



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

---

## FINDING AND REASONS

Inquiry NQ-2022-001

Certain Mattresses

*Finding issued  
Friday, November 4, 2022*

*Reasons issued  
Monday, November 21, 2022*

*Corrigendum issued  
Tuesday, December 19, 2023*

## TABLE OF CONTENTS

FINDING .....	i
CORRIGENDUM .....	iii
STATEMENT OF REASONS .....	1
INTRODUCTION .....	1
BACKGROUND .....	1
RESULTS OF THE CBSA'S INVESTIGATION .....	4
PRODUCT .....	4
Product definition .....	4
Product information .....	5
LEGAL FRAMEWORK .....	7
LIKE GOODS AND CLASSES OF GOODS .....	7
Like goods .....	8
Classes of goods .....	9
DOMESTIC INDUSTRY .....	11
CROSS-CUMULATION .....	13
INJURY ANALYSIS .....	13
Overview of the Canadian mattress market .....	14
Alleged deficiencies in the investigation report .....	18
Import volumes of dumped and subsidized goods .....	19
Price effect of dumped and subsidized goods .....	20
Resulting impact on the domestic industry .....	29
Other factors and causation .....	35
Materiality .....	37
Massive importations .....	38
CONCLUSION .....	45

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

## CERTAIN MATTRESSES

### 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 following goods have caused injury or are threatening to cause injury, as these words are defined in SIMA:

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 following are excluded from the investigations:

- 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; and
- j. mattress toppers less than three inches in thickness.

On October 5, 2022, the President of the Canada Border Services Agency (CBSA), pursuant to paragraph 41(1)(a) of SIMA, terminated the dumping investigation in respect of the aforementioned goods exported to Canada from China by Jiaxing Taien Springs Co., Ltd. and Xianghe Kaneman Furniture Ltd. and terminated the subsidy investigation in respect of the aforementioned goods exported to Canada from China by Dongguan Sinohome Ltd., Gold Lion Furniture (Shanghai) Co., Ltd., Guangdong Eonjoy Technology Ltd., Jinlongheng Furniture Co., Ltd., Xianghe Kaneman Furniture Ltd., Zinus Xiamen Inc., and Zinus Zhangzhou Inc. On the same day, the President of the CBSA, pursuant to paragraph 41(1)(b) of SIMA, made final determinations of dumping and subsidizing in respect of the aforementioned goods for which the respective investigations were not terminated.

Further to its inquiry, the Tribunal finds, pursuant to subsection 43(1) of SIMA, that the dumping and subsidizing of the aforementioned goods (excluding those goods exported to Canada by the above-mentioned exporters) have caused injury to the domestic industry.

Cheryl Beckett  
\_\_\_\_\_  
Cheryl Beckett  
Presiding Member

Randolph W. Heggart  
\_\_\_\_\_  
Randolph W. Heggart  
Member

Frédéric Seppey  
\_\_\_\_\_  
Frédéric Seppey  
Member

The statement of reasons will be issued within 15 days.

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

**CERTAIN MATTRESSES**

**CORRIGENDUM**

The last sentence of paragraph 92 of the Statement of Reasons should read as follows:

However, even if the Tribunal had considered a domestic price premium of 15 percent, as discussed in the analysis below, the amount by which the subject goods undercut the prices of the like goods would far exceed this amount.

Cheryl Beckett

---

Cheryl Beckett

Presiding Member

Randolph W. Heggart

---

Randolph W. Heggart

Member

Frédéric Seppey

---

Frédéric Seppey

Member

Place of Hearing:	Via videoconference
Dates of Hearing:	October 3 to 7, 2022
Tribunal Panel:	Cheryl Beckett, Presiding Member Randolph W. Heggart, Member Frédéric Seppey, Member
Tribunal Secretariat Staff:	Helen Byon, Lead Counsel Sarah Shinder, Counsel Isaac Turner, Counsel Shawn Jeffrey, Lead Analyst Rebecca Campbell, Analyst Rhonda Heintzman, Analyst Chelsea Lappin, Analyst Ozanay Bozkaya, Data Services Advisor Patrick Stidwill, Data Services Advisor Lindsay Vincelli, Senior Registrar Officer Kaitlin Fortier, Registrar Officer

**PARTICIPANTS:****Domestic Producers/Supporting Parties**

Owen & Company Limited (d.b.a. Kingsdown  
Canada)

Park Avenue Furniture MFG Corporation and  
Satpanth Capital Inc.

Restwell Mattress Co. Ltd.  
SSH Bedding Canada Co.  
United Sleep Products

Unifor  
United Steelworkers

VPC Group Inc.

**Counsel/Representatives**

Benjamin P. Bedard  
Manon Carpentier  
Kahina Haroune  
Ming Fei Li  
Anne-Marie Oatway

Alykhan Sunderji

Austin Amy  
Christopher J. Cochlin  
Alexander Hobbs  
Christopher J. Kent  
Andrew M. Lanouette  
Jordan Lebold  
Hugh Seong Seok Lee  
Susana May Yon Lee  
Michael Milne  
Jan M. Nitoslowski  
Cynthia Wallace

Craig Logie  
Jacob Millar  
Mark Rowlinson

J. Kevin Wright

**WITNESSES:**

Tom Allen  
Chief Financial Officer (Canada) and Vice  
President, Transformation and Brand Finance  
(North America)  
SSH Bedding Canada Co.

Meg Gingrich  
Assistant to the Canadian National Director  
United Steelworkers

Ryan Stevens  
President - Local 6565  
United Steelworkers

Claire Druce  
Controller  
Restwell Mattress Co. Ltd.

Todd Smith  
Director, Home Furnishings & Accessories  
Cantrex Nationwide

Niaina Andria  
Senior Director of Compliance & Quality  
Assurance  
Primo Bedding Co. d.b.a. Primo International

Stewart Schaefer  
President & Chief Executive Officer  
Sleep Country Canada

Denis Jones  
Chief Sales Officer (Canada)  
SSH Bedding Canada Co.

Thomas DeSousa  
Toronto Area Coordinator  
United Steelworkers

Ashley Allen  
General Manager  
Restwell Mattress Co. Ltd.

Troy Zanatta  
President and Owner  
Restwell Mattress Co. Ltd.

John Power  
General Manager Strategic Development  
Mega Group

Allan Kinahan  
Vice President of Sales - Canada  
TempurSealy Canada

Please address all communications to:

The Deputy Registrar  
Telephone: 613-993-3595  
Email: [citt-tcce@tribunal.gc.ca](mailto:citt-tcce@tribunal.gc.ca)

## STATEMENT OF REASONS

### INTRODUCTION

[1] The mandate of the Canadian International Trade Tribunal in this inquiry<sup>1</sup> is to determine whether the dumping and subsidizing of certain mattresses originating in or exported from the People's Republic of China (the subject goods) have caused injury 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 injury to the domestic industry.

### BACKGROUND

[3] This inquiry stems from a complaint filed with the Canada Border Services Agency (CBSA) on December 20, 2021, by Restwell Mattress Co. Ltd. (Restwell) and the United Steelworkers (USW), and the subsequent decision by the CBSA, on February 24, 2022, to initiate investigations into the alleged dumping and subsidizing of the subject goods pursuant to subsection 31(1) of the *Special Import Measures Act* (SIMA).

[4] On February 25, 2022, as a result of the CBSA's decision to initiate the investigations, the Tribunal initiated a preliminary injury inquiry pursuant to subsection 34(2) of SIMA. On 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.<sup>2</sup>

[5] On July 7, 2022, the CBSA made preliminary determinations of dumping and subsidizing in respect of the subject goods. It also considered that the imposition of provisional duty was necessary to prevent injury.<sup>3</sup> On July 8, 2022, the Tribunal issued a notice of commencement of inquiry.<sup>4</sup>

[6] The Tribunal's period of inquiry (POI) was from January 1, 2018, to March 31, 2022, and included two interim periods: January 1, 2021, to March 31, 2021 (interim 2021), and January 1, 2022, to March 31, 2022 (interim 2022).

[7] As part of this inquiry, a number of known domestic producers, importers, purchasers and foreign producers of mattresses were asked to respond to questionnaires from the Tribunal. The deadline for the submission of replies to the questionnaires was July 29, 2022. Several key domestic producers, importers, and purchasers did not reply to the questionnaires by the deadline established by the Tribunal. As a result, the Tribunal corresponded with these firms to emphasize the importance of completing the questionnaires for the purpose of its injury inquiry under SIMA and, in some instances, noted that the Tribunal would issue production orders to compel firms to provide the information.

[8] On August 23 and 24, 2022, the Tribunal issued production orders to Primo Bedding Co. d.b.a. Primo International (Primo), Sleep Country Canada (Sleep Country), Springwall Sleep

---

<sup>1</sup> The inquiry is conducted pursuant to section 42 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15.

<sup>2</sup> *Certain Mattresses* (25 April 2022), PI-2021-005 (CITT) [*Certain Mattresses PI*].

<sup>3</sup> Exhibit NQ-2022-001-01.

<sup>4</sup> Exhibit NQ-2022-001-03. On August 31, 2022, the Tribunal issued a revised notice of commencement of inquiry. Exhibit NQ-2022-001-03.A.



Products (Springwall) and TempurSealy Canada (TempurSealy) compelling each of them to complete the questionnaires.<sup>5</sup>

[9] The Tribunal received replies to its producers' questionnaire from 12 companies stating that they produced mattresses meeting the product definition in Canada during the POI. However, 2 of the replies were incomplete and therefore were not used in compiling the data pertaining to the domestic industry in the investigation report. There were responses to the Tribunal's importers' questionnaire from 6 companies that imported subject goods and/or goods meeting the product definition during the POI. From among them were 5 retailers and 1 distributor. The Tribunal received 22 replies to its purchasers' questionnaire from companies and institutions stating that they purchased such goods whether domestically produced or imported; 13 of the institutions were affiliated with Correctional Service Canada. The Tribunal did not receive any replies to its foreign producers' questionnaire. While the Tribunal encountered significant challenges in collecting information from certain firms, the Tribunal is of the view that the data it ultimately obtained was sufficiently robust to enable the Tribunal to support its conclusions from this injury inquiry.

[10] 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 to parties on September 7, 2022.<sup>6</sup> Revisions were subsequently made to the reports on September 12, September 13, September 29 and October 6, 2022, and fully revised reports were issued on October 7, 2022.<sup>7</sup>

[11] On September 9, 2022, Restwell, SSH Bedding Co. (SSB) and United Sleep Products (USP) advised the Tribunal that the volumes of imports from the United States (U.S.) over the POI were overstated in the investigation report due to the average unit values that were used to derive the residual/unreported volumes of U.S. imports. It was also noted that there was a lack of U.S. import data from significant importers of U.S. mattresses with known higher-value mattresses. Additionally, Restwell, SSB and USP requested that the raw import data used to derive the residual import values be placed on the record.<sup>8</sup>

[12] On September 13, 2022, the Tribunal advised the parties that the average unit values used to derive the import volumes from the U.S. for non-responding/non-surveyed firms were calculated in a manner consistent with the Tribunal's standard methodology, which uses the responding importers' total value of imports as reported in their questionnaire replies. The Tribunal also noted that parties could make submissions regarding an alternative methodology for calculating import volumes for non-responding/non-surveyed firms in the circumstances of this case in their written submissions.<sup>9</sup> On September 20, 2022, the Tribunal placed on the record a confidential summary of the volumes

---

<sup>5</sup> Exhibit NQ-2022-001-09.14.05; Exhibit NQ-2022-001-09.15.04; Exhibit NQ-2022-001-12.16.04; Exhibit NQ-2022-001-18.30.04.

<sup>6</sup> Exhibit NQ-2022-001-06; Exhibit NQ-2022-001-07 (protected).

<sup>7</sup> Exhibit NQ-2022-001-06.B; Exhibit NQ-2022-001-07.B (protected); Exhibit NQ-2022-001-06.C; Exhibit NQ-2022-001-07.C (protected); Exhibit NQ-2022-001-06.D; Exhibit NQ-2022-001-07.D (protected); Exhibit NQ-2022-001-06.E; Exhibit NQ-2022-001-07.E (protected); Exhibit NQ-2022-001-06.F; Exhibit NQ-2022-001-07.F (protected).

<sup>8</sup> Exhibit NQ-2022-001-24; Exhibit NQ-2022-001-24.A (protected).

<sup>9</sup> Exhibit NQ-2022-001-25.

and values of imports from the U.S., as reported in the CBSA facility for information retrieval management (FIRM) data that was provided to the Tribunal by the CBSA on June 6, 2022.<sup>10</sup>

[13] On September 12, 2022, the Tribunal received from the USW a request for information (RFI) directed at the CBSA for it to provide the Tribunal with the import data concerning the second quarter of 2022. As a rationale for its request, the USW asserted that there was a preliminary indication that importers had been engaging in “massive importations” prior to the imposition of provisional duties by the CBSA. No objections to the RFI were received by the Tribunal. Having considered the RFI and the rationale for it, on September 20, 2022, the Tribunal advised the parties that it agreed to request the information and that same day<sup>11</sup> issued a letter to the CBSA requesting FIRM import data for the period from January 1, 2022, to June 30, 2022.<sup>12</sup>

[14] On September 15, 2022, Restwell and SSB (the Domestic Producers) filed a joint case brief, which included four witness statements, and other evidence supporting a finding of injury or threat of injury. The USW also filed a case brief including three witness statements in support of a finding of injury or threat of injury. Additionally, in its case brief, the USW alleged that there had been “massive importations” of subject goods within the meaning of that term under paragraph 42(1)(b) of SIMA. For their part, the Domestic Producers took no position in respect of these alleged massive importations. No submissions opposing a finding of injury or threat of injury were filed by any party during the course of the inquiry.<sup>13</sup>

[15] Given the allegations raised by the USW concerning massive importation, on September 23, 2022, the Tribunal requested from importers who had previously indicated that they imported mattresses meeting the product definition that they provide additional information with respect to their volumes of imports and inventories of the subject goods. Additionally, the Tribunal requested submissions from the parties regarding the appropriate representative periods for comparison<sup>14</sup> for the purposes of the analysis concerning massive importation under paragraph 42(1)(b) of SIMA and section 37.11 of the *Special Import Measures Regulations* (Regulations).<sup>15</sup>

[16] After advising the parties of the date for a videoconference hearing in this inquiry, the Tribunal issued subpoenas to several witnesses representing different segments of the Canadian mattress market, including retailers, distributors, buying groups, and domestic producers, compelling their presence at the hearing to provide evidence with respect to certain topics which were outlined in the subpoenas. The Tribunal issued subpoenas to Stewart Schaefer, President and Chief Executive Officer of Sleep Country,<sup>16</sup> Niaina Andria, Senior Director of Compliance of Primo, Allan Kinahan, Vice President of Sales in Canada for TempurSealy, Todd Smith, Director of Home Furnishings and Accessories, Cantrex Nationwide (Cantrex), and John Power, General Manager of Strategic

---

<sup>10</sup> Exhibit NQ-2022-001-26.

<sup>11</sup> Exhibit NQ-2022-001-RFI-01.

<sup>12</sup> Exhibit NQ-2022-001-28. Data for the first quarter of 2022 were included in the request to the CBSA for verification purposes by the Tribunal’s staff.

<sup>13</sup> The Tribunal notes that it also received notices of participation from USP, UNIFOR, Owen & Company Limited (d.b.a. Kingsdown Canada) (Kingsdown), VPC Group and Park Avenue Furniture MFG Corporation and Satpanth Capital Inc. No written submissions were filed by the aforementioned parties.

<sup>14</sup> Exhibit NQ-2022-001-30.

<sup>15</sup> SOR/84-927.

<sup>16</sup> Stewart Schaefer replaced Craig De Pratto, Chief Financial Officer of Sleep Country, who had originally been subpoenaed by the Tribunal.

Development of Mega Group. In the Tribunal's view, these witnesses were in a position to provide information that was relevant to the issues examined in this inquiry.

[17] A hearing with public and in camera sessions was held by videoconference from October 3 to 7, 2022. The Tribunal heard testimony from witnesses for SSB, the USW and Restwell, as well as from witnesses who were called by the Tribunal from Cantrex, Mega Group, Primo, TempurSealy, and Sleep Country. The Tribunal also heard closing arguments on the issue of injury and threat of injury from Restwell, SSB and the USW.

[18] The Tribunal issued its finding on November 4, 2022.

## RESULTS OF THE CBSA'S INVESTIGATION

[19] On October 5, 2022, the CBSA, pursuant to paragraph 41(1)(a) of SIMA, terminated the dumping investigation in respect of the subject goods exported to Canada from China by Jiaying Taien Springs Co., Ltd. and Xianghe Kaneman Furniture Ltd. (Xianghe). The CBSA was satisfied that the goods of these exporters had not been dumped. Additionally, the CBSA terminated its subsidy investigation in respect of the subject goods exported to Canada from China by Dongguan Sinohome Ltd., Gold Lion Furniture (Shanghai) Co., Ltd., Guangdong Eonjoy Technology Ltd., Jinlongheng Furniture Co., Ltd., Xianghe, Zinus Xiamen Inc. and Zinus Zhangzhou Inc. The CBSA was satisfied that the goods of these exporters had not been subsidized or that the amount of the subsidy on those goods was insignificant.<sup>17</sup>

[20] On the same day, the CBSA, pursuant to paragraph 41(1)(b) of SIMA, made final determinations of dumping and subsidizing in respect of the aforementioned goods for which the respective investigations were not terminated.<sup>18</sup>

[21] The CBSA's period of investigation for both the dumping and subsidy investigations was from January 1, 2021, to December 31, 2021.<sup>19</sup> The margins of dumping specified by the CBSA in relation to each exporter in respect of which the dumping investigation was not terminated ranged from 3.7 to 146.6 percent.<sup>20</sup> The amounts of subsidy specified by the CBSA in relation to each exporter in respect of which the subsidy investigation was not terminated ranged from 1.2 to 24.1 percent.<sup>21</sup>

## PRODUCT

### Product definition

[22] The CBSA defined the subject goods as follows:<sup>22</sup>

---

<sup>17</sup> Exhibit NQ-2022-001-04 at 10–12. Subsection 2(1) of SIMA defines “insignificant”, in relation to an amount of subsidy, as an amount that is less than 1 percent of the export price of the goods.

<sup>18</sup> Exhibit NQ-2022-001-04 at 10–12.

<sup>19</sup> Exhibit NQ-2022-001-04.A at para. 15.

<sup>20</sup> Exhibit NQ-2022-001-04 at 14–16, 24. The margins of dumping are expressed as a percentage of the export price of the goods.

<sup>21</sup> Exhibit NQ-2022-001-04 at 17, 25. The amounts of subsidy are also expressed as a percentage of the export price of the goods.

<sup>22</sup> Exhibit NQ-2022-001-04 at 14.

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 following are excluded from the investigations:

- 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; and
- j. mattress toppers less than three inches in thickness.

### Product information

[23] The CBSA provided the following additional product information:<sup>23</sup>

[26] The term "mattress" denotes an assembly of materials that at a minimum includes a "core" as well as "upholstery" and/or "ticking." The "core" provides the main support system of the mattress. The core may consist of innersprings, foam or a combination of these materials. "Upholstery" refers to the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress. The upholstery could be additional foam layers, latex, wool, cotton, or other stuffing materials to create a comfort layer. It could also be a "sock" in the manufacture of a foam mattress. "Ticking" refers to the outermost layer of fabric (e.g., polyester, cotton, or some other blend) or other material (e.g., vinyl) that encloses the core and any upholstery. Ticking is also known as a cover.

[27] Mattresses of all sizes for human use are covered by the scope of this investigation. Mattresses sizes include, but are not limited to "crib", "toddler", "twin/single", "extra-long twin (twin XL)", "full/double", "queen", "king", "Hong Kong King", or "California king" mattresses. Mattresses intended for pets are not within the scope.

[28] The scope encompasses mattresses of all core types, including but not limited to innerspring mattress, foam mattresses, and hybrid mattresses. Mattresses that contain innersprings are referred to as "innerspring mattresses" or "hybrid mattresses." "Hybrid mattresses" contain two or more support systems as the core, such as layers of both memory foam and innerspring units. "Foam mattresses" are those that do not contain any innerspring units. They are generally produced from foams (e.g., polyurethane, memory (viscoelastic), latex foam, gel-infused viscoelastic (gel foam) or thermobonded polyester and polyethylene).

---

<sup>23</sup> Exhibit NQ-2022-001-01.A at paras. 26–32.

[29] Mattresses covered by the scope of this Complaint may be imported independently, as part of furniture or furniture mechanisms, or as part of a set in combination with a “mattress foundation.” “Mattress foundations” are any base or support for a mattress. Mattress foundations are commonly referred to as “foundations,” “boxsprings,” “platforms,” and/or “bases.” Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

[30] Mattresses to be incorporated into furniture (i.e., mattresses for use in sofas, daybeds, hide-a-beds, sleepers, murphy beds, etc.) are covered by the scope of the Complaint. That said, where such mattresses are covered by the Canadian International Trade Tribunal’s (CITT) Finding in NQ-2021-002, they are excluded from the product definition.

[31] Mattresses are covered by the scope of this Complaint even if imported without ticking, such as foam mattress slabs that are imported without the outermost cover. Products covered by this Complaint include mattresses packed and sold to end users in boxes, such as those marketed as “bed(s)-in-a-box,” “mattress(es)-in-a-box,” and/or “compressed mattress(es)”.

[32] Excluded from the scope of this complaint are:

- a) “futon” mattresses. A “futon” is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A “futon mattress” is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.
- b) airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.
- c) “mattress toppers” with a height of less than three inches. A “mattress topper” is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. A typical mattress topper is a foam slab cut to the size of a mattress and would typically range from 1.5 to 2.5 inches in thickness. Excluded mattress toppers have a height of less than three inches. Mattress toppers may be covered or uncovered and are produced in a same manner as foam mattresses. Mattress toppers with a thickness of greater than or equal to 3 inches have been included in the definition of the imported goods as these foam slabs are thick enough to be used independently as a foam mattress.
- d) gurney and stretcher mattresses. These are specialty mattresses that would be considered medical devices and would not be used in a residential or commercial setting.
- e) custom mattresses for boats, RVs, and other vehicles. These would be mattresses that are designed pursuant to a customer’s specific size and dimension specifications to fit within their vehicles. Standard size mattresses for such vehicles that are not made

pursuant to a custom order such as “three quarter” and “RV short queen” are intended to be covered by the product definition.

- f) camping mattresses. Camping mattresses are portable mattresses for use in tents or outdoors in camping applications.

## LEGAL FRAMEWORK

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

[25] 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.

[26] Given that the CBSA has determined that the subject goods have been dumped and subsidized,<sup>24</sup> 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.

[27] 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.<sup>25</sup> As a domestic industry is already established, the Tribunal will not need to consider the question of retardation.<sup>26</sup>

[28] 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

[29] 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

---

<sup>24</sup> The CBSA terminated its dumping and subsidy investigations with respect to mattresses exported by Xianghe. The volume of subject goods from this exporter represented only a small proportion of the total imports of subject goods from China during the CBSA’s period of investigation. Exhibit NQ-2022-001-04 at 10, 11; Exhibit NQ-2022-001-05 (protected) at 46.

<sup>25</sup> 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.

<sup>26</sup> Subsection 2(1) of SIMA defines “retardation” as “... material retardation of the establishment of a domestic industry”.

goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.<sup>27</sup>

### Like goods

[30] 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.

[31] In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).<sup>28</sup>

[32] In the preliminary injury inquiry, the Tribunal found that mattresses produced in Canada that are of the same description as the subject goods are “like goods” in relation to the subject goods and that there is one class of goods.<sup>29</sup>

[33] In this inquiry, the Domestic Producers submitted that, while the subject goods are not identical to like goods produced in Canada, they closely resemble each other in use, physical characteristics, market characteristics and customer needs. With respect to end uses, it was noted that, regardless of the type of mattress, all mattresses have a similar function of being intended for the use of being slept on. Mattresses remain interchangeable despite differences in specifications, comfort, weight and thickness (e.g. innerspring or foam).<sup>30</sup> In terms of physical characteristics, although different layers or materials may be used, whether imported or produced domestically, all mattresses are comprised of a core (made of foam, innerspring or both), upholstery and ticking.<sup>31</sup>

[34] Although there were no opposing submissions on the issue of like goods, the Tribunal also considered Primo’s questionnaire response, which stated that domestically produced mattresses are only interchangeable to a certain extent with mattresses from China. Primo indicated that it was

<sup>27</sup> 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.).

<sup>28</sup> See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

<sup>29</sup> *Certain Mattresses PI* at para. 20.

<sup>30</sup> Exhibit NQ-2022-001-12.12 at 4–5; Exhibit NQ-2022-001-09.05 at 10. The Domestic Producers acknowledged that not all mattresses may be used for the same technical end uses. For example, certain adjustable beds may require a specific type of mattress. However, as the Tribunal found in *Certain Upholstered Domestic Seating* (19 February 2021), PI-2020-007 (CITT) [UDS PI] at para. 31, for the purposes of consumer products, it is not necessarily the case that there are separate classes of goods if certain products may not be fully substitutable for some end uses.

<sup>31</sup> With respect to “mattress-in-box” (MiB), Denis Jones of SSB indicated that the only difference between a MiB and a regular mattress is the packaging. Exhibit NQ-2022-001-B-05 at para. 12. See also Exhibit NQ-2022-001-A-03 at paras. 6, 8. Walmart indicated in its questionnaire response that product quality between the subject goods and like goods is comparable because “most use the same materials”. Exhibit NQ-2022-001-18.11 at 8. *Transcript of Public Hearing* at 357–358.

standard practice with mattresses produced in China to be able to customize, even with producing minimal quantities, the feel of a mattress by using various densities of polyurethane foam, coil spring firmness and customized quilting fabric. Primo noted that this practice was not the case for domestic producers.<sup>32</sup>

[35] The Tribunal finds that, on balance, the evidence on the record confirms that the subject goods and domestically produced goods meeting the product definition are comparable in terms of non-price factors such as product quality, production to technical specifications, availability of proprietary specifications and uniqueness of design.<sup>33</sup> Moreover, domestic producers produce and have the capacity to produce a range of mattresses with different features and comfort levels with both foam and coil mattresses.<sup>34</sup>

[36] Additionally, 17 out of 18 questionnaire respondents indicated that like goods and subject goods are sold through the same channels of distribution.<sup>35</sup> Testimony heard at the hearing indicated that like goods and subject goods compete mostly for sales at the retailer level, which was described as constituting almost 90 percent of sales in the Canadian market, whether through brick-and-mortar retailers or sales on e-tailer websites.<sup>36</sup> The evidence also indicates that subject goods and like goods compete for contracts to produce private label mattresses for purchasers.<sup>37</sup>

[37] In sum, considering the foregoing, the Tribunal finds that domestically produced mattresses meeting the product definition are like goods in relation to the subject goods.

### Classes of goods

[38] In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute “like goods” in relation to each other. If those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.<sup>38</sup>

[39] Although no parties made submissions directly stating that there are separate classes of goods, some of the witness testimony raised questions concerning the interchangeability or substitutability of certain mattresses with other types of mattresses. The Tribunal therefore has weighed this evidence to assess the potential for separate classes of goods based, firstly, on whether

---

<sup>32</sup> Exhibit NQ-2022-001-12.16B at 5; *Transcript of Public Hearing* at 291–294.

<sup>33</sup> As noted by the Domestic Producers, an equal third of respondents to the Tribunal’s purchasers’ questionnaire noted that like goods and subject goods were comparable in each of the noted categories. The remaining two thirds were evenly split in providing the advantage to China or the advantage to Canada. The Tribunal agrees that, on balance, the responses show that like goods and subject goods are comparable. Exhibit NQ-2022-001-06.F at Table 8.

<sup>34</sup> *Transcript of Public Hearing* at 31, 133–134; Exhibit NQ-2022-001-A-03 at paras. 4, 5; Exhibit NQ-2022-001-B-05 at para. 6.

<sup>35</sup> Exhibit NQ-2022-001-06.F at Table 7.

<sup>36</sup> *Transcript of Public Hearing* at 21, 22, 39, 40, 330. The Tribunal notes that, while some domestic producers may sell directly to the end consumer in Canada, the subject goods are not sold in this manner.

<sup>37</sup> *Transcript of Public Hearing* at 25, 26, 386.

<sup>38</sup> *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.



the mattresses are made of foam or coil and, secondly, on branding, particularly in respect of higher-priced mattresses.

[40] In his oral testimony, Stewart Schaefer of Sleep Country explained that innerspring and foam mattresses are not interchangeable, as they differ in how comfortable the two types of mattresses are; foam providing more relief on pressure points.<sup>39</sup>

[41] Considering the totality of the evidence, the Tribunal is of the view that foam and coil mattresses are interchangeable notwithstanding any differences in the level of comfort provided by the mattress. The evidence confirms that mattresses are comprised of a range of materials and that they vary in design in terms of densities and layering to achieve different levels of comfort.<sup>40</sup> As explained by Troy Zanatta at the hearing, Restwell has both foam and pocket coil mattresses at similar price points, incorporating both latex and/or memory foam. There are different comfort levels at the same price point as well as similar comfort levels using variations of materials.<sup>41</sup> The Tribunal also finds that the level of comfort supposedly achieved by one mattress over another cannot be a factor that determines the interchangeability of products, given the importance of marketing in the mattress sales industry and how it can affect how a mattress is perceived by its customers.<sup>42</sup>

[42] Also, the Tribunal heard testimony at the hearing from Stewart Schaefer that imports of the subject goods for Sleep Country's MiB Bloom private-label brand were intended to compete with imports from the U.S. such as the mattresses produced by Casper, which were described as high-end MiBs sold online.<sup>43</sup> However, the Tribunal sees no reason to distinguish MiBs from brands such as Bloom or Casper from other types of mattresses produced domestically, including MiBs that are produced by domestic producers.<sup>44</sup> The evidence indicates that retailers will consider a multitude of factors when purchasing mattresses to sell to its consumers, including, in addition to price, quality, aesthetics, technology, warranty, speed of delivery regardless of the brand of mattress and whether it is a domestically produced brand or imported brand.<sup>45</sup>

[43] That said, the Tribunal notes from the testimony of Allan Kinahan of TempurSealy that, in higher-end or luxury mattresses, customers may place a higher value on brands. However, the Tribunal does not find that brands, in and of themselves, impede the interchangeability of mattresses across the spectrum of product offerings.<sup>46</sup> According to Stewart Schaefer's testimony, from the consumers' perspective, brand is a consideration once mattresses are comparable in terms of composition, comfort and price.<sup>47</sup>

[44] In light of the evidence outlined above, the Tribunal sees no reason to depart from its finding made in the preliminary injury inquiry that there is a single class of goods.

---

<sup>39</sup> Exhibit NQ-2022-001-18.30 at 2; *Transcript of Public Hearing* at 410.

<sup>40</sup> *Transcript of Public Hearing* at 293, 357–359.

<sup>41</sup> *Transcript of Public Hearing* at 133–134; Exhibit NQ-2022-001-A-03 at paras. 4, 5; SSB also produces mattresses using both types of materials and has the capacity to produce any type of mattress. Exhibit NQ-2022-001-B-03 at para. 7; *Transcript of Public Hearing* at 31.

<sup>42</sup> *Transcript of Public Hearing* at 388, 401, 410, 411.

<sup>43</sup> *Transcript of Public Hearing* at 445, 455.

<sup>44</sup> *Transcript of Public Hearing* at 45–46, 82, 339.

<sup>45</sup> *Transcript of Public Hearing* at 416–417.

<sup>46</sup> *Transcript of Public Hearing* at 357–359.

<sup>47</sup> *Transcript of Public Hearing* at 446.

## DOMESTIC INDUSTRY

[45] 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.

[46] 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 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. The decision of whether to assess injury to the domestic industry as a whole or a major proportion of the domestic industry is a matter of Tribunal discretion and turns on the facts that arise during the course of the inquiry, including the presence of structural and behavioural differences among producers and the availability of evidence.<sup>48</sup> While the term “major proportion” is not defined in SIMA, or in the World Trade Organization Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures, it has been interpreted to mean an important, serious or significant proportion and not necessarily a majority.<sup>49</sup> Furthermore, in assessing “major proportion”, the Tribunal has also given regard to whether the domestic industry is very fragmented in that it includes numerous producers. In that case, a major proportion may in fact be a smaller proportion than in a case with a concentrated industry.<sup>50</sup>

[47] In its preliminary injury inquiry, the Tribunal considered the fragmented nature of the Canadian mattresses industry. The complaint cited the Canadian Industry Statistics code for mattress manufacturing (33791) under the North American Industry Classification System (NAICS) published by the Department of Industry. The data indicated that there was a total of 108 producers throughout Canada.<sup>51</sup> Based on the evidence available to it at the time and with consideration of the fragmented nature of the industry, the Tribunal found that Restwell and the two other domestic producers who

---

<sup>48</sup> *Dry Wheat Pasta* (26 July 2018), NQ-2017-005 (CITT) at para. 41; *Essar Steel Algoma Inc. v. Jindal Steel and Power Limited*, 2017 FCA 166 (CanLII) at para. 26. See also *Decorative and Other Non-structural Plywood* (19 February 2021), NQ-2020-002 (CITT) [*Decorative Plywood*] at para. 47, where the Tribunal stated that an inquiry with less than full participation or cooperation from domestic producers is fully contemplated under SIMA.

<sup>49</sup> *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 [*EC – Fasteners*] at paras. 411, 412, 419; Panel Report, *Argentina – Poultry (Brazil)*, WT/DS241/R at para. 7.341.

<sup>50</sup> *Certain Mattresses PI* at para. 23, referring to *UDS PI* at paras. 44, 45. The Tribunal in *UDS PI* noted the Appellate Body’s finding in *EC – Fasteners*, which indicated that, in the case of a fragmented industry with numerous producers, a figure as low as 27 percent of total domestic production could potentially constitute a major proportion. See *EC – Fasteners* at paras. 415, 419, 422, 430.

<sup>51</sup> *Certain Mattresses PI* at para. 24. The firms were broken down by the number of employees: 39 firms had 1–4 employees; 58 firms had 5–99 employees; and 11 firms had 100–499 employees. Exhibit PI-2021-005-02.01 at 200; see Exhibit NQ-2022-001-22.

had provided sales, pricing and financial data represented a major proportion of the total domestic production of the like goods.<sup>52</sup>

[48] As part of this inquiry, the Tribunal sent questionnaires to 118 known and potential domestic producers of like goods.<sup>53</sup> The Tribunal received responses to its producers' questionnaire from 12 domestic producers of like goods, 10 of which provided information that could be included as part of the domestic industry in the investigation report.<sup>54</sup> These included the Domestic Producers as well as Sealy Canada Ltd., King Koil (Park Avenue Furniture [MFG.] Corp.), USP, Kingsdown, Springwall, Matelas Mirabel Inc, Jupiter Industries. (Jasztex Fibers Inc.) and Dorel Home Products Furniture (together the "responding domestic producers").<sup>55</sup> The responding domestic producers provided information regarding their domestic and export-related sales and production of like goods.

[49] While this represents a low response rate from the total number of producers that were sent a producers' questionnaire, as set out below, the Tribunal finds that, based on the evidence on the record, the 10 responding domestic producers represent a major proportion of the total domestic production of the like goods.<sup>56</sup>

[50] In their case brief, the Domestic Producers estimated the proportion of the total shipment data from Statistics Canada under the NAICS code for mattress manufacturing (33791) represented by the combined domestic and export sales for the 10 aforementioned domestic producers over the POI.<sup>57</sup> Based on this estimation, the domestic producers who provided data to the Tribunal accounted for well above the threshold for major proportion that was accepted at the preliminary injury inquiry stage.<sup>58</sup>

[51] The Tribunal conducted its own calculation of the responding domestic producers' proportion of total domestic production, for its estimate of total domestic production, using the value of total domestic production sold in Canada from the CBSA's complaint analysis, including certain

---

<sup>52</sup> While other domestic producers that supported the complaint provided sales data, they did not provide pricing and financial data, which the Tribunal viewed as necessary to assess any price effects that may be caused by the subject goods. *Certain Mattresses PI* at paras. 26–28.

<sup>53</sup> Exhibit NQ-2022-001-08.

<sup>54</sup> However, the partial data regarding those two producers were incorporated into the schedules to the investigation report. Exhibit NQ-2022-001-07.F (protected) at 14.

<sup>55</sup> Evidence gathered during the inquiry revealed that Primo began producing mattresses in May 2022. As such, while Primo is currently a domestic producer, it was not a producer during the Tribunal's POI and therefore cannot be considered as part of the domestic industry for the purposes of the Tribunal's injury inquiry. See *Transcript of Public Hearing* at 282.

<sup>56</sup> As noted by the Tribunal in *Certain Upholstered Domestic Seating* (2 September 2021), NQ-2021-002 (CITT) [UDS] at para. 91, where there is a lack of questionnaire responses from a significant number of potential domestic producers, the Tribunal must consider whether the collective production of the like goods by those domestic producers that responded and provided information constitute a major proportion.

<sup>57</sup> The Domestic Producers used the total net sales value (domestic and export sales) and added an estimate for domestic producers who only provided production information using their reported net delivered selling values. See Exhibit NQ-2022-001-A-02 (protected) at Table 1.

<sup>58</sup> The Tribunal notes that it has previously accepted as a proxy for the total domestic production of the like goods the total value of all sales of goods manufactured in Canada under a NAICS code. The Tribunal noted that this method of estimation would provide the same degree of assurance as if it had obtained actual production volumes or values from all domestic producers. See *UDS* at para. 95.

adjustments.<sup>59</sup> The Tribunal's calculation of the proportion of total domestic production held by the responding domestic producers, by volume, in fact, exceeded the estimate provided by the Domestic Producers, being well over three quarters of total domestic production. Accordingly, for the purposes of this inquiry, the Tribunal is satisfied that the collective production of the like goods by the 10 responding domestic producers constitutes the domestic industry, as they make up a major proportion of the total domestic production of the like goods.

[52] However, the Tribunal also notes that two of the responding domestic producers did not provide complete financial information with respect to net sales value, cost of goods sold, gross margin and net income.<sup>60</sup> As such, the impact of the dumping and subsidizing of the subject goods on financial performance can only be assessed with respect to the eight other responding domestic producers. The Tribunal has estimated that the domestic production of the eight other domestic producers remains above two thirds of total domestic production of the like goods over the POI and are therefore sufficiently representative of the domestic industry.

## CROSS-CUMULATION

[53] As noted above, since the CBSA determined that the subject goods were both dumped and subsidized, the Tribunal must decide whether to make an assessment of the cumulative effect of the dumping *and* subsidizing of those goods (i.e. whether to cross-cumulate).

[54] 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,<sup>61</sup> 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.

[55] Therefore, the Tribunal will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods.

## INJURY ANALYSIS

[56] Subsection 37.1(1) of the Regulations prescribes that, in determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped 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) also directs the Tribunal to consider whether a causal relationship exists between the dumping and

---

<sup>59</sup> The CBSA's estimates for firms that responded to the Tribunal's production questionnaire were replaced by actual production volumes from total sales (domestic and export sales) reported by the firm in its questionnaire reply. Additionally, production volumes from total sales for three domestic producers that were not included in the CBSA's estimate were added to the Tribunal's estimate of total domestic production. Also, for the purpose of this exercise, Tribunal staff annualized the 2021 CBSA data for total domestic production sold in Canada which had been reported for the year to date Q3 2021. Exhibit PI-2021-005-03.18 at 14; Exhibit NQ-2022-001-022 (single copy).

<sup>60</sup> Exhibit NQ-2022-001-07.F (protected) at 13, 14, 104, 105.

<sup>61</sup> See, for example, *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 76; *Aluminum Extrusions* at para. 147.

subsidizing of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping and subsidizing of the goods have caused injury.

[57] Before proceeding with its injury analysis, the Tribunal will present a general overview of the mattress market in Canada to provide context for its analysis.

## Overview of the Canadian mattress market

### Value categories of mattresses

[58] Mattresses sold in the Canadian market are generally classified in one of three main product categories or market segments: “value” or “entry-level” mattresses, “core” or “mid-level” mattresses and “luxury” or “high-end” mattresses.<sup>62</sup> Entry-level mattresses are sold at the lowest price point, whereas offerings in the mid-level and high-end categories have incrementally higher quality, features and price points.<sup>63</sup>

[59] The evidence indicates that the subject imports are predominately in the entry-level market segment.<sup>64</sup> The Domestic Producers submitted that, due to the increasing volumes of subject imports and pervasive price undercutting of the like goods by the subject goods, they have been forced to move out of the value segment of the market and shift their product mix toward higher-value products to maintain sales.<sup>65</sup> In the case of Restwell, while it remains a producer of lower-end mattresses, it has more recently focused on the high-end market segment, for example, a line of organic latex mattresses, which it sells in lower volumes but at higher prices.<sup>66</sup> SSB also describes being pushed toward the luxury mattress segment but continues to offer products in all market segments.<sup>67</sup>

[60] However, the Domestic Producers submitted that prices in the higher-end segments are not immune from the effects of prices in the lower-end segments, as all segments form a continuum. The price of items in the “entry-level” category is used as a value reference point for the pricing of items in the other categories. As such, lower prices in this category have the effect of lowering prices in the other segments, and vice versa.<sup>68</sup> According to Allan Kinahan of TempurSealy, once prices have

---

<sup>62</sup> These three market segments have also been characterized as “good”, “better” and “best”. Further market segmentation exists as well, such as the “ultra-luxury” designation. *Transcript of Public Hearing* at 42, 164–166, 345, 349, 372, 436–437.

<sup>63</sup> Exhibit NQ-2022-001-A-03 at para. 26; *Transcript of Public Hearing* at 42, 164–166. While the Tribunal acknowledges that there is no *precise* industry standard for qualifying mattresses as entry-level, mid-level or high-end, it finds that these market segments nevertheless are key distinctions in the market.

<sup>64</sup> *Transcript of Public Hearing* at 250–251.

<sup>65</sup> Exhibit NQ-2022-001-A-03 at paras. 25, 28, 34; Exhibit NQ-2022-001-A-04 (protected) at paras. 25, 28, 34; *Transcript of Public Hearing* at 22, 28–33, 250–251; *Transcript of In Camera hearing* at 12–13, 17–20. Witnesses for SSB have also testified to being pushed into the king and innerspring segments as well. *Transcript of Public Hearing* at 63.

<sup>66</sup> Exhibit NQ-2022-001-A-03 at para. 28; Exhibit NQ-2022-001-A-04 (protected) at para. 28.

<sup>67</sup> Exhibit NQ-2022-001-B-05 at paras. 6, 15, 30; Exhibit NQ-2022-001-B-06 (protected) at para. 15; *Transcript of Public Hearing* at 32, 33, 63. Stewart Schaefer of Sleep Country, a retailer that, according to his testimony, has approximately 32 to potentially 40 percent market share, also explained that Sleep Country is strategically moving the customer to higher-end beds, given the infrequency in which customers purchase mattresses, i.e. every 8 to 12 years. *Transcript of Public Hearing* at 390, 447.

<sup>68</sup> Exhibit NQ-2022-001-B-05 at paras. 17, 32; *Transcript of Public Hearing* at 56, 75, 207–208.

been pulled down at the value segment, higher-value mattresses need to start filling that gap.<sup>69</sup> Similarly, Todd Smith of Cantrex qualified price changes in the value segment as having a domino effect.<sup>70</sup>

[61] Furthermore, despite the shift to higher-value mattresses, according to the Domestic Producers, in order to be profitable, producers must sell a high volume of products, which *includes* mattresses in the core and value segments.<sup>71</sup> In this regard, Tom Allen of SSB explained that achieving sufficient levels of production across the various business segments is key for a number of reasons, including overhead absorption from a unit cost perspective.<sup>72</sup> Due to these issues, the Domestic Producers argued that they remain vulnerable to competition from Chinese value and core mattresses. While the evidence indicates that subject imports are permeating into higher-value categories of the mattress market (i.e. “low-end of the luxury segment”), as explained by Tom Allen, the segment at which imports have had the most effect remains at the value segment due to the influence of e-tailers such as Amazon or Wayfair, whose websites organize products based on the lowest price.<sup>73</sup>

### Mattress-in-a-box

[62] One type of mattress that has gained traction in the Canadian market is the “bed-in-a-box” or MiB. Although MiBs may have existed as early as approximately 15 years ago, according to witness testimony, their popularity grew dramatically starting in 2015 with the marketing campaigns of Casper and Endy, both U.S. companies.<sup>74</sup> MiBs are mattresses that are compressed and rolled into a box using various compression methods.<sup>75</sup> Both innerspring and foam mattresses can be offered in a box, although, according to Troy Zanatta, a larger proportion of MiBs consists of foam mattresses.<sup>76</sup>

[63] Witnesses testified that the recent surge in subject imports, since 2017, is attributable to MiBs. As explained by Denis Jones, MiBs have set the prices in the market. For example, if a retailer were not purchasing from China, they would ask domestic producers to match domestic wholesale prices with prices of subject goods in the market so that they can compete at retail.<sup>77</sup>

[64] MiBs also have clear advantages for distribution and supply chain logistics. With the use of these compression techniques, freight costs are significantly reduced, as sea containers can carry

---

<sup>69</sup> *Transcript of Public Hearing* at 363–364.

<sup>70</sup> *Transcript of Public Hearing* at 223–224.

<sup>71</sup> Exhibit NQ-2022-001-A-03 at para. 61; Exhibit NQ-2022-001-A-04 (protected) at para. 61; Exhibit NQ-2022-001-B-05 at para. 30.

<sup>72</sup> Exhibit NQ-2022-001-B-03 at paras. 13, 14. Tom Allen also explains that sufficient volumes are required to achieve longer production runs with fewer changeovers (value products are normally produced in higher volumes) and to ensure that the company secures value offerings that can pull additional core and luxury demand at individual customer accounts.

<sup>73</sup> *Transcript of Public Hearing* at 54, 76, 195–196, 251, 279, 372.

<sup>74</sup> Exhibit NQ-2022-001-A-03 at para. 45; *Transcript of Public Hearing* at 19, 20, 384–385, 404–407.

<sup>75</sup> Mattresses can also be transported using another compression method which consists of removing the air from the mattresses and stacking them. These mattresses are sometimes referred to as being “flat-packed”. See *Transcript of Public Hearing* at 132–133, 149, 280–281.

<sup>76</sup> Exhibit NQ-2022-001-A-03 at para. 45.

<sup>77</sup> *Transcript of Public Hearing* at 18, 20, 149, 343–344.

significantly more units of compressed mattresses than flat mattresses due to their smaller size.<sup>78</sup> In addition, compressed mattresses take up less space in warehouses, which reduces warehousing costs for distributors and retailers.<sup>79</sup> Niaina Andria of Primo also testified that some consumers prefer MiBs because they can purchase them from retail outlets without the need for delivery services.<sup>80</sup> John Power of Mega Group noted that the majority of MiB sales and shipment are sent directly to consumers (DTC) online.<sup>81</sup>

[65] The evidence indicates that MiBs are currently offered across all value segments, ranging from low-end to high-end, although the majority of MiBs imported from China fall within the value and core segment.<sup>82</sup> Troy Zanatta noted that MiBs may have experienced a plateau capturing approximately 20 to 25 percent of the market.<sup>83</sup>

### Trade levels

[66] In this inquiry, the Tribunal sought data in respect of the following trade levels: (1) distributors, buying groups, and furniture manufacturers; (2) retailers that sell to consumers; and (3) institutional (such as hospitals, universities and penitentiaries) and hospitality. However, not all producers operate in each of these trade levels. For instance, SSB indicated that it did not operate in the institutional space.<sup>84</sup>

[67] The data in the investigation report indicate that the majority of sales of domestically produced like goods and imports of mattresses meeting the product definition are made directly to retailers. Many of the large retailers import mattresses themselves as opposed to purchasing them through a distributor.<sup>85</sup> Although there were no sales to the institutional, commercial/hospitality or furniture manufacturing trade levels by importers according to the data collected by the Tribunal, Tom Allen estimated that approximately 10 percent of the market is comprised of sales to the commercial and hospitality trade levels.<sup>86</sup> Notably, only one purchaser identified itself as a distributor of mattresses meeting the product definition.

[68] Retailers include both large, national retailers, and smaller, regional and independent retailers.<sup>87</sup> Retailers sell mattresses either through brick-and-mortar stores and, in some cases,

---

<sup>78</sup> Compressed mattresses can also be “flat-packed”, allowing a greater number of mattresses to be stacked on skids for transport. However, these are primarily sold to distributors for sales to retailers. *Transcript of Public Hearing* at 149–151, 279–281, 343, 344.

<sup>79</sup> *Transcript of Public Hearing* at 279, 405–406.

<sup>80</sup> *Transcript of Public Hearing* at 287.

<sup>81</sup> *Transcript of Public Hearing* at 240, 241. MiBs can also be sold by retailers through a brick-and-mortar location. *Transcript of Public Hearing* at 190, 400, 405, 458.

<sup>82</sup> *Transcript of Public Hearing* at 19, 195, 196. Although pocket coil mattresses usually cost more and are therefore priced higher than other types of coils (i.e. open coil, offset coil, bonnell coil, and continuous coil), Restwell submitted that lower-priced pocket coil mattresses from China are impacting sales of other types of coil mattresses. Exhibit NQ-2022-001-A-03 at para. 40; Exhibit NQ-2022-001-A-04 (protected) at para. 40.

<sup>83</sup> Exhibit NQ-2022-001-A-03 at para. 46.

<sup>84</sup> *Transcript of Public Hearing* at 22.

<sup>85</sup> Exhibit NQ-2022-001-07.F (protected) at tables 20, 27. Crib mattresses are generally manufactured by different producers than other (larger) sizes of mattresses. *Transcript of Public Hearing* at 22, 39.

<sup>86</sup> *Transcript of Public Hearing* at 22, 39.

<sup>87</sup> *Transcript of Public Hearing* at 22.

through online e-commerce platforms.<sup>88</sup> While e-tailers, such as Amazon or Wayfair, operate online marketplaces,<sup>89</sup> domestic producers can also sell mattresses DTC through an online portal; however, these sales accounted for a very small proportion of the Canadian market over the POI.<sup>90</sup> There were no DTC sales of subject goods by foreign producers.<sup>91</sup>

[69] Large retailers generally purchase domestically produced goods directly from the manufacturer at wholesale prices.<sup>92</sup> The Tribunal is of the view that, based on the testimony of witnesses at the hearing, certain large retailers have some degree of buying power and control over marketing, which allows them to influence pricing for mattresses.<sup>93</sup> Retailers may also seek adjustments in pricing through input into design.<sup>94</sup> As discussed below, price is an important factor to retailers as they aim to ensure that they maximize margins from their sales of mattresses to consumers with marketing strategies based on selling quality mattresses at low and competitive prices.<sup>95</sup>

[70] Smaller regional and independent retailers are typically represented by buying groups such as Mega Group and Cantrex. According to testimony from representatives of Mega Group and Cantrex, buying groups provide retailers with additional buying power as well as services such as central billing, marketing and website services. Both Mega Group and Cantrex also have private labels, with exclusive products for their members.<sup>96</sup> Buying groups are not, however, purchasers of mattresses themselves and do not have warehouses. Rather, as explained by Todd Smith, it is the retailers themselves that order from manufacturers, and the mattresses are shipped directly to their stores. Although in the case of approved suppliers (i.e. suppliers that have supply agreements with the buying group), the buying group invoices retailers for the purchases from the supplier.<sup>97</sup>

#### Effects of the COVID-19 pandemic

[71] The COVID-19 pandemic also had significant impacts on market dynamics in the mattress industry during the POI. One such impact was its effect on mattress sales on e-commerce platforms. Troy Zanatta described how pandemic-related restrictions adversely impacted brick-and-mortar store

<sup>88</sup> *Transcript of Public Hearing* at 240.

<sup>89</sup> *Transcript of Public Hearing* at 40–41. Neither Amazon nor Wayfair responded to the importers' or purchasers' questionnaires. Exhibit NQ-2022-001-18.15.

<sup>90</sup> *Transcript of Public Hearing* at 23, 24, 39, 330, 334, 340; *Transcript of In Camera Hearing* at 222–224; Exhibit NQ-2022-001-09.02A at 15; Exhibit NQ-2022-001-07.F (protected) at tables 20, 22.

<sup>91</sup> *Transcript of Public Hearing* at 21, 81, 82.

<sup>92</sup> *Transcript of Public Hearing* at 21, 23.

<sup>93</sup> *Transcript of In Camera Hearing* at 3, 4, 35, 49, 259–261.

<sup>94</sup> *Transcript of Public Hearing* at 395.

<sup>95</sup> *Transcript of Public Hearing* at 21, 23.

<sup>96</sup> Exhibit NQ-2022-001-18.01A at 1; Exhibit NQ-2022-001-18.08A at 1; *Transcript of Public Hearing* at 24, 180, 181, 208, 209, 245–248, 237; *Transcript of In Camera Hearing* at 119–120, 140–141, 157–158. Todd Smith also noted that Cantrex provides inventory financing as well as other back-end business services such as insurance programs and credit card and consumer financing options.

<sup>97</sup> *Transcript of Public Hearing* at 180–182.



sales and encouraged consumers to buy mattresses online.<sup>98</sup> According to Troy Zanatta, the proliferation of online sales facilitated the absorption of market share by subject imports.<sup>99</sup>

[72] The pandemic also contributed to significant supply chain issues and shipping delays.<sup>100</sup> As described in the witness statement of Troy Zanatta, pandemic-related restrictions imposed in the first half of 2020 forced retailers to delay or cancel their orders through the summer of 2020.<sup>101</sup> However, the pandemic also spurred a rise in demand for mattresses as the second half of 2020 saw increases in consumers' disposable income as well as a desire by consumers to increase their living spaces in a period of rising housing prices.<sup>102</sup> Witnesses also attributed this to an increase in time spent at home and moves into larger homes outside of city cores.<sup>103</sup>

[73] In 2021, there was also a global shortage of shipping containers. This resulted in increasing freight costs, which contributed to both an increase in cost of raw materials and to a decline in subject imports.<sup>104</sup> However, the Domestic Producers submitted that the supply chain issues have since resolved, with freight costs declining in the second half of 2021 through to 2022.<sup>105</sup> With the improvement of supply chain issues, imports from China are once again more accessible to the Canadian market.

### **Alleged deficiencies in the investigation report**

[74] The Domestic Producers submitted that the import volumes from the U.S. and the corresponding market share of U.S. imports reported in the investigation report are anomalous, particularly in 2021, in comparison to other data on the record, including statistics from the CBSA and Statistics Canada. Similar to the explanation provided in their letter to the Tribunal dated September 9, 2022, the Domestic Producers stated that the 2021 volumes of imports from the U.S. were overestimated due to lower average unit values that were used to derive the residual/unreported volumes of U.S. imports for the investigation report.<sup>106</sup> In their view, these lower unit values are the product of an absence of U.S. import data from significant importers of known higher value mattresses such as those from Casper, whose retail prices start at CAD 1,256, and Kluft, whose retail prices start at CAD 8,700.<sup>107</sup> The Domestic Producers submitted that, to correct for the overestimation, the reported U.S. imports used for estimating residual import volumes for 2021 could

<sup>98</sup> Exhibit NQ-2022-001-A-03 at para. 59. Other witnesses similarly described increased sales on e-commerce platforms during the pandemic as a consequence of brick-and-mortar retail shutdowns. See, for example, Exhibit NQ-2022-001-B-05 at 13–14; *Transcript of Public Hearing* at 332, 407, 408.

<sup>99</sup> Exhibit NQ-2022-001-A-03 at para. 59.

<sup>100</sup> *Transcript of Public Hearing* at 178, 444.

<sup>101</sup> Exhibit NQ-2022-001-A-03 at para. 17.

<sup>102</sup> *Ibid.* at paras. 17, 22, 58; Exhibit NQ-2022-001-A-05 at para. 15; *Transcript of Public Hearing* at 233.

<sup>103</sup> *Transcript of Public Hearing* at 177–178, 383, 385–386.

<sup>104</sup> Exhibit NQ-2022-001-A-03 at paras. 18, 60; *Transcript of Public Hearing* at 144, 178, 299, 415–416.

<sup>105</sup> Exhibit NQ-2022-001-A-04 (protected) at paras. 18, 19; Exhibit NQ-2022-001-A-03 at paras. 18, 19, 41. The Tribunal also takes note of Stewart Schaefer's testimony that imports from China remain too expensive to import them. Stewart Schaefer has, however, recognized that, while sea containers from China used to cost USD 30,000, their prices have currently decreased to between USD 10,000 and USD 15,000. See *Transcript of Public Hearing* at 414, 415.

<sup>106</sup> For the Tribunal's estimation methodology, see Exhibit NQ-2022-001-06.F at 9, which refers to the Tribunal's website, online: <<https://citt-tcce.gc.ca/en/anti-dumping-injury-inquiries/determining-volume-imports-and-sales-imports-investigation-reports>>.

<sup>107</sup> Exhibit NQ-2022-001-24 at 1, 4, 12.

be adjusted by using domestic producer import data. The Domestic Producers submitted that this would be appropriate considering the objective should be to ensure that the estimates used in the investigation report are as accurate as possible and that the estimation involves non-subject goods as opposed to the subject goods.

[75] In the Tribunal's view, the absence of import data reflecting higher value mattresses imported from the U.S. can be attributed to the low response rate to the Tribunal's importer questionnaire. However, the Tribunal does not agree that it is appropriate to include domestic producer import volumes and values in its estimation of non-subject import volumes of non-surveyed and non-responding importers, given that it cannot be assumed that the importing behaviour of a domestic producer is similar to that of an importer.

[76] Although the evidence on the record is limited in respect of data regarding imports from the U.S., the Tribunal acknowledges that the investigation report's volumes of non-subject imports from the U.S. were likely overestimated for 2021 based on the evidence and submissions of the Domestic Producers. In this regard, the Tribunal took into consideration that the volume of imports from the U.S. in the investigation report for 2021 represents over 80 percent of the total volume of imports from non-subject countries estimated by the CBSA for that year. This was considered in conjunction with the magnitude by which the volume of non-subject imports from the U.S. reported in the investigation report exceeded Statistics Canada data for imports from the U.S. in 2021, which would also have included non-subject goods such as pet mattresses or toppers less than 3 inches.<sup>108</sup>

[77] While the Tribunal acknowledges the likely overestimation for 2021, it is unable to assess the extent, if any, to which import volumes from the U.S. were overestimated in other periods of the POI given that both the Domestic Producers' comparative data from Statistics Canada and the CBSA's estimate are limited to 2021. Accordingly, the Tribunal has made no assumptions about import volumes or market trends concerning imports from the U.S. with respect to other periods within the POI.

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

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

[79] Over the POI, import volumes of subject goods increased in every year in absolute terms, except for in 2020. Total imports of subject goods increased by 18 percent in 2019. This was followed by a 3 percent decrease in 2020 and then a 12 percent increase in 2021. With respect to the decline seen in 2020, the Domestic Producers attributed this decrease to the COVID-19 pandemic-related containment measures affecting global markets and supply chain disruptions.<sup>109</sup> The total imports of subject goods increased by 27 percent from 2018 to 2021. However, the increase in imports of subject goods was especially significant for interim 2022, which showed an increase of 84 percent when compared to interim 2021.<sup>110</sup> With the exception of 2020, the growth of imports from China outpaced the growth in the market over the POI.

---

<sup>108</sup> Exhibit NQ-2022-001-A-01 at paras. 128–129; Exhibit NQ-2022-001-A-02 (protected) at paras. 128–129.

<sup>109</sup> Exhibit NQ-2022-001-B-05 at para. 76.

<sup>110</sup> Exhibit NQ-2022-001-06.F at Table 17; Exhibit NQ-2022-001-07. F (protected) at tables 16, 17.

[80] The ratios of imports of subject goods relative to domestic production and domestic sales of domestic production increased in almost all periods, with the most significant increases occurring in 2019 and interim 2022.<sup>111</sup>

[81] To corroborate the trends in imports discussed above, several witnesses, including Troy Zanatta of Restwell, testified at the hearing that, over the past several years, they have seen a dramatic increase in the number of Chinese mattresses coming into Canada. Moreover, Denis Jones of SSB stated that, starting in 2018, there was an influx of MiBs arriving in Canada. Since this type of mattress can be rolled and compressed, Chinese exporters could fit between 550 and 600 mattresses in a sea container, where previously they could only fit approximately 80 mattresses.<sup>112</sup>

[82] On the basis of the foregoing, the Tribunal finds that, over the POI, and particularly in interim 2022, there was a significant increase in the volume of subject imports, both in absolute terms and relative to the production and consumption of like goods.

### **Price effect of dumped and subsidized goods**

[83] Paragraph 37.1(1)(b) of the Regulations directs the Tribunal to 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 or depressed the price of like goods or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred. In this regard, the Tribunal distinguishes the price effect of the dumped or subsidized goods from any price effects that may have resulted from other factors affecting prices.

[84] Mattresses are a consumer product and, unlike commodity products, factors other than price can have an impact on purchasing decisions. As such, before addressing the price effect of the dumped and subsidized goods on the price of like goods, the Tribunal must first determine the extent to which competition between these goods in the Canadian marketplace occurs on the basis of price. Since, in the circumstances of this case, it is primarily the *price undercutting* by the dumped and subsidized goods that may have led to the domestic industry suffering injury, determining the importance of price in purchasing decisions for mattresses is essential. As noted previously by the Tribunal in respect of its assessment of injury in relation to consumer products, if price is not an important consideration for purchasers, the dumping and subsidizing of the subject goods can hardly be a cause of material injury.<sup>113</sup>

#### Importance of price in purchasing decisions

[85] The Domestic Producers submitted that the evidence on the record confirms that price is a key factor for purchasers (i.e. retailers and distributors) when deciding from which suppliers to source mattresses. The Tribunal agrees.

[86] The responses to the purchasers' questionnaire support the view that price is generally an important consideration, with the majority of respondents indicating that the lowest net price was "very important". While purchasers indicated more frequently that factors such as "product quality" and "product meets technical specifications" were "very important", nearly three quarters of

---

<sup>111</sup> Exhibit NQ-2022-001-07. F (protected) at Table 19.

<sup>112</sup> *Transcript of Public Hearing* at 19–20, 90, 131, 135, 232, 250–251, 331–332.

<sup>113</sup> *UDS* at para. 142.

respondents indicated that, once products meet the required specifications, the lowest net prices offered “always” or “usually” win the sale.<sup>114</sup>

[87] The importance of price to retailers is evidenced by marketing material which has been submitted to the Tribunal confidentially. Promotional material created by retailers for end-use consumers clearly reflects how retailers market themselves to customers on the basis of offering competitive and low prices.<sup>115</sup> Consequently, in order to offer mattresses at lower prices, retailers seek the best price from their suppliers. According to Denis Jones, retailers create a target price point for the end consumer across the various product offerings and then require a wholesale price which maximizes profit margins.<sup>116</sup> The questionnaire responses from various retailers confirm this business strategy.<sup>117</sup>

[88] Witness testimony from all segments of the market, including domestic producers, a distributor, buying groups and a retailer, confirmed the importance of price in purchasing decisions. For example, Denis Jones stated that price is the main factor in sales presentations and, if the price is not set correctly, there is a risk of losing slots or floor space at specific retailers, which is critical to the domestic producers’ generating revenue at brick-and-mortar retailers. The risk of losing slots over price was corroborated by the testimony of Stewart Schaefer.<sup>118</sup> Additionally, price is also a key factor in product placement on e-tailer websites, which, according to Denis Jones, due to the algorithm used on the site, lower-priced mattresses appear before higher-priced mattresses, with some domestically produced like goods “buried deep into the websites”.<sup>119</sup> Similarly, Allan Kinahan indicated that, while brand plays a part in winning a sale, at the end of the day it comes down to price given that the end consumer will always have a budget for their mattress purchase.<sup>120</sup> Although Stewart Schaefer emphasized in his testimony the importance of product quality, aesthetics, warranty, service level and the speed of delivery to Sleep Country, price remained important in every market segment (i.e. low-end, mid-end and high-end). As noted by Stewart Schaefer, “price always is a determining factor on the consumer at the end of the day.”<sup>121</sup>

[89] In light of the foregoing, the Tribunal finds that price is a very important consideration in purchasing decisions for mattresses, assuming that other factors such as product quality, technical specifications and aesthetics are comparable. As such, the sale of subject goods at prices lower than those of domestically produced like goods will have adverse effects on the price of like goods.

#### Domestic price premium

[90] The Domestic Producers submitted that there is no price premium for domestically produced mattresses which should be factored into the Tribunal’s price undercutting analysis. To support this, in his witness statement, Denis Jones indicated that SSB has not seen retailer customers willing to accept a domestic premium for domestically produced goods when an ample supply of imports is

<sup>114</sup> Exhibit NQ-2022-001-06.F at Table 11.

<sup>115</sup> Exhibit NQ-2022-001-B-05 at 8, 9; Exhibit NQ-2022-001-B-06 (protected) at 8, 9, 31, 32, 45.

<sup>116</sup> Exhibit NQ-2022-001-B-05 at para. 21.

<sup>117</sup> See also Exhibit NQ-2022-001-A-02 at paras. 52, 53, notes 71, 72, 76.

<sup>118</sup> *Transcript of Public Hearing* at 28, 29, 165, 191, 396, 425–426. According to Stewart Schaefer, once a supplier wins a slot on the floor, Sleep Country would guarantee the space for a year on condition that the supplier’s price remains the same for this period. *Transcript of Public Hearing* at 440.

<sup>119</sup> *Transcript of Public Hearing* at 28–29.

<sup>120</sup> *Transcript of Public Hearing* at 364–365.

<sup>121</sup> *Transcript of Public Hearing* at 397–398, 416–417, 431.

available.<sup>122</sup> Troy Zanatta also reiterated a similar experience in his witness statement with respect to Restwell's customers.<sup>123</sup> Similarly, numerous purchaser respondents also indicated that they were not willing to pay any domestic price premium.<sup>124</sup>

[91] However, the Tribunal notes that one retailer, The Bay Limited Partnership, indicated in its questionnaire response that it was willing to pay a price premium of 15 percent for domestically produced mattresses.<sup>125</sup> Also, three institutional customers noted that they would pay a premium for domestically produced mattresses in the range between 2 and 10 percent.<sup>126</sup>

[92] On balance, given the preponderance of evidence that supports the absence of a domestic price premium, the Tribunal has not factored a price premium into its price undercutting analysis below. However, even if the Tribunal had considered a domestic price premium of 15 percent, as discussed in the analysis below, the amount by which the subject goods undercut the prices of the subject goods would far exceed this amount.

### Product mix

[93] The Tribunal acknowledges that a pricing analysis at the aggregate level may pose some issues due to product mix. To reduce product mix issues for the pricing analysis, the Tribunal collected full-year pricing data for 2018 and 2019 as well as quarterly data for 2020, 2021 and Q1 2022 in respect of 11 benchmark products. These benchmark products were generally divided between queen- and twin-size innerspring and foam mattresses with various thicknesses.

[94] In examining benchmark product pricing below, the Tribunal is cognizant that the sales data showing the distribution by mattress type indicates that twin/single and foam mattresses account for a larger proportion of subject imports than domestically produced like goods.<sup>127</sup>

[95] The benchmark products, however, are not defined by the value, core and luxury segmentation. That said, the Tribunal is of the view that the range of benchmark products as a whole nevertheless includes products that would fall across the entirety of the value, core and luxury spectrum based on the broad range of mattresses they cover, including with respect to material and height.<sup>128</sup> Furthermore, the Tribunal notes that no submissions were made, either by the parties in this inquiry or during the Tribunal's consultation with firms in the industry, during the questionnaire development phase following the preliminary injury inquiry, that the benchmark products were deficient in its representation of mattresses in the market.

---

<sup>122</sup> Exhibit NQ-2022-001-B-05 at para. 21.

<sup>123</sup> Exhibit NQ-2022-001-A-03 at para. 13. Other domestic producers made similar statements with respect to the absence of a domestic price premium in their questionnaire responses (Springwall and King Koil). Exhibit NQ-2022-001-09.10B at 6; Exhibit NQ-2022-001-09.15B at 6.

<sup>124</sup> Exhibit NQ-2022-001-18.07C at 3; Exhibit NQ-2022-001-18.09B at 4; Exhibit NQ-2022-001-18.11B at 4; Exhibit NQ-2022-001-18.14D at 4; Exhibit NQ-2022-001-18.04D at 4; Exhibit NQ-2022-001-18.18B at 4; Exhibit NQ-2022-001-18.19B at 4; Exhibit NQ-2022-001-18.20B at 4; Exhibit NQ-2022-001-18.21C at 4; Exhibit NQ-2022-001-18.22 at 4; Exhibit NQ-2022-001-18.23A at 4; Exhibit NQ-2022-001-18.25B at 4; Exhibit NQ-2022-001-18.26 at 4; Exhibit NQ-2022-001-18.29B at 4.

<sup>125</sup> Exhibit NQ-2022-001-18.16B at 4.

<sup>126</sup> Exhibit NQ-2022-001-18.06 at 4; Exhibit NQ-2022-001-18.10E at 4; Exhibit NQ-2022-001-18.28B at 4.

<sup>127</sup> Exhibit NQ-2022-001-06.F at tables 85, 86.

<sup>128</sup> *Transcript of Public Hearing* at 79–80, 165, 201–202.

[96] In the absence of a precise method to categorize the benchmark products within the value, core and luxury spectrum, the Tribunal nevertheless is of the view that price remains a key factor in assessing whether mattresses may be considered value, core or luxury. In this regard, the Tribunal notes the written testimony of Denis Jones which explained that, in terms of SSB's product offerings, and depending on the retailer's own positioning within the marketplace, the "value" segment covers lower-end products (at retail price points approximately \$799 and below for queen-size mattresses), the "core" segment covering mid-range price points (from \$799 to \$1,299, approximately, again for queen-size mattresses), and the "luxury" segment covering the most expensive offerings (above \$1,299 for a queen-size mattress). Additionally, he noted that mattresses in the "entry-level" market segment for primarily MiBs through online retailers such as Amazon, Wayfair and Walmart were being retailed to consumers at price points such as \$199, \$299 and \$399.<sup>129</sup>

[97] The Tribunal acknowledges that it may not be possible to draw a direct one-for-one match on any given benchmark product as being either value, core or luxury as noted by Denis Jones at the hearing.<sup>130</sup> However, the Tribunal nevertheless is of the view that, given that price remains a key indicator of product value, it may accept as an indication of the subject goods' impact on luxury and value segments, more generally, by assessing the extent to which there is undercutting in respect of the average highest- and lowest-priced domestically produced benchmark products sold by the domestic industry, which compete with the subject goods. The average highest-priced mattress is an indicator of the luxury segment, and the average lowest price is an indicator of the value segment.

#### Price undercutting

[98] As noted above, the data in the investigation report indicate that the majority of sales of domestically produced like goods and imports of mattresses meeting the product definition are made directly to retailers, with many large retailers being importers of subject goods themselves.<sup>131</sup> Given the number of retailer-importers and the low representation of distributors, the aggregate market pricing tables in the investigation report consisted of the pricing data for distributor sales (i.e. the distributor's *selling* prices) as well as prices of the retailers' purchases of subject goods from exporters or foreign producers (i.e. retailers' import *purchase* prices). In the Tribunal's view, comparing the domestic selling prices of like goods with the blended pricing data in respect of the subject goods takes into account the prices at which the domestic industry competes with foreign producers and exporters that sell to retailer-importers and any margin added to the subject goods sold by the distributor to retailers. It therefore provides the most conservative approach and is less likely to overestimate the level of price undercutting.

[99] At the aggregate level,<sup>132</sup> the import selling/purchase prices of the subject goods undercut the selling prices of domestically produced like goods throughout the POI by an amount ranging from approximately 20 to 45 percent, when expressed as a percentage of the selling prices of the like goods. Further, the magnitude of the undercutting increased over the POI, particularly in 2021 and

---

<sup>129</sup> Exhibit NQ-2022-001-B-05 at paras. 16, 26.

<sup>130</sup> *Transcript of Public Hearing* at 79–80.

<sup>131</sup> Exhibit NQ-2022-001-07.F (protected) at tables 20, 27. There were no sales to the institutional, commercial/hospitality or furniture manufacturing trade levels by importers; as such, no price undercutting analysis can be performed at this trade level.

<sup>132</sup> The aggregate market as reported in the investigation report shows retailers' import purchase prices and distributor import selling prices.

interim 2022.<sup>133</sup> Non-subject imports from other countries excluding the U.S. (other countries) also undercut the prices of domestically produced like goods throughout the POI, albeit at lower levels. With the exception of interim 2021, non-subject imports from the U.S. did not undercut the prices of domestically produced like goods.<sup>134</sup> Notably, the subject goods were the price leaders in every period of the POI.

[100] Looking specifically at the retailer trade level, average selling prices of domestically produced like goods were undercut by average prices of the subject goods in each period of the POI by at least 20 percent and up to approximately 45 percent.<sup>135</sup>

[101] At the distributor trade level, import purchase prices of distributors undercut selling prices of domestically produced like goods in every period of the POI ranging from approximately 38 to 45 percent.<sup>136</sup>

[102] In terms of benchmark product data, to be inclusive of the volumes of retailer-importers, the investigation report compared and summarized competition between the domestic sales of domestically produced like goods and the import purchase prices of the subject goods. These data reveal the existence of significant and widespread undercutting by the subject goods.

[103] Looking at benchmark products price differentials, the subject goods undercut the prices of domestically produced like goods in 77 of the 107 instances of competition. Moreover, the frequency of instances of undercutting increased over the POI. The magnitude of undercutting over the POI ranged significantly; however, in nearly all instances, the magnitude of undercutting was greater than 5 percent and, on average, it was greater than 35 percent.<sup>137</sup>

[104] That said, the magnitude of undercutting described above may be overstated insofar as the comparison of import purchase prices of subject goods and the selling prices of like goods for benchmark products does not account for margins on subject goods sold by the distributor to retailers. As such, the Tribunal considered the Domestic Producers' analysis of undercutting of domestically produced like goods by distributors' sales of subject imports over the POI. While this level of analysis is less comprehensive in terms of the volumes of imports in competition with the like goods, the instances and magnitude of undercutting by the sales of subject goods were significant and comparable to the instances and magnitude observed in the above import purchase price analysis.<sup>138</sup>

[105] With respect to the Tribunal's evaluation of the subject goods' impact on value and luxury segments using the benchmark product data, the Tribunal has determined that benchmark product 3 was the highest priced, on average, of the domestically produced benchmark products. Benchmark product 7 was the lowest priced, on average, of the domestically produced benchmark products. However, in respect of benchmark product 7, the Tribunal notes that this product represented a negligible proportion of domestic sales from domestic production. Accordingly, for the purposes of

---

<sup>133</sup> Exhibit NQ-2022-001-07.F (protected) at Table 38. The Tribunal also notes significant undercutting between the prices of subject goods and the producers' sales through its retail arm or through an e-commerce platform. However, these sales represent a negligible portion of the domestic producers' sales.

<sup>134</sup> Exhibit NQ-2022-001-07.F (protected) at Table 38.

<sup>135</sup> *Ibid.* at Table 42.

<sup>136</sup> *Ibid.* at Table 40.

<sup>137</sup> *Ibid.* at tables 49–50; Exhibit NQ-2022-001-06.F at Table 53.

<sup>138</sup> Exhibit NQ-2022-001-A-08 (protected) at 9–11.

the Tribunal's analysis of undercutting in respect of the value segment, the Tribunal will use benchmark product 10, which was the second lowest priced, on average, among all the benchmark products.<sup>139</sup>

[106] For its undercutting analysis, the Tribunal has compared the benchmark pricing of domestic sales from domestic production to importers' import purchase prices, given the number of retailer-importers and low number of distributors. With respect to benchmark product 3, undercutting by the subject goods for this benchmark product ranged from approximately 54 to 66 percent. With respect to benchmark product 10, undercutting by the subject goods ranged from approximately 6 to 32 percent. The Tribunal finds that the foregoing analysis indicates that the subject goods undercut domestically produced goods in both the domestic industry's value and luxury segments.

[107] There was only one common account reported among the domestic industry's sales of domestically produced like goods and importers' sales of subject imports; this account represented a significant share of the Canadian mattress industry.<sup>140</sup> Undercutting by the subject goods at this account was seen in most instances where comparisons with prices of the like goods were possible with the data submitted to the Tribunal.<sup>141</sup>

[108] In addition to the evidence of undercutting described above, Restwell submitted several injury allegations citing price undercutting by the subject goods resulting in substantial lost revenue as a result of the sales lost to lower-priced subject goods.<sup>142</sup> While the Tribunal does not place much weight on these allegations, the Tribunal finds that they do provide some support for, and are consistent with, the price undercutting already demonstrated by the pricing data in the investigation report. In light of the foregoing, the Tribunal concludes that the subject goods consistently and significantly undercut the prices of the like goods over the POI.

### Price depression

[109] The average selling prices of domestically produced like goods increased by 3 percent in 2019, decreased by 1 percent in 2020 and increased by 11 percent in 2021. In interim 2022, the average selling prices of like goods increased by 6 percent from interim 2021. With respect to the subject goods, after average prices increased by 17 percent in 2019, they decreased by 9 percent in both 2020 and 2021. In interim 2022, average prices of the subject goods decreased by 11 percent from interim 2021.<sup>143</sup>

[110] Pricing trends similar to those observed in the aggregate market are generally seen at the retailer trade level. For sales to retailers, which represent the majority of the domestic industry's sales, the prices of the like goods increased by 4 percent in 2019, decreased by 1 percent in 2020 and then increased again by 12 percent in 2021. Selling prices of like goods in interim 2022 increased by 3 percent as compared with interim 2021. Meanwhile, average prices of the subject goods increased in 2019 and decreased in each period of the POI thereafter.<sup>144</sup>

---

<sup>139</sup> Exhibit NQ-2022-001-07.F (protected) at tables 48, 60–70.

<sup>140</sup> *Ibid.* at Schedule 21, Table 20.

<sup>141</sup> *Ibid.* at Table 71.

<sup>142</sup> Exhibit NQ-2022-001-A-04 (protected) at paras. 65–78; Exhibit NQ-2022-001-A-03 at para. 74.

<sup>143</sup> Exhibit NQ-2022-001-07.F (protected) at Table 39.

<sup>144</sup> *Ibid.* at Table 42.



[111] With respect to the distributor trade level, selling prices of the like goods remained stable in 2019 and then decreased by 2 percent in 2020. This was followed by an increase of 9 percent in 2021. Interim 2022 saw a 14 percent increase in average selling prices of like goods as compared to interim 2021. With the exception of an increase in prices in 2019, similar price trends were seen with respect to the subject goods.<sup>145</sup>

[112] The pricing data, at both trade levels and in the aggregate, demonstrate a price decrease of domestically produced like goods between 2019 and 2020. However, the Tribunal notes that the domestic industry also saw declines in its per-unit cost of goods sold (COGS) that were greater than the decline in per-unit net sales value.<sup>146</sup>

[113] The Domestic Producers submitted that price depression could be more clearly observed in the pricing analysis for benchmark products beginning in 2019. Using 2019 as the base period and comparing those benchmark prices to the same benchmark prices at the end of 2020, 2021 and the beginning of 2022, the Domestic Producers argued that there were several instances where the prices of like goods decreased in the face of low-priced imports.<sup>147</sup>

[114] However, based on the benchmark pricing data in the investigation report, the Tribunal is not convinced that there is any discernible trend with respect to declines in the domestic industry selling prices of benchmark products. Moreover, in approximately half of the instances where a decline in the unit selling price of the domestically produced goods was seen, the unit value of the subject goods increased.<sup>148</sup> Considering this, the Tribunal is not persuaded that the evidence clearly supports the existence of price depression that can be attributed to the subject goods from the benchmark product data.

[115] The Tribunal notes from the Domestic Producers' submissions that prices of domestically produced like goods may have been skewed higher due to the domestic industry's shift to the production and sales of higher-value mattresses. In other words, the shift to higher-value mattresses, which, as discussed above, the Domestic Producers submitted was due to pervasive undercutting of the like goods by the subject goods, may mask the price depression.<sup>149</sup> At the aggregate level, the inclusion of higher-value products in the product mix skews average prices higher.

[116] Overall, the Tribunal finds that prices of domestically produced like goods generally increased over the POI and, while there was a decrease in prices at the aggregate level in 2020, it was not significant by any measure. The Tribunal therefore concludes that the subject goods did not significantly depress the prices of the like goods over the POI.

---

<sup>145</sup> *Ibid.* at Table 41.

<sup>146</sup> *Ibid.* at Table 73.

<sup>147</sup> Exhibit NQ-2022-001-A-02 (protected) at para. 89.

<sup>148</sup> Exhibit NQ-2022-001-07.F (protected) at tables 60–70.

<sup>149</sup> Exhibit NQ-2022-001-B-05 at para. 30.

### Price suppression

[117] In order to assess whether the subject goods have suppressed the prices of domestically produced like goods, the Tribunal typically compares the domestic industry's average unit COGS or cost of goods manufactured with its average unit selling values in the domestic market to determine whether the domestic industry has been able to increase selling prices in line with increases in costs.<sup>150</sup>

[118] The domestic industry's average COGS on a dollars-per-unit basis increased in 2019 from 2018 but decreased to a lesser extent in 2020 from 2019. The largest increases in COGS, however, on a per-unit basis occurred in 2021 from 2020 and in interim 2022 from interim 2021. The rising cost of direct materials used per unit over the POI drove the increase in overall COGS.<sup>151</sup> The evidence indicates that there were significant increases in ocean freight costs in 2021 as well as in costs of key inputs such as polyurethanes and innerspring inputs with reference to data from the Independent Commodity Intelligence Services and American Metal Market data. Inflation also contributed to rising costs.<sup>152</sup>

[119] The average unit net sales values for those domestic producers that provided their COGS increased over the POI. It is only in interim 2022 that the increase in COGS from interim 2021 was not matched by an equivalent increase in selling prices. This is also reflected in the decrease in gross margins in interim 2022 from interim 2021.<sup>153</sup>

[120] However, the Tribunal finds that the apparent price suppression seen from comparing interim 2022 with interim 2021 is not significant and that, in the context of this case, it is not appropriate to compare changes in net sales value and cost of goods in interim 2022 with interim 2021.

[121] In this regard, the Tribunal notes that, firstly, price suppression that can only be seen in a single quarter is generally not of a sufficient duration to be significant. Secondly, the evidence indicates that interim 2021 is a period in which the domestic industry was not significantly affected by the subject goods. The domestic industry's per-unit net sales value is notably higher in interim 2021 than in 2018 and every other period in the POI, except for interim 2022. However, in interim 2021, the domestic industry's per-unit gross margins, as well as its gross margins as a percent share of net sales value, were also higher than in 2018.<sup>154</sup> Based on the foregoing, the Tribunal is of the view that it would be inappropriate to use as a comparator the per-unit net sales value from interim 2021, a period which appears unaffected by the subject goods, to assess the magnitude of the increase in the domestic industry's net sales value in interim 2022.

[122] The Domestic Producers also argued that, in this case, there was price suppression insofar as price increases for the like goods that would have otherwise likely occurred have been prevented by the prices of the subject goods. In this regard, the Domestic Producers further noted that, in *UDS*, the Tribunal acknowledged that price suppression as described in paragraph 37.1(1)(b) of the Regulations is not limited to situations where an increase in costs is not met by an equivalent increase in selling prices and that, unlike in that case, there is evidence of the level of net income that the

<sup>150</sup> *Heavy Plate* (5 February 2021), NQ-2020-001 (CITT) at para. 118.

<sup>151</sup> Exhibit NQ-2022-001-07.F (protected) at Table 72.

<sup>152</sup> Exhibit NQ-2022-001-A-03 at paras. 17–18; Exhibit NQ-2022-001-A-04 (protected) at para. 18; Exhibit NQ-2022-001-B-04 (protected) at 11, 12, 18–24; Exhibit NQ-2022-001-B-03 (protected) at paras. 36–38.

<sup>153</sup> Exhibit NQ-2022-001-07.F (protected) at tables 72–73.

<sup>154</sup> *Ibid.* at tables 72, 73.

domestic industry was earning prior to the POI or should be earning above and beyond the level it was earning at the beginning of the POI.<sup>155</sup>

[123] In this regard, Restwell provided its historical earnings before interest, taxes, depreciation and amortization (EBITDA) from 2008 to 2018, which, in its view, demonstrated that it was able to achieve greater margins prior to the subject goods becoming such a significant part of the Canadian market.<sup>156</sup> Tom Allen also described SSB's target EBITDA during the *in camera* portion of the hearing.<sup>157</sup>

[124] In considering the above arguments, the Tribunal notes at the outset that only the Domestic Producers (i.e. only 2 of the 10 domestic producers comprising the domestic industry for the purposes of the Tribunal's injury analysis) have supplied evidence and, in fact, only 1 domestic producer, Restwell, has provided more specific details with respect to margins earned prior to the POI. The Tribunal is therefore of the view that this evidence is not sufficiently representative of the domestic industry's financial performance during this period. Nevertheless, the Tribunal has considered the evidence submitted by Restwell on its merits.

[125] Restwell's evidence with respect to its EBITDA shows declining profitability in the years prior to the POI, but there is no indication of the specific factors that would have impacted its EBITDA, such as changes in net sales value, costs to produce the like goods, overhead and other expenses. For the Tribunal to assess injury, it must be able to determine that, based on positive evidence, the subject goods themselves caused the decline seen in the domestic industry's financial performance. The evidence provided by the Domestic Producers is insufficient in this regard. The challenge of bringing forward allegations of injury in respect of the subject goods in relation to a period prior to the POI has been addressed previously by this Tribunal. In *Decorative Plywood*, the Tribunal explained that, with respect to any analysis of injury sustained by the domestic industry in a period prior to the POI, it does not have the means to establish whether any injury alleged to have occurred during this period was material and whether it was caused by the dumping and subsidizing of the subject goods. The Tribunal does not have information with respect to the volumes and prices of the subject goods and like goods, as well as with respect to the state of the domestic industry, prior to the POI.<sup>158</sup>

[126] That said, the Tribunal has also considered the more fundamental issue raised by the Domestic Producers position that prices of the like goods during the POI can be viewed as being suppressed on the basis that domestic prices of the like goods were allegedly higher sometime before the POI. This would require the Tribunal to accept as injury during the POI what is essentially the *continuing effects* of price depression (a decline in prices) or price suppression (inability to raise prices in the face of rising costs) that manifested itself prior to the POI. The Tribunal is not convinced that it can accept this as injury during the POI given the requirement under SIMA to establish, on the basis of an objective examination of positive evidence, that the *dumping and*

---

<sup>155</sup> UDS at para. 194.

<sup>156</sup> Exhibit NQ-2022-001-A-06 (protected) at paras. 11–12.

<sup>157</sup> *Transcript of In Camera Hearing* at 15–18.

<sup>158</sup> *Decorative Plywood* at paras. 99–102.

*subsidizing* of the goods have caused injury.<sup>159</sup> As such, even if the Tribunal could determine based on the evidence that there had been injury prior to the POI and that this injury *continued* throughout the POI, it could not establish that any such injury was *caused* by the dumping and subsidizing of the subject goods, in and of themselves, as opposed to any other factor that may, at the same time, have had an influence on the domestic industry.<sup>160</sup>

[127] In light of the foregoing, the Tribunal finds that the subject goods did not significantly suppress the prices of the like goods.

### **Resulting impact on the domestic industry**

[128] Paragraph 37.1(1)(c) of the Regulations requires the Tribunal to 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.<sup>161</sup> These impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry.<sup>162</sup> Paragraph 37.1(3)(a) requires the Tribunal to consider whether a causal relationship exists between the dumping or subsidizing of the goods and the injury 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.

[129] The Domestic Producers submitted that the domestic industry has suffered severe losses in sales volume, market share, production output, capacity utilization, employment and operational facilities. They argued that these losses were caused by massive price undercutting by subject

---

<sup>159</sup> See subsection 3(1) and paragraph 42(1)(a) of SIMA. In accordance with subsection 37.1(3) of the Regulations, the existence of a *causal* relationship between the dumping and subsidizing of the goods and the injury is established on the basis of the factors listed in subsection 37.1(1), which include the volume of the dumped or subsidized goods, their effect on the price of like goods in the domestic market, and their resulting impact on the state of the domestic industry, as distinguished from the effects of any other factors that at the same time may be affecting the domestic industry. These factors are assessed over the POI with the end of this period coinciding with the CBSA's period of investigation. This approach allows the Tribunal to assess changes in the volume of imports of subject goods, in the prices of like goods, as well as in the state of the domestic industry, over the POI, which allows for the establishment of the *requisite* causal relationship between the dumping and subsidizing of the goods and the injury.

<sup>160</sup> *Decorative Plywood* at para. 102.

<sup>161</sup> Such factors and indices include (i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity; (ii) any actual or potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital; (ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods; and (iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support program.

<sup>162</sup> Paragraph 37.1(3)(b) of the Regulations directs the Tribunal to consider whether any factors other than dumping or subsidizing of the subject goods have caused injury. The factors which are prescribed in this regard are (i) the volumes and prices of imports of like goods that are not dumped or subsidized; (ii) a contraction in demand for the goods or like goods; (iii) any change in the pattern of consumption of the goods or like goods; (iv) trade-restrictive practices of, and competition between, foreign and domestic producers; (v) developments in technology; (vi) the export performance and productivity of the domestic industry in respect of like goods; and (vii) any other factors that are relevant in the circumstances.

imports in competition for sales with domestically produced like goods as well as price depression and price suppression.

[130] As discussed above, the Tribunal did not find that the subject goods significantly depressed or suppressed the prices of domestically produced like goods over the POI. However, the Tribunal agrees with the Domestic Producers that, in light of the increasing volumes of the subject goods over the POI, which have significantly undercut the prices of like goods, the domestic industry has experienced significant volume effects as seen in the form of substantial lost sales and market share to the subject goods. These losses have also manifested in significant closures of facilities alongside substantial reductions in the domestic industry's production output, capacity utilization and employment.

#### Sales and market share

[131] The total Canadian mattress market expanded in size over the POI. After a reduction between 2018 and 2019 of 3 percent, the total Canadian market expanded between 2019 and 2020 by 3 percent before increasing by 6 percent between 2020 and 2021. Interim 2022 saw an increase in market volume of 8 percent over interim 2021.<sup>163</sup>

[132] In comparison to the expansion of the Canadian market, the domestic industry did not see similar growth over the POI. Domestic sales from domestic production decreased by 8 percent between 2018 and 2019 and saw a further 1 percent decline between 2019 and 2020. Only a marginal increase of sales from domestic production was seen between 2020 and 2021. The domestic industry's sales volumes in interim 2022 was 6 percent higher than in interim 2021. However, this growth was not equivalent to the rate that the market expanded over the same period.<sup>164</sup>

[133] By comparison, sales of the subject goods by importers increased substantially over the POI, systematically outpacing the growth of the market. Between 2018 and 2019, sales of the subject goods increased by 19 percent. Following a decline of 3 percent between 2019 and 2020, sales of the subject goods increased by 10 percent between 2020 and 2021. Considering the volume of sales in interim 2021 as compared to the volume for full year 2021, it is evident that sales of subject goods increased significantly through 2021. In interim 2022, sales of the subject goods increased by 90 percent as compared to interim 2021.<sup>165</sup>

[134] Trends at the retailer trade level were similar to those that were seen at the aggregate market level. Sales at this trade level, which represented the majority of the domestic industry's total sales, were the primary driver of trends observed at the aggregate market described above.<sup>166</sup>

[135] At the distributor/wholesaler/buying group trade level, which represented a much smaller proportion of the domestic industry's sales, the domestic industry saw an increase in domestic sales from domestic production over the POI, with a slight decline in interim 2022 over interim 2021.<sup>167</sup>

---

<sup>163</sup> Exhibit NQ-2022-001-07.F (protected) at tables 20, 21.

<sup>164</sup> Exhibit NQ-2022-001-06.F at tables 20, 21; Exhibit NQ-2022-001-07.F (protected) at tables 20, 21.

<sup>165</sup> Exhibit NQ-2022-001-07.F (protected) at tables 20, 21. The aggregate market volume tables in the investigation report include distributor sales to retailers as well as import purchases by retailers.

<sup>166</sup> Exhibit NQ-2022-001-07.F (protected) at tables 20, 21, 27, 28.

<sup>167</sup> *Ibid.* at tables 24, 25, 30. No sales of imports by importers at the institution/hospitality/commercial and furniture manufacturing trade levels were reported.

Meanwhile, sales of the subject goods at this trade level saw an increase in 2019, followed by decreases in 2020 and 2021. Interim 2022 saw an increase over interim 2021.

[136] The domestic industry's underperformance is clearly reflected in its market share over the POI which declined year over year between 2018 and 2021 and in interim 2022, for an overall decline of 12 percentage points.<sup>168</sup> During the same period of time, sales of the subject goods by importers increased by 12 percentage points.<sup>169</sup> These data therefore show a clear correlation between the domestic industry's significant loss in market share over the POI and the concurrent and increasing presence of the subject goods in the Canadian market.

[137] Share of sales at the retailer trade levels follows the same trends seen at the aggregate level, with the domestic industry share dropping 11 percentage points and the subject goods increasing by 12 percentage points over the POI.<sup>170</sup>

[138] At the distributor/wholesaler/buying group trade level, over the POI, the domestic industry's share of sales increased by 2 percentage points, while the subject goods decreased by the same amount.<sup>171</sup>

[139] In terms of non-subject imports, sales of imports from the U.S. by importers decreased in 2019 before increasing in 2020 and 2021 to volumes surpassing those seen in 2018. Sales of non-subject imports from the U.S. also decreased in interim 2022 as compared with interim 2021. However, the Tribunal notes that these results are less reliable due to the overestimation issues affecting 2021 volumes of U.S. imports as discussed above.<sup>172</sup>

[140] In considering whether imports from the U.S. contributed to the domestic industry's declining sales performance, the Tribunal considers trends in market share over the POI to be more indicative. In this regard, over the POI, the market share of imports from the U.S. was relatively flat, only increasing by 2 percentage points when comparing 2018 to interim 2022.<sup>173</sup> Moreover, as noted above, with the exception of interim 2021, prices of imports from the U.S. did not undercut the prices of domestically produced mattresses over the POI.<sup>174</sup> Based on the foregoing, the Tribunal does not attribute injury to the domestic industry from imports from the U.S.

[141] The Tribunal also does not find that non-subject imports from other countries excluding the U.S. adversely impacted sales of domestically produced like goods. In this regard, the Tribunal notes that the market share of imports from other countries was relatively flat, only decreasing by 2 percentage points between 2018 and interim 2022.<sup>175</sup>

[142] Looking at the market share of all non-subject imports from the U.S. and other countries, there were no changes when comparing 2018 to interim 2022. Given the much larger increase seen in

---

<sup>168</sup> Exhibit NQ-2022-001-07.F (protected) at tables 20–22.

<sup>169</sup> *Ibid.* at Table 22.

<sup>170</sup> *Ibid.* at Table 29. The retailer trade level market volume table includes distributors sales to retailers as well as import purchases by retailers.

<sup>171</sup> *Ibid.* at Table 26.

<sup>172</sup> *Ibid.* at tables 20, 21.

<sup>173</sup> *Ibid.* at Table 22.

<sup>174</sup> *Ibid.* at Table 38.

<sup>175</sup> *Ibid.* at Table 22.

the subject goods' market share over the POI, as discussed above, the Tribunal finds that the main contributor to the domestic industry's declining sales performance was the subject goods.<sup>176</sup>

[143] That said, the domestic industry's sales performance in 2020, a period in which, as described above, saw declines in both sales volume and market share, was undoubtedly impacted by the COVID-19 pandemic. In this regard, Troy Zanatta described in his witness statement that, during the first half of 2020, pandemic-related restrictions led to global supply shortages resulting in retailers delaying or cancelling orders for mattresses. Sales were also impacted by tightening consumer spending due to economic uncertainty. However, the evidence also indicates that, by the second half of 2020, demand for mattresses began to increase with greater consumer spending and home purchases, and the domestic industry was unable to take full advantage due to the presence of the subject goods from the second half of 2020 into 2021. Considering the foregoing, while the Tribunal acknowledges that the pandemic had some impact on the domestic industry's sales performance in 2020, the data confirms that the subject goods were able to capture market share from the domestic industry in 2020 and in 2021.

[144] In light of the foregoing, the Tribunal finds that the evidence demonstrates that the domestic industry lost domestic sales and significant market share to the subject goods over the POI.

#### Financial performance

[145] In terms of domestic sales, on a dollars-per-unit basis, the domestic industry's gross margins increased each year between 2018 and 2021, then remained generally flat through interim 2022. The domestic industry's per-unit net income also increased in each year between 2018 and 2021, with the exception of 2019. The decrease in 2019 was attributable to increases in both general, selling and administrative expenses as well as financial expenses. In interim 2022, the per-unit net income also saw a decrease from 2021 levels, which can be attributed to a significant increase in financial expenses. However, given that many factors can have an impact on general, selling, administrative and financial expenses, the Tribunal will focus on the domestic industry's performance at the gross margin level.<sup>177</sup>

[146] On an aggregate basis, the domestic industry's gross margin from domestic sales decreased in 2019 but increased both in 2020 and 2021, with the latest increase resulting in a gross margin that surpassed that from 2018. However, the domestic industry's gross margin declined significantly in interim 2022, when compared with interim 2021 and when annualized and compared with full year 2021 and even full year 2019, which was the lowest of the POI.<sup>178</sup>

[147] Based on the above analysis, the domestic industry's financial performance deteriorated at the total gross margin level in interim 2022. However, given the domestic industry's continual loss of market share to the subject goods throughout the POI, the actual decline in its performance at that level is much more significant than it appears. Indeed, when taking into account the volume effects

---

<sup>176</sup> *Ibid.*

<sup>177</sup> *Ibid.* at Table 72. The greater or lesser absorption of amounts like general, selling, administrative and financial expenses often depend on the industry's production of other goods, business decisions and/or commercial environments unrelated to its production of like goods, and liabilities that may have been assumed prior to the POI. See *UDS* at para. 206, note 204.

<sup>178</sup> Exhibit NQ-2022-001-07.F (protected) at Table 72.

of the domestic industry's lost sales and loss in market share over the POI, as explained below, it is clear that there has been a significant loss in total gross margin throughout the POI.

[148] To quantify the domestic industry's lost sales attributable to its loss in market share to the subject goods, the Tribunal first calculated the share of the market held by the eight domestic producers that make up the domestic industry in the financial results tables in the investigation report for 2018 and then calculated the net sales volume for each subsequent period of the POI based on that market share. With this adjustment, the net sales volume represents the volume of sales that the domestic industry would have made had it maintained its 2018 market share over the POI. From this, the Tribunal was able to calculate the losses in the aggregate net sales volume, net sales value, and gross margin based on the difference between the adjusted net sales volume, net sales value, and gross margin and the actual values as they are reflected in Table 72 of the investigation report. Based on this analysis, but for the dumping and subsidizing of the subject goods, the domestic industry could have potentially sold approximately 700,000 additional units over the POI, which amounts to a loss of approximately \$50 million gross margin.<sup>179</sup>

[149] The Tribunal's analysis above is consistent with evidence provided by Denis Jones with respect to SSB's lost volume and revenue with key accounts as well as the losses described by Troy Zanatta's description of account-specific allegations attributed to price undercutting.<sup>180</sup>

#### Other performance indicators

[150] Trends in production for domestic sales, which represented the most significant share of total production, largely followed trends in domestic sales as discussed above. Production for domestic sales decreased year over year by 12 percent in 2019 and 4 percent in 2020. This was followed by a 1 percent increase in 2021 and 5 percent increase in interim 2022 as compared to interim 2021. The domestic industry's total production decreased by 11 percent in 2019, increased by 3 percent in 2020 and decreased again by 4 percent in 2021, with a further 13 percent decline in interim 2022 as compared with interim 2021. The decreases seen in total production in 2021 and interim 2022 are attributable to the decrease in export sales and production as discussed further below.<sup>181</sup>

[151] Practical plant capacity decreased in every period of the POI. Specifically, practical plant capacity decreased by 1 percent in each year over the POI, with a 7 percent drop in interim 2022 compared to interim 2021. However, trends in capacity utilization rates have generally mirrored the domestic industry's production trends. Capacity utilization rate for domestic sales dropped from 47 percent to 41 percent between 2018 and 2021, and in interim 2022 it increased slightly to 29 percent compared to 26 percent in interim 2021.<sup>182</sup>

[152] The reduction in practical plant capacity is largely caused by numerous plant closures during the POI from the domestic producers constituting the domestic industry in this case. Restwell closed its Regina plant in 2018.<sup>183</sup> SSB also eliminated capacity in late 2019 with its closure of its Winnipeg plant and, following this, SSB closed its Calgary distribution centre and Mississauga headquarters.

---

<sup>179</sup> *Ibid.* at tables 20, 72, 73.

<sup>180</sup> Exhibit NQ-2022-001-A-04 (protected) at paras. 65–78; Exhibit NQ-2022-001-10.02A (protected) at 23; Exhibit NQ-2022-001-B-06 (protected) at paras. 54, 56, 60, 61; Exhibit NQ-2022-001-A-02 (protected) at paras. 78, 79.

<sup>181</sup> Exhibit NQ-2022-001-06.F at tables 77, 78; Exhibit NQ-2022-001-07.F (protected) at tables 77, 78.

<sup>182</sup> Exhibit NQ-2022-001-06.F at tables 77, 78; Exhibit NQ-2022-001-07.F (protected) at tables 77, 78.

<sup>183</sup> Exhibit NQ-2022-001-A-03 at paras. 50–52; *Transcript of Public Hearing* at 131.



This was followed by the closure of its production facilities in Montréal (Saint-Leonard) in April 2022 and in Vancouver in June 2022.<sup>184</sup> Kingsdown also closed its facility in Burnaby in June 2020.<sup>185</sup>

[153] The data indicate that the domestic industry's direct employment levels have consistently decreased in each period of the POI, with a total contraction of the total direct workforce of 24 percent between 2018 and 2021.<sup>186</sup> For SSB alone, Tom Allen noted that its employees have been reduced by half, from close to 1,000 employees to under 500.<sup>187</sup> Similar declines were seen in hours worked for direct employment (17 percent between 2018 and 2021), with the exception of an increase in hours in interim 2022, which showed a higher number of hours worked compared to interim 2021.<sup>188</sup> The reduction in hours was also confirmed by the testimony of Thomas DeSousa, who discussed the issue of hours in the context of employer funding into the employee benefit plans.<sup>189</sup> Total wages paid to those directly employed in the production of domestic mattresses decreased in 2019 and 2020. While there was a slight increase in 2021, total wages remained well below levels seen in 2018 (total wages paid decreased by 21 percent). The total wages paid in interim 2022 was higher compared to interim 2021.<sup>190</sup> According to Meg Gingrich of the USW, in some instances, workers may be given a low base salary with the rest of the wages tied to production levels. As such, plant workers see their take-home pay directly impacted by a decrease in production levels.<sup>191</sup>

[154] Investments made by domestic producers declined in every period of the POI, with the 2021 level representing only 18 percent of the level expended in 2018.<sup>192</sup> Negative effects on the domestic industry's return on investments were noted by half of the domestic producers.<sup>193</sup> The lack of return on investments was addressed more particularly by Troy Zanatta, who described in his witness statement that, despite Restwell's investments in MiB equipment (i.e. equipment to compress and roll mattresses into a box) and marketing of both innerspring and foam MiBs, it has not seen

<sup>184</sup> Exhibit NQ-2022-001-B-03 at paras. 25, 26; *Transcript of Public Hearing* at 17.

<sup>185</sup> Exhibit NQ-2022-001-09.05 at 7. Additionally, the Tribunal notes other evidence with respect to the reduction of production capacity by other domestic producers that did not respond to the Tribunal's questionnaires. For example, a plant closure relating to Marshall Ventilated Toronto (2020) and Sleep Factory in Brampton in November 2020. *Transcript of Public Hearing* at 99, 100, 114–115.

<sup>186</sup> Exhibit NQ-2022-001-07.F (protected) at tables 77, 78. As noted by the USW, certain SIMA provisions were amended by the *Budget Implementation Act*, 2022, No. 1, S.C. 2022, c. 10 (BIA 2022), which came into force on June 23, 2022. The USW acknowledged that the recent amendments made to SIMA, which expanded the injury assessment to include impacts on workers as well as the regulatory changes to the Regulations, did not apply to these proceedings as per the transitory provisions of the BIA 2022 (see Exhibit NQ-2022-001-D-01 at para. 168). Accordingly, the Tribunal's present analysis of injury does not take into account these amendments.

<sup>187</sup> *Transcript of Public Hearing* at 17.

<sup>188</sup> Exhibit NQ-2022-001-07.F (protected) at tables 77, 78.

<sup>189</sup> *Transcript of Public Hearing* at 99.

<sup>190</sup> Exhibit NQ-2022-001-07.F (protected) at tables 78, 79. The USW also submitted that injury from the subject goods extended to employee collective bargaining rights, pension plans, benefits, safety measures, as well as layoff protections and other benefits (see Exhibit NQ-2022-001-D-01 at paras. 158–172). 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>191</sup> *Transcript of Public Hearing* at 92, 93.

<sup>192</sup> Exhibit NQ-2022-001-07.F (protected) at Table 77.

<sup>193</sup> *Ibid.* at Table 82.

sufficient returns on the equipment purchased due to the firm's inability to compete with the subject goods. Furthermore, based on its past financial performance, Restwell will no longer be investing in its equipment for producing pocket coil innersprings. Consequently, Restwell will be ceasing its production of pocket coil innersprings, opting instead to import pocket coils from offshore sources to reduce costs.<sup>194</sup>

[155] The Tribunal does not find the evidence persuasive that any of the following performance indicators were impacted negatively over the POI: productivity indicators, inventory levels, the domestic industry's growth, ability to raise capital and cash flow.<sup>195</sup>

#### Magnitude of the margin of dumping and amount of subsidy

[156] The margins of dumping calculated by the CBSA for Chinese exporters in respect of which the dumping investigation was not terminated ranged from 3.7 to 146.6 percent, and the amounts of subsidy for those exporters in respect of which the subsidy investigation was not terminated ranged from 1.2 to 24.1 percent.<sup>196</sup> While this factor generally supports the view that the subject goods had a negative impact on the domestic industry, the Tribunal does not consider that these margins of dumping and amounts of subsidy necessarily represent the level of the injurious effects caused by the actual prices in Canada of the subject goods during the POI. Accordingly, the Tribunal placed little weight on this factor in the present injury analysis.

#### Conclusion

[157] On the basis of the factors above, the Tribunal finds that the domestic industry suffered injury throughout the POI in the form of lost sales and market share, which, in turn, had a negative impact on domestic production, profitability, employment and investments.

#### **Other factors and causation**

[158] As stated earlier, paragraph 37.1(3)(a) of the Regulations requires the Tribunal to consider whether a causal relationship exists between the dumping or subsidizing of the goods and the injury on the basis of the volume, the price effect and the impact on the domestic industry of the subject goods. To do so, the Tribunal must distinguish the impact of the subject goods from the impact of other factors also having a bearing on the state of the domestic industry.<sup>197</sup> In other words, the Tribunal must determine whether the subject goods, *in and of themselves*, caused injury to the domestic industry. The Tribunal cannot assume that the mere presence and availability of the subject goods in the Canadian market resulted in material injury to the domestic industry.<sup>198</sup>

[159] In this case, the domestic industry experienced injury in each period of the POI as a result of the significant price undercutting by the subject goods, which resulted in substantial losses in sales volume and market share. The injury resulting from the subject goods' lower prices was, in the Tribunal's view, exacerbated by the increased use of online e-commerce platforms by retailers which place higher priced domestically produced like goods lower down on pages, thereby significantly reducing their visibility to customers. The adverse volume effects caused by the subject goods in turn

<sup>194</sup> Exhibit NQ-2022-001-A-04 (protected) at paras. 47, 48; Exhibit NQ-2022-001-A-03 at paras. 47, 48.

<sup>195</sup> Exhibit NQ-2022-001-07.F (protected) at tables 77, 78, 82; *Transcript of In Camera Hearing* at 29.

<sup>196</sup> Exhibit NQ-2022-001-04 at 24–25.

<sup>197</sup> See paragraph 37.1(3)(b) of the Regulations.

<sup>198</sup> *Silicon Metal* (19 November 2013), NQ-2013-003 (CITT) at para. 109.

led to significant losses in profitability. To maintain margins, the domestic industry was forced to close several production facilities, as well as reduce output and employment. The data therefore support the allegations made by witnesses of the Domestic Producers that the decision to close facilities was driven by lost sales and revenue to the subject goods throughout the POI.<sup>199</sup>

[160] As discussed above, the COVID-19 pandemic in 2020 was another source of injury, at least in the earlier part of the year. Nevertheless, the Tribunal considers that the dumping and subsidizing of the subject goods were a direct cause of the injury suffered by the domestic industry in that year. As demand for mattresses began to improve into the second half of 2020 with increased pandemic-related consumer spending, as evidenced by the growth in the aggregate market in 2020 over 2019, the domestic industry was unable to take advantage of this growth, with its sales continuing to decline while the sales of subject goods remained stable. While U.S. imports also increased in 2020, they were priced significantly higher than domestically produced like goods in 2020, as well as in all other periods of the POI. Thus, the Tribunal sees no reasonable basis to attribute any injury suffered by the domestic industry to imports from the U.S.

[161] Another trend that can be observed over the POI has been the domestic industry's increasing production costs, which can be attributed to the rising cost of raw materials as well as the domestic industry's transition to producing more higher-value mattresses in its product mix. As discussed above, the Tribunal has found that there has been no significant price suppression in respect of the domestic industry's selling prices in the face of rising costs. Nevertheless, the Tribunal has considered the impact of the domestic industry's decision to move into a higher-value product mix.

[162] In the Tribunal's view, the transition to higher-value products was largely a defence strategy by the domestic industry, precipitated by the increasing presence of lower-priced subject goods. The evidence over the POI does not indicate, on balance, that the domestic industry's transition to a higher-value product mix has improved the domestic industry's financial performance. As noted by Denis Jones, the demand in Canada for core and luxury mattresses is not sufficient.<sup>200</sup> That said, in the Tribunal's view, the domestic industry did not injure itself by transitioning to a higher-value product mix.

[163] The key source of injury to the domestic industry over the POI has been the increasing presence of lower-priced subject goods, which, according to the evidence, has dominated the value product segment.<sup>201</sup> Although there has been a trend among domestic producers to move to a higher-value product mix, as explained in Tom Allen's written statement, the value segment remains critical to maintaining production throughput to level off per unit costs.<sup>202</sup> As such, sales in the value segment continue to be important to the domestic industry and, as seen in the Tribunal's pricing analysis of benchmark product 10 above, the subject goods significantly undercut prices of lower-value domestically produced like goods.

[164] From the testimony of the Domestic Producers as well as from buying groups discussed above, it is evident that lower-priced subject goods in the value segment can also negatively impact sales of domestically produced like goods in higher-value categories. As explained by Troy Zanatta,

<sup>199</sup> Exhibit NQ-2022-001-A-05 at para. 14; Exhibit NQ-2022-001-A-06 (protected) at para. 14; Exhibit NQ-2022-001-B-04 (protected) at para. 26; Exhibit NQ-2022-001-B-05 at para. 5.

<sup>200</sup> Exhibit NQ-2022-001-B-05 at para. 30. See also *Transcript of Public Hearing* at 74.

<sup>201</sup> *Transcript of Public Hearing* at 136, 195, 250, 360.

<sup>202</sup> Exhibit NQ-2022-001-B-03 at paras. 13, 14.

as a result of the low prices of subject imports, retailers have “an unreal expectation ... that *all* mattresses should be priced that low by domestic manufacturers” [emphasis added].<sup>203</sup>

[165] Furthermore, the evidence indicates that sales of the subject goods have not been limited to the value segment of the domestic market. Rather, the subject goods compete outside the value segment and in the higher-value core and luxury categories, also causing the domestic industry to lose sales in this market segment.<sup>204</sup> In this regard, the Tribunal’s pricing analysis of benchmark product 3 above shows that the subject goods have significantly undercut prices of higher-value domestically produced mattresses.

[166] The Tribunal also acknowledges the presence of intra-industry competition for sales among domestic producers as noted by Stewart Schaefer during the hearing.<sup>205</sup> Although intra-industry competition can lead domestic producers to lose sales to each other, the Tribunal has found that the domestic industry, as a whole, suffered injury over the POI mainly in the form of lost sales and market share. Intra-industry competition therefore would not, in this case, change the market share held by the domestic industry relative to that held by the subject goods.

[167] Finally, the Tribunal addresses the issue of whether injury to the domestic industry can be attributed to its performance in relation to export sales. The evidence indicates that, over the POI, export sales, relative to domestic sales, contributed a small proportion of the domestic industry’s total net sales.<sup>206</sup> In this context, export sales volumes decreased in 2019, increased in 2020, but decreased again in 2021 to return to the level seen in 2018. Export sales volumes in interim 2022 decreased significantly as compared to levels in interim 2021. The domestic industry’s production for export sales generally mirrored the changes seen in export sales volumes.<sup>207</sup> These results did not amount to injury to the domestic industry’s financial performance, as per unit gross margins for export sales generally remained steady over the POI, with an increase seen in interim 2022 over interim 2021. Per-unit net income increased in each period of the POI, except for in 2021 where it remained constant at 2020 levels. In terms of total gross margins, after a decrease in 2019, there were successive increases in 2020 and 2021, resulting in a margin in 2021 that almost reached that of 2018. In interim 2022, the domestic industry’s total gross margin declined slightly as compared to interim 2021, but, when annualized, surpassed all prior full years of the POI.<sup>208</sup> Overall, the foregoing suggest that no injury can be attributed to the domestic industry’s export sales performance.

[168] Considering the above, the Tribunal sees no reason that would prevent it from attributing the injury suffered by the domestic industry over the POI to the dumping and subsidizing of the subject goods.

### Materiality

[169] 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 subsection 2(1) of SIMA. SIMA does not define the term “material”. However, both the extent of injury during the relevant

<sup>203</sup> *Transcript of Public Hearing* at 136, 137.

<sup>204</sup> Exhibit NQ-2022-001-B-05 at paras. 17, 32; *Transcript of Public Hearing* at 53, 54, 56, 250, 251.

<sup>205</sup> *Transcript of Public Hearing* at 426.

<sup>206</sup> Exhibit NQ-2022-001-07.F (protected) at Table 76.

<sup>207</sup> *Ibid.* at tables 74, 75, 78.

<sup>208</sup> *Ibid.* at tables 74, 75.

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”.<sup>209</sup>

[170] In the present case, the evidence indicates that the domestic industry suffered injury caused by the dumping and the subsidizing of the subject goods throughout the POI mainly in the form of lost sales and a decline in market share. The domestic industry’s injury became progressively worse over the POI, as evidenced in the continued drop in market share year over year, with the lowest full-year levels seen in 2021, which coincides with the period in which the highest volume of subject imports was observed as well as with the CBSA’s period of investigation, with continued loss in market share in interim 2022. As discussed above,<sup>210</sup> the Tribunal has determined that the domestic industry’s loss in market share resulted in cumulative gross margin losses of approximately \$50 million over the POI. The Tribunal is therefore satisfied that the extent, timing and duration of the injury in this case are such that it can be considered material.

[171] As the Tribunal has concluded that the dumping and subsidizing of the subject goods caused injury to the domestic industry, it does not need to address the question as to whether the subject goods are threatening to cause injury.

### Massive importations

[172] The USW submitted that the increase in import volumes of the subject goods in the period between the filing of the complaint by the USW and Restwell and the issuance of the CBSA’s preliminary determination warrants a finding of “massive importation” as contemplated in paragraph 42(1)(b) of SIMA. Restwell and SSB took no position with respect to massive importation.<sup>211</sup>

[173] In response to the USW’s submissions, the Tribunal collected data on subject import and inventory volumes on a quarterly basis for the period between January 1, 2020, and June 30, 2022, from five known importers and a domestic producer that imported subject goods during this period.<sup>212</sup> Additionally, as noted above, the Tribunal requested from the CBSA additional FIRM data in respect of the period between January 1, 2022, and June 30, 2022. The Tribunal also sought submissions from the parties as to the appropriate representative periods for comparison to be used by the Tribunal for its analysis required by paragraph 42(1)(b) of SIMA and section 37.11 of the Regulations.

---

<sup>209</sup> The Tribunal suggested, in *Certain Hot-rolled Carbon Steel Plate* (27 October 1997), NQ-97-001 (CITT) at 13, that the concept of materiality could entail both temporal and quantitative dimensions, “[h]owever, the Tribunal is of the view that, to date, the injury suffered by the industry has not been *for such a duration or to such an extent* as to constitute ‘material injury’ within the meaning of SIMA” [emphasis added].

<sup>210</sup> See paragraph 148 of these reasons.

<sup>211</sup> Provisions relating to massive importation were amended by the BIA 2022. Pursuant to the transitional provisions found in section 208 of the BIA 2022, these provisions, as they read before June 23, 2022, apply in the context of the present inquiry.

<sup>212</sup> Specifically, the Tribunal gathered information from the following importers: Primo International, Costco Wholesale Canada Ltd., Walmart Canada, Ikea Supply AG, Symbol Canada Furniture and Mattresses, as well as from DHP Furniture (a domestic producer). Exhibit NQ-2022-001-12.16.10; Exhibit NQ-2022-001-12.06.02; Exhibit NQ-2022-001-12.04.03; Exhibit NQ-2022-001-12.19.02; Exhibit NQ-2022-001-12.02.05; Exhibit NQ-2022-001-12.12.04.

Massive importation framework

[174] Paragraph 42(1)(b) of SIMA reads as follows:<sup>213</sup>

**42 (1)** The Tribunal, forthwith after receipt pursuant to subsection 38(3) of a notice of a preliminary determination, shall make inquiry with respect to such of the following matters as is appropriate in the circumstances:

...

(b) in the case of any dumped goods to which the preliminary determination applies, as to whether

(i) either

(A) there has occurred a considerable importation of like goods that were dumped, which dumping has caused injury or would have caused injury except for the application of anti-dumping measures, or

(B) the importer of the goods was or should have been aware that the exporter was practising dumping and that the dumping would cause injury, and

(ii) injury has been caused by reason of the fact that the dumped goods

(A) constitute a massive importation into Canada, or

(B) form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time,

and it appears necessary to the Tribunal that duty be assessed on the imported goods in order to prevent the recurrence of that injury; and

[175] Pursuant to section 5 of SIMA, if the Tribunal ultimately determines that there has been injury caused by a massive importation of the subject goods and that, in order to prevent the recurrence of the injury, it appears necessary to the Tribunal that duty be assessed on those goods, the subject goods that were released during the period of 90 days preceding the CBSA's preliminary determination will be retroactively subject to duties. As previously described by the Tribunal, the purpose of the massive importation provision is "to remedy circumstances involving imports from the subject countries that would prevent the domestic industry from benefiting from the finding of injury".<sup>214</sup> Simply put, it aims at ensuring that an injury finding is not impaired by any massive stockpiling of subject goods immediately prior to the CBSA's imposition of SIMA duties.

[176] The massive importation provision, as set out in paragraph 42(1)(b) of SIMA, contains three distinct conditions, all of which must be satisfied in order to make a finding of massive importation.

---

<sup>213</sup> The Tribunal notes that paragraph 42(1)(c) of SIMA governs massive importations of subsidized goods in respect of which a specification has been made under clause 41(1)(b)(ii)(C) (i.e. prohibited subsidy). In its final determination, the CBSA did not make a finding that the subsidized goods were prohibited under clause 41(1)(b)(ii)(C). In light of this, the Tribunal need not inquire into the issue of massive importation under paragraph 42(1)(c). See Exhibit NQ-2022-001-04.A at para. 229.

<sup>214</sup> *Certain Concrete Reinforcing Bar* (1 June 2001), NQ-2000-007 (CITT) [*Rebar*] at 21; *Laminate Flooring* (30 June 2005), NQ-2004-006 (CITT) [*Laminate Flooring*] at para. 163.

[177] Pursuant to subparagraph 42(1)(b)(i) of SIMA, the Tribunal must first determine whether “there has occurred a considerable importation of like goods that were dumped, which dumping has caused injury or would have caused injury except for the application of anti-dumping measures”, or whether “the importer of the goods was or should have been aware that the exporter was practising dumping and that the dumping would cause injury”. The only question that has been raised in this case in respect of the foregoing conditions is with respect to the import volumes of the subject goods; therefore, in its analysis below, the Tribunal will consider whether the condition of “considerable importation” has been met.<sup>215</sup> In this regard, the Tribunal will consider whether there has been such a considerable importation as part of its analysis of massive importation below in the same manner as it had previously done in *Rebar*.

[178] In the next part of the analysis, under subparagraph 42(1)(b)(ii) of SIMA, the Tribunal must determine whether injury has been caused by reason of the fact that the dumped goods either constitute a “massive importation” into Canada or “form part of a series of importations into Canada, which importations in the aggregate are massive and have occurred within a relatively short period of time”. As there was not a single importation of the subject goods that was massive in nature, the Tribunal will undertake to determine whether a series of importations of the subject goods into Canada are massive in the aggregate.

[179] Section 37.11 of the Regulations sets out the factors that may be considered in determining whether injury has been caused by a massive importation of dumped goods or a series of importations of such goods that are massive in the aggregate. It provides as follows:

**37.11** The following factors may be considered in determining whether injury has been caused by a massive importation of dumped or subsidized goods or, if the importations have occurred within a relatively short period of time and in the aggregate are massive, by a series of importations of dumped or subsidized goods:

(a) whether there has been an increase of at least 15% in the volume of imports of those goods from an individual country of export and in respect of which an investigation under the Act has not been terminated, during a representative period within the period beginning 90 days before the date of initiation of the investigation and ending on the date of the President’s preliminary determination under subsection 38(1) of the Act, relative to a preceding representative period of comparable duration within the period of investigation;

(b) whether the importer, producer or exporter of the dumped goods has a history of importing into Canada, or exporting into Canada, dumped goods in respect of which the Tribunal has made an order or finding that the dumping of the goods has caused injury or retardation or a threat of injury;

---

<sup>215</sup> In *Rebar* at 19–20, the Tribunal considered the volume of imports from the subject countries on a cumulative basis over the Canada Customs and Revenue Agency’s (the CBSA’s predecessor) period of investigation (an 8-month period). The Tribunal determined that imports of subject goods amounting to approximately 24 percent to 27 percent of the apparent annual domestic market was a considerable importation. In *Laminate Flooring* at paras. 159, 162, the Tribunal found that a 232 percent increase in imports *between comparable periods*, as well as a 60 percent increase in inventory volumes, constituted a considerable importation. In that case, the Tribunal undertook an analysis of import volumes in comparative periods as prescribed under paragraph 37.11(a) of the Regulations and assessed both “considerable importation” and “massive importation” based on this analysis.

- (c) whether the authorities of a country other than Canada have determined that injury to the domestic industry of that country was caused by the dumping of goods of the same description, or of similar goods, by an exporter of the goods that are under investigation;
- (d) whether there has been a significant increase in the volume of domestic inventories of the dumped or subsidized goods within a relatively short period of time; and
- (e) any other factor that is relevant in the circumstances.

[180] As noted above, paragraph 37.11(a) of the Regulations directs the Tribunal to make a comparison of import volumes between two “representative” periods of time. In considering whether there had been a series of importations that, in the aggregate, are massive and have occurred within a relatively short period of time, the Tribunal determined the relevant periods, taking into account the nature of the subject goods and the manner in which they were traded. As discussed below, the Tribunal considered a six-month period prior to the CBSA’s preliminary determination to constitute “a relatively short period of time”. This six-month period was compared against the corresponding period in the previous year.

[181] If the Tribunal determines that injury has been caused by a series of importations of subject goods that are massive in the aggregate, it must also consider the last condition set out in paragraph 42(1)(b) of SIMA, that is, whether to prevent the recurrence of the injury, it appears necessary that a duty be assessed. The Tribunal has previously considered inventory levels to be largely determinative of this question as it has interpreted paragraph 42(1)(b) as being designed to deter large importations that lead to, for example, a rapid buildup or “stockpiling” of inventories that would overhang the market in the period beyond the preliminary determination.<sup>216</sup> Indeed, such goods could then be sold at injurious prices during this period and, hence, lead to a recurrence of injury, thus undermining the intended remedial effect of the SIMA duties. The Tribunal notes that such a consideration is consistent with paragraph 37.11(d) of the Regulations, which refers to an examination of whether there has been a significant increase in inventory volumes of the subject imports within a relatively short period of time.

#### Representative periods and import volumes

[182] Regarding the appropriate representative periods for the purposes of comparing import volumes, the USW submitted that these should be January 2022 to June 2022 (i.e. H1 2022) over January 2021 to June 2021 (i.e. H1 2021). In the alternative, the USW noted that the Tribunal could consider January to March 2022 (i.e. Q1 2022) over January to March 2021 (i.e. Q1 2021).

[183] In support of its assertion that the Tribunal should consider half-year periods, the USW relied on the fact that the CBSA’s preliminary investigations were extended from 90 days to 135 days, resulting in the issuance of the preliminary determinations of dumping and subsidizing on July 7, 2022. The USW also noted that the CBSA notified the complainants as well as the Government of China of the properly documented complaint on January 10, 2022.<sup>217</sup> In the USW’s view, it was on this date that importers could plausibly have gained knowledge of the complaint.

---

<sup>216</sup> *Laminate Flooring* at paras. 163–164, referencing *Rebar* at 21.

<sup>217</sup> These notifications were made pursuant to paragraph 32(1)(a) of SIMA as it read before June 23, 2022.



[184] Furthermore, the USW argued that the non-sequential periods of H1 2021 and H1 2022 are the appropriate representative periods, as these periods would capture seasonality in the mattress industry.<sup>218</sup>

[185] The Tribunal agrees that importers could have gained knowledge of the complaint as early as January 10, 2022, and that the extension of the CBSA's preliminary investigations warrants an analysis of import volumes in H1 2022 as compared against import volumes in a prior representative period. On balance, the evidence indicates that sales of mattresses are affected by seasonality, resulting in a lower demand for mattresses in the first half of the year (and hence lower sales) than the second half of the year.<sup>219</sup> This seasonality was reflected in import levels observed over the 2020 to 2022 period. In particular, import volumes were generally lower in the first two quarters of the year as compared to the latter two quarters of the year.<sup>220</sup> Seasonality is also corroborated by an importer that indicated that it typically increases its purchases for the back-to-school period.<sup>221</sup>

[186] Accordingly, in its analysis of import volumes set out below, the Tribunal compared the data in respect of imports and inventories of the subject goods between H1 2021 and H1 2022.

[187] The data indicate that, between H1 2021 and H1 2022, imports of subject goods increased by over two thirds, thus greatly exceeding the threshold of 15 percent as contemplated by paragraph 37.11(a) of the Regulations. This supports a finding that the importations of subject goods in H1 2022 were massive in the aggregate.

#### Inventory volumes

[188] The Tribunal notes that the USW's analysis of the rate of increase of inventories included an analysis of inventory volumes between quarterly periods in each of 2021 and 2022 (i.e. Q1 2021 to Q1 2022 and Q2 2021 to Q2 2022) as well as based on half-year periods (i.e. H1 2021 to H1 2022).<sup>222</sup>

[189] The Tribunal has not been presented with any reason to conduct its analysis of inventory volumes using different periods than those examined for import volumes. Accordingly, to ascertain whether there has been a significant increase in the inventories of subject goods within a relatively short period of time under paragraph 37.11(d) of the Regulations, the Tribunal will, in the circumstances of this case, compare inventory levels in H1 2022 with those in H1 2021.

---

<sup>218</sup> In this regard, the USW relied on comments made by the United States International Trade Commission on seasonal business cycles in its decision concerning *Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam* (see Exhibit NQ-2022-001-D-07 at 520). The USW also relied on a company's annual report (see Exhibit NQ-2022-001-B-06 [protected] at 71) and referred to trends in import data published by Statistics Canada as well as in the Tribunal's investigation report.

<sup>219</sup> Exhibit NQ-2022-001-B-06 (protected) at 71; Exhibit NQ-2022-001-09.14C at 7; Exhibit NQ-2022-001-09.10 at 6; Exhibit NQ-2022-001-12.04 at 3.

<sup>220</sup> Exhibit NQ-2022-001-35 at 2, 3; Exhibit NQ-2022-001-35.A (protected) at 2, 3.

<sup>221</sup> Exhibit NQ-2022-001-12.04 at 3.

<sup>222</sup> Exhibit NQ-2022-001-37.A (protected) at paras. 4, 27.

[190] To determine inventory levels of the subject goods for H1 2021 and H1 2022, the Tribunal calculated the *average* volume of importers' inventories for each of these half-year periods.<sup>223</sup> Comparing these average volumes, the Tribunal finds that average inventory levels in H1 2022 more than doubled when compared to average inventory levels in H1 2021. In the Tribunal's view, this increase is significant.<sup>224</sup>

[191] In light of the import volume and inventory level analysis above, for the purposes of subparagraph 42(1)(b)(i), the Tribunal finds that there has occurred a considerable importation of dumped goods that caused injury. Additionally, for the purposes of subparagraph 42(1)(b)(ii), the Tribunal finds that there has been a series of importations that, in the aggregate, are massive and have occurred within a relatively short period of time.

### Recurrence of injury

[192] With respect to the last requirement of paragraph 42(1)(b) of SIMA, which demands an assessment of whether duties are necessary to prevent the recurrence of injury, the Tribunal is of the view that this is primarily informed by the duration of time for the *excess* inventory to likely be *absorbed* by the market. The Tribunal is of the view that the assessment of whether there may be a recurrence of injury should focus on the magnitude of the inventory in excess of historical levels rather than the entirety of the inventory prior to issuance of the CBSA's preliminary determination. This would account for the fact that historical inventory levels would be absorbed at their normal rate by the domestic market. This form of analysis enables the Tribunal to assess the significance of any inventory overhang.<sup>225</sup>

[193] In this regard, the Tribunal estimates that, on the basis of the evidence on record, the ending inventory at Q2 2022 that was in excess of the average inventory levels in 2020 and 2021 would

---

<sup>223</sup> The Tribunal calculated the average volume of importers' inventories for H1 2021 and H1 2022 by adding the volumes for each quarterly period in the relevant half year and dividing that amount by 2. The Tribunal notes that, in their submissions on the issue of threat of injury, the Domestic Producers calculated inventory levels for each half-year period by *adding* the volumes for each quarter. Since inventory levels are established at a specific "point-in-time", levels cannot simply be added together and doing so has the obvious effect of overstating their magnitude.

<sup>224</sup> The Tribunal, however, notes that even when comparing average inventory levels between H1 2022 and H2 2021, the levels nearly doubled. Accordingly, even if the Tribunal were to conduct its analysis on that basis, it would have similarly concluded that there has been a significant increase in inventory levels.

<sup>225</sup> In *Laminate Flooring* at para. 164, to assess whether there had been stockpiling of the subject goods in that case at levels that would impact the domestic market in the period after the CBSA's preliminary determination, the Tribunal compared the volume of imports to the size of the Canadian market, the growth rate of demand in the market and the delivery time required for importing the goods from China.

represent less than two weeks of consumption in the market.<sup>226</sup> As such, the excess inventory would have been consumed just days after the CBSA's preliminary determination, if not sooner.

[194] The Tribunal notes that this estimate is conservative in two respects. First, the Tribunal's calculations are based on importers' market volumes for subject goods in interim 2021 and interim 2022, which would, for reasons of seasonality, likely have been lower than quarterly volumes in the remainder of the year. If the Tribunal had conducted its analysis using higher average sales volumes from, for instance, quarterly figures in the second half of the year, the absorption rate would be likely even greater.

[195] Second, as discussed above in the Tribunal's injury analysis, the evidence on the record indicates that there had been significant issues relating to the global supply chain, shortages of shipping containers and increased freight costs. These factors contributed to the decline of subject imports seen in the early part of 2021. Since that time, freight costs have decreased, which, according to the Domestic Producers, contributed to an increase in the volume of subject imports through the second half of 2021. It therefore follows that the supply chain issues described above may well have contributed to pent-up demand in the Canadian market, in which case the subject imports would have already been in larger part absorbed by the market by the time the CBSA's preliminary determination was issued. This is corroborated by confidential evidence which provided additional context for the inventory levels seen in this period.<sup>227</sup>

[196] In sum, the Tribunal has not been presented with evidence that there has been a stockpiling of the subject goods from China at such levels that would have an impact on the Canadian market in the period after the issuance of the CBSA's preliminary determination.

[197] The Tribunal therefore finds that it is not necessary for duty to be assessed on the subject goods in order to prevent the recurrence of injury. Hence, a finding of "massive importation" is not warranted.

---

<sup>226</sup> To assess the importers' excess inventory by the end of Q2 2022, the Tribunal first calculated the average quarterly inventory volume for 2020 and 2021 based on the quarterly inventory data from importers for these years. The Tribunal then subtracted from the ending inventory of Q2 2022 the average quarterly inventory volume to determine the excess inventory in Q2 2022. Next, the Tribunal determined the average quarterly market volume of sales of subject imports by importers from interim 2021 and interim 2022 figures. By dividing the average quarterly market volume by 13 (representing the number of weeks in a quarter), the Tribunal could determine the average weekly sales of subject goods by importers. By dividing the volume of excess inventory by the average weekly sales volume, the Tribunal determined the number of weeks it would take for the excess inventory in Q2 2022 to be sold. Exhibit NQ-2022-001-07.F (protected) at Table 20; Exhibit NQ-2022-001-35.A at 2.

<sup>227</sup> Exhibit NQ-2022-001-13.06B.

## CONCLUSION

[198] 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.

Cheryl Beckett  
\_\_\_\_\_  
Cheryl Beckett  
Presiding Member

Randolph W. Heggart  
\_\_\_\_\_  
Randolph W. Heggart  
Member

Frédéric Seppey  
\_\_\_\_\_  
Frédéric Seppey  
Member