Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2020-002

Decorative and Other
Non-structural Plywood

Finding issued
Friday, February 19, 2021

Reasons issued
Monday, March 8, 2021

Canada

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IN THE MATTER OF an inquiry, pursuant to section 42 of the *Special Import Measures Act*, respecting:

DECORATIVE AND OTHER NON-STRUCTURAL PLYWOOD

FINDING

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act* (*SIMA*), has conducted an inquiry to determine whether 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 are threatening to cause injury, as these words are defined in *SIMA*. 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 $90 g/m^3$ 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.

On January 21, 2021, the President of the Canada Border Services Agency (CBSA), pursuant to paragraph 41(1)(a) of *SIMA*, terminated the dumping investigation in respect of the above-mentioned goods exported by Celtic Co., Ltd., Linyi Evergreen Wood Co., Ltd., Linyi Huasheng Yongbin Wood Co., Ltd., Pingyi Jinniu Wood Co., Ltd., Pizhou Jiangshan Wood Co., Ltd., Shandong Good Wood Imp. and Exp. Co., Ltd., and Xuzhou Shengping Imp. and Exp. Co., Ltd., and terminated the subsidizing investigation in respect of the above-mentioned goods exported by the aforementioned exporters and Linyi Jiahe Wood Industry Co., Ltd. On the same day, the President of the CBSA, pursuant to paragraph 41(1)(b) of *SIMA*, made final determinations of dumping and subsidizing in respect of the above-mentioned goods for which the investigations were not terminated.

Further to its inquiry, the Tribunal hereby finds, pursuant to subsection 43(1) of *SIMA*, that the dumping of the above-mentioned goods (excluding those goods exported by Celtic Co., Ltd., Linyi Evergreen Wood Co., Ltd., Linyi Huasheng Yongbin Wood Co., Ltd., Pingyi Jinniu Wood Co., Ltd., Pizhou Jiangshan Wood Co., Ltd., Shandong Good Wood Imp. and Exp. Co., Ltd., and Xuzhou Shengping Imp. and Exp. Co., Ltd.) and the subsidizing of the above-mentioned goods (excluding those goods exported by the aforementioned exporters and Linyi Jiahe Wood Industry Co., Ltd.) have not caused injury and are not threatening to cause injury to the domestic industry.

Serge Fréchette

Serge Fréchette
Presiding Member

Peter Burn

Peter Burn
Member

Cheryl Beckett

Cheryl Beckett
Member

The statement of reasons will be issued within 15 days.

Place of Hearing:	Via videoconference
Date of Hearing:	January 28, 2021
Tribunal Panel:	Serge Fréchette, Presiding Member Peter Burn, Member Cheryl Beckett, Member
Support Staff:	Alain Xatruch, Lead Counsel Jessye Kilburn, Counsel Mark Howell, Lead Analyst Andrew Wigmore, Analyst Josée St-Amand, Analyst Thy Dao, Analyst Julie Charlebois, Data Services Advisor

PARTICIPANTS:

Domestic Producers/Supporting Parties	**Counsel/Representatives**
Canadian Hardwood Plywood and Veneer Association Columbia Forest Products Husky Plywood (a division of Commonwealth Plywood Co. Ltd.) Rockshield Engineered Wood Products ULC	Paul Conlin Benjamin P. Bedard Anne-Marie Oatway Manon Carpentier Greg Landry Shannon McSheffrey Lydia Blois Meagan Brae Vestby
Unifor United Steelworkers	Craig Logie Christopher Somerville Jacob Millar Masiel Matus

Importers/Exporters/Others	**Counsel/Representatives**
Canusa Wood Products Limited Hardwoods Specialty Products LP McCorry & Co. Ltd. Panoply Wood Products Inc.	Jesse Goldman Matthew Kronby Julia Webster Jacob Mantle Daehyun Yeo
Upper Canada Forest Products Ltd.	Riyaz Dattu

Parties that Requested Product Exclusions	**Counsel/Representatives**
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STATEMENT OF REASONS

INTRODUCTION

[1] The mandate of the Canadian International Trade Tribunal in this inquiry[1] is to determine whether the dumping and subsidizing of certain 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] The Tribunal has determined, for the reasons that follow, that the dumping and subsidizing of the subject goods have not caused injury and are not threatening to cause injury to the domestic industry.

BACKGROUND

[3] This inquiry stems from a complaint filed with the Canada Border Services Agency (CBSA) on April 21, 2020, by Columbia Forest Products (Columbia), 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), and the subsequent decision by the CBSA, on June 11, 2020, to initiate investigations into the alleged dumping and subsidizing of the subject goods.

[4] On June 12, 2020, as a result of the CBSA's decision to initiate the investigations, the Tribunal initiated a preliminary injury inquiry pursuant to subsection 34(2) of *SIMA*. On August 10, 2020, the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury to the domestic industry.[2]

[5] In its statement of reasons for its preliminary determination of injury, issued on August 25, 2020, the Tribunal indicated that domestically produced decorative and other non-structural plywood of the same description as the subject goods were like goods in relation to the subject goods and that there was only one class of goods. However, the Tribunal stated that, during its final injury inquiry, it would seek to confirm its determinations with respect to like goods and classes of goods.[3]

[6] On October 23, 2020, the CBSA made preliminary determinations of dumping and subsidizing in respect of the subject goods.[4] It also considered that the imposition of provisional duty was necessary to prevent injury.[5]

[7] On October 26, 2020, following the CBSA's preliminary determinations, the Tribunal initiated this final injury inquiry. In its Notice of Commencement of Inquiry, the Tribunal invited

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1 The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [*SIMA*].

2 *Decorative and Other Non-structural Plywood* (10 August 2020), PI-2020-002 (CITT) [*Decorative Plywood PI*].

3 *Decorative Plywood PI* at para. 16.

4 Exhibit NQ-2020-002-01 at 10-13.

5 Provisional duties were not assessed on subject goods from certain exporters for which the CBSA had preliminarily determined that the margin of dumping or amount of subsidy was insignificant, as that term is defined in *SIMA* (see Exhibit NQ-2020-002-01 at 1-2, 5).

interested parties to file early submissions and supporting evidence on whether (1) decorative and other non-structural plywood and (2) veneer core platforms for the production of decorative and other non-structural plywood constituted separate classes of goods and whether this had any impact on the issue of like goods.[6]

[8] The Tribunal received submissions and reply submissions on like goods and classes of goods from the Complainants and from Canusa Wood Products Limited (Canusa), Hardwoods Specialty Products LP (Hardwoods), McCorry & Co. Ltd. (McCorry) and Panoply Wood Products Inc. (Panoply) (the Importers). The Complainants and the Importers both made submissions in support of a single class of goods.

[9] On December 1, 2020, the Tribunal informed the parties that it had determined that there was a single class of goods and that domestically produced goods of the same description as the subject goods were "like goods" in relation to the subject goods.[7] The full reasons for these determinations are provided below.

[10] The Tribunal's period of inquiry (POI) was from January 1, 2017, to June 30, 2020, and included the following two interim periods: January 1, 2019, to June 30, 2019 (interim 2019), and January 1, 2020, to June 30, 2020 (interim 2020).

[11] As part of its inquiry, a number of known domestic producers, importers, purchasers and foreign producers of decorative and other non-structural plywood were asked to respond to questionnaires from the Tribunal. The Tribunal received replies to the domestic producers' questionnaire from Columbia, Husky and Rockshield stating that they produced goods meeting the product definition during the POI. Another domestic producer, Birchland Plywood-Veneer Ltd. (Birchland), only reported its sales of such goods for the POI. The Tribunal also received 15 replies to the importers' questionnaire from companies that imported subject goods and/or goods meeting the product definition and 14 replies to the purchasers' questionnaire from companies stating that they purchased such goods. The Tribunal received no replies to the foreign producers' questionnaire.

[12] Using the questionnaire responses and other information on the record, staff of the Secretariat to the Tribunal prepared public and protected investigation reports, which were issued on December 14, 2020. Minor revisions were made to both the public and protected investigation reports on January 11, 2021, and fully revised reports were issued on January 21, 2021,[8] following the issuance of final determinations of dumping and subsidizing by the CBSA.

[13] On December 18, 2020, Canusa, McCorry and Panoply each filed identical requests for the exclusion of certain thin plywood panels from any eventual finding of injury or threat of injury in respect of the subject goods. Panoply filed an additional request for the exclusion of certain oversized plywood panels. Hardwoods and Upper Canada Forest Products Ltd. (Upper Canada) stated their support for the requests.[9] The Complainants subsequently filed responses opposing the requests and the requesters filed replies to these responses.

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6 The Notice of Commencement of Inquiry was published on the Tribunal's website and in the *Canada Gazette* (see C. Gaz. 2020.I.3165).

7 Exhibit NQ-2020-002-27.

8 Exhibit NQ-2020-002-06B; Exhibit NQ-2020-002-07B (protected).

9 Exhibit NQ-2020-002-32.01 at 1; Exhibit NQ-2020-002-I-01 at 2.

[14] On December 21, 2020, the Complainants filed a case brief, witness statements and other evidence in support of a finding of injury or threat of injury in respect of the subject goods. Unifor and the United Steelworkers (USW) each filed a witness statement in support of such a finding.

[15] On January 5, 2021, the Importers filed a case brief, witness statements and other evidence opposing a finding of injury or threat of injury. Upper Canada also filed a case brief opposing such a finding.

[16] On January 14, 2021, the Complainants filed a reply brief, reply witness statements and additional evidence. The USW filed a reply witness statement on January 15, 2021.

[17] On December 21, 2020, the Complainants and the Importers filed various requests for information (RFIs) with the Tribunal, which were directed at each other. On December 30, 2020, the Complainants and the Importers each objected to a number of the RFIs. On January 7, 2021, after reviewing the RFIs, and taking into account the rationale for them and the objections filed, the Tribunal issued directions to the parties, indicating which RFIs required responses. Responses were required from Columbia, Husky and Rockshield only.[10] These responses were received and placed on the record on January 14, 2021.

[18] On December 16, 2020, the Tribunal advised parties that, due to the restrictions related to COVID-19, the in-person hearing of this matter, which was scheduled to commence in the latter part of January 2021, was cancelled. The Tribunal issued draft alternative hearing procedures and invited parties to comment on them. Comments were received from the parties on December 22, 2020.

[19] On December 24, 2020, having taken into consideration the parties' comments, the Tribunal issued final procedures for the conduct of the hearing, which would proceed by way of written submissions, with the exception of the parties' closing arguments, which would be heard by videoconference. The procedures gave parties the opportunity to suggest written questions to be directed to other parties. These questions were to be limited to requests for clarification or explanations regarding evidence previously submitted by another party. Parties were also given the opportunity to file objections to the proposed questions and to reply to any objections.

[20] The Complainants suggested questions to be put to Canusa, Hardwoods, McCorry and Panoply, and the Importers suggested questions to be put to Columbia and Husky. The Complainants and the Importers each objected to some of the proposed questions and each filed replies to some of those objections.

[21] On January 22, 2021, after having reviewed the suggested questions and considered the objections and replies thereto, the Tribunal issued directions to the parties, indicating which questions required responses. The Tribunal received written responses from the parties on January 26, 2021.

[22] On January 28, 2021, the Tribunal heard the parties' closing arguments, including on the issue of product exclusions, by public videoconference.

[23] The Tribunal issued its finding on February 19, 2021.

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10 Exhibit NQ-2020-002-RFI-01; Exhibit NQ-2020-002-RFI-01A (protected).

RESULTS OF THE CBSA'S INVESTIGATION

[24] On January 21, 2021, the CBSA, pursuant to paragraph 41(1)(a) of *SIMA*, terminated the dumping investigation in respect of the subject goods exported by Celtic Co., Ltd., Linyi Evergreen Wood Co., Ltd., Linyi Huasheng Yongbin Wood Co., Ltd., Pingyi Jinniu Wood Co., Ltd., Pizhou Jiangshan Wood Co., Ltd., Shandong Good Wood Imp. and Exp. Co., Ltd., and Xuzhou Shengping Imp. and Exp. Co., Ltd., and terminated the subsidizing investigation in respect of the subject goods exported by the aforementioned seven exporters and Linyi Jiahe Wood Industry Co., Ltd.[11] The goods of these exporters were found to not have been dumped, and/or to not have been subsidized or to have an amount of subsidy that is insignificant.[12]

[25] On the same day, the CBSA, pursuant to paragraph 41(1)(b) of *SIMA*, made final determinations of dumping and subsidizing in respect of the subject goods for which the investigations were not terminated.[13] The CBSA's period of investigation for the dumping investigation was from April 1, 2019, to March 31, 2020, and the period of investigation for the subsidy investigation was from January 1, 2019, to March 31, 2020.[14]

[26] The following margins of dumping and amounts of subsidy were calculated by the CBSA for its respective periods of investigation:[15]

Exporter	Margin of Dumping (% of export price)	Amount of Subsidy (% of export price)
Celtic Co., Ltd.	0.00	0.02
Linyi Evergreen Wood Co., Ltd.	0.00	0.30
Linyi Huasheng Yongbin Wood Co., Ltd.	0.00	0.00
Linyi Jiahe Wood Industry Co., Ltd.	16.03	0.11
Pingyi Jinniu Wood Co., Ltd.	0.00	0.00
Pizhou Jiangshan Wood Co., Ltd.	0.00	0.13
Shandong Good Wood Imp. and Exp. Co., Ltd.	0.00	0.89
Xuzhou Shengping Imp. and Exp. Co., Ltd.	0.00	0.62
Zhejiang Dehua TB Import & Export Co., Ltd.	33.70	17.37
All Other Exporters	181.81	127.36

PRODUCT

Product definition

[27] The CBSA defined the subject goods as follows:

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11 Exhibit NQ-2020-002-04 at 10-13.

12 Subsection 2(1) of *SIMA* defines "insignificant," in relation to an amount of subsidy, as an amount that is less than one percent of the export price of the goods.

13 Exhibit NQ-2020-002-04 at 10-13.

14 Exhibit NQ-2020-002-04B at 4.

15 Exhibit NQ-2020-002-04 at 26.

> 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 (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 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).
>
> The subject goods 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.[16]

Additional information

[28] The CBSA provided the following additional information with respect to the product, its production process and its use:

> [32] The following is a brief explanation of certain key terms:
>
> (a) Decorative and other non-structural plywood: 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.
>
> (b) Veneer: a slice of wood which is cut, sliced or sawed from a log, bolt, or flitch. To be called a "veneer", the slice of wood would generally be 6 mm or less in thickness. The face and back veneers are the outermost veneer of wood on either side of the core irrespective of additional surface coatings or covers as described below.

16 *Ibid.* at 10-11.

> (c) Cores: The core of decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to veneer core platforms (consisting of one or more veneers of hardwood or softwood), particleboard, or medium-density fiberboard (MDF).
>
> (d) Veneer core platforms: are cores composed of hardwood or softwood veneers. A veneer core platform would consist of at least two plies of wood. A veneer core platform may also be called a veneer core blank. A veneer core platform is itself covered by the product definition when the veneer core platforms are for the production of decorative and other non-structural plywood, and are themselves included as subject goods. The other types of cores (e.g. particleboard, MDF) on their own are not covered by the product definition. Decorative and other non-structural plywood which are made with those other cores are covered by the product definition.

[33] Other than the products excluded from the product definition, all decorative plywood is included within the scope of these investigations regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or cover(s) obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: ultra-violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of non-structural and decorative plywood may be sanded; smoothed or given a "distressed" appearance through such methods as hand-scraping or wire brushing.

[34] Decorative plywood is primarily manufactured as a panel. The most common panel sizes are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches). However, these panels are often cut-to-size by the manufacturer in accordance with a customer's requirements. The most common thicknesses of the panels range from 3.2 mm (1/8 inch) to 25.4 mm (1 inch). Regardless of the actual dimensions, all products that meet the production definition are included as subject goods.

[35] For further clarity regarding the cores, particle boards and MDF boards on their own (i.e., a particle board core or an MDF core) are not covered by the product definition. However, decorative plywood that includes a particle board core or MDF core or veneer core, or a combination of veneer, MDF and particleboard as the core, is covered by the product definition. Separately, a veneer core platform on its own is covered by the definition. A veneer core platform consists of a series of wood plies. The key distinction between a veneer core platform and decorative plywood is that decorative plywood generally has, as its outer plies, wood plies which are usually of a higher quality for their appearance.

[36] Decorative plywood is sometimes referred to by other terms, e.g., "hardwood plywood", "plywood" or "engineered wood." Regardless of the particular terminology, all products that meet the product definition are intended for inclusion within the product definition and are Subject Goods.

[37] Finished plywood which is used as flooring is excluded from the product definition. Separately, construction-grade plywood is used in subflooring. Since this is structural

plywood, it is not covered by the product definition. However, the underlayment (a thin panel installed above the subflooring) is not structural and is not used as flooring, and therefore falls within the product definition.

[38] PFF, also known as PSF, as described in the product definition exclusion section, is excluded from the product definition. This product is a film-faced plywood for use in concrete forming.

[39] Part (e) of the exclusions excludes laminated veneer lumber door and window components. Conditions associated with this exclusion ensure that only legitimate door and window components are excluded.

[40] In the context of this product definition, "non-structural" plywood refers to plywood which does not meet the requirements of a "structural" plywood, but is also not "decorative" in its application. These products are sometimes referred to as "utility panels" or "industrial panels." Generally, these products would not have a thin face veneer. Non-structural plywood is used in applications such as shelving, garage cabinets, or dog houses. This type of plywood could also be used as "framestock" for the frames of sofas. It could even be possible that some manufacturers could use these for the interiors of cabinets or furniture if the plywood will be painted.

[41] Most decorative plywood is produced on a custom basis. The production process is highly flexible and can produce goods to exact customer specifications. While some distributors may stock inventory for purchase by end-users, the typical purchase of decorative plywood is made in advance of production, on a spot (as opposed to contractual) basis.

[42] Decorative plywood is generally described by the number of plies, overall thickness, width, length, species of face ply, grade of face and back ply, pattern or type of cut of face ply, and type of core.

[43] Decorative plywood is not required to meet a standard or certification. There is a voluntary (not mandatory) standard call the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2016 (current version). In contrast, structural plywood (which is not subject) must be certified as it is intended to be used for construction applications; it is manufactured to meet U.S. Products Standard PS 1-09, PS 2-09, or PS 2-10 for Structural Plywood.

[44] Because decorative plywood is typically used for decorative purposes, the appearance of the face ply, and, where exposed, the back ply, is often an important feature of the plywood. For this reason, grades are assigned to the face and back plies which encompass such characteristics as colour streaks or spots, colour variations, burls, and pin knots. Some manufacturers offer proprietary or custom grades. However, the consensus grading standards are set forth in ANSI/HPVA HP-1-2016 (current version).

[45] The face ply is the side of the product that is exposed to view after installation. Face grades are delineated as "AA", "A", "B", "C", "D" and "E", where "AA" would have the best looking veneer face and "E" would have the worst looking veneer face (e.g. lots of knots in the wood). A veneer face with a higher grade (e.g. "AA") would generally entail a higher price compared to a veneer face with a lower grade (e.g. "E"). Wood species commonly used

for the face veneer include oak (red and white), birch, maple, ash, pine, walnut, southern pine, cherry, lauan, poplar, alder and numerous tropical hardwood species such as mahogany and Brazilian Cherry (also referred to as Jatoba). Bamboo may also be used for the face ply.

[46] Back grades are delineated as “1”, “2”, “3” or “4” (also listed in descending order of quality of grade).

[47] Decorative plywood is generally made from hardwood trees (i.e. deciduous or non-coniferous trees), but may also be made from softwood trees. Structural or construction plywood is generally made from softwood trees (i.e., coniferous trees).

[48] The manner in which a log is cut determines the appearance of the wood grain in the resulting veneers. This is of particular importance for the face ply, and where exposed, the back ply. The most common cuts for decorative plywood are rotary, quarter sliced, plain-cut (or flat-cut), and rift-cut.

Production Process

[49] As described above, the production of decorative plywood involves laminating a decorative face of veneer to different types of core. The production of the face veneer is done with a process of its own and mainly with different equipment. All decorative plywood producers must source their face veneer from face veneer producers. Some decorative plywood producers also produce the face veneers (so they do not need to source it externally), but the face veneer will always be made either at another location or on a different production line.

[50] There are two types of decorative plywood manufacturers: 1-step producers (CFP at its Hearst facility and Rockshield) and 3-ply producers (Husky, CFP at Kitchener and Saint-Casimir, and the other domestic producers).

[51] Notwithstanding slight variations that might exist from one manufacturer to another, decorative plywood is generally produced through the same basic production process in all countries.

3-Ply Producers

[52] These producers externally source all their cores. The cores may be particle board, MDF or veneer core blanks. These blanks are also called platforms. The platforms are basically panels, which do not yet have an external ply of decorative veneer.

[53] The production process is relatively straightforward. Veneers are peeled or cut from logs into sheets. The core (regardless of whether it is veneer, particle board or MDF) will pass through a glue spreader. The face and the back veneer are then applied to the glue-covered core. This “wood sandwich” is then sent to a press where heat and pressure will laminate the three components together. The laminated panel will then be trimmed, sanded, and inspected.

[54] While this is the only way to produce decorative plywood with particle core or MDF core, there is another way to produce veneer core panels, discussed below.

[55] 3-ply producers may also be referred to as 2-step producers. Chinese producers are generally 3-ply producers.

1-Step Producers

[56] Instead of externally sourcing their veneer core platform, some producers have the equipment to produce each ply of the core directly from logs. These plants are always located close to the log harvesting locations. For example, CFP's plant is located in Hearst, Ontario, in the heart of the boreal forest.

[57] Producing core ply requires the logs to be rotary peeled on a lathe. The long rolls of thick veneer produced this way are then cut to size and dried in a veneer dryer. When ready, these inner plies of veneer will then pass through a glue spreader, they will be stacked together along with the decorative face and back veneer. This multiple layered "wood sandwich" is then sent to a press where heat and pressure will laminate all these plies together.

[58] The laminated panel will then be trimmed, sanded, and inspected.

[59] Since the inner plies and the face and back plies are laminated at the same time, this process is also called one step production and therefore these producers are called 1-step producers.

Product Use

[60] Decorative plywood has a variety of end uses, including kitchen cabinets, furniture, wall paneling and architectural woodwork, seat backs, table and desk tops, drawer sides, television and stereo cabinets, furniture components, trailer components, and other uses.

[61] However, in all cases, as a result of the type of glue used in its production, it is intended for interior (indoor) uses and is distinguishable from construction plywood, which is used for structural applications and is suitable for outdoor use.[17]

[Footnotes omitted]

PRELIMINARY ISSUES

Scope of the product definition

[29] In their reply submissions on the issues of like goods and classes of goods (following the Tribunal's invitation for parties to file early submissions on these issues), the Importers claimed that the Complainants' submissions went beyond addressing the questions posed by the Tribunal and inappropriately attempted to expand the scope of the product definition. This prompted additional rounds of submissions by both the Complainants and the Importers. The Tribunal ruled on this issue on December 1, 2020, providing its interpretation of the product definition and indicating that full

17 Exhibit NQ-2020-002-04B at 9-13.

reasons for its decision would form part of its statement of reasons issued at the conclusion of the inquiry.[18] These reasons are as follows.

[30] The Importers alleged that the Complainants' submissions on like goods and classes of goods inappropriately attempted to expand the scope of the product definition by including veneer core platforms that are not for the production of decorative and other non-structural plywood. According to the Importers, if veneer core platforms were always included in the product definition regardless of end use, the product definition's explicit and conditional inclusion of veneer core platforms would be redundant.

[31] The Importers contended that, because veneer core platforms are "cores" as defined in the CBSA's additional product information, they cannot be "other non-structural plywood" unless and until additional wood veneers are added. The Complainants' reading of the product definition would, according to the Importers, unlawfully read out of the product definition the requirement that subject goods must have "two or more layers or plies of wood veneers *and a core*" [emphasis added] to which these veneers are bonded.

[32] In response, the Complainants maintained that veneer core platforms that are not for the production of decorative and other non-structural plywood are in fact "other non-structural plywood" and are therefore covered by the product definition. They submitted that the inclusion of veneer core platforms for the production of decorative and other non-structural plywood in the product definition was to avoid the circumvention issues that arose in the United States following the imposition of anti-dumping and countervailing duties on hardwood plywood imports from China.

[33] According to the Complainants, the Importers' position fails to give meaning to the term "other non-structural plywood." They submit that plies of hardwood or softwood glued together (with thicker and less aesthetically pleasing outer veneers) are plywood that is neither decorative nor structural, and thus constitute "other non-structural plywood." In the Complainants' view, the express inclusion of veneer core platforms does not detract from, or narrow, the scope of the goods otherwise covered by the product definition, which includes all "other non-structural plywood" that is not expressly excluded.

[34] In light of the arguments raised by the Importers, it was necessary for the Tribunal to ascertain the scope of the goods to which the CBSA's preliminary determination applied in order to properly conduct its inquiry and to ensure that it collected the correct information from producers, importers and purchasers. The Tribunal has jurisdiction to interpret the wording of the CBSA's definition of the subject goods in order to determine the goods to which it actually applies.[19] The Tribunal's authority to ascertain the scope of the subject goods was most recently confirmed by the Federal Court of Appeal in *Fluor Canada Ltd. v. Supreme Group LP*.[20]

[35] In its determination issued to the parties on December 1, 2020, the Tribunal indicated that, to the extent that veneer core platforms may, on their own, be considered decorative and other non-structural plywood, they need not be "for the production of decorative and other non-structural plywood" in order to fall within the scope of the product definition. In other words, the Tribunal found that, properly interpreted, the product definition covers both (1) veneer core platforms for the

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18 Exhibit NQ-2020-002-27 at 2.

19 *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*] at para. 58.

20 2020 FCA 58 at para. 15.

production of decorative and other non-structural plywood, *and* (2) veneer core platforms that are for other uses and which meet the definition of "other non-structural plywood."

[36] In coming to this determination, the Tribunal considered that the words of the definition of the subject goods must be ascribed their contextual and ordinary meaning.[21] In the Tribunal's view, the product definition, based on the ordinary meaning, in context, of its terms, includes the reference to veneer core platforms for greater certainty, to make clear that a plywood panel would be subject if it met the product definition, regardless of whether additional veneers were added to the panel later. Further, this reading of the product definition avoids the potentially impossible task of distinguishing between (1) other non-structural plywood, and (2) veneer core platforms that are not for the production of decorative and other non-structural plywood.

[37] Practically speaking, a product considered as a veneer core platform by virtue of its intended downstream use may also, at the same time, itself be considered multilayered plywood with its own core and layers or plies of wood veneers on the face and back (provided there are a sufficient number of layers to meet the product definition of "other non-structural plywood"). For example, a product with five plies of wood veneers could be considered a veneer core platform for the production of decorative or other non-structural plywood, if additional plies of wood veneer are to be added later. If no additional plies of wood veneers are to be added, the same panel with five plies of wood veneers could already be considered as meeting the definition of "other non-structural plywood," with the three middle plies considered as the core and the two remaining plies being the outer plies.

[38] This interpretation does not, as the Importers alleged, unlawfully read out of the product definition the requirement that subject goods must have "two or more layers or plies of wood veneers *and a core*." As the Complainants highlighted, the CBSA's statement of reasons for its preliminary determinations makes a subtle distinction between the definitions of "cores" and "veneer core platforms."[22] The result of this distinction and the product definition itself is that a product made of two plies of wood veneers could not qualify as decorative plywood or other non-structural plywood, as at least three plies are required—two or more plies of wood veneers and a core. A product with two plies could, however, be included in the product definition as a veneer core platform, if it is used for the production of decorative plywood or other non-structural plywood. This distinction also explains the inclusion of veneer core platforms in the product definition, meaning that it is not redundant as the Importers alleged.

[39] Therefore, for all the reasons above, the Tribunal dismissed the Importers' arguments that the Complainants attempted to improperly expand the scope of the product definition. Following the issuance of its determination on the scope of the product definition to the parties on December 1, 2020, staff of the Secretariat to the Tribunal communicated with certain questionnaire respondents to inform them of the determination and to request that, if this had any impact on their previously submitted responses, these responses be revised accordingly.

Alleged inadequacy of the Tribunal's investigation report

[40] On December 29, 2020, the Importers expressed concern regarding the adequacy of the information respecting domestic production and sales in the Tribunal's investigation report. The investigation report indicated that, of the twelve domestic producers identified by the Complainants,

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21 See *Steel Piling Pipe* (30 November 2012), NQ-2012-002 (CITT) at para. 118.

22 Exhibit NQ-2020-002-01A at para. 26.

only Columbia, Husky and Rockshield fully replied to the Tribunal's producers' questionnaire, with Birchland only providing information on its sales and Les Spécialités MGH Inc. responding that it did not produce goods meeting the product definition during the POI.[23] As no useable information could be obtained from the remaining seven domestic producers, the Complainants' estimated domestic production and sales for these producers (the Estimated Producers) were included in the investigation report.[24]

[41] The Importers submitted that the use of these unverified estimates, which represent a large proportion of the total volume of domestic sales from domestic production and market share losses presented in the investigation report, raised a number of concerns related to the Tribunal's ability to fulfil its statutory mandate in this proceeding. The Importers therefore requested that the Tribunal issue orders compelling the Estimated Producers to respond to the producers' questionnaire.

[42] On December 31, 2020, the Tribunal denied the Importers' request but indicated that their submissions opposing a finding of injury could include any arguments on how the domestic production and sales figures for the Estimated Producers should, or should not, be taken into account in the Tribunal's injury analysis, as well as any arguments on which domestic producers should constitute the "domestic industry."

[43] As part of their submissions opposing a finding of injury, the Importers repeated their prior submissions on this issue and added that relying on the unverified estimates in the investigation report, which estimates were originally provided by the Complainants to the CBSA, would turn what is intended to be a fact-driven exercise into one that is presumptive and speculative. They submitted that the Tribunal should therefore acknowledge the deficiency of the record and find accordingly, or use its full powers to obtain the missing information from the Estimated Producers that are still in business and re-issue the investigation report. Finally, the Importers suggested that the Tribunal should infer from the Estimated Producers' disinterest that a very sizeable portion of the domestic industry does not consider itself to have been materially injured, or threatened, by subject imports.

[44] The Complainants replied that their estimates are reliable as they were prepared by Mr. Gaetan Lauzon of the CHPVA, who has over 40 years of experience in the decorative plywood industry in Canada, and were based on what they submitted are reasonable assumptions. They added that, since the estimates include actual domestic sales volumes for one of the Estimated Producers for 2017-2019 (ProPly Custom Plywood Inc.) and that two other of these producers ceased operations in Canada in 2020 (Panneaux Optimum Inc. and Corporation Internationale Masonite—Megantic), the use of the Complainants' estimates by the Tribunal was reasonable. Finally, the Complainants submitted that no adverse inference should be drawn with respect to the domestic producers who did not provide a questionnaire response as there is a general reluctance in the industry to take sides in this proceeding and many of these producers lacked the financial and human resources required to provide the requested information on a timely basis.

[45] Despite repeated attempts, staff of the Secretariat to the Tribunal were unable to obtain responses to the Tribunal's producers' questionnaire from the Estimated Producers. As a result, and

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23 Exhibit NQ-2020-002-06B at 6, 9. Birchland's total domestic production was assumed to be the sum of its domestic and export sales.

24 See Exhibit NQ-2020-002-06B, Tables 12, 17-20. The Tribunal included the Complainants' estimates for 2017, 2018 and 2019, but had to make its own estimates for interim 2019 and interim 2020 using Columbia, Husky and Rockshield's share of sales for 2019 (see Exhibit NQ-2020-002-06B at 6).

in order to help establish whether the other domestic producers' collective production of the like goods constituted a major proportion of the total domestic production of the like goods and to get a sense of the approximate size of the Canadian market, a decision was made to include the Complainants' estimated domestic production and sales for the Estimated Producers in the investigation report. In addition, these estimates were only included in, or had an impact on, a limited number of tables in Part IV - Volume of the investigation report.[25] Moreover, since the estimates were presented separately, the parties were easily able to subtract or remove them from the affected tables for the purpose of making submissions on the question of injury. Thus, their inclusion did not obscure anything from the parties' view or raise any procedural fairness concerns.

[46] The Tribunal had denied the Importers' request for it to issue orders compelling the Estimated Producers to respond to the producers' questionnaire, as it did not believe that, in the particular circumstances of this case, the absence of such responses limited its ability to fulfil its statutory mandate to inquire into whether the dumping and subsidizing of the subject goods had caused injury, or were threatening to cause injury, to the "domestic industry." Subsection 2(1) of *SIMA* defines "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 . . .*" [emphasis added].

[47] There is therefore no legal requirement for the Tribunal to compel all domestic producers to provide information and for it to make a finding on this basis. In other words, an inquiry with less than full participation or cooperation from domestic producers is fully contemplated under *SIMA*. To be clear, staff of the Secretariat to the Tribunal typically strive to obtain information from all domestic producers and, in this case, they asked all twelve known potential domestic producers to respond to questionnaires and followed up with each one. Had they received any useable information from the Estimated Producers, that information would have been included in the investigation report. However, as will be discussed further below,[26] the Tribunal was satisfied, on the basis of the evidence on the record, that the responses it did receive to its producers' questionnaire were from domestic producers whose collective production of the like goods constituted a major proportion of the total domestic production of the like goods. There was thus no need to order the Estimated Producers to respond to the producers' questionnaire.

[48] As the Estimated Producers were not included as part of the "domestic industry" for the purpose of the Tribunal's injury analysis, the question as to whether or not these producers considered themselves to have been materially injured, or threatened, by subject imports is irrelevant.

Request for the late filing of additional evidence

[49] On January 22, 2021, the Complainants requested, purportedly in accordance with the Tribunal's notice-of-matters-arising process, that a document containing email exchanges between Columbia and another company be added to the Tribunal's record. They explained that, since the emails were in respect of new business that had arisen that same week, they were not available at the time the Complainants filed their evidence or reply evidence. They noted that older emails in the

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25 The estimates were included in, or had an impact on, Tables 12 (Production - Volume), 16 (Imports Relative To Domestic Production And Domestic Sales Of Domestic Production), and 17-20 (Market Volume, Volume – Percent Change, Volume – Percent Share and Volume – Percentage Point Change).

26 See the section entitled "Domestic Industry."

same thread were already on the Tribunal's record and that the new emails therefore provided an update for the Tribunal.

[50] On January 25, 2021, the Importers opposed this request. They argued that the Tribunal had not established a procedure in its inquiry schedule for "matters arising" and that, in any event, the Complainants' request bore no resemblance to the "matters arising" procedure set out in rule 61.2 of the *Canadian International Trade Tribunal Rules*.[27] They added that the document submitted by the Complainants is, at most, confirmatory of evidence already filed and that its submission is simply another form of case splitting.

[51] The Tribunal denied the Complainants' request at the start of the hearing, on January 28, 2021.[28] While the Tribunal provided some reasons for its decision at that time, it indicated that it would deal with this matter in greater detail in its statement of reasons.[29]

[52] As noted by the Importers, the "notice of matters arising" procedure stipulated under rule 61.2 of the *Rules* allows a party to request supplementary information from *another party* in response to matters arising from materials filed by that *other party*. This was evidently not the case here, as the Complainants were seeking to have added to the record their own supplementary information. In the Tribunal's view, this was an improper attempt to use the notice-of-matters-arising process as a means to make a late filing.[30]

[53] Even if the Complainants' request had been properly framed as a request seeking leave of the Tribunal for the late filing of additional evidence, it would have been denied for two reasons. First, the request was clearly late as the evidence indicates that five of the seven "new" emails had been available for about a year, but had not yet been placed on the record.[31] These emails could easily have been filed earlier in the proceedings, e.g. with the Complainants' initial submissions and evidence. Second, in terms of their content, these seven new emails do not add anything novel or of value to the information that is already on the record. For these reasons, the Tribunal declined to add the emails to the record.

Allegations of case splitting

[54] On January 25, 2021, the Importers asked the Tribunal to disallow, or expressly disregard, certain of the Complainants' reply submissions and evidence filed on January 14, 2021. They alleged that the Complainants had disregarded the proper scope of reply evidence, which must be limited to what is necessary to respond to unanticipated issues that arise from the other party's evidence, and had effectively split their case by advancing arguments and evidence that they could have, and should have, brought forward in their initial submissions. The Importers also alleged that the sheer volume of materials filed as reply evidence, which in their view largely repeated earlier evidence, was itself an abuse of process.

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27 SOR/91-499 [*Rules*].

28 *Transcript of Public Hearing* at 7-8.

29 *Ibid.* at 10.

30 The Tribunal notes that its hearing procedures for this inquiry, which were modified due to the COVID-19 pandemic, dispensed with the notice-of-matters-arising process, as a question-and-answer process was put in place instead. Both of these processes are limited to requests for information or clarification of evidence or materials submitted by *other parties*.

31 See Exhibit PI-2020-002-03.01 (protected) at 490-491 for the emails that are already on the record, with the most recent being dated January 21, 2020. Five of the seven new emails are dated January 29 or 30, 2020.

[55] On January 27, 2021, the Complainants responded that their reply submissions and evidence were filed in direct reply to the Importers' submissions opposing a finding of injury, which contained several allegations that the Complainants could not have fully anticipated when they filed their initial submissions. They provided a brief explanation of the reasons why each of the reply submissions and evidence designated as "improper" by the Importers were filed, and they requested that the Tribunal disregard the Importers' allegations. The Complainants added that, in light of the COVID-19 pandemic and the lack of oral witness testimony in these proceedings, the Tribunal needs to rely more than usual on parties' written submissions.

[56] The Tribunal denied the Importers' request at the start of the hearing, on January 28, 2021.[32] Just as it did with its decision to deny the Complainants' request for the late filing of additional evidence, it indicated that it would deal with this matter in greater detail in its statement of reasons.[33]

[57] Having reviewed the disputed reply submissions and evidence, the Tribunal is of the view that the Complainants did not disregard the proper scope of reply evidence or split their case as claimed by the Importers. There is therefore no reason to disallow or disregard their reply submissions. At the time they filed their initial submissions, the Complainants could not have fully anticipated all of the arguments that the Importers would eventually raise. The Tribunal finds that the Complainants' reply submissions and evidence were filed in direct reply, and were rationally connected, to the Importers' arguments and evidence.

[58] While the Importers reference case law on the scope of reply evidence, this jurisprudence is from the Federal Court, which conducts proceedings of a different nature than those of the Tribunal. The Tribunal is an administrative body and its procedures are more flexible than those of a court. This flexibility allows it to accommodate complex proceedings under *SIMA*, which involve multiple parties, comprehensive data collection, and the consideration of numerous issues of fact and law within exigent time constraints. Given the complexity of an inquiry such as this, it is not always possible for complainants or parties supporting a finding of injury to fully anticipate all the arguments that could be raised by the parties opposed to a finding.

[59] While the Tribunal acknowledges that the Complainants' reply evidence was voluminous in this case and that parties generally ought to exercise restraint regarding the amount of evidence they file, it also appreciates the fact that this case involved a new product for the Tribunal for which a greater level of information was required. In the Tribunal's opinion, the volume of evidence filed by the Complainants does not, therefore, rise to the level of an abuse of process as alleged by the Importers.

LEGAL FRAMEWORK

[60] The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping and subsidizing of the subject goods (i.e. the goods for which the CBSA did not terminate its dumping and subsidizing investigations) have caused injury or retardation[34] or are threatening to cause injury, with "injury" being defined, in subsection 2(1), as ". . . material injury to a domestic

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32 *Transcript of Public Hearing* at 8-10.

33 *Ibid.* at 10.

34 Subsection 2(1) of *SIMA* defines "retardation" as ". . . material retardation of the establishment of a domestic industry." As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.

industry." In this regard, "domestic industry" is defined in subsection 2(1) by reference to the domestic production of "like goods."

[61] Accordingly, the Tribunal must first determine what constitutes "like goods." Once that determination has been made, the Tribunal must determine what constitutes the "domestic industry" for purposes of its injury analysis.

[62] Given that the CBSA has determined that the subject goods have been dumped and subsidized, the Tribunal must also determine whether it is appropriate to 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) in this inquiry.

[63] The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused material injury to the domestic industry. Should the Tribunal arrive at a finding of no material injury, it will determine whether there exists a threat of material injury to the domestic industry.[35] If the Tribunal reaches a negative conclusion on injury and threat of injury, it will not need to proceed with an examination of the product exclusions filed by Canusa, McCorry and Panoply.

[64] In conducting its analysis, the Tribunal will also examine other factors that might have had an impact on the domestic industry to ensure that any injury or threat of injury caused by such factors is not attributed to the effects of the dumping and subsidizing.

LIKE GOODS AND CLASSES OF GOODS

[65] In order for the Tribunal to determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause 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.[36]

[66] 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.

[67] 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 fulfil the same customer needs).[37] In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute "like goods" in relation to

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35 Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.

36 Should the Tribunal determine that there is more than one class of goods in this inquiry, 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 (F.C.).

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

each other. If those goods are "like goods" in relation to each other, they will be regarded as comprising a single class of goods.[38]

[68] As noted above, in its statement of reasons for its preliminary determination of injury, the Tribunal indicated that domestically produced decorative and other non-structural plywood of the same description as the subject goods were like goods in relation to the subject goods and that there was only one class of goods. However, the Tribunal stated that, during its final injury inquiry, it would 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.[39]

[69] Following the receipt of early submissions and supporting evidence from the Complainants and the Importers, both of which were in support of a single class of goods, the Tribunal determined that (1) decorative and other non-structural plywood and (2) veneer core platforms for the production of decorative and other non-structural plywood constituted a single class of goods. The Tribunal also determined that domestically produced goods of the same description were "like goods" in relation to the subject goods. The following are the Tribunal's reasons for these determinations.

[70] The Importers submitted that there is only one class of goods because both veneer core platforms and finished plywood have similar physical and market characteristics. They submitted that, while veneer core platforms that are used as an input in the production process of decorative and other non-structural plywood are not identical in all respects to finished plywood products, they are not sufficiently distinct to form two classes of goods, with the primary difference being the level of finishing that the goods have undergone. They added that there is also a single class of goods because there is no evidence that there is a domestic industry producing veneer core platforms for sales to unaffiliated entities.

[71] The Complainants similarly submitted that there is only one class of goods as veneer core platforms, decorative plywood, and other non-structural plywood all fall within the same continuum of goods, which range according to the thickness and aesthetics of the outer wood plies. They submitted that all goods within the continuum have similar physical and market characteristics, and that any differences within the continuum fall within a narrow band that does not justify dividing the goods into separate classes. In reply to the Importers' submissions, the Complainants referred to evidence indicating that Columbia and Rockshield produce, market and sell veneer core platforms in Canada to unaffiliated entities.

[72] The Tribunal is of the view that the question as to whether there is a domestic industry producing veneer core platforms for sales to unaffiliated entities is unrelated to the issue of classes of goods, which is only concerned with the goods' physical and market characteristics. In any case, there is evidence on the record indicating that Columbia and Rockshield produce veneer core platforms for sales to unaffiliated entities.[40]

[73] The Tribunal's decision regarding the scope of the product definition, which essentially found that the key distinguishing feature between veneer core platforms and "other non-structural

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38 *Aluminum Extrusions* at para. 115; see also *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

39 *Decorative Plywood PI* at para. 16.

40 Exhibit NQ-2020-002-23.02 at 11-12, 33; Exhibit NQ-2020-002-24.02 (protected) at 33; Exhibit NQ-2020-002-25.01 at 3-5.

plywood" was their intended end use, has mainly addressed the concerns that were articulated by the Tribunal in its statement of reasons for its preliminary determination of injury and which had led it to seek early submissions on the issue of classes of goods.

[74] The Tribunal agrees with the Complainants and the Importers that there is a single class of goods which includes both (1) decorative and other non-structural plywood and (2) veneer core platforms for the production of decorative and other nonstructural plywood. There is no evidence of a dividing line that would clearly separate two classes of goods. Rather, as the Complainants argued, the goods appear to fall at various points along a continuum within a single class of goods.[41]

[75] On the less aesthetically pleasing end of the spectrum, veneer core platforms and utility or industrial panels can be used either as cores for further processing or as end products used primarily in hidden applications.[42] At the other end of the spectrum are more aesthetically pleasing decorative plywood panels, ranging in grade from "AA" to "E", which are end products primarily used in visible applications.

[76] The evidence indicates that, regardless of where they fall along the continuum, the goods have the same or similar methods of production,[43] a similar composition and general appearance,[44] and are sold through the same distribution channels.[45] While prices and end uses vary from one end of the continuum to another, the goods are substitutable to some extent, especially between contiguous grades.[46]

[77] The Tribunal also finds that its conclusion that there is a single class of goods has no impact on the issue of like goods and the finding that it made in this regard in its preliminary injury inquiry. Further, no evidence or submissions on the record suggest a different outcome on this issue. The Tribunal will therefore conduct its inquiry on the basis that domestically produced decorative and other non-structural plywood of the same description as the subject goods are "like goods" in relation to the subject goods and that there is a single class of goods.

DOMESTIC INDUSTRY

[78] Subsection 2(1) of *SIMA* defines "domestic industry" as follows:

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41 The Tribunal has previously accepted that a range of products may fall at various points along a continuum and, despite differences in price and certain variable characteristics, nonetheless be a single class of goods. See, for example, *Photovoltaic Modules and Laminates* (20 July 2015), NQ-2014-003 (CITT) at para. 40; *Concrete Reinforcing Bar* (9 January 2015), NQ-2014-001 (CITT) at paras. 66-67; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 50.

42 Exhibit NQ-2020-002-23.01 at para. 38; Exhibit NQ-2020-002-24.02 (protected) at 33.

43 Exhibit NQ-2020-002-23.02 at paras. 20-23.

44 *Ibid.* at paras. 27-29, 32-34; Exhibit NQ-2020-002-23.03 at paras. 12-15. See also photographs at Exhibit NQ-2020-002-23.02 at 31, 33.

45 Exhibit NQ-2020-002-23.02 at para. 40; Exhibit NQ-2020-002-23.03 at para. 20.

46 Both downward and upward substitutability are possible depending on ultimate end use and price. For example, a decorative grade panel could be used as framestock for furniture instead of a lower grade panel, or a veneer core platform laminated with paint could be used for kitchen cabinets instead of a decorative panel. See Exhibit NQ-2020-002-23.02 at para. 41; Exhibit NQ-2020-002-24.02 (protected) at paras. 42-44; Exhibit NQ-2020-002-23.03 at paras. 18-19.

> . . . 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.

[79] The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.[47]

[80] As previously noted, of the twelve domestic producers identified by the Complainants, only Columbia, Husky and Rockshield fully replied to the Tribunal's producers' questionnaire, with Birchland providing partial information and another company indicating that it did not produce goods meeting the product definition during the POI.

[81] On the basis of the evidence on the record, the Tribunal finds that Columbia, Husky, Rockshield and Birchland's collective production of the like goods account for a major proportion of the total domestic production of the like goods and that these producers therefore constitute the domestic industry for the purposes of this inquiry.[48] As mentioned above, the assessment of total domestic production of the like goods in this case includes the Complainants' estimated domestic production for the Estimated Producers (i.e. those seven producers from which the Tribunal was unable to obtain any information), which the Tribunal considers to be a sufficiently reliable estimate for the purpose of establishing the composition of the domestic industry in this inquiry.[49] In any case, even if domestic production for the Estimated Producers was actually double the estimated amount, Columbia, Husky, Rockshield and Birchland's collective production of the like goods would still account for more than 50 percent of the total domestic production of the like goods over the POI.[50]

[82] As Birchland did not provide any financial results or information related to other performance indicators, the impact of the dumping and subsidizing of the subject goods on these indicators can only be assessed with respect to Columbia, Husky and Rockshield, which the Tribunal considers to be sufficiently representative of the domestic industry as defined. Again, even with a doubling of the estimated production, Columbia, Husky and Rockshield's collective production of the like goods would still account for approximately 50 percent of the total domestic production of the like goods over the POI.

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47 The term "major proportion" means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (F.C.A); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (F.C.A.); Panel Report, *China – Automobiles* (*US*), WT/DS440/R at para. 7.207; Appellate Body Report, *EC – Fasteners* (*China*), WT/DS397/AB/R at paras. 411, 412, 419; Panel Report, *Argentina – Poultry* (*Brazil*), WT/DS241/R at para. 7.341.

48 Exhibit NQ-2020-002-07B (protected), Table 12.

49 See Exhibit NQ-2020-002-A-17 at paras. 9-10 for an explanation of how the CHPVA estimated domestic production for the Estimated Producers.

50 The Tribunal has previously stated that it is not necessary for a domestic producer or producers to be responsible for 50 percent or more of total domestic production in order for it to find that they meet the "major proportion" threshold. See *Hot-rolled Carbon Steel Plate and High-strength Low-allow Steel Plate* (27 December 2018), RD-2016-002 (CITT) at para. 33.

[83] The Importers contended that a meaningful but unknown share of the like goods sold by domestic producers is made by applying face and back veneers in Canada to cores imported from abroad. They argued that this raises an important question as to whether the resulting panels can be considered domestically produced plywood.

[84] The Complainants replied that making decorative plywood using imported veneer core platforms constitutes domestic production within the meaning of *SIMA*. They submitted that, in order to determine what constitutes "production" in Canada, the Tribunal takes guidance from the Supreme Court's decision in *York Marble*,[51] which considers giving material new forms, qualities and properties or combinations as the manufacture or production of articles. They submit that the process of adhering veneers to cores provides new forms to the product, new qualities and properties, and new combinations.

[85] The Tribunal agrees with the Complainants that adding veneers to imported cores constitutes domestic production of decorative and other non-structural plywood. The Tribunal considers that the level of work involved in adhering veneers to cores is not dissimilar to the work performed by steel service centres who cut plate from coil and which the Tribunal has found appropriate to include within the scope of the domestic industry producing hot-rolled carbon steel plate.[52]

[86] As such, no adjustments to domestic production figures are necessary and the Tribunal finds, as stated above, that Columbia, Husky, Rockshield and Birchland constitute the domestic industry for the purposes of this inquiry.

CROSS-CUMULATION

[87] This inquiry involves subject goods that were found by the CBSA to be both dumped and subsidized. 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,[53] the effects of dumping and subsidizing of the same goods from a particular country are manifested in a single set of injurious price effects and it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, the effects are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively.

[88] Given the above, the Tribunal's usual practice is to make a cumulative assessment of the injurious effects of goods that are both dumped and subsidized. No party submitted that the dumping and subsidizing of the subject goods should be considered separately in this proceeding. Therefore, the Tribunal will make a cumulative assessment of the effects of the dumping and subsidizing of the subject goods.

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51 *The Queen v. York Marble, Tile and Terrazzo Ltd.*, [1968] SCR 140 at 145, 1968 CanLII 112 (SCC).

52 *Hot-rolled Carbon Steel Plate* (20 May 2014), NQ-2013-005 (CITT) [*Hot-rolled Carbon Steel Plate*] at paras. 52-53.

53 See, for example, *Unitized Wall Modules* (3 July 2019), RR-2018-002 (CITT) at para. 47; *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) [*Silicon Metal*] at para. 59.

INJURY ANALYSIS

[89] Subsection 37.1(1) of the *Special Import Measures Regulations*[54] prescribes that, in determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped or subsidized goods, their effect on the price of like goods in the domestic market, and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping and subsidizing of the goods have caused injury.

[90] Before proceeding with its injury analysis, the Tribunal will provide a general overview of the decorative and other non-structural plywood market in Canada. This helps to provide context for the Tribunal's injury analysis, especially with respect to the issue of causation, which proved to be of central importance in this inquiry. The Tribunal will also address the issue of long-term recurrent injury allegedly suffered by the domestic industry, as well as how data for the goods of those exporters for which the CBSA terminated its investigations were presented in the Tribunal's investigation report.

Overview of the Canadian decorative and other non-structural plywood market

[91] The Canadian industry for decorative and other non-structural plywood is interconnected and operates at different levels. The majority of both domestically produced like goods and subject goods are sold to distributors, with lesser volumes being sold to retailers or directly to end users.[55] Domestically produced plywood and Chinese plywood are therefore distributed through the same channels.[56]

[92] The upstream suppliers to the Canadian decorative and other non-structural plywood industry are sawmills, which harvest and cut logs, and veneer producers, which peel the logs into veneers.[57] Upstream suppliers are sometimes affiliated with, or integrated within, companies that produce the resulting plywood panels.[58] Domestic plywood producers may also buy imported cores, to which they attach domestically-produced veneers.[59]

[93] The construction and renovation industry is the main driver for demand of decorative and other non-structural plywood, with cabinet makers forming the largest category of end users for decorative plywood.[60] Cabinet manufacturing tends to require two broad categories of plywood: "fancy" plywood for the exterior and lower grades of plywood for the interior.[61] Other end uses of decorative and other non-structural plywood include furniture, wall paneling, architectural

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54 SOR/84-927 [*Regulations*].
55 Exhibit NQ-2020-002-A-07 at para. 47; Exhibit NQ-2020-002-07B (protected), Table 33.
56 Exhibit NQ-2020-002-06B, Table 6.
57 Exhibit NQ-2020-002-B-07 at para. 35.
58 *Ibid.* at paras. 33-35; Exhibit NQ-2020-002-A-07 at para. 22.
59 Exhibit NQ-2020-002-E-03 at para. 4.
60 Exhibit NQ-2020-002-H-11 at para. 44; Exhibit NQ-2020-002-B-09 at paras. 17, 19.
61 Exhibit NQ-2020-002-F-05 at para. 23.

woodwork, stair parts, bathroom vanities, interiors of recreational vehicles and pleasure boats, coffins, speakers, and shelving.[62]

[94] Decorative and other non-structural plywood varies according to panel size, thickness, core type, outer veneer species and grade, cut, and finishing techniques.[63] With respect to veneers, each log yields a variety of grades, ranging from "A" to "E" (face grades) and from "1" to "4" (back grades).[64] Domestic producers often include a percentage of "shop grade" (i.e. lower grade) plywood in an order, at a discounted rate.[65]

[95] Price is one of the most important factors in purchasing decisions for decorative and other non-structural plywood, although not the only factor. In responses to the Tribunal's questionnaire, the most commonly cited reasons for not purchasing the lowest-priced product were delivery time and terms, product quality, long-term supply relationship, reliability of supply, and the need for certain technical specifications.[66] More than half of respondents also indicated that they were willing to pay a premium for domestically produced plywood ranging from 15 to 60 percent.[67]

Alleged long-term recurrent injury

[96] The Complainants submitted that the injury suffered by the domestic industry began "many years ago" and has continued throughout the POI. They submitted that there is no legal requirement for injury to have started or worsened over the POI, or for the domestic industry to file a complaint within a certain period of time. In their view, continued injury that began in a period prior to the POI and persists during the POI is still injury within the meaning of *SIMA*. Put another way, the Complainants submitted that the test is that of injury, not increasing injury.[68]

[97] The Importers submitted that the now decades-long historical effects of low-priced Chinese imports have nothing to do with subject goods and occurred well outside the POI.

[98] Essentially, the Complainants' position is that the domestic industry was already being injured by the dumping and subsidizing of the subject goods in 2017, at the beginning of the POI, and that this injury needs to be taken into account by the Tribunal in its analysis. Indeed, in his statement of evidence, Mr. Lauzon explained how imports of Chinese plywood grew significantly between 2000 and 2015 and that, by 2010, a series of Canadian plant closures began as domestic producers faced what he claimed was tougher and tougher competition in a market flooded by low-priced imports from China.[69]

[99] While the Tribunal agrees that there is no explicit legal requirement for injury to have started or worsened over the POI in order for a domestic industry to benefit from the protection afforded by *SIMA*, there is a requirement to establish, on the basis of an objective examination of positive

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62 Exhibit NQ-2020-002-A-07 at para. 20.
63 *Ibid.* at para. 18.
64 Exhibit NQ-2020-002-C-17 at para. 6; Exhibit NQ-2020-002-D-17 at para. 5.
65 Exhibit NQ-2020-002-G-07 at para. 33; Exhibit NQ-2020-002-D-17 at para. 51; Exhibit NQ-2020-002-C-17 at para. 26.
66 Exhibit NQ-2020-002-06B, Table 9.
67 *Ibid.* The Tribunal notes that, according to Mr. Terry Evans of Rockshield, distributors may allow a domestic premium of up to 10 percent. See Exhibit NQ-2020-002-C-09 at para. 7.
68 *Transcript of Public Hearing* at 197-198.
69 Exhibit NQ-2020-002-A-07 at paras. 9-11.

evidence, that the dumping and subsidizing of the goods have *caused* injury.[70] In accordance with subsection 37.1(3) of the *Regulations*, the existence of a causal relationship between the dumping and subsidizing of the goods and the injury is established on the basis of the factors listed in subsection 37.1(1), which include the volume of the dumped or subsidized goods, their effect on the price of like goods in the domestic market, and their resulting impact on the state of the domestic industry, as distinguished from the effects of any other factors that may at the same time be affecting the domestic industry.

[100] As it would usually be difficult to assess these factors over a relatively brief period of time (i.e. over the CBSA's period of investigation, which usually tends to be one year in length), the Tribunal's practice is to select, at a minimum, a three-year POI in an injury inquiry, with the end of this period coinciding with the CBSA's period of investigation. The Tribunal collects extensive data for all relevant factors over the POI chosen for the inquiry in issue. This is consistent with the recommendation of the World Trade Organization (WTO) Committee on anti-dumping practices that "the period of data collection for injury investigations normally should be at least three years . . . ."[71] This approach allows the Tribunal to assess changes in the volume of imports of subject goods, in the prices of like goods, as well as in the state of the domestic industry, over the POI, which allows for the establishment of the requisite causal relationship between the dumping and subsidizing of the goods and the injury.[72]

[101] Therefore, while the domestic industry can, in theory, already be injured at the beginning of the POI, the Tribunal does not have the means to establish whether that injury was material and whether it was caused by the dumping and subsidizing of the subject goods, as it does not have information with respect to the volumes and prices of the subject goods and like goods, and with respect to the state of the domestic industry, prior to the POI.[73] Apart from the fact that the long-term recurrent injury alleged by the Complainants may have occurred over a period of 10 to 15 years and that a POI covering such a long period would be a practical impossibility, it must be borne in mind that there is also no determination from the CBSA that imports of Chinese plywood were dumped or subsidized during that time.

[102] As such, even if the Tribunal had sufficient evidence to establish that there had been injury prior to the POI and that this injury continued throughout the POI, it could not establish that any such injury was *caused* by the dumping and subsidizing of the subject goods, in and of themselves, as opposed to any other factor that may, at the same time, have had an influence on the domestic

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70 See subsection 3(1) and paragraph 42(1)(a) of *SIMA*.

71 *Recommendation Concerning the Periods of Data Collection for Anti-Dumping Investigations*, G/ADP/6, 16 May 2000, online: <http://docsonline.wto.org>.

72 It is clear that subsection 37.1(1) of the *Regulations*, which prescribes the factors that must be considered by the Tribunal in its injury analysis, contemplates an assessment over a period of time. For example, the Tribunal must consider whether there has been a significant increase in the volume of imports of the subject goods, whether these goods have had an effect on the price of like goods and whether sales, market share, profitability and other such factors have declined. In order to find that there has been such an increase, price effect and decline, there must be a comparative period that precedes these changes.

73 This effectively prevents the Tribunal from making a determination of injury that is based on positive evidence, as required by Article 3.1 of the WTO Anti-dumping Agreement and Article 15.1 of the WTO Agreement on Subsidies and Countervailing Measures.

industry. This situation could potentially have been avoided had the Complainants filed their complaint earlier, a fact that appears to have been recognized by at least one domestic producer.[74]

[103] In light of the foregoing, the Tribunal will determine whether the dumping and subsidizing of the subject goods have caused injury to the domestic industry by considering changes in the volume of the goods, their effect on the price of like goods, and their resulting impact on the state of the domestic industry, during the POI, i.e. from January 1, 2017, to June 30, 2020.

Goods of exporters for which the CBSA terminated its investigations

[104] As mentioned above, the CBSA terminated its dumping investigation in respect of the subject goods exported by seven exporters (the goods were found to not have been dumped), and terminated its subsidizing investigation in respect of the subject goods exported by those same seven exporters and an eighth exporter (the goods were found to be either not subsidized or to have insignificant amounts of subsidy).

[105] Subsection 42(7) of *SIMA* provides that, for purposes of the Tribunal's inquiry, dumped or subsidized goods do not include goods of an exporter in respect of which the margin of dumping or amount of subsidy is insignificant. As a result, imports and sales of decorative and other non-structural plywood from those exporters whose goods were found to not have been dumped *and* to not have been subsidized or to have insignificant amounts of subsidy, were considered non-subject imports in the Tribunal's revised investigation report (i.e. they were not considered subject goods).

Volume of imports of dumped and subsidized goods

[106] Paragraph 37.1(1)(a) of the *Regulations* directs the Tribunal to consider the volume of the dumped or subsidized goods and, in particular, whether there has been a significant increase in the volume, either in absolute terms or relative to the production or consumption of the like goods.

[107] The volume of imports of subject goods increased year over year by 13 percent in 2018, but then declined by 23 percent in 2019 and by a further 16 percent in interim 2020, when compared to interim 2019.[75] As the volume of imports of subject goods was lower in 2019 than in 2017, and continued to decline in interim 2020,[76] there was an overall decrease in subject imports over the POI.

[108] The volume of non-subject imports from both China and "other countries"[77] followed a different pattern by increasing in 2018, before declining somewhat in 2019 (but still remaining above 2017 levels) and then increasing again in interim 2020, as compared to interim 2019.[78] Non-subject imports from the United States decreased in every period of the POI.

[109] The above resulted in the share of total imports held by the subject goods remaining steady at 46 percent in 2017 and 2018, and then decreasing to 41 percent in 2019 before finally dropping to 37 percent in interim 2020.[79] The share of total imports held by non-subject imports from the

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74 Exhibit NQ-2020-002-D-07A at para. 80.
75 Exhibit NQ-2020-002-06B, Table 14.
76 *Ibid.*, Table 13.
77 Reference to "other countries" throughout the remainder of these reasons is understood to mean countries other than China and the United States.
78 Exhibit NQ-2020-002-06B, Tables 13, 14; Exhibit NQ-2020-002-07B (protected), Table 13.
79 Exhibit NQ-2020-002-06B, Table 15.

United States also decreased over the POI, dropping by 3 percentage points from 2017 to interim 2020.[80] Conversely, the share of total imports held by non-subject imports from China rose from 11 percent in 2017 to 20 percent in interim 2020, with the large majority of that increase occurring in interim 2020. The share of total imports held by non-subject imports from other countries also rose over the POI, gaining 3 percentage points from 2017 to interim 2020.

[110] Relative to domestic industry production, the volume of imports of subject goods followed a trend similar to that observed for absolute volumes: it increased by 6 percentage points in 2018, but fell by 10 percentage points in 2019 and by a further 7 percentage points in interim 2020.[81]

[111] Relative to domestic industry sales of domestic production, the volume of imports of subject goods increased by 22 percentage points in 2018, fell by 3 percentage points in 2019 and remained flat in interim 2020.[82] As will be discussed further below, the evidence on the record indicates that the domestic industry's loss of market share throughout the POI was attributable to non-subject imports from China and other countries, thereby reducing the significance of changes in imports relative to domestic sales.

[112] Further, the Tribunal notes that, contrary to the subject goods, the combined volume of non-subject imports from China and other countries relative to both domestic industry production and sales increased consistently and significantly throughout the POI.[83]

[113] In light of the foregoing, the Tribunal concludes that, although the volume of imports of subject goods increased in 2018, both in absolute and relative terms, this is tempered by the fact that there was an overall decrease in the absolute volume of imports of subject goods, as well as in the volume of imports relative to domestic industry production, from 2017 to 2019 and that there were further decreases in interim 2020. In sum, the Tribunal finds that, over the POI, there has not been a significant increase in the volume of imports of subject goods.

Price effects of dumped and subsidized goods

[114] Paragraph 37.1(1)(b) of the *Regulations* directs the Tribunal to consider the effects of the dumped or subsidized goods on the price of like goods and, in particular, whether the dumped or subsidized goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred. In this regard, the Tribunal distinguishes the price effects of the dumped or subsidized goods from any price effects that have resulted from other factors affecting prices.

Price undercutting

[115] The Complainants submitted that all price comparisons in the Tribunal's investigation report confirm that the subject goods significantly undercut the price of the like goods over the POI.

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80 Exhibit NQ-2020-002-07B (protected), Table 15.

81 Exhibit NQ-2020-002-06B, Table 13; Exhibit NQ-2020-002-07B (protected), Table 12. As the Tribunal did not include the Estimated Producers as part of the "domestic industry," the relative import figures at Table 16 of the investigation (imports relative to domestic production and domestic sales of domestic production) were not used. The figures referred to in these reasons were calculated based on production and sales of the "domestic industry."

82 Exhibit NQ-2020-002-06B, Table 13; Exhibit NQ-2020-002-07B (protected), Table 17.

83 Exhibit NQ-2020-002-07B (protected), Tables 12, 13, 17.

[116] While the Importers acknowledged that there is a wide price difference between the subject goods and the like goods, they expressed the view that the only rational explanation for this difference is that the market is highly fragmented such that the subject goods and the like goods serve different market segments and do not actually compete against one another.

[117] The data concerning average selling prices indicate that the subject goods consistently undercut the domestically produced like goods throughout the POI by amounts ranging from 46 to 53 percent when expressed as a percentage of the price of the like goods.[84] As for non-subject imports from China, they undercut the like goods throughout the POI as well, but by amounts ranging from 26 to 37 percent. Although non-subject imports from other countries were not priced quite as low as the subject goods, their prices were low nonetheless, resulting in significant undercutting of the like goods.[85] Non-subject imports from the United States were priced above the like goods throughout the POI.

[118] When looking at average selling prices by trade level, the subject goods significantly undercut the domestically produced like goods at the distributor and retailer levels throughout the POI.[86] At the end user level, the undercutting was much less significant and, in one year of the POI, was even non-existent.[87] This is in contrast to non-subject imports from other countries, which significantly undercut both the like goods and the subject goods at the end user level throughout the POI, significantly undercut the like goods, but not the subject goods, at the distributor level, and significantly undercut the like goods, and sometimes the subject goods, at the retailer level. Although generally higher-priced than the subject goods and non-subject imports from other countries, non-subject imports from China undercut the like goods throughout the POI at the distributor and retailer trade levels, and in some periods at the end user level.

[119] The Tribunal also collected quarterly data on sales of five benchmark products over a period of two years. However, given the low volumes of sales from domestic production for Benchmark Product 5 and of sales from imports for Benchmark Products 2 and 5,[88] meaningful comparisons could only be performed for the remaining three benchmark products (i.e. for Benchmark Products 1, 3 and 4). For these products, the subject goods significantly undercut the domestically produced like goods in all quarters, with the percentage of undercutting generally being in the same range as that observed for the average selling prices discussed above.[89] As for non-subject imports from China, they also undercut the like goods in all quarters, albeit at a generally less significant—yet still important—level than the subject goods, save for a few quarters where the undercutting was greater than that of the subject goods. Non-subject imports from other countries undercut the like goods as well, but to an even lesser extent and, in two quarters, were even priced higher than the like goods for one of the benchmark products.

[120] The Importers alleged that the benchmark products are too broad to provide meaningful price comparisons on an "apples-to-apples" basis. In particular, the Importers pointed to Benchmark Products 1, 2 and 3, arguing that these products encompass a wide range of veneer grades, veneer

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84 Exhibit NQ-2020-002-06B, Table 39.
85 Exhibit NQ-2020-002-07B (protected), Table 39.
86 *Ibid.*, Tables 41, 45.
87 *Ibid.*, Table 43.
88 *Ibid.*, Tables 34, 35.
89 *Ibid.*, Table 53.

species, veneer thicknesses, and panel thicknesses, resulting in a wide variation of prices within each benchmark.

[121] In response, the Complainants asserted that the benchmarks provide valid comparisons. They submitted that the range of prices for sales from imports is explained by more expensive outliers, which account for only a small percentage of total volumes within the benchmark. In support of this position, they performed an analysis of Panoply's sales of benchmark products,[90] and concluded that the majority of products within each benchmark are similar in price.

[122] The Tribunal agrees with the Importers that the benchmark products allow for a wide variation in face grades, which range from "B" to "E", and, for Benchmark Products 1, 2 and 3, in panel thicknesses, which range from 15.7mm to 19mm, and that this has an impact on prices. The Tribunal notes that the benchmark products do not specify any thicknesses for the face and back veneers, which, according to evidence on the record, has a substantial impact on prices.[91]

[123] The Complainants' analysis of Panoply's sales from imports of benchmark products does suggest that the majority of its sales within each benchmark are made at similar—and lower—prices and that more expensive outliers account for only a relatively small percentage of total volumes. However, this analysis also demonstrates that these more expensive outliers are thicker panels with a "B" face grade (as opposed to thinner panels with a "C" face grade or below). The Complainants did not perform a similar analysis with respect to their sales from domestic production, which would have allowed the Tribunal to confirm whether the benchmark products permit an "apples-to-apples" comparison. Nevertheless, as will be discussed further below, the Tribunal is of the view that, on balance, the evidence indicates that the subject goods and the like goods do not primarily compete against one another.

[124] For sales to common accounts, the subject goods significantly undercut the domestically produced like goods in all quarters examined.[92] For the two accounts for which there were sufficient data relating to non-subject imports, non-subject imports from both China and other countries significantly undercut the like goods, but again, to a lesser extent than the subject goods.[93]

[125] Finally, the Complainants provided 58 examples of what they submit is aggressive price undercutting in the context of head-to-head competition between Chinese imports of decorative and other non-structural plywood and the like goods between 2018 and 2020.[94] They claim that these examples show average price undercutting of 41 percent by the subject goods.[95]

[126] The Importers argued that these examples failed to distinguish between subject and non-subject Chinese imports. They noted that at least some of the examples pertained to imports

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90 Exhibit NQ-2020-002-A-16 (protected) at 610-613. See also the Complainants' protected Aid to Argument at 17-19. The information used by the Complainants was sourced from Exhibit NQ-2020-002-H-12 (protected) at 118-120.

91 See Exhibit NQ-2020-002-A-17 at para. 17; Exhibit NQ-2020-002-G-08 (protected) at paras. 19-20. See also Exhibit NQ-2020-002-10.02 (protected) at 24; Exhibit NQ-2020-002-10.03 (protected) at 19; Exhibit NQ-2020-002-10.04 (protected) at 22, which indicate that the hardwood veneers account for a significant proportion of the cost of goods manufactured.

92 Exhibit NQ-2020-002-07B (protected), Tables 58-60.

93 *Ibid.*, Tables 59-60.

94 Exhibit NQ-2020-002-A-06 (protected) at para. 139.

95 Exhibit NQ-2020-002-A-05 at para. 140.

from exporters that received an insignificant margin of dumping from the CBSA and that were thus fairly traded.[96] The Importers also urged skepticism for some of the examples on the basis that they involve customers that are affiliated with the Complainants.

[127] In response, the Complainants submitted that their customers are often reluctant to reveal the name of the Chinese exporter who won the sale such that it is not possible to know whether the goods were dumped or subsidized. However, they submitted that, on a balance of probabilities, the Tribunal can conclude that there is a 75 percent chance that their examples of price undercutting pertain to subject goods given that 75 percent of Chinese imports are subject goods.[97] Additionally, they submitted that the Importers' concerns about allegations involving affiliated customers are unfounded as Husky, who provided many such examples, included the prices paid for the products as well as all other relevant details.

[128] The Tribunal finds that the examples provided by the Complainants do not, in this case, offer compelling evidence of price undercutting by the subject goods. As noted by the Importers, the information provided by the Complainants does not distinguish between subject and non-subject imports. As will be discussed in more detail below in the section addressing the state of the domestic industry, the data collected by the Tribunal indicate that the market share lost by the domestic industry over the POI was captured entirely by non-subject imports. This casts doubt on the accuracy of these examples of alleged head-to-head competition. If the domestic industry did not lose any market share to the subject goods, then there is no reasonable basis to infer that 75 percent of the Complainants' examples of lost sales were lost to subject goods.

[129] In addition, for the 31 examples provided by Columbia for 2019, the annual volume of business that is claimed to have been lost to Chinese imports is almost double the actual decline in Columbia's sales volume from in 2019, once this decline is corrected to take into account the loss of business that was acknowledged to be unrelated to Chinese imports.[98] This also does not account for the fact that the market declined by 11 percent in 2019,[99] which means that some sales were simply lost due to an apparent contraction in demand.

[130] More fundamentally, the examples provided above, as well as the pricing data in the investigation report showing consistent and very significant price undercutting by the subject goods at all levels throughout the POI, both raise the question as to whether the subject goods and the domestically produced like goods compete against one another to any significant degree. It is fair to assume that, given the relative importance of price in purchasing decisions,[100] if there was full and direct competition between the goods, the significant levels of price undercutting by the subject goods should have had much more deleterious effects on the domestic industry in terms of lost market share and/or price depression or suppression. After all, even if some of those who responded to the Tribunal's questionnaires did indicate that they were willing to pay a premium for domestically produced plywood, none indicated that they were willing to pay double the price of the subject goods for domestically produced like goods.[101]

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96 Exhibit NQ-2020-002-E-02 (protected) at paras. 99, 105.

97 *Transcript of Public Hearing* at 167.

98 Exhibit NQ-2020-002-D-08 (protected) at 15-17; Exhibit NQ-2020-002-07B (protected), Schedule 9; Exhibit NQ-2020-002-D-10 (protected) at paras. 11-12 and p. 14.

99 Exhibit NQ-2020-002-06B, Table 18.

100 *Ibid.*, Table 9.

101 *Ibid.*

[131] Price undercutting is not injurious *per se*. Rather, it is the volume and price effects of such price undercutting that can be injurious. Therefore, unless the price undercutting by the subject goods leads to a loss of market share for the domestic industry, or to price depression or suppression, it will not support a finding of injury by the Tribunal. As already mentioned, the data collected by the Tribunal indicate that the domestic industry lost market share to non-subject imports from China and other countries, rather than to subject imports, over the POI. In addition, the volume of subject imports over the POI declined overall, as did their market share. Further, as the Tribunal ultimately finds below, the subject goods did not significantly depress or suppress the price of the like goods over the POI. In the Tribunal's view, the inescapable conclusion that must be drawn from these findings is that, by and large, the subject goods and the like goods did not directly compete with one another during the POI. While the degree of price undercutting was significant, its impact was not.

[132] The Importers submitted that there is a lack of direct competition because the subject and like goods serve different market needs. In essence, they submitted that the domestic industry sells large volumes of what is colloquially known as "fancy" plywood, which is more expensive decorative plywood produced with thicker face and back veneers made with a range of higher-grade wood species, whereas Chinese plywood tends to resemble and compete with melamine (i.e. a non-plywood alternative product).

[133] The Complainants took the view that the domestically produced like goods compete directly with the subject goods and that the discrepancy in price is simply due to aggressive price competition among Chinese exporters. They pointed to evidence that importers sell "fancy" plywood and that domestic producers produce "non-fancy" grades. They submitted that the fact that Chinese imports have captured the bulk of the market for plywood made with "C" grade veneers from light coloured woods such as birch simply means that they have excluded the domestic industry from accessing the full market for the product mix which occurs naturally as logs are peeled into veneers.

[134] The Tribunal finds that, given the sales pricing and volume trends in evidence, the data in the investigation report demonstrate that the subject goods and the like goods did not compete against one another to any significant degree during the POI. Indeed, the evidence does suggest that a large proportion of the domestic industry's sales appear to be of higher-grade plywood (i.e. "fancy" plywood) whereas sales of Chinese imports are primarily of lower grade plywood (i.e. grades "C" and below).[102] The evidence also suggests that the bulk of the market for plywood made with these lower grades was captured by Chinese imports prior to the POI.[103]

[135] According to the evidence provided by Mr. Gary Meyer of Columbia, his company's domestic sales of plywood panels of grades "C", "D" and "E" did not account for a major proportion of its total domestic sales throughout the POI.[104] Conversely, there is evidence indicating that a large proportion of Chinese imports are plywood panels of these lower grades and that higher-grade panels

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102 The Tribunal notes that none of the parties in this case argued that the like goods and subject goods constitute more than one class of goods and the Tribunal found accordingly above, having regard to all the relevant criteria, and the fact that there is no clear line separating the goods into different classes. A finding that there is a lack of competition between products that fall within a single class of goods does not contradict this conclusion. It simply means that the goods may, on average, fall further apart along a continuum of goods within that single class such that they are no longer contiguous and may not be able to fulfil the same customer needs.

103 Exhibit NQ-2020-002-A-07 at para. 50.

104 Exhibit NQ-2020-002-D-18 (protected) at para. 6. Columbia has, by far, the largest market share of domestic producers who constitute the domestic industry. See Exhibit NQ-2020-002-07B (protected), Table 19.

are, in some cases, imported from countries other than China.[105] Furthermore, information regarding imports of benchmark products does suggest that higher-grade panels (e.g. thicker panels made with "B" grade maple veneers) represent a relatively small percentage of total imports of these products and are priced significantly higher.[106] The Tribunal notes that, with non-subject imports from China generally having higher selling prices than the subject goods, it is possible that at least a part of this difference may be attributable to non-subject imports including a larger proportion of higher-grade panels sold at higher prices.

[136] Ultimately, the Tribunal need not be absolutely certain as to *why* the subject goods and the like goods did not compete against one another to any significant degree during the POI. The simple fact that the evidence on the record demonstrates they did not compete is sufficient to allow the Tribunal to complete its inquiry pursuant to section 42 of *SIMA*.

[137] The Tribunal therefore concludes that the subject goods significantly undercut the price of the like goods over the POI, but that these goods also did not, for the most part, directly compete with one another during this period.

Price depression

[138] The average selling prices of like goods decreased by 2 percent from 2017 to 2018 before increasing by 10 percent in 2019 and by a further 1 percent in interim 2020, as compared to interim 2019.[107] Following an opposite trend, the average selling prices of subject goods increased by 5 percent from 2017 to 2018 and by a further 3 percent in 2019, before declining by 1 percent in interim 2020, as compared to interim 2019.

[139] For sales to distributors, which represent the majority of the domestic industry's sales, the prices of like goods increased throughout the POI despite the fact that prices of subject goods only increased in 2018 and decreased thereafter to reach their lowest level of the POI in interim 2020.[108] For sales to end users and retailers, while prices of like goods decreased in some periods, they were always higher in 2019 and in interim 2020, when compared to 2017.[109] However, as noted above, at these trade levels, non-subject imports from other countries were priced lower than the subject goods in most periods.

[140] For all benchmark products and sales to common accounts, the prices of domestically produced like goods fluctuated within a very narrow band throughout the period of eight quarters for which data were collected.[110] Moreover, from end point to end point (i.e. from the third quarter of 2018 to the second quarter of 2020, the period for which data were collected), prices of like goods generally increased and, for those few cases where they decreased, the decrease was insignificant.

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105 Exhibit NQ-2020-002-E-03 at paras. 18, 25; Exhibit NQ-2020-002-E-04 (protected) at paras. 19-20; Exhibit NQ-2020-002-E-05 at 2; Exhibit NQ-2020-002-E-06 (protected) at 2; Exhibit NQ-2020-002-F-06 (protected) at para. 11; Exhibit NQ-2020-002-F-07 at 2; Exhibit NQ-2020-002-F-08 (protected) at 2-3.

106 Exhibit NQ-2020-002-H-12 (protected) at 119-120; Exhibit NQ-2020-002-F-06 (protected) at paras. 42-44.

107 Exhibit NQ-2020-002-06B, Table 40. For the Complainants alone, average selling prices increased in 2018 and in 2019, before decreasing minimally in interim 2020. See Exhibit NQ-2020-002-07B (protected), Table 61.

108 Exhibit NQ-2020-002-06B, Table 42; Exhibit NQ-2020-002-07B (protected), Tables 33, 41.

109 Exhibit NQ-2020-002-07B (protected), Tables 43, 45.

110 *Ibid.*, Tables 47-51, 58-60.

[141] Overall, the Tribunal finds that, notwithstanding the consistent and very significant price undercutting by the subject goods, prices of domestically produced like goods generally increased over the POI and, in those specific instances where they *did* decrease, the decrease was limited to only certain periods within the POI and was not significant by any measure. Indeed, when prices did decrease, the decrease was very modest and did not always coincide with a decrease in the price of the subject goods. This suggests that, on an aggregate basis, the prices of the like goods have not been negatively impacted by the subject goods over the POI.

[142] The Complainants asserted that the depressive price effect caused by the subject goods is clearly illustrated by comparing the domestic industry's domestic pricing with its prices for export to the United States, where the imposition of duties on dumped and subsidized imports of hardwood plywood from China since mid-2017 has resulted in higher selling prices.

[143] The Importers argued that the domestic industry has not provided evidence of the price differences between Canada and the United States prior to the POI, making it impossible to assess whether there is correlation, let alone causation, between the dumping and subsidizing of the subject goods and the Canada-United States price differential. They also submitted that the difference in price may be attributable to the domestic industry selling only its higher-value products in the United States market due to high transportation costs.

[144] As the Tribunal indicated above with respect to the issue of injury that may have begun prior to the POI, injury is to be assessed by considering, *inter alia*, changes in the price of like goods *during* the POI. By claiming that price depression can be established on the basis of the difference between the domestic industry's domestic and export selling prices, the Complainants are in effect taking the position that price depression occurred prior to the POI. Since the Tribunal has not collected any information with respect to the volumes and prices of the goods and the state of the domestic industry prior to the POI, it is unable to make a finding in this regard.

[145] In any event, the Tribunal considers that the evidence regarding the difference between the domestic industry's domestic and export selling prices raises more questions than it answers. First, while the price differential increased considerably in 2018 due to the impact of the United States order on hardwood plywood from China, it reverted back to 2017 levels in subsequent periods, thereby suggesting that this price difference may be attributable to some other factor and that it existed prior to the POI.[111]

[146] Second, the fact that the domestic industry's cost of goods sold (COGS) for its export sales was very near to, or above, its average selling price for domestic sales throughout the POI is suggestive of a product mix issue.[112] In other words, as noted by the Importers, the domestic industry may only be exporting higher-value products to the United States.

[147] The Tribunal therefore concludes that the subject goods have not significantly depressed the price of the like goods over the POI.

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111 *Ibid.*, Tables 61-62.

112 *Ibid.*

Price suppression

[148] In order to assess whether the subject goods have suppressed the price of the like goods, the Tribunal typically compares the domestic industry's average unit cost of goods manufactured (COGM) or COGS with its average selling price in the domestic market to determine whether the domestic industry has been able to increase selling prices in line with increases in costs.

[149] The domestic industry's per-unit COGS for domestic sales increased in each full year of the POI, before declining in interim 2020, as compared to interim 2019.[113] Although average selling prices also increased in each full year of the POI, these increases did not keep pace with the rising per-unit COGS in 2018, resulting in a reduced per-unit gross margin for that year. These margins started to improve in 2019 when average selling prices increased at a faster rate than per-unit COGS. The improvement continued in interim 2020 when the decrease in per-unit COGS exceeded that of the average selling price, resulting in a per-unit gross margin that reached a level that exceeded that of 2017.

[150] The Importers submitted that the issue facing the domestic industry is one of rising costs rather than downward pricing pressures for the products it produces and sells. They added that the Complainants have not provided an explanation for the rise in COGS and that, were it not for this increase, their financial results would have been markedly more positive.

[151] The Complainants replied that their questionnaire responses did provide explanations for some of the increases in costs, including an increase in harvesting costs for Husky.[114] They added that they are unable to change the costs that were actually incurred during the POI.

[152] The Tribunal does not find that the rise in per-unit COGS in 2018 and 2019 was particularly unusual or that is was somehow the result of the Complainants' failure to take measures to control these costs. It is obvious that, if the Complainants' per-unit COGS had not risen as much, their gross margins, both on an aggregate and per-unit basis, would have been better. It is equally obvious that such a result could also be achieved with a larger increase in average selling prices.

[153] In any event, the Tribunal finds that, in the circumstances of this case, there was price suppression in 2018 that could be qualified as significant. The effects of this price suppression continued to be felt until interim 2020 when per-unit gross margins finally recovered and exceeded levels from 2017.[115] However, the Tribunal is of the view that, since the domestic industry only lost market share to non-subject imports from China and other countries, and did not experience significant price depression throughout the POI, despite very significant price undercutting by the subject goods, there is no evidentiary basis upon which to conclude that it was the subject goods that suppressed the price of the like goods in 2018. Given that the domestic industry lost market share to non-subject imports from China and other countries and that these imports, while not always priced as low as the subject goods, consistently undercut the price of the like goods, the Tribunal finds that it was the non-subject imports that likely competed against the like goods and suppressed their price.

[154] The Tribunal therefore concludes that the subject goods have not significantly suppressed the price of the like goods over the POI.

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113 *Ibid.*, Table 61. For purposes of this section, average selling prices and COGS are those of the Complainants only as they were the only ones to provide the Tribunal with their financial results.

114 See Exhibit NQ-2020-002-09.02 at 13.

115 Exhibit NQ-2020-002-07B (protected), Table 61.

Conclusion

[155] The Tribunal finds that, while the subject goods significantly undercut the price of domestically produced like goods over the POI, this undercutting did not have the effect of significantly depressing or suppressing the price of like goods and did not lead to the loss of market share by the domestic industry.

Resultant impact on the domestic industry

[156] Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the subject 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.[116] These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.[117] Paragraph 37.1(3)(a) requires the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the subject goods.

Sales and market share

[157] The total decorative and other non-structural plywood market expanded in volume by 7 percent in 2018, before contracting by 11 percent in 2019 and by another 11 percent in interim 2020, as compared to interim 2019.[118] The domestic industry underperformed relative to the market as domestic sales from domestic production declined by 2 percent in 2018, by 22 percent in 2019 and by a further 16 percent in interim 2020.[119]

[158] This underperformance is reflected in the domestic industry's market share, which fell by 2 percentage points in each of 2018 and 2019, and by another 1 percentage point in interim 2020 relative to interim 2019, for a total decline of 5 percentage points over the POI.[120]

[159] The market share held by subject imports remained flat from 2017 to 2018, increased by 1 percentage point in 2019, and fell by 5 percentage points in interim 2020, relative to interim 2019, for a total decline of 2 percentage points over the POI.[121] By contrast, the share of the market held by

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

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

118 Exhibit NQ-2020-002-06B, Table 18.

119 Exhibit NQ-2020-002-07B (protected), Table 17.

120 *Ibid.*, Tables 17, 19.

121 *Ibid.*, Table 19.

non-subject imports from China and other countries increased consistently throughout the POI, for a total combined gain of 12 percentage points. Moreover, the share of the market held by these non-subject imports exceeded that of the subject goods in every period of the POI.

[160] The above market share figures were calculated based on a total market that included sales from the Estimated Producers. If these sales are removed, the trends remain essentially the same, except for the subject imports whose market share remains flat from 2018 to 2019, instead of increasing by 1 percentage point.[122]

[161] The same general trends are also observed with respect to sales by trade level and sales of benchmark products. The domestic industry's share of total reported sales for each trade level, as well as for all trade levels combined, decreased over the POI.[123] While the subject imports' share of total reported sales also decreased over the POI, the combined share of total reported sales held by non-subject imports from China and other countries increased consistently throughout the POI. As for Benchmark Products 1, 3 and 4 (i.e. the three benchmark products for which meaningful comparisons could be performed), the domestic industry's share of total reported sales for each product trended downwards over the period of eight quarters for which data were collected.[124] Again, while the subject imports' share also trended downwards over this period, the combined share of total reported sales held by non-subject imports from China and other countries trended upwards.

[162] The Complainants argued that the domestic industry's market share was low at the beginning of the POI as a result of years of price undercutting by Chinese imports. They added that, even though the share of the market held by subject goods did not increase over the POI, the level of price undercutting explains why the goods were exercising price leadership in the market.

[163] The Tribunal has already stated that it does not have at its disposal information pertaining to the period of time that preceded the POI, which would enable it to assess any injury that may have been present at the beginning of the POI and to establish whether it was caused by the dumping and subsidizing of the subject goods.[125] Accordingly, the Tribunal can only assess whether the subject goods have caused material injury by considering those changes in market share that occurred during the POI. As for the level of undercutting and price leadership, their effects are properly measured by considering the resulting price of the like goods, which was discussed above, and changes in market share.

[164] In light of the foregoing, the Tribunal finds that the evidence demonstrates that, while the domestic industry lost market share over the POI, it was largely, if not entirely, captured by non-subject imports from China and other countries.[126]

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122 *Ibid.*, Table 17.

123 *Ibid.*, Tables 23, 27, 31, 33.

124 *Ibid.*, Schedules 1, 3, 4. Trends were established using simple linear regression.

125 If the domestic industry has actually been injured by subject imports prior to the POI, it could potentially explain why these imports have not captured any market share from the domestic industry over the POI. Subject imports may have previously captured the market for lower-grade plywood, effectively reducing the domestic industry's participation in that segment.

126 In the case of a declining market, market share is the most reliable comparative metric, as it accounts for relative increases or decreases in sales volumes.

Financial performance

[165] The domestic industry's financial performance, as it relates to domestic sales, deteriorated in 2018 as gross margins declined significantly, both on an aggregate and a per-unit basis, as a result of the domestic industry's inability to sufficiently raise its selling prices to offset an increase in its COGS (i.e. as a result of the price suppression discussed earlier).[127]

[166] In 2019, gross margins improved on a per-unit basis as the increase in the domestic industry's selling prices surpassed the increase in its COGS. However, as the domestic industry's sales volume fell importantly following a decline in the market, due to an apparent contraction in demand, and the loss of market share to non-subject imports, only a minimal improvement was seen in gross margins on an aggregate basis.

[167] In interim 2020, gross margins improved yet again on a per-unit basis and reached their highest level of the POI as COGS decreased considerably but selling prices remained flat. Although the domestic industry's sales volume fell somewhat during that period, once more the result of a decline in the market and the loss of market share to non-subject imports, the decrease in COGS more than compensated, such that there was also an appreciable improvement in gross margins on an aggregate basis.

[168] The domestic industry's export sales performance showed more favorable results, with gross margins and net income increasing in both 2018 and 2019, and decreasing slightly in interim 2020, as compared with interim 2019.[128] These better results seem to be attributable, at least in part, to increases in selling prices from 2017 to 2019 and to COGS that remained relatively flat throughout the POI.

Other performance indicators

[169] The domestic industry's production volumes for domestic sales declined by 2 percent in 2018, by 23 percent in 2019 and by a further 17 percent in interim 2020, as compared to interim 2019.[129] These declines, which are almost identical to those seen above for the domestic industry's domestic sales from domestic production, are also the direct result of a decline in the market and the loss of market share to non-subject imports.

[170] The domestic industry fared better in terms of total production as production for export sales only decreased in 2018, resulting in total production volumes increasing by 3 percent in 2018, before decreasing by 14 percent in 2019 and by a further 7 percent in interim 2020.

[171] Given that practical plant capacity only marginally increased in interim 2020, as compared to interim 2019, trends in capacity utilization rates largely matched those for domestic production.[130] The capacity utilization rate for domestic sales declined by 12 percentage points over the POI, with the totality of the decline occurring in 2019 and in interim 2020. As capacity utilization for export sales remained relatively flat throughout the POI, capacity utilization for total production followed a similar trend to that of domestic sales, with a slight increase in 2018, followed by large declines in 2019 and interim 2020.

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127 Exhibit NQ-2020-002-07B (protected), Table 61.
128 *Ibid.*, Table 62.
129 Exhibit NQ-2020-002-06B, Table 65.
130 *Ibid.*; Exhibit NQ-2020-002-07B (protected), Table 64.

[172] Turning to direct employment, the number of employees, hours worked and wages paid all followed the same pattern, with increases ranging from 7 to 9 percent in 2018, decreases ranging from 7 to 12 percent in 2019, and further decreases ranging from 3 to 7 percent in interim 2020, as compared to interim 2019.[131] The evidence does indicate that some, but not all, of the employment losses in interim 2020 were attributable to the impact of the COVID-19 pandemic.[132] These trends broadly follow those for the domestic industry's production and sales of like goods, and capacity utilization.

[173] In terms of investments, the Complainants submitted that they all have significant investments that have been put on hold, delayed and/or are contingent on the outcome of this case.

[174] The Complainants also noted that, since the complaint was filed in April 2020, two domestic producers have closed their operations or declared bankruptcy. They submitted that this was due to competition with low-priced Chinese imports.

[175] The first producer, Panneaux Optimum Inc., declared bankruptcy on June 1, 2020 (prior to the commencement of this inquiry), and indicated in a letter addressed to the Tribunal that, although several factors led to this outcome, one important factor was low-priced Chinese imports.[133] The Tribunal views this evidence as anecdotal at best as, without further information, it is impossible to assess how and to what extent the subject goods played a role in this producer's demise. It is entirely possible that it was injured by non-subject imports from China or from other countries for that matter.

[176] On November 16, 2020, the Corporation Internationale Masonite—Megantic announced that Industries manufacturières Mégantic (IMM) would cease to operate its plant in Lac-Mégantic on December 31, 2020, and would be transferring production to its existing facilities in the United States.[134] The press release issued by the company indicated that the decision was motivated by the fact that approximately 80 percent of IMM's production was destined for use by its facilities in the United States. Apart from the fact that this producer also did not respond to the Tribunal's questionnaire and does not form part of the "domestic industry" in this inquiry, there is nothing to suggest that the transferring of production to the United States was prompted by the dumping and subsidizing of the subject goods.

Magnitude of the margin of dumping and amount of subsidy

[177] The margins of dumping calculated by the CBSA for those two cooperative exporters for which the dumping investigation was not terminated were 16.03 and 33.70 percent, when expressed as a percentage of the export price of the goods.[135] The amount of subsidy calculated for the single cooperative exporter for which the subsidy investigation was not terminated was 17.37 percent. The margins of dumping and amounts of subsidy calculated for all other exporters were 181.81 and 127.36 percent, respectively. That being said, the Tribunal does not consider that the margins of dumping and amounts of subsidy, especially the ones determined for all other exporters (i.e. for those exporters that did not cooperate with the CBSA), necessarily represent the level of the injurious

131 Exhibit NQ-2020-002-06B, Table 65.
132 Exhibit NQ-2020-002-B-08 (protected) at paras. 25, 27; Exhibit NQ-2020-002-C-08 (protected) at para. 35 and footnote 9.
133 Exhibit NQ-2020-002-A-07 at 19.
134 Exhibit NQ-2020-002-09.06 at 1-2.
135 Exhibit NQ-2020-002-04 at 26.

effects caused by the actual prices in Canada of the subject goods during the POI. Accordingly, the Tribunal did not place much weight on this factor in its injury analysis.

Conclusion

[178] On the basis of the foregoing, the Tribunal finds that the domestic industry has suffered injury in the form of a reduction in gross margins as well as lost sales and market share, which, in turn, negatively impacted production, capacity utilization and employment. However, as alluded to in the analysis above, and as will be further discussed below, the evidence on the record indicates that this injury, whether material or not, was not caused by the subject goods.

Causation

[179] As stated earlier, paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the dumping or subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the subject goods. In order to do so, the Tribunal must distinguish the impacts of the subject goods from the impact of other factors also having a bearing on the state of the domestic industry.[136] The Tribunal cannot assume that the mere presence and availability of the subject goods in the Canadian market resulted in material injury to the domestic industry.[137]

[180] The Importers alleged that several factors other than the dumping and subsidizing of the subject goods caused the injury that the domestic industry may have suffered over the POI. Some of these have already been addressed above. The factors the Tribunal considers most relevant are further discussed below.

Non-subject imports

[181] The Importers submitted that the market share lost by the domestic industry was taken entirely by non-subject imports from both China and other countries. They added that, if subject goods were actually the cause of the Complainants' alleged lost sales and other adverse effects, one would expect those subject goods to have gained market share during the POI.

[182] The Complainants submitted that the volume and sales of non-subject imports from other countries is smaller than that of the subject goods. They added that the subject goods are the price leaders in the Canadian market.

[183] The Tribunal has already found above that, contrary to the market performance of the subject goods, the combined volume of non-subject imports from China and other countries increased consistently and significantly relative to both domestic industry production and sales throughout the POI. In absolute terms, the combined increase in non-subject imports from China and other countries in 2018 was greater than the increase in subject goods in the same year.[138] Moreover, the data in the investigation report demonstrate that the combined volume and sales of non-subject imports from China and other countries is larger, in absolute terms, than that of the subject goods.

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136 See paragraph 37.1(3)(b) of the *Regulations.*

137 *Silicon Metal* (19 November 2013), NQ-2013-003 (CITT) at para. 109.

138 Exhibit NQ-2020-002-07B (protected), Table 13.

[184] The Tribunal has also found that, while the non-subject imports from China and other countries are not always priced as low as the subject goods, they consistently undercut the price of the like goods throughout the POI and likely suppressed the price of the like goods in 2018.

[185] These findings, together with the finding that the market share lost by the domestic industry over the POI was largely, if not entirely, captured by non-subject imports from China and other countries, indicate that the injury suffered by the domestic industry was caused by these non-subject imports, rather than by the subject goods.

Contraction in demand for decorative and other non-structural plywood

[186] The Importers suggested that there is a market shift towards non-plywood products (e.g. composite cores with laminate or other non-wood veneers, such as thermally fused melamine, or TFLs), an alternative which is gaining in popularity and is competing with domestically produced "fancy" plywood. They note that, in the last five years, Canadian production of TFLs has increased importantly.

[187] The Complainants argued that the Importers' assertions in this regard lack evidence and that the injury the domestic industry faces is due to subject goods as opposed to any hypothetical overall reduction in demand.

[188] As previously mentioned, following an increase of 7 percent in 2018, the total decorative and other non-structural plywood market contracted by 11 percent in 2019 and by another 11 percent in interim 2020, as compared to interim 2019.[139] This reduction in demand, which was neither hypothetical nor related to the dumping and subsidizing of the subject goods, was responsible for a non-negligible share of the injury suffered by the domestic industry. The question as to whether the reduction in demand was caused by a market shift towards non-plywood alternative products, as suggested by the Importers, is therefore irrelevant in these circumstances. The sales that were lost by the domestic industry to the non-subject imports from China and other countries were in addition to those lost as a result of the decline in the market and were reflected in the domestic industry's loss of market share, which has already been addressed above.

COVID-19

[189] It is quite possible that the COVID-19 pandemic may have contributed to the decline in the total decorative and other non-structural plywood market in interim 2020. In fact, the Complainants acknowledge that the pandemic has had an impact on the domestic industry, especially in the second quarter of 2020. However, as mentioned above, the reason for the decline in the market is irrelevant. Regardless of the circumstances, the decline, and the resulting impact on the industry domestic industry, cannot be attributed to the subject goods.

Conclusion

[190] In light of the foregoing, the Tribunal concludes that the injury suffered by the domestic industry over the POI was caused by non-subject imports from China and other countries, as well as by a decline in the total decorative and other non-structural plywood market in 2019 and interim

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139 Exhibit NQ-2020-002-06B, Table 18.

2020. The Tribunal therefore finds that a causal relationship does not exist between the dumping and subsidizing of the subject goods and the injury suffered by the domestic industry over the POI.

THREAT OF INJURY ANALYSIS

[191] Having found that the dumping and subsidizing of the subject goods have not caused injury to the domestic industry, the Tribunal must now consider whether they are threatening to cause injury.

[192] The Tribunal is guided in its consideration of this question by subsection 37.1(2) of the *Regulations*, which prescribes factors to be taken into account for the purposes of its threat of injury analysis.[140] Further, subsection 37.1(3) directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the threat of injury on the basis of the factors listed in subsection 37.1(2), and whether any factors other than the dumping and subsidizing of the goods are threatening to cause injury.

[193] Relevant to the Tribunal's analysis is subsection 2(1.5) of *SIMA*, which indicates that a threat of injury finding cannot be made unless the circumstances in which the dumping and subsidizing of the goods would cause injury are clearly foreseen and imminent.

[194] The Tribunal is also mindful of Article 3.7 of the WTO Anti-dumping Agreement and Article 15.7 of the WTO Agreement on Subsidies and Countervailing *Measures*, which set out the framework of obligations implemented in subsection 2(1.5) of *SIMA*:

> A determination of a threat of material injury shall be *based on facts and not merely on allegation, conjecture or remote possibility*. The *change in circumstances* which would create a situation in which the [dumping or subsidy] would cause injury *must be clearly foreseen and imminent*.
>
> [Emphasis added]

[195] As the Tribunal has previously indicated,[141] the fundamental requirement that threat of injury findings must be based on facts and not on "allegation, conjecture or remote possibility" aims to

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

141 *Polyethylene Terephthalate Resin* (16 March 2018), NQ-2017-003 (CITT) [*PET Resin*] at para. 167.

mitigate the risk that such findings may be grounded in speculation about possible future events, rather than objective facts directing such a conclusion. The Tribunal has also indicated that there must be a high probability of a change in circumstances compared to those that existed during the POI, such that the subject goods would threaten to cause material injury in the very near future in the absence of measures.[142]

[196] The Complainants asserted that neither *SIMA*, the *Regulations*, nor the WTO agreements require a change in circumstances for the Tribunal to find that the dumping and subsidizing of the subject goods are threatening to cause injury. They submitted that a change in circumstances is a factor that can contribute to the threat of injury and that, where a party is relying on such a change to prove it is threatened with injury, the party needs to provide evidence that the change is clearly foreseen and imminent. However, they submitted that a change in circumstances is not the only means by which a threat of injury can be proven and that, where a domestic industry is already being injured, such as in the current inquiry, a change in circumstances is not required.

[197] The Importers replied that the words "clearly foreseen and imminent" suggest that there will be a change in circumstances. They submit that this is consistent with the Tribunal's most recent comprehensive review of this issue in *PET Resin* as well as with the pronouncements of a WTO panel in a dispute involving Egypt and Turkey.[143]

[198] In *PET Resin*, the Tribunal clearly stated that, where the situation in the future will be the same or similar to the period for which no injury was found, there cannot be a "change of circumstances" and thus there cannot be a threat of injury.[144] Indeed, as the Tribunal only proceeds to consider whether there is a threat of injury after having found that the subject goods have not caused injury during the period of inquiry, it makes inherent sense to consider that the same circumstances which led to that finding would again yield the same result. This was implicitly recognized by the Complainants who submitted that a change in circumstances is not required where a domestic industry is already being injured.

[199] In the present case, the Tribunal has already found that the injury suffered by the domestic industry during the POI, whether that injury is considered material or not, was caused by non-subject imports from China and other countries, as well as from a decline in the market, rather than by the dumping and subsidizing of the subject goods. In other words, the Tribunal found that a causal relationship did not exist between the dumping and subsidizing of the subject goods and the injury experienced by the domestic industry. Absent a change in the circumstances that led to this finding, there can be no basis upon which the Tribunal could make a finding that the dumping and subsidizing of the subject goods are threatening to cause injury.

[200] The Tribunal must therefore proceed to determine whether there is a high probability of a change in circumstances that will lead to a situation in which the dumping and subsidizing of the subject goods would, in the very near future, cause material injury to the domestic industry. For the

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142 *PET Resin* at paras. 170-171.

143 *Transcript of Public Hearing* at 150; Importers' Aid to Argument at 32-35.

144 *PET Resin* at para. 173. The requirement for a change in circumstances has also been enunciated in numerous other decisions. See, for example, *Nitisinone Capsules* (18 April 2019), NQ-2018-005 (CITT) at paras. 123-124; *Corrosion-resistant Steel Sheet* (21 February 2019), NQ-2018-004 (CITT) at para. 108; *Frozen Self-rising Pizza* (18 August 2004), NQ-2004-003 (CITT) at para. 17.

reasons set out below, the Tribunal finds that the evidence does not indicate that there is a high probability of such a change in circumstances.

Time frame for the threat analysis

[201] In assessing threat of injury, the Tribunal typically considers a time frame of 12 to 18 months, and no more than 24 months, beyond the date of its finding, depending on the unique circumstances of each case.

[202] The Complainants submitted that injury would occur rapidly if a finding was not put in place and that it is therefore appropriate for the Tribunal to consider the shorter 12- to 18-month period in this inquiry. The Importers submitted that, regardless of whether the Tribunal considers a shorter or longer time frame, there is no threat of injury.

[203] The Tribunal sees no reason to depart from its typical time frame in this case. It will therefore look at the next 12 to 18 months in its analysis of threat of injury.

Likelihood of increased dumped and subsidized goods

[204] The Tribunal found above that, while imports of subject goods increased by 13 percent in 2018, they declined by 23 percent in 2019 and by a further 16 percent in interim 2020, such that there was an important overall decrease in subject imports over the POI. Relative to domestic industry production, imports of subject goods followed a similar trend. As for imports of subject goods relative to domestic industry sales, they increased in 2018, fell slightly in 2019 and remained flat in interim 2020. However, the Tribunal noted that the significance of these changes was limited given the domestic industry's loss of market share to non-subject imports from China and other countries throughout the POI. Thus, overall, there clearly has not been a significant rate of increase of subject goods imported into Canada which would indicate a likelihood of substantially increased imports.

[205] This is in contrast to non-subject imports from China and other countries, which the Tribunal found had increased in absolute terms from 2017 to 2019, and again in interim 2020. The Tribunal also found that these imports, relative to both domestic industry production and sales, increased consistently and significantly throughout the POI.

[206] The Complainants submitted that, when subject and non-subject imports from China are considered together, there was an increase in imports in interim 2020. They also submitted that, in *Hot-rolled Carbon Steel Plate*, the Tribunal made a threat of injury finding despite imports from multiple subject countries being completely or virtually completely absent from the Canadian market for the last nine months of the period of inquiry.

[207] Paragraph 37.1(2)(b) of the *Regulations* speaks to whether there is a significant rate of increase of dumped or subsidized goods imported into Canada. Although there was an increase in total imports from China in interim 2020, this increase was entirely attributable to non-subject imports (i.e. goods that were neither dumped nor subsidized).[145] As noted above, subject imports actually decreased by 16 percent in interim 2020, as compared with interim 2019.

[208] In *Hot-rolled Carbon Steel Plate*, the Tribunal found that the volume of imports of the subject goods had almost tripled, both in absolute and relative terms, between the first and third years

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145 Exhibit NQ-2020-002-06B, Table 13.

of the period of inquiry and that, while they declined substantially during the last nine months of the period of inquiry, they still remained above levels from the beginning of the period of inquiry.[146] The Tribunal also noted that imports from certain subject countries had ceased but that imports from certain individual subject countries had followed different trajectories.[147] This is manifestly not the case here as there was an overall decrease in the absolute volume of imports of subject goods from China (the only subject country), as well as in the volume of imports relative to domestic industry production, from 2017 to 2019, with further decreases in interim 2020. The increases in imports seen in 2018 were nowhere near the tripling observed in *Hot-rolled Carbon Steel Plate*.

[209] The Complainants also submitted that Chinese plywood production is very large in comparison to total Canadian production, that China has had more than 10 million cubic meters of annual excess production since 2014, that many of China's provinces have seen an increase in production capacity, and that Chinese producers of decorative plywood are export-oriented.

[210] The Importers replied that there is no evidence that China's production capacity and export orientation changed materially during the POI or that they will change in the coming 12 to 24 months. They added that the Tribunal has previously warned against "relying solely upon production capacities and a general export orientation of producers from the subject countries to argue in favour of a finding of threat of injury."[148]

[211] The Tribunal finds that the evidence provided by the Complainants indicates that China's excess production of plywood remained essentially flat from 2014 to 2017 (the years for which data is provided) and that its exports increased minimally in 2018, but dropped importantly in 2019.[149] There is no evidence indicating that these levels of production and export are set to change in the near future. Moreover, there is no evidence indicating that, if they did change, it would somehow result in an increase in imports of subject goods into Canada. If existing large amounts of excess production and Chinese producers' strong export orientation have not previously resulted in increased imports of subject goods, absent some further evidence, there is no reason to believe that they would do so in the near future.

[212] The Complainants argued that international, Chinese and Canadian market conditions indicate a likelihood of substantially increased imports of subject goods into Canada. They submitted that with the economies of most countries just beginning to recover from the COVID-19 pandemic and Chinese domestic consumption of wood-based panels for the production of furniture forecasted to decline, the Canadian market will continue to be attractive to Chinese exporters as demand for plywood is expected to increase due to an expected recovery in housing starts and renovation spending in 2021. They added that a perennial desire for natural materials to be integrated into homes and other buildings will also increase demand.

[213] The Importers took the view that, while demand for plywood is increasing in Canada due to a variety of factors, the threat to the domestic industry is from the growing production and adoption of non-plywood alternative products. They also submitted that the decline in the Chinese furniture market indicates that wood-based panels used to produce one type of furniture are being shifted to the production of another type of furniture, as opposed to being turned into plywood for export.

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146 *Hot-rolled Carbon Steel Plate* at paras. 85, 87-88.
147 *Ibid.* at para. 86.
148 *Silicon Metal* at para. 149.
149 Exhibit NQ-2020-002-A-05 at 887, 986.

[214] The Tribunal is of the view that, in order to find that the above-forecasted market conditions constitute a change in circumstances that would result in substantially increased imports of subject goods in Canada, it would have to engage in speculation about a series of possible future events. Furthermore, even if these forecasted market conditions proved accurate, there is no evidence to suggest that non-subject imports from China and other countries would not also benefit from these conditions. If anything, given the trends in imports observed during the POI, it is more likely than not that non-subject imports would benefit from these market conditions to the detriment of the subject and like goods.

[215] Finally, the Complainants noted that the United States imposed anti-dumping and countervailing duties on hardwood plywood imports from China in January 2018.[150] They submitted that the U.S. orders imposing these duties have forced exporters to seek alternative markets. In this regard, they noted that, from 2016 to 2019, imports of Chinese plywood into the United States dropped by more than 1.6 million cubic meters.

[216] The Importers submitted that, while the timing of declining Chinese exports to the United States overlaps with the POI, the evidence indicates that subject imports declined from 2017 to 2019 and in interim 2020. They submitted that the Tribunal does not need to speculate about the potential effects of the U.S. orders because, in the last three years, there was no diversion to the Canadian market.

[217] The evidence indicates that the bulk of the 1.6 million-cubic-meter decline in imports of Chinese plywood into the United States cited by the Complainants had occurred by 2018.[151] It is important to note that the investigations were initiated in November 2016 and provisional measures were imposed in June 2017.[152] Although imports of subject goods increased by 13 percent in 2018, possibly as a result of the diversion caused by the U.S. orders, they decreased thereafter, thereby suggesting that the threat of diversion, if any, has passed.

[218] The Complainants submitted that, in November 2019, following an anti-circumvention inquiry, the scope of the U.S. orders was expanded. They added that the United States also initiated a new anti-circumvention inquiry in June 2020.

[219] Since imports of subject goods decreased in interim 2020, the evidence does not indicate that the expansion of the scope of the U.S. orders in November 2019 has had any diversionary effect. As for the anti-circumvention inquiry initiated in June 2020, there is no evidence on the record regarding its outcome. In any event, given that imports of subject goods have decreased since 2019, despite the U.S. orders, there is no basis upon which to find that a single anti-circumvention proceeding would lead to a substantial increase in imports of subject goods.

[220] In light of all of the above, the Tribunal finds that the evidence does not indicate a likelihood of substantially increased imports of subject goods into Canada in the next 12 to 18 months.

Likely price effects

[221] The Tribunal found above that the subject goods significantly undercut the price of the like goods over the POI, but that, since the subject goods and the like goods did not compete against one

150 Exhibit NQ-2020-002-06B, Table 70; Exhibit NQ-2020-002-A-05, Public Attachments 1, 46.
151 Exhibit NQ-2020-002-A-05 at 1360.
152 *Ibid.* at 103, 1261.

another to any significant degree during this period, the undercutting did not have the effect of significantly depressing or suppressing the price of the like goods. In fact, the Tribunal found that prices of domestically produced like goods generally increased over the POI and that, while there was price suppression in 2018, this was likely attributable to non-subject imports from China and other countries that had captured the market share lost by the domestic industry.

[222] The Tribunal finds that there is no reason to believe that the subject goods would not continue to significantly undercut the price of the like goods in the near future in the absence of measures. However, there is likewise no indication that there will be a change in circumstances such that this price undercutting will, in the near future, result in the price of the like goods being depressed or suppressed, or in the loss of market share on the part of the domestic industry. Rather, lost market share or price effects, if any, are likely to be the result of an increase in *non-subject* imports from China and other countries.

[223] The Importers submitted that declining inventories mean there is no threat that existing inventories will create downward price pressure in the immediate and near future. The Complainants replied that the decline in inventories in interim 2020 was minimal and that large inventories are still present in the Canadian market, threatening to cause injury.

[224] Inventories of subject and non-subject imports increased in 2018, but then decreased in 2019, and in interim 2020, to reach 2017 levels.[153] It is important to note that these inventories are comprised of both subject and non-subject imports such that the actual volume of inventories of subject goods is likely much smaller.[154] In any event, given that there is no indication that the price undercutting by the subject goods will result in the price of the like goods being depressed or suppressed, the impact of these inventories is largely irrelevant.

[225] Therefore, the Tribunal finds that the evidence does not indicate that the subject goods will have a significant depressing or suppressing effect on the price of the like goods in the next 12 to 18 months.

Likely impact on the domestic industry

[226] The Tribunal found above that, although the domestic industry had suffered injury during the POI, that injury, whether considered material or not, was not caused by the subject goods. Rather, it found that the injury was caused by non-subject imports from China and other countries, as well as by a decline in the total decorative and other non-structural plywood market in 2019 and interim 2020. Although the domestic industry continued to lose market share to these non-subject imports throughout the POI, its financial performance gradually improved after 2018.

[227] In the absence of any evidence suggesting a change in these circumstances in the next 12 to 18 months, and given the Tribunal's findings that imports of the subject goods are not likely to substantially increase or have a significant depressing or suppressing effect on the price of the like goods in this time period, it can only conclude that any injury that may be suffered by the domestic industry will not be caused by the dumping and subsidizing of the subject goods.

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153 Exhibit NQ-2020-002-06B, Table 67.

154 The Tribunal was able to estimate the likely percentage of inventories that is comprised of subject goods based on the confidential responses to the importers' questionnaire.

[228] The Tribunal acknowledges that other factors such as the continuing COVID-19 pandemic and the Importers' predicted shift in consumer trends towards non-plywood alternative products,[155] if well-founded, may have an impact on the state of the domestic industry in the near future. However, these impacts would be unrelated to the dumping and subsidizing of the subject goods.

Conclusion

[229] On the basis of the foregoing, the Tribunal finds that the dumping and subsidizing of the subject goods are not threatening to cause injury to the domestic industry in the next 12 to 18 months.

[230] In making this finding, the Tribunal recognizes the distinct possibility that the domestic industry was negatively affected by import competition in the period prior to the POI, as well as by domestic policies that hampered its competitiveness. However, for the reasons previously mentioned, the Tribunal neither has the information nor the requisite CBSA determinations that would allow it to determine whether the domestic industry suffered injury, as that word is defined in *SIMA*, prior to the POI and whether that injury was caused by the dumping and subsidizing of the subject goods.

EXCLUSIONS

[231] Given the Tribunal's finding that the dumping and subsidizing of the subject goods have not caused injury and are not threatening to cause injury to the domestic industry, it is unnecessary to consider whether exclusions should be granted.

CONCLUSION

[232] The Tribunal hereby finds, pursuant to subsection 43(1) of *SIMA*, that the dumping of the subject goods (excluding those goods exported by Celtic Co., Ltd., Linyi Evergreen Wood Co., Ltd., Linyi Huasheng Yongbin Wood Co., Ltd., Pingyi Jinniu Wood Co., Ltd., Pizhou Jiangshan Wood Co., Ltd., Shandong Good Wood Imp. and Exp. Co., Ltd., and Xuzhou Shengping Imp. and Exp. Co., Ltd.) and the subsidizing of the subject goods (excluding those goods exported by the aforementioned exporters and Linyi Jiahe Wood Industry Co., Ltd.) have not caused injury and are not threatening to cause injury to the domestic industry.

Serge Fréchette

Serge Fréchette
Presiding Member

Peter Burn

Peter Burn
Member

Cheryl Beckett

Cheryl Beckett
Member

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155 Exhibit NQ-2020-002-E-03 at paras. 35-39.