



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## DETERMINATION AND REASONS

Preliminary Injury Inquiry  
No. PI-2021-002

Certain Container Chassis

*Determination issued  
Monday, August 9, 2021*

*Reasons issued  
Tuesday, August 24, 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 CONTAINER CHASSIS**

### **PRELIMINARY DETERMINATION OF INJURY**

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods (defined as follows) have caused injury or retardation or are threatening to cause injury:

Container chassis and container chassis frames, whether finished or unfinished, assembled or unassembled, regardless of the number of axles, for the carriage of containers, or other payloads (including self-supporting payloads) for road, marine roll-on/roll-off and/or rail transport, and certain subassemblies of container chassis originating in or exported from the People's Republic of China.

Excluding:

(a) dry van trailers, meaning trailers with a wholly enclosed cargo space comprised of fixed sides, nose, floor and roof, with articulated panels (doors) across the rear and occasionally at selected places on the sides, with the cargo space being permanently incorporated in the trailer itself;

(b) refrigerated van trailers, meaning trailers with a wholly enclosed cargo space comprised of fixed sides, nose, floor and roof, with articulated panels (doors) across the rear and occasionally at selected places on the sides, with the cargo space being permanently incorporated in the trailer and being insulated, possessing specific thermal properties intended for use with self-contained refrigeration systems; and

(c) flatbed or platform trailers, meaning trailers that consist of load-carrying main frames and a solid, flat or stepped loading deck or floor permanently incorporated with and supported by frame rails and cross members.

For greater certainty, the subject goods include the following: complete or substantially complete major subassemblies, when imported, purchased or supplied with, or for assembly with, subject container chassis frames:

i) running gear assemblies for connection to the container chassis frame, whether fixed in nature or capable of sliding fore and aft or lifting up and lowering down, which may include suspension(s), wheel end components, slack adjusters, axles, brake chambers, locking pins, tires and wheels;

ii) landing gear assemblies, for connection to the container chassis frame, capable of supporting the container chassis when it is not engaged to a tractor; and

iii) connection assemblies that connect to the container chassis frame or a section of the container chassis frame, such as B-trains and A-trains, capable of connecting a container chassis to a converter dolly or another container chassis.

This preliminary injury inquiry follows the notification, on June 10, 2021, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing of the above-mentioned goods.

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

Frédéric Seppey

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Frédéric Seppey  
Presiding Member

Susan D. Beaubien

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Susan D. Beaubien  
Member

Randolph W. Heggart

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Randolph W. Heggart  
Member

The statement of reasons will be issued within 15 days.

## Tribunal Panel:

Frédéric Seppey, Presiding Member  
Susan D. Beaubien, Member  
Randolph W. Heggart, Member

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## STATEMENT OF REASONS

### INTRODUCTION

[1] On April 20, 2021, Max-Atlas Équipement International Inc. (Max-Atlas) filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping and subsidizing of certain container chassis and container chassis frames 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] In response to Max-Atlas's complaint, the CBSA initiated investigations on June 10, 2021, respecting the dumping and the subsidizing of the subject goods pursuant to subsection 31(1) of the *Special Import Measures Act*.<sup>1</sup>

[3] As a result of the CBSA's decision to initiate the investigations, the Canadian International Trade Tribunal began its preliminary injury inquiry, pursuant to subsection 34(2) of *SIMA*, to determine whether there is evidence disclosing a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic industry.<sup>2</sup> The Tribunal's preliminary injury inquiry commenced on June 11, 2021.

[4] Notices of participation were received from Ocean Trailer/C Keay Investments, CIE Manufacturing, Groupe St-Henri, Dongguan CIMC Vehicle Co., Ltd. (CIMC), Canadian Tire Corporation, Ltd., and the Fédération démocratique de la métallurgie, des mines et des produits chimiques. Notwithstanding the filing of a notice of participation, none of these entities filed evidence or submissions with the Tribunal in order to contest any aspect of the complaint on its merits.

[5] On August 9, 2021, pursuant to subsection 37.1(1) of *SIMA*, the Tribunal determined that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic industry. The reasons for that determination are set out below.

### PRODUCT DEFINITION

[6] The CBSA defined the subject goods as follows:<sup>3</sup>

Container chassis and container chassis frames, whether finished or unfinished, assembled or unassembled, regardless of the number of axles, for the carriage of containers, or other payloads (including self-supporting payloads) for road, marine roll-on/roll-off and/or rail transport, and certain subassemblies of container chassis originating in or exported from the People's Republic of China.

Excluding:

- a) dry van trailers, meaning trailers with a wholly enclosed cargo space comprised of fixed sides, nose, floor and roof, with articulated panels (doors) across the rear and

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<sup>1</sup> R.S.C., 1985, c. S-15 [*SIMA*].

<sup>2</sup> As a domestic industry is already established, the Tribunal need not consider the question of retardation.

<sup>3</sup> Exhibit PI-2021-002-02.09 at 1-3.

- occasionally at selected places on the sides, with the cargo space being permanently incorporated in the trailer itself;
- b) refrigerated van trailers, meaning trailers with a wholly enclosed cargo space comprised of fixed sides, nose, floor and roof, with articulated panels (doors) across the rear and occasionally at selected places on the sides, with the cargo space being permanently incorporated in the trailer and being insulated, possessing specific thermal properties intended for use with self-contained refrigeration systems; and
  - c) flatbed or platform trailers, meaning trailers that consist of load-carrying main frames and a solid, flat or stepped loading deck or floor permanently incorporated with and supported by frame rails and cross members.

For greater certainty, the subject goods include the following: complete or substantially complete major subassemblies, when imported, purchased or supplied with, or for assembly with, subject container chassis frames:

- i) running gear assemblies for connection to the container chassis frame, whether fixed in nature or capable of sliding fore and aft or lifting up and lowering down, which may include suspension(s), wheel end components, slack adjusters, axles, brake chambers, locking pins, tires and wheels;
- ii) landing gear assemblies, for connection to the container chassis frame, capable of supporting the container chassis when it is not engaged to a tractor; and
- iii) connection assemblies that connect to the container chassis frame or a section of the container chassis frame, such as B-trains and A-trains, capable of connecting a container chassis to a converter dolly or another container chassis.

## THE CBSA'S DECISION TO INITIATE THE INVESTIGATIONS

[7] The CBSA initiated the investigations pursuant to subsection 31(1) of *SIMA* as it was of the opinion that there was evidence that the subject goods had been dumped and subsidized, as well as evidence that disclosed a reasonable indication that the dumping and subsidizing had caused injury to the domestic industry.

[8] Using information for the dumping period of investigation (POI) of January 1, 2020, to December 31, 2020, the CBSA estimated the margin of dumping to be 39 percent, expressed as a percentage of export price.<sup>4</sup>

[9] Using information for the subsidy POI of the same period, the CBSA estimated the amount of subsidy to be 33 percent, expressed as a percentage of export price.<sup>5</sup>

## LEGISLATIVE FRAMEWORK

[10] The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine "whether the evidence discloses a reasonable

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<sup>4</sup> Exhibit PI-2021-002-05 at paras. 75, 77.

<sup>5</sup> *Ibid.* at para. 112.

indication that the dumping or subsidizing of the [subject] goods has caused injury or retardation or is threatening to cause injury.”

[11] The term “reasonable indication” is not defined in *SIMA* but it is understood to mean that the evidence need not be “conclusive, or probative on a balance of probabilities”.<sup>6</sup> The reasonable indication standard applicable to a preliminary injury inquiry is also lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of *SIMA*.<sup>7</sup> Indeed, not all the evidence is available at the preliminary inquiry stage. The evidence that is available will be significantly less detailed and comprehensive than the evidence submitted during the course of a final injury inquiry.

[12] However, the outcome of preliminary injury inquiries must not be taken for granted.<sup>8</sup> The Tribunal must be satisfied that there is positive and sufficient evidence on the record to support a preliminary determination of injury or threat of injury. This evidence must address the necessary requirements in *SIMA* and the relevant factors of the *Special Import Measures Regulations*.<sup>9</sup>

[13] Before examining the allegations of injury and threat of injury, the Tribunal must first identify both like goods and the domestic industry that produces those goods. This preliminary analysis is required because subsection 2(1) of *SIMA* defines “injury” as “material injury to a domestic industry”<sup>10</sup> and “domestic industry” as “the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods . . . .”

## LIKE GOODS AND CLASSES OF GOODS

[14] 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.

[15] In determining what constitutes the like goods and whether there is more than one class of goods,<sup>11</sup> the Tribunal typically considers a number of factors. These include the physical

<sup>6</sup> *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

<sup>7</sup> *Grain Corn* (10 October 2000), PI-2000-001 (CITT) at 5.

<sup>8</sup> *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at para. 19.

<sup>9</sup> SOR/84-927 [*Regulations*]. In making its preliminary determination, the Tribunal takes into account the injury and threat of injury factors that are prescribed in section 37.1 of the *Regulations*. These include the import volumes of the dumped and subsidized goods, the effects of the dumped and subsidized goods on the price of like goods, the resulting economic impact of the dumped and subsidized goods on the domestic industry and, if injury or threat of injury is found to exist, whether a causal relationship exists between the dumping and subsidizing of the goods and injury or threat of injury.

<sup>10</sup> It is not sufficient that the dumping or subsidizing contribute to material injury to a domestic industry or to a threat of material injury. There must be evidence that discloses a reasonable indication that the dumping or subsidizing has caused, or is threatening to cause, material injury. See *Unitized Wall Modules* (3 May 2013), PI-2012-006 (CITT) at para. 23.

<sup>11</sup> In order to decide whether there is more than one class of goods, the Tribunal must determine whether goods potentially included in separate classes of goods constitute “like goods” in relation to each other. If they do, they will be regarded as comprising one class of goods. See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.



characteristics of the goods (such as composition and appearance), and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).<sup>12</sup>

[16] Max-Atlas submitted that it produces various models of goods that are interchangeable with the subject goods, and that there is one class of goods. The CBSA found that domestically produced goods of the same description were like goods to the subject goods, and that there was one class of goods.<sup>13</sup>

[17] In the Tribunal's view, the evidence indicates that domestically produced chassis are not identical in *all* respects to the subject goods. The product definition and additional product information do not describe a single type of product but cover a relatively broad range of products with similar physical and market characteristics, making it difficult to determine whether subject and like goods are identical in all respects.<sup>14</sup> Both subject goods and domestically produced chassis come in a variety of lengths, configurations and characteristics to accommodate a diversity of customer needs.

[18] However, the Tribunal finds that the uses and characteristics of domestically produced chassis closely resemble those of the subject goods. As such, domestically produced chassis are like goods to the subject goods.

[19] The marketing materials submitted with the complaint show that domestically produced chassis and subject goods have very similar uses and functions, as well as similar characteristics.<sup>15</sup> Both domestic and subject goods serve to transport containers (including intermodal cargo, marine shipping, electrical power generators, and other containers), can accommodate a variety of container lengths (from 20 feet to 60 feet),<sup>16</sup> offer a range of characteristics (including number of axles, tilting and extensible capacity, height, and other characteristics), and are made of similar materials.<sup>17</sup> As such, both domestic and subject goods are interchangeable in terms of functions and features.

[20] Furthermore, both domestic and subject goods seem to be marketed through the same means: direct sales (Max-Atlas makes direct sales in Ontario and Quebec, while subject goods exporter CIMC is reported to make direct sales largely through its American subsidiary CIE Manufacturing), distributor networks, participation in trade shows, etc.<sup>18</sup>

[21] This evidence was not contested by opposing submissions, as none were received. Accordingly, the Tribunal is satisfied that domestically produced chassis, including subassemblies thereof, are like goods to the subject goods.

[22] The Tribunal is also of the view that there is a single class of like goods. Although there are variations in length, configurations and characteristics, the physical characteristics and market characteristics are very similar across the range of chassis meeting the product definition.<sup>19</sup> Different

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

<sup>13</sup> Exhibit PI-2021-002-05 at paras. 33-39.

<sup>14</sup> *Ibid.* at paras. 14-20.

<sup>15</sup> Exhibit PI-2021-002-02.01 at 418-541.

<sup>16</sup> *Ibid.* at 13.

<sup>17</sup> As per the sample of specification sheets provided; see Exhibit PI-2021-002-02.01 at 29, 418-541.

<sup>18</sup> Exhibit PI-2021-002-02.01 at 26-27.

<sup>19</sup> See Max-Atlas's analysis at Exhibit PI-2021-002-02.01 at 29-30.

models of chassis are often interchangeable, and each model's purpose is to haul containers and goods.

[23] The Tribunal also notes that the product definition includes, in addition to container chassis and container chassis frames, certain “major subassemblies, when imported, purchased or supplied with, or for assembly with, subject container chassis frames”. The evidence presented by Max-Atlas is that subassemblies are typically dedicated for use in producing the final chassis and retain the same essential characteristics after assembly.<sup>20</sup> Essentially, subassemblies are discrete parts which are assembled to construct an operable chassis. Accordingly, unassembled chassis subassemblies generally serve the same purpose as—and compete with—fully assembled chassis. Having considered the evidence before it, the Tribunal therefore concludes that subassemblies are not a separate class of goods.

[24] In sum, the Tribunal will conduct its analysis on the basis that domestically produced goods meeting the product definition are like goods to the subject goods, and that there is one class of like goods.

## DOMESTIC INDUSTRY

[25] 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 . . . .”

[26] 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. The term “major proportion” means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority.<sup>21</sup>

[27] Based on evidence presented by Max-Atlas and subsequently confirmed by the CBSA, the Tribunal considers that the domestic industry is composed of the following four producers: Max-Atlas, Innovative Trailer Design, Di-Mond, and Raja Trailer, all of which produce container chassis in Canada. Max-Atlas is the sole complainant, but both Innovative Trailer Design and Di-Mond filed letters supporting the complaint while Raja Trailer remained neutral.<sup>22</sup>

[28] While the specific production volumes for each of the entities comprising the domestic industry has been designated as confidential information, the Tribunal is satisfied that the four producers above represent all known production of like goods, based on the information collected by the CBSA.<sup>23</sup>

[29] Each of the four producers provided domestic production data to the CBSA, but only Max-Atlas has provided financial data at this stage. As such, the assessment of the impact on the

<sup>20</sup> Exhibit PI-2021-002-02.01 at 20.

<sup>21</sup> *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (FCA); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (FCA); Panel Report, *China – Automobiles (US)*, WT/DS440/R at para. 7.207; Appellate Body Report, *EC – Fasteners (China)* at paras. 411, 419, 430; Panel Report, *Argentina – Poultry (Brazil)*, WT/DS241/R at paras. 7.341-7.344.

<sup>22</sup> Exhibit PI-2021-002-05 at paras. 40-42; Exhibit PI-2020-03.10 (protected) at 14.

<sup>23</sup> Exhibit PI-2020-002-03.10 (protected) at 14.

domestic industry's financial performance presented below is limited to the data presented by Max-Atlas.

[30] The Tribunal expects that further information and evidence regarding the production, sales and performance of the domestic industry will be available for the purposes of a final inquiry.

## **CROSS-CUMULATION**

[31] In line with its long-standing view, the Tribunal considers that it is neither necessary nor practicable to disentangle the effects of the dumping and the effects of the subsidizing of goods originating from a single country.<sup>24</sup>

[32] The Tribunal will therefore assess the impact of the dumping and subsidizing of the goods cumulatively in this preliminary inquiry.

## **INJURY ANALYSIS**

[33] The Tribunal now turns to an examination of whether the evidence discloses a reasonable indication of injury or threat of injury, taking into account the framework established above and the factors prescribed by section 37.1 of the *Regulations*.

### **Import volume of subject goods**

[34] The Tribunal finds a reasonable indication that there has been a significant increase in the absolute volume of imports of the subject goods. The evidence presented to the Tribunal regarding import volumes has not been contested by any party to these proceedings.

[35] Max-Atlas estimated imports of subject goods using data from IHS Markit, Statistics Canada and the Coalition of American Chassis Manufacturers. As the tariff classification numbers (Harmonized System codes) for container chassis also contain a number of products outside the scope of the complaint, it made adjustments to eliminate such goods.

[36] The CBSA prepared its own analysis of imports of subject goods using import data, customs entry documentation and commercial intelligence provided by Max-Atlas. The CBSA made adjustments to its FIRM<sup>25</sup> import data using import entry documentation not available to Max-Atlas.<sup>26</sup>

[37] In a preliminary inquiry, the Tribunal relies on import volumes estimated by the CBSA as they incorporate certain information not available to the complainant. The volumes estimated by the CBSA show that imports of subject goods increased 13 percent in 2018 compared to 2017 and, more

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<sup>24</sup> See, for example, *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 76; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 147; *Corrosion-resistant Steel Sheet* (7 January 2020), PI-2019-002 (CITT) at para. 36.

<sup>25</sup> Facility for Information Retrieval Management System.

<sup>26</sup> Exhibit PI-2021-002-05 at para. 47.

significantly, 106 percent in 2019 compared to 2018. Import volumes of subject goods then declined in 2020, down 69 percent from 2019 volumes.<sup>27</sup>

[38] The Tribunal notes that the CBSA's estimates and information provided by Max-Atlas and other domestic producers show that the market for container chassis declined in 2020, with a decline in sales from all sources, domestic or imported.<sup>28</sup> The Tribunal, nevertheless, finds that there was a progression in the volume of imports of subject goods over the period presented in the complaint, with an average annual increase in imports of 53 percent between 2017 and 2019.

[39] The Tribunal notes that the import volumes provided by the CBSA are expressed in individual units and do not differentiate between complete chassis, frames, or other sub-assemblies. As such, volumes from different sources and changes in volumes from year to year may be distorted by product mix and by the way in which a complete assembly is imported (i.e. completely assembled or in multiple subassemblies for assembly). The Tribunal will explore this issue more in depth in the context of a final injury inquiry should the CBSA make preliminary determinations of dumping and subsidizing.

[40] Notwithstanding the issues indicated above and bearing in mind the evidential threshold at the preliminary inquiry stage, the Tribunal is sufficiently persuaded by the evidence before it that there is a reasonable indication of a significant increase in the absolute volume of subject goods.

[41] The Tribunal also finds that there is a reasonable indication that there have been significant increases in the volume of imports of the subject goods relative to the production of like goods and relative to consumption of like goods. To assess these two measures of relative imports, the Tribunal examines the change in the ratio of imports of subject goods to domestic production of like goods and the ratio of imports of subject goods to sales of like goods over the period presented in the complaint.

[42] The Tribunal finds that the relative imports of subject goods increased significantly over a relatively short period of time. Before the market decline in 2020, both ratios increased by one percentage point in 2018 and 43 percentage points in 2019. Although the ratios dropped in 2020, they remained significantly higher than those in 2017—with the ratio approximately doubling over the period, despite the decline in the market in 2020.<sup>29</sup>

[43] On the basis of the above, the Tribunal finds a reasonable indication that there have been significant increases in both the absolute and relative volumes of the subject goods.

## **Effects on prices of like goods**

### Price undercutting

[44] Max-Atlas alleged that prices of the subject goods have undercut those of the domestically produced like goods. It provided both account-specific examples of price undercutting by subject goods, and an estimate of undercutting based on average prices of the subject goods.

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<sup>27</sup> Exhibit PI-2021-002-03.10 (protected) at 13, 14.

<sup>28</sup> Exhibit PI-2021-002-05 at para. 118; Exhibit PI-2021-002-03.10 (protected) at 13, 14; Exhibit PI-2021-002-03.01A (protected) at 3378.

<sup>29</sup> Exhibit PI-2021-002-03.10 (protected) at 13, 14; Exhibit PI-2021-002-03.01A (protected) at 3378.

[45] While Max-Atlas provided an estimate of the average unit import price using data from Statistics Canada, the Tribunal will rely on the analysis of average unit import prices conducted by the CBSA, which used more precise commercial data that was not available to Max-Atlas.<sup>30</sup> This evidence shows that there is a significant price gap between domestic like goods and subject goods.

[46] Over the period of 2017 to 2020, subject goods have been priced significantly lower than domestically produced like goods, with the greatest degree of undercutting occurring in 2019. While there was a smaller price difference in 2020, the subject goods were still priced significantly lower than domestic like goods.<sup>31</sup>

[47] In light of this evidence, and in the absence of any evidence to the contrary or opposing submissions, the Tribunal is satisfied that there is a reasonable indication that the subject goods have significantly undercut the price of domestic like goods.

#### Price depression

[48] Price depression occurs when the prices of like goods have declined due to the presence of imports of subject goods.

[49] Evidence provided by Max-Atlas, which was relied upon by the CBSA, indicates that the selling price of like goods in the domestic market remained fairly stable over the period, and experienced a small increase from 2017 to 2020.<sup>32</sup>

[50] Max-Atlas provided several examples of instances where it had to lower prices to secure sales.<sup>33</sup> Notwithstanding such examples of price competition, the only period where the Tribunal observes a decline in average price of like goods sold by Max-Atlas was in 2019—and the decline was slight.

[51] The evidence does not indicate that the price of like goods has declined due to the presence of imports of subject goods. Accordingly, the Tribunal is not convinced that there is a reasonable indication that the subject goods have significantly depressed the price of like goods.

#### Price suppression

[52] 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 cost of goods sold (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.<sup>34</sup>

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<sup>30</sup> Exhibit PI-2021-002-03.10 (protected) at 28.

<sup>31</sup> Exhibit PI-2021-002-03.10 (protected) at 28; Exhibit PI-2021-002-03.01A (protected) at 3378.

<sup>32</sup> Exhibit PI-2021-002-03.01A at 3378.

<sup>33</sup> Exhibit PI-2021-002-02.01 at 133-139.

<sup>34</sup> *Decorative and Other Non-structural Plywood* (8 March 2021), NQ-2020-002 (CITT) at para. 148.

[53] The financial statement provided by Max-Atlas indicates that, while the unit value of domestic like goods remained fairly stable over the 2017-2020 period, increasing only slightly, COGS per unit grew at a higher rate.<sup>35</sup>

[54] The evidence provided in Max-Atlas's financial statement is further supported by its account-specific examples, which show that its ability to increase its prices to reflect changes in its manufacturing costs is extremely limited and that it is left to absorb any cost increases.<sup>36</sup> Max-Atlas added that if it were to increase its price to coincide with increased costs, it would not be able to compete with the subject goods.

[55] Given the analysis above, and in the absence of submissions in opposition, the Tribunal is satisfied that there is a reasonable indication that the subject goods have significantly suppressed the price of like goods by preventing the price increases for like goods that would otherwise have been expected to occur.

### **Resultant impact on the domestic industry**

[56] As part of its analysis under paragraph 37.1(1)(c) of the *Regulations*, the Tribunal considers the impact of the dumped and subsidized goods on the state of the domestic industry. In particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry are taken into account.<sup>37</sup> These impacts are to be distinguished from the impact of any other factors affecting the domestic industry.<sup>38</sup> 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 on the basis of the volume, the price effect, and the impact on the domestic industry of the dumped or subsidized goods.

#### Market share

[57] The evidence shows a reasonable indication that the domestically produced like goods lost market share to the subject goods between 2017 and 2020.<sup>39</sup> Particularly in 2019, the subject goods gained significant market share while the domestic industry's share decreased.<sup>40</sup>

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<sup>35</sup> Exhibit PI-2021-002-03.01A (protected) at 3378.

<sup>36</sup> Exhibit PI-2021-002-02.01 at 145.

<sup>37</sup> 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.

<sup>38</sup> 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.

<sup>39</sup> Exhibit PI-2021-002-05 at para. 119; Exhibit PI-2021-002-03.10 (protected) at 14.

<sup>40</sup> *Ibid.*

[58] Although in 2020 the domestic industry gained back some of the market share it lost in 2019, it did not gain it back entirely. Furthermore, the Tribunal considers that the conditions created by the COVID-19 pandemic likely affected the market in a material way, as the volume of the total market also decreased significantly in 2020, along with the absolute volumes of both domestic production and subject goods. Despite the domestic industry's relative gains in 2020, when comparing 2017 to 2020, the overall trend was that the subject goods gained about 13 percentage points of market share, while the domestic industry lost about 12 percentage points of market share.<sup>41</sup>

[59] As such, for the purposes of this preliminary inquiry, the Tribunal considers that the evidence establishes a reasonable indication that there has been an erosion of the domestic industry's market share caused by the subject goods.

#### Decline in output

[60] The evidence also reasonably indicates that the domestic industry's absolute output declined: output decreased over 2017 to 2019, despite rising slightly in 2018, and decreased again in 2020.<sup>42</sup>

[61] In relative terms, the total Canadian market grew 10 percent from 2017 to 2018, whereas total domestic production for domestic sales grew only 8 percent. In a year of market contraction, the relative drop is more significant: the total market contracted by 3 percent between 2018 and 2019, but domestic production for domestic sales dropped by 24 percent.<sup>43</sup> This correlated with a significant increase in the subject goods' market share between 2018 and 2019. In 2020, both the total Canadian market and domestic production for domestic sales decreased significantly, although the decline in the total market was slightly larger.

[62] Beyond the effects of the pandemic in 2020, the Tribunal has been presented with no evidence from opposing parties suggesting that factors other than the subject goods caused the decreases in output for domestic producers observed above. Therefore, the Tribunal finds that there is a reasonable indication that there has been an actual and/or relative decline in output due to imports of subject goods from 2017 to 2019.

#### Decline in sales

[63] Given that, for these specific products, the domestic production and domestic sales correlate to a large extent (i.e. at least for Max-Atlas, for which the Tribunal has export data),<sup>44</sup> the Tribunal considers that the preceding trends for domestic production are likely similar for domestic sales.

[64] Domestic sales from domestic production declined 24 percent in 2019 compared to 2018.<sup>45</sup> This correlated with, again, a significant increase in the subject goods' market share between 2018 and 2019.

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<sup>41</sup> Exhibit PI-2021-002-03.10 (protected) at 14; Exhibit PI-2021-002-03.01A (protected) at 3378.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Exhibit PI-2021-002-03.01A (protected) at 3378.

<sup>45</sup> Exhibit PI-2021-002-03.10 (protected) at 14. Exhibit PI-2021-002-03.01A (protected) at 3378.

[65] Max-Atlas also provided examples of specific sales it lost to CIMC even after lowering its price.<sup>46</sup>

[66] In absence of any evidence demonstrating that other factors may have contributed to decreasing domestic sales of domestic production, the Tribunal finds that there is a reasonable indication that this impact is due to the presence of the subject goods.

#### Decline in profit

[67] As mentioned above, in the context of this preliminary injury inquiry, the Tribunal has financial information from Max-Atlas only. This information indicates that from 2017 to 2019, Max-Atlas saw a significant negative impact on its profitability.<sup>47</sup> This occurred despite an increase in the volume of the total Canadian market from 2017 to 2018, and alongside an increase of volumes of subject goods in a slightly reduced domestic market in 2019.

[68] The Tribunal notes that Max-Atlas provided information regarding other factors that may have impacted its profitability in 2018 and 2019.<sup>48</sup> That being said, at least in 2019, the increased presence of subject goods on the Canadian market seems to have been a significant and causative factor leading to this adverse impact on Max-Atlas's profitability. As such, the Tribunal finds that there is a reasonable indication that the increased presence of the subject goods in the market during 2019 coincided with a decline in Max-Atlas's profits and that this decline was largely caused by the subject goods.

#### Employment

[69] Max-Atlas submitted that it saw a decline in employment caused by the subject goods.<sup>49</sup> Having reviewed this evidence, the Tribunal finds that there is a reasonable indication that Max-Atlas experienced a decrease in employment, even before the onset of the COVID-19 pandemic, and that this decrease coincided with a sharp increase of subject goods in 2019.<sup>50</sup>

#### Growth

[70] Max-Atlas submitted that the subject goods were hampering its ability to expand into western Canada, as it encountered lack of interest by potential dealers due to the presence of CIMC.<sup>51</sup> The Tribunal finds that there is a reasonable indication, particularly in light of the fact that prices of the subject goods are significantly undercutting those of Max-Atlas, that the subject goods have caused actual or potential negative effects on Max-Atlas's ability to grow its business, particularly with respect to capitalizing on prospects for geographic expansion, especially into western Canada.

#### Other impact factors

[71] Other factors listed under subsection 37.1(1) of the *Regulations* include: productivity, return on investments, utilization of industrial capacity, inventories, wages, ability to raise capital, and the

<sup>46</sup> Exhibit PI-2021-002-02.01 at 133-141.

<sup>47</sup> Exhibit PI-2021-002-03.01A (protected) at 3378; Exhibit PI-2021-002-03.10 (protected) at 13-14.

<sup>48</sup> Exhibit PI-2021-002-02.01 at 144; Exhibit PI-2021-002-03.01 (protected) at 144.

<sup>49</sup> The specific employment numbers have been designated by Max-Atlas as confidential information.

<sup>50</sup> Exhibit PI-2021-002-02.01 at 148-149.

<sup>51</sup> *Ibid.* at 147-148.



magnitude of the margin of dumping or amount of subsidy. The Tribunal did not have sufficient information, at this preliminary injury inquiry stage, to reach a conclusion concerning the relevance of these factors or how they may have impacted the domestic industry. Nonetheless, having regard to the evidential threshold applicable to a preliminary injury inquiry, the Tribunal finds that the evidence that is available on the factors addressed above is sufficiently persuasive to support a finding of reasonable indication of injury arising from dumping and subsidization.

#### Causation and materiality

[72] There is no evidence from opposing parties with respect to other causative factors that might explain, mitigate or counteract the injury to the domestic industry.

[73] Max-Atlas raised the COVID-19 pandemic as a potential factor other than the dumping or subsidizing affecting the domestic industry. At the time of the complaint, Max-Atlas's plant was operating at reduced capacity to comply with public health measures.<sup>52</sup> Max-Atlas submitted that, while the effects of the pandemic will be temporary, the domestic industry will remain vulnerable to the subject goods. In the analysis above, the Tribunal has addressed the instances when trends in 2020 were not consistent with trends in 2017 to 2019, and the Tribunal considers that this was likely related in large part to the pandemic.

[74] Despite the disruptions in the market in 2020, notably a large decline in the Canadian market as a whole, the Tribunal nonetheless observed sustained price undercutting and price suppression throughout 2017 to 2020, as well as an overall erosion of the domestic industry's market share and a decline in employment across 2017 to 2020. The Tribunal is satisfied that, in addition to the effects observed only in 2018 and/or 2019, this amounts to a reasonable indication of material injury. The Tribunal is also satisfied that this material injury was caused, in and of itself,<sup>53</sup> by the dumping and subsidizing of the subject goods.

#### **Conclusion**

[75] Having regard to the foregoing, the Tribunal is satisfied that the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.

#### **THREAT OF INJURY**

[76] As there is a reasonable indication that the dumping and subsidizing of the subject goods have caused injury, the Tribunal will exercise judicial economy and not consider whether there is a reasonable indication that the dumping and subsidizing of the subject goods are threatening to cause injury.

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<sup>52</sup> *Ibid.* at 150.

<sup>53</sup> *Gypsum Board* (5 August 2016), PI-2016-001 (CITT) at para. 44; *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 75; *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 82.

## CONCLUSION

[77] Based on the foregoing analysis, the Tribunal determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

Frédéric Seppey  
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Presiding Member

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Randolph W. Heggart  
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