



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING
AND REASONS

Inquiry NQ-2021-005

Certain Container Chassis

*Finding issued
Friday, February 18, 2022*

*Reasons issued
Monday, March 7, 2022*

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

CERTAIN CONTAINER CHASSIS

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 the subject goods (defined as follows) have caused injury or retardation or are threatening to cause injury, as these words are defined in SIMA:

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.

Further to the Tribunal's inquiry, and following the issuance by the President of the Canada Border Services Agency of final determinations dated January 19, 2022, that the above-mentioned goods have been dumped and subsidized, the Tribunal finds, pursuant to subsection 43(1) of SIMA, that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.

Randolph W. Heggart

Randolph W. Heggart
Presiding Member

Susan D. Beaubien

Susan D. Beaubien
Member

Frédéric Seppey

Frédéric Seppey
Member

The statement of reasons will be issued within 15 days.

Place of Hearing: Via videoconference

Dates of Hearing: January 19, 20, 21, and 24, 2022

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

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STATEMENT OF REASONS

INTRODUCTION

[1] The mandate of the Canadian International Trade Tribunal in this inquiry, conducted pursuant to section 42 of the *Special Import Measures Act*¹ (SIMA), is to determine whether 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 retardation or are threatening to cause injury to the domestic industry.

[2] For the reasons that follow, the Tribunal has determined that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.

BACKGROUND

[3] Container chassis are typically, but are not limited to, rectangular framed trailers comprising a suspension and axle system, wheels and tires, brakes, a lighting and electrical system, a coupling for towing behind a truck tractor, and a locking system or systems to secure the shipping container or containers to the chassis using twistlocks, slide pins or similar attachment devices to engage the corner fittings on the container or other payload. These chassis are typically used in the offloading of cargo at ports and other infrastructure for the purpose of intermodal transportation of cargo containers of various sizes.²

[4] The complainant, Max-Atlas Équipement International Inc. (Max-Atlas), manufactures container chassis and subassemblies at its plant in St. Jean-sur-Richelieu, Quebec.³ Its products are sold to customers in various industries including, but not limited to, the transportation, waste management and mobile energy (generators) industries, as well as the oil and gas industry for the transportation of frac sand used in fracking operations. Max-Atlas also manufactures and sells parts and custom-designed container chassis.⁴

[5] The opposing parties in this inquiry are CIMC Vehicles (Group) Co., Ltd, (CIMC), the Chinese exporter of subject goods, and Groupe St-Henri (GSH) and C. Keay Investments d.b.a. Ocean Trailer (Ocean Trailer), importers of the subject goods produced by CIMC.

[6] Max-Atlas filed a complaint with the Canada Border Services Agency (CBSA) on April 20, 2021, asking that investigations be initiated into the alleged dumping and subsidizing of the subject goods.⁵

[7] As a result of the CBSA's decision to initiate the investigations,⁶ the Tribunal commenced, on June 11, 2021, a preliminary injury inquiry pursuant to subsection 34(2) of SIMA.⁷ Pursuant to subsection 37.1(1) of SIMA, the Tribunal determined, on August 9, 2021, that there was evidence

¹ R.S.C., 1985, c. S-15.

² Exhibit NQ-2021-005-04.A at paras. 28–29.

³ Exhibit NQ-2021-005-A-03 at para. 4.

⁴ Exhibit NQ-2021-005-04.A at para. 16.

⁵ *Ibid.* at para. 1.

⁶ Made on June 10, 2021, pursuant to subsection 31(1) of SIMA; Exhibit NQ-2021-005-04.A at para. 4.

⁷ *Certain Container Chassis* (9 August 2021), PI-2021-002 (CITT) [*Container Chassis*] at para. 3.

disclosing a reasonable indication that the dumping and subsidizing of the subject goods had caused or were threatening to cause injury to the domestic industry.⁸

[8] On October 21, 2021, the CBSA made preliminary determinations of dumping and subsidizing of container chassis originating in or exported from China and imposed provisional anti-dumping and countervailing duties.⁹ Accordingly, on October 22, 2021, the Tribunal issued a notice of commencement of inquiry into whether the dumping and subsidizing of the subject goods caused injury or retardation or threatened to cause injury.¹⁰

[9] The Tribunal's period of inquiry (POI) covered the period of January 1, 2018, to December 31, 2020, and the interim period of January 1, 2021, to June 30, 2021 (interim 2021).¹¹ For comparative purposes, information was also collected for the interim period of January 1, 2020, to June 30, 2020 (interim 2020).¹²

[10] As part of the inquiry, a number of potential domestic producers, importers, purchasers and foreign producers of certain container chassis were asked to respond to questionnaires from the Tribunal. The Tribunal received replies to its questionnaires from the following companies: two domestic producers of goods meeting the product definition, Max-Atlas and Innovative Trailer Design Industries Inc. (ITD); three importers of subject goods and/or goods meeting the product definition, Ocean Trailer, GSH and Checker Flag Leasing Inc.; and two foreign producers of subject goods, Dongguan CIMC Vehicle Co., Ltd. and Shenzhen CIMC Vehicle Co., Ltd. The Tribunal also received nine responses from purchasers of subject goods and/or goods meeting the product definition.¹³

[11] 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 7, 2021.¹⁴ Revised versions of the reports were issued on January 11, 2022.¹⁵

[12] Max-Atlas filed a case brief, witness statements and other evidence supporting a finding of injury or threat of injury on December 15, 2021.

[13] The opposing parties in this inquiry (namely CIMC, GSH and Ocean Trailer) filed joint submissions on December 23, 2021. Max-Atlas filed a reply brief, reply witness statements and additional evidence on January 6, 2022.

⁸ *Container Chassis* at para. 5.

⁹ Exhibit NQ-2021-005-01 at 10–12.

¹⁰ Exhibit NQ-2021-005-03 at 1. The notice was published on the Tribunal's website and in Part I of the October 30, 2021, edition of the *Canada Gazette*.

¹¹ Exhibit NQ-2021-005-06.A at 4.

¹² *Ibid.*

¹³ *Ibid.* at 9–12.

¹⁴ Exhibit NQ-2021-005-06; Exhibit NQ-2021-005-07 (protected).

¹⁵ Exhibit NQ-2021-005-06.A; Exhibit NQ-2021-005-07.A (protected).

[14] The Tribunal received a request from CIMC for the exclusion of specific products from any eventual finding of injury or threat of injury in respect of the subject goods.¹⁶ Max-Atlas opposed the request.¹⁷ CIMC ultimately withdrew its request.¹⁸

[15] Max-Atlas filed protected and public requests for information (RFI) directed at GSH and Ocean Trailer on December 14, 2021. The opposing parties filed protected and public RFIs directed at Max-Atlas, ITD, Canadian Pacific Railway (CP), Canadian National Railway Company, Canadian Tire Corporation, Limited, and Carmel Transport International Limited on December 16, 2021.

[16] Max-Atlas, GSH and Ocean Trailer each filed objections to the RFIs directed to them, on December 17, 2021, and December 20, 2021, respectively. The Tribunal notes that a number of RFIs were directed to companies that were not parties to the inquiry. Such companies do not have the opportunity to review and oppose such requests and these RFIs were denied by the Tribunal.

[17] On December 23, 2021, after reviewing the RFIs and taking into account the rationale for each of them and the objections filed against them, the Tribunal issued directions to the parties indicating which RFIs required a response.¹⁹ The only party directed to reply to an RFI received from one of the parties was Ocean Trailer, who filed its response with the Tribunal on January 4, 2022.²⁰

[18] Additionally, the Tribunal directed ITD to provide its audited financial statements for each year of the POI, any documents setting out its strategies and objectives for each year of the POI, and forecasts for 2022 and 2023.²¹ On January 6, 2022, ITD responded that it did not have documents setting out its strategies and objectives for the requested years and that it would not provide audited financial statements.²²

[19] The Tribunal accepted ITD's explanation that the first set of documents did not exist and could therefore not be provided, but requested ITD to either provide the information requested or a justification for the refusal to provide audited financial statements.²³ On January 12, 2022, ITD explained that it could not provide audited financial statements because it is a non-audited private business. ITD also explained that financial statements would not provide information relevant to the inquiry because it manufactures a range of products, not just container chassis, and all products are considered together in terms of costs and revenues.²⁴ The Tribunal accepted ITD's explanation.

[20] After advising all parties of the date for a videoconference hearing in this inquiry, the Tribunal issued a subpoena to a representative of CP on January 11, 2022, compelling his presence as a Tribunal witness at the hearing.²⁵ The opposing parties asked the Tribunal to issue subpoenas to additional individuals from CP. Max-Atlas did not oppose the request.

¹⁶ Exhibit NQ-2021-005-23.01.

¹⁷ Exhibit NQ-2021-005-25.01.

¹⁸ Exhibit NQ-2021-005-23.02.

¹⁹ Exhibit NQ-2021-005-RFI-01.

²⁰ Exhibit NQ-2021-005-RI-03.

²¹ Exhibit NQ-2021-005-RFI-01 at 4-5.

²² Exhibit NQ-2021-005-RI-06.

²³ Exhibit NQ-2021-005-RFI-01.B.

²⁴ Exhibit NQ-2021-005-RI-06.A.

²⁵ Exhibit NQ-2021-005-33.

[21] On January 13, 2022, CP confirmed the subpoenaed representative's attendance at the hearing, but opposed the request for the Tribunal to issue subpoenas to anyone else at CP.²⁶ CP asserted that the subpoenaed representative had sufficient knowledge to answer questions on topics of interest to the Tribunal, making it unnecessary for other CP representatives to attend the hearing. The Tribunal accepted CP's position on January 17, 2022, and informed the parties that additional subpoenas would not be issued.²⁷

[22] The Tribunal held a pre-hearing case management conference with the parties on January 18, 2022. Several procedural issues were addressed with respect to the hearing schedule, the treatment of certain information as confidential during the hearing, discrepancies in Ocean Trailer's questionnaire response, and the granting of limited disclosure of confidential information by the parties to the Tribunal witness from CP.

[23] An oral hearing, with public and *in camera* sessions, was held via videoconference on January 19, 20, 21 and 24, 2022. The Tribunal heard evidence from witnesses for Max-Atlas, GSH, Ocean Trailer, CIMC (via a representative of its U.S. affiliate, CIE Manufacturing) and CP. The Tribunal also heard final arguments from Max-Atlas and the opposing parties.

RESULTS OF THE CBSA'S INVESTIGATION

[24] On January 19, 2022, the CBSA, pursuant to paragraph 41(1)(b) of SIMA, made final determinations of dumping and subsidizing of container chassis from China.²⁸ The CBSA determined that the margins of dumping and the amounts of subsidy for the goods were not insignificant.²⁹

[25] The CBSA's period of investigation with respect to the dumping was from May 1, 2020, to April 30, 2021.³⁰ The margins of dumping specified by the CBSA for this period, expressed as a percentage of export price, were 56.6 percent for Dongguan CIMC Vehicle Co. and 126.4 percent for all other exporters.³¹

[26] The CBSA's period of investigation with respect to the subsidy was January 1, 2020, to April 30, 2021.³² The amounts of subsidy for this period, expressed as a percentage of export price, were 2.5 percent for Dongguan CIMC Vehicle Co. and 20.4 percent for all other exporters.³³

²⁶ Exhibit NQ-2021-005-37.

²⁷ Exhibit NQ-2021-005-42.

²⁸ Exhibit NQ-2021-005-04 at 10–11.

²⁹ *Ibid.* at 11.

³⁰ Exhibit NQ-2021-005-01.A at 4.

³¹ Exhibit NQ-2021-005-04 at 16.

³² Exhibit NQ-2021-005-01.A at 4.

³³ Exhibit NQ-2021-005-04 at 17.

PRODUCT

Product definition

[27] The CBSA defines the subject goods as follows:³⁴

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.

³⁴ *Ibid.* at 9–10.

Product information

[28] The CBSA provided the following additional product information:³⁵

[28] Chassis are typically, but are not limited to, rectangular framed trailers with a suspension and axle system, wheels and tires, brakes, a lighting and electrical system, a coupling for towing behind a truck tractor, and a locking system or systems to secure the shipping container or containers to the chassis using twistlocks, slide pins or similar attachment devices to engage the corner fittings on the container or other payload.

[29] These chassis are typically used in the transportation of intermodal cargo containers and are skeletal rectangular framed trailers. The rectangular frame comprises steel with a suspension and axle system, wheels and tires, brakes, a lighting and electrical system, a coupling for towing behind a truck tractor, and a locking system or systems to secure the shipping container or containers attached to the chassis. Chassis are designed to carry containers of various sizes, usually ranging from 20' to 60' in Canada, including the typical container lengths of 20', 40', 45', 53' and 60'. Containers carried on chassis include marine containers which are sometimes referred to as "ISO containers", as they are manufactured to specifications set out by the International Organization for Standardization. Other containers carried by the subject goods include, but are not limited to, domestic containers designed to be carried exclusively over land and not via ocean transport, tank containers for the carriage of liquids or sand, flat racks which are containers without sides, generators for emergency systems and temporary power delivery and waste containers.

[30] Some chassis are built to a single container size and for holding a single container. Others are designed to be extendable chassis, meaning their sliding or adjustable suspension can be extended to allow for longer containers to be carried. Some longer chassis are designed to allow the operator to carry multiple smaller containers, allowing the operator the flexibility of carrying loads for multiple clients simultaneously.

[31] Chassis may be imported into Canada in a fully assembled form, or imported as an unassembled chassis, such as a chassis frame accompanied by the relevant subassemblies, with most or all of the integral items required to assemble a chassis into a finished form. For an unfinished or unassembled chassis to be considered subject goods, the parts for a single chassis do not have to enter Canada at the same time.

[32] The subject container chassis frames are steel skeletal frames forming the main frame of the trailer and typically include: coupler plate assemblies, bolsters consisting of transverse beams with locking or support mechanisms, gooseneck assemblies, drop assemblies, extension frame assemblies with locking mechanisms and/or rear impact guards. These container chassis frames are only used to manufacture a finished container chassis.

[33] For greater certainty, the subject goods include unfinished or unassembled container chassis or container chassis frames, for painting, coating or further assembly with components such as, but not limited to hub and drum assemblies, brake assemblies (either drum or disc), axles, brake chambers, suspensions and suspension components, wheel end

³⁵ Exhibit NQ-2021-005-04.A.

components, landing gear legs, spoke or disc wheels, tires, brake control systems, electrical harnesses and lighting systems.

[34] The subject goods do not include the individual components of the container chassis or subassemblies when imported as individual components, meaning not as part of an unassembled or unfinished container chassis or as part of a substantially complete subassembly. Such non-subject individual components may include hub and drum assemblies, brake assemblies (either drum or disc), axles, brake chambers, suspensions and suspension components, wheel end components, landing gear legs, spoke or disc wheels, tires, brake control systems, electrical harnesses and lighting systems. Some of these components may also be used in the production of non-subject trailers such as flatbeds, tankers, dumpers, grain hoppers and others.

[35] The processing of the subject goods, such as trimming, cutting, grinding, notching, punching, drilling, painting, coating, staining, finishing, assembly, bolting, welding or any other processing in China or another country does not remove the product from the definition of subject goods. In addition, if unfinished chassis manufactured in China are merely assembled into a completed chassis in a third country, such as the US or Mexico, the chassis remains subject to the scope of these investigations. The inclusion of additional components not identified as comprising the finished or unfinished container chassis does not remove the chassis from the definition of subject goods.

[Footnote omitted]

PRELIMINARY MATTERS

Request to disallow portions of the reply evidence

[29] On January 13, 2022, the opposing parties asked the Tribunal to disallow or expressly disregard certain statements and attachments in two reply witness statements filed by Max-Atlas. The opposing parties alleged that the statements and attachments were not properly in the scope of reply evidence because they introduced new evidence.³⁶ The opposing parties argued that as a court of record, the Tribunal must uphold general rules of procedure and principles common to all courts, including the rule against case splitting, to ensure minimal standards of procedural fairness.³⁷ According to the opposing parties, a reply is not an invitation for a party to have the last word or to split its case.³⁸

[30] The opposing parties made three claims. First, that the last three sentences of paragraph 20 of Mr. Tibor Varga's reply witness statement and accompanying confidential attachment 3 introduce new evidence regarding delivery charges. Second, that paragraph 41 of Mr. Varga's reply witness statement and accompanying confidential attachment 5 are new assertions, which could have been made in his initial witness statement, regarding the benefits to Max-Atlas of a protected market. Third, that paragraphs 18 and 19 of Mr. Patrick Bernatchez's reply witness statement and

³⁶ Exhibit NQ-2021-005-39.

³⁷ *Ibid.*; citing *Angelcare Development Inc. v. Munchkin, Inc.*, 2020 FC 1185 [*Angelcare*] at para. 10: "... the party must advance all the evidence they want to bring forward in the first instance; they will not be allowed to make up for their failure to do so in their reply."

³⁸ Exhibit NQ-2021-005-39; citing *Bauer Hockey Ltd. v. Sport Maska Inc.*, 2020 FC 212 at paras. 12–13, citing *R. v. Krause*, [1986] 2 SCR 466 [*R. v. Krause*] at 473.

accompanying confidential attachments 1 and 2 introduce new evidence regarding margins, purportedly to address the opposing parties' challenges to Max-Atlas's allegations regarding its ability to recover direct material cost increases. The opposing parties allege that the paragraphs and attachments have nothing to do with Max-Atlas's direct material costs and thus, do not constitute proper reply.

[31] On January 14, 2022, Max-Atlas asked the Tribunal to deny the opposing parties' request. Max-Atlas argued that its reply submissions and evidence were filed in direct reply and were rationally connected to the opposing parties' arguments and evidence.³⁹ Max-Atlas also argued that the Tribunal has previously found that the case law cited by the opposing parties is inapplicable because Federal Court proceedings differ from more flexible Tribunal procedures, and it is not always possible for parties supporting an injury finding to fully anticipate in all arguments that could be raised by opposing parties.

[32] Max-Atlas also addressed each claim from the opposing parties. Regarding the first claim, Max-Atlas argued that the statement and evidence respond to paragraph 35 of the opposing parties' case brief by confirming that container chassis were shipped to western Canada. Regarding the second claim, Max-Atlas argued that the statement and attachment address the opposing parties' submissions (e.g. in paragraphs 27 and 28 of their case brief) regarding the effect of the COVID-19 pandemic and their threat-of-injury arguments (e.g. in paragraph 105 of their case brief). Max-Atlas also argued that although the attachment predated its case brief, it could not have known or anticipated all the arguments that might be raised in the inquiry and could not be expected to file thousands of documents pre-emptively. Regarding the third claim, Max-Atlas argued that by providing additional background on its inability to raise prices to offset rising costs, the statements and attachments are clearly and rationally connected to the opposing parties' submissions on price suppression (e.g. in paragraphs 86 to 96 of its case brief).

[33] In the pre-hearing conference held on January 18, 2022, the Tribunal asked the parties to present their views on the opposing parties' request. The latter reiterated their original view that Max-Atlas filed new evidence under the guise of reply that is not reply, contrary to procedural fairness considerations. The opposing parties also argued that Federal Court jurisprudence regarding case splitting applies to the Tribunal and that historically the Tribunal has disallowed case splitting because it is contrary to procedural fairness. Max-Atlas reiterated its original arguments and noted that it was not arguing that Federal Court jurisprudence is inapplicable writ large, but rather that the Tribunal has recognized that proceedings before it are conducted in a more informal and expeditious manner than those in the Federal Court, and that accordingly the same principles may not apply.

[34] The rationale against case splitting arises from the principle that a responding party is entitled to know the case that it must meet. Accordingly, a complainant or moving party should put forward its complete and best case at the outset. It is impermissible for a complainant to lead a partial case, wait to hear the evidence of the opposing/responding party and then respond with additional evidence to bolster its position. Otherwise, the opposing party may be taken by surprise or prejudiced.⁴⁰

³⁹ Exhibit NQ-2021-005-40; citing *Decorative and Other Non-structural Plywood* (19 February 2021), NQ-2020-002 (CITT) [*Decorative Plywood*].

⁴⁰ *R. v. Krause* at para. 15; *Allcock, Laight & Westwood Ltd. v. Patten Bernard and Dynamic Displays Ltd.*, [1967] 1 O.R. 18; *Halford v. Seed Hawk Inc.*, 2003 FCT 141 [*Halford*] at paras. 12–15.

[35] An allegation of case splitting, as made here by the opposing parties, thus requires the Tribunal to assess the scope of proper reply evidence.

[36] The jurisprudence indicates that evidence that is new, that should have been part of the complainant's case in chief, or that is merely confirmatory, is typically not accepted as being a proper reply. However, there is a discretion to admit additional evidence, notwithstanding that it may not be the proper subject of reply.⁴¹ Relevant factors in the exercise of that discretion include considerations of procedural fairness and whether admitting the evidence will create substantial or serious prejudice, whether the evidence was available and could have been produced in chief using due diligence, and the need for a record that will enable a proper determination to be made on the basis of all proper and relevant facts.⁴²

[37] This latter factor is particularly significant, given that the Tribunal's role in SIMA matters takes the form of an inquiry, as opposed to being a purely adversarial proceeding.

[38] The Tribunal recently addressed similar arguments in *Decorative Plywood*. As an administrative body, the Tribunal's procedures are "more flexible than those of a court. This flexibility allows it to accommodate complex proceedings under SIMA".⁴³ The Tribunal also noted that "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."⁴⁴

[39] In the course of injury inquiries pursuant to section 42 of SIMA, the Tribunal's usual practice is to take a liberal approach with respect to the admissibility of evidence. This approach flows from the well-established common law principle that administrative tribunals are masters of their own procedure and are not strictly bound by the rules of evidence.⁴⁵ The Tribunal is statutorily mandated to conduct its hearings ". . . as informally and expeditiously as the circumstances and considerations of fairness permit."⁴⁶

[40] Although a party is expected to put its best foot forward when presenting its case in chief, this does not mean that it is required to anticipate the evidence and arguments of the opposing party fully and pre-emptively.

[41] The Tribunal finds the contested reply evidence to be directly responsive to, and rationally connected to, the evidence and arguments advanced by the opposing parties.⁴⁷ As such, the contested reply is not clearly evidence that Max-Atlas should have led, in the exercise of due diligence, at first instance.

[42] In addition, the opposing parties had the opportunity to cross-examine Max-Atlas's witnesses at the hearing concerning the evidence presented by Max-Atlas, including the contested aspects of

⁴¹ *Halford* at paras. 14–15; *Angelcare* at paras. 16–17.

⁴² *Amgen Canada Inc. v. Apotex Inc.*, 2016 FCA 121 at para. 10.

⁴³ *Decorative Plywood* at para. 58.

⁴⁴ *Ibid.*

⁴⁵ *Heavy Plate* (5 February 2021), NQ-2020-001 (CITT) at para. 28, citing *Carbon and Alloy Steel Line Pipe* (19 January 2016), NQ-2015-002 (CITT) at paras. 24–27 and footnote 14.

⁴⁶ Section 35, *Canadian International Trade Tribunal Act*, R.S.C., 1985, (4th Supp.), c. 47.

⁴⁷ In *Decorative Plywood* at para. 57, the Tribunal found that the complainants' reply submissions and evidence filed in direct reply and rationally connected to the importers' opposing arguments and evidence, "did not disregard the proper scope of reply evidence".

the reply. That right of cross-examination was exercised. As such, the Tribunal concludes that no significant or serious prejudice accrues to the opposing parties by the admission of the contested reply evidence.

[43] Moreover, as container chassis have not previously been the subject of SIMA proceedings, the interests of justice mitigate in favour of ensuring that as much information as possible concerning the relevant economic and marketplace factors are placed on the record. This enables the Tribunal to consider all relevant facts and evidence to arrive at its decision.

[44] Having considered the above factors, the Tribunal exercises its discretion in favour of admitting the contested portions of Max-Atlas's reply.

Request for certain information from GSH

[45] As the result of certain disclosures made during the *in camera* testimony of the witnesses from GSH, Max-Atlas expressed concern that the benchmark product comparisons may not have been made on an "apples to apples" basis, and requested that GSH provide details regarding any upgrades performed or changes made between the import and the sale of products meeting the description of one of the benchmark products, including the cost of the upgrade or change, as well as the ending gross margin, in the fourth quarter of 2020, the first quarter of 2021 and the second quarter of 2021.⁴⁸

[46] The opposing parties objected to this request on the grounds that it would be a difficult accounting exercise to perform and that ultimately, it would not affect the benchmark comparisons as the domestic selling price is compared with the price of sales from imports in the benchmark tables. As such, any additional costs incurred by the importer after importation are already reflected. The opposing parties requested that, should GSH be required to provide this information, Max-Atlas should also be required to do so.⁴⁹

[47] The Tribunal denied Max-Atlas's request and indicated that it would provide reasons for its decision in the statement of reasons.⁵⁰

[48] The Tribunal is satisfied that this information is not required as the benchmark tables compare selling price to selling price, and in that respect, are made on an "apples-to-apples" basis. The benchmark prices in the investigation report are an appropriate basis of comparison as they reflect the price at which the goods were competing in the market. The Tribunal is not concerned, in this case, with assessing price competition by comparing the purchase value of imports with the selling price of domestically produced goods. In addition, the Tribunal considered that the potential prejudice from having the parties produce this information at such a late stage in the proceedings outweighed the apparent probative value of the information in this instance.

LEGAL FRAMEWORK

[49] The Tribunal is required, pursuant to subsection 42(1) of SIMA, to inquire as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury, with "injury" being defined, in subsection 2(1), as "... material injury to a domestic

⁴⁸ *Transcript of Public Hearing* at 136–137, 139.

⁴⁹ *Ibid.* at 139–140, 141, 142.

⁵⁰ *Transcript of In Camera Hearing* at 272.

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

[50] 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.

[51] 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.

[52] 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.⁵¹ As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.⁵²

[53] 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

[54] 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.⁵³

[55] 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.

[56] To decide the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same

⁵¹ 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.

⁵² Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry”.

⁵³ 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).

customer needs).⁵⁴ To address 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 each other. If those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.⁵⁵

[57] In the preliminary injury inquiry, the Tribunal found that domestically produced container chassis, including subassemblies thereof, and the subject goods constitute like goods,⁵⁶ and that there is a single class of goods.⁵⁷

[58] Max-Atlas submitted that the domestically produced goods are nearly identical to the subject goods because they share factors typically considered by the Tribunal,⁵⁸ including physical characteristics such as composition and appearance, and market characteristics including substitutability, distribution channels, end uses and fulfilment of the same customer needs. Max-Atlas also argued that the goods constitute like goods in relation to each other and should therefore be regarded as a single class of goods. The opposing parties did not contest Max-Atlas’s submissions.

[59] The evidence on the record confirms that the subject goods and domestically produced like goods are substitutable, are comparable in terms of non-price factors such as quality and availability of technical specifications, and that they compete in the Canadian market.⁵⁹ Although the majority of questionnaire respondents indicated that the subject goods and the domestically produced goods are distributed through different channels,⁶⁰ Mr. Jimmy Zborowsky gave evidence that the subject goods and the like goods are sold through the same channels of distribution, as they are sold both to distributors and directly by the manufacturer to end users.⁶¹

[60] In sum, the Tribunal finds that although domestically produced goods are not identical to the subject goods, their uses and characteristics closely resemble those of the subject goods. The Tribunal therefore finds that domestically produced container chassis and the subject goods are like goods and that there is a single class of goods.

DOMESTIC INDUSTRY

[61] 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.

⁵⁴ See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) [*Pipe Fittings*] at para. 48.

⁵⁵ *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*] at para. 115; see also *Polyisocyanurate Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

⁵⁶ *Container Chassis* at paras. 18, 21.

⁵⁷ *Ibid.* at paras. 22–23.

⁵⁸ *Pipe Fittings* at para. 48; *Wheat Gluten* (22 April 2021), NQ-2020-003 (CITT) at para. 31.

⁵⁹ Exhibit NQ-2021-005-06.A, Tables 6–7.

⁶⁰ *Ibid.*, Table 6.

⁶¹ Exhibit NQ-2021-005-A-05 at para. 7.

[62] 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.⁶²

[63] In the preliminary injury inquiry, the Tribunal found that the domestic industry is composed of the following four producers: Max-Atlas, ITD, Di-Mond and Raja Trailer.⁶³ The parties do not dispute those findings in this final injury inquiry.

[64] There is no evidence in this inquiry that establishes that the domestic industry differs from the domestic industry identified in the preliminary injury inquiry. As such, the Tribunal finds that Max-Atlas, ITD, Di-Mond, and Raja Trailer comprise the domestic container chassis industry.

[65] The Tribunal collected data from Max-Atlas and ITD through the domestic producer questionnaires. Raja Trailer and Di-Mond did not provide responses to the questionnaires. Data collected by the CBSA at the initiation of the investigation indicate that Max-Atlas and ITD are the two largest producers (although Max-Atlas is by far the largest), and that Raja Trailer and Di-Mond represent a minor proportion of domestic production.⁶⁴ The parties do not dispute the data or the conclusion regarding the largest and smallest producers.

[66] The Tribunal finds that Max-Atlas and ITD represent a major proportion of domestic production and constitute the domestic industry for the purposes of this inquiry.

CROSS-CUMULATION

[67] 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,⁶⁵ 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. Therefore, the Tribunal will make a cumulative assessment of the effects of the dumping and subsidizing of the subject goods.

INJURY ANALYSIS

[68] Subsection 37.1(1) of the *Special Import Measures Regulations*⁶⁶ (Regulations) prescribes a range of factors that may be considered by the Tribunal in determining whether the dumping and subsidizing have caused material injury to the domestic industry. Most notably, these factors include

⁶² 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.

⁶³ *Container Chassis* at para. 27.

⁶⁴ Exhibit NQ-2021-005-07.A (protected), Table 13; Exhibit PI-2021-002-03.10 (protected) at 14.

⁶⁵ 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* at para. 147.

⁶⁶ SOR/84-927.

the volume of the dumped and 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) prescribes factors that the Tribunal may consider in determining whether a causal relationship⁶⁷ 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 in determining whether any factors other than the dumping and subsidizing of the goods have caused injury.

Import volume of dumped and subsidized goods

[69] Having regard to paragraph 37.1(1)(a) of the Regulations, the Tribunal considered evidence concerning the volume of the dumped and subsidized goods and, in particular, the extent to which there has been a significant increase in the volume, either in absolute terms or relative to the production or consumption of the like goods.

[70] Max-Atlas submitted that the increase in subject imports was significant both in absolute and relative terms during the POI. The opposing parties did not dispute these trends but submitted that the increased volumes of subject goods did not cause any injury to the domestic industry because the domestic industry lost sales for reasons unrelated to increased sales of the subject goods.

[71] The Tribunal's investigation report identifies two sources of imported container chassis in the Canadian market during the POI, namely imports of the subject goods and imports from the United States.⁶⁸ This information was corroborated by witness testimony.⁶⁹

[72] Although the trend in absolute volume of imports of the subject goods was variable, the subject goods held a dominant and increasing share of overall imports of container chassis during the POI.⁷⁰

[73] The volume of subject imports increased significantly in 2019, by 112 percent, before declining by 76 percent in 2020. For the full years of the Tribunal's POI, subject imports peaked in 2019 and saw their lowest level in 2020.⁷¹ However, the decrease in imports in 2020 occurred in the context of a 61 percent contraction in total market volume, which was likely due to a decrease in demand caused by the COVID-19 pandemic.⁷² The volume of subject imports rebounded significantly during the first six months of 2021, increasing by 149 percent as compared to the first six months of 2020.⁷³

[74] Imports from the United States followed the opposite trend to imports of the subject goods. The volume of imports declined by 89 percent in 2019, increased by 60 percent in 2020 then declined again, by 63 percent, during the first six months of 2021, when compared to the same period in

⁶⁷ Paragraph 42(1)(a) of SIMA requires the establishment of a causal relationship between the dumping and subsidizing of the subject goods and the injury.

⁶⁸ Exhibit NQ-2021-005-07.A (protected), Table 14.

⁶⁹ *Transcript of Public Hearing* at 74–75, 128–29, 195–96.

⁷⁰ Exhibit NQ-2021-005-07.A (protected), Table 16.

⁷¹ *Ibid.*, Table 14; Exhibit NQ-2021-005-06.A, Table 15.

⁷² Exhibit NQ-2021-005-06.A, Table 19; *Transcript of Public Hearing* at 15, 282.

⁷³ Exhibit NQ-2021-005-07.A (protected), Table 14; Exhibit NQ-2021-005-06.A, Table 15.

2020.⁷⁴ Imports from the United States were at their peak in 2018, and consistently represented a much smaller share of imports than imports of the subject goods.⁷⁵

[75] In relative terms, both the ratio of imports of the subject goods relative to domestic production and the ratio of imports of the subject goods relative to domestic sales from domestic production, increased between 2018 and the first six months of 2021. Furthermore, both ratios were relatively similar, if not identical, in every period of the POI. Both ratios followed the same trend, increasing by 38 percentage points in 2019, and declining by 25 and 24 percentage points, respectively, in 2020. Despite these declines in 2020, both ratios remained higher than in 2018. During the first six months of 2021, the ratios increased by 12 and 8 percentage points, respectively, when compared to the same period in 2020. Both ratios reached their highest points during the first six months of 2021, and their lowest points, in 2018.⁷⁶

[76] The Tribunal finds that the absolute and relative volumes of imports of the subject goods increased significantly during the POI.

Price effect of dumped and subsidized goods

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

Price undercutting and depression

[78] The Tribunal heard testimony that price is a very important factor in the purchase of container chassis. However, purchasing decisions are not always based solely on price.⁷⁷ When surveyed on the frequency of lowest-priced goods winning a contract or a sale, out of the nine purchasers that responded to the question, two purchasers selected “always” and four selected “usually”.⁷⁸

[79] When comparing the unit values of sales of subject goods with those of sales from domestic production, at the aggregate market level, there was price undercutting in every period of the POI. The price undercutting fluctuated throughout the POI, both in dollar amount and as a percentage of the selling prices of like goods. Price undercutting was at its highest level toward the end of the POI, during the interim 2021 period. For each full year of the POI, 2019 had a much higher degree of price undercutting than 2018 and 2020, when the degree of undercutting was small.⁷⁹

[80] The highest degrees of price undercutting occurred during periods of high levels of sales of imports of the subject goods. As mentioned previously, 2019 saw the highest volume of imports of the subject goods, and imports of subject goods saw an increase of 149 percent in the first six months

⁷⁴ Exhibit NQ-2021-005-07.A (protected), Table 14; Exhibit NQ-2021-005-06.A, Table 15.

⁷⁵ Exhibit NQ-2021-005-07.A (protected), Table 16.

⁷⁶ Exhibit NQ-2021-005-06.A, Table 17; Exhibit NQ-2021-005-07.A (protected), Table 17.

⁷⁷ *Transcript of Public Hearing* at 19, 22, 275–76.

⁷⁸ Exhibit NQ-2021-005-06.A, Table 8.

⁷⁹ Exhibit NQ-2021-005-07.A (protected), Table 36.

of 2021, when compared to the same period in 2020.⁸⁰ This situation is echoed in the data on sales of container chassis in the Canadian market. Sales of the subject goods reached their peak after increasing by 114 percent in 2019, and during the first six months of 2021, sales increased 89 percent, when compared to the first six months of 2020.⁸¹

[81] Although the domestic industry reported sales to distributors, there were no sales of subject imports to distributors, therefore no comparison could be made at that trade level.⁸² Looking specifically at sales to end users, price undercutting occurred in every period of the POI, with the exception of 2020. As with the aggregate market data, the level of price undercutting was at its highest in 2019 and interim 2021, and the degree of undercutting observed in 2018 was small.⁸³

[82] The evidence provided to the Tribunal concerning pricing was subject to some limitations. As noted in the Tribunal's investigation report, the sales figures for subject goods did not include the component of final delivery cost to the end user.⁸⁴ Importers of subject goods were asked to provide this information as part of their questionnaire responses but did not do so. As such, it is likely that an estimate of delivery costs, even to a small degree, could have reduced or even eliminated the price undercutting for 2018 and 2020. In the absence of the information requested from importers, the Tribunal had no other choice than to rely on the information on the record.

[83] Despite these limitations, the pattern of undercutting shown in the investigation report is consistent with Mr. Varga's evidence that competition with subject goods in eastern Canada was a factor in 2018 but accelerated in 2019, which is when subject goods became injurious.⁸⁵ While the market was disrupted in 2020 due to the pandemic, subject imports subsequently resumed sales at low prices and increased volumes during interim 2021. Accordingly, even though price undercutting in 2018 and 2020 may have been overstated, the Tribunal nevertheless considers the price undercutting observed in 2019 and interim 2021 to be significant.

[84] With respect to price depression, Max-Atlas acknowledged that none was evident in the Tribunal's investigation report. Indeed, the unit value of sales from domestic production increased in every period of the POI, by 4 percent in each of 2019 and 2020, and by 19 percent in interim 2021, when compared to interim 2020. By comparison, the unit value of sales of imports of the subject goods declined only in 2019, by 4 percent, before increasing by 12 percent in 2020 and by 11 percent during the first six months of 2021, when compared to the first six months of 2020.⁸⁶

[85] When looking specifically at the unit value for the sales to end users, the situation is similar for the domestic industry, as selling prices increased in every period of the POI.⁸⁷ Consequently, data collected on average selling prices of like goods are not indicative of price depression during the POI, as the domestic industry was able to increase its selling prices in every period. However, Max-Atlas submitted that there was evidence of price depression in individual account-specific allegations. These claims will be examined below.

⁸⁰ Exhibit NQ-2021-005-06.A, Table 15; Exhibit NQ-2021-005-07.A (protected), Table 14.

⁸¹ Exhibit NQ-2021-005-06.A, Table 19.

⁸² Exhibit NQ-2021-005-06.A, Table 23; Exhibit NQ-2021-005-07.A (protected), Table 22.

⁸³ Exhibit NQ-2021-005-07.A (protected), Table 40.

⁸⁴ Exhibit NQ-2021-005-06.A at 35.

⁸⁵ Exhibit NQ-2021-005-A-03 at paras. 13, 15.

⁸⁶ Exhibit NQ-2021-005-07.A (protected), Table 36; Exhibit NQ-2021-005-06.A, Table 37.

⁸⁷ Exhibit NQ-2021-005-07.A (protected), Table 40; Exhibit NQ-2021-005-06.A, Table 41.

- Benchmark products

[86] The Tribunal collected data for six benchmark products, covering eight quarters from the third quarter of 2019 to the second quarter of 2021 inclusively. Neither the domestic industry nor the importers provided data with respect to one of the benchmark products. Furthermore, having regard to purchasing patterns for container chassis, the domestic industry and the importers may not have transactions in each quarter for any given benchmark product, reducing the possible comparison points for certain benchmark products.⁸⁸

[87] Collectively, the benchmark products represented between 63 percent and 68 percent of the reported Canadian market for container chassis in the calendar year 2020, and in each of the interim periods of 2020 and 2021.⁸⁹ The benchmark products represented a higher share of total sales of imports (in the 80 to 90 percent range) than they did for sales from domestic production (in the 40 to 60 percent range).⁹⁰ In addition, the domestic industry's and importers' sales were not necessarily distributed across the benchmark products in a similar manner, nor did they necessarily have the same dominant benchmark products.⁹¹

[88] Notwithstanding the above, there are numerous quarters for which comparisons can be made to assess price undercutting.⁹² In a price comparison across five benchmark products, out of a maximum of forty quarters, there are twenty quarters where price comparison is possible.⁹³ Of those twenty possible price comparisons, a total of nine instances showed price undercutting of the like goods by the subject goods. Three of these instances occurred in the third quarter of 2019, then each subsequent quarter has one instance of price undercutting, with the exception of the third quarter of 2020.⁹⁴ The eleven instances where there was no price undercutting were concentrated with respect to one of the benchmark products.

- Account-specific injury allegations

[89] Turning to specific injury allegations, the Tribunal heard that Max-Atlas lowered its prices to be successful at a large RFP process during the POI. The evidence also shows that for a majority of goods under the RFP, the sale was awarded to an importer of the subject goods, at delivered prices that were lower than those of Max-Atlas – even after Max-Atlas lowered its initial prices in a further attempt to win the contract. While a portion of the RFP was awarded to Max-Atlas, it was at prices that were lower than those of the subject goods as a result of Max-Atlas reducing its initial prices to compete against the subject goods.⁹⁵ Finally, the Tribunal heard that on another RFP towards the end of the POI, the offered price of the subject goods undercut the price of the like goods and the entirety of the RFP was awarded to an importer of the subject goods.⁹⁶

⁸⁸ Exhibit NQ-2021-005-07.A (protected), Schedules 1–6.

⁸⁹ Exhibit NQ-2021-005-06.A, Table 32.

⁹⁰ Exhibit NQ-2021-005-07.A (protected), Table 32.

⁹¹ *Ibid.*, Table 31.

⁹² Exhibit NQ-2021-005-06.A, Table 52.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ Exhibit NQ-2021-005-A-06 (protected) at paras. 23–24; *Transcript of In Camera Hearing* at 3, 336–337, 368–370.

⁹⁶ Exhibit NQ-2021-005-A-06 (protected) at paras. 25–27; *Transcript of In Camera Hearing* at 342–44, 374.

[90] There is also evidence that although a sale of subject goods was cancelled following the initiation of the CBSA investigations due to what the seller described as “commercial risk”, the evidence does confirm that for this lost sale, the price of the subject goods undercut the price of like goods – which the Tribunal considers indicative of the injurious impact of the subject goods.⁹⁷ Although the domestic industry could recover this sale in the future, it does not change the fact that it lost a sale due to prices of the dumped and subsidized goods over the POI.

- Conclusion

[91] Based on the evidence before it, the Tribunal determines that the subject goods significantly undercut prices of the like goods on a regular and sustained basis over the POI, despite some limited exceptions. Despite an apparent lack of price depression at the aggregate level, the Tribunal finds that some price depression did occur at the individual account or RFP level during the POI, as noted above, but that it is not significant.

Price suppression

[92] In order to assess whether the subject goods have suppressed the price of like goods, the Tribunal typically compares the domestic industry’s average unit cost of goods manufactured (COGM) or average unit cost of goods sold (COGS) with its average unit selling values in the domestic market to determine whether the subject goods have prevented the domestic industry from increasing selling prices in line with any increases in costs.⁹⁸

[93] The domestic industry’s unit COGS increased in each period of the POI. As previously noted, selling prices of like goods in the Canadian market also increased throughout the POI, by 4 percent in 2019 and 2020, and by 19 percent in interim 2021.⁹⁹

[94] In 2019 and 2020, the increase in unit COGS for like goods was higher than the increase in the corresponding selling price, indicating that price suppression by the subject goods was occurring. It is noteworthy that the price suppression in 2019 coincided with a significant increase in the volume of the subject goods imported at prices that undercut those of the like goods. Then, despite the market contraction in 2020, the subject goods maintained an elevated market share compared to 2018, resulting in a continuation of price suppression first experienced in 2019.¹⁰⁰

[95] Conversely, the evidence does not indicate price suppression in interim 2021, as the increase in selling prices in interim 2021 compared to interim period 2020 exceeded the increase in unit COGS.¹⁰¹

⁹⁷ Exhibit NQ-2021-005-A-06 (protected) at paras. 48–49; Exhibit NQ-2021-005-B-03 at paras. 26–27; Exhibit NQ-2021-005-B-04 (protected) at paras. 26–27, attachments 8, 9.

⁹⁸ Since the domestic industry did not report any inventories at the end of each period of the POI, the COGM equals the COGS. Exhibit NQ-2021-005-06.A, Table 62; Exhibit NQ-2021-005-07.A (protected), Table 59.

⁹⁹ Exhibit NQ-2021-005-06.A, Table 37; Exhibit NQ-2021-005-07.A (protected), Table 59.

¹⁰⁰ Non-subject imports were present at low volumes and high prices throughout the POI; therefore, non-subject imports were not a contributing cause of price suppression in the domestic industry. See Exhibit NQ-2021-005-07.A (protected), Tables 18, 36.

¹⁰¹ Exhibit NQ-2021-005-06.A, Table 37; Exhibit NQ-2021-005-07.A (protected), Table 59.

[96] The parties made detailed submissions regarding Max-Atlas's input costs and direct materials margin as an indicator of price suppression. The Tribunal does not consider changes in Max-Atlas's direct materials margin, however calculated, as an indication of price suppression, since it does not include the other member of the domestic industry, ITD, and, further, does not take into account changes in other types of costs.

[97] In light of the evidence presented above, the Tribunal finds that the subject goods significantly suppressed the prices of like goods in 2019 and in 2020.

Resulting impact on the domestic industry

[98] Paragraph 37.1(1)(c) of the Regulations provides that the Tribunal may consider the resulting impact of the dumped and subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry.¹⁰² These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.¹⁰³ Having regard to paragraph 37.1(3)(a) of the Regulations, the Tribunal will assess 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 dumped or subsidized goods.

[99] Max-Atlas submitted that the domestic industry suffered material injury during the POI in the form of eroded margins and lost profits, lost employment, lost sales, lost market share, and the inability to further invest in its operations.

[100] The opposing parties argued that the complainant has not been materially injured and that any decline in the performance of the domestic industry at certain points during the POI is the result of factors other than the dumping or subsidization of subject goods. These factors include the effects of the COVID-19 pandemic; decisions by the complainants' largest accounts to postpone their purchases of container chassis, particularly in 2020; the complainant's lack of presence in western Canada to sell or service its products; and the complainant's production capacity constraints.

¹⁰² 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.

¹⁰³ 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.

Market share

[101] The total Canadian market remained relatively stable in terms of volume between 2018 and 2019, decreasing by 3 percent, but then contracting by 61 percent in 2020.¹⁰⁴ As noted above, this market contraction appears to be in part due to the fact that the three major purchasers of container chassis in the Canadian market delayed their purchases because of uncertainty created by the COVID-19 pandemic.¹⁰⁵ The market recovered significantly in interim 2021, increasing by 102 percent as compared to the same period in 2020.¹⁰⁶

[102] The domestic industry's market share decreased significantly between 2018 and the first half of 2021, while the market share of subject imports increased significantly in the same time frame. In fact, in terms of percentage points, the domestic industry's loss of market share is nearly identical to the increase in market share by the subject goods over the POI.¹⁰⁷

[103] More specifically, despite overall container chassis sales remaining stable between 2018 and 2019, market share by Canadian producers fell significantly in that time frame. In 2020, the domestic industry saw a slight improvement in market share, but market share fell below 2018 and 2019 levels in interim 2021, despite the significant recovery in the total market. In contrast, the market share of subject imports improved in interim 2021, reaching its highest level seen throughout the POI.¹⁰⁸

[104] In light of the above, the Tribunal finds that the subject goods captured significant market share over the POI at the expense of the domestic industry.

Production and sales

[105] Total domestic production and sales from domestic production decreased significantly between 2018 and 2020. While production and sales improved significantly in the first half of 2021 as compared to the same period in 2020, if annualized, the results in 2021 still represented a decrease as compared to 2019.¹⁰⁹ These reductions in production and sales correspond to an increase in the volumes of imports of subject goods at low prices, as detailed above.

[106] Although Max-Atlas acknowledged that the decrease in sales in 2020 was, at least in part, the result of the market contraction caused by COVID-19, it nevertheless provided evidence that there were sales to be made in 2020 and that it continued to lose sales to subject goods.¹¹⁰ Although Ocean Trailer denied making one of the lost sales identified by Max-Atlas in 2020,¹¹¹ this sale could have been lost to another importer, and this one instance where Max-Atlas was apparently mistaken about the identity of the importer does not negate its other evidence.

¹⁰⁴ Exhibit NQ-2021-005-06.A, Tables 18, 19.

¹⁰⁵ *Transcript of Public Hearing* at 282; Exhibit NQ-2021-005-18.10A at 3; Exhibit NQ-2021-005-18.09 at 3, 14.

¹⁰⁶ Exhibit NQ-2021-005-06.A, Tables 18, 19.

¹⁰⁷ Exhibit NQ-2021-005-07.A (protected), Table 20.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*, Table 62; Exhibit NQ-2021-005-06.A, Table 63.

¹¹⁰ Exhibit NQ-2021-005-A-03 at paras. 33–34; Exhibit NQ-2021-005-A-06 (protected) at para. 42; Exhibit NQ-2021-005-A-12 (protected) at 71–72.

¹¹¹ Exhibit NQ-2021-005-C-03 at para. 43; Exhibit NQ-2021-005-C-04 (protected) at para. 43; *Transcript of In Camera Hearing* at 213–214.

[107] Further, there is evidence that the importers performed well in 2020. For example, Mr. Darryl Chafe, of Ocean Trailer, stated that, although the first month of the pandemic was “scary” due to lockdowns, 2020 was a “great” year for Ocean Trailer and that it had “prospered through COVID”.¹¹²

[108] As noted above, the opposing parties argued that any injury experienced by Max-Atlas in terms of lost sales volumes was due to a variety of factors other than the subject goods. These arguments are addressed below.

[109] First, the opposing parties claimed that Max-Atlas lost sales because of non-price factors that are important to purchasers, such as after-sales service and warranties. The opposing parties pointed to evidence in the Tribunal’s investigation report indicating that availability of after-sales service and technical support is one reason given for not always purchasing the lowest-priced product, and that, generally, purchasers rate after-sales service or warranties as a very important factor in their purchasing decisions.¹¹³ This is also consistent with evidence provided by the representative of CP.¹¹⁴

[110] Mr. Chafe claimed that Max-Atlas lost a significant sale because it had previously refused to conduct repairs to fix axle seal failures on components common to both the Max-Atlas and CIMC container chassis, whereas Ocean Trailer undertook to make the repairs at no cost as part of its warranty service.¹¹⁵ The opposing parties also claimed that, since Max-Atlas terminated its relationship with Trailer Wizards, its distributor in western Canada, in 2020, purchasers would have been aware that Max-Atlas would not be able to provide reliable service on container chassis in that part of the country.¹¹⁶

[111] In reply, Max-Atlas argued that the evidence shows that its after-sales service and warranty support are comparable to those provided by importers. The data in the Tribunal’s investigation report indicate that, of the three purchasers who responded on comparability of after sales service and warranties as between subject and like goods, one found that after-sales service or warranties were comparable, one found that the advantage was with the domestic industry, and one found that the advantage was with the subject goods.¹¹⁷ Further, the company that responded that after-sales service or warranties were comparable as between subject and like goods was CP, an important purchaser of both subject and like goods.¹¹⁸

[112] In response specifically to Mr. Chafe’s claims regarding axle seal failures, Mr. Varga stated that he has no record of being contacted regarding the axle failure issue and that his conclusion is that the issue did not affect the axles on the units sold by Max-Atlas.¹¹⁹

[113] With respect to the statement that it was unable to provide service in western Canada more generally, Mr. Varga’s evidence is that Max-Atlas maintained relationships with four maintenance and service providers in western Canada throughout the POI. He further testified that purchasers would have been aware of these relationships, and that Max-Atlas would not have been able to

¹¹² *Transcript of Public Hearing* at 158–159. See also *Transcript of In Camera Hearing* at 135.

¹¹³ Exhibit NQ-2021-005-06.A, Tables 8, 10.

¹¹⁴ Exhibit NQ-2021-005-41 at 2, 3; *Transcript of Public Hearing* at 277.

¹¹⁵ Exhibit NQ-2021-005-C-03 at paras. 36–39, 42.

¹¹⁶ *Ibid.* at paras. 20, 34.

¹¹⁷ Exhibit NQ-2021-005-06.A, Table 7.

¹¹⁸ Exhibit NQ-2021-005-18.06 at 18. See also *Transcript of In Camera Hearing* at 382.

¹¹⁹ Exhibit NQ-2021-005-A-15 at paras. 21–23. See also *Transcript of In Camera Hearing* at 363–365, 381–383.

continue to secure business from major purchasers who operate across Canada, such as CP, if Max-Atlas did not have a reliable service network in place.¹²⁰

[114] On balance, the Tribunal finds Mr. Varga's evidence that the axle seal failure issue was not the reason that Max-Atlas lost the sale more compelling. Furthermore, the Tribunal accepts Mr. Varga's evidence that, despite the termination of its distribution agreement with Trailer Wizards, Max-Atlas is capable of offering service and maintenance for its container chassis in western Canada. As a result, the Tribunal does not consider these to be other factors causing injury to the domestic industry.

[115] Second, the opposing parties submitted that, since the majority of Canadian purchasers do not purchase imports, at least some of the lost sales volumes must be attributable to intra-industry competition rather than competition with subject goods. Specifically, since Max-Atlas holds a dominant position in the market, the opposing parties claimed that ITD must have lost sales to Max-Atlas.

[116] Max-Atlas replied that the Tribunal has confirmed that fair intra-industry competition is not a source of injury, and even strong intra-industry competition is not considered injurious unless it is somehow injurious to the industry as a whole.¹²¹ It further argued that, even if ITD lost sales to Max-Atlas in 2019, that simply means that Max-Atlas must have lost sales to subject imports, as subject imports increased and the market did not grow; therefore, those sales must have been taken from somewhere.

[117] The Tribunal finds that, while there is some evidence of intra-industry competition, there is no indication that the price pressures faced by the domestic industry over the POI were to a significant degree the result of intra-industry competition.

[118] Finally, the opposing parties submitted that Max-Atlas's decision not to participate in the leasing industry was a form of self-injury. In response to this claim, Mr. Varga testified that Max-Atlas has specifically chosen not to participate in this segment because some of its customers are lessors and it has chosen not to compete with them.¹²²

[119] While the leasing industry is a possible area of expansion for Max-Atlas, the Tribunal does not consider that Max-Atlas's decision to not expand its business into this area constitutes a form of self-injury.

[120] In light of all of the above, the Tribunal finds that there was a significant reduction in the domestic industry's production and sales volumes over the POI. Although the pandemic also had an impact in 2020, the subject goods were materially responsible for negatively affecting the domestic industry's production and sales over the POI.

[121] In addition, the Tribunal notes that Max-Atlas also claimed that it suffered injury in the form of an inability to re-enter the western Canadian market. Specifically, Mr. Varga stated that Max-Atlas made its last sale through Trailer Wizards in 2017. Since that time, Max-Atlas has been unable to

¹²⁰ Exhibit NQ-2021-005-A-15 at paras. 17–19; *Transcript of Public Hearing* at 66–70, 93–95.

¹²¹ *Polyiso Insulation Board* (6 May 2010), NQ-2009-005 (CITT) at para. 139; *Cold-Rolled Steel* (21 December 2018), NQ-2018-002 (CITT) at para. 112; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at paras. 244–246, citing *Carbon Steel Welded Pipe* (20 August 2008), NQ-2008-001 (CITT) at para. 115.

¹²² *Transcript of Public Hearing* at 23, 41.

make any significant sales or attract another distributor to sell on its behalf in the western market due to the presence of low-priced subject goods.¹²³

[122] The opposing parties argued that the domestic industry's lack of sales in western Canada was not due to competition with subject goods but rather due to the fact that Trailer Wizards was not interested in distributing container chassis, but rather expressed a business preference for renting, leasing and servicing dry vans.¹²⁴

[123] In reply, Mr. Varga denied this allegation. He asserted that Max-Atlas had been happy with the results of its partnership with Trailer Wizards until the subject goods took over the western Canadian market.¹²⁵

[124] The alleged loss of the western Canadian market by Max-Atlas occurred before the POI. The Tribunal does not generally consider allegations of injury that occurred prior to the POI in its analysis, since it does not have the necessary data to establish causation.¹²⁶ For instance, in this case, there are no data to support Max-Atlas's assertion that 20 percent of its sales were made in the western Canadian market prior to the appearance of the subject goods,¹²⁷ nor any information that would allow the Tribunal to put that claim in context, for example the size of the market or the volume of imports of subject goods.

Financial performance

[125] The domestic industry's gross margin and net income declined sharply between 2018 and 2019, which coincided with a decrease in sales volume and value, and an increase in unit COGS. After falling further in 2020, in line with the contraction in demand discussed above, gross margins rebounded in interim 2021, but were still below 2018 levels, and domestic producers were still operating at a net loss. COGS per unit continued to increase throughout the POI.¹²⁸

[126] The opposing parties submitted that Max-Atlas did not provide accurate financial data to the Tribunal for certain key metrics and made statements that are contradicted by its own evidence and the Tribunal's record. They submitted that, when those data are corrected as set out below, they do not demonstrate material injury.

[127] The opposing parties submitted that the conversion of Max-Atlas's financial results from its fiscal year of June to May to the Tribunal's requested calendar year caused a significant distortion and that if Max-Atlas's financial performance is assessed based on its audited financial statements, it is plain that Max-Atlas performed better than it claims.¹²⁹

[128] The opposing parties further argued that the financial picture presented in the Tribunal's investigation report differs substantially from certain information provided in the complaint.¹³⁰

¹²³ Exhibit NQ-2021-005-A-03 at paras. 8–11.

¹²⁴ *Ibid.* at para. 20.

¹²⁵ Exhibit NQ-2021-005-A-15 at para. 15.

¹²⁶ *Decorative Plywood* at paras. 96–103.

¹²⁷ Exhibit NQ-2021-005-A-03 at para. 8.

¹²⁸ Exhibit NQ-2021-005-07.A (protected), Table 59.

¹²⁹ Exhibit NQ-2021-005-B-01 at paras. 70–75; Exhibit NQ-2021-005-B-02.B (protected) at paras. 76–77.

¹³⁰ Exhibit NQ-2021-005-B-02.B (protected) at paras. 78–79.

Finally, the opposing parties stated that Max-Atlas omitted certain information and did not correctly calculate its COGS in 2020.¹³¹

[129] In reply, Max-Atlas submitted that it is inappropriate to assess its financial performance based on its fiscal year instead of a calendar year as this does not allow for a comparison with the remainder of the data in the Tribunal's investigation report, which is presented on a calendar year basis.¹³²

[130] Max-Atlas further noted that ITD, the other domestic producer, did not provide information based on a fiscal year of June to May and that this would cause problems for the assessment of injury to the domestic industry as a whole.¹³³ Finally, it noted that providing data based on a fiscal year would either improperly expand the POI into 2017, as Max-Atlas would have to include its results from June of 2017 to May of 2018, or result in the Tribunal missing data for 7 months of the POI (June to December 2018).¹³⁴

[131] With respect to the alleged contradiction between the financial information presented by Max-Atlas in its questionnaire response and certain information derived from the complaint (as identified by the opposing parties), Mr. Bernatchez explained that this presentation addressed an error that was resolved prior to the preparation of Max-Atlas's audited financial statements and the preparation of its complaint. As such, he opined that the results presented to the Tribunal in Max-Atlas's questionnaire response do not need to be adjusted, as contended by the opposing parties.¹³⁵

[132] Regarding the calculation of its COGS for 2020, Max-Atlas indicated that the information identified by the opposing parties was accounted for in the portion of Max-Atlas's questionnaire response where the data correspond to audited financial statements, in accordance with the Tribunal's instructions. However, it was not accounted for in the cost of container chassis sold. Max-Atlas submitted that this approach was the only way to avoid distorting the parameter of labour costs actually incurred, which would consequently artificially lower the actual cost of manufacturing a container chassis. Further, Max-Atlas argued that this approach would also render useless any comparisons of gross margins across the POI and take away the Tribunal's ability to see the year-over-year decline in profitability of making and selling container chassis.¹³⁶

[133] The Tribunal does not accept the opposing parties' assertions that the domestic industry's financial performance, as presented in the investigation report, is misleading or inaccurate. As noted by Max-Atlas, the Tribunal requests financial performance information on a calendar year basis in order to ensure that it can compare trends in other metrics with ones in the financial performance data. In addition, the Tribunal notes that it would not necessarily be appropriate to assess financial performance based on audited financial results, as these reflect performance pertaining to all of a company's products and is not limited to production and sales of like goods.

¹³¹ *Ibid.* at paras. 80–85.

¹³² Exhibit NQ-2021-005-A-13 at paras. 17–18.

¹³³ *Ibid.* at para. 19.

¹³⁴ *Ibid.* at para. 16.

¹³⁵ Exhibit NQ-2021-005-A-17 at para. 9; Exhibit NQ-2021-005-A-18 (protected) at paras. 5–12.

¹³⁶ Exhibit NQ-2021-005-A-13 at paras. 185–188; Exhibit NQ-2021-005-A-14 (protected) at paras. 185–188.

[134] With respect to the calculation of COGS in 2020, the Tribunal notes that Max-Atlas's approach only affects the results in 2020 and does not change the Tribunal's conclusions with respect to the injury caused to the domestic industry's financial performance in 2019 and interim 2021.

[135] As a result, the Tribunal finds that the domestic industry's lost market share and sales volumes, which are attributable to the presence of low-priced subject goods, translated to lost sales revenue. In turn, this negatively impacted the domestic industry's profitability, particularly in the face of rising costs over the POI.

Capacity utilization

[136] The domestic industry's capacity utilization rate declined over the POI. In interim 2021, capacity utilization rebounded from 2020 levels, which were low due to the collapse in demand during that period. However, capacity utilization in interim 2021 was still low as compared to 2018 and 2019,¹³⁷ even though, according to Max-Atlas, demand had substantially recovered.

[137] The opposing parties submitted that Max-Atlas overstated its practical plant capacity in its questionnaire response. The opposing parties further argued that the domestic industry was prevented from improving its capacity utilization rate due to labour shortages and lack of access to raw materials, rather than lack of demand due to the impact of subject goods.

[138] The Tribunal finds that, while there is some question as to whether the total normal plant capacity was reported correctly, there is still a decrease in capacity utilization that coincides with the increases in imports of subject imports. Further, while Max-Atlas acknowledged that labour shortages had been a problem immediately after the shutdown in 2020, and that, generally, a lack of skilled labour could be a constraint on productivity, Mr. Varga also testified that Max-Atlas was having more success in attracting new employees and would be able to add a second shift if necessary, going forward.¹³⁸

Employment

[139] For the domestic industry as a whole, employment levels declined throughout the POI until interim 2021, which showed an improvement as compared to interim 2020, though employment did not reach pre-pandemic levels.¹³⁹

[140] Max-Atlas submitted that it was required to lay off a significant number of employees in October of 2019.¹⁴⁰ This occurred prior to the start of the pandemic and the resultant plant shutdown, which occurred over seven weeks in the period from March to April of 2020.¹⁴¹ Accordingly, lay-offs in 2019 are attributable to the impact of the subject goods.

[141] In view of the foregoing, the Tribunal finds that the domestic industry suffered a reduction in employment that is attributable to the subject goods, notwithstanding that some of the reduction in employment over the POI was due to the impact of the pandemic.

¹³⁷ Exhibit NQ-2021-005-07.A (protected), Table 62.

¹³⁸ *Transcript of Public Hearing* at 58, 89–90.

¹³⁹ Exhibit NQ-2021-005-07.A (protected), Table 62; Exhibit NQ-2021-005-06.A, Table 63.

¹⁴⁰ Exhibit NQ-2021-005-10.01 (protected) at 21, 22.

¹⁴¹ Exhibit NQ-2021-005-A-03 at para. 32.

Investments

[142] Max-Atlas's witnesses provided evidence that the second phase of Max-Atlas's plan to upgrade its facilities had been put on hold due to the increased presence of the subject imports in the market. In the face of competition with the subject goods, Max-Atlas is unable to secure sufficient sales volumes to justify the expansion in capacity that would be the result of these investments.¹⁴²

[143] As noted above, the Tribunal accepts that some of the decrease in the domestic industry's sales volumes over the POI was due to the contraction in market demand in 2020. Nevertheless, the Tribunal finds that the presence of the subject goods has reduced sales volumes and has therefore negatively impacted the domestic industry's planned investments.

Other performance indicators

[144] There is little to no evidence that the increased presence of the subject goods in the Canadian market had negative effects on the domestic industry's cash flow, wages, ability to raise capital, or return on investments during the POI.

Magnitude of the margin of dumping and amount of subsidy

[145] As noted above, the margins of dumping and amounts of subsidy determined by the CBSA were not insignificant. That said, the Tribunal does not consider the margins of dumping or amounts of subsidy, expressed as a percentage of the export price, to necessarily represent the level of the injurious effects caused by the prices in Canada of the subject goods during the POI. The magnitude of the margins of dumping and amounts of subsidy therefore did not add much to the evidence and analysis of injury.

Materiality and causation

[146] The Tribunal will now determine whether the effects of imports of the subject goods noted above are "material", as contemplated in the definition of "injury" under section 2 of SIMA. SIMA does not define the term "material". However, both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury caused by the subject goods is "material".

[147] While, as noted above, the Tribunal must be cautious not to attribute injury caused by other factors to the dumped and subsidized goods, it is also true that the subject goods need not be the sole contributing factor to injury sustained by the domestic industry:

[I]n injury inquiries, there are almost always other factors present and [the Tribunal] cannot attribute any injury caused by these other factors to the dumping. Dumping, however, need not be the only or the principal cause of the injury. The statute requires that the injury caused by the dumping be material.¹⁴³

[148] The Tribunal must therefore assess whether, despite the losses suffered by the domestic industry that may be attributable to other factors, the dumping and subsidizing of the subject goods have, in and of themselves, caused material injury.

¹⁴² *Ibid.* at paras. 76-77; *Transcript of Public Hearing* at 16.

¹⁴³ *Refrigerators, Dishwashers and Dryers* (1 August 2000), NQ-2000-001 (CITT) at 27.

[149] In this case, the domestic industry experienced injury in 2019, 2020 and interim 2021, in the form of price undercutting and price suppression, which negatively impacted its sales volumes, revenues, market share, profitability, employment, capacity utilization and ability to invest.

[150] As discussed throughout these reasons, the collapse in demand caused by the COVID-19 pandemic in 2020 was another source of injury. Nevertheless, the Tribunal considers that the dumping and subsidizing of the subject goods were a direct and proximate cause of the injury suffered by the domestic industry. If the domestic industry's situation in interim 2021 is compared with 2018, then it is apparent that it has suffered a deterioration in all aspects of its performance throughout the POI. In other words, the Tribunal finds that the dumping and subsidizing of the subject goods, in and of themselves, have caused injury to the domestic industry and that such injury was material.

Conclusion

[151] In view of the foregoing, the Tribunal finds that the domestic industry was materially injured by the dumping and subsidizing of the subject goods. Accordingly, the Tribunal need not address the question of whether the subject goods are threatening to cause injury.

REQUEST FOR THE INITIATION OF A PUBLIC INTEREST INQUIRY

[152] The opposing parties submitted that, in the event that the Tribunal makes a finding of injury, there are reasonable grounds for the Tribunal to initiate a public interest inquiry pursuant to section 45 of SIMA. As justification, the opposing parties claimed that:

- Max-Atlas dominates the market and the imposition of duties will result in a near-monopoly situation;
- Max-Atlas cannot meet current demand in the Canadian market, as evidenced by its production constraints and order backlogs; and
- container chassis are required in order to alleviate supply chain bottlenecks and to address negative effects on downstream customers as Canada moves out of the COVID-19 pandemic and experiences supply chain equipment shortages.

[153] In reply, Max-Atlas submitted that the opposing parties have not followed the Tribunal's instructions in its notice of commencement for this inquiry, which explicitly states that the Tribunal "does not seek nor does it accept submissions on public interest issues during an injury inquiry" and directs parties to file any public interest requests within 45 days of the issuance of an affirmative finding, as set out in section 45(1) of SIMA and section 40.1 of the Regulations. Further, Max-Atlas argues that the opposing parties have not substantiated their request as they have not addressed the factors set out in subsection 40.1(2) of the Regulations.

[154] The Tribunal agrees that the opposing parties have not provided sufficient information to support their claim that there are reasonable grounds to consider that the imposition of the duties will restrict access to container chassis and result in negative downstream effects on purchasers and, ultimately, Canadian consumers.

[155] First, the Tribunal notes that its injury finding does not necessarily constrain the availability of container chassis, as it does not prohibit the importation of subject goods. It simply requires that

they be imported at the applicable normal values calculated by the CBSA and/or that the applicable duties be paid. As the market adjusts following the imposition of duties, new prices and/or sources of supply are likely to emerge for all market participants.¹⁴⁴

[156] Second, as the Tribunal has previously stated, the starting point in a public interest inquiry is that the imposition of duties following an inquiry under section 42 of SIMA is deemed to be in the public interest.¹⁴⁵ In this instance, the Tribunal considers that it is in the public interest to ensure that the domestic industry does not go out of business as a result of competition from dumped and subsidized goods, which would be the likely outcome without duties in place. Container chassis play a critical role in ensuring a secure supply of goods to Canadian consumers and maintaining the Canadian economy. Container chassis end users in Canada have access to limited sources of supply;¹⁴⁶ losing the domestic industry as a source of supply would make Canada vulnerable. Whether the duties could have unintended consequences such that it would be in the public interest to consider their elimination or reduction cannot, as indicated above, be determined on the basis of the information currently before the Tribunal.

[157] Accordingly, the Tribunal will not initiate a public interest inquiry at this time. However, it remains open to the opposing parties, or any other interested person, to file a request that complies with the informational requirements set out in the Regulations, within 45 days of February 18, 2022, the date on which the Tribunal's finding was issued.

CONCLUSION

[158] The Tribunal finds, pursuant to subsection 43(1) of SIMA, that the dumping and subsidizing of the subject goods have caused material injury to the domestic industry.

Randolph W. Heggart

Randolph W. Heggart
Presiding Member

Susan D. Beaubien

Susan D. Beaubien
Member

Frédéric Seppey

Frédéric Seppey
Member

¹⁴⁴ *Concrete Reinforcing Bar* (22 December 2015), PB-2014-001 (CITT) [*Rebar PB*] at para. 33.

¹⁴⁵ *Rebar PB* at para. 85.

¹⁴⁶ *Transcript of Public Hearing* at 287.