



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## FINDING AND REASONS

Inquiry No. NQ-2011-002

Stainless Steel Sinks

*Finding issued  
Thursday, May 24, 2012*

*Reasons issued  
Friday, June 8, 2012*

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IN THE MATTER OF an inquiry, pursuant to section 42 of the *Special Import Measures Act*, respecting:

**THE DUMPING AND SUBSIDIZING OF STAINLESS STEEL SINKS  
ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

**FINDING**

The Canadian International Trade Tribunal, pursuant to the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping and subsidizing of stainless steel sinks with a single drawn bowl having a volume between 1,600 and 5,000 cubic inches (26,219.30 and 81,935.32 cubic centimetres) or with multiple drawn bowls having a combined volume between 2,200 and 6,800 cubic inches (36,051.54 and 111,432.04 cubic centimetres), excluding sinks fabricated by hand, originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury to the domestic industry.

Further to the issuance by the President of the Canada Border Services Agency of final determinations dated April 24, 2012, that the aforementioned goods have been dumped and subsidized, and pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping and subsidizing of the aforementioned goods have caused injury to the domestic industry.

The Canadian International Trade Tribunal hereby excludes from its injury finding stainless steel sinks with a single drawn bowl or double drawn bowls and a 1 1/4-inch by 3/4-inch (32-millimetre by 19-millimetre) cast-resin matrix rim that replaces a stainless steel rim, for undermount seamless installation in countertops.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Pasquale Michaele Saroli  
Pasquale Michaele Saroli  
Member

Jason W. Downey  
Jason W. Downey  
Member

Dominique Laporte  
Dominique Laporte  
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	April 23 and 24, 2012
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**Counsel/Representatives**

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**Importers/Foreign Producers/Exporters**

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Blanco Canada Inc.  
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Karran USA	Mark A. Webster
Nautika	Gary Boucher
Polycryl Manufacturing (1998) Inc.	Iqbal Bhimji

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## STATEMENT OF REASONS

1. The Canadian International Trade Tribunal (the Tribunal), pursuant to section 42 of the *Special Import Measures Act*,<sup>1</sup> has conducted an inquiry to determine whether the dumping and subsidizing of stainless steel sinks with a single drawn bowl having a volume between 1,600 and 5,000 cubic inches (26,219.30 and 81,935.32 cubic centimetres) or with multiple drawn bowls having a combined volume between 2,200 and 6,800 cubic inches (36,051.54 and 111,432.04 cubic centimetres), excluding sinks fabricated by hand (stainless steel sinks), originating in or exported from the People's Republic of China (China) (the subject goods), have caused injury or retardation or are threatening to cause injury to the domestic industry.
2. On October 27, 2011, the President of the Canada Border Services Agency (CBSA), following a complaint filed jointly by Franke Kindred Canada Limited (FKC) of Midland, Ontario, and Novanni Stainless Inc. (Novanni) of Coldwater, Ontario, initiated investigations into whether the subject goods had been dumped or subsidized.
3. On October 28, 2011, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or retardation or were threatening to cause injury. On December 28, 2011, the Tribunal made a preliminary determination, pursuant to subsection 37.1(1), that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury or were threatening to cause injury.
4. On January 25, 2012, the CBSA issued preliminary determinations that the subject goods had been dumped and subsidized, that the margin of dumping and the amount of subsidy were not insignificant and that the import volumes of the subject goods were not negligible.
5. On January 26, 2012, the Tribunal issued a notice of commencement of inquiry.<sup>2</sup> The Tribunal's period of inquiry (POI) covered three full years, from January 1, 2009, to December 31, 2011.
6. As part of its inquiry, the Tribunal requested domestic producers, importers and foreign producers of stainless steel sinks to complete questionnaires. The Tribunal also requested purchasers of stainless steel sinks in Canada to complete a questionnaire on market characteristics. From the replies to questionnaires and other information on the record, the Tribunal's staff prepared public and protected pre-hearing staff reports.
7. On April 24, 2012, the CBSA issued final determinations of dumping and subsidizing.
8. The Tribunal held a hearing, with public and *in camera* testimony in Ottawa, Ontario, on April 23 and 24, 2012.
9. FKC and Novanni filed written submissions, provided evidence and made arguments in support of a finding of injury or, alternatively, threat of injury. They were represented by counsel and presented witnesses at the hearing.

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1. R.S.C. 1985, c. S-15 [*SIMA*].

2. C.Gaz. 2012.I.130.

10. Other parties that were represented by counsel in this inquiry include Blanco Canada Inc. (Blanco) and Blanco GmbH + Co KG, an importer and foreign producer/exporter respectively, of the subject goods, as well as Canadian Tire Corporation, Limited (Canadian Tire) and Garya International Inc./Gallant Marble Company, importers of the subject goods. The Tribunal received notices of participation from Artisan Manufacturing Corp., an importer and foreign producer/exporter of the subject goods, as well as from Nautika, Polycryl Manufacturing (1998) Inc. and Bristol Sinks, importers of the subject goods. None of these parties filed written submissions or took part in the hearing. However, the Tribunal received a written submission opposing a finding of injury from Quadro Canada Ltd. (Quadro), an importer of the subject goods.<sup>3</sup>

11. In its notice of commencement of inquiry, the Tribunal referred to the procedures for filing requests for specific product exclusions. The Tribunal received one request from Karran USA (Karran), a foreign producer/exporter of the subject goods, for the exclusion of stainless steel sinks with cast-resin matrix rims. The Tribunal allowed Karran to file physical exhibits and appear at the hearing to provide clarifications and argument, and answer questions with respect to its product exclusion request. Both FKC and Novanni made written and oral submissions in opposition to Karran's request.

12. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2011-002), replies to questionnaires, public and protected versions of the pre-hearing staff report, requests for information and replies thereto, documents with respect to the product exclusion process, witness statements, all other exhibits filed by the parties and the Tribunal throughout the inquiry, and the transcript of the hearing.

13. All public exhibits were made available to parties. Protected exhibits were made available only to counsel who had filed the required declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

14. The Tribunal issued its finding on May 24, 2012.

## **RESULTS OF THE CBSA'S INVESTIGATIONS**

15. On April 24, 2012, the CBSA determined that 100 percent of the subject goods released into Canada from September 1, 2010, to August 31, 2011, had been dumped at a weighted average margin of dumping of 71.1 percent, when expressed as a percentage of the export price.<sup>4</sup>

16. The CBSA also determined that 100 percent of the subject goods released into Canada from January 1, 2010, to August 31, 2011, had been subsidized at a weighted average amount of subsidy of 38.8 percent, when expressed as a percentage of the export price.<sup>5</sup>

17. The CBSA concluded that the overall margin of dumping and amount of subsidy were not insignificant.<sup>6</sup>

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3. The Tribunal decided to place this submission on the record of this inquiry despite the fact that Quadro's representative had not filed a notice of participation in a timely manner. Quadro claimed that it only became aware of the conduct of this inquiry in April 2012. Tribunal Exhibit NQ-2011-002-32.01, Administrative Record, Vol. 1 at 180.

4. Tribunal Exhibit NQ-2011-002-04A, Administrative Record, Vol. 1 at 138.19; Tribunal Exhibit NQ-2011-002-04B, Administrative Record, Vol. 1 at 138.26.

5. Tribunal Exhibit NQ-2011-002-04A, Administrative Record, Vol. 1 at 138.19.

6. Tribunal Exhibit NQ-2011-002-04B, Administrative Record, Vol. 1 at 138.42.

## PRODUCT

### Product Definition

18. The goods subject to this inquiry are defined as follows:

stainless steel sinks with a single drawn bowl having a volume between 1,600 and 5,000 cubic inches (26,219.30 and 81,935.32 cubic centimetres) or with multiple drawn bowls having a combined volume between 2,200 and 6,800 cubic inches (36,051.54 and 111,432.04 cubic centimetres), excluding sinks fabricated by hand,<sup>7</sup> originating in or exported from China.

### Additional Product Information<sup>8</sup>

19. The volume of stainless steel sinks is calculated as the product of the length, width and depth of the bowl, regardless of the taper and radius of the bowl, where length and width are measured from front to back and left to right of the bowl rim and where depth is measured from the bowl rim to the bottom of the sink at the point closest to the drain.

20. Stainless steel sinks are available in a variety of shapes and configurations. They may have single or multiple bowls, and may be undermount (mounted underneath the countertop with the faucet mounted directly to the countertop), top mount or drop in (mounted on top of the countertop surface with the faucet mounted directly on the sink), or designed as work tops.

21. Stainless steel sinks may be supplied with seals, strainer or strainer sets, mounting clips, fasteners, sound-deadening pads, cut-out templates, and additional accessories such as rinsing baskets and bottom grids.

22. Stainless steel sinks are commonly used in residential and non-residential installations, including in kitchens, bathrooms, utility and laundry rooms. They are generally made from grades 301, 304 and 316 cold-rolled stainless steel sheet that is 16, 18 or 20 gauges. They may be made of additional stainless steel grades, e.g. grades 202 and 416, thicker and thinner gauges, e.g. 15 and 22 gauges. Grade identifiers such as T301, T304 and T316 are American Iron and Steel Institute (AISI) designations for the chemical composition of stainless steel. Each designation has a specific chemical makeup that provides the steel with its unique properties (e.g. mechanical properties, weldability and corrosion resistance).

23. Stainless steel sinks sold in Canada are required to be manufactured in accordance with *ASME A112.19.3-2008/CSA B45.4.08*.<sup>9</sup>

### Production Process

24. The subject goods and domestically produced stainless steel sinks are manufactured using similar methods. The process begins with sheets of stainless steel being sheared into pieces, referred to as “blanks”. The blanks then undergo a series of forming, shearing, welding and finishing operations.

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7. This refers to the process by which sinkware is formed by hand. Hand-fabricated sinks may also be referred to as handcrafted or handmade sinks.

8. The information in this section is derived from the CBSA’s statement of reasons, information contained in FKC and Novanni’s complaint and responses to Tribunal questionnaires.

9. Manufacturing standard established by the American Society of Mechanical Engineers (ASME) and the Canadian Standards Association (CSA).



25. First, the blanks are conveyed through mechanical or hydraulic presses that punch the blanks into rough sink shapes. For each different bowl shape, there is a unique punch and die set that is interchangeable with the press. At this point, the depth and diameter of the bowl are slightly less than the required dimensions. These early stage forms are then placed in a second machine that uses a re-draw process to stretch the sink bowl to its final depth.

26. Next, the edges of the bowl are trimmed and a drain hole is punched. Hold-downs (metal clips) are then spot-welded to the sides of the sink bowl.

27. In some cases, double and triple bowl sinks are made by taking single drawn bowls, shearing them so that the ledges are straight, then tig-welding the ledges.

28. At this stage, the bottom and sides of the sink bowl are buffed. The deck of the sink is also buffed to produce a mirror-type finish.

29. A ring-form operation trims the sink to its final form and creates decorative edging. The sinks may be further buffed and washed following this operation. Sound dampening pads are then added to the sink and the finished stainless steel sinks are packaged for market.

## **DOMESTIC PRODUCERS**

30. There are two producers of stainless steel sinks in Canada, namely, FKC and Novanni. Both companies filed complete replies to the Tribunal's producers' questionnaire.

### **FKC**

31. FKC is wholly owned by Franke Holding AG of Switzerland. FKC was established in 1946 under the name Kitchen Installations Limited (KIL) and was located in Toronto, Ontario. In 1960, KIL moved its operations to its current location in Midland. In 1962, KIL changed its name to Kindred Industries Limited (Kindred). Throughout the 1960s, Kindred expanded its 40,000-square-foot facility to its current 110,000 square feet. In November 1998, Kindred became part of the Kitchen Systems Division of Franke Holding AG and known as FKC.

32. FKC produces a full range of stainless steel sinks, such as kitchen, commercial, laundry and utility stainless steel sinks with single, double and triple drawn bowls. It also produces stainless steel food preparation centres, vanity basins and bar sinks.

33. During the POI, FKC imported stainless steel sinks from China, the United States, Switzerland and Italy, and exported stainless steel sinks to China and the United States.

### **Novanni**

34. Novanni is a privately held company. It was established in 1955 under the name Wessan Plumbing Manufacturing (Wessan) and was located in Brampton, Ontario. After a fire in 1975, Wessan constructed a new plant in Coldwater. In 1999, Wessan was acquired by Elkay Manufacturing Company and operated as Elkay Canada Ltd. (Elkay). On March 20, 2008, Elkay was acquired by Novanni.

35. Novanni produces a full range of stainless steel sinks, such as kitchen, bathroom, laundry and utility stainless steel sinks with single and multiple drawn bowls, as well as small bar and lavatory stainless steel sinks.

36. During the POI, Novanni imported stainless steel sinks from China, the United States and the Netherlands. It had no exports of stainless steel sinks.

### **IMPORTERS**

37. The Tribunal requested 43 potential importers of stainless steel sinks to complete an importers' questionnaire. The Tribunal received 22 useable replies, 6 replies from companies that do not import the subject goods or whose imports were not covered by the product definition, and 3 incomplete replies.

### **PURCHASERS**

38. The Tribunal requested 19 potential purchasers of stainless steel sinks to complete a purchasers' questionnaire on market characteristics. The Tribunal received 14 useable replies.

### **FOREIGN PRODUCERS**

39. The Tribunal requested 199 potential foreign producers of stainless steel sinks to complete a foreign producers' questionnaire. The Tribunal received 1 useable reply.

### **MARKETING AND DISTRIBUTION**

40. Imported and domestically produced stainless steel sinks are generally sold through the same channels of distribution, i.e. plumbing and heating wholesalers, retail outlets, specialty kitchen and bath shops, solid-surface countertop fabricators and online retailers.

41. Both the domestic producers and importers have sales personnel interacting with potential customers in various distribution channels. Imported and domestically produced stainless steel sinks are generally advertised in the same industry and consumer publications, and are promoted at the same industry trade shows.

42. In recent years, there has been a shift in the traditional channels of distribution through which stainless steel sinks are supplied, as some wholesalers, national distributors and retail outlets have started to import directly from China.

43. There has also been a shift in the distribution of undermount stainless steel sinks for installation in solid-surface countertops. Historically, undermount stainless steel sinks have been supplied through plumbing and heating wholesalers. Recently, however, in order to provide undermount stainless steel sinks as part of their products, some solid-surface countertop fabricators have begun to import undermount stainless steel sinks directly from China or to purchase them from importers.

### **PRICING**

44. Historically, domestic producers and importers sold stainless steel sinks under a "list and discount" pricing model based on market-driven price points in the wholesale and retail channels of distribution. From a published price list, domestic producers and importers applied discount multipliers to yield an invoice price to which they also usually applied prompt-payment discounts and annually negotiated customer rebates. In addition, they might offer off-invoice price incentives, such as advertising discounts, volume discounts, discounts contingent on place of delivery, free products, cash and gift cards.

45. Recently, domestic producers and importers have moved away from the “list and discount” pricing model towards the “net sheet” pricing model, which provides specific customers with confidential invoice prices on a limited number of stainless steel sink models. Beyond the “net sheet” price, domestic producers and importers may also apply rebates, prompt-payment discounts and other off-invoice incentives similar to those described above.

## ANALYSIS

46. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury, with “injury” being defined, in subsection 2(1), as “. . . material injury to a domestic industry”. In this regard, “domestic industry” is defined in subsection 2(1) by reference to the domestic production of “like goods”.

47. Accordingly, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must determine what constitutes the “domestic industry” for purposes of its injury analysis. The Tribunal can then assess whether the dumping and subsidizing of the subject goods have caused injury to the domestic industry. Should the Tribunal arrive at a finding of no injury, it will determine whether there exists a threat of injury to the domestic industry.<sup>10</sup> If necessary, the Tribunal will consider the question of retardation.<sup>11</sup>

48. Given that the CBSA has determined that the subject goods were dumped and subsidized, the Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effects) in this inquiry.

49. In conducting its injury analysis, the Tribunal will also examine other factors that might have had an impact on the domestic industry to ensure that any injury caused by such factors is not attributed to the effects of the dumping or subsidizing of the subject goods.

## Like Goods and Classes of Goods

50. Given that the Tribunal must determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic producers of like goods, the Tribunal must decide which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods. Should the Tribunal determine that there is more than one class of goods in this inquiry, it must conduct a separate injury analysis and make a decision for each class that it identifies.<sup>12</sup>

51. Subsection 2(1) of *SIMA* defines “like goods”, in relation to any other goods, as follows:

- (a) goods that are identical in all respects to the other goods, or
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

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10. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.

11. Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry”. Therefore, should the Tribunal determine that a domestic industry is already established, it will not need to consider the question of retardation.

12. *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

52. When goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors to determine likeness, such as the physical characteristics of the goods (e.g. their composition and appearance), their market characteristics (e.g. substitutability, pricing, distribution channels and end uses), and whether the goods fulfill the same customer needs.<sup>13</sup>

53. In its preliminary injury inquiry, the Tribunal found that stainless steel sinks produced in Canada were like goods in relation to the subject goods. During the final injury inquiry stage, the Tribunal did not receive any submissions challenging this finding.

54. On the basis of the evidence before it, the Tribunal sees no reason to depart from its preliminary determination. While the Tribunal recognizes that there may be certain physical differences, such as finish and corner radius, between stainless steel sinks produced in Canada and the subject goods, it is of the opinion that stainless steel sinks produced in Canada closely resemble the subject goods in that they are essentially identical, as they have similar end uses and are produced to the same required specifications, using the same input materials and similar methods of manufacture.

55. The Tribunal is of the view that the subject goods and domestically produced stainless steel sinks are also fully substitutable, as they compete directly against one another in the Canadian market, fulfill the same customer needs and are distributed through the same channels.<sup>14</sup> Accordingly, for the purposes of this injury inquiry, the Tribunal finds that domestically produced stainless steel sinks, defined in the same manner as the subject goods, constitute like goods in relation to the subject goods.

56. In the context of its preliminary injury inquiry, the Tribunal found that the differences in finish and corner radius between the various types of stainless steel sinks that comprise the subject goods and the like goods were not sufficient to justify separating them into different classes. Again, the Tribunal received no submissions during the final injury inquiry stage to challenge this point.

57. On the basis of the evidence now before it, the Tribunal sees no reason to depart from its preliminary determination. The Tribunal is satisfied that, overall, while not identical in all respects to each other, all types of stainless steel sinks have similar physical and market characteristics. The fact that some types of stainless steel sinks may have varying physical characteristics, such as finish and corner radius, is not, in the Tribunal's opinion, a sufficient basis for determining that there exists more than one class of goods. Accordingly, for the purposes of this injury inquiry, the Tribunal finds that stainless steel sinks comprise a single class of goods.

### **Domestic Industry**

58. As noted above, subsection 2(1) of *SIMA* defines "injury" as "... material injury to a domestic industry".

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13. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 46; *Mattress Innerspring Units* (24 November 2009), NQ-2009-002 (CITT) at para. 49.

14. *Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-06, Administrative Record, Vol. 1.1 at 24, 27; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 147.

59. Subsection 2(1) of *SIMA* defines “domestic industry” as follows:

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

60. The Tribunal must therefore determine whether there has been injury, or whether there is a threat of injury, to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods. On the basis of the evidence on the record of this inquiry, there are only two domestic producers of stainless steel sinks—FKC and Novanni. However, the Tribunal notes that both FKC and Novanni were also importers of the subject goods during the POI,<sup>15</sup> an observation that neither FKC nor Novanni disputed.

61. As indicated above, subsection 2(1) of *SIMA* confers on the Tribunal the discretion to interpret the term “domestic industry” as meaning only the domestic producers that are not importers of dumped or subsidized goods. In other words, in certain circumstances, a domestic producer that is also an importer of the subject goods may be excluded from the domestic industry. The fundamental question in this regard is whether the domestic producer is essentially a producer of like goods in Canada or, instead, essentially an importer of dumped or subsidized goods.<sup>16</sup>

62. The Tribunal therefore examined whether FKC or Novanni should be excluded from the domestic industry on the basis of their import activities. Factors that the Tribunal typically considers when making its decision on whether to exclude a domestic producer from the definition of “domestic industry” can be characterized as being “structural” or “behavioural”.<sup>17</sup>

63. Structural factors relate to the characteristics of the domestic market and the domestic producer’s place in it. *SIMA* requires the Tribunal to determine whether the dumping and subsidizing have caused or threaten to cause injury in relation to the whole of the domestic production of like goods, whether sold for domestic consumption or export or used in downstream processing, and domestic producer imports must be viewed in this context.

64. Structural factors include the ratio of the domestic producer’s sales of the subject goods to its total sales in the domestic market, the ratio of the domestic producer’s volume of imports of the subject goods to its production of like goods, the domestic producer’s actual volume of imports of the subject goods, and its share of the total volume of imports of the subject goods.

65. Behavioural factors focus on the behaviour of the domestic producer and assist in the assessment of the circumstances that led to the structural outcomes observed in the Canadian market, such as whether the domestic producer imported the subject goods as a defensive measure against other imports of the subject goods or as an aggressive measure to capture market share from other domestic producers of like goods.

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15. *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 132; Tribunal Exhibit NQ-2011-002-11.01, Administrative Record, Vol. 3 at 9; Tribunal Exhibit NQ-2011-002-11.02, Administrative Record, Vol. 3B at 13; Tribunal Exhibit NQ-2011-002-12.01D (protected), Administrative Record, Vol. 4A at 146; Tribunal Exhibit NQ-2011-002-12.02A (protected), Administrative Record, Vol. 4A at 234.

16. *Cross-linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT) at para. 56.

17. *Ibid.* at paras. 57-59.

66. The Tribunal will also consider whether the domestic producer imported the subject goods to fill a specific market niche or to round out its product line so as to compete broadly with the like goods produced by other domestic producers. It may also consider whether the domestic producer's own like goods compete in the Canadian market with the subject goods that it imports.

67. With respect to structural factors, the evidence indicates that the role of FKC and Novanni as domestic producers of like goods is more important than their role as importers of the subject goods. Over the POI, the vast majority of FKC's and Novanni's sales in the Canadian market were sourced from their own domestic production of like goods, rather than imports of the subject goods.

68. Furthermore, FKC's and Novanni's domestic production of like goods was considerably greater than their volume of imports of the subject goods; including in 2011, when their ratio of imports of the subject goods to domestic production of like goods was at its highest level of the POI. The Tribunal also observes that, even though the volume of the subject goods imported by FKC and Novanni increased during the POI, their imports still only represented a small share of the total volume of imports of the subject goods.<sup>18</sup>

69. With respect to behavioural factors, the evidence suggests that FKC's and Novanni's motives in importing the subject goods were, in fact, defensive, with both companies turning to imports from China in an effort to remain competitive with importers in the sale of certain stainless steel sink models and to retain certain specific accounts.

70. The scope of the competitive challenge confronting FKC and Novanni was especially pronounced in 2011, when they were able to purchase the subject goods at average unit prices that were less than their respective average unit costs of production for like goods.

71. That FKC and Novanni did not import the subject goods as part of an aggressive marketing strategy to compete on price with other importers or to gain market share but, rather, to maintain a presence at the lower end of the market is reflected in the fact that the combined average unit purchase price of their imports of the subject goods was higher than the average unit purchase price of other importers of the subject goods, in every year of the POI, and especially in 2009 and 2010, when the difference was \$74/unit and \$44/unit respectively.<sup>19</sup>

72. Therefore, on the basis of the foregoing, the Tribunal finds that FKC and Novanni are primarily domestic producers of like goods and that, together, they account for the domestic production as a whole of the like goods and, thus, constitute the domestic industry for the purposes of the Tribunal's injury analysis.

### Cross-cumulation

73. As noted above, the Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods, i.e. whether it will cross-cumulate the injurious effects caused by each. While subsection 42(3) of *SIMA* addresses cumulation, which constitutes the assessment of the effects of the dumping of goods from more than one country, taken together, or of the subsidizing of goods from more than one country, taken together, there are no legislative provisions that directly address the issue of cross-cumulation.

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18. *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 37; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 132.

19. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2012-002-06A, Administrative Record, Vol. 1.1 at 138; Tribunal Exhibit NQ-2011-002-12.01 (protected), Administrative Record, Vol. 4 at 9.

74. However, as noted in previous cases,<sup>20</sup> subsections 37.1(1) and (2) of the *Special Import Measures Regulations*<sup>21</sup> prescribe certain factors for the Tribunal to consider in making its finding. These factors have, as their focus, the effects that dumped or subsidized goods have had or may have on a number of economic indices.

75. In this regard, the effects of dumping and subsidizing of the same goods from a particular country (in this case China) are manifested in a single set of effects caused by pricing. It is therefore the Tribunal's view that, in the conduct of an injury analysis, it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, they are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively.

76. Accordingly, the Tribunal will cross-cumulate the effects of the dumping and subsidizing of the subject goods in its injury analysis.

## INJURY

77. Subsection 37.1(1) of the *Regulations* prescribes that, in determining whether the dumping and subsidizing have caused injury to the domestic industry, the Tribunal consider the volume of the dumped and subsidized goods, their effect on the price of like goods and their resulting impact on the state of the domestic industry. Subsection 37.2(3) also directs the Tribunal to consider factors other than the dumping and subsidizing to ensure that any injury or threat of injury caused by those other factors is not attributed to the effect of the dumped and subsidized goods.

78. At the outset, the Tribunal notes that, as no parties opposed presented evidence or testified at the hearing, there is limited information opposing the claims put forward by the domestic industry in its submissions.<sup>22</sup> Furthermore, as indicated above, with only two domestic producers constituting the domestic industry, which themselves imported the subject goods during the POI, and with the bulk of the subject goods being imported by a few major importers, much of the consolidated information on imports and the apparent market is confidential.

79. Therefore, the Tribunal has had to rely primarily on evidence submitted on the confidential record in drawing its conclusions.

## Volume of Imports of Dumped and Subsidized Goods

80. Pursuant to paragraph 37.1(1)(a) of the *Regulations*, in conducting its injury analysis, the Tribunal will consider the volume of the dumped and subsidized goods and, in particular, whether there has been a significant increase in the volume, either in absolute terms or relative to the production or consumption of like goods.

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20. See, for example, *Copper Rod* (28 March 2007), NQ-2006-003 (CITT) at para. 48; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at para. 76; *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 147.

21. S.O.R./84-927 [*Regulations*].

22. In fact, the only submission opposing a finding of injury was filed by Quadro and did not address the claims of injury put forward by the domestic industry *per se*. Instead, it mainly disputed the manner in which the provisional duties were calculated by the CBSA. However, the Tribunal does not have the authority to address this issue in an inquiry pursuant to section 42 of *SIMA*. Quadro also claimed that both FKC and Novanni either manufacture stainless steel sinks in China or import the subject goods and have not suffered losses despite the presence of the subject goods in the Canadian market. These claims are addressed in the Tribunal's injury analysis. Tribunal Exhibit NQ-2011-002-32.01, Administrative Record, Vol. 1 at 180.

81. The domestic industry argued that there was a significant increase in the volume of imports of the subject goods, both in absolute terms and relative to the production and consumption of like goods, during the POI. Witnesses for the domestic industry testified that 2009 was the year the subject goods started to penetrate the Canadian market substantially. However, it was in 2010 that the damaging effects of the subject goods in the Canadian market intensified, as they attained their highest growth rate of the POI. In 2011, even though imports of the subject goods declined slightly, the domestic industry described their impact as “devastating”.<sup>23</sup>

82. The evidence on the record indicates that, in absolute terms, total imports of the subject goods increased by 161 percent in 2010 and decreased by 13 percent in 2011, for a net increase of 126 percent from 2009 to 2011. This increase was realized at the expense of imports from non-subject countries, whose volume decreased over the POI. The subject goods represented, by far, the major share of total imports of stainless steel sinks during the POI, increasing their share by more than 20 percentage points from 2009 to 2011.<sup>24</sup>

83. When excluding the volume of imports of the subject goods by the domestic industry, the Tribunal observes that, from 2009 to 2011, the volume of imports of the subject goods by non-producers still increased substantially, i.e. by 102 percent. Imports of the subject goods by non-producers alone represented a share of total imports of stainless steel sinks that was only a few percentage points lower than the share accounted for by total imports of the subject goods.<sup>25</sup>

84. In comparison, domestic production declined by 26 percent from 2009 to 2011. Expressed as a percentage of the volume of domestic production, the volume of total imports of the subject goods increased by 42 percentage points during the POI to reach, in 2011, a level that corresponded to a substantial proportion of domestic production. When excluding the volume of imports of the subject goods by the domestic industry, the ratio of imports of the subject goods by non-producers to domestic production shows an increase in every year of the POI, for an overall increase of 34 percentage points.<sup>26</sup> This trend reflects a decline in domestic production in the face of growing imports of the subject goods by non-producers.

85. Relative to the consumption of like goods, from 2009 to 2011, the volume of total imports of the subject goods increased by 46 percentage points and represented a significant proportion of domestic sales of like goods. The increase in the ratio of total imports of the subject goods to the consumption of like goods was the most significant in 2010, when it increased by 37 percentage points. When excluding the volume of imports of the subject goods by the domestic industry, the ratio of imports of the subject goods by non-producers to the consumption of like goods shows an increase of 38 percentage points from 2009 to 2011, with the bulk of that increase occurring in 2010.<sup>27</sup>

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23. *Transcript of Public Hearing*, Vol. 1, 23 April 2012, at 8-10, 13, 22-23.

24. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 132-33; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 132, 134.

25. *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 132, 134.

26. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 132; *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 37; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 132.

27. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 132; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 132, 140.



86. From the perspective of the Canadian market, sales of imports of the subject goods increased by 113 percent over the POI, gaining an additional 21 percentage points of market share, and this in a market that was essentially stable from 2009 to 2011. Looking only at sales of imports of the subject goods by non-producers, they increased by 97 percent over the POI, resulting in a gain of 18 percentage points of market share.<sup>28</sup>

87. The Tribunal notes that sales of imports of the subject goods increased in both 2010 and 2011 even though, as noted above, the volume of imports of the subject goods fell by 13 percent in the latter year. This phenomenon, in the view of the Tribunal, can be explained by the 355-percent increase in inventory in 2010 over 2009 that importers likely started to liquidate in 2011. By doing so, importers were able to reduce their inventory by 33 percent in 2011, but still had a large build-up in inventory compared to 2009.<sup>29</sup>

88. In light of the evidence before it, the Tribunal is of the view that the small decrease in imports of the subject goods in 2011 is unlikely to mark the beginning of a trend that offsets, more than to a small extent, the significant increase observed during the POI. Consequently, the Tribunal finds that, over the POI, there was a significant increase in the absolute volume of imports of the subject goods, as well as a significant increase relative to the production and consumption of like goods.

89. The Tribunal considers that the exclusion of the domestic producers' imports of the subject goods from its assessment does not affect its conclusion. The Tribunal is of the view that the volume of imports of the subject goods by non-producers increased significantly from 2009 to 2011, both in absolute terms and relative to the production and consumption of like goods. Accordingly, the Tribunal will conduct its injury analysis with respect to the effect of the subject goods on the price of like goods and their resulting impact on the state of the domestic industry, on the basis of imports of the subject goods by non-producers.

### **Effects of Dumped and Subsidized Imports on Prices**

90. Pursuant to paragraph 37.1(1)(b) of the *Regulations*, the Tribunal must consider the effect of the dumped and subsidized goods on the price of like goods and, in particular, whether the dumped and subsidized goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those goods that would otherwise likely have occurred.

91. The domestic industry submitted that it started to feel competitive pressure from imports of the subject goods in 2009 during discussions with some of its most important clients at different trade levels. However, it is towards the end of 2010, and especially in 2011, that the domestic industry felt the full impact of imports of the subject goods and was no longer able to maintain its prices. The domestic industry argued that the competition of low-priced imports of the subject goods caused it injury in the form of price undercutting, price depression and price suppression.

92. The domestic industry claimed that the Canadian stainless steel sink market is very price-sensitive and that being able to buy the lowest-priced product at all trade levels is very important for purchasers. The Tribunal notes that the evidence clearly supports this view. Nearly half of the 13 respondents to the

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28. *Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-06, Administrative Record, Vol. 1.1 at 49; *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 140; *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 49; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 140.

29. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 132-33, 140-41, 157.

purchasers' questionnaire on market characteristics mentioned that the lowest price was "very important", and 6 other respondents indicated that price was "somewhat important".<sup>30</sup> Furthermore, 4 out of 13 respondents specified that they "usually" purchase the lowest-priced product while 8 other respondents indicated that they "sometimes" purchase the lowest-priced product.<sup>31</sup>

93. The Tribunal points out that, while non-price factors, such as product quality and reliability of supply, are ranked higher than price in making purchasing decisions, price still plays an important role in that regard. Wholesaler Bartle & Gibson Co. Ltd. indicated in its reply to the purchasers' questionnaire on market characteristics that "[t]he marketplace has steadily moved towards import[ed] sinks due to pricing in the last few years" and that "[d]omestic sinks are generally preferred but price is increasingly driving the market."<sup>32</sup>

94. The Tribunal concludes, on the basis of the foregoing, that imports of the subject goods compete with the like goods on the basis of price.

#### Price Undercutting

95. The domestic industry alleged that, throughout the POI, the average unit selling price of the subject goods imported by non-producers declined more sharply than the average unit selling price of the like goods, thereby causing increasing price undercutting.

96. The Tribunal examined a variety of evidence to assess whether the price of the subject goods undercut the price of the like goods during the POI. The Tribunal notes that it relied on the prices of the subject goods imported by non-producers in its examination, as it does not believe that imports of the subject goods by the domestic industry substantially influenced the trends for the subject goods' prices seen in the Canadian market.

97. The domestic industry sold only small volumes of the subject imports in the Canadian market at average selling prices that were higher than the average unit selling prices of the subject goods imported by non-producers, by a range of \$10/unit to \$67/unit. Furthermore, it was only in 2011 that the domestic industry's average unit selling price of the like goods was higher than its average unit selling price of imports of the subject goods.<sup>33</sup>

98. The Tribunal first considered the overall average unit selling price of the subject goods imported by non-producers and that of the like goods. The data show that, while the average unit selling price of the subject goods was equal to that of the like goods in 2009, the price of the subject goods imported by non-producers undercut the price of the like goods in 2010 and 2011. The degree of undercutting increased from \$16/unit in 2010 to \$28/unit in 2011.<sup>34</sup>

99. The Tribunal also assessed evidence collected for different trade levels, i.e. wholesalers, retailers and solid surface or countertop fabricators, on seven different benchmark products and six common accounts to provide a more detailed price comparison between the subject goods imported by non-producers and the like goods, and to determine if the same trends as those seen in the Canadian market could be observed.

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30. *Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-06, Administrative Record, Vol. 1.1 at 26.

31. *Ibid.* at 31.

32. Tribunal Exhibit NQ-2011-002-20.03, Administrative Record, Vol. 5.2 at 60, 70.

33. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 145; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 140.

34. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 145.

100. First, comparing the volume of subject goods imported by non-producers to that of like goods sold at the different trade levels, it is obvious that most of the stainless steel sinks are sold predominately either to wholesalers or retailers, with sales to solid surface or countertop fabricators representing less than 5 percent of the total sales in the Canadian market during the POI.<sup>35</sup>

101. The evidence on the record also supports the common industry perception that FKC is more active at the wholesale trade level while Novanni is more active at the retail trade level.<sup>36</sup> This being said, the Tribunal is of the view that it is not essential for a domestic producer to offer its services at all trade levels to compete effectively in the Canadian market. In this regard, the Tribunal notes that it is required to look at the impact of the subject goods on the domestic industry as a whole.

102. At the wholesale trade level, the average unit selling price of the subject goods imported by non-producers undercut the average unit selling price of the like goods throughout the POI by a range of 13 percent in 2009 to 22 percent in 2011.

103. At the retail trade level, while in 2009 the average unit selling price of the like goods was 9-percent lower than the average unit selling price of subject imports by non-producers, the average unit selling price of subject imports by non-producers undercut that of the like goods by 6 percent in 2010 and 16 percent in 2011.<sup>37</sup>

104. Next, turning to the sales data collected on a quarterly basis for 2010 and 2011 for the seven different benchmark products in the Canadian market, the Tribunal observed that there were 56 points of comparison between the like goods and the subject goods imported by non-producers. The data show that the average unit selling prices of the subject goods imported by non-producers undercut the average unit selling prices of the like goods in all but three instances. The degree of price undercutting observed is as low as \$1/unit and as high as \$200/unit, with the majority of the price undercutting being at least \$50/unit.<sup>38</sup>

105. The Tribunal also considered the data on sales of the subject goods imported by non-producers and the like goods made to six common accounts on a quarterly basis for 2010 and 2011 and observed 43 points of comparison between the two. With respect to these common accounts, the data show that the average unit selling prices of the subject goods imported by non-producers undercut the average unit selling prices of the like goods in 29 instances by at least \$2/unit and by as much as \$122/unit.<sup>39</sup>

106. Finally, although the Tribunal is particularly cautious in considering account-specific injury allegations, given the often selective nature of such information, the extensive evidence provided by the domestic industry in this inquiry for 2010 and 2011 is, in the Tribunal's view, probative of the significant pricing challenges confronted by the domestic industry.

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35. *Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-06, Administrative Record, Vol. 1.1 at 57; *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 147.

36. Tribunal Exhibit NQ-2011-002-12.01 (protected), Administrative Record, Vol. 4 at 73; Tribunal Exhibit NQ-2011-002-12.02 (protected), Administrative Record, Vol. 4A at 98; *Transcript of Public Hearing*, Vol. 1, 23 April 2012, at 6-7, 25.

37. *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 152.

38. *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 68, 70, 72, 74, 76, 78; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 154.

39. *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 80, 84, 86, 88; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 156, 158.

107. This information shows that, in 23 injury allegations, the offered unit selling prices for the subject goods imported by non-producers were between 1 percent and 80 percent lower than those offered by the domestic industry.<sup>40</sup> The Tribunal points out that the domestic industry's evidence is corroborated by observations it received in reply to the purchasers' questionnaire on market characteristics. A total of 9 out of 13 respondents described the subject goods imported by non-producers as having the lowest price advantage over the like goods.<sup>41</sup>

108. In summary, the Tribunal is satisfied that the pricing activity relating to the different trade levels and benchmark products, and sales at common accounts are indicative of, and corroborate, the price undercutting that occurred in the marketplace during the POI. Furthermore, the Tribunal is of the opinion that the injury allegations put forward by the domestic industry are consistent with the evidence provided with respect to sales made by the domestic industry and non-producers at common accounts. In addition, when comparing the relative prices of the subject goods imported by non-producers and the like goods in these various contexts, it becomes clear to the Tribunal that the price difference is significant.

109. On the basis of the foregoing, the Tribunal concludes that all of this evidence demonstrates that the prices of the subject goods significantly undercut those of the like goods during the POI, particularly at the end of 2010 and in 2011.

#### Price Depression

110. Having determined that the prices of the subject goods imported by non-producers undercut the prices of like goods during the POI, the Tribunal will examine the data to determine if the undercutting depressed the prices of like goods (i.e. caused the prices of like goods to decline).

111. The domestic industry alleged that it had no choice but to start dropping its prices during the second half of 2010 and to continue dropping them through 2011 in an attempt to remain competitive with an increasing volume of imports of the subject goods by non-producers at declining prices. It added that this price depression was incurred at all sales levels, i.e. in the Canadian market as a whole, but specifically at the retail level, on its sales of benchmark products and sales at common accounts.

112. The Tribunal observes that the average unit selling price of the like goods decreased by 3 percent, from \$119/unit in 2009 to \$116/unit in 2011. During the same period, the average unit selling price of the subject goods imported by non-producers declined by 26 percent, from \$119/unit in 2009 to \$88/unit in 2011.<sup>42</sup>

113. While there is evidence of modest price depression at the aggregate level, the Tribunal believes that a detailed price analysis of the different trade levels of the Canadian market and a quarter-by-quarter analysis of sales of benchmark products and sales at common accounts are more indicative of price trends

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40. Tribunal Exhibit NQ-2011-002-12.01 (protected), Administrative Record, Vol. 4 at 22-68; Tribunal Exhibit NQ-2011-002-12.02 (protected), Administrative Record, Vol. 4A at 85-96; Manufacturer's Exhibit A-03, paras. 29-57, Administrative Record, Vol. 11; Manufacturer's Exhibit A-04 (protected), paras. 29-57, Administrative Record, Vol. 12; Manufacturer's Exhibit B-05, paras. 18-26, Administrative Record, Vol. 11; Manufacturer's Exhibit B-06 (protected), paras. 18-26, attachments 1-2, Administrative Record, Vol. 12; *Transcript of In Camera Hearing*, Vol. 1, 23 April 2012, at 5-8, 21.

41. *Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-06, Administrative Record, Vol. 1.1 at 27.

42. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 145.

over the POI. In fact, the domestic industry testified that it was only in the fourth quarter of 2010 that it made the decision to move on pricing in order to compete with imports of the subject goods by non-producers.<sup>43</sup>

114. At the wholesale trade level of the Canadian market, in an attempt to retain sales volumes, the domestic industry was reluctant to lower its price, and its average unit selling price of the like goods decreased by only 1 percent over the POI, while the much lower average unit selling price of the subject goods imported by non-producers declined by 11 percent.<sup>44</sup>

115. However, at the retail trade level of the Canadian market, price depression was especially obvious over the POI as the average unit selling price of the like goods declined by 11 percent while that of the subject goods imported by non-producers decreased by 32 percent.<sup>45</sup>

116. There is also strong evidence of price depression in sales of benchmark products. The domestic industry saw the average unit selling prices of its two most popular models of stainless steel sinks, i.e. single and double entry-level, drop-in stainless steel sinks, decrease by 21 percent and 9 percent respectively.<sup>46</sup>

117. Sales to common accounts also reveal indications of price depression. At least three of the seven common accounts show the domestic industry lowering its average unit selling prices in an attempt to be more competitive with the subject goods and maintain its sales volumes.<sup>47</sup>

118. The domestic industry testified that there were a number of occasions when it was told that, in order to retain its business at specific accounts, it had to further reduce its prices or its clients would start importing stainless steel sinks directly from China. In fact, witnesses for the domestic industry testified that some of their major clients, such as Canadian Tire, Emco Corporation, Home Depot of Canada Inc. (Home Depot), Rona Inc. (Rona) and Wolseley Canada Inc. started to do so in late 2009 and in 2010.<sup>48</sup> As discussed below, these actions had very negative consequences for the domestic industry in 2011.

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43. *Transcript of Public Hearing*, Vol. 1, 23 April 2012, at 9-13, 31.

44. *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 147, 152.

45. *Ibid.* at 152.

46. These like goods are also referred to as “Benchmark Product No. 1” and “Benchmark Product No. 2” in the *Pre-hearing Staff Report*. *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 68-69; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 154-55; Manufacturer’s Exhibit A-05, para. 4, Administrative Record, Vol. 11; Manufacturer’s Exhibit A-06 (protected), para. 4, Administrative Record, Vol. 12; Manufacturer’s Exhibit B-03, para. 7, Administrative Record, Vol. 11; Manufacturer’s Exhibit B-04 (protected), para. 7, Administrative Record, Vol. 12; *Transcript of In Camera Hearing*, Vol. 1, 23 April 2012, at 12-14.

47. *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 84-89; Manufacturer’s Exhibit A-03, para. 27, Administrative Record, Vol. 11; Manufacturer’s Exhibit A-04 (protected), paras. 26-27, Administrative Record, Vol. 12; Manufacturer’s Exhibit B-05, para. 17, Administrative Record, Vol. 11; Manufacturer’s Exhibit B-06 (protected), para. 17, Administrative Record, Vol. 12.

48. *Transcript of Public Hearing*, Vol. 1, 23 April 2012, at 8-12, 23, 27, 29-31, 37; Manufacturer’s Exhibit A-03, paras. 11, 23-25, Administrative Record, Vol. 11; Manufacturer’s Exhibit B-05, para. 11, Administrative Record, Vol. 11; Manufacturer’s Exhibit B-06 (protected), para. 11, Administrative Record, Vol. 12.

119. However, it is in the account-specific injury allegations that the price depression is most evident. They show the pervasive effects that the competition of low-priced subject goods imported by non-producers had on the domestic industry's prices, particularly in late 2010 and in 2011.<sup>49</sup> In particular, in 24 injury allegations, the domestic industry had to reduce the prices of its like goods to compete with the prices of the subject goods to retain some business. In 11 other injury allegations, the domestic industry alleged having lost the account even after lowering its prices.<sup>50</sup>

120. In light of the foregoing evidence of adverse price effects, together with the evidence that the like goods and the subject goods imported by non-producers are similar in quality and compete on the basis of price, as well as the uncontested evidence that the subject goods imported by non-producers are the lowest-priced in the Canadian market, the Tribunal finds that the domestic industry experienced significant price depression over the POI, especially in late 2010 and in 2011, and that such price depression can be attributed to the presence of the subject goods in the Canadian market.

### Price Suppression

121. To assess the extent of price suppression, the Tribunal compared the changes in the domestic industry's average unit cost of goods sold to the changes in the average unit selling price of the like goods.

122. The domestic industry argued that, over the POI, the subject goods suppressed the prices of the like goods by preventing price increases that would likely have otherwise occurred due to increasing costs, particularly in 2010 and 2011.<sup>51</sup>

123. The evidence indicates that, from 2010 to 2011, the average unit cost of goods sold increased as material costs, especially those for stainless steel, increased and costs were spread over a lower volume of sales. In fact, the average unit cost of goods sold increased while the average unit selling price of like goods declined.<sup>52</sup>

124. The domestic industry tried to reduce its overall costs in the fourth quarter of 2010 by reducing marketing and product innovation costs.<sup>53</sup> Further cost reductions, such as reducing staff and cutting back on investments, were made in 2011 in an attempt to maintain its gross margin, but to no avail.<sup>54</sup> From 2010 to 2011, FKC raised its average unit selling price to cover its increasing costs of goods sold. However, that price increase was outweighed by the magnitude of the cost increase.<sup>55</sup>

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49. *Transcript of Public Hearing*, Vol. 1, 23 April 2012, at 10-14, 16.

50. Tribunal Exhibit NQ-2011-002-12.01 (protected), Administrative Record, Vol. 4 at 22-68; Tribunal Exhibit NQ-2011-002-12.02 (protected), Administrative Record, Vol. 4A at 85-96; Manufacturer's Exhibit A-03, paras. 29-57, Administrative Record, Vol. 11; Manufacturer's Exhibit A-04 (protected), paras. 29-57, Administrative Record, Vol. 12; Manufacturer's Exhibit B-05, paras. 18-26, Administrative Record, Vol. 11; Manufacturer's Exhibit B-06 (protected), paras. 18-26, attachments 1-2, Administrative Record, Vol. 12; *Transcript of In Camera Hearing*, Vol. 1, 23 April 2012, at 5-8, 21.

51. *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 93; Manufacturer's Exhibit A-05, para. 6, Administrative Record, Vol. 11; Manufacturer's Exhibit A-06 (protected), para. 6, Administrative Record, Vol. 12; Manufacturer's Exhibit B-03, para. 8, Administrative Record, Vol. 11; Manufacturer's Exhibit B-04 (protected), para. 8, Administrative Record, Vol. 12.

52. *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 90, 95.

53. *Transcript of Public Hearing*, Vol. 1, 23 April 2012, at 11.

54. *Ibid.* at 13, 31-32; *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 90, 96, 124.

55. *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 116; Manufacturer's Exhibit A-05, para. 6, Administrative Record, Vol. 11; Manufacturer's Exhibit A-06 (protected), para. 6, Administrative Record, Vol. 12.

125. The Tribunal notes that the price suppression experienced by the domestic industry followed the substantial increase in the volume of subject goods sold in the Canadian market by non-producers in 2010 and 2011, at considerable reduced average unit selling prices.<sup>56</sup>

126. In the Tribunal's view, the domestic industry was prevented from recovering the increased costs of goods sold due to the price-suppressive effects of the subject goods. Accordingly, the Tribunal concludes that the subject goods significantly suppressed the prices of the like goods during the POI, especially in 2010 and 2011.

### Conclusion

127. On the basis of its analysis of the pricing factors prescribed by *SIMA*, the Tribunal finds that the prices of the subject goods significantly undercut, depressed and suppressed the prices of the like goods during the POI, especially in 2010 and 2011.

### **Impact of the Dumped and Subsidized Imports on the Domestic Industry**

128. Paragraph 37.1(1)(c) of the *Regulations* requires the Tribunal to consider the resulting impact of the dumped and subsidized goods on the domestic industry.

129. The domestic industry argued that the subject goods imported by non-producers have resulted in declines in production, sales, market share, profits, capacity utilization, employment and productivity.

130. As mentioned earlier, the domestic industry submitted that, in 2009, it became aware of the difficulties that the subject goods were creating in the Canadian market. It was getting increasingly difficult to successfully negotiate future business with clients. Large retail accounts such as Groupe BMR inc., Canadian Tire, Home Depot, Rona and Spancan (1999) Corporation decided to switch their sourcing to China. The same scenario was unfolding at the distributor level where companies like AFA Kitchen Ware Co., Ltd. (also known as AFA Sinkware), Nautika and Onex Corporation were ramping up their importations of the subject goods for the wholesale segment, and Blanco, for both the wholesale and retail segments, of the market. Nevertheless, 2009, as a whole, was considered a fairly stable year for the domestic industry, as it was successful in holding its prices.<sup>57</sup>

131. It was only in 2010 that the domestic industry felt the full impact of the competition of the low-priced subject goods. Throughout that year, the domestic industry received an increasing number of requests from its clients to lower its price points to compete with the subject goods. The domestic industry described 2010 as a transition year, as it saw poorer financial results than the ones achieved in 2009.<sup>58</sup> In sum, the domestic industry's results for the first half of 2010 were "... actually pretty good."<sup>59</sup> However, in the third quarter of 2010, the situation started to spiral down out of control for the domestic industry, as its volumes fell off dramatically even with a reduction in prices and it lost sales and clients. This had a "devastating" impact on its financial performance, employment and investments.<sup>60</sup>

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56. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 145; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 140.

57. *Transcript of Public Hearing*, Vol. 1, 23 April 2012, at 8-10, 27-29, 31, 37; Manufacturer's Exhibit A-03, para. 24, Administrative Record, Vol. 11.

58. *Ibid.* at 9-10, 29-30.

59. *Ibid.* at 10-11.

60. *Ibid.* at 10-13, 29-31.

132. The Tribunal points out that the deteriorating state of the domestic industry occurred at the same time as the principal factors affecting demand for stainless steel sinks, i.e. housing starts, housing under construction, and housing completions and renovations remained strong.<sup>61</sup>

#### Production, Capacity and Capacity Utilization

133. The domestic industry's production of like goods fell in every year of the POI, which translates into a 26-percent decrease from 2009 to 2011. In 2011 alone, domestic production declined by 23 percent over 2010.<sup>62</sup>

134. The domestic industry's capacity remained stable over the POI; however, its capacity utilization declined every year and reached its lowest rate in 2011, for an overall decline in its capacity utilization of 11 percentage points over the POI. The domestic industry had significant unused capacity throughout the POI, which, in the Tribunal's view, was sufficient for it to have supplied the Canadian market.<sup>63</sup>

135. In view of the above, the Tribunal finds that it was the presence of the subject goods imported by non-producers in the Canadian market that had a significant negative impact on the production and capacity utilization rates of the domestic industry.

#### Sales From Domestic Production and Market Share

136. Over the POI, both the domestic industry's sales from its production and its share of the Canadian market decreased steadily. There was an overall decline of 27 percent in its sales of domestic production from 2009 to 2011, with 24 percent of that drop occurring in 2011, when sales of like goods were at their lowest level of the POI. The domestic industry's share of the Canadian market fell by 25 percent over the POI, even as the size of the market fell minimally.<sup>64</sup>

137. The Tribunal observes that, in contrast, the market share held by the subject goods imported by non-producers increased in every year of the POI to capture a substantial part of a somewhat smaller market by 2011. It follows that the sales of the subject goods by non-producers increased in every year of the POI, i.e. by 53 percent in 2010 and by 28 percent in 2011, for an overall increase of 97 percent.<sup>65</sup>

138. Corroborating this evidence is a statement made by wholesaler B.A. Robinson Co. Ltd. in its reply to the purchasers' questionnaire on market characteristics to the effect that it has seen solid countertop fabricators begin to import directly from China, "... which is a shift from the traditional wholesale channel".<sup>66</sup>

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61. *Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-06, Administrative Record, Vol. 1.1 at 32, 34.

62. *Ibid.* at 37; *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 37.

63. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 140; *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 100.

64. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 131, 140-41; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 140.

65. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 140-41; *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 49; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 140.

66. Tribunal Exhibit NQ-2011-002-20.14, Administrative Record, Vol. 5.2 at 290.



139. The above discussion is also consistent with the substantial account-specific evidence of lost sales submitted by the domestic industry and corroborated by testimony at the hearing.<sup>67</sup> The Tribunal notes that the domestic industry's decreasing sales from domestic production relative to the increasing sales of the subject goods by non-producers are particularly significant considering the increases in housing starts, construction and renovations discussed earlier.

140. In light of the above, the Tribunal is of the view that the growth in market share of imports of the subject goods during the POI, particularly in the second half of 2010 and in 2011, occurred at the expense of the domestic industry.

#### Financial Results

141. The domestic industry enjoyed positive financial results for the first two years of the POI. However, the financial position of the domestic industry underwent substantial erosion in 2011. The gross margin fell by more than a third compared to 2010. The domestic industry's net profit also deteriorated substantially in 2011 over 2010, the only year of the POI in which the domestic industry suffered a net loss. Similar trends are observed at the per unit level.<sup>68</sup> Again, the Tribunal points out that these results are consistent with the drastic increases in sales of the subject goods by non-producers in 2010 and 2011.

142. The Tribunal is of the view that the domestic industry's decline in its financial results is directly related to the decrease in its sales and market share resulting from the adverse price effects caused by imports of the subject goods by non-producers.

#### Employment and Productivity

143. The domestic industry claimed that employment declined as a direct result of lower production and sales of like goods caused by the increased presence of imports of the subject goods by non-producers in the Canadian market over the POI.

144. Direct employment fell steadily in each year of the POI, which translated into an overall decline of 24 percent. However, in 2011, the domestic industry witnessed its largest drop in direct employment over 2010, i.e. 21 percent.<sup>69</sup> The domestic industry testified that these results would have been far worse if it had not imposed temporary measures to counteract such negative results.<sup>70</sup>

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67. Tribunal Exhibit NQ-2011-002-12.01 (protected), Administrative Record, Vol. 4 at 22-68; Tribunal Exhibit NQ-2011-002-12.02 (protected), Administrative Record, Vol. 4A at 85-96; Manufacturer's Exhibit A-03, paras. 29-57, Administrative Record, Vol. 11; Manufacturer's Exhibit A-04 (protected), paras. 29-57, Administrative Record, Vol. 12; Manufacturer's Exhibit B-05, paras. 18-26, Administrative Record, Vol. 11; Manufacturer's Exhibit B-06 (protected), paras. 18-26, attachments 1-2, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 23 April 2012, at 11-14, 29-31; *Transcript of In Camera Hearing*, Vol. 1, 23 April 2012, at 5-8, 21.

68. *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 90.

69. *Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-06, Administrative Record, Vol. 1.1 at 96; *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 96.

70. *Transcript of In Camera Hearing*, Vol. 1, 23 April 2012, at 14.

145. The productivity levels of the domestic industry exhibit a similar trend. In 2009 and 2010, productivity remained relatively stable, but then decreased in 2011 compared to 2010.<sup>71</sup>

146. The Tribunal is of the view that the decline in employment and productivity experienced by the domestic industry over the POI, particularly in 2011, reflects the decrease in production and sales caused by the increasing presence of imports of the subject goods by non-producers in the Canadian market.

#### Other Indicators

147. The Tribunal notes that paragraph 37.1(1)(c) of the *Regulations* prescribes that the Tribunal consider certain other factors, in addition to those discussed above, in its assessment of the impact of the subject goods on the domestic industry.

148. The domestic industry argued that the presence of imports of the subject goods by non-producers in the Canadian market has also negatively impacted its inventories, return on investments and cash flow.

149. With respect to inventories of like goods, the evidence indicates that they declined steadily over the POI. Although the ratio of inventory to production declined in 2009 and 2010, it increased in 2011 as the domestic industry experienced declining sales.<sup>72</sup>

150. With respect to investments and cash flow, the evidence indicates a downward trend over the POI. In the Tribunal's view, this has constrained the domestic industry's ability to invest in its production facilities.<sup>73</sup>

151. Subparagraph 37.1(1)(c)(ii.1) of the *Regulations* also prescribes that the Tribunal consider in its assessment "... the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods ... ." The Tribunal notes that the CBSA determined that the weighted average margin of dumping and amount of subsidy were not insignificant.<sup>74</sup>

152. The Tribunal is of the view that the negative impact of the dumped and subsidized goods on the state of the domestic industry was exacerbated by the magnitude of the margin of dumping and amount of subsidy.

153. Finally, there is little or no evidence with regard to the impact of the subject goods on the ability of the domestic industry to raise capital. That said, it is reasonable to expect, in view of the effects of the subject goods on the domestic industry's financial performance, that it would have experienced negative effects in this related area as well.

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71. *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 99.

72. *Ibid.* at 37; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 140, 157; Manufacturer's Exhibit A-05, para. 10, Administrative Record, Vol. 11.

73. *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 101; Manufacturer's Exhibit A-05, para. 11, Administrative Record, Vol. 11; Manufacturer's Exhibit A-06 (protected), para. 11, Administrative Record, Vol. 12; Manufacturer's Exhibit B-03, para. 12, Administrative Record, Vol. 11; Manufacturer's Exhibit B-04 (protected), para. 12, Administrative Record, Vol. 12.

74. Tribunal Exhibit NQ-2011-002-04A, Administrative Record, Vol. 1 at 138.19; Tribunal Exhibit NQ-2011-002-04B, Administrative Record, Vol. 1 at 138.42.

154. On the basis of the foregoing analysis, the Tribunal concludes that the domestic industry experienced injurious effects from imports of the subject goods. The Tribunal also concludes that the analysis demonstrates that the injurious effects were material and, accordingly, constitute injury, as defined in subsection 2(1) of *SIMA*.

### **Other Factors**

155. However, subsection 37.1(3) of the *Regulations* directs the Tribunal to consider factors other than the dumping and subsidizing to ensure that any injury or threat of injury caused by those factors is not attributed to the effects of the dumped and subsidized goods. Following is the Tribunal's assessment of the relevant factors in this inquiry.

#### Imports of Subject Goods by the Domestic Industry

156. As discussed earlier, the Tribunal is cognizant of the fact that the domestic industry imported the subject goods throughout the POI. However, the Tribunal notes that these imports were in volumes that were significantly small compared to the total volumes of imports of the subject goods and at prices that were either lower than the domestic industry's costs of production or higher than the non-producers' import prices.<sup>75</sup>

157. The Tribunal has already concluded that the domestic industry's motives in importing the subject goods were not aggressive but, rather, defensive. The Tribunal also finds that imports of the subject goods by the domestic industry were not in volumes or at prices sufficient to support a conclusion that the injury suffered by the domestic industry was self-inflicted.

158. On the basis of the foregoing, the Tribunal concludes that imports of the subject goods by the domestic industry did not contribute in a meaningful way to the injury it suffered. In other words, the fact that the domestic industry imported the subject goods does not negate the injury caused by imports of the subject goods by non-producers and is insufficient to sever the causal link between the dumping and subsidizing of the subject goods and injury.

#### Imports of Non-subject Goods by the Domestic Industry

159. As discussed earlier, over the POI, the domestic industry imported stainless steel sinks from non-subject countries. However, the volume of these imports and the share of the total imports they captured over the POI were small and decreased every year. Furthermore, the prices at which these imports were sold in the Canadian market were among the highest over the POI.<sup>76</sup>

160. On the basis of the foregoing, the Tribunal is of the view that these imports did not affect negatively the domestic industry's performance over the POI and that they in no way negate the injury caused by imports of the subject goods by non-producers.

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75. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 132, 138; *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 93; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 132, 134.

76. *Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-06A, Administrative Record, Vol. 1.1 at 133, 145; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 132, 134, 145.

### Intra-industry Competition

161. As mentioned earlier, the evidence does not show any strong competition between the domestic producers over the POI, as FKC's sales were concentrated in the wholesale segment of the market and those of Novanni, in the retail segment.<sup>77</sup> The Tribunal is of the view that, even if there had been strong competition between FKC and Novanni, it would not have had an impact on its injury analysis unless the competition had been injurious in some way to the domestic industry as a whole. The Tribunal therefore concludes that this non-dumping, non-subsidizing factor did not contribute to the injury suffered by the domestic industry.

### Financial Results From Exports

162. The Tribunal notes that only FKC exported stainless steel sinks over the POI. FKC's exports represented a small proportion of its domestic production over the POI. Its volume of exports fluctuated, but remained relatively unchanged when comparing 2009 to 2011. Except for 2009, the average unit selling price of FKC's exports was similar to its average unit selling price of like goods in the Canadian market.<sup>78</sup>

163. Despite its higher average unit export selling prices in 2010 and 2011, FKC sustained increasing losses on its export sales.<sup>79</sup> However, given the small volume that FKC exported from its domestic production, the Tribunal does not consider that FKC's export sales and associated negative financial returns have been sufficient to render non-material the injury on its domestic sales in relation to its domestic production as a whole. Furthermore, any effect that FKC's exports might have had on both FKC and Novanni, taken together, is even less apparent and, therefore, inconsequential.

### Conclusion

164. The Tribunal is of the view that any injurious effect that may be attributable to the above factors is minimal at most and does not negate its conclusion that the dumping and subsidizing of the subject goods have caused injury as defined in subsection 2(1) of *SIMA*.

## **PRODUCT EXCLUSION**

165. As indicated above, the Tribunal received one request for product exclusion from Karran concerning stainless steel sinks with a cast-resin matrix rim that it markets as its "Edge" stainless steel sink series. According to Karran, its "Edge" sinks are kitchen stainless steel sinks on which the stainless steel rim is removed and replaced with a 1 1/4-inch by 3/4-inch (32-millimetre by 19-millimetre) cast-resin matrix rim. It stated that these sinks were designed for seamless undermount installation in laminate countertops. Karran submitted that it developed this product line, which is the only one in the world that combines a stainless steel bowl and a cast-resin rim, and holds patent protection on this design.

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77. *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 147; Tribunal Exhibit NQ-2011-002-12.01 (protected), Administrative Record, Vol. 4 at 73; Tribunal Exhibit NQ-2011-002-12.01D (protected), Administrative Record, Vol. 4A at 146-49; Tribunal Exhibit NQ-2011-002-12.02 (protected), Administrative Record, Vol. 4A at 98; Tribunal Exhibit NQ-2011-002-12.02A (protected), Administrative Record, Vol. 4A at 234-35.

78. *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 37, 64; *Protected Pre-hearing Staff Report*, revised 12 April 2012, Tribunal Exhibit NQ-2011-002-07A (protected), Administrative Record, Vol. 2.1 at 145.

79. *Protected Pre-hearing Staff Report*, 14 March 2012, Tribunal Exhibit NQ-2011-002-07 (protected), Administrative Record, Vol. 2.1 at 91.

166. Karran appeared before the Tribunal to speak to its exclusion request. It also filed two physical exhibits—an “Edge 110” single-bowl stainless steel sink for undermount seamless installation in laminate countertops and an “Edge E150” double-bowl stainless steel sink with a cast-resin matrix rim.<sup>80</sup>

167. The Tribunal notes that while it has the discretion to grant exclusions under subsection 43(1) of *SIMA*,<sup>81</sup> it has indicated in the past that product exclusions are granted only in exceptional circumstances, and that it will grant exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry.

168. In *Certain Stainless Steel Wire*,<sup>82</sup> the Tribunal summarized its views on the matter of the factors that are relevant to product exclusions as follows:

... The Tribunal has granted product exclusions for particular products in circumstances when, for instance, the domestic industry does not produce those particular products. The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an “active supplier” of the product or whether it normally produces the product or whether the domestic industry has the capability of producing the product.

[Footnotes omitted]

169. The Tribunal further notes that, once injury has been found, all the subject goods are covered by that finding. When the Tribunal is requested to grant an exclusion, i.e. to exclude from its finding certain goods that would otherwise be covered by the finding, the onus is on the requester to demonstrate that imports of the goods for which an exclusion is sought will not be injurious to the domestic industry.

170. To support its request, Karran argued that, on the basis of both construction and application, the domestic industry does not produce stainless steel sinks that are equivalent to its “Edge” stainless steel sink series. Karran submitted that the only similarity between the domestically produced stainless steel sinks and those it produces in its “Edge” series is that both are drawn stainless steel sinks. It added that the domestic industry does not produce a stainless steel sink with a resin rim, nor does it produce one that can seamlessly bond to a laminate countertop.

171. Karran argued that the “Edge” stainless steel sinks, because of their higher price point, serve different segments of the Canadian market than the domestically produced goods. Specifically, Karran testified that they serve the demands of consumers looking to purchase a laminate countertop who are willing to pay more for countertops and sinks with an undermount seamless installation.

172. Furthermore, Karran argued that the “Edge” stainless steel sinks have been marketed and sold in Canada only since August or September 2011 and that these sinks cannot be produced or sold by any domestic producer because of the patent protection on the designs.

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80. Tribunal Exhibits NQ-2011-002-26.01A (physical exhibit) and NQ-2011-002-26.01B (physical exhibit).

81. *Certain Cold-rolled Steel Sheet Originating in or Exported from the United States of America (Injury)* (*United States v. Canada*) (1994), CDA-93-1904-09 (Ch. 19 Panel) at 54; *Hetex Garn A.G. v. Anti-dumping Tribunal*, [1978] 2 F.C. 507 (F.C.A.).

82. (30 July 2004), NQ-2004-001 (CITT) at para. 96.

173. The domestic industry argued that it already produces drop-in stainless steel sinks that can be used with laminate countertops in order to compete with Karran's "Edge" stainless steel sink series. However, the evidence indicates that such drop-in stainless steel sinks cannot be installed seamlessly in laminate countertops. As for its series of undermount stainless steel sinks typically used with solid surfaces such as a granite countertop, the domestic industry conceded that its method of installation for such sinks was different than that of Karran. At the hearing, in responding to questions from the Tribunal, the domestic industry's witnesses acknowledged that the domestic industry does not produce a stainless steel sink with a cast-resin matrix rim or an undermount stainless steel sink that can be installed seamlessly in laminate countertops.<sup>83</sup> On the basis of this evidence, the Tribunal finds that the domestic industry cannot produce an undermount stainless steel sink that can be installed seamlessly in laminate countertops.

174. The Tribunal finds that the evidence demonstrates that Karran's seamless undermount stainless steel sinks, while they are covered by the definition of the subject goods, fill a niche in the laminate countertop market that the domestic producers are unable to serve. The domestic industry, while recognizing that its drop-in stainless steel sinks could fulfill the same general end uses (such as the washing of dishes) when installed in laminate countertops, admitted that its products could not be installed seamlessly in laminate countertops and, thus, could not fulfill the same specific end use as the stainless steel sinks in Karran's "Edge" series. In other words, the Tribunal finds that Karran's sinks are designed for use in a specific application in which the domestic industry's sinks could not readily be used.

175. On the basis of the evidence before it, the Tribunal further finds that, from a consumer perspective, both the aesthetic- and hygiene-related attributes of Karran's "Edge" stainless steel sinks, especially when used in medical applications, are sufficient to differentiate them from the domestically produced stainless steel sinks.<sup>84</sup> Consequently, the Tribunal finds that Karran has discharged its burden of demonstrating that imports of the goods for which the exclusion is requested will not be injurious to the domestic industry.

176. With respect to Karran's submission that the "Edge" stainless steel sinks are patented and, therefore, cannot be copied, as the Tribunal has stated in *Certain Fasteners*,<sup>85</sup> the key question that must be answered by the Tribunal in deciding whether to grant a product exclusion in the case of a patented product is not whether the patented product is unique or if the domestic industry can, without infringing patent law, manufacture this product. Rather, it is whether the domestic industry manufactures or is capable of manufacturing a substitutable product that, while it may not have all the attributes of the patented product, still competes with the patented product and fulfils most of the same customer needs.

177. As noted above, the Tribunal finds, on the basis of the evidence presented at the hearing, that the domestic industry does not manufacture, and is not capable of manufacturing, a directly substitutable product.

178. For the foregoing reasons, the Tribunal concludes that, despite its earlier finding of injury, the importation of the goods for which the exclusion request is made would not cause injury and, therefore, would not contribute to the injury caused by the subject goods. Accordingly, it grants the request for product exclusion that was filed by Karran.

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83. *Transcript of Public Hearing*, Vol. 1, 23 April 2012, at 65-66.

84. *Ibid.* at 50.

85. (26 September 2006), NQ-2004-005R (CITT) at para. 18.

**CONCLUSION**

179. Pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

180. The Tribunal excludes from its injury finding stainless steel sinks with a single drawn bowl or double drawn bowls and a 1 1/4-inch by 3/4-inch (32-millimetre by 19-millimetre) cast-resin matrix rim that replaces a stainless steel rim, for undermount seamless installation in countertops.

Serge Fréchette

Serge Fréchette  
Presiding Member

Pasquale Michael Saroli

Pasquale Michael Saroli  
Member

Jason W. Downey

Jason W. Downey  
Member