



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Interim Review No. RD-2011-002

Aluminum Extrusions

*Order and reasons issued
Wednesday, March 14, 2012*

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IN THE MATTER OF a request for an interim review, pursuant to subsection 76.01(1) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on March 17, 2009, in Inquiry No. NQ-2008-003, concerning:

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

ORDER

On September 15, 2011, Everroll Industries Ltd. filed a request for an interim review of the findings made by the Canadian International Trade Tribunal in Inquiry No. NQ-2008-003 concerning the dumping and subsidizing of aluminum extrusions produced via an extrusion process of alloys having metallic elements falling within the alloy designations published by The Aluminum Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per metre of 22 kg and a profile or cross-section which fits within a circle having a diameter of 254 mm, originating in or exported from the People's Republic of China.

Pursuant to subsections 76.01(3) and (4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal has decided not to conduct an interim review of the above findings.

Jason W. Downey

Jason W. Downey
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Stephen A. Leach

Stephen A. Leach
Member

Dominique Laporte

Dominique Laporte
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STATEMENT OF REASONS

BACKGROUND

1. On September 15, 2011, the Canadian International Trade Tribunal (the Tribunal) received a request from Everoll Industries Ltd. (Everoll) for an interim review, under subsection 76.01(1) of the *Special Import Measures Act*,¹ of the Tribunal's findings in Inquiry No. NQ-2008-003² to exclude from their scope certain twisted aluminum pickets used to build railings.³
2. Everoll submitted that, because of the thicknesses required and the amount of time needed for production, the twisted aluminum pickets that it intends to import from the People's Republic of China (China) are not, and cannot be, produced in Canada.
3. On October 26, 2011, the Tribunal advised Everoll that its request for an interim review was not properly documented and requested that it provide additional information, including: any new facts or changes in circumstances that had arisen since the Tribunal's findings in *Aluminum Extrusions*; information indicating whether Canadian producers produced or were capable of producing either the products for which exclusions were being sought or substitutable products; and evidence of Everoll having attempted to purchase such products from Canadian producers.
4. On November 28, 2011, Everoll provided the Tribunal with some additional information, including evidence indicating that one particular Canadian producer was unable to produce the twisted aluminum pickets that Everoll requires.
5. On December 1, 2011, the Tribunal informed Everoll that the additional information that it provided on November 28, 2011, pertained only to one Canadian producer and that, in *Aluminum Extrusions*, the Tribunal had identified more than 10 other Canadian producers of aluminum extrusion products.⁴ The Tribunal, therefore, gave Everoll the opportunity to provide additional information or evidence regarding these other Canadian producers.
6. On December 16, 2011, Everoll advised the Tribunal that it had sent a few enquiries to Canadian producers of aluminum extrusion products but that, as it had not yet received definitive responses, it needed more time before it could provide the Tribunal with additional information. On January 9, 2012, Everoll provided the Tribunal with evidence indicating that another Canadian producer was unable to produce the twisted aluminum pickets that it requires. It also indicated that it was waiting for four other Canadian producers to confirm whether they could produce twisted aluminum pickets.
7. On January 23, 2012, the Tribunal requested that Everoll confirm whether it still intended to submit additional information or evidence regarding Canadian producers of aluminum extrusion products.
8. On January 30, 2012, Everoll provided the Tribunal with evidence indicating that another Canadian producer could produce twisted aluminum pickets but submitted that, in its view, its unit prices and tooling fee were too high and its lead times were too long, such that it was not competitive.

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

2. *Aluminum Extrusions* (17 March 2009) (CITT) [*Aluminum Extrusions*].

3. Everoll attached to its request drawings detailing the two products for which exclusions are being sought.

4. See *Aluminum Extrusions* at para. 135.

9. On February 1, 2012, Everoll responded to the Tribunal, confirming that no additional information would be forthcoming.

ANALYSIS

10. Subsection 76.01(1) of *SIMA* provides that the Tribunal may conduct an interim review of a finding or order and that such an interim review may concern the whole finding or order, or any aspect of it. However, pursuant to subsection 76.01(3), the Tribunal shall not conduct an interim review unless the requester satisfies the Tribunal that the interim review is warranted. The onus is therefore on the requester to establish that an interim review is warranted.

11. As the first step in determining whether an interim review is warranted, the Tribunal must determine whether Everoll's request for an interim review is properly documented. Subrule 70(1) of the *Canadian International Trade Tribunal Rules*⁵ requires that certain documentary requirements be fulfilled in order for a request to be considered properly documented. The Tribunal is of the view that Everoll's request for an interim review currently meets these requirements and, as such, is properly documented.

12. The Tribunal notes that subrule 70(2) of the *Rules* requires that all parties to the inquiry that resulted in the findings be informed of the receipt of a properly documented request and given 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.

13. In this case, the Tribunal has decided, applying rule 6 of the *Rules*, not to distribute the request for an interim review to the parties for comment. Any party that may oppose the request 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 and proceeding immediately to determine whether an interim review is warranted will expedite the matter.

14. In determining whether an interim review is warranted, the Tribunal takes into consideration rule 72 of the *Rules*, which provides as follows:

In order to decide whether an interim review under section 76.01 of the *Special Import Measures Act* is warranted, the Tribunal may request the 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.

15. Similarly, the Tribunal's *Guideline on Interim Reviews* indicates the following:

An interim review may be warranted where there is a reasonable indication that sufficient new facts have arisen or that there has been a sufficient change in the circumstances that led to the order or finding. . . . An interim review may also be warranted where there are sufficient facts that, although in existence, were not put into evidence during the previous review or inquiry and were not discoverable by the exercise of reasonable diligence at that time.

5. S.O.R./91-499 [*Rules*].

16. The Tribunal has consistently held that interim reviews will only be undertaken when there are sufficiently compelling reasons to persuade it to do so. New facts or changes in circumstances are not, in and of themselves, enough to warrant an interim review. The question is whether there are sufficient new facts or changes in circumstances to warrant an interim review, or whether sufficient facts, although in existence at the time of the injury inquiry in *Aluminum Extrusions*, were not put in evidence in the original proceedings because they were not discoverable by the exercise of reasonable diligence.⁶

17. The Tribunal has further stated the following in respect of the requirements for the initiation of an interim review:

In the Tribunal's opinion, the information on file in respect of a request must indicate a likelihood that an amendment to the order or finding would occur if an interim review were conducted. To initiate interim reviews on a lesser threshold would create an unacceptable level of uncertainty in the duration and durability of a finding or order and would be costly for the parties involved. Proceedings under SIMA are often complex and burdensome, and it would not be reasonable to permit the reopening of a case, or part of one, on a lesser standard.⁷

18. In other words, the mere existence of new facts, changed circumstances or pre-existing facts that were not discoverable by the exercise of reasonable diligence does not necessarily mean that there will be an interim review. Such facts or changed circumstances must also indicate a likelihood that an amendment to the Tribunal's order or finding would occur if an interim review were conducted.

19. In this case, the Tribunal is of the view that Everoll's apparent requirement for new products (i.e. twisted aluminum pickets that have not yet been imported) and the inability of some Canadian producers to produce such products, even if considered by the Tribunal to be new facts that have arisen since the making of its findings in *Aluminum Extrusions*, do not indicate a likelihood that an amendment to those findings would occur if an interim review were conducted. Put another way, the information provided by Everoll does not, in the Tribunal's view, indicate a likelihood that exclusions for twisted aluminum pickets would be granted if a review were conducted.

20. In *Stainless Steel Wire*,⁸ the Tribunal summarized its views on the matter of product exclusions as follows:

The fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry. The Tribunal has granted product exclusions for particular products in circumstances when, for instance, the domestic industry does not produce those particular products. The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an "active supplier" of the product or whether it normally produces the product or whether the domestic industry has the capability of producing the product.

[Footnotes omitted, emphasis added]

21. Therefore, in order for information to indicate a likelihood that product exclusions would be granted if an interim review were conducted, the information has to indicate a likelihood that such exclusions would not cause injury to the domestic industry or, in other terms, the information has to indicate a likelihood that the domestic industry does not produce, and does not have the capability to produce, the products for which exclusions are requested or substitutable or competing products.

6. See *Waterproof Footwear and Bottoms of Plastic or Rubber* (10 October 2002), RD-2002-001 (CITT) at 2; *Leather Footwear With Metal Toe Caps* (25 November 2005), RD-2005-001 (CITT) at paras. 8-9; *Concrete Reinforcing Bar* (9 November 2005), RD-2005-002 (CITT) at paras. 9-10.

7. *Machine Tufted Carpeting* (21 August 2000), RD-2000-001 (CITT) at 3.

8. (30 July 2004), NQ-2004-001 (CITT) at 22.

22. Although Everoll did provide information indicating that two Canadian producers are unable to produce the twisted aluminum pickets that it requires, the Tribunal had identified more than 10 Canadian producers of aluminum extrusion products in *Aluminum Extrusions*. In the Tribunal's view, the fact that 2 Canadian producers may be unable to produce the products for which Everoll is seeking exclusions is not sufficient to find that there is a likelihood that the remaining Canadian producers are also unable to produce those products. As the Tribunal stated in *Aluminum Extrusions*, "[t]he fact that a few domestic producers may not be able to supply a certain product does not imply that all domestic producers are incapable of doing so."⁹

23. Moreover, the Tribunal notes that the information provided by Everoll does indicate that one Canadian producer claims to have the capability to produce the twisted aluminum pickets that Everoll requires. While Everoll argues that the unit prices and tooling fee quoted by this producer are too high and that its lead times are too long, these are not normally considerations that are relevant for the purposes of determining whether or not to grant product exclusions.¹⁰ The Tribunal further notes that Everoll provided no information or evidence which indicates that this particular producer's unit prices and tooling fee are in fact an attempt to conceal a lack of capacity on its part.

24. In these circumstances, the Tribunal finds that Everoll has not established that an interim review is warranted.

DECISION

25. For the foregoing reasons, the Tribunal has decided, pursuant to subsections 76.01(3) and (4) of *SIMA*, not to conduct an interim review of its findings made on March 17, 2009.

Jason W. Downey

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Presiding Member

Serge Fréchette

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Member

Stephen A. Leach

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Member

9. *Aluminum Extrusions* at para. 343.

10. See, for example, *Aluminum Extrusions* at para. 339.