



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2020-002

Decorative and Other
Non-structural Plywood

*Determination issued
Monday, August 10, 2020*

*Reasons issued
Tuesday, August 25, 2020*

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

DECORATIVE AND OTHER NON-STRUCTURAL PLYWOOD

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping and subsidizing of decorative and other non-structural plywood, whether or not surface coated or covered, and veneer core platforms for the production of decorative and other non-structural plywood, originating in or exported from the People's Republic of China, have caused injury or retardation or are threatening to cause injury, as these words are defined in the *Special Import Measures Act*. Decorative and other non-structural plywood is defined as a flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of wood. The veneers, along with the core are glued or otherwise bonded together. Decorative and other non-structural plywood include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2016 (including any revisions to that standard), but exclude:

- a) Structural plywood that is manufactured to meet U.S. Products Standard PS 1-09, PS 2-09, or PS 2-10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), and which has both a face and a back veneer of coniferous wood;
- b) Finished plywood products for use as flooring;
- c) Plywood which has a shape or design other than a flat panel;
- d) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an "Exterior" or "Exposure 1" bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m³ permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges; and
- e) Laminated veneer lumber door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72 millimeters, and a length of less than 2413 millimeters, (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers, and (5) top layer machined with a curved edge and one or more profile channels throughout.

This preliminary injury inquiry follows the notification, on June 11, 2020, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping and subsidizing of decorative and other non-structural plywood from China.

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

Serge Fréchette

Serge Fréchette
Presiding Member

Peter Burn

Peter Burn
Member

Cheryl Beckett

Cheryl Beckett
Member

Tribunal Panel:

Serge Fréchette, Presiding Member
Peter Burn, Member
Cheryl Beckett, Member

Support Staff:

Martin Goyette, Lead Counsel
Jessye Kilburn, Counsel
Mark Howell, Lead Analyst
Andrew Wigmore, Analyst
Thy Dao, Analyst
Julie Charlebois, Data Services Advisor

PARTICIPANTS:

Canadian Hardwood Plywood and Veneer
Association
Commonwealth Plywood
Rockshield Engineered Wood Products ULC
Columbia Forest Products

Upper Canada Forest Products Ltd.

Canusa Wood Products Limited
Hardwoods Specialty Products LP
McCorry & Co. Ltd.
Panoply Wood Products Inc.

United Steelworkers
Unifor

Counsel/Representatives

Paul Conlin
Benjamin P. Bedard
Anne-Marie Oatway
Manon Carpentier
Greg Landry
Shannon McSheffrey
Lydia Blois
Annie Arko
Nasrudin Mumin

Riyaz Dattu
Gajan Sathananthan

Jesse Goldman
Matthew Kronby
Julia Webster
Samuel Levy
Erica Lindberg
Jacob Mantle

Craig Logie
Christopher Somerville
Jacob Millar
Masiel Matus
Annie (Qurrat-ul-ain) Tayyab

Please address all communications to:

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

STATEMENT OF REASONS

INTRODUCTION

[1] On April 21, 2020, Columbia Forest Products (CFP); Husky Plywood, a Division of Commonwealth Plywood Co. Ltd. (Husky); Rockshield Engineered Wood Products, ULC (Rockshield); and the Canadian Hardwood Plywood and Veneer Association (CHPVA) (the complainants), filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping and subsidizing of decorative and other non-structural plywood, originating in or exported from the People's Republic of China (China) (the subject goods), have caused injury or are threatening to cause injury to the domestic industry.

[2] On June 11, 2020, the CBSA initiated an investigation respecting the dumping and subsidizing of the subject goods pursuant to subsection 31(1) of the *Special Import Measures Act*.¹ In its statement of reasons concerning the initiation of this investigation, the CBSA estimated that, for the period from January 1 to December 31, 2019, the subject goods were dumped by a margin of dumping of 52% and were subsidized at a rate of 39.6%, each expressed as a percentage of the export price.²

[3] As a result of the CBSA's decision to initiate the investigation, on June 12, 2020, the Canadian International Trade Tribunal (the Tribunal) began its preliminary injury inquiry, pursuant to subsection 34(2) of *SIMA*, to determine whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods has caused injury or is threatening to cause injury to the domestic industry.³

[4] The complaint is supported by the United Steelworkers and Unifor. Upper Canada Forest Products Ltd.; Canusa Wood Products Limited; Hardwoods Specialty Products LP; McCorry & Co. Ltd.; and Panply Wood Products Inc. filed notices of participation in the inquiry but did not make submissions. There were no further submissions from the complainants following the filing of the complaint. The Tribunal received no opposing submissions.

[5] On August 10, 2020, the Tribunal determined that there was evidence disclosing a reasonable indication that the subject goods have caused injury or are threatening to cause injury to the domestic industry. The following are the reasons for this determination.

PRODUCT DEFINITION

[6] The subject goods were defined as follows by the CBSA:

Decorative and other non-structural plywood, whether or not surface coated or covered, and veneer core platforms for the production of decorative and other non-structural plywood, originating in or exported from the People's Republic of China. Decorative and other non-structural plywood is defined as a flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of wood. The veneers, along with the core are glued or otherwise bonded

¹ R.S.C., 1985, c. S-15 [*SIMA*].

² Exhibit PI-2020-002-05, Vol. 1 at 20, 25.

³ As a domestic industry is already established, the Tribunal need not consider the question of retardation.

together. Decorative and other non-structural plywood include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2016 (including any revisions to that standard).

Excluding:

- a) Structural plywood that is manufactured to meet U.S. Products Standard PS 1-09, PS 2-09, or PS 2-10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), and which has both a face and a back veneer of coniferous wood;
- b) Finished plywood products for use as flooring;
- c) Plywood which has a shape or design other than a flat panel;
- d) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an “Exterior” or “Exposure 1” bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m³ permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges; and
- e) Laminated veneer lumber door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72 millimeters, and a length of less than 2413 millimeters, (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers, and (5) top layer machined with a curved edge and one or more profile channels throughout.⁴

LEGISLATIVE FRAMEWORK

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

[8] The term “reasonable indication” is not defined in *SIMA*, but is understood to mean that the evidence need not be “conclusive, or probative on a balance of probabilities”.⁵ The reasonable indication standard is lower than the standard that applies in a final injury inquiry under section 42 of *SIMA*.⁶

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

[10] The standard of evidence at this stage of the inquiry is lower than at the final stage and complaints will be read generously.⁷

⁴ Exhibit PI-2020-002-05, Vol. 1 at 7.

⁵ *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

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

⁷ See, e.g., *Corrosion-resistant Steel Sheet* (7 January 2020), PI-2019-002 (CITT) at para. 12.

[11] However, the outcome of preliminary injury inquiries must not be taken for granted.⁸ Simple assertions are not sufficient.⁹ Complaints, as well as the cases of parties opposed, must be supported by positive and sufficient evidence. Such evidence must also be relevant, in that it addresses the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*.¹⁰

[12] Before examining the allegations of injury or threat of injury, the Tribunal must first identify the domestically produced goods that are “like goods” in relation to the subject goods, as well as the domestic industry that produces those like goods. This analysis is required because subsection 2(1) of *SIMA* defines “injury” as “material injury to a domestic industry” and “domestic industry” as “the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods . . .”. Subsection 2(1) of *SIMA* further defines “like goods”, in relation to any other goods, as “(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.”

LIKE GOODS AND CLASSES OF GOODS

[13] The complaint argues that domestically produced decorative and other non-structural plywood are like goods in relation to the subject goods and that there is a single class of goods. In this regard, the complainants indicate that decorative and other non-structural plywood is generally sold on a custom basis and therefore the physical characteristics of the goods are the same whether imported or produced domestically. In addition, imported and domestically produced decorative and other non-structural plywood also have the same methods of production. In the Canadian industry producers are either one-step or three-ply (or two-step) producers. Chinese manufacturers are generally three-ply producers. The market characteristics are also the same for imported and domestically produced decorative and other non-structural plywood as are the customers’ needs that they meet.¹¹

[14] Concerning the issue of classes of goods, the complainants submit that while there are various species of wood, dimensions, numbers of plies, and end uses for decorative and other non-structural plywood products, these fall within the same continuum of goods and are substitutable. The complainants further submit that in its 2017 determination, the U.S. International Trade Commission found that Chinese and U.S.-produced like goods constituted a single class of goods.¹²

⁸ *Reinforcing Bar* (12 August 2014), PI-2014-001 (CIIT) at paras. 18-19.

⁹ Article 5 of the World Trade Organization (WTO) *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* and Article 11 of the WTO *Agreement on Subsidies and Countervailing Measures* require an investigating authority to examine the accuracy and adequacy of the evidence provided in a complaint to determine whether there is sufficient evidence to justify the initiation of an investigation, and to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping or subsidization or of injury. The same provisions also specify that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements that they impose.

¹⁰ S.O.R./84-927 [*Regulations*].

¹¹ Exhibit PI-2020-002-02.01, Vol. 1 at 2846-2847.

¹² Exhibit PI-2020-002-02.01, Vol. 1 at 2847-2848.

[15] In light of the evidence on record and of the factors relevant to the issues of like goods and classes of goods,¹³ the Tribunal finds that domestically produced decorative and other non-structural plywood of the same description as the subject goods are “like goods” in relation to subject goods and that there is only one class of goods.

[16] However, during its final injury inquiry, the Tribunal will seek to confirm its determinations with respect to like goods and classes of goods by closely examining the role of veneer core platforms as an input in the production process of decorative and other non-structural plywood, and the role of veneer core platforms in the market.

DOMESTIC INDUSTRY

[17] The evidence provided by the complainants indicates that there are 12 domestic producers of decorative and other non-structural plywood. The evidence therefore indicates that these 12 producers constitute the domestic industry. In addition, the complaint asserts that the three producer complainants alone (not counting other members of the CHPVA) account for a high proportion of the domestic production.

[18] In its analysis, for the purposes of this preliminary injury inquiry, the Tribunal will consider the impact of the subject imports on the domestic industry as a whole, but notes that some of the evidence available at this stage pertains to the situation of the three complaining producers only. Given the high proportion of total production accounted for by these three producers,¹⁴ the Tribunal considers that the data concerning their situation is reasonably representative of the state of the entire domestic industry for the purposes of this preliminary inquiry.

CROSS-CUMULATION

[19] Where subject goods from the same source are both dumped and subsidized, the Tribunal considers that it is not necessary or practicable to disentangle the effects of subsidizing from the effects of dumping of the same goods.¹⁵ The Tribunal therefore assesses the impact of the dumping and subsidizing of the goods cumulatively in this preliminary inquiry.

INJURY ANALYSIS

Import Volume of Dumped and Subsidized Goods

[20] The CBSA conducted its own estimate of import volumes of subject goods, which differed from the volumes estimated by the complainants.¹⁶ According to the CBSA’s estimates, in *absolute* terms, subject imports increased in 2018 over 2017, and then decreased in 2019 but remained above 2017 levels. During the same years, the total market for decorative and other non-structural plywood

¹³ In deciding the issues of like goods and classes of goods, the Tribunal considers 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). *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

¹⁴ Exhibit PI-2020-03.01 (protected), Vol. 2 at 2939.

¹⁵ See, e.g., *Corrosion-resistant Steel Sheet* (7 January 2020), PI-2019-002 (CITT) at para. 36.

¹⁶ Exhibit PI-2020-002-05, Vol. 1 at 26, 28; Exhibit PI-2020-002-03.06 (protected), Vol. 2 at 17. The CBSA excluded certain flooring products and made other corrections.

decreased. In *relative* terms (compared to domestic production and domestic sales of domestic production), the volume of subject imports volumes increased significantly from 2017 to 2019.

[21] Having considered the evidence on record, and in particular the CBSA's estimates of the volumes of imports, the Tribunal finds that there is a reasonable indication of a significant increase in imports of subject goods, both in absolute and relative terms.

[22] In the context of the Tribunal's final inquiry, the import data will have to be closely examined in order to make sure not to capture non-subject goods and to overestimate the volume of subject goods.

Effects on Prices of Like Goods

[23] The complainants allege price undercutting by the subject goods, leading to lost sales and a loss of market share. The complainants also allege that the subject goods have significantly undercut domestic pricing of "shop-grade" or low-quality products and that Chinese producers are selling "on-grade" or higher-quality products in their place.

[24] In support of their claims concerning price effects, the complainants rely on available average import pricing, their own domestic selling prices, as well as specific injury allegations. With respect to the latter, the complaint contains allegations of lost sales due to price undercutting, and allegations of instances in which the domestic producers had to decrease their prices to retain sales.¹⁷

[25] The CBSA conducted its own price comparison analysis. The level of price undercutting calculated by the CBSA is significantly lower than the complainants' estimate. Nonetheless, the CBSA's figures clearly suggest a significant, and increasing, level of price undercutting by subject imports between 2017 and 2019.¹⁸

[26] Having considered the evidence on record, the Tribunal finds that there is a reasonable indication of price undercutting. For reasons of judicial economy, the Tribunal will not, in the context of this preliminary injury inquiry, address the complainants' allegations of price depression.

Resultant Impact on the Domestic Industry

[27] As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal must consider the impact of the dumped or subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.

[28] In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumping or subsidizing of the subject goods and the injury on the basis of the resultant impact of the volume and price effects of the dumped or subsidized goods on the domestic industry. The standard is whether there is a reasonable indication that the dumping or subsidizing of the subject goods has, *in and of itself*,¹⁹ caused injury.

¹⁷ Exhibit PI-2020-002-03.01 (protected), Vol. 2 at 2977- 2988.

¹⁸ Exhibit PI-2020-002-05, Vol. 1 at 27; Exhibit PI-2020-002-03.06 (protected), Vol. 2 at 38-39.

¹⁹ *Gypsum Board* (5 August 2016), PI-2016-001 (CITT) at para. 44; *Copper Rod* (30 October 2006), PI-2006-002 (CITT) at paras. 40, 43; *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 75.

[29] The complaint alleges that the subject goods have caused material injury to the domestic industry through price undercutting, price depression, lost sales and market share, underutilization of capacity, and a negative impact on the financial results and current and proposed investments.

[30] The Tribunal has reviewed the evidence submitted by the complainants on the confidential and public record in light of the relevant factors. With respect to domestic sales from domestic production, the complaint estimated sales for the whole of the domestic industry, i.e. the 12 domestic producers. The remainder of the data concerning the state of the domestic industry includes only the three complaining producers (CFP, Husky and Rockshield). The Tribunal is satisfied at this stage that the latter information is indicative of the situation of the broader domestic industry as the complainants represent a high proportion of the total domestic production of the like goods.²⁰ The Tribunal's final injury inquiry will provide a more complete and more accurate picture of the state of the domestic industry as a whole.

[31] The evidence provided in the complaint shows that production volumes²¹ and volumes of sales from domestic production²² increased slightly in 2018 over 2017, but then decreased in 2019. Capacity utilization, which was already at a relatively low level,²³ followed a similar trend.

[32] The complainants submit that imports of the subject goods have caused a loss of market share for the domestic industry and that the domestic producers are now minor players in the domestic market and that subject imports have become the dominant player. As noted above, the CBSA's estimate of the volume of subject imports differs from the estimate provided in the complaint. It follows that the market shares estimated by the CBSA also differ from the market shares estimates provided in the complaint. Nevertheless, the trends are similar under both sets of data: the domestic industry's market share increased in 2018 over 2017 but then decreased in 2019, at the same time as the market share of the subject imports continued to increase over the period of January 1, 2017, to December 31, 2019.²⁴

[33] The confidential data and trends pertaining to the complaining producers' financial performance are generally suggestive of a negative impact of subject imports.²⁵ While there were certain positive developments in the complaining producers' financial performance, the confidential version of the complaint contains an explanation by the complainants as to why these positive developments are nevertheless indicative of injury.²⁶

[34] The complainants allege that the presence of allegedly dumped and subsidized subject goods has negatively impacted recent and future investments.²⁷

[35] Having considered the evidence on record, the Tribunal finds that it provides a reasonable indication that the domestic industry experienced material injury. In particular, the evidence provides a reasonable indication of lost sales and market share, capacity underutilization and reduced financial results.

²⁰ See *supra*, para. 18.

²¹ Exhibit PI-2020-002-02.01, Vol. 1 at 2888; Exhibit PI-2020-03.01 (protected), Vol. 2 at 29-30.

²² Exhibit PI-2020-002-02.01, Vol. 1 at 26, 2845; Exhibit PI-2020-03.01 (protected), Vol. 2 at 2953. As noted above, the complaint provides an estimate of the total sales volumes of *the entire domestic industry* whereas the rest of the data pertains to the three complaining producers.

²³ Exhibit PI-2020-002-02.01, Vol. 1 at 2888; Exhibit PI-2020-03.01 (protected), Vol. 2 at 30.

²⁴ Exhibit PI-2020-002-05, Vol. 1 at 28; Exhibit PI-2020-002-03.06 (protected), Vol. 2 at 18.

²⁵ Exhibit PI-2020-03.01 (protected), Vol. 2 at 28.

²⁶ Exhibit PI-2020-03.01 (protected), Vol. 2 at 2993.

²⁷ Exhibit PI-2020-002-03.01 (protected), Vol. 2 at 2997-2998.

[36] Moreover, the evidence discloses a reasonable indication of a causal relationship between the significant increase in the volume of subject imports and the undercutting of the price of the domestic like goods by those imports on the one hand, and the deterioration of the economic performance of the domestic industry during the period of January 1, 2017, to December 31, 2019, on the other. In its final injury inquiry, the Tribunal will examine whether other factors have contributed to the deterioration of the economic performance of the domestic industry.

[37] For the foregoing reasons, the Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.

[38] In light of this finding, the Tribunal exercises judicial economy and does not consider whether there is a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury. However, the Tribunal will consider threat of injury allegations in the context of its final injury inquiry.

CONCLUSION

[39] The Tribunal finds that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic industry

Serge Fréchette

Serge Fréchette

Presiding Member

Peter Burn

Peter Burn

Member

Cheryl Beckett

Cheryl Beckett

Member