



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## ORDER AND REASONS

Expiry Review No. RR-2017-001

Stainless Steel Sinks

*Order and reasons issued  
Thursday, February 8, 2018*

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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 May 24, 2012, in Inquiry No. NQ-2011-002, concerning:

**THE DUMPING AND SUBSIDIZING OF STAINLESS STEEL SINKS  
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 May 24, 2012, in Inquiry No. NQ-2011-002, in respect of the aforementioned goods.

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.

Rose Ritcey  
Rose Ritcey  
Presiding Member

Ann Penner  
Ann Penner  
Member

Peter Burn  
Peter Burn  
Member

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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*,<sup>1</sup> of a finding of injury made by the Canadian International Trade Tribunal (the Tribunal) on May 24, 2012, in Inquiry No. NQ-2011-002 [*Sinks NQ*],<sup>2</sup> concerning the dumping and subsidizing of stainless steel sinks originating in or exported from the People's Republic of China (China) (the subject goods).
2. Under subsection 76.03(1) of *SIMA*, findings of injury or threat of injury and the associated protection in the form of anti-dumping or countervailing duties expire five years from the date of the last order or finding, unless an expiry review has been initiated before that date. The Tribunal issued a notice of its decision to initiate an expiry review of its finding on April 4, 2017.
3. On April 5, 2017, the Canada Border Services Agency (CBSA) initiated an investigation to determine whether the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping and/or subsidizing.
4. On September 1, 2017, pursuant to paragraph 76.03(7)(a) of *SIMA*, the CBSA determined that the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping and subsidizing of the subject goods.
5. On September 5, 2017, pursuant to subsection 76.03(10) of *SIMA*, and further to the CBSA's determination, the Tribunal initiated the investigation phase of its expiry review to determine whether the continuation or resumption of dumping and subsidizing was likely to result in material injury to the domestic industry and requested that actual or potential domestic producers, importers and foreign producers reply to Tribunal questionnaires.
6. The period of review (POR) for the Tribunal's expiry review comprises the three full years from January 1, 2014, to December 31, 2016, as well as the interim period of January 1 to June 30, 2017. For comparative purposes, information was also collected for the interim period of January 1 to June 30, 2016.
7. The Tribunal received notices of participation only from the two known domestic producers—Franke Kindred Canada Limited (FKC) and Novanni Stainless Inc. (Novanni). A continuation of the finding was, therefore, unopposed. Further, FKC and Novanni represented themselves.
8. In addition to the two domestic producers, the Tribunal sent questionnaires to 36 potential importers and 150 potential foreign producers.<sup>3</sup> The Tribunal received 20 importer replies stating that they imported subject goods and/or goods meeting the product definition from the non-subject countries, 16 of which were used in preparation of the investigation report.<sup>4</sup> The Tribunal also received five replies from importers indicating that they did not import stainless steel sinks as defined in the product definition. From the replies and other information on the record, public and protected investigation reports were prepared and placed on the record.

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

2. *Stainless Steel Sinks* (24 May 2012), NQ-2011-002 (CITT).

3. Exhibit RR-2017-001-05, Vol. 1.1 at 12-14 [Public IR].

4. Public IR at 13-14.

9. Due to the fact that the parties were self-represented, the Tribunal provided them with a submissions form for self-represented parties to complete.<sup>5</sup> Novanni and FKC each filed a completed form on November 9, 2017, as their submissions. Mr. S. Desroches and Mr. F. Brazda also each filed signed and dated certifications declaring that the written evidence provided in the submissions was “true, accurate, complete and correct”.<sup>6</sup>

10. Given that this proceeding was unopposed, and that the Tribunal was satisfied that the record contained sufficient evidence, the Tribunal conducted this review without an oral hearing pursuant to rule 25.1 of the *Canadian International Trade Tribunal Rules*.

## PRODUCT

### Product Definition

11. The subject goods are fully defined as follows:

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

- sinks fabricated by hand<sup>8</sup>; and
- stainless steel sinks with a single drawn bowl or double drawn bowls and a 1 1/4-inch by 3/4-inch (32-millimetre by 19-millimetre) cast-resin matrix rim that replaces a stainless steel rim, for undermount seamless installation in countertops.

## LEGAL FRAMEWORK

12. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the finding is likely to result in injury or retardation to the domestic industry.<sup>9</sup>

13. The Tribunal is also required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the finding if it determines that its expiry 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.

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5. The submissions form for self-represented parties is available to and designed to be used by any party in an expiry review. It provides a convenient means for a party to submit its evidence and argument to the Tribunal, whether for or against the continuation of the finding.

6. Exhibit RR-2017-001-A-01A, Vol. 11; Exhibit RR-2017-001-B-01A, Vol. 11.

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

8. The expression “sinks fabricated by hand” refers to the process by which sinkware is formed by hand. The sink stock is notched and folded, and sides are then welded and hand-polished to form a boxlike shape. Hand-fabricated sinks may also be referred to as handcrafted or handmade sinks.

9. Subsection 2(1) of *SIMA* defines “injury” as “material injury to the 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 in this case, the issue of whether the expiry of the finding is likely to result in retardation does not arise in this expiry review.

## LIKE GOODS AND CLASSES OF GOODS

14. As the “domestic industry” is defined as the domestic producers of like goods in relation to the subject goods, in order for the Tribunal to determine whether the expiry of the finding is likely to cause injury to the domestic industry, 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.<sup>10</sup>

15. 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.

16. 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).<sup>11</sup>

17. In *Sinks NQ*, it was uncontested, and the Tribunal ultimately determined, that domestically produced stainless steel sinks were a single class of like goods in relation to the subject goods.<sup>12</sup> At that time, the Tribunal found that domestically produced stainless steel sinks have similar end uses; are produced to the same required specifications, using the same input materials and similar methods of manufacture; and are fully substitutable, as they compete directly against one another in the Canadian market, fulfill the same customer needs, and are distributed through the same channels.<sup>13</sup>

18. The situation in this review is unchanged. Domestically produced stainless steel sinks remain physically similar to the subject goods and are offered in a variety of similar designs.<sup>14</sup> The domestically produced goods compete directly with imported subject goods in all channels of distribution.<sup>15</sup> They are functionally alike, being sold to the same type of end-user consumers and interchangeable for use in similar settings (e.g. kitchen, laundry, etc.) and across domestic, institutional and commercial applications.<sup>16</sup> Finally, they are both manufactured to CSA standards (which define the grade and thickness of the material) in a similar fashion, using stainless steel sheet as a raw input and punch-and-die sets and presses to create the required basin-bowl design.<sup>17</sup> Notably, no evidence was submitted in this expiry review to suggest that

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10. 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.).

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

12. *Sinks NQ* at paras. 53-57.

13. *Ibid.* at paras. 54-55.

14. Public IR at 11-12; Exhibit RR-2017-001-A-01 at 13, Vol. 11 [Public Novanni Submissions] (confirming compliance with CSA standards and industry norms; alleging that subject goods were modelled after FKC sinks); *ibid.* at 40-47 (showing various models sold by wholesale importers); Exhibit RR-2017-001-B-01 at 30-33, Vol. 11 [Public FKC Submissions] (samples of online ads for subject goods showing specifications, dimensions, materials, thickness, finish, etc.).

15. Public IR, Table 2 (showing common sales channels); Public Novanni Submissions at 18-20; Public FKC Submissions at 15.

16. Public FKC Submissions at 10.

17. Public Novanni Submissions at 13.

the Tribunal should reach a different conclusion. Thus, the uses and characteristics of domestically produced stainless steel sinks unquestionably closely resemble those of the subject goods.

19. Therefore, domestically produced stainless steel sinks are the like goods in relation to the subject goods.

## DOMESTIC INDUSTRY

20. 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

21. 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.<sup>18</sup>

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

23. In *Sinks NQ*, despite imports of the subject goods by both domestic producers, the Tribunal found that FKC and Novanni were primarily domestic producers of the like goods because the vast majority of their domestic sales came from their own production. Additionally, their imports represented a small share of total imports of subject goods, and their motives in importing were primarily defensive, i.e. to remain competitive with importers in the sale of certain models to specific accounts.<sup>19</sup> With regard to the latter, the average unit purchase price of their imports was higher than the average unit purchase price of other importers of the subject goods.<sup>20</sup>

24. Behaviour by FKC and Novanni during the POR supports the conclusion that they both remain primarily domestic producers of the like goods. Import volumes of the subject goods by the domestic producers are at levels below what they were leading up to *Sinks NQ*, both in absolute and relative terms,

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18. The term “major proportion” means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (F.C.A.); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (F.C.A.); *China – Anti-dumping and Countervailing Duties on Certain Automobiles from the United States* (23 May 2014), WTO Doc. WT/DS440/R, Report of the Panel at para. 7.207; *European Community – Definitive Anti-dumping Measures on Certain Iron or Steel Fasteners from China* (15 July 2011), WTO Doc. WT/DS397/AB/R, Report of the Appellate Body at paras. 411, 419, 430; *Argentina – Definitive Anti-dumping Duties on Poultry from Brazil* (22 April 2003), WTO Doc. WT/DS241/R, Report of the Panel at paras. 7.341-7.344.

19. *Sinks NQ* at paras. 67-69.

20. *Ibid.* at para. 71.



and now represent only an insignificant share of the total volume of imports of the subject goods.<sup>21</sup> Domestic producers' imports of stainless steel sinks from other countries are greater than their imports of the subject goods but still insignificant when compared with total imports for the Canadian market.<sup>22</sup> Further, their net delivered purchase unit values greatly exceed those of other importers, both for the subject goods and stainless steel sinks from non-subject countries; in fact, the evidence does not show price competition between imports by FKC and Novanni and those of other importers of the subject goods.<sup>23</sup>

25. As such, because FKC and Novanni constitute the totality of known domestic production of the like goods, they constitute the domestic industry for the purposes of the Tribunal's likelihood of injury analysis.

### CROSS-CUMULATION

26. In *Sinks NQ*, the Tribunal assessed the cumulative effects of the dumping and subsidizing of the subject goods on the domestic industry because it was not possible to unravel them so as to allocate specific or discrete portions to the dumping and subsidizing.<sup>24</sup> The same remains true in this case. Therefore, the Tribunal has cumulatively assessed the likely impact of the resumption of dumping and subsidizing of the subject goods on the domestic industry should the finding be rescinded.<sup>25</sup>

### LIKELIHOOD OF INJURY ANALYSIS

27. An expiry review is forward-looking.<sup>26</sup> It follows that evidence from the period of review during which a finding or order was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the finding or order is likely to result in injury.<sup>27</sup>

28. There is no presumption of injury in an expiry review; the Tribunal's findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization agreements.<sup>28</sup> In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.<sup>29</sup>

29. The Tribunal has consistently taken the view that the focus in expiry reviews should be on circumstances that can reasonably be expected to exist in the near to medium term. In this case, the Tribunal finds it appropriate to focus its analysis on the next 18 to 24 months.

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21. Exhibit RR-2017-001-06 (protected), Table 8, Vol. 2.1 [Protected IR].

22. *Ibid.*, Tables 6 and 8.

23. *Ibid.*, Table 22.

24. *Sinks NQ* at paras. 73-76.

25. *Pup Joints* (7 April 2017), RR-2016-001 (CITT) at para. 31.

26. *Certain Dishwashers and Dryers* (25 April 2005), RR-2004-005 (CITT) at para. 16.

27. *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See, also, *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) at para. 21.

28. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

29. *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21. Due to the small number of participants involved in this expiry review, most of the import, sales, pricing, production and financial data, even in aggregate form, cannot be disclosed in order to protect their confidentiality. Where possible, these reasons give an approximate percentage or general range of magnitude.

30. Subsection 37.2(2) of the *Special Import Measures Regulations*<sup>30</sup> lists factors that the Tribunal may consider in addressing the likelihood of injury in expiry reviews. First, the Tribunal looks at what has changed in the international and domestic markets over the past five years. Then, the Tribunal considers how Canadian producers will likely fare if the duties were to stay in place. Finally, the Tribunal analyzes what would happen if the duties were not in place, in particular, how the subject goods would affect the performance of Canadian producers in the future.

31. For the reasons described below, the Tribunal has decided to continue its finding:

- With the finding in place, prices of the subject goods in the Canadian market have stabilized at fairly-traded levels.
- Also, the domestic industry has been able to invest with more confidence and to adapt to the more competitive environment, e.g. by reducing its costs of goods manufactured.
- Nevertheless, the domestic industry has not been able to return to its previous levels of production, profits, market share and employment. Imports of the subject goods actually increased during the POR and took market share from the domestic industry. Even with the finding in place, the domestic industry will continue to face challenges in the next few years.
- However, without the finding, the domestic industry's situation would be much worse. Considering that China has an enormous capacity to produce stainless steel sinks and is restricted by trade measures in several other key markets, Canada would be an even more attractive market for its producers in the absence of *SIMA* duties. There would soon be a "race to the bottom" as Chinese producers would compete to offer the lowest-price product. The results would be devastating for the domestic industry and could even mean the end of production in Canada.

### Overview of the Canadian Market for Stainless Steel Sinks

32. The following overview of the Canadian market for stainless steel sinks gives important context for the Tribunal's assessment of the likelihood of injury:

- The market for stainless steel sinks is mature, in which suppliers are likely to compete more intensely for a smaller pool of consumers. According to Novanni, the domestic market "has remained relatively flat... for the last decade" and "overall... shows very little organic growth".<sup>31</sup> In fact, the data from the *Sinks NQ* investigation reports and those of this expiry review show that both the volume<sup>32</sup> and the value<sup>33</sup> of the apparent market in Canada declined from the full years surveyed in the period of inquiry (POI) (2009 to 2011) to the POR (2014 to 2016).
- The drivers of demand for stainless steel sinks are housing-related, e.g. housing starts, housing renovations, building permits and/or building construction. The modest growth in these indicators<sup>34</sup> from 2014 to 2016 confirms that this is a mature market. Further, looking

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

31. Public Novanni Submissions at 18.

32. Exhibit RR-2017-001-10A, Table 40, Vol. 1.3 [Public Revised NQ IR]; Protected IR at Table 10.

33. Public Revised NQ IR at Table 27; Protected IR at Tables 10 and 24.

34. Canada Mortgage and Housing Corporation, Housing Market Outlook (Fall 2017) [CMHC Report] at Table 1, online at: [https://www.cmhc-schl.gc.ca/odpub/esub/61500/61500\\_2017\\_B02.pdf?fr=1512059580210](https://www.cmhc-schl.gc.ca/odpub/esub/61500/61500_2017_B02.pdf?fr=1512059580210); Public IR at Table 49.

beyond 2017, new housing starts are forecast to decline by about 7 percent in 2018 and then remain flat in 2019, which means that the market for stainless steel sinks is unlikely to grow and may even shrink.<sup>35</sup>

- There are three market segments: wholesaler, retailer and fabricator. The wholesaler and retailer market segments are by far the largest ones, with similar-sized market volumes.<sup>36</sup> The fabricator segment accounts for a much smaller share of the market but remains important, as it is seen as an entry point for new suppliers offering aggressively low-priced products, a feature sought after by fabricator purchasers who often include a stainless steel sink at no charge to their customers.<sup>37</sup>
- At all levels of the market, stainless steel sinks are very price-sensitive products.<sup>38</sup>

### Changes in Market Conditions

33. The first step in the Tribunal's assessment of the likelihood of injury is to consider whether there have been any important changes in international and domestic market conditions since the finding was put in place.<sup>39</sup>

34. According to the domestic industry, hand-fabricated sinks have gained in popularity since the injury inquiry. Hand-fabricated sinks have tighter corners and a modern-restaurant look.<sup>40</sup> Even though hand-fabricated sinks are excluded from the product definition in this case, the domestic industry claims that these sinks are being imported and sold at low prices to compete with their drawn sinks.<sup>41</sup>

35. Another significant change in the Canadian market is the fact that the subject goods have recaptured market share despite the imposition of duties: in the last period of the POR, subject goods regained the share of the market they had held in the last period of the POI.<sup>42</sup> Also, imports of stainless steel sinks from non-subject countries gained market share compared to the POI.<sup>43</sup>

36. Furthermore, since 2012, certain key importers of the subject goods have increased their purchases of domestically produced goods. While major retailers such as Home Depot, Rona, Canadian Tire, Wal-Mart, Costco and IKEA imported the subject goods during the POI,<sup>44</sup> following the imposition of the duties many switched some of their business back to the domestic producers,<sup>45</sup> to the point that some no longer import the subject goods at all.<sup>46</sup>

37. The growth in the imports of the subject goods occurred alongside and despite consistent, economic growth in China, including a 25 percent increase in the total output value of the building construction industry between 2014 and 2016 followed by an estimated 12 percent increase in 2017.<sup>47</sup> The Tribunal has

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35. The Tribunal has elected to use Canada Mortgage and Housing Corporation's low forecast versus its high forecast in order to take the most conservative approach. CMHC Report at Table 1.

36. Protected IR at Tables 10, 13 and 16.

37. Protected IR at Table 19; Public FKC Submissions at 15; Exhibit RR-2017-001-25.02, Vol. 7.1C at 15 [Public Novanni CBSA Reply].

38. *Sinks NQ* at paras. 44-45 and 91-94.

39. Paragraph 37.2(2)(j) of the *Regulations*.

40. Public FKC Submissions at 25.

41. Public Novanni Submissions at 18.

42. Protected IR at Table 12; Exhibit RR-2017-001-11 (protected), Table 42, Vol. 2.3 [Protected NQ IR].

43. *Ibid.* at Table 42; Public IR at Table 8.

44. Exhibit RR-2017-001-10 at pp. 17-18, n° 6, vol. 1.3.

45. Public Novanni Submissions at 18-19; Public FKC Submissions at 16.

46. Public IR at Table 2; Exhibit RR-2017-001-19.09 (protected), Vol. 6 at 104.

47. Public IR at Table 50.

no forecasts for building construction after 2017, but Chinese Gross Domestic Product (GDP) is forecast to grow at more than double the average world GDP growth in both 2018 and 2019.<sup>48</sup> Therefore, it is likely that the same domestic economic conditions in China that prevailed during the growth of the market share of the subject goods over the POR will continue.

38. Finally, it is important to note that since 2012, dumping and countervailing duty findings against Chinese producers of stainless steel sinks have been issued in the United States (11 April 2013), Australia (26 March 2015) and Mexico (9 May 2015).<sup>49</sup> Thus, at least for the near to medium term, if the Tribunal's finding were rescinded, Canada would be the only jurisdiction in North America without trade remedy measures on the subject goods.

### **Likely Performance of the Domestic Industry if the Finding is Continued**

39. The Tribunal will now consider the domestic industry's recent performance and then assess the likely performance of the domestic industry if the finding is continued. The Tribunal will also consider whether there are any relevant factors other than the dumping and subsidizing of the subject goods affecting or likely to affect the domestic industry's performance in the near to medium term.<sup>50</sup>

40. For the reasons provided below, the Tribunal finds that, even with the finding in place, the domestic industry will continue to face significant pricing pressure from the subject goods in key market segments. Therefore, the domestic industry will continue to face significant challenges in the near to medium term.

41. Overall, the duties have stabilized pricing of the subject goods during the POR. From 2009 to 2011, average unit prices (CAN\$) of the subject goods fell rapidly each year—from \$121 to \$105 to \$89—and undercut domestic prices in 2010 and 2011 by ever larger amounts, while average unit prices for domestically produced goods also decreased, falling from \$119 to \$118 to \$116.<sup>51</sup> Between the POI and the POR, the prices of subject goods reversed course, rising from \$89 in 2011 to \$100 in 2014, while the prices of domestically produced goods fell even further as domestic producers tried to adapt to the new competitive environment.<sup>52</sup>

42. Despite the more stable prices by the end of the POR, the domestic industry's performance remained weak:

- The domestic industry lost significant market share across all three segments.<sup>53</sup> In interim 2017, the domestic producers' market share fell at a higher rate, in both relative and absolute terms, than it did in any other period during the POR, to the benefit of the subject goods.<sup>54</sup>
- The domestic industry experienced consistent net income losses.<sup>55</sup>

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48. *Ibid.*

49. *Ibid.* at Table 1.

50. Paragraph 37.2(2)(k) of the *Regulations*. Paragraph 37.2(2)(c) of the *Regulations* directs the Tribunal to examine the likely performance of the domestic industry, taking into account the industry's recent performance, including, as relevant, trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits.

51. Public Revised NQ IR at Table 46.

52. *Ibid.*; Protected IR at Table 24.

53. *Ibid.* at Tables 15, 18 and 21.

54. *Ibid.* at Table 12.

55. *Ibid.* at Table 42.

- Also, production, domestic sales, export sales, direct wages, direct hours worked, the number of direct employees and capacity utilization all fell considerably between 2014 and 2016.<sup>56</sup>

43. However, the evidence does demonstrate that both domestic producers have continued to improve their businesses and are planning for the future. The domestic industry has been actively working to reduce its costs of goods manufactured since the finding has been in place.<sup>57</sup> Further, both domestic producers have continued to invest over the POR, particularly via product updates with major retailers to retain their business<sup>58</sup> and expect to make additional investments in 2018 and 2019.<sup>59</sup> They also have won back and retained key major retailer clients that were lost prior to the imposition of *SIMA* duties.<sup>60</sup>

44. While hand-fabricated sinks appear to have grown in popularity in recent years, it seems unlikely that they are the main reason for the domestic industry's poor performance. As noted above, the size of the domestic market for stainless steel sinks did decrease between the POI and POR. However, even if one attributes the entirety of that decline to diversion to hand-made sinks, the net impact on the domestic industry's performance is small. Even if the domestic industry had successfully competed for these "lost" sales, its performance would still have been weak because of competition from the subject goods.

45. Based on all of the above, the Tribunal concludes that, even if the finding is continued, the domestic industry will likely continue to face strong competition from the subject goods, even at fairly-traded prices. However, as will be discussed below, rescission of the finding would result in even worse outcomes for the domestic industry, including the possible cessation of manufacturing operations in Canada.

#### **Likely Import Volume of Dumped and Subsidized Goods if the Finding is Rescinded**

46. Next, the Tribunal will consider the likely volume of the dumped or subsidized goods if the finding is rescinded 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.<sup>61</sup>

47. In this case, the Tribunal finds that if the finding is rescinded, imports of the subject goods will likely increase significantly because Chinese producers have more than sufficient excess capacity to service the entire Canadian market themselves. Canada would present an attractive market for the subject goods given the findings in place in Australia, the United States and Mexico. Chinese exporters have shown a consistent interest in increasing sales to Canadian customers, who have in turn been receptive to their marketing overtures as a low-priced alternative to domestic goods.

48. The domestic producers submit that Chinese producers have significant excess capacity.<sup>62</sup> The CBSA found, based on the responses of the four exporters cooperating in its most recent re-investigation,

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56. *Ibid.* at Table 45.

57. *Ibid.* at Table 42.

58. Public Novanni CBSA Reply at 16 and 18.

59. Protected IR at Schedules 16-17.

60. Public Novanni CBSA Reply at 22-24.

61. The Tribunal's assessment of the likely volumes of dumped and subsidized imports encompasses the likely performance of the foreign industry, the potential for the 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 measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada. Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

62. Public Novanni Submissions at 22; Public FKC Submissions at 21 and 25.

that, despite an increase in the overall production volumes of Chinese exporters between 2013 and 2015, “significant excess capacity still exists in their factories.”<sup>63</sup> The CBSA also found that there are over one hundred producers of stainless steel sinks in China, which would result in a considerable production capacity given that the combined annual production capacity of four exporters alone totaled 1.1 million units.<sup>64</sup>

49. The Tribunal finds it likely that Chinese producers of the subject goods currently have excess capacity sufficient to displace domestic production in Canada, even though current levels of imports of the subject goods are lower than those during the POI.<sup>65</sup> It is uncontroverted that production in Canada is a fraction of the excess capacity of just the four Chinese producers investigated by the CBSA. Given that there are over one hundred producers of the subject goods in China, it is reasonable to conclude that Chinese producers as a whole have more than sufficient capacity to capture all or a significant portion of the domestic industry’s current market share. There is no evidence that this excess capacity is likely to be reallocated to other ends or reduced.

50. If the finding is rescinded, some of this excess capacity would likely be turned into production for the Canadian market as the majority of Chinese production is exported.<sup>66</sup> However, the large markets found in the United States, Australia and Mexico have anti-dumping and/or countervailing measures on the subject goods, limiting the ability of Chinese exporters to access those markets.<sup>67</sup> Additionally, Chinese exporters’ volume of sales in foreign markets other than Canada fell significantly from 2013 to 2015.<sup>68</sup> This puts extra pressure on Chinese producers and exporters to find other markets.

51. The rescission of duties would only increase the attractiveness of the Canadian market. The absolute volumes of the subject goods have increased over the POR despite the finding.<sup>69</sup> Further, the ratios of imports of the subject goods relative to both domestic production and sales of domestic production also increased between 2014 and 2016 and between interim 2016 and interim 2017,<sup>70</sup> demonstrating the prominent role that subject goods have played in the Canadian market over the course of the POR.

52. The domestic producers submit that the rescission of the finding would result in further decreased sales in the retailer segment, with major customers likely to turn to the subject goods.<sup>71</sup> In support, the domestic producers allege that they have received communications from Chinese producers searching for Canadian customers, that Chinese producers participate in Canadian trade shows to try to find new Canadian customers, and that major retailers maintain procurement personnel in China to constantly monitor business opportunities.<sup>72</sup> Thus, Chinese exporters would have strong motives and opportunities to further increase their exports to Canada were the finding rescinded.

53. Without the finding in place, the increase in import volumes of the subject goods would likely be significant and, based on historical behaviour, would also be rapid. Chinese producers entered the Canadian

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63. Exhibit RR-2017-001-03A, Vol. 1A at para. 65 [Public CBSA Reasons].

64. *Ibid.* at para. 67.

65. At their peak in 2010, imports of the subject goods totaled 237,482 units while at their highest point during the POR they numbered only 177,960 units. Public Revised NQ IR at Table 30; Protected IR at Table 6.

66. Public CBSA Reasons at paras. 68-70.

67. Public FKC Submissions at 23-24; Public Novanni Submissions at 22; Public IR at Table 1.

68. Public CBSA Reasons at para. 70.

69. Public IR at Table 6.

70. Protected IR at Table 9.

71. Public FKC Submissions at 15-16; Public Novanni Submissions at 18-19.

72. Public FKC Submissions at 15-16; Public Novanni Submissions at 21 and 23.

market rapidly during the POI, with sales of imports from the subject goods increasing by 113 percent<sup>73</sup> between 2009 and 2011 and more than doubling their market share<sup>74</sup> during the same period due to aggressive price undercutting.<sup>75</sup> Additionally, in the lead-up to the imposition of duties in the United States, Chinese producers increased exports to the United States from 2.0 to 3.2 million units from 2009 to 2011, an increase of 57 percent.<sup>76</sup> These quantities are considerably greater than those involved in the Canadian market. Therefore, the size of the Canadian market would not be an obstacle for Chinese exporters.

54. Although the market is mature, there is sufficient opportunity for the market share of subject goods to significantly grow in the wholesale and, especially, retail segments through price undercutting to acquire customers of the domestic industry. Several major wholesalers already have an established and successful business strategy for sourcing from China.<sup>77</sup> Novanni submits that it continues to lose market share in this segment to the subject goods.<sup>78</sup> While the domestic industry has recovered its foothold in the retail segment since the finding was made, major national chains have easy access to Chinese exporters as well as their own distribution warehouses, which would enable them to directly import large volumes of subject goods themselves.<sup>79</sup>

55. In sum, the Tribunal is of the view that, if the finding were rescinded, there would be a significant increase in the volume of imports of the subject goods, both in absolute and relative terms.

#### **Likely Price Effects of Dumped and Subsidized Goods if the Finding is Rescinded**

56. The Tribunal will now consider the likely prices of the dumped and subsidized goods if the finding is rescinded. It will also consider whether the dumping and subsidizing of the subject goods is likely to significantly undercut the prices of like goods, depress those prices, or suppress them by preventing increases in those prices that would likely have otherwise occurred. The Tribunal will distinguish the price effects of the dumped and subsidized goods from any price effects that would likely result from other factors affecting prices.<sup>80</sup>

57. In this case, the Tribunal finds that rescission of the finding would likely result in further price undercutting in the wholesale segment accompanied by new price undercutting in retail, in response to which the domestic producers would have no choice but to either lower their prices or lose sales.

58. Purchasers of stainless steel sinks are “very price-sensitive”;<sup>81</sup> as such, the market relies heavily on rebates, discounts and other price incentives.<sup>82</sup> Each market segment aggressively prices entry-level goods as commodity products to maintain market share in this mature market.<sup>83</sup> In the fabricator segment, clients prioritize price because they tend to include stainless steel sinks with countertops at no charge to

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73. Public Revised NQ IR at Table 40.

74. *Ibid.* at Table 27.

75. *Ibid.* at Table 46.

76. *Drawn Stainless Steel Sinks from China* (11 April 2013), Inv. Nos. 701-TA-489 and 731 TA 1201 (US ITC) at 18, online at: [https://www.usitc.gov/publications/701\\_731/pub4390\\_final.pdf](https://www.usitc.gov/publications/701_731/pub4390_final.pdf).

77. Public Novanni CBSA Reply at 14-15; Public FKC Submissions at 15; Public Novanni Submissions at 18-19.

78. *Ibid.* at 20.

79. Public Novanni CBSA Reply at 14; Public FKC Submissions at 15.

80. Paragraph 32.2(2)(b) of the *Regulations*.

81. Public CBSA Reasons at paras. 78 and 83.

82. *Sinks NQ* at paras. 44-45 and 91-94.

83. Public FKC Submissions at 15; Public Novanni Submissions at 20.

customers.<sup>84</sup> In the retail segment, major national chains compete for the mass-market consumer demographic on the basis of price. In the wholesale segment, several major wholesalers have an established and successful business strategy for sourcing from China at minimum cost to compete for clients, particularly for entry-level products supplied to new house construction.<sup>85</sup> As a result, the domestic industry is highly vulnerable to price undercutting.

59. Importers of subject goods are already the low-priced sales leaders in much of the market. At the wholesaler market segment, the subject goods have a significant, and growing, price advantage when compared to unit values of sales from domestic production over the POR. Novanni submits that it continued to lose market share in this segment due to price undercutting by importers of the subject goods.<sup>86</sup> It also stated that it has experienced price depression and suppression over the POR.<sup>87</sup> In the fabricator market segment, the subject goods also have a slight but still growing price advantage.<sup>88</sup> Without the protection conferred by the finding, suppliers of subject goods would have greater ability to lower their prices and increase their price advantage even further, capturing additional market share from the domestic industry in these segments.

60. At the retailer market segment, no price undercutting was observed during the POR in comparison to the substantial price undercutting seen in this segment during the POI.<sup>89</sup> If the finding were rescinded, suppliers of the subject goods would look to win back the major retailers whose business they lost when the *SIMA* duties were imposed.<sup>90</sup> In a price-sensitive market they would succeed by undercutting the prices of the domestic producers. Novanni expects that it would face significant price undercutting in the range of 20 to 30 percent.<sup>91</sup> Indeed, the degree of undercutting would likely be significant considering that Chinese exporters have incurred substantial amounts of *SIMA* duties (\$4.13 million) over the POR.<sup>92</sup> When the *SIMA* duties are subtracted from the market value of the subject goods sold during the POR, it is clear that resulting prices of the subject goods would have been significantly lower than the prices of the domestically produced goods.<sup>93</sup>

61. Based on the above evidence, the Tribunal finds that the rescission of the finding would have significant adverse price effects on the domestic industry.

### **Likely Impact on the Domestic Industry if the Finding is Rescinded**

62. Finally, the Tribunal will assess the likely impact of the above volumes and prices on the domestic industry if the finding is rescinded,<sup>94</sup> taking into consideration the likely performance of the domestic industry were the finding continued. In this analysis, the Tribunal distinguishes the likely impact of the dumped and subsidized goods from the likely impact of any other factors affecting or likely to affect the domestic industry.

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84. Public Novanni CBSA Reply at 15; Public FKC Submissions at 15.

85. Public Novanni CBSA Reply at 14-15; Public FKC Submissions at 15; Public Novanni Submissions at 18-19.

86. Public Novanni Submissions at 20.

87. *Ibid.*

88. Protected IR at Table 30.

89. *Ibid.* at Table 28; *Sinks NQ* at paras. 98 and 102-103.

90. Public Novanni Submissions at 18-19; Public FKC Submissions at 16.

91. Public Novanni Submissions at 20.

92. Public IR at Table 5.

93. See Public IR at Table 5 and Protected IR at Tables 10 and 24.

94. Paragraphs 37.2(2)(e) and (g) of the *Regulations*.



63. Both domestic producers submit that if the finding were rescinded, they would have no further room to reduce margins or to pass cost increases to customers. Additionally, they submit that any further reduction in the domestic industry's market share would result in capacity utilization rates too low to justify continued operation in Canada.<sup>95</sup>

64. The Tribunal finds that the likely increase in the import volumes of the subject goods at low prices resulting from the rescission of the finding would likely cause material injury to the domestic industry. While the domestic producers would likely continue to face stiff competition from the subject goods even if the finding were continued, the situation without the finding in place would be materially worse. The domestic producers are not able to match any further price undercutting given the maturity of the market in Canada. As a result, they would likely be unable to retain a sufficient customer base, and the viability of the domestic industry would be seriously compromised.

#### **DETERMINATION**

65. The Tribunal finds that, if the finding is rescinded, the likely resumption or continuation of the dumping and subsidizing of the subject goods will likely cause material injury to the domestic industry.

#### **CONCLUSION**

66. Pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal continues its finding in respect of the subject goods.

Rose Ritcey  
Rose Ritcey  
Presiding Member

Ann Penner  
Ann Penner  
Member

Peter Burn  
Peter Burn  
Member

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95. Public FKC Submissions at 20 and 22; Public Novanni Submissions at 23 and 25.