



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2007-002

Xanthates

*Order issued
Monday, March 3, 2008*

*Reasons issued
Tuesday, March 18, 2008*

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IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on March 4, 2003, in Inquiry No. NQ-2002-003, concerning:

**XANTHATES OF ALL GRADES IN DRY OR LIQUID FORMS, EXCLUDING
CELLULOSE XANTHATES, ORIGINATING IN OR EXPORTED FROM THE
PEOPLE'S REPUBLIC OF CHINA**

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its finding made on March 4, 2003, in Inquiry No. NQ-2002-003, concerning xanthates of all grades in dry or liquid forms, excluding cellulose xanthates, originating in or exported from the People's Republic of China.

Pursuant to paragraph 76.03(12)(a) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its finding in respect of the aforementioned goods.

Serge Fréchette
Serge Fréchette
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Ellen Fry
Ellen Fry
Member

Hélène Nadeau
Hélène Nadeau
Secretary

The statement of reasons will be issued at a later date.

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	January 8 and 9, 2008
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STATEMENT OF REASONS

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ of the finding made by the Canadian International Trade Tribunal (the Tribunal) on March 4, 2003, in Inquiry No. NQ-2002-003, concerning xanthates of all grades in dry or liquid forms excluding cellulose xanthates (xanthates) originating in or exported from the People's Republic of China (China) (the subject goods).
2. On June 20, 2007, the Tribunal decided to initiate an expiry review and sent a notice of expiry review to known interested parties.² The Tribunal also sent letters requesting the domestic producer, potential importers and exporters/foreign producers to complete expiry review questionnaires. These questionnaires and the replies thereto formed part of the expiry review record of both the Tribunal and the Canada Border Services Agency (CBSA).
3. On June 21, 2007, the CBSA initiated an expiry review investigation to determine whether the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods.
4. On October 18, 2007, the CBSA determined, pursuant to subsection 76.03(7) of *SIMA*, that the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods.
5. On October 19, 2007, following the CBSA's determination, the Tribunal proceeded with its expiry review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the finding respecting the subject goods was likely to result in injury or retardation. As part of this process, in addition to requesting the domestic producer to provide information on its production, financial performance, employment and investments for the period from January 1, 2004 to September 30, 2007 (the period of review), the Tribunal requested the domestic producer and potential importers and exporters/foreign producers to update their questionnaire replies to include data for the first nine months of 2006 and 2007.
6. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, on January 8 and 9, 2008.
7. Charles Tennant & Company (Canada) Limited (CTC), the sole domestic producer of xanthates, filed a submission, provided evidence and made arguments in support of a continuation of the finding. It was represented by counsel and presented witnesses at the hearing.
8. Xstrata Zinc Canada (Xstrata),³ a purchaser of xanthates, filed a submission in support of a rescission of the finding. It was not represented by counsel, but presented a witness at the hearing.
9. Aslchem International Inc. (ASL), a large importer of the subject goods, did not file a submission and was not present at the hearing.
10. The Tribunal invited Messrs. Jean Constans, President, and Marco Giuliani, Vice-President, SNF Canada Ltd. (SNF), and Messrs. Leonard Surges, Director General, and Brian Smith, Director—Metallic Materials Division, Industry Analysis and Business Development Branch, Minerals and Metals Sector, Department of Natural Resources, to testify at the hearing.
11. The record of these proceedings consists of the following: all relevant documents, including the CBSA's expiry review report, statement of reasons, index of background information and related documents; the replies to the expiry review questionnaires; the pre-hearing staff reports prepared for this

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

2. C. Gaz. 2007.I.1832.

3. Formerly Noranda Inc. and Falconbridge Ltd.

expiry review; requests for information and parties' replies in accordance with the Tribunal's directions; submissions, witness statements and exhibits filed by the parties throughout the expiry review; the Tribunal's notice of expiry review; and the Tribunal's finding, statement of reasons and pre-hearing staff reports issued in Inquiry No. NQ-2002-003. All public exhibits were made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of protected information.

PRODUCT

Product Description

12. Xanthates are water-soluble chemicals that are used primarily in the mining industry.⁴ Other names for xanthates include xanthogenates, carbondithioates, dithiocarbonates and sodium or potassium salts of xanthanic (or dithiocarbonic) acids.

13. The products under review include all grades of sodium or potassium salts of ethyl, butyl (isobutyl, normal butyl, secondary butyl), propyl (isopropyl, normal propyl) and amyl (isoamyl, normal amyl, secondary amyl) xanthates, in dry forms, such as powder, granules, pellets, tablets or flakes, or in liquid forms, such as solution or slurry.

14. The products under review do not include cellulose xanthates, which are produced as intermediates in the production of viscose (rayon) and cellophane.

Production Process

15. Xanthates are produced through the reaction of sodium or potassium hydroxide with an alcohol and carbon disulphide. Four types of xanthates (ethyl, butyl, propyl and amyl) can be produced in various combinations with sodium and potassium, which are stabilizers in the chemical formula. Product differentiation is determined by the different hydroxides and alcohols employed in the production process.

16. In most commercial processes, the end product of the chemical reaction is a wet mixture, which is then dried, normally in a vacuum dryer, to allow the lowest temperature possible to be used. Since the decomposition of xanthates increases with temperature, the lower the temperature, the higher the quality and yield. CTC uses a slightly different proprietary process to produce xanthates.

Product Applications in the Mining Industry

17. In the mining industry, "xanthates" is the common name for chemical reagents used in the flotation of base and precious metals for their extraction from sulphide ores. Flotation using such reagents is a method for separating valuable minerals (also referred to as "values"), such as copper, zinc, nickel, lead and molybdenum, from other minerals, such as limestone and quartz.⁵

4. Xanthates are also used, albeit to a much lesser degree, as defoliants, herbicides, insecticides and fungicides in agricultural production, as additives in the curing and vulcanization of rubber, and as high-pressure lubricant additives. New uses for xanthates include inhibition of fertilizer nitrogen transformation and colour development for image-recording materials.

5. While xanthates are also used for the recovery of gold, silver and other minerals associated with sulphides, they are not used in the dominant recovery process for minerals associated with oxides. *Transcript of Public Hearing*, Vol. 2, 9 January 2008 at 185-87.

18. To extract values, conditioned ores are mixed in a solution of water and xanthates and then agitated in flotation cells, which resemble large washing machines. Xanthates may be added in liquid or solid form. Xanthates cause values to attach themselves to air bubbles and then float to the top of the flotation cell. As values reach the surface, the bubbles form a froth that overflows into a trough for collection. The residual mixture of ore and water may be re-used for additional recovery or removed for disposal. Most of the xanthates are consumed in the process.

19. Several separate flotations are typically required for different ores. Since each ore is unique, there is no standard flotation procedure and no standard grade or type of xanthates used to extract specific values. Each producer has its own grades for xanthate composition, including purity (which is stated as a minimum percentage up to 100 percent), and moisture.

20. Mine operators may use different xanthates to extract the same value by adjusting the quantity of xanthates used. Long alcohol chains of xanthates are stronger than short chains. Long alcohol chains are therefore used to produce high-grade concentrates or to promote the flotation of difficult-to-float minerals. A mine operator may however decide to use short alcohol chains if a cost benefit can be found in doing so. Some mine operators prefer to receive xanthates in liquid form. It is however more costly to transport liquid xanthates because they lose their strength faster and are heavier than dry xanthates.

Marketing and Distribution

21. In Canada, xanthates are classified as dangerous goods. They require special transportation and storage because, if not handled appropriately, they can self-ignite. Dry xanthates are transported in drums or bulk bags in wooden boxes or cartons. Liquid xanthates are transported by truck in bulk or in tote tanks (specialized containers).

22. CTC and exporters/foreign producers use similar direct and indirect channels of distribution in Canada. In addition to selling the vast majority of its xanthates directly to Canadian mine end users, CTC sells xanthates to Canadian distributors. Exporters/foreign producers market xanthates either indirectly through importers and distributors or directly to Canadian mine end users.

23. In addition to facilitating the sale of the goods and the logistics of moving them between a producer or importer and mines, Canadian distributors, which can also be importers, sell “bundles” of different types of mining chemicals and provide storage services to Canadian mines. Usually, Canadian mines obtain their xanthate supplies through a process of individual bids by potential suppliers, but, on occasion, they use a reverse auction, such as the one that Ariba Inc. managed on behalf of Xstrata in 2006. In this type of procurement process, potential purchasers place bids that decrease rather than increase throughout the course of the auction.

DOMESTIC PRODUCER

24. As indicated above, CTC is the sole domestic producer of xanthates. Its manufacturing division, Prospec Chemicals Division, produces xanthates in Fort Saskatchewan, Alberta.

25. CTC was established in 1932 and is wholly owned and privately held by Tennants Consolidated Limited of the United Kingdom. CTC owns a company in the United States that produces specialty chemicals for two Mexican mines. It owns another company in Peru that develops specialty chemicals for Peru and other South American countries. CTC also entered into a joint venture to operate a xanthate production facility in China. Through this joint venture, its Chinese xanthate production, which is projected to come on stream in April 2008, will serve as feedstock for the operation’s production of specialty chemical products.

IMPORTERS AND EXPORTERS

26. An importers' expiry review questionnaire was sent to the 17 largest potential importers of xanthates from China and other countries not subject to this expiry review (non-subject countries). Replies were received from ASL,⁶ which re-exported the majority of its imports of subject goods to the U.S. market during the period of review, and SNF, which started importing the subject goods in 2007. In addition, information was received from 7 different companies: 6 were not importers of xanthates during the period of review; and 1 imported insignificant volumes of xanthates at extremely high prices for applications other than mining.

27. An exporters' expiry review questionnaire was sent to 38 known potential exporters/foreign producers of the subject goods. No replies were received.

SUMMARY OF FINDING

28. On March 4, 2003, the Tribunal determined that the dumping of the subject goods had caused material injury to the domestic industry in the form of an erosion in prices, a reduction in sales volumes, employment and capacity utilization, a decline in production and a deterioration of its financial performance.

29. In its injury analysis, the Tribunal considered other factors, such as CTC's decline in its export sales, the increased pressure on worldwide xanthate prices, CTC's installation of a new reactor that increased its production capacity and CTC's sharp increase in its unit cost of goods sold. After assessing the impact of these factors on the performance of CTC's domestic operations, the Tribunal found that, while they may have caused injury to CTC, the significant price erosion suffered by the domestic producer was not attributable to these factors, but rather to the dumped imports.

ANALYSIS

30. On October 18, 2007, the CBSA determined that, pursuant to paragraph 76.03(7)(a) of *SIMA*, the expiry of the finding was likely to result in the continuation or resumption of dumping of the subject goods. Consequently, the Tribunal is required, pursuant to subsection 76.03(10), to determine whether the expiry of the finding is likely to result in injury or retardation, as the case may be, to the domestic industry.⁷

31. The Tribunal is required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the finding, if it determines that the expiry of the finding is unlikely to result in injury, or continuing the finding, with or without amendment, if it determines that its expiry is likely to result in injury.

32. Before proceeding with its analysis concerning the likelihood of injury, the Tribunal will first determine: (1) which domestically produced goods are "like goods" in relation to the subject goods; and (2) what constitutes the "domestic industry" for the purposes of its analysis.

6. ASL data encompass Quadra Chemicals Ltd. data.

7. Subsection 2(1) of *SIMA* defines "injury" as "... material injury to a domestic industry" and "retardation" as "... material retardation of the *establishment* of a domestic industry" [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry of the finding is likely to result in retardation does not arise in this expiry review.

Like Goods

33. 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 [such] goods ... , goods the uses and other characteristics of which closely resemble those of the other goods”. In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods, their market characteristics and whether the domestic goods fulfill the same customer needs as the subject goods.

34. In its statement of reasons for the finding, the Tribunal stated the following:

...

Domestically produced xanthates ... are not identical in all respects to the subject goods. The subject goods include all grades of sodium or potassium salts of ethyl, butyl, propyl and amyl xanthates, in dry or liquid forms. ... Further, xanthates produced by different producers are of varying purity and moisture levels.

However, the Tribunal is of the view that domestically produced xanthates closely resemble the subject goods. They are all chemical reagents used in the flotation of base and precious metals, which is a method of separating valuable minerals from other minerals. The evidence indicates that all xanthates are produced using similar production processes, have the same end use and can be used interchangeably. Further, domestically produced xanthates compete directly with the subject goods.

Therefore, the Tribunal concludes that, for the purposes of this inquiry, domestically produced xanthates ... are like goods to the subject goods.⁸

...

35. In this expiry review, the Tribunal heard no evidence or argument that warrants departing from the conclusion on like goods that it reached in the inquiry. Accordingly, the Tribunal concludes that xanthates produced by the domestic producer constitute like goods to the subject goods.

Domestic Industry

36. The domestic industry is defined in subsection 2(1) of *SIMA* 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”

37. Since CTC is the sole domestic producer of the like goods, it therefore constitutes the domestic industry for the purposes of this expiry review.

Likelihood of Injury

38. Subsection 37.2(2) of the *Special Import Measures Regulations*⁹ lists the factors that the Tribunal may consider in addressing the question of likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed below under the following headings: changes in international and

8. (4 March 2003), NQ-2002-003 (CITT) at 8.

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

domestic market conditions; likely volumes of dumped goods; likely prices of dumped goods and effects on prices of like goods; likely impact of dumped goods on the domestic industry and likely performance of the domestic industry; and other factors.

39. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus must be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally 18 to 24 months.¹⁰

Changes in International and Domestic Market Conditions

40. The Tribunal first reviewed both international and domestic market conditions as contemplated by paragraph 37.2(2)(j) of the *Regulations*.

41. During the period of review, there were noticeable changes in international and domestic market conditions. The international and domestic xanthate markets experienced higher pricing as a result of the boom in mineral commodities. Prices of minerals, primarily copper, zinc and nickel, increased considerably. This surge in prices increased the mining industry's interest in mineral production and investments.¹¹

42. With respect to the Canadian mining industry in particular, in the last two years, it has gone through takeovers by foreign multinational mining companies and consolidations. In an effort to reduce their cost of acquisition, newly consolidated larger mining entities are reducing their number of suppliers. They are also purchasing certain chemical products, including xanthates, in "bundles" from a single supplier.¹² In the next 18 to 24 months, the evidence on the record indicates that, in order to respond to strong prices of and demand for minerals that are extracted from sulphide ores using xanthates, the Canadian mining industry will reopen old or dormant mines, open new mines and expand existing facilities.¹³ The Tribunal notes the evidence that, while some Canadian mines will shut down due to the depletion of their ore bodies, these closures will be offset by existing, new and renewed mining activities.¹⁴

43. Information on the record shows that the upward trend in the prices of and demand for minerals using xanthates in their extraction process will also likely have a positive impact on the global and domestic demand for xanthates, which is also expected to grow in the next 18 to 24 months.¹⁵ The Tribunal observes that this growth was already apparent in the Canadian market in the first nine months of 2007.¹⁶ Xanthates will remain the only products feasible to use (from a technological and financial perspective) for

10. *Preformed Fibreglass Pipe Insulation* (17 November 2003), RR-2002-005 (CITT) at 11; *Prepared Baby Foods* (28 April 2003), RR-2002-002 (CITT) at 8; *Solder Joint Pressure Pipe Fittings* (16 October 1998), RR-97-008 (CITT) at 10.

11. Tribunal Exhibit RR-2007-002-15.01, Administrative Record, Vol. 3 at 18; Tribunal Exhibit RR-2007-002-28.01, Administrative Record, Vol. 1 at 165-203; Tribunal Exhibit RR-2007-002-RI-02A at 3, Administrative Record, Vol. 9; *Transcript of Public Hearing*, Vol. 2, 9 January 2008 at 203, 215.

12. Tribunal Exhibit RR-2007-002-15.01, Administrative Record, Vol. 3 at 18; *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 33-34; *Transcript of Public Hearing*, Vol. 2, 9 January 2008 at 171; *Transcript of In Camera Hearing*, Vol. 2, 9 January 2008 at 111; Manufacturer's Exhibit A-01 at para. 26, Administrative Record, Vol. 11.

13. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 105-108, 131-32, 149-50; *Transcript of Public Hearing*, Vol. 2, 9 January 2008 at 201; Tribunal Exhibit RR-2007-002-15.01, Administrative Record, Vol. 3 at 20.

14. *Transcript of Public Hearing*, Vol. 2, 9 January 2008 at 201-203.

15. Tribunal Exhibit RR-2007-002-15.01, Administrative Record, Vol. 3 at 20; Tribunal Exhibit RR-2007-002-18.01, Administrative Record, Vol. 5 at 32; *Transcript of Public Hearing*, Vol. 2, 9 January 2008 at 165-66, 185-86.

16. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 20.

extracting minerals from sulphide ores for the next five years. While there might be some specialty products available to supplement but not replace xanthates in the extraction process, they are typically more costly and have not been thoroughly tested to the satisfaction of mines.¹⁷ The Tribunal notes that the evidence does not indicate that this situation is expected to change over the next 18 to 24 months.

44. One of the significant changes observed recently in the Chinese xanthate industry, as reported by CTC, is an additional 35,000-tonne xanthate capacity coming on stream, including the 5,000 tonnes that CTC will use in its xanthate joint venture, starting in April 2008, to produce 3,000 tonnes of specialty chemical products.¹⁸ However, these figures on added Chinese capacity are partly based on estimates for which supporting data are not available. Other relevant changes in China mentioned by parties include the 8 percent reduction of tax credit that came into effect in 2007 on Chinese exports, and a further 5 percent reduction forecast for early 2008 that would eliminate Chinese export tax credits on xanthates and potentially increase the price of the subject goods in the Canadian market by the same percentage,¹⁹ and the increasing costs in China of producing and exporting xanthates.²⁰

45. One significant change in domestic market conditions since the finding is the appreciation of the Canadian dollar relative to the U.S. dollar to levels not seen in the past 30 years, a trend that accelerated during 2007.²¹ However, basing its conclusion on the limited information on the record, the Tribunal acknowledges that, while, on a specific-account basis, the devaluation of the U.S. dollar may have made some Canadian transactions less profitable and some purchases of raw materials more costly for CTC, on an aggregate basis, it does not seem to have made xanthates cheaper in the Canadian market, even for imports purchased in U.S. dollars and sold in the Canadian market, and CTC's exports of like goods less competitive in the U.S. market.²²

46. From 1999 (the first year of the period of inquiry) to 2006 (the last full year of the period of review), there were also a number of significant changes in domestic market conditions relating directly to CTC's xanthate activities. First, CTC was able to increase its market share by almost 25 percentage points. Second, CTC no longer had competition from non-subject countries, being the sole importer from Mexico during the period of review, and had very little competition from China.²³ Finally, CTC managed to reduce its unit cost of goods sold, which translated into unit gross margins that were as healthy or more profitable

17. *Transcript of Public Hearing*, Vol. 2, 9 January 2008 at 193, 206-11; Tribunal Exhibit RR-2007-002-RI-02A at 3-4, Administrative Record, Vol. 9.

18. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 14-15, 24-26.

19. *Ibid.* at 80-81, 83-84; *Transcript of In Camera Hearing*, Vol. 2, 9 January 2008 at 114; Tribunal Exhibit RR-2007-002-RI-02A at 1, 3, Administrative Record, Vol. 9.

20. Tribunal Exhibit RR-2007-002-18.01, Administrative Record, Vol. 5 at 32; Tribunal Exhibit RR-2007-002-RI-02A at 1, Administrative Record, Vol. 9.

21. *Pre-hearing Staff Report* from Inquiry No. NQ-2002-003, Tribunal Exhibit RR-2007-002-10, Administrative Record, Vol. 1.3 at 93; *Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-05, Administrative Record, Vol. 1.1 at 44.

22. *Transcript of In Camera Hearing*, Vol. 1, 8 January 2008 at 17-21; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 19, 22, 25; Tribunal Exhibit RR-2007-002-18.01B, Administrative Record, Vol. 5 at 62.13.

23. Tribunal Exhibit RR-2007-002-15.01, Administrative Record, Vol. 3 at 10-11; *Protected Pre-hearing Staff Report* from Inquiry No. NQ-2002-003, Tribunal Exhibit RR-2007-002-11 (protected), Administrative Record, Vol. 2.3 at 25; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 20.

during the period of review when compared to those of the period of inquiry.²⁴ Based on the above, the Tribunal observes that, whereas CTC had a strong presence in the Canadian market during the period of inquiry, it now has a healthier, more dominant position.

Likely Volumes of Dumped Goods

47. The Tribunal's assessment of the likely volumes of dumped imports²⁵ encompasses the likely performance of the foreign industry,²⁶ evidence of the imposition of anti-dumping measures on xanthates or similar goods in other jurisdictions²⁷ and the likelihood of trade diversion.²⁸

48. CTC submitted that, in the event of a rescission of the finding, its domestic production, which can meet the requirements of the Canadian market, will be displaced by significant volumes of subject goods once its existing contracts are completed. CTC also submitted that these volumes from China will be sufficient to supply the entire domestic market.

49. With respect to the total volume of subject goods imported into Canada, the evidence shows that, while significant, it was mainly a result of the activity of one large importer, ASL, which, as indicated previously, re-exported the majority of its xanthates from China to the U.S. market (the Red Dog mine in Alaska) during the period of review.²⁹ It did so because it is more cost-effective to ship xanthates via Canada than through U.S. ports, as the United States does not allow significant volumes of chemical product imports to be stored in bonded warehouses.³⁰

50. Given the large percentage of subject goods that were re-exported to the United States during the period of review, the Tribunal believes that an examination of total imports of the subject goods into Canada (i.e. imports destined for the Canadian market and imports re-exported to the United States) is not, in this case, a proper basis for determining the true impact on the domestic industry that imports of the subject goods had during the period of review and are likely to have in the next 18 to 24 months, taking the current situation into account. Consequently, the Tribunal compiled data on xanthates that were imported and then sold in the Canadian market (i.e. net imports). The Tribunal observes that there were net imports at only certain times during the period of review. Therefore, there are only a few comparable periods over the course of the period of review with regard to which the Tribunal can examine the volume of net imports of the subject goods relative to the domestic production or consumption of like goods.

24. *Protected Pre-hearing Staff Report* from Inquiry No. NQ-2002-003, Tribunal Exhibit RR-2007-002-11 (protected), Administrative Record, Vol. 2.3 at 38; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 27.

25. Paragraph 37.2(2)(a) of the *Regulations*.

26. Paragraph 37.2(2)(d) of the *Regulations*.

27. Paragraph 37.2(2)(h) of the *Regulations*.

28. Paragraph 37.2(2)(i) of the *Regulations*.

29. While the total volume of subject goods imported into Canada fluctuated from 2004 to 2006, it increased from the first nine months of 2006 (when imports were entirely from ASL and re-exported to the United States) to the corresponding period in 2007 (when ASL re-exported the totality of its imports to the United States and SNF started importing small volumes of the subject goods as one component within a basket of chemical products offered to its existing clients). Tribunal Exhibit RR-2007-002-19.09C (protected), Administrative Record, Vol. 6 at 79; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 17, 26; *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 33-34; *Transcript of Public Hearing*, Vol. 2, 9 January 2008 at 171; *Transcript of In Camera Hearing*, Vol. 2, 9 January 2008 at 111, 118.

30. Tribunal Exhibit RR-2007-002-15.01, Administrative Record, Vol. 3 at 19.

51. During the comparable periods within the period of review, the volume of net imports of the subject goods represented less than 3 percent of domestic production and of domestic consumption and, accordingly, represented an insignificant share of the Canadian market. The Tribunal notes that, as sales of imports from China decreased or almost disappeared from the Canadian market during these comparable periods, CTC's sales from its domestic production or its imports from Mexico increased, making it the dominant force in the Canadian market with its growing presence.³¹

52. Concerning the likely performance of the foreign industry, the Tribunal notes that the record contains very little information on the Chinese xanthate industry, as no Chinese exporters replied to the exporters' expiry review questionnaire, and no trade or statistical publications were filed in evidence.

53. CTC alleged that there is a global oversupply of xanthates relative to the estimated world demand for these products. Based on CTC's evidence, it is clear that China is the world's largest xanthate producer, for which estimates of annual capacity range from 115,000 tonnes to 145,000 tonnes. In comparison, the annual global demand for xanthates is estimated at between 80,000 tonnes and 100,000 tonnes, while that for Canada is estimated at 4,000 tonnes.³² This, CTC argued, makes Chinese production capacity at least 20 times the size of the Canadian market.³³

54. The Tribunal is of the opinion that CTC's assertions and estimates with respect to global and Chinese oversupply and overcapacity are unsubstantiated and are not convincing in light of the evidence filed by opposing parties that indicated that demand is equal to or even greater than supply and that plants in China are running at full capacity.³⁴ The Tribunal notes that CTC's information is not based on objective evidence, but rather on estimates stemming from its own involvement in xanthate export markets and on the intelligence gleaned from the global network of its sister companies.³⁵

55. The Tribunal also notes that Chinese exporters of xanthates do not appear to have a strategy in place to aggressively market the products into the Canadian market.³⁶ The Tribunal notes that Canada is not even an attractive export market for the many other xanthate-producing countries, which are not subject to the anti-dumping duty. These countries include Mexico, Australia, Brazil, Chile, India, Peru, South Africa and possibly Russia. Spain and Serbia also have production plants that are shut down, but remain operable. None of them, with the exception of Mexico, whose products can be delivered within seven days when on hand and were imported into Canada by CTC, sold xanthates and displaced imports from China or domestically produced xanthates in the Canadian market during the period of review.³⁷

31. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 16, 20; *Protected Pre-hearing Staff Report*, revised 2 January 2008, Tribunal Exhibit RR-2007-002-06B (protected), Administrative Record, Vol. 2.1 at 71.

32. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 14; Manufacturer's Exhibit A-03 at paras. 6, 8, Administrative Record, Vol. 11; Tribunal Exhibit RR-2007-002-15.01, Administrative Record, Vol. 3 at 21.

33. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 39-40.

34. Tribunal Exhibit RR-2007-002-18.01, Administrative Record, Vol. 5 at 32; *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 139; *Transcript of In Camera Hearing*, Vol. 2, 9 January 2008 at 85-86, 101-104.

35. Manufacturer's Exhibit A-01 at paras. 16, 18, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 12-13.

36. Tribunal Exhibit RR-2007-002-15.01, Administrative Record, Vol. 3 at 22.

37. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 61-62, 66; *Transcript of In Camera Hearing*, Vol. 2, 9 January 2008 at 106; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 20.

56. The Tribunal is of the view that there are a number of factors that are likely to limit significantly the volume of imports of the subject goods in the Canadian market in the next 18 to 24 months and thereby make it very difficult for importers of the subject goods to compete in the Canadian market. First, the elimination, in early 2008, of the tax credit on Chinese exports of xanthates, which will be replaced by much more enticing subsidies to Chinese producers that manufacture higher-value products or are using xanthates as feedstock for specialty chemical products, will potentially increase the cost of shipping the products to Canada.³⁸ Second, Canadian mines rely heavily on the timely availability of xanthates for the success of their mining operations. Third, due to the long-lasting and strong relationships that exist between Canadian mines and suppliers, the 6 to 12 months required to test a potential second source of supply and associated high risks of using a new product that is not consistent, predictable, dependable and of high quality, and high costs of developing a new technology,³⁹ the Tribunal believes that Canadian mines will be very reluctant to switch sources from CTC to importers of the subject goods, especially when xanthates account for a very small proportion of their mining costs and they have been satisfied with the domestic products and CTC's service.⁴⁰ Fourth, in most situations, Canadian mine operators are looking to minimize their inventory and costs of holding the products and are therefore not likely to buy large volumes of xanthates.⁴¹ Finally, the fact that it takes a number of weeks to ship xanthates from China to Canada also suggests that these imports will not constitute an attractive proposition for Canadian mines.⁴²

57. A factor that might have attracted more imports to the Canadian market over the period of review is the appreciation of the Canadian dollar against the U.S. dollar, since most purchases of xanthates from foreign producers or exporters are made in the latter currency. However, as indicated above, this did not materialize. The strengthening of the Canadian dollar did not lead to larger volumes of imports entering the Canadian market during the period of review.⁴³ Based on what transpired during the period of review and the fact that the evidence on the record does not indicate otherwise, the Tribunal does not foresee any major changes to this situation in the next 18 to 24 months.

58. Finally, with respect to the imposition of anti-dumping measures on xanthates from China in other jurisdictions, there is no evidence on the record that such measures by countries other than Canada are in place. Accordingly, the Tribunal concludes that it is very unlikely that there will be a diversion of the subject goods into the Canadian market as a result of measures taken by authorities other than Canada.⁴⁴

38. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 18; *Transcript of In Camera Hearing*, Vol. 1, 8 January 2008 at 42-43; Tribunal Exhibit RR-2007-002-RI-02A at 1, 3, Administrative Record, Vol. 9.

39. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 66, 93-94, 110-11, 120-24, 146-47; *Transcript of Public Hearing*, Vol. 2, 9 January 2008 at 196-97, 210-14.

40. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 93-94, 110-11, 120, 123-24; *Transcript of In Camera Hearing*, Vol. 1, 8 January 2008 at 65-66.

41. *Transcript of Public Hearing*, Vol. 2, 9 January 2008 at 198.

42. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 65-66.

43. Tribunal Exhibit RR-2007-002-15.01, Administrative Record, Vol. 3 at 22; Tribunal Exhibit RR-2007-002-18.01B, Administrative Record, Vol. 5 at 62.13; *Pre-hearing Staff Report*, revised 2 January 2008, Tribunal Exhibit RR-2007-002-06B (protected), Administrative Record, Vol. 2.1 at 71; *Transcript of In Camera Hearing*, Vol. 1, 8 January 2008 at 6-7, 25-26.

44. With respect to anti-dumping measures on similar goods, the record contains information with respect to anti-dumping actions against goods used as inputs in the production of the subject goods and against other allegedly similar chemical products that are either manufactured by Chinese xanthate producers or used in the mining industry. Given that there are no practical substitutes for xanthates available for extracting minerals from sulphide ores, the Tribunal is not convinced that such anti-dumping actions are against goods that are similar to the subject goods. Accordingly, the Tribunal concludes that it is very unlikely that there will be a diversion of similar goods into the Canadian market. Tribunal Exhibit RR-2007-002-15.01, Administrative Record, Vol. 3 at 23, 71-73.

59. In summary, the Tribunal is of the opinion that the evidence on the record does not demonstrate that the volume of China's exports to the Canadian market is likely to increase significantly in the next 18 to 24 months. Consequently, the Tribunal finds it unlikely that the volume of xanthates from China will be significant in the event of a rescission of the finding.

Likely Prices of Dumped Goods and Effects on Prices of Like Goods

60. In assessing the effects that the likely prices of dumped goods will have on prices of like goods, the Tribunal will examine whether the dumped goods are likely to significantly undercut, depress or suppress the prices of like goods.⁴⁵

61. While CTC argued that xanthates are a commodity and that price is the principal factor dictating purchasing decisions, the Tribunal considers that evidence on the record does not support this allegation. Although price is an important criterion in a purchasing decision, the evidence indicates that there are other criteria that are just as important. Most of the factors that were listed previously as likely to limit the volume of xanthates entering the Canadian market in the next 18 to 24 months are also factors that are significant in a purchasing decision. These factors include quality, consistency, predictability, dependability and availability of the products, service, reliability of shipment or timely delivery, long-lasting relationships between the producer and the end user, the value that Canadian mines places on the products and their reluctance to change their source of supply.⁴⁶

62. In the Tribunal's view, a factor that is likely to influence pricing is the fact that many Canadian mines purchase a range of chemical products, including xanthates, in "bundles". The Tribunal heard testimony that CTC does not often use "bundling" as a selling tool for its xanthates.⁴⁷ However, the evidence on the record does not indicate whether "bundling" would likely increase or decrease the price of the xanthate component of any bundle of Chinese product.⁴⁸

63. CTC argued that, if the finding is rescinded, Canadian importers will be very aggressive in their efforts to sell low-priced Chinese xanthates to all of CTC's customers. It further argued that the price difference would be important and more than sufficient to entice customers to switch sources.

64. ASL submitted that Chinese exports that might come to Canada in the next 18 to 24 months in the event of a rescission of the finding would be at higher prices than during the period of review due to the increase in freight rates to Canada, the increase in input costs for Chinese producers, the shortage in China of some raw materials and the elimination of China's export tax credit.⁴⁹

65. Information reported by Global Trade Information Services, Inc. confirms these increases in the unit export prices of Chinese xanthates. According to this information, during the period of review, average unit prices of Chinese exports throughout the world increased by 42 percent and to Canada, by 55 percent.⁵⁰ Based on these prices and the forecast cost increases in China, the Tribunal is of the opinion that the upward price trend is likely to continue in the next 18 to 24 months.

45. Paragraph 37.2(2)(b) of the *Regulations*.

46. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 66, 109-12, 119-24, 128, 146-47; *Transcript of Public Hearing*, Vol. 2, 9 January 2008 at 196-97, 212-14; *Transcript of In Camera Hearing*, Vol. 1, 8 January 2008 at 16, 37, 50-51; Purchaser's Exhibit C-02 (protected) at 1, 6-7, Administrative Record, Vol. 14.

47. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 34, 74.

48. *Transcript of Public Hearing*, Vol. 2, 9 January 2008 at 171.

49. Tribunal Exhibit RR-2007-002-18.01, Administrative Record, Vol. 5 at 32; Tribunal Exhibit RR-2007-002-RI-02A at 1, 3, Administrative Record, Vol. 9.

50. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-05, Administrative Record, Vol. 1.1 at 42.

66. Xstrata submitted that a rescission of the finding, and thereby the elimination of the anti-dumping duty on the subject goods, would allow the resumption of competition in the Canadian market and the possibility of testing and having a secondary source of supply.

67. Due to the limited evidence on the record relating to prices of the subject goods, the Tribunal finds it very difficult to assess the likely pricing in the event of a rescission of the finding. First, there are only a few periods within the period of review during which the Tribunal can conduct a comparative analysis on overall average selling prices. Second, the overall average selling prices of imports of the subject goods are from two different importers with significantly smaller volumes than CTC and with different average selling prices of the subject goods due possibly to product mix and relative volumes. Third, pricing in the Canadian market when there is a finding in place does not necessarily provide a good indication of what the likely prices will be absent the finding. Nevertheless, the Tribunal reviewed the pricing data on the record and conducted a number of price analyses.

68. The Tribunal first conducted a review of the total market pricing data on the record. This review shows that, on an aggregate level, average unit selling prices in the domestic market during the period of review trended upward. Average unit selling prices were at their highest level in the domestic market during the first nine months of 2007.

69. The trend observed for the total average unit selling prices also applies to the average unit selling prices of like goods. During the period of review, CTC was able to increase its average unit selling prices of like goods by 7 percent. Average unit selling prices of the subject goods decreased during the period of review, but were significantly higher than the average unit selling prices of like goods.⁵¹ This price difference is not surprising to the Tribunal, as it was partly caused by the imposition of the anti-dumping duty on imports of the subject goods during the period of review.⁵²

70. In an effort to come to a view concerning the likely impact of the selling prices of the subject goods on the selling prices of the like goods in the absence of the finding, the Tribunal first conducted a price analysis by estimating the average unit selling prices of the subject goods absent the anti-dumping duty⁵³ and then compared them to the average unit selling prices of the like goods.⁵⁴ This price analysis suggests

51. *Ibid.* at 22; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 22.

52. ASL was subject to an anti-dumping duty of 29.2 percent until March 15, 2007. Thereafter, all imports from China were subject to an anti-dumping duty of 49.5 percent. Tribunal Exhibit RR-2007-002-03A, Administrative Record, Vol. 1 at paras. 70-72.

53. In order to do so, the Tribunal took the average unit selling prices of the subject goods for comparable periods during the period of review and deducted the appropriate profit margins and delivery costs from the points of entry into Canada to the customers. This provided FOB prices at the points of entry into Canada (FOB prices in Canada). Then, the Tribunal removed from the FOB prices in Canada the estimated delivery costs, expressed in Canadian dollars, from the plants where xanthates were produced in China to the points of entry into Canada to get to the export prices, i.e. the ex-factory prices, which at this point still included the anti-dumping duty. This estimate is very conservative, as it is based on ASL's 2004 breakdown of the cost of shipping xanthates from China to Canada and does not take into consideration increases in shipping costs reported by parties since the beginning of the period of review. Finally, the Tribunal removed from these ex-factory prices the relevant anti-dumping duty and added back the costs of delivering xanthates from the factories in China to the customers in Canada.

54. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 22; *Protected Pre-hearing Staff Report*, revised 2 January 2008, Tribunal Exhibit RR-2007-002-06B (protected), Administrative Record, Vol. 2.1 at 73; Tribunal Exhibit RR-2007-002-RI-02 (protected) at 6, Administrative Record, Vol. 10; Tribunal Exhibit RR-2007-002-RI-02B (protected) at 1, Administrative Record, Vol. 10; *Transcript of In Camera Hearing*, Vol. 2, 9 January 2008 at 91-92, 94-95.

that, even after removing the anti-dumping duty from the average unit selling prices of the subject goods, these average unit selling prices were higher than the average unit selling prices of the like goods. The Tribunal believes that the lack of competition in the Canadian market could be one of the causes for the high prices of the subject goods. These high prices could also be a reflection of China's and, for this matter, the world's reported increasing costs of producing xanthates, as well as China's increasing shipping costs, higher production standards and low import volumes.⁵⁵

71. The Tribunal's second price analysis was conducted using the very limited evidence concerning selling prices of xanthates in other markets. The Tribunal considered the pricing comparison that CTC provided with respect to its market intelligence concerning Chinese bids in several instances in the U.S. market, which does not have measures in place against xanthates, and its equivalent prices to a Canadian customer for the same products, with same volumes offered at the same dates.⁵⁶ Based on this, CTC submitted that, if the finding is rescinded, it will have to reduce its prices by a significant amount to retain its Canadian customers or be competitive with imports of the subject goods that will no longer be subject to the anti-dumping duty.⁵⁷

72. The Tribunal is not persuaded that CTC's price estimates and comparisons necessarily provide a reliable indication of the likely prices of the subject goods in the Canadian market. In this regard, the Tribunal notes that CTC gathered these prices by way of commercial intelligence and not in the context of an ordinary commercial relationship and, consequently, it is not possible to confirm the comparability of the Chinese and CTC pricing and the accuracy of CTC's information on Chinese prices. Accordingly, the Tribunal observes that these prices may not necessarily reflect the prices that would apply in Canadian market conditions in the next 18 to 24 months if the finding were rescinded.

73. Finally, the Tribunal conducted a price comparison for the specific type and quantity of xanthates offered at Xstrata's 2006 reverse auction for the Canadian market. The information on the record indicates that CTC participated in the auction along with goods from exporting countries, including Mexico and China, and that all bids were made on the basis of delivered prices to Xstrata's Canadian operations.⁵⁸ The Tribunal's bid price comparison suggests that, at a comparable level of trade, CTC's average selling price was lower than the average selling price of xanthates from Mexico, but slightly higher than that of xanthates from China.⁵⁹ The Tribunal is of the view that the elimination of the export tax credit and increases in

55. *Protected Pre-hearing Staff Report*, revised 2 January 2008, Tribunal Exhibit RR-2007-002-06B (protected), Administrative Record, Vol. 2.1 at 71; Tribunal Exhibit RR-2007-002-18.01, Administrative Record, Vol. 5 at 32; Tribunal Exhibit RR-2007-002-RI-02A at 1, Administrative Record, Vol. 9; *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 113, 133-34; *Transcript of In Camera Hearing*, Vol. 2, 9 January 2008 at 104-105.

56. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 28-30; *Transcript of In Camera Hearing*, Vol. 1, 8 January 2008 at 4-6; Manufacturer's Exhibit A-01 at para. 29, Administrative Record, Vol. 11.

57. Manufacturer's Exhibit A-01 at para. 30, Annex 1, Administrative Record, Vol. 11; Manufacturer's Exhibit A-02 (protected) at para. 30, Annex 1, Administrative Record, Vol. 12.

58. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 91, 93-94, 98, 108-109, 111-12; *Transcript of In Camera Hearing*, Vol. 1, 8 January 2008 at 17, 67-68; Tribunal Exhibit RR-2007-002-RI-03 (protected) at 2, Administrative Record, Vol. 10; Tribunal Exhibit RR-2007-002-15.01, Administrative Record, Vol. 3 at 20.

59. The Tribunal deconstructed these bid prices to obtain estimated and comparable bid prices (FOB and CIF), expressed in Canadian dollars and net of anti-dumping duties. The Tribunal prepared various scenarios of this price comparison using different estimates of average delivery costs based on information on the record. These estimates are very conservative, as they are based on ASL's 2004 cost of shipping xanthates from China to Canada plus a small amount for increased delivery costs during the period of review. The Tribunal is mindful that its analysis is dependent on the correctness of the estimates and assumptions that it made in the absence of more concrete evidence. Nevertheless, the Tribunal believes that these estimates and assumptions are reasonable. Tribunal Exhibit RR-2007-002-RI-02 (protected) at 6, Administrative Record, Vol. 10.

production and freight costs for the subject goods forecast for the next 18 to 24 months will most likely offset this price difference and likely render average selling prices of the subject goods in the Canadian market competitive with those of the like goods.

74. When asked about the likely prices of the subject goods in the Canadian market in the absence of the finding, opposing parties that replied to the expiry review questionnaire and appeared at the hearing indicated that their purchasing and selling decisions were not based primarily on pricing. SNF indicated that it recently started importing and selling xanthates to diversify its offerings and promote new products to existing customers. It added however that xanthates represent only a small percentage of its total offerings. SNF also submitted that its goal is to compete with CTC in the Canadian xanthate market on the basis of product quality.⁶⁰ ASL indicated that it has no plans to sell xanthates for domestic consumption. It added that it is not interested in doing so, as it sells xanthates on the basis of product quality and not price.⁶¹ Finally, Xstrata submitted that, if the finding were rescinded, it would not change its purchasing practice, which is primarily based on product quality and origin, service and reliability of shipment rather than on price.⁶² Based on the evidence on the record, the Tribunal believes that opposing parties' purchasing and selling practices did not harm CTC during the period of review, and the evidence does not indicate that this situation is likely to change in the next 18 to 24 months.

75. The Tribunal observes that it is reasonable to assume that, should the finding be rescinded, average selling prices of the subject goods will decrease due to the elimination of the anti-dumping duty. However, the Tribunal is of the view that it is unlikely that average selling prices of the subject goods will be reduced by the full percentage of the anti-dumping duty, i.e. 49.5 percent, due to increased freight, production and input costs, the shortage, in China, of some raw materials and the elimination of the export tax credit in China, as discussed above.

76. Consequently, the Tribunal finds that, on balance, the evidence on the record does not demonstrate that average selling prices of the subject goods are likely to be much lower than the average selling prices of the like goods in the absence of the finding. Rather, the Tribunal is of the view that average selling prices of the subject goods are likely to be at levels that will be closer to average selling prices of the like goods and will compete fairly with them. In view of the above, and noting its conclusion above that the volume of xanthates from China is unlikely to be significant, the Tribunal concludes that the evidence on the record does not show that, in the absence of the finding, imports of the subject goods will enter Canada in the next 18 to 24 months at prices that are likely to undercut, depress, erode or suppress the prices of the like goods.

Likely Impact of Dumped Goods on the Domestic Industry and Likely Performance of the Domestic Industry

77. The Tribunal now turns to the likely impact that the above volumes and prices will have on the domestic industry if the finding is rescinded,⁶³ taking into consideration the domestic industry's likely performance.⁶⁴

60. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 22; *Transcript of Public Hearing*, Vol. 2, 9 January 2008 at 162-63, 165-66, 170-71; *Transcript of In Camera Hearing*, Vol. 2, 9 January 2008 at 110, 131.

61. Tribunal Exhibit RR-2007-002-18.01, Administrative Record, Vol. 5 at 31-32; Tribunal Exhibit RR-2007-002-19.01 (protected), Administrative Record, Vol. 6 at 6.

62. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 123, 126-29.

63. Paragraph 37.2(2)(e) of the *Regulations*.

64. Paragraph 37.2(2)(c) of the *Regulations*.

78. CTC argued that a resumption of dumped xanthate imports in Canada will have a severe negative impact on its sales, market share, output, profits, productivity, return on investments, cash flow, capacity utilization, employment, growth and ability to raise capital. Thus, CTC submitted that it will be left with no other alternative than to close its production plant in Canada. CTC argued that, while it managed to retain a high share of the Canadian market during the period of review, it could not increase its prices to a satisfactory level.

79. ASL submitted that CTC cannot be injured by imports of the subject goods, as the Canadian market has not been exposed to any competition in the past five years. Rather, it is ASL's view that the valuation of the Canadian dollar against the U.S. dollar and the increased cost of energy and raw materials are the factors that were harmful to CTC's bottom line.

80. Overall, the Tribunal is of the view that CTC has maintained a strong position in the Canadian market and had very little competition from imports of the subject goods. In this regard, the Tribunal notes that several important performance indicators, including production, capacity utilization rate, domestic sales, average unit selling prices and gross margins showed improvements during the period of review, especially during the first nine months of 2007 when compared to the same period in 2006. The Tribunal considers these indicators to be a reflection of CTC's healthy financial performance and its dominant position in the Canadian market during the period of review. On an annualized basis, 2007 could turn into CTC's best year and one of the domestic market's strongest years since 2004, even with imports of the subject goods re-emerging on the Canadian market.

81. CTC's total domestic production increased by 11 percent from 2004 to 2005 and by 17 percent from the first nine months of 2006 to the corresponding period in 2007, while its production capacity remained constant. With respect to CTC's capacity utilization rate, the evidence indicates that it was at its highest level in the first nine months of 2007. However, the evidence also demonstrates that CTC has enough capacity to supply the entire Canadian market.⁶⁵

82. During the period of review, CTC's volume of sales of like goods in the Canadian market fluctuated in correlation with the size of the Canadian market. In a comparison of the first nine months of 2006 with those of 2007, CTC was able to increase its volume of sales and its average unit selling price of like goods in the Canadian market, even with competition from a new importer of the subject goods. On an annualized basis, CTC's volume of sales of like goods in the Canadian market in 2007 could reach or surpass that of 2004, even with its highest average unit selling values of the period of review. Furthermore, throughout the period of review, CTC dominated the Canadian market in terms of market share, as it had to face very little competition.⁶⁶

83. Regarding its cost of production and profitability throughout the period of review, CTC argued that it was forced to accept lower prices at some of its accounts, which affected its profitability. However, the evidence indicates that CTC has already taken steps to remedy the situation.⁶⁷ Furthermore, the evidence on

65. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-05, Administrative Record, Vol. 1.1 at 16; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 16, 20, 36.

66. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-05, Administrative Record, Vol. 1.1 at 20, 22; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 20, 22.

67. Manufacturer's Exhibit A-08 (protected) at paras. 6-7, Administrative Record, Vol. 12; *Transcript of In Camera Hearing*, Vol. 1, 8 January 2008 at 15-21.

the record indicates that, on a per unit basis, CTC's cost of production remained fairly constant throughout the period of review. When its cost of production increased marginally, CTC was able to increase its average unit net selling price of like goods by at least the same percentage.⁶⁸

84. The evidence on the record indicates that CTC's gross margin on its domestic sales, on a per unit basis, was consistently positive and even showed some improvement during the period of review. In the first nine months of 2007, CTC even experienced, on a per unit basis, a record gross margin and net income.⁶⁹ Consequently, the Tribunal is of the view that CTC's gross margins earned on its domestic sales were healthy and enabled CTC to operate profitably throughout the period of review. Even if imports of the subject goods enter the Canadian market in the next 18 to 24 months following a rescission of the finding, the Tribunal considers, as discussed above, that their volumes will not be significant and that their prices will be competitive with those of CTC.

85. Therefore, in the Tribunal's view, even with a rescission of the finding, CTC is likely to keep its current healthy position in the Canadian market.

86. With respect to CTC's performance in the U.S. market, where it has a noticeable presence,⁷⁰ the Tribunal did not observe any negative impact caused by the appreciation of the Canadian dollar against the U.S. dollar, either on a volume basis or on an average unit selling price basis. On the contrary, CTC witnessed incremental increases on both levels throughout the period of review and especially in the first nine months of 2007, when it recorded its highest unit gross margin and net income of the entire period of review.⁷¹ This, in the Tribunal's view, is an indication that CTC can compete in a market where there is no anti-dumping duty in place.

87. CTC made major investments in its facilities during the period of review. It is also projecting significant investments in 2008 and 2009.⁷² The Tribunal considers that CTC's ability to invest in its business with such confidence may have given it an edge over Chinese exporters and helped CTC to dominate the Canadian market. Because of the likely volume and pricing of the dumped imports, as discussed above, the Tribunal is not persuaded that, if the finding is rescinded, planned future development and investments by CTC will be suspended to a significant extent.

88. In regard to the impact that the Tribunal decision might have on CTC's list of customers, the Tribunal notes that, even if the finding is rescinded, CTC's competitive advantage over imports from China discussed earlier will enable it to keep its large customers for the next 18 to 24 months. One of its large customers, Xstrata, which has been doing business with CTC for the past 10 years, has a six-month contract with CTC and is looking into signing a longer-term contract with it.⁷³

68. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 27, 31.

69. *Ibid.* at 27.

70. *Transcript of In Camera Hearing*, Vol. 1, 8 January 2008 at 34.

71. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 25, 28.

72. Manufacturer's Exhibit A-05 at para. 5, Administrative Record, Vol. 11; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2007-002-06 (protected), Administrative Record, Vol. 2.1 at 37.

73. *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 109-11, 113.

89. The Tribunal is of the opinion that, based on the evidence on the record, the Canadian xanthate market will continue to enjoy strong demand and increases in prices as a direct result of continued high prices for minerals, primarily copper, zinc and nickel, and renewed extracting activities in the Canadian mining industry in the next 18 to 24 months.

90. Based on the evidence, the Tribunal finds that, in the absence of the finding, it is unlikely that there will be a significant volume of imports of the subject goods and that any such imports will be at prices significantly lower than prices of domestic goods in the Canadian market. Consequently, the Tribunal concludes that it is unlikely that imports of the subject goods will result in injury to the domestic industry. Furthermore, based on CTC's performance in the Canadian market during the period of review, the Tribunal concludes that the expiry of the finding is unlikely to have a significant adverse impact on the domestic industry's performance in the next 18 to 24 months.

Other Factors

91. Pursuant to paragraph 37.2(2)(k) of the *Regulations*, the Tribunal may consider any other factors relevant in the circumstances.

CTC's Chinese Xanthate Joint Venture

92. As indicated above, the evidence on the record indicates that CTC entered into a 50/50 joint venture agreement with a Chinese producer to operate a xanthate production facility that will be used to produce xanthates as feedstock for the operation's production of specialty chemical products.⁷⁴

93. ASL submitted that the reason behind CTC's decision to enter into the xanthate joint venture in China was its inability to expand production at its Canadian plant and, consequently, increase its sales. ASL also indicated that it could not comprehend why CTC was building a plant in the same country from which it claimed injury.⁷⁵

94. While the Tribunal acknowledges that CTC's 5,000-tonne xanthate feedstock production in China, scheduled to start in April 2008, is somewhat larger than the actual size of the Canadian xanthate market, it believes that it is unlikely that CTC will sell xanthates from its Chinese plant into the Canadian market in the next 18 to 24 months. First, based on the evidence, the Tribunal is of the view that it will be more profitable for CTC to use xanthates as feedstock for its higher value-added product. Second, global demand for xanthates is forecast to grow in the next 18 to 24 months, and demand for specialty chemical products is expected to follow the same trend. Accordingly, CTC is unlikely to experience decreased demand for its specialty chemical products that would lead it to sell xanthates rather than using them as feedstock.⁷⁶ Consequently, the Tribunal does not believe that CTC's xanthate joint venture in China will have a significant effect on the Canadian market.

74. *Ibid.* at 24-27.

75. Tribunal Exhibit RR-2007-002-18.01, Administrative Record, Vol. 5 at 32.

76. Tribunal Exhibit RR-2007-002-15.01, Administrative Record, Vol. 3 at 20; *Transcript of Public Hearing*, Vol. 1, 8 January 2008 at 60.

CONCLUSION

95. Based on the evidence on the record concerning relevant factors likely to influence the Canadian market over the next 18 to 24 months, which the Tribunal notes is limited, the Tribunal concludes that the expiry of the finding is unlikely to result in injury.

96. Therefore, based on the foregoing analysis and pursuant to paragraph 76.03(12)(a) of *SIMA*, the Tribunal hereby rescinds its finding in respect of xanthates of all grades in dry or liquid forms, excluding cellulose xanthates, originating in or exported from China.

Serge Fréchette
Serge Fréchette
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Ellen Fry
Ellen Fry
Member