



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Request for Interim Review
No. RD-2004-010

Certain Dishwashers and Dryers

*Order issued
Monday, April 25, 2005*

*Reasons issued
Monday, May 9, 2005*

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IN THE MATTER OF a request for an interim review, under subsection 76.01(1) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on August 1, 2000, in Inquiry No. NQ-2000-001, as amended on March 19, 2003, in Interim Review No. RD-2002-005, concerning:

**CERTAIN 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**

ORDER

On March 22, 2005, Electrolux Home Products, Inc. and Electrolux Canada Corp. filed a request for an interim review of the findings made by the Canadian International Trade Tribunal in Inquiry No. NQ-2000-001, as amended on March 19, 2003, in Interim Review No. RD-2002-005, concerning the above-noted goods.

Pursuant to subsection 76.01(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal has decided not to conduct an interim review of the above findings.

Richard Lafontaine
Richard Lafontaine
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Ellen Fry
Ellen Fry
Member

Hélène Nadeau
Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. On August 1, 2000, the Canadian International Trade Tribunal (the Tribunal), in Inquiry No. NQ-2000-001, made findings of injury, pursuant to subsection 43(1) of the *Special Import Measures Act*,¹ respecting 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.
2. On March 19, 2003, the Tribunal, in Interim Review No. RD-2002-005, made an order, pursuant to paragraph 76.01(5)(b) of *SIMA*, to exclude refrigerators from the scope of the above findings.
3. On September 28, 2004, in Expiry No. LE-2004-006, the Tribunal gave notice of the expiry of its findings and invited submissions on whether a review of the findings was warranted pursuant to subsection 76.03(2) of *SIMA*. Basing its decision on the available information, including representations made by interested parties, the Tribunal decided that an expiry review was warranted and, on November 17, 2004, gave notice of the initiation of Expiry Review No. RR-2004-005 pursuant to subsection 76.03(3) of *SIMA*.
4. On December 22, 2004, Camco Inc. (Camco), the sole domestic producer that constituted the domestic industry in the initial inquiry, sent a letter to the Canada Border Services Agency (CBSA) stating that it would not be participating in the expiry review.
5. On March 17, 2005, the CBSA determined that the expiry of the above findings was unlikely to result in the continuation or resumption of dumping of the goods. On April 1, 2005, the CBSA issued its statement of reasons for its determination.
6. On March 18, 2005, the Tribunal sent a letter to the interested parties advising them that, as a result of the CBSA's determination, and without further consideration of the matter, the Tribunal would issue, on July 29, 2005, an order rescinding its findings made in Inquiry No. NQ-2000-001, as amended.
7. On March 22, 2005, Electrolux Home Products, Inc. and Electrolux Canada Corp., the successors and assigns of White Consolidated Industries, Inc. (collectively, Electrolux), filed a motion asking the Tribunal to issue, in Expiry Review No. RR-2004-005, an order rescinding the above findings "immediately", which Electrolux indicated meant effective March 17, 2005. The order and statement of reasons issued by the Tribunal in Expiry Review No. RR-2004-005 deal with that motion. Electrolux asked the Tribunal, in the alternative, pursuant to section 76.01 of *SIMA*, for the immediate initiation of an interim review of the findings. Through the interim review, Electrolux was also seeking the rescission of the findings effective March 17, 2005. This statement of reasons deals with Electrolux's request for an interim review.

POSITION OF ELECTROLUX

8. In its request, Electrolux contended that an interim review was warranted given the negative determination of the CBSA, and the lack of interest in participating in the expiry review proceedings on the part of the sole Canadian producer, Camco. Electrolux argued that these new facts or changes in

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

circumstances that have occurred since the Tribunal's findings should give rise to the immediate rescission of the findings.

ANALYSIS

9. Subsection 76.01(1) of *SIMA* provides that the Tribunal may conduct an interim review of a finding or order. Such an interim review may concern the whole finding or order or any aspect of it. Pursuant to subsection 76.01(3), the Tribunal shall not conduct an interim review unless the requester satisfies the Tribunal that the review is "warranted".

10. The *Canadian International Trade Tribunal Rules*² contemplate a two-step procedure for the requesting party to demonstrate the need for an interim review. First, the requesting party must submit to the Tribunal a "properly documented" request. The request must contain all the elements prescribed by subrule 70(1):

- the name, address for service, telephone number and fax number, if any, of the person making the request and of their counsel, if any;
- the nature of their interest in the order or finding;
- the grounds on which the person believes initiation of the review is warranted and a statement of the facts on which the grounds are based; and
- the nature of the order or finding that the person believes the Tribunal should make under subsection 76.01(5) of *SIMA* on completion of the review.

11. Second, the requesting party must satisfy the Tribunal that a review is warranted. Rule 72 of the *Rules* states that, in order to decide whether an interim review is warranted, the Tribunal may request parties to provide information concerning: "(a) whether changed circumstances or new facts have arisen since the making of the order or finding; (b) facts that were not put in evidence in the original proceedings and that were not discoverable by the exercise of reasonable diligence; and (c) any other matter that is relevant to the review."

12. In the Tribunal's view, Electrolux has submitted a properly documented request.

13. The Tribunal will address one procedural matter in connection with the request for interim review before it addresses the question of whether an interim review is warranted. Subrule 70(2) of the *Rules* requires the Tribunal to give all other parties to the original inquiry an opportunity to make representations to the Tribunal concerning the request. However, rule 6 allows the Tribunal to dispense with, vary or supplement any of the *Rules* if it is fair and equitable to do so or to provide for a more expeditious or informal process, as the circumstances and considerations of fairness permit. In this regard, in its motion, Electrolux stated that it would only make sense to initiate an interim review if the Tribunal is prepared to conduct such a review on an extremely expedited basis.

14. In this case, the Tribunal has decided, in light of rule 6 of the *Rules*, not to distribute the request for interim review to the parties for comment, as would ordinarily be the case pursuant to subrule 70(2). The only party likely to oppose the request would be Camco, and it will not be adversely affected by the Tribunal's disposition of the request. The Tribunal is therefore of the view that no parties will be treated unfairly and, further, that dispensing with representations from other parties will expedite the matter.

2. S.O.R. 91/499 [*Rules*].

15. As indicated earlier, on March 17, 2005, the CBSA determined that the expiry of the findings was unlikely to result in the continuation or resumption of dumping. In making that determination, the CBSA was required to look forward to the expiry date and consider what circumstances would likely exist after that date, i.e. after five years of protection have elapsed. The CBSA's determination is therefore indicative of circumstances that have not yet occurred.

16. By contrast, when deciding whether to conduct an interim review, the Tribunal is required to look back to the date of the findings and compare circumstances then to those present at the time of the request for an interim review.

17. A determination by the CBSA in an expiry review does not concern the period of time relevant for an interim review, that is, the period between the date of the findings and the date of their expiry. Therefore, the CBSA's negative determination does not evidence any change in circumstances during that period.

18. Similarly, Camco's decision not to participate in an expiry review that evaluates the likely situation after the expiry of the findings does not evidence a change in circumstances during the period relevant for an interim review.

19. Therefore, in the Tribunal's view, neither the CBSA's negative determination nor Camco's decision not to participate in the expiry review warrants the conduct of an interim review.

CONCLUSION

20. For the foregoing reasons, the Tribunal determines that an interim review of the findings is not warranted. Consequently, pursuant to subsection 76.01(4) of *SIMA*, the Tribunal has decided not to conduct an interim review.

Richard Lafontaine
Richard Lafontaine
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Ellen Fry
Ellen Fry
Member