

CANADA BORDER SERVICES AGENCY

NON-CONFIDENTIAL COMPLAINT

**The Dumping of Certain Gypsum Board Originating in or Exported from
The United States of America Imported into Canada for Use or Consumption
West of the Manitoba-Ontario Border**

Submitted By: CertainTeed Gypsum Canada Inc.

April 30, 2018

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1. This Complaint is filed with the Canada Border Services Agency (“CBSA” or the “Agency”), pursuant to section 31 of the *Special Import Measures Act* (“SIMA”), by CertainTeed Gypsum Canada Inc. (“CTG Canada” or “Complainant”) regarding the dumping of certain 54-inch gypsum board originating in or exported from the United States of America into Canada for use or consumption in British Columbia, Alberta, Saskatchewan, and Manitoba, as well as the Yukon and Northwest Territories (“Western Canada”).

2. CTG Canada submits that certain gypsum board originating in or exported from the United States is being imported into Canada for use or consumption in Western Canada at significantly dumped prices. These unfairly traded goods have caused the material retardation of the establishment of a domestic industry in Western Canada. CTG Canada requests that the President of the CBSA initiate an investigation into the material retardation caused by the dumped gypsum board originating in or exported from the United States.

I. THE COMPLAINANT

3. The contact information for CTG Canada is as follows:

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

Matthew Walker
Telephone Number: (905) 403 3030
Email: matthew.walker@saint-gobain.com

4. CTG Canada is represented by legal counsel with respect to this Complaint as follows:

Cassidy Levy Kent (Canada) LLP
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Ottawa, Ontario K1P 6L5
Tel: (613) 368-4170
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Contact:	Christopher J. Kent	Christopher J. Cochlin
Email:	ckent@cassidylevy.com	ccochlin@cassidylevy.com

II. PRODUCERS OF LIKE GOODS IN WESTERN CANADA

5. There are no producers of like goods (*i.e.*, 54-inch board) in Western Canada.

III. PRODUCERS OF NON-SUBJECT GYPSUM BOARD IN CANADA

6. CTG Canada (headquartered in Mississauga, Ontario) is the only producer of gypsum board products in Western Canada,¹ but these products are not covered by the scope of this Complaint. In Western Canada, CTG Canada produces gypsum board not covered by the scope of this complaint in Vancouver, British Columbia; Calgary, Alberta; and Winnipeg, Manitoba. CTG Canada also operates a gypsum mine in Windermere, British Columbia.

7. In Eastern Canada, [

].

8. CTG Canada is aware of two other Canadian producers of 54-inch board in Eastern Canada: CGC Inc. (“CGC”) operates manufacturing facilities in Montréal, Québec, and Hagersville, Ontario and Atlantic Wallboard LP operates a manufacturing facility in Saint John, New Brunswick. CTG Canada believes that both produce like goods (*i.e.*, 54-inch board). As discussed in further detail below, CTG Canada believes that only [

].

9. Finally, Acadia Drywall Supplies Ltd./Cabot Gypsum (“Acadia”) operates a manufacturing facility in Point Tupper, Nova Scotia. CTG Canada believes that Acadia does not produce 54-inch board at its Point Tupper facility.

IV. IMPORTED GOODS

A. Product Description

10. The goods subject to this Complaint (“subject goods”) are defined as:

Gypsum board, sheet, or panel (“gypsum board”) originating in or exported from the United States of America, imported into Canada for use or consumption in the provinces of British Columbia, Alberta, Saskatchewan, and Manitoba, as well as

¹ *Gypsum Board*, NQ-2016-002 (Jan. 19, 2017) at para 40.

the Yukon and Northwest Territories, made to a width of 54 inches (1,371.6 mm) composed primarily of a gypsum core and faced or reinforced with paper or paperboard, including gypsum board meeting or supplied to meet ASTM C 1396 or ASTM C 1396M or equivalent standards, regardless of end use, edge-finish, thickness, or length (but not width), excluding (a) gypsum board meeting ASTM C 1177 or ASTM C 1177M (commonly referred to and used primarily as “glass fiber re-enforced sheathing board” but also sometimes used for internal applications for high mold/moisture resistant applications); (b) double layered glued paper-faced gypsum board (commonly referred to and used as “acoustic board); and (c) gypsum board meeting ISO16000-23 for sorption of formaldehyde. All dimensions including width are plus or minus allowable tolerances in the applicable standards.

11. The subject goods are referred to as “subject gypsum board” or “54-inch board.”
12. As described in more detail below in **Section V**, CTG Canada believes that 48-inch gypsum board and 54-inch gypsum board constitute two separate classes of goods; and therefore 48-inch gypsum board must be excluded from both the subject goods as well as the like goods for the purposes of this investigation. 54-inch board is wider, heavier and more difficult to handle than 48-inch board. These physical differences make 54-inch board more difficult to load, unload, store and move from plant to distributor to project site. 54-inch board is primarily used in residential construction of houses with 9-foot ceilings for installation of two boards horizontally, and unlike 48-inch board, is not used in large quantities in commercial construction. 54-inch board is also sold through a different mix of distribution channels to a different mix of end-users than 48-inch board. Historically, 54-inch board commanded a premium price of approximately [] percent above 48-inch board prior to the imposition of provisional duties on imports of 48-inch board for use or consumption in Western Canada from the United States in September 2016. Moreover, 54-inch board cannot be produced on CTG Canada’s existing equipment because it requires different and more costly production equipment than 48-inch board production does not require. Finally, imports of 48-inch gypsum board for use and consumption in Western Canada are already subject to an affirmative finding of the Canadian International Trade Tribunal (“CITT” or the “Tribunal”).² In that case, the Tribunal determined a single class of like goods coterminous with the definition of subject goods (*i.e.*, excluding 54-inch board).³ For the same reasons, the

² See *Gypsum Board*, NQ-2016-002 (Jan. 19, 2017) at paras 37-38.

³ *Id.*

Tribunal should determine a single class of like goods coterminous with the definition of subject goods in this case.

13. However, in the event that the Agency or the Tribunal determines that 48-inch and 54-inch wide gypsum board constitute a single class of like goods, CTG Canada has, in the alternative, alleged both injury and threat of injury to its planned production of 54-inch board in Western Canada.⁴

B. Product Characteristics and Product Use

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

15. Standard size gypsum boards may be produced to widths of 48 or 54 inches and any length but is often produced to lengths of 8, 10, 12 or 14 feet.⁵ 54-inch board is primarily used for the construction of residential buildings with 9-foot ceilings by horizontally stacking two 54-inch boards, totalling 108 inches or 9 feet. Standard 48-inch width boards are undesirable for 9-foot

⁴ The Tribunal analyzed a retardation claim for additional production under the rubric of threat of injury in *Solder Joint Pressure Pip Fittings and Solder Joint Drainage, Waste and Vent Pipe Fittings, Made of Cast Copper Alloy, Wrought Copper Allow or Wrought Copper*, NQ-93-001 (Oct. 18, 1993) at 14 (“The Tribunal considered the submissions of counsel concerning the question of retardation to the domestic production by Cello. The Tribunal considers it more appropriate to deal with this issue as it relates to future injury.”) Moreover, in *Chemically Presensitized Aluminum Offset Printing Plates*, the Tribunal held that it was not possible for a complainant to succeed in its claim for retardation because the complainant *could* produce the implicated goods even though it had not actually produced them due to market conditions; here, however, there is no such concern because CTG Canada is physically incapable of producing 54-inch board in Western Canada with its existing equipment. *See Chemically Presensitized Aluminum Offset Printing Plates*, CIT-4-87 (Oct. 27, 1987) at 8 (“Since the reality is that HCI can in fact produce the positive plates, no question can arise as to retardation of the establishment of production: the claim, rather, relates to reduced production generally. Nor does an issue arise as to retardation of the establishment of production of two-sided negative plates. By HCI’s own account all the required research and development has been completed and the capital expenditures made to commence production.”)

⁵ Nominal widths include board manufactured to a maximum tolerance of plus or minus 1/8 of an inch.

ceiling construction because it requires three boards – two 48-inch boards plus a 12-inch rip from the third board if installed horizontally. Not only is this undesirable as it creates an additional joint, but because of the cutting required for the 12-inch rip, at least one edge does not have a mud taper, which makes it even harder to get a smooth joint. 54-inch board for 9-foot ceiling construction also translates into significantly lower labour and materials cost compared to using 48-inch board as it eliminates additional work and materials related to cutting and joining the additional 12-inch rip. Vertically installing a 9-foot length 48-inch width board is also undesirable and less efficient for 9-foot ceiling construction as it requires extra jointing per msf of board installed, which creates additional joint lines with higher risk of shadow lines and poor aesthetics. As such, 9-foot length 48-inch board is not standard and is not a commonly available product. Based on all of these factors, 54-inch board is considered to be unique and distinguishable from 48-inch board both in product characteristics and usage.

16. Under ASTM C1396, [

].⁶ Gypsum board volume is measured in the North American industry and wider construction sector in imperial units of measure, with typical units of measure used being thousands of square feet (“msf”), millions of square feet (“mmsf”), and billions of square feet (“bsf”).

17. Virtually all 54-inch board sold in Western Canada (*i.e.*, 99%) is sold in thicknesses of 1/2 inch and 5/8 inch.⁷ 1/2-inch thick 54-inch board is typically used as a single layer wall and ceiling material in residential work and in double-layer systems for greater sound and fire ratings. 54-inch board with 5/8-inch thickness is typically used in quality single-layer and double-layer wall systems. The greater thickness provides additional fire resistance, higher rigidity, and better impact resistance. The 5/8-inch product is sold as “type X” fire rated board and has improved fire resistance characteristics which are made possible through the use of special core additives. Although both thicknesses are available in any edge style, such as tapered and bevelled edge, CTG Canada believes that the Western Canadian market is all or almost all tapered edge because [

⁶ **CONFIDENTIAL Appendix 1** at Section 5.2.2.

⁷ [**CONFIDENTIAL Appendix 2** at para 17.

]. *See*

].⁸

18. In sum, the Western Canadian market for 54-inch board is all or virtually all composed of two products: tapered edge 1/2-inch thick board (*i.e.*, “standard” 54-inch board) and tapered edge 5/8 thick board (*i.e.*, “fire” or “Type X” 54-inch board).⁹

19. Subject gypsum board is also offered in several lengths including:

- 12 feet: standard length used for horizontal application, which is required for 9-foot construction (*i.e.*, 2-horizontal applications of 54-inch board); and
- 8, 9 and 10 feet: since the dumping Order was imposed against 48-inch board, these 54-inch boards are increasingly used vertically and in ceiling applications that would normally require 48-inch board.

20. Importantly, before September 2016, almost all of the Western Canadian 54-inch board market was composed 12-foot lengths. [

].¹⁰ U.S. exporters and their customers expanded their offerings of 54-inch board and focussed on 8-foot length products after provisional duties were imposed on 48-inch gypsum board as a result of the Tribunal’s findings in NQ-2016-002.¹¹ U.S. exporters also began marketing their 54-inch products for non-traditional applications.¹² This phenomenon and its impact on CTG Canada’s plans to establish production of 54-inch board in Western Canada are more fully described below.

⁸ **CONFIDENTIAL Appendix 2** at para 17.

⁹ In addition to these two products, [

Canada is unaware of any other [**CONFIDENTIAL Appendix 2** at para 17.

]. CTG
]. See

¹⁰ **CONFIDENTIAL Appendix 2** at para 24.

¹¹ **CONFIDENTIAL Appendix 2** at para 24.

¹² **CONFIDENTIAL Appendix 2** at para 24.

C. Production Process

21. To make gypsum board, gypsum rock is crushed and heated to about 150 Celsius, drying out roughly 75% of the chemically combined water in a process called calcining. Typically, roughly 45 kilograms of gypsum rock contains approximately 8.5 kilograms of water. The calcined gypsum powder (commonly referred to as “plaster of Paris”) is then used in producing the core of the board. The board is formed by introducing a slurry of calcined gypsum (also known as stucco), along with water, foam, pulps, starch and set control agents between two unwinding rolls of absorbent paper resulting in a continuous “sandwich” of wet board resting on a continuous belt line. To manufacture fire-resistant or water-resistant gypsum board, additional chemical components are added to the core when introducing the slurry of calcined gypsum.

22. As the board moves down the production line, the calcined gypsum rehydrates and recrystallizes reverting to a solid gypsum matrix, and the paper sheets become firmly bonded to the rehydrated core. After moving down the line for approximately 4 to 5 minutes, the continuous “sandwich” is firm enough to be cut to length and is then conveyed through dryers to remove excess moisture. The board is conveyed afterwards to a “take-off” point, where it is packaged, bundled, stacked, and removed to storage or shipped directly.

23. A high-level diagram illustrating the gypsum plasterboard manufacturing production process is provided in **CONFIDENTIAL Appendix 3**. Based on CTG Canada’s experience, this process is standard in North America in that the main stages of production process do not differ materially between the U.S. and Canadian plants, although the production process from one plant to another may vary depending on the type of gypsum they use and the design and configuration of the production facility.

24. Importantly, although the production process for 48-inch and 54-inch board is similar, the production of 54-inch board requires additional and more costly equipment to accommodate the extra six inches of board.

i. Differences in 54-Inch Production Equipment

25. CTG Canada is [

].¹³ Although producing different *lengths* of gypsum board¹⁴ can be achieved simply by changing the settings for existing equipment (*i.e.*, the knife, bundler and stacker) to accommodate the longer products, increasing the width of a product by six inches must be addressed in the initial design and construction of the entire plant. In order to achieve 54-inch production capabilities, CTG Canada must [

]. Therefore, in addition, to obtain production efficiencies that would render 54-inch production economically viable, CTG Canada must also [

]. These [

] in drywall manufacturing. [

].

26. In order to include the new product family in the local customer offering and maintain customer service levels, [

].

¹³ CONFIDENTIAL Appendix 2 at para 14.

¹⁴ Ranging from 6 feet up to a maximum of 16 feet.

D. Tariff Classification

27. Prior to the change in the tariff classification system in 2017, the subject goods were normally imported under the following tariff code:

- 6809.11.00.10: Boards, sheets, panels, tiles and similar articles, not ornamented: - Articles of plaster or of compositions based on plaster. – Gypsum wallboard. (Measured in square meters, “MTK”).

28. Under the customs tariff schedule revised in and applicable during 2017, subject goods were imported under the following tariff code:

- 6809.11.00.00: Boards, sheets, panels, tiles and similar articles, not ornamented: - Faced or reinforced with paper or paperboard only. (Measured in kilograms, “KG”).

29. Under the latest revised customs tariff schedule which took effect on January 1, 2018, subject goods are now imported under the following tariff code:

- 6809.11.00.11: Boards, sheets, panels, tiles and similar articles, not ornamented: - Faced or reinforced with paper or paperboard only – Gypsum wallboard: Of a width of 137.16 cm or more. (Measured in MTK).

30. Prior to the change in 2018, the customs tariff did not draw a distinction between gypsum board produced to 48-inch widths and gypsum board produced to 54-inch (*i.e.*, 137.16 cm) widths.

E. Countries of Export

31. This Complaint is with respect to 54-inch gypsum board originating in or exported from the United States for use or consumption in Western Canada. According to Canadian import data from Statistics Canada (“StatsCan”), gypsum board imports (which prior to January 1, 2018 includes both non-subject 48-inch and subject 54-inch board) from all other countries cleared in one of the Western provinces or territories were negligible.

32. These third country imports account for less than 6.5 mmsf (0.7 mmsf in 2015, 4.6 mmsf in 2016, and 1.1 mmsf in 2017) of total subject and non-subject imports into Western Canada, or no more than 0.1% of the total U.S. imports (subject and non-subject) into Western Canada, in

each of 2015, 2016, and 2017.¹⁵ With respect to 54-inch, these numbers are conservatively high given the fact that beginning in January 2018, the StatsCan data demonstrate that for subject board, there were *no* imports of 54” board into Western Canada from any country other than the United States. See **CONFIDENTIAL Appendix 4**.

F. Trade Unions Representing Persons Employed in the Production of Like Goods

33. Since there is *no* current production of like goods in Western Canada, there are no persons employed in the production of like goods. However, CTG Canada employs members [] in its production of 48-inch board.

Name	Known Contact Information
[
]

G. Known Exporters

34. The companies known to be producers or exporters of subject goods are:

¹⁵ See **CONFIDENTIAL Appendix 4**. The import volume for 2017 is based on an estimate as StatsCan import data in 2017 was measured in kilograms. Conversion used for this estimation is approximately 7.28 kilograms per square meter based on CTG Canada’s estimate of average weight of gypsum board in the Western Canadian market considering market composition (e.g., market split between ½-inch and 5/8-inch thickness products). The fact that imports from countries other than the U.S. is also evident based on import value, for which no conversion is required. Specifically, imports cleared through one of the Western Canadian provinces were \$78,901 in 2015, approximately \$1.4 million in 2016, approximately \$1.1 million in 2017, and \$277,366 for January-February 2018. Together, these represent 1.37 percent of total value of imports cleared in Western Canadian provinces between 2015 and February 2018.

Name	Known Contact Information
American Gypsum Company (“AGC”) a subsidiary of Eagle Materials	3811 Turtle Creek Blvd., Suite 1200 Dallas, Texas, USA, 75219
Continental Building Products, Inc. (“CBP”)	12950 Woeldgate Drive, Suite 700 Herndon, Virginia, USA, 20170 (*Note that CBP acquired the U.S. and Canadian gypsum operations of Lafarge in September 2013).
Georgia-Pacific Gypsum LLC (“GP”)	133 Peachtree Street NE Atlanta, Georgia, USA, 30303
National Gypsum Company (“NGC”)	2001 Rexford Road, Charlotte North Carolina, USA, 28211
PABCO Gypsum, a division of PABCO Building Products, LLC	PO Box 419074, Rancho Cordova, California, USA, 95741
USG Corporation (“USG”)	550 West Adams Street Chicago, Illinois, USA, 60661-3676

35. [

]. In 2017, [

]. [

] the prevailing market price for 54-inch board has been depressed and suppressed due to dumped subject imports from its competitors, which has materially retarded CTG Canada’s investment [

].

36. **CONFIDENTIAL Appendix 5** is the 2016 Global Gypsum Directory, which provides a full list of all the gypsum board manufacturing plants in the United States and Canada, including owner names and plant addresses. Some of the Canadian plants listed in the Global Gypsum Directory have been idled since 2011 and would have had no production from 2015 to present. **CONFIDENTIAL Appendix 6** contains reports concerning these idled facilities.

37. Based on 2018 StatsCan import data, a majority of the 54-inch imports cleared in Western Canadian provinces were exported from [] in terms of volume.¹⁶ As shown in Gypsum Directory, [

¹⁶ **CONFIDENTIAL Appendix 4.**

].¹⁷ In addition, [] percent and [] percent of imports were from [] respectively, and CTG Canada believes that they are produced in []¹⁸ []

].

38. Although CTG Canada is aware that there is 54-inch board production in Eastern Canada, [], sales from Eastern Canada to Western Canada are not viable due to high freight costs incurred over long distances when shipped over such distances. For example, []

[]. CTG Canada estimates that the freight costs from []:

Table 1: []

[]		
]

39. CTG Canada’s average net unit sales price in 2017 for 54-inch board in Western Canada was []. Net price excludes outbound freight to customers but CTG Canada has to cover internal freight with the net price realized. []

[]. Accordingly, as discussed in more detail in **Section VI**, Eastern Canadian production of 54-inch board remains negligible.

H. Known Canadian Importers

40. The companies known to be importers of subject goods in Western Canada, affiliates of the U.S. manufacturers, are:

¹⁷ CONFIDENTIAL Appendix 5.

¹⁸ See CONFIDENTIAL Appendix 4 and CONFIDENTIAL Appendix 5.

Name	Known Contact Information
CGC Inc., directly or indirectly owned by USG.	350 Burnhamthorpe Road West, 5th Floor, Mississauga, Ontario, Canada, L5B 3J1
Georgia-Pacific Canada LP (“GP Canada”), directly or indirectly owned by GP US.	2180 Meadowvale Blvd, Suite 200, Mississauga, Ontario, L5N 5S3

41. As discussed above, [] [], these importers are believed to account for virtually all of the subject imports. As detailed below, CTG Canada has been [].

42. In addition, the following are other major distributors of gypsum board in Canada may have also imported subject goods into Canada:

Name	Known Contact Information
Foundation Building Materials (“FBM”)	202 St. Langley, BC V1M 4A6
Timber Mart	20 Floral Parkway, Unit A, Vaughan, ON, L4K 4R1
WSB Titan	50 Royal Group Crescent, Unit 2, Vaughan, ON, L4H 1X9
ILDC	596 Kingston Rd W., Suite 100, Ajax, ON, L1T 3A2
Castle	100 Milverton Drive, Suite 400 Mississauga, Ontario L5R 4H1
TORBSA	21 Parr Blvd, Unit 6 Bolton, Ontario L7E 4G3

43. FBM, WSB Titan and ILDC are Gypsum Specialty Dealers (“GSDs”). Timber Mart and Castle are buying groups, and within each group, there are GSD members and Lumber Merchants (“LBMs”) members. TORBSA is a buying group with GSD members only. We detail the nature of GSDs, LBMs, and buying groups below in **Section IV.I.**

I. Marketing and Distribution

i. Demand for Subject Gypsum Board

44. Western Canadian demand for subject gypsum board is driven almost entirely by residential building construction, including:

- New residential construction for single family houses and multi-unit residential buildings (e.g., townhouses, apartment and condominium towers). Approximately [] percent of the demand for 54-inch board is believed to be driven by this.
- Renovation and repair such as replacement of old interior walls and ceilings in buildings. Approximately [] percent of the demand for 54-inch board is believed to be driven by this.

45. Commercial and institutional construction, such as construction for leisure, school, hospitals, etc. accounts for less than [] percent of the demand for subject gypsum board in Western Canada.

46. Subject gypsum board is subject to different demand factors than standard 48-inch gypsum board that flow from its distinctive physical characteristics. Given that 54-inch board is best-suited to create interior 9-foot ceiling walls, 54-inch has historically been used primarily in residential construction (which is where the vast majority of 9-foot walls are built). Non-subject 48-inch board is used in both residential and commercial construction. As discussed above in **Section IV.B**, 54-inch board is considered to be unique and distinguishable from 48-inch board because 48-inch board has historically been deemed unsuitable for 9-foot ceiling construction.

47. Of the 54-inch gypsum board sold in Western Canada, CTG Canada believes that 1/2-inch-thick standard board, and 5/8-inch thick, fire-resistant board (both virtually always with a tapered edge) account for all or virtually all 54-inch board sold in Western Canada. In this regard, [] CTG Canada's 2017 Western Canadian sales of 54-inch board were 1/2-inch thick and 5/8-inch thick board with tapered edge as discussed above, which demonstrates that the Western Canadian market for 54-inch board is all or virtually all 1/2-inch thick and 5/8-inch thick board with tapered edge. In addition, CTG Canada's ratio between Western Canadian sales of 1/2-inch and 5/8-inch thick board was approximately [] in 2017, meaning that the Western Canadian market for 54-inch board is [].

48. As noted, gypsum board is used for interior walls and ceilings. Subject gypsum board is primarily used in residential construction, in both new and renovation applications (*i.e.*, replacing 9-foot ceilings). Gypsum has been used as a building material for centuries because of its remarkable fire-resistant properties. When processed into gypsum board, it provides durable, economical, non-combustible and easily decorated surfacing material for interior walls, ceilings and partitions. In fact, gypsum board is now the most widely used material for ceilings and interior

walls of residential, commercial and institutional buildings in developed countries. Paper-covered gypsum board is well suited to the application for which it was designed, that is interior non-load bearing wall-construction.

49. In Canada, gypsum board, including subject gypsum board, is a relatively “mature product” in its development life with near 100% penetration of all potential markets in Canada. The end use of gypsum board is divided into three categories, which have traditionally been segmented as follows: new residential, repair and renovation, and new non-residential construction. Gypsum board differs from other products used in Canada for wall and ceiling construction business such as plywood, hardboard, fibre board, or wood panelling, mostly because of its non-combustible core. While functionally gypsum board competes with these other wall or ceiling construction materials, these other products (such as wood panelling) are much more expensive and are less fire-resistant. These other products therefore do not provide effective competition to gypsum board and their use is restricted to high-end, niche markets. Plastered walls also compete functionally with gypsum board, but plastered walls are likewise much more expensive. According to the Gypsum Association, virtually 100% of interior residential walls and ceilings and 90% of interior walls and concealed (as opposed to tiles) ceilings across all construction sectors are made of gypsum panels, with the balance being made up of the other products. See **Public Appendix 7**.

ii. Supply of Subject Gypsum Board

50. On the supply side, the Western Canadian 54-inch gypsum board market is composed of the three tiers: U.S. manufacturers, Canadian distributors, and end-users. There are no current Canadian manufacturers of 54-inch board in Western Canada. U.S. manufacturers sell gypsum board to Canadian distributors, not directly to end-users. Ends users of subject gypsum board are primarily high volume residential contractors rather than individual “DIY” homeowners because 54-inch board is heavier and wider than 48-inch board, making it more difficult to hang without professional equipment or assistance.

51. Thus, the main channel of distribution for 54-inch board is generally through larger volume GSDs and LBMs, who in turn generally sell gypsum board to larger professional contractors installing gypsum board in residential projects. GSDs and LBMs possess specialized delivery equipment and sell almost exclusively to larger residential applicators and building developers.

52. Most individual GSD and LBM companies arrange their purchases through buying groups. Buying groups consist of groups of distributors of the same type, or of different types, coming together to be able to aggregate supply and negotiate lower prices from manufacturers of gypsum board by reason of their higher volume of purchases, and potential ability to support suppliers' brands and market positions.¹⁹ Buying groups have a longstanding presence in the Canadian market and they have increased in number over the last 10 years. As a general rule, delivery of gypsum board is made directly to the individual distributors, but billing and payment in respect of such deliveries is made by the buying group. The buying groups, therefore, provide suppliers with an aggregated sales party, one credit risk and a contracting party for what are usually annual sales contracts or programs.

53. Unlike 48-inch board, subject gypsum board is not usually sold through the retail channel (*i.e.*, Lowes/Rona, Home Depot, etc.) because the demand for subject board from "DIY" homeowners and small contractors doing small renovation projects is very low. However, []].

iii. **Selling Terms and Conditions in Western Canada**

54. In Western Canada, the terms on which board products are sold to customers are fairly standard. There are typically volume rebates on purchases over specified thresholds or plateaus within a negotiated accounting period. There may also be off-invoice discounts that are not volume-based. In special circumstances, []].

55. Typically, customer contracts in Western Canada are negotiated on []]. These customer contracts typically provide for rebates which, when deducted, result in the "Net, Net, Net" (*i.e.*, "Triple Net") price, which is the bottom-line price to the customer. The starting point for these contract negotiations is the manufacturer's gross list price. From there, []].

¹⁹ For example, some of the major distributors of gypsum board in Canada identified in **Section IV.G** are buying groups composed primarily of GSD and LBM members.

]. Customer contracts then typically provide for some or all of following rebates (depending on product category and product type) that, when deducted, result in the Triple Net price.

- [
-
-
-
-
-
-
-
-
-
-

].

56. These rebates/allowances are negotiated and concluded []. Before the rebate/allowance negotiations are concluded, [

] and caution should be exercised about drawing conclusions about market trends from these data.

57. [

-
-
-
-

58. As a result of these competitor adjustments, CTG Canada often has no choice but to follow suit or lose sales. For CTG Canada’s Western Canadian sales of 54-inch board in 2017, the total of various rebates and discounts as a percentage of list price were, on average: [

] for ½-inch thick board, and; [] for 5/8-inch thick board.²⁰

59. Although annual price program negotiations typically include prices and rebates for both subject gypsum board and 48-inch board, [

]. Similarly, manufacturers announce price increases for 48- and 54-inch products both together and separately.

60. Unless otherwise stated, prices presented in this Complaint have been presented as average net prices (*i.e.*, excluding outbound delivery charges). Invoiced prices to CTG Canada’s customers are invoiced at a delivered price (which includes delivery charges). Most prices are presented as CAD per thousand square feet (“msf”). The exception is retail stores (to the extent they sell 54-inch board at all), which typically advertise their gypsum board in CAD per sheet (which is

²⁰ See **CONFIDENTIAL Appendix 2** at para 20.

typically 4.5 feet by 12 feet, or 54 square feet, which translates approximately to 19.23 sheets per msf).

61. There are no known associations of producers of gypsum board in Canada. There is the Gypsum Association of producers in the United States.

V. **NO DOMESTIC PRODUCTION OF LIKE GOODS AND CTG'S POTENTIAL INVESTMENT**

62. There is no production of like goods in Western Canada within the meaning of section 2 of the *SIMA*. However, there is production of 48-inch gypsum board in Western Canada. As discussed above in **Section IV.C.i**, CTG Canada's existing 48-inch gypsum board production facilities cannot produce 54-inch board without implementing its planned investments.²¹

63. In determining whether two products constitute a single class of like goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfil the same customer needs.²² Under this framework, 48-inch board is not "like" 54-inch board.

A. Prior Tribunal Determination

64. During the Tribunal's injury inquiry concerning 48-inch gypsum board, the Tribunal accepted that only domestically produced 48-inch gypsum board is "like goods" to imported 48-inch gypsum board and indeed, no party contested that conclusion as shown below. By the same token, only 54-inch gypsum board should be considered "like goods" to imported 54-inch gypsum board:

There were no arguments made that domestically produced gypsum board is not like goods in relation to the subject goods or that there is more than one class of goods. As it did at the preliminary injury inquiry stage of this matter, the Tribunal

²¹ CTG Canada is aware of 54-inch production in Eastern Canada, []. However, as also discussed in **Section VI** below in the context of the Western Canadian market as a regional market, supplying the Western Canadian market from Eastern Canadian production is not viable, thus is negligible, due to the long distance and high costs associated with freight.

²² *Oil Country Tubular Goods*, PI-2014-002 (Oct. 3, 2014) at para 25.

finds that gypsum board produced in Western Canada that is of the same description as the subject goods constitutes like goods, and will conduct its injury analysis on the basis of one class of goods.²³

B. Physical Characteristics

65. 54-inch board is 6 inches (or 12.5 percent) wider than 48-inch board. In addition, 54-inch board for use in traditional 9-foot ceiling applications are 12-foot in length (although 10-foot and 8-foot length 54-inch board has increasingly been used for applications that traditionally used 48-inch board since the dumping Order was imposed against dumped imports of 48-inch board), as compared to 48-inch board which is most commonly available in 8-foot length. This added width, as well as additional typical length, means that 54-inch board is heavier per piece. For example, even for the same length, a 12-foot length, 54-inch by ½ inch thickness board weighs approximately 75.5 lbs, which is 9 lbs (or 13.5 percent) heavier than the average 12-foot, 48-inch by ½ inch thickness board which weighs approximately 66.5 lbs. This additional weight and size also makes 54-inch board more difficult to handle, transport and manoeuvre for transport and use in a project site, which reduces the appeal for the “DIY” homeowner. The differences in physical characteristics therefore cause the differences in the channel of distribution through which 54-inch board and 48-inch board are sold (*e.g.*, retail stores carry 48-inch board, but usually not 54-inch board).

C. Substitutability and End Uses

66. As discussed above in **Section IV.B**, 48-inch and 54-inch board are not generally substitutable from an end user perspective under normal circumstances although under the exceptional circumstances that have existed since the imposition of antidumping duties on 48-inch board, CTG Canada believes that there has been emergence of [

] discussed below.

Otherwise, in the normal course, 54-inch board is primarily used for the construction of residential buildings with 9-foot ceilings by horizontally stacking two 54-inch boards, totalling 108 inches or 9 feet. 48-inch width boards are undesirable for 9-foot ceiling construction because it requires three boards – two 48-inch boards plus a 12-inch rip from the third board if installed horizontally. Not only is this undesirable as it creates an additional joint, but because of the cutting required for

²³ *Gypsum Board*, NQ-2016-002 at para 38.

the 12-inch rip, at least one edge does not have a mud taper, which makes it even harder to get a smooth joint. 54-inch board for 9-foot ceiling constructions also translate into significantly lower labour and materials cost compared to using 48-inch as it eliminates additional work and materials related to cutting and joining additional 12-inch rip. Vertically installing a 9-foot length 48-inch width board is also undesirable and generally applied for 9-foot ceiling construction as it requires extra jointing per msf of board installed, which creates additional joint lines with higher risk of shadow lines and poor aesthetics. As such, 9-foot length 48-inch width board is not standard and is not a commonly available product. Their different physical characteristics mean the two products have historically satisfied different user needs.

D. Pricing

67. 54-inch board has historically attracted a price premium in both Eastern and Western Canada. It historically attracted a [] percent price premium above 48-inch products. This price premium reflected (1) 54-inch board's increased production costs (it requires specialized equipment and is more difficult to transport, handle, and store than 48-inch board due to its wider size); and (2) lower sales volumes for a more niche product. Since the dumping order against U.S. imports of 48-inch board into Western Canada, however, [

], but prices for 54-inch board have been increasingly depressed as undisciplined dumping continued to intensify. Now, [

]. For example, CTG Canada's Western Canadian sales of [

] in 2017. For Western Canadian sales of [

] as shown below:

Table 2: CTG Canada's Western Canadian Net Sales Prices²⁴

Product		2015	2016	2017
Standard Board (1/2" Thickness)	48" (\$/msf)	[
	54" (\$/msf)			
	54" Premium (\$/msf)			
	54" Premium (%)			
Fire Board (5/8" Thickness)	48" (\$/msf)			
	54" (\$/msf)			
	54" Premium (\$/msf)			
	54" Premium (%)]

68. Notably, however, []. Specifically, CTG Canada's net unit selling price for 1/2-inch thick 54-inch board in Eastern Canada [

]. As such, [

] in Eastern Canada throughout 2015-2017. Likewise, CTG Canada's net unit selling price for 5/8-inch thick 54-inch board in Eastern Canada [

] as shown below:

Table 3: CTG Canada's Eastern Canadian Net Sales Prices²⁵

Product		2015	2016	2017
Standard Board (1/2" Thickness)	48" (\$/msf)	[
	54" (\$/msf)			
	54" Premium (\$/msf)			
	54" Premium (%)			
Fire Board (5/8" Thickness)	48" (\$/msf)			
	54" (\$/msf)			
	54" Premium (\$/msf)			
	54" Premium (%)]

²⁴ CONFIDENTIAL Appendix 8.

²⁵ CONFIDENTIAL Appendix 8.

E. Distribution Channels

69. 54-inch and 48-inch board have and continue to sell through different channels of distribution in Western Canada. The important difference is that 48-inch board sells substantial quantities through retailers but 54-inch board does not. This difference flows from the physical characteristics of the board. 54-inch board is wider, heavier, and as a result, more difficult to install without assistance and not appropriate for most small home owner renovation projects. This limits its use by “DIY” homeowners and therefore its sales through the retail channel. However, 48-inch and 54-inch both sell through GSDs and LBMs – who then resell the product to professional contractors for use in residential and commercial construction.

VI. “REGIONAL MARKET” UNDER THE SPECIAL IMPORT MEASURES ACT

70. This Complaint concerns the dumping of subject goods for use or consumption in Western Canada and the material retardation of the establishment of a Canadian industry for the production of 54-inch gypsum board caused by subject imports pursuant to *SIMA*. As elaborated below in detail, Western Canada meets the very particular requirements to be treated as a “regional market” within the meaning of subsection 2(1.1) of the *SIMA*. As the evidence shows, the Western Canadian market is distinct from the Eastern Canadian market. Although like goods are produced in Eastern Canada, very limited quantities are shipped into the Western Canadian market largely due to the cost of transporting these goods, and the Western Canadian market is completely dominated by imports as a result.

71. The Western Canadian market for 54-inch board has been [] by a significant concentration of subject goods, particularly in the wake of the Tribunal’s imposition of dumping duties on 48-inch gypsum board. [

[]. This surge of dumped and injuriously priced 54-inch imports has prevented the approval and full activation of CTG Canada’s plans to establish production of 54-inch board in Western Canada.

72. As elaborated below, consistent with the Agency’s and Tribunal’s prior determinations regarding regional markets and in particular their prior determinations concerning the regionality

of the 48-inch market, the Western Canadian market clearly constitutes a “regional market” under subsection 2(1.1) of the *SIMA* and there has been a concentration of imports of subject goods into Western Canada. The assumptions underlying the below discussion of the regional market criteria are contained at paras 25 to 37 of the **Declaration of Matthew Walker, CONFIDENTIAL Appendix 2.**

A. The Regional Market Provisions Can Be Applied in a Retardation Case

73. As a threshold matter, although the Complainant is unaware of any precedent where the Agency or Tribunal were asked to consider the issue of retardation in a regional market context, there can be no doubt that *SIMA* contemplates the possibility of a regional retardation case. Section 42(5) of *SIMA*, the section that sets out the pre-conditions that the Tribunal must find before rendering an affirmative injury finding, explicitly provides for the possibility of finding retardation in a regional market:

When domestic industry based on regional markets

(5) Where subsection 2(1.1) applies in respect of the dumping or subsidizing of goods to which the preliminary determination applies, the Tribunal shall not find that the dumping or subsidizing of those goods has caused injury or **retardation** or is threatening to cause injury unless

- a. there is a concentration of those goods into the regional market; and
- b. the dumping or subsidizing of those goods has caused injury or **retardation** or is threatening to cause injury to the producers of all or almost all of the production of like goods in the regional market.

(Emphasis added)

B. Western Canada is a Regional Market for 54-Inch Board under *SIMA*

74. The evidence provided in this Complaint establishes that, pursuant to section 2(1.1) of *SIMA*, Western Canada (*i.e.*, BC, AB, SK, MB, YK and NT) is a regional market.

75. Section 2(1.1) of *SIMA* identifies two tests to determine whether a regional market exists. *First*, whether producers in the market sell all or almost all of their production of like goods in the market; and *second*, whether demand in the market is supplied to any substantial degree by producers of like goods located elsewhere in Canada.

76. In *Gypsum Board*, NQ-2016-002, the Tribunal clarified these tests. *First*, the Tribunal held that although CTG Canada produced 48-inch board (like goods in that case) in both Western and Eastern Canada, section 2(1.1)(a) was to be determined with respect to the production in Western Canada only.²⁶ Therefore, the fact that CTG Canada produces 54-inch board (like goods in this case) in Eastern Canada is irrelevant to the determination of a regional market for the purposes of this Complaint.

77. *Second*, the Tribunal held that demand is not substantially supplied by producers located elsewhere in Canada if their products account for less than 14 percent of demand in the market.²⁷ Moreover, the Tribunal held that “demand in the market” within the meaning of section 2(1.1)(b) is to be assessed on the basis of total market demand, including imports.²⁸ Accordingly, the fact that there is currently *no* Western Canadian production does not preclude the finding of a regional market in Western Canada given the substantial degree to which imports are used to satisfy the total market demand.

i. There is no Western Canadian Production

78. As discussed above, there is no production of like goods in Western Canada.²⁹ As such, this prong of the regional market test is fully satisfied because there is no production in Western Canada sold outside of Western Canada.

²⁶ *Gypsum Board*, NQ-2016-002 at paras 49-53.

²⁷ *Gypsum Board*, NQ-2016-002 at para 54.

²⁸ *Gypsum Board*, NQ-2016-002 at paras 56-57. The Tribunal’s decision was laudably forward thinking as demonstrated by this scenario. If the threshold were assessed on the basis of domestic demand, *any* sales of Eastern Canadian production in Western Canada would deny *SIMA* protection because *none* of the Western Canadian demand is satisfied by Western Canadian production. In other words, sales of Eastern Canadian production necessarily satisfy 100% of the demand satisfied by domestic production. This result is irreconcilable with the clear statutory intent to provide for regional market protection in the case of a claim for retardation, when there is not yet *any* production in the regional market.

²⁹ See **CONFIDENTIAL Appendix 2** at para 7

Table 4: Regional Market Tests³¹

Tests	2015	2016	2017
Density Test	[
Distribution Test			
Ratio Test]

82. As the Tribunal noted in *Certain Grain Corn Originating in or Exported from the United States of America and Imported into Canada for use or Consumption West of the Manitoba-Ontario Border (Re)*,³² these tests can be applied "... alone or in combination, to measure concentration."³³ The Tribunal described the three tests in the following way:

In the first test, the density test, the volume of dumped and/or subsidized imports into the regional markets is compared to the grain corn supplied by Canadian producers within the market. A density test result of more than 1.0 indicates that there are more dumped and/or subsidized imports in the regional market than domestically produced goods (the subject imports have a higher market share than the domestic products). In the 1999-2000 crop year, the density test result was 1.3 for Western Canada.

The second test, the distribution test, establishes the proportion of the dumped and subsidized goods imported into all of Canada that is represented by the quantity of those goods imported into the regional market. In the 1999-2000 crop year, dumped and subsidized imports into Western Canada represented a 35 percent share of the total dumped and subsidized imports into Canada.

The third test is the ratio test. It compares the regional market's share of the total dumped and/or subsidized imports (*i.e.* the distribution test result, in this case, of approximately one third) to the regional market's share of total grain corn consumption in Canada. The ratio test is generally considered to be the most robust indicator of whether there is a concentration of imports of the subject goods into the regional market.³⁴

83. Taking that guidance into account, the following paragraphs demonstrate that the concentration tests have been met.

³¹ **CONFIDENTIAL Appendix 2** at Attachment 3.

³² *Grain Corn*, NQ-2000-005 (March 22, 2001).

³³ *Grain Corn*, NQ-2000-005 at para 118.

³⁴ *Grain Corn*, NQ-2000-005 at paras 119-121.

1) Density Test

84. Given that there is no production of like goods in Western Canada and [] of the Western Canadian demand is satisfied by Eastern Canadian production, the subject import density (*i.e.*, share of the Western Canadian regional market) is []. The subject imports have dominated the Western Canadian market in each year between 2015 and 2017.³⁵ These market shares can be compared to the market shares obtained by subject imports in Eastern Canada. There, the market share of subject imports in the Eastern Canadian market has been [] of the total estimated Eastern Canadian market between 2015 and 2017.³⁶ The Tribunal has previously recognized a concentration of imports even where the density test result was as low as 8 percent.³⁷ More recently, the Tribunal recognized that a density indicator ranging from 43 to 53 percent was found to satisfy the requirements of the density test.³⁸

2) Distribution Test

85. The distribution of subject imports into Western Canada has been high during the past three years. As shown in estimated market table, approximately [] of subject goods were imported into Western Canada, while the total estimated imports of subject goods to Canada was approximately [] in 2015, 2016 and 2017, respectively.³⁹ As such, the distribution of subject imports going into Western Canada was approximately []%, []% and []% in 2015, 2016 and 2017 respectively. The Tribunal has previously found a concentration of imports into Western Canada when the distribution of imports into the region was only 35% of the total imports coming into Canada.⁴⁰

³⁵ **CONFIDENTIAL Appendix 2** at Attachment 3.

³⁶ See **CONFIDENTIAL Appendix 2** at Attachment 3, notes for 1(f), 2(f) and 3(f).

³⁷ *Certain Beer*, NQ-91-002 (Oct. 2, 1991) at para. 39.

³⁸ *Gypsum Board*, NQ-2016-002 at para. 68 citing *Certain Whole Potatoes* (Sep. 10, 2010), RR-2009-002 at para. 98.

³⁹ **CONFIDENTIAL Appendix 2** at Attachment 3.

⁴⁰ *Grain Corn*, NQ-2000-005 at para 120.

3) Ratio Test

86. Western Canada's share of total subject imports is also disproportionately high compared to Western Canada's share of the total Canadian market. As discussed above with respect to the distribution test, Western Canada's share of total subject imports has been between [] between 2015 and 2017.⁴¹ During the same period, Western Canada's share of the total Canadian market was anywhere between []% and []%.⁴² As such, the ratios between these two indicators were [] in 2015, [] in 2016, and [] in 2017. This means that, for example, in 2017, Western Canada received [] it should be expected to receive if subject imports were distributed across the entire Canadian market in proportion to the size of the regional markets. Notably, the Tribunal has previously found that a concentration of imports when the ratio of import distribution to market distribution in the region was only 1.22.⁴³ Moreover, in *Gypsum Board*, the Tribunal found that the "penetration of imports from the United States into Western Canada as compared to the rest of Canada is **high**" (emphasis added), when the ratio test generated results of only 1.78, 1.57 and 1.54 respectively,⁴⁴ further demonstrating that the import penetration of 54-inch board into Western Canada is high enough to satisfy *SIMA*'s concentration requirements.

ii. **Retardation of All Production of 54-Inch Board in Western Canada**

87. Finally, the evidence demonstrates that the presence of subject goods has caused the retardation of production of all 54-inch board in Western Canada. This is made evident by the fact that there is no production of 54-inch board at all in Western Canada, and only CTG Canada is currently capable of producing 48-inch board in Western Canada. This satisfies the requirement in section 42(5)(b) that the "dumping ...has caused retardation...to the producers of all or almost all of the production of like goods in the regional market."

⁴¹ **CONFIDENTIAL Appendix 2** at Attachment 3.

⁴² **CONFIDENTIAL Appendix 2** at Attachment 3.

⁴³ *Fresh Iceberg (Head) Lettuce*, NQ-92-001 (Dec. 15, 1992) at para. 66.

⁴⁴ *Gypsum Board*, NQ-2016-002 at para 69 (emphasis added).

VII. DUMPING

88. In *Gypsum Board*, the Agency found that cooperative exporters from the United States, through their affiliated importers, had dumped 48-inch gypsum board into Western Canada at margins of dumping ranging from 94.6 to 211.0 percent.⁴⁵ All other exporters were issued a margin of dumping of 324.1 percent expressed as a percentage of the export price.⁴⁶

89. In addition, the evidence before the Tribunal also confirmed that the U.S. exporters have resorted to aggressive pricing strategy in order to cause material injury to CTG Canada, *i.e.*, to acquire market share in Canada at any cost. This led the Tribunal to find as follows:

Thus, it became apparent to the Tribunal that U.S. exporters treat their North American sales as part of a single continental operation. Specifically, U.S. exporters will export goods to Canada and treat these sales as profitable as assessed on the basis of their sales price to their related importers (but not necessarily based on the price from the importer to the next level of trade). This is because these sales still provide the benefit of contributing to the fixed costs of their U.S. factories. This strategy partly explains the increases in import volumes throughout the POI.⁴⁷

90. For the purpose of determining dumping, the U.S. exporters and their related importers made the following telling admissions, which confirmed that they have knowingly and willingly sold at low prices, absorbing freight and cost increases, and exchange rate changes, even if that means selling into Western Canada at prices that do not generate a profit:

Written Witness Statements	
Public Witness Statement of Mr. Leo Bissonnette, Regional Business Manager for Canada, Georgia-Pacific (para. 15)	“In roughly 2013, the Canadian dollar began losing value relative to the US dollar. GP currently produces gypsum board in the US, and most of our costs are denominated in US dollars. As the Canadian dollar falls relative to the US dollar, GP has sought to raise our Canadian prices to recover our margins...To remain competitive with CTG in Western Canada, GP was unable to raise prices in line with the dropping Canadian dollar...”
Testimony on Direct Examination	

⁴⁵ *Certain Gypsum Board* (Dec. 5, 2016), GB 2016 IN (CBSA) at Appendix 2. Notably, the CBSA calculated export prices for the cooperating exporters (CTG US, GP, and USG) by using section 25 of *SIMA* because it found that the section 24 export prices were unreliable. *See Certain Gypsum Board* (Dec. 5, 2016), GB 2016 IN (CBSA) at paras 62, 72, 81.

⁴⁶ *Certain Gypsum Board* (Dec. 5, 2016), GB 2016 IN (CBSA) at Appendix 2.

⁴⁷ *Certain Gypsum Board*, NQ-2016-002 at para 84.

<p>Public Testimony of GP on Direct Examination (Public Transcript: page 315 at lines 20 to 25; page 316 at lines 1 to 11)</p>	<p>Mr. Jonathan O’Hara (Counsel for GP): “From a management and a finance perspective, does GP wish that prices in the market had gone up more, or that they had been able to increase their prices more?”</p> <p>Mr. Duane Hughes (Vice-President of Finance and Business Development, GP): “Absolutely. Especially given the currency devaluation over the last several years, we denominate everything in U.S. dollar, of course, and we are shipping from the U.S. It hurts us badly.</p> <p>The downside of that is, as Leo said, we are a fairly small part of the market so, even though our costs have gone up dramatically, we still have to meet the alternative for the customer. And that is the way we view stuff; what is the customer’s best alternative? So if the people that are pricing those customers are at levels below what we can attain to recapture all that currency devaluation, yes, we have to do that.”</p>
<p>Public Testimony of Continental on Direct Examination (Public Transcript: page 292 at lines 20 to 25; page 292 at lines 1 to 11)</p>	<p>Ms. Cyndee Todgham-Cherniak (Counsel for CBP): “You have indicated in CBP Canada’s importer questionnaire that CBP stopped selling into Western Canada. Can you inform the Tribunal about the timing of CBP’s exit from Western Canada?”</p> <p>Mr. Tim Power (General Counsel, CBP): “Sure. In about April of 2015, our new CEO looked at our sales to one customer in Western Canada and determined it didn’t make a lot of sense to continue those sales. Our core markets are Eastern U.S., Eastern Canada. So he decided we should stop shipping to that customer. Among other things, freight costs were a bit too high. In the second half of 2015, that customer continued to want supply. So some additional supply was provided to that customer at rates that were increased to reflect the freight rates. Then by early 2016, that relationship was no longer working out for either party, so those remaining shipments were shut down.”</p>
<p>Testimony on Cross-Examination</p>	
<p>Public Testimony of GP on Cross- Examination (Public Transcript: page 321 at line 25; page 322 at lines 1 to 22)</p>	<p>Mr. Christopher Cochlin (Counsel for CTG): “...{D}id I hear right, Mr. Hughes, when you were speaking about the fact that when you were competing in the market with an appreciating U.S. dollar against CertainTeed in that context, with higher costs selling into Canada, you were going to have to forgo higher pricing in order to sell, to continue to sell and to service the customers?...”</p> <p>Mr. Duane Hughes (Vice-President of Finance and Business Development, GP): “(...) When you think about it, the way we think about it is a customer has alternatives, that they can go get product, any product, whether it is ours or anybody else’s.</p>

	<p>And so we always try to price to the customer's next best alternative. So to the extent that a customer, as an example, could get a product for \$200, it is going to be difficult for us unless we bring a better service proposition to him, to price in excess of that number.</p> <p>And so my comments really related to the fact it would have been great to get the entire appreciation back but, if the customer could in fact get it at a cheaper price, then we would have to meet that price in order to get it, otherwise you would forgo the entire sale, which otherwise would have been profitable.”</p>
<p>Public Testimony of Continental on Cross- Examination (Public Transcript, page 299 at lines 21 to 25)</p>	<p>Mr. Michael Milne (Counsel for CTG): “Is it fair to assume from that your Canadian operations were not profitable in 2015?”</p> <p>Mr. Tim Power (General Counsel, CBP): “I go back to the concerns I had earlier about foreign currency adjustments. Because of those, it is possible that we were not making money.”</p>
<p>Testimony on Response to Tribunal Questions</p>	
<p>Public Testimony of GP in Response to Tribunal Questions (Public Transcript, page 349 at lines 21 to 25.)</p>	<p>Mr. Duane Hughes (Vice-President of Finance and Business Development, GP): “As long as that sale is still profitable and that is our next best alternative for that volume versus going somewhere else, we would continue to sell the customer. It may be less profitable, but if it is still profitable, it may still be the best way to go.”</p>

91. Based on these admissions and the dumping analysis shown below, evidence establishes that subject imports from the United States in Western Canada are dumped by a significant margin.

A. Normal Value

92. For the purpose of the dumping analysis, CTG Canada has determined normal values based on the monthly sales prices realized by CTG US in its domestic market (*i.e.*, United States) for sales of 54-inch board during 2017 and January-February 2018 pursuant to section 15 of the *SIMA*,⁴⁸ as shown in **CONFIDENTIAL Appendix 10**. U.S. prices realized by CTG US in this

⁴⁸ CTG Canada has not conducted section 19 normal value determination because, based on the best information available to the Complainant, it appears that the U.S. exporters had a significant volume of profitable home market sales of gypsum boards in 2016 and 2017. For example, see USG’s 2017 10-K report in **Public Appendix 9** showing that the company recorded operating profit margin of approximately 19% for its U.S. Wallboard and Surfaces segment in 2016 (operating profit of US\$334 million over sales of US\$1,778 million) and 16% in 2017 (operating profit of US\$314 million over sales of US\$1,916 million). Furthermore, the CBSA found that all cooperating exporters have profitable domestic sales of 48-inch board in the *Gypsum Board*

Appendix are net unit prices (*i.e.*, triple net selling price excluding freight to customers, or in other words net of rebates/discounts as well as freight).⁴⁹ Sales were made in U.S. dollars, which have been converted into Canadian dollars based on monthly average exchange rate for the month in which sales occurred. These exchange rates are provided in **Public Appendix 11**.

93. For the purposes of determining dumping margins, CTG Canada has used ½-inch thick and 5/8-inch thick 54-inch board as benchmark products given that they have constituted [] of CTG Canada’s sales of 54-inch board in Western Canada in 2017. Among CTG Canada’s 2017 sales of 54-inch board, [] percent were ½-inch thick board and [] percent were 5/8-inch thick board. CTG Canada has used monthly U.S. net sales prices (*i.e.*, Triple Net, net of rebates/discounts and outbound freight) for 54-inch board with thickness of 1/2-inch and 5/8-inch realized by its sister company CTG US and reported in CTG US’s accounting system, for board produced and sold in the United States. In the United States, like in Canada, prices are determined by market forces. As such, CTG US’s price represents the U.S. market price for the purpose of determining normal values under section 15 of *SIMA*.

94. Based on these analysis, the following normal values have been determined and used for the purposes of dumping analysis, which are shown in detail in **CONFIDENTIAL Appendix 10**:

Table 5: Normal Values

Period	NV for 1/2 (\$/MSF)	NV for 5/8 (\$/MSF)
Q1-2017	[
Q2-2017		
Q3-2017		
Q4-2014		
Jan-Feb 2018]

Finding. *See Certain Gypsum Board* (December 5, 2016), GB 2016 IN (CBSA) at para 59 for CTG US, para 66 for GP USA, and para 76 for USG. Finally, to the extent that section 19 normal value determination is warranted because of U.S. home market sales at less than cost of goods under section 16 of the *SIMA*, the use of section 15 normal values would result in a conservative analysis as the cost plus normal value under section 19 would be higher than the section 15 normal values.

⁴⁹ *See* **CONFIDENTIAL Appendix 10** at Attachment 1.

B. Export Price

95. For the export price in 2017, CTG Canada has calculated a section 25 export price. CTG Canada believes the use of section 25 export prices in this investigation is supported by the CBSA's findings during its 2016 investigation into the dumping of 48-inch board.⁵⁰ In addition, CTG Canada is not able to calculate section 24 export prices for 2017 based on the best available StatsCan data because StatsCan data for 2017 do not break out 54-inch and 48-inch import values.

96. U.S. exporters sell and transfer their 54-inch board to their affiliated importing entities in Canada in exactly the same manner that they sell their 48-inch board. In other words, the U.S. exporters sell to affiliated importers which resell the board to unrelated downstream customers at prices that are unreliable, within the meaning of *SIMA* section 25(1)(b).

97. Specifically, a section 25 export price for 2017 is based on [] publicly available price lists for sales to its downstream customers. As discussed in **Section IV.F**, [] percent of all 54-inch board imports into Western Canada from the United States were exported from [

],⁵¹ [

]. As such, imports from [], which are sold through its affiliated importer, [], account for a vast majority of all subject imports. This analysis is conservative because it takes into account of the [

].⁵²

98. In order to derive [] export price from [] list price, CTG Canada applied []. For CTG Canada's Western Canadian sales of 54-inch board in 2017, the total of various rebates and discounts as a percentage of list price were, on average: [

⁵⁰ See *Certain Gypsum Board*, GB 2016 IN (Dec. 20, 2016) at paras 68, 72, 79 and 81, finding that both GP and USG exported to related Canadian importers and their section 24 export prices were unreliable; as such, their export prices were determined under section 25.

⁵¹ In this regard, as discussed in **Section IV.D**, 54-inch board was broken out as a separate tariff code starting only in 2018. In addition, at the date of filing of this Complaint, February import data are the latest import data available from StatsCan.

⁵² See **CONFIDENTIAL Appendix 2** at para 74.

] for 1/2 inch thick board, and; [
] for 5/8 inch thick board.⁵³ For the purposes of presenting a conservative analysis, CTG Canada has not taken into account any [].

99. In addition, as shown in **CONFIDENTIAL Appendix 10**, CTG Canada has calculated section 25 export prices by further deducting (1) an amount for profit equal to [] percent,⁵⁴ (2) freight costs of [] based on actual freight costs CTG Canada incurred to ship boards from its U.S. manufacturing plant to CTG Canada's warehouses; (3) outbound freight based on CTG Canada's actual outbound freight to its Canadian customers incurred in 2017; and (3) GS&A of 9.3 percent of net sales incurred by USG in 2017.⁵⁵

100. CTG Canada believes this calculated export price is conservative because the amount for profit was calculated for [] based on the CBSA's industry profit survey in the 48-inch investigation, and the calculations do not deduct [

]. CTG Canada believes that the GS&A rate of 9.3 percent of net sales based on USG's in 2017 financial performance is also conservative because the latest financial performance data provided by StatsCan for Canadian building materials/supplies dealers and wholesalers show that their average operating expenses range from 19.6 percent to 41.3 percent of their sales revenue, as shown in **Public Appendix 12**. In addition, the 9.3% GS&A USG incurred in 2017 is the lowest it achieved since 2015.⁵⁶ Any additional deductions would serve to reduce the export price and therefore increase the margin of dumping.

101. Starting in 2018, a 10-digit tariff code has been created and StatsCan import data have been collected for 54-inch board. As such, CTG Canada is able to calculate a section 24 export price based on this data up to and including for February 2018. However, [

⁵³ See **CONFIDENTIAL Appendix 2** at para 20.

⁵⁴ This is the amount for profit calculated by the CBSA in the original investigation. See **CONFIDENTIAL Appendix 10** at Attachment 3.

⁵⁵ **Public Appendix 9** (see USG's 2017 10-K at 25 stating that "selling and administrative expenses decreased to 9.3% in 2017 compared to 10.1% in 2016 and 10.4% in 2015").

⁵⁶ **Public Appendix 9** (see USG's 2017 10-K at 25 stating that "selling and administrative expenses decreased to 9.3% in 2017 compared to 10.1% in 2016 and 10.4% in 2015").

]. In a market where CTG Canada has realized an average net unit selling price of [], these import values are [] the true value of subject imports in Western Canada.⁵⁷ As such, in order to present an accurate analysis, []. In addition, given that import data are [].

102. Accordingly, the following export prices have been determined and used for the purposes of CTG Canada’s dumping analysis, which are shown in detail in **CONFIDENTIAL Appendix 10**:

Table 6: Export Price

Period	EP for 1/2 (\$/MSF)	EP for 5/8 (\$/MSF)
Q1-2017	[
Q2-2017		
Q3-2017		
Q4-2014		
Jan-Feb 2018]

C. Margins of Dumping

103. A comparison of the normal values identified above against CTG Canada’s calculated section 25 export prices reveals that the subject board is being dumped into Canada on an average basis of approximately []. In terms of price, these dumping margins translate into approximately [] and [] respectively. On a quarterly basis, the subject

⁵⁷ Indeed, these significant price [] can be explained in part by the fact that []. After previous year’s contract expires and before negotiations are concluded for a new contract, [

]. As a result, sales values in the early part of a given year, in particular during the first quarter, are not representative of the actual Triple Net prices. See **CONFIDENTIAL Appendix 2** at para 21.

goods have been dumped by between [] percent or [] and [] percent or []:

Table 7: Margins of Dumping

104. As discussed above, CTG Canada believes that these margins are conservative because the section 25 export price deductions were conservatively estimated and section 24 export prices calculated for January and February 2018 are likely to be found to unreliable.⁵⁸

VIII. RETARDATION OF THE ESTABLISHMENT OF THE DOMESTIC 54-INCH INDUSTRY IN WESTERN CANADA

105. To succeed in a claim for retardation, the Complainant must demonstrate that:⁵⁹

⁵⁸ In this regard, CTG Canada also notes that it has estimated a margin of dumping of [] percent to [] percent in its Complaint for the 48-inch board case, but the CBSA ultimately determined margins of dumping of 94.6 percent and 201.0 percent against GP and USG respectively.

⁵⁹ *Preformed Fibreglass Pipe Insulation*, NQ-93-002 (Nov. 19, 1993) at para. 119; *Fresh Garlic*, NQ-96-002 (March 21, 1997) at para. 94; *Wood Venetian Blinds and Slats*, NQ-2003-003 (July 2, 2004) at para. 81. CTG Canada notes that these three cases are the three most recent cases in which the Tribunal actually considered and applied the retardation standard and as such represent the proper test for retardation under *SIMA*. However, CTG Canada notes also that in *OCTG from China*, NQ-2009-004 (April 7, 2010) at fn. 46, the Tribunal opined in an orbiter footnote that the company alleging retardation must prove that “it has made a substantial commitment to establish (or re-establish) domestic production of like goods, its venture is commercially feasible and there is a firm assurance that the plan will be implemented in the near future.” Although CTG Canada

- there has been retardation in the *establishment* of an industry; and
- the complainant has made a “substantial *commitment*” to establish an industry but the *commitment* has been “materially frustrated” by dumping.

106. Here, there is no production of 54-inch board in Western Canada, there is also no existing *ability* to produce 54-inch board in Western Canada. Therefore, the claim for retardation is in respect of the establishment of the 54-inch gypsum industry. As demonstrated in **CONFIDENTIAL Appendix 2** and the [

], CTG Canada has made a substantial commitment to establish production of 54-inch and this commitment has been materially frustrated by the dumped goods entering into Western Canada from the United States.

A. There Has Been Retardation in the Establishment of the 54-Inch Gypsum Board Industry in Western Canada

107. *SIMA* provides a remedy for retardation when there is no established domestic industry.⁶⁰ In the context of a regional market case, this analysis must be conducted within the region under investigation only.⁶¹ Here, since there is no existing 54-inch production in Western Canada, CTG Canada’s claim of retardation relates exclusively to the establishment of an industry that does not yet exist in Western Canada, thereby satisfying this requirement. Importantly, CTG Canada is not currently capable of producing 54-inch board in Western Canada, further supporting the conclusion that the 54-inch industry has not yet been established in Western Canada.⁶²

believes that *SIMA* only requires the complainant to satisfy the two prongs expressly identified in this complaint, CTG Canada’s evidence satisfies all stated requirements, including those identified in the OCTG footnote.

⁶⁰ *Potassium Silicate Solids*, PI-2011-003 (March 6, 2012) at para 35.

⁶¹ This can be the only purpose to the inclusion of the word “retardation” within *SIMA* section 42(5), the regional market injury section.

⁶² In *Chemically Presensitized Aluminum Offset Printing Plates*, CIT-4-87 (Oct. 27, 1987) at 8, the Tribunal found that there could be no retardation claim because the complainant *could* produce the implicated goods even though it had not actually produced them due to market conditions. (“Since the reality is that HCI can in fact produce the positive plates, no question can arise as to retardation of the establishment of production: the claim, rather, relates to reduced production generally. Nor does an issue arise as to retardation of the establishment of production

B. CTG Canada Has Made a Substantial Commitment to Establish 54-Inch Production and This Commitment Has Been Materially Frustrated by Dumping

i. CTG Canada's Commitment to Commencing 54-Inch Production

108. CTG Canada's Western Canadian operations have suffered from many years of underinvestment due to material injury in the form of low profitability and poor economic returns caused by dumped U.S. imports. In particular, the Western Canadian market for gypsum board has been severely depressed by massive dumping of U.S. imports, including not only subject goods (*i.e.*, 54-inch board), but also 48-inch board and GlasRoc board. However, since the dumping finding against U.S. imports of 48-inch board into the Western Canadian market, CTG Canada has begun to see gradual recovery of the Western Canadian market for 48-inch board, albeit a partial one given the Remission Order.⁶³ Against the backdrop of these improvements, [

].⁶⁴ The key opportunity that was identified for this investment was to establish domestic 54-inch board capacity to [] in addition to []].

109. Since the identification of investment opportunities, CTG Canada, with the support of [

].⁶⁵ Starting in [], CTG Canada, with the support of regional and global Saint-Gobain teams began evaluating the plan and design for an approximately []]. Scoping and general arrangement drawings also progressed [

of two-sided negative plates. By HCI's own account all the required research and development has been completed and the capital expenditures made to commence production."").

⁶³ See *Gypsum Board Products Anti-dumping Duty Remission Order*, 2017, Canada Gazette Part II: Vol. 151, No. 5 (March 8, 2017).

⁶⁴ **CONFIDENTIAL Appendix 2** at para 50.

⁶⁵ **CONFIDENTIAL Appendix 2** at para 51.

]. Specifically, preliminary design consideration and property ownership research were conducted in [], followed by []. Subsequent to this initial work, []. As a result, the plan was revised [].⁶⁶

110. Based on this initial work, more detailed pre-engineering assessments were implemented [], including site investigation [] and preparation of detailed designs and cost estimates in []. These market investigations and market modeling have in turn formed the basis of CTG Canada's business case [].⁶⁷



111. Specifically, [].⁶⁸

⁶⁶ CONFIDENTIAL Appendix 2 at para 51.
⁶⁷ CONFIDENTIAL Appendix 2 at para 53.
⁶⁸ CONFIDENTIAL Appendix 2 at para 53.

112. Depending on the []
]. This investment is designed to [

]. As such, 54-inch board is fundamental to the investment and determinative of the viability of the investment. Based on the totality of assessments to date, CTG Canada has made a recommendation to proceed with further pre-engineering assessments [

].⁶⁹ Although CTG Canada has been [], the final project approval remains contingent on confidence in economic returns and viability to meet Saint-Gobain target of internal rate return (“IRR”) of []%, which absolutely requires restoration of 54-inch board pricing from current market price pressure from dumped U.S. imports.⁷⁰

ii. Saint-Gobain IRR Requirements and Commitment to Proceed with the Investment Should an Acceptable IRR Be Projected

113. CTG Canada is owned by and part of Saint-Gobain S.A., which is a large multi-national and the world’s leading building materials company. CTG Canada is part of the Gypsum Activity which is a division of the Construction Products Sector.⁷¹ The Construction Products Sector is one of three Sectors within Saint-Gobain’s corporate structure. As in any large enterprise with multiple businesses, CTG Canada [] capital investment.⁷² At the time of [] setting, CTG Canada [

⁶⁹ **CONFIDENTIAL Appendix 2** at para 55. Although currently, the project is progressing forward with [

].

⁷⁰ **CONFIDENTIAL Appendix 2** at para 56.

⁷¹ **CONFIDENTIAL Appendix 2** at para 59.

⁷² **CONFIDENTIAL Appendix 2** at para 59.

Gobain looks at [].⁷³ To reach these determinations, Saint-

].⁷⁴

114. Investment approval process is [

].⁷⁵ For very major capital investments such as this, investment decisions take a [

].⁷⁶ In Saint-Gobain, IRR is determined based on [

].⁷⁷

115. In order to inform and validate investment strategy and business case for large capital investments, [

].⁷⁸ As the project is progressed, key steps are reviewed [

].⁷⁹ This process takes [], and assumptions and information on which the business case is made are [

].⁸⁰

⁷³ CONFIDENTIAL Appendix 2 at para 59.

⁷⁴ CONFIDENTIAL Appendix 2 at para 59.

⁷⁵ CONFIDENTIAL Appendix 2 at para 60.

⁷⁶ CONFIDENTIAL Appendix 2 at para 60.

⁷⁷ CONFIDENTIAL Appendix 2 at para 41.

⁷⁸ CONFIDENTIAL Appendix 2 at para 60.

⁷⁹ CONFIDENTIAL Appendix 2 at para 60.

⁸⁰ CONFIDENTIAL Appendix 2 at para 60.

116. In addition, major investments such as establishment of 54-inch board production in Western Canada require [

]. They are then [

]. In this regard, there have been [

].⁸¹ An IRR of [] percent is absolutely required for CTG Canada to secure the necessary investment.⁸² [

], but the final approval is dependent on meeting an acceptable projected economic return of [] percent of IRR.⁸³

117. As discussed above, viability of the investment to establish production of 54-inch board in Western Canada requires restoration of the market conditions from the current depressed state due to dumped imports from the United States. Based on current depressed market conditions, the IRR is [].⁸⁴ Based on this projection, CTG Canada [

].⁸⁵ This direction is consistent with Saint-Gobain's project threshold IRR [].
]. For example, [

].⁸⁶ [

⁸¹ CONFIDENTIAL Appendix 2 at para 40.

⁸² CONFIDENTIAL Appendix 2 at para 40.

⁸³ CONFIDENTIAL Appendix 2 at para 61.

⁸⁴ CONFIDENTIAL Appendix 2 at para 62.

⁸⁵ CONFIDENTIAL Appendix 2 at Attachment 8.

⁸⁶ CONFIDENTIAL Appendix 2 at para 61

].⁸⁷ Here, CTG Canada estimates that the project's [] if the price pressure from dumped 54-inch board from the United States is returned to fair levels.⁸⁸ For this reason, establishment of 54-inch production in Western Canada literally hinges on the ability for CTG Canada to compete on a level playing field. The [] threshold is satisfied, Saint-Gobain is committed to making the investment.

iii. **U.S. Dumped Goods Prevent CTG Canada from Establishing 54-Inch Production**

1) CTG Canada Has Not Been Able to Raise Prices on 54-Inch Board in Western Canada Since January 1, 2016.

118. As demonstrated in **CONFIDENTIAL Appendix 2**,⁸⁹ at current dumped prices, market prices for 54-inch board could not []].

Indeed, despite several attempts to increase prices for 54-inch board in Western Canada to address the continually increasing inflationary costs incurred to produce gypsum board in Western Canada, CTG Canada has not succeeded in putting through sufficient price increases for 54-inch board since January 1, 2016.⁹⁰

Date	Event
[]	

⁸⁷ *Id.*

⁸⁸ **CONFIDENTIAL Appendix 2** at para 62.

⁸⁹ See **CONFIDENTIAL Appendix 2** at Attachments 3 and 4.

⁹⁰ **CONFIDENTIAL Appendix 2** at para 74. The chronology of events depicted here overlaps in part (in mid-2016) with those presented to and accepted by the Tribunal as having “limited any price increases in the pricing of gypsum board as reflected in overall market prices during the POI.” *Gypsum Board*, NQ-2016-002 at para 105.

].

119. The above demonstrates that despite CTG Canada’s repeated attempts, its competitors simply have not permitted 54-inch market prices to increase in line with rising inflationary costs. In the [] period, CTG Canada attempted to increase 54-inch market prices [

[]. It was not until [] that [] announced a 54-inch price increase, but even that price increase was []. CTG Canada [

].

120. Despite this demonstrated pricing pressure in Western Canada, CTG Canada’s Eastern Canadian 54-inch prices have []. This [] further demonstrates the existence of retardation in Western Canada since January 1, 2016:

Table 8: 54-inch Board Average Net Unit Selling Price

Product	Net Unit Selling Price (\$/msf)	2015	2016	2017
54-inch, ½-inch standard	Western Canada	[
	Eastern Canada			
54-inch, 5/8-inch Type X	Western Canada			
	Eastern Canada			
All 54-Inch Board	Western Canada			
	Eastern Canada]

Figure 1: All 54-Inch Board Average Net Unit Price



121. Notably, in 2015, CTG Canada's average net unit selling price for 54-inch board was []. However, by 2017, CTG Canada's 54-inch board selling price in Western Canada [], whereas its Eastern Canadian price []. In other words, CTG Canada's average net unit selling price for 54-inch board in Eastern Canada [] per msf or over [] percent between 2015 and 2017. In Western Canada, by contrast, CTG Canada's [] it from [] during the same time period.

2) Dumping of 54-Inch Board Continued and Intensified in Western Canada Since Dumping on 48-Inch Board was Addressed

122. []. Now, since the filing of the dumping case against 48-inch in 2016 and the dumping duties that were imposed, the dumping and resulting price suppression have intensified. Indeed, CTG Canada's average gross unit selling price for sales of 54-inch board in Western Canada [], while the average unit selling price []. During the same period, the costs

of goods sold [], resulting in [].

Table 9: CTG Canada's Average Selling Prices and Profitability for Western Canadian Sales of 54-inch Board

Account	2015	2016	2017
Gross average unit selling price (\$/msf)	[]		
Average unit selling price net of outbound freight (\$/msf)			
Gross margin (% of gross sales)			
Net margin (% of gross sales)]

123. As further evidence of this intensified dumping, []. These price levels are unprecedented. Before [], the price for 54-inch board []. However, since the implementation of the 48-inch dumping duties in Western Canada, the []. Notably, this [], further demonstrating the economic pressures felt in the Western Canadian market. As shown above (also reproduced below), there [] percent in 2017. In the case of 5/8-inch thick board, []:

Table 10: CTG Canada's Western Canadian Sales Price (Reproduction of Table 2)

Product		2015	2016	2017
Standard Board (1/2" Thickness)	48" (\$/msf)	[]		
	54" (\$/msf)			
	54" Premium (\$/msf)			
	54" Premium (%)			
Fire Board (5/8" Thickness)	48" (\$/msf)			
	54" (\$/msf)			
	54" Premium (\$/msf)			
	54" Premium (%)]

124. This erosion must be compared to the absence of the same effect observed in Eastern Canadian prices. The average net unit selling price for sales of 54-inch board in Eastern Canada [] as shown above (also reproduced below).

Table 11: CTG Canada's Eastern Canadian Sales Price (Reproduction of Table 3)

Product		2015	2016	2017
Standard Board (1/2" Thickness)	48" (\$/msf)	[]		
	54" (\$/msf)			
	54" Premium (\$/msf)			
	54" Premium (%)			
Fire Board (5/8" Thickness)	48" (\$/msf)			
	54" (\$/msf)			
	54" Premium (\$/msf)			
	54" Premium (%)			[]

125. These 54-inch prices reflect, in part, the fact that Western Canadian contractors have increasingly relied on 54-inch as a substitute for 48-inch board in applications that historically called for 48-inch board.⁹¹ Contractors in Western Canada now hang 54-inch board vertically and are increasingly relying on 8 and 10-foot lengths, which were previously unavailable in Western Canada. These new practices arose as a means to [] the existing 48-inch order because 54-inch board is not subject to the existing dumping duties. This [] further serves to demonstrate the need for protection against imports of 54-inch product. []

[]. In the wake of the Tribunal's decision regarding 48-inch board in December 2016, CTG Canada expected to regain accounts that it historically supplied. However, instead, the market began importing 54-inch board in greater quantities and different sizes to effectively [] the duties imposed on 48-inch board. []

[].⁹² Similarly, other large purchasers such

⁹¹ See CONFIDENTIAL Appendix 2 at para 24.

⁹² CONFIDENTIAL Appendix 2 at Attachment 2.

as [] have also confirmed stocking or being offered 8 and 10-foot length 54-inch board.⁹³

3) Stagnant Western Canadian Prices are []
Canadian 54-Inch Production Costs

126. CTG Canada's [] in Western Canada has resulted in increasing price suppression in Western Canada for sales of 54-inch board. Indeed, [

[]]. Between 2015 and 2017, [] unit costs of goods sold for its 54-inch [] percent, and the [] percent, which demonstrates the need to increase pricing to [] in Western Canada.

Table 12: CTG Canada's Costs⁹⁴

127. With [] in Western Canada, CTG Canada has simply been unable to justify adding 54-inch production in an environment where costs have increased while prices have [] over the same period as shown below. As shown above, [] has necessitated [] across all board prices in Canada, and CTG Canada's [] for 54-inch board in Western Canada in step with [] is a direct result of the price pressure caused by dumped subject imports. As a result, CTG Canada's profitability for Western Canadian sales of 54-inch board []

⁹³ CONFIDENTIAL Appendix 2 at Attachment 2.

⁹⁴ CONFIDENTIAL Appendix 13.

Canada went from []]. In terms of net margin, CTG

128. It is noteworthy that even [] due to the [] and the consistent, albeit insufficient, [] that Eastern Canada has seen for 54-inch products over the last three years. Specifically, CTG Canada achieved a gross margin of [] percent and a net margin of [] percent of total gross sales in 2017 from the total Canada sales []

[]. This comparison further demonstrates the extent to which prices in Western Canada are depressed by dumping.

4) Continued Aggressive Pricing Conduct by U.S. Exporters in Western Canada

129. As the Tribunal recognized in *Gypsum Board*, NQ-2016-002, U.S. manufacturers and their affiliated importers were selling their 48-inch board to some of the largest Canadian purchasers of gypsum board at prices that were “so low ...their levels were the subject of some candid and eye-opening protected evidence by the USG/CGC witness,”⁹⁵ some of key public examples which are provided above in **Section VII**.

130. This same level of price competition continues in the Western Canadian market today with respect to 54-inch board. Indeed, continued and deepening price aggression on 54-inch products caused USG to report significantly lower operating profit from Canadian gypsum operations throughout 2017 as compared to 2016 as shown in **Public Appendix 9** and summarized below:⁹⁶

⁹⁵ *Gypsum Board*, NQ-2016-002 at para 97.

⁹⁶ CTG Canada notes that CGC’s net profitability after taking into account of its share of central costs would be even lower. See **CONFIDENTIAL Appendix 2** at para 31.

Table 13: Publicly Available Operating Margins (Operating Profit as a Percentage of Net Sales) of USG

Quarter	2016	2017
Q1 for Canada Gypsum	7.32% ⁹⁷	1.20% ⁹⁸
Q2 for Canada Gypsum	5.81% ⁹⁹	2.17% ¹⁰⁰
Q3 for Canada Gypsum	6.98% ¹⁰¹	2.27% ¹⁰²
Full Year 2017 for All Canada / Q4 2016 for Canada Gypsum	5.88% ¹⁰³	2.96% ¹⁰⁴

5) These Economic Realities Prevent Saint-Gobain from Investing in CTG Canada's Western Canadian Operations

131. As shown above, at the current pricing level for 54-inch board in Western Canada, CTG Canada is making [] of approximately []. In addition, the investment is projected to achieve an IRR of only [] if current depressed market conditions continue as discussed above, which is [

].¹⁰⁵ As such, current

⁹⁷ Operating profit of US\$6 million out of sales of US\$82 million for Canada gypsum segment.

⁹⁸ Operating profit of US\$1 million out of sales of US\$83 million for Canada gypsum segment.

⁹⁹ Operating profit of US\$6 million out of sales of US\$86 million for Canada gypsum segment.

¹⁰⁰ Operating profit of US\$2 million out of sales of US\$92 million for Canada gypsum segment.

¹⁰¹ Operating profit of US\$6 million out of sales of US\$86 million for Canada gypsum segment.

¹⁰² Operating profit of US\$5 million out of sales of US\$86 million for Canada gypsum segment.

¹⁰³ Operating profit of US\$5 million out of sales of US\$85 million for Canada gypsum segment (derived from the difference between the full year 2016 result and nine month ended September 30, 2016 result).

¹⁰⁴ According to USG's 10-K for 2017, it has realigned its operating structure during Q4 2017 and changed the composition of its reportable segments effective for the quarter ended December 31, 2017. As such, Canadian gypsum segment is no longer available. As such, Canadian gypsum results cannot be isolated, nor is it impossible to isolate Q4 2017 total Canada segment results given that previous quarters are completed based on a different composition of reportable segments. The full year 2017 total Canada segment operating profit is based on operating profit of US\$12 million out of sales of US\$405 million for total Canada segment.

¹⁰⁵ See **CONFIDENTIAL Appendix 2** at para 61.

market realities are insufficient to permit Saint-Gobain to invest the necessary capital in Western Canada.¹⁰⁶

IX. INJURY AND THREAT OF INJURY

132. Although CTG Canada does not and cannot currently produce 54-inch board in Western Canada and must therefore satisfy the retardation standard to obtain dumping protection,¹⁰⁷ it has nonetheless, in the alternative, alleged that the dumped subject goods have caused injury or threaten to cause injury to its production of 54-inch board.

A. Injury

133. The market dynamics described above demonstrate that CTG Canada has suffered injury in the form of reduced investments in its 54-inch production. CTG Canada has been unable to invest in its production of 54-inch due to suppressed market prices and its forecasted inability to achieve a sufficient return on investment.

B. Threat of Injury

134. CTG Canada claims that its future production of 54-inch is threatened with injury from the dumped goods in the market. The Tribunal analyzed a claim for retardation under the guide of threat of injury in *Solder Joint Pressure Pipe Fittings and Solder Joint Drainage, Waste and Vent Pipe Fittings, Made of Case Copper Alloy, Wrought Copper Alloy or Wrought Copper*, NQ-93-001 (Oct. 18, 1993). There, the Tribunal considered it “more appropriate to deal with this issue {of retardation} as it relates to future injury.”¹⁰⁸

¹⁰⁶ See **CONFIDENTIAL Appendix 2** at para 62.

¹⁰⁷ *Potassium Silicate Solids*, PI-2011-003 at para 35 (“The Tribunal notes that *SIMA* views retardation and injury (or threat of injury) as two distinct and mutually exclusive concepts. In the Tribunal’s view, retardation is possible only if there is no established domestic industry, whereas injury or threat of injury is possible only in the case of an already established domestic industry.”).

¹⁰⁸ *Solder Joint Pressure Pipe Fittings and Solder Joint Drainage, Waste and Vent Pipe Fittings, Made of Case Copper Alloy, Wrought Copper Alloy or Wrought Copper*, NQ-93-001 (Oct. 18, 1993) at 14.

i. Significant Rate of Increase of Dumped Goods

135. As shown in the estimated market table,¹⁰⁹ CTG Canada estimates that the subject imports increased from approximately [] in 2015 to [] in 2017, an increase of just under [] percent.

136. More concerning still is the 2018 import trend. Although there are only two months of data available for 2018 at the time of this filing (*i.e.*, January and February), StatsCan import data breakdown 54-inch board as a separate tariff code starting in 2018. Based on the newly reported 54-inch import data from StatsCan, subject imports during the first two months of 2018 cleared in Western Canadian provinces were [] mmsf in total. This volume represents over [] percent of all gypsum boards imported during the same period into Western Canada, a substantial share compared to the [] percent of the total gypsum board market that 54-inch board has traditionally represented. This significant increase of 54-inch board imports demonstrate that the significant increase of dumped subject imports is likely in the absence of protection against dumping.

ii. Rapidly Increasing Excess Capacity

137. U.S. excess capacity for production of gypsum board is simply massive and has increased at an alarming rate in large part due to only modest U.S. market growth over the last three years. Based on the Gypsum Association data, U.S. gypsum manufacturers produced only [] bsf in 2017, while the total capacity in the U.S. industry was at [] bsf at the beginning of 2016, representing only a [] percent capacity utilization.¹¹⁰ This leaves an additional [] bsf of unused capacity in 2017, an amount representing [] the total estimated Canadian demand for gypsum board of [] (*i.e.*, subject and non-subject goods combined for Western and Eastern Canada), and [] the total estimated Western Canadian market for subject goods.¹¹¹

¹⁰⁹ CONFIDENTIAL Appendix 2 at Attachment 3.

¹¹⁰ CONFIDENTIAL Appendix 14.

¹¹¹ CONFIDENTIAL Appendix 2 at Attachment 3, notes for 1(d), 2(d) and 3(d).

iii. **Export Focus**

138. There can be no doubt that U.S. manufacturers of gypsum board look to Canada to offload their excess capacity in order to increase throughput and lower their fixed costs on incremental sales. This is exactly the dynamic discovered by the Tribunal during its 48-inch injury inquiry, where U.S. exporters made several stunning admissions about the nature of their business and the extent to which they see Canada as simply part of their overall North America focus:

U.S. exporters treat their North American sales as part of a single continental operation. Specifically, U.S. exporters will export goods to Canada and treat these sales as profitable as assessed on the basis of their sales price to their related importers (but not necessarily based on the price from the importer to the next level of trade). This is because these sales still provide the benefit of contributing to the fixed costs of their U.S. factories.¹¹²

139. At the 48-inch hearing, GP explained that: “As long as that sale is still profitable and that is our next best alternative for that volume versus going somewhere else, we would continue to sell to the customer. It may be less profitable, but if it is still profitable, it may still be the best way to go.”¹¹³ And CBP even admitted to having made no money on its Canadian sales without concern for its overall operations because it was still making significant profits in the United States.¹¹⁴

140. In other words, U.S. gypsum manufacturers look to Canada to offload production that they cannot sell profitably in their home markets. While dumping duties on imports of 48-inch board into Western Canada from the United States have curtailed dumping on 48-inch board, albeit only in part due to the Remission Order, this has further incentivized the U.S. exporters to switch their aggressive pricing behaviour to dumping of imports of 54-inch board into Western Canada, and further offloading of U.S. excess capacity at aggressive pricing through other means, such as exports of all subject and non-subject boards (*i.e.*, 54-inch board, 48-inch board, and other non-subject goods such as glass faced board) into Canada.

¹¹² *Gypsum Board*, NQ-2016-002 (Jan. 4, 2017) at para 84.

¹¹³ Transcript of Public Hearing (Nov. 30, 2016) at page 349, lines 21 to 25.

¹¹⁴ Transcript of Public Hearing (Nov. 30, 2016) at page 299, lines 21 to 25.

iv. **Market Conditions will Encourage Increased Exports to Canada**

141. The imposition of dumping duties in Western Canada for 48-inch board has already and will encourage continued shifting in the market towards 54-inch imports, thereby fuelling a further increase in 54-inch volumes. This trend began to manifest itself in 2017, but will no doubt continue. Current 48-inch pricing is subject to remission under the *Gypsum Board Products Anti-dumping Duty Remission Order, 2017*,¹¹⁵ which permits importers of certain gypsum board products into Western Canada to claim remission of the anti-dumping duties paid on those imports. This remission order, however, is tied to inflation, meaning that prices for 48-inch board will continue to rise in lock-step with inflation. As demonstrated above, however, CTG Canada [] to its Western Canadian customers of its 54-inch board meaning that the price gap between the two products will only continue to widen, thereby providing even further incentive to import greater volumes of 54-inch board at increasingly dumped prices.

v. **Ancillary Effects to 48-Inch Board**

142. As discussed above, an important driver of the increased volume of 54-inch board in Western Canada at a dumped and injurious pricing is the use of 54-inch board in applications for 48-inch board after the dumping duties have been imposed against dumped 48-inch board. Contractors in Western Canada now hang 54-inch board vertically and are increasingly relying on 8 and 10-foot lengths, which were previously unavailable in Western Canada. These new practices arose as a means to [] the existing 48-inch order because 54-inch board is not subject to the existing dumping duties. By dumping 54-inch board at incredibly low prices as shown above and focusing production on new types of 54-inch board that can be used in 48-inch board application, dumped subject imports have not only materially retarded CTG Canada's investment to repatriate 54-inch production in Western Canada, but they have also caused ancillary adverse impact on CTG Canada's performance with respect to 48-inch board. As a result, []

¹¹⁵ *Gypsum Board Products Anti-dumping Duty Remission Order, 2017*, Canada Gazette Part II: Vol. 151, No. 5 (March 8, 2017).

].

Table 14: ROS on CTG Canada's Western Sales of 48" Board from Western Canadian Production

Account	Q2 2017	Q3 2017	Q4 2017
ROS	[]

143. CTG Canada is aware of and has considered [],
 which provides for [],
 but unfortunately, [].

vi. **The Magnitude of the Dumping**

144. At conservatively estimated margins of dumping of between [] percent, the subject goods will continue to suppress market prices causing compounding retardation, injury and threat of injury to CTG Canada’s planned production of 54-inch board.

X. CAUSATION

145. The causal link between the dumped subject goods and CTG Canada’s inability to raise 54-inch prices and thereby execute its commitment to commence production of 54-inch board in Western Canada is supported by the Tribunal’s causation findings in *Gypsum Board* with respect to 48-inch board. There, the Tribunal concluded that “the subject goods {i.e. imports of 48-inch board} caused CTG to experience lost sales and market share, price suppression, reduced production and capacity utilization, which resulted in declining gross and net margins.”¹¹⁶ The market dynamics for 54-inch board are similar and the causal link between dumped imports and CTG Canada’s inability to raise prices for its 54-inch products is the same. In addition to the macro-evidence of causation discussed above (ie average import and Western Canadian market pricing well below levels to sustain profitability and to cover increasing costs and failed attempts by CTG Canada to increase pricing to achieve more sustainable levels) this causation is also supported by evidence of “lost sales” and “lost revenue” set out below which relate to its sales of 54-inch board that CTG Canada imports from the United States. Although these allegations do not

¹¹⁶ *Gypsum Board*, NQ-2016-002 at para 147.

themselves demonstrate injury, they corroborate the macro-evidence and demonstrate that the same causal relationship exists between market prices and the existence of dumped imports in Western Canada prevents CTG Canada's from raising prices to sufficient levels to repatriate its imports to Western Canadian production.

i. Volume Losses Due to Price Competition

1) []

146. In 2017, [] purchased only [] of 54-inch board from CTG Canada as compared to its 2016 purchases of [], a reduction of approximately [] percent. [] switched its purchases of 54-inch board [] because CTG Canada's price was too high. As an example, and consistent with those overall results, in [], CTG Canada approached [] with an offer to sell available 54-inch board; however, [] declined indicating that CTG Canada [].¹¹⁷

2) []

147. Similarly, CTG Canada's sales of 54-inch to [] in Western Canada also declined in 2017 on the basis of price. [] purchased [] of 54-inch board in 2016 but purchased only [] of 54-inch board in 2017, a decline of more than [] percent.

ii. Price Suppression/Depression from Dumped Imports

1) []

148. On [], CTG Canada agreed to []. CTG Canada had no choice but to make this investment with [] in order to retain its sales volumes at that account, equal to [].¹¹⁸

¹¹⁷ CONFIDENTIAL Appendix 2 at para 72.

¹¹⁸ CONFIDENTIAL Appendix 2 at para 74.

2) []

149. In [], CTG Canada was forced to [] because []. This [] cost CTG Canada approximately [] in lost revenue.

150. Moreover, later that year, as a result of continued aggressive price competition from U.S. imports, CTG Canada was forced to [] in order to retain its sales volumes at that account. If CTG Canada did not make that [], it would have stood to lose approximately [], simply because [].¹¹⁹

XI. CONCLUSION

151. As demonstrated above, the establishment of a domestic industry in Western Canada has been materially retarded as dumped subject imports into Western Canada have prevented, and continue to prevent, CTG Canada from establishing production of 54-inch board in Western Canada. CTG Canada has made a substantial commitment to this project and remains fully committed to move the project forward if fair pricing is restored in Western Canada. Such restoration will make or break viability of 54-inch board production.

152. In the alternative, production in Western Canada is materially injured or threatened to be material injured by dumped subject goods from the United States. The injury to its investments in its 54-inch production is manifest because it has not been able to secure the investments necessary to commence production. Moreover, CTG Canada's production of 54-inch board is threatened with material injury as a result of the substantial margins of dumping, evidence of the significant rate of increase of dumped imports, the massive excess capacity in the U.S., and the continued and increasing [] of duties on 48-inch board by substituting with 54-inch board.

¹¹⁹ See **CONFIDENTIAL Appendix 2** at para 73.

153. As such, CTG Canada hereby requests that the President of the CBSA initiate an investigation into the dumping of these subject goods originating in or exported from the United States into Western Canada and the material retardation or injury the dumping has caused or is threatening to cause.