

Ottawa, Monday, January 19, 1998

Review No.: RR-97-004

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on January 20, 1993, in Inquiry No. NQ-92-004, concerning:

**GYPSUM BOARD, COMPOSED PRIMARILY OF A GYPSUM CORE, WITH  
PAPER SURFACING BONDED TO THE CORE, ORIGINATING IN OR  
EXPORTED FROM THE UNITED STATES OF AMERICA**

**ORDER**

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of its finding made on January 20, 1993, in Inquiry No. NQ-92-004.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds the above-mentioned finding.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

Charles A. Gracey

Charles A. Gracey  
Member

Michel P. Granger

Michel P. Granger  
Secretary



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EXPORTED FROM THE UNITED STATES OF AMERICA**

*Special Import Measures Act* - Whether to rescind or continue, with or without amendment, the finding made by the Canadian International Trade Tribunal on January 20, 1993, in Inquiry No. NQ-92-004.

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: November 12 to 14 and 17 to 20, 1997  
Date of Order and Reasons: January 19, 1998  
Tribunal Members: Arthur B. Trudeau, Presiding Member  
Robert C. Coates, Q.C., Member  
Charles A. Gracey, Member  
Director of Research: Peter Welsh  
Lead Researcher: Tom Geoghegan  
Researchers: Audrey Chapman  
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Economists: Dennis Featherstone  
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Ottawa, Monday, January 19, 1998

**Review No.: RR-97-004**

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EXPORTED FROM THE UNITED STATES OF AMERICA**

TRIBUNAL:           ARTHUR B. TRUDEAU, Presiding Member  
                          ROBERT C. COATES, Q.C., Member  
                          CHARLES A. GRACEY, Member

**STATEMENT OF REASONS**

**BACKGROUND**

This is a review, under subsection 76(2) of the *Special Import Measures Act*<sup>1</sup> (SIMA), of the finding made by the Canadian International Trade Tribunal (the Tribunal) in Inquiry No. NQ-92-004,<sup>2</sup> concerning gypsum board, composed primarily of a gypsum core, with paper surfacing bonded to the core, originating in or exported from the United States of America.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of its finding and issued a notice of review<sup>3</sup> on June 18, 1997. This notice was forwarded to all known interested parties.

As part of this review, the Tribunal sent questionnaires to Canadian manufacturers, US manufacturers, Canadian purchasers and the Gypsum Association. From the replies to these questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

The record of this review consists of all relevant documents, including the finding in Inquiry No. NQ-92-004, the notice of review and public and confidential replies to the questionnaires for the 1997 review and the public and protected pre-hearing staff reports for the 1992 inquiry. All public exhibits were made available to interested parties, while protected exhibits were provided only to independent counsel who had filed a declaration and confidentiality undertaking with the Tribunal.

Public and *in camera* hearings were held in Ottawa, Ontario, on November 12 to 14 and 17 to 20, 1997.

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1. R.S.C. 1985, c. S-15, as amended by S.C. 1994, c. 47.
  2. *Finding*, January 20, 1993, *Statement of Reasons*, February 4, 1993.
  3. *Canada Gazette* Part I, Vol. 131, No. 26, June 28, 1997, at 1894.

During its review, the Tribunal dealt with a number of procedural matters. One of these matters arose in connection with interrogatories served by Westroc Inc. (Westroc) and Georgia-Pacific Corporation (GPC) on CGC Inc. (CGC), some of which contemplated materials in the possession and control of USG Corporation (USG), CGC's US parent. CGC indicated that, in light of that fact, it could not respond to the USG-related questions. Westroc and GPC brought a motion seeking to have the Tribunal compel CGC to respond. After receiving extensive submissions, the Tribunal ordered CGC to respond. In its decision, the Tribunal found that, pursuant to the *Canadian International Trade Tribunal Act*,<sup>4</sup> it had jurisdiction to order parties to produce documents. It also found that it had jurisdiction to order the production of information by "necessary implication."<sup>5</sup>

The Tribunal issued rulings circumscribing the scope of certain interrogatories; denying a request that the hearing be postponed or, alternatively, that an expert witness's report be struck from the record; and, in relevant instances, directing parties to provide the complete text of documents that they had filed, as opposed to selective excerpts. The Tribunal also directed counsel for one of the parties to "show cause" of why it should accept a witness statement filed nearly two weeks beyond the relevant deadline. After receipt of counsel's submission, the Tribunal accepted the statement for filing.<sup>6</sup>

## **PRODUCT**

The product which is the subject of this review is described as gypsum board, composed primarily of a gypsum core, with paper surfacing bonded to the core, with the exception of:

- (i) gypsum board panels with a raised surface;
- (ii) gypsum board panels with bevelled edges in a thickness of 5/8 in. and in a width of 23 in., 24 in., 29 in. or 30 in.; and
- (iii) plain or vinyl-faced gypsum board panels with squared edges in a thickness of 3/8 in. or 5/16 in.;

originating in or exported from the United States.

Gypsum board has long been used as a building material in various applications, including interior walls, partitions and ceiling construction. It provides a durable, economical, non-combustible and easily decorated surfacing material for construction use. As well, it has excellent compressive-strength properties and a relatively low density compared to other cement-type products.

The gypsum board production process commences with the mining and transportation of gypsum rock to the board plant where it is crushed and ground to a fine powder. The gypsum powder is then heated, driving off three quarters of the chemically combined water in a process called calcining. The calcined gypsum powder (plaster of Paris) is then used to produce the core of the board. The board is formed by introducing a slurry of calcined gypsum (stucco), along with water, foam, pulp, starch and set controlling agents, between two unwinding rolls of absorbent paper, resulting in a continuous "sandwich" of wet board resting on a continuous belt line. As the board moves down the belt line, the calcined gypsum rehydrates and recrystallizes, reverting to a solid gypsum matrix, and the paper sheets become firmly bonded to the rehydrated core. After moving down the belt line, the continuous board is cut to length and conveyed through

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4. R.S.C. 1985, c. 47 (4th Supp.).

5. The Tribunal issued orders and statements of reasons dated September 26 and October 1, 1997, respectively.

6. Tribunal letter to Ms. Swick-Martin, Ogilvy Renault, dated November 4, 1997.

dryers to remove excess moisture. The board is then conveyed to the “take-off” where it is bundled, stacked and moved to storage.

There are plants in Canada and the United States which use synthetic gypsum (DSG)<sup>7</sup> instead of natural ground gypsum. There has been a growing tendency by both Canadian and US gypsum producers whose plants are situated in the eastern parts of both countries to use DSG as a lower-cost raw material alternative to gypsum rock. From the evidence, it appears that several greenfield plants recently announced for the eastern United States will use DSG as their raw material. This material is produced by coal-fired thermal electric plants located exclusively in the eastern parts of Canada and the United States. Producers in the western parts of Canada and the United States do not have economical access to DSG and, therefore, most firms access gypsum rock from nearby gypsum mines.

Gypsum board is generally produced in standard 4-ft. widths, or the metric equivalent, and in varying lengths. The most common length is 8 ft. Gypsum board is manufactured in different thicknesses ranging from 1/4 in. to 1 in., although 1/2-in. gypsum board is, by far, the most common. Gypsum board of thicknesses greater than 1/2 in. is usually used in applications where there may be high traffic, where sound absorbency is significant or where fire regulations require a greater thickness. In addition, gypsum board may be produced with squared, bevelled or tapered edges.

The most common gypsum board is 1/2-in. standard tapered-edge gypsum board, followed by 5/8-in. fire-resistant gypsum board, which is used almost exclusively in commercial applications.

Other wall or ceiling construction materials, such as wood panels and plaster, are alternatives for gypsum board. However, these products are more expensive and less fire-resistant and, therefore, do not generally compete with gypsum board.

Historically, gypsum board has been produced and sold within specific regional markets because of high unit weight and high transportation costs relative to the unit value of the product. Friability<sup>8</sup> during transport has also been a limiting factor. In the past, these circumstances have generally dictated that markets be supplied by the nearest producer. However, since the onset of deregulation in the trucking industry, in the mid-1980s, freight rates declined, bringing distant markets within reach. Improved rail transport technology has also increased shipping distances.

A number of Canadian and US producers have been moving toward obtaining plant access to rail lines and securing contracts with railways to reduce costs on long distance shipments. This allows for lower transportation costs when Canadian and US producers ship product to a given Canadian or US regional market or to a series of regional markets. Rail is used for long distance shipments, while trucking is the mode of transport for shorter distances, including just-in-time deliveries.

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7. DSG (desulphogypsum) is produced as a by-product of a sulphur dioxide removal process used by particular coal-fired thermal electric generating stations. This product, which was formerly a waste material destined for landfill sites, is now transformed into a recyclable, high purity gypsum board product.

8. The core of the gypsum board is easily crumbled.

## **DISTRIBUTION AND MARKETING**

There are two basic channels of distribution in Canada. The first channel is the gypsum supply specialty dealer, which in turn supplies commercial and residential contractors. The second major channel of distribution is the building materials retailers that retain moderate levels of gypsum board inventory in order to supply the retail market (do-it-yourselfers and small contractors).

In addition to these two major channels of distribution, a small amount of gypsum board is supplied directly to original equipment manufacturer (OEM) accounts. These OEM accounts are primarily manufacturers of pre-fabricated homes.

In Canada, there has been considerable consolidation of purchasers by membership in buying groups. These buying groups may include both supply specialty dealers and retailers.

Gypsum board is promoted in a number of ways. It can be marketed through field sales representatives who have direct contact with the trade, through print ads in trade publications, through direct mail promotions and through joint events with customers.

## **DOMESTIC INDUSTRY**

Currently, there are four producers of gypsum board in Canada. They are Westroc, CGC, Georgia-Pacific Canada, Inc. (GP Canada) and Atlantic Group Limited (Atlantic).

### **Westroc**

Westroc, formerly known as Westroc Industries Limited, is indirectly a wholly owned subsidiary of BPB plc in the United Kingdom and is the largest producer of gypsum board in Canada.

Westroc operates six gypsum board plants and two gypsum mines across Canada. The plants are located in McAdam, New Brunswick; Ville Sainte-Catherine, Quebec; Mississauga, Ontario; Winnipeg, Manitoba; Calgary, Alberta; and New Westminster, British Columbia. Westroc's gypsum mines are located in Amaranth, Manitoba (quarry), and Windermere, British Columbia (quarry). Westroc's Mississauga board plant switched from natural gypsum rock to DSG in 1995. The DSG is supplied by Ontario Hydro's Lambton Generating Station.

In Canada, Westroc sells gypsum board to buying groups, gypsum specialty dealers, building materials distributors, retailers and OEMs.

Westroc also markets its gypsum board in the United States. Export sales increased sharply over the review period and, by 1996, they accounted for a significant proportion of total sales of gypsum board.

### **CGC**

CGC, the second largest Canadian producer of gypsum board, is located in Mississauga. It is the largest supplier of gypsum board in Eastern Canada. The firm is owned by USG which has its head office in Chicago, Illinois. CGC is divided into three business divisions: Canadian Gypsum Company, Limited, CGC Interiors and CGC Industries. In addition, CGC owns Economy Drywall Supplies. Canadian Gypsum Company, Limited accounts for a large proportion of CGC's total sales.



CGC markets gypsum board primarily in Eastern Canada, with recently increased efforts to sell gypsum board to markets in Western Canada. This increase in sales to the west follows the introduction of a new facility for rail car loading installed in Hagersville, Ontario. CGC operates two gypsum board plants: one in Montréal, Quebec, which produces gypsum board and joint treatment, and the other in Hagersville, which produces gypsum board, joint treatment and textures. The Hagersville plant is located at the site of its gypsum mine. The Montréal plant obtains its gypsum from CGC's new DSG processing plant in Belledune, New Brunswick, which was opened in November 1995. This facility processes DSG supplied by the Dalhousie and Belledune power generating facilities of New Brunswick Power Corporation.

Over the review period, CGC exported increasing volumes of gypsum board to the United States. In 1996, exports represented an important part of total sales of gypsum board.

### **GP Canada**

GP Canada is the third largest producer of gypsum board in Canada. GP Canada is a subsidiary of GPC. GPC is a leading US manufacturer and distributor of a wide variety of paper and building products, including a full line of gypsum board products, joint system products and a variety of specialty gypsum products. In the spring of 1996, GPC acquired all of the gypsum manufacturing operations of Domtar Inc. (Domtar). Domtar was one of the original complainants in the Department of National Revenue's 1992 dumping investigation.

GPC owns and operates all of the former Domtar gypsum board production facilities in Canada, located in Caledonia, Ontario; Winnipeg, Manitoba; Edmonton, Alberta; and Surrey, British Columbia. GPC continues to own and operate several gypsum board production facilities in the United States through its subsidiary G-P Gypsum, Inc.

GP Canada shipped increasing quantities of gypsum board to the United States during the review period.

### **Atlantic**

Atlantic, the fourth and smallest Canadian manufacturer of gypsum board, came out of receivership in February 1993 after having closed in June 1992. It currently operates one plant in Corner Brook, Newfoundland, and one quarry in Fischell's, Newfoundland. The firm markets its gypsum board in Newfoundland and the Maritimes.

### **Gypsum Association**

All Canadian and US producers of gypsum board are members of the Gypsum Association located in Washington, D.C. This association provides shipment, capacity and export data for its Canadian and US members. The Gypsum Association responded to the Tribunal's questionnaire.

### **NON-RESIDENT IMPORTERS/FOREIGN MANUFACTURERS**

Questionnaire responses were received from 5 of the 11 US producers of gypsum board to whom a review questionnaire was sent. Summary profiles of the US companies for which the Tribunal has information follow.

## **USG**

USG is the world's largest producer of gypsum board. Its headquarters is located in Chicago. This firm operates two core businesses: (1) North American Gypsum, which includes United States Gypsum Company, CGC Inc. and Yeso Panamericano, S.A.; and (2) Worldwide Ceilings. USG's distribution arm, L & W Supply Corporation, serves both core businesses and outside customers.

USG currently operates 22 plants in the United States. It extracts gypsum from its 11 mines and quarries located in the United States and Canada. USG is also the largest user of DSG in North America. The company operates four paper mills. These mills are located in Texas, Ohio, Florida and New York.

### **National Gypsum Company**

National Gypsum Company (National) is the second largest producer of gypsum products in the United States. This privately held company, which was incorporated in 1993, is headquartered in Charlotte, North Carolina. Delcor Inc. holds the major proportion of the common stock of National.

National currently has 18 plants across the United States that produce gypsum board. This firm is an integrated manufacturer and supplier of a variety of other gypsum products, including pre-decorated and mobile home board, plaster, joint compound, paper and metal products for the residential and commercial construction and remodelling markets.

The company operates eight mines and quarries, including the world's largest gypsum quarry in Nova Scotia. Approximately 2 percent of the company's raw material source is DSG which is obtained from utility companies that use high-sulphur fuels.

National sources its paper requirements for gypsum board from three company-owned mills, as well as from outside sources.

## **GPC**

GPC is a publicly held US corporation and is the third largest producer of gypsum products in the United States. It is the second largest producer of gypsum products in North America. Through its subsidiaries, GPC manufactures and distributes a wide variety of paper and building products, including a full line of gypsum board products, joint system products and a variety of specialty gypsum products. Gypsum products represented a small proportion of corporate sales in 1996.

GPC entered the gypsum business in 1965 with its acquisition of Bestwall Gypsum Company. In 1996, it acquired Domtar's gypsum business, including gypsum board plants in both Canada and the United States.

GPC currently has 17 gypsum board plants across the United States. All of these plants currently produce gypsum board, with the exception of one which is idle. GPC has announced that it will permanently close, dismantle and sell this idle plant in Florence, Colorado. Of the 17 plants, 9 are the recently acquired Domtar plants.

GPC sold two gypsum board plants in the third quarter of 1996 to Lafarge Corporation. The US Department of Justice required GPC to agree to sell these plants as a condition of its anti-trust clearance for the acquisition of Domtar's US gypsum operations.

### **James Hardie Gypsum, Inc.**

James Hardie Gypsum, Inc. (James Hardie) is the fourth largest producer of gypsum board in the United States. This firm is owned by James Hardie (USA), Inc. which, in turn, is part of James Hardie Industries Limited, a multi-billion dollar, international company with its head office in Sydney, Australia. James Hardie (USA), Inc. has two business units: (1) Building Products which makes and sells fibre cement products; and (2) the Gypsum unit which produces a full line of gypsum wallboard in thicknesses from 1/4 in. to 1 in.

James Hardie currently has three plants in the United States that produce gypsum board. These plants are located in Seattle, Washington; Las Vegas, Nevada; and Nashville, Arkansas. James Hardie purchased its third gypsum board plant, the Arkansas plant, on January 31, 1997, in order to provide growth to its overall gypsum business and to provide the company with a national US exposure by enabling it to serve the New England, Middle Atlantic, East North Central, West North Central, South Atlantic, East South Central and West South Central markets.

### **Lafarge Gypsum, A Division of Lafarge Corporation**

Lafarge Gypsum, A Division of Lafarge Corporation (Lafarge Gypsum), located in Reston, Virginia, is a partly owned subsidiary of Lafarge S.A., Paris, France. On September 16, 1996, Lafarge Gypsum entered the North American gypsum wallboard market by purchasing two gypsum board plants from GPC. This acquisition established market positions in the northeast and mid-Atlantic regions of the United States. The plants are located in Buchanan, New York, and Wilmington, Delaware. Lafarge Gypsum uses contracted trucks to transport finished gypsum board. Additionally, the Wilmington plant is fully equipped to ship by rail. Lafarge Gypsum manufactures and sells a full line of gypsum board products, including moisture-resistant and fire-rated wallboard in a variety of dimensions.

### **SUMMARY OF THE 1993 FINDING**

On January 20, 1993, the Tribunal found that the dumping of gypsum board, with certain exclusions, originating in or exported from the United States had caused, was causing and was likely to cause material injury to the production in Canada of like goods.

The three domestic producers, CGC, Westroc and Domtar, collectively represented approximately 98 percent of the gypsum board produced in Canada.

The Tribunal noted that gypsum board had the characteristics of a commodity product and that suppliers that failed to lower their prices ran the risk of losing their share of the market. The evidence showed that the domestic producers had chosen to match the US import prices and, in so doing, had experienced a progressively deteriorating financial performance. Gross margins decreased by 76 percent, and combined net income declined steadily to a loss of \$5.5 million during the first eight months of 1992.

The Tribunal noted that there were various factors other than dumping which contributed to the domestic industry's injury. However, these other factors, whether taken individually or collectively, fell far

short of explaining the extent of the decline in Canadian prices for gypsum board over the inquiry period. The average margin of dumping of 28 percent was considered by the Tribunal to be a large margin for price undercutting in a commodity market such as gypsum board. In the Tribunal's view, it was highly probable that the dumping had caused prices to decline by over 10 percentage points, which translated to industry annual losses of tens of millions of dollars. Accordingly, the Tribunal concluded that the dumping of gypsum board had caused and was causing material injury to the production of like goods in Canada.

The Tribunal also concluded that all the conditions which gave rise to the US dumping, including weak demand and substantial overcapacity, were likely to persist and, therefore, found that the dumping of gypsum board was likely to cause material injury to the production of like goods in Canada.

## **POSITION OF PARTIES**

### **Parties in Favour of a Continuation of the Finding**

Three of the four domestic producers, Westroc, GP Canada and Atlantic, are in favour of a continuation of the Tribunal's 1993 finding. They submitted that the dumping of US-manufactured gypsum board is likely to resume, should the anti-dumping measures in place be discontinued, and that the Canadian gypsum board industry is extremely vulnerable to material injury as a result of such dumping.

Parties in favour of a continuation of the finding argued that the North American gypsum board market is in virtually the same position as it was in 1987-88, i.e. at the beginning of a downturn of the US gypsum board industry's business cycle and the coming on stream of substantial US production capacity at the same time as the Canadian industry is experiencing a business cycle upturn.

Westroc and GP Canada noted that, although US construction activity has been expanding since 1993, the forecast for the coming years is for a softening or, at best, a stabilization in the economy in general and construction activity in particular. Since the demand for gypsum board is derived from construction activity, Westroc and GP Canada argued that these forecasts make it clear that the US gypsum board industry can expect to experience declining demand, production and capacity utilization rates from 1997 to 2000. They claimed that the forecasts indicate that the conditions which helped the US gypsum board industry reach the levels that it attained in 1995 through 1997 are about to change, paving the way for a reduction in shipments and capacity utilization for US producers. It was submitted that this slowdown in demand has already occurred in the south central and midwest regions.

Much evidence was presented with respect to the announced capacity expansion plans by US producers of gypsum board. Westroc and GP Canada argued that, as the experience of the 1980s and 1990s has shown, the US market has had a history of capacity additions decided at a time when the market was growing and coming on stream at the end of an upward cycle.

Parties in favour of a continuation of the finding introduced evidence that US producers of gypsum board plan to expand their production capacity by approximately 4.5 to 5.0 BSF<sup>9</sup> between 1997 and 2000. It was noted that this increase in production capacity is almost double the total annual capacity reported by the Canadian gypsum board producers in 1996. GP Canada related this significant volume of new capacity to the Tribunal's 1993 statement of reasons when it found that "the real importance of the U.S. sales lies not

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9. BSF = billion square feet. Estimates vary depending on the amount of capacity creep which is assumed for each year.

in the measurement of volumes sold, but in their effect on domestic prices<sup>10</sup>, and that a small volume of dumped gypsum board can have a dramatic affect on the performance of the domestic industry.

Parties in support of a continuation of the finding argued that, with the scheduled increase in capacity by US producers, there will be a significant decline in capacity utilization in a capital-intensive industry which requires high levels of capacity utilization to remain profitable. Gypsum board manufacturers have financial and operational incentives to run plants at full capacity. Westroc and GP Canada also noted that capacity utilization is particularly important for the independent and regional producers.

Based on the somewhat pessimistic forecasts for demand of gypsum board in the US market from 1998 to 2000, counsel for parties in favour of a continuation of the finding argued that the announced US capacity additions will cause major disruptions in the US market. Counsel submitted that capacity utilization rates will drop below the 90 percent level and that the historical evidence shows that reduced prices follow reduced capacity utilization.

Counsel for parties in favour of a continuation of the finding also stated that other factors suggest that there is a likelihood of renewed dumping by US producers. These factors include the level of debt among US producers, freight equalization or sales of gypsum board outside "logical" freight zones, and the value of export sales.

GP Canada noted that there are still substantial debt service obligations by a number of US producers. Also, additional debt may reasonably be expected to be taken on to finance the aggressive capacity expansion being undertaken by manufacturers such as USG, National, James Hardie, Republic Gypsum Company and Temple-Inland Forest Products Corporation. It was argued that this debt will provide substantial incentive to maintain high capacity utilization rates by maintaining or increasing sales volume.

In addition, testimony was presented by Westroc and GP Canada which addressed the continued presence of gypsum board in US regions, well outside of the logical freight zone of the producers' manufacturing facilities, which is sold at prices below the net return earned on the bulk of sales from the same facilities. After taking into account freight costs to regions where US firms are non-resident manufacturers of gypsum board, it was suggested that these US producers often sell to distant markets at prices that are lower than those to their local markets. Westroc and GP Canada argued that this shows a high propensity by US manufacturers to seek alternative markets (including export markets such as Canada) at lower prices and that, in doing so, prices in the destination markets inevitably decline, thereby causing injury to local producers. Therefore, in order to maintain utilization levels, US producers of gypsum board ship product to distant markets. The increasing use of rail allows for access to even more distant markets where product is either warehoused or sent to reload centres.

Westroc and GP Canada submitted that, since 1993, US producers have maintained their exports to offshore markets much further away than Canada despite significant freight costs. They argued that the evidence indicated that certain US producers' exports to third country markets earn, in some cases, significantly lower net returns than those earned by sales in the US market during 1995-97. Westroc and GP Canada submitted that such export activity reflects the natural tendencies of US gypsum producers to dump product.

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10. *Supra* note 2, *Statement of Reasons* at 12.

In support of the argument that there is a likelihood of resumed dumping in Canada by US producers, parties in favour of a continuation of the finding argued that the forecast for the decline in demand combined with the significant volume of new capacity expected to come on stream promise a strong likelihood of an early and a lasting decline in US capacity utilization rates. This will lead to a downward pressure on gypsum board prices in the United States and to a propensity for US exporters to resume shipping gypsum board to Canada at dumped prices.

Turning to arguments regarding the likelihood of material injury, Westroc and GP Canada argued that, in the absence of dumping from the United States, the projected improvements in the Canadian market should have positive effects on Canadian producers' production, capacity utilization, domestic sales and, perhaps, price levels. They believe that, should the dumping of gypsum board in Canada resume, the Canadian gypsum board industry will suffer the same types of material injury found by the Tribunal from 1990 to 1992, but with more devastating consequences, given the vulnerable state of the Canadian gypsum board industry following its muted performance between 1993 and 1995.

Westroc and GP Canada submitted that the anticipated softening of US demand together with a decrease in capacity utilization rates will have a twofold impact on the domestic industry. First, it will cause US producers to seek out new business in Canada by undercutting Canadian selling prices. This will prevent Canadian producers from reaping the necessary benefits of the long awaited recovery in the domestic market.

Second, and more importantly, counsel for parties in favour of a continuation of the finding argued that the projected downturn in demand in the United States will have a negative impact on the domestic industry's export sales. This will result in reduced exports by the domestic industry to the United States. Export sales to the United States have been a major contributor to the improvement in the health of the Canadian gypsum board industry between 1993 and 1996. This loss of business will make Canadian producers more vulnerable to resumed dumping. It will also result in significantly lower capacity utilization and higher unit costs. But for the substantial export sales between 1993 and 1997, the capacity utilization rates for Canadian producers would have been unacceptably low.

Parties in favour of a continuation of the finding argued that, in the Tribunal's 1993 statement of reasons, a single percentage drop in the price of gypsum board cost the Canadian industry millions of dollars in annual revenues and that a 10 percent decline in gypsum board prices caused material injury. It was submitted that a 10 percent decline in pricing would still be materially injurious as, in today's circumstances, such a 10 percent decline in pricing would take the industry very close to a break-even point. It was further submitted that a price decrease of less than 10 percent would also be materially injurious.

A witness for Westroc attempted to put the vulnerability question into perspective. He noted that a price decline of only 10 percent would essentially wipe out the profits of the gypsum board industry. This would occur at a time when domestic producers are looking at a modest upturn in the demand for gypsum board in Canada, something that has not been seen for about a decade. The witness for Westroc argued that this necessary improvement in sales and profitability is in jeopardy from the likelihood of resumed dumping. It was further argued that, with gypsum board being a commodity product, the entry of US gypsum board into the Canadian market will come from undercutting the price, which will cause price declines in Canada at a time when domestic producers are extremely vulnerable.

In addition, it was argued by parties in favour of a continuation of the finding that the consolidation of buying power in Canada and the emergence of "big-box" retailers, such as The Home Depot Canada, as substantial purchasers of gypsum board increase the vulnerability of the domestic industry. They further

argued that these buyers will not hesitate to seek out US-produced gypsum board if their prices are below those of the domestic producers.

In summary, parties in favour of a continuation of the finding argued that the historical evidence on the record will tell us what will occur. Specifically, when the US industry or individual manufacturers had excess production capacity, US-manufactured gypsum board was shipped to the Canadian market at lower net returns than earned on sales closer to the US production facilities.

### **Parties in Favour of a Rescission of the Finding**

CGC, the second largest domestic producer of gypsum board, along with James Hardie and National, two US gypsum board producers, argued in favour of a rescission of the finding. It was submitted that circumstances that were present in the Canadian and US gypsum board markets from 1990 to 1992 will not occur again. First, they contended that the events which led up to the 1993 finding followed a consistent drop in US housing starts and US demand for gypsum board over a period of six years starting in 1986 up to and including 1991 and a consistent drop in Canadian housing starts and Canadian demand for a period of four years starting in 1987 up to and including 1991.

Second, these parties noted that the finding was made at a time when both the US and Canadian economies were just beginning to recover from a deep recession, with US producers realizing national average selling prices of less than US\$70/MSF<sup>11</sup> in 1992 compared to more than US\$120/MSF at the peak in 1986. Currently, USG's national average price for gypsum board is over US\$120/MSF.

Third, Canadian exports of gypsum board to the United States, which peaked at 800 MMSF<sup>12</sup> in 1986, had precipitously dropped to 93 MMSF by 1991. Currently, the Canadian producers export gypsum board to the United States in record volumes, suggesting that, before dumping of US gypsum board in Canada could occur, Canadian exports would have to cease. It was submitted that this is not expected to occur in the next two years.

It was further submitted that there have been significant changes in the gypsum board industry since the Tribunal's 1993 finding. Reference was made to the substantial ongoing growth in the US economy, the strong performance in both residential and commercial building starts and the remodelling sector in the United States. These factors have resulted in a significant growth in the US gypsum board market since 1993.

Currently, the US gypsum board industry is operating at 95 percent capacity, and some US producers have their customers on allocation. US selling prices of gypsum board are at historically high levels and are higher than they are in Canada. Because of this and the strong demand in the US market, parties in favour of a rescission of the finding argued that US producers are not interested in selling gypsum board in the Canadian market.

From a structural and financial perspective, the US industry has extensively restructured and is now operating profitably. CGC, James Hardie and National argued that the marginal, single-line manufacturers are not a big factor in the industry and, as a result, that the consequences of decisions driven by "cash flow" and "capacity utilization" are no longer a concern. At the time of the finding, the Tribunal put considerable

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11. MSF = thousand square feet.

12. MMSF = million square feet.

weight on the heavy indebtedness of US producers and the regional imbalance between supply and demand. It was submitted that neither of these conditions exists today.

Parties in favour of a rescission of the finding argued that recent buoyant conditions in the US gypsum board market characterized by high utilization rates of the US industry and US price levels are positive indicators which are expected to continue, at least in the short term.

CGC, James Hardie and National stated that US research studies indicate that US prices are expected to continue to increase at a modest rate. These forecasts show that the US producers' capacity utilization rates are expected to remain high despite the announcements of significant increases in US gypsum board capacity.

The continuing strength in demand is likely to result in only a modest backing off from the premium pricing that has been realized while the industry has been operating at near its capacity limit. It was suggested by parties in favour of a rescission of the finding that the industry can maintain prices as long as utilization rates remain above 90 percent. Moreover, as there is no foreseen "meltdown" of the economy, there should be no precipitous decline in utilization rates for the US industry.<sup>13</sup>

With respect to pricing into export markets, National submitted that these sales represent less than 1 percent of total US shipments. In addition, there have been no indications that US gypsum board producers have been aggressively maintaining their presence in other export markets since 1993. Furthermore, National argued that comparing gross domestic and export selling prices can be most misleading. These sales are made ex-mill or ex-dock, in which case no transportation, handling or reload costs are incurred by National. Since National expends little or no effort in soliciting such orders, there are much lower selling and general overhead expenses associated with such transactions.

In response to the claim that US producers continue to sell into regions well outside the logical freight zone of the producers' manufacturing facilities, National submitted that it adjusts the price of gypsum board to the prevailing price in the region being served. It argued that this is something that any responsible supplier does as a matter of course. It was submitted that, in the majority of instances, the price invoiced is higher than that invoiced in the home market.

Parties in favour of a rescission of the finding claimed that the most recent forecasts are optimistic, suggesting the diminishing likelihood of a recession in the United States and the expectation of vigorous housing activity and continued earnings gains. In addition, forecasters are raising their estimates for 1998 because of the stronger than expected demand for gypsum board in the third quarter of 1997, due to the continuing robust performance of housing and commercial construction sectors. Price estimates for 1998 have also been revised upward.

With respect to the announced capacity increases, parties in favour of a rescission of the finding submitted that these announcements must be put in perspective. In this regard, the net increase in capacity from 1992 to 1997 amounted to 9.6 percent, which was well below the 35.7 percent growth rate in the US market over this same period. It was also submitted that capacity additions submitted by GP Canada and Westroc do not include closures, which are rarely announced. As a consequence, these figures could overstate actual capacity additions by an important margin.

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13. Exporter's Exhibit E-1 (protected), par. 45, Administrative Record, Vol. 14.



James Hardie and National noted that manufacturers' decisions as to where to locate new plants are heavily influenced by analyses of underserved market areas where there is a good potential for market share growth. They argued that this fact also limits the potential for new capacity to move to Canada. In addition, because of complex licensing and approval processes, as well as the degree of risk associated with an announced start-up date, certain investment decisions can be and often are deferred.

It was argued that the data reported by the Gypsum Association are not reported on a consistent basis. Shipment data, as the term implies, are for actual product shipped. They are, therefore, a mixed range of products representing both standard and specialty wallboard of differing sizes. Capacity, on the other hand, is a somewhat theoretical figure, as it represents potential output if only 1/2-in. standard board is being produced. As a result, parties in favour of a rescission of the finding argued that the capacity data overstate practical production capability.

Parties in favour of a rescission of the finding noted that various US producers use a factor to "mix adjust" the capacity figures issued by the Gypsum Association. While this adjustment factor does not alter the general trend line conclusions relating to capacity utilization, it does alter the percentage utilization rates and substantially reduces capacity additions announced by the US industry, as well as excess capacity forecasts when expressed in MSF.

In light of these developments, these parties submit that US producers will continue to supply the increasing US demand for gypsum board and do not consider the Canadian market to be a factor in their future plans. Finally, as a consequence of the present level of the Canadian dollar, the US industry prefers to service its US customers at superior returns to those which would be achieved on sales to Canada.

### **PRELIMINARY ISSUE**

As part of their argument in this proceeding, counsel for Westroc addressed the application of the "clearly foreseen and imminent" standard in the context of a review under section 76 of SIMA.

Counsel for Westroc noted that the "clearly foreseen and imminent" standard is set out in Article 3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*<sup>14</sup> (the Agreement), which governs determinations of injury and threat of injury, whereas it is not contained in Article 11 of the Agreement, which governs review proceedings. Counsel submitted that the test for the continuation of a finding is set out in Article 11.3 of the Agreement, which provides that anti-dumping duties are to be terminated not later than five years after being imposed, unless it is determined that the expiry of the duty "would be likely to lead to continuation or recurrence of dumping and injury." Counsel argued that the Tribunal should not apply the "clearly foreseen and imminent" standard in this review.

With respect to this issue, counsel for CGC referred the Tribunal to its statement of reasons in Review No. RR-89-009.<sup>15</sup> In that case, the Tribunal found that there were similarities between the questions that it must examine in considering whether a threat of injury exists and those that it must consider in a

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14. As signed in Marrakesh on April 15, 1994 (in force for Canada on January 1, 1996).

15. *Stainless Steel Bars and Stainless Steel Wire in Cut Lengths, Originating in or Exported from Brazil, the Federal Republic of Germany, France, Japan, the Republic of Korea and Spain, Order and Statement of Reasons*, July 20, 1990.

review. The Tribunal found that paragraph 6 of Article 3 of the GATT Anti-dumping Code,<sup>16</sup> which then contained the “clearly foreseen and imminent” standard, to be “instructive in interpreting the concept of threat of injury.<sup>17</sup>” Counsel argued that the Tribunal should apply that standard in this review.

Article 3 of the Agreement is entitled “Determination of Injury.” Article 3.7, which relates to threat of injury, provides, in part, that “[t]he change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.”

At the time that the Agreement was implemented into Canadian law, subsection 2(1.5) was added to SIMA. It provides as follows:

For the purposes of this Act, the dumping or subsidizing of goods shall not be found to be threatening to cause injury or to cause a threat of injury unless the circumstances in which the dumping or subsidizing of goods would cause injury are clearly foreseen and imminent.

While counsel focused their arguments regarding this issue on certain provisions of the Agreement, the Tribunal is of the view that subsection 2(1.5) of SIMA makes it clear that the Tribunal is required to apply the “clearly foreseen and imminent” standard only in considering the question of threat of injury in an inquiry under section 42. In this regard, the Tribunal notes that SIMA contains no parallel provision to subsection 2(1.5) with respect to reviews under section 76.

The Tribunal’s view is consistent with the structure of the Agreement. In the Agreement, pursuant to Article 3.7, the “clearly foreseen and imminent” standard applies only to the threat of injury question. Moreover, Article 11 of the Agreement sets out a different standard with respect to the review and continuation of findings and orders. Article 11.1 provides that anti-dumping duties are to “remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.” In addition, as noted by counsel for Westroc, Article 11.3 provides that anti-dumping duties are to be terminated not later than five years after being imposed, unless it is determined in a review that “the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.”

Notwithstanding the foregoing, the Tribunal notes that, as a practical matter, due to the tendency of economic forecasts to decline in terms of reliability as one goes further out into the future, in reviews, the Tribunal has tended to rely more heavily or place greater weight on evidence concerning what is likely to happen in the market in the near or medium term, rather than what may happen over the long term. For example, in Review No. RR-90-001,<sup>18</sup> the Tribunal stated:

It is impossible for the Tribunal and suppliers to anticipate, with any degree of certainty, what is likely to occur in the market for tubing in the medium or long term. Market and technological conditions could change, leading to major increases or sharp declines in potential demand.<sup>19</sup>

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16. *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade*, signed in Geneva on April 12, 1979.

17. *Supra* note 15, *Statement of Reasons* at 9.

18. *Certain Nickel and Nickel Alloy Seamless Tubing Imported from Japan or Otherwise Introduced into the Commerce of Canada by a Manufacturer, Producer, Vendor or Exporter in Japan*, Canadian International Trade Tribunal, *Order and Statement of Reasons*, December 21, 1990.

19. *Ibid.* *Statement of Reasons* at 11.

Indeed, as is discussed below, in this review, the Tribunal has attached more weight to the forecasts to the end of 1999, rather than to the forecasts for the year 2000 and beyond.

## **ANALYSIS**

Section 76 of SIMA provides that, on completion of a review, the Tribunal shall rescind or continue an order or finding, with or without amendment. In making its decision in this matter, the Tribunal deals with two fundamental questions. It first determines whether there is a likelihood of resumed dumping, if the finding is rescinded. If the Tribunal finds that there is a likelihood of resumed dumping, it then determines whether such dumping is likely to cause material injury to the domestic industry. Before considering these two fundamental questions, the Tribunal considered the change in market conditions in the gypsum board industries in Canada and the United States, since the period leading up to the original finding. The Tribunal considered this exercise to be useful, as parties supporting a continuation of the finding argued that the conditions present in the market today closely resemble those which existed prior to the Tribunal's finding in 1993, whereas parties in favour of a rescission of the finding took the opposite view.

### **Changes in Market Conditions**

In considering the extent to which circumstances may have changed in the market since the original finding, the Tribunal examined the extensive evidence before it on the Canadian and US gypsum board industries. The Tribunal began its analysis by considering the factors which led to the dumping of gypsum board prior to its 1993 finding. It then considered whether these factors continue to exist today.

#### **Canada**

When the Tribunal made its finding in 1993, the Canadian economy was slowly recovering from the recession. This recession was more severe in Canada than it was in the United States. It also lasted longer in Canada, especially with respect to the housing sector which remained weak well after the end of the overall recession. This weakness had a negative impact on demand for gypsum board. The recession was also more severe in Eastern Canada than in Western Canada, where it occurred later and was milder than in the rest of Canada.

The severity of the recession in Canada had a direct and negative impact on gypsum board demand and on the domestic gypsum board industry's performance. The Canadian gypsum board market declined by 18 percent between 1989 and 1991. In 1991, the domestic industry operated at 57 percent of total capacity, down from 86 percent in 1989. Average selling prices for gypsum board declined by 20 percent between 1990 and September 1992. Exports to the United States plunged by 76 percent and represented just 4 percent of total sales of gypsum board, down from 13 percent in 1989. The domestic industry's net income dropped from \$58.0 million in 1989 to less than \$1.0 million in 1991. For the first eight months of 1992, the industry reported losses of \$5.5 million.

Since the Tribunal's finding, there has been moderate but continuing growth in the Canadian economy. However, housing starts have lagged overall economic growth by a wide margin. They fell from 168,000 units in 1992 to 111,000 units in 1995, which was a 30-year low. While housing starts increased to 125,000 units in 1996, they remained well below the levels recorded during 1992-94. As a consequence of this poor performance, the domestic gypsum board market declined by 17 percent between 1992 and 1996.

While the domestic gypsum board market was not strong during the past five years, the domestic industry performed quite well. The domestic industry's profitability showed marked improvement over this period, with gross margin reaching 28 percent in 1996, up from 8 percent recorded in 1992. Over the same period, net income reached almost \$39.0 million compared to a loss of \$5.5 million. The domestic industry operated at 86 percent of capacity in 1996, a significant improvement over the 64 percent utilization rate in 1992. These positive results were largely due to the domestic industry's ability to ship increasing volumes of gypsum board to the United States. Exports to the United States reached 835 MMSF in 1996, up from 126 MMSF in 1992, a 563 percent increase. In 1996, export sales accounted for 28 percent of total sales of gypsum, compared to just 5 percent in 1992.

Table 1 provides a review of the consolidated domestic industry's income statement for gypsum board in this case. It reveals the level of success achieved by the industry since the issuance of the finding in early 1993. The clearest manifestation of that success is the financial performance of the domestic industry over the period of review, which improved as a result of a strong export performance and increasing price levels for gypsum board in Canada.

<b>TABLE 1</b>							
<b>CONSOLIDATED DOMESTIC INDUSTRY'S INCOME STATEMENT FOR GYPSUM BOARD</b>							
(\$000)							
	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<u><b>January to June</b></u>	
						<b>1996</b>	<b>1997</b>
Net Sales	260,410	285,163	331,722	298,386	309,272	140,161	155,686
Cost of Goods Sold	236,121	238,508	261,205	240,121	223,768	104,860	115,893
Gross Margin	24,289	46,655	70,517	58,265	85,504	35,301	39,793
(Percent Share)							
	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<u><b>January to June</b></u>	
						<b>1996</b>	<b>1997</b>
Net Sales	100	100	100	100	100	100	100
Cost of Goods Sold	91	84	79	80	72	75	74
Gross Margin	9	16	21	20	28	25	26
<b>Notes:</b>							
1. GP Canada could not separate export expenses from total gypsum expenses; therefore, they are included.							
2. Fiscal year ends December 31 for CGC and GP Canada. Fiscal year ends March 31 for Westroc. Westroc's fiscal 1993 (April 1992 to March 1993) has been added to CGC and GP Canada's calendar year 1992.							
Source: <i>Protected Pre-Hearing Staff Report</i> , September 23, 1997, Tribunal Exhibit RR-97-004-6 (protected), Administrative Record, Vol. 2 at 21.29.							

The domestic gypsum board industry has undergone both major structural and organizational changes since 1992. In 1996, GPC purchased the Canadian gypsum board assets of Domtar. Westroc took on new capacity by purchasing Nova Gypsum in MacAdam and reopened the plant which had ceased

operations in 1991. USG, which had previously owned 67 percent of the outstanding shares of CGC, purchased all of the remaining outstanding shares. Atlantic, the smallest domestic producer, came out of receivership in February 1993 after having closed in June 1992.

### United States

The recession of the late 1980s and early 1990s in the United States, coupled with the financial crisis of savings and loans institutions in the United States, led to a drop of 12 percent in gypsum board demand between 1989 and 1991. The US gypsum board industry's capacity utilization rate fell from 87 percent to 75 percent, while selling prices declined from US\$85/MSF to US\$70/MSF, a drop of 18 percent.

During this period, US producers representing 60 percent of the production capacity of the US gypsum board industry were in chapter 11 bankruptcy proceedings. USG, the largest US producer of gypsum board, and National, the second largest producer, emerged from chapter 11 bankruptcy proceedings in 1993. The Celotex Corporation, a third US producer, emerged from bankruptcy protection in 1996.

The shadow of increasing debt service obligations and related credit restrictions combined to make cash flow an imperative for US producers of gypsum board. Under these circumstances, these producers sold gypsum board to cover their cash obligations, even though prices were unprofitably low.<sup>20</sup>

During this same period, it is noteworthy to mention that one-line plant operations operated at full capacity despite the major downturn in the US economy and contributed to the excess supply of gypsum board.

These developments spilled over into the Canadian market where sales of US product were made through direct sales by US producers, sales agents and commodity brokers. At that time, US suppliers bypassed Canadian buying groups, which accounted for a substantial proportion of domestic sales, and sold directly to members of the buying groups themselves.

US broker involvement in the Canadian market was a new development and was particularly disruptive. The gypsum board that US brokers offered came from a wide spectrum of US producers, including those located in the south central region of the United States, as well as from the major national producers. They did not purchase product directly from US producers, but bought gypsum board in the open market through third parties. As a consequence, brokers were able to sell gypsum board to Canadian purchasers from producers such as National that did not ordinarily deal with brokers.

In its 1993 finding, the Tribunal found that US imports of gypsum board drove Canadian prices to ever lower levels through the effects of dumping. The Tribunal noted that the Deputy Minister of National Revenue had determined that the average margin of dumping was slightly over 27 percent, which, in the Tribunal's opinion, was a huge margin of underpricing in a commodity market where even small price differences could lead to large shifts in purchases by customers.

In contrast to 1989-91, there were significant changes during the past five years in the United States with respect to the economy, the gypsum board market and the structure of the gypsum industry. During this period, there was ongoing growth in the US economy. Strong housing and commercial activity, including growth in the remodelling and repair sector, had a significant impact on the gypsum board market as

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20. *Supra* note 2 at 11.

reflected by a 28 percent increase in demand over this period. Increasing demand led to steady increases in capacity utilization by the US gypsum industry and, by 1996, the utilization rate reached 95 percent.

US selling prices for gypsum board increased steadily from their lows in 1991-92. In 1997, selling prices were about 40 percent higher than they were in 1992. This rapid price escalation reflects three price increases which were introduced in 1997. Also, there is more price stability in the US market. One of the reasons for this development has been the discontinuation by several producers of selling gypsum board through brokers.

Turning to financial performance, the US gypsum industry returned to profitable operations after having suffered significant losses during 1991-92. Many US producers have taken advantage of these positive results by reducing their debt significantly since 1992. One major US producer has recently indicated that it intends to use 50 percent of earnings to reduce debt and the balance for capital improvements.

Since 1992, the US gypsum board industry has consolidated and restructured. The number of US producers has been reduced by 2 to 11. One-line plant operations have declined by 50 percent. Some one-line plant operations, such as Boral Gypsum and Eagle, no longer own plants (Boral Gypsum was purchased by James Hardie, while Centex purchased Eagle). Boral Gypsum was one of the dominant exporters of gypsum board to Canada in the years prior to 1993.

Major ownership changes occurred in the US gypsum board industry in 1995 and 1996. In 1995, Delcor Inc. purchased National, the second largest producer of gypsum board in the United States. In 1996, the gypsum board assets of Domtar in the United States were acquired by GPC. As a result of this purchase, GPC became the third largest producer of gypsum board in the United States and the second largest producer in North America. Also, in late 1996, Lafarge Gypsum entered the US gypsum board business with the acquisition of two former Domtar plants.

### **Current Situation in the United States**

During the past six to seven years, there has been continuous growth in the US economy. Currently, the US economy is buoyant, and the demand for gypsum board is strong. Interest rates and inflation are low, and there are few signs of a recession in the United States.<sup>21</sup> US gypsum board selling prices are presently at historically high levels, as shown in Table 2. The performance of the US gypsum board industry in the most recent period, the third quarter of 1997, was stronger than had been generally expected.

Table 2 also shows that the US gypsum board industry operated at 95 percent of capacity during the first half of 1997. Indeed, the evidence shows that, in some US regions, US producers are operating at full capacity and have their customers on allocation. Moreover, the primary source of the dumped gypsum board in 1992, the south central region of the United States, is now the home to facilities operating at high levels of capacity with relatively healthy price levels.

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21. The evidence on the record upon which the Tribunal must base its decision does not contain information relating to the economic events which unfolded in Asian countries during the last quarter of 1997. Therefore, any potential impact that this may have on the US economy in 1998 could not have been taken into account.

**TABLE 2**  
**COMPARATIVE DATA TABLE**  
**CANADIAN AND US GYPSUM BOARD INDUSTRIES**

	1994	1995	1996	<u>January to June</u>	
				1996	1997
Canadian Capacity (MMSF)	3,296	3,390	3,403	1,703	1,781
Canadian Utilization Rate (%)					
On Canadian Sales	76	61	62	57	67
On Export Sales	13	18	24	19	25
On Total Sales	89	79	86	76	92
US Capacity (MMSF)	24,640	25,180	25,900	12,950	13,065
US Utilization Rate (%)	94	92	95	93	95
<b>Average Selling Prices (\$CAN/MSF)</b>					
1/2-in. Standard Gypsum Board					
Canada	N/A	133	138	138	131
United States	N/A	143	139	135	157
5/8-in. Type X Gypsum Board					
Canada	N/A	162	169	169	164
United States	N/A	162	156	153	173

MMSF = million square feet.

MSF = thousand square feet.

N/A = not available.

Source: *Protected Pre-Hearing Staff Report*, September 23, 1997, Tribunal Exhibit RR-97-004-6 (protected), Administrative Record, Vol. 2 at 21.44, 21.80 and 21.89. Canadian utilization rates on Canadian and export sales estimated are based on sales data received from Westroc, CGC and GP Canada.

In summary, the US industry has restructured and rationalized during the past five years. The US market has shown strong growth and remains buoyant. US selling prices for gypsum board are now significantly higher than Canadian gypsum board prices, and the US industry is running at a high rate of capacity and, currently, there are no exports of gypsum board to Canada. US producers are finding the US market more attractive than the Canadian market. This situation is not likely to change soon due to the current high demand and price levels in the United States. The Tribunal considers that, on the basis of these developments, the circumstances in the market today are much different from what they were at the time of the 1993 finding.

### **Likelihood of Resumed Dumping**

Having reviewed the changed circumstances in the gypsum board industry in both Canada and the United States and the present situation in the US industry, the Tribunal now turns to consider the question of whether there is a likelihood of resumed dumping, if the finding is rescinded. In this respect, the Tribunal addresses the main arguments presented during the review process.

The parties in favour of a continuation of the finding argued that the dumping that took place in the late 1980s will reoccur in the late 1990s. Specifically, the US gypsum board industry is at a point in its business cycle which is very much like that which it faced in 1987. Westroc and GP Canada believe that the US industry is at the peak of the business cycle. Demand is about to decrease over a period when much new capacity is going to be added and, as a consequence, they expect the price of gypsum board to fall dramatically as it did in 1987. In light of Canada's geographic proximity and the fact that US producers are familiar with the Canadian market, they are likely to seek opportunities in the Canadian market.

In order to quantify the relationship between capacity utilization and the price of gypsum board in the United States, parties in favour of a continuation of the finding commissioned two economic experts<sup>22</sup> to develop an econometric model (the Boltuck Report). Based on a range of assumptions for several external economic variables, the economists used the model to make projections of demand, capacity utilization and prices for gypsum board in the United States to the year 2000.

The forecasts presented generally indicated that increases in production capacity for the industry will occur faster than increases in demand for gypsum board over the period from 1998 to 2000. As a result, capacity utilization is expected to decline. Based on historical performance, Westroc and GP Canada argued that this declining rate of capacity utilization would lead to a decrease in the price of gypsum board and renewed dumping.

Parties in favour of a rescission of the finding argued that circumstances have changed since the original finding. They pointed to the substantial growth in the US gypsum board market, high capacity utilization rates of the US industry and a gypsum board industry which has achieved financial stability. While it was acknowledged that new capacity was scheduled to come on stream, they argued that the new capacity would not lead to dumping in Canada.

CGC commissioned two economic experts<sup>23</sup> to respond to the Boltuck Report. In general, the authors of the rebuttal report<sup>24</sup> submit that the Boltuck Report has conceptual and empirical flaws. The principal findings presented in the rebuttal report are: first, the Boltuck Report is based on overly pessimistic external forecasts; second, it does not model capacity changes as a performance-dependent variable; and, third, it fails to recognize the importance of the differences in regional economic performance.

The Tribunal is of the view that the basic structure of the model in the Boltuck Report and the directions of its results on the price of gypsum board are consistent with the general indications underlying other evidence presented by parties. Generally, this evidence indicated that, within certain ranges, a decline in capacity utilization leads to a decline in the price of gypsum board and that an increase in capacity utilization leads to a rise in price. Given the announced intentions for a large increase in production capacity by US producers, a crucial question for the Tribunal is the probable impact of demand and other factors on the magnitude and timing of the increase in capacity. The economic model was not designed to capture the process by which gypsum board producers decide when to increase or decrease capacity, by how much and in what location. To address these questions, the Tribunal relied upon evidence presented by representatives from the US and Canadian gypsum board industries, rather than on the economic model.

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22. Richard D. Boltuck and Frederick L. Joutz.

23. Andrew R. Wechsler and Lawrence P. Schwartz.

24. Manufacturer's Exhibit D-23, Administrative Record, Vol. 11C.1.



In considering whether there is a likelihood of resumed dumping, the Tribunal first analyzed the forecasts presented for the demand of gypsum board in the United States. Second, it reviewed the announced capacity additions that are expected to come on stream. Third, the Tribunal considered the effects that estimated demand and capacity additions may have on capacity utilization rates. Finally, it took into account the potential effects of changing capacity utilization rates on future prices of gypsum board in the United States.

The Tribunal had before it numerous forecasts and plans, prepared by Canadian and US producers of gypsum board, as well as forecasts prepared by third parties. Table 3 provides a summary of some of these forecasts for capacity, shipments and capacity utilization in the US gypsum board industry. These forecasts are derived from those submitted by parties in favour of a continuation of the finding and by parties in favour of a rescission of the finding. In addition, the summary takes into account the forecasts prepared by third parties such as F.W. Dodge, Morgan Stanley and Dillon Read.

<b>TABLE 3</b>					
<b>US SHIPMENTS, CAPACITY AND UTILIZATION</b>					
<b>(1992-2000)</b>					
	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>
<b>Historical</b>					
Gypsum Association					
Capacity (BSF)	24.11	24.19	24.64	25.18	25.90
Shipments (BSF)	20.18	21.38	23.20	23.07	24.72
Utilization (%)	84	88	94	92	95
<b>Forecasts</b>					
Capacity (BSF)					
Lowest		26.19	27.14	28.40	29.80
Highest		27.90	29.46	30.60	32.40
Average		27.05	28.30	29.50	31.10
Shipments (BSF)					
Lowest		24.94	24.48	24.10	24.30
Highest		25.90	26.57	27.52	27.61
Average		25.42	25.53	25.81	25.955
Utilization (%)					
Lowest		91	88	83	79
Highest		97	96	94	91
Average		94.0	92.0	88.5	85.0

Note: The "lowest" and "highest" forecasts shown in the table represent the lowest and highest forecasts presented by parties in any given year. They do not represent any one company's forecast. The same applies for the lowest and highest values of percent utilization which represent the lowest and highest values presented by parties in any given year, rather than being a value computed from the other values in the table. The "average" forecasts shown in the table represent the average of eight individual company-specific forecasts for capacity, shipments and utilization.

BSF = billion square feet.

Source: The record of Review No. RR-97-004.

Table 3 shows that the average forecast for new capacity increases by close to 15.0 percent from 1997 to 2000. In addition, it shows that the average forecast for shipments of gypsum board increases marginally between 1997 and 2000.<sup>25</sup> The average forecast for capacity utilization levels falls slightly to 92.0 percent in 1998, before declining to 88.5 percent in 1999 and 85.0 percent in the year 2000.

The Tribunal is of the view that the demand for gypsum board is derived mainly from the demand for new housing and commercial building starts and, to a lesser but growing extent, from the demand for the remodelling and renovation of existing buildings,<sup>26</sup> both residential and commercial. A strong and growing overall economy will usually be accompanied by a buoyant housing market and growing demand for gypsum board. A weak and declining economy will normally be accompanied by a depressed housing market and a decline in the demand for gypsum board. Thus, the forecast for the economy and housing construction<sup>27</sup> is crucial for the outlook for the demand for gypsum board.

Forecasts for the overall economy are prepared by a large number of organizations. Their forecasts are based on a range of underlying assumptions and methodologies. These forecasts are typically revised during the year to take into account new statistical information which has become available and to reflect revised assumptions about external factors likely to affect the forecasts. As well, forecasts are likely to have different reliabilities in terms of their accuracy in predicting specific economic or industrial aggregates such as production and prices. The Tribunal is of the view that it should give more weight to the average of the forecasts presented. As well, the Tribunal believes that it should attach more weight to the forecasts to the end of 1999, rather than to the forecasts for the year 2000 and beyond.

As shown in Table 3, the average of forecasts for shipments of gypsum board in 1998 and 1999 shows further marginal growth, from the high level recorded in 1997. This would represent a continuation of the pattern of growth which has occurred in the United States in most of the years since 1992. If the slowing of the general economic growth in the United States were to slip into a decline in overall activity, then the forecast for shipments of gypsum board would also likely show a decline, as indicated by the lowest forecasts for shipments shown in Table 3. The Tribunal notes that, even if this were to occur, the decline in shipments of gypsum board in 1999 relative to 1997 would be about 3 percent, which is significantly smaller than the decline of approximately 12 percent in US shipments over the period from 1989 to 1991.<sup>28</sup>

In this respect, the Tribunal heard testimony from a witness for both Westroc and GP Canada and a witness for James Hardie that forecasts for the next 12 to 18 months do not call for a repeat of the sharp decrease in demand for gypsum board in the United States which occurred in the period from 1989 to 1991 and that estimates call for a moderate growth rate of 2 to 3 percent.<sup>29,30</sup> In light of the evidence and based on its review of the various forecasts filed in this proceeding, the Tribunal is of the view that the more plausible scenario is that the demand for gypsum board in the United States will continue to grow, at least marginally, in 1998 and 1999.

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25. The highest estimates for shipments show an increase of close to 7 percent from 1997 to 2000.

26. Dillon Read, Equity Research, May 30, 1997.

27. Manufacturer's Exhibit A-16 (protected), Tab 1, "Construction Market Forecasting Service 1998-2002, Third Quarter, 1997," Administrative Record, Vol. 12.1.

28. Tribunal Exhibit RR-97-004-26.1, Administrative Record, Vol. 5.3 at 19.

29. *Transcript of Public Hearing*, Vol. 4, November 17, 1997, at 876.

30. *Transcript of In Camera Hearing*, Vol. 5, November 19, 1997, at 482.

Having reviewed the outlook for demand in the United States, the Tribunal will now consider the issue of capacity expansion plans. Westroc and GP Canada provided extensive evidence on announcements made by US producers regarding their capacity expansion intentions. The evidence on the record indicates that the announced capacity additions for 1997 through to 2000, together with an amount for “capacity creep,<sup>31</sup>” is estimated to be between 4.5 and 5.0 BSF.

The Tribunal believes that the estimated 4.5 to 5.0 BSF of planned capacity additions announced for the years 1997 to 2000 may be somewhat overstated because the volume of capacity that actually comes on stream can be affected by a number of factors, including the time frame in which the new capacity will come on stream, the regional location of the new capacity, regional growth prospects, the proximity to older high-cost plants, and the structure and behaviour of today’s gypsum board industry in the United States.

There are a number of factors which may influence the time frame in which the new capacity additions will come on stream and which may lead to possible delays in the actual volume of operational gypsum board capacity available for the period from 1997 to 2000. They include securing a reliable source of raw material, the existence of a complex licensing and approval process, location and acquisition of the land site, ordering and installing the necessary equipment, environmental hurdles and the economic climate at the time when the capacity is scheduled to actually come on line. These factors all add to the degree of risk associated with meeting the announced start-up dates. In this respect, the Tribunal believes that the indicated start-up dates for several of the projects represent the earliest possible dates and that delays could occur for various reasons.

In addition to the potential delays in the start-up of new capacity, the Tribunal believes that there are certain regional factors which may mitigate the effects of new capacity additions on the US gypsum board market. Members of the Gypsum Association receive shipment and capacity data<sup>32</sup> on a national and regional basis. Regional data provide valuable information on the nine US regions which are recognized by members of the Gypsum Association. This regional information allows members to track regional growth rates, as well as the degree of their participation in each of these markets. This information also assists producers to better plan their capacity additions in the regional markets.

In this respect, the evidence shows that the location of some of the announced new capacity will be in or near deficit markets. For example, the witness for James Hardie explained that the capacity that it added in the Pacific Northwest was driven by the fact that about 50 percent of the market was being served by out-of-area, high-cost producers and that James Hardie could not meet the market demand.<sup>33</sup> Even after the completion of the expansion in Seattle by James Hardie in 1997, there still remains a portion of the market which must be served by out-of-region producers.

Further, many regional markets continue to have projections of buoyant economic growth.<sup>34</sup> Evidence suggests that an important amount of the planned additional capacity is aimed at the current and forecast shortfalls in supply of gypsum board to certain regional markets such the Pacific Northwest, the California market and the West South Central.

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31. Capacity creep occurs as firms acquire additional production experience and they are able to achieve more production volume with their existing facilities.

32. The Gypsum Association also publishes export data and recently began to report exports by country of destination.

33. *Transcript of Public Hearing*, Vol. 6, November 19, 1997, at 1243.

34. *Transcript of Public Hearing*, Vol. 6, November 19, 1997, at 1248 and 1288.

In addition, the Tribunal heard testimony that certain new capacity will be near older, high-cost plants. Testimony of the witness for GPC indicates that the strategic location of new capacity will give companies the choice to curtail production to meet demand, to replace high-cost production, to mothball plants or production lines (in extreme circumstances) or to refit the facilities for the production of other products depending on the economic advantages of the decision at a given point in time. In a market where there is high demand and high prices, companies will keep all their plants open, even the high-cost plants. However, if the market and prices slip, they can curtail the high-cost production or, if necessary, close the older facilities when the new lower-cost facilities are fully operational.

Another factor which may lessen the impact of the new capacity is related to the more consolidated structure of today's gypsum board industry in the United States (i.e. larger, more integrated companies and fewer one-line plants). This consolidation leads the Tribunal to believe that US producers of gypsum board have an improved potential and capability, relative to 1992, to curtail production in times of a downturn in demand, rather than sharply lowering prices while continuing to produce.

Further, US producers argue that the US gypsum board industry is now made up of more economically rational market players.<sup>35</sup> After surviving the difficult times of the early 1990s, the Tribunal believes that the major US producers are less likely to disrupt the market in which they all currently participate at profitable levels. In this respect, the Tribunal agrees with counsel for the exporters who argued that US producers would strive to curtail their expansion plans to reflect the emerging actual level of demand.<sup>36</sup> Furthermore, if, as was suggested, the industry cycle trends towards less severe peaks and valleys and, instead, has more graduated cycles,<sup>37</sup> the Tribunal considers that this would also support the contention that US producers may be in a better position to manage their capacity additions as the market requires. In this regard, the Tribunal considers that the US industry is in a better position to manage the implementation of its plans to increase capacity.

As previously noted, the current demand for gypsum board in the United States is high, and the national capacity utilization rate is 95 percent and up to 100 percent for some companies, depending on the region. This situation, together with the growth in market demand for gypsum board in the next 12 to 18 months, means that a certain amount of new capacity is required to keep up with demand. Clearly, the industry must invest in new capacity if it is to keep up with the market. The Tribunal recognizes that, in a growing market, the need to maintain market share is one of the driving forces behind decisions to add new capacity. Based on the above considerations, the Tribunal is of the view that only a relatively small portion of the new capacity expected to come on stream in the next 12 to 18 months may be in excess of demand during that same time period.

Having considered the outlook for production capacity of gypsum board in the United States, the Tribunal will now address the anticipated capacity utilization rates over the period from 1998 to 2000. Parties in favour of a continuation of the finding believe that, even with stable demand for gypsum board, the volume of new capacity which has been announced will result in a much lower level of capacity utilization in the United States over the next two to three years. Certain estimates show that the utilization rate will be about 90 percent in 1998 and will decrease to 79 percent in the year 2000.

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35. *Transcript of Public Hearing*, Vol. 6, November 19, 1997, at 1311.

36. *Transcript of In Camera Hearing*, Vol. 5, November 19, 1997, at 495.

37. *Transcript of In Camera Hearing*, Vol. 2, November 13, 1997, at 36.

The US producers and CGC, on the other hand, argue that, given the numerous factors which may lessen the actual amount of capacity which will come on stream, utilization rates will be well above 90 percent in 1998 and will decrease marginally in 1999 and 2000 to a percentage level in the high 80s.

The Tribunal believes that, in general, the level of capacity in the gypsum board industry tends to expand to meet current and expected future demand. If demand weakens, sales decline and the natural consequence is idle capacity. Therefore, capacity that was necessary for peak demand periods becomes excess capacity during a cycle downturn. In an industry like gypsum board, where demand is highly dependent upon business cycles and the economic climate in general, this is a normal expectation.

The Tribunal believes that, given the estimated moderate growth demand levels for gypsum board in the United States and the estimated capacity for the US gypsum board industry over the 1998-99 period, the average US capacity utilization levels are unlikely to fall dramatically. As indicated in Table 3, the average US capacity utilization levels are projected to be around 92.0 percent in 1998 and to slip to 88.5 percent in 1999, a rate which the Tribunal feels is not unreasonably low in comparison to the US capacity utilization rates of approximately 75.0 percent in 1991 and 83.0 percent in 1992.<sup>38</sup> The Tribunal notes that these estimates do not take into account the possibility that US producers may close some facilities or curtail production through shift reductions<sup>39</sup> in order to support the market and price of gypsum board if demand does fall.

Notwithstanding the fact that there may be an amount of capacity which could be in excess of the forecast demand, the Tribunal believes that the US market for gypsum board, particularly over the next 12 to 18 months, will be able to absorb most of the new production from the capacity additions that are likely to come on stream in that same time period. Accordingly, the Tribunal is not persuaded that US capacity utilization levels are likely to fall significantly in the short run.

Having reached a conclusion on the outlook for US capacity utilization, the Tribunal next considers the prospects for US gypsum board prices. The Tribunal heard testimony from both Canadian and US producers that, if the industry can maintain capacity utilization levels close to 90 percent, the price of gypsum board will tend to be relatively stable. When utilization levels fall below 90 percent, prices also begin to fall.<sup>40</sup> In this regard, since the current capacity utilization levels are very high, the Tribunal believes that there is room to allow for some moderating in demand growth without any appreciable impact on gypsum board prices. Further, in light of testimony that US producers recognize that their high-cost plants restrict efficiencies, these plants may be the first to operate at lower utilization levels, or indeed be shut down, as the need or opportunity arises.

Although parties in favour of a continuation of the finding argued strongly that there is a direct relationship between capacity utilization levels and price, the Tribunal notes that the evidence on the record indicates that there are many other factors which also influence the price of gypsum board. For example, price may be influenced by certain regional factors,<sup>41,42</sup> such as strong or weak demand, which affect

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38. Tribunal Exhibit RR-97-004-26.1, Administrative Record, Vol. 5.3 at 19.

39. *Transcript of In Camera Hearing*, Vol. 4, November 18, 1997, at 428 and 429, and Vol. 5, November 19, 1997, at 495.

40. *Transcript of Public Hearing*, Vol. 5, November 18, 1997, at 1041.

41. *Transcript of Public Hearing*, Vol. 5, November 18, 1997, at 1117.

42. Exporter's Exhibit E-5 (protected), Administrative Record, Vol. 14.

capacity requirements, the intensity of competition, the proximity of the market to high-cost or low-cost plants, the cost of raw materials to producers in any given region, economic conditions<sup>43</sup> and the sale of gypsum board to brokers.<sup>44</sup>

Thus, when taking into consideration the influence that the many different factors have on price, the Tribunal does not believe that there is likely to be a decline in the price of gypsum board in the United States similar in magnitude to that which occurred between 1989 and 1991.

In light of the above, the Tribunal is of the view that the interaction between the forecast for continued modest growth in the demand for gypsum board and the planned new capacity which is likely to actually come on stream in the United States will not give rise to excess capacity which would be large enough either to push US prices down dramatically or, more importantly, to create the pressure that would drive US producers to sell gypsum board to Canada at dumped prices.

The Tribunal considers that US producers would either delay the implementation of new capacity if demand does not warrant or support it or they would curtail or close the production of gypsum board at high-cost, less efficient plants. Such rational business decisions would necessarily limit the amount of new capacity which would come on stream in a weakened market situation and, in turn, utilization levels would not drop precipitously.

Further, the evidence shows that the US producers of gypsum board are currently operating in a strong US market, at historically high levels of production and at high prices. The Tribunal is persuaded by the evidence that the current and projected price levels in Canada, together with the current high price levels and demand for gypsum board in the United States, provide little incentive for US producers to sell gypsum board to Canada now or in the near future.

The Tribunal recognizes that there is a possibility that some of the more pessimistic forecasts for demand, capacity, utilization and prices of gypsum board in the US market presented for late 1999 and beyond may materialize. However, because longer-term forecasts are subject to greater uncertainty, the Tribunal believes that more weight and consideration should be given to the near future rather than to the more distant future. The Tribunal cannot continue the finding based on the chance that something negative may happen in the more distant future.

In light of the foregoing, the Tribunal concludes, on balance, that there is no likelihood of resumed dumping of gypsum board in Canada.

Given this conclusion regarding the likelihood of dumping, the matter of likelihood of material injury caused by a resumption of dumping does not need to be considered by the Tribunal. However, the Tribunal would like to make a few comments on the condition of the domestic industry.

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43. *Transcript of Public Hearing*, Vol. 1, November 12, 1997, at 134.

44. *Transcript of Public Hearing*, Vol. 2, November 13, 1997, at 337.

## Condition of the Domestic Industry

The Tribunal notes that the performance of the domestic producers has been positive despite the lack of sustained growth in the residential and non-residential construction sectors in Canada.

The Tribunal considers that prospects for the domestic industry appear to be good for both domestic and export markets. Recent forecasts suggest that Canadian housing starts for the whole of 1997 will be 19 percent above 1996 levels. Forecasts for 1998 call for housing starts to rise further by close to 10 percent.<sup>45</sup> In addition, the continuation of export sales, in the Tribunal's opinion, will remain the key to the continuing success of the domestic industry. In this regard, there are indications that exports by the Canadian industry to the United States may increase by 9 percent in 1998 and remain steady in 1999.<sup>46</sup> There is no indication that this positive outlook for the domestic industry is likely to change in the foreseeable future. As already stated, the Tribunal puts more weight on the shorter time frame than it does on events that may occur beyond 1999. The Tribunal considers it appropriate to take this position because of the increasing uncertainty of events which may or may not take place in the longer term.

In summary, the domestic industry's positive financial results, combined with a particularly strong export performance and increases in employment and capacity utilization levels, are all positive developments. The domestic industry has used the period provided by the finding to turn losses into significant gains and to strengthen its position in the domestic and export markets, in a climate of increasing selling prices.

## CONCLUSION

For the foregoing reasons, the Tribunal hereby rescinds its finding in respect of gypsum board originating in or exported from the United States.

Arthur B. Trudeau

Arthur B. Trudeau  
Presiding Member

Robert C. Coates, Q.C.

Robert C. Coates, Q.C.  
Member

Charles A. Gracey

Charles A. Gracey  
Member

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45. Tribunal Exhibit RR-97-004-RI-5H, Administrative Record, Vol. 10.4B at 1025.

46. *Ibid.* at 1027.