Federal Courts Reports | Recueil des décisions des Cours fédérales

A-84-21

2023 FCA 154

Canadian Hardwood Plywood and Veneer Association, Columbia Forest Products, Rockshield Engineered Wood Products ULC, and **Husky Plywood (a division of Commonwealth Plywood Company Limited)** (*Applicants*)

v.

Attorney General of Canada, Canusa Wood Products Limited, Hardwoods Specialty Products LP, McCorry & Co. Ltd., Panoply Wood Products Inc., Upper Canada Forest Products Inc., United Steelworkers, Unifor, and **Association des salariés du contre-plaqué de Ste-Thérèse** (*Respondents*)

INDEXED AS: CANADIAN HARDWOOD PLYWOOD AND VENEER ASSOCIATION V. CANADA (ATTORNEY GENERAL)

Federal Court of Appeal, Woods, Laskin and Rivoalen JJ.A.—Ottawa, March 31; June 30, 2023.

Anti-dumping — Application for judicial review brought under Special Imports Measures Act (SIMA), s. 96.1 of Canadian International Trade Tribunal's (Tribunal) finding that dumping, subsidizing of decorative, other non-structural plywood from certain exporters from China did not cause or threaten to cause injury to domestic industry, pursuant to SIMA, s. 43(1) — Applicants domestic producers of decorative, other non-structural plywood — Submitted that Tribunal applied unreasonable legal tests in past injury analysis, threat of injury analysis — Also submitted that Tribunal acted unreasonably when it found that goods produced by domestic industry did not compete with dumped, subsidized goods from China — Raised three major reasons why Tribunal's finding unreasonable — Whether Tribunal applied unreasonable legal test in injury analysis by requiring changes during period of inquiry (POI) to support finding of injury; whether Tribunal applied unreasonable legal test in threat of injury analysis by reading into SIMA requirement that domestic industry must demonstrate "change in circumstances" after POI; whether Tribunal made erroneous findings of fact, in particular, that like goods produced by domestic industry did not compete with dumped, subsidized subject goods because subject goods so inexpensive, rendering its finding unreasonable — Tribunal did not apply unreasonable legal test in injury analysis — Reasonable for it to conclude that dumping or subsidizing of subject goods did not cause injury to domestic industry — Reasonable for Tribunal to limit inquiry to three-year POI it set — Determination that dumping or subsidizing caused material injury must be based on injurious effects that crystalized during POI — Tribunal cannot examine POI set much earlier than POI used by Canada Border Services Agency, since no finding that subject goods dumped or subsidized at that time — Did not require domestic industry to demonstrate that injury increasing or intensifying during POI — Rather, Tribunal based its decision in part on assessment of "changes in the volume of the goods, their effect on the price of

like goods, and their resulting impact on the state of the domestic industry, during the POI" — Fact that Tribunal gave greater weight to some factors rather than others not, in itself, rendering its decision unreasonable — Nothing in Special Import Measures Regulations (SIMR) precluding Tribunal from examining trends, even in context of factors where SIMR not explicitly requiring looking at trends — Tribunal's determination of whether dumping or subsidizing of subject goods caused material injury did not rely exclusively on factors that depended on trends — It is Tribunal's role to weigh factors in determining whether dumping, subsidizing caused injury — Not for Federal Court of Appeal to second-guess Tribunal's factual findings — Tribunal's finding not unreasonable on basis that it placed less weight on factors not requiring assessment of trends — Tribunal not required to rely on net income rather than gross income when examining domestic industry's financial performance — Reasonable for Tribunal to consider change in circumstances when it undertook threat of injury analysis — While treaty can be highly relevant to statutory interpretation, presumption of conformity is aid to interpretation — International instrument cannot overwhelm legislative intent — Domestic statute always governing — Tribunal did not unreasonably prefer interpretation in accordance with international treaty inconsistent with text, context, purpose of domestic legislation — Interpreted SIMA, s. 2(1.5) in conformity with Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Art. 3.7 — Structure of SIMA implying that change in circumstances from that which occurred during POI required for subject goods to threaten to cause injury to domestic industry — Threat of injury analysis only relevant if Tribunal previously found that subject goods did not cause injury to domestic industry during POI — Illogical for circumstances of POI not found to cause injury to threaten to cause injury in future, absent some change in circumstances — Reasonable for Tribunal to find that like goods produced by domestic industry did not compete with dumped, subsidized subject goods — Tribunal did not need to know or explain why subject goods did not compete with like goods — Imposing such requirement on Tribunal would, in effect, impose presumption that subject goods competing with like goods — Unreasonable to impose such presumption in face of evidence demonstrating no such competition — Based on evidentiary record, reasonable for Tribunal to conclude that dumping, subsidizing of subject goods did not cause injury regardless of whether subject goods, non-subject goods similar to one another if non-subject imports accounted for declining performance of domestic industry — Reasonable for Tribunal to attribute domestic industry's loss of market share to non-subject goods — Application dismissed.

STATUTES AND REGULATIONS CITED

Special Import Measures Act, R.S.C., 1985, c. S-15, ss. 2(1), (1.5), 38(1),(3), 42(1), 43(1), 96.1.

Special Import Measures Regulations, SOR/84-927, s. 37.1.

TREATIES AND OTHER INSTRUMENTS CITED

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, 1868 U.N.T.S. 201, Art. 3.7.

CASES CITED

APPLIED:

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, [2019] 4 S.C.R. 653.

CONSIDERED:

Canadian Hardwood Plywood and Veneer Association v. Canada (Attorney General), 2023 FCA 74, [2023] F.C.J. No. 546 (QL), [2023] 2 F.C.R. D-1; *Polyethylene Terephthalate Resin* (3 April 2018), Inquiry No. NQ-2017-003 (C.I.T.T.); *Nitisinone Capsules* (3 May 2019), Inquiry No. NQ-2018-005 (C.I.T.T.); *Corrosion-resistant Steel Sheet* (8 March 2019), Inquiry No. NQ-2018-004 (C.I.T.T.); *Frozen Self-rising Pizza* (2 September 2004), Inquiry No. NQ-2004-003 (C.I.T.T.); *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, [2021] 1 F.C.R. 374, 321 A.C.W.S. (3d) 763, affd 2022 SCC 30, [2022] 2

S.C.R. 303, 471 D.L.R. (4th) 391; *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, [2014] 3 S.C.R. 176; *Concrete Reinforcing Bar* (26 January 2015), Inquiry No. NQ-2014-001 (C.I.T.T.); *Oil Country Tubular Goods* (17 April 2015, corr. 21 April 2015), Inquiry No. NQ-2014-002 (C.I.T.T.); *Hot-rolled Carbon Steel Plate* (4 June 2014), Inquiry No. NQ-2013-005 (C.I.T.T.); *Unitized Wall Modules* (27 November 2013), Inquiry No. NQ-2013-002 (C.I.T.T.).

REFERRED TO:

Fluor Canada Ltd. v. Supreme Group LP, 2020 FCA 58, 319 A.C.W.S. (3d) 229; *Essar Steel Algoma Inc. v. Jindal Steel and Power Ltd.*, 2017 FCA 166, 281 A.C.W.S. (3d) 762; *Nitisinone Capsules* (5 December 2018), Preliminary Injury Inquiry No. PI-2018-006 (C.I.T.T.); *Liquid Dielectric Transformers* (9 July 2012), Preliminary Injury Inquiry No. PI-2012-001 (C.I.T.T.); *Flat Hot-Rolled Carbon and Alloy Steel Sheet and Strip* (4 September 2001), Inquiry No. NQ-2001-001 (C.I.T.T.); *Women's Boots* (10 May 2005), Expiry Review No. RR-2004-002 (C.I.T.T.).

APPLICATION for judicial review brought by the applicants under section 96.1 of the *Special Imports Measures Act* (SIMA) of a finding of the Canadian International Trade Tribunal (19 February 2021, Inquiry No. NQ-2020-002 (C.I.T.T.)) that the dumping and subsidizing of decorative and other non-structural plywood from certain exporters from China did not cause or threaten to cause injury to the domestic industry, pursuant to subsection 43(1) of the SIMA. Application dismissed.

APPEARANCES

Paul Conlin, *Drew Tyler* and *Anne-Marie Oatway* for applicants.

Jesse Goldman, *Matthew Kronby* and *Jacob Mantle* for respondents Canusa Wood Products Limited, Hardwoods Specialty Products LP, McCorry & Co. Ltd. and Panoply Wood Products Inc.

Jacob Millar for respondents United Steelworkers and Unifor.

SOLICITORS OF RECORD

Conlin Bedard LLP, Ottawa, for applicants.

Borden Ladner Gervais LLP, Toronto, for respondents Canusa Wood Products Limited, Hardwoods Specialty Products LP, McCorry & Co. Ltd. and Panoply Wood Products Inc.

Craig S. Logie, Toronto, for respondents United Steelworkers and Unifor.

Affleck Greene McMurtry LLP, Toronto, for respondents United Steelworkers and Unifor.

Arent Fox LLP, New York, for respondent Upper Canada Forest Product Ltd.

This is a public version of confidential reasons for judgment issued to the parties. There are no redactions from the confidential reasons for judgment.

The following are the public reasons for judgment rendered in English by

[1] RIVOLALEN J.A.: The applicants apply for judicial review under section 96.1 of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 (SIMA) of a finding of the Canadian

International Trade Tribunal (the Tribunal's Finding) in *Decorative and Other Non-structural Plywood* (19 February 2021), Inquiry No. NQ-2020-002 (C.I.T.T.). The Tribunal found that the dumping and subsidizing of decorative and other non-structural plywood from certain exporters from China did not cause injury and were not threatening to cause injury to the domestic industry, pursuant to subsection 43(1) of the SIMA.

[2] The applicants are domestic producers of decorative and other non-structural plywood and form part of the domestic industry. They submit the Tribunal applied unreasonable legal tests in its past injury analysis and in its threat of injury analysis. Further, the applicants submit that the Tribunal acted unreasonably when it found that the goods produced by the domestic industry did not compete with the dumped and subsidized goods from China.

[3] The respondents, Canusa Wood Products Limited, Hardwoods Specialty Products LP, McCorry & Co. Ltd., and Panoply Wood Products Inc., are importers (collectively the respondent importers) and oppose the application for judicial review.

[4] The respondents, United Steelworkers and Unifor, appeared at the hearing but did not file any material with the Court. They support the applicants' position.

[5] The respondents, Attorney General of Canada and Association des salariés du contre-plaqué de Ste-Thérèse, did not appear at the hearing and filed no material with the Court.

[6] For the reasons set out below, I would dismiss the application for judicial review. I am of the view that the Tribunal's Finding is reasonable.

I. Background

[7] On October 23, 2020, the Canadian Border Services Agency (CBSA) made preliminary determinations of dumping and subsidizing in respect of decorative and non-structural plywood from some exporters from China, pursuant to subsection 38(1) of the SIMA. On January 21, 2021, the CBSA made final determinations and found that the goods from certain exporters from China were dumped and subsidized. In these reasons, I will refer to the dumped and subsidized decorative and non-structural plywood from these certain exporters as the "subject goods".

[8] After receiving notice of the preliminary determinations from the CBSA under subsection 38(3) of the SIMA, the Tribunal conducted its inquiry under subsection 42(1) of the SIMA to determine if the importation of the subject goods had injured or was threatening to cause injury to producers of like goods in Canada.

[9] The Tribunal determined that domestically produced decorative and other non-structural plywood and veneer core platforms for the production of decorative and other non-structural plywood were "like goods" in relation to the subject goods.

[10] The Tribunal set the period of inquiry (POI) for its inquiry from January 1, 2017, to June 30, 2020.

[11] On January 21, 2021, the CBSA terminated the dumping and the subsidy investigations in respect of decorative and other non-structural plywood from the other exporters from China. The goods of the other exporters were found to have not been dumped and to not have been subsidized or to have an amount of subsidy that is insignificant. The other exporters from China were Celtic Co., Ltd., Linyi Evergreen Wood Co., Ltd., Linyi Huasheng Yongbin Wood Co., Ltd., Pingyi Jinniu Wood Co., Ltd., Pizhou Jiangshan Wood Co., Ltd., Shandong Good Wood Imp. and Exp. Co., Ltd., and Xuzhou Shengping Imp. and Exp. Co., Ltd. Another exporter from China, Linyi Jiahe Wood Industry Co., Ltd., was found to be dumping but not subsidized (collectively, the other Chinese exporters).

[12] On February 19, 2021, the Tribunal issued its Finding that the dumping and subsidizing of the subject goods did not cause injury and were not threatening to cause injury to the domestic industry. On March 8, 2021, the Tribunal issued its Reasons [*Decorative and Other Non-structural Plywood* (8 March 2021), Inquiry No. NQ-2020-002 (C.I.T.T.)].

[13] In its Reasons, the Tribunal wrote 45 pages and 232 paragraphs to explain why, based on the evidentiary record, it reached the conclusion that the dumping and subsidizing of the subject goods had not caused injury and were not threatening to cause injury to the domestic industry. Details of those findings as they relate to the issues that are before this Court will be provided in the analysis portion of these reasons.

[14] In a separate application, the applicants sought judicial review of the final determination of the CBSA regarding the other Chinese exporters whose dumping and/or subsidizing investigations were terminated. On April 5, 2023, the application was dismissed by this Court in *Canadian Hardwood Plywood and Veneer Association v. Canada (Attorney General)*, 2023 FCA 74, [2023] F.C.J. No. 546 (QL), [2023] 2 F.C.R. D-1.

II. Standard of review

[15] The parties agree that the applicable standard of review is reasonableness. Therefore, the principles enunciated in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 (*Vavilov*) apply to our review of the Tribunal's Finding.

[16] With respect to the standard of review, this Court has recognized that the Tribunal is highly specialized and its decisions should be reviewed with deference (*Fluor Canada Ltd. v. Supreme Group LP*, 2020 FCA 58, 319 A.C.W.S. (3d) 229, at paragraph 4; *Essar Steel Algoma Inc. v. Jindal Steel and Power Ltd.*, 2017 FCA 166, 281 A.C.W.S. (3d) 762, at paragraph 15).

III. Issues

[17] The applicants raise three major reasons why they say the Tribunal's Finding is unreasonable:

1. The Tribunal applied an unreasonable legal test in its injury analysis by requiring changes during the POI to support a finding of injury;

2. The Tribunal applied an unreasonable legal test in its threat of injury analysis by reading into the SIMA a requirement that the domestic industry must demonstrate a “change in circumstances” after the POI; and

3. The Tribunal made erroneous findings of fact, rendering its Finding unreasonable. In particular, it was unreasonable for the Tribunal to find that the like goods produced by the domestic industry did not compete with the dumped and subsidized subject goods because the subject goods were so inexpensive.

[18] I will now review the Tribunal Reasons in connection with each issue raised by the applicants and then will proceed with my analysis.

A. *Did the Tribunal apply an unreasonable legal test when it conducted the past injury analysis?*

(1) Tribunal Reasons regarding the determination of past injury

[19] First, in order to determine whether the dumping and subsidizing of the subject goods had caused or were threatening to cause injury to the domestic industry, the Tribunal determined which domestically produced goods constituted like goods, as defined under subsection 2(1) of the SIMA.

[20] The Tribunal also assessed whether there was, within the subject goods and the like goods, more than one class of goods. The Tribunal agreed with the complainants (the applicants here) and the respondent importers that there was a single class of goods, which included: (1) decorative and other non-structural plywood; and (2) veneer core platforms for the production of decorative and other non-structural plywood. The Tribunal determined that “domestically produced goods of the same description were ‘like goods’ in relation to the subject goods” (Tribunal Reasons, at paragraph 69). The Tribunal found that there was no evidence of a dividing line that would clearly separate two classes of goods. Rather, the goods “appear[ed] to fall at various points along a continuum within a single class of goods” (Tribunal Reasons, at paragraph 74).

[21] Next, the Tribunal set out an overview of the Canadian decorative and other non-structural plywood market and considered the arguments that the domestic industry was already being injured by the dumping and subsidizing of the subject goods in 2017, at the beginning of the POI (Tribunal Reasons, at paragraphs 90–95).

[22] The Tribunal considered the applicants’ submission that the injury suffered by the domestic industry began before the POI. In particular, the Tribunal considered the applicants’ evidence that the imports of Chinese plywood grew significantly between 2000 and 2015 and that, by 2010, “a series of Canadian plant closures began as domestic producers faced … tougher and tougher competition in a market flooded by low-priced imports from China” (Tribunal Reasons, at paragraph 98).

[23] The Tribunal agreed with the applicants that there was “no explicit legal requirement for injury to have started or worsened over the POI in order for a domestic industry to benefit from the protection afforded by *SIMA*”. However, the Tribunal found that there was “a requirement to establish, on the basis of an objective examination of positive evidence, that the dumping and subsidizing of the goods have *caused* injury” (Tribunal Reasons, at paragraph 99) (emphasis in original).

[24] The Tribunal selected a three-year POI for its injury analysis, with the end of the period coinciding with the CBSA's period of investigation, from January 1, 2017, to June 30, 2020. The Tribunal noted that its selection of the three-year period was consistent with the recommendation of the World Trade Organization Committee on anti-dumping practices (Tribunal Reasons, at paragraphs 10 and 100).

[25] The Tribunal proceeded with its injury analysis. It considered the text of subsections 37.1(1) and 37.1(3) of the *Special Import Measures Regulations*, SOR/84-927 (SIMR). The Tribunal noted that "[s]ubsection 37.1(1) of the [SIMR] prescribes that, in determining whether the dumping and subsidizing have caused material injury to the domestic industry, the Tribunal is to consider the volume of the dumped or subsidized goods, their effect on the price of like goods in the domestic market, and their resulting impact on the state of the domestic industry. Subsection 37.1(3) also directs the Tribunal to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury on the basis of the factors listed in subsection 37.1(1), and whether any factors other than the dumping and subsidizing of the goods have caused injury" (Tribunal Reasons, at paragraph 89).

[26] Turning first to paragraph 37.1(1)(a) of the SIMR, the Tribunal considered the volume of the dumped or subsidized goods and whether there has been a significant increase in the volume relative to the production or consumption of the like goods.

[27] The Tribunal reviewed the evidentiary record and concluded that, although the volume of imports of subject goods increased in 2018, both in absolute and relative terms, this was tempered by the fact that there was an overall decrease in the volume of imports of subject goods, in both absolute and relative terms, from 2017 to 2019 and that there were further absolute decreases in interim 2020. In sum, the Tribunal found that, over the POI, there has not been a significant increase in the volume of imports of subject goods (Tribunal Reasons, at paragraphs 106–113).

[28] In particular, the Tribunal found that the goods from the other Chinese exporters that were not dumped or subsidized along with goods from other countries were considered non-subject goods (Tribunal Reasons, at paragraph 108). In these reasons, I will refer to the non-dumped and non-subsidized decorative and non-structural plywood from these other Chinese exporters and other countries as the "non-subject goods".

[29] Next, the Tribunal turned to paragraph 37.1(1)(b) of the SIMR and considered "the effects of the dumped or subsidized goods on the price of like goods and, in particular, whether the dumped or subsidized goods ha[d] significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred" (Tribunal Reasons, at paragraph 114).

[30] The Tribunal started its analysis with price undercutting. It stated that price undercutting is not injurious, *per se*. Rather, "it is the volume and price effects of such price undercutting that can be injurious". Therefore, it reasoned that "unless the price undercutting by the subject goods leads to a loss of market share for the domestic industry, or to price depression or suppression, it will not support a finding of injury by the Tribunal" (Tribunal Reasons, at paragraph 131).

[31] The Tribunal found that, “given the sales pricing and volume trends in evidence, the data in the investigation report demonstrate[d] that the subject goods and the like goods did not compete against one another to any significant degree during the POI” (Tribunal Reasons, at paragraph 134).

[32] The Tribunal stated that it was not necessary for it to “be absolutely certain as to *why* the subject goods and the like goods did not compete against one another to any significant degree during the POI. The simple fact that the evidence on the record demonstrate[d] they did not compete is sufficient to allow the Tribunal to complete its inquiry pursuant to section 42 of *SIMA*” (Tribunal Reasons, at paragraph 136) (emphasis in original). The Tribunal concluded that “the subject goods significantly undercut the price of the like goods over the POI, but that these goods also did not, for the most part, directly compete with one another during this period” (Tribunal Reasons, at paragraph 137).

[33] The Tribunal then considered price depression. It weighed the evidence on the record and concluded that the subject goods had not significantly depressed the price of the like goods over the POI (Tribunal Reasons, at paragraphs 138–147).

[34] Next, the Tribunal considered price suppression. In order to assess whether the subject goods had suppressed the price of the like goods, the Tribunal compared the domestic industry’s average unit cost of goods manufactured with its average selling price in the domestic market to determine whether the domestic industry had been able to increase selling prices in line with increases in costs (Tribunal Reasons, at paragraphs 152 and 153).

[35] The Tribunal found that, “in the circumstances of this case, there was price suppression in 2018 that could be qualified as significant. The effects of this price suppression continued to be felt until interim 2020 when per-unit gross margins finally recovered and exceeded levels from 2017” (Tribunal Reasons, at paragraph 153).

[36] However, the Tribunal was of the view [at paragraph 153] that:

> [S]ince the domestic industry only lost market share to non-subject imports from China and other countries, and did not experience significant price depression throughout the POI, despite very significant price undercutting by the subject goods, there [wa]s no evidentiary basis upon which to conclude that it was the subject goods that suppressed the price of the like goods in 2018. Given that the domestic industry lost market share to non-subject imports from China and other countries and that these imports, while not always priced as low as the subject goods, consistently undercut the price of the like goods, the Tribunal f[ound] that it was the non-subject imports that likely competed against the like goods and suppressed their price. [Emphasis added.]

[37] In conclusion, on the analysis of the price effects of the dumped and subsidized goods on the domestic market, the Tribunal found that, “while the subject goods significantly undercut the price of domestically produced like goods over the POI, this undercutting did not have the effect of significantly depressing or suppressing the price of like goods and did not lead to the loss of market share by the domestic industry” (Tribunal Reasons, at paragraph 155).

[38] Next, the Tribunal turned to paragraph 37.1(1)(c) of the SIMR and considered “the resulting impact of the subject goods on the state of the domestic industry and, in

particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry." The Tribunal stated that "[t]hese impacts are to be distinguished from the impact of other factors also having a bearing on the domestic industry." Further, the Tribunal noted that "[p]aragraph 37.1(3)(a) [of the SIMR] requires [it] to consider whether a causal relationship exists between the dumping and subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the subject goods" (Tribunal Reasons, at paragraph 156).

[39] The Tribunal found that "the domestic industry has suffered injury in the form of a reduction in gross margins as well as lost sales and market share, which, in turn, negatively impacted production, capacity utilization and employment." However, on the basis of the evidence on the record, the Tribunal found that "this injury, whether material or not, was not caused by the subject goods" (Tribunal Reasons, at paragraph 178).

[40] As a final step in its injury analysis, the Tribunal considered paragraph 37.1(3)(a) of the SIMR to determine "whether a causal relationship exist[ed] between the dumping or subsidizing of the goods and the injury, retardation or threat of injury, on the basis of the volume, the price effect, and the impact on the domestic industry of the subject goods." The Tribunal explained that it "must distinguish the impacts of the subject goods from the impact of other factors also having a bearing on the state of the domestic industry" (Tribunal Reasons, at paragraph 179).

[41] The Tribunal found that these further factors included the market share lost by the domestic industry taken by the non-subject goods from both China and other countries. On this point, the Tribunal reiterated its findings that the market share lost by the domestic industry over the POI was largely, if not entirely, captured by non-subject imports from China and other countries. The Tribunal held that the injury suffered by the domestic industry was caused by the non-subject imports, rather than by the subject goods (Tribunal Reasons, at paragraphs 183–185).

[42] The Tribunal considered two other factors: the contraction in overall demand for decorative and other non-structural plywood and the impact of the COVID-19 pandemic. The Tribunal found that these factors contributed to the decline in the total decorative and other non-structural plywood market in interim 2020 (Tribunal Reasons, at paragraphs 188 and 189).

[43] After completing its injury analysis, the Tribunal concluded that "the injury suffered by the domestic industry over the POI was caused by non-subject imports from China and other countries, as well as by a decline in the total decorative and other non-structural plywood market in 2019 and interim 2020." The Tribunal found that there existed no causal relationship between the dumping and subsidizing of the subject goods and the injury suffered by the domestic industry over the POI (Tribunal Reasons, at paragraph 190).

(2) The applicants' position

[44] The applicants advance several arguments in support of their position that it was unreasonable for the Tribunal to require the domestic industry to demonstrate that injury was increasing or intensifying during the POI, rather than simply demonstrate that injury occurred during the POI. In particular, the applicants argued that the Tribunal was

looking for “changes” in import volumes, price effects and the state of the domestic industry over the course of the POI and, absent such changes, the Tribunal would not issue a remedy under the SIMA. In doing so, according to the applicants, the Tribunal unreasonably narrowed its analysis of the impact of the subject goods on the domestic industry because the SIMA does not require “changes” to support a finding of injury; the SIMA only requires injury that is material (not changing or increasing).

[45] Effectively, the applicants contend the Tribunal failed to analyze the impact of the subject goods in each year (including 2017–2018) and did not analyze the causal effect of the subject goods on the domestic industry during the earlier part of the POI, despite the available evidence. The applicants argue that the injury caused by subject goods was material throughout the entire POI, although more pronounced in 2017–2018.

[46] The applicants submit that the Tribunal’s approach essentially means that there could never be injury by subject goods in the early part of the POI. It also effectively imposes a limitation period (which has no basis under the SIMA or SIMR) by barring the domestic industry from obtaining a remedy under the SIMA if it does not file a complaint shortly enough after the injury has started to occur.

[47] Next, the applicants rely on the factors set out in subsections 37.1(1) and 37.1(3) of the SIMR and acknowledge that certain factors suggest that the Tribunal should be looking for a deteriorating trend over the POI. Nonetheless, they argue that it was improper for the Tribunal to interpret these provisions as meaning that it could not make a positive finding of injury in the absence of a deteriorating trend.

[48] Finally, the applicants submit that the Tribunal made no mention of the domestic industry’s financial performance at the net income level for its domestic sales of like goods (which showed net losses). They argue that the causal link between the subject goods and the like goods was demonstrated by the fact that, as the supply of the subject goods slightly waned in the first half of 2020 (due to COVID-19), the domestic industry’s prices and profitability increased.

(3) Analysis

[49] The factors that may be considered by the Tribunal when it undertakes an injury analysis are found in subsections 37.1(1) and 37.1(3) of the SIMR. These subsections are reproduced as an Appendix to these reasons.

[50] While compelling, there are several reasons why I cannot agree with the applicants’ arguments, having regard to the standard of review of reasonableness and the deference that is owed to the Tribunal in these matters.

[51] First, I will consider the POI. It was reasonable for the Tribunal to limit its inquiry to the three-year POI it set.

[52] The Tribunal set the POI for its inquiry from January 1, 2017, to June 30, 2020. That is the starting point. A determination that dumping or subsidizing has caused material injury must be based on injurious effects that crystalized during the POI. The Tribunal could not find that injury to the domestic industry allegedly suffered prior to the POI was caused by the subject goods and then extrapolate from there. There was no evidence before the Tribunal to make such a finding.

[53] Indeed, at this stage, when the Tribunal's role is to determine whether the dumping or subsidizing of the subject goods (as found by the CBSA) caused material injury, the timing of the analysis is already set. The Tribunal cannot examine a POI set much earlier than the one used by the CBSA, since there was no finding that the subject goods were dumped or subsidized at that time (as noted in the Tribunal Reasons, at paragraph 101). For the same reason, the Tribunal cannot set a much longer POI starting several years before the start of the period of investigation considered by the CBSA.

[54] As mentioned, when the Tribunal makes a finding of injury, it must find that the injury was caused by the dumping and subsidizing of the subject goods during the POI (see *Nitisinone Capsules* (5 December 2018), Preliminary Injury Inquiry No. PI-2018-006 (C.I.T.T.), at paragraphs 42–43 and *Liquid Dielectric Transformers* (9 July 2012), Preliminary Injury Inquiry No. PI-2012-001 (C.I.T.T.) (*Liquid Dielectric Transformers*), at paragraph 32). In its previous decisions, the Tribunal concluded that "[a] determination that dumping 'has caused' material injury must, by definition, be based on injurious effects that crystalized (i.e. became manifest) during the POI", although foreseeably imminent injury could arguably "support a determination that the dumping is *threatening* to cause material injury" (*Liquid Dielectric Transformers*, at paragraph 32) (italics in original, underline added). It was reasonable for the Tribunal to rely on its previous decisions which held that the injury must be caused by the dumping and subsidizing of the subject goods during the POI. Furthermore, the Tribunal's Finding here is within a range of reasonable outcomes.

[55] Next, I cannot accept the arguments that the Tribunal required the domestic industry to demonstrate that the injury was increasing or intensifying during the POI. A careful reading of the Tribunal Reasons does not lead me to such a conclusion. The applicants do not reference any portion of the Tribunal Reasons that suggests this. To the contrary, the Tribunal based its decision in part on an assessment of "changes in the volume of the goods, their effect on the price of like goods, and their resulting impact on the state of the domestic industry, during the POI" (Tribunal Reasons, at paragraph 103).

[56] Turning to the factors set out in section 37.1 of the SIMR, I note that the language of subsections 37.1(1) and 37.1(3) of the SIMR indicates that the Tribunal has great flexibility in how it analyzes the factors therein (note the use of the words "may be considered"). The fact that the Tribunal gave greater weight to some factors rather than others would not, in itself, render its decision unreasonable.

[57] Nothing in the SIMR precludes the Tribunal from examining trends, even in the context of factors where the SIMR does not explicitly require looking at trends. This is consistent with the fact that several of the factors listed in subsections 37.1(1) and 37.1(3) of the SIMR depend on an assessment of trends.

[58] In any event, it cannot be said that the Tribunal's decision relied exclusively on factors that depended on trends or changes during the POI. The Tribunal specifically examined the factors from paragraphs 37.1(1)(a)–(c) of the SIMR when it conducted its injury analysis and did not rely solely on factors that required a deteriorating trend (Tribunal Reasons, at paragraphs 106–178).

[59] For example, the Tribunal analyzed factors on price undercutting at paragraphs 115–137 of the Tribunal Reasons, analyzed “[o]ther performance indicators” at paragraphs 169–176 of the Tribunal Reasons, and analyzed the magnitude of the margin of dumping and amount of subsidy at paragraph 177 of the Tribunal Reasons. These factors do not require an assessment of deteriorating trends.

[60] When considering the question of price undercutting, the Tribunal found “the subject goods consistently undercut the domestically produced like goods throughout the POI” (Tribunal Reasons, at paragraph 117). This conclusion was not based on any upward or downward trend in the data.

[61] The Tribunal also examined other factors that were not based on trends, in particular the fact that significant investments have been put on hold or delayed (Tribunal Reasons, at paragraph 173) and the fact two domestic producers closed their operations or declared bankruptcy (Tribunal Reasons, at paragraphs 174–176).

[62] As can be seen, the Tribunal’s determination of whether the dumping or subsidizing of the subject goods caused material injury did not rely exclusively on factors that depended on trends.

[63] What the applicants take issue with here is that the Tribunal placed less weight on factors not requiring an assessment of trends. It is the Tribunal’s role to weigh the factors when it determines whether the dumping and subsidizing caused injury and not for this Court to second-guess the Tribunal’s factual findings. The Tribunal’s Finding is not unreasonable on that basis.

[64] I will now address the argument that, by examining the domestic industry’s net income, a causal link between the subject goods and the like goods is established. Paragraph 42(1)(a) of the SIMA and section 37.1 of the SIMR preclude the Tribunal from finding that the mere presence of subject goods automatically caused injury to the domestic industry. The Tribunal must be satisfied, on the basis of its analysis, that it is the subject goods, and not other factors, that have caused the injury. The Tribunal did so here when it analyzed the evidence as it related to the factors set out in section 37.1 of the SIMR.

[65] The Tribunal examined the domestic industry’s financial performance at paragraphs 165–168 of the Tribunal Reasons. When considering the factors set out in section 37.1 of the SIMR, I cannot accept that the Tribunal should have relied on net income rather than gross income when examining the domestic industry’s financial performance.

[66] The text of subsections 37.1(1) and 37.1(3) of the SIMR do not require the Tribunal to examine the domestic industry’s net income. Not only do these subsections not require the Tribunal to examine or place any particular weight on any factor (through the use of the wording “may be considered”), but they also do not mention the terms “net income”.

[67] In sum, in my view, it was reasonable for the Tribunal to conclude, based on the evidentiary record before it, that dumping or subsidizing of the subject goods did not cause injury to the domestic industry. Overall, it seems that the applicants are taking issue with the weighing of the evidence as it relates to the factors set out in section 37.1

of the SIMR. They are essentially asking this Court to reweigh the evidence, prefer certain evidence that was before the Tribunal, and arrive at a different conclusion. That is not our role on judicial review. As mentioned, the Tribunal has a special expertise and, in light of this, we must show deference. Absent exceptional circumstances, this Court should not interfere with the decision maker's factual findings (*Vavilov*, at paragraph 125). There are no such exceptional circumstances here.

[68] Based on the foregoing, the Tribunal did not apply an unreasonable legal test in its injury analysis.

B. *Did the Tribunal apply an unreasonable legal test when it conducted its threat of injury analysis by reading into the SIMA a requirement that the domestic industry demonstrate a "change in circumstances"?*

(1) Tribunal Reasons regarding the threat of injury analysis

[69] The Tribunal identified the provisions of the SIMA and SIMR relevant to the threat of injury analysis, in particular subsection 2(1.5) of the SIMA and subsections 37.1(2) and 37.1(3) of the SIMR. In addition, the Tribunal wrote [at paragraph 194]:

> The Tribunal is also mindful of Article 3.7 of the WTO Anti-dumping Agreement and Article 15.7 of the WTO Agreement on Subsidies and Countervailing *Measures*, which set out the framework of obligations implemented in subsection 2(1.5) of *SIMA*:
>
> > A determination of a threat of material injury shall be *based on facts and not merely on allegation, conjecture or remote possibility*. The *change in circumstances* which would create a situation in which the [dumping or subsidy] would cause injury *must be clearly foreseen and imminent*. [Emphasis in original.]

[70] The Tribunal considered the applicants' submissions that a change in circumstances is not required for it to find the dumping and subsidizing of the subject goods are threatening to cause injury (Tribunal Reasons, at paragraph 196). Relying on its own decision in *Polyethylene Terephthalate Resin* (3 April 2018), Inquiry No. NQ-2017-003 (C.I.T.T.) (*Polyethylene Terephthalate Resin*), the Tribunal wrote: "The Tribunal has also indicated that there must be a high probability of a change in circumstances compared to those that existed during the POI, such that the subject goods would threaten to cause material injury in the very near future in the absence of measures" (Tribunal Reasons, at paragraph 195, referring to *Polyethylene Terephthalate Resin*, at paragraphs 170–171).

[71] Referring to its decision in *Polyethylene Terephthalate Resin*, the Tribunal specified that, where the situation in the future will be the same or similar to the period for which no injury was found, there cannot be a "change in circumstances" and thus there cannot be a threat of injury. The Tribunal stated that it only proceeds to consider whether there is a threat of injury after having found that the subject goods have not caused injury during the period of inquiry. It makes inherent sense to consider that, if there is no change in circumstances, the same circumstances which led to that finding would again yield the same result (Tribunal Reasons, at paragraph 198).

[72] The Tribunal also relied on its previous decisions setting out the requirement for a change in circumstances to support a finding of threat of injury: *Nitisinone Capsules* (3 May 2019), Inquiry No. NQ-2018-005 (C.I.T.T.) (*Nitisinone Capsules – Inquiry*), at

paragraphs 123–124; *Corrosion-resistant Steel Sheet* (8 March 2019), Inquiry No. NQ-2018-004 (C.I.T.T.), at paragraph 108; *Frozen Self-rising Pizza* (2 September 2004), Inquiry No. NQ-2004-003 (C.I.T.T.), at paragraph 17 (Tribunal Reasons, at footnote 144).

[73] The Tribunal expressed its approach to the threat of injury analysis as follows: "The Tribunal must therefore proceed to determine whether there is a high probability of a change in circumstances that will lead to a situation in which the dumping and subsidizing of the subject goods would, in the very near future, cause material injury to the domestic industry" (Tribunal Reasons, at paragraph 200).

(2) The applicants' position

[74] The applicants argue that, in its approach to the threat of injury analysis, the Tribunal incorporated terms into subsection 2(1.5) of the SIMA by referring to Article 3.7 of the World Trade Organization, *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*, 1868 U.N.T.S. 201 (Anti-Dumping Agreement).

[75] According to the applicants, instead of reading the unambiguous and plain meaning of subsection 2(1.5) of the SIMA, which does not include the terms "change in circumstances", the Tribunal engaged in an unreasonable chain of analysis by linking the requirement that the circumstances causing a threat of injury are "clearly foreseen and imminent" to also require a change in circumstances. In support of their argument, the applicants argue that only two of the ten non-exhaustive factors enumerated under subsection 37.1(2) of the SIMR contemplate such a change.

(3) Analysis

[76] Pursuant to subsection 2(1.5) of the SIMA, "the dumping or subsidizing of goods shall not be found to be threatening to cause injury or to cause a threat of injury unless the circumstances in which the dumping or subsidizing of goods would cause injury are clearly foreseen and imminent." The factors that may be considered by the Tribunal when it undertakes a threat of injury analysis are found in subsections 37.1(2) and 37.1(3) of the SIMR. These subsections of the SIMA and SIMR are reproduced as an Appendix to these reasons.

[77] Again, I cannot agree with the applicants' arguments.

[78] Before us, the applicants repeat arguments the Tribunal already considered and rejected. The applicants have not convinced me that it was unreasonable for the Tribunal to consider the absence of a change in circumstances when it undertook its threat of injury analysis.

[79] As noted above, the applicable standard of review in this application for judicial review is reasonableness. As a result, the role of this Court is not to determine the correct interpretation of subsection 2(1.5) of the SIMA, but to determine whether the Tribunal's interpretation was reasonable (*Vavilov*, at paragraphs 115–124). International law constrains administrative decision makers: "international treaties and conventions … can help to inform whether a decision was a reasonable exercise of administrative power" (*Vavilov*, at paragraph 114).

[80] In their written memorandum of fact and law, the applicants relied on this Court's approach in *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, [2021] 1 F.C.R. 374, 321 A.C.W.S. (3d) 763 (*Entertainment Software FCA*) on the manner in which international agreements should be taken into account when interpreting domestic legislation. This Court's decision in *Entertainment Software FCA* was later appealed to the Supreme Court of Canada and the appeal was dismissed (*Society of Composers, Authors and Music Publishers of Canada v. Entertainment Software Association*, 2022 SCC 30, [2022] 2 S.C.R. 303, 471 D.L.R. (4th) 391 (*Entertainment Software SCC*)).

[81] In *Entertainment Software SCC*, the Supreme Court confirmed that, when interpreting statutes under correctness review, an international treaty is relevant at the context stage of the statutory interpretation exercise (*Entertainment Software SCC*, at paragraph 44). However, while a treaty can be highly relevant to statutory interpretation, the presumption of conformity is an aid to interpretation. The international instrument cannot overwhelm legislative intent (*Entertainment Software SCC*, at paragraphs 47–48). It is always the domestic statute that governs because "[i]nternational law cannot be used to support an interpretation that is not permitted by the words of the statute" (*Entertainment Software SCC*, at paragraph 48, citing *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, [2014] 3 S.C.R. 176, at paragraph 60).

[82] In this case, we are reviewing the Tribunal Reasons on a standard of reasonableness. I do not find that the Tribunal unreasonably relied on Article 3.7 of the Anti-Dumping Agreement in its interpretation of subsection 2(1.5) of the SIMA. Rather, the Tribunal used the wording of Article 3.7 to help inform it of its obligations under subsection 2(1.5) of the SIMA.

[83] As explained by the Tribunal, the structure of the SIMA implies that a change in circumstances from that which occurred during the POI is required for the subject goods to threaten to cause injury to the domestic industry (Tribunal Reasons, at paragraph 198). The threat of injury analysis is only relevant if the Tribunal has previously found that the subject goods did not cause injury to the domestic industry during the POI. It would be illogical for the circumstances of the POI (which were found not to cause injury) to threaten to cause injury in the future, absent some change in circumstances.

[84] The Tribunal did not unreasonably prefer an interpretation in accordance with an international treaty that was inconsistent with the text, context and purpose of the domestic legislation. The Tribunal interpreted subsection 2(1.5) of the SIMA in conformity with Article 3.7 of the Anti-Dumping Agreement. It was a reasonable interpretation.

[85] Furthermore, in its previous decisions, the Tribunal has consistently required a change in circumstances to find that the subject goods are threatening to cause injury. The four Tribunal decisions cited by the applicants do not support their argument that the threat of injury test does not require a change in circumstances. To the extent that the applicants suggest that these four decisions were based solely on factors that did not reflect a change in circumstances, I disagree. Rather, in these four decisions, the Tribunal placed considerable emphasis on the foreseeable changes in the markets between the POI (which is analyzed in the injury analysis) and the following period of up to 24 months (which is analyzed in the threat of injury analysis) (*Concrete Reinforcing Bar* (26 January 2015), Inquiry No. NQ-2014-001 (C.I.T.T.); *Oil Country Tubular Goods*

(17 April 2015, corr. 21 April 2015), Inquiry No. NQ-2014-002 (C.I.T.T.); *Hot-rolled Carbon Steel Plate* (4 June 2014), Inquiry No. NQ-2013-005 (C.I.T.T.); *Unitized Wall Modules* (27 November 2013), Inquiry No. NQ-2013-002 (C.I.T.T.)).

[86] In sum, it was reasonable for the Tribunal to consider a change in circumstances when it undertook its threat of injury analysis.

C. *Did the Tribunal unreasonably find that the like goods produced by the domestic industry did not compete with the dumped and subsidized subject goods because the subject goods were so inexpensive?*

(1) Tribunal Reasons regarding its conclusion that the like goods did not compete with the subject goods

[87] The Tribunal found that the evidence on the record—in particular the sales pricing and volume trends—demonstrated that the subject goods did not compete with the domestically produced like goods to a significant degree (Tribunal Reasons, at paragraphs 123, 130, 134, 136–137, 153, and footnote 102).

(2) The applicants' position

[88] The applicants argue that it was unreasonable and contradictory to the purpose of SIMA for the Tribunal to find that the like goods and the subject goods do not compete because the Tribunal would have expected to see much more deleterious effects on the domestic industry given the significant level of undercutting by the subject goods. According to the applicants, this finding focuses on the impact of price undercutting on the industry's market share and price effects, but it ignores other SIMR factors such as the impact of the price undercutting on the domestic industry's poor financial results, low utilization rates and lost employment. This finding was also inconsistent with the Tribunal's finding that price is one of the most important factors in purchasing decisions for subject goods and like goods.

[89] Also, the applicants take issue with the Tribunal's assertion that it need not be absolutely certain as to why the subject goods and the like goods did not compete against one another to any significant degree during the POI. According to the applicants, in the cases where the Tribunal previously found that subject goods and like goods did not compete, the evidence before the Tribunal was clear (Applicants' memorandum of fact and law, at paragraph 89, referring to *Flat Hot-Rolled Carbon and Alloy Steel Sheet and Strip* (4 September 2001), Inquiry No. NQ-2001-001 (C.I.T.T.), at pages 17–18 and 25–26; *Women's Boots* (10 May 2005), Expiry Review No. RR-2004-002 (C.I.T.T.), at paragraphs 81–83).

(3) Analysis

[90] The definition of "like goods" is found at subsection 2(1) of the SIMA. In these reasons, the like goods refer to the goods from the domestic industry. Once the Tribunal receives a notice of preliminary determination from the CBSA made under subsection 38(3) of the SIMA, the Tribunal must make inquiry as to whether the dumping or subsidizing of the goods to which the preliminary determination applies have caused injury or are threatening to cause injury, pursuant to subsection 42(1) of the SIMA. The

goods to which the preliminary determination applies are the “subject goods”. These subsections are reproduced in an Appendix to these reasons.

[91] There are several reasons why I do not agree with the applicants’ submissions that it was unreasonable and contradictory for the Tribunal to find that the like goods and the subject goods did not compete.

[92] Based on the evidentiary record, the Tribunal was satisfied that the domestic industry predominantly sold higher-grade plywood whereas the Chinese imports were primarily lower-grade plywood (Tribunal Reasons, at paragraph 134). It is the Tribunal’s role to weigh the evidence before it and make such findings.

[93] Also, I cannot accept the applicants’ position that the Tribunal needed to know or explain why the subject goods did not compete with the like goods. Imposing such a requirement on the Tribunal would, in effect, impose a presumption that the subject goods compete with the like goods. In the face of evidence demonstrating that the subject goods do not compete with the like goods, it would be unreasonable to impose such a presumption. This could lead to illogical results where the Tribunal would be required to find that the subject goods and the like goods compete although the evidence clearly demonstrates that they do not, because there is a lack of evidence on the reasons why they do not compete.

[94] Based on the record before it, the Tribunal determined the declining performance of the domestic industry during the POI correlated with an increase in imports of non-subject goods and a decline in imports of subject goods. The evidence was that the subject goods and the like goods served different market segments and that price and volume trends between like goods and subject imports did not correlate and were not related.

[95] Next, the Tribunal addressed the argument that its finding that there was a single class of goods is inconsistent with its finding that the like goods do not compete with the subject goods. The Tribunal noted that none of the parties in this case argued that the like goods and the subject goods constituted more than one class of goods. A finding that there was a lack of competition between products that fall within a single class of goods is not contradictory. “It simply means that the goods may, on average, fall further apart along a continuum of goods within that single class such that they are no longer contiguous and may not be able to fulfil the same customer needs” (Tribunal Reasons, at footnote 102).

[96] The applicants argue that there was no evidence to suggest that the subject goods and the non-subject goods were different. However, the Tribunal wrote that non-subject imports may include “a larger proportion of higher-grade panels sold at higher prices” (Tribunal Reasons, at paragraph 135), which would suggest some stratification in the non-subject goods. This directly addresses the applicants’ argument, as it would explain the Tribunal’s finding that non-subject goods caused the injury to the domestic market: the non-subject goods included fancy grades of plywood that competed with the domestic industry, while the subject goods consisted predominantly of non-fancy grades. Because the Tribunal found that the declines in the domestic industry were caused by the non-subject goods, the similarity between the subject goods and non-subject goods is irrelevant.

[97] Based on the evidentiary record, it was reasonable for the Tribunal to conclude, as it did, that if non-subject imports—which, by definition, were not dumped or subsidized—accounted for the declining performance of the domestic industry, the dumping and subsidizing of subject goods did not cause the injury regardless of whether subject goods and non-subject goods were similar to one another.

[98] It was reasonable for the Tribunal to attribute the domestic industry's loss of market share to non-subject goods. According to the Tribunal's findings, the subject imports' market share remained flat or decreased (with only a slight increase of 1% in one year of the POI), whereas the non-subject imports' market share increased consistently throughout the POI. The Tribunal repeated its conclusion that the domestic industry lost its market share to non-subject goods in paragraphs 111, 128, 131, 153, 164, 166–67, 169, 185, 188, 204 and 226 of the Tribunal Reasons. Notably, at the end of its market share analysis, the Tribunal concluded that "the evidence demonstrates that, while the domestic industry lost market share over the POI, it was largely, if not entirely, captured by non-subject imports from China and other countries" (Tribunal Reasons, at paragraph 164) (emphasis added).

[99] The applicants once again argue that the evidence before the Tribunal demonstrated that the subject goods competed with the like goods to a significant degree. In their memorandum of fact and law, the applicants highlight several examples in the evidence that they say support this argument.

[100] The evidence highlighted by the applicants was expressly addressed in the Tribunal Reasons (Tribunal Reasons, at paragraphs 124, 128–129, 133–134, 159 and 164). As has been mentioned previously, the role of this Court is not to engage in a *de novo* review and sift through the evidence that was before the Tribunal (*Vavilov*, at paragraph 83).

[101] The slight discrepancy between whether the domestic industry's loss of market share was "entirely" or "largely, if not entirely" due to non-subject imports is not significant enough to warrant this Court's intervention. Doing so would amount to giving effect to a "line-by-line treasure hunt for error" (*Vavilov*, at paragraph 102).

[102] For these reasons, I conclude that it was reasonable for the Tribunal to find that the like goods produced by the domestic industry did not compete with the dumped and subsidized subject goods.

IV. Conclusion

[103] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness in the administrative process (*Vavilov*, at paragraph 13). This Court has previously recognized the Tribunal's vast expertise and that its decisions are entitled to deference. The role of this Court is to focus on the Tribunal Finding, including the justification offered for it in the Tribunal Reasons, and not on the conclusion that we might have reached in the administrative decision maker's place.

[104] I have not been persuaded, despite the applicants' able arguments, that the Tribunal Finding is unreasonable. The Tribunal carefully considered the extensive evidentiary record and thoroughly analyzed the issues before it. The Tribunal Reasons

are transparent, intelligible and justified. They are based on an internally coherent and rational chain of analysis and are justified in relation to the facts and the law that constrain the Tribunal (*Vavilov*, at paragraph 85). I see no reason to intervene.

[105] For these reasons, I would dismiss the application for judicial review with costs as agreed to by the parties in the amount of $7,500 to the respondents, Canusa Wood Products Limited, Hardwoods Specialty Products LP, McCorry & Co. Ltd and Panoply Wood Products Inc. No costs shall be awarded to or from the respondents Unifor, United Steelworkers, Attorney General of Canada, Association des salariés du contre-plaqué de Ste-Thérèse, and Upper Canada Forest Product Ltd.

WOODS J.A.: I agree.

LASKIN J.A.: I agree.

V. Appendix

A. *Special Import Measures Act*

Special Import Measures Act, R.S.C., 1985, c. S-15

Definitions

2 (1) In this Act,

…

like goods, in relation to any other goods, means

(a) goods that are identical in all respects to the other goods, or

(b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods; (*marchandises similaires*)

…

Threat of injury

(1.5) For the purposes of this Act, the dumping or subsidizing of goods shall not be found to be threatening to cause injury or to cause a threat of injury unless the circumstances in which the dumping or subsidizing of goods would cause injury are clearly foreseen and imminent.

…

Tribunal to make inquiry

42 (1) The Tribunal, forthwith after receipt of a notice of a preliminary determination under subsection 38(3), shall make inquiry with respect to the following matters:

(a) in the case of any goods to which the preliminary determination applies, as to whether the dumping or subsidizing of the goods

(i) has caused injury or retardation or is threatening to cause injury, or

(ii) would have caused injury or retardation except for the fact that provisional

duty was imposed in respect of the goods;

(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 a massive importation of the goods into Canada and the goods are likely to seriously undermine the remedial effect of the duties applicable under subsection 3(1); and

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

(i) injury has been caused by a massive importation of the goods into Canada, and

(ii) the goods are likely to seriously undermine the remedial effect of the duties applicable under subsection 3(1).

B. *Special Import Measures Regulations*

Special Import Measures Regulations, SOR/84-927

37.1 (1) The following factors may be considered in determining whether the dumping or subsidizing of goods has caused injury or retardation:

(a) the volume of the dumped or subsidized goods and, in particular, whether there has been a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods;

(b) the effect of the dumped or subsidized goods on the price of like goods and, in particular, whether the dumped or subsidized goods have significantly

(i) undercut the price of like goods,

(ii) depressed the price of like goods, or

(iii) suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred;

(c) the resulting impact of the dumped or subsidized goods on the state of the domestic industry and, in particular, all relevant economic factors and indices that have a bearing on the state of the domestic industry, including

(i) any actual or potential decline in output, sales, market share, profits, productivity, return on investments or the utilization of industrial capacity,

(i.1) any actual or potential negative effects on employment levels or the terms and conditions of employment of the persons employed in the domestic industry, including their wages, hours worked, pension plans, benefits or worker training and safety,

(ii) any actual or potential negative effects on cash flow, inventories, growth or the ability to raise capital,

(ii.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods, and

(iii) in the case of agricultural goods, including any goods that are agricultural goods or commodities by virtue of an Act of Parliament or of the legislature of a province, that are subsidized, any increased burden on a government support programme; and

(d) any other factor that is relevant in the circumstances.

(2) The following factors may be considered in determining whether the dumping or subsidizing of goods is threatening to cause injury:

(a) the nature of the subsidy in question and the effects it is likely to have on trade;

(b) whether there has been a significant rate of increase of dumped or subsidized goods imported into Canada, which rate of increase indicates a likelihood of substantially increased imports into Canada of the dumped or subsidized goods;

(c) whether there is sufficient freely disposable capacity, or an imminent, substantial increase in the capacity of an exporter, that indicates a likelihood of a substantial increase of dumped or subsidized goods, taking into account the availability of other export markets to absorb any increase;

(d) the potential for product shifting where production facilities that can be used to produce the goods are currently being used to produce other goods;

(e) whether the goods are entering the domestic market at prices that are likely to have a significant depressing or suppressing effect on the price of like goods and are likely to increase demand for further imports of the goods;

(f) inventories of the goods;

(g) the actual and potential negative effects on existing development and production efforts, including effects on hiring and on efforts to produce a derivative or more advanced version of like goods;

(g.1) the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods;

(g.2) evidence of the imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada in respect of goods of the same description or in respect of similar goods; and

(h) any other factor that is relevant in the circumstances.

(3) The following additional factors may be considered in determining whether the dumping or subsidizing of goods has caused injury or retardation or is threatening to cause injury:

(a) whether a causal relationship exists between the dumping or subsidizing of the

goods and the injury, retardation or threat of injury, on the basis of the factors listed in subsections (1) and (2); and

(b) whether any factors other than the dumping or subsidizing of the goods have caused injury or retardation or are threatening to cause injury, on the basis of

(i) the volumes and prices of imports of like goods that are not dumped or subsidized,

(ii) a contraction in demand for the goods or like goods,

(iii) any change in the pattern of consumption of the goods or like goods,

(iv) trade-restrictive practices of, and competition between, foreign and domestic producers,

(v) developments in technology,

(vi) the export performance and productivity of the domestic industry in respect of like goods, and

(vii) any other factor that is relevant in the circumstances.