



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2021-001

Certain Small Power Transformers

*Determination issued
Monday, June 14, 2021*

*Reasons issued
Tuesday, June 29, 2021*

*Corrigendum issued
Tuesday, December 7, 2021*

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

CERTAIN SMALL POWER TRANSFORMERS

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act* (*SIMA*), has conducted a preliminary injury inquiry into whether there is evidence that discloses a reasonable indication that the dumping of liquid dielectric transformers having a top power handling capacity equal to or greater than 3,000 kilovolt amperes (kVA) (3 megavolt amperes [MVA]), and less than 60,000 kilovolt amperes (kVA) (60 megavolt amperes [MVA]), and having a nominal high voltage rating of greater than 34.5 kilovolts (kV), whether assembled or unassembled, complete or incomplete, originating in or exported from the Republic of Austria, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), and the Republic of Korea, has caused injury or retardation or is threatening to cause injury as these words are defined in *SIMA*.

This preliminary injury inquiry follows the notification, on April 15, 2021, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping of the above-mentioned goods.

Pursuant to subsection 37.1(1) of *SIMA*, the Tribunal hereby determines that the evidence discloses a reasonable indication that the dumping of the above-mentioned goods has caused injury or is threatening to cause injury to the domestic industry.

Susan D. Beaubien

Susan D. Beaubien
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Frédéric Seppey

Frédéric Seppey
Member

The statement of reasons will be issued within 15 days.

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

CERTAIN SMALL POWER TRANSFORMERS

PRELIMINARY DETERMINATION OF INJURY

CORRIGENDUM

The last sentence of paragraph 45 of the Statement of Reasons should read as follows:

Additional evidence obtained during a full inquiry may cause the Tribunal to reassess the definition and scope of the domestic industry with respect to like goods.

The last sentence of paragraph 85 of the Statement of Reasons should read as follows:

In contrast, imports of non-subject goods steadily lost market share over this period.

Susan D. Beaubien

Susan D. Beaubien
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Frédéric Seppey

Frédéric Seppey
Member

Tribunal Panel:

Susan D. Beaubien, Presiding Member
Serge Fréchette, Member
Frédéric Seppey, Member

Support Staff:

Heidi Lee, Lead Counsel
Martin Goyette, Counsel
Mark Howell, Lead Analyst
Thy Dao, Analyst

PARTICIPANTS:**Domestic Producers**

Northern Transformer Corporation
PTI Transformers L.P. and PTI Transformers Inc.
Transformateurs Delta Star, Inc.

Embassy of the Republic of Korea

EU Delegation to Canada

Hyundai Electric & Energy Systems Co., Ltd.

Shihlin Electric & Engineering Corp.

United Steelworkers

Counsel/Representatives

Christopher J. Kent
Christopher J. Cochlin
Andrew M. Lanouette
Marc McLaren-Caux
Michael Milne
Susana May Yon Lee
Cynthia Wallace
Andrew Paterson
E. Melisa Celebican
Jordan Lebold
Alexander Hobbs

Joung Ki Kim

Maud Labat

Darrel H. Pearson
George Reid
Ethan Gordon

Joseph Kuo

Craig Logie
Christopher Somerville
Jacob Millar

Please address all communications to:

The Deputy Registrar
Telephone: 613-993-3595
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

INTRODUCTION

[1] Transformatours Delta Star, Inc. (Delta Star), Northern Transformer Corporation (Northern), PTI Transformers L.P. and PTI Transformers Inc. (collectively the SPT Coalition) have complained to the Canada Border Services Agency (CBSA) alleging that small power transformers originating or exported from Austria, Chinese Taipei and South Korea have been dumped into Canada, thus causing injury or threatening to cause injury to the domestic industry. The complaint was filed February 23, 2021.

[2] On April 15, 2021, the CBSA initiated an investigation respecting the dumping of the subject goods, pursuant to subsection 31(1) of the *Special Import Measures Act*.¹

[3] As a result of the CBSA's decision to initiate the investigation, on April 16, 2021, the Canadian International Trade Tribunal began its preliminary injury inquiry, pursuant to subsection 34(2) of *SIMA*, to determine whether the evidence discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury to the domestic industry.

[4] The Tribunal received submissions supporting a preliminary determination of injury from the SPT Coalition and the United Steelworkers (USW), a trade union representing a number of workers employed by the complainants.

[5] The Tribunal received submissions opposing the complaint from Shihlin Electric & Engineering Corp. (Shihlin), a producer of subject goods in Chinese Taipei. Hyundai Electric & Energy Systems Co., Ltd., the EU Delegation to Canada and the Embassy of the Republic of Korea filed notices of participation but did not make any submissions.

[6] On June 14, 2021, pursuant to subsection 37.1(1) of *SIMA*, the Tribunal determined that there is evidence that discloses a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury to the domestic industry. The reasons for that determination are set out below.

PRODUCT DEFINITION

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

Liquid dielectric transformers having a top power handling capacity equal to or greater than 3,000 kilovolt amperes (kVA) (3 megavolt amperes (MVA)), and less than 60,000 kilovolt amperes (kVA) (60 megavolt amperes (MVA)), and having a nominal high voltage rating of greater than 34.5 kilovolts (kV), whether assembled or unassembled, complete or incomplete, originating in or exported from the Republic of Austria, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), and the Republic of Korea.²

¹ R.S.C., 1985, c. S-15 [*SIMA*].

² Exhibit PI-2021-001-05 at 6.

CBSA'S DECISION TO INITIATE THE INVESTIGATION

[8] The CBSA initiated an investigation pursuant to subsection 31(1) of *SIMA* as it was of the opinion that there was evidence that the subject goods had been dumped, as well as evidence that disclosed a reasonable indication that the dumping had caused injury or was threatening to cause injury to the domestic industry.

[9] Using information for its chosen dumping period of investigation (POI) of July 1, 2019, to December 31, 2020, the CBSA estimated the margins of dumping and volumes of dumped goods for each of the subject countries as follows:³

Country	Margin of Dumping (% of export price)	Volume of Dumped Imports (% of total imports)
Austria	28.8	5.2
Chinese Taipei	17.9	4.7
South Korea	66.6	29.9

LEGISLATIVE FRAMEWORK

[10] The Tribunal must decide whether the evidence discloses a reasonable indication that the dumping of small power transformers has caused injury or retardation or is threatening to cause injury to the domestic industry. This mandate is prescribed by subsection 34(2) of *SIMA*.

Reasonable indication standard

[11] The term “reasonable indication” is not defined in *SIMA*, but has been interpreted as requiring a lower evidentiary standard than is applicable to a final injury inquiry under section 42 of *SIMA*. The Tribunal’s articulation of the standard of evidence required in a preliminary injury inquiry has been carefully crafted to ensure that it conforms to the requirements of *SIMA* and the World Trade Organization Agreements. The Tribunal must examine the evidence on the record using that standard, having regard to the specific circumstances of each case.

[12] There must be sufficient evidence to persuade the Tribunal that a final injury inquiry is warranted, having regard to the stage of the inquiry. In making this determination, the Tribunal considers the injury and threat of injury factors that are prescribed in section 37.1 of the *Special Import Measures Regulations*.⁴ These include the import volumes of the dumped goods, the effects of these goods on the price of like goods, the resulting impact of the subject goods on the state of the domestic industry, and if injury or threat of injury is found to exist, whether a causal relationship exists between the dumping of the goods and the injury or threat of injury.

[13] The outcome of a preliminary injury inquiry should not be presumed. The evidential standard is not met by bare, unsubstantiated allegations. The parties to a preliminary injury inquiry must put their best foot forward by providing positive and sufficient evidence that is relevant to both the prescribed requirements in *SIMA* and the factors set forth in the *Regulations*.

³ Exhibit No. PI-2021-001-05 at paras. 57 (Table 1) and 83 (Table 3).

⁴ SOR/84-927 [*Regulations*].

[14] The Tribunal will assess whether the allegations stand up to a somewhat probing examination, in light of the evidence and the opposing submissions of other interested parties, even if the theory of the case might not seem convincing or compelling.⁵

[15] However, the evidence underpinning a finding of preliminary injury need not be “conclusive, or probative on a balance of probabilities,” as it may not be complete or fully tested.⁶ At this early stage, the standard of “reasonable indication” of injury or threat of injury does not require the extensive evidence needed to satisfy the higher threshold of reliability and cogency that is needed in the context of a final injury inquiry.

[16] In the present case, only the complainants have filed evidence with the Tribunal. The other party that made submissions in these proceedings, Shihlin, has confined its participation in making written observations concerning the evidence submitted by the SPT Coalition.

Framework issues

[17] Prior to assessing whether the evidence demonstrates a reasonable indication of injury or threat of injury, the Tribunal must first consider the following framework issues:

- defining the scope of the like goods in relation to the subject goods;
- considering whether the subject goods constitute one or more classes of goods;
- defining the domestic industry; and
- whether the effect of the dumping of the subject goods should be assessed cumulatively or whether a separate analysis should be undertaken for each of the subject countries.

LIKE GOODS AND CLASSES OF GOODS

Like goods

[18] 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.

[19] In determining what are like goods and whether there is more than one class of goods, the Tribunal typically considers a number of factors. These include the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses, and whether the goods fulfill the same customer needs).

⁵ *Certain Grinding Media* (15 February 2021) PI-2020-006 (CITT) at para. 14.

⁶ *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD); *Wheat Gluten* (13 October 2020) PI-2020-003 (CITT) at para. 15.

[20] Small power transformers are used to increase, maintain or decrease electric voltage in high-voltage transmission and distribution systems. They are capital goods that are made to order based on the purchaser's specifications and needs.

[21] The complainants say that small power transformers comprise a spectrum of products that are characterized by largely the same physical characteristics, production process, end use and marketing characteristics.

[22] According to the complainants, small power transformers produced in Canada that meet the definition of the subject goods are like goods relative to the subject goods.

[23] Although the goods are made to order and include a number of customizable features, the complainants say that domestically produced small power transformers compete in the same market for the same sales as the subject goods.

[24] The CBSA concluded that domestically produced small power transformers are like goods to the subject goods and that they constitute only one class of goods.⁷ The CBSA found that both subject goods and like goods are produced following substantially the same production process and follow the same key steps of design. In addition, the CBSA concluded that subject goods are completely substitutable for domestic like goods of the same specifications.

[25] In its written submission, Shihlin argues that the subject goods are distinguishable from like goods in view of different specifications and standards applicable to the Canadian and Chinese Taipei markets. The Tribunal notes that this argument seems to compare goods produced in Chinese Taipei that are destined for the Canadian market against those that are destined for their home market, which is not relevant to the like goods analysis.

[26] Small power transformers in Canada are largely sold through procurement processes in which both domestic and foreign producers participate.⁸ The evidence therefore suggests that domestic small power transformers and the subject goods compete for the same sales and, where specifications are equal, are sufficiently substitutable. However, the Tribunal has some reservations concerning the breadth of the CBSA's finding that the subject goods are fully substitutable for domestically produced like goods. Small power transformers are bespoke products. As such, some product features, including the engineering requirements of each customer and the technical standards to which the products adhere, may be variable.

[27] These issues are best examined in the context of a full inquiry, with the benefit of a more comprehensive evidentiary record.

[28] For the purposes of this preliminary inquiry, the Tribunal is satisfied that domestically produced small power transformers are like goods to the subject goods.

⁷ Exhibit PI-2021-001-05 at 12.

⁸ Exhibit PI-2021-001-02.01 at 332-334, 446-448, 494-497; Exhibit PI-2021-001-03.01 (protected) at 939-941, 2541-2543, 3170-3173.

[29] The complainants have provided evidence of actual sales that have been lost to the subject goods on the basis of price.⁹ The evidence of lost sales based on price alone supports a finding that the subject and like goods closely resemble each other.

[30] Moreover, no opposing party has contested the premise that small power transformers produced domestically are like goods to the subject goods.

Classes of goods

[31] The CBSA found that the subject goods and like goods constitute only one class of goods. These conclusions were not contested before the Tribunal in the form of submissions from opposing parties.

[32] Even if there are some differences as between the power transformers within the product definition, whether arising from inherent characteristics, performance standards, methods of manufacture, or value-added features, while they may not be identical in all respects to each other, small power transformers have similar physical and market characteristics and similar end uses, and generally resemble one another. In *Liquid Dielectric Transformers PI*, the Tribunal also previously found that power transformers that were similarly variable constituted a single class of goods.¹⁰ The Tribunal sees no rationale to depart from that reasoning for the purposes of this preliminary inquiry.

[33] Accordingly, the Tribunal concludes that the subject goods form a single class of goods.

DOMESTIC INDUSTRY

[34] In order to assess whether the dumping of subject goods has caused injury or is threatening to cause injury, the Tribunal must identify the subject of any such injury or potential injury, namely the domestic industry that comprises producers of the like goods.

[35] Subsection 2(1) of SIMA defines “domestic industry” as follows:

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

[36] The Tribunal must therefore determine whether the evidence discloses a reasonable indication of injury or 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.

[37] In addition to the constituent members of the SPT Coalition, there is evidence of other domestic manufacturers that are not parties to this proceeding, namely Pioneer Transformers Ltd. (Pioneer), Stein Industries Inc. (Stein) and Transmag Energy (Transmag). Other entities have been identified as: manufacturers of goods bearing some similarity to the like goods, but which

⁹ Exhibit PI-2021-001-03.01 (protected) at 950-951, 954-955, 2551-2554, 2557-2558, 3181-3182.

¹⁰ *Liquid Dielectric Transformers* (22 June 2012) PI-2012-001 (CITT) [*Liquid Dielectric Transformers PI*] at paras. 23-26.

nonetheless fall outside the scope of the product definition; entities that import small power transformers from non-subject countries; and entities that sell refurbished product.

[38] Both Pioneer and Stein filed letters in support of the complaint lodged by the SPT Coalition but did not otherwise participate in the proceeding.

[39] At issue is whether Transmag should be considered as part of the domestic industry. The complainants assert that Transmag should be excluded because it either imports the subject goods or is otherwise affiliated with importers of subject goods. It is further alleged that Transmag is affiliated with Volta Energy through their memberships in the Société Générale d'Électrotechnique and that Volta Energy is a "partner" of HC Transformer & Switchgear, which is a fully owned subsidiary of Han Chang Transformer of South Korea.¹¹

[40] The Tribunal may exclude a domestic producer from the domestic industry if that producer would contribute to, or benefit from, the potentially injurious effects of dumping, whether directly as an importer or indirectly through related companies. The Tribunal typically considers both structural and behavioural factors to make this determination.

[41] The data and evidence relevant to domestic production of small power transformers in this case is predominantly confined to the complainants. There is limited evidence concerning the products and activities of Transmag or the importers of small power transformers and sellers of refurbished product. For example, there is no conclusive data concerning the size and scope of Transmag's production of the like goods.

[42] The record, at this stage, does not include evidence and data with respect to all known or possible producers of like goods, and the evidence as to Transmag's role in the industry is inconclusive at present.

[43] As such, the Tribunal must consider whether a major proportion of domestic production is represented in the present inquiry. Based on the evidence that has been provided, the Tribunal finds that the complainants collectively account for a major proportion of both domestic production and sale of small power transformers, with or without the inclusion of other possible producers such as Transmag, Stein and Pioneer as part of the domestic industry.

[44] For the purposes of this preliminary inquiry, the Tribunal will also consider the impact of the subject goods on the complainants.

[45] The Tribunal also concludes that further investigation and data can, and should, be gleaned concerning domestic production within the scope of a full inquiry. This would extend not only to the complainants and to Pioneer, Stein and Transmag, but also to the importers and refurbishers of small power transformers. Additional evidence obtained during a full inquiry may cause the Tribunal to reassess the definition and scope of the domestic industry with respect to subject goods.

CUMULATION

[46] Although there is no statutory requirement for the Tribunal to consider the issue of cumulation at the preliminary inquiry stage, the Tribunal has conventionally done so, as the issue of

¹¹ Exhibit PI-2020-001-02.01 at 152-154.

cumulation has a bearing on the analysis of whether there is a reasonable evidential basis to support a preliminary finding of injury or threat of injury.

[47] In doing so, the Tribunal will have regard to the provisions of section 42(3) of *SIMA*, which directs the Tribunal (in the context of a final injury inquiry) to make a cumulative assessment of the effects of dumping of subject goods from more than one country if:

- the margin of dumping in relation to the goods from each of the countries is not insignificant and the volume of goods imported into Canada from any of those countries is not negligible; and
- an assessment of the cumulative effect of the subject goods would be appropriate taking into account the conditions of competition between the goods from any of the subject countries, the other dumped goods, and like goods.

[48] In this case, the CBSA has estimated that the margin for dumping for each of the subject countries is not insignificant and that the estimated volumes are not negligible.

[49] The complainants assert that the subject goods and domestically produced small power transformers compete directly for the same customers for the following reasons:

- Both are customized capital goods sold through procurement. Producers of domestic small power transformers and importers of subject goods submit bids in response to those tenders and compete with each other, head to head, in order to secure that business;
- In order to submit a responsive bid, both domestic producers and importers of subject goods must meet the standards and specifications set out in the tender documents;
- Where the product specifications are equal or equivalent, subject goods and like goods produced domestically are essentially interchangeable with each other, even if not identical; and
- In terms of product quality, small power transformers are equivalent regardless of origin, whether produced domestically or in any of the subject countries.

[50] Having regard to the purpose and the threshold of a preliminary injury inquiry, the Tribunal finds that the complainants' assertions are underpinned by a reasonable evidential foundation.

[51] Accordingly, the Tribunal will cumulate the effect of dumping from all the subject countries when considering the issue of injury or threat of injury to the domestic industry.

INJURY ANALYSIS

[52] The analysis as to whether there is a reasonable indication of injury (or threat of injury) involves a consideration of multiple factors.

[53] As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal considers the impact of the dumped goods on the state of the domestic industry. In particular, the Tribunal will

have regard to all relevant economic factors and indices that have a bearing on the state of the domestic industry. These impacts are to be distinguished from the impact of any other factors affecting the domestic industry.

[54] Power transformers have high fixed costs of production. They are tailored to the engineering requirements of each customer. As capital equipment, a power transformer tends to have a relatively long working life and will thus tend to be ordered relatively infrequently by each individual customer.

[55] As the number of sales opportunities is variable and differs from year to year, the SPT Coalition submits, and the Tribunal accepts, that year-over-year trends provide a more appropriate context for analysis, as opposed to trends referable over a period of inquiry.

[56] Furthermore, the physical, manufacturing and marketing characteristics of like goods and subject goods, including channels of trade, provide relevant context for the Tribunal's injury analysis, and as noted above, are not dissimilar to those identified in *Liquid Dielectric Transformers NQ*.¹² As such, the Tribunal will adopt an analytical framework that is similar in many respects to that adopted in that inquiry.

[57] According to the complainants, the lead time between a sale and delivery (i.e. importation) is approximately 6 to 12 months. In *Liquid Dielectric Transformers NQ*, the Tribunal found that long lead times resulted in certain price effects of dumping, such as price undercutting and price depression, materializing one or two years before the actual importation of the subject goods.¹³ Conversely, the Tribunal also found that the domestic industry's production and financial performance in the first year of the period of inquiry were related to pricing practices that predated the period of inquiry. Accordingly, the Tribunal examined price effects throughout the entire period of inquiry but focused on the second and third years as being more representative of the impact of dumping on the domestic industry, at least with respect to the volume of imports of subject goods.

Import volumes of subject goods

[58] The Tribunal must consider whether there is a reasonable indication that importation of the subject goods has significantly increased in absolute and relative terms.

[59] The complainants submit that megavolt amperes (MVA), rather than number of units, is the appropriate measure to quantify and measure the flow of subject goods into Canada. The SPT Coalition argues that, within the industry, production volume and capacity are measured in MVA rather than units or numbers of transformers.

[60] In its written submissions, Shihlin submits that the number of units, as opposed to value, is the appropriate metric to assess the import volume of the subject goods. It contends that the number of subject goods, measured in units, is quite small and does not demonstrate that a significant volume of small power transformers is being imported into Canada.

¹² *Liquid Dielectric Transformers* (20 November 2012) NQ-2012-001 (CITT) [*Liquid Dielectric Transformers NQ*] at paras. 44-45, 60-61.

¹³ *Ibid.* at paras. 60-61.

[61] The complainants' suggestion is consistent with the Tribunal's approach in *Liquid Dielectric Transformers NQ*.¹⁴ Moreover, for the purposes of this preliminary injury inquiry, the Tribunal finds that evaluating the import volume of the subject goods is not contingent on the choice of metric as between value or volume, given that the relevant test is "reasonable indication" of injury to the domestic industry.

[62] Due to limitations in the Statistics Canada data available to them, the complainants provided estimates of subject goods based on value, rather than on number of individual units imported.

[63] Using the Statistics Canada data, the complainants submit that there was a significant increase in the value of imports of subject goods from 2018 to 2020. The complainants estimate that imports of subject goods increased from \$12.9 million in 2018 to \$30.7 million in 2019 and decreased to \$22.2 million in 2020.¹⁵ Based on their industry knowledge, the complainants have provided the Tribunal with a confidential estimate showing a projected volume for 2021 that is slightly lower than, but generally consistent with, the import volume of subject goods during 2020 and one that is significantly higher than imports during 2018.

[64] The CBSA also provided its import estimates in terms of dollar value. There is some discrepancy between the Statistics Canada data and the CBSA's estimates of the dollar value of imports of subject goods over the same time period.

[65] The Tribunal typically relies on CBSA estimates at this stage, given that the CBSA has access to better data than the complainants. As such, the CBSA's information should typically be more accurate.¹⁶

[66] Although there is variation of the reported dollar value of the imported subject goods during the 2018-to-2020 time frame, the trends observed by the CBSA are similar to those in the complainants' estimates. According to the CBSA, the dollar value of imports of subject goods increased by approximately 43 percent in 2019 over 2018, before declining by about 37 percent in 2020.¹⁷

[67] The value of imports of subject goods relative to domestic sales of domestic production also reflected a similar pattern in showing an increase in 2019 over 2018, before dropping in 2020, at a level lower than that of 2018.¹⁸

[68] It is unclear whether the COVID-19 pandemic had any impact on the import values for 2020.

[69] Having regard to the threshold for a preliminary inquiry, the Tribunal finds that the evidence supports a finding that there is a reasonable indication that the volume of subject goods is increasing overall. The Tribunal considers that the overall dynamics of the small power transformer market are best explored in the context of a full inquiry.

[70] The Tribunal must also consider whether significant price effects are associated with the subject goods.

¹⁴ *Ibid.* at para. 69.

¹⁵ Exhibit PI-2021-001-02.01 at para. 161.

¹⁶ See e.g. *Heavy Plate* (27 July 2020) PI-2020-001 (CITT) at para. 26.

¹⁷ Exhibit PI-2021-001-03.02 (protected) at 20.

¹⁸ Exhibit PI-2021-001-10.C (protected) at 2; Exhibit PI-2021-001-3.02 (protected) at 19.

Price effects of the subject goods

[71] The complainants submit that the pricing of the subject goods has undercut, depressed and suppressed prices of domestic small power transformers.

[72] In support of these allegations, the complaint submitted sworn declarations which describe account-specific allegations of lost sales. These comprised instances during the competitive bidding process where the price of imports of subject goods caused the complainants to lower their price. The complainants also provided sales and financial data demonstrating their cost of goods sold as a proportion of their net sales.

[73] The complainants assert that small power transformers are price-sensitive. As noted above, the complainants explain that small power transformers are purchased through open tenders, which provide a degree of transparency into industry pricing levels through formal and informal feedback processes.

[74] According to the complainants, purchasers often use pre-qualification processes to ensure that bidders meet the required technical requirements.¹⁹ The complainants argued that once suppliers are judged to meet the purchaser's requirements for technical expertise and ability, price becomes the most important consideration.²⁰ In addition, some purchasers award blanket agreements to buy greater volumes at fixed, lower prices.²¹ The complainants argue that losing out on a blanket agreement can be so significant that bidders compete fiercely to secure the sale.

[75] For its part, Shihlin argued that it won bids due to the quality of its product and service, rather than price.

[76] The Tribunal is satisfied that the evidence demonstrates that small power transformers are capital goods which can be customized, whose procurement and purchase are predominantly price driven.

Price undercutting

[77] Due to issues with Statistics Canada data, the complainants were unable to provide average unit values. Instead, they provided pricing evidence in the form of account-specific information. The complainants provided a table summarizing competitive bidding processes for 2018 to 2020 for which they were not able to win a sale,²² to the effect that they had lost a large quantity of sales to imports of subject goods as a result of price undercutting by the subject goods.

[78] Although largely anecdotal in nature, the complainants' evidence demonstrates price undercutting that has resulted in lost sales and accounts to producers of the subject goods. The loss of these sales and accounts has been price-driven, as the complainants have lost sales even after they have significantly and successively lowered prices.

Price depression and suppression

¹⁹ Exhibit PI-2021-001-02.01 at 333.

²⁰ *Ibid.* at 449-450.

²¹ *Ibid.* at 334.

²² Table 9 of the complaint summarizes information contained in Attachments 7-5, 7-6 and 7-7 of the confidential complaint. Exhibit PI-2021-001-03.01 at 936-4377.

[79] The complainants also submit that imports of subject goods have depressed prices of domestic transformers, regardless of what company wins the contract.

[80] The complainants filed a sworn declaration from Mr. Steve Newman of Delta Star, who explained that Delta Star gathers market intelligence from a variety of sources. According to Mr. Newman, this provides a certain level of transparency into the producers and prices of winning bids.²³

[81] The complainants submitted evidence indicating that, due to pricing pressures from subject goods, they must lower their prices to compete against subject goods and, where subject goods are expected to compete for the sale, have quoted lower prices than they otherwise would have done.²⁴ This evidence also indicates that the complainants have lost sales despite having lowered prices due to pricing pressures from imports of subject goods.

[82] The complainants also allege that the presence of subject goods has prevented the domestic industry from raising prices to cover rising production costs. The ratio of cost of goods sold (COGS) to sales rose sharply from 2018 to 2019, as a result of the COGS rising faster than net sales value.²⁵ Though the ratio decreased somewhat during 2020, the complainants contend that they remained unable to raise prices to cover elevated costs. In this regard, Mr. Colin Mark of Northern stated that Northern was unable to improve pricing in 2019 to sustainable levels, which continued in 2020.²⁶

[83] In light of the foregoing, the Tribunal finds that the evidence demonstrates a reasonable indication that the pricing of the subject goods has operated to undercut and depress the price of domestically produced small power transformers. However, these pricing effects warrant the greater scrutiny of a full inquiry. In that respect, the Tribunal will benefit from the additional information it will collect during its investigation through its questionnaires and through the submissions of the parties.

Impact of the subject goods on the domestic industry and causation

[84] Paragraph 37.1(3)(a) of the *Regulations* requires the Tribunal to consider whether a causal relationship exists between the dumping of the goods and the injury on the basis of the volume, the price effect, and the impact on the domestic industry of the dumped goods.

[85] Over the time period of 2018 to 2020, the market share held by the imports of subject goods followed the same pattern as discussed above in relation to import volumes of the subject goods. Total apparent market share grew in 2019 and shrank in 2020 to pre-2018 levels. In contrast, non-imports of subject goods steadily lost market share over this period.²⁷

[86] The Tribunal finds that there is some evidence to support the complainants' allegations that the subject goods are gaining sales at the expense of the domestic industry, but that a full inquiry is required to test those allegations fully, in light of the opposing argument advanced by Shihlin.

²³ Exhibit PI-2021-001-03.01(protected) at 944.

²⁴ *Ibid.* at 950-951, 954-955, 2551-2554, 2557-2558, 3181-3182.

²⁵ Exhibit PI-2021-001-10.C (protected) at 4.

²⁶ Exhibit PI-2021-001-02.01 at 454; Exhibit PI-2021-001-03.01 (protected) at 2549.

²⁷ Exhibit PI-2021-001-10.C (protected) at 2; Exhibit PI-2021-001-3.02 (protected) at 19.

[87] The domestic industry's financial performance worsened from 2018 to 2020. Profitability decreased in 2019, which coincided with the largest volumes of imports of subject goods during this time period, and improved somewhat in 2020, though performance remained worse than in 2018.²⁸

[88] Production levels on an MVA basis and capacity utilization for like goods followed the opposite trend, increasing in 2019 and declining in 2020, though they remained at higher levels than in 2018. The domestic industry's performance was positive in other key indicators: sales values and market share held by domestic sales from domestic production increased in each year from 2018 to 2020.²⁹

[89] The evidence of lost sales provided by the SPT Coalition and the price effects described in the complaint are sufficient to show some evidence of actual injury, despite some fluctuations in the domestic industry's performance. Indeed, the domestic industry lost sales even after it began cutting prices.

[90] The Tribunal further notes that there is a strong and notable negative correlation between the increase in importation of the subject goods and the declining financial performance of the domestic industry.

[91] The Tribunal finds that this evidence provides a reasonable indication of material injury, and reasonably indicates that there is a causal link between the imports of subject goods and the deterioration of the domestic industry's performance, including decreasing profitability and loss of sales.

THREAT OF INJURY

[92] Although there is evidence showing that the domestic industry has already been injured by the importation of the subject goods at dumped prices, the Tribunal also finds that the complainants have met the evidentiary threshold applicable at the preliminary inquiry stage to demonstrate a threat of injury.

[93] The complaint alleges, with supporting data, that the imports of subject goods threaten to cause further material injury to the domestic industry in light of the following:

- The domestic industry remains vulnerable due to pricing pressures from and lost sales to imports of subject goods, the impacts of which will continue to be felt into the near- to medium-term future;³⁰
- Demand is expected to soften due to the economic impact of the COVID-19 pandemic;³¹
- Major purchasers are expected to renew blanket agreements in the next 12 to 24 months. Without anti-dumping duties in place, domestic producers will be vulnerable to pricing

²⁸ Exhibit PI-2021-001-10.C (protected) at 4; Exhibit PI-2021-001-3.02 (protected) at 19.

²⁹ Exhibit PI-2021-001-10.C (protected) at 2, 4, 10; Exhibit PI-2021-001-3.02 (protected) at 19.

³⁰ Exhibit PI-2021-001-02.01 at 331, 345, 455, 457; Exhibit PI-2021-001-03.01 (protected) at 938, 952, 2550, 2552.

³¹ Exhibit PI-2021-001-02.01 at 451, 496; Exhibit PI-2021-001-03.01 (protected) at 2546, 3172.

pressures from imports of subject goods, particularly if blanket agreements are locked in at dumped prices;³²

- The volume of imports of subject goods over the CBSA's POI and the volumes of lost sales to imports of subject goods slated for delivery in 2021 and 2022, as well as the production capacity and export orientation of producers in subject countries, indicate a likelihood that substantial volumes of the subject goods will be imported into Canada over the next 12 to 24 months;³³ and
- Worsening market conditions in the subject countries and the combined attractiveness of the Canadian market will encourage increased imports from subject countries.³⁴

[94] On a preliminary injury inquiry, the threshold to be met by a complainant is relatively low. The evidence of actual or threat of injury need not be overwhelming. Based on the information available at this stage, the Tribunal finds that the evidence overall discloses a reasonable indication that the dumping of the subject goods is threatening to cause injury.

CONCLUSION

[95] For the foregoing reasons, the Tribunal finds that the evidence discloses a reasonable indication that the dumping of the subject goods has caused or is threatening to cause injury to the domestic industry.

Susan D. Beaubien
Susan D. Beaubien
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Frédéric Seppey
Frédéric Seppey
Member

³² Exhibit PI-2021-001-02.01 at 347-348, 351-354, 463, 497; Exhibit PI-2021-001-03.01 (protected) at 955, 959-962, 2558, 3173.

³³ Exhibit PI-2021-001-02.01 at 452-453, 543-1093.

³⁴ *Ibid.* at 1094-2094.