threat of injury. First, the production of unitized wall modules appears to be marked by high fixed costs, which can require producers to maintain plant loadings, the disruption of which can be costly.⁴⁵ Second, because the unitized wall modules are typically large volume custom-designed one-off orders, the loss of a single order can have significant and long-lasting injurious effects on a domestic producer.⁴⁶ Third, given that the delay between contract award and product delivery can extend to one or more years, depending on the size, complexity and schedule of each project, it is conceivable that some of the price effects of the alleged dumping or subsidizing would only materialize later.

79. With that in mind, the complainants provided evidence on their production, capacity utilization, employment, market shares, sales and financial performance.

43. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2 at 167-68; Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2A at 42-43, 69-70, 235-36.

44. The Tribunal had sufficient information in this preliminary inquiry to probe the lost sale allegations more thoroughly (approaches one and two) than the very basic probing that it conducted in *Unitized Wall Modules I* (approach three), which gave maximum benefit of the doubt to the domestic producers. As the results of the more thorough analysis disclose sufficient evidence to warrant further inquiry into the alleged injury, it is not necessary to have further regard to the third approach in this case.

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

46. *Hydroelectric Turbines* (19 August 1983), ADT-4B-76 (ADT) at 6.

Production

80. The complainants' contend that total value of domestic production⁴⁷ declined by 25 percent between 2009 and 2011. Annualized data for 2012 indicates a 10 percent increase in the value of production over 2011, for net decline of 17 percent between 2009 and 2012.⁴⁸ For the complainants, production declined by 23 percent between 2009 and 2011. However, annualized data for 2012 indicates a 17 percent increase in production over 2011, for net decline of 10 percent between 2009 and 2012.⁴⁹ Of the net decline in production of 10 percent between 2009 and 2012, a significant portion could be attributable to the project-specific lost sales.

Capacity Utilization

81. Declining production translated into reduced rates of capacity utilization. Data for the complainants indicate that capacity utilization rates declined from 56 percent in 2009 to 41 percent in 2011, and consistent with increased production in 2012, capacity utilization rose to 46 percent.

82. The Tribunal notes, however, that over the 2009 to 2012 period, the complainants increased production capacity by 10 percent.⁵⁰ In the absence of this capacity expansion, capacity utilization would have declined by 5 percentage points over the 2009 to 2012 period.

Employment

83. Similar to capacity utilization rates, certain anecdotal evidence⁵¹ provided by the complainants indicated that the decline in order backlog and production has translated into reduced employment.⁵² One domestic producer submitted that it had laid off 40 employees. Another domestic producer submitted that it was forced to implement a work-share program, thereby reducing employees' hours, as a result of low production levels. A third company submitted that they laid off 40 permanent staff in 2011 and anticipate further lay-offs by the end of 2013, if new Canadian projects are not secured. The company is considering moving all production facilities to the US.

Market Share

84. On a sales value basis, apparent market data submitted by the complainants showed a decline in their market share from 2009 to 2010, as well as from H1 2011 to H1 2012.⁵³ The CBSA has indicated that its analysis of import data supports the complainants' claim that subject goods are taking an increasing share of the Canadian market.⁵⁴

85. Parties opposed submitted the Tribunal's assessment of market share in *Unitized Wall Modules I* found that the domestic producer's market share was marginally higher in 2011 than in 2009. Parties opposed submitted that this improving performance is confirmed in the present complaint when comparing

47. As noted previously, it is unclear what the reported value of production represents.

48. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2, Attachment 19 at 117.

49. *Ibid.*

50. *Ibid.*, Attachment 84 at 156-57.

51. The Tribunal notes that the complaint did not provide information on the actual number of employees or wages paid by year for each of the complainants, or on an aggregate basis.

52. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2A at 42, 113, 238.

53. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2, Attachment 6 at 111-12.

54. Tribunal Exhibit PI-2012-006-05, Administrative Record, Vol. 1F at 140.

H1 2011 with H1 2012. These data show that domestic sales, on a value basis, were up 71 percent and, on a volume basis, up 80 percent.⁵⁵

86. The Tribunal observes that from 2009 to 2011, total apparent market for unitized wall modules is estimated to have increased by 83 percent. The market then increased by 96 percent in H1 2012 compared to H1 of 2011.

87. Although the complainants captured 86 percent of the market growth between 2009 and 2011, and 76 percent of the growth observed between H1 2011 and H1 2012, their market share decreased from 95 percent in 2009 to 83 percent in H1 2012. Conversely, the market share of the subject imports increased from 3 percent in 2009 to 15 percent in H1 2012.

Financial Performance

88. The complainants submitted that the dumping and subsidizing of the subject goods have caused a reduction in profitability since 2009. The complainants argue that the loss of sales to lower priced subject goods or the retention of sales at substantially reduced prices was already translating into decreased profitability and will continue to be reflected in financial results for 2013-2014 due to the time lag between order and delivery.⁵⁶ Nevertheless, the consolidated complainants' income statements do show a steady deterioration in financial performance, at both the unit gross margin level and the unit net income before taxes level between 2009 and H1 2012. These declines are consistent with the apparent project-specific losses.

89. The Tribunal finds that the reductions in gross sales resulting from both the alleged lost sales and price depression contributed to this declining financial performance.

Other Performance Indicia

90. There is very little evidence, if any, concerning the impact on other prescribed economic factors and indices of injury, such as productivity, return on investment, cash flow, employment and wages.

Threat of Injury

91. The Tribunal will next consider whether or not there is a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury. The complainants' evidence focused on the increased capacity and expansion of Chinese producers, slowing economic growth in China, slowing demand in other export markets and a strong real estate market in Canada.

92. In considering the disposable capacity in China, the Tribunal notes the complainants filed evidence that Chinese production capacity is projected to increase from 22.7 million m² in 2011 to 37.1 million m² in 2015.⁵⁷ The capacity utilization rate is also forecast to remain very high.⁵⁸ These estimates indicate that China will have 3.2 million m² of disposable capacity in 2014, or enough to supply the Canadian market twice over.⁵⁹ In terms of likely demand for the subject goods, the complainants submitted a number of articles forecasting strong demand for commercial properties in Canada "well into 2013", and forecasting "a

55. Tribunal Exhibit PI-2012-006-03.01 (protected), Administrative Record, Vol. 2, Attachment 6 at 112.

56. *Ibid.* at paras. 231-34.

57. Tribunal Exhibit PI-2012-006-02.01, Administrative Record, Vol. 1 at para. 257.

58. *Ibid.*

59. *Ibid.* at para. 258.

new cycle of [commercial real estate] construction to occur over 2013-2014".⁶⁰ Finally, with respect to the availability of export markets to absorb any increase in Chinese capacity, the complainants also provided evidence that demand in China and other export markets, including the Middle East and Europe, is likely to slow down.⁶¹

Summary

93. On the basis of the foregoing analysis, the Tribunal is satisfied that the evidence, adduced in support of the complaint and, in particular, in respect of certain project-specific loss allegations, discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury.

CONCLUSION

94. The Tribunal therefore determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused or are threatening to cause injury.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Daniel Petit
Daniel Petit
Member

60. *Ibid.* at paras. 286-87; Tribunal Exhibit PI-2012-006-02.01, Administrative Record, Vol. 1C, Attachments 100, 102.

61. Tribunal Exhibit PI-2012-006-02.01, Administrative Record, Vol. 1 at paras. 264, 267, 277-79, Attachment 17; Tribunal Exhibit PI-2012-006-03.01A (protected), Administrative Record, Vol. 2.01, Attachment 13.