



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## ORDER AND REASONS

Expiry Review No. RR-2018-002

Unitized Wall Modules

*Order and reasons issued  
Wednesday, July 3, 2019*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on November 12, 2013, in Inquiry No. NQ-2013-002, concerning:

**UNITIZED WALL MODULES ORIGINATING IN OR EXPORTED FROM THE  
PEOPLE'S REPUBLIC OF CHINA**

**ORDER**

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of the finding made on November 12, 2013, in Inquiry No. NQ-2013-002, concerning the dumping and subsidizing of unitized wall modules, with or without infill, including fully assembled frames, with or without fasteners, trims, cover caps, window operators, gaskets, load transfer bars, sunshades and anchor assemblies, excluding non-unitized building envelope systems, such as stick systems and point-fixing systems, originating in or exported from the People's Republic of China.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its finding in respect of the aforementioned goods.

Peter Burn  
Peter Burn  
Presiding Member

Randolph W. Heggart  
Randolph W. Heggart  
Member

Susan D. Beaubien  
Susan D. Beaubien  
Member

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: April 23 to 26, 2019

Tribunal Panel: Peter Burn, Presiding Member  
Randolph W. Heggart, Member  
Susan D. Beaubien, Member

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& Aluminum Limited

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BVGlazing Systems Ltd.

Contract Glazier Corp.

Ferguson-Neudorf Glass Inc.

Flynn Group of Companies (Flynn Canada Ltd.  
and Northern Facades Ltd.)

Quest Windows Systems Inc.

Sotawall Limited

Starline Windows Ltd.

State Window Systems / Integro Building Systems

Toro Aluminum / Toro Glasswall Inc.

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Peter Clark

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Donald Delaney  
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Danny Neudorf  
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Toro Aluminum Group of Companies

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## STATEMENT OF REASONS

### INTRODUCTION

1. The Canadian International Trade Tribunal (the Tribunal) has conducted an expiry review<sup>1</sup> of its finding in Inquiry No. NQ-2013-002,<sup>2</sup> concerning the dumping and subsidizing of certain unitized wall modules (UWMs) originating in or exported from the People's Republic of China (China) (the subject goods).<sup>3</sup>

2. The Tribunal's mandate in this expiry review is to determine whether the expiry of the finding is likely to result in injury to the domestic industry and then, accordingly, to make an order either continuing or rescinding the finding with or without amendment.

3. In the present case, the Tribunal has determined that such injury is likely and, therefore, orders the continuation of the finding without amendment. The reasons for its determination are set out below.

### PROCEDURAL BACKGROUND

4. The finding in *UWM NQ* was scheduled to expire on November 11, 2018, unless the Tribunal initiated an expiry review before that date.<sup>4</sup>

5. The Tribunal initiated its expiry review on August 27, 2018, which triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) to determine whether the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping or subsidizing. On January 24, 2019, the CBSA determined that there was a likelihood of resumed or continued dumping and subsidizing of the subject goods.<sup>5</sup>

6. On January 25, 2019, the Tribunal initiated its investigation phase of this expiry review to determine whether the continuation or resumption of dumping and subsidizing of the subject goods is likely to result in injury to the domestic industry if the finding were rescinded.

7. The period of review (POR) for this expiry review is from January 1, 2015, to September 30, 2018. For comparative purposes, information was also collected for the interim period of January 1 to September 30, 2017. The Tribunal requested that domestic producers, importers, foreign producers, and purchasers of UWMs complete questionnaires. The Tribunal received completed questionnaires from 12 domestic producers, two importers, one foreign producer, and two purchasers.<sup>6</sup> Using the questionnaire replies and other information on the record, staff of the Canadian International Trade Tribunal's Secretariat

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1. The expiry review is conducted pursuant to subsection 76.03(3) of the *Special Import Measures Act*, R.S.C. 1985, c. S-15 [*SIMA*].

2. *Unitized Wall Modules* (12 November 2013), NQ-2013-002 (CITT) [*UWM NQ*].

3. The full product definition is set out in paragraph 14.

4. Pursuant to subsection 76.03(1) of *SIMA*, findings of injury or threat of injury and the associated protection in the form of anti-dumping or countervailing duties expire five years from the date of the finding, unless the Tribunal initiates an expiry review before that date.

5. Exhibit RR-2018-002-03, Vol. 1 at 5.

6. The Tribunal received replies from 32 companies indicating that they did not import goods meeting the product definition over the POR. Exhibit RR-2018-002-05, Vol. 1.1 at 17.

prepared public and protected investigation reports. The financial results tables of the investigation reports were revised on April 23, 2019, to account for a correction that was made to Toro's questionnaire response.<sup>7</sup>

8. Antamex Industries ULC (Antamex), BVGlazing Systems Ltd. (BVG), Contract Glaziers Corp. (CGC), Ferguson-Neudorf Glass Inc. (FNG), Flynn Group of Companies (Flynn), Aluminum Curtainwall Systems Inc. / Inland Glass & Aluminum Limited, Quest Windows Systems Inc.(Quest), Sotawall Limited (Sotawall), Starline Windows Ltd. (Starline), State Window Systems / Integro Building Systems (State), and Toro Aluminum/Toro Glasswall Inc. (Toro) (collectively, the supporting parties) filed written submissions in support of the continuation of the finding as well as reply submissions.

9. Shenyang Yuanda Aluminium Industry Engineering Co., Ltd. and Yuanda Canada Enterprises Ltd. (collectively, Yuanda) filed written submissions opposing the continuation of the finding. Yuanda also filed responses to various requests for information from the supporting parties.

10. The Tribunal did not receive any requests for product exclusions.

11. On April 1, 2019, Westbank Corp. (Westbank) filed a motion for leave to join the Tribunal's expiry review proceedings as a party. According to Westbank, it wished to dispute the accuracy of certain information filed on the public record of these proceedings by one or more of the supporting parties. In view of the advanced stage of the proceedings, Westbank proposed serving and filing a brief witness statement, in accordance with the existing schedule for filing of submissions by parties opposed to the continuation of the finding.

12. The supporting parties submitted that there was no basis to grant Westbank's request for party status at such a late stage in the proceedings. They contended that potential prejudice to the Tribunal's expiry review process that could arise from allowing Westbank's late participation as a party outweighed any benefits. In response, Mr. Peter Clark submitted that there was a paucity of information on the record from purchasers of relevant goods and that the focus should be ensuring that the Tribunal's record was as complete as possible.

13. On April 2, 2019, after reviewing the witness statement filed by Mr. Bryan Tucker of Westbank, the supporting parties filed a second submission opposing Westbank's participation. They submitted that Westbank was effectively opposing the continuation of the finding and, as such, it was procedurally unfair to allow a new opposing party to join the proceeding after the domestic industry had led its evidence and argument. The domestic producers also submitted that Mr. Tucker's witness statement included a number of unsupported allegations about unnamed projects and domestic producers to which the supporting parties could not respond.

14. On April 4, 2019, after considering the views of the parties, the Tribunal decided, pursuant to rules 6 and 8 of the *Canadian International Trade Tribunal Rules*,<sup>8</sup> to grant Westbank party status and accept Mr. Tucker's witness statement onto the record. The Tribunal considered that Westbank's evidence was relevant and that it contributed to the completeness of the Tribunal's record. The Tribunal gave parties the opportunity to file requests for information directed to Westbank. The Tribunal issued its directions regarding these requests on April 11, 2019. The Tribunal also directed Westbank to complete specific portions of the Tribunal's Purchasers' Questionnaire and to file the completed portions by April 12, 2019.

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7. Exhibit RR-2018-002-16.11B (protected), Vol. 4; Exhibit RR-2018-002-05A, Vol. 1.1; Exhibit RR-2018-002-06A (protected), Vol. 2.1.

8. S.O.R./91-499.

Finally, the Tribunal granted a one-day extension of time to allow the supporting parties to file their reply submissions.

15. On April 15, 2019, Westbank withdrew from these proceedings, indicating that it was unable to assemble the required information to respond to the requests for information and complete the requested portions of the Purchasers' Questionnaire.

16. The supporting parties asked the Tribunal, on April 16, 2019, to order Westbank to respond to the requests and complete the questionnaire, maintaining that this information would be of assistance to the Tribunal.

17. As an alternative, because the hearing date was quickly approaching, the Tribunal summoned Mr. Tucker to appear at the hearing to respond to potential questions concerning the following topics: his witness statement; the outlook for the Canadian market; Westbank's purchasing process for UWMs; the prevalence and sources of imported UWMs in the Canadian market; details about the request for proposal processes used for sourcing UWMs for specific Westbank projects; and projects that Westbank intends to award over the next 24 months.

18. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, from April 23 to 26, 2019.

19. Each of Antamex, BVG, CGC, Flynn, FNG, Inland, Quest, Sotawall, Starline, State and Toro provided corporate witnesses and were represented by counsel at the hearing. Mr. Robert Quattrociocchi of EllisDon Corporation (EllisDon) also appeared as a witness on behalf of the supporting parties.

20. Yuanda was the only party that opposed the continuation of the finding. It provided a corporate witness and was represented by counsel at the hearing.

21. Mr. Tucker and Mr. David Hudock of PCL Constructors Canada Inc. appeared as witnesses for the Tribunal.

22. Shortly before the hearing, Mr. Tucker advised the Tribunal that he did not wish to adopt the content of his witness statement. Accordingly, this document was struck from the record of these proceedings.

23. In testifying before the Tribunal, Mr. Tucker referred to a number of documents that he had brought with him. These documents were placed on the Tribunal record at the end of his testimony. All parties to the proceeding were given the opportunity to review these documents and recall Mr. Tucker if they wished to ask him any questions arising from those documents. All of the parties declined the opportunity to recall Mr. Tucker for further questioning.

## **PRODUCT**

### **Product Definition**

24. The subject goods are defined as follows:<sup>9</sup>

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9. Exhibit RR-2018-002-03A, Vol. 1 at para 18.



Unitized wall modules, with or without infill, including fully assembled frames, with or without fasteners, trims, cover caps, window operators, gaskets, load transfer bars, sunshades and anchor assemblies; excluding non-unitized building envelope systems such as stick systems and point-fixing systems, originating in or exported from the People's Republic of China.

### **Product Information**

25. UWMs are aluminum-framed engineered fenestration products that interlock when installed to form the building envelope (or façade) of multi-storey buildings.

26. The two main types of UWM building envelope systems are referred to as “curtain wall” and “window wall”.

27. UWMs are manufactured and shipped to customers' building sites in accordance with the installation schedule on the construction plan.

28. Once installed, UWMs separate the indoor environment from the outdoors and insulate it from the elements. UWMs are designed to resist extreme wind pressures, limit air infiltration and exfiltration, prevent water infiltration and meet heat loss and energy usage criteria.

29. UWMs are generally designed to meet any of the following minimum specifications (or acceptable equivalents):

- air infiltration/exfiltration to a minimum 0.1 L/s/m<sup>2</sup> (litres/second/square metre) when tested in accordance with American Society for Testing and Materials International (ASTM) standard E283 at 0.3 kPa (kilopascals) negative and positive pressure differential or equivalent proprietary or other internationally accepted standard;
- no water infiltration when tested under static wind load in accordance with ASTM standard E331 using 205 litres of water per square metre for 15 minutes at a minimum 0.3 kPa negative pressure differential or equivalent proprietary or other internationally accepted standard;
- no water infiltration when tested under dynamic wind load in accordance with American Architectural Manufacturers Association standard 501.1 using 205 litres of water per square metre for 15 minutes at a minimum 0.3 kPa negative pressure differential or equivalent proprietary or other internationally accepted standard;
- structural performance when tested to ASTM standard E330 by uniform static air pressure at a minimum 0.5 kPa for 60 seconds without permanent deformation or equivalent proprietary or other internationally accepted standard; or
- thermal performance calculated in accordance with Canadian Standards Association standard A440.2 to deliver a maximum of 3.0 W/m<sup>2</sup>C (watt/square metre/Celsius) for vision glass areas and 1.5 W/m<sup>2</sup>C for opaque areas (including framing) or equivalent proprietary or other internationally accepted standard.

30. UWMs consist of three principal components: extruded pre-finished (mill, alodine, painted or anodized) aluminum frame, hardware and infill materials.

31. The frame is the structural component that provides support for the infill materials. Hardware consists of fasteners, gaskets and sealants used to attach, or otherwise interface with, the frame and the infill materials. Infill materials include but are not limited to: insulated glass units; monolithic glass; panels

comprised of various materials, such as stone, granite or limestone, aluminum or galvanized steel back pans, insulation, terracotta tiles, ceramic tiles, thin veneer unitized bricks, louvers, grilles and photovoltaic panels. Patio or terrace doors and operable windows may also be used as infill materials.

## LEGAL FRAMEWORK

32. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the finding in respect of the subject goods is likely to result in injury for the domestic industry, being the domestic producers of like goods.<sup>10</sup> Pursuant to subsection 76.03(12), if the Tribunal determines that the expiry of the finding is unlikely to result in injury, it is required to rescind the finding. However, if it determines that the expiry of the finding is likely to result in injury, the Tribunal is required to continue the finding, with or without amendment.

33. Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what constitutes “like goods.” Once that determination has been made, the Tribunal must then determine what constitutes the “domestic industry”.

34. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effect).

## LIKE GOODS AND CLASSES OF GOODS

35. In order for the Tribunal to determine whether the resumed or continued dumping and subsidizing of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.<sup>11</sup>

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

- (a) goods that are identical in all respects to the other goods, or
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

37. In deciding the issue of like goods when goods are not identical in all respects to the other goods, 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.<sup>12</sup>

38. In *UWMNQ*, the Tribunal considered whether domestically produced stick systems and point-fixing systems were “like goods” in relation to the subject goods. The Tribunal determined that

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10. Subsection 2(1) of *SIMA* defines “injury” as “. . . material injury to the domestic industry” and “retardation” as “. . . material retardation of the establishment of a domestic industry”. Given that there is currently an established domestic industry, the issue of whether the expiry of the finding is likely to result in retardation does not arise in this expiry review.

11. Should the Tribunal determine that there is more than one class of goods in this expiry review, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (FC).

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

domestically produced stick systems and point-fixing systems were not “like goods” because these systems require onsite construction whereas UWMs are manufactured off-site and are ready to be installed upon delivery to the construction site.

39. The Tribunal also considered that the CBSA’s product definition expressly excluded “stick systems and point-fixing systems” from the scope of the subject goods, and that treating domestically produced stick systems and point-fixing systems as like goods would inappropriately broaden the scope of the like goods beyond that of the subject goods.<sup>13</sup>

40. In *UWM NQ*, the Tribunal also considered whether UWMs are composed of two classes of goods, namely unitized curtain wall modules and unitized window wall modules. After considering the relevant factors, the Tribunal determined that unitized window wall modules and unitized curtain wall modules have a sufficiently high degree of substitutability and share sufficient commonalities to warrant treatment as a single class of goods.<sup>14</sup>

41. No evidence was presented in this expiry review that would have led the Tribunal to reach a different conclusion than it did in *UWM NQ*. Therefore, the Tribunal finds that domestically produced UWMs defined in the same manner as the subject goods constitute a single class of “like goods” in relation to the subject goods.

## DOMESTIC INDUSTRY

42. 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.

43. The Tribunal must therefore determine whether there is a likelihood 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.<sup>15</sup>

44. The supporting parties jointly submitted that cumulatively, they account for a major proportion of the total domestic production of like goods. According to the CBSA’s record, the consensus among the

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13. *UWM NQ* at paras. 28-34.

14. *Ibid.* at paras. 28, 35-50.

15. The term “major proportion” means an important or significant proportion of total domestic production of the like goods and not necessarily a majority of these goods: *Japan Electrical Manufacturers Assn. v. Canada* (Anti-Dumping Tribunal), [1986] F.C.J. No. 652 (FCA); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (FCA); *China – Anti-dumping and Countervailing Duties on Certain Automobiles from the United States* (23 May 2014), WTO Docs. 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 Docs. WT/DS397/AB/R, Report of the Appellate Body at paras. 411, 412, 419; *Argentina – Definitive Anti-dumping Duties on Poultry from Brazil* (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel at para. 7.341.

supporting parties was that they accounted for, on average, 76 percent of total domestic production of UWMs for the Canadian market from 2015 to H1 2018.<sup>16</sup> Yuanda made no submissions on this point.

45. As there is no evidence to contradict this position, the Tribunal finds that the collective domestic production of the supporting parties represents a major proportion of the total domestic production of the like goods. Therefore, the supporting parties constitute the “domestic industry” for the purposes of this expiry review.

## CROSS-CUMULATION

46. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods.

47. 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, 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, when the dumped and subsidized goods originate from a single country, the effects are so closely intertwined as to render it impossible to allocate discrete portions of injury to the dumping and the subsidizing.<sup>17</sup>

48. Given that this expiry review is in respect of dumped and subsidized goods from China only, the likely effects of the resumption of dumping and subsidizing of the subject goods will likewise be manifested in a single set of prices. Therefore, the Tribunal will make a cumulative assessment of the likely impact of the continued or resumed dumping and subsidizing of the subject goods on the domestic industry.

## LIKELIHOOD OF INJURY ANALYSIS

49. An expiry review is forward-looking.<sup>18</sup> It follows that evidence from the period of review (POR) during which a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the finding is likely to result in injury.<sup>19</sup>

50. There is no presumption of injury in an expiry review; findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization.<sup>20</sup>

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16. Exhibit RR-2018-002-03A, Vol. 1 at para. 53.

17. See, for example, *Steel Piling Pipe* (4 July 2018), RR-2017-003 (CITT) at para. 42; *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) at paras. 72-73; *Silicon Metal* (2 November 2017), NQ-2017-001 (CITT) at para. 59; *Pup Joints* (7 April 2017), RR-2016-001 (CITT) at paras. 30-31; *Welded Large Diameter Carbon and Alloy Steel Line Pipe* (20 October 2016), NQ-2016-001 (CITT) at para. 84; *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) at paras. 84-85; *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*] at paras. 56-57.

18. *Certain Dishwashers and Dryers* (procedural order dated 25 April 2005), RR-2004-005 (CITT) at para. 16.

19. *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*] at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See also *Aluminum Extrusions* at para. 21.

20. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

In the context of an expiry review, positive evidence can include evidence based on past facts that support forward-looking conclusions.<sup>21</sup>

51. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term.

52. Subsection 37.2(2) of the *Special Import Measures Regulations*<sup>22</sup> lists factors that the Tribunal may consider in addressing the likelihood of injury once the CBSA has determined that there is a likelihood of continued or resumed dumping or subsidizing. The provision is permissively worded.<sup>23</sup> As such, the listed factors need not be accorded equal weight. The Tribunal has discretion to assess which of the listed factors are relevant in the circumstances of a particular case, to consider any other relevant factor and to weigh the relevant factors, either individually or cumulatively.<sup>24</sup> The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

### Changes in Market Conditions

53. In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the finding were rescinded, the Tribunal will first consider changes in international and domestic market conditions.<sup>25</sup>

#### International Market Conditions

54. UWMs are used worldwide to form the façade of multi-story buildings for both residential and commercial use. UWMs share many of the characteristics of capital goods. In particular, UWMs are custom-designed, have high unit costs and are ordered infrequently.<sup>26</sup>

55. The global UWM market is driven generally by the world economy, and particularly by the rate of high-rise building construction.<sup>27</sup>

56. Industry-specific data for the Chinese UWM market is limited. Evidence on the record suggests that demand for UWMs in China increased in the years since *UWM NQ*, which led to an increase in production.<sup>28</sup> However, demand in China appears to have softened in recent years, due in part to specific measures taken by the Government of China aimed at slowing the real estate market, creating excess supply.<sup>29</sup> For example, the 2017 annual report of Yuanda's parent company, Yuanda China Holdings Limited (Yuanda's Annual Report), forecasted challenges in 2018, stating that property developers would be less willing to invest in 2018 as a result of curbed demand, the reduction of residents' leverage,

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21. *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

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

23. *ArcelorMittal Dofasco G.P. v. Essar Steel Algoma Inc.*, 2018 FCA 63 at paras. 25-26.

24. Appellate Body Report, *US – Oil Country Tubular Goods Sunset Reviews*, WTO Doc. WT/DS268/AB/R at para. 284.

25. See paragraph 37.2(2)(j) of the *Regulations*.

26. *UWM NQ* at para. 60; Exhibit RR-2018-002-K-05, Vol. 11 at para. 8; Exhibit RR-2018-002-D-03, Vol. 11 at para. 11; Exhibit RR-2018-002-I-03, Vol. 11 at para. 10; *Transcript of In Camera Hearing* at 183; Exhibit RR-2018-002-06 (protected), Table 42, Vol. 2.1.

27. Exhibit RR-2018-002-A-01, Vol. 11 at 175.

28. *Ibid.* at 173.

29. *Ibid.* at 145-147, 152.

unbalanced demand and supply, and tightening of the financing environment.<sup>30</sup> Yuanda has also acknowledged that the growth of new construction projects in China decreased in 2018 for office and commercial business buildings.<sup>31</sup> In addition, there may still be upwards of 200 UWM producers in China today, comprising a mix of some large, sophisticated companies and many smaller, less sophisticated ones.<sup>32</sup>

57. Yuanda's Annual Reports from 2016 and 2017 stated that "an excessive supply of curtain wall products on the mainland has sparked fierce competition".<sup>33</sup> Far East Global Group Ltd. (Far East Global) has also described the Chinese domestic market as fragmented and oversupplied.<sup>34</sup>

58. Similarly, Far East Global's 2018 Interim Report acknowledged "...a structural imbalance between supply and demand in the curtain wall business in mainland China which intensified disorderly competitions".<sup>35</sup>

59. Global growth rates are expected to slow during the next 12 to 24 months. According to the January 2019 International Monetary Fund (IMF) *World Economic Outlook Update*, the global economy is projected to grow by 3.5 percent in 2019 and 3.6 percent in 2020.<sup>36</sup> Risks to global growth in the near to medium term include the escalation of trade tensions, policy uncertainty, a "no deal" withdrawal of the United Kingdom from the European Union, and greater than expected slowdowns in China during 2019 and 2020, including in the construction sector.<sup>37</sup>

#### Domestic Market Conditions

60. Demand in Canada is driven by a relatively small number of construction projects, particularly in the large conurbations of the greater Toronto area (GTA) in Ontario and the Vancouver-centered Lower Mainland in British Columbia. Each individual project could account for as much as 2 to 3 percent of the total apparent market in terms of volume in any given year.<sup>38</sup> For very large projects, this figure would be higher.

61. Purchasers of UWMs in the Canadian market are typically the owner or developer of a building, or the general contractor or construction manager hired by the owner or developer to manage the project.<sup>39</sup> Purchases of UWMs are usually made through a competitive bidding process.

62. This competitive bidding process is relatively informal, with a limited number of producers generally being invited to bid on a particular project by the construction manager, the owner or the

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30. *Ibid.* at 101, 103.

31. Exhibit RR-2018-002-L-01, Vol. 13 at 49.

32. Exhibit RR-2018-001-A-01, Vol. 11 at 162; *Transcript of Public Hearing* at 207. The Tribunal recalls that at the time of the *UWM NQ*, "there [may have been] more than 200 other producers of UWMs in China with sufficient capacity to supply the Canadian market 100 times over" (*UWM NQ* at para. 145).

33. Exhibit RR-2018-002-A-01, Vol. 11 at 103, 152.

34. *Ibid.* at 409, 412.

35. *Ibid.* at 391.

36. *Ibid.* at 88.

37. *Ibid.* at 85-86; Exhibit RR-2018-002-L-01, Vol. 13 at 49.

38. This estimate is based on the average volume of past projects as reported by domestic producers and importers for their top ten bids over the POR and the total apparent market as reported in Exhibit RR-2018-002-05, Table 37, Vol. 1.1.

39. Exhibit RR-2018-002-K-05, Vol. 11 at para. 6; Exhibit RR-2018-002-D-03, Vol. 11 at para. 9.

developer.<sup>40</sup> An important component of the bidding process is bid “levelling”, whereby the construction managers work with the various bidders to obtain additional information or clarification, or to adjust certain elements of the bids to create an “apples-to-apples” comparison of the various proposals under consideration.<sup>41</sup>

63. At the end of the RFP process, a contract is awarded based on considerations of price and various risk factors such as the project schedule and product quality and price, with price being a key consideration.<sup>42</sup>

64. There is a significant lag time between order placement and product delivery for UWMs. RFPs are issued and orders are booked many months before production commences, and several more months may pass before the goods are delivered.<sup>43</sup> The lag time in most cases ranges from 12 to 18 months, but can be longer or shorter, depending on the requirements of the project for which the goods are being produced.<sup>44</sup> Delivery of the goods can also occur over an extended period.<sup>45</sup> Delivery is normally effected to the construction site, on a just-in-time basis, as per the construction schedule.<sup>46</sup>

65. Payment takes place at various stages throughout the bidding process. In this regard, invoicing and payment related to engineering and/or design work normally occurs as these specific costs are incurred, while invoicing and payment for the UWMs themselves typically occurs at the time of delivery, which is also when sales volumes and revenues are normally recorded.<sup>47</sup>

66. The domestic market is primarily served by domestic producers.<sup>48</sup> On average, domestic producers bid on approximately 10 to 12 projects per year.<sup>49</sup> Some individual producers may bid on more or fewer projects. Typically, each domestic producer has an average success rate of roughly 30 percent on the projects for which bids have been submitted.<sup>50</sup>

67. The domestic producers’ large share of the Canadian market is not surprising. UWMs are bespoke products that must be uniformly and consistently manufactured in compliance with narrowly prescribed specifications. Purchasing UWMs from offshore suppliers creates additional risks that include inferior quality, unsafe products, untimely delivery and installation, the impact of differences in business culture, lack of relationship with overseas suppliers, and other logistical concerns, such as shipping.<sup>51</sup> However, there is evidence that some owners and developers (primarily in Western Canada) have assumed the

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40. *UWMNQ* at para. 60; Exhibit RR-2018-002-K-05, Vol. 11 at para. 7; Exhibit RR-2018-002-D-03, Vol. 11 at para. 10; Exhibit RR-2018-002-I-03, Vol. 11 at para. 8; *Transcript of Public Hearing* at 138, 159, 254, 304, 315, 321.

41. *Transcript of Public Hearing* at 138-140, 255-258, 333.

42. *Ibid.* at 139, 142, 256, 280, 297, 333-334.

43. Exhibit RR-2018-002-K-05, Vol. 11 at para. 7; Exhibit RR-2018-002-D-03, Vol. 11 at para. 10.

44. Exhibit RR-2018-002-D-03, Vol. 11 at para. 101; Exhibit RR-2018-002-I-03, Vol. 11 at para. 7; Exhibit RR-2018-002-H-03, Vol. 11 at paras. 12-13; Exhibit RR-2018-002-C-03, Vol. 11 at para. 14; *Transcript of Public Hearing* at 56.

45. Exhibit RR-2018-002-I-03, Vol. 11 at para. 7.

46. *Transcript of Public Hearing* at 56.

47. *Ibid.* at 102, 182; Exhibit RR-2018-002-C-03, Vol. 11 at para. 21.

48. Exhibit RR-2018-002-06 (protected), Table 39, Vol. 2.1.

49. *Transcript of Public Hearing* at 15.

50. *Ibid.* at 15-16; Exhibit RR-2018-002-06 (protected), Table 7, Vol. 2.1.

51. *Ibid.* at 120, 272, 275, 297, 305, 339.

additional risk of sourcing UWMs from Asia in exchange for lower prices. In particular, over the POR, there were imports of UWMs from Korea and Chinese Taipei.<sup>52</sup>

68. General contractors and construction managers appear to be less willing to assume the additional risk associated with imported UWMs. On projects where an owner or developer selects a UWM provider that a construction manager is not comfortable with, the general contractor or construction manager may propose risk management strategies, or opt to not take on the contract and ask the owner or developer to contract directly with the producer.<sup>53</sup>

69. There are ways to mitigate the risks associated with purchasing imported UWMs from offshore producers.. Mr. Hudock acknowledged two such ways: (1) placing quality-assurance personnel in the factory in the exporting country in order to oversee production; and (2) requiring early delivery of the subject goods to a storage area in the destination city (e.g. Toronto, Calgary, Vancouver) to enable later just-in-time delivery to the construction site.<sup>54</sup> Mr. Tucker also testified that when importing UWMs, Westbank makes advance purchases (i.e. enough for ten floors) of stock before the material is required for installation on the project site.<sup>55</sup> Mr. Tucker also explained that for installation glitches, “. . . you have a representation from the supplier there on the ground and they work with the installer to try and come up with a resolution or a problem or a fix”.<sup>56</sup> The Tribunal also heard that consultants may be hired to provide quality assurance and facilitate the importation and installation of UWMs.<sup>57</sup> These consultants can also be used to help overcome language or other barriers that may exist where the manufacturer does not have a physical presence in Canada.<sup>58</sup>

70. The total apparent domestic market for UWMs decreased by 3 percent in each full year of the POR and increased by 22 percent between the two interim periods.<sup>59</sup> Despite the contraction in the total apparent market in 2016 and 2017, certain domestic producers noted that demand for UWMs had been strong.<sup>60</sup> Mr. Quattrociochi described the Canadian market as a “suppliers’ market”.<sup>61</sup> A number of domestic producers described the Canadian market as being competitive, but having fair pricing since the imposition of measures against the subject goods.<sup>62</sup>

71. The January 2019 IMF *World Economic Outlook Update* states that growth in Canada is forecast to slow to 1.9 percent in 2019 and 2020.<sup>63</sup> A number of domestic producers expressed concerns that demand

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52. *Ibid.* at 29, 47-48, 121-122, 284, 352; Exhibit RR-2018-002-37A (protected), Vol. 2 at 4-5. There may have also been bids submitted by Turkish suppliers and/or imports from Turkey over the POR. See Exhibit RR-2018-002-A-03, Vol. 11 at para. 31; *Transcript of In Camera Hearing* at 8, 68, 83, 178, 197.

53. *Transcript of Public Hearing* at 147, 150-151, 164-165, 304-305, 314, 317-318; Exhibit RR-2018-002-37A (protected), Vol. 2 at 4-5.

54. *Transcript of Public Hearing* at 341-344; see also *Transcript of Public Hearing* at 277.

55. *Ibid.* at 267.

56. *Ibid.* at 268.

57. *Ibid.* at 119-120, 165; *Transcript of In Camera Hearing* at 83-84, 152-153.

58. *Transcript of Public Hearing* at 199.

59. Exhibit RR-2018-002-05, Table 38, Vol. 1.1; Exhibit RR-2018-002-06 (protected), Table 37, Vol. 2.1. The total apparent market volume over the POR was similar to the total apparent market volume over the period of investigation. See Exhibit RR-2018-002-10B, Vol. 1.3 at 69.

60. Exhibit RR-2018-002-D-03, Vol. 11 at paras. 22, 34; Exhibit RR-2018-002-E-03, Vol. 11 at para. 9; Exhibit RR-2018-002-H-03, Vol. 11 at paras. 25, 27; Exhibit RR-2018-002-I-03, Vol. 11 at para. 19; Exhibit RR-2018-002-J-03, Vol. 11 at para. 13; Exhibit RR-2018-002-K-03, Vol. 11 at para. 10.

61. Exhibit RR-2018-002-K-03, Vol. 11 at para. 10.

62. *Ibid.*; Exhibit RR-2018-002-D-03, Vol. 11 at paras. 22, 34; Exhibit RR-2018-002-F-03, Vol. 11 at paras. 14, 18.

63. Exhibit RR-2018-002-A-01, Vol. 11 at 88.



will soften somewhat in 2019 and 2020, particularly in the Vancouver and Toronto residential sectors.<sup>64</sup> However, the Tribunal heard from other witnesses that the GTA and the Lower Mainland in British Columbia are still “hot” markets.<sup>65</sup> Overall, and based on its assessment of the evidence presented, the Tribunal finds that demand for UWMs in the Canadian market will remain stable in the near to medium term.<sup>66</sup>

### **Likely Performance of the Domestic Industry if the Finding is Continued**

72. The Tribunal will examine the likely performance of the domestic industry should the finding be continued. In doing so, the Tribunal has taken into account the industry’s recent performance, with a view to also assessing whether the domestic industry’s performance is likely to be materially worse if the finding is rescinded.<sup>67</sup> For the purposes of this analysis, the Tribunal has considered whether there are any relevant factors, other than the dumping and subsidizing of the subject goods, affecting or likely to affect the domestic industry’s performance in the near to medium term.<sup>68</sup>

73. The domestic industry’s consolidated performance was generally positive over the POR. For the reasons that follow, the Tribunal finds that, if the finding is continued, the domestic industry’s performance is likely to remain substantially the same as during the POR.

74. The domestic industry’s total production volumes increased in 2016 and 2017. These increases were driven by export sales (primarily to the United States), which almost doubled from 2015 to 2017. Production for domestic sales and domestic sales from domestic production declined slightly during that period. However, production for domestic sales and domestic sales from domestic production both increased significantly between interim 2017 and interim 2018 (as did the total apparent market), whereas export sales declined significantly.<sup>69</sup>

75. As noted above, the subject goods essentially disappeared from the Canadian market after 2016, and the volume of imports from non-subject countries was low over the POR.<sup>70</sup> Nonetheless, the continued presence of low-priced imports from non-subject countries could have a negative impact on the domestic industry’s performance in the next 12 to 24 months, and indeed is likely to have a negative impact, as further discussed below.

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64. Exhibit RR-2018-002-A-03, Vol. 11 at paras. 27-28; Exhibit RR-2018-002-D-03, Vol. 11 at para. 30; Exhibit RR-2018-002-E-03, Vol. 11 at para. 22; Exhibit RR-2018-002-H-03, Vol. 11 at paras. 29-30; Exhibit RR-2018-002-I-03, Vol. 11 at para. 19.

65. *Transcript of Public Hearing* at 299, 301.

66. *Ibid.* at 36-37; Exhibit RR-2018-002-B-03, Vol. 11 at paras. 16-21; Exhibit RR-2018-002-J-03A, Vol. 11 at para. 17; Exhibit RR-2018-002-L-03, Vol. 13 at para. 28.

67. See paragraph 37.2(2)(c) of the *Regulations*; *Hot-Rolled Carbon Steel Plate and High-Strength Low-Alloy Steel Plate* (7 January 2014), RR-2013-002 (CITT) at para. 85. In *Thermoelectric Containers* at para. 14, the Tribunal stated the requirement in an expiry review is that the Tribunal draw logical conclusions from the relevant information before it, and that information will often appropriately include the performance of the domestic and foreign industries during the POR, when anti-dumping and countervailing duties were in place. See also *Aluminum Extrusions* at para. 21.

68. See paragraph 37.2(2)(k) of the *Regulations*.

69. Exhibit RR-2018-002-06A (protected), Table 44, Vol. 2.1; Exhibit RR-2018-002-06 (protected), Tables 45, 47, Vol. 2.1; Exhibit RR-2018-002-05, Table 48, Vol. 1.1; *Transcript of In Camera Hearing* at 20, 53, 65-66, 108.

70. Exhibit RR-2018-002-06 (protected), Tables 33, 35, 37, 39, Vol. 2.1; *Transcript of Public Hearing* at 132.

76. Due to the long lead times between order placements, production and delivery, the domestic industry has already booked many orders for 2019 and even 2020.<sup>71</sup> However, a number of domestic producers expressed concerns and provided evidence with respect to current low levels of backlog, in particular in the second half of 2020 and 2021.<sup>72</sup> Domestic producers have also identified a number of important upcoming projects in the domestic market.<sup>73</sup> The softening or stabilizing of demand in the Canadian market could increase competition between domestic producers for these upcoming projects and lead to significant decreases in price.<sup>74</sup> Accordingly, the evidence indicates that, even if the finding is continued, the domestic industry's production and sales volumes are likely to decline somewhat over the next 12 to 24 months. Some domestic producers foresee continued opportunities in the United States. However, the primary focus of most domestic producers remains the Canadian market.<sup>75</sup> Domestic producers have also expressed concerns about low-priced competition in the U.S. market, which could detrimentally affect their ability to make profitable export sales.<sup>76</sup>

77. The domestic industry's practical plant capacity increased over the POR, which is attributable to a variety of steps taken by several domestic producers.<sup>77</sup> Total capacity utilization rates ranged from 43 percent (2015) to 48 percent (2016) throughout the POR, indicating that the domestic industry had the capacity to produce additional volumes of UWMs.<sup>78</sup> Despite this, the complexity of scheduling UWM production is such that certain domestic producers may not have had available capacity at certain times over the POR.<sup>79</sup>

78. The domestic industry was able to improve its financial performance over the POR. On a dollar-per-square-metre basis, net domestic sales values increased modestly from 2015 to 2017 and increased slightly between the two interim periods.<sup>80</sup> Gross margins for domestic sales also improved in

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71. *Transcript of Public Hearing* at 283; Exhibit RR-2018-002-A-04 (protected), Vol. 12 at para. 43; Exhibit RR-2018-002-B-04 (protected), Vol. 12 at para. 24; Exhibit RR-2018-002-C-04 (protected), Vol. 12 at para. 45; Exhibit RR-2018-002-E-04 (protected), Vol. 12 at para. 25; Exhibit RR-2018-002-G-04 (protected), Vol. 12 at para. 36.

72. Exhibit RR-2018-002-K-04 (protected), Vol. 12 at para. 44-45; Exhibit RR-2018-002-A-04 (protected), Vol. 12 at para. 43; Exhibit RR-2018-002-B-04 (protected), Vol. 12 at para. 24; Exhibit RR-2018-002-D-04 (protected), Vol. 12 at paras. 43-46; Exhibit RR-2018-002-G-04 (protected), Vol. 12 at para. 42; Exhibit RR-2018-002-H-04 (protected), Vol. 12 at para. 31; Exhibit RR-2018-002-I-04 (protected), Vol. 12 at para. 27; Exhibit RR-2018-002-J-04 (protected), Vol. 12 at para. 20.

73. Exhibit RR-2018-002-A-04 (protected), Vol. 12 at paras. 46-48; Exhibit RR-2018-002-C-04 (protected), Vol. 12 at paras. 48-50; Exhibit RR-2018-002-D-04 (protected), Vol. 12 at para. 45; Exhibit RR-2018-002-E-04 (protected), Vol. 12 at paras. 27-28; Exhibit RR-2018-002-F-04 (protected), Vol. 12 at para. 47; Exhibit RR-2018-002-G-04 (protected), Vol. 12 at paras. 39-40; Exhibit RR-2018-002-J-04 (protected), Vol. 12 at para. 21; Exhibit RR-2018-002-K-04 (protected), Vol. 12 at paras. 23-43; *Transcript of In Camera Hearing* at 47, 49, 58-61, 70, 73, 117-118. See also the summary Table in the *Protected Aid to Argument of the Canadian Producers*, Vol. 18 at 63.

74. Exhibit RR-2018-002-C-03, Vol. 11 at para. 46; Exhibit RR-2018-002-E-04 (protected), Vol. 12 at paras. 21-24.

75. *Transcript of Public Hearing* at 123-125; Exhibit RR-2018-002-J-03A, Vol. 11 at para. 15; Exhibit RR-2018-002-J-04A (protected), Vol. 11 at para. 15; Exhibit RR-2018-002-K-03, Vol. 11 at para. 6; Exhibit RR-2018-002-K-04 (protected), Vol. 12 at para. 6; Exhibit RR-2018-002-C-03, Vol. 11 at paras. 44-45; Exhibit RR-2018-002-C-04 (protected), Vol. 12 at paras. 44-45.

76. *Transcript of Public Hearing* at 123-125; *Transcript of In Camera Hearing* at 98-99, 127.

77. RR-2018-002-06 (protected), Table 47, Vol. 2.1; Exhibit RR-2018-002-05, Table 48, Vol. 1.1; *Transcript of Public Hearing* at 109.

78. Exhibit RR-2018-002-06 (protected), Table 47, Vol. 2.1; Exhibit RR-2018-002-05, Table 48, Vol. 1.1.

79. *Transcript of Public Hearing* at 16, 25, 31, 101.

80. Exhibit RR-2018-002-06A (protected), Table 44, Vol. 2.1.

each full year of the POR and further increased in the 2018 interim period. Net income for domestic sales improved in every period with the exception of 2016.<sup>81</sup> Despite this strong performance, the supporting parties submit that the net income results for a number of producers are reasonable or low, and that producers expect to earn higher margins due to the risks associated with UWM production.<sup>82</sup> The Tribunal expects that the domestic industry's strong results will likely continue or decline slightly in the next 12 to 24 months, in line with demand and sales volumes.

79. Direct and indirect employment numbers improved over the POR, as did direct and indirect hours worked (with the exception of interim 2018), wages and productivity. In the event that the finding is continued, these indicators are likely to remain stable in the near to medium term. Investments increased significantly in 2016 and decreased in 2017.<sup>83</sup> Investments were projected to increase in 2018 and then decline in 2019 and 2020.<sup>84</sup>

80. In summary, the domestic industry has improved its performance over the POR, particularly in interim 2018. Considering that the market conditions are expected to remain generally stable or become somewhat softer, the Tribunal finds it likely that the domestic industry's overall performance will likely remain substantially the same, or decline slightly if the finding is continued.

### **Likely Performance of the Domestic Industry if the Finding is Rescinded**

81. The Tribunal must also assess the likely performance of the domestic industry if the finding is rescinded. In order to determine the likely impact of a rescission of the finding on the domestic industry, the Tribunal must first consider the likely prices and import volumes of the subject goods if the finding is rescinded. In doing so, the Tribunal has considered the unique nature of UWMs and the manner in which they are sold, as discussed above and below.

### **Likely Price Effects of Dumped and Subsidized Goods**

82. The Tribunal must further consider whether, if the finding is allowed to expire, the dumping and subsidizing of the subject goods are likely to have injurious price effects, including significantly undercutting the prices of like goods, depressing those prices, or suppressing price increases that would likely have otherwise occurred.<sup>85</sup> In this regard, the Tribunal distinguishes the price effects of the dumped and subsidized goods from any price effects that would likely result from other factors affecting prices.

#### UWM purchasers are price-sensitive

83. In *UWM NQ*, the Tribunal found as follows:

While UWMs are not commodities, price is nonetheless of considerable importance. With competing bids having to meet a purchaser's performance and aesthetic specifications, the scope for

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81. *Ibid.*

82. Exhibit RR-2018-002-D-03, Vol. 11 at para. 12; Exhibit RR-2018-002-D-04 (protected), Vol. 12 at para. 12; Exhibit RR-2018-002-I-03, Vol. 11 at para. 11; Exhibit RR-2018-002-I-04 (protected), Vol. 12 at para. 11; Exhibit RR-2018-002-H-03, Vol. 11 at para. 23; Exhibit RR-2018-002-H-04 (protected), Vol. 12 at para. 23.

83. Exhibit RR-2018-002-06 (protected), Table 47, Vol. 2.1; Exhibit RR-2018-002-05, Table 48, Vol. 1.1.

84. Exhibit RR-2018-002-06 (protected), Table 47, Vol. 2.1.

85. Paragraph 37.2(2)(b) of the *Regulations*.

product differentiation is generally narrow, and price may therefore be a decisive consideration in sourcing decisions.<sup>86</sup>

84. The evidence on the record of this expiry review indicates that both price and non-price considerations are very important to purchasers. The limited data in the investigation report is split as to whether bids are typically awarded on the basis of price, and indicates that the lowest-priced goods “frequently” or “sometimes” win the contract.<sup>87</sup> In that regard, Mr. Quattrociocchi stated that price is not the only factor considered when choosing a UWM supplier, with other important considerations being logistics, delay, quality, and warranty, and that these concerns may be elevated when sourcing from outside Canada.<sup>88</sup> Mr. Tucker also indicated that having an established relationship with a supplier is an important factor in Westbank’s purchasing decisions.<sup>89</sup>

85. As noted above, general contractors, construction managers, owners and developers go through a comprehensive bid levelling and quality assurance process when evaluating proposals, which allows them to make an “apples-to-apples” comparison when assessing competing bids. This process incorporates an assessment of price and all other considerations, including known risk factors. The Tribunal heard that evaluating risk is a particularly important element of the purchasing process.<sup>90</sup>

86. However, there is no doubt that price remains a key, if not overriding, consideration in sourcing decisions. A number of domestic producers stated that, in their view, price is often the deciding factor.<sup>91</sup> For example, Mr. Spurgeon of Antamex testified that “. . . price really at the end of the day is everything. Because [UWM] is a custom product and we [go] through a very expensive bid-levelling process to ensure that everyone was pricing . . . a product that fulfilled the needs of the specification, the price is the final determinant on every single award we’ve found.”<sup>92</sup> Mr. Cohen of BVG also testified that price is the ultimate factor.<sup>93</sup>

87. In addition, Mr. Quattrociocchi stated that developers are price conscious, and while there are risks associated with purchasing UWMs from overseas, some developers are keen to purchase them if the lower price offsets the risk.<sup>94</sup> Mr. Quattrociocchi testified that once bids are levelled, it is usually the lowest-priced bid that is recommended to the owner or developer and that, in his experience, owners and developers find lower-priced UWMs to be attractive, because the overall cost of this building component comprises such a significant amount of the total project costs.<sup>95</sup>

88. In light of the foregoing, and having regard to the risk mitigation strategies discussed above, the Tribunal has no doubt that once bids have been levelled, price may become a decisive consideration in sourcing decisions.

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86. *UWM NQ* at para. 69.

87. Exhibit RR-2018-002-06 (protected), Tables 4, 6, 7, Vol. 2.1.

88. Exhibit RR-2018-002-K-05, Vol. 11 at para. 12; *Transcript of Public Hearing* at 163-164.

89. *Transcript of Public Hearing* at 263-264.

90. *Ibid.* at 252, 267-268, 271-273; *Transcript of In Camera Hearing* at 180-182.

91. Exhibit RR-2018-002-A-03, Vol. 11 at para. 18; Exhibit RR-2018-002-C-03, Vol. 11 at para. 46; Exhibit RR-2018-002-H-03, Vol. 11 at para. 14; Exhibit RR-2018-002-I-03, Vol. 11 at para. 12; Exhibit RR-2018-002-J-03, Vol. 11 at para. 12; *Transcript of In Camera Hearing* at 102-103.

92. *Transcript of Public Hearing* at 27-28.

93. *Ibid.* at 55.

94. Exhibit RR-2018-002-K-05, Vol. 11 at paras. 11-13.

95. *Transcript of Public Hearing* at 142, 144-145.

Price effects

89. The supporting parties contended that if the finding is rescinded, the subject goods will be exported to Canada at prices that significantly undercut the prices of domestic producers, thus resulting in lost sales, price depression, and financial injury. They submitted that the subject goods would need to significantly undercut domestic pricing in order to compete against other imports and offset the risks associated with purchasing imported UWMs. The supporting parties estimated that price undercutting would be at least 30 percent, with the possibility of it reaching 50 percent or more.<sup>96</sup> They recalled that the producers of the subject goods were found to have significantly undercut the prices of like goods during the period of investigation and submitted that they are likely to re-engage in this pricing behaviour if the finding is rescinded.

90. Yuanda submitted that the price of UWMs in the Canadian market is strong, and has increased significantly since the finding was put in place.<sup>97</sup> Yuanda also submitted that its policies focus on profits, and that low prices are not necessarily indicative of unfair or unprofitable price levels.<sup>98</sup>

91. In *UWMNQ*, the Tribunal found significant price undercutting. When average unit values were examined, undercutting ranged between 38 percent and 49 percent for curtain wall and 16 percent to 28 percent for window wall.<sup>99</sup> Although the Tribunal was cautious in its consideration of average prices at the time of the initial inquiry, it found that three purchaser witnesses corroborated this evidence.<sup>100</sup> The Tribunal also found project specific examples of undercutting ranging from 2 to 71 percent.<sup>101</sup>

92. As there were few imports of the subject goods over the POR, there is limited data upon which to compare the prices of subject goods in Canada with the prices of imports of non-subject goods or domestically produced like goods. The average price of domestically produced like goods increased over the POR.<sup>102</sup> The small volumes of subject goods imported in 2015 and 2016 were priced well below the average unit value for domestically produced UWMs.<sup>103</sup> The average unit value of the imports of non-subject goods was higher than the average unit value of domestically produced like goods in all periods except 2015.<sup>104</sup> However, the customized nature of UWMs means that average prices per square metre are of limited value in assessing the level of price competition in the Canadian market or the overall profitability of a particular sale.

93. Other evidence indicates a likelihood of significant price undercutting by the subject goods if the finding is rescinded. First, there are examples of low-priced competition from non-subject countries over the POR, including Korea and Chinese Taipei, with the offshore bids being significantly below domestic

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96. Exhibit RR-2018-002-A-01, Vol. 11 at para. 143.

97. Exhibit RR-2018-002-L-03, Vol. 13 at paras. 27-28, 32-33.

98. *Ibid.* at para. 33, 43.

99. *UWMNQ* at para. 79.

100. Mr. D. J. Dutton of Daniels stated that, in his experience, the price of the subject goods was 20 to 35 percent less than that of the like goods. Mr. Smith of EllisDon testified that, in his experience, the degree of price undercutting was in the order of 30 percent. Mr. Mark Andrew Garber of Niche Development stated that the price of the subject goods was 15 percent higher than that of the like goods, which appeared to be based on his comparison of domestically produced unitized window wall modules with a subject unitized (window wall/curtain wall) hybrid module of higher value. *UWMNQ* at para. 80.

101. *UWMNQ* at para. 81.

102. Exhibit RR-2018-002-06 (protected), Table 42, Vol. 2.1; Exhibit RR-2018-002-05, Table 43, Vol. 1.1.

103. Exhibit RR-2018-002-06 (protected), Table 42, Vol. 2.1.

104. *Ibid.*

industry pricing.<sup>105</sup> If the finding were rescinded, the subject goods would be competing with these low-priced imports. Second, there is confidential evidence of a recent offer of subject goods in the Canadian market that undercut the price offered by other imports and was significantly below domestic industry pricing.<sup>106</sup> Third, there is confidential evidence of an offer of subject goods that significantly undercut the price of non-subject goods.<sup>107</sup> Fourth, the Tribunal heard confidential examples of significant price undercutting by the subject goods in certain U.S. markets over the POR.<sup>108</sup>

94. Several witnesses for the domestic producers gave evidence that massive production capacity in China would enable producers of the subject goods to target the largest and most lucrative upcoming projects in the Canadian marketplace. As producers of the subject goods possess familiarity with the Canadian market, and a track record of aggressively undercutting domestic prices, the domestic producers testified that they are particularly concerned about the impact on the domestic industry should the finding be rescinded.<sup>109</sup>

95. The Tribunal finds that, if the finding is rescinded, the subject goods are likely to significantly undercut the prices of the like goods, and that such price undercutting will occur in order to offset the risks associated with purchasing imported UWMs and to render sourcing of the subject goods more attractive to UWM purchasers, namely general contractors, construction managers, owners and developers.

96. Further, in doing so, the subject goods would also likely need to compete against other low-priced imports. This factor would further incentivize the provision of the subject goods at prices that would significantly undercut the prices of domestically produced UWMs.

97. As discussed above, it is possible to assume the risks associated with offshore purchasing, but doing so comes with additional costs to the purchaser. Mr. Hudock stated that, in his view, a 25 percent differential between offshore and domestic prices for UWMs is significant, and would prompt an investigation to assess the cost of risk mitigation and the residual reward for assuming such additional risks.<sup>110</sup> This type of investigation could include overseas and domestic factory visits, as well as discussions to assess the flexibility of each UWM producer in terms of adjustments, capacity, timelines, etc.<sup>111</sup> In this regard, Mr. Quattrociochi testified that he “would expect [Chinese pricing] to be lower than the domestic producers’ and most likely in line with what it was prior to the finding”.<sup>112</sup>

98. The number of contract awards that can be expected to be won by the subject goods will ultimately depend on the risk tolerance of the owners and developers of a particular project. However, as the Tribunal has already found, effective risk management strategies are available and the Tribunal finds it likely that some owners and developers would be willing to assume the additional risks of purchasing subject goods in order to benefit from the significant cost savings.<sup>113</sup>

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105. Exhibit RR-2018-002-H-03, Vol. 11 at paras. 35-36; Exhibit RR-2018-002-H-04 (protected), Vol. 12 at paras. 35-36; Exhibit RR-2018-002-D-03, Vol. 11 at para. 28; Exhibit RR-2018-002-D-04 (protected), Vol. 12 at para. 28; *Transcript of In Camera Hearing* at 34-36, 81-82, 90-92.

106. *Protected Aid to Argument of the Canadian Producers*, Vol. 18 at 50-52, 56-57.

107. *Ibid.* at 52, 54-55.

108. *Ibid.* at 45-46.

109. *Ibid.* at 38, 61, 77, 80-81.

110. *Transcript of Public Hearing* at 334-335.

111. *Ibid.* at 335.

112. *Ibid.* at 144, 157.

113. *Ibid.* at 270-273.

99. Over the course of this expiry review, there was some debate concerning Yuanda's profit targets for export sales. Dr. Hong-Bo Wang, Yuanda's corporate witness testified that Yuanda has a corporate policy of avoiding exports that are sold at a loss.<sup>114</sup> However, Yuanda is only one producer of the subject goods. It cannot speak to, or address, the policies or practices of other suppliers of the subject goods, which compete with Yuanda for sales in the Chinese domestic market and/or export markets. The Tribunal finds that suppliers of the subject goods, including Yuanda, have an economic incentive to increase their overall production volumes and to price aggressively in order to secure export sales (including sales to Canada), provided that these prices cover variable costs and contribute to fixed costs. This is a rational business decision that lowers suppliers' unit fixed costs and improves the overall profitability of capital-intensive producers with significant excess capacity.<sup>115</sup> The evidence demonstrates that suppliers of the subject goods have excess manufacturing capacity.<sup>116</sup>

100. The supporting parties contended that price undercutting by suppliers of the subject goods will occur if the finding is rescinded, causing price depression in the Canadian market. They also submitted that domestic producers will be forced to reduce prices when competing head to head against subject goods for key projects. They added that the availability of lower-priced subject goods (at dumped and subsidized prices) will affect purchaser expectations by creating a new baseline price that falls below a level where it is commercially viable for the domestic industry to supply the Canadian market. In addition, they submitted that domestic producers will likely have to lower prices even when they are not competing against subject goods, as there will be increased intra-industry competition for the remaining available projects not awarded to producers of the subject goods.

101. The Tribunal finds that the expected significant price undercutting of the subject goods is likely to have a depressive effect on the prices of like goods in the Canadian market. Evidence tendered to the Tribunal shows that the pricing of domestic producers (and even of some non-subject imports) tends to fall within a relatively narrow range.<sup>117</sup>

102. As part of the RFP process, UWM suppliers are often given the opportunity to revise their bid and/or provide a best and final offer.<sup>118</sup> In cases where producers of the subject goods have bid at prices which significantly undercut the domestic industry's prices, the domestic industry may further reduce its price in response to a request from an owner or developer, in order to improve its position in the bid process and secure the contract.<sup>119</sup>

103. In addition, the increased market presence of subject goods, available at prices that are expected to significantly undercut the prices of domestically produced like goods, is likely to affect the pricing expectations of purchasers and increase intra-industry competition in relation to other projects, even if the subject goods are not competing.<sup>120</sup> As discussed below, these conditions are likely to cause significant lost sales to the domestic industry.

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114. Exhibit RR-2018-002-L-03, Vol. 13 at para. 15; *Transcript of In Camera Hearing* at 154, 168-170.

115. *UWM NQ* at para. 60.

116. See paras. 117-122 of these reasons.

117. *Transcript of In Camera Hearing* at 102, 201-204.

118. *Transcript of Public Hearing* at 21, 44; *Transcript of In Camera Hearing* at 38, 103; Exhibit RR-2018-002-06, Table 8, Vol. 2.1.

119. *Transcript of Public Hearing* at 19-21.

120. *Ibid.* at 32; *Transcript of In Camera Hearing* at 177-178, 216.

### Summary

104. In summary, the Tribunal finds that the rescission of the finding is likely to lead to significant price undercutting and price depression with regard to the prices of the like goods.<sup>121</sup>

### Likely Import Volume of Dumped and Subsidized Goods

105. Paragraph 37.2(2)(a) of the *Regulations* indicates that the likely volume of the dumped or subsidized goods is a relevant factor that the Tribunal may consider when assessing the likelihood of injury if the finding is allowed to expire. In particular, the Tribunal may assess whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods.

106. The Tribunal's assessment of the likely volume of dumped and subsidized imports includes an analysis of the likely performance of the foreign industry; the potential for the foreign producers to produce goods in facilities that are currently used to produce other goods; evidence of the imposition of anti-dumping and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.<sup>122</sup>

107. The supporting parties submitted that a significant volume of subject goods is likely to be exported to Canada, if the finding is rescinded. Based on the Tribunal's finding in *UWM NQ*, they contend that the subject goods would capture at least 20 percent of the Canadian market. This contention is underpinned by evidence showing significant challenges in the Chinese market, the overall attractiveness of the Canadian market to foreign suppliers, Yuanda's continued presence in Canada and the Canadian market's familiarity with the subject goods.

108. Yuanda submitted that demand in China remains steady and strong. It contends that very few Chinese UWM producers have the necessary experience to export UWMs into Canada and that Yuanda's re-entry into the Canadian market would be difficult, even without the finding in place. In this regard, it added that neither Yuanda nor Jangho Wall Curtain Canada Co. Ltd. (Jangho) have maintained a full operational presence in Canada over the POR.

109. For the reasons that follow, the Tribunal finds that, were the finding to be rescinded, the resumption or continuation of dumping would likely lead to a significant increase in the volume of imports in both absolute and relative terms.

#### – Likely Performance of the Foreign Industry

110. Large producers of UWMs in China are increasingly export-focused.<sup>123</sup> In light of reduced demand and fierce competition in the Chinese domestic market,<sup>124</sup> the Tribunal finds it reasonable to expect that Chinese producers will seek new export opportunities in the near to medium term.

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121. The Tribunal notes that there were no submissions made with respect to likely price suppression and that there was very limited discussion about the likelihood of price increases in the Canadian market in the next 12 to 24 months, either as a result of increases in raw material costs or otherwise. Data from the investigation report indicates that the domestic industry did not experience significant price suppression over the POR as a result of increases in raw material costs. Exhibit RR-2018-002-06A (protected), Table 44, Vol. 2.1.

122. Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

123. Exhibit RR-2018-002-A-01, Vol. 11 at 96, 208-210, 409.



111. For example, Yuanda has a demonstrated interest in export markets, and it has been able to successfully navigate the risks associated with being an offshore provider in a number of these markets.<sup>125</sup> According to its questionnaire response, Yuanda's sales in its home market declined over the POR and its export sales increased from 2015 to 2016, declined from 2016 to 2017, and then increased between the two interim periods.<sup>126</sup> Other evidence on the record confirms that Yuanda's exports have been increasing. According to Yuanda's Annual Reports, overseas projects represented more than 60 percent of the value of Yuanda's newly awarded projects in 2017 and 2018.<sup>127</sup> Overseas projects also represented more than 60 percent of Yuanda's reported backlog in 2018 and more than 50 percent of Yuanda's reported backlog in 2017.<sup>128</sup>

112. Dr. Wang confirmed that competition in the Chinese market makes overseas markets more attractive.<sup>129</sup> In addition, in Yuanda's 2017 Annual Report stated that "the Group will adapt to the changes in the market, and strengthen the expansion of overseas markets strategically".<sup>130</sup> Also, the Tribunal relies on confidential evidence filed as part of Yuanda's questionnaire response regarding Yuanda's interest in overseas markets.<sup>131</sup>

113. Jangho, another large Chinese producer that was active in the Canadian market at the time of the initial inquiry, has also expressed a strong interest in export markets, stating its objective to "make full use of the global business market and resource" and not to "rely on a single country, single market".<sup>132</sup> Dr. Wang testified that he believes Yuanda encounters Jangho when competing for UWM projects in Europe.<sup>133</sup> Jangho also has a "regional" business unit in the "America" region.<sup>134</sup> In addition, at the time of the Tribunal's expiry proceeding, Jangho still had a subsidiary in Canada, i.e. Jangho Curtain Wall Canada Co. Ltd.<sup>135</sup>

114. Far East Global has expanded its production and manufacturing base in China, in part to fulfil overseas demand.<sup>136</sup>

115. Both Yuanda and Jangho have also demonstrated interest in the U.S. market. In 2017, three of Yuanda's largest awarded contracts were for projects located in the United States.<sup>137</sup>

116. Dr. Wang further explained that the U.S. market is important for Yuanda and that Yuanda remains active in the U.S. market, supplying that market with UWMs made with non-Chinese aluminium extrusions.<sup>138</sup> Jangho appears to be serving the United States through a company called Elicc Group.<sup>139</sup>

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124. *Ibid.* at 101, 103, 152; *Transcript of Public Hearing* at 210, 213.

125. *Transcript of Public Hearing* at 213-215.

126. Exhibit RR-2018-002-06 (protected), Table 53, Vol. 2.1; Exhibit RR-2018-002-05, Table 53, Vol. 1.1; *Transcript of In Camera Hearing* at 168.

127. Exhibit RR-2018-002-L-01, Vol. 13 at 49.

128. *Ibid.*, Vol. 13 at 50; *Transcript of Public Hearing* at 213.

129. *Transcript of Public Hearing* at 210.

130. Exhibit RR-2018-002-A-01, Vol. 11 at 96.

131. Exhibit RR-2018-002-22.01 (protected), Vol. 6.1 at 19.

132. Exhibit RR-2018-002-A-01, Vol. 11 at 424-425.

133. *Transcript of Public Hearing* at 215.

134. Exhibit RR-2018-002-A-01, Vol. 11 at 424-425.

135. Exhibit LE-2018-002-05.02.

136. Exhibit RR-2018-002-A-01, Vol. 11 at 409.

137. *Ibid.* at 99.

138. *Transcript of Public Hearing* at 194, 202, 205.

139. *Ibid.* at 216-217; Exhibit RR-2018-002-A-01, Vol. 11 at 32-33, 35.

– Excess Production and Capacity in China

117. It is not disputed that there is massive UWM production capacity in China.<sup>140</sup> Total curtain wall production in China has been estimated to be in the range of 156.4 million square metres in 2016.<sup>141</sup> As curtain walls constitute one type of UWM, and because production capacity generally exceeds production, the overall total capacity for production of UWMs is likely much greater than this figure.

118. In particular, the capacity of the first-tier Chinese UWM producers, such as Yuanda and Jangho, is relevant. In its 2011 initial public offering, Yuanda reported a production capacity of 10 million square metres of “standard unitized curtain wall products” and noted plans to increase that production capacity by 9.6 million square metres by 2013.<sup>142</sup> More recently, Yuanda has marketed itself as the fastest growing facade manufacturer in the world and the largest facade manufacturer in its home market of China. Yuanda has four manufacturing plants in China with a total manufacturing capacity of 12 million square metres of curtain wall per year.<sup>143</sup>

119. Yuanda’s publicly available production capacity figures are much higher than the production capacity reported by Yuanda in its questionnaire response.<sup>144</sup> This discrepancy could not be fully explained by Dr. Wang at the hearing.<sup>145</sup> However, the Tribunal finds it likely that Yuanda based its questionnaire response on the sole production facility that had been supplying Canada – as it did during *UWM NQ*.<sup>146</sup> Either way, the preponderance of the evidence points to Yuanda having significant capacity, even acknowledging that some of its capacity may relate to non-subject goods, or that not all of Yuanda’s facilities manufacture products for export sales. The Tribunal finds these figures to be especially significant when compared to the total apparent Canadian market, which was less than 1 million square metres in each full year of the POR.<sup>147</sup>

120. There is limited evidence as to Yuanda’s capacity utilization rate.<sup>148</sup> The figure reported by Yuanda to the Tribunal was high, but as noted above, there is some doubt as to the reliability of the practical plant capacity figures in Yuanda’s questionnaire response. However, even the reported data shows that Yuanda has the ability and capacity to markedly increase its presence in Canada if the finding is rescinded. Yuanda’s capacity utilization rate for production of UWMs dropped from 2015 to interim 2018. However, Yuanda’s unused capacity at the end of the POR exceeded the apparent size of the entire Canadian market.<sup>149</sup>

121. Jangho’s capacity also appears to be significant. The evidence shows that it has four production facilities in China. Jangho reports a production capacity for curtain wall modules of 4.8 million square metres at just two of those facilities.<sup>150</sup> It also operates Beijing Gangyuan Curtain Wall, which has

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140. *Transcript of Public Hearing* at 208-209.

141. Exhibit RR-2018-002-A-01, Vol. 11 at 174. See also Exhibit RR-2018-002-A-01, Vol. 11 at 208-210.

142. Exhibit RR-2018-002-A-01, Vol. 11 at 106, 128, 130, 192; *Transcript of Public Hearing* at 223-225.

143. Exhibit RR-2018-002-A-01, Vol. 11 at 192; Exhibit RR-2018-002-31.01 (protected), Vol. 8.1 at 164; *Transcript of In Camera Hearing* at 157-163.

144. Exhibit RR-2018-002-06 (protected), Table 53, Vol. 2.1.

145. *Transcript of In Camera Hearing* at 156-157.

146. *UWN NQ* at para. 143; *Transcript of Public Hearing* at 226-227, 244-245.

147. Exhibit RR-2018-002-05, Table 37, Vol. 1.1.

148. *Transcript of Public Hearing* at 227.

149. Exhibit RR-2018-002-05, Table 37, Vol. 1.1; Exhibit RR-2018-002-06 (protected), Table 53, Vol. 2.1.

150. Exhibit RR-2018-002-A-01, Vol. 11 at 199, 201.

four production facilities in China, and a production capacity for 3.5 million square metres of UWMs at its Beijing facility alone.<sup>151</sup>

122. As noted above, these figures represent only a portion of China's UWM production capacity.

– Potential for Diversion

123. Curtain wall modules fall within the scope of the U.S. measures on aluminum extrusions.<sup>152</sup> However, these measures have been in place since 2011 and were continued following a sunset review in 2017. As such, Chinese producers have presumably adjusted to those conditions by now. Indeed, Dr. Wang testified that UWMs can be assembled in China with non-Chinese aluminum extrusions and that these UWMs can be exported to the United States free of anti-dumping or countervailing duties.<sup>153</sup> As such, the Tribunal does not place significant weight on this factor in arriving at its findings concerning the likely volumes of the subject goods.

– Likely Absolute and Relative Volumes

124. With the finding in place, the volume of subject goods sold in the Canadian market declined significantly, particularly after 2015.<sup>154</sup> In addition, the small volumes of subject goods in 2015 and 2016 were sold pursuant to bids won by suppliers of the subject goods prior to the imposition of Canadian measures. In other words, it does not appear as though significant quantities of the subject goods were present in the Canadian market over the course of the POR.

125. Despite this, UWM producers from China remained interested in the Canadian market.<sup>155</sup> On cross-examination, Dr. Wang acknowledged that Canada's stable demand, stable political situation, strong legal systems, high per capita income, and large cities are attractive features for Chinese UWM producers.<sup>156</sup> Additional confidential evidence further indicates that Canada is an attractive market for Yuanda.<sup>157</sup>

126. Jangho has confirmed that if the finding is rescinded "... [it] may bid on [a] couple [of] big and complicated projects which local wall module suppliers are not capable to do".<sup>158</sup> In addition, the Tribunal relies on the confidential evidence referenced here as support for the continued interest of Chinese UWM producers in the Canadian market if the finding were rescinded.<sup>159</sup>

127. Yuanda submitted that it is not poised to re-enter the Canadian market immediately. Dr. Wang testified that Yuanda has virtually no infrastructure in Canada and has maintained only one to two employees to complete previous projects and to provide maintenance support.<sup>160</sup> Dr. Wang testified that, to date, he devotes most of his time to the U.S. market and that it would take some time to re-build

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151. *Ibid.* at 207.

152. *Ibid.* at 479-492.

153. Exhibit RR-2018-002-L-03, Vol. 13 at para. 44; *Transcript of Public Hearing* at 193-194.

154. Exhibit RR-2018-002-05, Table 38, Vol. 1.1; Exhibit RR-2018-002-06 (protected), Table 37, Vol. 2.1.

155. *Transcript of Public Hearing* at 232; *Transcript of In Camera Hearing* at 164.

156. *Transcript of Public Hearing* at 217-218.

157. Exhibit RR-2018-002-22.01 (protected), Vol. 6.1 at 9, 15-24.

158. Exhibit RR-2018-002-18.29, Vol. 5 at 6.

159. Exhibit RR-2018-002-22.01A (protected), Vol. 6.1 at 5; *Transcript of In Camera Hearing* at 56-61, 98-100, 164, 166.

160. Exhibit RR-2018-002-L-03, Vol. 13 at para. 40; *Transcript of Public Hearing* at 186-187.

infrastructure and relationships in Canada.<sup>161</sup> Dr. Wang also stated that not all of the producers of subject goods would be familiar with unique Canadian specifications or products, or have the language requirements to do business in Canada.<sup>162</sup>

128. However, the Tribunal finds that Yuanda could be in a position to re-enter the Canadian market in a significant way in a relatively short timeframe. First, Yuanda has maintained a sales presence on the east and west coasts of the United States.<sup>163</sup> Second, Yuanda is familiar with independent local installers in the key markets of Vancouver, Toronto, and Calgary.<sup>164</sup> Third, Yuanda's sales team has been active in Canada in recent months, meeting with approximately ten potential customers.<sup>165</sup> Fourth, Yuanda's bids for Canadian projects would be prepared in China, thus limiting the number of employees required on the ground in Canada.<sup>166</sup> Fifth, Yuanda has acknowledged that support for the Canadian market is available from its U.S. offices, where there are currently 20 to 30 employees.<sup>167</sup>

129. Yuanda is likely to target at least three to five large projects in Canada if the finding is rescinded and duties are consequently removed.<sup>168</sup> Given the Tribunal's finding that significant price undercutting is likely, it is reasonable to conclude that Yuanda will win at least some contracts for major projects over the short to medium term. According to Dr. Wang, Yuanda is most interested in large projects and is not interested in competing for small projects.<sup>169</sup> As such, even if Yuanda is not successful on each of these bids, the Tribunal finds that a significant increase in the volume of imports of the dumped or subsidized goods, both in absolute terms and relative to the production and consumption of like goods, is likely, particularly as other Chinese UWM producers, such as Jangho and Far East Global, are also likely to bid on at least some upcoming projects in the Canadian market.

– Summary

130. Based on the foregoing, the Tribunal finds that, if the finding is rescinded, there will likely be a significant increase in the volume of imports of the subject goods, especially when compared with their currently low levels.

### **Likely Impact on the Domestic Industry if the Finding is Rescinded**

131. The Tribunal has assessed the likely impact of the above volumes and prices on the domestic industry if the finding is rescinded.<sup>170</sup> In doing so, the Tribunal has considered the likely performance of the domestic industry should the finding be continued, as discussed above. In this analysis, the Tribunal distinguishes the likely impact of the dumped and subsidized goods from the likely impact of any other factors likely to affect the domestic industry.<sup>171</sup>

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161. *Transcript of Public Hearing* at 184-185.

162. Exhibit RR-2018-002-L-01, Vol. 13 at para. 14.

163. *Transcript of Public Hearing* at 182-183, 186, 197.

164. *Ibid.* at 188.

165. *Ibid.* at 200; *Transcript of In Camera Hearing* at 165-166, 171-172.

166. *Transcript of Public Hearing* at 236; *Transcript of In Camera Hearing* at 171-172.

167. *Transcript of Public Hearing* at 201-202; *Transcript of In Camera Hearing* at 155-156.

168. *Transcript of Public Hearing* at 219, 220.

169. *Ibid.* at 219.

170. Paragraphs 37.2(2)(e) and (g) of the *Regulations*.

171. See paragraph 37.2(2)(k) of the *Regulations*.

132. The supporting parties submit that if the finding is rescinded, producers of the subject goods will start bidding on large projects at prices that significantly undercut the domestic industry's prices, thus causing lost sales and price depression.

133. Yuanda argued that the domestic industry has benefitted considerably from the finding. It submitted that the domestic industry has performed well over the POR and is likely to continue performing well in the future notwithstanding a rescission of the finding. Yuanda also submitted that the domestic industry's allegations of likely material injury are not based on positive evidence.<sup>172</sup>

134. Given the nature of the UWM industry, the domestic industry's 2019 financial results are largely "locked in" at this point. As such, the rescission or continuation of the finding is unlikely to have any significant impact on these short-term results for the current fiscal year. Therefore, the Tribunal has focused its analysis on the domestic industry's likely performance in 2020 and early 2021.

135. As noted above, the Tribunal finds it likely that Chinese producers of UWMs will bid on projects in the domestic market at prices that will significantly undercut the prices of the like goods, in order to increase export sales volumes. The Tribunal finds it likely that these low-priced bids will be attractive to at least some owners and developers of upcoming major projects, despite the risk associated with the offshore purchase of large, heavy construction materials that are manufactured and tailored to exacting product specifications. The Tribunal is satisfied that some owners or developers would be prepared to take on the risks associated with purchasing subject goods in exchange for a significantly lower price.

136. The Tribunal accords some weight to the evidence of Mr. Tucker. He testified that relationships matter when decisions are made to invite suppliers to bid on a proposed contract. In this regard, he referred to a previous working relationship with Mr. Arthur Chan of Yuanda, who has since retired.<sup>173</sup> The Tribunal also considered other, confidential testimony given by Mr. Tucker.<sup>174</sup>

137. However, the Tribunal is not persuaded that Mr. Chan's retirement means that purchasers in Canada will not buy from Yuanda, much less from other producers of the subject goods.<sup>175</sup> As noted above, other representatives from Yuanda have begun reaching out to owners, developers and construction managers in Canada, presumably to rebuild these types of relationships. In addition, as discussed above, there are agents in Canada who sell or facilitate sales of imported UWMs in the Canadian market in order to

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172. As part of its closing argument, Yuanda referred to the Tribunal's decision in *Wood Slats* (15 July 2009), RR-2008-003 (CITT) [*Wood Slats*], noting that the Tribunal chose to rescind that finding despite the significant excess capacity in China, and Yuanda encouraged the Tribunal to reach a similar conclusion in this case. However, the Tribunal finds that *Wood Slats* is distinguishable from the present case. In *Wood Slats*, the domestic industry's entire production of like goods was consumed in its own integrated production of custom wood blinds or sold in export markets and, as a result, there were no volumes or prices for merchant market sales of domestically produced wood slats. The Tribunal also found that the rescission of the finding was not likely to result in significant price undercutting or other significant price effects and went on to conclude that any anticipated further deterioration in the domestic industry's performance indicators if the finding were rescinded were attributable to other causes, such as the 2008 economic downturn, the move towards substitute products, and competition from imports of non-subject goods.

173. *Transcript of Public Hearing* at 277-278.

174. *Transcript of In Camera Hearing* at 208.

175. *Ibid.* at 17.

mitigate some of the risk involved with purchasing offshore.<sup>176</sup> These agents would have existing relationships with purchasers in Canada.<sup>177</sup>

138. The injury resulting from Yuanda's targeting three to five of the largest upcoming projects in Canada is likely to be considerable, even if not all of Yuanda's bids are ultimately successful. Large projects represent significant volumes and market share and also tend to be the most lucrative and prestigious.<sup>178</sup>

139. The CBSA has determined that dumping and subsidizing of the subject goods are likely to continue or resume if the finding is rescinded, and the Tribunal's expiry review must proceed on that basis. In that regard, the Tribunal notes that determinations relating to the likelihood of continued or resumed dumping or subsidizing are within the purview of the CBSA.<sup>179</sup>

140. The Tribunal finds it likely that the domestic industry will also lose sales to dumped and subsidized subject goods sold in Canada if the finding is rescinded. In this regard, the Tribunal has previously found that other large and reputable producers of the subject goods, such as Jangho and Far East Global, were active in the Canadian market at the time of the initial inquiry.

141. These lost sales diverted from Canadian producers of UWMs are likely to result in lost revenue and lost market share for the domestic industry. In those cases where the domestic industry is successful in obtaining the contract, as discussed above, it is likely to do so at significantly depressed prices, resulting in lower revenue, with consequential and cascading adverse impact.

142. This adverse impact is likely to comprise a decline in output, capacity utilization rates, and productivity and, in turn, is likely to lead to a reduction in employment. In addition, reduced capacity utilization rates will result in higher unit costs and lower net sales revenue on a per-unit basis, which is likely to have negative effects on the domestic industry's competitiveness with regard to future bids.

143. Whether through price depression or lost sales, the rescission of the finding is likely to have a significant negative effect on the domestic industry's profitability. For example, the Tribunal has considered the impact of a ten percent reduction in the domestic industry's sales volume and net sales value over the POR and finds that the resulting injury to the domestic industry would be material.<sup>180</sup>

144. Reduced profitability will have a negative impact on growth prospects, prospective reinvestment, potential expansion and returns on existing capital investment. In turn, these contractions are likely to trigger

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176. *Ibid.* at 88.

177. See, for example, *Ibid.* at 175.

178. *Transcript of Public Hearing* at 31-32, 219. Regarding the volume and/or value of upcoming projects, see, for example, Exhibit RR-2018-002-A-04 (protected), Vol. 12 at paras. 46-48; Exhibit RR-2018-002-C-04 (protected), Vol. 12 at paras. 48-50; Exhibit RR-2018-002-E-04 (protected), Vol. 12 at paras. 27-28; Exhibit RR-2018-002-F-04 (protected), Vol. 12 at para. 47; Exhibit RR-2018-002-G-04 (protected), Vol. 12 at paras. 39-40; Exhibit RR-2018-002-J-04 (protected), Vol. 12 at para. 21; Exhibit RR-2018-002-K-04 (protected), Vol. 12 at paras. 24-25, 37, 40-41; *Transcript of In Camera Hearing* at 47, 49, 58-61, 70, 73, 117-118. See also the summary table in the *Protected Aid to Argument of the Canadian Producers*, Vol. 18 at 63.

179. *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (30 June 2004), RR-2003-002 (CITT) at paras 68-69.

180. The Tribunal considers this estimate to be conservative based on Yuanda's expressed interest in bidding on three to five of the largest projects and the Tribunal's finding that other Chinese producers are also likely to bid on projects in the Canadian market if the finding is rescinded. The Tribunal also notes the supporting parties' position that the domestic industry would experience 15 percent price erosion and 20 percent lost sales volumes if the finding were rescinded. Using these figures, the likely impact to the domestic industry would be even greater.

consequential and detrimental effects on credit worthiness and the ability of the domestic industry to raise capital. In that regard, the evidence shows that the domestic industry has invested in new equipment and facilities over the POR, in some cases improving efficiency and/or increasing production capacity.<sup>181</sup> Additional investments are planned. However, the rescission of the finding would likely have a chilling effect on these planned investments, causing them to be delayed or cancelled.

145. The Tribunal recognizes that the domestic industry is also likely to face some competition from imports of non-subject goods in the near to medium term, which could impact the domestic industry's performance. However, the significant capacity and the export orientation of the producers of the subject goods indicate that the domestic industry's situation is likely to be materially worse if the finding is rescinded.

146. On the basis of the foregoing, the Tribunal finds that if the finding is rescinded, the likely resumption or continuation of the dumping and subsidizing of the subject goods will likely cause material injury to the domestic industry.

#### **DETERMINATION**

147. Pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal continues its finding in respect of the subject goods.

Peter Burn  
Peter Burn  
Presiding Member

Randolph W. Heggart  
Randolph W. Heggart  
Member

Susan D. Beaubien  
Susan D. Beaubien  
Member

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181. *Transcript of Public Hearing* at 34-36, 72-73, 96, 107, 109; Exhibit RR-2018-002-06 (protected), Table 47, Vol. 2.1.