



Ottawa, Tuesday, October 3, 2000

Public Interest Investigation No.: PB-2000-002

IN THE MATTER OF representations as to whether the imposition, in whole or in part, of anti-dumping duties on imports of certain refrigerators, dishwashers and dryers originating in or exported from the United States of America and produced by, or on behalf of, White Consolidated Industries, Inc. and Whirlpool Corporation, their respective affiliates, successors and assigns, as a result of the Canadian International Trade Tribunal's findings dated August 1, 2000, relating to Inquiry No. NQ-2000-001 conducted under section 42 of the *Special Import Measures Act*, raises public interest issues that warrant further investigation under section 45 of the *Special Import Measures Act*.

DECISION

The Canadian International Trade Tribunal (the Tribunal) has determined that there is no public interest issue that warrants further investigation under section 45 of the *Special Import Measures Act*. Accordingly, the Tribunal will not conduct a public interest investigation into this matter.

Patricia M. Close

Patricia M. Close
Presiding Member

Pierre Gosselin

Pierre Gosselin
Member

Zdenek Kvarda

Zdenek Kvarda
Member

Michel P. Granger

Michel P. Granger
Secretary



Ottawa, Tuesday, October 3, 2000

Public Interest Investigation No.: PB-2000-002

**TRIBUNAL'S CONSIDERATION OF THE REQUESTS FOR A PUBLIC INTEREST
INVESTIGATION**

**IMPOSITION OF ANTI-DUMPING DUTIES ON IMPORTS OF CERTAIN
REFRIGERATORS, DISHWASHERS AND DRYERS ORIGINATING IN OR EXPORTED
FROM THE UNITED STATES OF AMERICA AND PRODUCED BY, OR ON BEHALF OF,
WHITE CONSOLIDATED INDUSTRIES, INC. AND WHIRLPOOL CORPORATION, THEIR
RESPECTIVE AFFILIATES, SUCCESSORS AND ASSIGNS**

BACKGROUND

The Canadian International Trade Tribunal (the Tribunal) conducted an inquiry respecting the dumping in Canada of certain top-mount electric refrigerators, electric household dishwashers and gas or electric laundry dryers originating in or exported from the United States of America and produced by, or on behalf of, White Consolidated Industries, Inc. (WCI) and Whirlpool Corporation (Whirlpool), their respective affiliates, successors and assigns. On August 1, 2000, pursuant to subsection 43(1) of the *Special Import Measures Act*,¹ the Tribunal found that:

1. the dumping in Canada of the aforementioned refrigerators had caused material injury to the domestic industry, excluding those:
 - with a capacity of 18.5 cubic feet and above; or
 - destined for use in the Habitat for Humanity Program;
2. the dumping in Canada of the aforementioned dishwashers had caused material injury to the domestic industry (Member Close dissenting), excluding those:
 - with stainless steel interiors (tubs); or
 - destined for use in the Habitat for Humanity Program; and
3. the dumping in Canada of the aforementioned dryers had caused material injury to the domestic industry (Member Close dissenting), excluding those:
 - with controls at the front, removable tops and chassis designed to be stacked on top of washers; or
 - destined for use in the Habitat for Humanity Program.

Subsection 45(2) of SIMA provides that “any person interested” in an inquiry under section 42 can make a request to make representations to the Tribunal on whether the Tribunal should report to the Minister of Finance that the Tribunal is of the view that the imposition, in whole or in part, of the anti-dumping duties

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

would not or might not be in the public interest.² The Tribunal is required under subsection 45(2) to afford that person an opportunity to make such representations.

With its injury findings of August 1, 2000, the Tribunal issued a letter which indicated that it would be accepting representations from all “interested persons” on the issue of whether the Tribunal should conduct a public interest investigation. In that letter, the Tribunal notified counsel and interested persons of the schedule for submissions regarding public interest representations. Interested persons wishing to make representations in support of a public interest investigation were requested to file their submissions on or before August 29, 2000. Interested persons wishing to respond to such representations were requested to file their responses on or before September 12, 2000. The Tribunal is of the view that no authorization other than its letter of August 1, 2000, was required in order for interested persons to make representations on the public interest, as long as they were made within the set time frames.

The Tribunal advised that, following consideration of the representations, it would decide, on or before October 3, 2000, whether the representations demonstrated that there was a public interest concern worthy of further investigation.

The Tribunal accepted 8 out of 10 representations that it received in support of a public interest investigation to eliminate the anti-dumping duties on the subject goods originating in or exported from the United States and produced by, or on behalf of, WCI and Whirlpool, their respective affiliates, successors and assigns.

The Tribunal did not accept the late submissions filed by the Commissioner of Competition and WCI and WCI Canada Inc. (WCI Canada). On September 15, 2000, the Tribunal received a motion from WCI and WCI Canada requesting that the Tribunal accept their submission of September 7, 2000. They noted that their submission did not introduce any factual or legal elements, but merely supported the submissions already received by the Tribunal. In addition, on September 18, 2000, the Tribunal received a letter from the Commissioner of Competition explaining why his submission was late and requested leave to file late. On September 21, 2000, the Tribunal denied the motion and request on the grounds that, as active parties in the inquiry under section 42 of SIMA, WCI and WCI Canada, the Commissioner of Competition and their counsel were well aware of the schedule for filing representations.

On September 12, 2000, Camco Inc. (Camco) and Maytag Corporation (Maytag) each filed a response submission opposing a public interest investigation.

SUMMARY OF SUBMISSIONS

Submissions in Support of a Public Interest Investigation and the Elimination of Anti-dumping Duties

The eight representations accepted by the Tribunal alleged several public interest considerations with respect to the effects of the anti-dumping duties. The submissions presented a number of reasons why access to the subject goods with no anti-dumping duties is warranted and requested the elimination of these duties.

2. In accordance with Tribunal procedures, WCI and WCI Canada Inc. made such a request to the Tribunal on April 26, 2000.

It was submitted that the imposition of the anti-dumping duties is not in the best interest of Canadian distributors or retailers and will result in significant injury to competition in Canada, contrary to the public interest. It was argued that the anti-dumping duties will cause economic damage to distributors and retailers that are not supported by Camco and that are near the U.S. border and will lose business to cross-border shopping.

Cantrex Group Inc. (Cantrex) and Appliance Canada submitted that, based on the new pricing from WCI Canada and Inglis Limited (Inglis), they were forced to increase their retail prices. Appliance Canada stated that it has increased prices by up to 25 percent. In addition to Cantrex and Appliance Canada, Sears Canada Inc. (Sears) notes that the imposition of the anti-dumping duties is not in the best interest of Canadian consumers, as it decreases affordable appliance choices for consumers. Hardest hit is the lower-priced, value segment of the market. These appliances are generally purchased by first-time buyers and lower-income consumers.

According to several submissions, the imposition of the anti-dumping duties will force consumers to pay a significant premium for the performance-enhancing features offered on the Whirlpool and WCI appliances.

Inglis submitted that the imposition of the anti-dumping duties will result in delays in the introduction of technological innovation to the market and gave a number of examples of Whirlpool products that would not be available to the Canadian consumer.

Inglis claimed that the imposition of the anti-dumping duties would impact its jobs in sales, marketing and distribution. Further, Inglis noted that there will be an impact on its sales of ranges produced in Canada and that the anti-dumping duties may jeopardize hundreds of manufacturing jobs in Quebec.

Finally, Inglis maintained that the anti-dumping duties would increase the price of new homes and have a depressive effect on the Canadian housing market.

B.C. Hydro and the Consumers' Association of Canada submitted that the imposition of the anti-dumping duties will force consumers to purchase products that use more energy and water. In addition, they state that the increased prices will lead consumers to choose products that will be more expensive to operate for the 15- to 20-year life of the product. The Sierra Club of Canada submitted that the price of energy will undoubtedly increase in the coming years in response to government efforts to reduce consumption, resulting in greater operating costs to consumers who purchase less efficient appliances, and that this will impair Canada's efforts to reach the greenhouse gas emission targets that it accepted when it signed the Kyoto Protocol. Finally, Inglis noted that this, in turn, will have an environmental impact, in particular, the deleterious effects on air and water caused by the loss of energy- and water-efficient products.

Submissions Opposing a Public Interest Investigation and the Elimination of Anti-dumping Duties

Camco and Maytag submitted that the requests made to the Tribunal to initiate a public interest investigation do not support the requirement that there be a public interest issue worthy of further investigation, in that they do not identify any public interest issue or "exceptional circumstances" that would demonstrate the need for further investigation. It was submitted that, in past cases where the Tribunal has

conducted public interest investigations,³ there was a broad and cross-sectoral range of user and competition issues that were worthy of further investigation.

Camco and Maytag submitted that there are no compelling reasons or circumstances present to warrant a public interest investigation for the following reasons.

There remains a multitude of suppliers of appliances in the Canadian market. These suppliers include Camco, General Electric Appliances (GEA), Maytag, Amana Company (Amana), Bosch Appliances North America (Bosch), Asko and Miele Appliances Ltd. (Miele). In addition to these suppliers, WCI and Whirlpool have not withdrawn from the Canadian market and continue to supply refrigerators, dishwashers and dryers.

There continues to be a number of secure sources of supply. The noted suppliers provide competitively priced appliances in the Canadian market. As evidenced by the number of players in the market, price competition in Canada continues despite the application of anti-dumping duties. The exclusions listed in the Tribunal's findings of August 1, 2000, allow for many competitively priced products produced by WCI and Whirlpool to enter Canada without anti-dumping duties. Camco notes that these appliances compete with certain appliances available from Camco and other suppliers.

The dumping margins for Whirlpool and, in particular, WCI are relatively low. In addition, approximately one quarter of the subject goods exported to Canada by WCI were not dumped. Therefore, the prices of these appliances have not changed as a result of the imposition of the anti-dumping duties. The Canadian consumer still has access to certain refrigerators, dishwashers and dryers that are not subject to anti-dumping duties, and other appliances have relatively low margins of dumping.

Camco, GEA, Maytag, Amana, Bosch, Asko and Miele all supply appliances with energy-efficient features and many technological innovations. Both Camco and Maytag provided examples of models of appliances that they produce that have high energy ratings and technological innovations.

Camco pointed out that, in the analysis done by the Department of Natural Resources (NRCan) regarding the implementation of Canada's new energy standards for refrigerators, NRCan indicates that the proposed effective date of December 31, 2002, will not have a significant impact on the total amount of energy savings/CO₂ emissions reduction that will be achieved by the amendment, since it is expected that most of the energy savings will occur between 2010 and 2020.

Inglis's assertions about housing and low-income families do not justify the commencement of a public interest investigation because there does not appear to be a genuine interest by groups representing low-income Canadians; the margin of dumping is not significant; there are other exporters not subject to the injury findings that continue to compete in the domestic market; and there is no indication that WCI and Whirlpool are ceasing to operate in the Canadian market.

Finally, Camco submitted that cross-border shopping will not be an issue because of the current exchange rate, delivery costs and the fact that all the subject goods are subject to anti-dumping duties whether imported for personal consumption or for resale in Canada.

3. See *Refined Sugar* (4 April 1996), PB-95-002 (CITT); and *Baby Food* (30 November 1998), PB-98-001 (CITT).

PUBLIC INTEREST CONSIDERATIONS

The Tribunal is of the view that section 45 of SIMA was included in Canada's anti-dumping and countervailing law in order to provide a means for the Tribunal to consider a broader set of interests than those addressed in an injury inquiry under section 42. However, for the Tribunal to proceed to a public interest investigation after making a finding of injury, it must be satisfied that there exist circumstances that demonstrate a public interest concern worthy of further investigation.⁴

While SIMA provides no guidance to the Tribunal as to the issues that are relevant to a determination as to what constitutes the public interest, the amendments to SIMA enacted in April 2000, which are not applicable in this investigation, but which provide guidance for this case, clarify the public interest provisions under section 45. The amendments provide that the Tribunal may initiate a public interest inquiry if there are "reasonable grounds" for doing so. The amended legislation prescribes, in paragraph 40.1(3)(b) of the *Special Import Measures Regulations*,⁵ factors that the Tribunal may consider in public interest inquiries.

It is in this context that the Tribunal has considered the requests for a public interest investigation. The following points were presented as the grounds in support of a public interest investigation.

- Canadian distributors and retailers will suffer significant injury. The imposition of anti-dumping duties will cause economic damage to distributors and retailers that are not supported by Camco and that are near the U.S. border and will lose business to cross-border shopping.
- The imposition of the anti-dumping duties will result in significant injury to competition in Canada.
- Prices have increased.
- The imposition of the anti-dumping duties decreases affordable appliance choices for Canadian consumers, particularly first-time buyers and lower-income consumers.
- Consumers will be forced to pay a significant premium for the performance-enhancing features offered on the Whirlpool and WCI appliances.
- There is an environmental impact, in particular, the harmful effects on air and water caused by the loss of energy- and water-efficient products. Canada's efforts to reach the greenhouse gas emission targets that it accepted when it signed the Kyoto Protocol will be impaired. The imposition of the anti-dumping duties will force consumers to purchase products that use more energy and water. Increased prices will lead consumers to choose products that will be more expensive to operate for the 15- to 20-year life of the product. In addition, the price of energy

4. For example, in the notice of commencement of a public interest investigation in *Certain Iodinated Contrast Media* (PB-2000-001), the Tribunal found that a number of factors existed which, when considered together, constituted circumstances that demonstrated a public interest concern worthy of further investigation. In reaching its decision, the Tribunal considered, in particular, the high margins of dumping, the nature and structure of the Canadian market, the choices of iodinated contrast media available to Canadian users and the cost of the choices, and the effects of the anti-dumping duties on the public health system and on the people that it serves.

5. S.O.R./2000-138, C. Gaz. 2000.II.776.

will undoubtedly increase in the coming years in response to government efforts to reduce consumption, resulting in greater operating costs to consumers who purchase less efficient appliances.

- There will be delays in the introduction of technological innovations to the market.
- There will be harm to Inglis jobs in sales, marketing and distribution.
- The sales of non-subject goods, such as the ranges produced in Canada, will be negatively impacted, which may jeopardize hundreds of manufacturing jobs in Quebec.
- The price of new homes will increase, and there will be a depressive effect on the Canadian housing market.

The Tribunal has carefully reviewed all the representations and submissions received, as well as the evidence and testimony adduced during the inquiry under section 42 of SIMA.

First and foremost, the Tribunal considered the availability of non-dumped appliances. It observed that there continues to be a number of suppliers of appliances in the Canadian market. These suppliers include Camco, GEA, Maytag, Amana, Bosch, Asko and Miele. In addition to these suppliers, the Tribunal notes that WCI and Whirlpool have not withdrawn from the Canadian market and continue to supply refrigerators, dishwashers and dryers.

Second, the Tribunal addressed the prospect that the imposition of the anti-dumping duties will significantly impair competitiveness in the Canadian marketplace by limiting access to appliances from WCI and Whirlpool. As evidenced by the number of suppliers in the Canadian appliance market, the Tribunal believes that price competition in Canada continues to be strong. Camco and Maytag submitted that they continue to be subject to strong competitive pressures in the market because of the sustained presence of WCI and Whirlpool and other U.S. and European suppliers, such as Bosch, Asko and Miele.

Third, the Tribunal considered the arguments made regarding the possible delays in the introduction of technological innovations to the Canadian market. The Tribunal is of the view that the injury findings will not discourage WCI and Whirlpool from continuing to compete in terms of the technological and innovative features that they can offer the Canadian consumer. In fact, the findings may even enhance competition. As a result, the increases in such features will provide an incentive for all other companies that compete with WCI and Whirlpool, including Camco, to continue to offer similar features in order to remain competitive.

Fourth, the Tribunal considered the average margins of dumping. Of significance is the fact that the weighted average margins of dumping are relatively low on some products in this case, ranging from 5.5 percent to 16.3 percent. The Tribunal believes that Canadian consumers are afforded many choices in terms of appliances for the following reasons: (1) the relatively low margins of dumping which appear not to have precluded WCI and Whirlpool from participating in the market; (2) not all of the goods investigated by the Commissioner of the Canada Customs and Revenue Agency were found to be dumped; (3) the exclusions from the findings; and (4) there remain several competitive suppliers of appliances in the Canadian market. The Tribunal is of the opinion that Canadian consumers continue to have access to a full range of products that satisfy their needs, whether they are guided by budgetary limitations, such as those of lower-income consumers, or the requirement for high-end, multi-featured products.

Finally, with respect to the issues of environmental impact and undue burden on energy and water consumption, the Tribunal has considered the concerns raised by B.C. Hydro, the Consumers' Association of Canada, the Sierra Club of Canada, the Friends of the Earth, Inglis and Sears. In this regard, the Tribunal notes that there have been substantial improvements in the efficiency of major appliances over the years. Energy consumption is regulated through NRCan and is outlined in the CAN/CSA-C300 energy performance test procedures. Compliance, which is mandatory, is monitored through the Canadian Standards Association inspection system. All appliances sold in Canada meet the current requirements. Informed, energy-conscious consumers continue to have options with respect to the energy-efficiency ratings of the appliances that they purchase, as these ratings are clearly posted on the individual products at the retail level. The Tribunal notes the analysis conducted by NRCan regarding the fact that the new energy requirement for certain top-mount refrigerators will not come into effect until December 31, 2002. Based on NRCan's "Regulatory Impact Analysis Statement",⁶ the proposed effective date of December 31, 2002, will not have a significant impact on the total amount of energy savings/CO₂ emissions reduction that will result from the amendment, since it is expected that most of the energy savings will occur between 2010 and 2020.

Based on the above, the Tribunal is of the view that the application of the anti-dumping duties will not limit the supply of competitively priced and energy-efficient refrigerators, dishwashers and dryers or curtail effective price competition in the domestic market for these appliances. The reasons cited above also suggest that there will not be any significant negative impact on housing prices or the housing market in Canada as a result of the imposition of the anti-dumping duties.

The Tribunal notes that the imposition of the anti-dumping duties is intended to eliminate the injury caused by sales of dumped goods in the Canadian market. As noted in previous cases before the Tribunal, price increases in the market for the subject goods are a normal consequence of the removal of injurious dumped pricing. In this regard, the Tribunal notes the representations made by Appliance Canada and Cantrex that their prices have risen since the injury findings. The Tribunal also expects that the commercial interests of those that had previously sold dumped goods may be affected. The Tribunal recognizes that importers, such as Inglis, may be required to make adjustments resulting from the new market conditions. The Tribunal also notes Inglis's arguments regarding the potential impact of the findings on the manufacture of non-subject goods, such as ranges. Given the Tribunal's conclusion that competition continues in the Canadian market, the Tribunal is not convinced that there would be an impact of a public interest dimension worthy of further investigation. For such considerations to be present, the Tribunal must see clear and compelling evidence of effects or potential effects that extend beyond the commercial interests of industry players into the broader public domain.⁷

6. *Regulations Amending the Energy Efficiency Regulations*, C. Gaz. 2000.I.2591.

7. *Polyiso Insulation Board* (13 June 1997), PB-97-001 (CITT); and *Preformed Fibreglass Pipe Insulation* (28 January 1994), PB-93-001 (CITT).

For the above reasons, the Tribunal is not convinced that there is a public interest issue worthy of further investigation under section 45 of SIMA. Accordingly, the Tribunal will not conduct a public interest investigation into this matter and will not report to the Minister of Finance.

Patricia M. Close

Patricia M. Close
Presiding Member

Pierre Gosselin

Pierre Gosselin
Member

Zdenek Kvarda

Zdenek Kvarda
Member