



OTTAWA, July 6, 2018

## STATEMENT OF REASONS

**Concerning the initiation of the investigation into the dumping of certain 54-inch 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**

## DECISION

Pursuant to subsection 31(1) of the *Special Import Measures Act*, the Canada Border Services Agency initiated an investigation on June 21, 2018 respecting the alleged dumping of certain 54-inch 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.

Cet Énoncé des motifs est également disponible en français.  
This *Statement of Reasons* is also available in French.

---

## TABLE OF CONTENTS

<b>SUMMARY.....</b>	<b>1</b>
<b>BACKGROUND.....</b>	<b>1</b>
<b>INTERESTED PARTIES.....</b>	<b>2</b>
COMPLAINANT.....	2
EXPORTERS.....	2
IMPORTERS .....	2
TRADE UNIONS.....	3
<b>PRODUCT INFORMATION .....</b>	<b>3</b>
DEFINITION.....	3
ADDITIONAL PRODUCT INFORMATION.....	3
PRODUCTION PROCESS .....	4
CLASSIFICATION OF IMPORTS .....	4
LIKE GOODS .....	5
<b>DETERMINATION OF REGIONAL MARKET.....</b>	<b>6</b>
STANDING.....	7
<b>REGIONAL MARKET .....</b>	<b>8</b>
<b>EVIDENCE OF DUMPING.....</b>	<b>8</b>
NORMAL VALUE.....	9
EXPORT PRICE .....	10
ESTIMATED MARGIN OF DUMPING .....	11
<b>EVIDENCE OF RETARDATION – REGIONAL MARKET.....</b>	<b>11</b>
ANALYSIS .....	12
<b>INJURY AND THREAT OF INJURY.....</b>	<b>15</b>
<b>CONCLUSION.....</b>	<b>15</b>
<b>SCOPE OF THE INVESTIGATION.....</b>	<b>15</b>
<b>FUTURE ACTION .....</b>	<b>16</b>
<b>RETROACTIVE DUTY ON MASSIVE IMPORTATIONS.....</b>	<b>17</b>
<b>UNDERTAKINGS .....</b>	<b>17</b>
<b>PUBLICATION.....</b>	<b>17</b>
<b>INFORMATION.....</b>	<b>17</b>

## **SUMMARY**

[1] On April 30, 2018, CertainTeed Gypsum Canada Inc. of Mississauga, Ontario (the complainant) filed a complaint with the Canada Border Services Agency's (CBSA) Trade and Anti-dumping Programs Directorate alleging that certain 54-inch gypsum board originating in or exported from the United States of America (US), 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 (Western Canada), are being dumped. The complainant alleges that the dumping has caused material retardation of the establishment of a domestic industry in Western Canada.

[2] On May 22, 2018, pursuant to paragraph 32(1)(a) of the *Special Import Measures Act* (SIMA), the CBSA informed the complainant that the complaint was properly documented. The CBSA also notified the government of the US that a properly documented complaint had been received.

[3] The complainant provided evidence to support the allegations that certain 54-inch gypsum board from the US imported into Canada for use or consumption in Western Canada has been dumped. The evidence also discloses a reasonable indication that the dumping has caused retardation of the establishment of a domestic industry in Western Canada.

[4] On June 21, 2018, pursuant to subsection 31(1) of SIMA, the CBSA initiated an investigation respecting the dumping of certain 54-inch gypsum board originating in or exported from the US, imported into Canada for use or consumption in Western Canada.

## **BACKGROUND**

[5] This is the third complaint filed by the Canadian industry in respect of gypsum board products from the US. Each of these complaints has resulted in the imposition of anti-dumping duties against the subject goods from the US.

[6] On June 8, 2016, the CBSA initiated an investigation respecting the dumping of certain 48-inch gypsum board from the US, imported into Canada for use or consumption in Western Canada. This resulted in a final determination of dumping which was issued on December 20, 2016.

[7] On January 4, 2017, in Inquiry No. NQ-2016-002, the Canadian International Trade Tribunal (CITT) found that dumped imports of certain 48-inch gypsum board had caused injury to the domestic industry.

[8] Previously, on June 24, 1992, the Department of National Revenue, Customs and Excise initiated an anti-dumping investigation on gypsum board from the US. This resulted in a final determination of dumping which was issued on December 14, 1992. The CITT found that dumped imports from the US were injuring the production of gypsum board in Canada and issued their decision on January 20, 1993.<sup>1</sup> The finding was rescinded by the CITT on January 19, 1998, as it was concluded that there was no likelihood of resumed dumping.<sup>2</sup>

## **INTERESTED PARTIES**

### **Complainant**

[9] CertainTeed Gypsum Canada Inc. (CTG Canada) operates six gypsum board manufacturing facilities located throughout Canada and is the only producer of gypsum board products located in Western Canada with three manufacturing facilities located in Vancouver, British Columbia, Calgary, Alberta and Winnipeg, Manitoba.

[10] Currently, CTG Canada does not produce 54-inch gypsum board. CTG Canada does produce 48-inch gypsum products.

[11] The address of the complainant's head office is as follows:

CertainTeed Gypsum Canada Inc.  
2424 Lakeshore Road West  
Mississauga, Ontario  
L5J 1K4

[12] According to the complainant, there are no producers of 54-inch gypsum board in Western Canada. The CBSA conducted research, and based on the available information there are no Canadian producers of 54-inch gypsum board in Western Canada.

### **Exporters**

[13] The CBSA has identified 26 potential exporters of the subject goods from CBSA import data<sup>3</sup> and the complaint.

### **Importers**

[14] The CBSA has identified 29 potential importers of the subject goods from CBSA import data and the complaint.

---

<sup>1</sup> Canadian International Trade Tribunal, Inquiry No. NQ-92-004.

<sup>2</sup> Canadian International Trade Tribunal, Review No. RR-97-004.

<sup>3</sup> Customs Commercial System (CCS).

## **Trade Unions**

[15] The complainant has identified two trade unions representing persons employed in the production of gypsum board products in Western Canada.

## **PRODUCT INFORMATION**

### **Definition**

[16] For the purpose of this investigation, subject goods are defined as:

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, made to a width of 54 inches (1,371.6 mm), 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, or length (but not width), excluding (a) 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); (b) double layered glued paper-faced gypsum board (commonly referred to and used as “acoustic board”); and (c) gypsum board meeting ISO16000-23 for sorption of formaldehyde. All dimensions including width are plus or minus allowable tolerances in the applicable standards.

### **Additional Product Information**

[17] Gypsum board volume is measured in the North American industry and wider construction sector in imperial units of measure, with typical units of measure used being thousands of square feet (“msf”), millions of square feet (“mmsf”), and billions of square feet (“bsf”).

[18] Gypsum board is used as a building material for various applications, including: the surface layer of interior walls and ceilings; a base for ceramic, plastic, and metal tile; elevator and other shaft enclosures; area separation fire walls between occupancies; and the fire-resistant layer over structural elements.

[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.

## **Production Process**

[20] The process of gypsum board production does not typically vary substantially between producers of gypsum board. This process is standard in North America in that the main stages of production process do not differ materially between plants in the US and Canada, although the production process from one plant to another may vary slightly depending on the type of gypsum they use and the design and configuration of the production facility.

[21] To make gypsum board, gypsum rock is crushed and heated to about 150 Celsius, drying out roughly 75 percent of the chemically combined water in a process called calcining. Forty-five kilograms of gypsum rock contains approximately 8.5 kilograms of water. The calcined gypsum powder (commonly referred to as “plaster of Paris”) is used in producing the core of the board. The board is formed by introducing a slurry of calcined gypsum (also known as stucco), along with water, foam, pulps, starch and set control agents between two unwinding rolls of absorbent paper resulting in a continuous “sandwich” of wet board resting on a continuous belt line. To manufacture fire-resistant or water-resistant gypsum board, additional chemical components are added to the core when introducing the slurry of calcined gypsum.

[22] As the board moves down the production line, the calcined gypsum rehydrates and recrystallizes reverting to a solid gypsum matrix, and the paper sheets become firmly bonded to the rehydrated core. After moving down the line for approximately four to five minutes, the continuous “sandwich” is firm enough to be cut to length and is then conveyed through dryers to remove excess moisture. The board is conveyed afterwards to a “take-off” point, where it is packaged, bundled, stacked, and removed to storage or shipped directly.

[23] Although the production process for 48-inch and 54-inch board is similar, the production of 54-inch board requires additional and more costly equipment to accommodate the extra six inches of board.

## **Classification of Imports**

[24] Prior to January 1, 2018, the subject goods were normally classified under the following tariff classification numbers:

6809.11.00.00                      6809.11.00.10

[25] Effective January 1, 2018, the subject goods are normally classified under the following tariff classification number:

6809.11.00.11

[26] The listing of tariff classification numbers is for convenience of reference only. The tariff classification numbers include non-subject goods. Also, subject goods may fall under tariff classification numbers that are not listed. Refer to the product definition for authoritative details regarding the subject goods.



## Like Goods

[27] Subsection 2(1) of SIMA defines “like goods” in relation to any other goods, as goods that are identical in all respects to the other goods, or in the absence of identical goods, goods the uses and other characteristics of which closely resemble those of the other goods.

[28] In considering the issue of like goods, the CITT typically looks at a number of factors, including the physical characteristics of the goods, their market characteristics and whether the domestic goods fulfill the same customer needs as the subject goods.

[29] The complainant indicated that 54-inch gypsum board they plan to produce should be considered “like goods” to certain 54-inch gypsum board imported from the US. This is based on the CITT’s finding in *Gypsum Board*.<sup>4</sup>

[30] The complainant noted that during the CITT’s injury inquiry, the CITT accepted that only domestically produced certain 48-inch gypsum board is “like goods” to certain 48-inch gypsum board imported from the US and no party contested that conclusion. For this reason, the complainant concluded that only certain 54-inch gypsum board should be considered “like goods” to certain 54-inch gypsum board imported from the US.

[31] Further, the complainant argued that certain 48-inch gypsum board and certain 54-inch gypsum board constitute two separate classes of goods. The complainant noted that in the CITT’s inquiry concerning certain 48-inch gypsum board, the CITT determined a single class of like goods coterminous with the definition of subject goods (i.e., excluding 54-inch board). For this reason, the complainant argued that a single class of like goods coterminous with the definition of subject goods is appropriate in this case.

[32] The complainant reasoned that 48-inch gypsum boards are not like goods in relation to the subject goods, because:<sup>5</sup>

- Certain 54-inch boards are primarily used for the construction of residential buildings with nine-foot ceilings while certain 48-inch boards are primarily used in commercial construction projects.
- Certain 54-inch and certain 48-inch boards are produced on different machinery and equipment.
- Unlike certain 48-inch boards, certain 54-inch boards are not sold through the retail channel because the demand for certain 54-inch board from “do-it-yourself” homeowners and small contractors doing small renovation projects is very low. Certain 54-inch boards are wider, heavier, and as a result, more difficult to install without assistance and not appropriate for most small home owner renovation projects.

<sup>4</sup> *Gypsum Board*, NQ-2016-002 (January 19, 2017) at para. 38.

<sup>5</sup> Exhibit 2 (NC) - GB II 2018 IN Complaint, page 3-8, paragraphs 12-26; page 19-23, paragraphs 62-69.

- Certain 48-inch boards are not generally substitutable for 54-inch boards from an end user perspective under normal circumstances.
- Certain 54-inch boards generally are sold at premium above certain 48-inch boards because of the increased production costs and the lower sales volume.

[33] The 54-inch gypsum board produced in Eastern Canada and the 54-inch gypsum board that the complainant is planning to produce in Western Canada would have the same physical characteristics and end uses as the subject goods imported from the US. The goods to be produced in Western Canada and the US would be fully interchangeable when manufactured to industry standards and specifications. As such, subject goods from the US would compete directly with the 54-inch gypsum board that is planned to be produced in Western Canada.

[34] The CBSA is of the opinion that certain 48-inch gypsum board produced in Canada is not like goods in relation to certain 54-inch gypsum board imported from the US because, as set out above, 48-inch gypsum board differs significantly in terms of physical characteristics, end use, manufacturing processes, distribution channels, substitutability and price.

[35] After considering questions of use, physical characteristics and all other relevant factors, the CBSA is of the opinion that the 54-inch gypsum board produced in Eastern Canada and the 54-inch gypsum board planned to be produced in Western Canada are like goods in relation to the subject goods. Further, the CBSA is of the opinion that subject goods and like goods constitute only one class of goods.

### **DETERMINATION OF REGIONAL MARKET**

[36] The goods subject to this investigation are those imported into Canada for use or consumption in a regional market composed of the provinces of British Columbia, Alberta, Saskatchewan, and Manitoba, as well as the Yukon and Northwest Territories. In order to identify a regional market in Canada, subsection 2(1.1) of SIMA specifies that two criteria must exist.

[37] The two conditions contained in subsection 2(1.1) are:

- (a) the producers in the market sell all or almost all of their production of like goods in the market; and
- (b) the demand in the market is not to any substantial degree supplied by producers of like goods located elsewhere in Canada.

[38] The first criterion is that the producers in the region must sell all or almost all of their production of like goods in the regional market. This condition concerns the extent to which the like goods are sold in other Canadian markets. As there is no production of 54-inch gypsum board in Western Canada, no 54-inch gypsum board produced in Western Canada was sold in Eastern Canada. Therefore, the first condition has been met.



[39] In Eastern Canada, CTG Canada produces 54-inch gypsum board in McAdam, New Brunswick. CTG Canada also produces 48-inch gypsum board in Mississauga, Ontario; and Montreal, Québec.

[40] In Eastern Canada, CGC Inc. operates manufacturing facilities in Montréal, Québec, and Hagersville, Ontario and Atlantic Wallboard LP operates a manufacturing facility in Saint John, New Brunswick. The complainant believes these companies have production of 54-inch gypsum board. Acadia Drywall Supplies Ltd./Cabot Gypsum ("Acadia") operates a manufacturing facility in Point Tupper, Nova Scotia. CTG Canada believes that Acadia does not produce 54-inch board at its Point Tupper facility.

[41] The second criterion for a regional market is that the demand for the product in the regional market should not, to any substantial degree, be supplied by producers located elsewhere in Canada.

[42] Based on information received from the complainant, the total demand in Western Canada is not to any substantial degree supplied by producers located elsewhere in Canada. Consequently, the CBSA is satisfied that this criterion has been met.<sup>6</sup>

[43] As a result, the CBSA is satisfied that a regional market for certain 54-inch gypsum board exists in the provinces of British Columbia, Alberta, Saskatchewan, and Manitoba, as well as the Yukon and Northwest Territories.

### **Standing**

[44] Subsection 31(2) of SIMA requires that the following conditions be met in order to initiate an investigation:

- the complaint is supported by domestic producers whose production represents more than 50% of the total production of like goods by those domestic producers who express either support for or opposition to the complaint; and
- the production of the domestic producers who support the complaint represents 25% or more of the total production of like goods by the domestic industry.

[45] However, this investigation relates to the retardation of the establishment of a domestic industry in Western Canada. There are currently no producers of 54-inch gypsum board in Western Canada. The complainant is the only known party planning to produce 54-inch gypsum board in Western Canada. Since there are no domestic producers in Western Canada, there are no parties to provide support for or opposition to the complaint. Therefore, the CBSA is satisfied that the requirements of subsection 31(2) of SIMA have been met in respect of the initiation of this investigation pursuant to subsection 31(1) of SIMA.

---

<sup>6</sup> Exhibit 2 (NC) – GB II 2018 IN Complaint – Appendix 2, Attachment 3.

## **REGIONAL MARKET**

[46] Gypsum board is generally marketed to customers within close proximity of the manufacturing facilities due to the friable nature of the product and high freight costs due to the product weight. In Western Canada, 54-inch gypsum board is sold through one main distribution channel which is through Gypsum Specialty Dealers (GSD) and Lumber Merchants (LBM), who sell gypsum board to professional contractors installing gypsum board on residential projects.

[47] The complainant estimated the total volume of imports of 54-inch gypsum board originating from all countries from 2015 to 2017 for Western Canada by supplementing its own internal regional sales information with publicly available import data obtained from the CITT finding in *Gypsum Board, Inquiry No. NQ-2016-002*.<sup>7</sup>

[48] The CBSA conducted its own analysis of imports of 54-inch gypsum board based on actual CBSA import data. Although review of the CBSA import data indicated smaller volumes from the US than what was estimated by the complainant, the data demonstrated similar import market shares with respect to imports of subject goods when compared to information provided in the complaint.

[49] Detailed information regarding the volume of imports of subject goods cannot be divulged for confidentiality reasons. However, the CBSA has prepared the following table to show the estimated import share of subject goods in Western Canada.

**CBSA Estimates of Import Share**  
(as % of volume – square meters)

COUNTRY	2015	2016	2017	2018 (Jan-Apr)
US	100%	99.0%	99.9%	100%
All Other Countries	0%	0.4%	0.1%	0
<b>Total All Imports (%)</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100.00%</b>	<b>100%</b>

[50] The estimated import share for the period of investigation will be further refined based on information received from cooperative exporters and importers of the subject goods in the next phase of the investigative process.

## **EVIDENCE OF DUMPING**

[51] The complainant alleges that subject goods from the US have been dumped into Western Canada and the alleged dumping has caused material retardation of the establishment of the domestic industry. Dumping occurs when the normal value of the goods exceeds the export price.

---

<sup>7</sup> Exhibit 2 (NC) – GB II 2018 IN Complaint – Appendix 2, Attachment 3.

[52] Normal values are generally based on the domestic selling price of like goods in the country of export where competitive market conditions exist or as the aggregate of the cost of production of the goods, a reasonable amount for administrative, selling and all other costs, and a reasonable amount for profits.

[53] The export price of goods sold to importers in Canada is generally the lesser of the exporter's selling price and the importer's purchase price, less all costs, charges, expenses, duties and taxes resulting from the exportation of the goods.

[54] The CBSA's analysis of the alleged dumping is based on a comparison of the estimated normal values, with estimated export prices based on the actual declared value for duty for importations of the subject goods between January 1, 2017 and February 28, 2018. This period encompasses a sufficient length of time to accurately reflect the exporters' price levels to Western Canada and relates closely to the time period during which the complainant alleges that the dumping has occurred.

[55] Estimates of normal values and export prices by both the complainant and the CBSA are discussed below.

#### **Normal Value**

[56] The complainant estimated normal values for the subject goods using the methodology of section 15 of SIMA. Normal values were estimated based on average monthly domestic sales prices for two benchmark products sold by the complainant's sister company in the US during the period January 1, 2017 and February 28, 2018.

[57] The CBSA estimated normal values on the basis of the methodology of section 15 of SIMA by combining the complainant's information with publicly available information that was filed with the US Securities and Exchange Commission.<sup>8</sup> Specifically, the CBSA also used quarterly domestic pricing information that was published in financial statements of two US gypsum board producers.<sup>9</sup> The quarterly domestic average selling prices reported by the two companies in their financial statements were net of freight and delivery costs.

[58] The reported quarterly average selling prices are in respect of all gypsum board products including 48-inch and 54-inch gypsum board. As 54-inch gypsum board is generally more expensive than 48-inch gypsum board, the resultant estimated normal values are more conservative than those estimated by the complainant.

---

<sup>8</sup> <https://www.sec.gov/edgar/searchedgar/companysearch.html>.

<sup>9</sup> The two companies are Continental Building Products Inc. and Eagle Materials Inc.

## Export Price

[59] The export price of goods sold to an importer in Canada is generally determined in accordance with section 24 of SIMA as being an amount equal to the lesser of the exporter's sale price for the goods and the price at which the importer has purchased or agreed to purchase the goods adjusted by deducting all costs, charges, expenses, and duties and taxes resulting from the exportation of the goods.

[60] The complainant could not estimate export prices under the methodology of section 24 of SIMA for 2017 because import data reported by Statistics Canada did not separate 54-inch versus 48-inch gypsum board. However, it did estimate export prices under section 24 of SIMA for the first two months of 2018 because in 2018 the tariff classification is specific to only 54-inch gypsum board. For 2018, the complainant excluded anomalies in their estimates. Also, given that import data was not distinguished between ½-inch and 5/8-inch boards, the average unit value of total imports were used.

[61] The complainant noted that US exporters sell and transfer gypsum board to associated importers in Western Canada. As the complainant was unable to estimate export prices under the methodology of section 24 of SIMA, the complainant estimated export prices under the methodology of section 25 of SIMA for 2017.

[62] Where there are sales between associated persons, the export price is estimated based on the importer's resale price of the imported goods in Canada to unrelated purchasers, less deductions for all costs incurred in preparing, shipping and exporting the goods to Canada that are additional to those incurred on the sales of like goods for use in the country of export, all costs included in the resale price that are incurred in reselling the goods (including duties and taxes) or associated with the assembly of the goods in Canada and an amount representative of the average industry profit in Canada as provided for in paragraphs 25(1)(c) and 25(1)(d) of SIMA.

[63] The complainant submitted a price list of a major importer in Canada and from the resale price deducted an industry profit determined in the CBSA's investigation concerning certain 48-inch gypsum board from the US<sup>10</sup>, its own freight costs and an estimated general selling and administrative based on publically available information from the associated exporter.

[64] In estimating the export prices, the CBSA used the value for duty (VFD) data as reported in the CBSA import data, for each individual shipment imported into Western Canada during the period January 1, 2017 and February 28, 2018. No adjustments were made to the VFD in estimating export price as VFD represents a price exclusive of freight and delivery costs, which is consistent with the normal values estimated by the CBSA.

---

<sup>10</sup> CTG Canada was an importer in the original 48-inch gypsum board investigation.

## **Estimated Margin of Dumping**

[65] The CBSA compared the estimated normal values with the estimated export prices obtained from CBSA import data for all importations into Western Canada during the period from January 1, 2017 to February 28, 2018. The estimated margin of dumping was calculated by deducting the estimated total export price from the estimated total normal value and expressing the result as a percentage of the estimated total export price of the subject goods.

[66] Based on this analysis, it is estimated that the subject goods from the US were dumped. The margin of dumping is estimated to be 6.1%.

## **EVIDENCE OF RETARDATION – REGIONAL MARKET**

[67] The complainant has alleged that the dumping of certain 54-inch gypsum board into Western Canada has caused retardation of the establishment of a domestic industry for like goods in Western Canada.

[68] Subsection 42(5) of SIMA specifies two conditions that must be evaluated in assessing the alleged retardation where a regional market exists.

[69] The first condition is that there must be a concentration of the dumped goods imported into the regional market as opposed to the volume imported into the rest of Canada. In order to determine concentration the CITT has utilized three methodologies: the density test, the distribution test and the ratio test.

[70] In the density test, the volume of subject imports within the regional market is compared to the total regional market volume. A density test result of more than 1.0 indicates that there are more subject imports in the isolated market than domestically produced goods. The distribution test compares the volume of subject goods imported into the regional market, to the volume of imports into the national territory, i.e. the rest of Canada. The ratio test compares the regional market's share of the subject imports to the regional market's share of total consumption in Canada (including imports).

[71] The information available to the CBSA establishes that there is clearly a concentration of imports into the regional market. Due to confidentiality reasons the results of the CBSA's analysis are not detailed here.

[72] The second condition of subsection 42(5) is that there must be evidence that the dumping of the subject goods has caused retardation to the producers of all or almost all of the production within the regional market. As previously stated, the complainant has indicated that it plans to produce 54-inch gypsum board in Western Canada.

[73] The following provides the CBSA's analysis of whether the evidence discloses a reasonable indication that the dumping of the subject goods has caused retardation to the establishment of a domestic industry in Western Canada.



## Analysis

[74] Retardation occurs when circumstances materially hinder or retard the establishment of an industry in Canada. The CITT has previously recognized that

“*SIMA* views retardation and injury (or threat of injury) as two distinct and mutually exclusive concepts. In the Tribunal’s view, retardation is possible *only* if there is no established domestic industry, whereas injury or threat of injury is possible *only* in the case of an already established domestic industry.”<sup>11</sup>

[75] Based on evidence available in the complaint and the CBSA’s research, the CBSA is satisfied that there is no domestic industry that produces like goods in Western Canada.

[76] The complainant alleged that the dumped goods have led to price suppression, reduced profitability and price erosion in respect of its resales in Canada of imported 54-inch gypsum board from the US, which in turn has caused retardation of the establishment of a domestic industry in Western Canada. Specifically, the complainant alleges that the current market realities caused by the alleged dumping have prevented the investment of the capital necessary to establish a domestic industry in Western Canada.

[77] With respect to the selling price of 54-inch gypsum board in Western Canada, the complainant provided a chronology of events between June 2016 to March 2018 in which the company demonstrated where it attempted, but failed to increase prices for its Canadian resales of imported 54-inch board in Western Canada to address inflationary costs.<sup>12</sup> The complainant also provided a table reporting its net average unit selling price of its Canadian resales of imported 54-inch gypsum board and net margin percentage between 2015 and 2017. The table demonstrates decreasing net average unit selling prices as well as decreasing net margin percentages from 2015 to 2017.<sup>13</sup>

[78] The complainant also provided a table comparing the average unit selling price of 48-inch standard and fire gypsum board versus 54-inch standard and fire gypsum board between 2015 and 2017. The table demonstrates that the price premium of 54-inch over 48-inch eroded from 2015 to 2017.

[79] The effects of the allegedly dumped goods on the Western Canadian market for 54-inch gypsum board, as demonstrated by the alleged price suppression, reduced profitability and price erosion, has impacted the complainant’s ability to establish a 54-inch gypsum board industry in Western Canada.

<sup>11</sup> *Potassium Silicate Solids*, PI-2011-003 (March 6, 2012) at para. 35.

<sup>12</sup> Exhibit 2 (NC) – GB II 2018 Complaint – page 44-46, paragraph 118.

<sup>13</sup> Exhibit 2 (NC) – GB II 2018 Complaint – page 47-48, paragraph 122.



[80] Based on the CITT's reasons in its previous injury inquiries,<sup>14</sup> the CBSA also considers that for there to be retardation, the complainant must provide evidence of a "substantial commitment" to establish a domestic industry.

[81] To support its commitment to establish an industry for the production of certain 54-inch gypsum board in Western Canada, the complainant submitted a 36-page confidential declaration and attachments from the General Manager of CTG Canada ("the declaration").<sup>15</sup> The declaration is in regards to the alleged dumping of 54-inch gypsum board from the US into Western Canada and the proposed investment for establishing 54-inch gypsum board production in Western Canada, including memos between the General Manager of CTG Canada and officials of CTG Canada's parent company, Compagnie de Saint-Gobain S.A of France ("Saint-Gobain").

[82] The declaration also contains details regarding initial assessments, project evaluations, various proposed alternative economic analyses, locations, estimated budget, recommendations and plans for the phases of the investment.

[83] In the declaration, the complainant estimated the internal rate of return (IRR) and that the pricing and sales levels it can achieve for its proposed investment in the absence of allegedly dumped prices from US exporters of such goods.<sup>16</sup> An IRR was also estimated for the current scenario, under the environment of allegedly dumped imports.<sup>17</sup>

[84] The declaration makes it clear that the authority for investment approval for the new production line for 54-inch gypsum board is with its parent company, Saint-Gobain.<sup>18</sup>

[85] The complainant also stated that once the project can attain the required return on investment, its parent company, Saint-Gobain, is committed to making the investment.<sup>19</sup>

[86] The complainant has made reasonably detailed plans to establish production and resources have been allocated to advance beyond a mere proposal. The complainant also has land dedicated at one of its facilities in Western Canada. The complainant has not yet purchased any machinery or equipment to establish production.

[87] Overall, based on the evidence contained in the complaint, the CBSA is satisfied that the complainant has provided evidence that it has made a substantial commitment to establish an industry in Western Canada for the production of certain 54-inch gypsum board.

---

<sup>14</sup> *Potassium Silicate Solids*, PI-2011-003 (March 6, 2012) at para. 35; *Preformed Fibreglass Pipe Insulation*, NQ-93-002 (November 19, 1993) at para. 119; *Fresh Garlic*, NQ-96-002 (March 21, 1997) at para. 94; and *Wood Venetian Blinds and Slats*, NQ-2003-003 (July 2, 2004) at para. 81.

<sup>15</sup> Exhibit 2 (NC) – GB II 2018 Complaint – Appendix 2.

<sup>16</sup> Exhibit 2 (NC) – GB II 2018 Complaint – Appendix 2, paragraphs 64-69 and attachments 6 and 7.

<sup>17</sup> Exhibit 2 (NC) – GB II 2018 Complaint – Appendix 2, paragraphs 64-69 and attachments 6 and 7.

<sup>18</sup> Exhibit 2 (NC) – GB II 2018 Complaint – Appendix 2, paragraphs 60-62.

<sup>19</sup> Exhibit 2 (NC) – GB II 2018 Complaint – page 43, paragraph 117.

## **Causal Link – Dumping and Retardation**

[88] Based on information provided in the complaint and the CBSA import data, importations of subject goods into Western Canada have been ongoing for several years. The information available indicates that the volume of subject goods from the US account for nearly 100 percent of importations of subject goods into Western Canada from all countries.

[89] Information provided in the complaint, and corroborated by the CBSA's own estimates of normal values and export prices, indicates that subject goods have been dumped into Western Canada since at least January 2017.

[90] As noted above, the complainant has demonstrated a substantial commitment to the establishment of an industry and is positioned to proceed with the next phase of the plan. However, the complainant is unable to achieve the necessary return on investment as a result of the depressed prices from the dumped goods. The inability to achieve the necessary return on investment is preventing CTG Canada's parent company, Saint-Gobain, from providing final investment approval.<sup>20</sup>

[91] The complainant estimated an IRR for the project under current market conditions of the allegedly dumped goods, which does not meet the required minimum threshold established by Saint-Gobain for approval of an investment.<sup>21</sup>

[92] The complainant also estimated an IRR for the project based on the prices of 54-inch gypsum board at normal levels. The estimated IRR for the project under conditions where alleged dumping is no longer occurring is above the required minimum threshold established by Saint-Gobain for approval of an investment.<sup>22</sup> The CBSA notes that attaining the required return on investment does not guarantee approval as CTG Canada will have to compete for funding with other projects from sister companies owned by the parent company, Saint-Gobain.

[93] As of the date of the complaint, the complainant had been instructed by its parent company to only expend a fixed and limited amount of capital to proceed in planning the project. By indicating that CTG Canada cannot spend above the allocated amount on the project until it can attain the necessary return on investment, Saint-Gobain has effectively postponed the project.

[94] Based on the information detailed above, there is a reasonable indication that the plans to establish a domestic industry in Western Canada have been postponed due to the alleged dumping of subject goods.

---

<sup>20</sup> Exhibit 2 (NC) – GB II 2018 Complaint – page 44, paragraph 117.

<sup>21</sup> Exhibit 2 (NC) – GB II 2018 Complaint – appendix 2, attachment 8.

<sup>22</sup> Exhibit 2 (NC) – GB II 2018 Complaint – appendix 2, attachment 8.

## **INJURY AND THREAT OF INJURY**

[95] In the event that the CBSA did not find that the evidence disclosed a reasonable indication of retardation, the complainant also alleged that the dumped goods have caused injury and threaten to cause injury to its future production of certain 54-inch gypsum board.

[96] The complainant alleged that the dumping has caused injury to the domestic industry in the form of reduced investments in its production of certain 54-inch gypsum board and that the dumping is threatening to cause injury to its future production of 54-inch gypsum board in Western Canada. In support of its allegations of threat of injury, the complainant provided evidence of the following factors: the significant rate of increase of dumped goods; rapidly increasing excess capacity of producers in the US; the export orientation of US producers; the anti-dumping finding on certain 48-inch gypsum board; the shift in demand for gypsum board products due to market conditions and the magnitude of the margin of dumping.

[97] As stated earlier, injury and threat of injury are possible only in the case of an already established domestic industry.<sup>23</sup> As domestically produced 48-inch gypsum board is not considered like goods in relation to the subject goods and there is presently no established domestic industry, the evidence does not disclose a reasonable indication that the dumping of the subject goods has caused injury or is threatening to cause injury.

## **CONCLUSION**

[98] Based on information provided in the complaint, other available information and the CBSA import data, the CBSA is of the opinion that there is evidence that certain 54-inch gypsum board originating in or exported from the US, imported into Canada for use or consumption in Western Canada has been dumped. The CBSA is also of the opinion that the evidence discloses a reasonable indication that such dumping has caused retardation to the establishment of a Western Canadian industry. As a result, pursuant to subsection 31(1) of SIMA, the CBSA initiated a dumping investigation on June 21, 2018.

## **SCOPE OF THE INVESTIGATION**

[99] The CBSA is conducting an investigation to determine whether the subject goods have been dumped.

[100] The CBSA has requested information relating to the subject goods imported into Western Canada originating in or exported from the US during the period of June 1, 2017 to May 31, 2018, the selected period of investigation. The information requested from all potential exporters and importers will be used to estimate normal values and export prices and ultimately to determine whether the subject goods have been dumped.

---

<sup>23</sup> *Potassium Silicate Solids*, PI-2011-003, para 35.

[101] All parties have been clearly advised of the CBSA's information requirements and the time frames for responding to the Requests for Information.

## **FUTURE ACTION**

[102] The Canadian International Trade Tribunal (CITT) will conduct a preliminary inquiry to determine whether the evidence discloses a reasonable indication that the dumping of the goods has caused injury or retardation or is threatening to cause injury. The CITT must make its decision on or before the 60<sup>th</sup> day after the date of the initiation of the investigation, by August 20, 2018. If the CITT concludes that the evidence does not disclose a reasonable indication of injury, retardation or threat of injury, the investigation will be terminated.

[103] If the CITT finds that the evidence discloses a reasonable indication of injury, retardation or threat of injury and the CBSA determines in the preliminary phase of the investigation that the goods have been dumped, the CBSA will make a preliminary determination of dumping within 90 days after the date of the initiation of the investigation, by September 19, 2018. Where circumstances warrant, this period may be extended to 135 days from the date of the initiation of the investigation.

[104] Under section 35 of SIMA, if, at any time before making a preliminary determination, the CBSA is satisfied that the volume of goods of a country is negligible, the investigation will be terminated with respect to goods of that country.

[105] Imports of subject goods released by the CBSA on and after the date of a preliminary determination of dumping, other than goods of the same description as goods in respect of which a determination was made that the margin of dumping of the goods is insignificant, may be subject to provisional duty in an amount not greater than the estimated margin of dumping on the imported goods.

[106] Should the CBSA make a preliminary determination of dumping, the investigation will be continued for the purpose of making a final decision within 90 days after the date of the preliminary determination. If a preliminary determination of dumping is made, the CITT will initiate an inquiry to determine whether the dumping of the goods has caused injury or retardation or is threatening to cause injury.

[107] If a final determination of dumping is made, the CITT will continue its inquiry and hold public hearings into the question of injury, retardation or threat of injury. The CITT is required to make a finding with respect to the goods to which the final determination of dumping applies, not later than 120 days after the CBSA's preliminary determination.

[108] In the event of a finding of injury, retardation or threat of injury by the CITT, imports of subject goods released by the CBSA after that date will be subject to anti-dumping duty equal to the applicable margin of dumping on the imported goods.

## **RETROACTIVE DUTY ON MASSIVE IMPORTATIONS**

[109] When the CITT conducts its inquiry, it may consider if dumped goods that were imported close to or after the initiation of an investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry.

[110] Should the CITT issue such a finding, anti-dumping duties may be imposed retroactively on subject goods imported into Canada and released by the CBSA during the period of 90 days preceding the day of the CBSA making a preliminary determination of dumping.

## **UNDERTAKINGS**

[111] After a preliminary determination of dumping by the CBSA, an exporter may submit a written undertaking to revise selling prices to Canada so that the margin of dumping or the injury, retardation or threat of injury that is being caused by the dumping is eliminated. In order for undertakings to be acceptable, they must account for all or substantially all of the exports to Canada of the dumped goods.

[112] Interested parties may provide comments regarding the acceptability of undertakings within nine days of the receipt of an undertaking by the CBSA. The CBSA will maintain a list of parties who wish to be notified should an undertaking proposal be received. Those who are interested in being notified should provide their name, telephone and fax numbers, mailing address and e-mail address to one of the officers identified in the “Information” section of this document.

[113] If undertakings were to be accepted, the investigation and the collection of provisional duty would be suspended. Notwithstanding the acceptance of an undertaking, an exporter may request that the CBSA’s investigation be completed and that the CITT complete its inquiry.

## **PUBLICATION**

[114] Notice of the initiation of this investigation is being published in the Canada Gazette pursuant to subparagraph 34(1)(a)(ii) of SIMA.

## **INFORMATION**

[115] Interested parties are invited to file written submissions presenting facts, arguments, and evidence that they feel are relevant to the alleged dumping. Written submissions should be forwarded to the attention of one of the officers identified below.

[116] To be given consideration in this phase of this investigation, all information should be received by the CBSA by July 30, 2018.



[117] Any information submitted to the CBSA by interested parties concerning this investigation is considered to be public information unless clearly marked "confidential". Where the submission by an interested party is confidential, a non-confidential version of the submission must be provided at the same time. This non-confidential version will be made available to other interested parties upon request.

[118] Confidential information submitted to the CBSA will be disclosed on written request to independent counsel for parties to this proceeding, subject to conditions to protect the confidentiality of the information. Confidential information may also be released to the CITT, any court in Canada, or a WTO/NAFTA dispute settlement panel. Additional information respecting the Directorate's policy on the disclosure of information under SIMA may be obtained by contacting one of the officers identified below or by visiting the CBSA's website.

[119] The investigation schedule and a complete listing of all exhibits and information are available at: [www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html](http://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/menu-eng.html). The exhibits listing will be updated as new exhibits and information are made available.

[120] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also available through the CBSA's website at the address below. For further information, please contact the officers identified as follows:

**Mail:** SIMA Registry and Disclosure Unit  
Trade and Anti-dumping Programs Directorate  
Canada Border Services Agency  
100 Metcalfe Street, 11<sup>th</sup> floor  
Ottawa, Ontario K1A 0L8  
Canada

**Telephone:** Nalong Manivong 613-954-7268  
Jody Grantham 613-954-7405

**Fax:** 613-948-4844

**E-mail:** [simaregistry@cbsa-asfc.gc.ca](mailto:simaregistry@cbsa-asfc.gc.ca)

**Web site:** [www.cbsa-asfc.gc.ca/sima-lmsi](http://www.cbsa-asfc.gc.ca/sima-lmsi)



Doug Band  
Director General  
Trade and Anti-dumping Programs Directorate