Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2018-003

Gypsum Board

Determination issued
Monday, August 20, 2018

Reasons issued
Tuesday, September 4, 2018

Canada

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

GYPSUM BOARD

DETERMINATION WITH RESPECT TO THE PRELIMINARY INJURY INQUIRY

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, made to a width of 54 inches (1,371.6 mm), 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, or length (but not width), excluding (a) 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); (b) double layered glued paper-faced gypsum board (commonly referred to and used as "acoustic board); and (c) gypsum board meeting ISO16000-23 for sorption of formaldehyde (the subject goods), has caused injury or retardation or is threatening to cause injury. All dimensions are plus or minus allowable tolerances in applicable standards.

This preliminary injury inquiry follows the notification, on June 21, 2018, 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 the evidence does not disclose a reasonable indication that the dumping of the subject goods has caused injury or retardation or is threatening to cause injury to the domestic industry. Therefore, pursuant to paragraph 35(3)(a) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby terminates the preliminary injury inquiry with respect to the subject goods.

Serge Fréchette
Serge Fréchette
Presiding Member

Jean Bédard
Jean Bédard
Member

Randolph W. Heggart
Randolph W. Heggart
Member

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. The Canadian International Trade Tribunal (the Tribunal) commenced this preliminary injury inquiry on June 22, 2018, concerning 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, made to a width of 54 inches (1,371.6 mm), 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, or length (but not width), excluding (a) 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); (b) double layered glued paper-faced gypsum board (commonly referred to and used as "acoustic board); and (c) gypsum board meeting ISO16000-23 for sorption of formaldehyde (the subject goods). All dimensions are plus or minus allowable tolerances in applicable standards.

2. This preliminary inquiry stems from a complaint filed by CertainTeed Gypsum Canada Inc. (the complainant or CTG) and the initiation of dumping and subsidizing investigations on June 21, 2018, by the President of the Canada Border Services Agency (CBSA).

3. For the period from January 1, 2017, to February 28, 2018, the CBSA estimated that the subject goods were dumped by 6.1 percent, expressed as a percentage of the export price.[1]

4. The Tribunal received written submissions from the complainant (and trade unions supporting the complaint) as well as parties opposing the complaint, namely, CGC Inc. (CGC), Continental Building Products, Inc. and Continental Building Products Canada, Inc., Georgia-Pacific Canada LP and Georgia-Pacific Gypsum LLC (collectively referred to as GP).

5. CTG submitted that its complaint disclosed a reasonable indication that it suffered material retardation, i.e. that it was unable to establish production of 54-inch gypsum board due to the dumping of the subject goods. The complainant submitted that it has a substantial commitment to establish such production but has been unable to so with a sufficient return on sales from such production as a result of the low prices of the subject goods for sale in the regional market.

6. CTG also submitted, in the alternative, that the dumping and subsidizing of the subject goods is injuring or threatening to cause injury to a domestic industry.

7. The parties opposing the complaint submitted that the evidence does not disclose a reasonable indication that the dumping of the subject goods has caused injury, retardation, or threat of injury. The parties opposing the complaint made a variety of arguments including the following: the absence of a regional market, and a lack of evidence as to material retardation and causation, and as to injury or threat thereof.

1. Exhibit PI-2018-003-05, Vol. 1C at 45.

LEGISLATIVE FRAMEWORK

Reasonable Indication

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

9. The term "reasonable indication" is not defined in *SIMA*, but is understood to mean that the evidence need not be ". . . conclusive, or probative on a balance of probabilities . . . ."[3]

10. The reasonable indication standard is lower than the standard that applies in a final injury inquiry under section 42 of *SIMA*.[4]

11. The Tribunal expects that the evidence at the preliminary phase of proceedings will be significantly less detailed and comprehensive than the evidence in a final injury inquiry. Not all the evidence is available at the preliminary phase, and there is no oral hearing to fully probe what is available. As a result, the evidence cannot be tested to the same extent as it would be during a final injury inquiry.

12. The standard of evidence at this stage of the inquiry is lower than at the final stage and complaints will be read generously. However, the outcome of preliminary inquiries must not be taken for granted.[5] Simple assertions are not sufficient.[6] Complaints, as well as the cases of parties opposed, must be supported by positive evidence that is both relevant and sufficient, in that it addresses the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*[7] and does so in a manner that is sufficiently convincing at this stage of the inquiry.

13. In this preliminary inquiry, the Tribunal finds that the complaint discloses evidence that seems relevant and accurate, including uncontested evidence submitted by the complainant as to its plans for future production. However, the Tribunal finds that this evidence is not sufficiently convincing and, on its face, does not reasonably support the allegations that dumping has caused injury or retardation or threatens to cause injury.

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2. R.S.C., 1985, c. S-15 [*SIMA*].
3. *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).
4. *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 7.
5. *Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at paras. 18-19.
6. Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* [the *Anti-dumping Agreement*] and Article 11 of the WTO *Agreement on Subsidies and Countervailing Measures* [the *SCM Agreement*] require an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping and subsidizing 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 and subsidizing or injury. Article 5 of the *Anti-dumping Agreement* and Article 11 of the *SCM Agreement* also specify that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the articles.
7. S.O.R./84-927 [*Regulations*].

Regional Industry/Regional Market[8]

14. Firstly, it must be noted that, since retardation is defined in *SIMA* as ". . . material retardation of the establishment of a domestic industry", the Tribunal's analysis must exclusively deal with *potential* rather than *actual* production and sales, which would be analyzed in an injury claim. As explained further below, if there is actual production, there cannot be retardation. Accordingly, since CTG is the only potential domestic producer identified in the complaint, it constitutes the regional industry in this preliminary inquiry.

15. Secondly, the tests for identifying a regional market are the subject matter of an exhaustive discussion in the statement of reasons in *Gypsum I*.[9] The Tribunal will review those tests in the context of this case using the principles already established in *Gypsum I*.

No Outflows from Regional Market

16. This test is not at issue in this case as there is no production of wide board and therefore no outbound sales.

No Inflows From Rest-of-Canada Into the Regional Market

17. There are very minor amounts reported in the complaint of wide board sold in Western Canada from Eastern Canadian production.

18. CGC's arguments on this point are to the effect that inflows from Eastern Canada satisfy 100 percent of the "demand" in the regional market and are therefore substantial. This is because, according to CGC, "demand" is demand for domestically produced goods, i.e. demand in the regional market for Canadian–produced goods excluding imports. In the Tribunal's view, CGC misconstrues this test.

19. The World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, article 4.1(ii),[10] states as follows:

> in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) *the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory*. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.
>
> [Emphasis added]

8. See subsection 2(1) of *SIMA*.
9. *Gypsum Board* (4 January 2017), NQ-2016-002 (CITT) [*Gypsum I*] at paras. 41-71.
10. (15 April 1994), 1868 U.N.T.S. 201 (entered into force 1 January 1995), available at <http://www.wto.org/english/docs_e/legal_e/19-adp_01_e.htm>.

20. *SIMA*, subsection 2(1.1), states as follows:

> 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.*
>
> [Emphasis added]

21. As admitted by CGC, even otherwise insubstantial sales of non-regional like products into the regional market would preclude a regional retardation case from being possible. CGC concedes only that "zero" inflows could satisfy their interpretation of the test.

22. As an illustration, in a market of 100 units, where there is 1 unit of inflows, 20 units of regional production and 79 units of imports, those inflows are likely insubstantial using either calculation method, being 1 out of 21 units, i.e. 4.8 percent (based on "demand" for domestically produced goods) or 1 out of 100 units, i.e. 1 percent (based on demand for all like and subject goods). Where retardation is alleged (so that there is no regional production and therefore no sales) and the market and inflows are the exact same size, i.e. 100 units are sold, 1 being from the rest of Canada and 99 from imports, CGC's arguments would mean that the 1 unit is now substantial as it satisfies 100 percent of the so-called demand for domestically produced goods in the market. This is an absurd outcome. This cannot be the correct interpretation of the *SIMA* provision as it (and the underlying international agreement) allows insubstantial inflows.

23. The interpretation advanced by CGC is an unreasonable reading-in of terms into the provision, which is not supported by the context of *SIMA*.

24. There is no valid rationale for limiting "demand in the market" to demand for domestically produced goods, which was pointed out by the Tribunal in *Gypsum I*.[11] Such an interpretation would deprive a regional retardation claimant recourse to *SIMA* protection in all cases where there are any inflows above zero.

25. CGC's arguments appear to be taken from a decision by the Binational Panel in *Malt Beverages*.[12] Most notably, the Binational Panel's statement on this issue in that decision was not made in the context of retardation and did not explore the significance of this issue in the context of a retardation claimant.

26. As the Binational Panel concluded that any errors did not impact the final Canadian Import Tribunal (CIT, as it then was) decision, their review did not result in a remand. Accordingly, the statement in *Malt Beverages* is *obiter dictum*. More importantly, the statement has no supporting rationale.

27. The statement in *Malt Beverages* appears to be manifestly wrong and is distinguishable. It is not binding on the Tribunal for all of the above reasons.[13]

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11. *Gypsum I* at paras. 56-57.
12. (15 November 1995), CDA-95-1904-01 (Binational Panel) at 22-23.
13. See *Canada (Attorney General)* v. *Access Information Agency Inc.* (18 January 2018), 2018 FCA 18 (CanLII) at paras. 34-36.

28. Therefore, the Tribunal finds that the "inflows" part of the regional market test is satisfied.

Concentration of Imports in the Regional Market

29. The confidential statistics regarding concentration of imports are summarized in the complaint[14] and the Tribunal finds that the data more than satisfies the standards for finding a concentration of imports most recently enunciated in *Gypsum I*.

Other Requirements for a Regional Market

30. In addition, in a regional market case, retardation must be caused to all or almost all production. Since there is only one potential producer, alleging retardation to all of its potential production, this test is met; this issue is not contested by the opposing parties.

Like Goods and Classes of Goods

31. Parties opposing argue that narrow board is like goods to wide board even though the former is covered by the previous finding and is not included in the scope of the present complaint. This preliminary question must also be decided before the merits.

32. The Tribunal's case law, based on relevant WTO decisions, strongly indicates that like goods should be co-extensive[15] with the subject goods (an area of exclusive CBSA jurisdiction).This means that the like goods should not include goods which would not be subject goods if exported from the subject country instead of being produced domestically.

33. The present case indicates most strongly the reasonableness of such an approach. If the Tribunal was to decide the contrary, i.e. that the like goods include narrow board, the analysis would become one of injury or threat thereof; there would be production of like goods and, thus, an established domestic industry—retardation cannot be made out in such a situation. However, the Tribunal would then have to analyze injury to like goods which are *entirely* covered by an existing injury finding. The Tribunal has steadfastly refused to do so in past preliminary injury inquiries; the Tribunal has specifically excluded goods covered by existing findings from the scope of its inquiry.[16]

34. As well, while the products are similar, the fact that both sets of goods cannot be produced on the same equipment makes the submissions that they are like goods unpersuasive. This is in addition to the differences in usage of wide board, which are admitted by parties such as GP, i.e. in walls for 9-foot ceilings,[17] and the significant price premiums for wide board cited by CTG in its complaint.[18]

35. Regarding classes of goods, there is no argument and no evidence as to there being more than one class of goods of wide board. One class of goods was found in the narrow gypsum board inquiry. The same is the case in the present inquiry.

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14. Exhibit PI-2018-003-03.01 (protected), Vol. 2 at 33.
15. See *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) at paras. 45-49.
16. See, for example, *Carbon and Alloy Steel Line Pipe* (27 October 2015), PI‑2015-002 (CITT) at paras. 38-40; *Piling Pipe* (3 July 2012), PI-2012-002 (CITT) at para. 50.
17. Exhibit PI-2018-003-07.03A (protected), Vol. 4 at para. 16. *et seq.*
18. Exhibit PI-2018-003-03.01 (protected), Vol. 2 at paras. 123-124.

No Injury and Threat of Injury

36. The Tribunal notes that the allegations by CTG focused almost exclusively on retardation. While the complaint mentions injury and threat thereof, this was done in the alternative and without any detailed factual support capable of supporting a preliminary determination of injury.

37. As discussed below, since there is no established domestic industry, there cannot be any injury or threat thereto, and the Tribunal will not analyze that part of the complaint any further.

MATERIAL RETARDATION

Components of a Material Retardation Finding

38. There has not been a material retardation finding in Canada since 1972.[19] However, the previous case law has established a number of principles which the Tribunal can rely on in its analysis. Notably, the case law indicates that there is a three-part test for material retardation:[20]

- there is **no domestic industry producing like goods**.[21] In *Potassium Silicate Solids*, for example, the Tribunal found that there was no reasonable indication of material retardation as the domestic industry was already producing like goods.[22]
- the complainant has a **substantial commitment** to establish a domestic industry.[23] A plan to begin production is not enough.[24] The commitment usually has the following elements:
  a) production will begin in the near future;
  b) the venture is commercially feasible;[25]
  c) there is an assurance that the plan will be implemented.[26]
- the efforts to establish a domestic industry are adversely affected to a material degree by the dumping.[27]

These tests in relation to the complaint will be discussed below.

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19. *Bicycle Tires and Tubes* (15 August 1972), ADT-4-72 (ADT) [*Bicycle Tires and Tubes*]. In *Wood Venetian Blinds* (18 June 2004), NQ-2003-003 (CITT) at 15-16, the Tribunal considered material retardation to stock blind production on its own accord and found that there was no retardation given the lack of substantial commitment and ability (or even any serious interest) on the part of the domestic producers of custom blinds.
20. There is no legal concept of *threat* of material retardation: *Portable File Cases* (4 June 1996), NQ-95-005 (CITT) at 14.
21. *Fresh Garlic* (21 March 1997), NQ-96-002 (CITT); *Preformed Fibreglass Pipe Insulation* (19 November 1993), NQ-93-002 (CITT) [*PFPI*] at pp. 21-22.
22. (6 March 2012), PI-2011-003 (CITT).
23. *PFPI* at pp. 21-22.
24. See *Stainless Steel Sheet* (29 March 1983), ADT-17-82 (ADT) [*Stainless Steel Sheet*] where the Tribunal states that "[t]here is a difference between planning and commitment . . .".
25. CTG does not agree that this is a part of the test but nevertheless argues that commercial viability is undisputed.
26. *Stainless Steel Sheet*.
27. By way of example, in *Bicycle Tires and Tubes*, the Tribunal found that the dumping was causing material retardation because it would be very difficult for the industry to gain any meaningful market share once it began production.

No Domestic Production

39. CTG has not produced any wide board. Therefore, its complaint passes this part of the test.

"Substantial Commitment" to Establish the Industry

40. Given significant differences which can exist between industries, this test is especially fact-dependent and is to be evaluated on a case-by-case basis. However, the principle behind this test is clear: the Tribunal should not extend anti-dumping protection unless there will be some production to protect in the near future.

41. In the present case, there is little evidence that CTG will commence production in the near future, and there is no firm assurance that it will ever produce like goods even if anti-dumping duties are imposed.

42. CTG has prepared a business case to expand in order to produce like goods and has conducted a pre-engineering study. Another outlay has been approved for site assessments, engineering layouts and feasibility studies. However, by its own admission, CTG is not yet in position to assure the Tribunal that it will proceed to establish domestic production and that it will do so in the near future. The best-case timeline submitted by CTG clearly shows that production would not start in the near future, even when counting from the time of imposition of the envisaged anti-dumping duties.[28] Moreover, there appear to be solid business reasons why this is the case, including the following:

- the entire process of ramping up to full production of wide board can be understandably characterized as very capital-intensive and is therefore a careful and lengthy process;
- sales opportunities in the regional market are already being supplied by CTG's imports from the U.S.;
- CTG has had, until very recently, other pressing operational, capital and hiring concerns, especially with the 48-inch board market, including all of the events following imposition of anti-dumping duties as a result of *Gypsum I*.[29]

43. These are some of the reasons that CTG's prospective venture into wide board can, at best, be characterized as only being in the initial planning stages and uncertain as to its outcome. Another key reason is the lack of funding commitment to finance the project.

44. Indeed, in a forthright and key admission, CTG explicitly states that the necessary capital spending has **not** been approved and that CTG will not even formally request capital authorization from its parent company without anti-dumping duties in place.[30] This is because, without such protection, CTG's proposed expansion into the production and sales of like goods is not seen as producing the necessary rate of return required by its parent company. Moreover, CTG appears to take issue with the CBSA's estimated margin of

28. The actual dates have been designated by CTG as confidential information: Exhibit PI-2018-003-03.01 (protected), Vol. 2, Appendix 2, at para. 59; Exhibit PI-2018-003-09.03 (protected), Vol. 4A at para. 59.
29. Exhibit PI-2018-003-02.01, Vol. 1 at 81, 93-94, 97-102.
30. Exhibit PI-2018-003-08.03, Vol. 3A at paras. 50-52. The CTG confidential reply brief contains some poorly substantiated comments on this issue: Exhibit PI-2018-003-09.03 (protected), Vol. 4A at para. 49 (citing the confidential reply witness statement of Mark Rayfield at para. 4).

dumping, with the implication that low margins and duties may not suffice to meet its requirements for initiating production.[31]

45. In other words, should prices not rise to levels required by CTG for any reason, the Tribunal does not view it as likely that production will be commenced.

46. The Tribunal finds that, while CTG may be seriously interested in production of wide board, it has not yet secured a financial commitment to establishing such production from its parent company.

47. By the complainant's own evidence, at this point in time the Tribunal is left with no assurance that any capital outlays for the necessary production facilities have been or will be approved (even if the approval was conditional only on the existence of anti-dumping protection). In the particular circumstances of this case, without such an approval, the case for material retardation cannot succeed at this preliminary stage.

48. Also, as will be discussed later, the linkage of the commitment to establish production with obtaining a particular rate of return raises fundamental issues for the Tribunal, in particular as it concerns the causation requirement.

49. Furthermore, in this case, the time lag between the imposition of anti-dumping measures and production from the regional industry is significant. The Tribunal cannot establish a hard and fast rule on what is an acceptable time lag, since each project is different. Parties who would approach the Tribunal with a retardation case involving the kind of time lag that is estimated in this case should expect that the Tribunal will endeavour to mitigate the time lag by some remedy (whether as a result of a self-initiated public interest inquiry or otherwise) in order to avoid an unnecessary price increase and disruption in the marketplace during the period between the imposition of the measure and the beginning of operations of the domestic industry.

Adverse Impact

50. Given the above conclusion, discussion of this third test is largely academic. However, for completeness and guidance, a number of incomplete or missing aspects in the complaint as it relates to impact and causation are discussed below.

– Volume of Dumped Goods[32]

51. The volume factor is of little utility in the retardation context. The Tribunal did not find CTG's submissions on this factor to be relevant to the issue of retardation. Since imports are the only source in the market, it is not possible to say that the imports are taking market share from like goods; the market is likely to be growing based on import patterns into Western Canada.

– Price Effects of the Dumped Goods[33]

52. According to the complaint, the prices of the subject goods are low, and projected returns on investment would not justify the establishment of a domestic industry.[34]

31. Exhibit PI-2018-003-08.03, Vol. 3A at paras. 92-97.
32. Pursuant to paragraph 37.1(1)(a) of the *Regulations.*
33. Pursuant to paragraph 37.1(1)(b) of the *Regulations.*
34. Exhibit PI-2018-003-08.03, Vol. 3A at paras. 92-97.

53. The complainant therefore argues that there is price suppression and cites numerous price increases that have been withdrawn or were not accepted. However, while competitors' price lists are provided in the complaint, average net delivered selling prices from imports to the customer cannot be discerned from these list prices.

54. The complaint mentions significant and variable discounts that are given by CTG from its list prices. It is apparent that the exact selling prices in this industry can vary by seller, purchaser (based on trade level and volume) and time of year.

55. Accordingly, whether competitors' prices are above or below CTG's price, and by how much, is largely unknown.

56. There is no information on United States Gypsum (USG) net delivered average pricing. The only competitive average pricing information is provided by GP in its brief at paragraph 58. If it was not for this GP information, the proceeding would have been completely devoid of macro-level average pricing data.

57. While the absence of competitors' pricing may be understandable given the difficulty in obtaining such commercially sensitive information, there is very little that is provided in the nature of micro-level, account-specific injury allegations. There is a discussion of rebates or discounts at specific accounts but there is no comparison of selling prices between CTG's imports and goods from GP or USG at individual accounts.

58. Where a complaint is primarily, if not exclusively, based on average price suppression/depression (as it was in this case) caused by sales of low-priced subject goods, the Tribunal expects adequate net delivered pricing information to be presented at this stage or, alternatively, an adequate and credible explanation for the lack of such information.

– Resultant Impact[35]

59. The alleged effects of the dumping on the financial returns for the complainant's sales of subject imports are presented as negative and are summarized in the complaint.[36]

60. The key link to material retardation is that these prices are insufficient to generate a threshold required by CTG's parent company to justify the additional investment needed to begin 54-inch board production.[37] The Tribunal does not accept that any internally determined threshold is to be the sole take-off point for a retardation analysis, just as the Tribunal does not automatically accept benchmark profit amounts to determine injury or lack thereof in other inquiries. In other words, while CTG's parent (like any investors) is entitled to consider a particular rate of return as being a minimum for proceeding with a project, this cannot form the basis for a finding of retardation or injury by the Tribunal. The Tribunal will determine whether there is retardation or not on the basis of the applicable legislation and the underlying international obligations of Canada.

61. Additionally, the discussion in the complaint of issues impacting CTG in the market for 48-inch board is largely irrelevant to the analysis of retardation of 54-inch board production. It raises the question, however, as to whether the complaint truly relates to the establishment of 54-inch board production rather than on strengthening the protection for 48-inch board regional production.

35. Pursuant to paragraph 37.1(1)(c) of the *Regulations*.
36. Exhibit PI-2018-003-03.01 (protected), Vol. 2 at para. 122.
37. *Ibid.*, Appendix 2, at paras. 64-69.

– Causation/Non-Dumping Factors[38]

62. Evidence in the narrow board inquiry indicated that costs were increasing while prices were rising (insufficiently), constituting price suppression and resulting in material injury. Here, sales of CTG's imports of U.S.-made goods in Western Canada could constitute a valid proxy for potential sales of like goods in that market. However, the information in the complaint does not provide the costs (and reasons for same) of production and sales of those imports during the period of inquiry, which would be important factors influencing their price and profitability, especially since price suppression is alleged to be the main cause of material retardation (as it was for injury in the narrow board case).

63. Exports to Canada from CTG's sister operations in the U.S. were also insufficiently explored in the complaint. It is admitted that CTG's imports of wide board to Western Canada are considerable.[39] These imports from its related companies are surely a factor as to why CTG has not produced like goods thus far and would have been an issue in the inquiry phase.

64. Crucially, the only condition for the investment and the establishment of the production should be the presence of dumped goods. Any additional corporate requirement, as in this case, raises serious doubts about the relationship between the retardation and the presence of subject goods in the market, and the commitment by the complainant to produce the like goods. The fact that the investment is related to an internal rate of return is essentially an admission that the retardation may be linked to factors other than the presence of the subject goods. In other words, linking retardation to a particular threshold is admitting that the commitment is not conditional upon the presence of dumped goods but rather upon the presence of a particular level of market pricing.

CONCLUSION

65. On the basis of the foregoing analysis, the Tribunal determines that the evidence does not disclose a reasonable indication that the dumping of the subject goods has caused injury or retardation or is threatening to cause injury to the domestic industry.

Serge Fréchette
Serge Fréchette
Presiding Member

Jean Bédard
Jean Bédard
Member

Randolph W. Heggart
Randolph W. Heggart
Member

38. Pursuant to subsection 37.1(3) of the *Regulations*.
39. Exhibit PI-2018-003-16 (protected), Vol. 2B at 14.