



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## DETERMINATION AND REASONS

Preliminary injury inquiry  
PI-2021-005

Certain Mattresses

*Determination issued  
Monday, April 25, 2022*

*Reasons issued  
Tuesday, May 10, 2022*

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

## **CERTAIN MATTRESSES**

### **PRELIMINARY DETERMINATION OF INJURY**

The Canadian International Trade Tribunal, pursuant to the provisions of subsection 34(2) of the *Special Import Measures Act* (SIMA), has conducted a preliminary injury inquiry into whether there is evidence that discloses a reasonable indication that the dumping and subsidizing of mattresses, mattress toppers, and mattresses for use and incorporation into furniture regardless of size and core type, originating in or exported from the People's Republic of China, whether imported independently or in a set with a mattress foundation, mattress topper, or both (the subject goods), have caused injury or retardation or are threatening to cause injury, as these words are defined in SIMA. The subject goods exclude the following:

- a) Pet mattresses;
- b) Mattresses which are incorporated into furniture and which are subject to the Canadian International Trade Tribunal's Finding in NQ-2021-002;
- c) Mattress Foundations;
- d) Tufted futon mattresses which do not include innersprings or foam;
- e) Camping mattresses;
- f) Stretcher or gurney mattresses;
- g) Custom mattresses for boats, RVs, or other vehicles;
- h) Airbeds;
- i) Water beds;
- j) And Mattress toppers less than three inches in thickness.

This preliminary injury inquiry follows the notification, on February 24, 2022, that the President of the Canada Border Services Agency had initiated investigations into the alleged injurious dumping and subsidizing of the subject goods.

Pursuant to subsection 37.1(1) of SIMA, the Tribunal determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

Randolph W. Heggart

Randolph W. Heggart  
Presiding Member

Cheryl Beckett

Cheryl Beckett  
Member

Frédéric Seppey

Frédéric Seppey  
Member

The statement of reasons will be issued within 15 days.

Tribunal Panel:	Randolph W. Heggart, Presiding Member Cheryl Beckett, Member Frédéric Seppey, Member
Tribunal Secretariat Staff:	Helen Byon, Lead Counsel Sarah Shinder, Counsel Shawn Jeffrey, Lead Analyst Rebecca Campbell, Analyst Chelsea Lappin, Analyst Morgan Oda, Registrar Officer

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## STATEMENT OF REASONS

### INTRODUCTION

[1] On December 20, 2021, the complainants, Restwell Mattress Co. Ltd. (Restwell) and the United Steelworkers (USW), filed a complaint with the Canada Border Services Agency (CBSA) alleging that the dumping and subsidizing of certain mattresses originating in or exported from the People's Republic of China (China) (the subject goods) have caused injury or are threatening to cause injury to the domestic industry. The complaint is also supported by additional domestic producers (the supporting producers). However, their identity and status as supporting parties to the complaint has been designated as confidential.<sup>1</sup>

[2] On February 24, 2022, the CBSA initiated an investigation respecting the dumping and subsidizing of the subject goods pursuant to subsection 31(1) of the *Special Import Measures Act* (SIMA).<sup>2</sup>

[3] As a result of the CBSA's decision to initiate an investigation, on February 25, 2022, the Canadian International Trade Tribunal began its preliminary injury inquiry pursuant to subsection 34(2) of SIMA to determine whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury to the domestic industry.<sup>3</sup>

[4] Notices of participation were received from Restwell, the USW, SSH Bedding Canada Co., Restonic Mattresses, Park Avenue Furniture Corporation and Satpanth Capital Inc., 1369874 Ontario Inc. o/a Galaxy Bedding and Furniture, and United Sleep Products. During these proceedings, no additional submissions from any party was filed.

[5] On April 25, 2022, the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury to the domestic industry. The following are the reasons for this determination.

### PRODUCT DEFINITION

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

Mattresses, mattress toppers, and mattresses for use and incorporation into furniture regardless of size and core type, originating in or exported from the People's Republic of

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<sup>1</sup> The identity of the domestic producers supporting the complaint, as identified in the complaint, is part of the CBSA record transferred to the Tribunal for the purposes of this preliminary injury inquiry and has been designated as confidential. The Tribunal notes that the extensive redaction of the identities of the domestic producers supporting the complaint may prevent the Tribunal from providing adequate public reasons for its determination in the final injury inquiry. The Tribunal is a court of public record and, as such, endeavours to have as much information on the public record as possible. The Tribunal expects parties before it to adhere to the requirements of sections 46 and 47 of the *Canadian International Trade Tribunal Act* regarding the designation of information as confidential, as well as the Tribunal's Confidentiality Guidelines, which, *inter alia*, sets out information that is typically considered public or confidential.

<sup>2</sup> R.S.C., 1985, c. S-15.

<sup>3</sup> As a domestic industry is already established, the Tribunal does not need to consider the question of retardation.

China, whether imported independently or in a set with a mattress foundation, mattress topper, or both.<sup>4</sup>

[7] The CBSA excluded the following from the subject goods:

- a) Pet mattresses;
- b) Mattresses which are incorporated into furniture and which are subject to the Canadian International Trade Tribunal's Finding in NQ-2021-002;
- c) Mattress Foundations;
- d) Tufted futon mattresses which do not include innersprings or foam;
- e) Camping mattresses;
- f) Stretcher or gurney mattresses;
- g) Custom mattresses for boats, RVs, or other vehicles;
- h) Airbeds;
- i) Water beds;
- j) And Mattress toppers less than three inches in thickness.<sup>5</sup>

## THE CBSA'S DECISION TO INITIATE THE INVESTIGATION

[8] The CBSA initiated an investigation pursuant to subsection 31(1) of SIMA, as it was of the opinion that there was evidence that the subject goods had been dumped and subsidized and that there was evidence that disclosed a reasonable indication that the dumping and subsidizing had caused or were threatening to cause injury or retardation to the domestic industry.<sup>6</sup>

[9] Using information for the period from October 1, 2020, to September 30, 2021, the CBSA estimated that the subject goods were dumped by a margin of 249 percent, expressed as a percentage of export price. For the same period, the CBSA estimated that the subject goods were subsidized by a margin of 226 percent, expressed as a percentage of export price.<sup>7</sup>

## LEGISLATIVE FRAMEWORK

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

[11] The term "reasonable indication" is not defined in SIMA but is understood to mean that the evidence need not be "conclusive, or probative on a balance of probabilities".<sup>8</sup> The reasonable

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<sup>4</sup> Exhibit PI-2021-005-02.09 at 1, 2.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.* at 1.

<sup>7</sup> Exhibit PI-2021-005-05 at paras. 76, 96.

<sup>8</sup> *Ronald A. Chisholm Ltd. v. Deputy M.N.R.C.E.* (1986), 11 CER 309 (FCTD).

indication standard applicable to a preliminary injury inquiry is lower than the evidentiary threshold that applies in a final injury inquiry under section 42 of SIMA.<sup>9</sup>

[12] The evidence at the preliminary phase of proceedings tends to be significantly less detailed and comprehensive than the evidence in a final injury inquiry. Not all the evidence is available at the preliminary phase, and the evidence cannot be tested to the same extent as it would be during a final injury inquiry. At this stage of the process contemplated by SIMA, the Tribunal's role is to assess whether there is sufficient evidence of injury or threat of injury caused by the subject goods for the CBSA to continue with an investigation, whereas, at the final injury inquiry stage, the Tribunal's role is to determine whether the dumping and subsidizing of the subject goods have caused injury or are threatening to cause injury, justifying the imposition of a trade remedy. Therefore, the standard of "reasonable indication" of injury or threat of injury does not require the extensive evidence needed to satisfy the higher threshold of reliability and cogency that is needed in the context of a final injury inquiry.<sup>10</sup>

[13] However, the outcome of preliminary injury inquiries must not be taken for granted.<sup>11</sup> Simple assertions are not sufficient.<sup>12</sup> The Tribunal must be satisfied that there is positive and sufficient evidence on the record to support a preliminary determination of injury or threat of injury. This evidence must address the necessary requirements in SIMA and the relevant factors of the *Special Import Measures Regulations* (Regulations).<sup>13</sup> In previous cases, the Tribunal stated that the "reasonable indication" test is passed where, in light of the evidence presented, the allegations stand up to a somewhat probing examination, even if the theory of the case might not seem convincing or compelling.<sup>14</sup>

### **Injury factors and framework issues**

[14] In making its preliminary determination of injury, the Tribunal takes into account the injury and threat of injury factors that are prescribed in section 37.1 of the Regulations, including the import volumes of the dumped and subsidized goods and the effects of the dumped and subsidized goods on the price of like goods, the resulting economic impact of the dumped and subsidized goods on the state of the domestic industry and—if injury or threat of injury is found to exist—whether a causal relationship exists between the dumping and subsidizing of the goods and the injury or threat of injury.

<sup>9</sup> *Sucker Rods* (17 July 2018), PI-2018-001 (CITT) at para. 11; *Certain Fabricated Industrial Steel Components* (10 November 2016), PI-2016-003 (CITT) at para. 13.

<sup>10</sup> *Certain Upholstered Domestic Seating* (19 February 2021), PI-2020-007 (CITT) [*UDS PI*] at para. 15.

<sup>11</sup> *Concrete Reinforcing Bar* (12 August 2014), PI-2014-001 (CITT) at paras. 18–19.

<sup>12</sup> Article 5 of the World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 requires an investigating authority to examine the accuracy and adequacy of the evidence provided in a dumping complaint to determine whether there is sufficient evidence to justify the initiation of an investigation and to reject a complaint or to terminate an investigation as soon as an investigating authority is satisfied that there is not sufficient evidence of dumping or injury. Article 5 also specifies that simple assertions that are not substantiated with relevant evidence cannot be considered sufficient to meet the requirements of the article.

<sup>13</sup> SOR/84-927.

<sup>14</sup> *UDS PI* at para. 16. See, for example, *Silicon Metal* (21 June 2013), PI-2013-001 (CITT) at para. 16; *Unitized Wall Modules* (3 May 2013), PI-2012-006 (CITT) at para. 24; *Liquid Dielectric Transformers* (22 June 2012), PI-2012-001 (CITT) at para. 86.



[15] However, before examining whether there is evidence of injury or threat of injury, the Tribunal must address a number of framework issues. Specifically, it must identify the domestically produced goods that are “like goods” in relation to the subject goods, determine whether there is more than one class of goods and identify the domestic industry that produces those like goods. This is required because subsection 2(1) of SIMA defines “injury” as “material injury to a domestic industry”.

## LIKE GOODS AND CLASSES OF GOODS

[16] 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.

[17] In determining the like goods and whether there is more than one class of 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 customer needs).<sup>15</sup>

[18] According to the complaint, mattresses imported from China and mattresses produced domestically are highly substitutable for one another. Moreover, domestic producers manufacture or have the ability of manufacturing the entire range of products included in the subject goods. In this regard, the complainants explain that subject imports and domestically produced mattresses within the scope of the product definition are produced from similar types of materials, such as innersprings, foam and ticking, and are produced to common sizes that include, but are not limited to, crib, twin, twin XL, full, queen, king, Hong Kong king, and California king. The evidence indicates that both the subject goods and domestically produced like goods are sold in all market segments.<sup>16</sup>

[19] The uncontroverted evidence also indicates that domestically produced mattresses and subject imports compete through the same channels of distribution. Domestically produced mattresses and subject imports are sold to retailers for sales to end users either directly (in the case of larger retailers) or through buying groups (in the case of smaller regional and independent furniture and retail stores).<sup>17</sup>

[20] Accordingly, the Tribunal finds that mattresses produced in Canada that are of the same description of the subject goods are “like goods” in relation to the subject goods and that there is one class of goods.

## DOMESTIC INDUSTRY

[21] 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

<sup>15</sup> See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

<sup>16</sup> Exhibit PI-2021-005-03.01 (protected) at 114, 3080, 3081.

<sup>17</sup> Exhibit PI-2021-005-02.01 at 2838; Exhibit PI-2021-005-03.01 (protected) at 3077–3079.

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.

[22] In this preliminary injury inquiry, the Tribunal must therefore determine whether the evidence discloses a reasonable indication of injury, or threat of injury, to the domestic producers as a whole or to those domestic producers whose production represents a major proportion of the total production of like goods. The term “major proportion” is not defined in SIMA. However, it has been interpreted to mean an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority.<sup>18</sup>

[23] In considering whether the collective production of domestic production constitutes a “major proportion”, the Tribunal has previously considered the level of fragmentation in the industry. In *UDS PI*, the Tribunal noted the WTO Appellate Body’s finding<sup>19</sup> that, in the case of a fragmented industry with numerous producers, a major proportion may in fact be a smaller proportion than in a case with a concentrated industry. Accordingly, the Tribunal determined that it was reasonable to accept that a major proportion may be a lower amount than in a standard case and found that, as the domestic industry in that case was very fragmented, a proportion of more than 20 percent of the total domestic production constituted a major proportion.<sup>20</sup>

[24] To support their position that the domestic industry for mattresses is fragmented, the complainants referred to the Canadian Industry Statistics pertaining to Mattress Manufacturing (33791) published by the Department of Innovation, Science and Economic Development. According to this document, there are a total of 58 producers throughout Canada with at least 5 employees and 11 larger producers with at least 100 employees. Additionally, there are 39 producers with fewer than 5 employees.<sup>21</sup>

[25] Based on confidential estimates of the percentages of total domestic production and total domestic sales from domestic production represented by Restwell and the supporting producers,<sup>22</sup> the complainants submitted that the threshold for a major proportion of the domestic industry is met.

[26] The Tribunal has reviewed the evidence submitted by the complainants on the confidential and public record in light of the relevant factors. With respect to domestic sales from domestic production, the complaint included estimated sales volumes from domestic production for Restwell and the supporting producers, including an estimate for the whole of the domestic industry. While the complaint included limited sales data for Restwell and the supporting producers, only Restwell and two of the supporting producers provided pricing and financial data. In the Tribunal’s view, in addition to sales data, pricing and financial data are necessary for the Tribunal to assess any price effects that may be caused by the subject goods and their impact on financial performance, a key indicator of injury. Given that data are only available at this stage on these indicators for Restwell and two supporting producers, the Tribunal will assess whether these three companies constitute a major proportion of the domestic industry.

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<sup>18</sup> *Japan Electrical Manufacturers Assoc. v. Canada (Anti-Dumping Tribunal)*, [1982] 2 FC 816 (FCA).

<sup>19</sup> WTO Appellate Body Report, *EC – Fasteners (China)*, WT/DS397/AB/R at paras. 415–416.

<sup>20</sup> *UDS PI* at paras. 44, 45.

<sup>21</sup> Exhibit PI-2021-005-02.01 at 33, 200.

<sup>22</sup> Exhibit PI-2021-005-03.01 (protected) at 38, 39, 3350, 3357.

[27] Based on the evidence on the record, and taking into account the fragmented nature of the Canadian industry, the Tribunal is satisfied at this stage that Restwell and the two supporting producers that provided their sales, pricing and financial data represent a major proportion of the total domestic production of the like goods. This proportion is generally consistent with the proportion of domestic sales from domestic production based on the CBSA's estimate of total domestic sales.<sup>23</sup> If the CBSA makes a preliminary determination of dumping or subsidizing, the Tribunal will collect data from other domestic producers during the final injury inquiry and, as such, the composition of the domestic industry will be revisited.

[28] Therefore, for the purposes of its preliminary injury inquiry, the Tribunal will consider the impact of the subject goods on the three producers considered as constituting the domestic industry.

## CROSS-CUMULATION

[29] Where subject goods from the same source are both dumped and subsidized, the Tribunal considers that it is not necessary or practicable to disentangle the effects of subsidizing from the effects of dumping of the same goods.<sup>24</sup> The Tribunal will therefore assess the impact of the dumping and subsidizing of the goods cumulatively.

## INJURY ANALYSIS

### Period of analysis

[30] The complainants' evidence with respect to injury covered the period from 2017 to 2020 and the first three quarters of 2020 (interim 2020) and 2021 (interim 2021). The complainants submitted that this period of analysis would allow the Tribunal to assess data for three full years which were unaffected by the COVID-19 pandemic. As discussed below, the complainants' evidence with respect to imports of subject goods was based on adjusted Statistics Canada import data.

[31] The CBSA's analysis, however, covers the period from 2018 to 2020 and interim 2021. No data were included in the CBSA's analysis for the comparative period, interim 2020.

[32] The Tribunal typically relies on CBSA estimates at the preliminary inquiry stage, given that the CBSA has access to better data than the complainants. As such, the CBSA's information should typically be more accurate.<sup>25</sup> In this regard, the Tribunal notes that the CBSA has refined importation data and, based on responses to its standing request for information, additional production data from several domestic producers. However, in making its determination on whether there is a reasonable indication of injury based on the available evidence, the Tribunal relies on the sales, pricing and financial data provided in the complaint insofar as it pertained to the domestic industry as defined above. The Tribunal finds that these data, the adjusted Statistics Canada import data, as well as the

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<sup>23</sup> Using Restwell's and the two supporting producers' volumes of domestic production and domestic sales and the estimate for volume of total domestic production provided in the complaint, the Tribunal estimated the three producers' production volume as a proportion of total domestic production and their proportion of domestic sales volume as a proportion of total sales from domestic production. The Tribunal compared these ratios against Restwell's and the two supporting producers' domestic sales volume as a proportion of the CBSA's estimated total domestic sales volume. Exhibit PI-2021-005-03.01 (protected) at 3350, 3357; Exhibit PI-2021-03.18 at 14.

<sup>24</sup> See, for example, *Corrosion-resistant Steel Sheet* (7 January 2020), PI-2019-002 (CITT) at para. 36.

<sup>25</sup> See, for example, *Heavy Plate* (27 July 2020), PI-2020-001 (CITT) at para. 26; *Certain Small Power Transformers* (14 June 2021), PI-2021-001 (CITT) at para. 65.

written declarations from the domestic industry provide the Tribunal with sufficiently reliable data for a broader period of review, including more data points in respect of the state of the domestic industry (i.e. it included three full years before the COVID-19 pandemic). That said, where possible, the Tribunal also took note of the relevant trends based on the CBSA's data.

### **Import volume of dumped and subsidized goods**

[33] The complainants submitted that the subject goods had been imported in significant and increasing volumes in absolute terms and relative to domestic production and consumption.

[34] The trends in import volumes of the subject goods presented in the complaint were based on adjusted Statistics Canada import data.<sup>26</sup> Absolute volumes of imports of the subject goods increased from 2017 to 2019 but dropped slightly in 2020, for an overall increase of 82 percent during the four-year period. Imports of the subject goods fell in interim 2021 as compared to interim 2020 but not to the same degree as the increase in imports over the 2017 to 2020 period. Subject goods represented a 48 percent share of imports in 2017, increasing to a 60 percent share in 2020. The subject goods held a 54 percent share of imports in interim 2021, as compared to a 58 percent share in interim 2020.<sup>27</sup>

[35] The above trends are consistent with the CBSA's estimates, which indicate an increase in imports of the subject goods from 2018 to 2020, but to a lesser degree than observed in the complainants' import data.<sup>28</sup>

[36] Using the Statistics Canada import data submitted by the complainants, the relative share of subject imports as a proportion of the domestic industry's domestic production increased by 174 percentage points from 2017 to 2020 and fell 40 percentage points in interim 2021 from interim 2020. Relative to the domestic industry's domestic sales of domestic production, import volumes of the subject goods increased by 181 percentage points from 2017 to 2020 and fell 27 percentage points from interim 2020 to interim 2021.<sup>29</sup> Using the CBSA's complaint analysis data for 2018 to 2020, the ratios of imports relative to domestic sales from domestic production were smaller than the ratios using data submitted in the complaint, but they followed the same trends.<sup>30</sup>

[37] According to the complainants, the decreasing trends in imports of the subject goods from 2020 to interim 2021 can be explained by the effects of the COVID-19 pandemic, which resulted in plant closures and supply chain disruptions and temporarily interrupted imports from China. However, by the end of 2020, Chinese imports began to recover.

[38] Having considered the uncontroverted evidence on the record, the Tribunal finds that there is a reasonable indication of a significant increase in imports of the subject goods in absolute terms and relative to domestic production and consumption.

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<sup>26</sup> Given that the import data may include pet mattresses and certain futon mattresses of a lower average unit value (which are excluded from the product definition), the complainants removed imports with unit values of \$25 or less from Chinese imports and \$50 or less from other countries. Exhibit PI-2013-005-02.01 at 89.

<sup>27</sup> Exhibit PI-2021-005-02.01 at 89–91, 487.

<sup>28</sup> Exhibit PI-2021-005-03.18 (protected) at 14.

<sup>29</sup> Exhibit PI-2021-005-03.01 (protected) at 3357; Exhibit PI-2021-005-02.01 at 487.

<sup>30</sup> Exhibit PI-2021-005-03.18 (protected) at 14.

### Effects on prices of like goods

[39] The complainants allege that, in the face of low-priced subject goods, the domestic industry's prices were significantly undercut. Further, they allege that, while the average pricing trends did not demonstrate price depression,<sup>31</sup> the evidence demonstrated price suppression in multiple forms.

[40] According to the complainants, price is a highly determinative factor in the purchasing decisions of retailers seeking to minimize costs and maximize margins on their sales of mattresses (which account for a large majority of purchases) and advertising "guaranteed lowest prices". Additionally, there is a high degree of price transparency in the market.<sup>32</sup>

[41] The complaint also explains that the cost of production (and, in turn, selling prices) is largely affected by the size of the mattress (crib, toddler, twin/single, full/double, queen, king, Hong Kong king, California king) and the core type (foam, innerspring, or a hybrid of the two, with innerspring models including pocket coil, bonnell, offset and continuous). There are also other options that could be included, such as the upholstery/quilting and cover/ticking. The result of all of these options is that no precise single model is unique or represents a meaningful portion of the market.

[42] Accordingly, the Tribunal accepts that product mix issues likely affect the comparability of average unit values. Should the CBSA make preliminary determinations of dumping or subsidizing and the Tribunal proceeds with the final injury inquiry, the Tribunal will collect benchmark product pricing for the subject goods and domestically produced like goods.

[43] From 2017 to 2020, the domestic industry experienced year-over-year increases in prices of like goods. Prices of like goods in interim 2021 were higher than interim 2020. During the same period, after an increase in selling prices of subject goods from 2017 to 2018, selling prices of the subject goods saw a year-over-year decrease. However, selling prices of the subject goods were slightly higher in interim 2021 as compared to interim 2020.<sup>33</sup>

[44] The evidence in the complaint indicates that, on an average annual aggregate basis, the selling prices of the subject goods significantly undercut the price of domestically produced like goods in each year from 2017 to 2020. Further significant price undercutting is observed in the interim periods.<sup>34</sup> Additionally, the average import values for the subject goods were consistently less than half of the average import values from non-subject countries.<sup>35</sup> These trends were consistent with the slightly higher average unit values of the subject goods, according to the CBSA's data, for the period from 2018 to 2020 and in interim 2021.<sup>36</sup>

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<sup>31</sup> The Tribunal notes that, after initially alleging price depression (see Exhibit PI-2021-005-02.01 at para. 178), later in the complaint, the complainants submitted that the average price trends do not demonstrate price depression (see Exhibit PI-2021-005-02.01 at para. 196).

<sup>32</sup> Exhibit PI-2021-005-02.01 at 92, 93; Exhibit PI-2021-005-03.01 (protected) at 2928, 3082, 3083.

<sup>33</sup> Exhibit PI-2021-005-02.01 at 95; Exhibit PI-2021-005-02.01.A at 488; Exhibit PI-2021-005-03.01 (protected) at 99, 3352.

<sup>34</sup> The unit values for subject and non-subject imports in the complaint were the values for duty prices derived from Statistics Canada's import data. See Exhibit PI-2021-005-02.01 at 95; Exhibit PI-2021-005-02.01.A at 488; Exhibit PI-2021-005-03.01 (protected) at 99, 3352.

<sup>35</sup> Exhibit PI-2021-005-02.01 at 93.

<sup>36</sup> Exhibit PI-2021-005-03.18 (protected) at 27.

[45] The complaint also included account-specific examples of price undercutting and lost sales from 2017 to 2020 due to competition from the subject goods suffered by the domestic industry.<sup>37</sup>

[46] With respect to price suppression, from 2017 to 2020, the domestic industry's cost of goods sold increased year over year. Meanwhile, the average selling price of like goods did not increase to the same extent year over year during the same period. The evidence shows that the domestic industry's cost of goods sold to net sales ratio increased by 5 percentage points from 2017 to 2021.<sup>38</sup>

[47] Accordingly, the Tribunal finds that this evidence discloses a reasonable indication that the prices of the subject goods significantly undercut those of the like goods in each year from 2017 to interim 2021 and suppressed prices of like goods over the same period.

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

[48] As part of its analysis under paragraph 37.1(1)(c) of the Regulations, the Tribunal must consider the 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.<sup>39</sup>

[49] In a preliminary injury inquiry, the Tribunal must determine whether the evidence discloses a reasonable indication of a causal link between the dumping and subsidizing of the subject goods and the injury on the basis of the resultant impact of the volume and price effects of the dumped and subsidized goods on the domestic industry. The standard is whether there is a reasonable indication that the dumping and subsidizing of the subject goods have, *in and of themselves*,<sup>40</sup> caused injury.

[50] The complainants alleged that, as a result of the increased volumes of subject goods in the Canadian market, significant price undercutting and price suppression, the domestic producers have suffered material injury in terms of market share, sales, profitability, production, capacity utilization, employment, operations and return on investments.

[51] As explained above, the complainants attributed the decreases in imports in 2020 to temporary supply chain issues brought on by the pandemic. These disruptions to import supply created an opportunity in the second half of 2020 to increase sales and improve profitability as retailers reopened and consumer demand increased. However, as Chinese imports began to increase at the end of 2020, the domestic industry's financial performance in 2021 was weakened.<sup>41</sup> The Tribunal finds that this is generally corroborated by the evidence discussed below.

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<sup>37</sup> Exhibit PI-2021-005-03.01 (protected) at 113–115, 2937–2939, 3084–3094, 3333–3335.

<sup>38</sup> *Ibid.* at 3352. Some confidential evidence was provided explaining the growth in production costs. See Exhibit PI-2021-005-03.01 (protected) at 3309–3310. In the final injury inquiry, the Tribunal can examine this issue more closely.

<sup>39</sup> Such factors and indices include: “(i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity, (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital, (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods”.

<sup>40</sup> *Gypsum Board* (5 August 2016), PI-2016-001 (CITT) at para. 44; *Copper Rod* (30 October 2006), PI-2006-002 (CITT) at paras. 40, 43; *Galvanized Steel Wire* (22 March 2013), PI-2012-005 (CITT) at para. 75; *Circular Copper Tube* (22 July 2013), PI-2013-002 (CITT) at para. 82.

<sup>41</sup> Exhibit PI-2021-005-02.01 at 103; Exhibit PI-2021-005-03.01 (protected) at 107, 3352.

[52] According to the data contained in the complaint, the domestic industry lost market share year over year from 2017 to 2020, with a slight increase in interim 2021, relative to interim 2020. Meanwhile, the market share of subject imports increased year over year from 2017 to 2019 and decreased slightly in 2020 and in interim 2021 relative to interim 2020.<sup>42</sup> These trends are similar when compared to the CBSA's estimates for total sales from domestic production for 2018 to 2020.<sup>43</sup>

[53] Similarly, the evidence on record is indicative of a year-over-year decrease in sales from domestic production from 2017 to 2020, with a slight increase in interim 2021 over interim 2020.<sup>44</sup> As noted above, the domestic industry experienced lost sales and revenue based on account-specific examples for the period from 2017 to 2020.

[54] With respect to the domestic industry's financial performance over the relevant period, the evidence on the record indicates that the domestic industry saw declining profitability both at the gross margin and net income levels from 2017 to 2019. While there is some indication of increasing profitability in absolute terms at the gross margin and net income levels in 2020 as well as in interim 2021 as compared to interim 2020, the Tribunal notes that relative to net sales value, the profitability at the gross margin level fell in interim 2021 as compared to interim 2020.<sup>45</sup>

[55] The Tribunal additionally notes that the domestic industry saw, over the period from 2017 to 2020, decreasing production levels and capacity utilization rates. However, practical plant capacity also declined by a notable amount from 2018 to 2020.<sup>46</sup> The confidential evidence further describes how competition with the subject goods has affected the domestic industry's operations as well as strategies employed by the domestic industry to enable it to compete with the subject goods.<sup>47</sup>

[56] Employment within the domestic industry was also adversely impacted in the form of layoffs from 2018 to 2020 as well as wage reductions.<sup>48</sup>

[57] The complaint also included submissions with respect to the adverse impact of the subject goods on investments and planned investments. This was corroborated by confidential evidence.<sup>49</sup>

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<sup>42</sup> The Tribunal's calculation of market share for the domestic industry was based on the domestic sales volumes of Restwell and the two supporting producers. Exhibit PI-2021-005-03.01 (protected) at 3350, 3357.

<sup>43</sup> Exhibit PI-2021-005-03.01 (protected) at 3357; Exhibit PI-2021-005-03.18 (protected) at 14.

<sup>44</sup> Exhibit PI-2021-005-03.01 (protected) at 3357.

<sup>45</sup> Exhibit PI-2021-005-02.01 at 103; Exhibit PI-2021-005-03.01 (protected) at 107, 3352.

<sup>46</sup> Exhibit PI-2021-005-03.01 (protected) at 2933–2934, 3307, 3310, 3314, 3357. The Tribunal notes other evidence with respect to the reduction of production capacity of supporting producers that are not part of the domestic industry. The Tribunal's findings regarding the impact on the domestic industry's production does not include these data. See, for example, Exhibit PI-2021-005-03.01 (protected) at 168, 3328–3329.

<sup>47</sup> Exhibit PI-2021-005-03.01 (protected) at 2933–2934.

<sup>48</sup> *Ibid.* at 2934, 3307, 3333–3335. The USW also submitted that injury from the subject goods extended to employee bargaining rights, pensions, training and higher safety measures, as well as layoff protections and other benefits. With respect to these submissions, as the Tribunal finds that there is reasonable indication of an adverse impact on employment, even on a more limited construction of the term "employment", it does not need to assess these factors in its assessment of reasonable indication of injury. In this regard, see *Oil Country Tubular Goods* (30 December 2020), RR-2019-006 (CITT) at note 175.

<sup>49</sup> Exhibit PI-2021-005-03.01 (protected) at 112, 2933, 3316, 3317.

[58] Having considered the totality of the uncontroverted evidence on record, and bearing in mind the lower evidentiary threshold applicable at the preliminary inquiry stage, the Tribunal finds that it provides a reasonable indication that the domestic industry experienced material injury.

[59] The evidence discussed above shows that, from 2017 to interim 2021, there were significant volumes of low-priced subject goods in the Canadian market, which significantly undercut and suppressed the prices of domestic like goods. Overall, the evidence supports the complainants' submissions that, due to the availability of the subject goods, the domestic industry suffered lost sales and market share as well as a deterioration of its financial performance from 2017 to 2020. The evidence also indicates declining profitability in interim 2021 that is attributable to the subject goods. Lastly, the Tribunal finds that employment was adversely impacted by the subject goods from 2018 to 2020. Should there be a final injury inquiry, the Tribunal will further examine whether other factors have contributed to the deterioration of the economic performance of the domestic industry.

### **THREAT OF INJURY**

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

### **CONCLUSION**

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

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Randolph W. Heggart  
Randolph W. Heggart  
Presiding Member

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Cheryl Beckett  
Cheryl Beckett  
Member

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Frédéric Seppey  
Frédéric Seppey  
Member