



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Interim Review No. RD-2011-004

Mattress Innerspring Units

*Order issued
Friday, March 30, 2012*

*Reasons issued
Friday, April 13, 2012*

TABLE OF CONTENTS

ORDERi

STATEMENT OF REASONS1

 BACKGROUND.....1

 Request1

POSITIONS OF THE PARTIES2

 Parties Supporting the Request2

 Parties Opposed to the Request4

TRIBUNAL ANALYSIS5

CONCLUSION.....7

IN THE MATTER OF an interim review, pursuant to subsection 76.01(1) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on November 24, 2009, in Inquiry No. NQ-2009-002, concerning:

THE DUMPING OF MATTRESS INNERSPRING UNITS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.01(1) of the *Special Import Measures Act*, has conducted an interim review of its finding made on November 24, 2009, in Inquiry No. NQ-2009-002, concerning the dumping of mattress innerspring units, with or without edgeguards, used in the manufacture of innerspring mattresses, originating in or exported from the People's Republic of China.

Pursuant to paragraph 76.01(5)(a) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues the finding without amendment.

Serge Fréchette
Serge Fréchette
Presiding Member

Diane Vincent
Diane Vincent
Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Dominique Laporte
Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

| | |
|---|---|
| Tribunal Members: | Serge Fréchette, Presiding Member Diane Vincent, Member Pasquale Michael Saroli, Member |
| Research Directors: | Randolph W. Heggart Lisa Backa Demers |
| Senior Research Officer: | Josée St-Amand |
| Counsel for the Tribunal: | Georges Bujold |
| Manager, Registrar Programs and Services: | Michel Parent |
| Registrar Officer: | Julie Lescom |
| Registrar Support Officer: | Jade Realffe |

PARTICIPANTS:**Domestic Producers**

Simmons Canada Inc.
Les Ressorts Primeau Inc.
Marshall Mattress

Counsel/Representatives

Andrew M. Lanouette
Jacques Primeau
Brad Warner

Importers/Exporters/Others

Owen & Company Limited (Kingsdown)

Matelas Mirabel

Counsel/Representatives

Benjamin P. Bedard
Paul D. Conlin
Drew Tyler
Guy Tousignant

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
Standard Life Centre
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

BACKGROUND

Request

1. On November 10, 2011, the Canadian International Trade Tribunal (the Tribunal) received a request from Owen & Company Limited, a manufacturer of mattresses known as Kingsdown, for an interim review under section 76.01 of the *Special Import Measures Act*¹ of the Tribunal's finding made on November 24, 2009, in Inquiry No. NQ-2009-002 (the injury inquiry) concerning mattress innerspring units originating in or exported from the People's Republic of China (China) (the subject goods). Kingsdown requested that the Tribunal, on completion of the interim review, rescind its finding.

2. In its request, Kingsdown submitted that Globe Spring & Cushion Co. Ltd. (Globe Spring), a domestic producer at the time of the injury inquiry, whose production accounted for over 90 percent of merchant market sales of like goods, ceased to manufacture mattress innerspring units in Canada in October 2011. Accordingly, Kingsdown submitted that, in practical and legal terms, there was no longer any domestic production of like goods and that, as a result, the basis for the Tribunal's finding no longer existed. Kingsdown further submitted that the existence of production for internal processing and from small producers that cannot supply any meaningful proportion of the domestic market was not sufficient to support the finding.²

3. On November 29, 2011, the Tribunal decided that the request for an interim review was properly documented, as prescribed by subrule 70(1) of the *Canadian International Trade Tribunal Rules*.³ In addition, pursuant to subrule 70(2), the Tribunal informed all parties to the injury inquiry of its receipt of the request and invited them to make representations concerning Kingsdown's request by December 12, 2011.

4. The Tribunal received only one response. The sole party to file representations was Simmons Canada Inc. (Simmons), a producer of like goods, on December 12, 2011. Simmons stated that it currently manufactures and will continue to manufacture mattress innerspring units in Canada and intends to consume all of its production in its own manufacturing environment. Simmons submitted that none of the like goods that it produces are destined for the merchant market and that its production will be entirely for internal use.

5. On December 14, 2011, in its reply submission, Kingsdown noted that Globe Spring, Les Ressorts Alpha Inc. (Alpha) and Les Ressorts Primeau Inc. (Primeau)⁴ had not filed submissions. Consequently, according to Kingsdown, there was no evidence of current Canadian production for the merchant market, no interest on the part of any company in having the finding continued and no utility or value in having the finding continued.

6. On the basis of the submissions received, the Tribunal decided that an interim review of the finding was warranted and issued a notice of commencement of interim review on December 28, 2011.⁵ In accordance with paragraph 25(c) of the *Rules*, the Tribunal decided to proceed with a hearing by way of

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

2. Tribunal Exhibit RD-2011-004-01, Administrative Record, Vol. 1 at 3-6.

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

4. The Tribunal notes that these are domestic producers that manufactured mattress innerspring units for the merchant market only at the time of the injury inquiry. During the injury inquiry, among those three companies, only Globe Spring was represented by counsel and present at the hearing.

5. C. Gaz. 2012.I.4.

written submissions. Submissions already filed by interested parties were placed on the record of the interim review. The Tribunal asked that any further submissions by parties be filed no later than January 18, 2012, with any reply submissions due on January 27, 2012.

7. The Tribunal indicated in its notice of commencement of interim review that the purpose of this interim review was to determine if the finding should be rescinded on the basis that there is no longer any domestic production of mattress innerspring units sold in the Canadian merchant market, as claimed by Kingsdown. In this regard, parties were asked to address, in their submissions, the issue of whether there is still any production of mattress innerspring units in Canada and, in particular, whether there is still domestic production being sold in the merchant market.

POSITIONS OF THE PARTIES

Parties Supporting the Request

8. Kingsdown submitted that the Tribunal has no alternative but to rescind its finding since there is no evidence of current domestic production of mattress innerspring units for the merchant market, no interest on the part of any company in having the finding continued and, therefore, no purpose in having the finding continued.

9. As background information on the injury inquiry, Kingsdown submitted that the Tribunal, in analyzing the domestic industry, considered the operations of seven companies. According to Kingsdown, three of them produced only for their own internal consumption,⁶ Simmons sold very small quantities of niche mattress innerspring units but otherwise used its production internally, leaving Globe Spring, Alpha and Primeau with merchant market sales. Kingsdown further submitted that Globe Spring, at that time, was by far the largest Canadian producer of mattress innerspring units for sale in Canada, with production and sales representing more than 90 percent of domestic production and sales in the merchant market.⁷ Kingsdown also submitted that Alpha and Primeau, during the injury inquiry, did not provide any indication of support for, or interest in, the Tribunal's injury inquiry, as they did not provide any evidence, did not file a full questionnaire response and did not appear at the Tribunal's hearing.

10. In terms of developments since the finding in the injury inquiry, Kingsdown submitted that, in October 2011, Globe Spring ceased Canadian production of mattress innerspring units and intends to service its Canadian customers from the production of its parent company, Leggett & Platt Incorporated, located in the United States.

11. Kingsdown also submitted that, while there continues to be Canadian production of mattress innerspring units for internal use in the production of mattresses, it is not sufficient to support an injury finding. In this regard, Kingsdown submitted that, in the injury inquiry, the Tribunal did not consider the issue of whether the subject goods caused injury to the domestic production of like goods destined for internal processing.

12. Kingsdown argued that, in the injury inquiry, the Tribunal focused its injury analysis on the impact of the subject goods on the domestic merchant market of mattress innerspring units. Regarding the Tribunal's statement that the materiality of any injury caused by the dumping was assessed against the domestic industry's production of like goods as a whole, Kingsdown submitted that this statement

6. Those companies are Literie Giddings, Marshall Mattress (Marshall) and Park Avenue Furniture; Tribunal Exhibit RD-2011-004-09.03, Administrative Record, Vol. 1 at 61.

7. Tribunal Exhibit RD-2011-004-09.03, Administrative Record, Vol. 1 at 61.

confirmed that the Tribunal only reached a determination on the quantification of injury to the production of like goods destined for the merchant market and then concluded that this injury was material even when assessed against the entirety of the domestic production. Put another way, according to Kingsdown, the inclusion of all domestic industry production for the purposes of the assessment of materiality could only dilute the overall impact of the quantified injury.

13. In particular, Kingsdown submitted that the Tribunal found that the subject goods had caused injury to the domestic industry in the merchant market and that, since production for the merchant market accounted for more than 70 percent of total domestic production, the extent of the injury found was enough to be material when considered in relation to total domestic production.

14. According to Kingsdown, the Tribunal's analysis did not, at any point, analyze injury to domestic production of mattress innerspring units for internal use (which was only relevant to the question of materiality) or injury to Alpha or Primeau. Kingsdown submitted that the Tribunal determined that Globe Spring's results were representative of the overall domestic industry in the merchant market due to its high volume of domestic production and sales, more than 90 percent, in that market.

15. According to Kingsdown, when that analytical framework is applied to the current situation (i.e. in view of the cessation of Globe Spring's production), it is clear that the finding no longer has the necessary factual or legal basis to remain in effect. Kingsdown submitted that, since more than 90 percent of the domestic production for the merchant market sales has ceased, it is no longer reasonable to deem Globe Spring's results to be representative of the entire domestic production for merchant market sales, as was done in 2009.

16. Kingsdown further submitted that, since Globe Spring, Primeau and Alpha chose not to respond to the Tribunal's request to advise of their current production in this interim review, there is no evidence of current Canadian production of mattress innerspring units and certainly no evidence that Alpha or Primeau suffered injury caused by the subject goods.

17. Kingsdown requested the rescission of the Tribunal's finding, stating that, in the absence of evidence of any current domestic production of mattress innerspring units for merchant market sales, the basis for the finding is no longer present.

18. In its reply submission in response to Primeau's claims, Kingsdown argued that the only evidence of Primeau's production is a very limited partial questionnaire response. Kingsdown also argued that Primeau's submission "... is not evidence of the sort upon which the Tribunal can base a decision." Kingsdown also submitted that Primeau would ask that the Tribunal "... continue its finding on the basis of a three-year old, partial questionnaire response and, now, a letter that does not provide a single figure."⁸

19. According to Kingsdown, the issue before the Tribunal in an interim review is whether the facts that led to the Tribunal's finding are still in place, so that the evidence and the legal bases for the finding still stand. Kingsdown submitted that Globe Spring represented more than 90 percent of domestic sales for the merchant market and that only Globe Spring was found by the Tribunal to have been injured by dumped imports, not Primeau. According to Kingsdown, the Tribunal, after not having been able to conclude that Primeau suffered injury because of the paucity of the information that it provided in the injury inquiry, cannot, in this interim review, conclude that there is sufficient evidence to continue the finding.

8. Tribunal Exhibit RD-2011-004-11.01, Administrative Record, Vol. 1 at 75.

20. Alternatively, if the Tribunal is inclined to continue the finding on the basis of Primeau's alleged production for the merchant market, Kingsdown submitted that natural justice and procedural fairness would require that Primeau be directed by the Tribunal to provide actual specific evidence of its production capacity and sales, in order that it might be tested during an oral hearing. According to Kingsdown, while the finding may be rescinded on the basis of the information on the administrative record, it cannot be continued without an oral hearing.

21. Matelas Mirabel, in a submission, supported Kingsdown's request and requested the rescission of the finding.

Parties Opposed to the Request

22. The Tribunal received submissions from Marshall and Primeau, requesting that the finding be continued.

23. Marshall stated that it still manufactures in Canada, as does Simmons, pocket coil mattress innerspring units and that both were valued customers of Globe Spring. Marshall stated that the dumping of the subject goods continues. Furthermore, according to Marshall, Globe Spring was forced to cease its operations due to continued tariff evasion by Chinese exporters and Canadian importers of mattress innerspring units. On this matter, Marshall stated that the subject goods go through one or more countries before entering Canada, so that the point of origin is "set aside" and the goods enter Canada at reduced duty or perhaps duty free. It also stated that some Chinese companies are rated as tariff-free by the Canadian customs "old rulings", and other Chinese manufacturers of mattress innerspring units sell their goods to those tariff-free or duty-reduced Chinese exporting companies before they are sold to their Canadian customers. Marshall also stated that Chinese exporters created a new class of innerspring products which circumvents the Tribunal's injury finding by creating "faux-finished mattresses" (mattress innerspring units with a temporary fabric finish) that correspond to "finished mattresses" instead of "mattress innerspring units". Finally, Marshall stated that Chinese exporters disappear from the CBSA's and the Tribunal's mailing lists, as they change company names repeatedly; therefore, valuable time is lost before their mattress innerspring units are identified again as being dumped.

24. Marshall further submitted that it prefers to buy Canadian and North American mattress innerspring units and that, if the finding is rescinded, a "Canadian production comeback" would be impossible.

25. Primeau stated that comments made in the request for the interim review are incorrect. According to Primeau, it has been an important Canadian manufacturer of mattress innerspring units since 1945, with a production capacity available to supply Canadian market demand, for all of the product range set out in the injury inquiry. Primeau submitted that a rescission of the finding would harm the domestic industry of mattress innerspring units.

26. According to Primeau, unfair competition over the last few years has caused many business closures, and their manufacturing sector will be forced out of the market completely, should the finding be rescinded. Primeau submitted that there are at least three companies in Canada that specialize in the production of mattress innerspring units, including Alpha and itself.

27. According to Primeau, mattress producers that manufacture mattress innerspring units for their own internal use could also be impacted by imports of the subject goods, should their competitors be supplied with mattress innerspring units at a lesser cost.

28. In its reply submission, Primeau submitted that mattress innerspring units were found to be dumped, and this fact has not changed. According to Primeau, the market for mattress innerspring units is still sensitive and vulnerable to the dumping of the subject goods. According to Primeau, the Canadian industry has the available production capacity to supply the domestic demand for mattress innerspring units.

29. Primeau requested that the Tribunal continue the finding.

TRIBUNAL ANALYSIS

30. Subsection 76.01(1) of *SIMA* states that, at any time after the making of an order or finding described in any of sections 3 to 6, the Tribunal may, on its own initiative or at the request of the Minister of Finance, the President of the Canada Border Services Agency or any other person or government, conduct an interim review of (a) the order or finding, or (b) any aspect of the order or finding. Further, subsection 76.01(3) states that the Tribunal shall not conduct an interim review at the request of any person or government unless the person or government satisfies the Tribunal that the review is warranted.

31. The Tribunal's first step after receiving a request for an interim review, therefore, is deciding whether the interim review is warranted. This decision is usually reached after considering whether there is a reasonable indication that sufficient new relevant facts have arisen since the issuance of the existing finding or order, or that there has been sufficient change in the circumstances that led to the finding or order in question. In its request for an interim review, Kingsdown alleged that there had been a change in the circumstances that led to the finding, that is, the cessation of production by the principal domestic producer of like goods at the time of the injury inquiry and that, as a result, there was no longer any production of like goods sold in the Canadian merchant market. This allegation was not disputed by the only party, Simmons, that filed representations concerning Kingsdown's request.

32. After reviewing Kingsdown's request and reply, and Simmons' representations, the Tribunal was satisfied that the information provided a reasonable indication that sufficient new facts had arisen since the issuance of the finding to warrant the conduct of an interim review of the finding, pursuant to paragraph 76.01(1)(a) of *SIMA*.

33. Kingsdown is asking the Tribunal to rescind its original finding due to the absence of evidence of Canadian production of mattress innerspring units for sale in the merchant market. In its request, Kingsdown submitted that Globe Spring, the most important Canadian manufacturer of mattress innerspring units at the time of the injury inquiry, ceased production in October 2011. This was the basis on which the Tribunal initiated this interim review.

34. Indeed, the evidence confirms that Globe Spring ceased to produce mattress innerspring units in Canada in October 2011, as stated by Kingsdown.⁹ Moreover, the evidence filed by Kingsdown in this regard was not disputed by the other parties. However, it is also clear from the evidence that, despite Globe Spring's cessation of production, there is still domestic production of like goods¹⁰ and, in particular, domestic production destined for sale in the merchant market.¹¹

9. Tribunal Exhibit RD-2011-004-09.03, Administrative Record, Vol. 1 at 67-69.

10. Tribunal Exhibit RD-2011-004-04.01, Administrative Record, Vol. 1 at 21; Tribunal Exhibit RD-2011-004-09.01, Administrative Record, Vol. 1 at 53.

11. Tribunal Exhibit RD-2011-004-12.02 (protected), Administrative Record, Vol. 2 at 7-9; Tribunal Exhibit RD-2011-004-09.04, Administrative Record, Vol. 1 at 71.

35. Thus, contrary to Kingsdown's allegations, this is not a case where there is no longer domestic production. The evidence on the record indicates that there is at least one domestic producer of the like goods for the merchant market, namely, Primeau, as well as at least one domestic producer of like goods destined for internal consumption, namely, Simmons. Primeau and Simmons were considered, along with other manufacturers of mattress innerspring units, to be a constituent part of the domestic industry for the purpose of the Tribunal's injury analysis in the injury inquiry.¹² Indeed, Primeau, in its submission to the Tribunal in this interim review, has identified itself as an important Canadian manufacturer of like goods, with a production capacity available to supply the Canadian market demand.

36. Accordingly, the central allegation in Kingsdown's request is not borne out by the facts. In these circumstances, the Tribunal finds that the finding cannot be rescinded on the basis that there is no longer any domestic production of mattress innerspring units sold in the Canadian merchant market.

37. The only issue that remains to be considered in this interim review is whether, in light of the fact that Globe Springs no longer manufactures like goods, there remains a continuing justification for the application of anti-dumping duties on the subject goods. On this issue, Kingsdown essentially argued that only Globe Spring was found by the Tribunal to have been injured by the subject goods in the injury inquiry and that, in view of the recent developments concerning Globe Spring's situation, there is no longer sufficient evidence to continue the finding.

38. The Tribunal is unable to accept this argument. The basis for the application of anti-dumping and/or countervailing duties on goods is established in the original finding or order. In this case, contrary to Kingsdown submissions, the finding in the injury inquiry was the result of a determination of material injury caused by the dumping of the subject goods to the entire domestic industry. Indeed, in stating that it considered Globe Spring's situation at the time to be a reliable representation of the effect of the dumped imports on the domestic industry's performance as a whole, in the merchant market,¹³ the Tribunal made it clear that its injury analysis was not limited to the effect of the dumped imports on Globe Spring's production and sales. In other words, Globe Spring's performance was used as a representative proxy for the performance of the domestic industry's performance as a whole.

39. This means that there is an assumption that all Canadian manufacturers of mattress innerspring units suffered material injury due to the subject goods, even though the evidence, at the time, was based on information that related primarily to Globe Spring. The absence of current domestic production by Globe Spring does not undo or eliminate the evidence on which the Tribunal relied in the injury inquiry.

40. The evidence on the record is clear that there is still a domestic industry that produces mattress innerspring units. There is no indication that the evidence in the injury inquiry was incorrect or nonexistent. The purpose of the finding is to protect the production of like goods from the injury caused by the subject goods for the entire duration of the finding. The Tribunal finds that it has not been established, in this interim review, that the reasons that led the Tribunal to conclude to the existence of injury to the domestic industry in 2009 are no longer valid, such as to warrant rescission of the order prior to its expiration. Moreover, considering that there is currently domestic production, the Tribunal is not convinced that injury will not continue or recur if the duties are removed. Therefore, the Tribunal is unable to conclude that the finding is no longer necessary.

12. See *Mattress Innerspring Units* (24 November 2009), NQ-2009-002 (CITT) at para. 56.

13. *Mattress Innerspring Units* (24 November 2009), NQ-2009-002 (CITT) at para. 88.

CONCLUSION

41. For the foregoing reasons, pursuant to paragraph 76.01(5)(a) of *SIMA*, the Tribunal hereby continues the finding without amendment.

Serge Fréchette
Serge Fréchette
Presiding Member

Diane Vincent
Diane Vincent
Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member