



OTTAWA, June 30, 2023

STATEMENT OF REASONS

Concerning an expiry review determination
under paragraph 76.03(7)(a) of the *Special Import Measures Act* respecting

**CERTAIN COPPER PIPE FITTINGS ORIGINATING IN OR EXPORTED
FROM THE SOCIALIST REPUBLIC OF VIETNAM**

DECISION

On June 15, 2023 pursuant to paragraph 76.03(7)(a) of the *Special Import Measures Act*, the Canada Border Services Agency determined that the expiry of the Canadian International Trade Tribunal's finding made on May 25, 2018, in Inquiry NQ-2017-004:

- is likely to result in the continuation or resumption of dumping of the goods from Vietnam; and
- is likely to result in the continuation or resumption of subsidizing of the goods from Vietnam.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
BACKGROUND	3
PRODUCT DEFINITION	3
ADDITIONAL PRODUCT INFORMATION.....	4
PRODUCT USE.....	4
CLASSIFICATION OF IMPORTS.....	5
PERIOD OF REVIEW	5
CANADIAN INDUSTRY	5
CANADIAN MARKET	6
ENFORCEMENT DATA.....	6
Enforcement Data – Imports of Subject Goods from Vietnam and Imports of CPF1	7
PARTIES TO THE PROCEEDINGS.....	7
INFORMATION CONSIDERED BY THE CBSA	8
POSITION OF THE PARTIES – DUMPING.....	8
PARTIES CONTENDING THAT CONTINUED OR RESUMED DUMPING IS LIKELY	8
<i>Commodity nature of CPF</i>	9
<i>Shifting import patterns from named countries to non-named countries</i>	9
<i>Inability of CPF exporters in Vietnam to compete at non-dumped prices</i>	10
<i>Excess production capacity of CPF producers in Vietnam</i>	11
<i>Weak market conditions and demand forecasts in Vietnam compared to Canada</i>	11
<i>Imposition of anti-dumping measures by the U.S. in respect of similar goods (copper tube)</i>	12
PARTIES CONTENDING THAT CONTINUED OR RESUMED DUMPING IS UNLIKELY	12
<i>The Canadian Producer does not have capacity to meet the Canadian market demand</i>	13
<i>A lack of presence in the Canadian market by Vietnamese exporters</i>	13
CONSIDERATION AND ANALYSIS - DUMPING.....	13
<i>Commodity nature of CPF</i>	14
<i>Shifting import patterns from Vietnam to all other countries</i>	14
<i>Apparent inability of CPF exporters from Vietnam to sell to Canadian importers at non-dumped prices while the CITT finding was in effect</i>	15
<i>Changes in market conditions in Canada</i>	15
<i>Weak market conditions and demand for CPF in Vietnam</i>	16
<i>Excess production capacity of CPF producers in Vietnam</i>	18
<i>Ongoing relationships of CPF producers in Vietnam with Canadian importers</i>	19
<i>Imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada concerning Vietnamese copper pipe and tube</i>	20
<i>Shifting import patterns from named countries to non-named countries</i>	21
<i>Propensity to dump</i>	21
Determination Regarding Likelihood of Continued or Resumed Dumping.....	23
POSITION OF THE PARTIES - SUBSIDIZING	23
PARTIES CONTENDING THAT CONTINUED OR RESUMED SUBSIDIZING IS LIKELY	23
<i>Continued subsidizing of CPF while the finding was in effect</i>	23
PARTIES CONTENDING THAT CONTINUED OR RESUMED SUBSIDIZING IS UNLIKELY - GOV	24
<i>Lack of subsidy programs specifically intended for CPF producers or exporters</i>	24
<i>Termination of certain subsidy programs</i>	24
PARTIES CONTENDING THAT CONTINUED OR RESUMED SUBSIDIZING IS UNLIKELY - CB.....	24
CONSIDERATION AND ANALYSIS - SUBSIDIZING	25
<i>Continued availability of subsidy programs for CPF producers in Vietnam</i>	25
<i>Imposition of countervailing measures by an authority of a country other than Canada concerning Vietnamese copper tube and pipe</i>	28
Determination Regarding Likelihood of Continued or Resumed Subsidizing	29
CONCLUSION	29
FUTURE ACTION.....	29
INFORMATION	30

EXECUTIVE SUMMARY

[1] On January 16, 2023, the Canadian International Trade Tribunal (CITT), pursuant to subsection 76.03(1) of the *Special Import Measures Act* (SIMA), initiated an expiry review of its finding made on May 25, 2018, in Inquiry No. NQ-2017-004, concerning the dumping and subsidizing of certain copper pipe fittings originating in or exported from the Socialist Republic of Vietnam (Vietnam).

[2] As a result of the CITT's notice of expiry review, on January 17, 2023, the Canada Border Services Agency (CBSA) initiated an expiry review investigation to determine, pursuant to paragraph 76.03(7)(a) of SIMA, whether the expiry of the finding is likely to result in the continuation or resumption of dumping and/or subsidizing of the subject goods from Vietnam.

[3] The CBSA received a response to the Canadian Producer Expiry Review Questionnaire (ERQ) from Cello Products Inc. ("Cello")¹, the sole producer of CPF in Canada. Cello also submitted additional comments regarding the Canadian market for copper pipe fittings (CPF).² The submissions made by Cello included information supporting their position that continued or resumed dumping and subsidizing of CPF from Vietnam is likely if the CITT's finding expires.

[4] The CBSA received responses to the Importer ERQ from Cello³, Noble Corp ("Noble")⁴, CB Supplies Ltd. ("CB")⁵, and Prevost, a division of Volvo Group Canada Inc. ("Prevost")⁶. The submissions made by Noble and Prevost did not indicate a position on the likelihood of continued or resumed dumping and/or subsidizing of CPF if the CITT's finding expires. The submission made by CB did not state a clear position but contained certain representations that may imply a position that continued or resumed dumping and subsidizing of CPF from Vietnam is unlikely if the CITT's finding expires.

[5] The CBSA did not receive any responses to its Exporter ERQ.

[6] The CBSA received a response to the Foreign Government ERQ from the Government of Vietnam (GOV).⁷ The submission made by the GOV did not indicate a clear position on the likelihood of continued or resumed dumping of CPF if the CITT's finding expires, but contained certain representations that may imply a position that continued or resumed subsidizing of CPF from Vietnam is unlikely if the CITT's finding expires.

¹ Exhibit 17 (PRO) & 18 (NC) – Response to Canadian Producer ERQ from Cello Products Inc. ("Cello").

² Exhibit 23 (PRO) & 24 (NC) – Comments Submitted by Counsel for Cello Regarding the Canadian CPF Market

³ Exhibit 19 (PRO) & 20 (NC) – Response to Importer ERQ from Cello.

⁴ Exhibit 13 (PRO) & 14 (NC) – Response to Importer ERQ from Noble Corp. ("Noble").

⁵ Exhibit 15 (PRO) & 16 (NC) – Response to Importer ERQ from CB Supplies Ltd. ("CB").

⁶ Exhibit 21 (PRO) & 22 (NC) – Response to Importer ERQ from Prevost, a division of Volvo Group Canada Inc. ("Prevost").

⁷ Exhibit 25 (NC) – Response to Foreign Government ERQ from the Government of Vietnam ("GOV").

[7] Cello provided case briefs to the CBSA in support of its position that continued or resumed dumping and subsidizing of CPF from Vietnam is likely if the CITT's finding expires.⁸ No other party provided case briefs to the CBSA and no party provided reply submissions in response to Cello's case briefs.

[8] Analysis of information on the administrative record indicates a likelihood of continued or resumed dumping into Canada of CPF originating in or exported from Vietnam should the CITT's finding expire. This analysis relied upon the following factors:

- Commodity nature of CPF;
- Shifting import patterns from Vietnam to all other countries;
- Apparent inability of CPF exporters from Vietnam to sell to Canadian importers at non-dumped prices while the CITT finding was in effect;
- Changes in market conditions in Canada;
- Weak market conditions and demand for CPF in Vietnam;
- Excess production capacity of CPF producers in Vietnam;
- Ongoing relationships of CPF producers in Vietnam with Canadian importers;
- Imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada concerning Vietnamese copper pipe and tube;
- Shifting import patterns from named countries to non-named countries; and
- Propensity to dump

[9] In addition, analysis of information on the administrative record indicates a likelihood of continued or resumed subsidizing of CPF from Vietnam should the CITT's finding expire. This analysis relied upon the following factors:

- Continued availability of subsidy programs for CPF producers in Vietnam; and
- Imposition of countervailing measures by an authority of a country other than Canada concerning Vietnamese copper tube and pipe

[10] For the forgoing reasons, the CBSA, having considered the relevant information on the record, determined on June 15, 2023, pursuant to paragraph 76.03(7)(a) of SIMA that the expiry of the finding in respect of certain CPF is likely to result in:

- the continuation or resumption of dumping of the goods from Vietnam; and
- the continuation or resumption of subsidizing of the goods from Vietnam exported to Canada.

⁸ Exhibit 31 (PRO) & 32 (NC) – Case brief filed on behalf of Cello.

BACKGROUND

[11] On October 27, 2017, following a complaint filed by Cello of Cambridge, Ontario, the CBSA initiated an investigation pursuant to subsection 31(1) of SIMA regarding the dumping and subsidizing of CPF from Vietnam.⁹

[12] On April 25, 2018, the CBSA made final determinations of dumping and subsidizing, in accordance with paragraph 41(1)(a) of SIMA in respect of CPF from Vietnam.¹⁰

[13] On May 25, 2018, the CITT issued an injury finding pursuant to subsection 43(1) of SIMA in Inquiry No. NQ-2017-004 respecting the dumping and subsidizing of CPF from Vietnam.¹¹

[14] On January 16, 2023, pursuant to subsection 76.03(1) of SIMA, the CITT initiated an expiry review of its finding made on May 25, 2018, in Expiry Review RR-2022-003.¹²

[15] On January 17, 2023, the CBSA initiated an expiry review investigation to determine whether the expiry of the finding is likely to result in the continuation or resumption of dumping and/or subsidizing of CPF from Vietnam.

PRODUCT DEFINITION

[16] The goods subject to this expiry review investigation are defined as:

"Pressure pipe fittings and drainage, waste and vent pipe fittings, made of cast copper alloy, wrought (or "wrot") copper alloy or wrought copper for use in heating, plumbing, air conditioning and refrigeration applications originating in or exported from the Socialist Republic of Vietnam, restricted to the products enumerated in Appendix 1."

[17] A list of the specific copper pipe fittings that are subject goods (Appendix 1) is available on the [CITT's website](#).

[18] For purposes of this expiry review investigation, "copper pipe fittings" also refers to goods produced in Canada that meet the above product definition.

⁹ Exhibit 26 (NC) – CBSA Research #2, ADCV 01 - CPF2 2017 IN FD SOR

¹⁰ *Ibid.*

¹¹ Exhibit 26 (NC) – CBSA Research #2, ADCV 02 - CPF2 2017 IN Injury CITT SOR Inquiry No. NQ-2017-004

¹² See the CITT website at: <https://decisions.citt-tcce.gc.ca/citt-tcce/ra/en/item/18483/index.do>

Additional Product Information¹³

[19] Certain copper pipe fittings are available in a large number of sizes and configurations. Common examples of certain copper pipe fittings include: Tees, Elbows, Bushings, Fitting Reducers, and Adapters.

[20] Certain copper pipe fittings sold in Canada are manufactured to a variety of standards including:

- ASME/ANSI Std. B16.22 – 2013 (Wrought Copper and Copper Alloy Solder Joint Pressure Fittings);
- ASME/ANSI Std. B16.18 – 2012 (Cast Copper Alloy Solder Joint Pressure Fittings);
- ASME/ANSI Std. B16.29 – 2012 (Wrought Copper and Wrought Copper Alloy Solder Joint Drainage Fittings – DWV);
- ASME/ANSI Std. B16.23 – 2016 (Cast Copper Alloy Solder Joint Drainage Fittings);
- ASME/ANSI Std. B16.24 – 2016 (Cast Copper Alloy Pipe Flanges, Flanged Fittings, and Valves: Classes 150, 300, 600, 900, 1500, and 2500);
- ASME/ANSI Std. B16.50 – 2013 (Wrought Copper and Copper Alloy Braze – Joint Pressure Fittings);
- MSS SP-104 – 2012 (Wrought Copper LW Solder Joint Pressure Fittings);
- MSS SP-106 – 2012 (Cast Copper Alloy Flanges and Flanged Fittings Class 125, 150, 300).

Product Use¹⁴

[21] Certain copper pipe fittings are used to connect copper pipes, tubes or other certain copper pipe fittings to one another. The methods of joining certain copper pipe fittings include soldering, silver brazing and epoxy or similar gluing techniques. The connection is made by fitting two pieces together and heating the ends of the tubing and fittings, filling the gap between the two with melted solder or brazing material that solidifies while cooling, resulting in a strong leak-proof intermetallic connection. The threaded fittings can also be used to connect copper tubing to other metal systems.

[22] Certain copper pipe fittings that are commonly referred to as “pressure pipe fittings” may be used to convey liquids (e.g. potable water), gases and air under pressure in residential, industrial, commercial and institutional buildings.

[23] Certain copper pipe fittings that are commonly referred to as “drainage, waste and vent fittings (DWV)” are used primarily to convey waste from buildings to sewers and for venting purposes under low-pressure conditions.

¹³ Exhibit 26 (NC) – CBSA Research #2, ADCV 01 - CPF2 2017 IN FD SOR

¹⁴ *Ibid.*

[24] In addition, certain copper pipe fittings are also used in a variety of air conditioning and refrigeration (ACR) applications. Certain copper pipe fittings used in air conditioning applications are typically identified by reference to their outside diameters, whereas the same certain copper pipe fittings used in non-ACR applications such as plumbing and heating are typically identified by reference to their inside or “nominal” diameters. Apart from the reference to diameter, a particular certain copper pipe fittings for an ACR application is the same as a certain copper pipe fittings for a non-air conditioning application. It is common practice to label certain copper pipe fittings by reference to both their inside (nominal) and outside diameters.

CLASSIFICATION OF IMPORTS

[25] The subject goods are normally imported into Canada under the following tariff classification numbers:

7412.10.00.11
7412.10.00.19
7412.10.00.90
7412.20.00.11
7412.20.00.12
7412.20.00.19
7412.20.00.90

These tariff classification numbers may also include non-subject goods, and subject goods may also fall under additional tariff classification numbers.

PERIOD OF REVIEW

[26] The Period of Review (POR) for the CBSA’s expiry review investigation is January 1, 2020 to December 31, 2022.

CANADIAN INDUSTRY

[27] The Canadian industry is comprised of Cello, the sole Canadian producer of CPF.

[28] Cello commenced operations in 1946 in Cambridge, Ontario, as a supplier of cast copper alloy solder joint pipe fittings. Wrought copper and wrought copper alloy solder joint pipe fittings were added to the product line in the 1960s. Cello was incorporated in 1983 and its products are made for pressure and drainage, waste and vent applications. Cello’s domestic production mix for CPF has not changed materially during the POR.¹⁵

¹⁵ Exhibit 18 (NC) – Response to Canadian Producer ERQ from Cello, Questions Q9 and Q23.

CANADIAN MARKET

[29] The CBSA cannot release specific quantitative data regarding the value and volume of Canadian production of CPF sold for domestic consumption as it would lead to the disclosure of confidential information of Cello, the only Canadian producer of CPF. Therefore, only the imports of CPF during the POR are presented below in **Table 1**.

Table 1: Imports of CPF during the POR¹⁶

Source	2020		2021		2022	
	Volume (kg)	Value (\$)	Volume (kg)	Value (\$)	Volume (kg)	Value (\$)
Vietnam ¹⁷	573	12,950	3	114	2	97
China	526,129	7,133,076	1,362,315	9,279,803	2,197,485	11,767,277
Korea	4,148	76,931	207	8,028	1,463	58,251
U.S.	31,263	746,767	29,126	565,765	36,312	1,140,136
Other Countries	480,687	5,967,070	458,174	7,191,374	881,347	14,644,486
Total - All Other Countries ¹⁸	1,042,227	13,923,844	1,849,822	17,044,970	3,116,607	27,610,149
Total Imports	1,042,800	13,936,795	1,849,825	17,045,084	3,116,609	27,610,247

[30] Based on information on the administrative record, the total apparent Canadian market, in terms of value and volume, increased each year during the POR from 2020 to 2022.

[31] Based on information on the administrative record, the Canadian producer's share of the apparent Canadian market, in terms of value and volume, decreased each year during the POR.

[32] Based on information on the administrative record, the market share of imports from Vietnam, in terms of volume and value, decreased each year during the POR.

[33] Based on information on the administrative record, the market share of imports from all other countries (i.e., all countries except Vietnam), in terms of value and volume, increased each year during the POR.

ENFORCEMENT DATA

[34] In the enforcement of the CITT's finding during the POR, as detailed in **Table 2** below, the total amount of anti-dumping and countervailing duties collected on subject imports from Vietnam was \$6,351. The total value for duty of subject imports during the POR from Vietnam was \$13,162. As a percentage of the total value for duty, the combined anti-dumping and countervailing duties assessed during the POR were equal to 48.3%.

¹⁶ Exhibit 29 (NC) – Compliance Statistics – Day 50. and Exhibit 30 (NC) – CBSA Import Statistics – Day 50.

¹⁷ Exhibit 29 (NC) – Compliance Statistics – Day 50.

¹⁸ Exhibit 30 (NC) – CBSA Import Statistics – Day 50.

[35] Enforcement data during the POR for the named countries subject to the measures in force of certain copper pipe fittings from the People's Republic of China, the Republic of Korea and the United States of America (hereafter named “CPF1”) are also presented in **Table 2**.

Table 2:
Enforcement Data – Imports of Subject Goods from Vietnam and Imports of CPF1¹⁹
 Quantity, Value for Duty, and Anti-dumping and Countervailing Duties Collected during the POR

Country Name	Quantity (kg)			Value for Duty (CAD)			SIMA Duties (CAD)		
	2020	2021	2022	2020	2021	2022	2020	2021	2022
Vietnam	573	3	2	12,950	114	97	5,975	240	136
China	526,129	1,362,315	2,197,485	7,133,076	9,279,803	11,767,277	729,491	1,136,518	1,179,962
Korea	4,148	207	1,463	76,931	8,028	58,251	3,137	17,655	48,075
U.S.	31,263	29,126	36,312	746,767	565,765	1,140,136	292,731	247,989	786,847

PARTIES TO THE PROCEEDINGS

[36] On January 17, 2023, the CBSA sent notices concerning the initiation of the expiry review investigation and ERQs were sent to the known Canadian producers, importers and exporters. The GOV was also sent a Foreign Government ERQ relating to subsidy.

[37] The ERQs requested information relevant to the CBSA’s consideration of the expiry review factors, as listed in subsection 37.2(1) of the *Special Import Measures Regulations* (SIMR).

[38] Four Canadian importers (including the Canadian producer who also acted as an importer), the Canadian producer, and the GOV, participated in the expiry review investigation by responding to the ERQs.

[39] The Canadian producer, Cello, provided case briefs to the CBSA in support of its position that continued or resumed dumping and subsidizing of CPF from Vietnam is likely if the CITT’s finding expires.

[40] No other party provided case briefs or reply submissions.

¹⁹ Exhibit 29 (NC) – Compliance Statistics – Day 50.

INFORMATION CONSIDERED BY THE CBSA

[41] The information considered by the CBSA for purposes of this expiry review investigation is contained in the administrative record. The administrative record includes the information on the CBSA's exhibit listing, which is comprised of the CBSA exhibits and information submitted by interested parties, including information which the interested parties feel is relevant to the decision as to whether dumping and subsidizing are likely to continue or resume absent the CITT order. This information may consist of expert analysts' 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 (WTO) and responses to the ERQs submitted by the Canadian producer, exporters, importers and governments.

[42] 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" and is set to allow participants time to prepare their case briefs and reply submissions based on the information that is on the administrative record as of the closing of the record date. For this investigation, the administrative record closed on March 8, 2023.

POSITION OF THE PARTIES – DUMPING

Parties Contending that Continued or Resumed Dumping is Likely

[43] Cello made representations through its Canadian Producer ERQ response, additional submitted exhibits²⁰, and in its case briefs in support of its position that the dumping of CPF from Vietnam is likely to continue or resume should the CITT's finding expire. Consequently, Cello argues that the anti-dumping measures should remain in place.

[44] The main arguments made by Cello can be summarized as follows:

- Commodity nature of CPF;
- Shifting import patterns from named countries to non-named countries;
- Inability of CPF exporters in Vietnam to compete at non-dumped prices;
- Excess production capacity of CPF producers in Vietnam;
- Weak market conditions and demand forecasts in Vietnam compared to Canada; and
- Imposition of anti-dumping measures by the U.S. in respect of similar goods (copper tube).

²⁰ Exhibit 23 (PRO) & 24 (NC) – Comments submitted by counsel for Cello regarding the Canadian CPF Market; and Exhibit 27 (PRO) & 28 (NC) – Close of Record - Additional Information from Cello

Commodity nature of CPF

[45] Cello states that regardless of what country CPFs stem from, whether from Canada, Vietnam, or non-named countries, CPFs are an interchangeable commodity. Hans Ratz, Cello's Vice-President of Product Development, indicates that: "a 2-3% price difference will routinely cause Cello to lose a sale and customers switch suppliers for pennies". Furthermore, he notes that based on his knowledge, observation, and market intelligence, imported CPFs continue to have a significant presence in the Canadian market.²¹

[46] Cello references the CITT's Orders and Reasons dated March 2, 2012 for Expiry Review No. RR-2011-001, with regards to CPF from China, Korea and the U.S., to further bolster their claim:

“copper pipe fittings are a commodity product and, as found in the inquiry and supported by the evidence introduced in this proceeding, compete essentially on the basis of price with little or no scope for product differentiation. Moreover, the evidence suggests that other important factors in purchasing decisions, such as product quality and delivery, are consistent among the like goods, the subject goods and non-subject goods”.²²

[47] Furthermore, Cello highlights that the CITT also made a similar remark in CPF from Vietnam:

“As has been found by the Tribunal previously in NQ-2006-002 and as purchasers indicated in their questionnaire responses, copper pipe fittings are commodity products, making the price quite important, and often determinative, in purchasing decisions.”²³

[48] Cello indicates that due to the commodity nature of CPFs and the fact that pricing is a major factor in the procurement process, if the finding expires, subject goods from Vietnam will have to compete with low-priced imports from non-named countries and consequently the market would quickly deteriorate.²⁴

Shifting import patterns from named countries to non-named countries

[49] Cello points out that following the CITT's finding in 2018, CPF imports into Canada from Vietnam were quickly replaced by low-priced imports from non-subject countries, particularly from Thailand.²⁵ In fact, imports of CPF from Vietnam that had comprised 47% of all imports in 2017 prior to the CITT's finding, have since been virtually absent from the Canadian market during this recent POR.²⁶

²¹ Exhibit 24 (NC) – Statement of Hans Ratz, para. 4.

²² *Ibid.*

²³ *Ibid.*, para. 5.

²⁴ *Ibid.*, para. 7.

²⁵ Exhibit 32 (NC) – Case brief filed on behalf of Cello, paras. 6 & 7.

²⁶ Exhibit 24 (NC) – Statement of Hans Ratz, para. 8.

[50] In its submissions to the CITT during the original investigation of certain copper pipe fittings originating in or exported from Vietnam (hereafter named “CPF2”), Cello explained that the volume of imports from Vietnam were shipped almost exclusively by Hailiang (Vietnam) Metal Products Co. Ltd. (“Hailiang Vietnam”), a sister company of Zhejiang Hailiang Co., Ltd. (“Zhejiang Hailiang”), which had also been a major Chinese exporter in the CPF1 investigation.²⁷

[51] Cello contends that the Hailiang Group of Companies, to which Hailiang Vietnam and Zhejiang Hailiang are related, opened a copper tube and CPF manufacturing facility in Thailand following the CITT’s finding for CPF2. Thai imports have since captured an increasing share of the Canadian market with aggressively low pricing to effectively avoid the CPF1 and CPF2 measures in force. Cello contends that current Thai import patterns display the same dynamics that had previously led to the CPF2 finding against Vietnamese imports.²⁸

[52] Cello contends that it is supported by observations made by the CITT, which in its 2021 CPF1 Expiry Review stated that “a notable change in the domestic market was the presence and increase in the volume of non-subject imports from Thailand [and] the undercutting of domestic prices was most pronounced with non-subject goods imported from Thailand”.²⁹

[53] Cello points to its own Import Activity Reports³⁰ and the evidence on the record³¹ to show a pattern of price undercutting by imports from Thailand into Canada.

[54] Cello contends that low-priced CPF imports from Thailand have undercut the selling prices of CPF from sources subject to CPF1, as well as Cello’s own prices. By shifting production to countries not subject to the CPF1 and CPF2 findings, the Hailiang Group of Companies has sought to maintain its Canadian presence despite anti-dumping measures. Cello argues that while importers have the choice to continue importing from subject countries, they have largely chosen to abandon Vietnamese imports in favour of lower-priced offerings from non-subject countries, which strongly indicates that Vietnamese exporters will quickly resume dumping if the CITT’s finding expires.³²

Inability of CPF exporters in Vietnam to compete at non-dumped prices

[55] Cello points to the CBSA’s import statistics showing that imports of CPF from Vietnam, which had previously comprised 47% of all imports in 2017 prior to the CITT’s finding, have since been practically absent from the Canadian market during this recent POR.³³

²⁷ *Ibid.*, para 9.

²⁸ *Ibid.*, para 10.

²⁹ *Ibid.*, para 11.

³⁰ Exhibit 32 (NC) – Case brief filed on behalf of Cello, para. 9.

³¹ *Ibid.*, paras. 7 & 8.

³² Exhibit 32 (NC) – Case brief filed on behalf of Cello, paras. 7-10.

³³ Exhibit 24 (NC) – Statement of Hans Ratz, paras. 15-16.

[56] Cello also contends that a lack of participation in the Canadian market during the POR, including a lack of requests by Vietnamese exporters to initiate a reinvestigation or a normal value review, suggest that Vietnamese exporters are unable or unwilling to participate in the Canadian market under the normal value regime.³⁴

[57] Based on the information on the record, Cello contends that if the CITT's finding expires, Hailiang Vietnam will re-enter the Canadian market at prices lower than those currently offered by its plant in Thailand.³⁵

Excess production capacity of CPF producers in Vietnam

[58] Cello points out that Hailiang Vietnam indicated in the original CPF2 investigation that it did not have any domestic sales, which Cello contends would mean that Hailiang Vietnam's entire production capacity are intended for export.³⁶

[59] Cello's own commercial intelligence indicates that Hailiang Vietnam's production facilities were temporarily closed following the CITT's finding but reopened in 2020, and is currently offering and quoting prices for CPF in the U.S.³⁷

[60] Cello also points to the presence of other CPF manufacturers in Vietnam with the potential to export low-priced goods to Canada should the CITT's finding expire. As an example, Cello identified Jintian Copper Industrial (Vietnam) Co. Ltd. ("Jintian Copper Vietnam"), as a Vietnamese CPF producer, whose related company in China, Jintian Copper Fitting Company (China), has a publicly stated international market focus.³⁸

Weak market conditions and demand forecasts in Vietnam compared to Canada

[61] Cello contends that due to a strong export-orientation, domestic demand factors in Vietnam are less relevant as considerations for CPF exporters in Vietnam, such as Hailiang Vietnam and Jintian Copper Vietnam, as domestic forecasts for Vietnamese non-residential construction (the main driver of CPF demand) will have no impact on the available capacity for export.³⁹

³⁴ Exhibit 32 (NC) – Case brief filed on behalf of Cello, para. 11.

³⁵ Exhibit 24 (NC) – Statement of Hans Ratz, para. 17.

³⁶ Exhibit 24 (NC) – Statement of Hans Ratz, para. 18.

³⁷ *Ibid.*, para. 19.

³⁸ Exhibit 24 (NC) – Statement of Hans Ratz, paras. 20-21.

³⁹ *Ibid.*, para 22.

[62] Notwithstanding the foregoing, Cello contends that the Vietnamese construction sector is losing momentum and appears set to underperform the general Vietnamese economy. Cello points to various sources such as a report from the Vietnam Ministry of Construction stating that the number of construction firms declaring bankruptcy or closing down increased by 38.7% in 2022, and statements from industry analysts regarding market uncertainty due to global economic and financial risks. Cello argues that given the export-orientation of Vietnamese CPF producers and a depressed domestic CPF demand in Vietnam for the near-term, Vietnamese CPF producers will heavily rely on export markets for their products.⁴⁰

[63] In contrast, Cello indicates that non-residential construction in Canada is forecasted to grow at a modest pace for 2023 and 2024 according to the Bank of Montreal. Similarly, Build Force Canada forecasts that non-residential construction investments will be somewhat higher in the next couple of years compared to 2019 and 2020. As well, the Canadian plumbing market in Canada (in which CPF are used) is expected to grow at an annual compound rate of 3.3% in the next few years. Cello contends that these forecasts suggest Canada will continue to be an attractive market for CPF, compared to a depressed near-term demand for CPF in Vietnam, creating an incentive for Vietnamese CPF exporters to continue or resume dumping if the CITT's finding expires.⁴¹

Imposition of anti-dumping measures by the U.S. in respect of similar goods (copper tube)

[64] Cello points to the final determination of dumping made on June 24, 2021, by the U.S. Department of Commerce (USDOC) with respect to seamless copper tube originating in or exported from Vietnam. In the USDOC investigation, Hailiang Vietnam and Jintian Copper Vietnam were found to have dumped copper tube into the U.S. Cello contends that since both these companies also produce CPF, it is reasonable to expect these companies will also continue to dump CPF.⁴²

[65] Cello contends that the likelihood that Hailiang Vietnam will resume dumping of CPF is compounded by the fact that the commercial relationships to facilitate imports of CPF are already in place in Canada.⁴³

Parties Contending that Continued or Resumed Dumping is Unlikely

[66] The submission made by CB did not state a clear position on the likelihood of continued or resumed dumping should the CITT's finding expire. However, CB made certain representations in their submission that may imply a position that continued or resumed dumping of CPF from Vietnam is unlikely if the CITT's finding expires.

⁴⁰ Exhibit 32 (NC) – Case brief filed on behalf of Cello, paras. 14-15.

⁴¹ *Ibid.*, paras. 13 & 15.

⁴² *Ibid.*, para. 16.

⁴³ *Ibid.*

[67] The main arguments made by CB can be summarized as follows:

- The Canadian producer does not have capacity to meet the Canadian market demand; and
- A lack of presence in the Canadian market by Vietnamese exporters.

The Canadian Producer does not have capacity to meet the Canadian market demand

[68] CB contends that Cello does not have the production capacity to meet the demand of the Canadian market since they themselves are importing CPF.

A lack of presence in the Canadian market by Vietnamese exporters

[69] CB points out that following the CITT's finding, there has not been any imports of CPF from Vietnam. A lack of imports from Vietnam indicates a lack of dumping by Vietnamese exporters during the POR.

CONSIDERATION AND ANALYSIS - DUMPING

[70] 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 CBSA may consider the factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant under the circumstances.

[71] Guided by these aforementioned factors, the CBSA conducted its review based on the documentation submitted by the various participants and its own research, all of which can be found on the administrative record. The following list represents a summary of the CBSA's analysis conducted in this expiry review investigation with respect to dumping:

- Commodity nature of CPF;
- Shifting import patterns from Vietnam to all other countries;
- Apparent inability of CPF exporters from Vietnam to sell to Canadian importers at non-dumped prices while the CITT finding was in effect;
- Changes in market conditions in Canada;
- Weak market conditions and demand for CPF in Vietnam;
- Excess production capacity of CPF producers in Vietnam;
- Ongoing relationships of CPF producers in Vietnam with Canadian importers;
- Imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada concerning Vietnamese copper pipe and tube;
- Shifting import patterns from named countries to non-named countries; and
- Propensity to dump.

Commodity nature of CPF

[72] Generally speaking, CPF produced either by a Canadian manufacturer or by a foreign manufacturer are physically interchangeable. Consequently, CPF are extremely price-sensitive.

[73] As noted by the CITT in Inquiry No. NQ-2017-004 in its finding for CPF2: “copper pipe fittings are commodity products, making the price quite important, and often determinative, in purchasing decisions”.⁴⁴

[74] The CBSA also notes the widespread availability of detailed CPF price lists to Canadian customers as evidence of the commodity nature of CPF and open price-based competition amongst CPF suppliers.⁴⁵

[75] As a result of the commodity nature of CPF, purchasers will always seek the lowest prices in the market. As such, should the CITT finding expire, the commodity nature of CPF may increase the likelihood of continued or resumed dumping of CPF.

Shifting import patterns from Vietnam to all other countries

[76] During the POR, there has been a shift in imports into Canada from the named country, Vietnam, to imports from all other countries.⁴⁶ The market share of CPF imports from all other countries (i.e. all countries other than Vietnam) into Canada has consistently increased year-over-year during the POR, measured in both volume and value.

[77] Despite an increase in imported CPF into Canada, imports of CPF from Vietnam have consistently declined year-over-year to extremely low quantities. Import patterns show that compared to the overall CPF import market, imports of CPF from Vietnam have declined.⁴⁷

[78] Furthermore, the weighted-average price of CPF imports from Vietnam during the entire POR was \$22.77 per kg compared to \$9.75 per kg for all other countries. The average price of CPF from all other countries was likewise significantly lower than CPF from Vietnam for all individual years of the POR.⁴⁸

[79] Given the price sensitive nature of the subject goods, the CBSA finds that the shift in imports into Canada from Vietnam to imports from all other countries can be reasonably attributed to the competition from lower-priced imports in Canada from all other countries.

⁴⁴ Exhibit 26 (NC) – CBSA Research #2, ADCV 02 - CPF2 2017 IN Injury CITT SOR Inquiry No. NQ-2017-004, para. 34.

⁴⁵ Exhibit 26 (NC) – CBSA Research #2: MARKET 01 - BMI - Price List, MARKET 02 - Price list CF - Copper Wrot Pressure Fittings, MARKET 03 - Price list Large Selection of Copper Sweat Fittings and Adaptors, MARKET 04 - Price list PF221, and MARKET 05 - Price list UW-CFC0123.

⁴⁶ Exhibit 29 (NC) – Compliance statistics – Day 50 and Exhibit 30 (NC) – CBSA Import Statistics – Day 50.

⁴⁷ Refer to Table 1.

⁴⁸ Calculated from Table 1.

[80] As such, should the CITT's finding expire, the commodity nature of CPF and the market's strong price competition may lead to the continued or resumed dumping of CPF.

Apparent inability of CPF exporters from Vietnam to sell to Canadian importers at non-dumped prices while the CITT finding was in effect

[81] Imports of subject goods from Vietnam have declined substantially since anti-dumping duties were first imposed. However, low volumes continued to be imported during the POR as shown in **Table 1**. During the POR, imports of CPF from Vietnam accounted for approximately 0.010% by quantity and 0.022% by value of the imports of CPF from all sources. The share of imports from Vietnam, out of all CPF imports into Canada, showed a continued downward trend from the first year of the POR to the last.

[82] Information on anti-dumping duties collected during the POR is presented in the *Enforcement Data* section. A total of approximately 578 kg of CPF from Vietnam entered the Canadian market during the POR. Importations of CPF from Vietnam have resulted in the assessment of anti-dumping duties of approximately \$6,351 during the POR.

[83] The near-disappearance of CPF imports from Vietnam during the POR stands in sharp contrast to the large quantity of CPF imports from Vietnam before the CBSA's anti-dumping duties were originally imposed. During the original CPF2 investigation's dumping Period of Investigation (POI), encompassing the period between September 1, 2016 and August 31, 2017, imports of CPF from Vietnam accounted for 33.3% of total import volume into Canada.⁴⁹

[84] The extreme decrease in import volumes from 33.3% to near-zero, occurring within the years shortly following the imposition of anti-dumping duties, may demonstrate an apparent inability for Vietnamese CPF exporters to compete in the Canadian market at non-dumped prices.

[85] As such, should the CITT's finding expire, an apparent inability for Vietnamese CPF exporters to compete in the Canadian market at non-dumped prices may lead to the continued or resumed exportation of CPF at dumped prices.

Changes in market conditions in Canada

[86] The Canadian economic outlook is not as favourable for 2023 and 2024 in terms of GDP growth compared to the previous years. According to the Bank of Montreal, annual real GDP growth for Canada is projected to be 0.7% for 2023 and 1.3% for 2024, compared to 5.0% for 2021 and 3.6% for 2022.⁵⁰

⁴⁹ Exhibit 26 (NC) – CBSA Research #2, ADCV 01 - CPF2 2017 IN FD SOR, para. 52.

⁵⁰ Exhibit 26 (NC) – CBSA Research #2, CAN ECON 07 - BMO Canadian Economic Outlook for Feb 24, 2023

[87] However, the non-residential construction growth rate in Canada is expected to outperform the general Canadian economy, with forecasted growth of 3.9% in 2023 and 2.0% in 2024.⁵¹ Demand for CPF is largely driven by non-residential construction activity.⁵²

[88] TD Economics predicts a similar outperformance of Canadian non-residential construction compared to the general Canadian economy, with growth forecasts in non-residential investment of 3.8% in 2023 and 1.8% in 2024. With regards to the U.S. however, TD Economics expects a decrease in U.S. non-residential investment, with negative growth forecasts of -5.6% in 2023 and -0.1% in 2024.

[89] The forecasted increase in the Canadian non-residential construction sector, being expected to outperform the general Canadian economy and significantly outperform its equivalent sector in the U.S., is likely to make the Canadian market increasingly attractive to global exporters of CPF and may incentivize continued and/or resumed dumping by exporters of CPF from a named country subject to anti-dumping duties, such as Vietnam, should anti-dumping duties be removed.

[90] According to multiple Canadian importers who responded to the CBSA's Importer ERQ in the 2021 Expiry Review of CPF1, there is also a growing trend of product substitutes which could continue to erode demand for CPF in the Canadian market in the coming years. This includes more cost effective water distribution solutions such as PEX pipe and fittings, and press copper fittings. If this trend continues, exporters from a named country such as Vietnam may be further incentivised to continue or resume dumping in order to acquire and maintain market share in Canada.⁵³

[91] As such, should the CITT's finding expire, the relative strength of the Canadian non-residential construction sector is likely to make the Canadian market increasingly attractive to Vietnamese exporters of CPF and may increase the likelihood of continued or resumed dumping of CPF.

Weak market conditions and demand for CPF in Vietnam

[92] The CBSA reviewed a variety of sources to assess the growth outlook of the Vietnamese construction industry. The result indicates that at minimum, strong downward pressures to future growth in the country's construction industry are expected.

⁵¹ *Ibid.*

⁵² Exhibit 26 (NC) – CBSA Research #2, ADCV 03 - CPF 2021 ER SOR, para. 94.

⁵³ *Ibid.*, para. 97.

[93] The industrial and construction sector in Vietnam grew by 7.78% in 2022, roughly in-line with an overall GDP growth of 8.02% in 2022.⁵⁴ However, the positive revenue growth in Vietnam's construction sector is not representative of true current sector conditions. A closer analysis shows that Vietnamese construction companies have been operating on thin profit margins, which are expected to be further reduced in the near-future due to higher construction material costs and issues collecting receivable debts.⁵⁵

[94] An ongoing property debt crisis in Vietnam has plagued the country's construction sector, with a wide range of companies facing severe difficulties collecting payments from cash-strapped property developers.⁵⁶ Vietnam's property debt crisis continues to worsen and risks triggering a broader crisis for Vietnam's banking sector and economy.⁵⁷

[95] According to a report by the Vietnam's Ministry of Construction, the number of enterprises in the construction sector declaring bankruptcy increased by 38.7% in 2022 due to insufficient cash flows and high raw material costs. The report also stated that property developers had difficulty accessing loans, issuing corporate bonds and mobilizing capital from customers, forcing many businesses to delay or suspend projects.⁵⁸

[96] Moreover, tightening monetary policy, rising inflation and the risk of a global recession are expected to dampen the general growth of the Vietnamese economy. According to Standard Chartered Bank, annual GDP growth for Vietnam is projected to be 7.2% for 2023 and 6.7% for 2024; a near-term deceleration of Vietnam's GDP growth.⁵⁹ Slowing general economic activity in Vietnam further decreases the likelihood of a quick recovery for the country's construction sector.

[97] Overall, the highly uncertain economic outlook in Vietnam demonstrates that demand for CPF in Vietnam is not likely to expand in the near future.

[98] As such, should the CITT's finding expire, Vietnamese CPF producers may rely heavily on export markets as the domestic market in Vietnam slows down which may increase the likelihood of continued or resumed dumping of CPF.

⁵⁴ Exhibit 26 (NC) – CBSA Research #2, VN ECON 27 - Vietnam's GDP expands by 8.02% in 2022 - VietnamPlus – 29 Dec 2022

⁵⁵ Exhibit 26 (NC) – CBSA Research #2, VN ECON 20 - What is the outlook for Vietnam's construction sector - Chamber of Commerce and Industry of Vietnam – 14 Jun 2022

⁵⁶ Exhibit 26 (NC) – CBSA Research #2, VN ECON 12 - Property market woes engulf construction companies - VnExpress International – 14 Feb 2023

⁵⁷ Exhibit 26 (NC) – CBSA Research #2, VN ECON 24 - Vietnam Property Debt Crisis Deepens as Major Developer Delays Bond Payment - BNN – 22 Feb 2023

⁵⁸ Exhibit 26 (NC) – CBSA Research #2, VN ECON 10 - Property developer bankruptcy up nearly 40% - VnExpress International – 30 Jan 2023

⁵⁹ Exhibit 26 (NC) – CBSA Research #2, VN ECON 14 - Standard Chartered forecasts Vietnam's 2023 GDP growth at 7.2% - VietnamPlus- 10 Jan 2023

Excess production capacity of CPF producers in Vietnam

[99] The original CPF2 investigation identified Hailiang (Vietnam) Metal Products Co., Ltd. (“Hailiang Vietnam”) as the sole known exporter in Vietnam of CPF to Canada.⁶⁰ Hailiang Vietnam is a subsidiary of Zhejiang Hailiang Co., Ltd. (“Zhejiang Hailiang”), which in turn is a subsidiary of the Hailiang Group (“Hailiang”) based in China.⁶¹ Hailiang Vietnam and its affiliated companies ultimately withdrew their participation in the original CPF2 investigation.⁶²

[100] For purposes of this present Expiry Review of CPF2, the CBSA will place a focus on Hailiang Vietnam given its status on the record as the sole known Vietnamese exporter of CPF to Canada, as well as being the largest producer of copper pipe and tube in Vietnam⁶³.

[101] While there is limited information on the production capacity and capacity utilization of CPF producers in Vietnam, due to a lack of cooperation of Vietnamese CPF producers, the information available on the record indicates that there is excess CPF production capacity in Vietnam.

[102] During the 2018 expiry review of copper tube, information submitted by Great Lakes Copper Ltd. (GLC), the sole producer of copper tube in Canada, indicates that Hailiang shuttered its Vietnamese plant and started exporting from a newly opened plant in Thailand.⁶⁴

[103] CBSA research including from a company press release in 2023 indicates that Hailiang’s Vietnamese subsidiary remains active⁶⁵, despite the lack of meaningful export activity to Canada. The CBSA also notes that Hailiang Vietnam represents Hailiang’s earliest production plant outside of China and has significant accumulated operational expertise.⁶⁶

[104] The active status of Hailiang Vietnam is corroborated by updated commercial intelligence provided by Cello in the course of this expiry review, indicating that Hailiang Vietnam’s production facilities were temporarily closed following the CITT’s finding but reopened in 2020, and is currently offering and quoting prices for CPF in the U.S.⁶⁷

[105] Furthermore, the commercial intelligence provided by GLC and Cello regarding the underutilization of Vietnamese CPF production capacity is indirectly supported by evidence of excess production capacity in Vietnamese steel production.

⁶⁰ Exhibit 26 (NC) – CBSA Research #2, ADCV 01 - CPF2 2017 IN FD SOR, paras. 53-57.

⁶¹ Exhibit 26 (NC) – CBSA Research #2, MARKET 06 - About Hailiang _ Custom Copper Pipes, Bars and Coils

⁶² Exhibit 26 (NC) – CBSA Research #2, ADCV 01 - CPF2 2017 IN FD SOR, para. 57.

⁶³ Exhibit 26 (NC) – CBSA Research #2, ADCV 04 - US ITC - Seamless Refined Copper Pipe and Tube from Vietnam - Aug 2021, pg. 15.

⁶⁴ Exhibit 26 (NC) – CBSA Research #2, ADCV 05 - CT 2018 ER SOR, para. 68.

⁶⁵ Exhibit 26 (NC) – CBSA Research #2, MARKET 16 - Hailiang 2022 Summary – 6 Feb 2023 and Exhibit 26 (NC) – CBSA Research #2, MARKET 11 - Hailiang Foreign Production Base

⁶⁶ Exhibit 26 (NC) – CBSA Research #2, MARKET 15 - Global M&A - Zhejiang Hailiang Co., Ltd – 25 May 2019

⁶⁷ Exhibit 24 (NC) – Statement of Hans Ratz, para. 19.

[106] A lack of construction demand during 2022 in Vietnam was the primary cause of sharp reductions in steel-making activity, with certain plants believed to be operating at below 50% of their capacity.⁶⁸ Given that the sources of demand for CPF and steel overlap to some degree, the identical issue of weak construction demand in Vietnam may have negatively affected capacity utilization rates to both steel and copper product demand.

[107] As such, the capacity underutilization of Vietnamese CPF producers creates an incentive to sell excess production in foreign markets at depressed prices, which may increase the likelihood of continued or resumed dumping of CPF if the CITT's finding expires.

Ongoing relationships of CPF producers in Vietnam with Canadian importers

[108] Evidence on the record shows that Hailiang Vietnam's parent company, Hailiang, has maintained ongoing relationships with Canadian importers, as evidenced by imports of CPF from Hailiang Thailand during the POR by Noble⁶⁹. Hailiang's ongoing relationships with importers in Canada demonstrate a continued interest in the Canadian market.

[109] In addition, Cello contends that the likelihood of Hailiang Vietnam resuming dumping of CPF is compounded by the fact that commercial relationships between Canadian importers and Hailiang Vietnam are already in place.⁷⁰

[110] Public statements made by Hailiang regarding the related copper pipe industry also indicate a continued interest in the Canadian market, with the company stating in 2019 that: "The Americas is an important market for copper pipe consumption, and North America has always been the largest overseas sales market of Zhejiang Hailiang".⁷¹

[111] As such, should CITT's finding expire, the ongoing relationships of Vietnamese CPF exporters with Canadian importers and their apparent continued interest in the Canadian market, may increase the likelihood of continued or resumed dumping of CPF.

⁶⁸ Exhibit 26 (NC) – CBSA Research #2, VN ECON 19 - Vietnam steel demand slumps as construction stumbles - Nikkei Asia – 24 Jan 2023

⁶⁹ Exhibit 14 (NC) – Response to Importer ERQ from Noble, Appendix 1.

⁷⁰ Exhibit 32 (NC) – Case brief filed on behalf of Cello, para. 16.

⁷¹ Exhibit 26 (NC) – CBSA Research #2, MARKET 17 - Hailiang - Safety Net Weaved by Hailiang Explores the Last Mile of the American Market_2019 – 14 Oct 2019

Imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada concerning Vietnamese copper pipe and tube

[112] Three Vietnamese producers of seamless refined copper pipe and tube - Hailiang Vietnam, Jintian Copper Industrial (Vietnam) Company Limited. (“Jintian Copper Vietnam”), and Toan Phat Copper Tube Joint Stock Company (brand named as “Ruby Copper”) - were publicly identified in a 2021 investigation by the U.S. Department of Commerce (USDOC) to have dumped their products in the U.S.⁷²

[113] The same three companies were also the only cooperative producers from Vietnam during a countervailing investigation conducted by the Government of India’s Directorate General of Trade Remedies regarding copper tubes and pipes from Malaysia, Thailand and Vietnam, which concluded in 2022.⁷³

[114] As previously established in the 2021 Expiry Review of CPF1, overlap exists between the producers of copper tube, copper pipe, and CPF. In particular, large producers of copper pipe and tube may also be large producers of CPF, as evidenced by the recurrence of Hailiang in anti-dumping investigations related to copper products.⁷⁴

[115] Two of the three copper pipe and tube producers identified by the USDOC and the Government of India - Hailiang Vietnam, the largest producer in Vietnam of copper tube and pipe⁷⁵, and Jintian Copper Vietnam - are also producers of CPF.

[116] Furthermore, U.S. anti-dumping duties imposed include Vietnamese copper pipe and tube imports with attachments such as CPF⁷⁶. Due to Canada’s close proximity to the US, Vietnamese CPF exports can easily be diverted to Canada. Hence, Canada is exposed to diversion risk for available volumes of Vietnamese CPF.

[117] The CBSA finds that the imposition of anti-dumping and countervailing measures by U.S. and Indian authorities demonstrates a propensity by Vietnamese exporters to dump copper products in foreign markets. As such, should the CITT’s finding expire, the propensity by Vietnamese exporters to dump copper goods may increase the likelihood of continued or resumed dumping of CPF.

⁷² Exhibit 26 (NC) – CBSA Research #2, ADCV 04 - US ITC - Seamless Refined Copper Pipe and Tube from Vietnam - Aug 2021, pg. I-3.

⁷³ Exhibit 26 (NC) – CBSA Research #2, ADCV 11 - India DOC - 2022 FD CVD Copper Tubes and Pipes from Malaysia, Thailand and Vietnam, pg. 3.

⁷⁴ Exhibit 26 (NC) – CBSA Research #2, ADCV 03 - CPF 2021 ER SOR, para. 185.

⁷⁵ Exhibit 26 (NC) – CBSA Research #2, ADCV 04 - US ITC - Seamless Refined Copper Pipe and Tube from Vietnam - Aug 2021, pg. 15.

⁷⁶ *Ibid.*, pg. 13.

Shifting import patterns from named countries to non-named countries

[118] Information on the record, including from GLC⁷⁷ and producers in the U.S.,⁷⁸ indicates that following the imposition of anti-dumping duties on copper tubes from Hailiang Vietnam by the CBSA and USDOC respectively, Hailiang began to substantially increase exports from Thailand, a non-subject country. The aforementioned sources support Cello's information regarding Hailiang's opening of a copper tube and CPF manufacturing facility in Thailand following the CITT's finding for CPF2.⁷⁹

[119] Furthermore, confidential information on the record shows a pattern of price undercutting by imports from Thailand into Canada.⁸⁰

[120] Given all of the above information, the CBSA views the pricing and sales volume of CPF imports during the POR from Thailand, a non-subject country, to be indicative of the likely pricing and sales volume of Vietnamese CPF should the CITT's finding expire.

[121] As such, should the CITT's finding expire, CPF from Vietnam would need to compete in Canada with the lower prices of imports from non-subject countries, which may increase the likelihood of continued or resumed dumping of CPF.

Propensity to dump

[122] Information on the record suggests that Hailiang, acting together with Hailiang Vietnam, implemented a deliberate strategy of relocating copper-related manufacturing capacity from countries subject to anti-dumping measures to non-named countries.

[123] Hailiang publicly stated in 2019 that: "When the United States implemented anti-dumping policy on China's copper tube products in 2009, the Vietnam base was put into operation. Since then, the company's export orders to the US have all been transferred to the Vietnam factory."⁸¹ Qian Ziqiang, secretary of the board of Zhejiang Hailiang, further stated in 2019 that: "At this point, anti-dumping, trade barriers and other unfavorable factors will hardly affect the company".⁸² The CBSA notes that the USDOC subsequently made an affirmative determination of dumping with regards to seamless refined copper pipe and tube from Vietnam in 2021.⁸³

⁷⁷ Exhibit 26 (NC) – CBSA Research #2, ADCV 05 - CT 2018 ER SOR, para. 68.

⁷⁸ Exhibit 26 (NC) – CBSA Research #2, ADCV 04 - US ITC - Seamless Refined Copper Pipe and Tube from Vietnam - Aug 2021, pg. IV-4.

⁷⁹ Exhibit 24 (NC) – Statement of Hans Ratz, para. 10.

⁸⁰ Expiry Review Report (PRO), paras. 122-127.

⁸¹ Exhibit 26 (NC) – CBSA Research #2, MARKET 17 - Hailiang - Safety Net Weaved by Hailiang Explores the Last Mile of the American Market_2019 – 14 Oct 2019

⁸² *Ibid.*

⁸³ Exhibit 26 (NC) – CBSA Research #2, ADCV 04 - US ITC - Seamless Refined Copper Pipe and Tube from Vietnam – Aug 2021.

[124] The clearly stated intentions by Hailiang and Hailiang Vietnam to relocate the source of exports to non-subject countries to avoid anti-dumping duties, as opposed to increasing export prices above their normal values, increases the likelihood of continued or resumed dumping should the CITT's finding expire.

[125] In addition, both Hailiang Vietnam and Jintian Copper Vietnam share similar characteristics as Vietnamese subsidiaries of a Chinese parent company that also operates manufacturing facilities of like goods in China.⁸⁴ Both subsidiaries appear to form part of an integrated international sales network overseen by their respective parent companies, as evidenced by the consolidated nature of their sales marketing⁸⁵ and lack of a separate website.

[126] Hailiang Vietnam's parent company, Hailiang, was found by the CBSA to have dumped its products into Canada in three separate investigations: with respect to certain copper pipe fittings from the U.S., South Korea and China (CPF1)⁸⁶, certain copper pipe fittings from Vietnam (CPF2)⁸⁷, and certain copper tube from Brazil, China, Greece, Mexico and Korea (CT)⁸⁸. Likewise, exports of CPF and copper tube into Canada from Jintian Copper Vietnam and its parent company in China are both subject to anti-dumping duties. The history of investigations by the CBSA and other international investigating authorities⁸⁹ into Hailiang, Jintian Copper, and other Chinese producers of CPF and copper tube, indicates a propensity to dump copper products by Chinese CPF producers and their subsidiaries.

[127] Thus, the propensity of certain Vietnamese CPF producers to dump goods is further magnified by their close relationships with Chinese parent companies that have themselves exhibited a propensity and history of dumping.

[128] As such, should the CITT's finding expire, the propensity to dump by Vietnamese exporters of CPF may increase the likelihood of continued or resumed dumping of CPF.

⁸⁴ Exhibit 26 (NC) – CBSA Research #2, MARKET 06 - About Hailiang _ Custom Copper Pipes, Bars and Coils, and Exhibit 26 (NC) – CBSA Research #2, MARKET 09 - Jintian Copper - Firm Structure.

⁸⁵ Exhibit 26 (NC) – CBSA Research #2, MARKET 18 - Jintian Copper Fitting Catalogue, pg. 2-3.

⁸⁶ Exhibit 26 (NC) – CBSA Research #2, ADCV 03 - CPF 2021 ER SOR.

⁸⁷ Exhibit 26 (NC) – CBSA Research #2, ADCV 01 - CPF2 2017 IN FD SOR.

⁸⁸ Exhibit 26 (NC) – CBSA Research #2, ADCV 07 - CT 2013 IN FD SOR.

⁸⁹ Refer to previous section titled: *Imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada concerning Vietnamese copper pipe and tube.*

Determination Regarding Likelihood of Continued or Resumed Dumping

[129] Based on the information on the record in respect of the: commodity nature of CPF; shifting import patterns from Vietnam to all other countries; apparent inability of CPF exporters from Vietnam to sell to Canadian importers at non-dumped prices while the CITT finding was in effect; changes in market conditions in Canada; weak market conditions and demand for CPF in Vietnam; excess production capacity of CPF producers in Vietnam; ongoing relationships of CPF producers in Vietnam with Canadian importers; imposition of anti-dumping or countervailing measures by the authorities of a country other than Canada concerning Vietnamese copper pipe and tube; shifting import patterns from named countries to non-named countries; and a propensity to dump, the CBSA has determined that the expiry of the finding is likely to result in the continuation or resumption of dumping of CPF from Vietnam.

POSITION OF THE PARTIES - SUBSIDIZING

Parties Contending that Continued or Resumed Subsidizing is Likely

[130] Cello made representations through its ERQ response and in its case briefs in support of its position that subsidizing from Vietnam is likely to continue or resume in the event the CITT's finding expires. Consequently, Cello argues that the countervailing measures should remain in place.

[131] The main factor identified by Cello is the continued subsidizing of CPF while the finding was in effect.

Continued subsidizing of CPF while the finding was in effect

[132] Cello notes that Vietnamese CPF exporters and producers did not cooperate in this expiry review. As such, Cello refers to the fact that in the final determination of the original CPF2 investigation, the CBSA found that subject goods from Vietnam were subsidized at a rate of 30.6% based on various subsidy programs that Vietnamese producers of subject goods would be entitled to benefit from. Cello also states that the GOV's ERQ response did not indicate any changes to the subsidy programs available nor to the amount of benefits available. Cello contends that CPF producers in Vietnam continue to benefit from the subsidy programs identified in the CBSA's original CPF2 investigation.⁹⁰

⁹⁰ Exhibit 32 (NC) – Case brief filed on behalf of Cello, para. 17.

Parties Contending that Continued or Resumed Subsidizing is Unlikely - GOV

[133] The Trade Remedies Authority of Vietnam under the Ministry of Industry and Trade of Vietnam provided a response to the CBSA's Foreign Government ERQ, but did not state a clear position on the likelihood of continued or resumed subsidizing should the CITT's finding expire. However, the GOV made certain representations in their submission that may imply a position that continued or resumed subsidizing of CPF from Vietnam is unlikely if the CITT's finding expires.

[134] The main factors identified by the GOV are the lack of subsidy programs specifically intended for CPF producers or exporters, and the termination of certain subsidy programs.

Lack of subsidy programs specifically intended for CPF producers or exporters

[135] The GOV submits that: "there is no subsidy or grant program that specifically intends to the CPF industry as well CPF's producers/exporters. In several previous CVD investigations, the alleged subsidy programs listed in this ERQ have been determined by investigating Governments (including the Canadian Government) that the GOV does not subsidize or intervene in the market to create unfair benefits/advantages for producers/exporters of certain industries."⁹¹

Termination of certain subsidy programs

[136] The GOV contends that the following program examined by the CBSA: "#5. Export and Import Support in Forms of Preferential Loan, Interest Rate, Guarantee and Factoring" is not a subsidy as "[the GOV] and the State Bank of Viet Nam do not intervene in lending decisions nor specifically stipulate interest rates, guarantee and factoring for each bank loans to enterprises"⁹².

[137] The GOV also contends that the following subsidy programs examined by the CBSA: "#10. Export Promotion"; "#13. Grants to Firms that Employ More than 50 Employees"; and "#14. Assistance to Enterprises Facing Difficulties Due to Objective Reasons", have been terminated and were thus not applicable during the POR.⁹³

[138] A lack of subsidization and/or the termination of certain subsidy programs would imply that subsidization is unlikely to continue or resume should the CITT's finding expire.

Parties Contending that Continued or Resumed Subsidizing is Unlikely - CB

[139] The submission made by CB did not state a clear position on the likelihood of continued or resumed subsidizing should the CITT's finding expire. However, CB made certain representations in their submission that may imply a position that continued or resumed subsidizing of CPF from Vietnam is unlikely if the CITT's finding expires.

⁹¹ Exhibit 25 (NC) – Response to Foreign Government ERQ from the GOV, pg. 28.

⁹² Exhibit 25 (NC) – Response to Foreign Government ERQ from the GOV, pg. 9.

⁹³ Exhibit 25 (NC) – Response to Foreign Government ERQ from the GOV.

[140] CB did not present any arguments to support their position.

CONSIDERATION AND ANALYSIS - SUBSIDIZING

[141] 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 subsidizing of the goods, the CBSA may consider the factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant under the circumstances.

[142] Guided by the aforementioned regulations and having examined the information on the administrative record, the following is a list of the factors considered in the analysis with respect to the likelihood of continued or resumed subsidizing:

- Continued availability of subsidy programs for CPF producers in Vietnam; and
- Imposition of countervailing measures by an authority of a country other than Canada concerning Vietnamese copper tube and pipe.

Continued availability of subsidy programs for CPF producers in Vietnam

[143] In light of the lack of participation from Vietnamese producers and exporters of subject goods in this expiry review, the CBSA relied on information from the original CPF2 investigation, the ERQ response submitted by the Government of Vietnam (GOV), and other pertinent information on the record in assessing the likelihood of continued or resumed subsidization, should the CITT's finding expire.

[144] In the original subsidy investigation of CPF originating in or exported from Vietnam, 19 potential subsidy programs were investigated and 13 of these subsidy programs were considered to be available to producers or exporters of CPF in Vietnam.⁹⁴ The amount of subsidy for all exporters was 30.6%, expressed as a percentage of the export price, as determined according to a Ministerial Specification pursuant to subsection 30.4(2) of SIMA.⁹⁵

[145] The CBSA sent an expiry review questionnaire to the GOV to obtain updated information on the following subsidy programs⁹⁶:

Relief from Import Tax and Duties

1. Exemptions of Import Tax and Duty
2. Refunds of Import Duty

Relief from Land Rent, Tax and Levy

3. Incentives on Non-Agricultural Land Use Tax
4. Exemptions/Reductions of Land Rent, Tax and Levy

⁹⁴ Exhibit 26 (NC) – CBSA Research #2, ADCV 01 - CPF2 2017 IN FD SOR, paras. 93-97.

⁹⁵ *Ibid.*, paras. 99-105.

⁹⁶ Exhibit 7 (NC) – Expiry Review Questionnaire (ERQ) sent to GOV.

Preferential Loans and Loan Guarantees

5. Export and Import Support in Forms of Preferential Loan, Interest Rate, Guarantee and Factoring

Preferential Tax Programs

6. Enterprise Income Tax Preferences, Exemptions and Reductions
7. Vat Preferences, Exemptions and Reductions
8. Accelerated Depreciation of Fixed Assets

Grants and Grants Equivalent

9. Investment Support
10. Export Promotion
11. Consultancy Support for Small and Medium-Sized Enterprises
12. Support for the Human Resources Development of Small and Medium-Sized Enterprises
13. Grants to Firms that Employ More than 50 Employees
14. Assistance to Enterprises Facing Difficulties Due to Objective Reasons

Goods/Services Provided By the Government at Less Than Fair Market Value

15. Utilities Provided at Less than Fair Market Value for Enterprises in Industrial Zones

[146] The Trade Remedies Authority of Vietnam under the Ministry of Industry and Trade of Vietnam provided a response to the CBSA’s ERQ regarding any changes to each of the above identified subsidy programs since the final determination of the CPF2 original investigation on April 25, 2018.

[147] For the majority of the subsidy programs examined in this expiry review, the GOV stated in their ERQ response that: “There have not been any changes to this alleged subsidy program since 2018-04-25 that would affect the access of producers of copper pipe fittings or the amount of benefits available under the programs”.⁹⁷

[148] The GOV contends that for at least eight of the subsidy programs identified by the CBSA, these programs are generally available and/or not specifically applicable to CPF producers or exporters.⁹⁸ However, the CBSA notes that according to subsection 2(7.2) of SIMA, a subsidy is considered specific when it is limited, in a legislative, regulatory or administrative instrument, or other public document, to a particular enterprise within the jurisdiction of the authority that is granting the subsidy. An “enterprise” is defined as including a group of enterprises, an industry and a group of industries.⁹⁹ Hence, an actionable subsidy program under SIMA does not require that the program be applicable solely to CPF producers and exporters, nor solely to a particular industry.

⁹⁷ Exhibit 25 (NC) – Response to Foreign Government ERQ from the GOV.

⁹⁸ *Ibid.*

⁹⁹ Exhibit 26 (NC) – CBSA Research #2, ADCV 01 - CPF2 2017 IN FD SOR, paras. 84-85..

[149] The GOV contends that the following program examined by the CBSA: #5. Export and Import Support in Forms of Preferential Loan, Interest Rate, Guarantee and Factoring is not a subsidy as “[the GOV] and the State Bank of Viet Nam do not intervene in lending decisions nor specifically stipulate interest rates, guarantee and factoring for each bank loans to enterprises”¹⁰⁰. The GOV also contends that the following subsidy programs examined by the CBSA: #10. Export Promotion; #13. Grants to Firms that Employ More than 50 Employees; and #14. Assistance to Enterprises Facing Difficulties Due to Objective Reasons, have been terminated and were thus not applicable during the POR.¹⁰¹ Nonetheless, these aforementioned programs were identified as actionable subsidy programs by the CBSA in the 2020 subsidy investigation into upholstered domestic seating from China and Vietnam.¹⁰²

[150] Given the lack of cooperation by Vietnamese CPF producers and exporters, the CBSA does not have sufficient information on the record to: determine the eligibility of each individual CPF producer or exporter to each individual available subsidy program, determine the existence of any new subsidy programs, nor to determine any continuing benefits from terminated programs.

[151] However, sufficient information is available on the record to indicate that current countervailable subsidy programs, whether the same or closely resembling the countervailed programs at the final determination of the CPF2 original investigation, continue to be available to Vietnamese CPF producers and exporters as a whole.

[152] Following the final determination of the CPF2 original investigation, Vietnamese exporters of cold-rolled steel and upholstered domestic seating were also found by the CBSA to have benefitted from countervailable subsidies in 2018¹⁰³ and 2020¹⁰⁴ respectively, demonstrating a continued commitment by the GOV to provide subsidies to Vietnamese companies.

[153] Hence, available information on the record, including from the GOV’s ERQ response, would indicate a continued availability of subsidy programs to CPF producers and exporters, along with a continued commitment by the GOV to provide subsidies to Vietnamese companies.

[154] As such, should the CITT’s finding expire, the continued availability of subsidy programs for CPF producers in Vietnam may increase the likelihood of continued or resumed subsidizing of CPF.

¹⁰⁰ Exhibit 25 (NC) – Response to Foreign Government ERQ from the GOV, pg. 9.

¹⁰¹ Exhibit 25 (NC) – Response to Foreign Government ERQ from the GOV.

¹⁰² Exhibit 26 (NC) – CBSA Research #2, ADCV 08 - UDS 2020 IN FD SOR, Appendix 4.

¹⁰³ Exhibit 26 (NC) – CBSA Research #2, ADCV 09 - CRS 2018 IN FD SOR.

¹⁰⁴ Exhibit 26 (NC) – CBSA Research #2, ADCV 08 - UDS 2020 IN FD SOR.

Imposition of countervailing measures by an authority of a country other than Canada concerning Vietnamese copper tube and pipe

[155] Three Vietnamese producers of seamless refined copper pipe and tube - Hailiang Vietnam, Jintian Copper Vietnam, and Toan Phat Copper Tube Joint Stock Company (brand named as “Ruby Copper”) - were the only cooperative producers from Vietnam during a countervailing investigation conducted by the Government of India’s Directorate General of Trade Remedies regarding “copper tubes and pipes” from Malaysia, Thailand and Vietnam, which concluded in 2022.

[156] The countervailing investigation conducted by the Government of India determined a final amount of subsidy, expressed as a percentage of the CIF price¹⁰⁵, of 2.13%, 2.30%, 6.81% and 14.76% for Jintian Copper Vietnam, Hailiang Vietnam, Toan Phat Copper Tube Joint Stock Company (“Ruby Copper”) and for all other Vietnamese exporters respectively.¹⁰⁶

[157] The same three companies were also publicly identified in a 2021 investigation by the U.S. Department of Commerce (USDOC) to have dumped their products in the U.S.¹⁰⁷

[158] Overlap exists between the producers of copper tube, copper pipe, and CPF. In particular, large producers of copper pipe and tube may also be large producers of CPF, as evidenced by the recurrence of Hailiang in anti-dumping investigations related to copper products.¹⁰⁸

[159] Two of the three copper pipe and tube producers identified by the Government of India - Hailiang Vietnam, the largest producer in Vietnam of copper tube and pipe¹⁰⁹, and Jintian Copper Vietnam - are also producers of CPF.

[160] As copper tube is a main input for the production of CPF¹¹⁰, there is also a high likelihood that subsidies received for the production of copper tube would be attributable to CPF products in the form of indirect pass-through subsidies.

[161] Thus, the imposition of countervailing measures by authorities of a country other than Canada concerning Vietnamese copper tube and pipe indicates that it is likely that exporters of CPF from Vietnam will likely benefit from continued or resumed subsidizing if the CITT’s finding expires.

¹⁰⁵ Cost, Insurance, and Freight Import Value (C.I.F.)

¹⁰⁶ Exhibit 26 (NC) – CBSA Research #2, ADCV 11 - India DOC - 2022 FD CVD Copper Tubes and Pipes from Malaysia, Thailand and Vietnam, pgs. 126-128.

¹⁰⁷ Exhibit 26 (NC) – CBSA Research #2, ADCV 04 - US ITC - Seamless Refined Copper Pipe and Tube from Vietnam - Aug 2021, pg. I-3.

¹⁰⁸ Exhibit 26 (NC) – CBSA Research #2, ADCV 03 - CPF 2021 ER SOR, para. 185.

¹⁰⁹ Exhibit 26 (NC) – CBSA Research #2, ADCV 04 - US ITC - Seamless Refined Copper Pipe and Tube from Vietnam - Aug 2021, pg. 15.

¹¹⁰ Exhibit 26 (NC) – CBSA Research #2, ADCV 01 - CPF2 2017 IN FD SOR, para. 30.

[162] As such, the CBSA finds that should the CITT's finding expire, the imposition of countervailing measures by authorities of a country other than Canada concerning Vietnamese copper tube and pipe increases the likelihood of continued or resumed subsidizing of CPF.

Determination Regarding Likelihood of Continued or Resumed Subsidizing

[163] Based on the information on the record in respect of the continued availability of subsidy programs for CPF producers in Vietnam and the imposition of countervailing measures by an authority of a country other than Canada concerning Vietnamese copper tube and pipe, the CBSA has determined that the expiry of the finding is likely to result in the continuation or resumption of subsidizing of CPF from Vietnam.

CONCLUSION

[164] For the purpose of making a determination in this expiry review investigation, the CBSA conducted its analysis within the scope of the factors found under subsection 37.2(1) of the SIMR and considering any other factors relevant in the circumstances. Based on the foregoing analysis of pertinent factors and consideration of information on the record, on June 15, 2023, the CBSA made a determination pursuant to paragraph 76.03(7)(a) of SIMA that the expiry of the finding made by the CITT on May 25, 2018, in Inquiry NQ-2017-004, in respect of certain copper pipe fittings originating in or exported from Vietnam:

- is likely to result in the continuation or resumption of dumping of the goods from Vietnam; and
- is likely to result in the continuation or resumption of subsidizing of the goods from Vietnam.

FUTURE ACTION

[165] The CITT has now initiated its expiry review to determine whether the continued or resumed dumping and subsidizing are likely to result in injury. The CITT's Expiry Review schedule indicates that it will make its decision by November 22, 2023.

[166] If the CITT determines that the expiry of the finding with respect to the goods is likely to result in injury, 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/or countervailing duties on dumped and/or subsidized importations of the subject goods.

[167] If the CITT determines that the expiry of the finding with respect to the goods is not likely to result in injury, the finding will expire in respect of those goods. Anti-dumping and/or countervailing duties would then no longer be levied on importations of the subject goods, and any anti-dumping and/or countervailing duties paid in respect of goods that were released after the date that the finding was scheduled to expire will be returned to the importer.

INFORMATION

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

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