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Services Agency

Agence des services
frontaliers du Canada

OTTAWA, October 14, 2011

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STATEMENT OF REASONS

Concerning determinations under paragraph 76.03(7)(a) of the
Special Import Measures Act regarding

**CERTAIN COPPER PIPE FITTINGS ORIGINATING IN OR EXPORTED FROM
THE UNITED STATES OF AMERICA,
THE REPUBLIC OF KOREA AND THE PEOPLE'S REPUBLIC OF CHINA**

DECISION

On September 29, 2011, pursuant to paragraph 76.03(7)(a) of the *Special Import Measures Act*, the President of the Canada Border Services Agency determined that the expiry of the findings made by the Canadian International Trade Tribunal on February 19, 2007, in Inquiry No. NQ-2006-002, in respect of certain copper pipe fittings originating in or exported from the United States of America, the Republic of Korea and the People's Republic of China was likely to result in the continuation or resumption of dumping of these goods into Canada, and in the continuation or resumption of subsidizing of such goods from the People's Republic of China.

Cet Énoncé des motifs est également disponible en français.
This Statement of Reasons is also available in French.

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SUMMARY

[1] On June 1, 2011, the Canadian International Trade Tribunal (Tribunal), pursuant to subsection 76.03(3) of the *Special Import Measures Act* (SIMA), initiated an expiry review of its findings made on February 19, 2007, in Inquiry No. NQ-2006-002 concerning the dumping of solder joint pressure pipe fittings and solder joint drainage, waste and vent pipe fittings, made of cast copper alloy, wrought copper alloy or wrought copper, for use in heating, plumbing, air conditioning and refrigeration applications (copper pipe fittings), originating in or exported from the United States of America, the Republic of Korea and the People's Republic of China and the subsidizing of copper pipe fittings originating in or exported from the People's Republic of China.

[2] For the purposes of this *Statement of Reasons*, the term "copper pipe fittings" shall hereafter refer strictly to products subject to the findings and the countries identified shall collectively be referred to as "the Named Countries."

[3] As a result of the Tribunal's notice, on June 2, 2011, the Canada Border Services Agency (CBSA) commenced an investigation to determine whether the expiry of the findings in respect of the subject goods is likely to result in the continuation or resumption of dumping of the goods and, in the case of China, subsidizing of the goods.

[4] The Canadian producers of copper pipe fittings, namely Cello Products Inc. (Cello) and Bow Plumbing Group Inc. (Bow), provided responses to the Expiry Review Questionnaire (ERQ).

[5] The Canadian producers also provided information in support of their position that continued or resumed dumping of copper pipe fittings from the Named Countries is likely if the Tribunal's findings are allowed to expire.

[6] The Canadian producers provided information in support of their position that continued subsidizing of copper pipe fittings from China is likely if the Tribunal's finding in respect of copper pipe fittings from China is allowed to expire.

[7] The CBSA also received responses to the ERQ from six exporters and nine importers. Five of the exporters are located in the United States and the other exporter is located in Korea.

[8] One exporter from the United States and one exporter from Korea made representations through their ERQ response that specifically addressed their position that, in absence of the Tribunal's findings, they are unlikely to continue or resume dumping copper pipe fittings into Canada.

[9] No exporters from the United States or from Korea provided case arguments or reply submissions.

[10] The CBSA did not receive any responses to the ERQ from Chinese exporters nor did these exporters provide case arguments or reply submissions.

[11] The CBSA did not receive a response to the ERQ from the Government of China (GOC) nor did the GOC provide case arguments or reply submissions.

[12] Analysis of information on the record indicates that exporters in the United States, unable to compete at non-dumped prices, have either stopped exporting to Canada or have continued to export subject goods to Canada at dumped prices while the findings were in place; have had declining sales of copper pipe fittings in the United States, Canada and other export markets; have substantial excess production capacity; are struggling with import pressures of copper pipe fittings entering the United States from countries such as China and Korea; are besieged by a shift in imports of copper pipe fittings into Canada from countries not covered by the Tribunal's findings such as Vietnam and Spain; and are facing an uncertain future demand for copper pipe fittings because of continued recession in the construction market and substitution of other types of pipe fittings arising from high copper prices.

[13] Analysis of information on the record indicates that exporters in Korea, unable to compete at non-dumped prices, have either stopped exporting to Canada or have dumped subject goods into Canada while the findings were in place; have had declining sales of copper pipe fittings in their domestic market; have substantial excess production capacity, are besieged by a shift in imports of copper pipe fittings into Canada from countries not covered by the Tribunal's findings such as Vietnam; and are facing an uncertain future demand for copper pipe fittings because of continued recession in the construction market and high copper prices.

[14] Analysis of information on the record indicates that exporters in China, unable to compete at non-dumped prices, have either stopped exporting to Canada or have continued to export subject goods to Canada at dumped prices while the findings were in place; have substantial production capacity based on the evidence of significant exports of Chinese copper pipe fittings to the U.S. market; are besieged by a shift in imports of copper pipe fittings into Canada from countries not covered by the Tribunal's findings such as Vietnam; and are trying to cope with economic downturn in China's foreign markets and more recently a softening of the Chinese domestic economy.

[15] The information on the record also shows the continuing availability and applicability of subsidy programs in China.

[16] For the foregoing reasons the President, having considered the relevant information on the record and the foregoing factors, determined, on September 29, 2011, under paragraph 76.03(7)(a) of SIMA that:

- i. the expiry of the finding in respect of the dumping of certain copper pipe fittings originating in or exported from the United States is likely to result in the continuation or resumption of dumping of the goods into Canada;
- ii. the expiry of the finding in respect of the dumping of certain copper pipe fittings originating in or exported from Korea and China is likely to result in the continuation or resumption of dumping of the goods into Canada; and

- iii. the expiry of the finding in respect of the subsidizing of certain copper pipe fittings originating in or exported from China is likely to result in the continuation or resumption of subsidizing of the goods into Canada

BACKGROUND

[17] On June 8, 2006, following a complaint filed by Canadian industry, the President of the CBSA (the President) initiated an investigation pursuant to subsection 31(1) of SIMA into whether certain copper pipe fittings originating in or exported from the United States, Korea and China had been dumped. On the same date, the President initiated an investigation pursuant to subsection 31(1) of SIMA into whether certain copper pipe fittings originating in or exported from China had been subsidized.

[18] The complaint was made by Cello of Cambridge, Ontario, and was supported by the only other known Canadian producer of copper pipe fittings, Bow of Montréal, Quebec.

[19] On January 18, 2007, the President made a final determination of dumping and, in the case of China, of subsidizing in accordance with paragraph 41(1)(a) of SIMA in respect of copper pipe fittings originating in or exported from the United States, Korea and China.

[20] On February 19, 2007, the Tribunal found that injury had been caused by the dumping of the goods originating in or exported from the United States, Korea and China, and by the subsidizing of such goods from China.

[21] On April 12, 2011, pursuant to subsection 76.03(2) of SIMA, the Tribunal issued a notice concerning the upcoming expiry of its findings which would have expired on February 17, 2012. Based on the available information and the information submitted by the interested parties, the Tribunal was of the opinion that an expiry review of the findings was warranted.

PRODUCT DESCRIPTION

DEFINITION

[22] The goods subject to the findings under review are defined as:

Solder joint pressure pipe fittings and solder joint drainage, waste and vent pipe fittings, made of cast copper alloy, wrought copper alloy or wrought copper, for use in heating, plumbing, air conditioning and refrigeration applications, restricted to the products enumerated in the Tribunal's findings (copper pipe fittings), originating in or exported from the United States of America, the Republic of Korea and the People's Republic of China.

PRODUCT INFORMATION

[23] Solder joint copper pipe fittings are used to connect copper pipes, tubes or other fittings to one another. The connections are made by fitting two pieces together and heating the ends of the tubing and fitting, and filling the gap between the two with melted solder which solidifies on cooling to form a strong, leakproof connection. The fittings can also be used to connect copper tubing to other metal systems by use of threaded fittings. However, at least one end of a fitting is always soldered. Finally, the connection can also be made using epoxy or similar gluing methods.

[24] Solder joint copper pipe pressure fittings may be used in conveying liquids (e.g. potable water), gases and air under pressure in residential, industrial, commercial and institutional buildings. Copper pipe pressure fittings are also used in a variety of air-conditioning and refrigeration (ACR) applications. The types of fittings used in air-conditioning applications are typically identified by reference to their outside diameters, whereas the same fittings used in non air-conditioning applications such as plumbing and heating are typically identified by reference to their inside or “nominal” diameters. Apart from the reference to diameter, a fitting for an air-conditioning application is the same as a fitting for a non air-conditioning application.

[25] Solder joint copper pipe drainage, waste and vent (DWV) fittings are used primarily to convey waste from buildings to sewers and for venting purposes under low-pressure conditions.

[26] Female and male adaptors are used to connect a copper tube to an iron pipe or a water heater. Other adapters include ferrules that are used to join a copper tube to a cast-iron pipe in older installations. Bushings are used to reduce the diameter of other fittings. Couplings are used to join tubes of either the same size or two different sizes to make longer runs through buildings. Elbows are used to change the direction of a copper tube by either 45° or 90°. Flanges and unions are used to provide a connection that can be either unscrewed or unbolted for maintenance or repairs. Tees are used to allow a copper line to be split into two separate lines. There are pressure tees and drainage tees; TY's (90°) and Y's (45°). Traps are used to trap water to prevent sewer gases from coming back into a building. Cleanouts are used to provide access to drainage systems in case of blockage; and caps are removable plugs used to permit inspection and access for the purpose of clearing an obstruction.

[27] Solder joint pipe fittings manufactured in Canada and the United States are made to the standards of the ASME (American Society of Mechanical Engineers) / ANSI (American National Standards Institute) and to the standards of the MSS (Manufacturers Standardization Society).

[28] Copper pipe fittings may be either cast brass, produced from copper alloy ingots and recycled cast brass scrap, or wrought copper, produced from extruded copper tube or hollows.

CLASSIFICATION OF IMPORTS

[29] Copper pipe fittings are normally imported into Canada under the following Harmonized System (HS) classification numbers:

7412.10.00.11	7412.10.00.19	7412.10.00.20	7412.20.00.11
7412.20.00.12	7412.20.00.19	7412.20.00.20	

[30] The above tariff classification numbers include a broad range of goods that are not subject to the Tribunal's findings.

[31] In addition, imports into Canada of the subject goods described above may also be imported into Canada under HS classification numbers 7412.10.00.90 and 7412.20.00.90.

PERIOD OF REVIEW

[32] The period of review (POR) for the CBSA's expiry review investigation is January 1, 2008 to March 31, 2011. The President also considered additional information placed on the administrative record, up to the closing of the record date, which was July 21, 2011.

CANADIAN INDUSTRY

[33] The Canadian industry for copper pipe fittings is comprised of the following two companies:

- Cello Products Inc. of Cambridge, Ontario
- Bow Plumbing Group Inc. of Montréal, Quebec

Cello Products Inc.

[34] Cello commenced operations in 1946 in Cambridge, Ontario, as a supplier of cast copper alloy solder joint pipe fittings. Wrought copper and wrought copper alloy solder joint pipe fittings were added to the product line in the 1960s. Cello was incorporated in 1983.

[35] Cello's products are made for pressure and drainage, waste and vent applications in both cast brass and wrought copper.

Bow Plumbing Group Inc.

[36] Bow was founded in 1949 as a producer of various plastic products, including some specialty plumbing items. Bow began producing wrought copper and wrought copper alloy solder joint pipe fittings in 1991, when the company acquired the assets of EMCO Canada, a former producer of copper pipe fittings.

[37] Bow's corporate head office is located in Montréal, Quebec, while its manufacturing facility is located in Dorchester, Ontario.

[38] Bow produces wrought pressure and DWV copper pipe fittings. Bow does not produce cast copper pipe fittings.

CANADIAN MARKET

[39] Detailed information regarding overall Canadian apparent market cannot be divulged for confidentiality reasons. However, based on the information on the administrative record the apparent market has increased in value and volume since 2008.¹

[40] In terms of overall market, the Canadian producers saw their share of the apparent Canadian market for copper pipe fittings increase in both value and volume from 2008 to 2009 and then steadily decline afterward. In the last three months of the POR (January through March 2011) the Canadian producers' share of the apparent Canadian market for copper pipe fittings declined to the lowest point. For the Named Countries, their share decreased from 2008 to 2009, changed little in 2010 and rebounded in the last three months of the POR. Imports from other countries significantly increased their share of the apparent Canadian market in value and volume in 2010 before declining in the last three months of the POR.²

ENFORCEMENT

[41] Between 2008 and 2009, import volume and value of subject goods imported into Canada from the United States decreased by 44% and 26%, respectively. Between 2009 and 2010, import volume increased by 28% while import value declined by 12%.³

[42] In the enforcement of the Tribunal's finding in respect of goods from the United States during the POR, the amount of anti-dumping duty collected on subject imports was CAN\$1,133,814.⁴

[43] Between 2008 and 2009, import volume of subject goods imported into Canada from China increased by 7% while import value declined by 5%. Between 2009 and 2010, import volume and value increased by 14% and 21%, respectively.⁵

[44] In the enforcement of the Tribunal's finding in respect of goods from China during the POR, the amount of anti-dumping duty and countervailing duty collected on subject imports was about CAN\$691,152.⁶

[45] Detailed information regarding the volume and value of subject goods imported into Canada from Korea cannot be divulged for confidentiality reasons except to state that in 2008, imports from Korea accounted for 41% of the import volume from the Named Countries and 34% of the import value.⁷

¹ Exhibit 106 (PRO) - Apparent Canadian Market for Copper Pipe Fittings.

² Exhibit 85 (NC) – Import and Enforcement Statistics for Period of Review.

³ Exhibit 85 (NC) – Import and Enforcement Statistics for Period of Review.

⁴ Exhibit 85 (NC) – Import and Enforcement Statistics for Period of Review.

⁵ Exhibit 85 (NC) – Import and Enforcement Statistics for Period of Review.

⁶ Exhibit 85 (NC) – Import and Enforcement Statistics for Period of Review.

⁷ Exhibit 85 (NC) – Import and Enforcement Statistics for Period of Review.

[46] In the enforcement of the Tribunal's finding in respect of goods from Korea during 2008, the amount of anti-dumping duty collected on subject imports was CAN\$83,290.⁸ Detailed information regarding the collection of anti-dumping duties for the remainder of the POR cannot be divulged for confidentiality reasons.

PARTICIPANTS

[47] On June 1, 2011, the Tribunal's notice of the expiry review of its findings and the Expiry Review Questionnaires (ERQs) were sent to the known Canadian producers, exporters, importers, and the GOC.

[48] The ERQ requested information relevant to the consideration of the expiry review factors by the President, as listed in subsection 37.2(1) of the *Special Import Measures Regulations (SIMR)*. Any persons or governments having an interest in this investigation were also invited to provide a submission regarding the likelihood of continued or resumed dumping and (where applicable) subsidizing of these goods should the findings be allowed to expire.

[49] As mentioned above, there are presently two producers of copper pipe fittings in Canada. In addition to participating in the expiry review investigation and answering the ERQ, counsel for the Canadian producers provided two case briefs stating that the dumping of the subject goods from the Named Countries and subsidizing of such goods from China would continue or resume should the Tribunal's findings be allowed to expire.

[50] Six exporters participated in the expiry review investigation and provided responses to the ERQ. The participating exporters were: NIBCO Inc. (NIBCO)⁹, Mueller Industries Inc. and Mueller Streamline Co. (Mueller)¹⁰, Lee Brass¹¹, Elkhart Products Corp. (Elkhart)¹² and Interstate Assembly Systems (IAS)¹³ of the United States and Jungwoo Metal Ind. Ltd. (Jungwoo)¹⁴ of Korea. Elkhart and Jungwoo made representations through their ERQ response that specifically addressed their position that, in absence of the Tribunal's findings, they are unlikely to continue or resume dumping copper pipe fittings into Canada.

[51] Nine importers participated in the expiry review investigation and provided responses to the ERQ. The participating importers were: NDL Industries Inc. (NDL),¹⁵ BMI Canada Inc. (BMI),¹⁶ EMCO Corp. (EMCO),¹⁷ C-B Supplies Ltd. (C-B Supplies),¹⁸

⁸ Exhibit 85 (NC) – Import and Enforcement Statistics for Period of Review.

⁹ Exhibit 31 (PRO) - NIBCO Inc. response to Exporter ERQ.

¹⁰ Exhibit 56 (PRO) - Mueller Industries Inc. and Mueller Streamline Co. response to Exporter ERQ.

¹¹ Exhibit 33 (PRO) - Lee Brass response to Exporter ERQ.

¹² Exhibit 48 (PRO) - Elkhart Products Corp. response to Exporter ERQ.

¹³ Exhibit 63 (PRO) and Exhibit 68 (NC) - Interstate Assembly Systems responses to Exporter ERQ.

¹⁴ Exhibit 38 (PRO) - Jungwoo Metal Ind. Ltd. response to Exporter ERQ.

¹⁵ Exhibit 28 (PRO) - NDL Industries Inc. response to Importer ERQ.

¹⁶ Exhibit 36 (PRO) - BMI Canada Inc. response to Importer ERQ.

¹⁷ Exhibit 41 (PRO) - EMCO Corp. response to Importer ERQ.

¹⁸ Exhibit 47 (PRO) - C-B Supplies Ltd. response to Importer ERQ.

Elkhart Products Ltd. (Elkhart Canada),¹⁹ Streamline Copper & Brass Ltd.,²⁰ NCI Marketing Inc. (NCI),²¹ 4361814 Canada Inc.²² and Bombardier Transport Canada Inc. (Bombardier).²³

INFORMATION CONSIDERED BY THE PRESIDENT

ADMINISTRATIVE RECORD

[52] The information used and considered by the President for purposes of this expiry review investigation is contained in the administrative record. The administrative record includes the information on the CBSA's Exhibit Listing, which is comprised of the Tribunal's administrative record at initiation of the expiry review, CBSA exhibits and information submitted by interested persons, including information which they feel is relevant to the decision as to whether dumping and (where applicable) subsidizing is likely to continue or resume absent the findings. This information may consist of expert analysts' reports, excerpts from trade magazines and newspapers, orders and findings issued by authorities of Canada or of a country other than Canada, documents from international trade organizations such as the World Trade Organization and responses to the ERQs submitted by Canadian producers, exporters and importers.

[53] For purposes of an expiry review investigation, the CBSA sets a date after which no new information may be placed on the administrative record. This is referred to as the "closing of the record date". For this investigation, the administrative record closed on July 21, 2011. This allows participants time to prepare their case briefs and reply submissions based on the information that is on the administrative record as of the closing of the record date.

PROCEDURAL ISSUES

[54] In accordance with the CBSA's *Expiry Review Guidelines*, the President will normally not consider any new information submitted by participants subsequent to the closing of the record date. However, in certain exceptional circumstances, it may be necessary to permit new information to be submitted. The President will consider the following factors in deciding whether to accept new information submitted after the closing of the record date:

- (a) the availability of the information prior to the closing of the record date;
- (b) the emergence of new or unforeseen issues;
- (c) the relevance and materiality of the information;
- (d) the opportunity for other participants to respond to the new information; and
- (e) whether the new information can reasonably be taken into consideration by the President in making the determination.

¹⁹ Exhibit 50 (PRO) - Elkhart Products Ltd. response to Importer ERQ.

²⁰ Exhibit 54 (PRO) - Streamline Copper & Brass Ltd. response to Importer ERQ.

²¹ Exhibit 58 (PRO) - NCI Marketing Inc. response to Importer ERQ.

²² Exhibit 93 (PRO) - 4361814 Canada Inc. response to Importer ERQ.

²³ Exhibit 72 (PRO) - Bombardier Transport Canada Inc. response to Importer ERQ (partial response).

[55] Participants wishing to file new information after the closing of the record date, either separately or in case briefs or reply submissions, must identify this information so that the President can decide whether it will be included in the record for purposes of the determination.

[56] With respect to this expiry review investigation, there were no new documents submitted by the participants after the July 21, 2011 closing of the record date.

POSITION OF THE PARTIES - DUMPING

PARTIES CONTENDING THAT CONTINUED OR RESUMED DUMPING IS LIKELY

Canadian Producers

[57] The Canadian producers made representations through their ERQ response as well as in their case briefs in support of their position that continued or resumed dumping from the Named Countries is likely should the present findings be allowed to expire. Accordingly, the Canadian producers contend that the measures should remain in place.

[58] The Canadian producers presented many common arguments which focus largely on the detrimental effects of worldwide recession with its accompanying reduction in construction activity and underutilization of production capacity. The Canadian producers believe that these factors together with new production capacity of copper pipe fittings will inevitably lead to dumping if left unrestrained by regulatory measures such as those found in SIMA.

[59] The Canadian producers' position that if the Tribunal's findings are allowed to expire, dumping of the goods is likely to continue or resume from the Named Countries, is based predominantly on a number of global and country specific factors identified below.

Position of the Canadian producers regarding global copper pipe fitting issues

[60] The Canadian producers collectively identified certain global conditions related largely to the production of and capacity for copper-based products and specifically for copper pipe fittings as significant in arguing that the absence of the Tribunal's findings will lead to continued or resumed dumping of copper pipe fittings from the Named Countries. The main factors identified by the Canadian producers can be summarized as follows:

- excess capacity for copper pipe fittings is large and projected to grow worldwide in the face of continued recession in the construction market;
- the compounding effect of current non-subject export sources (i.e., other countries) selling low-priced copper pipe fittings into Canada; and
- the commodity nature of the subject goods facilitates dumping, as they are very price sensitive.

[61] The Canadian producers provided evidence to demonstrate that exporters in the Named Countries had significant excess capacity for copper pipe fittings during the POR.

[62] The Canadian producers cite a number of economic and business forecasts relating to copper demand generally, to construction and building materials forecasts in various markets, and to broader economic forecasts for Canada and elsewhere.

[63] These forecasts project weak economic growth in the United States, Europe, China and Korea and in the construction and housing markets in the United States, Korea and Europe for the remainder of 2011 and for 2012. The reports were taken from a variety of sources.

[64] According to the most recent Canadian Economic Outlook by the Bank of Montreal, Canadian and U.S. 2012 forecasts for Gross Domestic Product, non-residential construction and residential construction are conservative.²⁴

[65] Regarding the United States, the IMF's most recent comments are that "the recovery has proceeded at a relatively slow pace, as in the aftermath of other severe financial crises, and has recently weakened... Looking ahead, we expect growth to remain relatively modest, as private demand recovers only slowly and fiscal policy support is withdrawn."²⁵

[66] According to the International Wrought Copper Council, global demand for copper is expected to slow to 8.4% in 2011-2012, slowing substantially from the average growth of 16.4% between 2005 and 2010.²⁶

[67] The Associated Builders and Constructors published comments by several economists, including the following statements: "We're in for a relatively slow recovery this year with a 30% to 35% improvement in multifamily starts, but with single family starts going backward" and "From what we've seen so far in 2011, non residential construction will likely be further delayed...The economy has hit a soft spot and the construction job picture is flat".²⁷

[68] The Canadian producers indicated that one of the key developments in the Canadian market for copper pipe fittings during the POR was the steady increase in the volume of copper pipe fittings from non-subject countries.²⁸

[69] The Canadian producers indicated that importers began sourcing copper pipe fittings from non-subject countries such as Vietnam, Chinese Taipei, Spain and Indonesia and that these low-priced imports have in many cases displaced imports from the Named Countries.²⁹

²⁴ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 13.

²⁵ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 13.

²⁶ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 13.

²⁷ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 13.

²⁸ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 11.

²⁹ Exhibit 46 (NC) - Cello response to Producer ERQ, Question A21.

[70] In the face of continued recession in the construction market, the Canadian producers believe that “There is now an increasing number of manufacturers from around the world chasing a diminishing or stagnant Canadian market.”³⁰

Position of the Canadian producers regarding the United States

[71] The main factors identified by the Canadian producers for the United States can be summarized as follows:

- history of dumping arising from inability to compete at non-dumped prices;
- loss of market share arising from inability to compete at non-dumped prices;
- inability to compete against low-priced copper pipe fittings from other countries;
- reduced involvement of U.S. exporters in the Canadian market after the Tribunal’s findings were issued;
- excess production capacity;
- continued recession in the construction market.

[72] The Canadian producers indicated that Mueller, Elkhart and NIBCO, the primary exporters of subject goods from the United States during the POR, have a history of dumping copper pipe fittings into Canada going back 18 years.³¹ The Canadian producers indicated that this has continued by citing the collection of CAN\$1,133,814 in SIMA duties during the POR on imports of the subject goods from the United States.³²

[73] Citing information from the administrative record, the Canadian producers noted that imports of subject goods from the United States declined from the period of April 2005 to March 2006 (the period prior to the Tribunal’s findings) to the first quarter of 2010.³³ During the same period, Canadian producers increased their share of the Canadian market reaching a peak in 2009. Finally, the Canadian producers noted that exporters from all non-subject countries increased their share of the Canadian market reaching a peak in 2010.³⁴

[74] The Canadian producers claimed that the loss of market share has arisen from the U.S. exporters’ inability to compete at non-dumped prices³⁵ and inability to compete against low-priced copper pipe fittings from other countries.³⁶

[75] The Canadian producers noted that Lee Brass had exported subject goods to Canada prior to the finding of the Tribunal but subsequently exited the Canadian market and did not obtain normal values in any re-investigation during the POR. The Canadian

³⁰ Exhibit 46 (NC) - Cello response to Producer ERQ, Question A21.

³¹ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 17. This remark is making reference to a previous dumping investigation involving only the United States for which a finding was issued on October 18, 1993 (CITT Inquiry No.: NQ-93-001) and rescinded on October 16, 1998.

³² Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 17.

³³ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 7.

³⁴ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 11.

³⁵ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraphs 7 and 10.

³⁶ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 11.

producers concluded that “Lee Brass has been unable to compete in the Canadian market under normal values disciplines.”³⁷

[76] The Canadian producers cited the excess production capacity for copper pipe fittings in the United States as reported to the CBSA by Elkhart, Mueller, NIBCO and Lee Brass.³⁸

[77] The Canadian producers cited NIBCO’s 2012-2013 outlook for the U.S. market: “continued low sales, low capacity utilization and lower profits.”³⁹

[78] The Canadian producers reproduced the following statements taken from the 2011 First Quarter Results for Mueller Industries, Inc.:

“The construction sector remains anemic. On the residential side, foreclosures and the threats thereof weigh on weak demand caused by poor jobs growth, even though mortgage rates are low and favorable affordability conditions exist. As for commercial construction, private nonresidential activity suffers from high vacancy rates.”⁴⁰

[79] The Canadian producers concluded their position regarding the United States by stating the following:

“it is highly probable that if the current order [finding] is allowed to expire, U.S. exporters will abandon the pricing discipline imposed by the normal value regime in order to regain market share as they compete with each other and with imports from non-subject countries.”⁴¹

Position of the Canadian producers regarding Korea

[80] The main factors identified by the Canadian producers for Korea can be summarized as follows:

- history of dumping arising from inability to compete at non-dumped prices;
- reduced involvement of Korean exporters in Canadian market arising from the Tribunal’s findings;
- loss of market share arising from low-priced copper pipe fittings from other countries;
- excess production capacity;
- plans for adding production capacity;
- continued recession in the construction market.

³⁷ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 20.

³⁸ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraphs 18 and 20.

³⁹ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 19.

⁴⁰ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 13.

⁴¹ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 21.

[81] The Canadian producers claimed that the fact that anti-dumping duty was collected on subject goods from Korea⁴² shows that Korean exporters were unable to compete in the Canadian market under the system of normal values.

[82] The Canadian producers noted that at the time of the dumping investigation while the CBSA identified 15 exporters of subject goods from Korea, only Jungwoo obtained normal values. The Canadian producers indicated that another Korean exporter, SMI Co. Ltd. (SMI), ceased exporting to Canada following the finding of the Tribunal and did not seek normal values during the POR.⁴³ The Canadian producers noted a third Korean exporter, Poongsan Industrial Corp. (Poongsan), which the Canadian producers indicated had exported subject goods to Canada prior to the finding of the Tribunal, also ceased exporting to Canada.⁴⁴ The Canadian producers contend that the fact that certain Korean exporters left the Canadian market and did not seek normal values after the finding of the Tribunal indicates that they were unable to compete in the Canadian market under the system of normal values.

[83] The Canadian producers contended that the system of normal values was in part responsible for Jungwoo's inability to increase exports to Canada while increasing exports to other countries during the POR.⁴⁵

[84] The Canadian producers suggested that the increase in imports of copper pipe fittings from non-subject countries was another reason that Jungwoo was unable to increase its exports to Canada. The Canadian producers noted Jungwoo's response to the ERQ where the exporter had indicated that low priced imports from Vietnam had caused the company to be unable to increase its sales in Canada.⁴⁶

[85] The Canadian producers noted Jungwoo's excess capacity at the end of 2010 and, together with the production capacities of Poongsan and SMI, indicated that Korean exporters had the potential to supply the Canadian market for copper pipe fittings many times over.⁴⁷ In addition, Cello indicated that it believed that Jungwoo is moving to a new manufacturing facility with greater production capacity.⁴⁸

[86] The Canadian producers noted that Jungwoo has stated that demand in Korea during the POR was depressed due to the worldwide recession and expects that demand will only recover gradually.⁴⁹ The Canadian producers claim that this is consistent with other evidence on the record that forecasts continued weakness in the Korean economy. The Canadian producers cite an article from the Wall Street Journal indicating that there was a decline of 6.7% in construction investment in Korea in the first quarter of 2011 and

⁴² Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 22.

⁴³ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 22.

⁴⁴ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 22.

⁴⁵ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 23.

⁴⁶ Exhibit 40 (NC) - Jungwoo response to Exporter ERQ, Question B22. Jungwoo also identified imports into Canada from the United States as a reason why it was unable to increase shipments to Canada.

⁴⁷ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraphs 24 and 26.

⁴⁸ Exhibit 46 (NC) – Cello response to Producer ERQ, Question A25.

⁴⁹ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 25.

a second article from the International Monetary Fund that mentions the ongoing weakness in the construction sector in Korea.⁵⁰

[87] The Canadian producers concluded their position regarding Korea by stating the following:

“if the current order [finding] is allowed to expire, Jungwoo and other South Korean exporters will abandon the pricing discipline imposed by the normal value regime in order to gain market share and resume dumping in the Canadian market.”⁵¹

Position of the Canadian producers regarding China

[88] The main factors identified by the Canadian producers for China can be summarized as follows:

- history of dumping arising from inability to compete at non-dumped prices;
- reduced involvement of Chinese exporters in Canadian market arising from the Tribunal’s findings;
- excess production capacity;
- warehouse distribution centers with significant inventories located in the United States;
- redirection of shipments from other countries;
- forecasts of reduced growth in China.

[89] The Canadian producers claimed that the fact that CAN\$691,152 in SIMA duty⁵² was collected on subject goods from China shows that Chinese exporters were unable to compete in the Canadian market under the system of normal values.⁵³

[90] The Canadian producers noted that at the time of the dumping investigation, the CBSA had identified 90 exporters of subject goods from China. The Canadian producers indicated that only two exporters in China responded to the questionnaire of the CBSA and that throughout the POR only one exporter in China has obtained normal values with the remaining Chinese exporters exiting the Canadian market. The Canadian producers provided information showing the decline in the volume of imports of subject goods from China before and after the Tribunal’s findings.⁵⁴

[91] The Canadian producers contended that the fact that certain Chinese exporters left the Canadian market and did not seek normal values after the findings of the Tribunal was because they were unable to compete in the Canadian market under the system of normal values.

⁵⁰ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 13.

⁵¹ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 26.

⁵² Exhibit 85(NC) – Import and Enforcement Statistics for Period of Review.

⁵³ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 28.

⁵⁴ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 28.

[92] The Canadian producers provided information about exports from China to the United States of goods under harmonized system codes 7412.10 (copper tube or pipe fittings of refined copper) and 7412.20 (copper tube or pipe fittings of copper alloys) and claimed that the value of exports from China to the United States is evidence of the export orientation of Chinese producers of copper pipe fittings as well as an indication of the potential volume of dumped copper pipe fittings that could be directed to the Canadian market should the Tribunal's findings be allowed to expire.⁵⁵

[93] Cello indentified one Chinese producer, Zhejiang Hailiang Co. Ltd., (Hailiang). It claimed that Hailiang had exported to Canada prior to the Tribunal's findings and had continued to maintain a presence in the Canadian market by exporting from its related company, Hailiang (Vietnam) Metal Products Co., Ltd., in Vietnam.⁵⁶

[94] In addition to opening a large manufacturing facility in Vietnam from where it now exports to Canada, Cello also claimed that Hailiang has three warehouse distribution centers in the United States with easy access to the Canadian market.⁵⁷

[95] The Canadian producers claimed that forecasted growth in China is now less likely. The Canadian producers cited a statement from researchers at Credit Suisse that "China's economy might avoid a hard landing but that growth over the next year was likely to be less robust"⁵⁸ and from the New York Times that "Several economists in China have recently lowered their growth forecasts for this year and the next year to about 8.5%."⁵⁹

[96] The Canadian producers concluded their position regarding China by stating the following:

"if the current order [finding] is allowed to expire, it is highly likely that Chinese exporters will resume and continue dumping copper pipe fittings in the Canadian market."⁶⁰

PARTIES CONTENDING THAT CONTINUED OR RESUMED DUMPING IS UNLIKELY

Exporters

[97] Only one U.S. exporter, Elkhart, made representations through their ERQ response that specifically addressed their position that, in the absence of the Tribunal's finding, they are unlikely to resume dumping of copper pipe fittings in Canada.

[98] Elkhart cited the determination of the President of the CBSA during the dumping investigation in which Elkhart was found not to have been dumping during the original period of investigation, a period prior to anti-dumping measures being put into place.

⁵⁵ Exhibit 113 (NC) – Cello/Bow Supplemental Case Brief, paragraphs 3-5.

⁵⁶ Exhibit 46 (NC) – Cello response to Producer ERQ, Question A25.

⁵⁷ Exhibit 46 (NC) – Cello response to Producer ERQ, Question A25.

⁵⁸ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 13.

⁵⁹ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 13.

⁶⁰ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 32.

Elkhart stated that this is an indicator that dumping will not continue or resume in the future. Elkhart contends that any dumping that has occurred on subject goods it shipped to Canada since the Tribunal's finding was minor and was the result of pricing errors or shipping an individual product without a specific normal value. Finally, Elkhart noted that it has attempted to ship subject goods to Canada at or above the normal values.⁶¹

[99] The Korean exporter, Jungwoo, also made representations through their ERQ response that specifically addressed their position that, in the absence of the Tribunal's finding, they are unlikely to resume dumping of copper pipe fittings in Canada.

[100] Jungwoo noted that its export quantity of subject goods to Canada had not fluctuated during the POR and indicated that it does not have the intention to increase that quantity should the finding be allowed to expire.⁶² Jungwoo cited price competition in the Canadian market for copper pipe fittings from exporters in Vietnam and the United States as the reason it does not believe it can increase market share in Canada and that the company will focus its export trade on countries other than Canada. Jungwoo also indicated that it does not intend to sell to Canada at prices lower than prices in its other markets.

CONSIDERATION AND ANALYSIS - DUMPING

[101] In establishing whether the expiry of the findings are likely to result in the continuation or resumption of dumping, the President may consider any factor specifically identified in paragraphs (a) to (i) of subsection 37.2(1) of the SIMR, as well as any other factors relevant under the circumstances when rendering a determination pursuant to paragraph 76.03(7)(a) of SIMA.

[102] Before presenting a country-by-country analysis on the likelihood of continued or resumed dumping in the absence of the Tribunal's findings, there are certain issues that relate to the goods on a broader scale which are as follows:

Commodity nature of copper pipe fittings

[103] Generally speaking, copper pipe fittings produced either by a Canadian manufacturer or by a foreign manufacturer are physically interchangeable. Consequently, copper pipe fittings are extremely price-sensitive.

[104] From its Statement of Reasons "The Tribunal notes that imports from all the subject countries compete on the basis of price and, in turn, compete with the prices of domestic producers. This competition may not always be at the same accounts, but, given that the purchasers in the marketplace compete with one another, their demands result in strong price-based competition between their suppliers."⁶³

⁶¹ Exhibit 49 (NC) – Elkhart response to Exporter ERQ, Question B22.

⁶² Exhibit 40 (NC) - Jungwoo response to Exporter ERQ, Question B22.

⁶³ Exhibit 2 (NC) - Certain Copper Pipe Fittings, Inquiry No. NQ-2006-002, *Statement of Reasons*, 6 March 2007, paragraphs 104 and 105.

[105] Peter Howell, Cello's Vice-President of Sales and Marketing has noted, "a 5% price difference will routinely cause me to lose a sale and customers switch suppliers for pennies."⁶⁴

Copper pipe fittings market developments and trends

1. THE SHIFT IN IMPORTS OF COPPER PIPE FITTINGS FROM THE NAMED COUNTRIES TO IMPORTS FROM OTHER COUNTRIES

[106] During the POR there was an apparent shift in imports of copper pipe fittings into Canada from the Named Countries to imports from other countries into Canada. While the names of importers, their suppliers and the circumstances that lead them to purchase copper pipe fittings from the other countries can not be disclosed for confidentiality reasons, their decisions appear to be based on costs.

[107] Imports from other countries significantly increased their share of the apparent Canadian market in value and volume in 2010 before declining in the last three months of the POR.

[108] The CBSA believes that the entry of low-priced sources of supply from the other countries will have a significant impact on the Canadian market throughout 2011 and beyond. The existence of these alternate sources of supply may compel exporters in the Named Countries to sell to Canada at lower prices in order to regain/maintain market share.

2. THE IMPACT OF INCREASING COPPER PRICES ON THE DEMAND FOR COPPER PIPE FITTINGS

[109] Copper is the primary material used in the production of copper pipe fittings accounting for 75% to 85% of the total cost of a copper pipe fitting. Accordingly, a change in the price of copper has a significant impact on both the total cost and the selling price of copper pipe fittings.

[110] Copper is traded on three commodity exchanges: the London Metal Exchange (LME), the Commodities Exchange Division of the New York Mercantile Exchange (COMEX/NYMEX), and the Shanghai Metal Exchange (SHME).

[111] The price of copper fluctuated significantly during the POR. In April 2008, the COMEX price of copper was US\$3.93/pound.⁶⁵ Within six months copper prices would drop by close to half of this level and further drop to as low as US\$1.39/pound in December 2008 in response to the global financial crises. Prices then recovered and rose steadily through 2009. A short term drop in the late spring and early summer 2010 was followed by a steady rise throughout the remainder of 2010 with the price of copper peaking to US\$4.17/pound in December of that year. Prices stayed high in the first quarter

⁶⁴ Exhibit 13 (NC) - Public version of CITT's administrative record, Public Statement of Peter Howell, 2 May 2011, paragraph 13.

⁶⁵ Exhibit 22 (NC) - COMEX Price of Copper, by month for the period January 2007 to March 2011.

of 2011 primarily in response to strong demand resulting from economic growth in China and other developing countries.

[112] While periods of higher copper prices have prompted importers to seek out alternate sources of supply of copper pipe fittings, higher copper prices have also impacted on the market for copper pipe fittings by making lower-priced alternative or replacement products more attractive.

[113] According to NIBCO, “Product substitution is expected to continue and increase as raw material prices remain high – specifically by press-to-connect and push-to-connect products. Other product substitutions include stainless steel systems and plastics, which are less expensive when raw material reaches certain levels.”⁶⁶

[114] Streamline Copper & Brass Ltd. stated “the volatility in the price of copper can cause demand to drop in copper pipe fittings as the high price of copper can result in the substitution of copper pipe fittings for lower-priced plastic piping systems.”⁶⁷

[115] In its ERQ response, EMCO indicated “The major changes in Canada affecting Copper Pipe Fittings include Residential housing construction moving to PEX [cross-linked polyethylene], the emergence of Push and Press joining technologies [non-soldered fittings] the Commercial building approval of larger diameter plastics, plus the price escalation of Copper making alternative materials more attractive.”⁶⁸

[116] Finally, BMI stated “During the POR, the price of copper has had a direct and immediate effect on copper pipe, the principal financial cost factor in a copper pipe and fitting assembly. Alternative product assemblies are gaining ground on copper because of the high price of raw copper.”⁶⁹

[117] The majority of the interested parties believe that future demand for copper pipe fittings is uncertain and, based on recent events, will remain depressed.

[118] Cello and Bow stated that future demand for copper pipe fittings will depend on the pace of economic recovery in Canada and abroad and the extent to which such a recovery results in increased residential and commercial construction and they submitted various articles and reports indicating that demand for copper pipe fittings in Canada and elsewhere will remain depressed in the near term.⁷⁰

[119] Importers are also skeptical about future demand for copper pipe fittings. EMCO believes that the market will continue to shrink.⁷¹

⁶⁶ Exhibit 32 (NC) – NIBCO response to Exporter ERQ, Question B20.

⁶⁷ Exhibit 55 (NC) - Streamline Copper & Brass Ltd. response to Importer ERQ, Question B15.

⁶⁸ Exhibit 42 (NC) - EMCO Corp. response to Importer ERQ, Question B11.

⁶⁹ Exhibit 37 (NC) - BMI response to Importer ERQ, Question B15(a).

⁷⁰ Exhibit 110 (NC) – Cello/Bow Case Brief, paragraph 13.

⁷¹ Exhibit 42 (NC) - EMCO Corp. response to Importer ERQ, Question B13.

[120] In conclusion, the current economic climate of high copper prices and declining demand for copper pipe fittings has driven exporters to be more aggressive in marketing copper pipe fittings in all of their markets.

LIKELIHOOD OF CONTINUED OR RESUMED DUMPING

[121] Guided by the factors in the aforementioned SIMR and having considered the information on the administrative record, the ensuing list represents a summary of the factors considered most relevant to the analysis conducted in this review with respect to the likelihood of continued or resumed dumping of the goods:

- exporters have been unable to compete at non-dumped prices and have either stopped exporting to Canada or have continued to export subject goods to Canada at dumped prices while the findings were in place;
- exporters are struggling with excess capacity as well as new capacity and increased production in other countries such as Vietnam;
- exporters in the United States are facing import pressures from such countries as China and Korea;
- importers are increasingly turning to foreign sources of supply from countries other than the Named Countries including Chinese Taipei, Indonesia, Vietnam and Spain;
- recent pricing data appears to indicate that the exporters in other countries are selling copper pipe fittings to Canada at prices that are lower than normal values issued to exporters in the Named Countries;
- exporters in all countries are trying to cope with a continued recession in the construction market and the substitution of other types of pipe fittings arising from high copper prices.

[122] The following country specific analysis begins with the United States, followed by Korea, and China.

United States

[123] The supply of copper pipe fittings to the U.S. domestic market is dominated by four American companies; NIBCO, Mueller, Elkhart and Lee Brass. IAS does not manufacture copper pipe fittings but purchases the fittings in the United States that are subsequently used by various intracity and intercity bus transit manufacturers.⁷²

[124] SIMA duties totalling CAN\$1,133,814 were paid during the POR. The majority of SIMA duties collected was based on the application of the ministerial specification which provides that where a specific normal value has not been determined for a product, the normal value is equal to the export price advanced by 242%.

[125] The volume of imports into Canada of copper pipe fittings during the POR indicates a continued interest in the Canadian market on behalf of some of the U.S. exporters. The imposition of anti-dumping duties of over CAN\$1.1 million, either from

⁷² Exhibit 68 (NC) - Interstate Assembly Systems response to Exporter ERQ, Question A2.

exporters selling below normal value or without specific normal values, demonstrates an apparent inability to compete in the Canadian market at non-dumped prices.

[126] While Lee Brass participated in the dumping investigation, it later chose not to export to Canada. Other U.S. exporters also left the Canadian market after the Tribunal issued its finding with respect to the United States. This demonstrates an apparent inability to compete in the Canadian market at non-dumped prices.

[127] It is apparent that U.S. exporters are struggling with excess capacity. While details concerning each of the exporter's plant capacity, production and capacity utilization can not be disclosed for confidentiality reasons, based on the information on the administrative record the overall production of U.S. exporters declined by almost 21% between 2008 and 2010.

[128] In addition, a number of exporters responded that they produce other products on the same machinery and equipment used in the production of copper pipe fittings. This additional capacity would be available to the exporters in the event that they wanted to produce additional copper pipe fittings for sale to Canada.

[129] In addition to dealing with excess capacity in their respective companies, U.S. exporters must also deal with new capacity and increased production in other countries. China Hailiang Group is one of world's largest manufacturers of copper pipe fittings and pipes with a manufacturing capacity of more than 200,000 tons [400 million pounds]/year.⁷³ This Chinese company has started a new copper pipe fitting facility in Vietnam with a production capacity equal to 33 million pounds.⁷⁴

[130] Exporters from the United States face import pressures of copper pipe fittings from countries such as China and Korea. Information concerning imports into the United States of HS classification numbers 7412-10 and 7412-20 reveal that imports in 2010 from China and Korea surpassed levels reached in 2008. Further, results for the first quarter of 2011 projected for the entire year point to record imports in 2011 from Korea and continued import pressure from China. The increasing volume of imports into the United States may prompt U.S. exporters to attempt to increase sales into their export markets, including Canada.

[131] There has been a shift in imports into Canada from the Named Countries to imports from other countries. Importers in Canada are purchasing copper pipe fittings from other countries because of lower prices.

[132] In his statement to the Tribunal in response to the Tribunal's notice of expiry of its findings on copper pipe fittings, Peter Howell, Cello's Vice-President of Sales and Marketing, stated "the shift to imports from non-subject countries also leads us to believe

⁷³ Exhibit 21 (NC) - Manufacturers and vendors of copper pipe fittings from the People's Republic of China and the Republic of Korea, Hailiang.PDF.

⁷⁴ Hailiang Annual Financial Statement 2010, <http://www.cninfo.com.cn/finalpage/2011-04-21/59304898.PDF>, Page 48.

that if normal values were not in place, subject imports would have to be dumped in order to regain their share of the Canadian market.”⁷⁵

[133] Since copper pipe fittings are a commodity based product, price is a major factor in the purchasing decision. As a result, U.S. exporters would have to compete against these low-priced imports in Canada in order to maintain or secure additional market share.

[134] While details concerning importers’ purchase prices of copper pipe fittings from other countries can not be disclosed for confidentiality reasons, based on the information on the administrative record there were a number of importations from Vietnam and Spain that disclosed that importers purchased copper pipe fittings for less than the normal values issued to U.S. exporters.

[135] Future demand for copper pipe fittings is uncertain. Exporters in the United States have had to contend with a continued recession in the construction market and substitution of other types of pipe fittings arising from higher copper prices.

[136] According to Lee Brass “The housing market has had a devastating effect on the sale of this product. Foreclosures, glut of existing homes on the market, economic conditions, etc. all contribute to the lack of housing starts which mostly utilize this product. It is our impression that the housing market will not return to its glory days for another 7 to 10 years.”⁷⁶ Mueller is somewhat more optimistic expecting a modest increase in demand for copper pipe fittings as the U.S. housing market recovers from the economic recession.⁷⁷

[137] In the face of declining or stagnant demand for copper pipe fittings, exporters in the United States may be more willing to aggressively compete in foreign markets, including Canada.

President’s Determination – United States

[138] Based on the information on the record in respect of: the fact that copper pipe fittings are a commodity product and are sold on the basis of price; that exporters have either stopped exporting to Canada or have continued to export subject goods to Canada at dumped prices while the finding was in place because they may be unable to compete at non-dumped prices; have had declining sales of copper pipe fittings in the United States, Canada and other export markets; have substantial excess production capacity; are struggling with import pressures of copper pipe fittings entering the United States from countries such as China and Korea; are besieged by a shift in imports of copper pipe fittings into Canada from countries not covered by the Tribunal’s findings such as Vietnam and Spain, and, are facing an uncertain future demand for copper pipe fittings because of continued recession in the construction market and substitution of other types of pipe fittings arising from higher copper prices, the President determined that the expiry of the finding in respect of copper pipe fittings originating in or exported from the

⁷⁵ Exhibit 13 (NC) - Public version of CITT's administrative record, paragraph 14.

⁷⁶ Exhibit 34 (NC) - Lee Brass response to Exporter ERQ, Question B19.

⁷⁷ Exhibit 57 (NC) - Mueller Industries Inc. and Mueller Streamline Co. response to Question B20.

United States is likely to result in the continuation or resumption of dumping of these goods into Canada.

Korea

[139] The CBSA received an ERQ response from one exporter, Jungwoo, the only Korean company that has participated in the CBSA's past three re-investigations. Jungwoo made representations through their ERQ response that specifically addressed their position that, in the absence of the Tribunal's finding, they are unlikely to resume dumping of copper pipe fittings in Canada.

[140] Other Korean exporters besides Jungwoo were identified in the CBSA's dumping investigation. The fact that Jungwoo was the only Korean company that continued to export copper pipe fittings to Canada after the Tribunal's finding suggests that other Korean exporters stopped shipping to Canada because they may be unable to compete at non-dumped prices.

[141] While details concerning the collection of SIMA duties can not be disclosed for confidentiality reasons, based on the information on the administrative record SIMA duties totalling CAN\$83,290 were paid by importers in 2008 on shipments into Canada from Jungwoo and other exporters. This fact demonstrates that Jungwoo was unable to compete in the Canadian market at non-dumped prices at some point in the POR.

[142] While details concerning Jungwoo's plant capacity, production and capacity utilization can not be disclosed for confidentiality reasons, Jungwoo also had to deal with excess capacity.

[143] As noted earlier, there has been a shift in imports from the Named Countries to imports from other countries. Importers are purchasing copper pipe fittings from other countries because of lower prices.

[144] Since copper pipe fittings are a commodity based product, price is a major factor in the purchasing decision. As a result, Jungwoo and other Korean exporters would have to compete against these low-priced imports in Canada in order to maintain market share.

[145] While details concerning importers' purchase prices of copper pipe fittings from other countries cannot be disclosed for confidentiality reasons, based on the information on the administrative record there were a number of importations from Vietnam that disclosed that importers purchased copper pipe fittings for less than the normal values issued to Jungwoo.

[146] While acknowledging that it does not plan to pursue the market in Canada because of "keen competition owing to import lower price [lower import prices] from other country, specifically Vietnam, U.S.,"⁷⁸ but intends to pursue specific export markets, namely the European Union and South America (especially Mexico),⁷⁹ low priced copper

⁷⁸ Exhibit 40 (NC) - Jungwoo response to Exporter ERQ, Question B22.

⁷⁹ Exhibit 40 (NC) - Jungwoo response to Exporter ERQ, Question B18.

pipe fittings from other countries may compel Jungwoo to offer lower prices in its other export markets, including Canada.

[147] Korea's construction industry was not immune from the worldwide recession during the POR nor is it protected from the impact of high copper prices and substitution of other types of pipe fittings.

President's Determination – Korea

[148] Based on the information on the record in respect of: the fact that copper pipe fittings are a commodity product and are sold on the basis of price; that exporters have either stopped exporting to Canada or have continued to export subject goods to Canada at dumped prices while the finding was in place because they are unable to compete at non-dumped prices; have had declining sales of copper pipe fittings in their domestic market; have substantial excess production capacity; are besieged by a shift in imports of copper pipe fittings into Canada from countries not covered by the Tribunal's findings such as Vietnam, and, are facing an uncertain future demand for copper pipe fittings because of continued recession in the construction market and high copper prices, the President determined that the expiry of the finding in respect of copper pipe fittings originating in or exported from Korea is likely to result in the continuation or resumption of dumping of these goods into Canada.

China

[149] As noted earlier, no Chinese copper pipe fitting exporters provided a response to the ERQ, nor did any Chinese exporters file case briefs or reply submissions.

[150] Zhuji City Howhi Air Conditioners Made Co. (Howhi) is the only Chinese exporter that has participated during the last three CBSA re-investigations of normal values and export prices for copper pipe fittings.

[151] Other Chinese exporters besides Howhi were identified in the CBSA's dumping investigation. The fact that Howhi was the only Chinese company that continued to export copper pipe fittings to Canada after the Tribunal's finding suggests that other Chinese exporters stopped shipping to Canada because they may be unable to compete at non-dumped prices.⁸⁰

[152] Anti-dumping duties totalling CAN\$593,132 were paid during the POR. The majority of SIMA duties collected was based on the application of the ministerial specification which provides that where a specific normal value has not been determined for a product, the normal value is equal to the export price advanced by 242%.

[153] In the absence of participation from Howhi and other Chinese exporters, the CBSA relied on other information on the record in assessing the likelihood of continued or resumed dumping should the Tribunal's finding be allowed to expire.

⁸⁰ A second Chinese exporter, Tianli Pipe Fitting Co. Ltd., did participate in the dumping investigation and the first of the three re-investigations but declined to participate in the later two re-investigations.

[154] There are numerous exporters of copper pipe fittings in China. The Web site, www.Made-in-China.com, lists over 200 exporters of copper pipe fittings.⁸¹ The value of imports of copper pipe fittings from China into the United States in 2010⁸² underlines the immense production capacity of exporters of copper pipe fittings in China.

[155] As noted earlier, there has been a shift in imports into Canada from the Named Countries to imports from other countries. Importers in Canada are purchasing copper pipe fittings from other countries because of lower prices.

[156] Since copper pipe fittings are a commodity based product, price is a major factor in the purchasing decision. As a result, Howhi and other Chinese exporters would have to compete against these low-priced imports in Canada in order to maintain market share.

[157] While details concerning importers' purchase prices of copper pipe fittings from other countries cannot be disclosed for confidentiality reasons, based on the information on the administrative record there were a number of importations from Vietnam that disclosed that importers purchased copper pipe fittings for less than the normal values issued to Howhi.

[158] Over 40% of copper is used in construction and China makes up 27% of world copper demand.⁸³ Simon Hunt (copper analyst) forecasts that the combination of a slow down in real estate construction in China following successive increases in the Chinese central bank rate coupled with declining sales of consumer items both in China and to the United States and Europe will lead to a drastic collapse in the price of copper by 2013-2016.⁸⁴

[159] Given the continued economic downturn in China's foreign markets, namely the United States and Europe and more recently a softening of the Chinese domestic economy, there is a likelihood that Chinese exporters will have to look to other export markets like Canada to replace lost sales to customers in those foreign markets and within China itself.

President's Determination – China

[160] Based on information on the record in respect of the fact that copper pipe fittings are a commodity product and are sold on the basis of price; that exporters have either stopped exporting to Canada or have continued to export subject goods to Canada at dumped prices while the finding was in place because they are unable to compete at non-dumped prices; have substantial production capacity; are besieged by a shift in imports of copper pipe fittings into Canada from countries not covered by the Tribunal's findings such as Vietnam, and, are trying to cope with economic downturn in China's foreign markets and more recently a softening of the Chinese domestic economy, the President determined that the expiry of the finding in respect of copper pipe fittings originating in or

⁸¹ Exhibit 98 (NC) - Copper Pipe Fitting Companies in China.pdf

⁸² Exhibit 111 (PRO) - Import statistics of HS numbers 7412-10 and 7412-20 to the USA.

⁸³ Exhibit 98 (NC) – “China's Property Markets Are Forecasting Plunging Copper Prices”, Cullen Roche, 13 June 2010.

⁸⁴ The Likely Pattern for Copper Prices in 2011 & Beyond., Simon Hunt, 7 January 2011 and “Copper Seen as Falling 20% or more as China Economy Slows,” Simon Hunt, 5 July 2011.

exported from China is likely to result in the continuation or resumption of dumping of these goods into Canada.

POSITION OF THE PARTIES - SUBSIDIZING

PARTIES CONTENDING THAT CONTINUED OR RESUMED SUBSIDIZING IS LIKELY

Canadian Producers

[161] The Canadian producers made representations specifically concerning subsidizing in China.

[162] The main factors identified by the Canadian producers can be summarized as follows:

- the availability of various subsidy programs in China;
- the CBSA's final determination: 91% of subject goods from China were subsidized at a rate of 51%.

[163] Understanding that most Chinese exporters left the Canadian market following the Tribunal's finding the Canadian producers believe that access to subsidies is widespread.

CONSIDERATION AND ANALYSIS - SUBSIDIZING

[164] In making a determination under paragraph 76.03(7)(a) of SIMA whether the expiry of the finding in respect of goods from China is likely to result in the continuation or resumption of subsidizing of these goods, the President may consider factors identified in subsection 37.2(1) of the SIMR, as well as any other factors relevant in the circumstances.

LIKELIHOOD OF CONTINUED OR RESUMED SUBSIDIZING

China

[165] Guided by the aforementioned factors in subsection 37.2(1) of the SIMR, and having considered the information in the administrative record, the following list summarizes the most relevant aspects of the CBSA's analysis with respect to the recommendation that continued or resumed subsidizing of certain copper pipe fittings originating in or exported from China is likely:

- continued availability of subsidy programs for copper pipe fitting exporters;
- the volume of subsidized goods;
- the performance and likely future performance of Chinese exporters in respect of production capacity and exports;
- the GOC provision of subsidies to its manufacturers in the industrial sector.

[166] At the time of the original subsidy investigation in 2006, the President of the CBSA determined that 18 GOC programs and practices were available to non-cooperative exporters. These programs are identified below.

- A. Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area).
- B. Preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and in the economic and technological development zones.
- C. Preferential Tax Policies for Foreign-Invested Enterprises (FIE).
- D. Preferential Tax Policies for Foreign-Invested Export Enterprises.
- E. Preferential tax policies for enterprises with foreign investment which are technology intensive and knowledge-intensive.
- F. Preferential tax policies for the research and development of foreign-invested enterprises.
- G. Preferential tax policies for foreign invested enterprises and foreign enterprises which have establishments or places in China and are engaged in production or business operations purchasing domestically produced equipments.
- H. Preferential tax policies for domestic enterprises purchasing domestically produced equipments for technology upgrading purpose.
- I. Preferential tax policies for enterprises which provide employment for unemployed people.
- J. Tariff exemptions on imported materials.
- K. Reduction of corporate income tax.
- L. Value Added Tax (VAT) exemptions.
- M. Special land tax and land use exemptions.
- N. Preferential costs of services and infrastructure provided by government bodies or state-owned enterprises.
- O. Fund for international market exploration by SMEs.
- P. Exemption of tariff and import VAT for the imported technologies and equipments.

Q. Reduction in land use fees.

R. Purchase of goods from state-owned enterprises.

[167] Based on the results of the investigation, it was determined that two cooperative exporters did not receive any benefits associated with the alleged subsidy programs during the period under review.

[168] The amount of subsidy for uncooperative exporters was determined according to ministerial specification pursuant to subsection 30.4(2) of SIMA.

[169] It was found that 91% of the goods exported from China were subsidized. The weighted average amount of subsidy, expressed as a percentage of the export price, is equal to 51%. The amount of subsidy for non-cooperative exporters is equal to 17.73 Renminbi per kilogram.

[170] Detailed descriptions of the programs and explanations as to why they were regarded as subsidies subject to countervailing duties are contained in the CBSA's *Statement of Reasons* issued at the final determination.⁸⁵

[171] Neither the GOC nor the exporters in China provided responses to the CBSA for this expiry review investigation. As a result, the CBSA relied on the information that was submitted by the GOC in the 2010 re-investigation, as well as on publicly available data found on various government, organizational and media Web sites.

Availability of Subsidy Programs in China

[172] In its analysis into the likelihood of continued or resumed subsidizing of copper pipe fittings from China, the CBSA reviewed the GOC subsidy programs, which were found in the original subsidy investigation and in subsequent re-investigations to have been available to the exporters of this product. Following is a summary of the current status of each program.

A. Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area)

[173] The Preferential tax policies for enterprises with foreign investment established in special economic zones (excluding Shanghai Pudong area) was established to encourage foreign investment in special economic zones (SEZ). Under this program, a Foreign Invested Enterprise (FIE) may apply for and receive an exemption from national income tax in the first and second profitable years and a 50% reduction in the third, fourth, and fifth years of profitable operation.⁸⁶

[174] This program was terminated when the Enterprise Income Tax Law of the People's Republic of China (hereinafter the "new Tax Law") came into effect on January 1, 2008.

⁸⁵ Exhibit S1 (NC) - CBSA Statement of Reasons – Final Determination, 2 February 2007.

⁸⁶ Exhibit S18 (NC), Subsidy Programs in the People's Republic of China

Under the new Tax Law, a uniform income tax rate of 25% applies to all enterprises within the territory of China.

[175] However, pursuant to Article 57 of the new Tax Law, and the Notice of the State Council on the Implementation of the Transitional Preferential Policies in Respect of Enterprise Income Tax (GUOFA [2007] No. 39), enterprises that enjoyed a reduced income tax rate of 15% under the terminated program are permitted a five-year grace period to graduate to the statutory 25% rate. Each year of the five-year grace period, an enterprise's income tax rate increases to a prescribed rate, ultimately settling at 25% by the end of the fifth year. The Chinese producers of copper pipe fittings in China will continue to benefit from this program until as late as December 31, 2012.

B. Preferential tax policies for enterprises with foreign investment established in the coastal economic open areas and in the economic and technological development zones

[176] This program was established in order to encourage foreign investment in Economic and Technical Development Zones (ETDZs) in open coastal cities and encourage some districts to take the lead in development.

[177] The program was terminated and replaced by the Enterprise Income Tax Law of the People's Republic of China on January 1, 2008. The transitional rule of the preferential tax treatment in a five-year grace period was the same as the preferential tax policies for enterprises with foreign investment established in special economic zones. The Chinese producers of copper pipe fittings in China will continue to benefit from this program until as late as December 31, 2012.

C. Preferential Tax Policies for Foreign-Invested Enterprises (FIE)

[178] This program was established in order to encourage foreign investment. Under this program, from the year an FIE begins to make a profit, they may apply for and receive an exemption from income tax in the first and second years and a 50% reduction in the third, fourth, and fifth years of profitable operation.

[179] The program was terminated and replaced by the Enterprise Income Tax Law of the People's Republic of China on January 1, 2008. The transitional rule of the preferential tax treatment in a five-year grace period was the same as the preferential tax policies for enterprises with foreign investment established in SEZs. The Chinese producers of copper pipe fittings in China will continue to benefit from this program until as late as December 31, 2012.

D. Preferential Tax Policies for Foreign-Invested Export Enterprises

[180] This program was established to expand foreign economic cooperation. Under this program, export oriented enterprises invested in and operated by foreign businesses may pay a reduced income tax rate of 15% if their annual output value of all export products amounts to 70% or more of the output value of the products of the enterprise for that year.

[181] The program was terminated and replaced by the Enterprise Income Tax Law of the People's Republic of China on January 1, 2008. The transitional rule of the preferential tax treatment in a five-year grace period was the same as the preferential tax policies for enterprises with foreign investment established in special economic zones. The Chinese producers of copper pipe fittings in China will continue to benefit from this program until as late as December 31, 2012.

E. Preferential tax policies for enterprises with foreign investment which are technology intensive and knowledge intensive

[182] This program was established to further utilize foreign capital, introduce foreign advanced technology and equipment and accelerate industry structural adjustment. Under this program, production oriented enterprises with foreign investment established in the coastal economic open zones, SEZs, and in the old urban districts of municipalities where ETDZs are located and which are engaged in technology intensive and knowledge intensive projects, may receive a reduced income tax rate of 15%.

[183] The program was terminated and replaced by the Enterprise Income Tax Law of the People's Republic of China on January 1, 2008. The transitional rule of the preferential tax treatment in a five-year grace period was the same as the preferential tax policies for enterprises with foreign investment established in SEZs. The Chinese producers of copper pipe fittings in China will continue to benefit from this program until as late as December 31, 2012.

F. Preferential tax policies for the research and development of foreign invested enterprises

[184] This program was established to encourage the research and development of enterprises. Under this program, certain foreign investment enterprises may offset their taxable income by 150% of their R&D expenses for the same year, not to exceed the taxable income for the year.

[185] The program was terminated and replaced by the Enterprise Income Tax Law of the People's Republic of China on January 1, 2008. The transitional rule of the preferential tax treatment in a five-year grace period was the same as the preferential tax policies for enterprises with foreign investment established in SEZs. The Chinese producers of copper pipe fittings in China will continue to benefit from this program until as late as December 31, 2012.

G. Preferential tax policies for foreign invested enterprises and foreign enterprises which have establishments or place in China and are engaged in production or business operations purchasing domestically produced equipments

[186] Those programs were established in the Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises and to encourage foreign investment. Under this program, certain FIEs and foreign enterprises are eligible to receive a refund of 40% of the investment for the homemade equipment

purchase from the increased part of their enterprise income taxes of the purchasing year over those of the year before.

[187] The program was terminated and replaced by the Enterprise Income Tax Law of the People's Republic of China on January 1, 2008. The transitional rule of the preferential tax treatment in a five-year grace period was the same as the preferential tax policies for enterprises with foreign investment established in SEZs. The Chinese producers of copper pipe fittings in China will continue to benefit from this program until as late as December 31, 2012.

H. Preferential tax policies for domestic enterprises purchasing domestically produced equipments for technology upgrading purpose

[188] The preferential tax policies for domestic enterprises purchasing domestically produced equipments for technology upgrading purpose was established to encourage domestic investment and support the technology upgrading.

[189] Information from the GOC indicated the program was terminated and replaced by the Enterprise Income Tax Law of the People's Republic of China on January 1, 2008. The transitional rule of the preferential tax treatment in a five-year grace period will continue to benefit the manufacturers of copper pipe fittings in China.

I. Preferential tax policies for enterprises which provide employment for unemployed people

[190] This program was established in the Notice on Some Preferential Policies for Enterprise Income Tax Cai Shui Zi [94] No. 1 of 1994. This program was established to increase and encourage employment by encouraging newly established labour employment service enterprises in cities or towns that employ unemployed people.

[191] Information from the GOC indicated this program terminated when the Enterprise Income Tax Law of the People's Republic of China (hereinafter the "new Tax Law") came into effect on January 1, 2008. Under the new Tax Law, a uniform income tax rate of 25% applies to all enterprises within the territory of China. There is no transitional arrangement for this program.

J. Tariff exemptions on imported materials

[192] This program is limited to FIEs and foreign enterprises that fall under the Encouraged Category and Restricted B Category listed in the Directive Category of the Industries of Enterprises with Foreign Investment stipulated in the Circular of the State Council concerning the Adjustment of Taxation Policies for Imported Equipments (Guo Fa [1997] No. 37).

[193] Information from the GOC indicated that the program is still in effect and enterprises may continue to import equipment free from customs duties.

K. Reduction of corporate income tax

[194] This program was established in the *Regulations on Special Economic Zones in Guangdong Province* and approved for implementation on August 26, 1980. The program was established to absorb investment in SEZs and encourage districts to take the lead in development. Under this program, all eligible enterprises may receive a reduced corporate income tax rate of 15%.

[195] Information from the GOC indicated this program was terminated when the Enterprise Income Tax Law of the People's Republic of China (Exhibit E1-2) came into effect on January 1, 2008. There is no transitional arrangement for this program.

L. Value Added Tax (VAT) exemptions

[196] The exemptions of tariffs and import linked VAT is provided for and administered in accordance with the Circular of the State Council concerning the Adjustment of Taxation Policies for Imported Equipments (Guo Fa [1997] No. 37), which was established on December 29, 1997, and came into effect on January 1, 1998. This program was established to further expand foreign capital utilization, attract technologies and equipment from abroad, promote structural adjustments in industry and technological advancement and maintain the sustained, rapid and healthy development of the national economy. Under this program, enterprises meeting the eligibility criteria may apply for exemption from VAT on imported equipment and its related technologies, components, and parts.

[197] The GOC indicated that there was only one program in China concerning the tariff and value-added tax (VAT) exemptions on imported materials and equipment and enterprises still have the privilege of VAT exemptions.

M. Special land tax and land use exemptions

[198] The GOC indicated that the reduction of land use fee is a measure used in the transitional period that permitted FIEs to acquire land use rights without paying any other consideration before *Interim Regulations on Land Use Tax* came into effect on November 1, 1988. The program of reduction of land use fee is no longer in effect except with respect to those FIEs that were licensed for land usage before that date.

N. Preferential costs of services and infrastructure provided by government bodies or state-owned enterprises

[199] The GOC has stated it does not provide preferential costs of services or goods to producers of the subject goods located in the alleged areas, other than the general infrastructure and public services.

O. Fund for international market exploration by SMEs

[200] This program was established to support the development of SMEs, to encourage SMEs to join in the competition of international markets, to reduce the business risks of the enterprises, and to promote the development of the national economy.

[201] Information from GOC indicated that the program remained unchanged and the fund was still available to SMEs.

P. Exemption of tariff and import VAT for the imported technologies and equipments

[202] This program was established in order to attract foreign advanced technology and equipment and encourage structural improvement and technological advancement in industry.

[203] The GOC indicated that the program was partially terminated. The exemption of tariff is still applicable, but enterprises are no longer able to import equipment free of VAT.

Q. Reduction in land use fees

[204] The GOC confirmed that the program is the same program as the special land tax and land use exemptions and it is no longer in effect.

R. Purchase of goods from state-owned enterprises (SOE)

[205] The GOC claimed that neither the GOC nor any SOE has ever provided goods or services at less than market value to copper pipe fittings producers/exporters in China.

Other Factors Concerning Subsidies in China

[206] Since the conclusion of the original investigation and up to the conclusion of the most recent re-investigation, all subject goods originating in or exported from China (excluding subject goods exported to Canada by Tianli Pipe Fitting Co., Ltd. and Zhuji City Howhi Air Conditioners Made Co., Ltd.) have been assessed countervailing duties.

[207] Information on the administrative record indicates that during the POR the total volume of copper pipe fittings from China subject to countervailing duty was 77,814 pounds.⁸⁷ The total countervailing duty collected was CAN\$98,021.⁸⁸

[208] Chinese producers have continued their presence in the Canadian market through direct and indirect shipments while the finding was in place.

⁸⁷ Exhibit 84 (PRO) - Records of Payment of SIMA duties for the period January 2008 to March 2011, taken from the CBSA's internal information system FIRM (Facility for Information Retrieval Management).

⁸⁸ The amount of countervailing duty was established by applying a subsidy rate of 17.73 Chinese Renminbi per kilogram and converting to CAN\$ using the exchange rates of the Bank of Canada found in Exhibit 83 (NC).

[209] Also, as noted in the analysis of likelihood of the continued or resumed dumping, information on the record indicates that there are hundreds of copper pipe fitting manufacturers in China and their capacities for production of copper pipe fittings exceed the Canadian market many times over.⁸⁹ Many of the companies are located in the province of Zhejiang where there are both provincial and state development zones as well as export processing zones which offer subsidies.⁹⁰

[210] Finally, there is information on the record that indicates that Chinese copper pipe fitting producers rely heavily on export markets.⁹¹

[211] The World Trade Organization reported that between 1995 and 2010 there were 21 countervailing measures throughout the world imposed against exports from China.⁹² Of that total, eight of the countervailing measures from Canada concern industrial goods, namely base metals or articles of base metal.

[212] In Canada at the end of March 2011, in addition to the finding concerning the subsidizing of copper pipe fittings, there were countervailing measures in place respecting certain carbon steel fasteners, hot-rolled steel sheet, carbon steel welded pipe, seamless carbon or alloy steel oil and gas well casing, aluminum extrusions, certain steel grating and certain oil country tubular goods.

[213] The existence of these other subsidy findings and orders are further indications that the GOC continues to provide subsidies to its domestic producers and likely will continue to do so in the future.

President's Determination – China

[214] Based on the information on the record in respect of: the continued availability of subsidy programs for copper pipe fitting exporters in China; the volume of subsidized goods imported during the POR; the performance and likely future performance of Chinese exporters in respect of production capacity and exports; and, the GOC provision of subsidies to its manufacturers in the industrial sector, the President determined that the expiry of the finding in respect of copper pipe fittings originating in or exported from China is likely to result in the continuation or resumption of subsidizing of these goods into Canada.

REQUEST FOR EXCLUSION

[215] While Cello has indicated that it continues to produce cast copper fittings in Cambridge, two importers, BMI Canada Inc. and 4361814 Canada Inc., and an exporter

⁸⁹ Exhibit S97 (NC) - Various articles regarding the copper industry and China

⁹⁰ Investment in the Province of Zhejiang, <http://www.zhejiang.gov.cn/gb/node2/node1619/index.html>.

⁹¹ Exhibit S22 (NC) - Various articles on copper prices, copper pipe fitting company in China

⁹² World Trade Organization, Subsidies and Countervailing Measures against China, http://www.wto.org/english/tratop_e/scm_e/cvd_sect_distrib_meas_exp_country_e.xls

from the United States, Lee Brass, have asserted that Cello no longer produces cast copper pipe fittings and that the findings should not apply to these fittings.^{93, 94, 95}

[216] On November 13, 2009, Lee Brass filed a request with the Tribunal for an interim review of the findings stating that Cello, the only producer in Canada of cast copper pipe fittings at the time of the findings, had ceased production of these goods and, therefore, no longer required the protection of the findings. Specifically, Lee Brass was seeking exclusions from the findings for certain cast copper pipe fittings. BMI Canada and a second importer NCI Marketing Inc. noted that Lee Brass's request did not include all cast copper pipe fittings covered by the findings and submitted that, in the absence of production in Canada of all cast copper pipe fittings, there could be no valid basis for maintaining the findings against any cast copper pipe fittings.

[217] The Tribunal decided not to conduct an interim review of the findings. In providing its reasons, the Tribunal indicated that it was not satisfied that the domestic production of cast copper pipe fittings has ceased permanently. Furthermore, even if domestic production of cast copper pipe fittings had permanently ceased, the Tribunal stated that if it amended its findings to exclude cast copper pipe fittings such action would likely lead to the resumption or continuation of dumping of cast copper pipe fittings resulting in injury to the domestic production of wrought copper pipe fittings.⁹⁶

[218] The President's determinations cover all subject copper pipe fittings from the United States, Korea and China.

CONCLUSION

[219] For the purposes of making determinations in this expiry review investigation, the CBSA conducted its analysis within the scope of the factors contained in subsection 37.2(1) of the SIMR. Based on the foregoing consideration of pertinent factors and analysis of the information on the record, the President determined that:

- (i) the expiry of the finding made by the Tribunal on February 19, 2007, in Inquiry No. NQ-2006-002, in respect of certain copper pipe fittings originating in or exported from the United States is likely to result in the continuation or resumption of dumping of these goods into Canada;
- (ii) the expiry of the finding made by the Tribunal on February 19, 2007, in Inquiry No. NQ-2006-002, in respect of certain copper pipe fittings originating in or exported from Korea and China is likely to result in the continuation or resumption of dumping of these goods into Canada; and
- (iii) the expiry of the finding made by the Tribunal on February 19, 2007, in Inquiry No. NQ-2006-002, in respect of certain copper pipe fittings originating

⁹³ Exhibit 37 (NC) - BMI Canada Inc. response to Importer ERQ, Question B17.

⁹⁴ Exhibit 94 (NC) - 4361814 Canada Inc. response to Importer ERQ, Question B17.

⁹⁵ Exhibit 34 (NC) - Lee Brass response to Exporter ERQ, Question B22.

⁹⁶ Copper Pipe Fittings Interim Review No. RD-2009-002, Order and Reasons Issued February 5, 2010, Paragraph 19.

in or exported from China is likely to result in the continuation or resumption of subsidizing of these goods into Canada.

FUTURE ACTION

[220] On September 30, 2011, the Tribunal commenced its inquiry to determine if the continued or resumed dumping of copper pipe fittings from the United States, Korea and China and the continued or resumed subsidizing of these goods from China is likely to result in injury or retardation to the Canadian industry. The Tribunal has announced that it will issue its order no later than February 17, 2012.

[221] If the Tribunal determines that the expiry of its findings in respect of goods from the United States is likely to result in injury or retardation, the finding will be continued in respect of those goods, with or without amendment. If this is the case, the CBSA will continue to levy anti-dumping duties on dumped importations of copper pipe fittings originating in or exported from the United States.

[222] If the Tribunal determines that the expiry of its finding in respect of goods from Korea and China (dumping and subsidizing) is likely to result in injury or retardation, the finding will be continued in respect of those goods, with or without amendment. If this is the case, the CBSA will continue to levy anti-dumping duties on dumped importations of copper pipe fittings originating in or exported from these countries and countervailing duties on subsidized importations of copper pipe fittings originating in or exported from China.

[223] If the Tribunal determines that the expiry of its findings in respect of goods from the United States, Korea and China is unlikely to result in injury or retardation, the findings in respect of those goods will be rescinded. Anti-dumping and countervailing duties would no longer be levied on importations of copper pipe fittings beginning on the date the findings are rescinded.

INFORMATION

[224] This *Statement of Reasons* has been provided to persons directly interested in these proceedings. It is also posted on the CBSA's Web site, in English and in French, at the address below. For further information, please contact the officer identified as follows:

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