



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## DETERMINATION AND REASONS

Preliminary Injury Inquiry  
No. PI-2008-001

Thermoelectric Containers

*Determination issued  
Monday, July 14, 2008*

*Reasons issued  
Tuesday, July 29, 2008*

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IN THE MATTER OF a preliminary injury inquiry, under subsection 34(2) of the *Special Import Measures Act*, respecting:

**THE DUMPING AND SUBSIDIZING OF THERMOELECTRIC CONTAINERS  
ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF  
CHINA**

**PRELIMINARY DETERMINATION OF INJURY**

The Canadian International Trade Tribunal, under the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the alleged injurious dumping and subsidizing of thermoelectric containers that provide cooling and/or warming with the use of a passive heat sink and a thermoelectric module, excluding liquid dispensers, originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury.

This preliminary injury inquiry is pursuant to the notification, on May 15, 2008, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping and subsidizing of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods have caused injury.

Ellen Fry  
Ellen Fry  
Presiding Member

Diane Vincent  
Diane Vincent  
Member

Pasquale M. Saroli  
Pasquale M. Saroli  
Member

Audrey Chapman  
Audrey Chapman  
Acting Secretary

The statement of reasons will be issued within 15 days.

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Canadian Tire Corporation, Limited

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## STATEMENT OF REASONS

### BACKGROUND

1. On May 15, 2008, following a complaint filed on March 25, 2008 by Koolatron Corporation (Koolatron), the President of the Canada Border Services Agency (CBSA) initiated an investigation into the alleged injurious dumping and subsidizing of thermoelectric containers that provide cooling and/or warming with the use of a passive heat sink and a thermoelectric module, excluding liquid dispensers, originating in or exported from the People's Republic of China (China) (the subject goods).
2. On May 16, 2008, the Canadian International Trade Tribunal (the Tribunal) issued a notice of commencement of preliminary injury inquiry.
3. MTL Technologies Inc. (MTL), of Chambly, Quebec, was identified by the Tribunal as another potential domestic manufacturer of thermoelectric containers and, on June 6, 2008, the Tribunal sent a request for information in order to collect additional information on its product and sales. A reply from MTL was received on June 18, 2008.
4. On July 14, 2008, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,<sup>1</sup> the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury.

### CBSA'S DECISION TO INITIATE AN INVESTIGATION

5. In accordance with subsection 31(1) of *SIMA*, the CBSA was of the opinion that there was evidence that the subject goods had been dumped and subsidized, as well as evidence that disclosed a reasonable indication that the dumping and subsidizing had caused injury or were threatening to cause injury. Accordingly, the CBSA initiated an investigation on May 15, 2008.
6. In coming to its decision to initiate an investigation, the CBSA used information with respect to the volume of dumped and subsidized goods for the period from January 1 to December 31, 2007.
7. The CBSA was of the view that 100 percent of the subject goods were dumped with estimated margins of dumping, expressed as a percentage of the export price, ranging from 45 percent to 117 percent. The CBSA estimated an overall weighted average margin of dumping of 71 percent.
8. The CBSA estimated that the subject goods accounted for 96 percent of thermoelectric containers imported into Canada between January 1 and December 31, 2007. As a result, the CBSA was of the opinion that the estimated volume of the dumped goods was not negligible and that the estimated overall weighted average margin of dumping was not insignificant.<sup>2</sup>

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

2. Administrative Record, Vol. 1A at 441-42.

9. With respect to subsidizing, the CBSA estimated the average amount of subsidy to be equal to 58 percent of the export price of the subject goods. As well, the CBSA considered that 100 percent of the subject goods had benefited from the alleged subsidies. Accordingly, the CBSA was of the opinion that the volume of subsidized goods was not negligible and that the amount of subsidy was not insignificant.<sup>3</sup>

10. Furthermore, the CBSA stated that there was evidence that disclosed a reasonable indication that the dumping and subsidizing had caused injury or were threatening to cause injury to the domestic industry.

## ANALYSIS

### Legislative Framework

11. The Tribunal's mandate in a preliminary injury inquiry is set out in subsection 34(2) of *SIMA*, which requires the Tribunal to determine whether the evidence discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury.<sup>4</sup> In making its determination, the Tribunal took into account the factors prescribed in section 37.1 of the *Special Import Measures Regulations*.<sup>5</sup>

12. Subsection 2(1) of *SIMA* defines "injury" as "... material injury to a domestic industry". It also defines "domestic industry" as "... 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". Therefore, the Tribunal must identify the like goods and the domestic industry that produces those goods before addressing the issues of injury, retardation or threat of injury.

### Like Goods and Classes of Goods

13. No submissions were received from parties during this preliminary injury inquiry regarding the issues of like goods and classes of goods.

14. In deciding the issue of like goods and classes of goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance), their market characteristics (such as substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.

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3. Administrative Record, Vol. 1A at 445-46. Since the CBSA considered China a developing country, the thresholds for negligibility and insignificance for China were 4 percent and 2 percent respectively.

4. The Tribunal notes that it is its longstanding practice to make a cumulative assessment of the injurious effects of both dumped and subsidized goods (cross-cumulation) from a given country in the context of an inquiry under section 42 of *SIMA*. The Tribunal therefore considers that it would be inconsistent not to cross-cumulate the subject goods in a preliminary injury inquiry and has consequently cumulatively assessed the impact of the dumping and subsidizing of the subject goods on the domestic industry.

5. S.O.R./84-927.

15. In view of the evidence on the record, the Tribunal finds, in the context of this preliminary injury inquiry, that the thermoelectric containers produced in Canada are “like goods” to the subject goods. For the purposes of determining whether there is a reasonable indication of injury, the Tribunal will also consider that thermoelectric containers that provide cooling and/or warming with the use of a passive heat sink and a thermoelectric module constitute a single class of goods.

16. However, the Tribunal is of the view that there is evidence on the record which indicates that there may be more than one class of goods in this inquiry. The question as to whether there could exist more than one class of goods is an issue that will need to be fully addressed during an inquiry under section 42 of *SIMA*, if the CBSA concludes, in its preliminary determination, that the subject goods have been dumped or subsidized. Consequently, the Tribunal will collect data on four potential classes of goods and will also ask for submissions from parties on that issue. These potential classes of goods are: (1) thermoelectric containers used for travel, whether sold to consumers or to commercial users; (2) thermoelectric containers exclusively for home use, i.e. excluding those that can also be used for travel; (3) thermoelectric containers used for retail display; and (4) thermoelectric containers used as wine display/wine coolers.

17. The Tribunal has also requested the CBSA to collect separate information on the dumping and subsidizing of these four potential classes of goods.

### **Domestic Industry**

18. Although Koolatron identified itself as the sole Canadian producer of thermoelectric containers meeting the product description in its complaint, and although the CBSA indicated that Koolatron constituted the domestic industry, a second Canadian producer, MTL, has indicated that it produces thermoelectric containers. After considering information requested from MTL, the Tribunal is of the view that the thermoelectric containers produced by MTL are “like goods” to the subject goods. In its reply submission, Koolatron acknowledged that, in light of this additional information, both it and MTL should constitute the domestic industry.

19. On the basis of the evidence on the record of this preliminary injury inquiry, the Tribunal finds that Koolatron and MTL constitute the domestic industry and that, in terms of volume of production, Koolatron accounts, by itself, for a major proportion of the production of “like goods” in Canada.<sup>6</sup>

### **Volume of Dumped and Subsidized Goods**

20. Koolatron submitted that imports of the subject goods into Canada began in the year 2000 and have since then increased significantly. Koolatron pointed to Statistics Canada import data and its own estimate of the Canadian market to show an upward trend in the importation and sales of the dumped and subsidized goods. Based on the best estimates available by Koolatron, total sales of imports of the subject goods increased by almost 50 percent<sup>7</sup> between 2005 and 2007.

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6. Administrative Record, Vol. 2 at 451, 627.

7. *Ibid.* at 93.

21. The Tribunal notes that Koolatron and the CBSA provided differing estimates of the volume of imports of the subject goods. The CBSA acknowledged that its estimates include both subject goods and parts used in the manufacture of thermoelectric containers, which are non-subject goods. The CBSA indicated that, in its view, Koolatron has provided a reasonable estimate of the volume of imports of the subject goods.<sup>8</sup>

22. The Tribunal considers the estimates put forward by Koolatron to be more accurate than the volume reported by the CBSA. The Tribunal notes that the volume of total imports of the subject goods increased by more than 52 percent between 2005 and 2007,<sup>9</sup> while imports of the subject goods by non-producers increased by 60 percent during the same period. According to these preliminary estimates, the Tribunal is satisfied that the evidence shows that the total volume of imports of the subject goods, as well the volume of non-producers' imports of the subject goods, has increased significantly since 2005.<sup>10</sup>

### **Effect on the Price of Like Goods**

23. Koolatron submitted that there are four main groups of domestic purchasers of the thermoelectric containers, namely, mass merchandisers, operators of premium programs, specialty retailers and commercial buyers. Thermoelectric containers are sold mainly for travel use, with mass merchandisers being by far the most important purchasing group. Koolatron manufactures several thermoelectric containers in Canada, including but not limited to a 14-litre wine cooler,<sup>11</sup> a 17-litre travel cooler (known as the "P-20 Compact Cooler"),<sup>12</sup> a 31-litre multi-use cooler (known as the "P-65 Kargo Cooler"),<sup>13</sup> a 34-litre multi-use cooler (known as the "P-75 Kool Kaddy")<sup>14</sup> and a 45-litre wine cooler (known as the "18 Bottle Wine Cellar").

24. Koolatron submitted that, as a result of the prices of imports of the subject goods, it suffered price depression on the sale of like goods between 2005 and 2007. In particular, Koolatron submitted figures that indicated price depression on its two largest selling products, the P-27 and P-34/75 coolers, which represented a significant share of its sales in 2005 and 2006, as well as on the overall average selling price of its domestic production. Koolatron also stated that it was left with no choice but to offer additional price reductions in 2008 to its largest customer.

25. Koolatron also submitted that, even with price reductions, its prices were still undercut by the subject goods and that it lost significant sales in fiscal years 2007 and 2008<sup>15</sup> due to the presence of the subject goods. Koolatron provided an example of price undercutting on its P-27 product, as a result of which Koolatron submitted that it was not able to sell any units of that product in the domestic market in 2007. Koolatron also added that, by 2006, its selling prices for the P-27 and the P-75 had fallen below its costs of production.

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8. Administrative Record, Vol. 1A at 438.

9. For the purpose of this preliminary injury inquiry, the Tribunal notes that Koolatron has submitted information and evidence dating back to 2000 and has discussed injury compared to performance in 2003. Although there is no defined period of inquiry at the preliminary injury inquiry stage, the Tribunal will follow its usual practice of examining the last three years and will therefore focus on the period from 2005 to 2007 inclusively.

10. Administrative Record, Vol. 2 at 93, 487.

11. Administrative Record, Exhibit A-01.

12. Administrative Record, Exhibit A-02.

13. Administrative Record, Exhibit A-03.

14. Administrative Record, Exhibit A-04.

15. Koolatron's fiscal year is from September 1 to August 31.



26. Concerning price suppression, Koolatron provided examples of price increases of input materials such as plastic parts, aluminum extruded heat sinks and cardboard cartons. Furthermore, Koolatron submitted that it experienced significant cost increases for labour, employee benefits and hydroelectric power and occupancy costs. Koolatron indicated that, because of very low prices at which the subject goods are being offered in the market, it was unable to recover these cost increases.

27. Mobicool International Ltd. and Mobicool Electronic (Shenzhen) Co., Ltd. (Mobicool) argued that price was not the issue and that the specific injury claims presented by Koolatron were out of context and unpersuasive. The Tribunal does not agree. The evidence at this stage suggests that the magnitude of price undercutting and price depression and the level of price suppression were significant<sup>16</sup> and that this had a negative impact on Koolatron's prices. Moreover, the Tribunal notes that Mobicool offered no convincing evidence that would contradict the injury claims put forward by Koolatron.

28. Based on the foregoing, the Tribunal is of the view that the evidence discloses a reasonable indication that the subject goods caused price undercutting, price depression and price suppression between 2005 and 2007.

### **Impact on the Domestic Industry**

29. Koolatron claimed that it had suffered injury in terms of a decline in domestic production and sales of domestic production, a loss of market share, and reduced employment and profitability and attributed this injury to the dumped and subsidized subject goods. MTL submitted in its reply to the Tribunal's request for information that it had not experienced any negative effects due to the dumping and subsidizing of the subject goods.

30. The evidence shows that, while domestic production declined in 2007 compared to 2005, the apparent market<sup>17</sup> for thermoelectric coolers increased in each of 2006 and 2007. While the apparent market grew by 18 percent between 2005 and 2007, the volume of domestic sales from domestic production fell by 56 percent over the same period, and the corresponding value dropped by 62 percent, which suggests a certain decline in prices. Total domestic producers' sales volume, including sales from imports of the subject goods, also fell by 32 percent over the same period. However, non-producers' sales volumes of imports of the subject goods increased by 59 percent between 2005 and 2007.

31. The market share<sup>18</sup> held by sales from domestic production decreased by 15 percentage points between 2005 and 2007, while the producers' total market share, including producers' imports of the subject goods, declined by 16 percentage points during the same period. The market share held by non-producers' imports of the subject goods increased by 19 percentage points over the same period. This leads the Tribunal to conclude that sales from imports of the subject goods by domestic producers did not displace sales from domestic production to an extent where they would explain the loss in market share of sales from domestic production. In addition, Koolatron submitted that it will experience a more severe loss of market share for fiscal year 2008, as it was informed by its largest customer that it will purchase all of its thermoelectric containers directly from Chinese manufacturers.

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16. Administrative Record, Vol. 2 at 67-70, 455-65.

17. *Ibid.* at 93, 450-51, 487, 626-28.

18. *Ibid.* at 93, 487, 626-28.

32. Based on the foregoing, the Tribunal is satisfied that the evidence provides a reasonable indication that sales of the subject goods have resulted in injury to the domestic industry in terms of a decline in domestic production and sales from domestic production, and a loss of market share.

33. Regarding capacity utilization, since capacity did not increase over the period, it is reasonable to conclude that the net decrease in the capacity utilization experienced by Koolatron from 2005 to 2007 is due to the decrease in sales volume, which the Tribunal has attributed to imports of dumped and subsidized goods.

34. With respect to employment, the Tribunal is satisfied that there is a reasonable indication that the events surrounding lay-offs at Koolatron are the result of increased imports of the subject goods, given the decrease in domestic production and sales from domestic production, which, as indicated above, the Tribunal considers attributable to the subject goods.

35. The Tribunal concludes that the evidence on the record provides a reasonable indication that price undercutting, price depression and price suppression, and declining sales volumes attributable to the dumped and subsidized goods have resulted in the deteriorating financial performance of the domestic industry. Indeed, an analysis of the evidence on the record shows that Koolatron's financial performance for 2007 decreased significantly in terms of sales value, gross margin and operating income when compared with both 2005 and 2006. Koolatron's financial performance is also projected to be impacted to a greater extent in 2008.<sup>19</sup>

36. No specific evidence was provided regarding other injury factors that the Tribunal is required to examine, including cash flow, inventories, wages, growth or the ability to raise capital. However, the price erosion and decrease in sales volume would reasonably be expected to have a negative impact on cash flow and the ability to raise capital. As well, an analysis of the evidence on the record regarding the volumes of sales in Canada and abroad and the volume of production indicates that Koolatron's domestic production inventories increased between 2005 and 2007, due to the decrease in domestic sales, even if it reduced its production. Higher inventories would reasonably be expected to have a negative financial impact on Koolatron.

37. Based on the foregoing, the Tribunal is of the view that the evidence on the record provides a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

### **Other Factors**

38. Mobicool argued that various factors other than dumping and subsidizing were the cause of the injury to the domestic industry. These other factors comprised Koolatron's own production, importing and marketing decisions, and the strengthening of the Canadian dollar.

39. Regarding Koolatron's production and marketing decisions, there is no convincing evidence on the record that corroborates Mobicool's position that they resulted in injury to the domestic industry.

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19. *Ibid.* at 52, 53, 67, 70, 469.

40. As to the impact of Koolatron's imports of the subject goods, the Tribunal is of the view that the evidence at this stage tends to indicate that Koolatron's decision to import the subject goods<sup>20</sup> was a defensive measure taken against the competition of other importers of dumped and subsidized goods in order to protect its market share of domestically produced goods. It is only in the context of an inquiry under section 42 of *SIMA* that the Tribunal will be in a position to fully examine the motivations and impact of Koolatron's decision in that regard.

41. As to the strengthening of the Canadian dollar, while it may have contributed to the injury experienced by Koolatron, the evidence on the record at this stage does not indicate that it negatively impacted Koolatron.

42. The Tribunal is therefore of the opinion that the evidence on the record regarding the impact of the above-mentioned factors does not negate its conclusion that there is a reasonable indication of injury caused by the dumping and subsidizing of the subject goods. It is only in the context of an inquiry under section 42 of *SIMA* that the Tribunal will be in a position to fully assess the magnitude of any impact of these other factors.

## CONCLUSION

43. Based on the above analysis, the Tribunal is of the view that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

Ellen Fry  
Ellen Fry  
Presiding Member

Diane Vincent  
Diane Vincent  
Member

Pasquale M. Saroli  
Pasquale M. Saroli  
Member

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20. Administrative Record, Vol. 3, Koolatron's reply submission at para. 25.