



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2014-003

Photovoltaic Modules and
Laminates

*Determination issued
Tuesday, February 3, 2015*

*Reasons issued
Wednesday, February 18, 2015*

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

**PHOTOVOLTAIC MODULES AND LAMINATES ORIGINATING IN OR
EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping and subsidizing of photovoltaic modules and laminates consisting of crystalline silicon photovoltaic cells, including laminates shipped or packaged with other components of photovoltaic modules, and thin-film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS), originating in or exported from the People's Republic of China, excluding modules, laminates or thin-film products with a power output not exceeding 100 W, and also excluding modules, laminates or thin-film products incorporated into electrical goods where the function of the electrical goods is other than power generation and these electrical goods consume the electricity generated by the photovoltaic product, have caused injury or are threatening to cause injury to the domestic industry.

This preliminary injury inquiry follows the notification, on December 5, 2014, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing of the above-mentioned goods.

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

Jean Bédard

Jean Bédard
Presiding Member

Peter Burn

Peter Burn
Member

Rose Ritcey

Rose Ritcey
Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. On December 5, 2014, following a complaint filed on October 1, 2014, by Eclipsall Manufacturing Corp. (Eclipsall), Heliene Inc. (Heliene), Silfab Solar Inc. (Silfab) and Solgate Inc. (together, the complainants), the President of the Canada Border Services Agency (CBSA) initiated investigations into the alleged injurious dumping and subsidizing of photovoltaic modules and laminates consisting of crystalline silicon photovoltaic cells, including laminates shipped or packaged with other components of photovoltaic modules, and thin-film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS), originating in or exported from the People's Republic of China (China), excluding modules, laminates or thin-film products with a power output not exceeding 100W, and also excluding modules, laminates or thin-film products incorporated into electrical goods where the function of the electrical goods is other than power generation and these electrical goods consume the electricity generated by the photovoltaic product (the subject goods).

2. On December 8, 2014, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.¹

3. Enerdynamic Hybrid Technologies Inc. (Enerdynamic), a domestic producer of photovoltaic modules and laminates, supports the complaint.²

4. The two largest³ domestic producers of photovoltaic modules and laminates, Canadian Solar Solutions Inc. (Canadian Solar), a wholly owned subsidiary of Canadian Solar Inc.,⁴ and Celestica Inc. (Celestica), do not support the complaint. Canadian Solar opposes the complaint, and Celestica has not expressed a position.⁵

5. Also opposing the complaint are the following: Jinko Solar Canada Co., Ltd., an importer and distributor, and Jinko Solar Co., Ltd. and Zhejiang Jinko Solar Co., Ltd.,⁶ two affiliated Chinese exporters of the subject goods; the China Chamber of Commerce for Import & Export of Machinery and Electronic Products (CCCME) on behalf of its members involved in the production of the subject goods; Carmanah Technologies Corporation (Carmanah), an importer; Abundant Solar Energy Inc. (Abundant Solar), a purchaser; and H.E.S. Home Energy Solutions, a distributor.

6. On February 3, 2015, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,⁷ the Tribunal determined that there was a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury to the domestic industry.

1. C. Gaz. 2014.I.3040.

2. Exhibit PI-2014-003-02.01, Vol. 1A at 210.

3. Based on the complainants' estimates and industry publications. See Exhibit PI-2014-003-02.01, Vol. 1 at 25, 201.

4. Canadian Solar Solutions Inc. and its parent, Canadian Solar Inc., both federally incorporated companies, are referred to collectively as "Canadian Solar" for the purposes of the Tribunal's preliminary injury inquiry. Exhibit PI-2014-003-09, Vol. 10 at 89.

5. Exhibit PI-2014-003-10, Vol. 10 at 102.

6. Referred to collectively as "Jinko Solar" for the purposes of the Tribunal's preliminary injury inquiry.

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

CBSA'S DECISION TO INITIATE INVESTIGATIONS

7. The CBSA was of the opinion that there was evidence that the subject goods had been dumped and subsidized, as well as evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury. Accordingly, pursuant to subsection 31(1) of *SIMA*, the CBSA initiated investigations on December 5, 2014.

8. In coming to its decision to initiate investigations, the CBSA used information with respect to the volume of dumped goods for the period from October 1, 2013, to September 30, 2014.

9. The CBSA was of the view that the subject goods had been dumped, with an estimated overall margin of dumping of 49.4 percent, expressed as a percentage of the export price of the subject goods.⁸ The CBSA was also of the view that the subject goods had been subsidized, with an estimated amount of subsidy equal to 15.3 percent of the export price of the subject goods.⁹

10. Further, the CBSA was of the opinion that the estimated overall margin of dumping and amount of subsidy were not insignificant and that the estimated volumes of dumped and subsidized goods were not negligible.¹⁰

SUBMISSIONS ON INJURY AND THREAT OF INJURY

Complainants

11. In support of their claim that the subject goods have caused injury, the complainants provided evidence of increased volumes of the subject goods, price undercutting, price depression, lost sales, stagnant market share, reduced gross margins, underutilization of production capacity and reduced net incomes. The injury allegations and evidence focus primarily on the first half of 2014. According to the complainants, the removal of a domestic content requirement under the Ontario government's Feed-in Tariff (FIT) Program in 2013 would have had little to no impact on Ontario producers of photovoltaic modules and laminates but for the injurious effects of the dumped and subsidized goods to which they are now fully exposed.

12. The complainants also submitted that the dumping and subsidizing of the subject goods threaten to cause injury to the domestic industry. They alleged that increasing imports of the subject goods dominate the Canadian market, that, because of the time lag between order and delivery, the volumes of sales captured by Chinese exporters are not yet reflected in the import data, that Chinese producers are export-oriented and that China has significant production capacity, capacity underutilization and large inventories. In addition, the complainants submitted that trade restrictions on photovoltaic modules and laminates from China in the United States and the European Union make Canada more attractive and show the propensity of Chinese producers to engage in injurious dumping and subsidizing.

Parties Opposed to the Complaint

13. Parties opposed to the complaint submitted that the evidence did not establish a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury. They argued that the domestic industry dominates the market and is performing well.

8. Exhibit PI-2014-003-10, Vol. 10 at 107.

9. *Ibid.* at 113.

10. *Ibid.* at 107, 114.

14. The opposing parties alleged that several other factors were responsible for any injury that the complainants and Enerdynamic may have experienced or anticipated. In particular, the CCCME, Canadian Solar and Jinko Solar submitted that any injurious effects arising from the loss of government support and guaranteed markets under the former FIT Program should not be attributed to the subject goods.

INJURY ANALYSIS

Legislative Framework

15. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine "... whether the evidence discloses a reasonable indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury."

16. The expression "reasonable indication" is not defined in *SIMA*, but it is understood to mean that the evidence need not be conclusive, or probative on a balance of probabilities.¹¹ Nevertheless, simple assertions are not sufficient and must be supported by relevant evidence.¹²

17. This test is met where (i) the evidence is relevant, accurate and adequate and, (ii) in light of the evidence, the allegations stand up to a somewhat probing examination, even if the theory of the case might not seem convincing or compelling.¹³

18. In making its preliminary determination, the Tribunal takes into account the injury and threat of injury factors that are prescribed in section 37.1 of the *Special Import Measures Regulations*.¹⁴ These factors include the import volumes of the dumped and subsidized goods, the effects of the dumped and subsidized goods on the price of like goods, the resulting economic impact of the dumped and subsidized goods on the domestic industry and, if injury or threat of injury is found to exist, whether a causal relationship exists between the dumping and subsidizing of the goods and the injury or threat of injury.

19. However, before examining the allegations of injury and threat of injury, the Tribunal must identify the like goods and the domestic industry that produces those goods. This preliminary analysis is required because subsection 2(1) of *SIMA* defines "injury" as "... material injury to a domestic industry"¹⁵ and "domestic industry" as "... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods"

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

12. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* requires investigating authorities to examine the accuracy and adequacy of the evidence provided in a dumping complaint to determine whether there is sufficient evidence to justify the initiation of an investigation and to reject a complaint or terminate an investigation as soon as the investigating authority is satisfied that there is not sufficient evidence of dumping or injury. Article 5 also specifies that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article.

13. *Silicon Metal* (21 June 2013), PI-2013-001 (CITT) at para. 16; *Unitized Wall Modules* (3 May 2013), PI-2012-006 (CITT) at para. 24; *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 86.

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

15. It is not sufficient that dumping or subsidizing contributes to material injury to a domestic industry or to a threat of material injury. There must be evidence that discloses a reasonable indication that the dumping or subsidizing has caused or is threatening to cause material injury. See *Unitized Wall Modules* at para. 23.

Like Goods and Classes of Goods

20. The Tribunal must conduct its preliminary injury inquiry on the basis of the CBSA's product definition.¹⁶

21. In order to assess whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic producers of like goods, the Tribunal must first define the scope of the like goods in relation to the subject goods. It may also consider whether the subject goods constitute one or more classes of goods.

22. Subsection 2(1) of *SIMA* defines "like goods", in relation to any other goods, as follows:

(a) goods that are identical in all respects to the other goods, or

(b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

23. In determining the like goods and whether there is more than one class of goods,¹⁷ the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).¹⁸

24. The complainants have asserted that all photovoltaic modules and laminates falling within the scope of the subject goods constitute a single class of like goods.¹⁹ While the parties opposed did not dispute that Canadian-made photovoltaic modules and laminates are "like goods" in relation to the subject goods, they proposed the following separate classes of goods:

- The CCCME and Jinko Solar both submitted that crystalline silicone photovoltaic modules and laminates and thin-film photovoltaic modules and laminates are two separate classes of goods, which should result in the termination of an inquiry with respect to the thin-film products because there is no domestic production.
- The CCCME submitted that photovoltaic modules and photovoltaic laminates are separate classes of goods.
- Jinko Solar also submitted that there should be separate classes of goods for photovoltaic modules and laminates that are unassembled versus finished and mono-crystalline versus multi-crystalline products.

25. In addition, Carmanah distinguished between on-grid and off-grid photovoltaic modules and requested the exclusion of off-grid modules from the Tribunal's preliminary injury inquiry.

16. The CBSA's product definition is set out in para. 1.

17. In order to decide whether there is more than one class of goods, the Tribunal must determine whether goods potentially included in separate classes of goods constitute "like goods" in relation to each other. If they do, they will be regarded as comprising one class of goods. See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; *Polyisocyanurate Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

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

19. While the complainants acknowledge that there is currently no domestic production of thin-film solar modules, they contend that these products and crystalline photovoltaic modules are fully interchangeable, have similar physical characteristics, distribution channels and end uses, and compete directly in the domestic market. See Exhibit PI-2014-003-02.01, Vol. 1 at 27, paras. 45-46; Exhibit PI-2014-003-13.01 at para. 11, Vol. 3C.

26. In other jurisdictions (i.e. the United States and the European Union),²⁰ some trade measures on Chinese solar module products have distinguished between crystalline photovoltaic products and thin-film photovoltaic products, whereas at least one other country (India) found that they constitute a single class of goods.²¹

27. In light of the above, the Tribunal issued a short-form questionnaire at the outset of the present preliminary injury inquiry in order to address the issue of whether crystalline photovoltaic modules and laminates and thin-film photovoltaic modules and laminates constitute separate classes of goods. It received 21 replies from a mix of producers, importers and purchasers.²² The replies confirmed that there is no domestic production of thin-film photovoltaic modules and laminates, but three firms either imported or purchased both products.

28. The Tribunal finds that the replies to the questionnaire on classes of goods overwhelmingly indicate that both crystalline photovoltaic modules and laminates and thin-film photovoltaic modules and laminates serve the same end use (i.e. solar power generation) and are distributed through the same channels (i.e. by retailers, distributors and installers).

29. Although several responses to the questionnaire stated that the Canadian market has consisted primarily of crystalline photovoltaic modules and laminates with little competition from thin-film photovoltaic modules and laminates, noting that this was due at least in part to the domestic content requirement under the former FIT Program,²³ some responses stated that, with the relaxing of the FIT Program, competition between the two products may increase.²⁴

30. The evidence shows that price fluctuations play a large role in competitiveness between crystalline photovoltaic modules and laminates and thin-film photovoltaic modules and laminates. Since photovoltaic modules and laminates produced using thin-film materials require significantly less silicon, an increase in the cost of silicon or a decline in its availability will make the price of thin-film photovoltaic modules and

20. The U.S. International Trade Commission found that thin-film photovoltaic products were not like goods to crystalline photovoltaic products. See *Crystalline Silicon Photovoltaic Cells and Modules From China*, November 2012, Investigation Nos. 701-TA-481 and 731-TA-1190 (Final) (USITC), at Part II. Similarly, the European Union found that thin-film photovoltaic products were clearly excluded from the product definition, which concerned crystalline photovoltaic products only. See Commission Regulation (EU) No. 513/2013 (4 June 2013), Official Journal of the European Union, L152/5 at para. 41.

21. See *Anti-dumping Investigation concerning imports of solar cells whether or not assembled partially or fully in Modules or Panels or on glass or some other suitable substrates, originating in or exported from Malaysia, China PR, Chinese Taipei and USA, The Gazette of India: Extraordinary*, Part I, Section 1, New Delhi (22 May 2014), 126 at xii. In this case, the goods were defined to include both crystalline photovoltaic and thin-film photovoltaic products.

22. Exhibit PI-2014-003-07.02, Exhibit PI-2014-003-07.03, Exhibit PI-2014-003-07.04, Exhibit PI-2014-003-07.05, Exhibit PI-2014-003-07.06, Exhibit PI-2014-003-07.07, Exhibit PI-2014-003-07.08, Exhibit PI-2014-003-07.09, Exhibit PI-2014-003-07.10, Exhibit PI-2014-003-07.11, Exhibit PI-2014-003-07.12, Exhibit PI-2014-003-07.12A, Exhibit PI-2014-003-07.13, Exhibit PI-2014-003-07.14, Exhibit PI-2014-003-07.15, Exhibit PI-2014-003-07.15A, Vol. 5; Exhibit PI-2014-003-07.16, Exhibit PI-2014-003-07.17, Exhibit PI-2014-003-07.17A, Exhibit PI-2014-003-07.17B, Exhibit PI-2014-003-07.18, Exhibit PI-2014-003-07.19, Exhibit PI-2014-003-07.20, Exhibit PI-2014-003-07.21, Exhibit PI-2014-003-07.22, Exhibit PI-2014-003-07.22A, Vol. 5A; Exhibit PI-2014-003-08.17 (protected), Exhibit PI-2014-003-08.18 (protected), Vol. 6.

23. Exhibit PI-2014-003-07.10, Vol. 5 at 143; Exhibit PI-2014-003-07.15, Vol. 5 at 185; Exhibit PI-2014-003-07.17, Vol. 5A at 11; Exhibit PI-2014-003-07.20, Vol. 5A at 64; Exhibit PI-2014-003-07.22, Vol. 5A at 76.

24. Exhibit PI-2014-003-07.10, Vol. 5 at 143; Exhibit PI-2014-003-07.17, Vol. 5A at 11; Exhibit PI-2014-003-07.20, Vol. 5A at 64.

laminates more attractive and, thus, more competitive with crystalline photovoltaic modules and laminates. There is other evidence on the record indicating that some producers of crystalline photovoltaic modules and laminates, including Canadian Solar and Jinko Solar, consider that thin-film photovoltaic modules and laminates that offer cost advantages are competitive with crystalline photovoltaic modules and laminates and expect that evolving technologies will continue to improve the performance of thin-film photovoltaic modules and laminates and other new products.²⁵

31. The questionnaire replies also highlighted perceived differences in the physical characteristics and manufacturing processes of crystalline photovoltaic modules and laminates and thin-film modules and laminates. With respect to differences in the manufacturing process, the Tribunal considers that the focus should be on the products themselves and not on how they are produced.²⁶ The main physical differences are that the thin-film product is a lighter, more flexible product that can be applied to a curved surface, but has a lower efficiency in terms of capturing solar energy, whereas crystalline photovoltaic modules and laminates are more stable and efficient (making them more suitable for limited space applications) and have higher heat resistance. However, those respondents that indicated that there were no differences in physical characteristics between the two products focused on the fact that the finished photovoltaic modules and laminates essentially look the same and have similar dimensions.

32. There is also a price premium for crystalline photovoltaic modules and laminates due to their higher efficiency, but the price is susceptible to fluctuations in the cost of silicon, as mentioned above. The questionnaire replies further indicated that the prices of photovoltaic modules using crystalline technology and thin-film technology influence one another, although the degree of such influence varied among respondents, and one response indicated that the price of thin-film photovoltaic products reacts to the price of crystalline photovoltaic modules and laminates, which is the price leader in the solar module market.

33. The Tribunal accepts that crystalline photovoltaic modules and laminates may be more favourable for some specific end uses, such as limited space installations, due their higher efficiency. Conversely, thin-film products may be more suitable for specific installations that require a flexible material for use on curved surfaces. It also appears that the trade-off between the price premium of crystalline photovoltaic products and the lower efficiency of thin-film products is subject to the effects of fluctuations in the price of silicon, as an input material.

34. However, despite the price premium and differing levels of efficiency, both types of photovoltaic modules and laminates achieve the same end result, which is solar power generation. While they may not be perfectly suitable in all situations or where particular specifications are required, the Tribunal considers that the fact that certain goods may not be fully substitutable for some end uses is not, in and of itself, a sufficient basis for determining that there exist multiple classes of goods.²⁷ Although substitution between crystalline photovoltaic modules and laminates and thin-film photovoltaic modules and laminates may not necessarily occur because of differences in physical characteristics and pricing, this does not necessarily mean that they should constitute separate classes of goods.

25. Exhibit PI-2014-003-02.01, Vol. 1B at 17, 58, Vol. 1D at 60, Vol. 1E at 19, 62, Vol. 1G at 23.

26. See, for example, *Copper Pipe Fittings* at para. 53; *Circular Copper Tube* (18 December 2013), NQ-2013-004 (CITT) at para. 44. This view is consistent with the WTO Appellate Body's decision in *United-States—Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia* (2001), WTO Docs. WT/DS177/AB/R, WT/DS178/AB/R at para. 94 (Appellate Body Report), where it held that the focus should be on the products, not on how they were produced.

27. *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at paras. 38-40; *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) at paras. 67, 74.

35. Overall, in light of the evidence on the other relevant factors, the Tribunal finds that, while crystalline photovoltaic modules and laminates and thin-film photovoltaic modules and laminates are not fully substitutable across the entire spectrum of applications, they nevertheless fall within a continuum of like goods within a single class, which represents a range of goods with varying physical characteristics and efficiencies but serves the same general end use, and are, under the right circumstances, sufficiently substitutable for one another.²⁸

36. With respect to the remaining proposed separate classes of goods, the Tribunal finds that the parties opposed provided very little data or empirical evidence in support of their claims. For instance, in support of its argument that unassembled and finished solar modules are separate classes of goods, Jinko Solar relied on a single paragraph and provided no supporting evidence.²⁹ Therefore, in the absence of compelling evidence to the contrary, the Tribunal rejects the remaining proposed separate classes of goods.

37. As a result, on the basis of the evidence on the record and upon consideration of the relevant factors, the Tribunal finds that domestically produced photovoltaic modules and laminates, defined in the same manner as the subject goods, are like goods in relation to the subject goods and that the subject goods and like goods constitute a single class of goods.

Domestic Industry

38. Subsection 2(1) of *SIMA* defines “domestic industry” as follows:

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

39. The Tribunal must therefore determine whether the evidence discloses a reasonable indication of injury or threat of injury to the domestic producers as a whole, or those domestic producers whose production represents a major proportion of the total production of like goods.³⁰

40. In its decision to initiate the investigations, the CBSA identified the complainants and three other producers of like goods in Canada: Canadian Solar, Celestica and Enerdynamic.³¹ However, the CBSA accepted the complainants’ submission that Canadian Solar was not part of the domestic industry.³²

41. On this basis, the complainants submitted that they, together with Enerdynamic, represent 63 percent of domestic production of like goods.³³ This figure is premised in large part on the Tribunal not

28. *Circular Copper Tube* at paras. 55-58; *Concrete Reinforcing Bar* at para. 66.

29. Exhibit PI-2014-003-11.03 at 42, Vol. 3.

30. The term “major proportion” means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority. *Japan Electrical Manufacturers Assoc. v. Canada (Anti-Dumping Tribunal)*, [1982] 2 FC 816 (F.C.A); *China – Anti-dumping and Countervailing Duties on Certain Automobiles from the United States* (23 May 2014), WTO Doc. WT/DS440/R, Report of the Panel at para. 7.207; *European Community – Definitive Anti-dumping Measures on Certain Iron or Steel Fasteners from China* (15 July 2011), WTO Doc. WT/DS397/AB/R, Report of the Appellate Body at paras. 411, 419, 430; *Argentina – Definitive Anti-dumping Duties on Poultry from Brazil* (22 April 2003), WTO Doc. WT/DS241/R, Report of the Panel at paras. 7.341-7.344.

31. Exhibit PI-2014-003-10 at paras. 9, 11, Vol. 10.

32. *Ibid.* at para. 34.

33. Exhibit PI-2014-003-02.01, Vol. 1 at 26.

including Canadian Solar as part of the domestic industry because it imports the subject goods and is affiliated with a Chinese producer/exporter of the subject goods.³⁴

42. Several of the opposing parties argued that Canadian Solar should not be excluded from the domestic industry, casting doubt on whether the complainants account for a major proportion of domestic production. In addition, Jinko Solar raised other questions about the scope of the domestic industry, including whether there are more domestic producers not identified in the complaint, whether Silfab and other assemblers of photovoltaic modules and laminates should be excluded from the domestic industry and whether Eclipsall should be excluded, given its current receivership status. Abundant Solar further submitted that, if the domestic industry includes Silfab, an Italian-controlled company with manufacturing facilities in Canada and Italy, then Canadian Solar should also be included, despite its affiliation with Chinese-based manufacturing facilities.

43. At the outset of this preliminary injury inquiry, the Tribunal sent a letter to Canadian Solar requesting information relating to its corporate structure and operations, both in Canada and in China. In its reply, Canadian Solar stated that it is federally incorporated in Canada with two production facilities in Ontario (i.e. those operated by Canadian Solar Solutions Inc.) and three production facilities that it owns and operates in China.³⁵ It also provided confidential information about its Canadian and Chinese production for domestic sales and export sales, imports to its Canadian operations and its number of employees in each country.³⁶

44. The Tribunal finds that there is not enough evidence at this stage to allow it to make a final determination on Canadian Solar's status. There are a number of questions that still need to be resolved before the Tribunal can make a final decision on this issue, particularly as a result of clear linkages that exist between Canadian Solar's Canadian operations and affiliated Chinese producers that export the subject goods. These questions will need to be addressed in the context of a final injury inquiry, in which the Tribunal will be in a better position to assess Canadian Solar's production and import activities in the Canadian market, as well as the export activities of related Chinese producers of the subject goods.

45. Questions have also been raised about the inclusion of Silfab in the domestic industry. Those questions, however, were raised through submissions from one of the opposing parties, and the Tribunal did not have an opportunity to fully investigate the matter in the preliminary injury inquiry. For those reasons, a final determination on Silfab's status can only be made in the context of a final injury inquiry.

46. Questions were also raised about Eclipsall. On the basis of the information currently available and particularly the evidence of Mr. Mikael Niskanen filed with complainants' reply,³⁷ the Tribunal finds that Eclipsall is still in operation and still producing despite its receivership. The Tribunal will reassess Eclipsall's status in the context of a final injury inquiry after assessing the company's circumstances at that time.

47. Moreover, the Tribunal recognizes that the data currently available regarding Celestica's production volumes are estimates, but it is the best information available, since that company chose not to participate in the preliminary injury inquiry.

34. *Ibid.* at 23-24.

35. Exhibit PI-2014-003-09, Vol. 10 at 89-91.

36. Exhibit PI-2014-003-09A (protected), Vol. 2C at 18-19.

37. Exhibit PI-2014-003-13.01, tab C, Vol. 3C.

48. Assuming for the purposes of this preliminary injury inquiry that all the above companies form the domestic industry, the proportion of total domestic production represented by the complainants and Enerdynamic is at the low end of what would normally be considered a major proportion in the context of a final injury inquiry.³⁸ Taking into consideration, however, the specific facts of this preliminary injury inquiry, the Tribunal finds this proportion to be adequate for the purposes of its preliminary determination in this matter. This finding is based on the fact that the scope of the domestic industry could change depending on the Tribunal's final decisions regarding Canadian Solar, Silfab and Eclipsall, and on the collection of actual production data for Celestica in the course of a final injury inquiry. As noted earlier, the proportion would change substantially should Canadian Solar be eventually excluded from the domestic industry.

49. The Tribunal also finds that there is no evidence at this stage to indicate that the assembly operations of any domestic producers, including those that allegedly assemble photovoltaic modules and laminates using imported components, would affect their inclusion in the domestic industry. However, the Tribunal will investigate this issue in the context of a final injury inquiry. Furthermore, the Tribunal will also investigate the issue of whether there are other domestic producers in the course of a final injury inquiry.

Cross-cumulation

50. Given that the preliminary injury inquiry relates to investigations into alleged injurious dumping and subsidizing of goods, an issue that arises is whether the impact of the dumping should be assessed separately from the impact of the subsidizing.

51. There are no legislative provisions that directly address the issue of cross-cumulation of the effects of both dumping and subsidizing. However, as noted in previous cases,³⁹ the effects of dumping and subsidizing of the same goods from a particular country are manifested in a single set of injurious price effects, and it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, the effects are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing.

38. In *European Community – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China* (15 July 2011), WTO Doc. WT/DS397/AB/R, Report of the Appellate Body at paras. 412, 419, 422, 430, the WTO Appellate Body found that, while a lower proportion may be permissible in a fragmented industry, 27 percent of total domestic production is not a major proportion. The Appellate Body did not specify what threshold is required to establish a major proportion, but indicated that it should be a relatively high proportion to avoid a distorted analysis.

39. See, for example, *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at paras. 76-77; *Aluminum Extrusions* at para. 147.

52. Accordingly, the Tribunal finds it appropriate to assess the cumulative effects of the dumping and subsidizing of the subject goods for the purposes of its preliminary injury analysis.⁴⁰

Import Volume of Dumped and Subsidized Goods

53. The complainants submitted that the subject goods make up a significant and increasing share of total imports of photovoltaic modules and laminates into Canada. They further argued that, because of a time lag between order and delivery of photovoltaic modules and laminates, the volumes of sales captured by the Chinese exporters are not reflected in the 2014 import data from Statistics Canada and that the actual market penetration of the subject goods is likely even higher than shown in the data.

54. The CCCME submitted that the volumes of the subject goods in 2013 and the first half of 2014 were relatively flat and only accounted for an increasing share of total imports because imports of photovoltaic modules and laminates from other countries declined substantially. The CCCME also submitted that the domestic industry increased production and gained market share during the same period.

55. The data collected to date indicate that the total volume of the subject goods increased in absolute terms between 2012 and 2013, and in the first half of 2014 as compared to the first half of 2013.⁴¹ In terms of share of imports by volumes, China accounted for a significant and growing share of total imports of photovoltaic modules and laminates into Canada.⁴² Conversely, imports of non-subject goods from other countries have collectively fallen in both absolute and relative terms since 2013.

56. The evidence does not indicate any significant increase in imports of the subject goods relative to the domestic production or consumption of like goods.⁴³ There is some variation in the trends, however, depending on the composition of the domestic industry.

57. On the basis of the above, the Tribunal finds that the evidence discloses a reasonable indication that the absolute volume of imports of the subject goods increased significantly from 2012 to 2014.

40. The WTO Appellate Body recently found that cross-cumulating the effects of imports from countries subject to simultaneous dumping and subsidizing investigations with those of countries subject to parallel dumping investigations only constituted a violation of the *Agreement on Subsidies and Countervailing Measures*. See *United States - Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India* (8 December 2014), WTO Doc. WT/DS436/AB/R, Report of the Appellate Body. The Tribunal considers the circumstances in that case dissimilar to the present preliminary injury inquiry, which involves only one country, China, the goods from which have been found, on a preliminary basis, to be both dumped and subsidized. Accordingly, there is no risk of improperly attributing the impacts of either the dumping or subsidizing to a country that has not been found to be dumping or subsidizing, as the case may be.

41. Statistics Canada does not report import volumes for the relevant Harmonized System (HS) tariff classification code. Since the CBSA's methodology for estimating import volumes was not disclosed, the Tribunal relied on the complainants' (corrected) data on import volumes by using import values from Statistics Canada multiplied by average weekly solar spot prices for multi-crystalline silicon modules reported by Bloomberg New Energy Finance. See Exhibit PI-2014-003-03.01 (protected), Vol. 2 at 212.

42. The CBSA's estimate shows a similar trend of the subject goods accounting for an increasing share of total imports of photovoltaic modules and laminates, rising from 55.5 percent in 2012 to 72 percent in 2013, reaching 85.1 percent in the first half of 2014. See Exhibit PI-2014-003-10, Vol. 10 at 104.

43. Exhibit PI-2014-003-03.01 (protected), Vol. 2 at 212; Exhibit PI-2014-003-9A (protected), Vol. 2C at 19.

Price Effects of Dumped and Subsidized Goods

58. According to the complainants, the subject goods are commodity products sold primarily on the basis of price, and price changes are quickly transmitted throughout the market by way of communications among buyers and sellers and the weekly publication of pricing data in industry periodicals.⁴⁴

59. The complainants submitted that they have suffered lost sales and reduced market share due to price undercutting and price depression caused by imports of the subject goods, which are the lowest priced product in the domestic market.⁴⁵ The complainants also claimed that they have often made sales on behalf of foreign manufacturers that require local content, in order to meet the former domestic content requirement under the FIT Program, because they cannot compete with low-priced imports from China that are below the production costs of both domestic and Chinese manufacturers.

60. The opposing parties generally asserted that lower pricing of the subject goods is attributable to other factors, including greater production efficiencies and technological developments that are driving down costs and pricing of photovoltaic modules and laminates globally and in Canada. Jinko Solar also submitted that some subject goods may be lower-priced due to the fact that they are unassembled at the time of importation, with significant value being added during assembly, post-importation.

61. The Tribunal finds that, on the basis of the complainants' estimates⁴⁶ of annual average import values, imports of the subject goods significantly undercut the domestic selling price of the like goods in 2012 and 2013.⁴⁷ In the first half of 2014, the gap narrowed considerably but the price of the subject goods still remained lower than the domestic selling price.

62. The average price of imports of photovoltaic modules and laminates from non-subject countries⁴⁸ tended to be higher than both the domestic industry's selling prices and the import prices of the subject goods, which were the price leaders in the Canadian market between 2012 and the first half of 2014.

63. Selling prices appear to vary by domestic producer and certain producers had prices below or in line with Chinese pricing in some periods. While it is not clear from the currently available data, the Tribunal considers that differences in product mix may have contributed, to some extent, to this disparity.

64. With respect to the allegation of price depression, the injury allegations did not include specific instances where the complainants were forced to lower their initial price offering in order to secure a sale in competition with the subject goods. Most of the complainants' allegations of lost sales did not relate to a specific sale but rather documented the complainants' loss of particular customer accounts or, alternatively, general information on Chinese pricing obtained either directly from Chinese producers/exporters or from

44. Exhibit PI-2014-003-02.01, Vol. 1 at 21.

45. The complaint does not allege price suppression.

46. The Tribunal relied on the complainants' estimates of Chinese import values for the purposes of its preliminary injury inquiry, as unit import values for the relevant HS classification code are not available from Statistics Canada data.

47. Exhibit PI-2014-003-03.01 (protected), Vol. 2 at 212; Exhibit PI-2014-003-03.01 (protected), Vol. 2A at 39.

48. Without a breakdown in prices by non-subject country, it is not possible to determine at this stage whether a particular country or countries may be responsible for the higher average prices of non-subject countries.

Canadian customers.⁴⁹ The single exception was a specific sale that Heliene allegedly lost to the subject goods that was supported by evidence of price undercutting.⁵⁰

65. The evidence, however, indicates that the weighted average selling price of the like goods decreased between 2012 and 2013 and decreased again in the first half of 2014, as compared to the first half of 2013.⁵¹ Prices of the subject goods also fell, albeit to a lesser degree, over the same period. Whereas the price of the subject goods did not decrease significantly in the first half of 2014, the price of like goods dropped substantially. The Tribunal finds that this reflects the impact of the lower-priced subject goods exerting downward pressure on domestic pricing in the market.

66. Overall, the Tribunal finds that the evidence on aggregate prices outlined above discloses a reasonable indication that the dumping and subsidizing of the subject goods have resulted in significant price undercutting and price depression.

Resultant Impact on the Domestic Industry

67. As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal considers the impact of the dumped and subsidized goods on the state of the domestic industry and, in particular, all relevant economics factors and indices that have a bearing on the state of the domestic industry.⁵² These impacts are to be distinguished from the impact of any other factors affecting the domestic industry.⁵³ Paragraph 37.1(3)(a) requires the Tribunal to consider whether a causal relationship exists between the dumping or subsidizing of the goods and the injury on the basis of the volume, the price effect and the impact on the domestic industry of the dumped or subsidized goods.

68. The complainants submitted that they have experienced injury caused by the low-priced subject goods in the form of lost sales, decreased market share, sales revenue and gross margins, negative net income before taxes, underutilized production capacity, reduced employment and wages, and the recent or pending closure of several other domestic producers.⁵⁴ The complainants alleged that the removal of the

49. Exhibit PI-2014-003-03.01 (protected), Vol. 2 at 168-72, 208-210; Exhibit PI-2014-003-03.01 (protected), Vol. 2A at 11-12, 18-38; Exhibit PI-2014-003-03.01 (protected), Vol. 2A at 214; Exhibit PI-2014-003-03.01 (protected), Vol. 2A at 217-18, 222.

50. Exhibit PI-2014-003-03.01 (protected), Vol. 2 at 208-210.

51. *Ibid.* at 212; Exhibit PI-2014-003-03.01 (protected), Vol. 2A at 39.

52. Such factors and indices include “. . . (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme”.

53. Paragraph 37.1(3)(b) of the *Regulations* directs the Tribunal to consider whether any factors other than dumping or subsidizing of the subject goods have caused injury. The factors which are prescribed in this regard are “. . . (i) the volumes and prices of imports of like goods that are not dumped or subsidized, (ii) a contraction in demand for the goods or like goods, (iii) any change in the pattern of consumption of the goods or like goods, (iv) trade-restrictive practices of, and competition between, foreign and domestic producers, (v) developments in technology, (vi) the export performance and productivity of the domestic industry in respect of like goods, and (vii) any other factors that are relevant in the circumstances.”

54. The complaint did not include arguments or evidence of any negative impact on cash flow, inventories, return on investments or the ability to raise capital.

domestic content requirement under the FIT Program in 2013 would have had little or no effect on the industry but for the dumped and subsidized imports from China.⁵⁵

69. The parties opposed to the complaint submitted that the domestic industry is performing well. They pointed to several other factors that are responsible, in whole or in part, for any alleged impact on the domestic industry. These other factors include the recent changes to the FIT Program in light of a finding by the WTO Appellate Body that the domestic content requirement did not comply with Canada's multilateral trade obligations,⁵⁶ reduced market demand for solar energy, the development of new solar technologies that are driving down costs and prices, and the inability of smaller domestic producers to compete with larger domestic producers that have economies of scale and vertically integrated supply chains.

70. The complainants have provided evidence regarding their production, capacity utilization, employment, market share, sales and financial performance. The Tribunal recognizes, however, that it does not have the full picture in terms of the domestic industry's recent financial performance without similar information for the other domestic producers, particularly Celestica. Although Canadian Solar provided some evidence regarding its production and general information about its financial performance, it did not file any recent income statements to allow for a more detailed analysis.⁵⁷ Furthermore, as stated above, it is only in the context of a final injury inquiry that the Tribunal will be able to determine the scope of the domestic industry, which could impact the consolidated financial data. With these considerations in mind, the Tribunal is satisfied that it has sufficient evidence for the purposes of determining whether there is a reasonable indication that the dumped and subsidized goods have caused injury to the domestic industry.

Domestic Production

71. With respect to domestic production, the Tribunal compiled data from the complainants, including Enerdynamic and their estimate of Celestica's production, and from Canadian Solar. The consolidated data show that domestic production increased by 16 percent from 2012 to 2013, and then jumped by 112 percent in the first half of 2014 as compared to the first half of 2013.⁵⁸ Even if Canadian Solar and Celestica⁵⁹ are removed from the data, the production of the complainants and Enerdynamic increased significantly between 2013 and 2014. Accordingly, the Tribunal is not convinced that an actual increase in production by the domestic industry over the period examined suggests a reasonable indication of injury.

Market Share and Sales

72. The evidence on the record shows that, in terms of volume, the size of the Canadian market for photovoltaic modules and laminates increased moderately between 2012 and 2013.⁶⁰ The like goods

55. Exhibit PI-2014-003-13.01 at 28, Vol. 3C.

56. *Canada – Certain Measures Affecting the Renewable Energy Generation Sector* and *Canada – Measures Relating to the Feed-in Tariff Program* (6 June 2013), WTO Docs. WT/DS412/AB/R and WT/DS426/AB/R, Reports of the Appellate Body.

57. Canadian Solar provided, in the attachments to its brief, an income statement summary for the company's global operations (Exhibit PI-2014-003-11.04, Exhibit 1, Vol. 3B); however, it did not file any income statements specific to its Canadian operations.

58. Exhibit PI-2014-003-03.01 (protected), Vol. 2 at 240; Exhibit PI-2014-003-9A (protected), Vol. 2C at 19.

59. There is other evidence on the record that indicates that Celestica's production volume in 2013 may have been even higher than estimated by the complainants. Specifically, the International Energy Agency's "National Survey Report of PV Power Applications in Canada 2013" shows the 2013 production for individual domestic producers, including 200 megawatts for Celestica. See Exhibit PI-2014-003-02.01, Vol. 1 at 201.

60. Exhibit PI-2014-003-03.01 (protected), Vol. 2 at 212, Vol. 2A at 39; Exhibit PI-2014-003-9A (protected), Vol. 2C at 19.

dominated sales in the Canadian market in both years. In the first half of 2014, the market expanded by 66 percent as compared to the same period in 2013. The market share of the like goods increased significantly during that same period, mostly at the expense of sales from non-subject countries, which fell dramatically, but the subject goods also lost some market share in the first half of 2014.

73. In terms of sales, the complainants' consolidated net sales increased in each period.⁶¹ Although the complainants anticipated a drop in sales of the like goods with the winding down of existing contracts under the former FIT Program, i.e. with the domestic content requirement, the Tribunal sees no evidence indicating any such downward trend in sales in the first half of 2014.

74. Similarly, in the small number of specific lost sales alleged by the complainants, it was not clear in all but one case⁶² that the complainant made an offer and that the sale was actually lost to the subject goods.⁶³ As discussed above, the Tribunal is unable to rely on the anecdotal evidence of recent lost sales attributed to imports of the subject goods.

75. In sum, the Tribunal finds that, while the evidence is not conclusive and could change when looking at the domestic producers as a whole, depending on the final composition of the domestic industry, there is a reasonable indication that this industry was able to maintain its market share and increase sales over the period examined.

Profitability

76. The consolidated financial data provided by the complainants demonstrate an improving financial performance between 2012 and 2014.⁶⁴ Despite net losses, both at the aggregate level and the unit level, the complainants' saw a steady improvement in gross margins and net income before taxes from 2012 to 2013. In the first half of 2014, gross margins declined, but, at the aggregate level, they were still considerably higher than in 2012. Overall, the Tribunal does not find a reasonable indication of a decline in profits.

Productivity and Capacity Utilization

77. The complainants' evidence shows an increase in consolidated productivity in terms of watts per employee from 2012 to 2014.⁶⁵ Total production capacity was relatively flat between 2012 and 2013 and then increased in the first half of 2014. The complainants' consolidated capacity utilization rate also increased over the period examined.

Employment

78. The evidence on the record indicates that the complainants increased their number of direct employees between 2012 and 2014.⁶⁶ On an individual basis, only one complainant had to reduce its number of employees in the first half of 2014; the others either maintained or increased their levels of direct employment.

61. Exhibit PI-2014-003-03.01 (protected), Vol. 2 at 212, Vol. 2A at 39.

62. Exhibit PI-2014-003-03.01 (protected), Vol. 2 at 208-210.

63. Exhibit PI-2014-003-03.01 (protected), Vol. 2A at 217-18, 222.

64. Exhibit PI-2014-003-03.01 (protected), Vol. 2 at 212, Vol. 2A at 39.

65. *Ibid.*

66. *Ibid.*

Conclusion

79. On the basis of the above analysis, the Tribunal finds that, despite an overall increase in volumes of low-priced subject goods during the period examined, the evidence does not disclose a reasonable indication that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.

THREAT OF INJURY ANALYSIS

80. The Tribunal must now consider whether there is a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause material injury. The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.⁶⁷

81. The complainants submitted that the subject goods are threatening to cause injury to the domestic industry in the following terms:

- the size of Chinese production capacity in absolute terms and relative to Canada's production capacity;
- excess Chinese production capacity is significantly greater than Canada's total market consumption;
- the nature of the subsidies demonstrates a commitment by the Chinese government to sustain the growth of its solar power industry;
- Chinese producers plan to increase their production capacity;
- Chinese inventories are massive;
- Chinese producers are export-oriented;
- China faces anti-dumping and/or countervailing measures in major export markets, including the United States, the European Union, Australia and India;
- China is already the low price leader in the Canadian market;
- China has established relationships and distribution networks in Canada; and
- market penetration of the subject goods is actually higher than suggested by import volumes due to a lag in time between order and delivery.⁶⁸

67. Subsection 37.1(2) of the *Regulations* reads as follows: "For the purposes of determining whether the dumping or subsidizing of any goods is threatening to cause injury, the following factors are prescribed: (a) the nature of the subsidy in question and the effects it is likely to have on trade; (b) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods; (c) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase; (d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods; (e) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods; (f) inventories of the goods; (g) the actual and potential negative effects on existing development and production efforts, including efforts to produce a derivative or more advanced version of like goods; (g.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; (g.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and (h) any other factors that are relevant in the circumstances."

68. Exhibit PI-2014-003-02.01, Vol. 1 at 131-47.

82. The CCCME replied that the domestic industry has performed very well and that any anticipated difficulties are due to reduced support from the Ontario government since the removal of the domestic content requirement under the former FIT Program and the rapid evolution of solar technology, which is driving costs and prices of photovoltaic modules and laminates downward.⁶⁹

83. Jinko Solar submitted that there is no reasonable indication of a clearly foreseen and imminent threat of injury and echoed the same other factors as the CCCME, adding that a decrease in recent Ontario government contracts for solar projects suggests a contraction in demand for photovoltaic modules and laminates.

84. The evidence indicates that, until recently, the domestic industry was shielded from the full impact of the dumped and subsidized goods because of the domestic content requirement of the FIT Program. The domestic content requirement has been relaxed to conform to a WTO Appellate Body finding. Consequently, the circumstances in a key part of the domestic market have changed significantly to allow suppliers of foreign goods, including the subject goods, to compete directly with like goods.

85. In this respect, the Tribunal does not consider that the elimination of the domestic content requirement, in and of itself, is threatening to cause injury to the domestic industry. Rather, the threat of injury to the domestic industry arises from the presence of the dumped and subsidized goods in the new market environment created by the elimination of the program. The evidence indicates that the subject goods, which are now fully in direct competition with the like goods, are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of the like goods and are likely to increase demand for further imports of the subject goods.

86. In the most recent period examined, the available evidence indicates a significant rate of increase of the subject goods imported into Canada. Specifically, the volume of imports of the subject goods increased by 26 percent in the first half of 2014, as compared to the first half of 2013, and accounted for an increasingly dominant share of the import market.⁷⁰ Although the domestic market share of the subject goods fell over the same period, returning almost to the 2012 level, the recent elimination of the domestic content requirement under the FIT Program, together with the increased volumes of imports of the low-priced subject goods since 2013, indicate that the demand for the dumped and subsidized goods will continue to grow in the near future.

87. The Tribunal finds that there is a reasonable indication that the exporters of the subject goods will be ready to meet this growing demand for their goods. The recent production volumes of the largest Chinese manufacturers of solar modules have greatly surpassed domestic production volumes, and the excess could easily swamp the Canadian market.⁷¹

88. Total Chinese capacity is exceedingly high.⁷² Chinese producers of solar modules have significant excess capacity and significant inventories.⁷³ Moreover, additional capacity will soon come on-line. The

69. Exhibit PI-2014-003-12.06 (protected) at para. 157, Vol. 4A.

70. Exhibit PI-2014-003-03.01 (protected), Vol. 2 at 212.

71. Exhibit PI-2014-003-02.01 at para. 344, Table 6, Vol. 1; Exhibit PI-2014-003-03.01A (protected), Attachment 96, Vol. 2.01.

72. Exhibit PI-2014-003-02.01 at para. 342, Vol. 1; Exhibit PI-2014-003-03.01A (protected), Attachment 89, Vol. 2.01.

73. Exhibit PI-2014-003-02.01 at paras. 348-50, Vol. 1; Exhibit PI-2014-003-03.01A (protected), Attachment 117, Vol. 2.01.

complainants have referred to specific examples of at least two major Chinese manufacturers that are expanding their facilities.⁷⁴

89. There is also evidence of the imposition of anti-dumping and/or countervailing measures by authorities in other countries, including the United States, the European Union and India, in respect of goods of the same description or in respect of similar goods from China. Thus, it seems plausible, in the circumstances, that increasing volumes of the subject goods will find their way to Canada.

90. There is already some, albeit limited, anecdotal evidence of lost sales by the domestic industry in situations where it was in direct competition with the subject goods, as discussed above. The evidence indicates that this trend will become more widespread in the near to medium term, given the increasing volumes of the subject goods in absolute terms and relative to total imports of solar modules into Canada, as well as the above evidence of price undercutting and price depression between 2012 and the first half of 2014.

91. The Tribunal concludes that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury. Any negative effects that the domestic industry may experience due to the elimination of the FIT Program do not negate the Tribunal's conclusion in this regard.

CONCLUSION

92. On the basis of the foregoing analysis and pursuant to subsection 37.1(1) of *SIMA*, the Tribunal finds that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury *or* are threatening to cause injury to the domestic industry.

93. Should the CBSA make a preliminary determination that the subject goods are dumped or subsidized, then the Tribunal shall, pursuant to section 42 of *SIMA*, inquire into whether the dumping or subsidizing has caused or is threatening to cause injury. As a result of the statutory scheme, such an inquiry would not be restricted to determining whether there is a threat of injury.

Jean Bédard
Jean Bédard
Presiding Member

Peter Burn
Peter Burn
Member

Rose Ritcey
Rose Ritcey
Member

74. Exhibit PI-2014-003-02.01 at paras. 352-53, Vol. 1; Exhibit PI-2014-003-02.01, Vol. 1G at 5; Exhibit PI-2014-003-02.01, Vol. 1E at 4.