



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2012-004

Thermoelectric Containers

*Order and reasons issued
Monday, December 9, 2013*

TABLE OF CONTENTS

ORDER	i
STATEMENT OF REASONS	1
INTRODUCTION	1
PRODUCT	1
LEGAL FRAMEWORK	2
LIKE GOODS AND CLASSES OF GOODS	3
DOMESTIC INDUSTRY	4
CROSS-CUMULATION.....	4
PRELIMINARY MATTERS	4
LIKELIHOOD OF INJURY ANALYSIS.....	5
Changes in International and Domestic Market Conditions.....	5
Likely Volumes of Dumped and Subsidized Goods.....	8
Likely Prices of Dumped and Subsidized Goods and Effects on the Prices of Like Goods.....	11
Likely Performance of the Domestic Industry and Likely Impact of the Dumped and Subsidized Goods on the Domestic Industry	13
Factors Other Than Dumping or Subsidizing	16
REQUESTS FOR PRODUCT EXCLUSIONS	16
CONCLUSION	18

IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on December 11, 2008, in Inquiry No. NQ-2008-002, concerning:

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

ORDER

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

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

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Pasquale Michaele Saroli
Presiding Member

Daniel Petit

Daniel Petit
Member

Ann Penner

Ann Penner
Member

Dominique Laporte

Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Dates of Hearing: October 15 and 16, 2013

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STATEMENT OF REASONS

INTRODUCTION

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 December 11, 2008, in Inquiry No. NQ-2008-002, concerning the dumping and subsidizing of thermoelectric containers that provide cooling and/or warming with the use of a passive heat sink and a thermoelectric module, excluding liquid dispensers, originating in or exported from the People's Republic of China (China) (the subject goods).

2. The Tribunal initiated this expiry review on March 27, 2013.² It notified the Canada Border Services Agency (CBSA) and sent letters to known domestic producers, importers, foreign producers and exporters requesting that they complete expiry review questionnaires. The Tribunal's period of review (POR) is from January 1, 2010, to June 30, 2013.

3. On March 28, 2013, the CBSA initiated its investigations to determine whether the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping and/or subsidizing of the subject goods.

4. On July 25, 2013, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the finding was likely to result in the continuation or resumption of dumping and subsidizing of the subject goods.

5. Following the CBSA's decision, on July 26, 2013, the Tribunal commenced its part of the expiry review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the finding was likely to result in injury or retardation to the domestic industry. As part of these proceedings, the Tribunal sent a *Short-form Importers' Questionnaire* to importers that had not completed the original *Expiry Review Questionnaire – Importer* and to two other importers.

6. The Tribunal held a public hearing in Ottawa, Ontario, on October 15 and 16, 2013, during which it heard oral submissions from counsel for Koolatron Corporation (Koolatron), a domestic producer, and Canadian Tire Corporation, Limited (Canadian Tire), an importer, as well as testimony from three witnesses.

7. In its notice of expiry review, the Tribunal referred to the procedures for filing requests for specific product exclusions. The Tribunal received two requests for product exclusions, both from Canadian Tire. At the hearing, Canadian Tire additionally requested an exclusion for all thermoelectric containers used for travel or, in the alternative, for all soft-sided thermoelectric containers used for travel. Canadian Tire also requested a producer exclusion for Mobicool International, Ltd./Mobicool Electronic (Shenzhen) Co., Ltd. (Mobicool).³

PRODUCT

8. Thermoelectric containers rely on a principle called "the Peltier effect" to pump heat electronically, without the use of compressors, coils and gases. The Peltier effect dictates that, if a direct current (DC) passes through an electrical junction formed of dissimilar metals, heat will flow towards or away from the

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

2. C. Gaz. 2013.I.760.

3. *Transcript of Public Hearing*, Vol. 2, 16 October 2013, at 152-54.

junction, depending on the direction of the DC flow in the junction. Thermoelectric containers can therefore be used to either cool or warm their interior air volume, relative to the temperature of the surrounding (ambient) air. The nature of thermoelectric technology generally limits the maximum size of thermoelectric containers to approximately 100 litres.

9. Thermoelectric containers are made of a variety of materials, including plastic, metal and fabric. They can be hard- or soft-sided. Thermoelectric containers operate using a DC power cord, a battery or a 120-volt alternating current power adapter.

LEGAL FRAMEWORK

10. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the finding in respect of the subject goods is likely to result in injury or retardation.⁴

11. The Tribunal is also required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the finding in Inquiry No. NQ-2008-002, 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 the expiry of the finding is likely to result in injury.

12. As indicated by the Tribunal in *Copper Pipe Fittings*,⁵ the analysis conducted in an expiry review is forward-looking, and, as such, evidence from the POR is relevant only to the extent that such evidence bears upon the prospective analysis of whether the expiry of an order or a finding is likely to result in injury.

13. Further, as indicated by the Tribunal in *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip*,⁶ there is no presumption of injury in an expiry review, but instead, the Tribunal's finding must be based on positive evidence in compliance with domestic law and consistent with the requirements of the World Trade Organization.

14. Thus, the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. In essence, positive evidence in the context of an expiry review can include evidence based on past facts that tend to support forward-looking conclusions. The requirement in an expiry review is that the Tribunal draw logical conclusions from the relevant information before it, and that information will often appropriately include the performance of the domestic and foreign industries during the POR, when anti-dumping and countervailing duties were in place.⁷ An aid to the proper contextualization of that information can include the performance of the domestic and foreign industries during the initial injury inquiry's period of investigation, when anti-dumping and countervailing duties had yet to be applied.⁸ For instance, while not dispositive, a significant improvement in domestic market and industry performance indicators during the POR relative

4. 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.

5. (17 February 2012), RR-2011-001 (CITT) at para. 56.

6. (16 August 2006), RR-2005-002 (CITT).

7. Thus, paragraphs 37.3(2)(c) and (d) of the *Special Import Measures Regulations*, S.O.R./84-927 [Regulations], indicate that it is appropriate for the Tribunal to consider the "recent" performance of both the domestic and foreign industries.

8. Such an analysis was put before the Tribunal at the hearing by Koolatron. Counsel for Koolatron employed the Rorschach or inkblot test, pursuant to which an inkblot on a folded piece of paper will tend to produce a symmetric pattern, in explaining that the converse of what transpired during the initial injury inquiry's period of investigation took place during the POR, such that the graphic depictions of relevant data imitate the Rorschach test.

to the period of investigation is suggestive of the pivotal role played by anti-dumping and countervailing duties and is *prima facie* evidence that the rescission of the extant finding would likely result in injury to the domestic industry.

15. Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must determine what constitutes the “domestic industry”.

16. 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 effect).

LIKE GOODS AND CLASSES OF GOODS

17. In order for the Tribunal to determine whether the resumed or continued dumping and subsidizing of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine 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.⁹

18. 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.

19. In deciding the issue of like goods when goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether the goods fulfill the same customer needs).¹⁰

20. In Inquiry No. NQ-2008-002, the Tribunal found that domestically produced thermoelectric containers closely resembled the subject goods in terms of physical and market characteristics, could generally be substituted for them and competed directly with them in the Canadian market. On that basis, the Tribunal determined that domestically produced thermoelectric containers constituted like goods in relation to the subject goods.¹¹

21. As part of the initial injury inquiry, the Tribunal requested that interested parties present facts and arguments on whether the following categories of thermoelectric containers constituted separate classes of goods: (1) thermoelectric containers used for travel, whether sold to consumers or to commercial users (travel thermoelectric containers); (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. After having considered the evidence and argument on the record, the Tribunal concluded that thermoelectric containers constituted a single class of goods.¹²

9. Should the Tribunal determine that there is more than one class of goods in this expiry review, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

10. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

11. *Thermoelectric Containers* (11 December 2008), NQ-2008-002 (CITT) at para. 40.

12. *Ibid.* at para. 52.

22. In the current expiry review, the Tribunal was presented with no evidence or argument that warrants a departure from these determinations. Accordingly, in this expiry review, the Tribunal continues to be of the view that there is one class of goods and that domestically produced thermoelectric containers are “like goods” in relation to the subject goods.

DOMESTIC INDUSTRY

23. 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.

24. The Tribunal must therefore determine whether there is a likelihood 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.

25. There are two domestic producers of thermoelectric containers as defined in this expiry review, Koolatron and MTL Technologies. Together, these two companies account for the domestic production of the like goods and, as such, constitute the “domestic industry”.¹³ Koolatron filed submissions in support of the continuation of the Tribunal’s finding and participated in the hearing. MTL Technologies did not participate in this expiry review. Since Koolatron accounts for the vast majority of total domestic production,¹⁴ the Tribunal considers it appropriate to restrict its analysis of likelihood of injury on Koolatron. For the purposes of this statement of reasons, any references made to submissions by the domestic industry or domestic producers are references to submissions made by Koolatron.

CROSS-CUMULATION

26. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods. In Inquiry No. NQ-2008-002, the Tribunal stated that it would cross-cumulate the effects of the dumping and subsidizing of the subject goods, being of the view that it was not possible to isolate the effects caused by the dumping of goods from those caused by the subsidizing of the same goods because the effects are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and subsidizing respectively.¹⁵

27. The Tribunal was presented with no evidence or argument during this expiry review that would warrant a departure from this approach. Accordingly, the Tribunal continues to be of the view that it is appropriate to assess the cumulative effect of the dumping and subsidizing of the subject goods for the purposes of its likelihood of injury analysis.

PRELIMINARY MATTERS

28. During the course of this expiry review, Canadian Tire requested that part of the record in Inquiry No. NQ-2008-002 be placed on the record of the expiry review. Koolatron, in a letter dated October 9, 2013, indicated it did not object to the inclusion of the requested materials on the record if the Tribunal deemed it

13. Exhibit RR-2012-004-03A, Vol. 1A at 114.

14. *Ibid.* at 115.

15. *Thermoelectric Containers* (11 December 2008), NQ-2008-002 (CITT) at paras. 70-71.

helpful. The Tribunal sought clarifications from Canadian Tire and stipulated a deadline for reply. While Canadian Tire's clarifications were provided to the Tribunal two hours beyond the deadline, the Tribunal exercised its discretion pursuant to rule 6 of the *Canadian International Trade Tribunal Rules*¹⁶ to grant Canadian Tire's request. Subsequently, in a letter dated October 10, 2013, Koolatron registered its objection to the granting of Canadian Tire's request. The Tribunal noted, in its reply to Koolatron, that it had heard and taken into account its views of October 9, 2013, and, having disposed of the matter, considered it closed.

29. The Tribunal disposed of two additional preliminary matters during the hearing. The first concerned the signing of a limited disclosure form by the witness for Canadian Tire, Ms. Natasha Corbett, with regard to certain statements in Koolatron's submissions, which was effected with no objection from Koolatron. The second concerned a request by counsel for Canadian Tire that a Mobicool representative be allowed to sit with and assist Ms. Corbett in her testimony on behalf of Canadian Tire. Koolatron objected to this request. Noting that Ms. Corbett had had ample opportunity prior to the hearing to familiarize herself with the particulars of this expiry review and, further, that Mobicool, in the interest of procedural fairness, would not be allowed to do indirectly what it was not prepared to do directly, that is, testify on its own behalf and submit to cross-examination, the Tribunal rejected the request.

LIKELIHOOD OF INJURY ANALYSIS

30. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally considered to be 18 to 24 months from the expiry of a finding or an order.¹⁷ The Tribunal heard no argument that it should consider a different time period in this expiry review.

31. Subsection 37.2(2) of the *Regulations* lists the factors that the Tribunal may consider in an expiry review. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

Changes in International and Domestic Market Conditions

32. In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the finding is allowed to expire, the Tribunal will first consider changes in international and domestic market conditions.¹⁸

International Market Conditions

33. Since the recession of 2008-2009, the global economy has been recovering slowly, with significant risks and challenges remaining.¹⁹ For 2013, the estimate of global economic growth remains modest at 2.9 percent. The level of economic activity across the major economies is expected to vary significantly, with estimates of negative growth in the European Union²⁰ (-0.2 percent), growth lower than the global average in the United States (1.6 percent) and growth higher than the global average in China (7.5 percent).²¹

16. S.O.R./91-499.

17. *Wood Slats* (15 July 2009), RR-2008-003 (CITT) at para. 45; *Preformed Fibreglass Pipe Insulation* (17 November 2003), RR-2002-005 (CITT) at 11; *Certain Prepared Baby Foods* (28 April 2003), RR-2002-002 (CITT) at 8; *Certain Solder Joint Pressure Pipe Fittings* (16 October 1998), RR-97-008 (CITT) at 10.

18. See paragraph 37.2(2)(j) of the *Regulations*.

19. Exhibit RR-2012-004-40.03, Vol. 1B at 39; Exhibit RR-2012-004-40.05, Vol. 1B at 52.

20. This source refers to the 27 countries of the European Union, though the European Union currently consists of 28 countries.

21. Exhibit RR-2012-004-40.02, Vol. 1B at 36.

34. Looking ahead to 2014 and 2015, the pace of the global economic recovery is expected to accelerate, with forecasted growth rates of 3.5 percent and 3.6 percent respectively. The major economies will continue to grow at different rates, with the European Union and the United States lagging the global average (substantially in the case of Europe), and China exceeding it.²²

35. Although China's economy will continue to grow faster than the global economy, the pace of growth is forecasted to be significantly slower than the previous "... 30 years of meteoric, double-digit GDP growth . . .".²³ In fact, the most recent forecasts indicate that the growth rate in China will continue to slow or remain flat through to 2015, with annual rates of approximately 7.2 percent to 7.5 percent.²⁴

36. A consequence of decades of strong economic growth in China is increased household spending, with wine consumption and automobile ownership, for example, having increased substantially in recent years.²⁵ These trends have likely contributed to increased demand for thermoelectric containers in China, with numerous Chinese producers of thermoelectric containers selling a wide range of products to meet this demand.²⁶

Domestic Market Conditions

37. The Canadian economy was also negatively affected by the 2008-2009 global recession, contracting by 2.8 percent in 2009. Following a strong recovery in 2010, when the economy grew by 3.2 percent, the pace of growth slowed, first to 2.6 percent in 2011 and then to 1.8 percent in 2012.²⁷ Estimates for 2013 indicate a continuing weak recovery, with a growth rate of only 1.6 percent.²⁸ In 2014 and 2015, growth is forecasted to be more robust, with rates of 2.4 percent and 2.5 percent respectively.²⁹

38. Three defining characteristics of the domestic market for thermoelectric containers have not changed since the issuance of the original finding in 2008. First, Canadian Tire continues to be the dominant player in the domestic market, accounting for at least 50 percent of the market for travel thermoelectric containers, according to the witness for Canadian Tire.³⁰ Also, Canadian Tire has continued to import thermoelectric containers exclusively from Mobicool.³¹ Second, mass merchandisers ("big-box" retailers) remain the largest purchasers of thermoelectric containers in Canada, and competition among them remains intense.³² Third, the like goods continue to compete directly with imported thermoelectric containers across a wide range of styles and sizes of travel containers and wine coolers.³³

39. The most significant change in the domestic market since the finding has been the increase in imports of thermoelectric containers from the United States, particularly in 2012. During the POR, two

22. *Ibid.*

23. Exhibit RR-2012-004-A-03 at 139, Vol. 11.

24. Exhibit RR-2012-004-40.01, Vol. 1B at 18; Exhibit RR-2012-004-40.04, Vol. 1B at 43. Exhibit RR-2012-004-40.02, Vol. 1B at 36.

25. Exhibit RR-2012-004-15.01, Vol. 3 at 56, 155-62; Exhibit RR-2014-015.01A, Vol. 3B at 34-35.

26. Exhibit RR-2012-004-A-03 at tabs 4, 8, Vol. 11.

27. Exhibit RR-2012-004-40.05, Vol. 1B at 52.

28. Exhibit RR-2012-004-40.01, Vol. 1B at 18.

29. Exhibit RR-2012-004-40.02, Vol. 1B at 29.

30. *Transcript of Public Hearing*, Vol. 1, 15 October 2013, at 82.

31. Exhibit RR-2012-004-B-01 at paras. 7, 34, Vol. 13.

32. Exhibit RR-2012-004-10B, Vol. 1.3 at 283; Exhibit RR-2012-004-06A (protected), Table 22, Vol. 2.1; Exhibit RR-2012-004-A-01 at 9, Vol. 11; Exhibit RR-2012-004-11B (protected), Vol. 2.3 at 229.

33. Exhibit RR-2012-004-A-03 at para. 37, Vol. 11.

companies, Coleman Canada, Division of Sunbeam Corporation (Canada) Limited and Costco Wholesale Canada Ltd., reported imports of thermoelectric containers from the United States.³⁴ On the basis of the information provided by these companies, the Tribunal is of the view that this increase is not aberrational and anticipates that higher levels of imports of thermoelectric containers from the United States will be a permanent new trend.³⁵

40. Overall, demand for thermoelectric containers in Canada is rising, and new market segments are developing. The size of the domestic market increased by 34 percent from 2010 to 2012, before decreasing in the first six months of 2013, primarily due to a “one-off” decrease in imports from the United States.³⁶ The witness for Canadian Tire testified that demand for travel thermoelectric containers has increased because consumers have “traded up” from non-electric coolers at both the low-end and mid-range price points.³⁷ A witness for Koolatron agreed that travel thermoelectric containers are a growing market segment, as are thermoelectric containers for medical applications, for use as water/liquid dispensers and for retail displays.³⁸ Koolatron also indicated that the Internet had become a more important distribution channel and now plays a major role in its sales to consumers.³⁹

41. In the Tribunal’s view, the rising demand for thermoelectric containers demonstrates that this market is neither mature nor saturated. Looking to the future, demand for thermoelectric containers is expected to remain strong even if Canada’s economic recovery were to slow. A witness for Koolatron testified that, as Canadians travel more by car in the face of rising airline costs, they may be more inclined to use thermoelectric containers.⁴⁰ The witness for Canadian Tire provided her view of future demand for thermoelectric containers *in camera*.⁴¹

42. Despite the growth in the domestic market for thermoelectric containers during the POR, the market remained smaller than its pre-recession levels.⁴² The subject goods still accounted for a significant share of the market, though a much smaller share than in the years preceding the issuance of the finding.⁴³ Canadian Tire was by far the dominant importer of the subject goods during the POR; however, there were several other importers, predominately distributors that imported travel thermoelectric containers and wine coolers.⁴⁴ These importers participated in the market to varying degrees year-by-year.⁴⁵ For example, in 2012, Salton Appliances (1985) Corporation (Salton), a long-term distributor of the subject goods, reduced its imports in anticipation of exiting the market.⁴⁶

34. Exhibit RR-2012-004-21.12, Vol. 5.1 at 102; Exhibit RR-2012-004-18.02A, Vol. 5C at 16.

35. Exhibit RR-2012-004-RI-03A (protected), Vol. 10; Exhibit RR-2012-004-19.02B (protected), Vol. 6 at 81; Exhibit RR-2012-004-22.12A (protected), Vol. 6.1 at 128-29; Exhibit RR-2014-004-19.02A (protected), Vol. 6 at 56; Exhibit RR-2012-004-22.12 (protected), Vol. 6.1 at 115.

36. Exhibit RR-2012-004-05A, Tables 3, 6, 15, Vol. 1.1.

37. *Transcript of Public Hearing*, Vol. 1, 15 October 2013, at 82-85, 94-95.

38. *Ibid.* at 72-73, 77-78.

39. Exhibit RR-2012-004-A-03 at para. 38, Vol. 11; Exhibit RR-2012-004-15.01, Vol. 3 at 51.

40. *Transcript of Public Hearing*, Vol. 1, 15 October 2013, at 72.

41. *Transcript of In Camera Hearing*, Vol. 1, 15 October 2013, at 30-31.

42. Exhibit RR-2012-004-05A, Table 2, Vol. 1.1; Exhibit RR-2012-004-10A, Vol. 1.3, at 205.

43. Exhibit RR-2012-004-11A (protected), Vol. 2.3 at 151; Exhibit RR-2012-004-06A (protected), Table 2, Vol. 2.1.

44. Exhibit RR-2012-004-18.02A, Vol. 5C at 9, 16; Exhibit RR-2012-004-21.05, Vol. 5.1 at 63, 65; Exhibit RR-2012-004-21.08, Vol. 5.1 at 85, 86; Exhibit RR-2012-004-21.03, Vol. 5.1 at 51, 53; Exhibit RR-2012-004-21.07, Vol. 5.1 at 77-78; Exhibit RR-2012-004-21.10, Vol. 5.1 at 94-95.

45. Exhibit RR-2012-004-19.02B (protected), Vol. 6 at 81; Exhibit RR-2012-004-22.05 (protected), Vol. 6.1 at 21; Exhibit RR-2012-004-22.08 (protected), Vol. 6.1 at 65; Exhibit RR-2012-004-22.03 (protected), Vol. 6.1 at 4; Exhibit RR-2012-004-22.07A (protected), Vol. 6.1 at 54; Exhibit RR-2012-004-22.10E (protected), Vol. 6.1 at 96.12.

46. Exhibit RR-2012-004-21.05, Vol. 5.1 at 63-64.

43. In every period of the POR, the average prices of the like goods in the domestic market remained below the levels seen during the Tribunal's period of inquiry (POI) in Inquiry No. NQ-2008-002.⁴⁷ In contrast, the average prices of the subject goods were generally higher, while the average prices of U.S. thermoelectric containers were more or less similar, with the exception of 2012, when the prices of U.S. thermoelectric containers were lower than at any time during the POI in Inquiry No. NQ-2008-002.⁴⁸

44. Finally, there was much discussion about the effects of the arrival of Target on the Canadian retail landscape. Target opened its first stores in Canada in March 2013, taking over the leases of Zellers Corporation, and, as of September 2013 it had opened 68 stores, with announced plans to open 124 stores by the end of 2013.⁴⁹ It was widely anticipated that Target's presence would intensify competition among "big box" retailers across all product lines.⁵⁰ To date, Target's direct involvement with thermoelectric containers in the domestic market appears limited. A witness for Koolatron testified that Target is selling only two models of wine coolers, but no travel thermoelectric containers.⁵¹ The witness for Canadian Tire corroborated the latter statement.⁵²

Likely Volumes of Dumped and Subsidized Goods

45. Paragraph 37.2(2)(a) of the *Regulations* directs the Tribunal to consider the likely volume of the dumped or subsidized goods if the finding is allowed to expire, and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods.

46. The Tribunal's assessment of the likely volumes of dumped and subsidized imports encompasses the likely performance of the foreign industry, the potential for foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping and/or countervailing duties in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.⁵³

47. Koolatron submitted that significant volumes of the subject goods will enter the domestic market if the finding is allowed to expire. It pointed to the substantial scale and export orientation of the Chinese thermoelectric container industry and contended that slowing demand in China and other export markets will make Canada an attractive destination. Further, Koolatron submitted that the intense competition among "big box" retailers makes it even more likely that Chinese producers other than Mobicool will begin shipping thermoelectric containers to Canada again.

48. Canadian Tire submitted that there is no credible evidence that other Chinese producers of thermoelectric containers besides Mobicool will be present in the domestic market in the absence of the finding.

47. The POI covered three full years, from January 1, 2005, to December 31, 2007, and two interim periods, from January 1 to June 30, 2007 and the corresponding period in 2008. Exhibit RR-2012-004-11A (protected), Vol. 2.3 at 172; Exhibit RR-2012-004-06A (protected), Table 20, Vol. 2.1.

48. Exhibit RR-2012-004-11A (protected), Vol. 2.3 at 172; Exhibit RR-2012-004-06A (protected), Table 20, Vol. 2.1.

49. Exhibit RR-2012-004-A-03 at 120-21, 123-24, Vol. 11.

50. *Transcript of Public Hearing*, Vol. 1, 15 October 2013, at 19, 53-54, 56, 83, 104-105; Exhibit RR-2012-004-A-03 at 123-24, Vol. 11; Exhibit RR-2012-004-15.01, Vol. 3 at 115-24; Exhibit RR-2012-004-18.01, Vol. 5 at 198.

51. *Transcript of Public Hearing*, Vol. 1, 15 October 2013, at 53-54.

52. *Ibid.* at 83.

53. Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

49. No Chinese exporters responded to the Tribunal's *Expiry Review Questionnaire – Exporter* or filed evidence; nor did Canadian Tire file any evidence. Therefore, the best information available on the record with regard to the Chinese thermoelectric container industry is the evidence filed by Koolatron with the CBSA and the Tribunal.

50. A witness for Koolatron testified that, on the basis of visits to trade shows and on conversations with producers in China, there are currently 15 to 20 Chinese producers of thermoelectric containers.⁵⁴ Koolatron submitted evidence that a wide range of Chinese-made thermoelectric containers, equivalent to sizes and categories of goods available in Canada, are being offered for sale in the Chinese market by various producers.⁵⁵

51. Koolatron submitted evidence that the combined annual capacity of just two Chinese producers of thermoelectric containers, Mobicool and Guangdong Fuxin Electronic Technology Co. (Fuxin), is 2.74 million units.⁵⁶ Unless these two producers are operating at extraordinarily low utilization rates, their combined annual production is many times larger than Koolatron's production.⁵⁷ Given the evidence noted above that there are at least 15 to 20 Chinese producers of thermoelectric containers, it is reasonable to conclude that the volume of production of thermoelectric containers in China is considerably larger than the volume of production in Canada.

52. Indeed, the combined capacity of Mobicool and Fuxin alone is approximately 14 times as large as the Canadian market. Even if these two producers were operating at 90 percent capacity, the potential volume of thermoelectric containers that could be exported to Canada would exceed the size of the domestic market by approximately 40 percent.⁵⁸ When one factors in the capacity of the other Chinese producers,⁵⁹ it is again reasonable to conclude that capacity and excess capacity in the Chinese thermoelectric container industry is very large compared to the domestic market.

53. Having found that there is substantial production, capacity and excess capacity in the Chinese thermoelectric container industry, the Tribunal will now turn to an assessment of the likely import volumes of the subject goods in Canada if the finding is allowed to expire.

54. As noted above, growing levels of wine consumption and increasing use of automobiles in China have likely led to increasing demand for thermoelectric containers in China. If China's rate of economic growth slows as forecasted, then the rate of growth in wine consumption and the use of automobiles may also moderate. In this scenario, the pace of increasing consumption of thermoelectric containers in China may be insufficient to absorb the industry's excess capacity, and it is reasonable to expect that Chinese producers would look to export markets, including Canada, to make up the shortfall. The less than robust growth expected in Europe could further enhance the attractiveness of Canada as an export destination for excess Chinese thermoelectric container production.

54. *Transcript of Public Hearing*, Vol. 1, 15 October 2013, at 36-37.

55. Exhibit RR-2012-004-A-01 at para. 47, Vol. 11; Exhibit RR-2012-004-A-03 at tab 4, Vol. 11.

56. Exhibit RR-2012-004-A-03 at 156, 158, Vol. 11.

57. Exhibit RR-2012-004-06A (protected), Table 4, Vol. 2.1.

58. Exhibit RR-2012-004-05A, Table 2, Vol. 1.1.

59. There is evidence of a third Chinese producer of thermoelectric containers whose capacity for thermoelectric containers and other products is 200,000 units per year. Therefore, the combined capacity of Mobicool and Fuxin, as large as it is, must be seen as a "floor" level only. Exhibit RR-2012-004-15.01, Vol. 3 at 153.

55. There is evidence that Chinese producers of thermoelectric containers are export-oriented and that they currently ship products to many destinations, including the United States.⁶⁰ According to the witness for Canadian Tire, most of Mobicool's sales of travel thermoelectric containers are to Europe.⁶¹ A witness for Koolatron testified that Chinese producers have told him that they target export markets. Fuxin, for example, indicated to him that approximately half of its production of thermoelectric containers is destined for export markets.⁶² There is also evidence that Chinese producers are prepared to price aggressively and willing to sell thermoelectric containers in foreign markets at prices that are significantly lower than in China.⁶³

56. Only a single Chinese producer, Mobicool, which supplies Canadian Tire and Dometic,⁶⁴ an associated distributor, has obtained normal values from the CBSA.⁶⁵ In the absence of the finding, there is every reason to believe that other Chinese producers, which have been effectively shut out of the domestic market by the current application of anti-dumping and countervailing duties, would begin to export thermoelectric containers to Canada again. The increasingly competitive dynamic among "big box" retailers makes it even more likely that, in the absence of the current finding, those Chinese producers that have not been able to compete at non-dumped and non-subsidized export prices would seek out new opportunities to supply their goods to Canadian buyers at higher volumes (and at lower prices).

57. The willingness of importers other than Canadian Tire to pay substantial duties⁶⁶ confirms that Canadian distributors and retailers have a strong, ongoing interest in Chinese thermoelectric containers.⁶⁷ Salton, a distributor of Chinese thermoelectric containers, stated in its reply to the short-form importer's questionnaire that it was planning to cease importing the product into Canada by the end of 2013, but implied that its interest might be "... rekindled if this punitive ruling is not renewed ..."⁶⁸

58. Besides Mobicool and Dometic, there are other relationships among Chinese producers of thermoelectric containers and Canadian distributors that would facilitate the speedy return of subject imports to the domestic market. Danby Products Limited, a long-standing Canadian distributor of thermoelectric containers, indicated in its reply to the short-form importer's questionnaire that it is associated with two Chinese producers of thermoelectric containers.⁶⁹

59. Looking ahead, the ongoing interest of Canadian distributors and retailers in Chinese thermoelectric containers and their long-standing relationships with Chinese producers, coupled with China's massive production capacity and slowing economy, make it reasonable to conclude that, if the finding is allowed to expire, there will indeed be a sharp increase in imports of the subject goods, much like there was in 2008. The Tribunal recalls that, between the first half of 2007 and the first half 2008, the volume of imports of the

60. *Transcript of Public Hearing*, Vol. 1, 15 October 2013, at 87; Exhibit RR-2012-004-A-03 at 158, Vol. 11; Exhibit RR-2012-004-15.01A, Vol. 3B at 29-31.

61. *Transcript of Public Hearing*, Vol. 1, 15 October 2013, at 87.

62. *Ibid.* at 38.

63. Exhibit RR-2012-004-A-04 (protected) at tabs 3-4, Vol. 12.

64. The evidence does not indicate if Mobicool has received normal values for the models of the thermoelectric containers that it ships to Dometic. Exhibit RR-2012-004-21.10, Vol. 5.1 at 94.

65. Exhibit RR-2012-004-03A, Vol. 1A at 122, 127.

66. Exhibit RR-2012-004-13.04 (protected), Vol. 2.4 at 5; Exhibit RR-2012-004-04 (protected), Vol. 2 at 19; Exhibit RR-2012-004-03A, Vol. 1A at 115.

67. Exhibit RR-2012-004-22.11 (protected), Vol. 6.1 at 98; Exhibit RR-2012-004-21.05, Vol. 5.1 at 64.

68. Exhibit RR-2012-004-21.05, Vol. 5.1 at 64.

69. Exhibit RR-2012-004-21.08, Vol. 5.1 at 85.

subject goods more than doubled, virtually eliminating the like goods from the domestic market and dramatically reducing the share held by imports from the United States.⁷⁰

60. Finally, the Tribunal notes that, although no anti-dumping or countervailing measures have been imposed against imports of thermoelectric containers from China in other jurisdictions, there are numerous measures in place against Chinese consumer goods in Canada, the United States and the European Union.⁷¹ As a recent example, on April 24, 2012, the CBSA determined that imports of stainless steel sinks from China were dumped and subsidized.⁷² These many measures speak to the propensity of Chinese producers to ship dumped and/or subsidized consumer goods onto world markets.

61. In summary, having considered the large scale of the Chinese thermoelectric container industry, the moderating growth rate of the Chinese economy, the export orientation of Chinese producers, the ongoing interest of Canadian retailers and distributors in the subject goods, and China's propensity to dump and subsidize consumers goods, the Tribunal concludes that a substantially larger volume of the subject goods will be present in the Canadian market in the near to medium term, if the current finding is allowed to expire.

62. Accordingly, the Tribunal finds that there is likely to be a significant increase in the volume of imports of the subject goods, both in absolute and relative terms, if the current finding is allowed to expire.

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

63. The Tribunal must consider, if the finding is allowed to expire, whether the dumping and/or subsidizing of the subject goods is likely to significantly undercut the prices of the like goods, depress those prices or suppress them by preventing increases in those prices that would likely have otherwise occurred.⁷³

64. Koolatron submitted that, in the absence of the finding, the prices of the subject goods will significantly undercut the prices of the like goods, which would result in significant price depression and price suppression. Koolatron contended that prices of the like goods remained low during the POR because of the dominance of Canadian Tire and that the subject goods were still the price leaders in many categories.

65. Canadian Tire submitted that it had no incentive to lower prices and that it was speculative to predict how other retailers might react or how it might respond in turn.

66. During the original injury inquiry, the Tribunal concluded that, while "... price is not the only factor considered by purchasers when purchasing the subject and like goods...", the evidence clearly indicates that "... price is an important factor in the purchase decision" [emphasis added].⁷⁴ The evidence in this expiry review confirms that this conclusion is still valid.

67. Indeed, the witness for Canadian Tire testified that specific price points and target margins are among the considerations that factor into Canadian Tire's negotiations with product suppliers, including Mobicool.⁷⁵ The witness also agreed that low retail price points are important to encourage consumers to

70. Exhibit RR-2012-004-11A (protected), Vol. 2.3 at 163; Exhibit RR-2012-004-10A, Vol. 1.3 at 217.

71. Exhibit RR-2012-004-15.01, Vol. 3A at 175-224.

72. *Stainless Steel Sinks* (24 May 2012), NQ-2011-002 (CITT) at paras. 15-16.

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

74. *Thermoelectric Containers* (11 December 2008), NQ-2008-002 (CITT) at para. 91.

75. *Transcript of Public Hearing*, Vol. 1, 15 October 2013, at 97-98 *Transcript of In Camera Hearing*, Vol. 1, 15 October 2013, at 37, 44-45.

transition from non-electric coolers to thermoelectric containers.⁷⁶ According to the witness, Canadian Tire is not influenced by what other retailers may do to attract and retain customers, nor is its strategy based on the “every day low prices” strategy employed by some other Canadian retailers. Rather, the witness asserted that Canadian Tire’s marketing strategy is based on exclusivity and branding and that it uses a “high-low” pricing strategy whereby the subject goods are discounted on occasion throughout the selling season.⁷⁷

68. In the Tribunal’s view, given that low pricing is not unimportant for Canadian Tire to attract new customers to thermoelectric containers with its “high-low” strategy, then low pricing must be of paramount importance for other “big box” retailers, as they seek to attract new customers with “every day low prices”.

Price Undercutting and Price Depression

69. Throughout the POR, the average prices of the subject goods undercut Koolatron’s average prices by a significant degree.⁷⁸ An examination of the benchmark product data reveals price undercutting by the subject goods in 22 of 45 quarters where there was head-to-head competition between the subject goods and the like goods. Beginning in 2012, there was also substantial price competition from imports of thermoelectric containers from the United States.⁷⁹

70. At the level of average prices, there is little evidence of price depression during the POR, as Koolatron’s average price was essentially flat from 2010 to 2012, before increasing slightly in the first half of 2013.⁸⁰ It is also difficult to discern clear-cut trends of price depression in the benchmark price data.⁸¹ However, for the two smallest sizes of travel thermoelectric containers, Koolatron’s prices in the second quarter of 2013 were noticeably lower than in the second quarter of 2012.⁸²

71. In the absence of the finding, the Tribunal anticipates that the intense price-based competition among “big box” retailers, coupled with sustained competition from imports from the United States, will likely exert significant downward pressure on the prices of like goods. There would likely be a “race for the bottom”, as Chinese producers other than Mobicool try to regain market share by supplying the subject goods at aggressively low prices to retailers eager to attract customers and improve margins. The evidence that Chinese producers sell goods on export markets at prices significantly less than domestic prices⁸³ lends credence to this scenario. That Mobicool has opted to price up to normal values in order to avoid anti-dumping and countervailing duty liability does not mean that it will not return to exporting dumped and subsidized thermoelectric containers to Canada if the current finding is rescinded. Indeed, the CBSA has already determined that rescission of the current finding would likely result in the continuation or resumption of dumping and subsidizing.

72. Having regard to the fact that the realization of specific price points and target margins is important to Canadian Tire, that it is not locked into a written agreement with Mobicool⁸⁴ and that it engages in annual

76. *Transcript of Public Hearing*, Vol. 1, 15 October 2013, at 84-85. 94.

77. Exhibit RR-2012-004-B-02 (protected) at paras. 15-16, Vol. 14; *Transcript of Public Hearing*, Vol. 1, 15 October 2013, at 86-87, 97.

78. Exhibit RR-2012-004-06A (protected), Table 20, Vol. 2.1.

79. *Ibid.*, Tables 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, Vol. 2.1.

80. *Ibid.*, Table 20, Vol. 2.1; Exhibit RR-2012-004-05A, Table 3, Vol. 1.1.

81. Exhibit RR-2012-004-06A (protected), Tables 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, Vol. 2.1.

82. *Ibid.*, Tables 25, 27, Vol. 2.1.

83. Exhibit RR-2012-004-A-04 (protected), tabs 3-4, Vol. 12.

84. *Transcript of In Camera Hearing*, Vol. 1, 15 October 2013, at 35-37, 42-46; *Transcript of Public Hearing*, Vol. 1, 15 October 2013, at 85, 94-99.

reviews of its product lines,⁸⁵ the Tribunal is of the view that Canadian Tire might well avail itself of the negotiating leverage afforded it by its dominant position in the market to appropriate to itself much of the “margin space” created by the elimination of anti-dumping and countervailing duties in an effort to realize higher margins within its existing price points or to lower those price points while maintaining existing margins.

73. This outcome is all the more likely given Canadian Tire’s limited ability to expand margins by increasing either entry level price points or upper level prices, which are intended at the low end to incentivize consumers to transition from non-electric coolers to thermoelectric coolers and at the high end to keep consumers from graduating out of the thermoelectric cooler category to, for example, compressor-based units.⁸⁶

Price Suppression

74. During the POR, the costs of many inputs used by Koolatron to manufacture thermoelectric containers increased; however, there is little evidence that Koolatron’s prices were suppressed as a result.⁸⁷ In fact, in only one period of the POR did Koolatron’s average unit selling price decrease, while its unit cost of goods manufactured increased. In other periods of the POR, either Koolatron’s unit cost of goods manufactured decreased or its average unit selling price increased sufficiently to cover the increase in the unit cost of goods manufactured.⁸⁸

75. Looking ahead, if the finding is allowed to expire, Koolatron will experience price suppression, as the significantly depressed prices for like goods will prevent it from passing on any future increases in costs of production.

76. In summary, the Tribunal concludes that, if the finding is allowed to expire, imports of the subject goods will enter Canada at prices that will significantly undercut the prices of the like goods, thereby causing significant price depression and significantly suppressing the price of the like goods by preventing price increases that would otherwise have occurred.

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

77. The Tribunal will next turn to an assessment of the likely impact of the above volumes and prices on the domestic industry, taking into consideration the likely performance of the domestic industry.⁸⁹

78. Koolatron submitted that the injury that it experienced before the finding was put in place will repeat itself if the finding is allowed to expire, given that it remains vulnerable to competition from the subject goods.

79. Canadian Tire submitted that any injury previously sustained by Koolatron was due primarily to the loss of Canadian Tire as a customer and that Koolatron’s success in increasing sales during the POR indicates that it is no longer vulnerable to injury.

85. *Ibid.* at 85.

86. *Ibid.* at 94-98.

87. Exhibit RR-2012-004-06A (protected), Table 52, Vol. 2.1.

88. *Ibid.*, Tables 47, 50, Vol. 2.1.

89. See paragraphs 37.2(2)(c), (e) and (g) of the *Regulations*.

80. In considering the likely performance of the domestic industry and the likely impact of the dumped and subsidized goods on the domestic industry, the Tribunal took into account relevant economic factors, including any potential decline in output, sales, market share, utilization of production capacity and profits.

81. In terms of the domestic industry's recent performance it is clear that the finding has had its intended remedial effect by helping to stabilize the market, thereby allowing Koolatron to return to profitability, increase its sales and market share and invest in production facilities.

82. Koolatron's production, capacity and capacity utilization generally improved during the POR compared to the years preceding the finding.⁹⁰ In this regard, it saw a steady rise in production, which increased by 21 percent from 2010 to 2012 and by 5 percent from the first half of 2012 to the first half of 2013.⁹¹ Koolatron made significant investments to improve productivity⁹² and product design, allowing it to benefit from notable increases in practical plant capacity since 2012.⁹³ Koolatron's capacity utilization rate remained fairly consistent in 2010 and 2012, with a sharp increase in 2011, reflecting the increase in production in that year. The capacity utilization rate fell slightly in the first half of 2013 compared to the same period in 2012, as the increase in capacity outpaced the increase in production.⁹⁴

83. Koolatron was able to recover substantial market share after the finding was put into place. Nonetheless, its performance deteriorated slightly from 2010 to 2012, as it lost a few percentage points of market share, first to the subject goods in 2011 and then to imports from the United States in 2012, which captured significant market share in that year⁹⁵. The Tribunal recalls that, from 2010 to 2012, the size of the domestic market grew by 34 percent. Koolatron's inability to not fully maintain its share of the growing market speaks to its ongoing vulnerability to a continuation or resumption of dumping and subsidizing.⁹⁶ Further, in the first six months of 2013, when there was a transitory decrease in the volume of imports from the United States, the subject goods recaptured a greater share of the domestic market than Koolatron.⁹⁷

84. In terms of financial performance, Koolatron was able to achieve significant improvements in both its total and per unit gross margins and net income since the finding was put in place, recovering from the significant losses that it had experienced beginning in 2006.⁹⁸ Again, its performance weakened slightly over the POR, further reinforcing its ongoing vulnerability.

85. The number of direct employees and the corresponding number of hours worked increased steadily from 2010 to 2012 and again in the first six months of 2013 compared to the same period in 2012.⁹⁹ However, direct employment failed to return to its pre-finding peak.¹⁰⁰

90. Exhibit RR-2012-004-11A (protected), Vol. 2.3 at 151; Exhibit RR-2012-004-06A (protected), Table 2, Vol. 2.1.

91. Exhibit RR-2012-004-06A (protected), Table 4, Vol. 2.1; Exhibit RR-2012-004-05A, Tables 3, 4, Vol. 1.1.

92. The data provided by Koolatron in its reply to the domestic producers' questionnaire do not show an increase in productivity. Exhibit RR-2012-004-06A (protected), Table 54, Vol. 2.1 However, in its narrative response, Koolatron indicated that productivity had increased. Exhibit RR-2012-004-15.01, Vol. 3 at 43-44; Exhibit RR-2012-004-16.01 (protected), Vol. 4 at 38-39.

93. Exhibit RR-2012-004-A-03 at paras. 19-21, Vol. 11; Exhibit RR-2012-004-05A, Table 3, Vol. 1.1.

94. Exhibit RR-2012-004-06A (protected), Table 55, Vol. 2.1; Exhibit RR-2012-004-05A, Table 3, Vol. 1.1.

95. Exhibit RR-2012-004-06A (protected), Table 2, Vol. 2.1; Exhibit RR-2012-004-11A (protected), Vol. 2.3 at 151; Exhibit RR-2012-004-05A, Table 3, Vol. 1.1.

96. Exhibit RR-2012-004-05A, Table 3, Vol. 1.1.

97. Exhibit RR-2012-004-06A (protected), Tables 14, 16, Vol. 2.1.

98. *Ibid.*, Table 47, Vol. 2.1; Exhibit RR-2012-004-11A (protected), Vol. 2.3 at 189.

99. Exhibit RR-2012-004-05A, Table 3, Vol. 1.1; Exhibit RR-2012-004-06A (protected), Table 53, Vol. 2.1.

86. Although inventories increased in terms of volume and value over the POR, their ratio to production and total sales (domestic and export) remained relatively stable.¹⁰¹

87. Koolatron's volume of domestic sales increased steadily from 2010 to 2012, before decreasing by 11 percent in the first half of 2013.¹⁰² Its volume of export sales exhibited similar trends, with the exception of a marginal decrease in 2012.¹⁰³ Koolatron exports thermoelectric containers to the United States and other destinations.¹⁰⁴

88. Canadian Tire argued that Koolatron's successful efforts to increase sales indicate that Koolatron can compete successfully against the subject goods, a point which undermines its case for continued protection in Canada. According to Canadian Tire, this is especially true given Koolatron's success in increasing sales in the U.S. market, where there are no anti-dumping or countervailing duties on Chinese thermoelectric containers.¹⁰⁵

89. In response, the Tribunal first notes that the U.S. and Canadian markets for thermoelectric containers operate as completely different paradigms. Notably, the dominance of Canadian Tire in the domestic market in terms of price leadership and its volume of purchases of the subject goods make the comparison between Canada and the United States tenuous at best. By comparison, Koolatron holds only a small share of the U.S. market, which is dominated by two U.S. manufacturers and other imported products, largely from China.¹⁰⁶ Among the other differences between the two markets is the fact that the truck stop segment is important in the United States, but not in Canada.¹⁰⁷

90. Aside from oral assertions,¹⁰⁸ Canadian Tire provided no clear evidence from which the Tribunal could conclude that Koolatron's success in the U.S. market demonstrates that it is no longer vulnerable to the injurious effects of resumed or continued dumping and subsidizing in Canada.

91. Second, that Koolatron was able to increase its sales in the domestic market during the POR does not necessarily imply that it would be capable of competing successfully in the future without the discipline of the current finding. In fact, the significant remedial effect of the finding (as indicated by the improvement in key market and domestic industry performance indicators since anti-dumping and countervailing duties were imposed), the continued vulnerability of the domestic industry, as indicated by low (albeit improved) prices and modest profits and the likelihood of the continuation or resumption of dumping and subsidizing as determined by the CBSA, all point to the likelihood of a material deterioration of Koolatron's performance if the finding is allowed to expire.

92. In this scenario, it is reasonable to expect that the subject goods will again quickly dominate the market, as Chinese producers, which have not been able to compete at non-dumped and non-subsidized export prices, will seek to regain market share. Because of the competitive dynamic among "big box" retailers, it also reasonable to conclude that Koolatron's sales volumes and prices will decline, as these

100. Exhibit RR-2012-004-A-04 (protected) at para. 75, Vol. 12; Exhibit RR-2012-004-11A (protected), Vol. 2.3 at 195; Exhibit RR-2012-004-06A (protected), Table 2, Vol. 2.1.

101. *Ibid.*, Tables 4, 14, 24, 57, Vol. 2.1.

102. Exhibit RR-2012-004-05A, Table 15, Vol. 1.1.

103. *Ibid.*, Table 24, Vol. 1.1.

104. *Transcript of In Camera Hearing*, Vol. 1, 15 October 2013, at 21; Exhibit RR-2012-05A, Vol. 1.1 at 88.

105. *Transcript of Public Hearing*, Vol. 2, 16 October 2013, at 140-46.

106. *Transcript of In Camera Hearing*, Vol. 1, 15 October 2013, at 22-24.

107. *Transcript of Public Hearing*, Vol. 1, 15 October 2013, at 57-58.

108. Canadian Tire had not filed a written brief prior to the hearing to support the oral arguments made during the hearing.

retailers seek lower-cost products, especially for entry-level thermoelectric containers. In this scenario, Koolatron would inevitably experience negative effects on its production, profits, market share, capacity utilization and employment.

93. While it could be argued that rising demand for thermoelectric containers could help Koolatron's performance and future profitability, rising demand also increases opportunities for lower-priced imports to penetrate the market, as "big box" retailers require a wider range and higher number of units to meet Canadians' needs. In the absence of the finding, Koolatron is unlikely to benefit from the growing demand for thermoelectric containers, some of which Koolatron itself has created through its own marketing and consumer education initiatives.

94. Even if the Tribunal were to accept Canadian Tire's argument that the injury previously sustained by Koolatron was a "one-off" event due to the loss of Canadian Tire as a customer, it does not mean that Koolatron would no longer be vulnerable to injury from the reappearance of large volumes of the subject goods in the domestic market in the absence of the finding. As explained above, given the competitive dynamics of the retail market for thermoelectric containers, other retailers, some of whom are Koolatron customers,¹⁰⁹ would return to importing the subject goods at low prices to try to regain their share of the market and improve their margins.

95. In summary, the Tribunal is of the view that, if the finding is allowed to expire, the likely negative impacts of the dumped and subsidized subject goods on the domestic industry will likely be material, immediate and sustained. The Tribunal has no doubt that the impact of increased volumes of the subject goods, at prices that will likely undercut, depress and suppress those of the like goods, will result in a decline in Koolatron's key performance indicators, including sales, market share, production, gross margin, net income, capacity utilization, employment and return on investment.

Factors Other Than Dumping or Subsidizing

96. Pursuant to paragraph 37.2(2)(k) of the *Regulations*, the Tribunal may consider any other factors that are relevant in the circumstances. Accordingly, the Tribunal reviewed certain factors unrelated to the dumping or subsidizing that could adversely affect the domestic industry.

97. As noted above, during the POR, there was a pronounced increase in imports of thermoelectric containers from the United States. Although Koolatron is likely to continue to face competition from low-priced imports of U.S. thermoelectric containers, the Tribunal does not consider that any resultant injury would negate the likely material injury attributable to the subject goods that would enter the Canadian market if the finding is allowed to expire.

REQUESTS FOR PRODUCT EXCLUSIONS

98. Canadian Tire requested product exclusions for the following two products:

- 13-litre thermoelectric containers with soft (fabric) sides whether or not made with a rigid interior, and
- 32-litre thermoelectric containers with soft (fabric) sides whether or not made with a rigid interior.

109. Exhibit RR-2012-004-15.01, Vol. 3 at 49.

99. Canadian Tire imports the products from China for sale in Canada and premised its request on the assertion that the products are not available from domestic producers and that, as such, its importations do not compete with the products of the domestic industry. Canadian Tire additionally argued in support of its request that, despite the indication by Koolatron in Inquiry No. NQ-2008-002 that it had imminent plans to produce soft-sided thermoelectric containers, it has not done so in the intervening years while receiving the benefit of the Tribunal's finding in that injury inquiry.¹¹⁰ Canadian Tire did not attach a picture or any technical information to its request, but submitted a Koolatron owner's manual indicating soft-sided thermoelectric containers manufactured in China.

100. Koolatron opposed the exclusion of thermoelectric containers of any description or capacity, indicating that it presently manufactures 13-litre and 24-litre soft-sided thermoelectric containers for sale in the domestic market and, further, that it has recently produced and continues to be able to produce 32-litre models. Further, Koolatron indicated that, while it has always had the ability to produce a complete range of soft-sided models, domestic production was not viable due to the low price of dumped and subsidized products from China prior to the finding in the original injury inquiry. In addition, Koolatron clarified that the owner's manual appended to Canadian Tire's request references goods produced in China prior to the finding in the original injury inquiry and was inadvertently left on Koolatron's Web site after production was returned to Canada.¹¹¹ In its written submissions, as well as at the hearing, Koolatron provided production and sales data with regard to soft-sided thermoelectric containers.¹¹²

101. In *Stainless Steel Wire*,¹¹³ the Tribunal indicated as follows with regard to product exclusions:

It is well established that the Tribunal has the discretion to grant product exclusions under subsection 43(1) of *SIMA*. The fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry. 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]

102. The evidence before the Tribunal supports the conclusion that Koolatron has the capacity to locally produce a complete range of soft-sided models and currently locally produces or has recently produced those soft-sided models that form the subject of Canadian Tire's exclusion request.¹¹⁴ Thus, the granting of this request would cause injury to the domestic industry by excluding a subset of the subject goods from the discipline of anti-dumping and countervailing duties. As such, the Tribunal denies Canadian Tire's product exclusion request.

103. With regard to the additional exclusion requests made by Canadian Tire at the hearing, pertaining to all travel thermoelectric containers and all soft-sided containers,¹¹⁵ as well as a producer exclusion request

110. Exhibit RR-2012-004-36.01A, Vol. 1.5 at 10-17.

111. Exhibit RR-2012-004-38.01, Vol. 1.5 at 20-87.

112. Exhibit RR-2012-004-39.01 (protected), Vol. 2.5 at 7-90; Exhibit RR-2012-004-A-30 (protected) at 1, Vol. 12.

113. *Certain Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at 22.

114. Exhibit RR-2012-004-39.01 (protected), Vol. 2.5 at 40, 78; Exhibit RR-2012-004-A-30 (protected) at 1, Vol. 12; Exhibit RR-2012-004-38.01, Vol. 1.5 at 27.

115. Canadian Tire characterized soft-sided containers as a "subset" of travel thermoelectric coolers. See *Transcript of Public Hearing*, Vol. 2, 16 October 2013, at 153.

for Mobicool, it is noteworthy that they were raised long after the deadline for the filing of requests and, as such, did not afford Koolatron an opportunity to prepare a considered response. In addition, it should be noted that Mobicool was not a participant in this expiry review and that, as such, its positions, or positions taken on its behalf, were not open to examination or cross-examination. Thus, the demands of procedural fairness dictate that these additional requests not be further considered.

104. In any event, since it is evident that Koolatron produces a wide range of travel thermoelectric containers and has the capacity to produce a wide range of soft-sided thermoelectric containers, the Tribunal sees no merit in these requests by Canadian Tire. As for the request to exclude Mobicool, the Tribunal has indicated many times that producer exclusions are granted only in exceptional circumstances,¹¹⁶ which are absent in this case.

CONCLUSION

105. In conclusion, on the basis of its review of the evidence on the record and taking into account the arguments put forth by Koolatron and Canadian Tire, the Tribunal finds that to allow the expiry of the current finding would likely result in a significant increase in imports of the subject goods at prices that could be expected to significantly undercut, depress and suppress those of the like goods, thereby likely causing material injury to the domestic industry.

106. On the basis of the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its finding in respect of thermoelectric containers originating in or exported from China.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Daniel Petit
Daniel Petit
Member

Ann Penner
Ann Penner
Member

116. *Carbon Steel Welded Pipe* (11 December 2012), NQ-2012-003 (CITT); *Thermoelectric Containers* (11 December 2008), NQ-2008-002 (CITT); *Horizontal Venetian Blinds* (7 February 1992), NQ-91-004 (CITT).