



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDERS AND REASONS

Expiry Review No. RR-2008-003

Wood Slats

*Orders and reasons issued
Wednesday, July 15, 2009*

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IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on June 18, 2004, in Inquiry No. NQ-2003-003, concerning:

**WOOD SLATS ORIGINATING IN OR EXPORTED FROM MEXICO AND THE
PEOPLE'S REPUBLIC OF CHINA**

ORDERS

On November 7, 2008, the Canadian International Trade Tribunal gave notice that, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, it would initiate an expiry review of the above-mentioned findings.

Pursuant to subparagraph 76.03(12)(a)(ii) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its finding in respect of wood slats originating in or exported from the People's Republic of China (Member Vincent dissenting).

Pursuant to subparagraph 76.03(12)(a)(ii) and subsection 76.04(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its finding in respect of wood slats originating in or exported from Mexico (Member Vincent dissenting).

Dissenting

Diane Vincent
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Pasquale Michaele Saroli

Pasquale Michaele Saroli
Member

Hélène Nadeau

Hélène Nadeau
Secretary

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	May 26 and 27, 2009
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STATEMENT OF REASONS

1. This is an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*,¹ of the findings made by the Canadian International Trade Tribunal (the Tribunal) on June 18, 2004, in Inquiry No. NQ-2003-003, concerning wood slats originating in or exported from Mexico and the People's Republic of China (China) (the subject goods).
2. On November 7, 2008, the Tribunal decided to initiate an expiry review and sent a notice of expiry review to all known interested parties.² The Tribunal also sent letters requesting the Canadian producers, importers and foreign exporters/producers to complete expiry review questionnaires. These questionnaires and the replies thereto formed part of the Tribunal's expiry review record.
3. On November 10, 2008, the Canada Border Services Agency (CBSA) initiated an expiry review investigation to determine whether the expiry of the findings was likely to result in the continuation or resumption of dumping of the subject goods.
4. On March 6, 2009, the CBSA determined that, pursuant to subsection 76.03(7) of *SIMA*, the expiry of the findings was likely to result in the continuation or resumption of dumping of the subject goods.
5. On March 9, 2009, following the CBSA's determination, the Tribunal proceeded with its expiry review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the findings respecting the subject goods was likely to result in injury or retardation. At the outset of the review process, the Tribunal requested that, if the CBSA found a likelihood of continued or resumed dumping, domestic producers, importers and exporters/foreign producers update their responses to questionnaires submitted to the CBSA to include data for the last three months of 2008 and that domestic producers complete Part E of the expiry review questionnaire for producers. Also on March 9, 2009, the Tribunal sent letters requesting importers to complete a supplementary questionnaire.
6. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, on May 26 and 27, 2009.
7. SBM Wood Industries (SBM), a domestic producer, filed a submission, submitted evidence and made arguments in support of a continuation of the findings. SBM was represented by counsel and presented witnesses at the hearing.
8. Blinds to Go Inc. (BTG), an importer, filed a submission, submitted evidence and made arguments in support of a rescission of the findings. BTG was represented by counsel and presented a witness at the hearing.
9. The Tribunal invited Mr. Jacques Martineau of Trans UV Inc. (Trans UV), another domestic producer, to testify at the hearing. Mr. Martineau testified in support of a continuation of the findings.
10. The record of these proceedings consists of the following: all relevant documents, including the CBSA's protected expiry review report, statement of reasons, index of background information and related documents; the public and protected replies to the expiry review questionnaires and the Tribunal's supplementary questionnaire; the public and protected pre-hearing staff reports prepared for this expiry review; requests for information and parties' replies in accordance with the Tribunal's directions; witness

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

2. C. Gaz. 2008.I.1407.

statements and exhibits filed by the parties throughout the expiry review; the Tribunal's findings and notice of expiry review; the transcript of the hearing; and the public and protected pre-hearing staff reports prepared for Inquiry No. NQ-2003-003. All public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of protected information.

PRODUCT

Production Definition

11. Wood slats³ are the main component of custom wood blinds. They have no other function. The type of wood most commonly used to manufacture slats is basswood. Other types of wood, such as cherry, white ash, beech, poplar, ramin,⁴ samba, red oak and red cedar, may also be used. The wood can be bare, stained, varnished or painted. Usually, wood slats are 1 or 2 inches wide and 1/8 inch thick.

Production Process

12. While details may vary from producer to producer, the process by which wood slats are produced is essentially the same for all.⁵

13. Slats are manufactured in five steps: (1) the wood planks are put on a planer to size them and cut them to the required size and thickness; (2) the wood planks are cut to make wood blocks of specific widths; (3) a handsaw is used to remove knots and imperfections in the wood; (4) the wood blocks are made into slats using a moulding machine; and (5) the slats are machine-sanded.

14. The unfinished wood slats are then dyed, painted or varnished. The wood slats are dyed mechanically and dried quickly, generally with the use of ultraviolet rays. The wood slats can also be dyed by hand when certain finishes or colours are required.

Distribution

15. SBM and Trans UV are integrated producers that manufacture wood slats for use in the manufacture of their own custom wood blinds.

16. Fabricators of custom wood blinds purchase wood slats either from producers of wood slats or from distributors of components of custom wood blinds.

DOMESTIC PRODUCERS

17. Expiry review questionnaires were sent to three domestic producers: SBM, Trans UV and Les Stores A.T.S. Enr. (ATS). Responses were received from SBM and Trans UV. ATS did not provide a response, but indicated in a letter to the Tribunal that its annual sales of wood slats and custom wood blinds were minimal.⁶

3. The terms "strips" and "laths" are synonyms of the term "slats".

4. Ramin products imported into Canada must be accompanied by a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) export permit issued by the exporting country, if the wood is from a nation that has included ramin on the list of protected species, or by a CITES export permit, a CITES certificate of origin or a CITES re-export certificate, if the specimen is from another nation.

5. Tribunal Exhibit RR-2008-003-17.01, Administrative Record, Vol. 3 at 12; Tribunal Exhibit RR-2008-003-23.02A, Administrative Record, Vol. 5.1 at 20.

6. Tribunal Exhibit RR-2008-003-17.02, Administrative Record, Vol. 3 at 109.

SBM

18. SBM has been manufacturing wood slats since 1995 at its present location in Anjou, Quebec. It also manufactures other products, including faux wood blinds.

19. SBM's principal market for custom wood blinds consists of retail decorating stores located throughout Canada. SBM also sells a significant volume of custom wood blinds as part of major construction and renovation projects.

20. During the period of review, SBM did not sell any wood slats in the domestic market. However, it did sell wood slats in export markets and imported wood slats.

Trans UV

21. Trans UV is located in St-Laurent, Quebec. The company was founded in December 2000. Trans UV also manufactures wood shutters and faux wood blinds. Its products are distributed through a variety of retailer networks, mostly residential, commercial and industrial.

22. During the period of review, Trans UV did not import wood slats or sell wood slats in either the domestic market or export markets.

IMPORTERS AND EXPORTERS

23. The expiry review questionnaire for importers was sent to 31 potential importers. Responses were received from BTG, a fabricator of custom wood blinds, and Z.M.C. Metal Coating Inc., a distributor of wood slats. The Tribunal issued a supplementary questionnaire to 30 companies, including other fabricators and distributors. Ten usable responses were received. The responses to the expiry review questionnaire for importers and the supplementary questionnaire were used to prepare the pre-hearing staff report.

24. The expiry review questionnaire for exporters was sent to 9 companies. One reply was received from Tieling Excellent Timber Co. Ltd. (ETL).

SUMMARY OF PREVIOUS FINDINGS

25. When the CBSA initiated its investigation in 2003, it defined the subject goods as comprising a single class of goods, including both wood blinds and wood slats.

26. Subsequently, as part of its injury inquiry, the Tribunal determined that there were three classes of goods: stock blinds, custom wood blinds and wood slats.⁷

Stock Blinds

27. The Tribunal concluded that, since there was no stock blind industry in Canada, the dumping of stock blinds had not caused and was not threatening to cause injury. The Tribunal also found that the dumping in Canada of stock blinds had not caused retardation of the establishment of a domestic industry.

7. In Inquiry No. NQ-2003-003, the classes of goods were "stock blinds", "custom blinds" and "slats". Tribunal Exhibit RR-2008-003-01, Administrative Record, Vol. 1 at 18.

Custom Wood Blinds

28. The Tribunal determined that the domestic custom wood blind industry consisted of integrated producers, as well as fabricators. In the Tribunal's view, SBM and its supporters did not represent a major proportion of the total domestic production of custom wood blinds. Accordingly, it concluded that the dumping of custom wood blinds had not caused and was not threatening to cause injury.

Wood Slats

29. The Tribunal determined that the domestic wood slat industry was comprised of SBM, Trans UV and ATS.

30. The Tribunal found that the volume of wood slats entering Canada directly from China and Mexico increased. In the Tribunal's view, the subject goods competed with the like goods (wood slats) and captured market share from the domestic producers, reducing their sales and restraining domestic production. It found that price was the main driving factor behind the increase in imports and that the dumped prices had resulted in lost sales to the domestic industry. In addition, the significant price differential applied downward pressure on the pricing of wood slats used internally for the production of custom wood blinds, thus preventing the integrated producers from achieving better returns on their slat production. The Tribunal concluded that the competitiveness of the domestic wood slat industry's production for internal use (i.e. for custom wood blind production) was materially impacted.⁸

31. During the period of inquiry, the subject goods also entered Canada indirectly from the United States. These were mostly unfinished wood slats that had been exported from China and further processed in the United States. For *Customs Tariff* purposes, such slats could qualify for duty-free treatment under the *North American Free Trade Agreement*⁹ as goods originating in the United States. However, the CBSA considered that they were goods originating in China for the purposes of *SIMA* and the application of anti-dumping duties. The Tribunal determined that these imports entered Canada at very competitive prices, which allowed fabricators to market custom wood blinds with good profit margins in competition with domestic producers.

32. As for the impact of the dumping, the Tribunal determined that the domestic industry had underutilized its capacity, lost market share and revenues, experienced low returns on investment, and suffered other negative impacts on inventory and financial performance. Accordingly, the Tribunal concluded that the increasing volumes of imports of wood slats at dumped prices from China and Mexico had caused injury to domestic slat producers.

ANALYSIS

33. On March 6, 2009, the CBSA determined that, pursuant to paragraph 76.03(7)(a) of *SIMA*, the expiry of the findings was likely to result in the continuation or resumption of dumping of the subject goods. Consequently, the Tribunal is required, pursuant to subsection 76.03(10), to determine whether the expiry of the findings is likely to result in injury or retardation, as the case may be, to the domestic industry.¹⁰

8. *Wood Venetian Blinds and Slats* (18 June 2004), NQ-2003-003 (CITT) at para. 87.

9. *North American Free Trade Agreement between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994).

10. Subsection 2(1) of *SIMA* defines "injury" as "... material injury to a domestic industry" and "retardation" as "... material retardation of the *establishment* of a domestic industry" [emphasis added]. Given that there is

34. Therefore, the Tribunal is required, pursuant to subsection 76.03(12) of *SIMA*, to make orders either rescinding the findings issued in 2004, if it determines that the expiry of those findings is unlikely to result in injury, or continuing those findings, with or without amendment, if it determines that their expiry is likely to result in injury.

35. Before proceeding with its analysis concerning the likelihood of injury, the Tribunal will first determine (1) what domestically produced goods are “like goods” in relation to the subject goods, (2) what constitutes the “domestic industry” for the purposes of its analysis and (3) whether the analysis must be done separately for each subject country or cumulatively for all countries.

Like Goods

36. 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 [such] goods . . . , goods the uses and other characteristics of which closely resemble those of the other goods”. In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods, their market characteristics and whether the domestic goods fulfill the same customer needs as the subject goods.

37. In its statement of reasons in Inquiry No. NQ-2003-003, the Tribunal stated that “... domestically produced slats are like goods to the subject slats. . . .”¹¹ In this expiry review, the Tribunal heard no evidence or argument to dispute that conclusion. Accordingly, the Tribunal finds that wood slats produced by the domestic industry constitute like goods in relation to the subject goods.

Domestic Industry

38. The domestic industry is defined in subsection 2(1) of *SIMA* 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”

39. As noted above, ATS did not provide a questionnaire response to the Tribunal, but indicated that its annual sales of wood slats and custom wood blinds were “minimal”. The Tribunal notes that, while ATS was included in the scope of the domestic industry in Inquiry No. NQ-2003-003,¹² its production, at that time, could also have been described in that same manner.¹³ ATS aside, SBM and Trans UV account for the total known domestic production of like goods. Accordingly, their production constitutes a major proportion of total domestic production of like goods (if not almost all of it). This fact was not contested. Under these circumstances, the Tribunal finds that SBM and Trans UV constitute the domestic industry for the purposes of assessing the likelihood of injury in the context of this expiry review.

Cumulation

40. Subsection 76.03(11) of *SIMA* provides that, for the purpose of its determination, the Tribunal shall make an assessment of the cumulative effect of the dumping of goods “... that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition” between the goods imported into Canada from any of the countries and the goods from any other of the countries or between those goods and the like goods.

currently an established domestic industry, the issue of whether the expiry of the findings is likely to result in retardation does not arise in this expiry review.

11. Tribunal Exhibit RR-2008-003-01, Administrative Record, Vol. 1 at 18.

12. *Ibid.* at 21.

13. Tribunal Exhibit RR-2008-003-11 (protected), Administrative Record, Vol. 2.3 at 132.

41. If the Tribunal is not satisfied that an assessment of the cumulative effect of the dumping of goods from more than one country would be appropriate, based on its assessment of the relevant conditions of competition, then it must assess the effects of dumping for each country separately.

42. In its statement of reasons in Inquiry No. NQ-2003-003, the Tribunal stated the following:

With respect to paragraph 42(3)(b) of *SIMA* [relating to cumulation], Royal argued that it is not appropriate for the Tribunal to assess the cumulative effects of dumped slats from China and Mexico, given differing conditions of competition between those goods in the Canadian market. The Tribunal is of the view that the evidence on file does not support such a finding. Rather, the Tribunal finds that all the subject slats serve the same market and compete with one another and with domestic like goods, for the most part, under similar conditions of competition. Accordingly, the Tribunal will assess the cumulative effects of the dumping of the subject slats from China and Mexico.¹⁴

[Footnote omitted]

43. The Tribunal received no evidence, and heard no argument, to indicate that there have been any changes, or that there were likely to be any, in the conditions of competition that existed at the time of Inquiry No. NQ-2003-003. Accordingly, the Tribunal is satisfied that it is appropriate to consider the cumulative effect of continued or resumed dumping of wood slats from China and Mexico.

Likelihood of Injury

44. Subsection 37.2(2) of the *Special Import Measures Regulations*¹⁵ lists the factors that the Tribunal may consider in addressing the question of likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed below.

45. In making its assessment of likelihood of injury, the Tribunal generally takes the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally 18 to 24 months from the time that the finding or order is rescinded. However, given the uncertain market and economic circumstances in which this review is being undertaken, the Tribunal agrees with SBM that it should "... focus on the nearer term, rather than trying to see further into the future ...".¹⁶ Accordingly, the Tribunal will focus on the circumstances that can reasonably be expected to exist in the next 12 to 14 months.

46. This case presented certain unique issues for the Tribunal by virtue of the fact that the domestic industry's entire production of like goods was entirely consumed in its own integrated production of custom wood blinds or sold in export markets, with no sales of wood slats to fabricators of custom wood blinds or distributors of custom wood blind components in the Canadian merchant market.¹⁷ This meant that there were no volumes or prices for merchant market sales of domestically produced wood slats.

14. Tribunal Exhibit RR-2008-003-01, Administrative Record, Vol. 1 at 22.

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

16. *Transcript of Public Argument*, Vol. 1, 27 May 2009, at 23-24.

17. Tribunal Exhibit RR-2008-003-18.01C (protected), Administrative Record, Vol. 4 at 161.9; Tribunal Exhibit RR-2008-003-18.03 (protected), Administrative Record, Vol. 4 at 169; Tribunal Exhibit RR-2008-003-17.01, Administrative Record, Vol. 3 at 15; Tribunal Exhibit RR-2008-003-17.03, Administrative Record, Vol. 3 at 117; Tribunal Exhibit RR-2008-003-17.01B, Administrative Record, Vol. 3 at 107.1.

47. Further, the Tribunal observes generally that there was limited data on the record due to the poor response to the expiry review questionnaire and the Tribunal's supplementary questionnaire and the fact that wood slats are products for which there is no readily available third-party information.

Changes in Market Conditions

48. In developing its views on the likely volumes and prices of the subject goods and their impact on the domestic industry if the findings are rescinded, the Tribunal first considered changes in international and domestic market conditions, as contemplated by paragraph 37.2(2)(j) of the *Regulations*.

49. Since the Tribunal's findings in 2004, there have been several changes in the domestic market.

50. First, as noted above, the most significant change is that there are no longer any merchant market sales of domestically produced wood slats and that these slats are now consumed entirely in the internal operations of SBM and Trans UV.¹⁸

51. Another important change is that Hunter Douglas Canada, previously a large producer of custom wood blinds in Canada, ceased manufacturing wood blinds in Canada in 2006.¹⁹ It currently imports wood slats only for the purpose of repairing custom wood blinds.

52. As for sources of imported wood slats, Vietnam has become a significant supplier in the Canadian market.²⁰ There was also testimony with respect to other sources of supply either currently available, i.e. Chinese Taipei,²¹ or potentially available, i.e. Indonesia and Thailand,²² in the Canadian market.

53. Finally, the Tribunal notes that faux wood blinds appear to be increasingly popular and represent an important alternative product in the Canadian window coverings market.²³

54. The Tribunal observes that the factors cited most frequently by respondents to its questionnaire as affecting changes in demand for wood slats and custom wood blinds were those relating to economic activity, including "[c]hanges in economic conditions in Canada", "[c]hanges in residential construction activity", "[c]hanges in household spending on window coverings and household textiles" and "[c]hanges in average real family income".²⁴ The witness for Trans UV characterized custom wood blinds as being luxury items and suggested that, in times of recession, luxury items are the first to be affected negatively.²⁵

55. Regarding recent economic conditions, the Tribunal notes that the Bank of Canada stated that the global recession has intensified and that there has been weaker than expected activity in all major

18. Tribunal Exhibit RR-2008-003-18.01C (protected), Administrative Record, Vol. 4 at 161.9; Tribunal Exhibit RR-2008-003-18.01C (protected), Administrative Record, Vol. 4 at 169; Tribunal Exhibit RR-2008-003-17.01, Administrative Record, Vol. 3 at 15; Tribunal Exhibit RR-2008-003-17.03, Administrative Record, Vol. 3 at 117; Tribunal Exhibit RR-2008-003-17.01B, Administrative Record, Vol. 3 at 107.1.

19. Tribunal Exhibit RR-2008-003-26.02B, Administrative Record, Vol. 5.2 at 36.

20. *Pre-hearing Staff Report*, 16 April 2009, Tribunal Exhibit RR-2008-003-05, Administrative Record, Vol. 1.1 at 14.

21. *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 38, 71.

22. *Ibid.* at 159-60.

23. *Ibid.* at 26, 110; *Transcript of In Camera Hearing*, Vol. 1, 26 May 2009, at 125-26.

24. *Pre-hearing Staff Report*, 16 April 2009, Tribunal Exhibit RR-2008-003-05, Administrative Record, Vol. 1.1 at 23.

25. *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 111.

economies. As for the future, the International Monetary Fund forecasts that 2009 output for advanced economies is expected to contract by 3.8 percent and world output to decline by 1.3 percent.²⁶

56. Against this backdrop of a sustained global recession, the Canada Mortgage and Housing Corporation forecasts that, because of the downturn in Canadian economic activity and the employment market, housing starts and home resales will decrease in 2009 and increase only slightly in 2010.²⁷

57. All other things being equal, the Tribunal is of the view that the preceding supports the conclusion that the current economic downturn will result in reduced demand for custom wood blinds and, accordingly, reduced demand for wood slats. In this regard, the witnesses for SBM and Trans UV agreed that the demand for custom wood blinds, and hence wood slats, would likely not begin to improve before 2010.²⁸

Likely Volumes of Dumped Goods

58. The Tribunal's assessment of the likely volumes of dumped imports²⁹ encompasses the likely performance of the foreign industry,³⁰ potential for the foreign producers to produce goods in facilities that are currently used to produce other goods,³¹ evidence of the imposition of anti-dumping measures on wood slats or similar goods in other jurisdictions³² and the likelihood of trade diversion.³³ Given the lack of information on these other factors, as they might pertain to the issue of volume, the Tribunal can only consider as relevant those factors that relate to excess capacity and propensity to export.

59. SBM submitted that there is no limit to the supply of wood slats from China and that the capacity of Chinese wood slat manufacturers could easily supply all the demand for wood slats in Canada. According to SBM, this excess capacity, coupled with the absence of demand for wood slats in China, will lead to increased exports to Canada should the findings be rescinded. SBM also noted that Canadian importers of wood slats, including BTG, have maintained commercial relationships with producers and exporters of wood slats in the subject countries despite the findings being in place.

60. BTG submitted that, if the findings are rescinded, exports of the subject goods will be constrained by the demand for wood slats in Canada which is, at the very best, flat or decreasing. The witness for BTG also submitted that China was unlikely to become a major source of supply for the company because BTG was satisfied with its current supplier in Vietnam.

61. Regarding SBM's allegations of systemic circumvention via the transshipment of subject goods through the United States, the Tribunal notes that the CBSA, which is responsible for the enforcement of the Tribunal's findings and orders under *SIMA*, was unable to find such circumvention.³⁴ While certain evidence was adduced during the hearing suggestive of possible circumvention,³⁵ the Tribunal did not find

26. Manufacturer's Exhibit A-05 at 3, Administrative Record, Vol. 11; Manufacturer's Exhibit A-07 at 4, Administrative Record, Vol. 11.

27. Tribunal Exhibit RR-2008-003-34.01, Administrative Record, Vol. 1 at 176.

28. *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 13, 73, 90.

29. Paragraph 37.2(2)(a) of the *Regulations*.

30. Paragraph 37.2(2)(d) of the *Regulations*.

31. Paragraph 37.2(2)(f) of the *Regulations*.

32. Paragraph 37.2(2)(h) of the *Regulations*.

33. Paragraph 37.2(2)(i) of the *Regulations*.

34. Tribunal Exhibit RR-2008-003-03A, Administrative Record, Vol. 1 at 145; Tribunal Exhibit RR-2008-003-04 (protected), Administrative Record, Vol. 2 at 15.

35. *Transcript of In Camera Hearing*, Vol. 1, 26 May 2009, at 100-107.

the evidence sufficient to warrant disagreement with the CBSA's own conclusion on this issue, or to affect its consideration of the likely volume of dumped goods for the purpose of this review.

62. The Tribunal notes that, during the period of review, the volume of imports of subject goods was minimal,³⁶ reflecting the remedial effect of the anti-dumping duties.

63. However, the evidence on the record shows that there is significant excess capacity in China and that Chinese producers could supply the Canadian market many times over.³⁷ Further, in terms of excess capacity, an important Chinese producer's (ETL)³⁸ currently idle capacity alone could easily be re-engaged to ramp up wood slat production to a level sufficient to supply half the entire Canadian market.³⁹

64. The Tribunal further notes that the negative effect of the current economic downturn on global demand for custom wood blinds and, hence, for wood slats can be seen in the decrease in wood slat production of one Chinese producer during the period of review.⁴⁰

65. ETL, which exports to the United States, the United Kingdom, Japan, Australia and the Republic of South Africa,⁴¹ was pessimistic about its export sales of wood slats for 2009, mentioning that demand is decreasing in all these markets, and especially in the United States, which is "... the most hit ...".⁴² ETL indicated that the overall business from its main markets has shrunk, especially in the United States, and that the company therefore hopes that it can supply its wood slats to Canada, stating that, "[i]f we can sell to Canada, this will increase our client base, bigger order quantity thus a better production economic scale. Anyway our company strategy is to maintain a reasonable price structure, plus good quality and punctual delivery so to secure higher market share in each of our export market[s]".⁴³

66. Having regard to the export orientation of Chinese producers, the Tribunal expects that these producers will return to the Canadian market if the findings are rescinded.

67. Although there is less evidence on the record with regard to Mexico, the Tribunal observes that there were imports of the subject goods from that country during the period of review, which indicates an ongoing interest on the part of Mexican suppliers in the Canadian market. It also notes SBM's submission that states that, in the original injury inquiry, Mexico had a six-fold increase in one year in terms of its exports during the period of inquiry, demonstrating its ability to react quickly.⁴⁴ In this regard, there is some evidence that Mexico has maintained business contacts in Canada.

36. Tribunal Exhibit RR-2008-003-29 (protected), Administrative Record, Vol. 2 at 21; *Pre-hearing Staff Report* (protected), revised 21 May 2009, Tribunal Exhibit RR-2008-003-06B (protected), Administrative Record, Vol. 2.1 at 135.

37. Tribunal Exhibit RR-2008-003-34.03, Administrative Record, Vol. 1 at 213; Tribunal Exhibit RR-2008-003-24.02 (protected), Administrative Record, Vol. 6.1 at 14; *Pre-hearing Staff Report* (protected), revised 21 May 2009, Tribunal Exhibit RR-2008-003-06B (protected), Administrative Record, Vol. 2.1 at 138.

38. ETL perceives itself as being in or near the top 10th percentile of Chinese wood slat producers. Tribunal Exhibit RR-2008-003-24.02 (protected), Administrative Record, Vol. 6.1 at 14, 18.

39. *Pre-hearing Staff Report* (protected), revised 21 May 2009, Tribunal Exhibit RR-2008-003-06B (protected), Administrative Record, Vol. 2.1 at 133; Tribunal Exhibit RR-2008-003-24.02 (protected), Administrative Record, Vol. 6.1 at 21.

40. Tribunal Exhibit RR-2008-003-24.02 (protected), Administrative Record, Vol. 6.1 at 21.

41. Tribunal Exhibit RR-2008-003-23.02A, Administrative Record, Vol. 5.1 at 32.

42. *Ibid.*

43. *Ibid.* at 33.

44. *Transcript of Public Argument*, Vol. 1, 27 May 2009, at 20-21.

68. Finally, the Tribunal notes that there are currently no anti-dumping or countervailing measures in place in other jurisdictions in respect of wood slats.

69. Based on the foregoing, the Tribunal concludes that the rescission of the findings will likely result in a significant increase in the volume of imports of the subject goods into Canada, compared to their currently low levels.

70. That said, the Tribunal is of the view that the likely increase in the volume of imports of the subject goods, in the absence of the findings, is more likely to occur at the expense of imports from, and the market shares of, non-subject sources currently operating in the Canadian merchant market. The Tribunal agrees with BTG that "... export potential is constrained by the most obvious of factors which is the market demand for the subject goods in Canada...",⁴⁵ which is expected to remain flat. In other words, the Tribunal expects that the likely weak demand for custom wood blinds and, hence, for wood slats will moderate the likely increases in the absolute volumes of imports of wood slats from all sources, including the subject countries, over the next 12 to 14 months.

Likely Prices of Dumped Goods and Effects on Prices of Like Goods

71. Implicit in subsection 76.03(10) of *SIMA* is the need to establish the existence of a causal relationship between the likelihood of a continuation or resumption of dumping on the one hand, and the likelihood of injury or retardation to the domestic industry producing the like goods on the other. The phrase "likely to result in" in subsection 76.03(10) implies causality between the expiry of the order or finding and injury or retardation. The order or finding referred to in that subsection is in respect of *dumping* and, therefore, by logical extension, a causal relationship must be established between the likely continuation or resumption of dumping as found by the CBSA and likely injury.

72. As to the nature of this causal relationship, since dumping is, by definition, a commercial practice that manifests itself in the prices of subject imports, it necessarily follows that likely injury must ultimately result from the price effects of dumped goods on the like goods, i.e. in a significant undercutting, depression or suppression of the prices of like goods by the prices of the subject imports.

73. In the absence of such likely adverse price effects, any anticipated deterioration in domestic industry performance indicators (e.g. production, capacity utilization, profits, employment, wages, inventories, etc.) could not be properly attributed to the continuation or resumption of dumping and would have to be attributed to other factors.

74. SBM submitted that, if the findings are rescinded, the prices of the subject goods will decrease dramatically and the new floor price in the Canadian market will be lower than the domestic cost of slat production.

75. BTG, on the other hand, contended that, if the findings are rescinded, the prices of any subject goods that enter the Canadian market following the rescission of the findings will not be lower than the current prices of wood slats from non-subject countries.

76. In examining whether the rescission of the findings will likely have adverse price effects, it is essential to reach a reasoned conclusion on both the likely prices of the subject goods should the finding be rescinded and the likely prices of domestically produced wood slats. An assessment can then be made of the

45. *Ibid.* at 59.

likely effects of the former on the latter and, in particular, whether the prices of the subject goods are likely to significantly undercut, depress or suppress the prices of the domestically produced wood slats.

77. Even though there are currently no sales of domestically produced wood slats in the Canadian merchant market, there is no evidence that suggests that this market is closed to the domestic industry. In fact, witnesses for both SBM and Trans UV indicated a willingness to sell wood slats to other manufacturers or distributors of custom wood blinds.⁴⁶ For his part, the witness for BTG indicated a willingness to buy from domestic producers if prices were right and the company's requirements with respect to quantity and delivery times could be met.⁴⁷ That said, the Tribunal can appreciate that, as a practical matter, and as noted in the statement of reasons in Inquiry No. NQ-2003-003,⁴⁸ Canadian custom wood blind fabricators are reluctant to purchase wood slats from their competitors, i.e. from SBM or Trans UV.

78. Since there are currently no merchant sales of domestically produced wood slats, there are, as such, no merchant market prices for domestically produced wood slats.

79. In the absence of such prices, and given that, under paragraph 37.2(2)(b) of the *Regulations*, the likely effects of the dumped prices of the subject goods must be determined in relation to the prices of the like goods (i.e. domestically produced wood slats), the Tribunal considers it reasonable and appropriate for the purpose of its analysis to construct what would likely be the unit selling price of domestically produced wood slats in the Canadian merchant market, based on unit costs of production and intra-Canada delivery,⁴⁹ and a margin of profit considered reasonable by industry standards.

80. In undertaking this exercise, the Tribunal found the values submitted by Trans UV to be anomalous compared to the other evidence on the record. Moreover, the Tribunal was unable to reconcile significant inconsistencies between the testimony of the witness for Trans UV and the company's questionnaire response.⁵⁰ As a result, the Tribunal considers these values unreliable.

81. Therefore, based on the evidence on the record relating to SBM's production costs⁵¹ and the delivery costs for a Canadian distributor of wood slats,⁵² and testimony indicating that a reasonable amount

46. *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 23-24, 44-45, 84, 113.

47. *Ibid.* at 150-51.

48. Tribunal Exhibit RR-2008-003-01, Administrative Record, Vol. 1 at 25.

49. The Tribunal estimated the unit delivery costs for domestically produced wood slats by using the percentage delivery cost reported by ZMC Metal Coating Inc., a wood slat distributor, for 2008. Tribunal Exhibit RR-2008-003-21.05A (protected), Administrative Record, Vol. 6 at 68.

50. Tribunal Exhibit RR-2008-003-18.03E (protected), Administrative Record, Vol. 4 at 3-4; *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 119, 131-33; *Transcript of In Camera Hearing*, Vol. 1, 26 May 2009, at 78-82.

51. The Tribunal notes that there was some discrepancy in the evidence submitted by SBM on its cost of production for wood slats and, in particular, on the treatment of overhead expenses. (Tribunal Exhibit RR-2008-003-18.01D (protected), Administrative Record, Vol. 4 at 161.19) In addressing this discrepancy, the Tribunal chose to rely on the amount cited in the written statement of the witness for SBM as representing the "fully-loaded" cost of finished wood slats (Manufacturer's Exhibit A-04 [protected] at 4, Administrative Record, Vol. 12). The Tribunal's decision was based *inter alia* on the fact that, when the import price, which the witness indicated would render SBM "very competitive", was de-constructed on cross-examination by opposing counsel, the witness effectively confirmed that the amount that resulted after a 30 percent profit margin was backed out of the import price equated to SBM's "fully-loaded" costs. Having regard to the above, and in particular the written statement of the witness for SBM, the Tribunal is of the view that the amount cited in that statement as representing SBM's "fully loaded" costs would necessarily have had to include an allowance for overhead costs in order to render the competitive assessment in the statement meaningful (*Transcript of In Camera Hearing*, Vol. 1, 26 May 2009, at 4-7). While certain subsequent oral testimony of the witness could be taken to suggest

of profit would be in the order of 30 percent,⁵³ the Tribunal constructed a unit selling “price” for domestically produced wood slats.

82. Turning to the second aspect of paragraph 37.2(2)(b) of the *Regulations* on which the Tribunal must reach a conclusion, i.e. the likely prices of the subject goods if the findings are rescinded, it is the Tribunal’s view that rational pricing behaviour would dictate that, if the findings are rescinded, the prices of Chinese and Mexican wood slats will be no lower than required to compete with the price leader.

83. In this regard, the Tribunal notes that the evidence on the record indicates that price is an important consideration for purchasers of wood slats, as 8 of 11 respondents to its questionnaire indicated that the lowest price was very important or somewhat important in their purchase decision.⁵⁴ Further, the witness for BTG, one of the largest purchasers of wood slats in Canada, testified that “. . . price is always one factor” and that, although the company sometimes did not obtain the lowest price, it did obtain “. . . very close to the lowest price.”⁵⁵ The witnesses for SBM and Trans UV also testified that custom wood blinds and, hence, wood slats are price-sensitive products.⁵⁶

84. Given the acknowledged price sensitivity of wood slats, the Tribunal is of the view there would be no need or reasonable expectation of significant price erosion or undercutting by wood slats from the subject countries in the absence of the findings. That is, the Tribunal is of the view that, if the findings were rescinded, Chinese and Mexican producers would likely quote prices to Canadian purchasers comparable to, rather than significantly below, those of Vietnam, the current price leader in the Canadian market for wood slats.⁵⁷ This view is supported by the testimony of the witness for BTG who testified that, in his opinion, the prices of Vietnamese and Chinese wood slats in the Canadian market would be “very similar” in the absence of the findings.⁵⁸

85. As further support for this conclusion, the Tribunal considers that the prices of Chinese wood slats in the United States serve as a useful proxy for estimating the prices of Chinese wood slats in the Canadian market if the findings are rescinded. After adjusting the prevailing average free-on-board prices of Chinese wood slats to factor in the CAN\$/US\$ exchange rate and ocean transportation costs,⁵⁹ the resulting price of

otherwise (*Transcript of In Camera Hearing*, Vol. 1, 26 May 2009, at 19, 36-37, 48), the Tribunal accords particular significance to the witness’s written statement.

52. Tribunal Exhibit RR-2008-003-21.05A (protected), Administrative Record, Vol. 6 at 68.

53. *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 68.

54. *Pre-hearing Staff Report*, 16 April 2009, Tribunal Exhibit RR-2008-003-05, Vol. 1.1 at 20.

55. *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 174-75.

56. *Ibid.* at 42-43, 98.

57. While there would appear to be at least one Chinese wood slat producer that could conceivably enter the Canadian market at lower prices, it is the Tribunal’s view that the price sensitivity of wood slats would not require that it do so. Tribunal Exhibit RR-2008-003-24.02 (protected), Administrative Record, Vol. 6.1 at 21, 23; *Pre-hearing Staff Report* (protected), revised 21 May 2009, Tribunal Exhibit RR-2008-003-06B (protected), Administrative Record, Vol. 2.1 at 144.

58. *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 170.

59. The prices of Chinese wood slats in the U.S. market are taken primarily from Tribunal Exhibit RR-2008-003-RI-02A (protected), Administrative Record, Vol. 10 at 3. (The Tribunal took the prices in this exhibit as including the costs of delivery to BTG’s U.S. facility because its request for information from BTG had been made on this basis.) The Tribunal also considered *Transcript of In Camera Hearing*, Vol. 1, 26 May 2009, at 25, 39, 53-54, and *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 96, 166. The Tribunal estimated transportation costs using the percentage transportation cost reported by BTG for its direct imports of wood slats in the fourth quarter of 2008. Tribunal Exhibit RR-2008-003-21.06C (protected), Administrative Record, Vol. 6 at 106. The exchange rate was the Bank of Canada rate for June 1, 2009, i.e. US\$1=CAN\$1.09.

wood slats from Chinese producers delivered to Canadian wood blind manufacturers⁶⁰ would be comparable to the current price of Vietnamese wood slats in the Canadian market.

86. The Tribunal also notes the testimony of the witness for BTG with regard to the relative prices of Chinese and Vietnamese wood slats in the U.S. market, where there are no anti-dumping duties on imports of wood slats from any source, including the subject countries, as illustrative in predicting the likely behaviour of prices in the Canadian market if the findings are rescinded and, in particular, the fact that prices in that market are not in a downward spiral.⁶¹

87. Having reached conclusions on the likely prices of the subject goods and the likely prices of the like goods, the Tribunal will now consider the effects of the former on the latter.

88. In this regard, when the Tribunal compares the constructed “price” for domestically produced wood slats to the likely price of the subject goods if the findings are rescinded, the results do not indicate a significant difference.

89. Moreover, the Tribunal notes that, the witness for SBM testified that it would be “possible” to compete with a price of imported wood slats, from any source, that is essentially on par with the lowest-priced non-subject wood slats currently in the Canadian market, i.e. slats from Vietnam, and that SBM would be “very competitive” at this amount.⁶² This testimony confirms his written statement.⁶³

90. Based on the foregoing, the Tribunal is of view that the rescission of the findings will not likely result in significant adverse price effects on the prices of like goods and that the likely prices of the subject goods in the absence of the findings will likely not significantly undercut, depress or suppress the prices of domestically produced wood slats.

91. Beyond paragraph 37.2(2)(b) of the *Regulations* which requires the Tribunal to assess the effects of the prices of the dumped goods on the prices of the like goods, the Tribunal also looked at relative input costs and made an “apples-to-apples” comparison of SBM’s “fully-loaded” unit cost of slats for the internal production of custom wood blinds to what would be the Canadian equivalent of the landed and delivered cost to other Canadian custom wood blind manufacturers of the theoretically cheapest Chinese slats available in the U.S. market.⁶⁴

92. This analysis reveals a price differential of less than CAN\$0.01 per linear foot.⁶⁵

93. Therefore, the Tribunal is of the view that any effects of the subject goods in relation to the input costs of integrated custom wood blind producers would also not likely be significant.

60. In the case of the indirect sales of wood slats by Chinese producers, through distributors, to smaller wood blind manufacturers (whose lower volume requirements preclude direct purchases), the distributor markup would result in a higher price.

61. *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 170; *Transcript of In Camera Hearing*, Vol. 1, 26 May 2009, at 112-13.

62. *Transcript of In Camera Hearing*, Vol. 1, 26 May 2009, at 4-7.

63. Manufacturer’s Exhibit A-04 (protected) at 4-5, Administrative Record, Vol. 12.

64. Manufacturer’s Exhibit A-04 (protected) at 4, Administrative Record, Vol. 12; Tribunal Exhibit RR-2008-003-24.02 (protected), Administrative Record, Vol. 6.1 at 21, 23.

65. *Ibid.*

94. The Tribunal considered SBM's argument that it is not limited to assessing the price effects of the dumped goods in relation to the like goods (i.e. wood slats) and can also assess their price effects in relation to the finished product (custom wood blinds). Leaving aside the fact that paragraph 37.2(2)(b) of the *Regulations* explicitly provides that the effects of the likely prices of dumped goods are to be assessed on the prices of the like goods, such an analysis would not yield a different result, having regard to the Tribunal's finding that Chinese and Mexican wood slat prices will likely settle at a level comparable to those of Vietnam, to which the Canadian industry has already had to adjust.

95. Finally, as indicated previously, the Tribunal is of the view that the increase in the volume of imports from the subject countries will likely occur at the expense of imports from, and the market shares of, non-subject sources currently operating in the Canadian merchant market. Therefore, the Tribunal does not anticipate any volume-driven price depression in the Canadian market for wood slats.

96. As such, the Tribunal is of the view that any incremental adverse price effects on domestically produced slats, beyond those already sustained by the Canadian industry by virtue of the current low prices of non-subject imports from Vietnam, will not be significant.

Likely Performance of the Domestic Industry and Likely Impact of Dumped Goods on the Domestic Industry

97. The Tribunal will now consider the likely impact that the subject goods will have on the domestic industry if the findings are rescinded, taking into consideration the domestic industry's recent performance.⁶⁶

98. SBM and Trans UV submitted that a continuation or resumption of dumping in Canada will have a severe negative impact on their businesses and that they will be significantly less competitive in the sale of their custom wood blinds, as the volume of their wood slat production will decrease, thus increasing costs and decreasing productivity.

99. BTG submitted that, if the findings are rescinded, the domestic industry will not be impacted by imports from the subject countries because, if the Canadian market is as open as the U.S. market, the price of the wood slats coming from Vietnam and those coming from China will differ only by half of one cent.

100. The Tribunal notes that, during the period of review, several key performance indicators for the domestic industry, including production, direct employment and capacity utilization, decreased by more than 15 percent, with the largest declines coming in 2008. These decreases followed the same trend as the decrease in domestic consumption of wood slats, which fell by 16 percent between 2006 and 2008. The volume of SBM's exports also fell significantly.⁶⁷

101. However, the average unit cost of goods manufactured remained relatively stable. Productivity experienced a positive trend, increasing by approximately 20 percent between 2006 and 2008.⁶⁸ The domestic industry maintained its share of the declining domestic consumption of wood slats.⁶⁹

66. Paragraphs 37.2(2)(c), (e) and (g) of the *Regulations*.

67. *Pre-hearing Staff Report*, revised 21 May 2009, Tribunal Exhibit RR-2008-003-05B, Vol. 1.1 at 134; *Pre-hearing Staff Report* (protected), revised 21 May 2009, Tribunal Exhibit RR-2008-003-06B (protected), Vol. 2.1 at 133.

68. *Pre-hearing Staff Report* (protected), 16 April 2009, Tribunal Exhibit RR-2008-003-06 (protected), Vol. 2.1 at 62.

102. The Tribunal is of the view that, in the absence of significant adverse price effects, any anticipated further deterioration in the domestic industry's performance indicators, if the findings are rescinded, could not be properly attributed to the likelihood of continued or resumed dumping, but would have to be attributed to other causes, such as the current global economic downturn and the gradual move toward substitute products, such as faux blinds.

103. Furthermore, the Tribunal notes that production and capacity utilization are already low, most probably as a result of the presence in the market of low-priced imports from non-subject countries. In the current market, where prices constitute a very important consideration, it appears more likely that imports of the subject goods will compete with non-subject goods and will not affect domestic production and capacity utilization any more than it has already been affected by the prices of non-subject goods in the market.

104. Capacity exceeds potential demand, and increased capacity utilization is unlikely to be achieved given the effects of economic conditions on demand within the next 12 to 14 months. It appears more likely that any additional loss in production and capacity utilization will result from increased competition from slats made of faux wood.

105. In summary, the Tribunal concludes that, in the near term, if the findings are rescinded, the domestic industry will not suffer significant negative impacts.

CONCLUSION

106. Based on the evidence on the record concerning relevant factors likely to influence the Canadian market over the near term, which the Tribunal notes is limited, the Tribunal concludes that, if the findings are rescinded, the resumed or continued dumping of the subject goods is unlikely to result in injury to the domestic industry.

107. Therefore, based on the foregoing analysis, and pursuant to subparagraph 76.03(12)(a)(ii) of *SIMA*, the Tribunal hereby rescinds its finding in respect of wood slats from China.

108. In addition, pursuant to subparagraph 76.03(12)(a)(ii) and subsection 76.04(1) of *SIMA*, the Tribunal hereby rescinds its finding in respect of wood slats from Mexico.

Serge Fréchette

Serge Fréchette

Member

Pasquale M. Saroli

Pasquale M. Saroli

Member

69. *Pre-hearing Staff Report*, revised 21 May 2009, Tribunal Exhibit RR-2008-003-05B, Vol. 1.1 at 134; *Pre-hearing Staff Report* (protected), revised 21 May 2009, Tribunal Exhibit RR-2008-003-06B (protected), Vol. 2.1 at 133.

DISSENTING OPINION OF PRESIDING MEMBER VINCENT

109. With great respect for the majority, I cannot agree with its conclusion that, if the findings are rescinded, the continued or resumed dumping of the subject goods is unlikely to result in injury to the domestic industry. My review of the evidence and arguments advanced during the course of this expiry review brings me to different conclusions, which I summarize in the paragraphs that follow.

110. I concur with my colleagues' views with respect to the issues of like goods, domestic industry, cumulation and the appropriate time period for the analysis of the likelihood of injury in this expiry review as the circumstances that are likely to exist in the next 12 to 14 months.

111. As for the majority's assessment of the factors that the Tribunal is required to address pursuant to the *Regulations*, I agree with its analysis of the evidence as it pertains to changes in international and domestic market conditions.

112. Further, I agree that there will likely be a significant increase in the volume of imports of the subject goods if the findings are rescinded. However, as I discuss later, I disagree with my colleagues' conclusion that the increase in the volume of the subject goods will be largely at the expense of non-subject imports of wood slats with no negative effects for the domestic industry.

113. Where I differ in view from the majority is my assessment of what will be the likely prices of the subject goods if the findings are rescinded and what will be the subsequent impact on the domestic industry. I find that the continuation or resumption of dumping of the subject goods will likely result in injury to the domestic industry. Pursuant to subparagraph 76.03(12)(a)(ii) and subsection 76.04(1) of *SIMA*, I am therefore of the opinion that the findings should be continued.

Likely Prices of Dumped Goods and Effects on Prices of Like Goods

114. The evidence indicates that wood slats are best characterized as a commodity product. In this regard, BTG, one of the largest purchasers of wood slats, indicated in its response to the Tribunal's questionnaire that the lowest price is a very important⁷⁰ consideration in the choice of supplier.

115. In many previous expiry reviews dealing with commodity products, the Tribunal has observed that prices tend to converge at the lowest available price in the market.⁷¹ I see nothing in the evidence for this case to suggest a different outcome.

116. Therefore, in keeping with my understanding of the Tribunal's well-established view of how prices for commodity products behave in the market, I am unable to agree with my colleagues' conclusion that, if the findings are rescinded, producers in the subject countries will choose simply to match the lowest prices of the current price leader in the market. Rather, in my view, wood slat producers in the subject countries will have every incentive to undercut Vietnamese prices in order to win sales and re-establish their presence in the Canadian market. This will lead to a downward spiral in the price of wood slats, which will eventually settle at the lowest possible level.

70. Tribunal Exhibit RR-2008-003-26.05, Administrative Record, Vol. 5.2 at 74.

71. See, for example, *Structural Tubing* (22 December 2008), RR-2008-001 (CITT) at 18; *Carbon Steel Pipe Nipples and Adaptor Fittings* (15 July 2008), RR-2007-003 (CITT) at 12; *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at 28; *Hot-rolled Carbon Steel Plate* (10 January 2003), RR-2001-006 (CITT) at 14.

117. In my assessment of what will be the likely prices of the subject goods if the findings are rescinded, I considered a variety of evidence, including the evidence of ETL, the Chinese wood slat producer that responded to the expiry review questionnaire and that has maintained an ongoing business relationship with BTG by virtue of being the primary supplier of wood slats to BTG's U.S. operations.⁷² ETL provided specific information on its average prices for sales of wood slats in the United States (to all buyers) and to its four other major markets. These prices are consistent among these different markets.⁷³ Further, ETL is an important producer in the Chinese wood slat industry.⁷⁴ Therefore, I gave substantial weight to the information that ETL provided on its sales in the United States.

118. ETL provided average prices for its sales of wood slats to the United States for 2006, 2007 and the first nine months of 2008. These prices were relatively stable across the three time periods. ETL also provided a March 2008 price list for a specific product. Relying on the most recent information, I adjusted the average price for the first nine months of 2008 and the March 2008 price list to account for the CAN\$/US\$ exchange rate and for transportation costs to Canada to give a range of likely prices for sales of ETL's wood slats to Canadian custom wood blind fabricators in the absence of the findings.⁷⁵

119. I am of the opinion that should the Tribunal's findings be continued, and based on the values provided by ETL with regard to sales in the United States in 2008 adjusted for transport and the CAN\$/US\$ exchange rate, the likely prices of wood slats from China would be at least 20 percent lower than the prices of wood slats from Vietnam. This price gap is significant. Because we are dealing with a commodity product that is very price-sensitive, and the lowest prices represent the likely point of market-price convergence, the price of the subject goods would result in a downward spiral in the prices of wood slats in Canada of more than 20 percent. I note that this sizeable estimated gap reflects ETL's current prices and does not depend on it reducing its prices in order to make sales in Canada.⁷⁶ They are simply the current prices in the United States, adjusted for Canada. In my view, ETL and other Chinese producers would take advantage of this gap to try to make sales in the Canadian market and gain significant market shares. Vietnamese suppliers would be under pressure to offer prices that were comparable to the new lower prices of the subject goods. In this regard, I note ETL's response to the expiry review questionnaire that it "hopes" to be able to sell wood slats to Canada in the future, which it has "... not been able to do ... in the past ...", presumably because it cannot compete on a fairly traded basis.⁷⁷

120. Although ETL's average prices and price list for its sales of wood slats to the United States are among the lowest on the record, the preponderance of the evidence on the record with regard to the prices of Chinese slats in the U.S. market supports these values in part. In fact, there is evidence of prices that essentially overlap the average price and price list of ETL. The witness for BTG, one of the largest purchasers of wood slats, testified that the price of wood slats FOB China is US\$0.12 to US\$0.13 per linear foot. This agrees with the testimony of the witness for Trans UV who stated that the FOB China price of wood slats is US\$0.10 to US\$0.14 per linear foot. There was similar testimony *in camera*. This supports the view that, in the absence of the findings, the likely prices of Chinese slats in the Canadian market would be substantially

72. *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 142.

73. Tribunal Exhibit RR-2008-003-24.02 (protected), Administrative Record, Vol. 6.1 at 21, 23.

74. *Ibid.* at 18.

75. *Ibid.* at 21, 23, 32. The percentage transportation cost and the CAN\$/US\$ exchange rate are the same as in the majority's analysis.

76. *Pre-hearing Staff Report* (protected), revised 21 May 2009, Tribunal Exhibit RR-2008-003-06B (protected), Administrative Record, Vol. 2.1 at 144.

77. Tribunal Exhibit RR-2008-003-23.02A, Administrative Record, Vol. 5.1 at 33.

lower than the prices of Vietnamese slats.⁷⁸ As noted earlier, due to the price-sensitive nature of wood slats, the magnitude of these price gaps is significant enough to lead purchasers to switch suppliers and for Canadian producers of slats used internally to experience increased competition in the market for custom wood blinds, which represents the only commercial use for wood slats.

121. For the reasons outlined above, in the absence of the findings, I disagree with my colleagues on what will be the likely prices of the subject goods. Concerning their assessment of what is the relevant basis of comparison for the domestic industry, in my view, it is not imperative that likely injury invariably result from the effects of prices of dumped goods on the prices of the like goods. In this case, there are no merchant market sales of like goods (i.e. no prices for the like goods) or reasons to believe that there will be any in the next 12 to 14 months. In my opinion, the likely injury may ultimately result from the effects of prices of dumped goods on the prices of downstream products, for which the like goods are an important component.⁷⁹ In addition, in its statement of reasons in Inquiry No. NQ-2003-003, the Tribunal explicitly recognized that slats have no purpose or commercial use other than being part of wood blinds, of which they are the main component.⁸⁰ The Tribunal also recognized that low-priced slats “. . . allowed domestic fabricators to market custom blinds with good profit margins in competition with SBM.”⁸¹

122. While the factor set out at paragraph 37.2(2)(b) of the *Regulations* does speak of the likely prices of the dumped goods and their effect on the prices of like goods, I do not believe that it is necessary for the Tribunal to construct prices for like goods where none currently exist. I note that subsection 37.2(2) provides a list of factors that the Tribunal “may consider” in addressing the question of likelihood of injury. Therefore, these factors are not mandatory and should only be considered to the extent that they are relevant to the question of likelihood of injury. This is supported by paragraph 37.2(2)(k), which allows the Tribunal to take into consideration any other factors that it believes are “relevant in the circumstances”.

123. In light of the particular circumstances of this case, i.e. the absence of any merchant market sales of domestically produced wood slats, I believe that the most relevant comparison for purposes of determining whether there exists a likelihood of injury is between the cost of wood slat production for the integrated domestic producers and the likely prices of the subject goods that custom wood blind fabricators will pay if the findings are rescinded. Such a comparison reflects the fact that competition in the marketplace occurs in respect of custom wood blinds which has a direct impact on the domestic industry’s production of wood slats.

124. Based on my examination of the evidence, the material cost of domestic wood slat production for internal consumption is best considered as the average of the material costs reported by SBM and Trans UV. I have no reason to believe that this is not a reasonable assessment of a representative material cost for the domestic industry. In this regard, I note that the Tribunal is required to assess injury to the domestic industry, i.e. to domestic producers as a whole, and not simply to a single producer.⁸² This approach departs from that used by the majority in the examination of the costs of material, which is based on SBM’s costs only.

78. I relied on the *Transcript of In Camera Hearing*, Vol. 1, 26 May 2009, at 25, 39, 53-54; *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 96, 165-66. I also considered Tribunal Exhibit RR-2008-003-RI-02A (protected), Administrative Record, Vol. 10 at 3.

79. In my view, there is no need to have merchant market sales in order to access the protection offered by *SIMA*. Subsection 2(1) of *SIMA* defines “injury” as “. . . material injury to a domestic industry”. “Domestic industry”, in turn, is described as “. . . the domestic producers . . . of the like goods . . .” There is nothing in *SIMA* which suggests that merchant market sales are a *sine qua non* for the existence of a domestic industry.

80. Tribunal Exhibit RR-2008-003-01, Administrative Record, Vol. 1 at 11, 13.

81. *Ibid.* at 27.

82. See, for example, *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT) at 19.

125. In order to assess the total cost of producing wood slats for internal consumption, the costs of labour and overhead must be added to the material cost. In this regard, I followed the same approach as the majority and used only the labour and overhead costs reported by SBM. I note that the resultant value for the average cost of domestically produced wood slats for internal consumption compares favourably to the costs of wood slats used by fabricators in the production of custom wood blinds.⁸³

126. A comparison of this average cost of wood slat production for internal consumption to the likely prices of the subject goods in the absence of the findings indicates that the integrated domestic producers will face a gap that is at least twice as large as it currently is between the costs of production and the price of wood slats from Vietnam. In the absence of the findings, the average cost of material for wood slats for internal consumption alone will likely be higher than the likely prices of the subject goods,⁸⁴ which will likely have an impact on the capacity of domestic producers to use slats made internally to compete on the wood slat market.

127. I will now discuss more in detail the impact of this deterioration in the relative price of the slats in question on the domestic industry.

Likely Performance and Likely Impact on the Domestic Industry

128. Witnesses for both integrated domestic producers testified that, if the findings are rescinded, low-priced imports of the subject goods will force them to lower their prices for custom wood blinds, to a point where they will be forced to shut down the production of wood slats because they will not be able to justify the price gap on custom wood blinds which would allow them to recover their costs.⁸⁵

129. In Inquiry No. NQ-2003-003, the Tribunal concluded, and it is further confirmed by the witnesses for the integrated domestic producers during this expiry review, that wood slats have but one use, i.e. as a component in the manufacture of custom wood blinds.⁸⁶ Consequently, the integrated domestic producers will only continue to make wood slats if that production is cost-effective as an input into their manufacture of custom wood blinds.

130. As I concluded above, given the commodity nature of wood slats, if the findings are rescinded, the subject goods will enter the Canadian market at low prices, which will be significantly less than the comparable costs of wood slat production for the integrated domestic producers. The presence of dumped wood slats from the subject countries in the Canadian market will be a source of tremendous pressure on the business model of the integrated domestic producers. This is inevitable because wood slats are the major input of custom wood blinds, and any variation in the cost of wood slats is certain to have an immediate repercussion on the price of custom wood blinds.

83. Tribunal Exhibit RR-2008-003-18.01D (protected), Administrative Record, Vol. 4 at 161.19; Tribunal Exhibit RR-2008-003-18.03E (protected), Administrative Record, Vol. 4 at 210; *Pre-hearing Staff Report* (protected), Tribunal Exhibit RR-2008-003-06 (protected), Administrative Record, Vol. 2.1 at 48-54.

84. Tribunal Exhibit RR-2008-003-18.01D (protected), Administrative Record, Vol. 4 at 161.19; Tribunal Exhibit RR-2008-003-18.03E (protected), Administrative Record, Vol. 4 at 210; Tribunal Exhibit RR-2008-003-24.02 (protected), Administrative Record, Vol. 6.1 at 21, 23, 32. The percentage transportation cost and the CAN\$/US\$ exchange rate are the same as in the majority's analysis.

85. *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 13-14, 68-69, 103-104; *Transcript of In Camera Hearing*, Vol. 1, 26 May 2009, at 20-22, 71-72.

86. Tribunal Exhibit RR-2008-003-01, Administrative Record, Vol. 1 at 13.

131. The rescission of the findings could not come at a worse time for the integrated domestic producers, which are coping with flat or decreasing demand for custom wood blinds due to the economic slowdown and which are not in a position to absorb the negative impact that resumed or continued dumping will have on the relative cost of wood slats.

132. The integrated domestic producers submitted that, if the findings are rescinded, dumped wood slats will force them to lower their prices for custom wood blinds, to a level where it will no longer be viable to produce wood slats.

133. In my view, the growing gap between the likely prices of the subject goods and the cost of production of wood slats for internal use will lessen the competitiveness of the integrated domestic producers in terms of the production of custom wood blinds. In response to lower prices for custom wood blinds manufactured by fabricators using the much lower-priced subject goods, the integrated domestic producers will be forced to lower their prices for custom wood blinds, which will squeeze their margins.

134. I accept the position of the integrated domestic producers that, faced with the reality of no longer being able to compete with imported wood slat prices, they will lose any competitive advantage they might have in terms of shorter delivery times and broader range of colours and will have no choice but to reduce or cease their production of wood slats, which would negatively affect the overall profitability of their businesses. In this regard, Trans UV estimated losses of 75 to 80 percent of sales,⁸⁷ while SBM stated that it might not survive another five years in the custom wood blinds market⁸⁸ if it were unable to manufacture wood slats cost-effectively.

135. In its statement of reasons in Inquiry No. NQ-2003-003, the Tribunal came to the following conclusion concerning the injury caused by the dumped goods on the domestic production of wood slats for internal use:

87. However, in the Tribunal's view, the competitiveness of the domestic slat industry's production for internal use (i.e. custom blind production) was materially impacted. But for the low cost of imported slats used to fabricate custom blinds, the integrated producers would have been significantly more competitive. The volumes of their slat production would have likely increased, thus reducing costs and increasing profitability both in the internal captive and external merchant markets that they serve.

...

96. ... Also, the significant price differential applied downward pressure on the pricing of slats used internally for the production of custom blinds, thus preventing the domestic integrated producers from achieving better returns on their slat production. ...

136. There is no evidence to suggest that the impact of lower-priced subject goods, without the findings in place, will be any different from the impacts found by the Tribunal during the period of inquiry, particularly in light of the current economic condition where producers in the subject countries have increasing overcapacity to use and a greater incentive to sell.

137. Consequently, if the findings are rescinded, the domestic industry will experience injury principally in the form of significant decreases of wood slats production, capacity utilization and employment caused by the significantly lower prices and negative effects of the subject goods on their relative cost-competitiveness as manufacturers of custom wood blinds. The integrated domestic producers could

87. *Transcript of Public Hearing*, Vol. 1, 26 May 2009, at 105.

88. *Ibid.* at 14.

also see lower profitability for their companies as a whole. In the worse case scenario, they will cease production of wood slats entirely, which will entail even greater injury.

Other Factors

138. Given the remedial effects of the findings, it is not surprising that imports of wood slats from non-subject sources, including the United States and Vietnam, are present in large quantities in the Canadian market. In this regard, I agree with the views of my colleagues that the integrated domestic producers have already had to adjust to the low prices of wood slats from Vietnam.

139. However, the evidence indicates that they have been largely able to meet this competition from fairly traded goods. Although the domestic industry saw deterioration in several key performance indicators, including production, direct employment and capacity utilization, it was able to maintain its relative share of the declining Canadian consumption of wood slats.⁸⁹

140. In my view, this indicates that there is nothing intrinsically inefficient about the business model employed by SBM and Trans UV.

141. I also note that the domestic industry has suffered setbacks in export performance.⁹⁰ However, I attribute this to the worldwide economic slowdown and the negative effect on demand for custom wood blinds.

142. Accordingly, I conclude that the above non-dumping factors will be of little or no consequence to the injury that will likely be caused to the domestic industry if the findings are rescinded.

Conclusion

143. For the foregoing reasons, I conclude that the resumed or continued dumping of the subject goods will likely result in injury to the domestic industry. Pursuant to paragraph 76.03(12)(b) and subsection 76.04(1) of *SIMA*, I would therefore continue the findings.

Diane Vincent
Diane Vincent
Presiding Member

89. *Pre-hearing Staff Report* (protected), revised 21 May 2009, Tribunal Exhibit RR-2008-003-06B (protected), Administrative Record, Vol. 2.1 at 133; *Pre-hearing Staff Report*, revised 21 May 2009, Tribunal Exhibit RR-2008-003-05B, Administrative Record, Vol. 1.1 at 134.

90. *Pre-hearing Staff Report* (protected), 16 April 2009, Tribunal Exhibit RR-2008-003-06 (protected), Administrative Record, Vol. 2.1 at 45.