



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-2008-002

Aluminum Extrusions

*Determination issued  
Friday, October 17, 2008*

*Reasons issued  
Friday, October 31, 2008*

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

**THE DUMPING AND SUBSIDIZING OF ALUMINUM EXTRUSIONS  
ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S  
REPUBLIC OF CHINA**

**PRELIMINARY DETERMINATION OF INJURY**

The Canadian International Trade Tribunal, under 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 alleged injurious dumping and subsidizing of aluminum extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminum Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per metre of 22 kg and a profile or cross-section which fits within a circle having a diameter of 254 mm, originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury.

This preliminary injury inquiry is pursuant to the notification, on August 18, 2008, that the President of the Canada Border Services Agency had initiated an investigation 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.

André F. Scott  
André F. Scott  
Presiding Member

Serge Fréchette  
Serge Fréchette  
Member

Diane Vincent  
Diane Vincent  
Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

The statement of reasons will be issued within 15 days.

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## STATEMENT OF REASONS

### BACKGROUND

1. On August 18, 2008, following a complaint filed on July 4, 2008, by Almag Aluminum Inc. (Almag), Apel Extrusions Limited (Apel), Can Art Aluminum Extrusion Inc. (Can Art), Metra Aluminum Inc. (Metra), Signature Aluminum Canada Inc. (Signature) (formerly Bon L Canada Inc.) and Spectra Aluminum Products Ltd./Spectra Anodizing Limited (Spectra) (the complainants), the President of the Canada Border Services Agency (CBSA) initiated an investigation into the alleged injurious dumping and subsidizing of aluminum extrusions produced via an extrusion process, of alloys having metallic elements falling within the alloy designations published by The Aluminum Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per metre of 22 kg and a profile or cross-section which fits within a circle having a diameter of 254 mm, originating in or exported from the People's Republic of China (China) (the subject goods).
2. On August 19, 2008, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.
3. The complaint is supported by three other producers of aluminum extrusions, Daymond Aluminum (Daymond), Extrudex Aluminum (Extrudex) and Kaiser Aluminum Canada Ltd. (Kaiser). The following three companies have been identified as producers of aluminum extrusions, but they do not support the complaint: Indalex Aluminum Solutions Group (Indalex), Kawneer Company Canada Limited (Kawneer) and Kromet International Inc. (Kromet).
4. On October 17, 2008, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,<sup>1</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.

### CBSA'S DECISION TO INITIATE AN INVESTIGATION

5. 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 an investigation on August 18, 2008.
6. The CBSA collected information with respect to the volume of dumped goods for the period from July 1, 2007, to June 30, 2008. The CBSA was of the view that 93.5 percent of the subject goods were dumped, with estimated margins of dumping, expressed as a percentage of the export price, ranging from 1.0 percent to 262.0 percent. The CBSA estimated an overall weighted average margin of dumping of 40.5 percent. Further, the CBSA's analysis indicated that the estimated volume of dumped goods was not negligible and that the estimated overall weighted average margin of dumping was not insignificant.<sup>2</sup>

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

2. Administrative Record, Vol. 1D at 16.

7. With respect to the volume of subsidized goods, the CBSA collected information for the period from January 1, 2007, to June 30, 2008. The CBSA estimated the average amount of subsidy to be equal to 26.0 percent of the export price of the subject goods. As well, the CBSA considered that 89.5 percent of the subject goods had benefited from the alleged subsidies. Accordingly, the CBSA was of the opinion that the volume of subsidized goods was not negligible and that the amount of subsidy was not insignificant.<sup>3</sup>

## **SUBMISSIONS ON INJURY**

### **Domestic Producers in Support of the Complaint**

8. The complainants claimed that the dumping and subsidizing of the subject goods had caused and threatened to cause injury to the domestic industry. In support of their allegations, the complainants provided evidence of increased volumes of dumped and subsidized goods, reduced market share, loss of sales, price undercutting, price depression, price suppression, underutilization of capacity, reduction in employment, loss in revenue and reduction in profitability.

9. The complainants submitted, among other things, that imports of the subject goods increased significantly throughout the period of investigation and that they accounted for a larger share of all import sources of such products in Canada. On the question of price depression, they pointed out that unit pricing achieved by the domestic industry would have been higher had it not been for the presence of the subject goods. They also argued that the presence of the subject goods had the effect of forcing them to absorb the dramatic increases in raw material costs over fewer volumes produced. They also provided examples of injury allegations in the form of lost and discounted sales due to the subject goods. Finally, the complainants noted that the presence of the subject goods caused significant deterioration in their gross profit and net income between 2006 and 2007.

10. As for the threat of injury, the complainants submitted that the Canadian apparent consumption of the subject goods, after declining in 2007 to below the 2005 level, will decline further in 2008 and that the trend of significant increases in raw material costs will continue. All these developments will exacerbate the injurious impact on the domestic industry as a result of competition with the subject goods.

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

11. The Tribunal received submissions from eight parties opposed to the complaint: Digi-Key Corporation (Digi-Key), Extrude-A-Trim Inc., Hunter Douglas Canada LP (Hunter Douglas), Kromet, PanAsia Aluminum Limited,<sup>4</sup> Ryerson Canada, Tag Hardware Systems Ltd. and Z.M.C. Metal Coatings Inc. (ZMC).

12. Parties opposed submitted, among other things, that the complainants have not supported their claim on injury for the entire industry in regard to lost market share, lost sales, price suppression, capacity utilization, employment reduction and financial performance. They also submitted that the complainants have not addressed other non-dumping factors, such as a contraction of demand in the manufacturing sector, the strengthening of the Canadian dollar relative to the U.S. dollar, the export performance of the domestic industry, intra-industry competition, imports from non-subject countries and the complainants' lack of service and capacity to serve the Canadian market. As discussed later, some of the parties opposed also argued that there is more than one class of goods in this inquiry.

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3. Administrative Record, Vol. 1D at 20. Since the CBSA considered China a developing country, the thresholds for negligibility and insignificance for China were 4 percent and 2 percent respectively.

4. PanAsia Aluminum (Toronto) Limited, PanAsia Aluminum (Calgary) Limited and PanAsia Aluminum (Macao Commercial Offshore) Limited.



13. Finally, parties opposed submitted that the Tribunal is not precluded from terminating a preliminary injury inquiry and that the evidence in this case supports it doing so.

## ANALYSIS

### Legislative Framework

14. 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 and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury.<sup>5</sup> In making its determination, the Tribunal took into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*.<sup>6</sup>

15. Subsection 2(1) of *SIMA* defines "injury" as "... material injury to a domestic industry". It also defines "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 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". Therefore, the Tribunal must identify the like goods and the domestic industry that produces those goods before addressing the issues of injury, retardation or threat of injury.

### Like Goods and Classes of Goods

16. The Tribunal notes that, in its decision to initiate the investigation, the CBSA stated that the aluminum extrusions produced in Canada compete directly with and have similar physical characteristics and end uses as the subject goods. The CBSA concluded that the goods produced in Canada and China are fully interchangeable and that the aluminum extrusions produced in Canada constitute like goods to the subject goods. The CBSA also found that aluminum extrusions can be considered a single class of goods on the grounds that different aluminum extrusions are made from the same input material, in the same manufacturing process.

17. The complainants agreed with the CBSA's assessment. They argued that aluminum extrusions cannot be divided into more than one class of goods since they are not made from different materials, cannot be usefully or practically divided into classes of goods by die-by-die geometry or specific shape, are marketed and sold through the same channels, have the same general function (i.e. components used in the manufacture of other products requiring inputs made of aluminum) and satisfy similar customer needs.

18. ZMC, an importer and distributor of window coverings, and Hunter Douglas, an importer and manufacturer of window coverings, did not dispute that domestically produced aluminum extrusions are like goods to the subject goods. However, they argued that there is more than one class of goods in this inquiry. Specifically, they argued that aluminum extrusions used for window coverings constitute a separate class of goods on the grounds that the physical and market characteristics of aluminum extrusions for window

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5. The Tribunal notes that it is its longstanding practice to make a cumulative assessment of the injurious effects of both dumped and subsidized goods (cross-cumulation) from a given country in the context of an inquiry under section 42 of *SIMA*. The Tribunal therefore considers that it would be inconsistent not to cross-cumulate the subject goods in a preliminary injury inquiry and has consequently cumulatively assessed the impact of the dumping and subsidizing of the subject goods on the domestic industry.

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

coverings differ from the physical and market characteristics of other types of aluminum extrusions. In the alternative, they submitted that the Tribunal should provisionally conclude that there are or may exist separate classes or categories of aluminum extrusions for purposes of its final injury analysis and should seek to have data and other information collected by the CBSA on that basis.

19. Digi-Key argued that the like goods identified by the complainants seemed to be defined by manufacturing process and not by evidence of markets in which Canadian products compete with the subject goods. It also argued that the Tribunal needed more information on classes of goods. On the basis of the scope of markets described by the CBSA, Digi-Key submitted that there will be, of necessity, a wide range of classes of goods, as it is difficult to conceive, for example, that windows and doors for the construction industry are the same class of goods as components of medical equipment and laboratory equipment. Digi-Key contended that the domestic industry must at least be directed to show how domestic goods fulfill the same customer needs as the subject goods in each of the listed market segments.

20. Kromet argued that the goods that it produces and imports from China are not like goods to the subject goods pursuant to paragraph 2(1)(b) of *SIMA* because its products are dissimilar and do not compete directly with the products manufactured by the complainants. In the alternative, it argued that its products should be recognized as a separate class of goods for the purpose of this inquiry since, in its view, they fulfill specific customer needs in the kitchen appliance industry and have specific market characteristics.

21. In deciding the issue of like goods and classes of goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.

22. In view of the evidence on the record in relation to these factors, the Tribunal finds, in the context of this preliminary injury inquiry, that the aluminum extrusions produced in Canada are “like goods” to the subject goods because they closely resemble the subject goods in terms of physical characteristics, market characteristics and end uses.

23. As for the issue of classes of goods, the Tribunal notes that there is evidence on the record which indicates that there may be more than one class of goods in this inquiry. In view of this evidence, on October 1, 2008, the Tribunal requested the parties to provide submissions on issues relating to the identification of potential classes of goods in order to come to a view on whether there may exist multiple classes of goods in this inquiry and to identify such potential separate classes, if any. Specifically, the Tribunal requested arguments and evidence on the following issues:

- whether the Harmonized System (HS) nomenclature would provide guidance in determining classes of goods and, in particular, whether there is merit in assessing injury on the basis of the following classes of goods: (a) aluminum bars; (b) aluminum rods; (c) aluminum profiles; (d) aluminum hollow profiles; and (e) aluminum tubes and pipes;
- whether the totality of the subject goods would be covered by the five categories described above;
- whether there is merit in combining some of the above-mentioned categories or, to the contrary, whether additional categories would need to be added (based on the HS nomenclature);
- whether the five categories described above correspond to a certain reality in the marketplace in terms of common characteristics, pricing, end uses, channels of distribution, etc.;

- whether the goods that fall within each of the categories described above share the same or similar physical characteristics and similar manufacturing processes; and
- any additional comments that are directly relevant to those questions.

24. On October 9, 2008, the Tribunal received submissions from 13 parties in response to its request. On October 15, 2008, reply submissions were filed by 10 parties. After a careful review of the arguments and evidence received from the parties, the Tribunal is of the view that it would not be appropriate to assess injury on the basis of the five potential classes of goods identified in its October 1, 2008, letter to the parties. Nevertheless, as part of their additional submissions filed on this issue, the parties put forward constructive arguments and suggestions in respect of alternative options regarding classes of goods in this case.

25. Notwithstanding the additional submissions received 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 aluminum extrusions constitute a single class of goods.

26. However, the Tribunal finds that the arguments made in support of more than one class of goods merit further consideration and that the question as to whether there could exist more than one class of goods is an issue that will need to be fully addressed during an inquiry under section 42 of *SIMA*, if the CBSA concludes, in its preliminary determination, that the subject goods have been dumped or subsidized. In particular, in view of the evidence on the record in relation to the relevant factors and after taking into account the additional submissions received in response to its October 1, 2008, letter, 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) aluminum extrusion products which have standard shapes; and (2) aluminum extrusion products which have custom shapes.

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

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

### **Domestic Industry**

29. The complainants have identified 12 Canadian producers of aluminum extrusions. On the question of what constitutes the domestic industry, *SIMA* confers on the Tribunal the discretion to interpret the term “domestic industry” as meaning only the domestic producers that are not related to an exporter or importer of dumped or subsidized goods or that are not importers of such goods.

30. The Tribunal notes that the evidence on the record indicates that some domestic producers are also importers of the subject goods. Based on an analysis of the information provided in the complaint, should the domestic industry be defined as including only the remaining domestic producers (i.e. those that are not importers of the subject goods), the collective production of those producers would represent 100 percent of the domestic production of aluminum extrusions. The Tribunal further notes that, even if the producers that are also importers are not excluded from the domestic industry, the collective production of the complainants and those producers that supported the complaint represents about 73 percent of the total domestic production in 2007 and in the first quarter of 2008.

31. At this preliminary stage, the Tribunal will interpret “domestic industry” as including the domestic producers that imported the subject goods. However, the Tribunal will revisit this issue during the phase of the inquiry under section 42 of *SIMA*, following a preliminary determination of dumping and/or subsidizing, if any, by the CBSA. Should this case proceed to an inquiry under section 42 of *SIMA*, the Tribunal intends to gather information from domestic producers about their imports of the subject goods.

32. On the basis of the evidence on the record of this preliminary injury inquiry, the Tribunal finds that Almag, Apel, Can Art, Daymond, Extrudex, Kaiser, Indalex, Kawneer, Kromet, Metra, Signature and Spectra constitute the domestic industry and that, in terms of volume of production, the complainants and those producers that supported the complaint account, by themselves, for a major proportion of the total production of like goods in Canada.<sup>7</sup>

### **Volume of Dumped and Subsidized Goods<sup>8</sup>**

33. The complainants’ volume estimates, which the Tribunal has found to be reliable, show that imports of the subject goods increased by approximately 27 percent between 2005 and 2007, while the volume of non-subject imports decreased by 3 percent over the same period.<sup>9</sup> In absolute terms, while imports from non-subject countries declined by about 1,500 tonnes over that same period, imports of the subject goods increased by approximately 7,000 tonnes. In terms of the share of total volume of imports, imports of the subject goods increased from 35 percent to 42 percent.<sup>10</sup> When compared to the same period in 2007, imports of the subject goods increased by another 5 percent during the first quarter of 2008 and were able to maintain their share of total imports.

34. The Tribunal notes that, in comparison with the volume of production by domestic producers, as well as their sales volume in the Canadian market, the volume of imports of the subject goods shows a similar rising trend over the period from 2005 to 2007 and between the first quarter of 2007 and the first quarter of 2008.<sup>11</sup>

35. In light of the above, the Tribunal finds that there is a reasonable indication that, over the period from 2005 to the first quarter of 2008, the increase in the volume of subject goods was significant.

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7. Administrative Record, Vol. 1 at 28, Vol. 2 at 362.

8. The Tribunal notes that the complainants and the CBSA provided differing estimates of the volume of imports of the subject goods. The complainants identified the subject goods as being imported into Canada under 17 HS codes (“Of aluminum alloys”), as reported by Statistics Canada, for the period from January 2005 to March 2008. The CBSA has determined that 17 additional HS codes (“Of aluminum, not alloyed”) also met the definition of the subject goods, including alloy designations commencing with “1” which are composed of a minimum of 99 percent of aluminum. Therefore, the CBSA has provided data for all 34 HS codes for the period from January 2005 to June 2008. For the purpose of its preliminary injury inquiry, the Tribunal used the volume estimates put forward by the complainants, since they cover the same time period as most other data provided by the complainants, including production, market and financial information. The Tribunal has also reviewed the import data prepared by the CBSA and notes that, while the CBSA’s estimates of the volume of subject goods are higher, both the complainants’ and the CBSA’s import data show similar increasing import trends for the subject goods.

9. Administrative Record, Vol. 2 at 80.

10. Administrative Record, Vol. 1 at 18.

11. Administrative Record, Vol. 1 at 80, Vol. 2 at 38, 39, 270.

### Effect on the Price of Like Goods

36. Although the Tribunal could not make a direct comparison between the unit selling prices of the subject goods and the unit selling prices of the like goods,<sup>12</sup> the evidence on the record indicates that the unit selling prices of the subject goods were lower when compared to the unit selling prices of non-subject goods by a significant margin throughout the period from 2005 to the first quarter of 2008.<sup>13</sup> These preliminary data tend to indicate that imports of the subject goods were exerting downward pressure on prices in the market.

37. The complainants submitted evidence to show loss of sales and discounted sales to certain customers in 2007 and 2008 as a result of the pricing of the subject goods at 5 to 37 percent below the selling prices of the domestic producers.<sup>14</sup> These injury allegations are corroborated by the evidence that shows that, by the first quarter of 2008, the selling prices of the complainants declined significantly, compared to the same period in 2007. In the Tribunal's view, the evidence available at this stage shows that imports of the subject goods undercut the prices of domestic aluminum extrusions, which led to price depression.

38. The evidence before the Tribunal also indicates that the complainants' unit selling prices of domestic aluminum extrusions increased at a slower rate than their unit cost of goods sold for each year between 2005 and 2007.<sup>15</sup> These preliminary data support the Tribunal's view that, due to competition from the subject goods, the complainants faced price suppression and were not able to increase their prices sufficiently to recover their increases in costs.

39. Based on the foregoing, the Tribunal is of the view, at this preliminary stage, that the evidence discloses a reasonable indication that the subject goods caused price undercutting, price depression and price suppression.

### Impact on the Domestic Industry

40. Turning now to the impact of imports of the subject goods on the state of the domestic industry, the Tribunal notes that, during the period from 2005 to 2007, sales from domestic production decreased, while sales from imports of the subject goods increased. In relative terms, the domestic producers' share of the Canadian apparent market declined by the same number of percentage points as the increase in the share of the market of the subject goods, while the market share of non-subject imports remained stable.<sup>16</sup> For the first quarter of 2008, the market shares held by sales from domestic production and sales from imports of the subject goods remained relatively stable when compared to the same period in 2007. This leads the Tribunal to conclude that, between 2005 and 2007, sales from imports of the subject goods displaced sales from domestic production.<sup>17</sup>

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12. Only FOB prices were available for import data.

13. Administrative Record, Vol. 2 at 80.

14. *Ibid.* at 92-266.

15. *Ibid.* at 276.

16. *Ibid.* at 80.

17. *Ibid.* at 80.

41. The Tribunal notes that the financial performance of the complainants deteriorated over the period from 2005 to 2007, as shown in the decline of gross margins and net income from domestic sales. In fact, the consolidated gross margins of the complainants were down by 14 percent on a per unit basis for this period.<sup>18</sup> With regard to the trend in the complainants' net income, the Tribunal found that their consolidated net income decreased by 30 percent on a per unit basis between 2005 and 2007.<sup>19</sup> Although the complainants' consolidated net income on a per unit basis improved during the first quarter of 2008 compared with 2007, the consolidated gross margin grew by only 1 percentage point. The Tribunal concludes that the evidence on the record provides a reasonable indication that price undercutting, price depression and price suppression have resulted in the deteriorating financial performance of the domestic industry.

42. The Tribunal also observes that the complainants' employment levels<sup>20</sup> decreased significantly between 2005 and the first quarter of 2008 and that they had significant unused capacity throughout the period of investigation.<sup>21</sup>

43. No specific evidence was provided regarding other injury factors that the Tribunal is required to examine, including productivity, return on investments, cash flow, inventories, wages, growth or the ability to raise capital. However, the Tribunal is of the view that the decrease in sales volume and profitability would reasonably be expected to have a negative impact on cash flow and the ability to raise capital.

44. Based on the foregoing, the Tribunal is satisfied that the evidence on the record provides a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

#### **Other Factors**

45. Parties opposed to the complaint argued that various non-dumping and non-subsidizing factors were the cause of injury to the domestic industry. These other factors included, among other things, a contraction of demand in the manufacturing sector, the strengthening of the Canadian dollar relative to the U.S. dollar, the export performance of the domestic industry, intra-industry competition, imports from non-subject countries, and the lack of service and capacity of the complainants to serve the Canadian market.

46. The Tribunal has considered the above factors and is of the opinion that, in this preliminary injury inquiry, the evidence on the record regarding any impact of these other factors does not negate its conclusion that there is a reasonable indication of injury caused by the dumping and subsidizing of the subject goods. It is only in the context of an inquiry under section 42 of *SIMA* that the Tribunal will be in a position to fully assess the magnitude of these other factors and their relative importance.

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18. *Ibid.* at 276.

19. *Ibid.* at 276.

20. *Ibid.* at 274.

21. *Ibid.* at 270.

**CONCLUSION**

47. Based on the above analysis, the Tribunal is of the view that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

André F. Scott  
André F. Scott  
Presiding Member

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