



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDING AND REASONS

Inquiry No. NQ-2004-006

Laminate Flooring

*Finding issued
Thursday, June 16, 2005*

*Reasons issued
Thursday, June 30, 2005*

TABLE OF CONTENTS

FINDING	i
STATEMENT OF REASONS	1
BACKGROUND	1
RESULTS OF THE CBSA'S INVESTIGATION	2
PRODUCT	2
Product Definition and Technical Information	2
Production Process	3
DOMESTIC PRODUCER	3
IMPORTERS AND FOREIGN PRODUCERS	3
PRODUCT DISTRIBUTION	4
POSITIONS OF THE PARTIES	4
Party in Support of an Injury Finding	4
Parties Opposed to an Injury Finding	6
ANALYSIS	9
Like Goods and Classes of Goods	9
Domestic Industry	10
Cumulation	11
INJURY	13
Volume of Dumped and Subsidized Goods	14
Effects of Dumped and Subsidized Goods on Prices	15
Impact on the Domestic Industry	18
Factors Other Than Dumping and Subsidizing	22
Massive Importation	26
EXCLUSIONS	30
CONCLUSION	31

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

THE DUMPING OF LAMINATE FLOORING ORIGINATING IN OR EXPORTED FROM AUSTRIA, BELGIUM, THE PEOPLE'S REPUBLIC OF CHINA, FRANCE, THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF POLAND AND THE SUBSIDIZING OF SUCH PRODUCT ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

FINDING

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping in Canada of laminate flooring in thickness ranging from 5.5 mm to 13 mm (other than laminate hardwood flooring where the hardwood component exceeds 2 mm in thickness) originating in or exported from Austria, Belgium, the People's Republic of China, France, the Federal Republic of Germany and the Republic of Poland and the subsidizing of such product originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury to the domestic industry.

This inquiry is pursuant to the issuance by the President of the Canada Border Services Agency of a preliminary determination dated February 16, 2005, that the aforementioned product originating in or exported from Austria, Belgium, the People's Republic of China, France, the Federal Republic of Germany and the Republic of Poland has been dumped and, in the case of the People's Republic of China, that the aforementioned product has also been subsidized and that the margins of dumping and the amount of subsidy on the product from the subject countries are not insignificant. On May 17, 2005, the President of the Canada Border Services Agency made a final determination that the aforementioned product originating in or exported from the People's Republic of China and France has been dumped and, in the case of the People's Republic of China, that the aforementioned product has also been subsidized and that the margins of dumping and the amount of subsidy on the product from the subject countries are not insignificant. In addition, the President of the Canada Border Services Agency terminated the investigation regarding the dumping of the aforementioned product originating in or exported from Austria, Belgium, the Federal Republic of Germany and the Republic of Poland.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping in Canada of the aforementioned product originating in or exported from the People's Republic of China and France and the subsidizing of such product originating in or exported from the People's Republic of China have caused injury to the domestic industry.

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Pierre Gosselin
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James A. Ogilvy
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
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Hélène Nadeau
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The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: May 18 to 25, 2005

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STATEMENT OF REASONS

BACKGROUND

1. The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry to determine whether the dumping in Canada of laminate flooring in thickness ranging from 5.5 mm to 13 mm (other than laminate flooring where the hardwood component exceeds 2 mm in thickness) originating in or exported from Austria, Belgium, the People's Republic of China (China), France, the Federal Republic of Germany (Germany) and the Republic of Poland (Poland) and the subsidizing of laminate flooring originating in or exported from China have caused injury or retardation or are threatening to cause injury to the domestic industry.
2. On October 4, 2004, the President of the Canada Border Services Agency (CBSA), following a complaint filed by Uniboard Surfaces Inc. (Uniboard), of Laval, Quebec, initiated an investigation into whether imports of laminate flooring originating in or exported from Austria, Belgium, China, France, Germany, Luxembourg and Poland were being dumped or subsidized. The CBSA did not initiate a dumping investigation with respect to laminate flooring from Spain, as the likely volume of dumped goods from Spain was considered negligible. On October 5, 2004, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping and subsidizing of laminate flooring had caused injury or retardation or was threatening to cause injury to the domestic industry.
3. On December 3, 2004, the Tribunal issued a preliminary determination of injury with respect to the dumping and subsidizing of laminate flooring. In its reasons, it indicated that the question of whether there should be more than one class of goods merited further consideration.
4. On February 16, 2005, the CBSA issued a preliminary determination of dumping with respect to laminate flooring from Austria, Belgium, China, France, Germany and Poland and a preliminary determination of subsidizing with respect to laminate flooring from China. The CBSA was satisfied, as a result of this preliminary investigation, that the subject goods had been dumped and subsidized, that the margins of dumping and amounts of subsidy were not insignificant and that the volumes of dumped and subsidized goods were not negligible. It terminated the dumping investigation with regard to Luxembourg because the volume of dumped imports from that country was negligible.
5. On February 17, 2005, the Tribunal issued a notice of commencement of inquiry.² The period of inquiry covered three years, from January 1, 2002, to December 31, 2004. As part of the inquiry, the Tribunal sent questionnaires to the domestic producer, importers, purchasers and foreign producers of laminate flooring. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.
6. In its notice, the Tribunal informed parties that, in order to facilitate the conduct of the inquiry, it would issue a ruling on classes of goods prior to the hearing and invited parties to make submissions on the matter. On April 11, 2005, it informed parties that it would conduct its injury analysis on the basis of a single class of goods.

1. R.S.C. 1985, c. S-15 [*SIMA*].

2. C. Gaz. 2005.I.528.

7. On May 17, 2005, the CBSA issued a final determination that laminate flooring originating in or exported from China and France had been dumped and that the margins of dumping and the amount of subsidy were not insignificant, and a final determination of subsidizing in respect of laminate flooring originating in or exported from China. On the same date, the CBSA, pursuant to paragraph 41(1)(b) of *SIMA*, terminated the dumping investigation in respect of laminate flooring originating in or exported from Austria, Belgium, Germany and Poland because the margins of dumping were insignificant.

8. A hearing, with public and *in camera* testimony, was held in Ottawa, Ontario, from May 18 to 25, 2005. Uniboard was represented by counsel at the hearing, testified and made submissions. Alsapan SAS (Alsapan) and Espace Production International S.A., exporters and foreign producers of laminate flooring, and Quality Craft Ltd. (Quality Craft), an importer of laminate flooring, were represented by counsel at the hearing, testified and made submissions opposing an injury finding. Asia Dekor Industries (Shenzhen) Co., Ltd. (Asia Dekor) and Vöhringer Wood Products (Shanghai) Co., Ltd., foreign producers of laminate flooring, were represented by counsel at the hearing and opposed an injury finding. The Tribunal also heard testimony from witnesses from Home Hardware Stores Limited (Home Hardware) and Guardian Building Products Distribution, the latter having been subpoenaed by the Tribunal.

9. The record of this inquiry consists of all Tribunal exhibits, including the public and protected record of the preliminary injury inquiry on laminate flooring (PI-2004-003), public and protected replies to questionnaires, requests for information and replies thereto, witness statements and all exhibits filed by the parties throughout the inquiry, and the transcript of the hearing. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

10. The Tribunal issued its finding on June 16, 2005.

RESULTS OF THE CBSA'S INVESTIGATION

11. The CBSA's investigation covered imports of the subject goods from July 1, 2003, to June 30, 2004.

12. The CBSA determined that the weighted average margins of dumping for China and France were, respectively, 7.8 percent and 7.0 percent. The CBSA did not indicate in the reasons for its final determination what proportion of the volume of goods from China and France had been dumped. It determined that 99.8 percent of laminate flooring from China was subsidized, at an average subsidy amount of 3.0 percent or 1.16 renminbi per square metre.

PRODUCT

Product Definition and Technical Information

13. For the purposes of this inquiry, the subject goods are defined as laminate flooring in thickness ranging from 5.5 mm to 13 mm (other than laminate hardwood flooring where the hardwood component exceeds 2 mm in thickness) originating in or exported from China and France.

14. Laminate flooring is a rigid flooring material consisting of several layers: a wear or surface layer, a decorative layer, a core layer—usually high-density fibreboard (HDF)—and a backer or balancing layer. Laminate flooring with paper has wear, decorative and balancing layers of paper. The decorative layer is printed with the motif and colour that will show on the flooring, usually a wood grain or ceramic tile pattern.

The decorative and balancing layers of laminate flooring with wood consist of a thin layer (e.g. 0.5 mm) of real wood veneer, while the wear layer takes the form of multiple coats of polyurethane.

Production Process

15. The machinery and equipment used by laminate flooring manufacturers worldwide is generally manufactured in Germany. The production equipment is highly automated, requiring a minimum number of trained staff to operate.

16. Although the steps may vary from producer to producer, there are generally four major steps in the production of laminate flooring with paper: pressing, cooling, cutting and milling. First, panels of the four layers of raw materials are placed one on top of the other and rolled in a press where they are bonded together using heat and pressure. The top plate of the press may have a textured surface to emboss the top of the flooring with a wood grain or other decorative characteristic. Once the panels are formed, they are cooled and then cut into planks. Finally, each plank is milled on all four edges to produce a locking tongue and groove system.

17. In one production method for laminate flooring with wood, a sheet of veneer is pressed on top of an HDF board using special glues. A second sheet of wood veneer is then pressed to the bottom of the HDF. The pressed wood veneer product is finished using multiple coats of polyurethane, and then sawn into floor panel dimensions. The edges of the panels are milled and may be bevelled.

DOMESTIC PRODUCER

18. Uniboard, the sole Canadian manufacturer of laminate flooring, produces only laminate flooring with paper at its Laval, Quebec, facility, where it has two pressing lines and one cutting and milling line.

19. Uniboard is a wholly owned subsidiary of Uniboard Canada Inc. (Uniboard Canada), which in turn is a wholly owned subsidiary of Kunz Holding GmbH & Co. of Germany. Uniboard Canada began operations in 1981 and currently produces a variety of products at nine production facilities in Canada, three of which provide inputs or services to Uniboard in the production of laminate flooring: Mont Laurier, Quebec, produces HDF; Lac-des-Îles, Quebec, presses the four layers of materials to make unfinished boards, which can be either sold in that state or cut and milled to be sold as laminate flooring; and Drummondville, Quebec, impregnates the papers with resin.

20. In 1995, Uniboard began production of laminate flooring in Ville Saint-Laurent, Quebec. In 2001, it moved to a new manufacturing facility in Laval with state-of-the-art equipment.

21. Uniboard exports laminate flooring, as well as 4 ft. x 8 ft. and 5 ft. x 8 ft. unfinished boards, to the United States. Since 2000, it has also imported laminate flooring from France and Germany.

IMPORTERS AND FOREIGN PRODUCERS

22. The Tribunal received 24 replies to the questionnaires sent to 36 importers of laminate flooring. Of the 24 respondents, 19 identified themselves as brokers/wholesalers/distributors, and 5 as retailers/mass merchandisers. All importers of laminate flooring reported imports of laminate flooring with paper, with 3 companies also reporting imports of laminate flooring with wood.

23. With the exception of Germany, imports from each of the subject and non-subject countries are highly concentrated, with the top one to three importers accounting for nearly all the imports into Canada from each country.

24. The Tribunal received 10 replies to the questionnaires sent to 15 foreign producers of laminate flooring. In addition, it received responses from 9 foreign producers that were not on its distribution list. Of the 19 replies received from foreign producers, 15 indicated that they produce only laminate flooring with paper, 1 indicated that it produces only laminate flooring with wood, and 3 indicated that they produce laminate flooring with both paper and wood.

25. A single foreign producer in each of Austria, Belgium, France and Poland was predominantly responsible for that country's exports of laminate flooring to Canada.

PRODUCT DISTRIBUTION

26. Laminate flooring is sold in the domestic market through two main channels of distribution, either national or regional floor covering distributors or floor covering retailers, which consist of building and renovation centres (e.g. Home Depot, Rona), mass merchandisers not dedicated to renovations (e.g. Costco Wholesale Canada Ltd., Canadian Tire Corporation, Limited) and small and medium-sized specialty decorating and hardware stores.

27. National or regional floor covering distributors are wholesalers that normally buy in large quantities and sell an array of flooring products to floor covering retailers. They usually provide accessories, delivery arrangements and lines of credit for their clients. They typically sell directly to floor covering retailers, but may also sell to distributors.

28. Retailers are split between the "big box" stores and the smaller specialty stores. Although the quantity of their respective purchases may vary, both sell directly to end users.

29. Uniboard sells laminate flooring to floor covering distributors, as well as to building and renovation centres and mass merchandisers. Foreign producers, for the most part, market laminate flooring in Canada through wholesale distributors. In some instances, retailers, such as building and renovation centres or specialty decorating and hardware stores, also purchase directly from foreign manufacturers.

POSITIONS OF THE PARTIES³

Party in Support of an Injury Finding

30. Uniboard submitted that the Tribunal's record contains abundant evidence of material injury that it had suffered. It argued that it had suffered injury to its output, sales, market share, profits and capacity utilization.

31. It argued that, between 2001 and 2004, when the Canadian market was in full expansion, it was pushed out of the market by the subject goods. Uniboard argued that it was only happenstance that it had managed to find profitable sales in the United States and that it did not abandon the Canadian market, but switched to the United States because it was suffering huge losses to its market share and margins in the Canadian market. In this regard, Uniboard pointed out that it believed that, in 2001, its share of the Canadian

3. This portion of the text is intended to outline a number of key submissions made by the parties. It is not intended to be exhaustive.

market had reached 30 percent, but that this dropped dramatically in 2002 and continued to drop in 2003 and 2004.

32. Uniboard argued that, because the CBSA had changed its policy regarding “zeroing”,⁴ the Tribunal should be cautious in the conclusions that it draws from the CBSA’s investigation.

33. Uniboard also submitted that there is only one class of goods, comprising both the wood veneer product and the paper product, on the basis that the goods are manufactured in the same way with identical raw materials, have similar physical characteristics and fulfil the same needs, with any differences in pricing being attributable to the wide variety of features.

34. With respect to cumulation, Uniboard submitted that the effect of the subject goods should be assessed on a cumulative basis since the conditions of competition, both among themselves and with Canadian producers in the Canadian market, were not significantly different.

35. In considering the factors relating to injury, Uniboard argued that the volume of imports from the subject countries was “amazing” and that there was no question that subject imports had increased significantly, both in absolute terms and in relation to the production or consumption of domestically produced goods.

36. Uniboard asked the Tribunal to consider the testimony of its witnesses with respect to the pricing of the subject goods and their impact on Uniboard’s bottom line. It also submitted that the testimony of its witnesses had supported its allegations with respect to lost sales. Uniboard claimed that it had initially tried to lower its prices in response to the price pressure in the market, but that it had still lost volume because of the seemingly endless supply of subject goods.

37. In the context of considering the impact of the subject goods on the state of the domestic industry, Uniboard submitted that the fact that it was operating at full capacity did not mean that there was a healthy situation, because it had a production imperative that did not allow it to operate below full capacity. In terms of the other injury indicators, specifically, sales, market share, rates of return on investment, pricing and profits, Uniboard submitted that the Tribunal should compare those in Canada to those in the United States and that the differences were due to the presence of massive quantities of the subject goods in the Canadian market.

38. Uniboard submitted that there were clear causal links between the subject goods and the injury that it had suffered. It submitted that the investment in the second cutting and milling line at the Laval facility had been halted because the situation in the market could not justify such an investment, due to the price pressure from the subject goods.

39. With respect to “other factors” that might be responsible for the injury suffered by the domestic industry, Uniboard argued that, although it had filed allegations of lost sales with respect to countries that the CBSA subsequently determined not to be dumping, the volume and prices of non-dumped imports were not the source of its injury, but rather, that the “troublemakers” in the market were the Chinese and French products. It argued that the other prescribed factors, specifically, contraction in demand for domestic like goods, developments in technology, product quality, product offerings, and its presence in the domestic market, were not relevant in this matter. In terms of export performance, Uniboard argued that the Tribunal

4. The CBSA has recently discontinued the practice of “zeroing”, i.e. determining a margin of dumping in respect of a model or type of product under investigation and setting any negative margins of dumping to zero.

should only consider whether its performance in the U.S. market was responsible for the injury that it had suffered and not measure its profits in the United States against its profits in Canada. Regarding the sales of second-quality products⁵, Uniboard submitted that they account for a very minor proportion of its overall business. However, its sales of seconds are greater as a proportion of Canadian sales. Uniboard argued that those sales are not identifiable as being of Uniboard product and are sold to firms specialized in secondary product and, therefore, do not affect the price levels of the regular laminate flooring market. It further submitted that the increase in seconds as a proportion of its sales volume in Canada reflects a market that had been decimated by low-priced imports, leaving Uniboard, which decided not to reduce its prices to unsustainable levels, with no option but to sell seconds as close to the area of production as possible.

40. With respect to threat of injury, Uniboard submitted that the injurious situation that it had experienced in the past would clearly continue in the future. It submitted that the Tribunal should consider the nature of the business, the fragility of the company and the dramatic increase in the volume of subject goods.

41. Regarding massive importation, Uniboard argued that the conditions for a finding in respect of China had been met in this particular case. It submitted that the evidence indicated that there was a considerable increase in the volume of imports from China and that the exporter was aware of the likely dumping determination and had made an effort to “load up” containers and ship them to Canada as quickly as possible.

42. Lastly, Uniboard argued that there was insufficient evidence on the record to justify the requests for product exclusions and noted the Tribunal’s practice of granting exclusions only in exceptional circumstances.

Parties Opposed to an Injury Finding

Vöhringer and Asia Dekor⁶

43. Vöhringer submitted that the imports from China have not caused material injury or retardation to the domestic producer, nor do they threaten to cause material injury or retardation to the domestic producer. Furthermore, it argued that the domestic industry has not shown the crucial causal link between the dumped or subsidized goods and any injury suffered and that, in any case, any injury that could be shown would not be material in nature.

44. Vöhringer also submitted that, in assessing injury, the Tribunal should not consider only Uniboard’s domestic production for domestic sales, but rather all of its production and sales, whether destined for export sale or domestic sale.

45. Vöhringer rejected Uniboard’s claims of a production imperative and argued that, unlike the situation of a steel mill, restarting a cutting line takes only a few hours, as witnesses for Uniboard had testified.

46. Vöhringer submitted that a consideration of the indicators of financial performance, specifically, gross margins and profitability, net sales and cost of goods sold, does not indicate that a causal link exists between the presence of imports from China and material injury to the domestic industry. It argued that this is also true if the Tribunal were to consider some of the other prescribed factors, such as employment,

5. Second-quality products are products that do not fully meet industry standards [seconds].

6. Hereinafter referred to collectively as Vöhringer.

productivity, level of inventories and capacity utilization. Vöhringer urged the Tribunal, when considering the question of injury, to keep in mind the testimony of Uniboard's witnesses as to how the company plans to finance its capital expansion. Furthermore, Vöhringer submitted that there is no basis for an injury or threat of injury finding in the evidence on pricing. Vöhringer argued that it is important to take into account Uniboard's sales of seconds, submitting that Uniboard sells its seconds for about half the price of its regular laminate flooring and that it does so almost exclusively in Canada.

47. In terms of non-dumping factors, Vöhringer argued that currency was a huge issue in this case. It submitted that, when the Canadian dollar was low, Uniboard made spectacular gains in the U.S. market, but that, when the Canadian dollar began to rise, this had a major negative impact on Uniboard.

48. Regarding cumulation, Vöhringer argued that, if the Tribunal were to conclude that injury had occurred prior to 2003, the Tribunal would have the discretion not to cumulate the effect of the imports from China with those of the imports from France, on the basis that imports from China were virtually non-existent in the Canadian market prior to 2003.

49. As to threat of injury, Vöhringer argued that any analysis of threat needs to be considered in the context of the incredible growth in demand being experienced in the market. Vöhringer submitted that Uniboard had not made its case in terms of the factors that the Tribunal considers in respect of threat of injury.

50. Finally, Vöhringer argued that it was outside the Tribunal's mandate to second-guess the results of the CBSA's investigation.

Quality Craft

51. Quality Craft submitted that any injury suffered by Uniboard is not material. It also submitted that injury should be assessed in terms of all production in Canada and that the Tribunal should consider the unfinished boards as forming part of the like goods.

52. It submitted that the most significant non-dumping factor is the low-priced imports from non-subject countries. In this regard, Quality Craft argued that Uniboard experienced its most significant injury before Chinese product was present in the Canadian market and noted that Uniboard's market share fell precipitously between 2001 and 2002. Quality Craft also cited the following non-dumping factors: Uniboard's failure to innovate; its focus on the U.S. market at the expense of the Canadian market; the significant increase in the value of the Canadian dollar against the U.S. dollar; its failure to properly service the Canadian market; its smaller range of stock-keeping units (SKUs); its own low-priced imports; its sales of low-priced seconds; and its capacity constraints. As an alternative argument, Quality Craft submitted that, if the Tribunal was of the view that Chinese product was underpricing and taking away sales from Uniboard, then the Tribunal needed to consider the low cost of Chinese laminate flooring as another factor. In this context, it indicated that the cost efficiencies in producing this product in China give this product an advantage that has nothing to do with dumping or subsidizing.

53. In terms of threat, Quality Craft argued that the low price of the Chinese product is only responding to the aggressive pricing of the German, Austrian and Polish product, as well as the product pricing of other non-subject countries. Quality Craft also submitted that an injury finding in this case would not help Uniboard in the future, since it would still not be competitive.

54. Regarding massive importation, Quality Craft argued that the volume of imports from China increased only slightly between the two comparable periods, when considered on an annualized basis. It also argued that, between the date of initiation of investigation by the CBSA and the anticipated date of the CBSA's preliminary determination, the importers of Chinese product had virtually no opportunity to place orders that would have arrived in time to avoid the duties, based on a 10- to 12-week lead time for delivery from China. Quality Craft highlighted that its product is pre-sold and ordered on that basis rather than for inventory purposes.

55. Quality Craft requested product exclusions for 12-mm laminate flooring and for narrow planks with bevelled edges. As a basis for its requests, it submitted that Uniboard does not produce these products and that any plans to produce them are still some time from fruition.

56. Quality Craft also argued that the Tribunal should not go behind the dumping and subsidizing calculations that had been made by the CBSA.

EPI and Alsapan⁷

57. EPI submitted that a decision of the World Trade Organization Appellate Body⁸ is relevant to the Tribunal's injury analysis in this matter with respect to its assessment of Uniboard's export performance. In this regard, EPI argued that Uniboard's production destined for export ought to be examined in the same manner as its production consumed in the domestic market.

58. EPI argued that France should not be cumulated with China, on the basis of important distinctions between them in almost every condition of competition that is relevant. In this context, it submitted that Uniboard's case against France pertains to events that took place in 2001, which, it noted, was before the Tribunal's period of inquiry.

59. Regarding causation, EPI submitted that the Tribunal should consider the degree to which the domestic industry itself imports the subject goods, which it does in order to fill voids in its product offerings.

60. With respect to massive importation, EPI submitted that the legal rules do not provide for a cumulated massive importation finding because Article 3 of the World Trade Organization *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*,⁹ which provides for cumulation, does not apply to Article 10, which deals with massive importation.

61. EPI requested product exclusions for tiles, narrow planks, anti-static laminate flooring, 12-mm laminate flooring and various products where patents are pending.

62. In terms of the CBSA's determination, EPI submitted that the Tribunal does not have jurisdiction to determine dumping.

7. Hereinafter referred to collectively as EPI.

8. *United States - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan* (24 July 2001), AB-2001-2.

9. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm> [*Anti-dumping Agreement*].

ANALYSIS

Like Goods and Classes of Goods

63. At the preliminary injury inquiry stage, the Tribunal found that the domestically produced goods were “like” the subject goods and that, for the purpose of determining whether there was a reasonable indication of injury, the Tribunal would consider the goods as being composed of a single class of goods. However, it indicated that the arguments in support of more than one class of goods merited further consideration. As a preliminary matter in this injury inquiry, the Tribunal notified parties that, in order to facilitate the conduct of the inquiry, it was seeking submissions from parties on the issue of classes of goods.¹⁰ Having reviewed those submissions, the Tribunal circulated its interim decision indicating that it would conduct its injury analysis on the basis of a *single* class of goods.¹¹

64. The Tribunal notes that the scope of the like goods and the number of classes of goods were not highly contentious issues at the hearing. Uniboard submitted that there is only one class of like goods, on the basis that the manufacturing process is the same and uses similar raw materials, that the goods have similar physical characteristics and that any difference in pricing is attributable to the wide variety of features among the goods. Quality Craft argued that the scope of like goods should include unfinished boards, i.e. product that has been pressed, but not cut or milled.

65. In assessing the scope of the like goods, as well as the number of classes of goods, the Tribunal typically considers the following factors: the physical characteristics of the goods, their method of manufacture, their market characteristics (such as substitutability, pricing and distribution) and whether the goods fulfill the same customer needs.

66. In light of the foregoing, the Tribunal finds that there is only one class of goods and that it encompasses both narrow and wide boards, laminate flooring with paper and wood veneer surface layers, tile-look laminate flooring and laminate flooring in all thicknesses that fall within the definition of the subject goods, i.e. 5.5 mm to 13 mm.

67. The Tribunal notes that, while encompassing the above-noted variations, all the flooring is composed of a surface layer, a decorative layer, a core layer and a balancing layer. Further, it is marketed in the same manner and is designed for the same markets and end uses. Despite the differences between laminate flooring with paper and laminate flooring with wood veneer with respect to the manufacturing methods and some of the materials used, the Tribunal is of the opinion that these minor differences are not sufficient to justify splitting the goods into two classes.

68. The Tribunal also notes that other distinguishing characteristics, such as green core, attached foam backing, anti-static surface, waterproof edges, bevelled edges, etc., are but variations of the basic product that serve to differentiate it in the marketplace, but always within the laminate flooring group. Thus, the Tribunal finds that these features are also not sufficient to justify creating separate classes of goods.

10. Tribunal Exhibit NQ-2004-006-03, Administrative Record, Vol. 1 at 144.

11. Tribunal Exhibit NQ-2004-006-28, Administrative Record, Vol. 1 at 214.

69. With respect to Quality Craft's argument that the scope of the like goods should include the unfinished boards, the Tribunal notes that the CBSA has defined the subject goods as:

Laminate flooring in thickness ranging from 5.5 mm to 13 mm (other than laminate hardwood flooring where the hardwood component exceeds 2 mm in thickness) originating in or exported from the People's Republic of China and France.¹²

70. The CBSA also provided the following additional information for "laminate flooring":

Laminate flooring may be defined as a rigid floor covering with a surface layer consisting of one or more thin sheets of a fibrous material printed with the motif and colour that will show on the flooring, generally a wood grain or ceramic tile pattern (usually paper but can be printed on the raw board) and impregnated with aminoplastic resins (usually melamine). These sheets are either pressed as high pressure laminate and compact laminate or bonded on a substrate, which usually consists of high-density fibreboard (HDF), or in the case of direct pressure laminate directly pressed on a substrate, usually HDF. The product is normally finished with a backing, primarily used as a balancing material.

In the market, laminate flooring may be described as "laminated wood flooring" or "floating flooring".

...

Production Process

...

There are four major stages of production of laminate flooring: pressing, cooling, cutting and milling.¹³

71. Basing its conclusion on the foregoing, for example, the inclusion of cutting and milling in the production process, the Tribunal is convinced that unfinished boards should not be included in the scope of the like goods. The Tribunal is of the view that the above definition and additional information provided by the CBSA limit the scope of the like goods and that the descriptions taken together lead the Tribunal to find that the like goods consist only of the fully finished laminate flooring.

Domestic Industry

72. The term "domestic industry" is defined in subsection 2(1) of *SIMA* in part as follows:

"domestic industry" means . . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.

73. As indicated above, Uniboard is the sole Canadian manufacturer of laminate flooring and, as such, the producer of 100 percent of the domestic production. On this basis, the Tribunal determines that Uniboard represents the domestic industry for the purposes of its inquiry.

12. Tribunal Exhibit NQ-2004-006-01A, Administrative Record, Vol. 1 at 30.

13. Tribunal Exhibit NQ-2004-006-33 (single copy exhibit), Administrative Record of Preliminary Injury Inquiry No. PI-2004-003, Vol. 1B at 123-25.

Cumulation

74. EPI argued that the effect of the dumped goods from France should not be cumulated with those of the goods from China because of important distinctions between the products with respect to almost every relevant condition of competition. In this context, EPI submitted that Uniboard's case against France pertains to events that took place in 2001, which, it noted, was before the Tribunal's period of inquiry.

75. For its part, Vöhringer argued that, if the Tribunal were to conclude that injury occurred prior to 2003, the Tribunal has the discretion not to cumulate China with France, on the basis that imports from China were virtually non-existent prior to 2003.

76. Pursuant to subsection 42(3) of *SIMA*, the Tribunal shall, when conducting an inquiry under subsection 42(1), make an assessment of the cumulative effect of the dumping of the goods that are imported into Canada from more than one country, if it is satisfied that the following conditions are met:

- (a) the margin of dumping . . . in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and
- (b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and
 - (i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or
 - (ii) like goods of domestic producers.

77. If the Tribunal determines that the requirements for cumulation are satisfied, it will conduct a single injury analysis for the goods from China and France.

78. The CBSA's final determination indicates that the margins of dumping and the amounts of subsidy in relation to the subject goods from China are not insignificant.¹⁴ The CBSA's final determination also indicates that the margin of dumping in relation to the goods from France is not insignificant.¹⁵ Therefore, the first criterion under paragraph 42(3)(a) of *SIMA* is met.

14. Section 2 of *SIMA* states that "insignificant" means:

- (a) in relation to a margin of dumping, a margin of dumping that is less than two per cent of the export price of the goods, and
- (b) in relation to an amount of subsidy, an amount of subsidy that is less than one per cent of the export price of the goods.

The CBSA indicated that the margin of dumping for China was 7.8 percent; therefore, the Tribunal finds that the margin of dumping for China is not "insignificant" (Tribunal Exhibit NQ-2004-006-04A, Administrative Record, Vol. 1 at 182.38). For the purposes of assessing whether the amount of subsidy for the imports from China is "insignificant", the Tribunal took into account the provisions of Article 27.12 of the WTO *Agreement on Subsidies and Countervailing Measures*, as per subsection 42(4) of *SIMA*, which provides for a two percent "insignificance" threshold for China as a developing country member of the WTO. The CBSA indicated that the amount of subsidy for the imports from China is three percent; therefore, the Tribunal finds that the amount of subsidy for the imports from China is not "insignificant".

15. The CBSA indicated that the margin of dumping for France is 7.0 percent; therefore, the Tribunal finds that the margin of dumping for France is not "insignificant" (Tribunal Exhibit NQ-2004-006-04A, Administrative Record, Vol. 1 at 182.38).

79. On the basis of volume data on the record, the Tribunal finds that the volume of dumped goods from each of the two subject countries is not negligible.¹⁶ On the same basis, the Tribunal also finds that the volume of subsidized goods from China is not negligible.¹⁷ Therefore, the second criterion under paragraph 42(3)(a) of *SIMA* is met.

80. In considering the conditions of competition between goods, the Tribunal typically considers the following factors: the degree to which the subject goods from each subject country are interchangeable with goods from other subject countries or with the domestic goods; the presence or absence of sales or offers to sell in the same geographical markets of imports from different subject countries and of the domestic like goods; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry. As the Tribunal has previously stated, it recognizes that there may be other factors that it can consider in deciding whether the exports of a particular country should be cumulated and that no single factor may be determinative.

81. The evidence demonstrated that there is competition in the same geographical markets between the like goods and the subject goods, and among the subject goods themselves.¹⁸ The evidence also indicated that the like goods and the subject goods are generally interchangeable.¹⁹ As indicated above, Uniboard sells laminate flooring to floor covering distributors, as well as to building and renovation centres and mass merchandisers. The subject imports are, for the most part, also marketed in Canada through wholesale distributors. On this basis, the Tribunal finds that the subject goods are sold through channels of distribution that are similar among themselves and to those of the like goods.

82. With respect to the difference in the timing of the imports, both Vöhringer and EPI argued that the effect of the imports from China should not be cumulated with the effect of the imports from France, on the basis that the imports from China entered the Canadian market during a different time frame from that of the

16. Subsection 2(1) of *SIMA* defines the term “negligible” in part to mean: “in respect of the volume of dumped goods of a country, (a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are of the same description as the dumped goods”. For the purposes of its negligibility calculation regarding the dumped imports, the Tribunal first calculated the volume of dumped goods from China and France using information contained in confidential attachments to the CBSA’s final determination. It used this number as the numerator. For the denominator, the Tribunal relied on the data that it had gathered on total import volumes through its inquiry. Accordingly, the Tribunal determined that the volume of dumped imports from China and France were not negligible on this basis.

17. *SIMA* defines “negligible” in respect of the volume of dumped goods only, and no definition is provided for “negligible” in respect of subsidized goods. However, Article 27.10 of the WTO *Agreement on Subsidies and Countervailing Measures* provides for a 4 percent negligibility threshold for developing countries, which include China. In the Tribunal’s view, the 4 percent negligibility threshold for developing countries is applicable to China. This is consistent with section 41.2 of *SIMA*, which provides that the CBSA shall, in an investigation respecting the subsidizing of any goods, take into account the provisions of Article 27.10 of the *Agreement on Subsidies and Countervailing Measures*. Accordingly, since *SIMA* provides that the CBSA must terminate its investigation if the volume of the subsidized imports into Canada from a developing country represents less than 4 percent of the total imports of the like products, the Tribunal is of the opinion that it should interpret subsection 42(4.1) of *SIMA* in light of section 41.2 of *SIMA* and apply the same threshold. For the purposes of its negligibility calculation regarding the subsidized imports, the Tribunal relied on the same type of information as it did in its calculation on dumped imports. Accordingly, the Tribunal determined that the volume of subsidized imports from China was not negligible on this basis.

18. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07B (protected), Administrative Record, Vol. 2.1 at 207, 208.

19. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-06, Administrative Record, Vol. 1.1 at 72.

imports from France. The Tribunal is not convinced by the parties' argument in this regard. Although imports from China began arriving in Canada in late 2002,²⁰ the evidence indicates that the imports from the subject countries competed against each other²¹ and also against the like goods in the Canadian market at the same time and for a major part of the period of inquiry. In 2003-2004, both the Chinese and French were very active in the market and fought for market share at the expense of the domestic industry. Therefore, the Tribunal determines that, upon having conducted an assessment of the conditions of competition, cumulating the effect of the subject goods is appropriate.

83. The Tribunal will cross cumulate the effect of dumping and subsidizing, as is its usual practice when conducting its injury analysis.²²

INJURY

84. Subsection 37.1(1) of the *Special Import Measures Regulations*²³ directs the Tribunal to consider certain factors for the purpose of determining whether the dumping or subsidizing of goods has caused material injury or retardation to the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider factors other than the dumping and subsidizing to ensure that any injury, retardation or threat of injury caused by those other factors is not attributed to the effect of the dumped or subsidized imports.

85. As a preliminary matter, the Tribunal notes that parties made extensive submissions on how it should treat Uniboard's export performance in its assessment of injury. The Tribunal is guided in this regard by the decision of the Binational Panel in *Appliances*:

The Tribunal majority determined that the positive export performance of the domestic industry did not extirpate the injury to the domestic industry. We find no error in this determination. Nothing in SIMA, its implementing regulations or reported precedent suggests that the "material injury" sufficient to sustain an antidumping order must reflect injury suffered by every market sector in which domestic like product is sold, including export market sectors. Furthermore, the Tribunal majority indicated that "in this case" the domestic industry's export success should not be weighed against the injury found in sectors of the domestic market. This determination is case-specific and involves a weighing of evidence, which is the prerogative of the Tribunal, and to which the Panel will defer.

The Tribunal took note of the factors prescribed by the SIM Regulations to consider in the injury determination and gave specific attention to Camco's export performance. Nowhere, however, does SIM Regulations subsection 37.1(3) dictate how [emphasis in original] the Tribunal must consider or weigh the domestic industry's export performance. Obviously, the SIM Regulations, which concerns itself with non-dumping causes of injury, seeks to have the Tribunal consider whether a decline in export performance, rather than imports, might be the cause of injury to a domestic industry. However, nowhere does the regulation dictate or even suggest that positive export performance is a factor, which must be weighed against other evidence of injury. The weighing of evidence in each case is an issue of fact, to be scrutinized by the Panel under a deferential standard of review.

...

In this case, Camco is the only domestic producer. Thus, there is injury to the domestic industry from dumping to the extent that Camco is injured by that dumping. There is no indication that domestic

20. *Transcript of Public Hearing*, Vol. 4, 24 May 2005, at 345; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07B (protected), Administrative Record, Vol. 2.1 at 192.

21. *Transcript of Public Hearing*, Vol. 4, 24 May 2005, at 327.

22. *Grain Corn* (7 March 2001), NQ-2000-005 (CITT).

23. S.O.R./84-927 [*Regulations*].

production “as a whole” must be injured; rather “domestic producers as a whole” must be injured. It is possible to injure a producer by only injuring one part of its business. The Tribunal found that Camco was injured by dumping by loss of market share in the Canadian market.²⁴

86. In this regard, the Tribunal notes that paragraph 37.1(3)(b) of the *Regulations*, which reflects the non-attribution provision of the *Anti-dumping Agreement*,²⁵ prescribes certain factors other than the dumping and subsidizing that might be causing injury that the Tribunal should consider in order to ensure that the effects of these other factors are not attributed to the dumping and subsidizing. Since the export performance of the domestic industry is cited as one of these other factors—under subparagraph 37.1(3)(b)(vi)—it is clear that, when the domestic industry is impacted by a negative export performance (e.g. reduced export sales), the Tribunal is not allowed to attribute any injury caused by this negative export performance to the dumping and subsidizing of the subject goods. In the case at hand, as will be elaborated later in these reasons, this is clearly not the situation for Uniboard, which enjoyed success in its export performance.

87. The Tribunal also notes that, when there is positive export performance, parties often present arguments asking the Tribunal to offset the domestic industry’s poor performance in Canada against its successes in other markets. As stated in *Appliances*, the Tribunal is required to consider whether there is injury to the domestic industry caused by the dumping and subsidizing. In the Tribunal’s view, this requires a thorough consideration of the facts of each case and not merely an algebraic summing up, where the gains in one market are used to cancel out the losses in another. In this case, as will be discussed later in this statement of reasons, the Tribunal determined that Uniboard’s injury in the domestic market, which was caused by the dumping and subsidizing of the subject goods, was material, even while it enjoyed some success in the export market.

Volume of Dumped and Subsidized Goods

88. During the period of inquiry, the volume of imports from the subject countries grew by 431 percent, increasing by 52 percent in 2003 and by a further 249 percent in 2004. The subject imports entered Canada first from France and then, starting in the latter half of 2002, from both France and China. The volume of imports from non-subject countries also increased during the period of inquiry, albeit at a much slower rate, growing by less than the overall market between 2002 and 2004. As a result, the share of total imports of laminate flooring accounted for by imports originating in the subject countries increased slightly more than threefold between 2002 and 2004, while the share accounted for by imports from non-subject countries fell by 20 percent.²⁶

89. With the increase in imports of laminate flooring from the subject countries during the period of inquiry, there was also a significant increase in the volume of sales of such imports in Canada, which rose by 144 percent in 2003 and by an additional 176 percent in 2004, for a total increase of 574 percent over the

24. (16 January 2002), CDA-USA-2000-1904-04 (Ch. 19 Panel).

25. The relevant part of Article 3.5 of the *Anti-dumping Agreement* states in part:

The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry. [Emphasis added]

26. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07B (protected), Administrative Record, Vol. 2.1 at 192.

three years. In contrast, sales of imports from non-subject countries increased by only 31 percent during the period of inquiry.²⁷

90. The apparent domestic market for laminate flooring grew at a robust rate during the period of inquiry, with consecutive annual increases of approximately 25 percent. Despite this impressive growth, Uniboard's domestic sales from domestic production dropped sharply during the same time, falling first by 9 percent in 2003, then plummeting by a further 40 percent in 2004, for a total decrease of 46 percent. As a result, Uniboard's share of the domestic market fell by two thirds during the period of inquiry. The Tribunal notes that increases in sales of laminate flooring from the subject countries far outstripped the growth in the domestic market, as well as the growth in sales of imports from non-subject countries. Accordingly, the subject imports increased their share of the market at the expense of non-subject imports and the domestic industry, strengthening their presence in the market by more than 300 percent between 2002 and 2004.²⁸

91. In sum, the Tribunal is of the view that the significant increase in dumped and subsidized imports of laminate flooring from the subject countries displaced Uniboard's sales from domestic production in the domestic market. While the Canadian market grew vigorously during the Tribunal's period of inquiry, Uniboard's absolute volumes and its share of that market declined steadily, as dumped and subsidized imports were sold in increasing volumes.

92. The Tribunal notes that Uniboard's total production of laminate flooring grew²⁹ over the period of inquiry, even as it was experiencing declining sales and market share in the Canadian market in the face of ever-increasing volumes of dumped and subsidized imports. Uniboard was able to successfully export its increased production of laminate flooring to the United States, and its sales in that market grew significantly during the period of inquiry.³⁰ In the Tribunal's view, the fact that Uniboard experienced such different results with respect to its volume of sales in these two markets is, in itself, indicative of the significant displacement of like goods caused by dumped and subsidized imports in the Canadian market.

Effects of Dumped and Subsidized Goods on Prices

93. Unit import costs for laminate flooring from the subject countries fell by 22 percent in 2003 and remained essentially unchanged at that level in 2004. In contrast, unit import costs for laminate flooring from non-subject countries rose by 5 percent in 2003, only to fall back by approximately the same percentage in 2004. Throughout the period of inquiry, unit import costs for the subject laminate flooring were at least 9 percent lower than for non-subject laminate flooring, with the gap being significantly larger in 2003 and 2004 than in 2002.³¹

94. During the period of inquiry, the average selling price of the subject imports fell steadily, declining by 14 percent between 2002 and 2004. The Tribunal notes that the rate of decline for the subject imports outpaced that for imports from non-subject countries, whose average selling prices fell by only 11 percent

27. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-06B, Administrative Record, Vol. 1.1 at 202.

28. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07B (protected), Administrative Record, Vol. 2.1 at 202-203.

29. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-06A, Administrative Record, Vol. 1.1 at 149.

30. *Ibid.* at 150.

31. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07B (protected), Administrative Record, Vol. 2.1 at 194.

over the three years. However, the Tribunal notes that, within the overall decline seen for non-subject countries, the selling prices did move up for certain countries.³²

95. In contrast to the downward trends noted above, the Tribunal observes that Uniboard's average selling price of its domestically produced laminate flooring in the Canadian market increased by 5 percent during the period of inquiry, the result of a 6 percent decrease in 2003, followed by a 12 percent increase in 2004.³³

96. The average selling price of the subject imports was consistently the lowest in the market throughout the period of inquiry, undercutting Uniboard's average price by a widening margin between 2002 and 2004. On the other hand, the average selling price of non-subject imports was consistently higher than Uniboard's average selling price. At the same time, the Tribunal notes that selling prices of imports from certain non-subject countries were, at times, below Uniboard's average selling price and even the average selling price of the subject imports.³⁴

97. The Tribunal also examined the selling prices of a series of benchmark products on a quarterly basis from January 1, 2003, to December 31, 2004. In the Tribunal's view, the most relevant results are those for 7-mm and 8-mm laminate flooring, as these sizes account for the majority of product sold in the Canadian market.³⁵

98. With respect to 7-mm laminate flooring, the average selling price of the subject imports undercut Uniboard's average selling price in each quarter. Moreover, whereas Uniboard's pricing remained essentially flat during the period examined, despite experiencing some significant quarterly swings, the pricing of the subject imports followed a nearly steady decline. As a result, the gap between the average selling price of domestically produced 7-mm laminate flooring and that of 7-mm laminate flooring from the subject countries widened considerably. The Tribunal notes that the average selling price of 7-mm laminate flooring from non-subject countries also declined, but not as sharply as that of 7-mm laminate flooring from the subject countries. For the most part, Uniboard had the highest average selling price for 7-mm laminate flooring, followed by non-subject countries, with the subject countries generally having the lowest average selling price.³⁶

99. In the case of 8-mm laminate flooring, the average selling price of the subject imports also undercut the average selling price of domestically produced flooring in each quarter of the two years examined. Whereas the average selling price of Uniboard's 8-mm laminate flooring rose during the inquiry period, the average selling price of the 8-mm laminate flooring from the subject countries initially declined, but then increased, beginning in the second quarter of 2004, to reach a level in the fourth quarter of 2004 similar to that in the first quarter of 2003. On the other hand, the average selling price of 8-mm laminate flooring from non-subject countries dropped consistently and significantly during the period examined. However, that

32. *Ibid.* at 206.

33. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-06B, Administrative Record, Vol. 1.1 at 206.

34. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07B (protected), Administrative Record, Vol. 2.1 at 206.

35. *Ibid.* at 231, 233, 235, 237, 239; Manufacturer's Exhibit A-05, para. 34, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 3, 20 May 2005, at 255.

36. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07B (protected), Administrative Record, Vol. 2.1 at 213.

price was generally higher than Uniboard's, which, in turn, was higher than the average selling price of 8-mm laminate flooring from the subject countries.³⁷

100. In assessing the trends presented above with respect to pricing of laminate flooring, the Tribunal acknowledges the difficulties inherent in using average prices for this type of product. Factors such as changes in product mix and one-off market circumstances (e.g. inventory sell-offs or very large orders) can have an important influence on apparent trends. That said, the Tribunal takes note of the one result that is consistent across virtually all the time periods that it examined, as well as at both the aggregate and benchmark product levels, namely, that the price of the subject imports undercut Uniboard's price. In the Tribunal's view, the subject imports were clearly the "price leaders" in the market.

101. The price leadership of the subject imports is also demonstrated in the marked difference between the prices at which Uniboard was able to sell its domestic production in the Canadian market and those at which it sold its products in the U.S. market.³⁸ In this regard, the Tribunal notes that there is evidence on the record that average prices in the U.S. market were higher than Canadian prices, taking into account the effect of the exchange rate.³⁹ The Tribunal will not speculate on why prices in the U.S. market have remained higher despite the fact there is also competition in the United States from foreign suppliers. The only explanation offered at the hearing for this phenomenon was that this is a reflection of a healthier respect for trade laws and patent rights in the United States,⁴⁰ given the more vigorous prosecutions. In this context, the Tribunal also notes the questionnaire responses of foreign producers in the subject countries regarding their respective sales of laminate flooring in Canada and the United States.⁴¹

102. There is ample evidence on the record of the importance of price, for both distributors and final consumers, in the decision to purchase a particular line of laminate flooring.⁴² Accordingly, the Tribunal has no doubt that the severe decline of Uniboard's Canadian sales and market share during the period of inquiry reflect the consistent price undercutting by the subject imports.

103. Uniboard submitted that toward the end of 2001, as it initially began to experience price pressure from dumped and subsidized imports, it tried to meet the low price offerings of the subject country suppliers through discounts and promotions, but enjoyed little success in this regard. Uniboard provided the Tribunal with several examples of accounts where, in the face of price undercutting by the subject imports, it would have had to lower prices to unprofitable levels in order to make sales. In other instances, Uniboard did lower its prices to retain customers, and its witnesses testified that sales to even its largest accounts became unprofitable.⁴³

37. *Ibid.* at 214.

38. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07 (protected), Administrative Record, Vol. 2.1 at 55, 57; *Transcript of Public Argument*, 25 May 2005, at 42, 50.

39. Manufacturer's Exhibit A-20 (protected), Table III-13, Administrative Record, Vol. 12; Tribunal Exhibit NQ-2004-006-13.13 (protected), Administrative Record, Vol. 6 at 26; Tribunal Exhibit NQ-2004-006-12.17, Administrative Record, Vol. 5A at 11.

40. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 124, 125.

41. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07 (protected), Administrative Record, Vol. 2.1 at 132-39.

42. *Ibid.* at 71; *Transcript of Public Hearing*, Vol. 4, 24 May 2005, at 337.

43. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 27-28, 32.

104. By the first quarter of 2002, in the face of mounting price pressures that, if met, would have led to escalating losses, the Audit Committee of Uniboard's Board of Directors gave management an ultimatum to find profitable sales for its laminate flooring or risk closure of the plant.⁴⁴

105. Uniboard's response to this directive took several forms. First, it continued to try to bolster its Canadian sales with targeted promotions on select products for certain customers,⁴⁵ while at the same time trying to maintain prices on the remainder of its product line. Second, Uniboard continued to seek new Canadian customers and, in late 2002 approached Home Hardware,⁴⁶ eventually becoming one of its two suppliers of laminate flooring. Third, Uniboard actively sought out U.S. customers in order to generate profitable sales for its laminate flooring.⁴⁷ Finally, Uniboard also tried to compete against dumped and subsidized imports by moving away from entry level price points to focus on the mid-to-high price range.⁴⁸

106. In the Tribunal's view, Uniboard's strategy of price maintenance was not sustainable in the long run, as neither its distributors nor its retail clients could have continued to compete either head-to-head or indirectly with purchasers of dumped and subsidized goods without losing sales. Uniboard cited the case of one customer whose purchases from it have steadily decreased because Uniboard's products are higher priced than products from the subject countries.⁴⁹

107. Although Uniboard submitted that, by 2003, it was generally trying not to match the low prices of the subject imports, it nonetheless recorded a 6 percent decline in its average selling price in that year. However, the Tribunal notes that, in the early part of 2003, Uniboard liquidated a significant volume of surplus inventory that it had accumulated in the latter half of 2002, selling much of it at discounted prices to existing customers.⁵⁰ According to witnesses from Uniboard, this surplus arose as it continued to produce at high levels in order to maintain capacity utilization (the production imperative), and it was unable to sell this production because of the price undercutting by the subject imports.

108. As to the 12 percent increase in Uniboard's average selling price in 2004, this was accompanied by a 40 percent decline in the volume of its domestic sales. In the Tribunal's view, the continuing price undercutting by the subject imports, whose average price fell by 6 percent that year, was responsible for the decline in Uniboard's sales.

109. In conclusion, the Tribunal finds that the decline in the average selling price of the subject imports between 2002 and 2004 and their significant undercutting of domestic prices resulted in Uniboard sacrificing substantial sales volumes and market share in the domestic market, rather than competing at unprofitable prices.

Impact on the Domestic Industry

110. As noted above, beginning in late 2001 and continuing through the period of inquiry, there was intense pressure on Uniboard to reduce its prices to compete in the Canadian market with dumped and subsidized imports from the subject countries. Uniboard faced relentless price undercutting and eventually

44. *Ibid.* at 28.

45. *Ibid.* at 27.

46. *Transcript of Public Hearing*, Vol. 3, 20 May 2005, at 314-15.

47. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 30.

48. *Ibid.* at 138-39.

49. *Transcript of In-camera Hearing*, Vol. 1, 18 May 2005, at 11-12; *Transcript of In Camera Hearing*, Vol. 2, 19 May 2005, at 253.

50. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 110-11.

chose the strategy of not matching the dumped and subsidized prices, but trying instead to maintain its prices at sustainable levels. The outcome of this strategy, as discussed above, was a precipitous drop in market share.

111. The magnitude of the impact on Uniboard of the loss of market share was substantial and has to be viewed against the backdrop of the robust growth in the Canadian market over these three years. As one measure of the impact, the Tribunal estimates that, if, throughout the period of inquiry, Uniboard had been able to retain the same share of the market that it enjoyed in 2002, its volume of sales in 2004 would have been nearly three times greater. In turn, this increased sales volume would have generated substantially greater profits.⁵¹

112. In addition to the lost sales volume, the price-suppressing presence of dumped and subsidized imports impeded Uniboard's ability to raise prices in the domestic market sufficiently to generate a reasonable rate of return. Uniboard's results with respect to its domestic sales from domestic production did turn around from losses to profits⁵² during the period of inquiry, partly due to an improvement in its average price, as it changed its product mix to target the higher end of the market, and partly due to the reductions in manufacturing costs that it was able to achieve. As well, sales to the United States permitted Uniboard to increase its production and realize some economies of scale at the plant by ensuring an increasingly high capacity utilization.⁵³ This in turn boosted productivity. In this regard, the Tribunal notes that, while the number of employees decreased during the period of inquiry, the number of hours worked increased.⁵⁴

113. However, even in 2004, Uniboard's gross margin with respect to its domestic sales did not attain the minimum target set by the company.⁵⁵ It is instructive to note that, in the domestic market, it took Uniboard three years to achieve positive returns on its domestic sales of laminate flooring, while in the U.S. market, with a similar mix of products, it was profitable from the outset of the period of inquiry and achieved gross and net margins that sales in Canada have yet to attain.⁵⁶ If Uniboard had been able to achieve the same degree of profitability on its domestic sales as it did on its export sales, even assuming that its volume of sales did not increase, the Tribunal estimates that its aggregate losses over the period of inquiry would have been transformed into profits of an even greater amount.⁵⁷

114. Furthermore, the domestic industry suffered injury as a result of being driven from the domestic market by the dumped and subsidized imports in the sense that having to rely on the United States for an increasing portion of its sales exposed it to exchange rate fluctuations which, because of the rise of the Canadian dollar against U.S. currency, resulted in losses.⁵⁸ Witnesses from Uniboard testified that the

51. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07B (protected), Administrative Record, Vol. 2.1 at 202-203; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07 (protected), Administrative Record, Vol. 2.1 at 55.

52. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-06B, Administrative Record, Vol. 1.1 at 222.

53. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07A (protected), Administrative Record, Vol. 2.1 at 157.

54. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-6, Administrative Record, Vol. 1.1 at 59-60.

55. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07 (protected), Administrative Record, Vol. 2.1 at 55; Manufacturer's Exhibit A-08 (protected), para. 14, Administrative Record, Vol. 12

56. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07 (protected), Administrative Record, Vol. 2.1 at 55, 57.

57. *Ibid.*

58. Tribunal Exhibit NQ-2004-006-10.01E (protected), Administrative Record, Vol. 4 at 148; Tribunal Exhibit NQ-2004-006-10.01 (protected), Administrative Record, Vol. 4 at 122; *Transcript of Public Argument*, 25 May 2005, at 195-96.

company primarily tried to respond to the increased risk by reducing its production costs, but that it was not able to offset completely the negative effects of exchange rate fluctuations.⁵⁹

115. Finally, perhaps most significant is the loss that Uniboard incurred by being unable to pursue its plans to install a second cutting and milling line for laminate flooring at the Laval plant. Witnesses from Uniboard testified that, by late 2001, prices in the domestic market had been driven so low by the subject imports that it was financially unwise to go ahead with the investment as planned, especially since the equipment that had been planned for transfer from the Ville Saint-Laurent plant to Laval was not able to provide the necessary quality of product. Uniboard management was unwilling to approve the substantially greater investment required for the purchase of new cutting and milling equipment because the low prices in the market in late 2001 and early 2002 made this option uneconomical.⁶⁰ As a stopgap measure, Uniboard was forced to find alternative markets for the unfinished boards generated by its now mismatched facilities with their surplus of pressing capacity.⁶¹

116. The impact on Uniboard of not being able to install the second cutting and milling line as planned was considerable. In fact, the Tribunal estimates that, had Uniboard been able to sell its unfinished boards as finished laminate flooring, it would have generated profits representing more than twice the value of its aggregate losses during the period of inquiry.⁶²

117. The *Regulations* prescribe that the Tribunal consider in its assessment of injury, as one factor, the “magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods”. In this regard, the Tribunal notes that, in the CBSA’s final determination, issued on June 1, 2005, France and China had weighted margins of dumping of 7 percent and 7.8 percent, respectively, and that China had an average subsidy of 3.0 percent or 1.16 renminbi per square metre. The domestic industry urged the Tribunal to be cautious in drawing conclusions with respect to injury based on these results because the CBSA had changed its policy regarding “zeroing” and that, as result, the margins did not reflect the true extent of dumping. Parties opposing a finding of injury argued that the Tribunal had no mandate to look behind the CBSA’s determination.

118. The Tribunal clearly has no jurisdiction to review the CBSA’s determination of dumping and subsidizing, and it did not take into account the methodologies used by the CBSA in its assessment of the magnitude of the margins of dumping and subsidizing.

119. The Tribunal is of the view that dumping margins of 7.0 percent to 7.8 percent, combined with a subsidizing margin of 3.0 percent, are sufficient in an industry as price-competitive as laminate flooring to give the subject imports a pricing advantage that could be used to gain customers and, ultimately, market share.⁶³

120. As previously noted, Uniboard experienced a significant buildup of inventories during the fourth quarter of 2002, as it was unable to sell its output in the domestic market because of the presence of the dumped and subsidized imports.

59. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 107-108.

60. *Ibid.* at 95-98.

61. Manufacturer’s Exhibit A-01, para. 64, Administrative Record, Vol. 11; Manufacturer’s Exhibit A-06 (protected), paras. 76-77, Administrative Record, Vol. 12.

62. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07 (protected), Administrative Record, Vol. 2.1 at 55, 57; Tribunal Exhibit NQ-2004-006-10.01 (protected), Administrative Record, Vol. 4 at 15.

63. *Transcript of Public Hearing*, Vol. 4, 24 May 2005, at 378, 396.

121. In the Tribunal's view, based on the foregoing, Uniboard suffered injury that was material, principally from the loss of market share, suppressed prices and the inability to install the second cutting and milling line.

122. As noted above, with respect to Uniboard's export performance, the Tribunal was guided by the decision of the Binational Panel in *Appliances* and is of the view that, in this case, Uniboard's positive performance in the United States should not be used to offset the material injury that it sustained in the domestic market. There is no evidence that Uniboard's export activities led to a shorting of the domestic market and to consequent losses of customers or market share. Further, the export activity helped Uniboard achieve efficiencies that reflected positively on its costs of manufacturing.

123. The links between the injury sustained by Uniboard over the period of inquiry and the dumped and subsidized imports are clear in this case. The price leaders in the domestic market have been the subject countries and that their aggressive strategy has been successful is clearly demonstrated in the dramatic growth of their sales and market share, at the expense of both the domestic industry and non-subject suppliers.

124. At a micro level, the influence of subject imports is also clear from the many references in the record to Uniboard's generally unsuccessful attempts to compete on a price basis in the domestic market. Even though Uniboard's market intelligence was sometimes inaccurate in terms of the volume, prices and types of products that its clients or potential clients purchased from competitors selling the subject imports, the Tribunal finds Uniboard's evidence compelling with respect to its lost sales allegations.

125. In particular, the Tribunal notes the loss of several major Quebec retailers, such as Canac-Marquis Grenier (Canac) and Jacques Laferté Ltée (Laferté), which are members of the Independent Lumber Dealers Co-operative (ILDC), a buying group of 24 independent home improvement chains. The ILDC negotiates prices for its members with selected suppliers; however, it does not purchase goods on their behalf. By 2001, its various members were some of Uniboard's major⁶⁴ customers. However, by late 2001, Uniboard had lost many of its sales to ILDC members to the subject imports.⁶⁵ The importance of price to at least one of the members of the ILDC, namely, Canac, is highlighted in its response to the Tribunal's market characteristics questionnaire where "lowest price" is rated as a very important factor in the choice of a supplier of laminate flooring, and its principal supplier, EPI, is given the advantage over Uniboard in terms of offering the lowest price and discounts. The Tribunal also notes that Canac rated EPI and Uniboard equally in terms of product quality and reliability of supply and even gives Uniboard the advantage when it comes to range of product line and delivery time and terms.⁶⁶ Five other purchasers gave similar responses, with the domestic product being better or comparable with respect to quality and delivery terms, but losing out to the subject goods with respect to lowest price.⁶⁷ Only two purchasers indicated that Uniboard had the lowest price compared to the subject goods.⁶⁸

126. The Tribunal also notes Uniboard's more recent loss, in June and July 2004, of a sale to Le Groupe B.M.R. (B.M.R.), a distributor of building and hardware supplies, because of the low price demanded by the buyer. Testimony at the hearing indicated that the sale went eventually to the subject imports.

64. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 27.

65. *Transcript of In Camera Hearing*, Vol. 3, May 18 2005, at 16-20; *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 27, 122-23.

66. Tribunal Exhibit NQ-2004-006-18.11, Administrative Record, Vol. 5.2A at 91, 95.

67. Alberta Hardwood Flooring, François Lespérance, Home Hardware, AFA, and Multisol.

68. Centura and Matériaux à Bas Prix.

127. In sum, the Tribunal finds that imports of dumped and subsidized laminate flooring from the subject countries caused material injury to the domestic industry.

Factors Other Than Dumping and Subsidizing

128. Parties opposing an injury finding made submissions with respect to several factors other than the dumping and subsidizing that they argued were responsible for any injury that Uniboard had suffered. The Tribunal carefully considered these factors, as well as the remaining factors prescribed by subsection 37.1(3) of *SIMA*.

Competition from Undumped Imports

129. During the period of inquiry, the Canadian laminate flooring market included imports from a host of non-subject sources. In fact, the Tribunal notes that the share of the Canadian market held by imports from non-subject countries was significant, albeit declining, throughout the period of inquiry.⁶⁹ Consequently, Uniboard had to compete in the domestic market with distributors selling laminate flooring originating in non-subject countries, as well as in the subject countries.

130. The Tribunal notes that, for the most part, the average selling price of non-subject imports was higher than Uniboard's average selling prices. However, there were time periods and products where flooring from certain non-subject countries was, in fact, lower in price than Uniboard's flooring.⁷⁰ Accordingly, the Tribunal is of the view that the presence in the Canadian marketplace of a significant volume of imports originating in non-subject sources, some of which were priced competitively with Uniboard's product, may also have had a negative impact on Uniboard in some instances. For example, the Tribunal notes one instance where, in order to make a sale, Uniboard had to come down in price and place itself in a range below that of Belgian product also carried by Home Hardware, one of its customers.⁷¹

131. One particular situation with respect to non-subject imports involved Domcor Tarkett (Domcor). Domcor was the national distributor for Uniboard between 1996 and 2003, promoting its Multilook product across Canada. Domcor also played a pivotal role in helping to develop the market for laminate flooring across Canada in the product's early days.⁷² In both 2001 and 2002, Uniboard's sales to Domcor were significant, and Domcor was a critical account for Uniboard.⁷³ Beginning in 2002, Domcor began reducing its purchases from Uniboard and, by mid-2003, it had ceased purchasing from Uniboard entirely, switching its purchases to the German factory in which its new parent company had a joint interest.⁷⁴

132. The Tribunal notes that the loss of its major national distributor was a serious blow to Uniboard. The Tribunal is of the view that, while Uniboard was able to replace some of the lost volume⁷⁵ of sales, its efforts would have been more successful but for the presence of dumped and subsidized imports in the domestic market, which had undermined Uniboard's price competitiveness.

69. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-07B (protected), Administrative Record, Vol. 2.1 at 202-203.

70. *Ibid.* at 206, 213-16.

71. *Transcript of Public Hearing*, Vol. 3, 24 May 2005, at 303-304.

72. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 24.

73. Manufacturer's Exhibit A-06 (protected), para. 46, Administrative Record, Vol. 12.

74. Exporter's Exhibit S-02, paras. 12, 15, Administrative Record, Vol. 13A; *Transcript of In Camera Hearing*, Vol. 1, 18 May 2005, at 27, 40, 43; *Transcript of In Camera Hearing*, Vol. 2, 19 May 2005, at 139, 140; Manufacturer's Exhibit A-06 (protected), paras. 46-55, Administrative Record, Vol. 12.

75. *Transcript of In Camera Hearing*, Vol. 1, 18 May 2005, at 33-35.

Exchange Rate Losses

133. As previously noted, in April 2002, when Uniboard was struggling to make profitable sales in Canada in a market characterized by low-priced dumped and subsidized imports, it received an ultimatum from the Audit Committee of its Board of Directors to find profitable sales or risk closure of the Laval plant.⁷⁶ Shortly thereafter, in mid-2002, Uniboard landed a contract with the Sam's Club chain of stores in the United States. Its business with Sam's Club thrived and, by 2003, it was named "Supplier of the Year".⁷⁷ Uniboard was also able to find a buyer in the United States for its excess supply of unfinished board.⁷⁸

134. However, the Tribunal notes that, even while Uniboard was experiencing profitable sales in the United States, it was exposing itself to serious exchange rate risks by doing business in U.S. dollars for a portion of its sales.⁷⁹ The Tribunal heard testimony that Uniboard did not have sufficient financial resources at the time to invest in financial instruments (e.g. "hedging") to mitigate the risks of exchange rate fluctuations.⁸⁰ The Tribunal notes that, had it not been for the presence of dumped and subsidized imports in the Canadian marketplace, Uniboard would not have been forced to rely as heavily as it did on the U.S. market and, consequently, would have averted some of the exchange rate losses that it experienced⁸¹ during the period of inquiry.

Product Quality and Range, Service and Innovation

135. Parties opposing an injury finding raised poor product quality and poor service as factors explaining Uniboard's declining sales and loss of market share. The Tribunal has examined the claims and has concluded that there is ample evidence on the record that attests to the contrary. Specifically, the Tribunal heard testimony from Uniboard's largest Canadian customer, Home Hardware, confirming Uniboard's reputation for high-quality products and service, as well as commending its extremely low rate for product returns.⁸² Moreover, being named "Supplier of the Year" in 2003 by its biggest U.S. customer, Sam's Club,⁸³ as well as by an important Canadian distributor and ILDC member, Sodisco-Howden, in 2001,⁸⁴ also speaks to the excellence of Uniboard's product quality and service. With respect to the claims of poor quality and poor service in a letter sent to the Tribunal by Stafford Agencies, the Tribunal has disregarded this evidence, as it lacks credibility, considering that Stafford Agencies acknowledged that its purchases from Uniboard were primarily of seconds.⁸⁵ In the Tribunal's view, it is unreasonable to expect a supplier to provide warranties and after-sales services for such products, which are known in the industry to be sold essentially at a very significant discount.

136. Parties opposing an injury finding also claimed that Uniboard had been slow to react to consumer demand in the Canadian market for new products and characterized the company as not being sufficiently

76. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 28; Manufacturer's Exhibit A-05, para. 73, Administrative Record, Vol. 11.

77. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 29-30.

78. Manufacturer's Exhibit A-01, para. 64, Administrative Record, Vol. 11.

79. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 82-83; *Transcript of In Camera Hearing*, Vol. 2, 19 May 2005, at 197.

80. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 108-109; *Transcript of In Camera Hearing*, Vol. 2, 19 May 2005, at 181-82.

81. Tribunal Exhibit NQ-2004-006-10.01E (protected), Administrative Record, Vol. 4 at 148.

82. *Transcript of Public Hearing*, Vol. 4, 24 May 2005, at 240, 274-75, 313-14.

83. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 30.

84. *Ibid.* at 25.

85. Tribunal Exhibit NQ-2004-006-39.01, Administrative Record, Vol. 1 at 365.

innovative. In this regard, the Tribunal notes Uniboard's product leadership in introducing the in-registered embossing technology, which was acknowledged by one of its direct competitors that testified before the Tribunal as being at the leading edge when it was introduced.⁸⁶ The Tribunal also notes that Uniboard offers laminate flooring with a pre-installed sound barrier backing and has invested in equipment to speed up its production of this product. The issue is not so much whether this particular product will be well accepted in the market, as it is evidence that Uniboard, along with other manufacturers, is trying to innovate to differentiate its product offerings from those of other manufacturers.

137. Moreover, the Tribunal notes that Uniboard's recent decision to invest in a second cutting and milling line will enable it to supply products, such as 12-mm thick laminate flooring and bevelled-edge narrow-plank laminate flooring.⁸⁷ The Tribunal acknowledges that Uniboard is currently disadvantaged by being unable to offer these products, but the Tribunal also heard testimony that these products were only introduced in the Canadian market in late 2003⁸⁸ and, thus, the Tribunal cannot explain the huge loss of market share experienced by Uniboard in the earlier years of the period of inquiry.

138. Another factor that opposing parties claimed had contributed to Uniboard's declining sales was its narrow product range. The Tribunal notes that Uniboard's current range of product offering is 63 to 75 SKUs compared to Quality Craft that has over 300 SKUs. In the Tribunal's view, it is entirely reasonable to expect a distributor such as Quality Craft, which purchases from a variety of suppliers,⁸⁹ to offer a wider range of products than a manufacturer such as Uniboard. In any event, the Tribunal heard testimony that Quality Craft's core offering in fact amounts to some 70 SKUs.⁹⁰ Finally, the Tribunal notes that, with the investment in a second cutting and milling line, Uniboard anticipates significantly increasing its number of product offerings.⁹¹

Seconds

139. Seconds are typically sold in a secondary market to specialized dealers,⁹² at prices that are about half those of first-quality products.⁹³

140. When Uniboard's new production facility started up in Laval in the spring of 2001, there was a certain period of time before it was operating at full capacity and producing the level of first-quality products expected. In 2005, with the Laval plant running at close to capacity, Uniboard's output of seconds is at a more normal rate of 2 percent of production.⁹⁴

141. Because of the low prices that seconds command in the marketplace and the fact that their manufacturing costs are the same as for first-quality products, Uniboard tends to sell its seconds principally in Canada to avoid incurring the additional costs to export them.⁹⁵ However, contrary to the arguments of Quality Craft and Vöhringer that Uniboard's sales of seconds were suppressing prices of prime flooring products in the Canadian market, the Tribunal is of the view that the sales of seconds had little effect on

86. *Transcript of Public Hearing*, Vol. 2, 19 May 2005, at 177.

87. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 33.

88. *Transcript of Public Hearing*, Vol. 4, 24 May 2005 at 334.

89. *Ibid.* at 377.

90. *Ibid.* at 347.

91. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 33.

92. *Ibid.* at 113.

93. *Ibid.* at 72.

94. *Ibid.* at 73.

95. *Ibid.* at 72-73.

pricing. Not only are seconds sold in a distinct, secondary market, but also their overall volume is small compared to the size of the domestic market as a whole. Further, Uniboard is the sole source, as there is no evidence of imports of seconds. Moreover, even with the sales of seconds incorporated into Uniboard's average price, the average price of the subject imports still undercut Uniboard's average price by a significant margin. The Tribunal is of the view that Uniboard's sales of seconds during the period of inquiry did negatively affect its results. However, had it not been for the presence of dumped and subsidized imports in the Canadian market, Uniboard could have sold much greater volumes of prime flooring products and, consequently, the adverse financial impact of its sales of seconds would have been greatly diminished.

Inventories

142. As previously noted, in the fourth quarter of 2002, Uniboard found itself with excess inventory,⁹⁶ the result of the production imperative to operate its facility at near 100 percent capacity utilization on a continual basis,⁹⁷ coupled with Uniboard's inability to compete with low-priced dumped and subsidized imports and its unwillingness to sell at a loss. Uniboard was forced to sell off a significant volume of this inventory in 2003 at reduced prices, to existing customers.⁹⁸ These sales at depressed prices may have negatively affected Uniboard's bottom line in 2003. In the Tribunal's view, however, the excess inventory accumulated, in large measure, because Uniboard was unable to maintain its sales in the domestic market in 2002 as a result of the price-undercutting effect of dumped and subsidized imports.

Export Performance

143. Uniboard's performance in the United States was clearly not a factor that contributed to the injury that it sustained. In fact, as Uniboard described it, "[t]he US market was the lifeboat into which Uniboard climbed to survive the flood of low-price dumped and subsidized imports in the Canadian market".⁹⁹ In this regard, the Tribunal refers again to the Binational Panel decision in *Appliances*. Also, Uniboard's success in the export market allowed it to achieve economies of scale, thereby contributing to its cost-reduction efforts, making its per unit price more competitive.

Other Factors

144. As to the remaining factors prescribed in subsection 37.1(3) of the *Regulations*, the Tribunal notes that, far from there being a contraction in demand or a change in the pattern of consumption, the domestic market grew significantly during the period of inquiry, with the evidence generally pointing to continued growth in the future. Further, there was no evidence of injury on the basis of the trade-restrictive practices of foreign producers.

Conclusion

145. Notwithstanding any of the losses that can be attributed to the above non-dumping factors, the Tribunal is of the view that the injury caused by the dumping and subsidizing of the subject goods is material. The Tribunal's conclusion in this regard is based on the aggregate impact on Uniboard of the loss of market share, price suppression and delayed investment.

96. *Ibid.* at 110.

97. Manufacturer's Exhibit A-03, para. 15, Administrative Record, Vol. 11.

98. *Transcript of Public Hearing*, Vol. 1, 18 May 2005, at 110; *Transcript of In Camera Hearing*, Vol. 2, 19 May 2005, at 207-12.

99. Manufacturer's Exhibit A-12, para. 20, Administrative Record, Vol. 11.

Massive Importation

146. Uniboard argued that, in respect of China, the conditions for the imposition of a finding of massive importation of the subject goods have been met. It submitted that the evidence indicated that there was a considerable increase in the volume of the imports and that the exporter was aware of the likely dumping and subsidizing determination and had made an effort to “load up” on product before the CBSA’s preliminary determination.

147. Quality Craft argued that the value of the subject imports from China increased only slightly between the two comparable periods, when considered on an annualized basis. It also argued that, between the date of initiation by the CBSA and the anticipated date of the CBSA’s preliminary determination, the importers of the subject goods from China had virtually no opportunity to place orders that would have arrived in time to avoid the duties, based on a 10- to 12-week lead time for delivery from China. Quality Craft submitted that its product is pre-sold and ordered on that basis rather than for inventory purposes. Vöhringer supported Quality Craft’s arguments. EPI noted that the domestic industry had not argued for a finding of massive importation against France.

148. Paragraphs 42(1)(b) and (c) of *SIMA* state:

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

(i) either

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

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

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

(A) constitute a massive importation into Canada, or

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

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

(c) in the case of any subsidized goods in respect of which a specification has been made pursuant to clause 41(1)(a)(iv)(C) and to which the preliminary determination applies as to whether

(i) injury has been caused by reason of the fact that the subsidized goods

(A) constitute a massive importation into Canada, or

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

(ii) a countervailing duty should be imposed on the subsidized goods in order to prevent the recurrence of that injury.

149. The Tribunal notes that both the dumping provision (paragraph 42(1)(b) of *SIMA*) and the subsidizing provision (paragraph 42(1)(c) of *SIMA*) contain three distinct parts, all of which must be satisfied in order to make a finding pursuant to this section.

150. The Tribunal will first deal with the subsidizing provision and, in particular, the subsidized imports from China. The first requirement under the subsidizing provision is a specification made pursuant to clause 41(1)(a)(iv)(C) of *SIMA* in respect of the goods from China. Section 41 states:

41. (1) Within ninety days after making a preliminary determination under subsection 38(1) in respect of goods of a country or countries, the Commissioner shall

(a) if, on the available evidence, the Commissioner is satisfied, in relation to the goods of that country or countries in respect of which the investigation is made, that

(i) the goods have been dumped or subsidized, and

(ii) the margin of dumping of, or the amount of subsidy on, the goods of that country or of any of those countries is not insignificant,

make a final determination of dumping or subsidizing with respect to the goods after specifying, in relation to each exporter of goods of that country or countries in respect of which the investigation is made as follows:

(iii) in the case of dumped goods, specifying the goods to which the determination applies and the margin of dumping of the goods, and

(iv) in the case of subsidized goods,

(A) specifying the goods to which the determination applies,

(B) specifying the amount of subsidy on the goods, and

(C) subject to subsection (2), where the whole or any part of the subsidy on the goods is a prohibited subsidy, specifying the amount of the prohibited subsidy on the goods; or

(b) where, on the available evidence, there is no exporter described in paragraph (a) with respect to whom the Commissioner is satisfied in accordance with that paragraph, cause the investigation to be terminated with respect to the goods.

(2) The Commissioner shall not specify anything under clause (1)(a)(iv)(C) if the Commissioner is of the opinion that, having regard to the country that is providing the export subsidy, the nature of the goods and the circumstances under which the export subsidy is provided, provision of the export subsidy in relation to those goods is not inconsistent with that country's obligations under the international agreement known as the General Agreement on Tariffs and Trade, 1994.

151. In this regard, the Tribunal notes that, in the CBSA's statement of reasons for its final determination, it is stated:

Retroactive Duty On Massive Importations

[146] Under certain circumstances, anti-dumping and countervailing duties can be imposed retroactively on subject goods imported into Canada. When the Tribunal conducts its inquiry on material injury to the Canadian industry, it may consider if dumped and/or subsidized goods that were imported close to or after the initiation of the investigation constitute massive importations over a relatively short period of time and have caused injury to the Canadian industry. Should the Tribunal issue a finding that there were recent massive importations of dumped and/or subsidized goods that caused injury, imports of subject goods from China and France released by the CBSA in the 90 days preceding the day of the preliminary determination could be subject to anti-dumping and/or countervailing duty.

[147] In respect of importations of subsidized goods that have caused injury, however, this provision is only applicable where the President has determined that the whole or any part of the subsidy on the goods is a prohibited subsidy. In such a case, the amount of countervailing duty applied on a retroactive basis will equal the amount of subsidy on the goods that is a prohibited subsidy. As the

President has not determined that any part of the subsidy on the goods is a prohibited subsidy, countervailing duty will not be imposed retroactively on subject goods imported into Canada.¹⁰⁰

152. In light of the foregoing statement by the CBSA, the Tribunal finds that the first requirement of the subsidizing provision is not met.

153. With respect to the dumping provision, the first part itself contains two alternative requirements, only one of which must be satisfied in order to move to the second part. Specifically, the Tribunal must inquire as to whether “there has occurred a considerable importation of like goods that were dumped, which dumping has caused injury or would have caused injury except for the application of anti-dumping measures”. Alternatively, the Tribunal must inquire as to whether “the importer of the goods was or should have been aware that the exporter was practising dumping and that the dumping would cause injury”.

154. The second part of the dumping provision requires the Tribunal to inquire into whether injury has been caused by reason of the fact that the dumped goods either “constitute a massive importation into Canada” or “form part of a series of importations into Canada, which in the aggregate are massive and have occurred within a relatively short period of time”.

155. The third part of the dumping provision requires the Tribunal to consider whether duty should be imposed “in order to prevent the recurrence of that injury”.

156. In analyzing the above requirements for the dumping provision, the Tribunal also took into consideration those factors prescribed under the *Regulations*, specifically:

37.11 For the purposes of determining whether injury has been caused by a massive importation of dumped or subsidized goods, or by a series of importations of dumped or subsidized goods where the importations have occurred within a relatively short period of time and in the aggregate are massive, the following factors are prescribed:

- (a) whether there has been an increase of at least 15% in the volume of imports of those goods from an individual country of export and in respect of which an investigation under the Act has not been terminated, during a representative period within the period beginning 90 days before the date of initiation of the investigation and ending on the date of the Commissioner’s preliminary determination under subsection 38(1) of the Act, relative to a preceding representative period of comparable duration within the period of investigation;
- (b) whether the importer, producer or exporter of the dumped goods has a history of importing into Canada, or exporting into Canada, dumped goods in respect of which the Tribunal has made an order or finding that the dumping of the goods has caused injury or retardation or a threat of injury;
- (c) whether the authorities of a country other than Canada have determined that injury to the domestic industry of that country was caused by the dumping of goods of the same description, or of similar goods, by an exporter of the goods that are under investigation;
- (d) whether there has been a significant increase in the volume of domestic inventories of the dumped or subsidized goods within a relatively short period of time; and
- (e) any other factors that are relevant in the circumstances¹⁰¹

100. Tribunal Exhibit NQ-2004-006-04A, Administrative Record, Vol. 1 at 182.56.

101. S.O.R./2002-67, s. 2, which came into effect on February 7, 2002.

157. Paragraph 37.11(a) of the *Regulations* directs the Tribunal to make a comparison of import volumes between two “representative” periods of time, which, in this case, the Tribunal established as October 2003 to January 2004, and October 2004 to January 2005, both inclusive. Further, with respect to paragraph 37.11(d) and the assessment of the volume of inventories, the Tribunal defined, for the purposes of this case, a “relatively short period of time” as October 1, 2004, to January 31, 2005.

158. In view of the above, the Tribunal gathered information¹⁰² from exporters and importers regarding import volumes for the representative periods established above. Similarly, the Tribunal obtained inventory volumes for October 1, 2004, and January 31, 2005.

159. The volume of imports from China increased by 232 percent between the two comparable periods, whereas the volume of imports from France increased by only 1 percent. Furthermore, between the two comparable periods, inventory volumes increased by 60 percent for China and by 55 percent for France.¹⁰³

160. In relation to the other prescribed factors, the Tribunal notes that, with respect to laminate flooring, there have been no previous anti-dumping or countervailing trade actions in Canada or any other jurisdiction.¹⁰⁴

161. With respect to imports from France, the Tribunal notes that the volume of import data clearly shows that imports did not meet the 15 percent threshold under paragraph 37.11(a) of the *Regulations* and, thus, finds that imports from France do not constitute a massive importation into Canada.

162. With respect to imports from China, and in light of the volume of imports and inventories and the other prescribed factors, the Tribunal finds that the evidence clearly demonstrates that “there has occurred a considerable importation of like goods that were dumped, which dumping has caused injury or would have caused injury except for the application of anti-dumping measures”, thus satisfying the first part of the dumping provision. The Tribunal also finds that injury has been caused by reason of the fact that the dumped and subsidized goods “constitute a massive importation into Canada”, thus satisfying the second part of the dumping provision.

163. Also with respect to China, although the first two conditions have been satisfied for the dumping provision, the Tribunal finds that the final requirement has not been met, i.e. that the duty is necessary in order to prevent the recurrence of that injury. In this regard, it notes the following excerpt from *Rebar*:

Retroactive anti-dumping duties are to be imposed in order to remedy the possible recurrence of injury resulting from massive imports of dumped goods undermining the imposition of provisional and final anti-dumping duties. This may be the case where dumped imports have entered Canada in massive quantities prior to the preliminary determination, leading to, for example, a rapid buildup or “stockpiling” of inventories. Such goods could then be sold at injurious prices subsequent to the

102. Supplementary questionnaires were sent to certain exporters and importers. Furthermore, the Tribunal sent requests for information to those exporters and importers that were parties before the Tribunal. The Tribunal gathered volume of import and inventory data separately by country. In choosing this approach, the Tribunal had regard to the wording of paragraph 37.11(a) of the *Regulations* wherein it discusses “the volume of imports of those goods from an *individual* country of export” [emphasis added]. Furthermore, the Tribunal acknowledges EPI’s argument that Article 3 of the *Anti-dumping Agreement*, the provision dealing with cumulation, is not incorporated by reference or otherwise into Article 10 of the *Anti-dumping Agreement*, the provision dealing with massive importation.

103. Tribunal Exhibit NQ-2004-006-06C, Administrative Record, Vol. 1.1 at 243.

104. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-006-06, Administrative Record, Vol. 1.1 at 19.

application of provisional anti-dumping duties and, hence, lead to a recurrence of injury, thus undermining the intended remedial effect of the definitive anti-dumping duties.¹⁰⁵ [Footnote omitted]

164. The Tribunal has not been presented with evidence that there has been a stockpiling of the subject goods from China at such levels as would have an impact on the Canadian market in the period of time after the issuance of the CBSA's preliminary determination. It notes also the testimony of the witness from Quality Craft that the Chinese producers with which it deals only produce laminate flooring to order.¹⁰⁶ The Tribunal is of the view that this provision was designed to deter large importations that would overhang the market in the period beyond the preliminary determination. The Tribunal finds that, in this case, the imports of laminate flooring from China that entered Canada between the CBSA's initiation of the investigation and its preliminary determination were in such volumes that all or almost all of them would have been absorbed into the market by the time the preliminary determination was issued. In arriving at this conclusion, the Tribunal compared the volume of imports to the size of the Canadian market, the growth rate of demand in the market and the delivery time required for importing the goods from China.

EXCLUSIONS

165. Quality Craft requested product exclusions for 12-mm laminate flooring and for narrow planks with bevelled edges. As a basis for its requests, Quality Craft argued that Uniboard is not producing these products, nor does it have any plans to do so for some time. Vöhringer supported Quality Craft's requests. EPI requested product exclusions pertaining to tiles, narrow planks, anti-static laminate flooring, 12-mm laminate flooring and various products for which patents are pending.

166. Uniboard argued that there was insufficient evidence on the record to justify any of the requests for product exclusions and noted the Tribunal's practice of granting exclusions only in exceptional circumstances.

167. At the outset, the Tribunal notes that it has indicated in past decisions that exclusions are granted only in exceptional circumstances. In *Stainless Steel Wire*,¹⁰⁷ the Tribunal summarized its views on the matter of product exclusions as follows:

It is well established that the Tribunal has the discretion to grant product exclusions under subsection 43(1) of *SIMA*. The fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry. The Tribunal has granted product exclusions for particular products in circumstances when, for instance, the domestic industry does not produce those particular products. The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an "active supplier" of the product or whether it normally produces the product or whether the domestic industry has the capability of producing the product.¹⁰⁸
[Footnotes omitted]

168. In this particular case, the Tribunal is of the view that the requests for exclusions are for goods that are, for the most part, interchangeable with the like goods. That is, characteristics such as green core, attached foam backing, anti-static surface, waterproof edges, bevelled edges, etc., are simply features of the basic product that serve to differentiate it within the laminate flooring group. Thus, if exclusions were

105. (1 June 2001), NQ-2000-007 (CITT).

106. *Transcript of Public Hearing*, Vol. 4, 24 May 2005, at 389.

107. (30 July 2004), NQ-2004-001 (CITT).

108. *Ibid.* at 22.

granted, it is likely that imports of these goods from the subject countries would cause injury to the like goods. For this reason, the Tribunal denies the requests for exclusions.

CONCLUSION

169. The Tribunal finds, pursuant to subsection 43(1) of *SIMA*, that the dumping of laminate flooring originating in or exported from China and France and the subsidizing of such product originating in or exported from China have caused injury to the domestic industry.

Pierre Gosselin
Pierre Gosselin
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member