

Grey, Clark, Shih and Associates, Limited

- Public Affairs - International Trade -

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SUBMITTED BY E-MAIL

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Good afternoon Mr. Duval,

RE: Request for Re-investigation – Gypsum Board

These submissions request re-investigation of normal values and export prices of Gypsum Board imported into Western Canada from the United States of America are made on behalf of:

- the International Brotherhood of Boilermakers (the Boilermakers), and
- Teamsters Local 213 (the Teamsters),

collectively referred to as “the Unions”. The Unions’ Members work in CertainTeed plants located in Delta, B.C., Windemere, B.C., Calgary, Alberta and Winnipeg, Manitoba.

On October 24, 2023, CertainTeed Canada, Inc. (CTC), asked CBSA to initiate a re-investigation of normal values and export prices with respect to gypsum board from the USA. The Unions support this request to initiate re-investigations which are long overdue. Remedying the obsolescence of normal values and the absence of CBSA attention to export prices is very important to our members who work for CertainTeed Canada at its plants located in Western Canada.

The CBSA as a matter of policy tries to avoid reliance on “stale” or outdated normal values for SIMA enforcement. CBSA has developed and operates an effective approach to enforcement which is applied in virtually all SIMA cases to ensure that normal values do not become stale or obsolete. The procedures for doing so are contained in Departmental Memorandum D14-1-8. There is no evidence on the records of CBSA that this has been done or is being done with respect to Gypsum Board. The normal values and reference prices in *Gypsum Board*¹ are so old that alleging staleness does not capture the extent of their irrelevance and obsolescence.

The Unions urge the CBSA to initiate a full re-investigation of Gypsum Board from the USA as soon as possible: time is of the essence as we do not want a single member’s job to be lost solely on account of unfair import competition that has been allowed to persist under an existing Order. A separate duty remission order² has already been put in place and the Government of Canada has failed to update it to take into account changes in market conditions. The Unions should not be paying the price for any lack of Government of Canada resources or willingness to keep SIMA measures effective in eliminating injury to unionized workers at CertainTeed plants in Western Canada.

Since 2018, CBSA has been required to base its reference prices on a value which should be 47.4% higher to reflect normal levels of protection.

To be clear, the Unions have never received the full protection envisaged by the SIMA from this dumping. Failure to properly mitigate injury from serial dumpers³ would appear to be inconsistent with providing effective relief to union members from internationally condemned injurious trading practices.

The Remission Order currently in effect permits U.S. exporters to Canada to continue to dump into the market with apparent impunity. The Unions are concerned that the reference prices in the Remission Order are obsolete and understated. While there appear to be safeguards built into subsection 2(2) of the Remission Order to ensure that post-import manipulation does not dilute export prices, these do not appear to be operational. Already, the Remission Order suffers from fundamental flaws in its design by tying reference pricing to long-outdated normal values from the original CBSA investigation. Condoning and continuing to condone injurious dumping of subject goods into Western Canada during the life of the Order in NQ-2016-002, both through the flawed design and operation of the Remission Order, and any unwillingness to re-investigate normal values and export pricing fully and completely must end.

The Unions consider that the absence of effective oversight and enforcement undermines the intent of Government with respect to the enhanced participation in SIMA trade remedies proceedings by affected workers.

While there have been examples of mutually satisfactory and agreed remission of SIMA duties, the CBSA Measures in Force (“MIF”) does not include any other products with automatic

¹ NQ-2016-002

² Gypsum Board Anti-dumping Duty Remission Order, 2017 (Remission Order)

³ This is the third trade remedy case involving this product from the U.S. earlier investigations occurred in ADT-1-71 and NQ-92-004.

blanket remission orders. No other remission orders envisage the regular verification that is required by subsection 2(2) of the Remission Order.

The normal values referenced in CBSA's MIF web page are more than five years old.⁴ These were based on data related to imports in 2017. Reference prices under the Remission Order were based on the normal values established at the Final Determination were discounted by 32.17% in an apparent attempt to address an emergency situation. In addition, the various export price deductions such as general selling and administrative (GS&A) rates and amounts for profit are also five years old

The MIF section of the CBSA website indicates that the last re-investigation of Gypsum Board was concluded on July 18, 2018. The explanations of CBSA's methodology on that re-investigation are sparse. There is no public information in CBSA's public reasons about the SIMA provisions used to determine export prices. There has been no apparent effort by CBSA to determine the accuracy or continuing relevance of reference prices. CBSA recent reporting on collection (and remission) of SIMA duties indicates "The CBSA uses shipment reports supplied by importers as part of enforcement and monitoring."⁵ But CBSA does not refer to any information generated through re-investigations.

It is relevant to the Unions and CTC and should be relevant to CBSA that import prices for Gypsum Board into Western Canada declined by 26.7 % in 2019, a further 1.1% in 2020, 11.1% in 2021, followed by 5.2% in 2022 and have been essentially flat since. The compound decreases in import prices since 2018 has been 38.3%. This is extremely difficult to reconcile with the announced price increases in the U.S. market reported in CTC Table 1.

These apparent contradictions cry out for a full review of normal values to determine whether or not the adjusted reference prices are in line with current market conditions as well as a full investigation of export prices in order to detect and adjust for any "hidden dumping"⁶ which may have occurred.

The Unions support the evidence attached to CTC's letter of October 24, 2023 and submit that it establishes the need for a prompt decision to initiate the requested re-investigations. CTC

⁴ They date back to July 18, 2018. These normal values and reference prices were based on market prices and costs in Canada in 2017.

⁵ <https://www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/mif-mev-stats-eng.html>

⁶ GATT Article VI "hidden dumping by associated houses" See Interpretative Note to paragraph 1. Hidden dumping by associated houses (that is, the sale by an importer at a price below that corresponding to the price invoiced by an exporter with whom the importer is associated, and also below the price in the exporting country) constitutes a form of price dumping with respect to which the margin of dumping may be calculated on the basis of the price at which the goods are resold by the importer.

See also Article 2:3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994)

2.3 "In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine."

operates in the market in Canada and the U.S. and is privy to more detailed and confidential information than the Unions are.

CTC has provided eight reasons why re-investigations of both normal values and export prices are required.

CTC's reasons numbers four and eight have been redacted in order to protect confidential information which is not available to the Unions. The Unions are in accord with the remaining six reasons.

The Unions wish to offer the following comments on the principal issues raised by CTC, set out in more detail below. But as a final introductory point, the Unions reiterate the urgent need for the initiation of a full re-investigation of both normal values and export prices. The current status quo is unacceptable to the hardworking employees of CTC and not in any way in keeping with the object and purpose of the SIMA. Moreover, the fact that an outdated Remission Order overlays the current circumstances merely adds further insult to the injurious impact of dumped gypsum board imports from the United States. The Unions have attached an extract from reporting under the Lobbyist Registration Act with respect to activity related to the "Gypsum Board Remission Order, with respect to its suitability and application". Clearly, the Unions' view is that the Remission Order is no longer suitable (if it ever was), certainly not desirable and should no longer be applied.

However, on July 12, 2023, the Unions were advised by the Department of Finance:

"Thank you for your engagement in the consultations that informed the Government's review of the [*Gypsum Board Products Anti-Dumping Duty Remission Order, 2017*](#) (Remission Order). Further to those consultations, the Minister of Finance has decided not to proceed with changes to the Remission Order at this time.

The Government will continue to monitor the situation in the Western Canada drywall market to ensure that the Remission Order continues to meet its intended policy objectives."

The Unions consider that in light of this Government decision to control subsidizing dumped competition, CBSA should not be precluded from ensuring that the Remission Order be effectively enforced in order to meet its policy objective related to avoiding hidden dumping.

II. A. There have been numerous changes in market and export price conditions

The administration and enforcement of the finding, as diluted by the Remission Order, do not appear to have reflected changes in the cost of selling Gypsum Board in Western Canada. As CTC explains, movement/freight related expenses have increased materially in recent years. The proper enforcement of trade remedies findings relates to both normal values and export prices. The expenses incurred by importers who are related to U.S. exporters must be deducted from selling prices to unrelated customers in the Canadian market to determine export prices pursuant to SIMA Section 25 in order to assess the reliability of export prices.

II. B. CBSA has not examined or applied Subsection 2(2) of the Gypsum Board Remission Order

The Remission Order permits significant continued dumping into Western Canada by U.S. producers. But this subsidy to U.S. dumpers was not intended to be unlimited nor unfettered. Related importers are precluded by subsection 2(2) of the Order from reselling below the reference price. This appears to be a mandatory requirement without the need for CBSA to establish reliability. The Unions submit that in practice, lack of re-investigation and effective enforcement tends to exacerbate the dilution of SIMA protection for their members. It seems clear that the Governor-in-Council did not intend this to be the case otherwise subsection 2(2) would not have been needed in the Remission Order. However, the Unions believe that little or no attention has been paid to the intended safeguarding protection of subsection 2(2) of the Remission Order.

Indeed, as the Regulatory Impact Analysis Statement accompanying the Remission Order notes,

“for importers that import goods below this reference value, or in situations where the importer is related to the exporter, and resells drywall in the Western Canadian market at prices that injure the Canadian producer by absorbing the impact of the duties, the amount of anti-dumping duty remitted will be reduced by an amount equal to the difference between the reference price and the export price.”⁷

As noted above, this is a mandatory, unqualified provision. To the Unions’ knowledge, CBSA has not been collecting information to perform this type of analysis and calculations in its regular enforcement of the Anti-dumping Order. However, import data shows that the SIMA duties assessed are substantial, with more than \$11.7 million assessed since 2020.⁸

More recently, in 2021 (the last full year in which data are available), more than \$4.1 million of \$4.2 million (97%) in SIMA duties assessed were remitted. A re-investigation will provide an opportunity and, indeed, the only mechanism available, to assess whether subsection 2(2) should be applied to ensure that importers are not absorbing the impact of duties, thus suppressing Canadian market prices, and perpetuating injury to the Western Canadian producer and prejudicing the interests of Union members working at CTC’s plants.

The decision in GB 2016 IN indicated that in all three cases the importers and exporters were related parties. In view of CBSA’s silence on methodology for determining export prices, the Unions cannot rule out that export prices in GB 2018 RI were determined based on SIMA Section 24. After six years it would appear timely to conduct thorough testing of export prices and to conduct reliability tests on the U.S. exporters’ pricing with a view to preventing “hidden” dumping.

The public record in this case demonstrates that all three exporters sold to related importers in Canada.⁹ Export prices in the original investigation were determined pursuant to

⁷ Gypsum Board Products Anti-dumping Duty Remission Order, 2017, P.C. 2017-175 (February 24, 2017). Available online: <https://gazette.gc.ca/rp-pr/p2/2017/2017-03-08/html/sor-dors28-eng.html>

⁸ Public Attachment 1, Import Data through August 2023

⁹ All of CertainTeed’s U.S. exports to Canada were sold to a related importer, CertainTeed Canada.

SIMA subparagraph 25(1)(c). Paragraph 25 of SIMA is designed to ensure the reliability of export prices and to prevent hidden dumping when exporters and importers are related parties.

The Remission Order is silent on the calculation of export price. Only three U.S. exporters have normal values. They are:

- CertainTeed Gypsum and Ceiling Manufacturing Inc. (CGC);
- Georgia-Pacific Gypsum LLC (GP USA); and
- United States Gypsum Company (USG).

In the original investigation, all of GP USA's exports to Canada were sold to a related exporter, GP Canada. Export prices for sales to GP Canada were determined in accordance with Section 25(1)(c) or a Ministerial Specification pursuant to Section 25(1)(c) of SIMA. The Unions do not know the current basis for establishing export prices for GP's exports to Western Canada.

USG is a manufacturer and exporter of subject goods and its head office is located in Chicago, Illinois. All of USG's exports to Canada were sold to a related importer in Western Canada, CGC. CGC and USG are both wholly owned subsidiaries of USG Corporation.¹⁰

In the original Investigation the CBSA reliability test revealed that the export prices determined in accordance with section 24 of SIMA were unreliable. Therefore, export prices for sales made by USG to CGC were determined in accordance with a ministerial specification under paragraph 25(1)(e) of SIMA employing the methodology described above.¹¹

It is not clear whether USG's export pricing has been deemed to be reliable. The Unions submit that proper enforcement of the SIMA and respect for workers' rights should be based on re-investigation and that nothing should be taken for granted.

The CTC submissions point out that CBSA has not conducted the required export price re-investigations or reviews which must be the basis for ensuring that subsection 2(2) of the Remission Order has force and teeth. This provision would appear to have been designed to safeguard the interests of Union members, as well as CTC.

Subsection 2(2) of the Remission Order is a safeguard to ensure that the remission order does not promote or permit hidden dumping which can exert negative pressure on prices in Canada.

The CBSA record does not indicate that there has been a review or audit of the export prices since the Remission Order entered into force on February 24, 2017.

¹⁰ GB 2016 IN, Certain Gypsum Board, Statement of Reasons, December 20, 2016. A Dumping Final Determination concerning Certain Gypsum Board from the United States of America, para. 74

¹¹ GB 2016 IN, Certain Gypsum Board, Statement of Reasons, December 20, 2016. A Dumping Final Determination concerning Certain Gypsum Board from the United States of America, para. 81

II. C. Import volumes of Gypsum Board from the U.S. are increasing

The data provided by CTC in Part II C reports on the aggressive practices of U.S. exporters which have resulted in increased imports with import values which have declined and are now flat notwithstanding increases in costs, reference prices and favourable exchange rate movements.¹² The data appear to suggest prima facie evidence of “hidden” dumping and unmade assessments pursuant to subsection 2(2).

II. D. The Unions have no comment with respect to this item due to redactions in order to protect information sensitive to CTC.

II. E. Changes in U.S. Selling Prices

In this connection, there have been the following adjustments to reference prices:

Year	Reference Price Index
2018	1.13
2019	1.25
2020	1.28
2021	1.26
2022	1.11
2023	1.20

This means that 2023 reference prices are only 20% higher today than they were when the Remission Order was introduced. This suggests a failure to reflect properly the announced U.S. price increases of at least 20% a year for each of the last four years. The Unions note that the indexation is based on price trends in the Canadian market. Continued dumping, subsidized by the Remission Order, may in itself suppress the Canadian price trends used to calculate changes in reference prices. The exporters suggested the last time that CTC made a re-investigation request that the announced price increases may not be successful.¹³ The accuracy of these suggestions could, of course, be tested in a re-investigation. Self-serving diversions are not sufficient to justify perpetuating the laissez-faire approach to enforcement which short changes the Unions’ members working at CertainTeed Plants in Western Canada.

At the same time, CTC has reported and has documented the following price adjustment announcement set out in Table 1 in the changes in U.S. market prices since 2018:

Year	Price Increase
2018	12%
2019	7% to 25%
2020	20%
2021	20%
2022	25% to 35%
2023	20% to 40%

¹² favourable strengthening of the value of the U.S. dollar

¹³ Normal Values: Representations to the CBSA webpage, Gypsum Board

The import prices of U.S. gypsum board into the Western Canadian market are shown below:

Import Data through August 2023

Price (\$CAD/MSF)	2018	2019	2020	2021	2022	Jan-August 2022	Jan-August 2023
Subject Imports (HS Code 6809.11.00.19)	360	264	261	232	220	223	222

All prices are from Statistics Canada.

Import prices have been declining throughout the period and have been essentially flat since 2021. In RR-2021-004, the CITT discussed aggressive pricing in Western Canada by U.S. exporters. CBSA Enforcement should ensure these pricing practices do not undermine the intent of subsection 2(2) and jeopardize the interests of union members.

II. F. Increased Raw Material Costs

The CTC submissions address increased raw material costs including cost for natural gas, gypsum rock (See CTC Table 3 Confidential) and paper. These cost increases are described as constant and significant over the past three years. CTC's comments are supported by price announcements linked to increased costs. The industry in the United States has not been immune to or sheltered from inflationary impacts from more costly raw materials, energy fuel cost/freight and from higher labour costs (please see CTC Table 4 Confidential).

II. G. Changes to Exchange rates

CTC explains in some detail at page 11 the impact of movement in exchange rates. The Unions note that the U.S. dollar is currently worth 1.36 Cdn.

Conclusion

The Unions have been able to participate in securing an injury finding in this matter as well as the extension of RR-2021-004. If the Government is serious about providing meaningful protection to workers, there must be regular and effective enforcement efforts to ensure workers receive proper relief under SIMA from injurious dumping. Initiation of a re-investigation of normal values and export prices of subject gypsum board would be a helpful initiative of importance to our members.

Please let us know if the CBSA requires any additional information from the Unions.

Yours truly,



Peter Clark

Encl.

cc SIMA Registry, simaregistry-depotlmsi@cbsa-asfc.gc.ca

Registration - Consultant

All Monthly Communication Reports for Georgia-Pacific Gypsum LLC

Jonathan O'Hara, McMillan LLP (Consultant)

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Georgia-Pacific Gypsum LLC

Consultant: **Jonathan O'Hara**

Designated Public Office Holders who participated in the communication:

- **Mathew Hall**, Senior Policy Advisor | Finance Canada (FIN)

Subject Matter of the communication: **International Trade**

Communication date: **2023-06-02**

Posted date: **2023-07-15**

Communication number: **359260-567423**

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Georgia-Pacific Gypsum LLC

Consultant: **Jonathan O'Hara**

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- **Mathew Hall**, Senior Policy Advisor | Finance Canada (FIN)
- **Nicholas Mahoney**, Policy Advisor | Finance Canada (FIN)

Subject Matter of the communication: **International Trade**

Communication date: **2023-05-30**

Posted date: **2023-06-15**

Communication number: **359260-567420**

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Georgia-Pacific Gypsum LLC

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Designated Public Office Holders who participated in the communication:

- **Ian Foucher**, Senior Policy Advisor | Minister's Office | Finance Canada (FIN)

Subject Matter of the communication: **Consumer Issues, Economic Development, International Trade, Justice and Law Enforcement, Taxation and Finance**

Communication date: **2017-01-16**

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Communication number: **359260-394228**

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