



Canada Border
Services Agency

Agence des services
frontaliers du Canada

OTTAWA, August 9, 2013

4366-53(AD)
4366-54(CV)

STATEMENT OF REASONS

Concerning a determination under paragraph 76.03(7)(a) of the
Special Import Measures Act regarding

**CERTAIN THERMOELECTRIC CONTAINERS FROM
THE PEOPLE'S REPUBLIC OF CHINA**

DECISION

On July 25, 2013, pursuant to paragraph 76.03(7)(a) of the *Special Import Measures Act*, the President of the Canada Border Services Agency determined that the expiry of the finding made by the Canadian International Trade Tribunal on December 11, 2008, in Inquiry No. NQ-2008-002, concerning the dumping and subsidizing of thermoelectric containers that provide cooling and/or warming with the use of a passive heat sink and a thermoelectric module, excluding liquid dispensers, originating in or exported from the People's Republic of China was likely to result in the continuation or resumption of dumping and subsidizing of these goods into Canada.

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

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SUMMARY

[1] On March 27, 2013, the Canadian International Trade Tribunal (Tribunal), pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), initiated an expiry review of its finding made on December 11, 2008, in Inquiry No. NQ-2008-002, concerning the dumping and subsidizing of thermoelectric containers that provide cooling and/or warming with the use of a passive heat sink and a thermoelectric module, excluding liquid dispensers (Thermoelectric Containers), originating in or exported from the People's Republic of China (China)

[2] As a result of the Tribunal's notice, on March 28, 2013, the Canada Border Services Agency (CBSA) commenced an investigation to determine whether the expiry of the finding is likely to result in the continuation or resumption of dumping and/or subsidizing of the goods.

[3] Koolatron Corporation of Brantford, Ontario, the foremost Canadian producer, provided a response to the producers Expiry Review Questionnaire (ERQ) and also submitted a case argument.¹

[4] The Canadian producer provided information in support of its position that continued or resumed dumping and subsidizing of Thermoelectric Containers from China is likely if the Tribunal's finding is rescinded.

[5] The CBSA received responses to the ERQ from two importers. One response was received from Canadian Tire Corporation (CTC) and the other from Costco Wholesale Canada, Ltd. (Costco). The response from Costco was received after the close of record, and as such was not taken into consideration. The CBSA did not receive any case arguments or reply submissions from importers.

[6] The CBSA received one exporter response to the ERQ from Tharpe Robbins Company, however it did not express any position on the likelihood of continued or resumed dumping and subsidizing.² The CBSA did not receive any case arguments or reply submissions from exporters.

[7] The CBSA did not receive a response to the ERQ from the Government of China (GOC) nor did the GOC provide a case argument or reply submission.

[8] Information on the record indicates that: there is excess capacity for Thermoelectric Container production in China; there are high volumes of production of Thermoelectric Containers in China; there is a dependence on exports by Chinese producers to maintain capacity utilization rates due to the insufficient domestic demand in China; there is weakening demand for consumer goods in China and the recovery of demand for consumer goods in Canada remains sluggish; there is an anticipated increased level of competition in the retail market with the arrival of Target stores in Canada; there has been dumping of the goods while the finding has been in effect; potential exporters in China continue to promote Thermoelectric Containers to importers in Canada at dumped prices, and the volume of dumped goods while the finding has been in effect has been significant, and is likely to increase if the finding is rescinded.

¹ Exhibits 24 (NC) & 25 (PRO) – Case brief of Koolatron Corporation.

² Exhibit 13 (NC) – ERQ response of Tharpe Robbins Company.

[9] Information on the record also indicates that: there is a continued availability of subsidy programs for exporters of Thermoelectric Containers in China; subsidized goods were imported during the period of review (POR); the volume of subsidized goods imported while the finding has been in effect has been significant; there is a sustained interest in the Canadian market by Chinese exporters as evidenced by the volumes of subsidized goods exported while the finding has been in effect and subsidies have been provided by the GOC to its domestic producers.

[10] For the foregoing reasons, the President of the CBSA (the President), having considered the relevant information on the record, determined on July 25, 2013, under paragraph 76.03(7)(a) of SIMA that the expiry of the finding made by the Tribunal in respect of Thermoelectric Containers originating in or exported from China is likely to result in:

- i. the continuation or resumption of dumping of the goods into Canada; and
- ii. the continuation or resumption of subsidizing of the goods into Canada.

BACKGROUND

[11] On May 15, 2008, following a complaint filed by Koolatron of Brantford, Ontario, the President of the CBSA initiated investigations pursuant to subsection 31(1) of SIMA concerning the alleged injurious dumping and subsidizing of Thermoelectric Containers originating in or exported from China.

[12] On November 10, 2008, the President made final determinations of dumping and subsidizing in accordance with paragraph 41(1)(a) of SIMA in respect of Thermoelectric Containers originating in or exported from China.

[13] On December 11, 2008, the Tribunal found that the dumping and subsidizing of the goods originating in or exported from China had caused injury to the Canadian domestic industry.³

[14] On February 5, 2013, pursuant to subsection 76.03(2) of SIMA, the Tribunal issued a notice concerning the upcoming expiry of its finding.⁴ The finding is scheduled to expire on December 10, 2013. Based on the available information and the information submitted by the interested parties, on March 27, 2013, the Tribunal issued a notice that it was of the opinion that an expiry review of the finding was warranted.⁵

³ Exhibit 4 (NC) – CITT Finding and Reasons, Thermoelectric Containers, Inquiry No. NQ-2008-002.

⁴ Exhibit 3 (NC) – CITT Notice of Expiry LE-2012-004.

⁵ Exhibit 8 (NC) – CITT Notice of Initiation of Expiry Review.

PRODUCT DESCRIPTION

Definition

[15] The goods subject to the finding under review are defined as:

“Thermoelectric containers that provide cooling and/or warming with the use of a passive heat sink and a thermoelectric module, excluding liquid dispensers, originating in or exported from the People’s Republic of China.”

Product Information

[16] Thermoelectric Containers rely on a principle called the Peltier effect to pump heat electronically, without the use of compressors, coils and gases. The Peltier effect dictates that if a direct current (DC) passes through an electrical junction formed of dissimilar metals, heat will flow towards or away from the junction, depending on the direction of the DC flow in the junction. To achieve a practical level of heat pumping capability, multiple junctions are bonded together to form thermoelectric modules.

[17] Thermoelectric Containers can, therefore, be used to either cool or warm the interior air volume of the container, relative to the temperature gradient with the ambient air.

[18] The Thermoelectric Containers operate using a DC power cord, a battery or a 120-volt alternative current (AC) power adapter.

[19] Although the interior is normally made of plastic, the exterior can either be made of plastic, metal, a combination of plastic and metal or of a soft-shell that covers the plastic interior. The coolers and warmers have a lid or door that is composed of plastic, metal, glass or a combination of these materials.

[20] Thermoelectric Containers are generally categorized according to their marketed uses as:

- (a) travel coolers and warmers;
- (b) home use coolers and warmers;
- (c) wine (or display) coolers; and
- (d) commercial coolers and warmers.

[21] Due to limitations associated with thermoelectric refrigeration using modules paired to passive heat sinks, the size of containers is generally limited to approximately 100 litres.

Exclusions

[22] The exclusion of liquid dispensers from the definition is intended to exclude such products as water coolers, cream dispensers and milk dispensers.

Production Process⁶

[23] Thermoelectric Containers are not manufactured to any industry-wide specification for quality, performance or otherwise.

[24] Thermoelectric Containers are composed of an insulated box and a heat pump along with electronics. The box consists of an inner and outer shell with two-part polyurethane foam insulation injected between the inner and outer wall. The shells can be made of plastic, metal, cardboard or fabric.

[25] The plastic shells are manufactured by using either injection moulding, vacuum forming or by using rotationally moulded parts. Metal, fabric and cardboard shells are fabricated, which does not require moulds.

[26] Lids and doors are constructed in a similar manner. Solid plastic and metal lids are comprised of an inner and outer shell, with polyurethane foam sandwiched between the inner and outer shell. For coolers with a clear plastic or glass lid or door, the inner and outer shell is made of either clear plastic or a solid plastic, with part of the plastic lid being cut out and replaced with clear plastic or glass.

[27] The heat pump consists of a heat sink on the outside and a cold plate on the inside of the cooler, which are joined together by an extender block. The thermoelectric module is placed between the heat sink and the extender block. A fan motor (or motors) blows air on the cold plate and the heat sink. Depending on the use of the container, various types of controllers are added.

[28] The production process generally begins with the inner and outer shell being treated with electro treatment. The inner and outer shell are then assembled and conveyed through a heat tunnel to a foam insulation station. Two-part polyurethane is injected between the shells that are then placed in foaming fixtures. The inner and outer shell containing the foam are held in these fixtures for up to six minutes, while the two-part polyurethane foam expands through a chemical reaction. Once the foamed boxes and lids are removed from the foaming fixtures they are placed on the main production line.

[29] The assembly of the heat pump consists of a heat sink, a thermoelectric module and an extender block. In order to reduce heat receptivity, silicon grease is applied on all surfaces which are in contact with each other. The thermoelectric module is generally a small device (of matchbook size) made-up of a number of pairs of bismuth telluride crystals sandwiched between ceramic plates. In order to obtain proper contacts, without breaking the ceramic, the thermoelectric module is carefully sandwiched between the heat sink and cold plate. The heat pump is assembled and placed on the outside of the box and on the inside a cold plate is attached to the extender block. As the box travels down the main assembly line, a fan motor is added and wired, fan blades on the inside and outside are attached, a cold plate shroud is fitted and finally lids and latches are installed.

⁶ CBSA – Statement of Reasons – Initiation of Investigations – Thermoelectric Containers – 2008, paragraphs 15 – 22

Packaging

[30] Thermoelectric Containers require no special packaging or approvals. They are easily distributed by national retailers and wholesalers. They are generally sold fully assembled and ready to use, packaged in protective boxes for shipping and ease of palletizing.

CLASSIFICATION OF IMPORTS

[31] Thermoelectric Containers are normally, but not exclusively, imported into Canada under the Harmonized System (HS) classification numbers as follows:

Prior to November 4, 2011	As of November 4, 2011
8418.69.00.90	8418.69.90.90
The subject goods may also have been imported under the following Harmonized System Tariff Classification numbers:	
8418.50.10.00	8418.50.10.00
8418.50.29.00	8418.50.29.00
8418.61.91.90	8418.61.00.00
8418.99.90.90	8418.99.90.90

PERIOD OF REVIEW

[32] The POR for the CBSA's expiry review investigation is from January 1, 2010 to March 31, 2013.

CANADIAN INDUSTRY

[33] A response to the ERQ for the Thermoelectric Containers expiry review was received from Koolatron, the foremost Canadian producer of like goods. Koolatron produces like goods ranging from 1 to 70 litres of internal volume capacity. They produce like goods marketed to travel-use, home-use, wine/display and commercial uses.

[34] Koolatron, a privately held company, started in the business of thermoelectric cooling and warming in 1976. Koolatron's current manufacturing facilities for the production of the like goods are located in Brantford, Ontario.

[35] In addition to producing and selling the like goods, Koolatron is also a manufacturer of various other products as well as an importer and reseller of consumer products for which it has obtained distributor licenses.

[36] The only other known Canadian producer is MTL Technologies, Inc., located in Chambly, Quebec. MTL Technologies, Inc. did not provide a response to the ERQ nor did it file a case argument or reply submission. MTL Technologies, Inc. is a niche producer dealing in small volumes of customized retail display coolers.

[37] Koolatron accounts for the vast majority of total domestic production of Thermoelectric Containers in Canada and for purposes of this expiry review investigation, is considered representative of the entire Canadian industry.

CANADIAN MARKET

[38] The CBSA cannot release specific quantitative data for sales from Canadian production as it relates to only one Canadian company and would lead to the disclosure of confidential information. However, as can be seen from the percentage share of the market in Table 1 below, the share of the Canadian market held by imports from China has, with the exception of a decline in 2012, remained relatively stable during the POR. The decline in market share of Chinese origin product in 2012 was the result of an increase in imports of Thermoelectric Containers from the United States.

Table 1⁷

Apparent Canadian Market (Units)

Source	2010	2011	2012	2013 (Jan. – Mar.)	Total POR
Canadian Production	***	***	***	***	***
China	64,946	68,187	48,404	17,781	199,318
All Other Countries	***	***	***	***	***
Total Market	146,833	138,183	176,840	41,783	503,639
% Share from China	44.2%	49.3%	27.4%	42.6%	39.6%

*** The disclosure of these figures would result in the disclosure of confidential information and, therefore, cannot be displayed

ENFORCEMENT

[39] The enforcement of the Tribunal's finding in respect of Thermoelectric Containers from China during the POR has resulted in the assessment of anti-dumping and countervailing duty in excess of \$1.3 million. Countervailing duty was assessed on 100% of the volume of imports of subject goods from China and anti-dumping duty was assessed on approximately 88% of the volume of imports of subject goods from China. The CBSA considers the amount of anti-dumping and countervailing duty and the volume of dumped and subsidized goods to be significant.⁸

PARTIES TO THE PROCEEDINGS

[40] On March 27, 2013, the Tribunal's notice of the expiry review and ERQs were sent to the known Canadian producers, exporters, importers, the GOC and other interested parties.

⁷ Exhibit 18 (PRO) – Updated CBSA Compliance Statistics for the Period of Review.

⁸ Ibid.

[41] The ERQs requested information relevant to the consideration of the expiry review factors by the President, as listed in subsection 37.2(1) of the *Special Import Measures Regulations* (SIMR). Any persons or governments having an interest in this investigation were also invited to provide a submission regarding the likelihood of continued or resumed dumping and/or subsidizing of these goods should the finding be rescinded.

[42] The Canadian producer, Koolatron provided an ERQ response, in addition to a case argument, emphasizing that the dumping and/or subsidization is likely to continue or resume should the Tribunal's finding be rescinded.

[43] One importer, Canadian Tire Corporation (CTC)⁹ provided a response to the ERQ prior to the close of record. CTC did not provide any specific opinion on the likelihood of continued or resumed dumping and/or subsidizing of the goods. However, it indicated that its sourcing decision to buy from its Chinese supplier, Mobicool, is not driven by price considerations and that its prices for subject goods are set at or above normal value by Mobicool. CTC did not provide a case argument or reply submission.

[44] One exporter, Tharpe Robbins Company provided a response to the ERQ and indicated that its exports to Canada during the POR were very minimal and consisted of wine coolers provided as part of employee recognition programs.¹⁰ It did not provide any opinion on the likelihood of continued or resumed dumping and/or subsidizing.

[45] The GOC did not respond to the ERQ, and did not provide a case argument or a reply submission.

INFORMATION CONSIDERED BY THE PRESIDENT

Administrative Record

[46] The information considered by the President for purposes of this expiry review investigation is contained in the administrative record. The administrative record includes the information on the CBSA's listing of Exhibits and Information, which is comprised of the Tribunal's administrative record at initiation of the expiry review, CBSA exhibits and information submitted by interested persons, including information which parties feel is relevant to the decision as to whether dumping and/or subsidizing is likely to continue or resume if the finding is rescinded. This information may consist of expert analyst reports, excerpts from trade magazines and newspapers, orders and findings issued by authorities of Canada or of a country other than Canada, documents from international trade organizations such as the World Trade Organization and responses to the ERQs submitted by Canadian producers, importers and exporters.

⁹ Exhibits 16 (PRO) and 17 (NC) – ERQ response of Canadian Tire Corporation.

¹⁰ Exhibit 13 (NC) – ERQ response of Tharpe Robbins Company.

[47] For purposes of an expiry review investigation, the CBSA sets a date after which no new information submitted by interested parties will be placed on the administrative record or considered as part of the CBSA's investigation. This is referred to as the "closing of the record date." For this investigation, the administrative record closed on May 16, 2013. This deadline allows participants time to prepare their case arguments and reply submissions based on the information that is on the administrative record.

Procedural Issues

[48] The President will normally not consider any new information submitted by participants subsequent to the closing of the record date. However, in certain exceptional circumstances, it may be necessary to permit new information to be submitted. The President will consider the following factors in deciding whether to accept new information submitted after the closing of the record date:

- (a) the availability of the information prior to the closing of the record date;
- (b) the emergence of new or unforeseen issues;
- (c) the relevance and materiality of the information;
- (d) the opportunity for other participants to respond to the new information; and
- (e) whether the new information can reasonably be taken into consideration by the President in making the determination.

[49] Participants wishing to file new information after the closing of the record date, either separately or in case arguments or reply submissions must identify this information so that the President can decide whether it will be included in the record for purposes of the determination.

[50] With respect to this expiry review investigation, the CBSA received one importer response from Costco, one week after the close of record date of May 16, 2013.¹¹ There was no justification provided as to why this information should be considered after the close of record. The President decided not to take this information into consideration as part of its analysis. The response was added to the CBSA's SIMA website listing of Exhibits and Information with a notation that the response was received after the close of record and would not be taken into consideration by the CBSA.

POSITION OF THE PARTIES - DUMPING

Parties Contending that Continued or Resumed Dumping is Likely

Canadian Producer

[51] The Canadian producer made representations through its ERQ response as well as in its case argument in support of its position that the continued and/or resumed dumping of Thermoelectric Containers from China is likely should the finding be rescinded. Accordingly, the Canadian producer contends that the measures should remain in place.

¹¹ The due date for ERQ responses was May 3, 2013.

[52] The Canadian producer focussed largely on the excess capacity for thermoelectric container production in China and the inability of the Chinese domestic market to absorb this capacity, necessitating exports to available markets, during a period of weak economic growth in China and in Canada. The Canadian producer is of the opinion that these factors will inevitably lead to dumping when left unrestrained by regulatory measures such as those found in SIMA.

[53] The Canadian producer's position is that in the event that the Tribunal's finding is rescinded, dumping of the goods is likely to continue or resume from China. This is based predominantly on a number of specific factors identified below.

[54] The Canadian producer identified certain conditions related mostly to the Chinese production of and capacity for Thermoelectric Containers and anticipated increased competition in the Canadian retail sector in arguing that the absence of the Tribunal's finding will lead to continued and/or resumed dumping of Thermoelectric Containers from China. The main factors identified by the Canadian producer can be summarized as follows:¹²

- increased competition among Canadian mass merchandisers caused by Target's arrival;
- the development of a domestic Chinese market for thermoelectric travel coolers, water coolers and wine coolers;
- the recent weakening demand for household appliances and consumer goods in the Chinese domestic market;
- the large production capacity and export orientation of Chinese producers;
- the worldwide economic slowdown has created additional idle production capacity in China;
- the continued dumping and subsidizing of Thermoelectric Containers into the Canadian market during the POR; and
- the recent history of dumping consumer products into Canada and other markets by Chinese producers.

[55] The Canadian producer stated in its case argument that, in the original Tribunal inquiry (NQ-2008-002), the Tribunal noted the significant competitive dynamic that exists among the big-box retailers in Canada and, in particular how the dominance of CTC "pulls down retail prices generally and, consequently, affects the price at which retailers and importers seek to purchase thermoelectric containers".¹³ The Canadian producer further noted that this competition will intensify with the arrival of "Target Canada, which opened the first of between 125 and 135 discount stores across Canada in March 2013".¹⁴

[56] Koolatron notes that a significant change since the finding was put in place has been the development of a domestic market in China for Thermoelectric Containers. Wine consumption in China has increased dramatically in the past five years, particularly in 2010 – 2011,¹⁵ and automobile ownership also continues to rise, both of which have resulted in greater demand for

¹² Exhibit 24 (NC) – Case brief of Koolatron Corporation, paragraph 6.

¹³ Exhibit 4 (NC) – CITT Finding and Reasons, paragraph 96.

¹⁴ Exhibit 24 (NC) – Case brief of Koolatron Corporation, paragraph 28.

¹⁵ Exhibit 15 (NC) – Koolatron ERQ response, Exhibit "J" – "China's Exploding Wine Consumption", China Briefing News, February 14, 2013.

wine and travel coolers in China. These developments resulted in Chinese producers increasing production capacity for the production of Thermoelectric Containers.¹⁶ In this regard, Koolatron pointed to the evidence it provided as part of its ERQ response of a large Chinese domestic market for Thermoelectric Containers.¹⁷ It further noted that Chinese companies routinely advertise their enormous capacity to produce subject goods and referenced evidence provided in its ERQ response of three producers' Web sites promoting their capacity.¹⁸

[57] The Canadian producer also emphasized the sheer size of Chinese production capacity in comparison to the Canadian market. The Canadian producer stated "To put these numbers in context, Mobicool's and Fuxin's advertised annual output of the subject goods is more than 14 times the size of the current Canadian market. These are just two of the dozens of similar-sized producers."¹⁹

[58] The Canadian producer stated that over the past five years, the Canadian market has been shaped by two factors: the global economic downturn and the imposition of SIMA duties.²⁰ It further stated that the overall Canadian market continues to be negatively affected by the global economic downturn, and China's economy which had escaped the worst of the recession in 2009 and 2010 is now slowing markedly.²¹

[59] Koolatron noted that the World Bank slashed its growth forecast for China in 2012 to 7.7% (down from its previous forecast of 8.2%) and 8.1% for 2013 (down from 8.6%) and referenced a Bloomberg article dated April 15, 2013, which stated "China's economic growth unexpectedly lost momentum in the first quarter as gains in factory output and consumption weakened, driving stock and commodities lower on concern global expansion will slow".^{22, 23} It further stated that a slowing Chinese economy is weakening the demand for consumer products in China and referenced a recent article which stated in part: "The poor economic data in recent times has shown that the Chinese government's plans to shift the economy's dependence from exports to domestic demand failed to mitigate the impact of the global recession".²⁴

[60] With weakening domestic demand, Chinese producers will increasingly look to the export markets. Koolatron asserts that as a result of the slowing domestic demand and increased capacity, Chinese governments and industry are again focusing on export markets to drive growth and referenced a Thomson Reuters article entitled "China exports rebound but 2013 outlook remains murky".²⁵ In this regard, Koolatron further noted that the Chinese

¹⁶ Ibid, paragraphs 44 – 48.

¹⁷ Exhibit 15 (NC) – Koolatron ERQ response, Exhibit "K".

¹⁸ Ibid, Exhibit "I"

¹⁹ Exhibit 24 (NC) – Case brief of Koolatron Corporation, paragraph 42.

²⁰ Ibid, paragraph 11.

²¹ Ibid, paragraphs 14 and 15.

²² Exhibit 24 (NC) – Case brief of Koolatron Corporation, paragraph 16

²³ Exhibit 15 (NC) – Koolatron ERQ response, Exhibit "O" – "China Growth Loses Momentum in Blow to Global Expansion", Bloomberg.com/news, April 15, 2013.

²⁴ Ibid – "China's domestic market a sputtering engine for growth", WantChinaTimes.com, September 10, 2012.

²⁵ Exhibit 24 (NC) – Case brief of Koolatron Corporation, paragraph 49 and Exhibit 15 (NC) – Koolatron ERQ response, Exhibit "O" – "China exports rebound but 2013 outlook remains murky", Thomson Reuters, January 10, 2013.

manufacturers of Thermoelectric Containers have demonstrated “the availability of identical products for export and domestic markets – with significantly lower prices quoted for export sales”.²⁶

[61] Koolatron also noted the lack of participation in obtaining specific normal values by all but one Chinese exporter during the period since the Tribunal’s finding went into place and the lack of participation by Chinese exporters in the expiry review investigation proceedings, as an inability to compete in the Canadian market at normal values.²⁷

[62] With reference to the CBSA’s record, the Canadian producer noted that significant SIMA duties had been collected during the entire POR confirming that there has been dumping of subject goods while the finding has been in effect.²⁸

[63] Further to the pattern of behavior with respect to the dumping of Chinese origin Thermoelectric Containers into Canada, the Canadian producer also cited numerous other anti-dumping measures in Canada involving various consumer products including bicycles, stainless steel sinks, carbon steel fasteners and copper pipe fittings.²⁹

[64] Koolatron also noted that there are numerous anti-dumping findings in place in the United States and the European Union regarding Chinese consumer products that illustrate the continued propensity of Chinese producers to dump into foreign markets.³⁰ The Canadian producer further stated that “The sheer number of these measures directed against China show a sustained pattern of dumping and subsidization, and also that the volumes of shipments in relation to the small scale of Canadian production is very high. These factors should be assessed in the context of the slowdown in Chinese GDP growth in 2013 and the newly added capacity in thermoelectric container industry referred to above.”³¹

Parties Contending that Continued or Resumed Dumping is Unlikely

[65] There were no case arguments or reply submissions submitted contending that the dumping of Thermoelectric Containers is not likely to continue or resume if the finding is rescinded.

CONSIDERATION AND ANALYSIS - DUMPING

[66] In making a determination under paragraph 76.03(7)(a) of SIMA whether the expiry of the finding is likely to result in the continuation or resumption of dumping of the goods, the President may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstances.

²⁶ Exhibit 24 (NC) – Case brief of Koolatron Corporation, paragraph 50 and Exhibit 14 (PRO) – Koolatron ERQ response, Exhibit “L”.

²⁷ Exhibit 24 (NC) – Case brief of Koolatron Corporation, paragraph 73.

²⁸ Exhibit 25 (PRO) – Case brief of Koolatron Corporation, paragraph 74.

²⁹ Exhibit 24 (NC) – Case brief of Koolatron Corporation, paragraph 84.

³⁰ Exhibit 24 (NC) – Case brief of Koolatron Corporation, paragraphs 85 - 87.

³¹ Ibid, paragraph 89.

LIKELIHOOD OF CONTINUED OR RESUMED DUMPING

[67] Guided by the factors in the aforementioned subsection 37.2(1) of the SIMR and having considered the information on the administrative record, the ensuing list represents a summary of the CBSA's analysis conducted in this expiry review investigation with respect to dumping:

- the capacity for Thermoelectric Container production in China;
- the volume of production of Thermoelectric Containers in China;
- the dependence on exports to maintain capacity utilization rates due to the insufficient domestic demand in China;
- the impact of the weakening demand for consumer goods in China and the continued sluggish recovery of demand for consumer goods in Canada;
- the anticipated increased level of competition in the retail market with the arrival of Target stores in Canada;
- the dumping of the goods while the finding has been in effect;
- the continued promotion of Thermoelectric Containers to importers in Canada at dumped prices; and
- the volume of dumped goods while the finding has been in effect.

[68] No Chinese exporters of Thermoelectric Containers provided a response to the ERQ, nor did they file case arguments or reply submissions. An ERQ response was provided by one importer of subject goods prior to the close of record, however, this importer did not provide an opinion on the likelihood of continued or resumed dumping. Further, no case arguments or reply submissions were received from any of the importers that imported subject goods during the POR. The GOC did not provide a response to the ERQ, nor did the GOC provide a case argument or reply submission.

[69] In the absence of participation from Chinese exporters and the GOC, and only one ERQ response from an importer of subject goods that did not express an opinion on the likelihood of continued or resumed dumping, the CBSA relied on other information on the record in assessing the likelihood of continued or resumed dumping should the Tribunal finding be rescinded.

[70] With respect to the capacity utilization rates of producers in China, the CBSA is not able to conduct a thorough analysis of the capacity utilization rates of the producers in China, as there is insufficient information on the record. The Canadian producer, however, did provide information in its ERQ response relating to the annual production capacity of three producers in China.³² This information reveals that these companies have a combined annual production capacity of 2.9 million units. As can be seen in Table 1 - Apparent Canadian Market, in 2012 the entire Canadian market was approximately 177,000 units. If one were to make a conservative assumption that the producers in China are operating at 90% capacity, which is unlikely given current economic conditions, there would be 290,000 units of excess capacity available for these three producers, which is more than 1.6 times the apparent Canadian market.

³² Exhibit 15 (NC) – Koolatron ERQ response, Exhibit “I”.

[71] Koolatron stated in its ERQ response that there are “dozens of Chinese producers currently manufacturing large volumes of thermoelectric containers in every product category and size that is currently available for sale in Canada”.^{33,34} The factory capacity information provided by Koolatron includes that for Mobicool, the only producer that has consistently co-operated in CBSA investigations and re-investigations and obtained specific normal values for its products during the period the finding has been in place. Mobicool’s monthly production capacity is stated to be 120,000 units (1.4 million units annually).³⁵ Again, if one conservatively assumes Mobicool is operating at 90% capacity, its excess capacity would be 144,000 units, equivalent to 81% of the entire apparent Canadian market in 2012. Furthermore, the CBSA’s mailing list for this expiry review contains 23 exporters located in China. This suggests that there is more than enough plant capacity for Thermoelectric Containers in China to supply the entire Canadian market.

[72] In its case argument, Koolatron provided evidence that China’s new burgeoning middle class has resulted in steadily increasing automobile ownership and a dramatic increase in wine consumption, thereby triggering an increase in domestic demand for travel coolers and wine coolers.³⁶ This, in turn, has resulted in additional capacity for Thermoelectric Containers being added in China. Recently however, there is evidence that the recession has had an impact on the domestic Chinese economy and growth has slowed.³⁷ This slowing of China’s domestic economy has resulted in Chinese producers looking to export markets to mitigate the effects of increased capacity and slowing domestic demand.³⁸ It is, therefore, likely that producers of Thermoelectric Containers are also looking to export markets. In this regard, Koolatron has provided numerous price quotes from other potential exporters in China, in which the offer price is below the price indicated for sales in China.³⁹

[73] Coupled with Chinese producers increasing their interest in export markets for additional sales, there is also evidence on the record pointing to the anticipated increased level of competition with Target Canada’s plans to open between 125 and 135 stores in Canada.⁴⁰ Koolatron provided a number of business news articles relating to the anticipated increase in competition amongst Canadian big-box retailers. In particular, a Canadian Press article dated October 1, 2012, stated that “Canadian Tire Corp. is working aggressively to carve out a bigger share of the market before Target arrives. It has unveiled a new automotive-centric store format in a strategy aimed at improving customer experience among those shopping for products that helped make the company a household name.”⁴¹ Further, the Globe and Mail published an

³³ Exhibit 24 (NC) – Case brief of Koolatron Corporation, paragraph 43.

³⁴ Exhibit 15 (NC) – Koolatron ERQ response, Exhibits “I” and “K” and Exhibit 20 (NC) – Supplement to producers’ ERQ, Tab 2.

³⁵ Exhibit 15 (NC) – Koolatron ERQ response, Exhibit “I”.

³⁶ Exhibit 24 (NC) – Case brief of Koolatron Corporation, paragraphs 45 – 47.

³⁷ Exhibit 15 (NC) – Koolatron ERQ response, Exhibit “O”, see various reports and articles on current economic conditions in China.

³⁸ Ibid, “China exports rebound but 2013 outlook remains murky”, Thomson Reuters, January 10, 2013.

³⁹ Exhibit 15 (NC) – Koolatron ERQ response, Exhibit “L”.

⁴⁰ Exhibit 24 (NC) – Case brief of Koolatron Corporation, paragraph 28.

⁴¹ Exhibit 15 (NC) – Koolatron ERQ response, Exhibit “D” – “Target Canada To Take Sales From Other Retailers: Barclays”, Canadian Press, October 1, 2012

article on February 18, 2013, stating “Canadian Tire and Loblaw in ‘battle mode’ ahead of Target arrival”.⁴² In addition, the Toronto Star published an article on February 23, 2012, entitled “Target’s Canadian arrival helps drive prices down”.⁴³ Finally, CTV news published an article on March 5, 2013, entitled “Target’s Canadian launch expected to spark price wars”.⁴⁴ All of which point to the increased competition that is expected with Target Canada’s new stores.

[74] It is noteworthy that, at the time of the original inquiry in 2008 (NQ-2008-002), the Tribunal noted the significant impact that mass-merchandisers like CTC had on the degree of competition in the Canadian market:⁴⁵

94. The evidence shows that mass merchandisers purchase the majority of the subject and like goods. In the Tribunal’s view, while different mass merchandisers have different strategies with regard to how they position their prices in the marketplace, mass merchandisers and the importers who sell to them generally track their competitors’ prices for identical or similar goods, which can influence their respective price targets. Retail price targets, along with the margin that a retailer expects to achieve on the sale of the goods to its customers, determine the prices that it is willing to pay for the subject or like goods.

95. Canadian Tire is the dominant seller of thermoelectric containers for travel use. It submitted that its strategy for selling thermoelectric containers is to provide consumers with “exciting, new and exclusive” products in order to differentiate itself from its competitors, particularly those mass merchandisers that try to attract consumers on the basis of offering the lowest price. Canadian Tire explained that it spends time, money and effort to build awareness of products that bring customers to shop at Canadian Tire specifically. According to Canadian Tire, this means that it does not have to compete on price on similar items.

96. In the Tribunal’s view, the fact that Canadian Tire is the dominant seller of thermoelectric containers in the Canadian market means that retail prices at Canadian Tire greatly influence retail prices at other retailers. In instances where other retailers are offering lower retail prices than Canadian Tire, Canadian Tire’s desire to sell products at attractive price points pulls down retail prices generally and, consequently, affects the price at which retailers and importers seek to purchase thermoelectric containers.

[references omitted]

[75] With the arrival of Target stores in Canada, the competitive landscape will likely become more intense. Irrespective of whether Target Canada chooses to sell Thermoelectric Containers, the increased competition will result in a desire amongst all big-box retailers to lower prices ‘across-the-board’ on all products generally, in so doing, this is likely to exert downward pressure on the pricing of Thermoelectric Containers in the Canadian market.

⁴² Ibid, “Canadian Tire and Loblaw in ‘battle mode’ ahead of Target arrival”, Globe and Mail, February 18, 2013.

⁴³ Ibid, “Target’s Canadian arrival helps drive prices down”, Toronto Star, February 23, 2012.

⁴⁴ Ibid, “Target’s Canadian launch expected to spark price wars”, CTV News, March 5, 2013.

⁴⁵ Exhibit 4 (NC) – CITT Finding and Reasons, paragraphs 94 – 96.

[76] There is also evidence on the record indicating that the outlook for Canada's economy has weakened in the past few months. An IMF report which states in part that: "High household debt and continued moderation of the housing sector will restrain domestic demand. Canada's growth will ease to 1.5% this year from 1.8% in 2012."⁴⁶

[77] The cooling Canadian economy, coupled with the arrival of a new big-box retailer will result in even greater competitive pressures and increase the likelihood that retailers will import dumped Thermoelectric Containers if the opportunity were to arise.

[78] Finally, as indicated earlier in the section on Enforcement, during the POR, the CBSA has assessed anti-dumping and countervailing duty in excess of \$1.3 million. Anti-dumping duty was assessed on approximately 88% of the volume of imports of subject goods from China. The CBSA considers the amount of anti-dumping duty and the volume of dumped goods to be significant. Furthermore, the Canadian producer has provided numerous price quotes from other potential exporters in China, in which the offer price is below the price indicated for sales in China.⁴⁷ This evidence shows Chinese producers offering export sales at a discount to domestic pricing of up to 40% or more.⁴⁸ Not only does this demonstrate that Chinese exporters continue to have an interest in the Canadian market, it clearly demonstrates a likelihood of the continuation or resumption of dumping in the absence of the current finding.

President's Determination – Dumping

[79] Based on information on the record in respect of: the capacity for Thermoelectric Container production in China; the volume of production of Thermoelectric Containers in China; the dependence on exports by Chinese producers to maintain capacity utilization rates due to the insufficient domestic demand in China; the impact of the weakening demand for consumer goods in China and the continued sluggish recovery of demand for consumer goods in Canada; the anticipated increased level of competition in the retail market with the arrival of Target stores in Canada; the dumping of the goods while the finding has been in effect; the continued promotion of Thermoelectric Containers to importers in Canada at dumped prices, and the volume of dumped goods while the finding has been in effect, the President determined that the expiry of the finding is likely to result in the continuation or resumption of dumping into Canada of Thermoelectric Containers originating in or exported from China.

POSITION OF THE PARTIES - SUBSIDIZING

Parties Contending that Continued or Resumed Subsidizing is Likely

Canadian Producer

[80] The Canadian producer, Koolatron, made limited representations through its ERQ response as well as in its case argument in support of its position that the continued and/or resumed subsidizing of Thermoelectric Containers from China is likely should the finding be rescinded. As such, the Canadian producer contends that the measures should remain in place.

⁴⁶ Exhibit 15 (NC) – Koolatron ERQ response, Exhibit "E", "IMF Public Information Notice", February 14, 2013

⁴⁷ Exhibit 15 (NC) – Koolatron ERQ response, Exhibit "L".

⁴⁸ Ibid.

[81] The main factors identified by the Canadian producer can be summarized as follows:

- the effect of export subsidies on the large production capacity and export orientation of Chinese producers;
- the continued availability of numerous subsidy programs in China; and
- countervailing measures in Canada and the other jurisdictions against Chinese consumer products.

[82] The Canadian producer indicated there is evidence of widespread subsidies for the automotive sector in China and referenced an Economic Policy Institute Briefing Paper on the subject.^{49, 50} Koolatron further stated that since travel coolers are associated with automotive accessories, it surmises that many Chinese producers of Thermoelectric Containers position themselves as automotive-related producers in order to receive subsidies from local, provincial and national levels of government.⁵¹

[83] Koolatron further stated that in its final determination of subsidizing concerning Thermoelectric Containers, the CBSA found that 100% of the subject goods were subsidized, and in arriving at this determination it found evidence of 38 actionable and potentially actionable programs. In addition, Koolatron noted that the CBSA has continued to hold these subsidies actionable in two subsequent re-investigations.⁵²

[84] The Canadian producer also remarked that producers in China have been found to be exporting subsidized consumer and other products to Canada and other jurisdictions.⁵³

Parties Contending that Continued or Resumed Subsidizing is Unlikely

[85] No case arguments or reply submissions were submitted contending that the subsidizing of Thermoelectric Containers is not likely to continue or resume if the finding is rescinded.

CONSIDERATION AND ANALYSIS - SUBSIDIZING

[86] In making a determination under paragraph 76.03(7)(a) of SIMA whether the expiry of the finding in respect of goods from China is likely to result in the continuation or resumption of subsidizing of these goods, the President may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstances.

⁴⁹ Exhibit S25 (NC) – Case brief of Koolatron Corporation, paragraph 79.

⁵⁰ Exhibit S21 (NC) – Supplement to producers' ERQ, Tab 3.

⁵¹ Exhibit S25 (NC) – Case brief of Koolatron Corporation, paragraph 48.

⁵² Ibid, paragraph 76.

⁵³ Exhibit S16 (NC) – Koolatron ERQ response, Exhibits "J" and "Q"

LIKELIHOOD OF CONTINUED OR RESUMED SUBSIDIZING

[87] Guided by the factors in the aforementioned subsection 37.2(1) of the SIMR and having considered the information on the administrative record, the ensuing list represents a summary of the CBSA's analysis conducted in this expiry review investigation with respect to subsidizing:

- continued availability of subsidy programs for exporters of Thermoelectric Containers in China;
- the fact that subsidized goods were imported during the POR;
- the volume of subsidized goods imported during the POR;
- the sustained interest in the Canadian market by Chinese exporters as evidenced by the volumes of subsidized goods exported during the POR;
- the capacity for Thermoelectric Container production in China; and
- the GOC provision of subsidies to its domestic producers.

[88] No Chinese exporters of Thermoelectric Containers provided a response to the ERQ, nor did they file case arguments or reply submissions. An ERQ response was provided by one importer of subject goods prior to the close of record, however this importer did not provide an opinion on the likelihood of continued or resumed subsidizing. Further, no case arguments or reply submissions were received from any of the importers that imported subject goods during the POR. The GOC did not provide a response to the ERQ, nor did the GOC provide a case argument or reply submission.

[89] In the absence of participation from Chinese exporters and the GOC and only one ERQ response from an importer of subject goods that did not express an opinion on the likelihood of continued or resumed subsidizing, the CBSA relied on other information on the record in assessing the likelihood of continued or resumed subsidization should the Tribunal finding be rescinded.

[90] At the time of the original subsidy investigation in 2008, the President of the CBSA found three actionable GOC subsidy programs that were used by Mobicool, the sole cooperative exporter, and 35 additional potentially actionable subsidy programs that were not used by the cooperative exporter.⁵⁴

[91] A list of the programs found actionable that were used by the sole cooperative exporter at the time of the final determination is as follows:

- Program 1: Preferential Tax Policies for Enterprises with Foreign Investment Established in Special Economic Zones (Excluding Shanghai New Pudong Area).
- Program 2: Preferential Tax Policies for Foreign Invested Enterprises and Foreign Enterprises in China and are engaged in production or business operations purchasing domestically produced equipment.
- Program 3: Government Interest Subsidy of Shenzhen Foreign Trade Development Fund.

⁵⁴ Exhibit S2 (NC) – Final Determination – Statement of Reasons – Certain Thermoelectric Containers – 2008, Appendix 2.

[92] It was found that 100% of the goods exported from China were subsidized. The weighted average amount of subsidy, expressed as a percentage of the export price, was equal to 9.9%. The amount of subsidy found for the sole cooperative exporter was 2.17 Renminbi per unit. The amount of subsidy for all other exporters was equal to 53.27 Renminbi per unit, as determined according to a ministerial specification pursuant to subsection 30.4(2) of SIMA.⁵⁵

[93] Detailed descriptions of the programs and explanations as to why they were regarded as countervailable subsidies are contained in the CBSA's *Statement of Reasons* issued at the final determination.⁵⁶

[94] The GOC did not provide information on the 35 subsidy programs that were not used by the cooperative exporter during the original investigation. Consequently, while they were investigated, the CBSA had limited details to report on those programs at the final determination.

[95] Since the Tribunal's finding, the CBSA has conducted two re-investigations to update amounts of subsidy for Thermoelectric Containers. One in 2010 and again in 2011/12.

[96] The Request for Information (RFI) sent to exporters at the time of each re-investigation included programs identified at the original investigation, as well as those programs identified from any other investigation or new source in which it appeared that the program may be applicable to the production of Thermoelectric Containers.

[97] In each of the two subsidy reinvestigations, Mobicool was the sole exporter that participated and was provided with revised amounts of subsidy. Furthermore, the GOC did not participate in either the 2010 or 2011/12 subsidy re-investigation. Consequently, the CBSA has limited information concerning the details of the identified subsidy programs.

[98] Accordingly, for exporters that did not provide sufficient information to the CBSA to enable the determination of the amount of subsidy using company specific information, the amount of subsidy was 53.27 Renminbi per unit, in accordance with the ministerial specification pursuant to subsection 30.4(2) of SIMA.⁵⁷

[99] The results of the conclusion of the 2011/12 subsidy re-investigation represent the best information available, which is that subsidy programs continue to be available to producers of Thermoelectric Containers in China.

[100] As noted earlier, the GOC did not provide a response to the ERQ for this expiry review investigation. As a result, the CBSA relied on the information on the record, including publicly available data.

⁵⁵ Ibid, Appendix 1.

⁵⁶ Ibid, Appendix 2, pages 29 - 76.

⁵⁷ Exhibit S1 (NC) – Notice of Conclusion of Re-investigation – Thermoelectric Containers, March 1, 2012.

[101] Since the conclusion of the original 2008 investigation, all subject goods have been assessed countervailing duties throughout the POR. As indicated earlier in the section on Enforcement, the CBSA has assessed anti-dumping and countervailing duty in excess of \$1.3 million. Countervailing duty was assessed on 100% of the subject goods. The CBSA considers the amount of countervailing duty assessed and the volume of subsidized goods to be significant.

[102] Chinese producers have continued a presence in the Canadian market while the finding has been in effect as evidenced in Apparent Canadian Market Table 1. In addition, there is evidence of numerous promotional price quotes to potential importers from other potential exporters in China.⁵⁸

[103] As noted in the analysis of likelihood of the continued or resumed dumping, information on the record indicates that there are many producers of Thermoelectric Containers in China and that their capacities for production of the subject goods exceeds the Canadian market many times over. This indicates that there is excess capacity which would allow for subsidized Thermoelectric Containers to be exported to Canada in the absence of a finding.

[104] Since the Tribunal's injury finding concerning Thermoelectric Containers, the CBSA has conducted six additional subsidy investigations involving China. In each of these cases the CBSA has identified a significant number of potentially actionable subsidy programs that may also be available to producers of Thermoelectric Containers.

[105] The existence of these other countervailing measures is a further indication that the GOC continues to provide subsidies to its domestic producers, including producers of Thermoelectric Containers and likely will continue to do so in the future.

President's Determination – Subsidizing

[106] Based on the information on the record in respect of: continued availability of subsidy programs for exporters of Thermoelectric Containers in China; the fact that subsidized goods were imported during the POR; the volume of subsidized goods imported during the POR; the sustained interest in the Canadian market by Chinese exporters as evidenced by the volumes of subsidized goods exported during the POR; the capacity for Thermoelectric Container production in China; and the continued provision of subsidies by the GOC to its domestic producers, the President determined that the expiry of the finding is likely to result in the continuation or resumption of subsidizing of Thermoelectric Containers originating in or exported from China.

⁵⁸ Exhibit S16 (NC) – Koolatron ERQ response, Exhibit "L".

CONCLUSION

[107] For the purposes of making determinations in this expiry review investigation, the CBSA conducted its analysis within the scope of the factors contained in subsection 37.2(1) of the SIMR. Based on the foregoing consideration of pertinent factors and analysis of the information on the record, the President determined that the expiry of the finding in Inquiry No. NQ-2008-002, made by the Tribunal on December 11, 2008:

- in respect of Thermoelectric Containers originating in or exported from China is likely to result in the continuation or resumption of dumping of the goods; and
- in respect of Thermoelectric Containers originating in or exported from China is likely to result in the continuation or resumption of subsidizing of the goods.

FUTURE ACTION

[108] On March 27, 2013, the Tribunal commenced its inquiry to determine whether the expiry of its finding concerning the dumping and subsidizing of Thermoelectric Containers from China is likely to result in injury or retardation to the Canadian industry. The Tribunal has announced that it will issue its decision by December 9, 2013.

[109] If the Tribunal determines that the expiry of the finding with respect to the goods from China is likely to result in injury or retardation, the finding will be continued in respect of those goods, with or without amendment. If this is the case, the CBSA will continue to levy anti-dumping and countervailing duties on dumped and subsidized importations of Thermoelectric Containers originating in or exported from China.

[110] If the Tribunal determines that the expiry of the finding with respect to the goods from China is unlikely to result in injury or retardation, the finding in respect of those goods will be rescinded. Anti-dumping and countervailing duties would no longer be levied on importations of Thermoelectric Containers beginning on the date the finding is rescinded.

INFORMATION

[111] For further information, please contact the officer listed below:

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