

GYPSUM BOARD

Reference No. GC-2016-001

Report issued
Wednesday, January 4, 2017

Reasons issued
Thursday, January 19, 2017

Canadian International Trade Tribunal

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For further information, contact the Registrar, Secretariat to the Canadian International Trade Tribunal, 15th Floor, 333 Laurier Avenue West, Ottawa, Ontario K1A 0G7, 613-993-3595 (telephone), 613-990-2439 (fax), citt-tcce@tribunal.gc.ca (e-mail).

REPORT

This report completes an inquiry by the Canadian International Trade Tribunal (the Tribunal) to determine whether the imposition of provisional duties or duties applicable to gypsum board imported from the United States for markets in Manitoba, British Columbia, Saskatchewan, Alberta, Yukon and the Northwest Territories is contrary to Canada's economic, trade or commercial interests, and specifically whether such an imposition has or would have the effect of substantially reducing competition in those markets or causing significant harm to consumers of those goods or to businesses who use them.

The inquiry was referred to the Tribunal on October 13, 2016, by His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to section 18 of the *Canadian International Trade Tribunal Act*.¹ The Governor in Council directed that the Tribunal report to the Governor in Council on those matters no later than January 4, 2017, and submit to the Governor in Council, within 15 days after that date, its findings and recommendations on any remedy that could be taken.

It is a well-recognized feature of the trade remedy system that imposing anti-dumping and/or countervailing duties on a particular good will affect the Canadian market price and may impose higher costs on the downstream industry that uses those goods. However, there may be consequences on the downstream industry that are either unintended or unwanted. This inquiry process provided a public forum for interested parties to express their concerns and inform the Tribunal of their views or experience about unintended or unwanted consequences that arose from the imposition of the provisional duties and that might arise from the imposition of final duties. It also allowed them to present the options that they favoured and believed viable to deal with any unintended downstream consequences arising from the imposition of the provisional duties and the possible imposition of final duties.

After reviewing the documentary and oral evidence presented to the Tribunal, it has come to the conclusion that the imposition of provisional duties or duties applicable to gypsum board imported from the United States for markets in Manitoba, British Columbia, Saskatchewan, Alberta, Yukon and the Northwest Territories, in its full amount, is contrary to Canada's economic, trade or commercial interests, and specifically that such an imposition has or will substantially reduce competition in those markets, or cause significant harm to consumers of those goods or to businesses who use them.

Accordingly, the Tribunal hereby recommends as follows:

- That provisional duties collected be retained by the federal government and used to refund, either wholly or in part, the higher costs for imported and domestically produced gypsum board purchased since the imposition of the provisional duties on September 6, 2016, up to but not including January 4, 2017;
- That all of the final duties imposed on cooperating exporters be remitted to them through a simplified process until the earlier of a) six months, from the date of this report, i.e. from January 4, 2017, up to and including July 4, 2017, or b) the date the subject imports reach a maximum volume of 229 million square feet, allocated on the basis of historical export shares; this temporary elimination of the duties would give

1. R.S.C., 1985, c. 47 (4th Supp.).

time for the downstream market participants (especially drywall installers) to perform existing fixed-price contracts and, going forward, to give them an opportunity to reflect the duties in new contracts;

- That final duties for any cooperating exporters on any export transaction involving subject gypsum board to Canada should not exceed 43 percent of the export price at any time on and after the earlier of July 5, 2017, or the date the subject imports reach a maximum volume of 229 million square feet, a reduced rate which should allow either U.S. exports or domestic shipments from Eastern Canada to continue to supply the Western Canadian market;
- That, considering the limited amount of data available to the Tribunal at the time of the inquiry in GC-2016-001, the reduced final duty be reviewed at the appropriate time; and
- That, if the Government considers the measures mentioned above as insufficiently alleviating the hardship suffered by certain residents of the Regional Municipality of Wood Buffalo (the Fort McMurray region) as a result of the May 2016 wildfires, and considering the consent by the domestic industry to a special remission in connection with the Fort McMurray region, the Government grant a special remission in an amount equivalent to the dumping duties collected on gypsum board specifically used for the rebuilding of the Fort McMurray region, on terms and conditions that ensure that the end users or consumers benefitting from the measure do not pay more than the amount that they would have paid for that gypsum board in the absence of duties. This special remission should cover subject imported gypsum board which is specifically linked to the reconstruction effort, and is purchased and installed between September 6, 2016, and December 31, 2019.

The reasons for its findings and recommendations will be issued within 15 days from this date.

Serge Fréchette
Serge Fréchette
Presiding Member

Jean Bédard
Jean Bédard
Member

Jason W. Downey
Jason W. Downey
Member

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PART I

INTRODUCTION

1. The mandate of the Canadian International Trade Tribunal (the Tribunal) in this inquiry¹ is to determine whether the imposition of provisional duties or duties applicable to gypsum board imported into Canada from the United States for markets in Manitoba, British Columbia, Saskatchewan, Alberta, Yukon and the Northwest Territories (Western Canada) (the subject goods)² is contrary to Canada's economic, trade or commercial interests, and specifically whether such an imposition has or will substantially reduce competition in those markets, or cause significant harm to consumers of those goods or to businesses who use them.

2. In its related and concurrent inquiry, Inquiry No. NQ-2016-002, the Tribunal had also to determine whether the dumping of the subject goods has caused injury or retardation, or is threatening to cause injury to the domestic industry. In Inquiry No. NQ-2016-002, the Tribunal has found that the dumping of the subject goods has caused injury to the domestic industry. Therefore, subject to the implementation of the Tribunal's recommendation in this inquiry, Reference No. GC-2016-001, the Canada Border Services Agency (CBSA) will impose definitive anti-dumping duties on imports of the subject goods.

3. In this inquiry, the Tribunal has found, for the reasons that follow, that the imposition of provisional duties to the subject goods since September 6, 2016, and the imposition of duties as determined by the CBSA on December 5, 2016, is contrary to Canada's economic, trade or commercial interests. The Tribunal has found that such an imposition will substantially reduce competition in Western Canada, has caused and will continue to cause significant harm to businesses who use them, and harm consumers of those goods.

4. As such, the Tribunal recommends as follows:

- That provisional duties collected be retained by the federal government and used to refund, either wholly or in part, the higher costs for imported and domestically produced gypsum board purchased since the imposition of the provisional duties on September 6, 2016, up to but not including January 4, 2017;
- That all of the final duties imposed on cooperating exporters be remitted to them through a simplified process until the earlier of a) six months, from the date of this report, i.e. from January 4, 2017, up to and including July 4, 2017, or b) the date the subject imports reach a maximum volume of 229 million square feet, allocated on the basis of historical export shares; this temporary elimination of the duties would give time for the downstream market participants (especially drywall installers) to perform existing fixed-price contracts and, going forward, to give them an opportunity to reflect the duties in new contracts;
- That final duties for any cooperating exporters on any export transaction involving subject gypsum board to Canada should not exceed 43 percent of the export price at any time on and after the earlier of July 5, 2017, or the date the subject imports reach a

1. The inquiry is conducted pursuant to section 18 of the *Canadian International Trade Tribunal Act*, R.S.C., 1985, c. S-15 [*CITT Act*].

2. A detailed description of the goods subject to this inquiry is found in section 3.

maximum volume of 229 million square feet, a reduced rate which should allow either U.S. exports or domestic shipments from Eastern Canada to continue to supply the Western Canadian market;

- That, considering the limited amount of data available to the Tribunal at the time of the inquiry in GC-2016-001, the reduced final duty be reviewed at the appropriate time; and
- That, if the Government considers the measures mentioned above as insufficiently alleviating the hardship suffered by certain residents of the Regional Municipality of Wood Buffalo (the Fort McMurray region) as a result of the May 2016 wildfires, and considering the consent by the domestic industry to a special remission in connection with the Fort McMurray region, the Government grant a special remission in an amount equivalent to the dumping duties collected on gypsum board specifically used for the rebuilding of the Fort McMurray region, on terms and conditions that ensure that the end users or consumers benefitting from the measure do not pay more than the amount that they would have paid for that gypsum board in the absence of duties. This special remission should cover subject imported gypsum board which is specifically linked to the reconstruction effort, and is purchased and installed between September 6, 2016, and December 31, 2019.

1. Procedural Background

5. On June 8, 2016, following a complaint filed on April 18, 2016, by CertainTeed Gypsum Canada Inc. (CTG), the CBSA initiated an investigation into the alleged dumping in the Western Canadian regional market of gypsum board.

6. The CBSA's investigation triggered the initiation of a preliminary injury inquiry by the Tribunal on June 9, 2016. The Tribunal issued its preliminary determination on August 5, 2016, that the evidence disclosed a reasonable indication that the dumping of the subject goods had caused injury or was threatening to cause injury to the producer in Western Canada. In its Statement of Reasons, the Tribunal stated that:

65. A number of parties made arguments regarding the impact of the potential imposition of duties on end users and consumers of the subject goods and related downstream products. These are issues which can only be addressed in a public interest inquiry after, and only if, the Tribunal makes a finding of injury or threat of injury. The Tribunal has the power to initiate a public interest inquiry if it determines that the circumstances warrant such an inquiry.
66. The Tribunal, without prejudging these issues in any manner, will allow continued evidence and argument on the issue of public interest in its final injury inquiry, as long as the evidence and argument are clearly identified as relating to this issue³

7. On September 6, 2016, the CBSA made a preliminary determination of dumping, resulting in the imposition of provisional anti-dumping duties on the subject goods and the commencement of Inquiry No. NQ-2016-002. The provisional duties which were imposed were as follows:⁴

- Georgia-Pacific Gypsum LLC (GP US): 105.2%

3. *Gypsum Board* (22 August 2016), PI-2016-001 (CITT) [*Gypsum Board PI*].

4. Exhibit NQ-2016-002-01A, Vol. 1 at 28-31.

- United States Gypsum Company (USG): 143.6%
 - CertainTeed Gypsum and Ceilings Manufacturing, Inc. (CTG US): 125.0%
 - All other exporters: 276.5%
8. On September 7, 2016, the Tribunal issued a notice of commencement of inquiry.⁵
9. On October 13, 2016, His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to section 18 of the *CITT Act*, directed the Tribunal to inquire into the matter of whether the imposition of provisional duties or duties, applicable to gypsum board imported from the United States for markets in Western Canada, is contrary to Canada's economic, trade or commercial interests, and specifically whether such an imposition has or would have the effect of substantially reducing competition in this market or causing significant harm to consumers of those goods or to businesses who use them.
10. The Tribunal combined the two inquiries to provide for a more expeditious process in accordance with rule 6.1 of the *Canadian International Trade Tribunal Rules* and section 35 of the *CITT Act*. On October 18, 2016, the Tribunal issued a revised notice of commencement of inquiries.⁶
11. Parties who were participants in Inquiry No. NQ-2016-002 were automatically considered to be parties to Reference No. GC-2016-001. Twenty-five parties were participants to both inquiries. One hundred and eight other parties filed notices of participation with the Tribunal in Reference No. GC-2016-001.⁷
12. The parties supporting a finding of injury or threat thereof in the injury inquiry and arguing that the imposition of duties are in Canada's economic, trade and commercial interests is the domestic producer that filed the complaint—CTG—together with Acadia Drywall Supplies Ltd. (Acadia Drywall), a producer of gypsum board in Eastern Canada; Vipco Industries Inc. (Vipco), a user of gypsum board; and the International Brotherhood of Boilermakers (IBB), the trade union representing a number of the workers in CTG's Winnipeg and Calgary factories. These parties submitted evidence and argument, and provided witnesses during the Tribunal's hearing.
13. The parties participating in both inquiries that filed evidence and argument with the Tribunal in opposition to CTG's injury and threat of injury allegations and arguing that the imposition of duties are contrary to Canada's economic, trade and commercial interests are the following: the Canadian Home Builders' Association; Continental Building Products Inc., a U.S. producer/exporter of the subject goods, and its related importer in Canada, Continental Building Products Canada Inc. (collectively, CBP); DCL Drywall Inc. (DCL Drywall); GP US, a U.S. exporter of the subject goods, and its related importer in Canada, Georgia-Pacific Canada LP (GP Canada), which is also a producer of gypsum board in Eastern Canada; USG, a U.S. producer/exporter of the subject goods, and its related importer in Canada, CGC Inc. (CGC), which is also a producer of gypsum board in Eastern Canada; WSB Titan; and the Western Canada Alliance of Wall and Ceiling Contractors (WCAWCC). The Alberta Wall and Ceiling Association (AWCA); the Association of Wall and Ceiling Contractors of BC (AWCCBC); TBM Holdco Ltd./

5. C. Gaz. 2016.I.

6. C. Gaz. 2016.I.

7. The lists of participants are found in Appendices II, III and IV.

Timber Mart; the B.C. Wall and Ceiling Association (BCWCA); and the National Gypsum Company, a U.S. producer/exporter of the subject goods, filed case briefs but did not file witness statements.

14. The parties to Reference No. GC-2016-001 arguing that the imposition of duties is contrary to Canada's economic, trade and commercial interests that filed witness statements are the following: 1-800 Drywall (1735907 Alberta Inc.); Cedar Ridge Quality Homes; Cutting Edge Solutions Drywall Ltd.; Empire Drywall; Gypsum Drywall Interiors (Saskatchewan) Ltd.; Gypsum Drywall Interiors Ltd.; Davenport Interiors Limited Partnership Ltd.; Loewen Drywall Ltd.; PR Wilson Interiors; Qualico; DVS Drywall Contractors Ltd.; Gallagher Bros. Contractors Ltd.; Gypsum Drywall (Southern) Ltd.; and PABCO Building Products LLC (PABCO), which also filed a case brief. The Commissioner of Competition filed a case brief.

15. Nine Members of Parliament filed notices of participation in Reference No. GC-2016-001. Six of them submitted witness statements: Mr. Chris Warkentin, Mr. Martin Shields, Mr. John Barlow, Mr. Kevin Waugh, Mr. Gerry Ritz, and Mr. David Yurdiga. The last three also testified at the hearing via video conference. Mr. David Anderson, Mr. Randy Hoback, and Mr. Ted Falk did not file briefs or evidence.

16. Parties that filed notices of participation in Inquiry No. NQ-2016-002, but did not file briefs or evidence, are the Atlantic Wallboard Limited Partnership (Irving Wallboard), a producer of gypsum board in Eastern Canada; Castle Building Centres Group Ltd.; the Manitoba Wall and Ceiling Association Inc.; Sexton Group; the Ministry of International Trade, Government of British Columbia; and the U.S. Department of Commerce/U.S. Embassy Ottawa.

17. Parties that filed notices of participation in Reference No. GC-2016-001, but did not file briefs or evidence are the following: 0765507 DC Ltd.; ADSS Buildings Supplies Inc.; Allied Contractors Inc.; Alta Interior Contracting (Services) Ltd.; Ar Drywall; Bashaw Farm & Building Supplies Ltd.; Big Al's Texturing Ltd.; Calvert's Construction Services Inc.; Crozier Developments; Crystal Drywall Corp.; Edge Development Ltd.; EGM Drywall Systems Inc.; Elktone Contracting Ltd.; Elktone Interiors; EllisDon Corporation; Fairways Drywall Ltd.; Fries Tallman Lumber; Government of Alberta; Government of Manitoba; Government of Saskatchewan; Great Western Interiors; Hiway Steel Structures; Igloo Buildings Supplies Group Ltd.; Integrity Drywall Ltd.; International Painting and Drywall Ltd.; Ivory Interiors Ltd.; Jamal Contracting Inc.; K. Sleva Contracting Ltd.; Karma Konstruktion Ltd.; Kaviar Inc. (La Broquerie Lumber); Keltum Drywall Ltd.; Kensington Homes; Landville Drywall Ltd.; Lan-Mar Contracting Ltd.; LAPC Drywall Ltd.; Lincolnberg; Logic Lumber (Leth) Ltd.; Magnum Building Corporation; Mattamy Homes Ltd.; McMunn & Yates Building Supplies Ltd.; Midwest Contracting Ltd.; Moduline Industries (Canada) ULC; Montana Homes; Nexgen Drywall Ltd.; Northern Building Supply; Nuvista Homes; Okaply Industries Ltd.; Pacesetter Homes Ltd.; Pacesetter Homes Regina; Paramount Project Solutions Ltd.; Peace River Building Products Ltd.; Pre Con Builders; Qualico British Columbia; Qualico Development West Ltd.; Quality Drywall Interiors Ltd.; R & D Drywall Inc.; Rethink Spray Foam Services; Rona Inc.; Ross Contracting Inc.; Saywell Contracting; Slegg Building Materials; Sterling Homes Group; Sterling Homes Ltd.; Streetside Developments; Streetside Developments (Winnipeg); Sych Drywall Enterprise Ltd.; The Drywall Co.; The Lumberzone; Thermopro Insulation Ltd.; TIC Interiors Ltd.; United Drywall Ltd.; Van-Roc Interiors Ltd.; Viking Drywall Ltd.; Winnipeg Interior Systems Experts Ltd.; and Woodbrook Construction Ltd.

18. In Reference No. GC-2016-001, nine parties notified the Tribunal that they were withdrawing from participation in the proceedings: Anglian Interiors Ltd.; Atomik Interiors and Spray Systems; First General Services (Calgary) Inc.; MJ Chahley Coast Group; Power Drywall 2005 Ltd.; Workman Roofing Inc.; Kaloya Drywall Ltd.; Acoustic Ceiling & Drywall Ltd.; and Beach Quality Drywall Ltd. FBM Canada GSD Inc., a successor company to Allroc, withdrew from participation in Inquiry No. NQ-2016-002.

19. On November 7, 2016, in accordance with the Tribunal's usual procedure in trade remedy inquiries, the parties filed requests for information (RFIs) with the Tribunal. The Tribunal issued directions to the parties on November 15, 2016, regarding the RFIs that required responses. The Tribunal also directed some parties to respond to certain RFIs. The majority of the responses were received by November 22, 2016, and placed on the record of the proceedings. An RFI Report, summarizing and aggregating RFI responses, was also prepared by staff of the Secretariat to the Canadian International Trade Tribunal of the Administrative Tribunals Support Service of Canada and placed on the record. The Tribunal posed subsequent RFIs to several parties and to other interested parties during and after the hearing.

20. The Tribunal's hearing was held in Edmonton, Alberta, from November 28, 2016, to December 8, 2016. While most of the proceedings were held in public, certain sessions were held *in camera*.

21. The Tribunal, on consent of the parties, accepted four proposed expert witnesses put forward by certain parties and qualified them as experts in the field of economics. All four experts had filed reports or, in certain cases, rebuttal reports prior to the hearing. They testified to the injury to the domestic gypsum board industry and to other matters relevant to Inquiry No. NQ-2016-002 and to Reference No. GC-2016-001: Ms. Margaret Sanderson was called to testify by USG and CGC, Mr. Dan Ciuriak and Dr. Seth Kaplan were called to testify by CTG, and Dr. Alan Gunderson testified for the Commissioner of Competition.

22. The Tribunal allowed counsel and parties who did not appear at the hearing for the purposes of making arguments to file written closing arguments along with any necessary aids to argument, subject to the limits imposed by the Tribunal. The BCWCA, the AWCA and PABCO filed such written closing arguments.⁸ CTG and the IBB replied to these submissions.

23. The Tribunal further allowed parties to file post-hearing submissions limited to addressing any post-hearing information. CTG submitted post-hearing submissions, but the Tribunal did not accept the filing of an annex which did not deal with post-hearing information.

24. On December 5, 2016, the CBSA made a final determination of dumping. The CBSA determined that the U.S. exporters did dump the subject goods into Canada by margins of dumping as follows:

- GP US: 94.6%
- USG: 201.0%
- CTG US: 211.0%

8. Acadia Drywall attempted to file an argument which was not within the scope of the Tribunal's directions; it was not accepted by the Tribunal.

- All other exporters: 324.1%

25. With its final determination, the CBSA communicated confidential normal values to GP US and USG. These confidential normal values are model-specific “floor prices” at or above which U.S. exporters can ship to Canada from certain of their plants without incurring anti-dumping duties.

26. Further, as the importers are parties related to the exporters and were not covering their full costs and profit on resale in Canada, the CBSA calculated constructed export prices under section 25 of *SIMA*. Such methodology usually results in the raising of Canadian resale prices by the importers. Constructed export prices are reviewed periodically by the CBSA.

27. On January 4, 2017, the Tribunal found that the dumping of the subject goods had caused injury to the domestic industry. Therefore, the CBSA will impose, as of that date, subject to the implementation of the Tribunal’s recommendations in this inquiry, definitive anti-dumping duties on imports of the subject goods.

2. Legal Framework for the Tribunal’s Analysis

28. His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to section 18 of the *CITT Act*, issued an Order in Council (OIC) for a reference to the Tribunal.

29. The terms of reference directed the Tribunal to:

- ...[assess] whether the imposition of provisional duties or duties, applicable to gypsum board imported from the United States for markets in [Western Canada] is contrary to Canada’s economic, trade or commercial interests, and specifically whether such an imposition has or would have the effect of substantially reducing competition in those markets or causing significant harm to consumers of those goods or to businesses who use them; and
- ...report to the Governor in Council on those matters no later than January 4, 2017, and submit to the Governor in Council, within 15 days after that date, its findings and recommendations on any remedy that could be taken.⁹

3. Subject goods

a) Product Definition

30. The subject goods are defined as follows:

Gypsum board, sheet, or panel (“gypsum board”) originating in or exported from the United States of America, imported into Canada for use or consumption in the provinces of British Columbia, Alberta, Saskatchewan, and Manitoba, as well as the Yukon and Northwest Territories, composed primarily of a gypsum core and faced or reinforced with paper or paperboard, including gypsum board meeting or supplied to meet ASTM C 1396 or ASTM C 1396M or equivalent standards, regardless of end use, edge-finish, thickness, width, or length, excluding

- gypsum board made to a width of 54 inches (1,371.6 mm);

9. The Order in Council P.C. 2016-0879 is reproduced in Appendix I.

- (b) gypsum board measuring 1 inch (25.4 mm) in thickness and 24 inches (609.6 mm) in width regardless of length (commonly referred to and used as “paper-faced shaft liner”);
- (c) gypsum board meeting ASTM C 1177 or ASTM C 1177M (commonly referred to and used primarily as “glass fiber re-enforced sheathing board” but also sometimes used for internal applications for high mold/moisture resistant applications);
- (d) double layered glued paper-faced gypsum board (commonly referred to and used as “acoustic board”); and
- (e) gypsum board meeting ISO16000-23 for sorption of formaldehyde.

All dimensions are plus or minus allowable tolerances in applicable standards.

b) Product Information

31. In its statement of reasons for its preliminary determination of dumping, the CBSA provided the following additional product information:¹⁰

[18] For greater certainty, the gypsum board considered to be subject goods includes but is not limited to:

- **Abuse-resistant gypsum board** offering greater resistance to surface indentation, abrasion and penetration than standard gypsum board.
- **Eased edge gypsum board**, which has a tapered and slightly rounded or beveled factory edge. It may be used as an aid in custom finishing of joints.
- **Gypsum base** for veneer plaster serves as a base for thin coats of hard, high strength gypsum veneer plaster.
- **Impact-resistant gypsum board** offer greater resistance to the impact of solid objects from high traffic and vandalism than standard gypsum board.
- **Mold-resistant gypsum board or Mold and moisture resistant gypsum board** has a mold/moisture resistant gypsum core and paper facing that incorporates various methods of preventing the growth of mold and mildew on the board’s surface.
- **Regular gypsum board** (gypsum wallboard) is used as a surface layer on walls and ceilings.
- **Sag-resistant gypsum board** is a ceiling board that offers greater resistance to sagging than regular gypsum products used for ceilings where framing is typically spaced 24 inches.
- **Type C or Proprietary Type-X gypsum board** is available in 1/2 inch and 5/8 inch thicknesses and is required in some fire rated assemblies. Additional additives give this product improved fire resistive properties.
- **Type X gypsum board** is available in 1/2 inch and 5/8 inch thicknesses and has an improved fire resistance made possible through the use of special core additives. Type X gypsum board is used in most fire rated assemblies.

[19] Gypsum board has long been used as a building material because of its fire-resistant properties. It provides a durable, economical, non-combustible and easily decorated surfacing material for construction use. Gypsum board is the most widely used material for ceilings and interior walls for residential, commercial, and institutional buildings in developed countries. Paper-covered gypsum board is well suited to the application for which it was designed, that is interior non-load bearing construction.

10. Exhibit NQ-2016-002-01A, Vol. 1 at 3-4.

PART II

TRIBUNAL'S ANALYSIS

Chapter I – Tribunal's Mandate

32. Parties had widely diverging views of the Tribunal's mandate. The domestic industry argued that the Tribunal should limit its inquiry to whether a public interest inquiry should be commenced and indeed advocated the commencement of a public interest inquiry as the main remedy to be recommended by the Tribunal. The parties opposing argued that the Tribunal's mandate was to conduct an assessment, concurrent with the injury inquiry, of whether the duties have impacted or will impact competition or cause harm to businesses or consumers but without taking into account the context of the imposition of the duties, i.e. the injurious dumping. This context is that the provisional duties were, or final duties would be, imposed pursuant to a legislated procedure carried out by the Tribunal as established by *SIMA* to protect the domestic industry.

33. The OIC setting out the Tribunal's mandate was enacted pursuant to section 18 of the *CITT Act*, which reads as follows: "The Tribunal shall inquire into and report to the Governor in Council on any matter in relation to the *economic, trade or commercial interests of Canada* with respect to any goods or services or any class thereof that the Governor in Council refers to the Tribunal for inquiry" [emphasis added]. The use of the words "Canada's economic, trade and commercial interests" in the OIC mirrors the statutory provision which enabled the reference to the Tribunal.

34. As with the interpretation of other statutory instruments, the terms of the OIC must be interpreted by reading the words "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of the [Governor in Council]." ¹² Furthermore, the Tribunal must also consider sections 12 and 13 of the *Interpretation Act*. ¹³

35. The OIC directs the Tribunal to consider *specifically* whether the imposition of provisional duties or duties applicable to gypsum board imported from the United States for markets in Western Canada has or would have the effect of substantially reducing competition in this market or causing significant harm to consumers of those goods or to businesses who use them.

36. The Tribunal notes that the elements that the Tribunal has been directed to specifically consider mirror some of the prescribed factors set out in subsection 40(3) of the *Special Import Measures Regulations* ¹⁴ which apply to the conduct of public interest inquiries under section 45 of *SIMA*. The Tribunal notes, however, that the wording of the OIC does not track those prescribed factors *verbatim*, but speaks broadly to the purpose of those particular prescribed factors.

12. Elmer A. Driedger, *The Construction of Statutes*, 2nd ed., Toronto, Butterworths, 1983, at 87.

13. R.S.C., 1985, c. I-21. Sections 12 and 13 read as follows:

"12 Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

13 The preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object."

14. SOR/84-927 [*SIMR*].

37. The Tribunal's finding in this inquiry does not occur in a vacuum; it is premised on the conclusions reached from the related injury inquiry. Specifically, the Tribunal starts with the presumption that the imposition of duties is indeed in the public interest—or, as framed in this case, in the “trade, economic or commercial interests” of Canada—as the object and purpose of *SIMA* is to protect domestic industries from injury caused or threatened by the dumping or subsidizing of foreign goods. Accordingly, the conclusion reached in Inquiry No. NQ-2016-002, where it has been demonstrated that the dumping of the subject goods has caused injury, is central to the Tribunal's analysis in this related inquiry.

38. Also, implicit in both this Reference and section 45 of *SIMA* is the possibility of eliminating or reducing anti-dumping duties nonetheless in certain circumstances where other overriding factors prevail. A lesser amount of duty may thus be sufficient to offset the injury while mitigating the impact on competition, consumer choice, or other domestic producers who use the goods as inputs in their own downstream industries.

39. Thus, when understood within the broader context, this inquiry requires the Tribunal to analyze both the remedial and the negative impacts that the provisional duties have had or that the final duties would have. In its analysis, the Tribunal is to assess whether a possible negative impact is disproportionate, so as to exceed the remedial impact of the duties. In that case, the duties ought to be eliminated, or adjusted in a way that still affords adequate protection to the domestic gypsum board industry while mitigating some of the negative effects on other important Canadian trade, economic and commercial interests.

40. The Tribunal wishes to note at the outset that an inquiry focusing narrowly on matters of competition law that are part of the special expertise of another administrative tribunal would be inconsistent with the Tribunal's mandate and would be counterproductive. The Tribunal thus rejects such a narrow interpretation of the OIC which was suggested by certain parties.

41. The Tribunal was also asked to make recommendations on any remedy that could be taken. In view of the special context of this Reference, the Tribunal does not consider that it is limited by section 45 of *SIMA*. Accordingly, the Tribunal in the context of this Reference will make recommendations that go beyond those that are set out in section 45(5) of *SIMA*.

42. For those reasons, the Tribunal will conduct its inquiry according to the factors specifically set out in the OIC. In doing so, it will inform itself from the broader context of trade remedy law, which is part of its special expertise, and it will make recommendations on any remedy which, in its view, would be appropriate and should be taken in the circumstances.

Chapter II – Positions of Parties

43. As gypsum board use is widespread throughout the economy, there are many different stakeholders among businesses at both the producer and downstream industry levels, consumers and governments. Representatives of many of these stakeholder groups presented their respective views in submissions and during the hearing.

1. Canadian Producers

44. CTG indicated that since the imposition of provisional duties, it was able to raise prices 30 percent in Western Canada and return to profitability.¹⁵ According to CTG's witnesses, employment and the number of shifts have increased or will soon increase in at least two Western Canadian plants,¹⁶ and the gypsum board market has come into a demand-supply balance.¹⁷

45. For producers in Eastern Canada it has become profitable to ship gypsum board from Eastern Canada at least to the Prairies. Eastern producers indicated that shipping costs from Eastern Canada to Western Canada are the key variable affecting volume.¹⁸ According to CTG's witness, the volume of these shipments to Western Canada rose significantly between August and October 2016.¹⁹

46. On the issue of substantial reduction of competition, CTG produced a rebuttal expert report from Dr. Kaplan, essentially responding to the expert opinion of Dr. Gunderson, who appeared on behalf of the Commissioner of Competition. In this report, Dr. Kaplan argued that the increased prices for gypsum board were a natural consequence of the imposition of anti-dumping measures. He opined that Dr. Gunderson's report was fundamentally flawed by assuming baselines in his analyses which included the presence of injurious dumped imports.²⁰ In Dr. Kaplan's view, to assume that Canadian gypsum board prices, in the presence of injurious dumped imports, are competitive prices is contrary to the spirit and purpose of anti-dumping laws, which is to remediate unfairly priced imports.²¹

47. Dr. Kaplan said that it was already clear, based on the experience during the provisional duties period of implementation, that there would be no shortage of supply in either Western or Eastern Canada and that the post-duty equilibrium was competitive.²² He argued that the three Western plants have already increased production to levels nearly equal to full practical capacity. In addition, he posited that excess capacity in the United States will continue to be available to supply the Western region at undumped prices. As well, he opined that significant volumes of imports from the United States will probably enter under the normal value regime.²³

15. *Transcript of In Camera Hearing*, Vol. 5, 5 December 2016, at 490-91, 494; Exhibit NQ-2016-002, Aid to Argument of CertainTeed Gypsum Canada Inc. (protected), filed during the course of the hearing on December 7, 2016, Vol. 18 at Tab 3; *Transcript of Public Hearing*, Vol. 3, 30 November 2016, at 367; *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 402.

16. *Transcript of Public Hearing*, Vol. 2, 29 November 2016, at 209.

17. *Transcript of Public Hearing*, Vol. 1, 28 November 2016, at 30, 70-71.

18. *Transcript of Public Hearing*, Vol. 2, 29 November 2016, at 183-84.

19. Exhibit NQ-2016-002-07F (protected), Table 5, Vol. 2.1.

20. Exhibit NQ-2016-002-A-18, Vol. 11A at para. 16.

21. Exhibit NQ-2016-002-A-18, Vol. 11A at paras. 25-26.

22. *Transcript of Public Hearing*, Vol. 6, 5 December 2016, at 681.

23. Exhibit NQ-2016-002-A-18, Vol. 11A at para. 62.

48. Finally, in terms of a possible recommendation for alleviating undesirable consequences of the anti-dumping duties, CTG proposed a partial remission of the provisional duties paid with respect to contracts with no cost escalation provisions for duties. CTG also proposed a specific remission of both provisional and final duties, if any, for use in the reconstruction of Fort McMurray or the Regional Municipality of Wood Buffalo.²⁴

2. Unions

49. The IBB, the trade union representing a number of the workers in CTG's Winnipeg and Calgary factories, stated that union members lost gypsum board manufacturing jobs when GP idled two plants, one in Surrey, B.C., in 2011 and one in Edmonton, Alberta, in 2009.²⁵ According to the IBB, the imposition of provisional duties has led to a small increase in unionized employment in the gypsum board industry in Western Canada and could potentially lead to more secure jobs. The IBB argued that the existing Western Canada plants, both those belonging to CTG and other idled plants, can produce more gypsum board in the Western Canadian market.²⁶ The IBB supported the implementation of the duties.²⁷

3. Exporters and Importers

50. According to several contractors who purchase imported gypsum board, the application of the provisional duties has forced importers to raise prices by approximately 55 percent since September 6, 2016.²⁸ WSB Titan argued that with this increase, imports from the United States to Western Canada may still be possible, though probably not profitable over the long term; buyers will begin to seek out cheaper alternatives as the market supply conditions in Western Canada equilibrate.²⁹ With respect to the possibility of idled plants coming back on line to supply the gypsum board market in Western Canada, testimony from GP suggested that this scenario was unlikely in the short to medium term.³⁰

51. CGC and USG proposed that, in the event of an injury finding resulting from the related injury inquiry, any provisional duties paid on gypsum board imported from the United States on or after September 6, 2016, be either fully or partially refunded and that no anti-dumping duties or normal value requirement be imposed on or after January 4, 2017. They also proposed, in the alternative, a partial refund of such provisional duties and a reduction in any anti-dumping duties or normal value requirements on or after January 4, 2017.³¹

52. In terms of potential remedies, GP proposed a lower floor price for imports, essentially lower normal values for exporters, so that exporters would have the flexibility to ship gypsum board at lower prices without incurring duty that is currently permitted.³² Also in that respect, CBP presented a number of potential solutions including the creation, by the Government, of an

24. Exhibit NQ-2016-002-A-01, Vol. 11 at paras. 5, 190.

25. Exhibit NQ-2016-002-K-01, Vol. 13A at para. 61.

26. Exhibit NQ-2016-002-TTTT-01, Vol. 11A at para. 35.

27. Exhibit NQ-2016-002-TTTT-01, Vol. 11A at para. 43.

28. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 450, 454, 472.

29. *Transcript of In Camera Hearing*, Vol. 4, 1 December 2016, at 447-48; Exhibit NQ-2016-002-07G (protected), Table 5, Vol. 2.1.

30. *Transcript of Public Hearing*, Vol. 3, 30 November 2016, at 331-32.

31. Exhibit NQ-2016-002-C-03, Vol. 13 at 59.

32. Exhibit NQ-2016-002-K-01, Vol. 13A at para. 145.

assistance program to help people affected by natural disasters and middle-class Canadians, granting location-specific exemptions, which would include Fort McMurray and the Regional Municipality of Wood Buffalo, a reduction of the duty rate, the imposition of annual allocated quotas to importers, a duty relief program and a goods and services tax relief for gypsum board.³³

4. Gypsum Board Buying Groups and Retailers

53. Large gypsum board buying groups testified that they suffered supply disruptions in the fall of 2016 when the price increases were announced, but supply conditions in the market seem to have stabilized since then.³⁴ Some buying groups reliant on imports explained that they have started to look towards other sources of supply (e.g. Mexico or Eastern Canada), as U.S. import prices have risen or are expected to rise too much to remain competitive over the long term.³⁵

54. Depending on the way retailers, buying groups, contractors and builders pass through the price increase from higher domestic prices or from the provisional or final duties, the pass-through may not equate to a dollar-for-dollar figure. This may be the case where percentage-on-percentage mark-ups from retailers/mass merchandisers could amplify the impact of the duties on consumers. WSB Titan argued that these price increases will harm competition, businesses and consumers.³⁶

55. Timber Mart proposed different guidelines for calculating the duty amount³⁷, and WSB Titan proposed that no duties be imposed with respect to the subject goods.³⁸

5. Builders and Contractors

56. Builders (including gypsum board installers) and contractors testified that they have lost price stability and profit, resulting in less work and layoffs. They said that in the past, the gypsum board market was characterized by small, relatively predictable annual price increases, announced in advance to take effect at the same time each year. As of September 2016, builders and contractors no longer had such a price stability guarantee.³⁹ According to them, this is important because they have little flexibility to renegotiate contracts that are already signed.⁴⁰ Hence, builders and contractors argued that they are either making no profit or losing money on contracts signed before the price increase was announced. As a result, in some instances, building and contracting firms had to reduce hours for their installation teams or lay off employees.⁴¹ This situation will continue for six months to a year from now, or until those contracts for which prices are locked in are performed.⁴²

33. Exhibit NQ-2016-002-H-01, Vol. 13A at 39-46.

34. *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 527-28.

35. *Transcript of In Camera Hearing*, Vol. 4, 1 December 2016, at 448.

36. Exhibit NQ-2016-002-B-01A, Vol. 13 at paras. 83-97.

37. Exhibit NQ-2016-002-O-01, Vol. 13B at 1-2.

38. Exhibit NQ-2016-002-B-01A, Vol. 13 at para. 8.

39. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 437-38.

40. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 440-41, 450-55, 459-60.

41. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 448-49.

42. The Tribunal heard testimony that, depending on the size of the project, contracts can be from three to nine months. Large institutional projects, however, can last one to three years. See *Transcript of Public Hearing*, Vol. 1, 28 November 2016, at 28 and Vol. 4, 1 December 2016, at 451.

57. Moreover, builders and contractors are now operating under a cloud of uncertainty, as many feel that another round of price increases is potentially on the horizon; yet, they do not know when and how much that increase will be.⁴³ The actual calculation of duties and the way it impacts pricing on gypsum board is not transparent to them. They testified that adding a price adjustment clause into new contracts exposes them to losing those future contracts (by being undercut by someone who may be willing to risk a fixed price).⁴⁴ Some customers have also gone as far as asking for a rebate on gypsum board costs, should further price increases not materialize as predicted.⁴⁵

58. New sources of gypsum board, such as imports from Mexico or Korea, may enter the Western Canadian market, though builders and contractors might initially be reluctant to use gypsum board from these new, unfamiliar sources.⁴⁶

59. Builders generally want duties removed and to be refunded for losses incurred in those contracts signed before the announced price increases.⁴⁷ For example, in its public submission, DCL Drywall is seeking a number of remedies, including a cancellation of the provisional duties in Alberta, a six-month order forcing CTG to sell gypsum board at the price it was selling prior to the imposition of the provisional duties and financial compensation representing the additional costs incurred on fixed agreements.⁴⁸

6. Consumers

60. Though not directly represented at the hearing, virtually all participants agreed that consumers are the ones who will ultimately pay more because of the duties. Gypsum board is a product with a highly inelastic derived demand with no real substitutes. Therefore, cost can be passed along easily, at least in the long term. Moreover, the evidence was that gypsum board represents a relatively small amount of the cost of building a house; this cost will usually be amortized over the life of a mortgage.⁴⁹ Some witnesses testified that gypsum board cost increases are one of many cost increases or government actions designed to cool the housing market, which collectively may increase housing costs.⁵⁰

61. Shayne Marcil, from the Canadian Homebuilders' Association, argued that, while builders and contractors may have little flexibility to renegotiate prices for contracts that have already been signed, future contracts will be adjusted according to the increase. The duties will therefore ultimately result in consumers paying thousands of dollars more for a typical house, a view supported by CTG.⁵¹

43. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 452.

44. *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 525.

45. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 485.

46. *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 565-66.

47. See several case briefs and statements filed by builders: Exhibit NQ-2016-002-U-01, Vol. 13C at 3; Exhibit NQ-2016-002-S-01, Vol. 13B; Exhibit NQ-2016-002-X-01, Vol. 13C at 2.

48. Exhibit NQ-2016-002-Q-01, Vol. 13B at paras. 9-13.

49. That does not mean that the increase in cost is inconsequential to a typical consumer.

50. See, for example, *Transcript of Public Hearing*, Vol. 7, 6 December 2016, at 839-40.

51. Exhibit NQ-2016-002-A-01, Vol. 11, Tables 19, 20, 21; Exhibit NQ-2016-002-M-05, Vol. 13B at 3.

7. Insurance companies

62. No insurance companies were a party to this inquiry. As such, the Tribunal had little perspective as to their interests or the impact of duties on their activities.

63. The interest of insurance companies in this inquiry arises from the question of how imposition of duties on gypsum board might affect the rebuilding of the Fort McMurray region. That process is still in the clean-up stage,⁵² but rebuilding will start next spring. Many of the estimated 1500 houses to be rebuilt, or others to be renovated, will be done under insurance payouts.⁵³

64. The Tribunal heard from at least one contractor who had already completed some rebuild contracts under provisional-duty conditions. It was feared that the insurance companies may reject any requests for that builder, or its contractors, to renegotiate the contracts. Generally, it is assumed that the insurance companies will pay higher gypsum board costs, to the extent that new contracts will be signed going forward.⁵⁴

8. Commissioner of Competition

65. The Bureau of Competition has a legislated mandate to help cultivate a competitive, innovative marketplace for the benefit of Canadian businesses and consumers, and to administer and enforce Canada's *Competition Act* and other statutes.

66. The Commissioner of Competition produced Dr. Gunderson as an expert witness to this inquiry. In his expert report, Dr. Gunderson concluded that the duties would lessen competition in the Western Canadian market for gypsum board. Specifically, by weakening the competitive constraint on CTG, duties on U.S. imports would allow CTG to exercise market power and raise its prices above competitive levels for a sustained period of time.⁵⁵

67. Dr. Gunderson expressed the view that the low pre-duty prices were not predatory, but were driven by vigorous competition resulting from difficulties predicting demand and a production imperative required by plants with high fixed costs.⁵⁶

68. Dr. Gunderson further said that, with duties in place, CTG now had limited competition in Western Canada. Faced with a price increase for gypsum board, customers could not readily switch to a substitutable product or source. According to him, sourcing gypsum board from Eastern Canada was not an effective competitive alternative for buyers in Western Canada because the low value-to-weight ratio of gypsum board makes transport prohibitively expensive. He opined that to overcome these shipping costs, prices in Western Canada would therefore have to rise significantly to make Western Canada an attractive option.⁵⁷

69. Finally, Dr. Gunderson indicated that barriers to entry or re-entry for supplying gypsum board into Western Canada do not appear to be sufficiently low, such that any increase in market

52. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 463.

53. Exhibit NQ-2016-002-RI-120, Vol. 9D at 2; Exhibit NQ-2016-002-RI-121 (protected), Vol. 10B at 3.

54. *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 596-98.

55. Exhibit NQ-2016-002-UUUU-01, Vol. 13 at para. 9.

56. Exhibit NQ-2016-002-UUUU-01, Vol. 13 at para. 38.

57. Exhibit NQ-2016-002-UUUU-01, Vol. 13 at paras. 40-42.

power resulting from duties would be quickly eroded by the potential entrants. With high fixed costs and the need to operate a plant near capacity, potential entrants in Western Canada would face considerable risk.⁵⁸ There is also evidence that there are significant costs associated with restarting plants that have been idled. Dr. Gunderson maintained the same position during his testimony, a view supported by the testimony of GP's witness, Mr. Hughes.⁵⁹

9. Members of Parliament and Governments

70. Some Members of Parliaments testified as to constituent accounts of the negative ramifications of the duties on contractors, subcontractors and end users of gypsum board. They noted that there was support for the elimination of the duties, or at least for a refund of provisional duties, from constituents who have suffered losses resulting from higher prices for gypsum board.⁶⁰

71. While three provincial governments, Alberta, British Columbia and Saskatchewan, were parties in this inquiry, no provincial governments appeared before the Tribunal nor provided case briefs or witness statements. The Province of Alberta, as well as the relevant Regional Municipality, did respond to a Tribunal request for information related specifically to the Region of Wood Buffalo rebuilding effort. The Tribunal received no representations with respect to the effects of the duties on the cost of government infrastructure projects, investments or employment.

72. Some participants suggested that provincial governments in Western Canada will likely incur higher costs for the construction of new schools, hospitals and government buildings.⁶¹

58. Exhibit NQ-2016-002-UUUU-01, Vol. 13 at paras. 47-48.

59. *Transcript of In Camera Hearing*, Vol. 3, 30 November 2016, at 331.

60. The Members of Parliament that submitted submissions and/or participated at the hearing are Mr. Gerry Ritz, Mr. Kevin Waugh, Mr. David Yurdiga, Mr. John Barlow, Mr. Chris Warkentin and Mr. Martin Shields. See *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 781-83, 786, 790, 794, 798.

61. *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 787, 806-07.

Chapter III – Canada’s Economic, Trade and Commercial Interests

1. Substantial Reduction of Competition

a) Introduction

73. The OIC directs the Tribunal to determine whether the imposition of provisional or final duties in respect of imports of the subject goods has had or would have the effect of substantially reducing competition in the Western Canadian market. In its analysis, the Tribunal will thus consider whether the imposition of the duties has reduced or will reduce competition in the market, including resulting in excessive price increases, a loss of sources of supply, and a reduction in product choices.

b) Analysis

74. The imposition of provisional duties had a sharp and immediate effect on the supply of gypsum board in Western Canada. Imports from the United States declined significantly in the months immediately following the imposition of the provisional duties.⁶² However, a 30 percent rise in the price of gypsum board from the domestic producer was enough to allow more gypsum board from Eastern Canada to supply Western Canada, despite high freight costs, which had, until September 2016, appeared to be prohibitively high.⁶³

75. That being said, the Tribunal heard of supply disruptions immediately following the announced price increase in September 2016,⁶⁴ with gypsum board dealers and other buyers seeking supply from the domestic producer.⁶⁵ This rush for supply resulted in customers being put on allocation by the domestic producer, which visibly could not immediately fulfill the extent of the market requirements.⁶⁶ Shipments from Eastern Canada rose substantially, offsetting the decline in imports from the United States. The Tribunal heard evidence that the supply situation had stabilized by December 2016.⁶⁷ However, Eastern Canadian producers do not appear to have the capacity to serve both Eastern Canada *and* the share of the Western Canadian market historically held by imports. The Tribunal is also reluctant to view Eastern Canadian producers as a longer-term source as this may entail serious supply disruptions in Eastern Canada.⁶⁸

76. As for additional sources of supply, other than from Eastern Canada, at least one importer began to import gypsum board from Mexico into the B.C. market.⁶⁹ As well, WSB Titan noted an

62. Exhibit NQ-2016-002-07G (protected), Table 5, Vol. 2.1.

63. *Transcript of Public Hearing*, Vol. 2, 29 November 2016, at 183-84.

64. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 415, 446, 468; *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 527, 564.

65. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 403.

66. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 475. The supply disruption phenomenon seems to have mimicked an annual phenomenon in the industry, whereby builders and contractors sometimes buy stocks of gypsum board after a price increase is announced in the fall but before the price increase takes effect in January. *Transcript of In Camera Hearing*, Vol. 1, 28 November 2016, at 8.

67. *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 527-29.

68. Exhibit NQ-2016-002-07G (protected), Vol. 2.1, Tables 5, 17; Exhibit NQ-2016-002-07 (protected), Vol. 2.1, Table 16.

69. Exhibit NQ-2016-002-B-02A, Vol. 13 at para. 44; *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 379-80, 398.

offer to supply the Western Canadian market with Korean gypsum board.⁷⁰ However, import penetration from other countries may be slow to occur. For example, several contractors noted that even though gypsum board might be available from Mexico, they would not necessarily use it because it is of unknown quality and the Mexican producer offered no liability for its use in Canada.⁷¹ Contractors would thus not be willing to either risk a delay in their project caused by said gypsum board failing a quality inspection, or any future claims as to the performance of the product.

77. In addition, although CTG has increased, or plans to increase, the number of shifts at its Winnipeg and Calgary plants,⁷² and is in the process of hiring new employees at both plants, it still cannot supply the entire Western Canadian market.⁷³

78. With respect to the supply of gypsum board from imports, the duties have significantly limited sales of imports in the market.⁷⁴ Some imports continued to arrive from the United States,⁷⁵ as large buying groups appear to not have fully and immediately passed on all of the duty costs to their purchasers; this situation is not likely to continue in the long term.⁷⁶ Evidence and data gathered from importers indicated that they were currently absorbing at least some of the import price increases stemming from the provisional duties. It is reasonable to consider that this is a situation which would be untenable in the long term.

79. Continued application of the duties in the full amount will make U.S. imports uncompetitive in Western Canada, driving them out of the market. This would leave downstream consumers of gypsum board with less competition and choice, particularly as CTG is unable to fully supply the Western Canadian market.⁷⁷ The Tribunal finds that measures are necessary that result in the continued viability of U.S. imports, which would in turn assist in maintaining competition in the market.

80. CTG increased its prices by 30 percent post-imposition of the provisional duties. By its own admission, the 30 percent price increase has brought its financial performance to an acceptable level. However, there is no reason why CTG could not impose further increases if the final duties are imposed in the full amount.

c) Conclusion

81. For the foregoing reasons, the Tribunal finds that the imposition of duties, in their full amount, in respect of imports of the subject goods will have the effect of substantially reducing competition in the Western Canadian market in the future, including losses in sources of supply, excessive price increases and reduced consumer choice.

70. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 398, 400, 419-20.

71. *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 565-66.

72. *Transcript of Public Hearing*, Vol. 2, 29 November 2016, at 209; *Transcript of In Camera Hearing*, Vol. 1, 28 November 2016, at 9; Exhibit NQ-2016-002-A-04 (protected), Vol. 12 at para. 44d.

73. Exhibit NQ-2016-002-06, Vol. 1.1, Table 20; Exhibit NQ-2016-002-07A (protected), Vol. 2.1, Table 68.

74. Exhibit NQ-2016-002-06G, Vol. 1.1, Table 6.

75. Exhibit NQ-2016-002-07G (protected), Vol. 2.1, Table 5.

76. Exhibit NQ-2016-002-RI-25A (protected).

77. Exhibit NQ-2016-002-06, Vol. 1.1, Table 20; Exhibit NQ-2016-002-07A (protected), Vol. 2.1, Table 68.

2. Harm to Businesses Who Use the Subject Goods

a) Introduction

82. The Tribunal is directed to assess whether the imposition of provisional or final duties in respect of imports of the subject goods has had or would have the effect of causing significant harm to businesses who use the subject goods. This element of the OIC is similar to the factor described in subsection 40.1(3)b(ii) of the *SIMR*, which considers whether the imposition of duties “has caused or is likely to cause significant damage to producers in Canada that use the goods as inputs in the production of other goods and in the provision of services”. The Tribunal will thus consider whether there are financial or other impacts of the imposition of the duties which are significant and unintended or unwanted given the nature of the gypsum board market.

b) Analysis

83. Anti-dumping duties are imposed only on those dumped goods that have caused or threaten to cause material injury to a domestic industry. The application of anti-dumping duties serves to counteract the injury caused by dumping by raising the price of dumped imports. The cost of the elevated market prices are then expected to propagate down the value chain in each subsequent downstream industry. The extent to which costs are passed along will depend, among other things, on the price elasticity of the input and output good in question.⁷⁸ These higher downstream costs are therefore the natural result of the application of anti-dumping duties and, as such, are *prima facie* in Canada’s trade, economic and commercial interest.

84. However, anti-dumping duties may have certain unintended or unwanted consequences on downstream users that, on balance, would not be in Canada’s trade, economic or commercial interest. In the present case, testimony during the hearing revealed that the provisional duties had significant unexpected effects on the costs of downstream users⁷⁹ stemming from contracts which had been entered into at levels which did not account for provisional duties, based on the assumption of on-going price stability.⁸⁰ Price stability with a known and predictable pattern of annual price increases was the norm in the gypsum board market before the provisional duties were imposed.⁸¹

85. As explained above, a small price increase would typically be announced in the fall, to take effect in January of the subsequent year. Thus, gypsum board installers, builders and contractors were able to plan for these price increases when they signed their contracts. Small price increases could either be reflected in new contracts, or absorbed within normal profit margins. Price increases never occurred mid-year. Indeed, two attempts by the domestic industry to implement a mid-year price increase in 2013 and in 2014 proved fruitless and ultimately failed in the face of significant resistance by large buying groups.⁸²

78. Exhibit NQ-2016-002-A-18, Vol. 11A at para. 13.

79. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 440, 450, 455, 461, 464; Responses to Tribunal Requests for Information in Vol. 10A and 10B.

80. Correspondence received from various purchasers, contractors and builders in Vol. 1.

81. *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 519, 562; *Transcript of Public Hearing*, Vol. 1, 28 November 2016, at 143; *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 562; *Transcript of Public Hearing*, Vol. 3, 30 November 2016, at 313-14.

82. Exhibit NQ-2016-002-A-02 (protected), Vol. 12 at paras. 27-29; *Transcript of In Camera Hearing*, Vol. 1, 28 November 2016, at 40.

86. By contrast, when the provisional duties were imposed in September 2016, the domestic industry immediately implemented a 12 percent price increase, followed by an additional 16 percent price increase one month later.⁸³ Parties sourcing from imports, meanwhile, simultaneously were subject to a 55 percent increase in the price of imported gypsum board.⁸⁴ Thus, prices from all supply sources rose quickly and precipitously. As one builder put it: overnight, they lost price stability.⁸⁵

87. Suddenly, builders and contractors found themselves in a very difficult position where they were locked into fixed-price contracts with little to no ability to renegotiate the price of gypsum board for various building projects. The large price increase was, in many instances, more than the actual profit margin built into these contracts.⁸⁶ Builders and contractors now faced the option of taking a loss on individual construction projects or simply walking away from their signed contracts.⁸⁷ This would damage their reputation and make it difficult to secure future work.

88. The losses are substantial: just six companies that appeared before the Tribunal have lost millions of dollars following the imposition of provisional duties.⁸⁸ There are some 800 other building and construction companies in Western Canada,⁸⁹ many of whom could be experiencing similar losses.

89. Builders and contractors were also concerned that gypsum board prices would rise further,⁹⁰ a suspicion no doubt enhanced in early December 2016 when the CBSA announced higher final duty rates. Thus, not only were builders harmed by higher costs for their projects already committed, but they also found themselves in a period of uncertainty and were very hesitant to either negotiate or sign new contracts for fear that further price increases were coming. Builders that attempted to add price adjustment clauses into their contracts immediately found themselves in situations where potential customers would now seek quotes from other builders.⁹¹ As a result, in some instances, building and contracting firms had to reduce hours for their installation teams or lay off employees.⁹²

c) Conclusion

90. In light of the foregoing, the Tribunal finds that the immediate imposition of provisional or final duties, in their full amount, in respect of imports to the subject goods has had or would have

83. *Transcript of Public Hearing*, Vol. 7, 6 December 2016, at 825.

84. Provisional duties of 140 percent were imposed on a calculated transfer price between affiliated producing and importing entities, translating into a market-level increase of 55 percent on gypsum board. The exporting and importing entities appeared to have further absorbed some of the duties to match the domestic price increase.

85. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 439; *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 559.

86. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 440, 493-94; Exhibit NQ-2016-002-S-02, Vol. 13B; Exhibit NQ-2016-002-X-02 (protected), Vol. 14B at para. 57.

87. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 448; *Transcript of Public Hearing*, Vol. 7, 6 December 2016, at 788.

88. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 443-44.

89. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 489.

90. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 442.

91. *Transcript of Public Hearing*, Vol. 7, 6 December 2016, at 827.

92. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 448-49.

the effect of causing significant harm to businesses who use these goods, unless there is a mechanism put in place to allow the market to adjust to the resulting price increase.

3. Harm to Consumers of the Subject Goods

a) Introduction

91. The OIC's terms of reference specifically directed the Tribunal to assess whether the imposition of provisional or final duties in respect of imports of the subject goods has had or would have the effect of causing significant harm to consumers of gypsum board in the Western Canadian market. In the context of this case, consumers do not only include individual consumers. It broadly encompasses all public and private owners of buildings in which gypsum board is being used. The Tribunal will therefore assess if the imposition of duties would cause an excessively negative impact to consumers of the subject goods.

b) Analysis

92. Virtually all participants agreed that consumers will ultimately pay more because of these duties. Gypsum board is a product with a highly inelastic derived demand with no real substitutes. Unlike many products which are the subject of anti-dumping measures, this increased cost can be passed along easily to the consumer.⁹³ Though the pass-through may not equate to a dollar-for-dollar figure, the effect of the duties may be marked up at each trade level, magnifying the ultimate effect on the consumer. As for smaller renovation projects that consumers may undertake, retailers have also raised their prices in recent months.⁹⁴

93. Consumers have benefited from low gypsum board prices before the provisional duties went into effect, albeit at the expense of the financial health of the domestic industry in reaction to unfair competition practices from U.S. producers. While recent price increases seem to have restored the domestic producer to profitability, further price increases (which could arise if full final duties were implemented) would harm consumers and, by driving out U.S. exports, could reduce choice of supply. The Tribunal heard testimony that, even with the provisional duties in place, consumers of gypsum board in Western Canada are already paying some of the highest prices in North America.⁹⁵

94. The Tribunal recognizes that gypsum board represents a relatively small proportion of the cost of building a house; for a typical home buyer, this cost will usually be amortized over the life of a mortgage. Thus, gypsum board price increases are unlikely to be a key factor in the consumer's building decision. That does not mean that the increase in cost is inconsequential to a typical consumer. The fact remains that the duties will ultimately result in house buyers paying thousands of dollars more for a typical home; in addition, this increase is occurring in a market where builders and ultimately house buyers have already seen other major increases in costs.⁹⁶ Both of these issues cannot be ignored by the Tribunal.

93. *Transcript of Public Hearing*, Vol. 6, 5 December 2016, at 622-23; Exhibit NQ-2016-002-A-11, Vol. 11A at 3; Exhibit NQ-2016-002-C-01, Vol. 13 at paras. 26, 67, 79; Exhibit NQ-2016-002-A-18, Vol. 11A at para. 10.

94. Exhibit NQ-2016-002-RI-22 (protected), Vol. 10A at 3; Exhibit NQ-2016-002-RI-20B (protected), Vol. 10A at 2.

95. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 404.

96. Exhibit NQ-2016-002-A-01, Vol. 11, Tables 19, 20, 21; Exhibit NQ-2016-002-M-05, Vol. 13B at 3.

c) Conclusion

95. For these reasons, the Tribunal finds that the imposition of provisional or final duties, in their full amount, in respect of imports of the subject goods has had or would have the effect of causing harm to consumers of these goods.

4. Summary

96. The imposition in their full amounts of provisional duties and final duties applicable to gypsum board imported from the United States into Western Canada is contrary to Canada's economic, trade or commercial interests. Specifically, such an imposition will substantially reduce competition in the Western Canadian market, has caused and will continue to cause significant harm to businesses who use them, and harm consumers of those goods.

Chapter IV – Reasons for the Tribunal’s Recommendations

97. In light of the previous analysis and in the circumstances of this inquiry, the Tribunal considers that it would be in Canada’s economic, trade and commercial interest to mitigate the impact of the duties.

98. As explained above, the imposition of the provisional duties in this case led to unintended or unwanted effects. The sudden increase in prices threw a market previously characterized by relatively stable prices and predictable annual price changes into disarray. This situation generated large unexpected losses for downstream businesses using gypsum board, causing significant harm to these industries. It has harmed consumers through unwanted increases of overall construction and renovation costs for homes due to rising prices for gypsum board. It will, in the future, result in a substantial reduction in competition with several accompanying negative effects.

99. In these circumstances, it is the Tribunal’s task to balance the interests of the domestic gypsum board industry in obtaining the remedial benefits arising from the imposition of anti-dumping duties against the unintended or unwanted consequences of the duties for competition, downstream industries and consumers in the Western Canadian market for gypsum board. To achieve that objective, the Tribunal recommends three main, related remedies: (1) that provisional duties collected be retained by the federal government and used to refund downstream losses already incurred; (2) that final duties imposed on cooperating exporters be remitted to them in order to address future short-term downstream losses, i.e. a temporary duty holiday; and (3) that final duties for any cooperating exporters on any export transaction involving subject gypsum board to Canada should not exceed 43 percent of the export price, i.e. a lesser duty. The Tribunal also makes recommendations regarding a review of the reduced final duties and certain measures regarding the Fort McMurray region.

100. The Tribunal considered many other potential remedies and selected the above recommendations to best fulfill its mandate as established by the OIC, which in addition to the balancing of the interests of the domestic industry, exporters/importers, multiple levels of governments, buyers, contractors, installers, home-builders, consumers and others, also required “timely consideration” of the issues and potential solutions. Although not the only possible solutions, given the OIC’s terms of reference, the Tribunal views this combination of recommendations as balanced, transparent, and effective.

1. Refunds for Downstream Losses Already Incurred

a) Introduction

101. The imposition of provisional duties raised the price of imports and allowed the domestic producer to raise prices for gypsum board sharply. The harm caused by provisional duties to downstream users through higher-priced domestically produced and imported gypsum board should be alleviated. An appropriate remedy should address, in particular, harm caused during the time period where contractors and builders were still subject to contractual obligations negotiated based on lower pre-duty prices. The Tribunal therefore suggests introducing a temporary reimbursement system for downstream losses already incurred by the building and construction industry.

b) Analysis

102. Retaining and distributing provisional duties could help downstream builders and contractors to mitigate some of the increased costs they have already incurred since the provisional duties were imposed on September 6, 2016. However, resultant price increases of gypsum board will continue to impact their profit margins, as long as gypsum board prices remain high while their existing “supply and install” contracts are still in place and working towards completion.⁹⁷

103. While the government has no direct control over the sales and pricing of domestically produced gypsum board, provisional duties on imported gypsum board have been collected by the CBSA since their imposition in September 2016. The Tribunal expects that some provisional duties will be returned to cooperating importers whose average dumping duty has decreased in the final determination. Any remaining provisional duties collected by the CBSA will be retained by the government. These retained duties could be used to reimburse downstream users, such as builders and contractors, for the additional costs incurred by the September and October 2016 price increases.⁹⁸

104. Builders and contractors who have lost revenue from contracts entered into before the imposition of provisional duties would have to submit detailed contract and purchasing information. This information would need to demonstrate that a contract or a binding letter of intent was entered into before September 6, 2016, and provide verifiable revenue loss accounting directly related to higher gypsum board prices. The federal government could then reimburse the builder or contractor, either wholly or in part, for any loss directly related to the gypsum board price increase.

105. It must be stressed that the problem goes beyond the impact of duties on imported gypsum board. Builders and contractors who purchased domestic gypsum board at an increased price have experienced the same negative consequences on their businesses. They should not be penalized for having supported the domestic gypsum board industry. The remedy should cover both those who purchased imported gypsum board and those who purchased domestic gypsum board.

106. The Tribunal cautions that the remaining provisional duties collected would only be enough to reimburse a small fraction of the construction industry’s related incremental gypsum board costs. Even without an in depth analysis of total incurred downstream losses, it was immediately apparent to the Tribunal, from evidence collected through the hearing, that these costs have been compounded through the different market levels and that such losses could probably not be fully alleviated by the actual amount of collected duties.

97. A typical contract in Western Canada can range anywhere from 6 to 12 months depending on the size of the development, as estimated by the Canadian Home Builders’ Association in Exhibit NQ-2016-002-RI-115, Vol. 9D at 10.

98. As an alternative solution, the Minister could consider extending the time frame for the reimbursement program; this could be combined with eliminating the temporary remission of final duties currently recommended to take place from January 2017 to July 2017 (which remission is further discussed below). One downside of this approach, however, is that the downstream industry would continue to incur losses and therefore experience issues with cash-flow and uncertainty as details of the program are announced and implemented, i.e. until monies are disbursed. Furthermore, this extension would result in considerably higher funding outlays than a reimbursement program for a period ending in January 2017. These concerns are why the Tribunal proposed the temporary duty remission to complement a more limited reimbursement program.

107. As an example, the Tribunal heard testimony from six builders and contractors during the hearing. Those six companies alone accounted for losses in the millions of dollars in those first three months following the imposition of provisional duties.⁹⁹ Several market participants estimated that there were some 800 active building and construction companies using gypsum board in Western Canada.¹⁰⁰

108. Should the federal government wish to fully reimburse all Western Canadian users of gypsum board, including those who purchased domestically produced gypsum board, it would then need to provide additional funds from another funding source, since no duties were collected in connection with the latter.

c) Conclusion

109. Since the Tribunal finds that the imposition of provisional duties caused harm to the downstream building and construction industry, a remedy refunding those downstream industries (rather than refunding such duties to importers of the dumped imports) would be in Canada's trade, economic and commercial interest. It would ensure that the injurious dumping which occurred during the period when the provisional duties were applied remains remediated, while alleviating the collateral harm those duties have caused to downstream industries.

2. Temporary Remission of Final Duties to Address Future Short-term Downstream Losses

a) Introduction

110. Unintended harm to the downstream industry will continue as long as gypsum board prices remain at current levels and until prices adjust to a new equilibrium or price increases are announced. This adjustment period could stretch over many months. The remittance of final duties on imports from cooperating exporters, i.e. a duty holiday for a limited time period or up to a certain maximum volume of imports, could provide the means to mitigate harm to the downstream industries resulting from expected short-term losses.

b) Analysis

111. The Tribunal heard evidence that a typical residential dwelling is often built over a period of 6 to 12 months. Contracts for multi-unit dwellings or large industrial or institutional buildings, such as schools, offices or hospitals, may extend over several years.¹⁰¹ Therefore, as long as gypsum board prices remain at current levels, unintended harm to the downstream industry will continue over many months, though diminishing thereafter.

112. Once gypsum board prices adjust to a new equilibrium, or once future price increases are known, new contracts or letters of intent will eventually reflect such an equilibrium price and downstream industry actors will no longer be in that difficult situation where they are unable to pass on costs. As Dr. Kaplan opined in his expert report, because the price increases can be readily passed along to consumers, there will be no significant medium- or long-term damage to downstream industries. The price increases and the ability of businesses to pass along those

99. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 443-44.

100. *Transcript of Public Hearing*, Vol. 4, 1 December 2016, at 489.

101. Exhibit NQ-2016-002-AA-01, Vol. 13 at para. 2.

increases was an anticipated consequence of the duty.¹⁰² It is the interim period which is here problematic.

113. A potential temporary remedy to future unintended revenue loss for the downstream builders and contractors would be to restore some measure of price stability, at least in the short term. This could be accomplished by remitting final duties which would otherwise be imposed on firms importing gypsum board from cooperating U.S. exporters for a period of six months as of January 4, 2017, effectively creating a duty “holiday”. This would allow to complete current and ongoing projects at previously determined price levels and would also provide predictability in setting a date for the next announced annual price increase. This, in turn, will also mean that the domestic industry would have to temporarily roll back its prices to pre-provisional duty levels.

114. The Tribunal recognizes that such a remedy would essentially restore prices to pre-provisional duty levels. For this reason, such a measure must be temporary, and should be put in place only as a measure to exhaust the majority of residential building contracts already in place. It would not be in keeping with the purpose of *SIMA* to keep this measure in place for several years in order to fully accommodate the multi-dwelling and large industrial or institutional projects. Based on the testimony collected at the hearing, the Tribunal recommends that this measure be in effect for no more than six months.¹⁰³ While six months may not be sufficient to meet the completion of all contracts previously signed by downstream builders and contractors, it will be long enough to allow most contracts to be at least substantially completed. Moreover, if combined with the recommendation above to reimburse builders and contractors for contracts in place since September 6, 2016, using provisional duties collected, these two measures could mitigate the cost increases incurred over a period of 10 months.¹⁰⁴

115. This measure must not allow importers to circumvent the anti-dumping duties by excessively importing gypsum board during the duty holiday before it ends. The aim of a duty holiday is to provide some measure of price certainty in the market and stop the erosion of builders’ and contractors’ profit margins by higher gypsum board prices; it must not allow importers to build up a large inventory of dumped gypsum board in Canada for future sale.

116. For this reason, the Tribunal recommends that duties during this period be remitted to importers up to a maximum level, after which the reduced duties would apply.¹⁰⁵ Further, the Tribunal recommends that duty remission only be available for imports from those U.S. exporters who cooperated with the CBSA during its investigation, and hence received individual normal values.¹⁰⁶

102. Exhibit NQ-2016-002-A-18, Vol. 11A at para. 66.

103. *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 518.

104. This should allow time for most, though not all, currently existing contracts to be completed. See, for example, *Transcript of Public Hearing*, Vol. 1, 28 November 2016, at 28 and Vol. 4, 1 December 2016, at 451.

105. This panel has made this recommendation in the context of the balancing of different interests as mandated by the OIC. The Tribunal notes that it would not normally grant similar remedies in proceedings under *SIMA*, i.e. it would not grant an exclusion permitting imports up to a certain quantity (however temporary or limited) of injurious subject goods. In *SIMA* proceedings, injury to the domestic industry is the determinative factor in granting of an exclusion.

106. If a non-cooperating importer wished to participate in the duty holiday, it could be allowed to provide the required information to the CBSA and receive individual normal values for their exports. However, it may be difficult to complete this process before the duty holiday is completed.

117. The permissible volume of gypsum board imports for a temporary duty remission should be set to reflect market demand but also minimize any potential damage to the domestic industry. The Tribunal heard conflicting evidence as to the potential demand for gypsum board in 2017.¹⁰⁷ There are strong reasons against using the volume of imports in the first half of 2016. Those imports occurred in a market characterized by injurious dumping. Allowing a duty holiday on that level of imports could impose an overly large burden of downstream market support on the revenue prospects of the domestic industry.

118. In this case, evidence was adduced that there was no dumping in 2013 based on average prices from U.S. exporters to Canada.¹⁰⁸ For this reason, the Tribunal suggests that the maximum volume for the duty holiday be calculated by using 2013 market shares (as arguably untainted by dumping) and total market volumes in the first half of 2016 (as the most recent information available). This would be done by adjusting the volume of imports in the first half of 2016 to reflect the shares of market sales of domestic production and imports in 2013.¹⁰⁹ This mechanism would represent a balanced approach in determining a volume cap for a temporary duty holiday.

119. In other words, the share of U.S. gypsum board exports allocated to each of the cooperating exporters could hence be calculated based on each company's share of exports to Canada (or imports by their affiliated importers) in 2013,¹¹⁰ before any injury from the dumping started,¹¹¹ and based on the more contemporary and known volume levels for the first half of 2016.¹¹² Once an importer reaches its allocated level of imports, any subsequent imports would be subject to the reduced duty rate.

120. This temporary measure would be in Canada's trade, economic and commercial interest. U.S. importers would be able to sell gypsum board at pre-duty prices while the domestic gypsum board industry would adjust prices accordingly, thus providing temporary relief to downstream builders and contractors confined by the terms of existing contracts. In effect, the unintended damage caused to them by the large and sudden price increases in the fall of 2016 would stop accumulating. While this remedy would mean a reduced level of protection to the domestic gypsum board industry, it would only be in place for a reasonable amount of time allowing the market to find a new stable price.

121. The Tribunal strongly encourages all market participants to identify future gypsum board prices as quickly as possible, or equip themselves with price-adjustment mechanisms going forward, so that they can enter into future contracts and letters of intent with greater financial certainty.

107. See, for example, Exhibit NQ-2016-002-M-07, Vol. 13B at 4; Exhibit NQ-2016-002-M-01, Vol. 13B, Tab 7; Exhibit NQ-2016-002-13.05, Vol. 4 at 307; Exhibit NQ-2016-002-RI-25A, Vol. 10A at 9.

108. Exhibit NQ-2016-002-A-12 (protected), Vol. 12A at 20.

109. Exhibit NQ-2016-002-07 (protected), Table 22, Vol. 2.1.

110. Given the data collected during the investigation, the share of exports will be calculated using the import volumes provided by the affiliated Canadian firms. In the six month temporary remission period, individual exporters/importers, i.e. USG/CGC and GP US/GP would be limited to importing 93.5 percent of the volume of their January to June 2016 sales from imports in Western Canada as reported by them to the Tribunal. Exhibit NQ-2016-002-16.01A (protected), Vol. 6 at 121; Exhibit NQ-2016-002-13.04 (protected), Vol. 4 at 175; Exhibit NQ-2016-002-06, Table 20.

111. Exhibit NQ-2016-002-13.04 (protected), Vol. 4 at 175; Exhibit NQ-2016-002-16.01A (protected), Vol. 6 at 121.

112. Exhibit NQ-2016-002-16.01A (protected), Vol. 6 at 121.

c) Conclusion

122. The imposition of duties in their full amount is likely to cause harm to the downstream building and construction industry for some time. A remedy allowing importers to import the subject goods at pre-duty prices for a limited time period or up to a certain volume of imports will allow for the price of gypsum board to return to pre-duty prices during that time period and will mitigate expected short-term losses to the downstream industries, i.e. to builders and contractors using gypsum board as an input in construction projects.

3. Reduced Final Duties**a) Introduction**

123. The final margins of dumping applicable to imports of subject goods by the three companies cooperating in the anti-dumping investigation, GP US, USG and CTG US, were found to be 94.6, 201.0 and 211.0 percent, respectively; all other exporters are subject to a duty rate of 324.1 percent.

124. As explained above, it is an intended effect that anti-dumping duties raise the import price of subject goods in order to eliminate injury to the domestic industry. Domestic prices may also rise; this is an expected consequence of trade protection measures. However, the Tribunal has found in this case that the duties have unintended or unwanted consequences. They will substantially reduce competition and are likely causing significant harm to downstream industries that use the subject goods and harm consumers in Western Canada.

125. There are three options available to the Tribunal regarding the applicable duty rate in this case: the duty rates remain at their current full levels, they could be reduced to zero, or a reduced rate could be applied.

b) Effects of the Duties on Competition and Downstream Markets

126. Evidence and data gathered from importers indicated that they were currently absorbing at least some of the import price increases stemming from the provisional duties. This situation is unlikely to be sustainable over the medium to long term, as absorbing the duties will greatly reduce the profitability of gypsum board sales in Western Canada.

127. Full application of the high final duties to several of the cooperating U.S. exporters risks making U.S. imports uncompetitive in Western Canada, driving U.S. imports out of the market. This would very likely reduce competition in the market and leave downstream customers with fewer choices. Moreover, full application of the duty could disrupt a well-established supply chain if U.S. exporters exited the Western Canadian market. The potential situation is exacerbated by the fact that CTG is unable to fully supply the Western Canadian market. Eastern Canadian producers do not appear to be able to fill the void. Additionally, imposition of the full duties could allow CTG to raise prices further, well above the already announced 30 percent price increase. Such a price would allow CTG to earn a return on sales in Western Canada well above the average return of companies within the Saint-Gobain organization in any country, and drive gypsum board prices even higher. In a context where the 30 percent price increase allowed CGT to get back to profitability, any significant further price increase could hardly be justified by the need for protection from injury.

128. As noted earlier, the Tribunal heard repeatedly at the hearing that downstream users of gypsum board will ultimately pay more because of the duties, due primarily to the fact that gypsum board is a highly inelastic derived product with no real substitutes. Builders and contractors are already paying more from their wholesale supply dealers as CTG and the Canadian importers raised prices immediately following imposition of the provisional duties. Retailers have also raised their prices in recent months.¹¹³ Builders and contractors noted that they will ultimately adjust their contract bids accordingly in order to reflect the higher prices for gypsum board. There is an entire chain of entities through which the price increases are passed to the consumers.

129. The Tribunal heard that gypsum board represents a relatively small amount of the cost of building a house; this cost will usually be amortized over the life of a mortgage,¹¹⁴ though some witnesses argued that gypsum board cost increases are one of many cost increases faced by the housing industry. Cost increases also come from changes to building code requirements in some jurisdictions. The cumulative impact of all cost increases, including the increased costs of gypsum board, in addition to government actions designed to cool the housing market, may reduce housing demand¹¹⁵ and put intolerable cost strains on home buyers.¹¹⁶

130. On the other hand, imposing no duties at all is not a desirable long-term solution. Imposing no duties would likely restore pre-provisional duty gypsum board prices. While this would alleviate the cost burden on consumers, builders and contractors, it would also lead to a resumption of injurious dumping of gypsum board in Western Canada. The domestic gypsum board industry would suffer further losses, risking its long-term sustainability. The resulting reduction in competition and consumer choice would not be beneficial to the long-term interests of the industry, downstream consumers, or the government.

131. The Tribunal is of the view that any remedy should preserve U.S. exports as a viable source of supply for the Western Canadian market while at the same time allowing CTG to make a reasonable return on sales. Both of these goals cannot be accomplished with either the imposition of full anti-dumping duties or with no duties at all.

132. Accordingly, the Tribunal is of the view that a lesser final duty should apply.

c) The Concept of Lesser Duty

133. In a typical anti-dumping case, once injurious dumping has been found, the CBSA imposes normal values on exporting firms that, when applied fully, offset the calculated margin of dumping. A lesser duty is a rate which does not counteract the full extent of the dumping, but is expressed at a lower rate meant to counteract the actual injury suffered by the domestic industry caused by the dumping.

134. The WTO agreement on anti-dumping measures forms part of the context within which *SIMA* was enacted, and is thus a useful context within which the domestic legislation is

113. Exhibit NQ-2016-002-RI-22 (protected), Vol. 10A at para. 3; Exhibit NQ-2016-002-RI-20B (protected), Vol. 10A at 2.

114. That does not mean that the cost is inconsequential to a typical consumer.

115. See, for example, *Transcript of Public Hearing*, Vol. 7, 6 December 2016, at 839-40.

116. *Transcript of Public Hearing*, Vol. 3, 30 November 2016, at 282.

interpreted.¹¹⁷ Article 9.1 of the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*¹¹⁸ suggests that “[i]t is desirable that the imposition . . . [of] the duty be less than the margin [of dumping] if such *lesser duty* would be adequate to remove the injury to the domestic industry”¹¹⁹ [emphasis added].

135. Unlike other countries,¹²⁰ the application of the concept of lesser duty in Canada is limited to public interest inquiries and is only used as a method for determining the appropriate level of duty once a public interest has been found.¹²¹ In a public interest inquiry, pursuant to subsections 45(4) and (5) of *SIMA*,¹²² if, as a result of the inquiry, the Tribunal is of the opinion that the imposition of duties in their full amount would not, or might not be, in the public interest, the Tribunal must, without delay, report to the Minister, and specify either:

- a level of reduction in the anti-dumping duty;
- a price or prices that are adequate to eliminate the threat of injury to the domestic industry.

136. After reviewing the evidence, the Tribunal has concluded that the imposition of provisional duties or duties applicable to gypsum board imported from the United States for use or consumption in Western Canada, in its *full* amount, is contrary to Canada’s economic, trade or commercial interests. Specifically, the Tribunal has concluded that such an imposition will likely reduce competition, has caused and will cause significant harm to multiple trade levels who use gypsum board and ultimately to the consumers themselves. In the present case, the imposition of an appropriate lesser duty would alleviate the adverse impact on market participants and ultimately consumers, while providing adequate protection to the domestic producer from the injurious effects of the dumping.

117. *National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 SCR 1324, 1990 CanLII 49 (SCC); *Rahaman v. Canada (Minister of Citizenship and Immigration)*, [2002] 3 FCR 537, 2002 FCA 89 (CanLII) at paras. 35-36.

118. https://www.wto.org/english/docs_e/legal_e/19-adp.pdf [Anti-dumping Agreement].

119. Article 9.1 of the *Anti-dumping Agreement* stipulates that the “decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.” See also Article 19.2 of the *Agreement on Subsidies and Countervailing Measures* at https://www.wto.org/english/docs_e/legal_e/24-scm.pdf.

120. For example, in the European Union, the European Commission determines a non-injurious price in every investigation. The European Commission then compares this to the weighted average import price of the dumped and subsidized goods and calculates a “margin of injury”, which, if it is lower than the margin of dumping, is applied as the prevailing duty rate. The Australian Anti-Dumping Commission also routinely calculates a non-injurious price in its investigations and will set the duty rate on the basis of this price if it is lower than the non-dumped price of the imported goods.

121. *Bill C-35: An Act to Amend the Special Import Measures Act and the Canadian International Trade Tribunal Act* at http://www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?lang=E&ls=C35&Parl=36&Ses=1.

122. *Special Import Measures Act*, R.S.C., 1985, c. S-15 at <http://laws-lois.justice.gc.ca/eng/acts/S-15/>.

d) Calculating a Lesser Duty

137. In order to assess which lesser duty would be adequate to counteract the injury caused by the dumping of the subject goods, the Tribunal started with an evaluation of the non-injurious price level for CTG. In Inquiry No. NQ-2016-002, the Tribunal found that CTG was materially injured through price undercutting and price suppression, and a resultant reduction in net profits.

138. In evaluating the non-injurious price level, the Tribunal first looked at “benchmarks” for return on sales or, in some instances, net margins of firms in the same business in the United States¹²³ and firms in the Saint-Gobain family of companies.¹²⁴ The Saint-Gobain benchmarks were particularly important because CTG competes with other companies in the Saint-Gobain family for a share of the finite capital investment pool. This investment pool is allocated on the basis of CTG’s performance relative to the other companies with gypsum-related production activities and within Saint-Gobain as a whole. Companies that perform below average and below profit and return on sales expectations find it harder to get agreement on capital requests for above average activity levels, or on proposals to increase resourcing.¹²⁵ By studying these benchmarks, the Tribunal came to a view on a target rate of return on sales for CTG.

139. The Tribunal then calculated a target market price using the target return on sales, CTG’s income statement for the third quarter of 2016, and information for CTG’s most recent sales delivery cost estimates in the Western Canadian market. The income statement for the third quarter of 2016 was chosen as it is the most recent income statement available.

140. The Tribunal next estimated the anti-dumping duty required for the imports so that they would be sold at a target market price. The duty amount was then calculated using export price levels in order to achieve the target market price, less the known export price without the duty in August 2016. The duty percentage hence became the duty amount divided by the known export price without the duty.

141. Most of the information used for this calculation was confidential in nature, either proprietary to the domestic producer and/or the importers on record. As a result, the Tribunal cannot discuss publically the numbers used to arrive at its recommendation. In its methodology, the Tribunal aimed at arriving at a number which would, based on the information currently available to it, allow CTG to return to a level of profitability that would allow it to compete internally for investment within the Saint-Gobain group of companies.

142. The Tribunal then increased the duty rate in order to account for the fact that the importers did not appear to be passing the entire anti-dumping duty through to customers.¹²⁶ An estimate of the amount of actual pass-through was made for the period of the provisional duties. In view of importers’ market behaviour, in the longer term there would likely continue to be a less than full

123. Exhibit NQ-2016-002-A-01, Vol. 11 at 30.

124. Exhibit NQ-2016-002, Aid to Argument of Certain Teed Gypsum Canada Inc. (protected) filed during the course of the hearing on December 7, 2016, Vol. 18, Tab 3.

125. Exhibit NQ-2016-002-A-01, Vol. 11 at para. 32.

126. Depending on the market conditions, importers faced with an increase in duty may react in one of three ways. They may pass the duty amount through to their customers dollar-for-dollar. They may mark it up and increase profits, or they may absorb some of the amount by reducing profits. The latter response is a partial pass-through of the duty increase. See also Exhibit NQ-2016-002-RI-25A (protected), Vol. 10A at 6.

pass-through of the anti-dumping duties, but that it would be closer to a full pass-through as the market adjusts to the new duty levels.

143. Following this calculation, the Tribunal determined that a duty of 43 percent could effectively counteract the injurious effects of the dumping, while providing a balanced market price level for downstream users and consumers. At 43 percent, the proposed lesser duty is much lower than the margins of dumping found for U.S. exporters under the final determination, which were 211.0 percent for CTG US, 201.0 percent for USG, 94.6 percent for GP US, and 324.1 percent for all other exporters.

e) Conclusion

144. The Tribunal recognizes that at their current rate, final anti-dumping duties will substantially reduce competition and likely impose excessive and harmful additional costs on businesses and consumers in Western Canada. The Tribunal considers that a lesser final duty of 43 percent would be an appropriate means to mitigate such harm and would thus be in Canada's trade, economic and commercial interest. The lesser duty would also be sufficient to mitigate the harm caused by the dumping to CTG even though it would not offset the full extent of the margins of dumping by the U.S. exporters.

4. Review of Measures

145. The recommendations of the Tribunal are based on the best evidence available. The Tribunal recognizes the great length to which parties have gone to provide witness statements, hearing evidence, and accurate responses to the Tribunal's requests for information.

146. That being said, there is only so much information that can be gathered in the short time frame over which this Reference response was drafted. Arguments were made, particularly by the domestic gypsum board industry,¹²⁷ that any actions should be delayed until a full public interest inquiry, as provided for in section 45 of *SIMA*, be conducted many months down the road. This would be contrary to the explicit requirement set out in the reference asking the Tribunal to engage in the timely consideration of these matters. The Tribunal recognizes, however, that in the context of a section 45 inquiry, it would have the benefit of seeing how the market reacted to the imposition of provisional and final duties over a period of time.

147. While the Tribunal rejects the argument of the domestic gypsum board industry, it does recognize that there are many ways that the domestic industry, importers and exporters, and downstream industry, might respond to the recommendations in this report, should they be adopted. Many variables may affect price, demand and supply in the Western Canadian gypsum board market. It is therefore very difficult at this stage to predict how the gypsum board industry and consumers may react in the near term.

148. Thus, the Tribunal believes that should these recommendations be adopted, they should be reviewed by the Tribunal approximately one year from the date that the duty holiday ends, i.e. from July 4, 2017, in order to ensure that the lesser duty is allowing the market to find an equilibrium price that allows imports and domestic production to compete at non-injurious prices. This period is seen to account for an upcoming six month "duty holiday" where duties would have little to no

127. Exhibit NQ-2016-002-A-01, Vol. 11 at paras. 127-28.

effect in the market, and then to capture an additional year beyond this point, at normalized duty levels. This measure would hence give full effect to the lesser duty, whereas the two other recommended measures, relating to reimbursing the downstream builders and contractors for lost revenue and imposing a duty holiday on future imports would be inherently finite measures. In view of all of the circumstances, the Tribunal believes that the appropriate time for it to review these measures is the fall of 2018.

5. Assistance for the Rebuilding of the Fort McMurray Region

149. In May 2016, the Fort McMurray region was devastated by wildfires which destroyed about 1,600 residential and non-residential structures and damaged many others.¹²⁸ The impact of this tragedy was felt not only in the immediate region where it took place, but throughout the Province of Alberta. There is a human cost that results from a devastation of this magnitude. It is understandable that in that context, the imposition of the provisional duties and the potential imposition of a final duty at the full rate determined by the CBSA can be seen as adding an undesirable economic burden to their plight.

150. One of the reasons for holding the hearing for this inquiry in Edmonton was to bring the Tribunal closer to the reality of those who suffered from this tragedy. During the course of the inquiry on the reference, the Tribunal tried to elicit as much information as it could concerning the situation in Fort McMurray. The local Member of Parliament for Fort McMurray – Cold Lake, Mr. David Yurdiga, testified at the hearing.

151. After the hearing, the Tribunal reached out to the Regional Municipality of Wood Buffalo (where Fort McMurray is located) and to the Government of Alberta in order to solicit additional information which could assist in understanding the particular reality to which was confronted Fort McMurray and its residents and to better assess the actual and potential impact of any anti-dumping duties on gypsum board. The Tribunal received written submissions from the Province of Alberta on December 16, 2016, and from the Regional Municipality on December 28, 2016.

152. As indicated earlier in this report, the price of gypsum board in Western Canada prior to September 6, 2016, was artificially low and resulted from the dumping of gypsum board imported from the United States. When the dumping is found to be injurious to the domestic industry, as was established in the dumping inquiry NQ-2016-002, the Government of Canada is authorized under the *Anti-dumping Agreement* to adopt anti-dumping duties that are intended to protect domestic production, and consequently jobs, from said injury. No other meaningful measure is available to the Government to counteract this injury.

153. While consumers in Western Canada have benefited from the artificially low prices resulting from the dumping of gypsum board imported from the United States, this has come at a cost to the financial health of a producer that is contributing to the diversification of the Western Canadian economy and creates middle-class jobs in Western Canada.

154. The Tribunal has already recommended that the implementation of final duties be delayed and modulated in order to provide specific relief to certain stakeholders. It also recommended that the final duties be reduced to a rate which will allow the Western Canadian producer to earn a fair return on its sales while at the same time allowing for gypsum board imports to keep coming from

128. Exhibit NQ-2016-002-RI-120, Vol. 9D at 2; Exhibit NQ-2016-002-RI-121, Vol. 10B at 3-4.

the United States at a price that will not be injurious to the domestic industry, as well as to provide an opportunity for gypsum board from Eastern Canada to compete in the Western Canadian market. It is expected that the residents of the Fort McMurray region will also benefit from those measures.

155. Nonetheless, there are certain aspects of the Fort McMurray disaster situation that may not be completely alleviated as a result of those recommendations. Information from the Regional Municipality of Wood Buffalo indicates that 300 properties affected by the wildfires were un-insured.¹²⁹ This represents approximately 20 percent of the total number of residential houses that were destroyed during the wildfires. This information also indicates that a number of residents may only have been partially insured.

156. Needless to say, the residents that were un-insured are confronted with an important financial burden. To the extent that any houses were under-insured, higher gypsum board costs may take away from other insurance funds available for other building components, contents and living expenses reimbursements.¹³⁰ Unfortunately, it is impossible to come up with any solid assessment of what the economic burden caused as a result may be, as this would require a review of individual insurance policies. However, the Tribunal strongly believes that these two groups of residents are especially vulnerable in these circumstances and deserve special attention. The Tribunal fully realizes that for residents in such situations, rebuilding their home is not a discretionary expense as they have to put a roof over their heads and rebuild their lives.

157. A large part of the rebuilding will start in the spring of 2017,¹³¹ which happens to be within the “duty holiday” period recommended in the present report, should it be implemented by the Government. However, the situation described above with respect to the un-insured and under-insured residents could extend well beyond this short-term horizon. For example, for some citizens, it may take them longer to be in a position to rebuild their lost houses. The Tribunal cannot ignore those potential longer-term effects.

158. The Tribunal notes that the provincial and municipal levels of government have announced measures to subsidize the rebuilding costs. For example, the Alberta government provided funds for evacuation assistance during the fires and has allocated other funds for disaster recovery through its Disaster Recovery Program, totalling almost \$650 million.¹³² The regional municipality has waived fees and provided rebates, such as a property tax rebate that would otherwise be applicable, totalling about \$23 million.¹³³

159. As part of that effort, the federal government may wish to consider forgoing revenue from the duties collected on the import of gypsum board after July 5, 2017, in order to compensate individual citizens and businesses that are not fully insured and need to rebuild their properties in the disaster area of Fort McMurray and the region.

160. If such a measure is implemented by the Government, it should target those who are in need of assistance and ensure that it benefits the end users or consumers in the disaster area of Fort

129. Exhibit NQ-2016-002-RI-121, Vol. 10B at 5.

130. Exhibit NQ-2016-002-RI-121, Vol. 10B at 3.

131. *Transcript of Public Hearing*, Vol. 5, 2 December 2016, at 600.

132. Exhibit NQ-2016-002-RI-120, Vol. 9D at 2.

133. The Conference Board of Canada estimates that governments of all levels will spend an additional \$1.2 billion on goods, services and public infrastructures between now and 2019. See Exhibit NQ-2016-002-RI-121, Vol. 10B at 9-10.

McMurray and the region. It should be geared at ensuring that they do not pay more than the amount that they would have paid for that gypsum board in the absence of duties. Furthermore, the Tribunal understands from the information presented by the Regional Municipality of Wood Buffalo that the reconstruction effort could take up to three years, ending at the end of 2019. Therefore, the Tribunal recommends that this program end on December 31, 2019.

161. The Tribunal's recommendation would affect any duties charged on importers of gypsum board. There is no formal mechanism that is available to the federal government to compel CTG to assist in the rebuilding effort in any way. That being said, the Tribunal does not doubt the desire of CTG to assist in the rebuilding effort; CTG recognized the need for a special measure aimed specifically at the Fort McMurray situation.¹³⁴ Should the government implement this recommendation, the Tribunal is certain that CTG would find some way to match the remission with a view to help the reconstruction efforts and to remain competitive in the Fort McMurray regional market for gypsum board.

134. Exhibit NQ-2016-002-A-01, Vol. 11 at paras. 5, 190.

Chapter V – Tribunal’s Recommendations

162. For the foregoing reasons, the Tribunal recommends as follows:

- That provisional duties collected be retained by the federal government and used to refund, either wholly or in part, the higher costs for imported and domestically produced gypsum board purchased since the imposition of the provisional duties on September 6, 2016, up to but not including January 4, 2017;
- That all of the final duties imposed on cooperating exporters be remitted to them through a simplified process until the earlier of a) six months, from the date of this report, i.e. from January 4, 2017, up to and including July 4, 2017, or b) the date the subject imports reach a maximum volume of 229 million square feet, allocated on the basis of historical export shares; this temporary elimination of the duties would give time for the downstream market participants (especially drywall installers) to perform existing fixed-price contracts and, going forward, to give them an opportunity to reflect the duties in new contracts;
- That final duties for any cooperating exporters on any export transaction involving subject gypsum board to Canada should not exceed 43 percent of the export price at any time on and after the earlier of July 5, 2017, or the date the subject imports reach a maximum volume of 229 million square feet, a reduced rate which should allow either U.S. exports or domestic shipments from Eastern Canada to continue to supply the Western Canadian market;
- That, considering the limited amount of data available to the Tribunal at the time of the inquiry in GC-2016-001, the reduced final duty be reviewed at the appropriate time; and
- That, if the Government considers the measures mentioned above as insufficiently alleviating the hardship suffered by certain residents of the Regional Municipality of Wood Buffalo (the Fort McMurray region) as a result of the May 2016 wildfires, and considering the consent by the domestic industry to a special remission in connection with the Fort McMurray region, the Government grant a special remission in an amount equivalent to the dumping duties collected on gypsum board specifically used for the rebuilding of the Fort McMurray region, on terms and conditions that ensure that the end users or consumers benefitting from the measure do not pay more than the amount that they would have paid for that gypsum board in the absence of duties. This special remission should cover subject imported gypsum board which is specifically linked to the reconstruction effort, and is purchased and installed between September 6, 2016, and December 31, 2019.

Serge Fréchette
Serge Fréchette
Presiding Member

Jean Bédard
Jean Bédard
Member

Jason W. Downey
Jason W. Downey
Member

APPENDIX I

ORDER IN COUNCIL

P.C. 2016-0879
October 13, 2016

Whereas on September 6, 2016, the Canada Border Services Agency, pursuant to subsection 38(1) of the *Special Import Measures Act*, made a preliminary determination of dumping with respect to gypsum board imported from the United States for markets in Manitoba, British Columbia, Saskatchewan, Alberta, Yukon and the Northwest Territories, which determination provides for, until January 4, 2017, the imposition of provisional duties in respect of those goods;

Whereas, as of January 4, 2017, the Canadian International Trade Tribunal could, under section 43 of the *Special Import Measures Act*, make a finding that provides for the imposition of duties;

Whereas the circumstances merit timely consideration of whether the imposition of duties is in Canada's economic, trade and commercial interest;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to section 18 of the *Canadian International Trade Tribunal Act*,

(a) refers to the Canadian International Trade Tribunal the matter of whether the imposition of provisional duties or duties, applicable to gypsum board imported from the United States for markets in Manitoba, British Columbia, Saskatchewan, Alberta, Yukon and the Northwest Territories, is contrary to Canada's economic, trade or commercial interests, and specifically whether such an imposition has or would have the effect of substantially reducing competition in those markets or causing significant harm to consumers of those goods or to businesses who use them; and

(b) directs that the Tribunal report to the Governor in Council on those matters no later than January 4, 2017, and submit to the Governor in Council, within 15 days after that date, its findings and recommendations on any remedy that could be taken.

APPENDIX II**LIST OF PARTICIPANTS/WITNESSES THAT APPEARED BEFORE THE TRIBUNAL****PARTICIPANTS:****Domestic Producer**

CertainTeed Gypsum Canada Inc.

Counsel/Representatives

Christopher J. Kent
 Christopher J. Cochlin
 Christopher R. N. McLeod
 Andrew Lanouette
 Hugh Seong Seok Lee
 Michael Milne
 Susana May Yon Lee
 Cynthia Wallace

Importers/Exporters/Others

1-800 Drywall

Acadia Drywall Supplies Ltd. (carrying on business as Cabot Gypsum)

Association of Wall and Ceiling Contractors of BC

Canadian Home Builders' Association

CGC Inc.

USG Corporation

Commissioner of Competition

Continental Building Products Canada, Inc.

Continental Building Products, Inc.

Cutting Edge Solutions Drywall Ltd.

Davenport Interiors Limited Partnership

David Yurdiga, Member of Parliament

DCL Drywall Inc.

DVS Drywall Contractors Ltd.

Counsel/Representatives

Bill Ackerman

Lawrence L. Herman
 Bill Hearn
 Young Park

Peter Gallagher

Jason Burggraaf
 Gordon LaFortune
 Paul Moen
 Jan Smith

David I. W. Hamer
 John W. Boscariol
 Robert Glasgow
 Ryan MacIsaac
 Marissa Caldwell

G. Ian Clarke
 Alex Gay

Cyndee Todgham Cherniak
 Effie Triantafilopoulos

Lance Kozak

Gregory Davenport

David Yurdiga

David Lessard

Dan Sager

Importers/Exporters/Others

Gallagher Bros. Contractors Ltd.

Georgia-Pacific Canada LP

Georgia-Pacific Gypsum LLC

Gerry Ritz, Member of Parliament

Gypsum Drywall Interiors Ltd.

Gypsum Drywall Interiors (Saskatchewan) Ltd.

Gypsum Drywall (Southern) Ltd.

International Brotherhood of Boilermakers

Kevin Waugh, Member of Parliament

Loewen Drywall Ltd.

Qualico

Vipco Industries Inc.

Western Canada Alliance of Wall and Ceiling
Contractors

WSB Titan

WITNESSES:

Matt Walker

General Manager

CertainTeed Gypsum Canada Inc.

Wayne Edgecombe

Vice President Sales, Canada

CertainTeed Gypsum Canada Inc.

Jim P. Taylor

President/General Manager

VIPCO Industries Inc.

Kevin Sheptycki

Assistant Business Manager – District 11, Western
Canada

International Brotherhood of Boilermakers

Kevin Forsyth

Assistant Business Manager

International Brotherhood of Boilermakers

Counsel/Representatives

Danny Gallagher

Neil Campbell

Jonathan O'Hara

Timothy Cullen

Shauna Cant

Gerry Ritz

Thomas P. Robson

Steve Brown

Peter Clark

Renée Clark

Kevin Waugh

Harry Loewen

Ken Braun

Greg Somers

Brenda C. Swick

Rachel H. Pilc

Dylan E. Augruso

John Terry

Nick Kennedy

Adriano Mazzaferro

Controller, Gypsum Canada

CertainTeed Gypsum Canada Inc.

Ben White

Regional Manufacturing Manager Western Canada

CertainTeed Gypsum Canada Inc.

Marcel Girouard

President

Acadia Drywall Supplies Ltd. (Cabot Gypsum)

Rob Lauzon

Assistant Director of Industrial Sector Operations,
Canada

International Brotherhood of Boilermakers

Shayne Marcil

Construction Manager

Can-Der Construction Limited

Jason Burggraaf
Government Relations and Policy Advisor
Canadian Homes Builders' Association

Duane R. Hughes
Vice President, Finance and Business Development,
Gypsum and Chemical
Georgia-Pacific Canada LP (GP)

Donald Brandt
Vice President, Sales and Marketing
CGC Inc.

Ryan Shoemaker
President
Shoemaker Drywall Supplies

Peter Gallagher
Vice President
Gallagher Bros Ltd.

Jim Paulsen
President/General Manager
Peninsula Wall and Ceiling Ltd.

Steve Brown
President
Gypsum Drywall (Southern) Ltd.

Dave Lessard
Vice President
DCL Drywall Inc.

Harry Loewen
President
Loewen Drywall Ltd.

Alan Gunderson
Coordinator
Competition Bureau

Dr. Seth Kaplan
President
International Economic Research LLC

Tom Robson
General Manager
Gypsum Drywall Interiors Ltd.

Kevin Waugh
Member of Parliament, Saskatoon-Grasswood

Tim Power
Senior Vice President, General Counsel and
Secretary
Continental Building Products Canada Inc.

Leo J. Bissonnette
Regional Manager, Gypsum
Georgia-Pacific Gypsum LLC

Doug Skrepnek
President and Chief Executive Officer
WSB Titan

Lance Kozak
Owner
Cutting Edge Solutions Drywall Ltd.

Neal Pollock
President and General Manager
TDL Drywall Inc.

Jim Gordon
Director
Gordon N. Gordon Interiors Ltd.

Dan Sager
Vice President
DVS Drywall Contractors

Roy Lewis
General Manager
1 800 Drywall

Darren Chambers
Senior Manager Corporate Purchasing
Qualico

Margaret Sanderson
Vice President
Charles River Associates

Dan Ciuriak
Director and Principal
Ciuriak Consulting Inc.

Brent Bélanger
Director, Architectural Services
CertainTeed Gypsum Canada Inc.

Gerry Ritz
Member of Parliament, Battlefords-Lloydminster,
International Trade Critic

David Yurdiga
Member of Parliament, Fort McMurray-Cold Lake

APPENDIX III**LIST OF PARTIES THAT FILED SUBMISSIONS BUT DID NOT APPEAR
BEFORE THE TRIBUNAL**

Parties	Counsel/Representatives
Alberta Wall and Ceiling Association	Madelyn Todd
B.C. Wall and Ceiling Association	Jeff Triggs
Cedar Ridge Quality Homes	Rachiel Rearden
Chris Warkentin, Member of Parliament	Chris Warkentin
Empire Drywall	David Campbell
John Barlow, Member of Parliament	John Barlow
Martin Shields, Member of Parliament	Martin Shields
National Gypsum Company	Riyaz Dattu Jaime Auron Gajan Sathananthan
PABCO Building Products, LLC (doing business as PABCO Gypsum)	Wendy Wagner Danica Doucette-Preville
PR Wilson Interiors	Pete Wilson
TBM Holdco Ltd./Timber Mart	Bernie Owens

APPENDIX IV**LIST OF PARTIES THAT FILED NOTICES OF PARTICIPATION BUT DID NOT FILE SUBMISSIONS**

Parties	Counsel/Representatives
0765507 DC Ltd.	Brent Nagy
ADSS Building Supplies Inc.	Guillermo Davila
Allied Contractors Inc.	Jean-Francois Cyr
Alta Interior Contracting (Services) Ltd.	Jean-Paul Cote
AR Drywall	Anthony Rippon
Atlantic Wallboard Limited Partnership (doing business as Irving Wallboard)	Paul Conlin Linden Dales
Bashaw Farm & Building Supplies Ltd.	Marion L. Hartel
Big Al's Texturing Ltd.	Tracy Moen
Calvert's Construction Services Inc.	Calvert Mason
Castle Building Centres Group Ltd.	Ken Jenkins
Crozier Developments	Myles Crozier
Crystal Drywall Corp.	John Hesp
David Anderson, Member of Parliament	David Anderson
Edge Development Ltd.	Brian Weiss
EGM Drywall Systems Inc.	Edgardo Giovannoni
Elktone Contracting Ltd.	Steffen Holdt
Elktone Interiors	Clifford Francis
EllisDon Corporation	Mark Paolini
Fairways Drywall Ltd.	Lynda Gordey Fred Robichaud
Fries Tallman Lumber	Kevin Stricker
Government of Alberta	Daryl Hanak
Government of Manitoba	Carolynn Osborn
Government of Saskatchewan	Robert A. Donald
Great Western Interiors	Gordon B. Kausche
Hiway Steel Structures	George Wolf
Igloo Building Supplies Group Ltd.	Kieran Porter
Ivory Interiors Ltd.	Carrie Peters

Parties

Integrity Drywall Ltd.
International Painting and Drywall Ltd.
Jamal Contracting Inc.
Karma Konstruktion Ltd.

Kaviar Inc. (La Broquerie Lumber)
Keltum Drywall Ltd.
K. Sleva Contracting Ltd.
Kensington Homes
Pacesetter Homes Regina
Montana Homes
Landville Drywall Ltd.
Lan-Mar Contracting Ltd.
LAPC Drywall Ltd.
Lincolnberg
Logic Lumber (Leth) Ltd.
Magnum Building Corporation
Manitoba Wall and Ceiling Association Inc.
Mattamy Homes Ltd.

McMunn & Yates Building Supplies Ltd.
Midwest Contracting Ltd.
Ministry of International Trade, Government of
British Columbia
Moduline Industries (Canada) ULC

Counsel/Representatives

Dave Knoch
Pino Francese
Mickeal Berteig
Neil Armstrong
Tyler Armstrong,
Andrew Armstrong
John Armstrong
Brittney Armstrong
Erica Armstrong
Reece Florek
Austin Martin
Brant Hockley
Gabriel Duerreault
Camille Duerreault
Darcy Black
Brandon Metz

Farrel Rempel
Tim Weinmeister
Ken Sleva
Tony Balaz

Wilmer Funk
Oscar Lanoo
Jean Michel Lajoie
Keith Jansen
Tom Dixon
Steven John Vodopija
B. Gauthier
Peter Kirby
Clifford Sosnow
Jason Yates
Shane Brierley
Jeffrey S. Thomas

Daryn Schlamp
Jim Adams

Parties

Nexgen Drywall Ltd.
Northern Building Supply
Nuvista Homes
Okaply Industries Ltd.
Pacesetter Homes Ltd.
Paramount Project Solutions Ltd.
Peace River Building Products Ltd.
Pre Con Builders
Qualico British Columbia
Qualico Developments West Ltd.
Quality Drywall Interiors Ltd.
R & D Drywall Inc.
Randy Hoback, Member of Parliament
Rethink Spray Foam Services
Rona Inc.
Ross Contracting Inc.
Saywell Contracting
Sexton Group Ltd.
Slegg Building Materials
Sterling Homes Group
Sterling Homes Ltd.
StreetSide Developments
StreetSide Developments (Winnipeg)
Sych Drywall Enterprise Ltd.
Ted Falk, Member of Parliament
The Drywall Co.
The LumberZone
ThermoPro Insulation Ltd.
TIC Interiors Ltd.

United Drywall Ltd.

Counsel/Representatives

Eric Reimer
Bryce Atkinson
Mike Plumton
Dale McILveen
Lloyd Dumonceaux
Shamus Burn
Sam Spruyt
Jeff Hawryluk
Garry Mertens
Darren Chambers
Karl Koch
Roland Houle
Randy Hoback
Fraser McConnell
Maxime Harvey
Jean-François Ross
Sheldon Saywell
Brian Kusisto
Timothy Urquhart
Bill Bobyk
Zan Owsley
Richard Daley
Brian Cornelsen
Brian Sych
Ted Falk
Frank Elzingo
Joel Hartung
Ben DeRegt
Kelly Brownlee
Nelson Belsher
Jillian Chamney
Trevor Seidel

Parties

U.S. Department of Commerce – U.S. Embassy
Ottawa

Van-Roc Ltd.

Viking Drywall Ltd.

Winnipeg Interior Systems Experts Ltd.

Woodbrook Construction Limited

Counsel/Representatives

Christopher Quinlivan

William B. Vansteen

Marko Holdt

T. Joshua Kennedy

Karl Frede

APPENDIX V**TRIBUNAL STAFF INVOLVED IN THE INQUIRY**

Tribunal Panel:

Serge Fréchette, Presiding Member
Jean Bédard, Member
Jason W. Downey, Member

Support Staff:

Peter Jarosz, Lead Counsel
Amélie Cournoyer, Counsel
Greg Gallo, Lead Analyst
Sandy Greig, Advisor
Mylène Lanthier, Analyst
Joseph Long, Analyst
Christiane Schuchhardt, Analyst
Andrew Wigmore, Analyst
Julie Charlebois, Data Services Advisor
Jyotsna Venkatesh, Clerk