



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2016-001

Gypsum Board

*Determination issued
Friday, August 5, 2016*

*Reasons issued
Monday, August 22, 2016*

TABLE OF CONTENTS

PRELIMINARY DETERMINATION OF INJURY	i
STATEMENT OF REASONS	1
BACKGROUND	1
SUBMISSIONS ON INJURY AND THREAT OF INJURY.....	2
CertainTeed.....	2
Parties Opposed to the Complaint	2
LEGISLATIVE FRAMEWORK.....	2
Reasonable Indication.....	2
Injury and Threat of Injury Factors	3
PRELIMINARY ISSUES	4
Like Goods and Classes of Goods.....	4
Regional Market.....	4
All or Almost all Like Goods Were Sold in the Regional Market.....	5
Regional Demand is not Supplied from Elsewhere in Canada	5
INJURY ANALYSIS	6
Import Volume of Dumped Goods	6
Effect on Price of Like Goods	6
Resultant Impact on the Domestic Industry	7
THREAT OF INJURY ANALYSIS	8
EXCLUSIONS	10
PUBLIC INTEREST ISSUES.....	10
CONCLUSION	11

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

**GYPSUM BOARD ORIGINATING IN OR EXPORTED FROM THE
UNITED STATES OF AMERICA**

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 alleged injurious dumping of gypsum board, sheet, or panel (“gypsum board”) originating in or exported from the United States of America, imported into Canada for use or consumption in the provinces of British Columbia, Alberta, Saskatchewan, and Manitoba, as well as the Yukon and Northwest Territories, composed primarily of a gypsum core and faced or reinforced with paper or paperboard, including gypsum board meeting or supplied to meet ASTM C 1396 or ASTM C 1396M or equivalent standards, regardless of end use, edge-finish, thickness, width, or length, excluding (a) gypsum board made to a width of 54 inches (1,371.6 mm); (b) gypsum board measuring 1 inch (25.4 mm) in thickness and 24 inches (609.6 mm) in width regardless of length (commonly referred to and used as “paper-faced shaft liner”); (c) gypsum board meeting ASTM C 1177 or ASTM C 1177M (commonly referred to and used primarily as “glass fiber re-enforced sheathing board” but also sometimes used for internal applications for high mold/moisture resistant applications); (d) double layered glued paper-faced gypsum board (commonly referred to and used as “acoustic board”); and (e) gypsum board meeting ISO16000-23 for sorption of formaldehyde, has caused injury or retardation or is threatening to cause injury to the domestic industry. All dimensions are plus or minus allowable tolerances in applicable standards.

This preliminary injury inquiry follows the notification, on June 8, 2016, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping 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 of the above-mentioned goods has caused injury or is threatening to cause injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

Jean Bédard
Jean Bédard
Member

Rose Ritcey
Rose Ritcey
Member

The statement of reasons will be issued within 15 days.

Tribunal Members:	Serge Fr�chet, Presiding Member Jean B�dard, Member Rose Ritcey, Member
Director, Trade Remedies Investigations:	Greg Gallo
Trade Remedies Investigations Officers:	Andrew Wigmore Julie Charlebois Boxi Zhou Jyotsna Venkatesh
Counsel for the Tribunal:	Peter Jarosz
Student-at-law:	Jessica Spina
Registrar Officer:	Sara Pelletier
Registrar Support Officer:	Chelsea McKiver

PARTICIPANTS:

Allroc
Winroc-SPI

Castle Building Centres Group Ltd.
CertainTeed Gypsum Canada Inc.

CGC Inc.

Continental Building Products Canada, Inc.
Continental Building Products, Inc.

Georgia-Pacific Gypsum LLC

National Gypsum Company

Sexton Group Ltd.

Counsel/Representatives

Clint Wormsbecker

Ken Jenkins

Christopher J. Kent
Christopher J. Cochlin
Christopher R.N. McLeod
Andrew M. Lanouette
Hugh Seong Seok Lee
Michael Milne
Susana May Yon Lee
Adrian Burger
Jana Keeley
Cynthia Wallace

John W. Boscariol
Robert Glasgow
Linda El Halabi

Cyndee Todgham Cherniak

Neil Campbell
Jonathan P. O'Hara
Timothy Cullen

Riyaz Dattu
Jaime Auron

Brian Kusisto

Please address all communications to:

The Registrar
Secretariat to the Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario K1A 0G7
Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

BACKGROUND

1. On June 8, 2016, following a complaint filed on April 18, 2016, by CertainTeed Gypsum Canada Inc. (CertainTeed), the President of the Canada Border Services Agency (CBSA) initiated an investigation into the alleged injurious dumping in a regional market comprised of Manitoba, Saskatchewan, Alberta, British Columbia, the Yukon, the Northwest Territories and Nunavut (the regional market) of goods defined as follows:

Gypsum board, sheet, or panel (“gypsum board”) originating in or exported from the United States of America, imported into Canada for use or consumption in the provinces of British Columbia, Alberta, Saskatchewan, and Manitoba, as well as the Yukon and Northwest Territories, composed primarily of a gypsum core and faced or reinforced with paper or paperboard, including gypsum board meeting or supplied to meet ASTM C 1396 or ASTM C 1396M or equivalent standards, regardless of end use, edge-finish, thickness, width, or length, excluding (a) gypsum board made to a width of 54 inches (1,371.6 mm); (b) gypsum board measuring 1 inch (25.4 mm) in thickness and 24 inches (609.6 mm) in width regardless of length (commonly referred to and used as “paper-faced shaft liner”); (c) gypsum board meeting ASTM C 1177 or ASTM C 1177M (commonly referred to and used primarily as “glass fiber re-enforced sheathing board” but also sometimes used for internal applications for high mold/moisture resistant applications); (d) double layered glued paper-faced gypsum board (commonly referred to and used as “acoustic board”); and (e) gypsum board meeting ISO16000-23 for sorption of formaldehyde. All dimensions are plus or minus allowable tolerances in applicable standards [the subject goods].

2. The CBSA described the uses of gypsum board as follows:

Gypsum board has long been used as a building material because of its fire-resistant properties. It provides a durable, economical, non-combustible and easily decorated surfacing material for construction use. Gypsum board is the most widely used material for ceilings and interior walls for residential, commercial, and institutional buildings in developed countries. Paper-covered gypsum board is well suited to the application for which it was designed, that is interior non-load bearing construction.¹

3. The CBSA was of the opinion that there was evidence that the subject goods had been dumped, as well as evidence that disclosed a reasonable indication that the dumping of the subject goods had caused injury or was threatening to cause injury to the producers in the regional market.

4. In coming to its decision to initiate the investigation, the CBSA used information with respect to the volumes of dumped goods for the period from January 1 to December 31, 2015.²

5. The CBSA estimated the overall margin of dumping at 76.8 percent, expressed as a percentage of the export price of the subject goods.³ Further, the CBSA opined that the estimated overall margin of dumping was not insignificant and that the estimated volumes of dumping in the regional market were not negligible.⁴

1. Exhibit PI-2016-001-05, Vol. 1B at 240.

2. Injury information was provided for the calendar years 2013 to 2015. Exhibit PI-2016-001-05, Vol. 1B at 246-51.

3. Exhibit PI-2016-001-05, Vol. 1B at 245.

4. Exhibit PI-2016-001-05, Vol. 1B at 246.

6. On June 9, 2016, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.

7. The Tribunal made its preliminary determination of injury on August 5, 2016.

SUBMISSIONS ON INJURY AND THREAT OF INJURY

CertainTeed

8. CertainTeed is the sole complainant and the sole producer of the gypsum board in the regional market; it participated to support its complaint. For the purpose of this preliminary injury inquiry, CertainTeed constitutes the domestic industry.

9. CertainTeed submitted that the dumping of the subject goods has caused material injury to the domestic industry. In support of its allegations, CertainTeed provided evidence of increased volumes of imports of the subject goods, loss of market share, loss of sales volumes, price undercutting, price suppression, price depression, lost revenues, reduced gross margins, reduced profitability, underutilization of production capacity and loss of employment.

10. CertainTeed also submitted that the dumping of the subject goods is threatening to cause injury to the domestic industry. It alleged that there is a likelihood that a significant increase in dumped imports, and the corresponding reduction of domestic market share, will continue. Further, it argued that the prices of the subject goods are likely to continue to undercut, depress and suppress domestic prices.

Parties Opposed to the Complaint

11. The complaint is opposed by the following: Georgia-Pacific, an exporter of the subject goods from the United States; Continental Building Products, a U.S. producer/exporter of the subject goods (and its related importer in Canada, Continental Building Products Canada, Inc.) (collectively, CBP), and CGC Inc., a producer in Eastern Canada which imports from USG Corporation, a related U.S. producer/exporter of the subject goods.

12. Parties opposed to the complaint submitted that the evidence provided with the complaint does not disclose a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury to the domestic industry. Parties disputed the existence of a regional market. Several parties also submitted that any injury that CertainTeed may have experienced is attributable to factors other than the dumping.

LEGISLATIVE FRAMEWORK

Reasonable Indication

13. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of the *Special Import Measures Act*,⁵ 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."

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

14. In the present case, it is alleged by CertainTeed that the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury; retardation is not alleged.

15. The “reasonable indication” standard that applies in a preliminary injury inquiry is lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of *SIMA*.⁶ The term “reasonable indication” is not defined in *SIMA*, but is understood to mean that the evidence in question need not be “. . . conclusive, or probative on a balance of probabilities . . .”⁷ Nevertheless, simple assertions are not sufficient and must be supported by relevant evidence.⁸

16. The Tribunal has previously been satisfied that the threshold for the “reasonable indication” standard was met where:⁹

- the alleged injury or threat of injury is substantiated by evidence that is sufficient in the sense that it is “relevant, accurate and adequate”; and,
- in light of the evidence, the allegations stand up to a “somewhat probing examination”, even if the theory of the case might not seem convincing or compelling.

17. When determining whether the reasonable indication standard has been met in a preliminary injury inquiry, the Tribunal must rely mainly on the information and evidence provided in the complaint and submissions from the parties. Although the reasonable indication standard is less demanding than the standard that applies in a final injury inquiry pursuant to section 42 of *SIMA*, the outcome of the Tribunal’s preliminary injury inquiry must not be taken for granted.¹⁰ While the complaint will be read generously, it must be supported by positive evidence that is sufficient and relevant, in that it addresses the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*.¹¹ This evidence, however, will in most cases be less comprehensive than the evidence collected for the final injury inquiry and will not be tested to the same extent. It is only in a final injury inquiry that the Tribunal will have the opportunity to collect its own information, receive submissions on all the evidence on the record and test such evidence through the oral hearing process.

Injury and Threat of Injury Factors

18. In making its preliminary determination of injury, the Tribunal takes into account the factors prescribed in section 37.1 of the *Regulations*, including the import volumes of the dumped goods, the effect of the dumped goods on the price of like goods, the resulting economic impact of the dumped goods on the

6. *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 7.

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

8. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* requires an investigating authority 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 to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping or injury. Article 5 also specified that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article.

9. *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) [*Reinforcing Bar*] at para. 15; *Silicon Metal* (21 June 2013), PI-2013-001 (CITT) at para. 16; *Unitized Wall Modules* (3 May 2013), PI-2012-006 (CITT) [*Unitized Wall Modules*] at para. 24; *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 86.

10. *Reinforcing Bar* at paras. 18-19.

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

domestic industry and, if injury or threat of injury¹² is found to exist, whether a causal relationship exists between the dumping of the goods and the injury or threat of injury.

PRELIMINARY ISSUES

Like Goods and Classes of Goods

19. There were no express arguments made that the domestically produced gypsum board is not like goods in relation to the subject goods or that there is more than one class of goods. The Tribunal will conduct its analysis on the basis that domestically produced gypsum board is like goods in relation to the subject goods. The Tribunal will also analyze the allegations of injury and threat of injury on the basis of one class of goods.

20. However, before examining the allegations of injury and threat of injury, the Tribunal must address the issue of the existence of a regional market.

Regional Market

21. With respect to the establishment of a regional market, subsection 2(1.1) of *SIMA* provides as follows:

(1.1) In exceptional circumstances, the territory of Canada may, for the production of any goods, be divided into two or more regional markets and the domestic producers of like goods in any of those markets may be considered to be a separate domestic industry where

(a) the producers in the market sell all or almost all of their production of like goods in the market; and

(b) the demand in the market is not to any substantial degree supplied by producers of like goods located elsewhere in Canada.

22. If the Tribunal finds that a regional market exists, subsection 42(5) of *SIMA* provides as follows:

(5) Where subsection 2(1.1) applies in respect of the dumping or subsidizing of goods to which the preliminary determination applies, the Tribunal shall not find that the dumping or subsidizing of those goods has caused injury or retardation or is threatening to cause injury unless

(a) there is a concentration of those goods into the regional market; and

(b) the dumping or subsidizing of those goods has caused injury or retardation or is threatening to cause injury to the producers of all or almost all of the production of like goods in the regional market.

12. In its consideration of whether there is a reasonable indication that the dumping of the subject goods is threatening to cause injury, the Tribunal is guided 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.

23. On the basis of these provisions, the Tribunal will consider three tests¹³ to determine whether it should apply a regional market analysis to the case at hand. Specifically, it will consider the following:

- whether all or almost all of the like goods were sold in the regional market;
- whether regional demand was to any substantial degree supplied by like goods from elsewhere in Canada; and
- whether there was a concentration of dumped goods in the regional market.

24. If these tests are met, the Tribunal will then conduct its injury analysis on the basis of its finding of a regional market.

All or Almost all Like Goods Were Sold in the Regional Market

25. The facts regarding this first test are unchallenged;¹⁴ it is not disputed that this test is met.¹⁵ The confidential information in the complaint confirms such a conclusion.¹⁶

Regional Demand is not Supplied from Elsewhere in Canada

26. The data on the limited inflows of gypsum board from the rest of Canada are an estimate by CertainTeed. While the results of the estimate meet satisfy the second test, they are challenged by the parties opposed as conjecture and without basis in evidence.

27. The Tribunal notes that there are no official statistics for trade in the like goods within Canada; accordingly, CertainTeed's estimate, being based on its commercial intelligence, is of some assistance. The Tribunal also notes that the parties opposed did not provide any positive evidence as to any intra-Canada shipments which they allege may be occurring, including any shipments from their own production.

28. The Tribunal will address this factual issue further in its final injury inquiry; at this preliminary stage, however, it finds that there is satisfactory evidence that this test is met.¹⁷

There is a Concentration of Dumped Goods in the Regional Market

29. The Tribunal uses several sub-tests or benchmarks to determine this issue—the distribution, density and ratio tests. Although, in the present case, some of these benchmarks are at the lower end of the spectrum established in previous cases,¹⁸ the Tribunal is satisfied that, at this preliminary stage, this test is met.

13. As explained in its decision in *Certain Whole Potatoes* (9 September 2015), RR-2014-004 (CITT) at paras. 46-48, there are no additional tests to be met for the existence of a regional market such as, for example, the existence of “exceptional circumstances” in order to apply the statutory tests. In the context of the injury analysis, the Tribunal considers the last statutory requirement, i.e. whether injury is to all or almost all of regional production.

14. This refers to data regarding CertainTeed's sales from its regional production. Exhibit PI-2016-001-03.01 (protected), Vol. 2A at 72.

15. Exhibit PI-2016-001-08.01 at para. 8, Vol. 3.

16. Exhibit PI-2016-001-03.01 (protected), Vol. 2A at 72.

17. The fact that CertainTeed has production facilities and other operations outside the regional market does not change this conclusion.

18. Exhibit PI-2016-001-06.02 at paras. 31-38, Vol. 3; Exhibit PI-2016-001-08.01 at paras. 16-28, Vol. 3.

INJURY ANALYSIS

Import Volume of Dumped Goods

30. CertainTeed submitted that its estimates show that the volume of imports of the subject goods has been significant and increasing since 2013, both in absolute terms and relative to the production and consumption of like goods in the regional market.¹⁹

31. However, the Tribunal notes a discrepancy when CertainTeed's estimates of import volumes are compared against the CBSA's data. Therefore, for the purposes of its analysis, the Tribunal considered both CertainTeed's estimates and the CBSA's Facility for Information Retrieval Management data for the period from January 1, 2013, to December 31, 2015.

32. CertainTeed's confidential estimates indeed indicate that, despite a decrease between 2014 and 2015, the total volume of subject imports increased significantly in absolute terms between 2013 and 2015.²⁰

33. An examination of the CBSA's data regarding the volume of the subject goods is somewhat different in that, despite a decrease between 2014 and 2015, imports essentially remained flat in absolute terms between 2013 and 2015.²¹

34. However, regardless of which import estimates are used, since domestic production decreased in 2013 to 2015,²² imports increased significantly relative to domestic production between 2013 and 2015. This appears to indicate that import sales were being realized to the detriment of like goods during that period.

35. On the basis of the above, the Tribunal finds that the evidence discloses a reasonable indication that there has been a significant increase in the absolute or relative volume of imports of the subject goods.

Effect on Price of Like Goods

36. CertainTeed submitted that, as the result of the dumping of the subject goods, which undercut the prices of the like goods, the domestic industry has suffered price depression and price suppression.

37. In response to the above allegations, parties opposed asserted that CertainTeed has not provided appropriate, accurate or complete evidence in order for the Tribunal to be able to assess the price impact of the subject goods on the like goods.

38. As noted earlier, CertainTeed is required at the preliminary injury inquiry stage to provide evidence that is sufficient, in the sense that it is relevant, accurate and adequate. There is no requirement that the evidence be complete or otherwise meet the standard expected at the final injury inquiry stage. After reviewing the evidence submitted by CertainTeed, the Tribunal finds it to be sufficient for the purpose of this preliminary injury inquiry in order to determine if the reasonable indication standard is met. It will only be possible to test the credibility of the evidence in the context of a final injury inquiry.

19. Exhibit PI-2016-001-02.01, Vol. 1 at 46-48.

20. Exhibit PI-2016-001-03.01 (protected), Vol. 2A at 72.

21. Exhibit PI-2016-001-03.02 (protected), Vol. 2B at 43.

22. Exhibit PI-2016-001-02.01, Vol. 1 at 58; Exhibit PI-2016-001-3.01 (protected), Vol. 2A at 53.

39. First, in terms of price undercutting, the Tribunal finds that CertainTeed's estimates of average price undercutting²³ are reasonable for the purposes of this preliminary injury inquiry. Also, the specific injury allegations provided by CertainTeed provide an indication of price undercutting. Several of those examples referred to sales that went to the subject goods at prices that were below those quoted by the domestic producer or sales secured by the domestic producer but only because it lowered its prices in order to compete with the subject goods. While such evidence would clearly need to be fully examined and tested in the context of a final injury inquiry, the Tribunal accepts that, for the purposes of the preliminary injury inquiry, it is sufficient to meet the reasonable indication standard.

40. In terms of price depression, the complaint does not show a decline in average selling prices from 2013 to 2015.²⁴ CertainTeed does point to shorter periods in 2015 where it alleges that prices were reduced in order to compete with imports.²⁵ Prices did decrease during those months of 2015; however, without comparable data for other years, these data must be further analyzed during the final injury inquiry in terms of assessing this potential price effect of the subject goods.²⁶

41. With respect to the allegation of price suppression, confidential unit pricing and costing submitted by CertainTeed support these allegations.²⁷

42. Overall, the Tribunal finds that the evidence discloses a reasonable indication that the dumping of the subject goods resulted in price undercutting, price depression and price suppression.

Resultant Impact on the Domestic Industry

43. As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal considers the impact of the dumped 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.

44. In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumping of the subject goods and the injury on the basis of the resultant impact of the volume and price effects of the dumped goods on the domestic industry. The standard is whether there is a reasonable indication that the dumping of the subject goods has, *in and of itself*, caused injury.²⁸ The Tribunal must further consider, pursuant to paragraph 37.1(3)(b) of the *Regulations*, whether the reasonable indication of injury is attributable to factors other than the dumping.

45. Further, subsection 42(5) of *SIMA* requires that, in a regional market analysis, injury must be shown to all or almost all the production of the domestic producers. Since CertainTeed is the only regional producer, the Tribunal's conclusions are based on its performance alone.

46. CertainTeed submitted that the domestic industry experienced significant injury caused by imports of the subject goods over the period from 2013 to 2015, in the form of reduced sales, market share, gross

23. Exhibit PI-2016-001-09.01 (protected) at 19-20, Vol. 4.

24. Exhibit PI-2016-001-03.01 (protected), Vol. 2 at 43; Exhibit PI-2016-001-08.01 at para. 54, Vol. 3.

25. Exhibit PI-2016-001-02.01, Vol. 1 at 53.

26. Exhibit PI-2016-001-03.01 (protected), Vol. 2 at 48.

27. Exhibit PI-2016-001-03.01 (protected), Vol. 2A at 43, 156.

28. *Copper Rod* (30 October 2006), PI-2006-002 (CITT) at paras. 40, 43; *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 75; *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 82; *Reinforcing Bar* at para. 95.

margins, net profits, capacity utilization rates and employment. In addition, CertainTeed provided information on account-specific sales lost to imports of the subject goods.

47. CertainTeed's regional production for regional sales did decrease from 2013 to 2015.²⁹

48. The evidence on the record also shows that the domestic industry's market share decreased from 2013 to 2015, while the market share of the subject goods increased over the same period.³⁰ This suggests a reasonable indication that the subject goods gained market share at the expense of the like goods.

49. CertainTeed's financial data reasonably indicate that, from 2013 to 2015, the domestic industry experienced some reduction in net sales, gross margins and net profits.³¹ Employment was steady throughout the period.³² The data also suggest reductions in capacity utilization among the various plants producing like goods in the regional market.³³

50. As stated above, CertainTeed provided a number of examples of specific instances where it allegedly lost sales or accounts to imports of the subject goods or had to lower prices in order to maintain sales or accounts in competition with the lower-priced subject goods. This evidence, subject to being fully assessed in the context of a final injury inquiry, reasonably indicates support for the conclusion of a preliminary determination of injury to the domestic industry.

51. On balance, the Tribunal finds that the evidence on the record discloses a reasonable indication that the dumping of the subject goods has caused injury to the domestic industry.

52. The Tribunal recognizes that the other factors raised by the parties opposed³⁴ may in fact have had an impact on the domestic industry and, as such, are worthy of further investigation and analysis in a final injury inquiry. Nevertheless, for the purposes of this preliminary injury inquiry, there is insufficient evidence regarding the impact of such other factors to negate the Tribunal's conclusion that the overall evidence on the record discloses a reasonable indication that the dumping of the subject goods has caused injury. The Tribunal anticipates however that the parties will present more evidence in this regard so that the Tribunal will be in a position to fully explore the relative importance of these other factors in the context of a final injury inquiry under section 42 of *SIMA*.

THREAT OF INJURY ANALYSIS

53. If the Tribunal found that there was no reasonable indication that the subject goods have caused injury (which is not the case in the preliminary injury inquiry), the Tribunal would consider whether there is a reasonable indication that the dumping of the subject goods is threatening to cause injury. The Tribunal briefly does so below for completeness and guidance to the parties.

29. Exhibit PI-2016-001-03.01 (protected), Vol. 2A at 156.

30. Exhibit PI-2016-001-03.01 (protected), Vol. 2A at 156.

31. Exhibit PI-2016-001-03.01 (protected), Vol. 2A at 156.

32. Exhibit PI-2016-001-03.01 (protected), Vol. 2A at 166.

33. Exhibit PI-2016-001-03.01 (protected), Vol. 2A at 164.

34. Such as decreased demand caused by the collapse in oil prices, increased input costs as a result of the depreciation of the Canadian dollar and the failure of the domestic industry to innovate etc. Exhibit PI-2016-001-06.01 at paras. 26, 97, Vol. 3; Exhibit PI-2016-001-06.02 at paras. 58-61, Vol. 3.

54. CertainTeed submitted that the dumping of the subject goods pose an imminent and foreseeable threat of injury due to the following:

- the likelihood that the significant increase in imports of the subject goods into Canada, and the corresponding reduction of the domestic industry's market share, is going to continue; and
- there exist a combined export orientation and demonstrable production capacity of the producers of the subject goods in the United States and their corresponding ability to sustain and accelerate the increase in imports of those goods into Canada.
- excess U.S. capacity exists, which represents many times the total regional market in Western Canada in 2015;
- Canada accounted for more than 90 percent of the total U.S. exports by volume in each of the last three years with Western Canada receiving a disproportionate amount of those exports;
- U.S. exporters do not have established production facilities in Western Canada as they do in Eastern Canada;
- U.S. exports of gypsum board to Western Canada increased in 2015 despite the fact that the U.S. domestic demand for gypsum board recovered over the same period and despite the fact that the Canadian dollar depreciated significantly beginning in 2014;
- housing demand (which drives gypsum board demand) in Western Canada is continuing to weaken; and
- there has been some past injury which has already occurred in the domestic industry and makes it more vulnerable to a threat thereof.³⁵

55. Parties opposed deny that there is a threat of injury citing, *inter alia*, the recovery in the U.S. market and strong capacity utilization.³⁶

56. As discussed above, there is a reasonable indication that the prices of the subject goods caused significant price effects on the prices of like goods in the domestic market from 2013 to 2015. The Tribunal finds that this evidence suggests that the subject goods are likely to continue entering the market at prices that are below the price of the like goods, which could foreseeably result in additional price depression and suppression and increased demand for imports of the subject goods in the future. This is further supported by the magnitude of the margins of dumping estimated by the CBSA, which are significant.

57. These developments could foreseeably make the domestic industry susceptible to imminent injury from the subject goods, especially in light of the Tribunal's finding that the alleged injurious impact of the dumped goods on the state of the domestic industry is tenable.

58. The Tribunal is satisfied that CertainTeed has provided positive evidence that is relevant to the threat of injury factors listed in subsection 37.1(2) of the *Regulations* and appears to be accurate and adequate for the purposes of the preliminary injury inquiry. The reliability of the evidence will need to be tested in the context of a final injury inquiry.

35. Exhibit PI-2016-001-02.01, Vol. 1, at 68-75.

36. Exhibit PI-2016-001-06.02 at paras. 63-66, Vol. 3.

59. Accordingly, bearing in mind the lower evidentiary standard applicable in a preliminary injury inquiry, the Tribunal finds that, overall, there is sufficient evidence that discloses a reasonable indication that the dumping of the subject goods is threatening to cause injury.

EXCLUSIONS

60. The Tribunal received one request from CBP to exclude products from a preliminary determination of injury or threat of injury. The proposed exclusion request was for shipments of 5,000 square feet or less. The exclusion was opposed by CertainTeed.

61. While *SIMA* does not expressly authorize the Tribunal to grant exclusions from the scope of an order or finding, this authority is implicit.³⁷

62. Exclusions are an extraordinary remedy that may be granted only when the Tribunal is of the view that granting the exclusion will not cause injury or threat of injury to the domestic industry.³⁸ Applying this principle entails determining whether imports of the specific goods for which exclusions are requested have not caused and are not threatening to cause injury, despite the general conclusion that the dumping of the subject goods have caused or threaten to cause injury to the domestic industry.

63. As stated in the notice of commencement of this preliminary injury inquiry, the Tribunal generally does not consider product exclusion requests at this stage. Although it may deviate from this standard practice in “exceptional circumstances”,³⁹ the evidence relating to the product exclusion request made in this preliminary injury inquiry does not disclose exceptional circumstances. For those reasons, the Tribunal will not deal with this exclusion request at this time, as it does not meet the standard required for being adjudicated at this stage of the proceedings and is therefore premature.

64. In light of the above, the Tribunal will entertain product exclusions at the final injury inquiry under section 42 of *SIMA* only. At that stage, the Tribunal will be in a position to properly assess evidence from any and all interested parties on whether or not granting an exclusion will cause injury or threat of injury to the domestic industry. CBP should file a new exclusion request in the course of the final injury inquiry under section 42 of *SIMA* using the appropriate form and providing all the information and evidence required for such purposes during a final injury inquiry.

PUBLIC INTEREST ISSUES

65. A number of parties made arguments regarding the impact of the potential imposition of duties on end users and consumers of the subject goods and related downstream products. These are issues which can only be addressed in a public interest inquiry after, and only if, the Tribunal makes a finding of injury or threat of injury. The Tribunal has the power to initiate a public interest inquiry if it determines that the circumstances warrant such an inquiry.

37. *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA) at 4; *Sacilor Aciéries v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (CA); Binational Panel, *Induction Motors Originating From the United States of America (Injury)* (11 September 1991), CDA-90-1904-01; Binational Panel, *Certain Cold-Rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA-93-1904-09.

38. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 339; *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96.

39. *Hot-rolled Carbon Steel Plate and High-strength Low-alloy Steel Plate* (12 August 2003), PI-2003-002 (CITT) at 4.

66. The Tribunal, without prejudging these issues in any manner, will allow continued evidence and argument on the issue of public interest in its final injury inquiry, as long as the evidence and argument are clearly identified as relating to this issue and limited to assisting the Tribunal in deciding whether to initiate a public interest inquiry in the event of a finding of injury or threat thereof. The Tribunal may also seek information relevant to this issue in its questionnaires.

67. The Tribunal will not take the above evidence and submissions into account in its deliberations on its decision of injury or threat thereof but may do so in deciding whether to initiate a public interest inquiry in the event of a finding of injury or threat thereof.

CONCLUSION

68. On the basis of the foregoing analysis, the Tribunal determines that the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

Jean Bédard
Jean Bédard
Member

Rose Ritcey
Rose Ritcey
Member