



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-2011-005

Aluminum Extrusions

*Order and reasons issued
Thursday, September 12, 2013*

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DECISION7

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 February 9, 2012, Pacific Shower Doors (1995) Ltd. and WHET Kitchen Bath & Closet Creations Co. Ltd. filed 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 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 February 9, 2012, the Canadian International Trade Tribunal (the Tribunal) received a request from Pacific Shower Doors (1995) Ltd. (PSD) and WHET Kitchen Bath & Closet Creations Co. Ltd. (WHET) for an interim review, pursuant to subsection 76.01(1) of the *Special Import Measures Act*,¹ of the findings made by the Tribunal on March 17, 2009, in Inquiry No. NQ-2008-003² (the findings), 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 (China) (the subject goods).
2. PSD and WHET specifically requested that the Tribunal exclude from the scope of the findings all extruded aluminum parts designated for use in producing shower doors or, alternatively, the custom-shaped extruded aluminum shower door parts imported by PSD from WHET. PSD and WHET also requested that the product exclusions be granted with retroactive effect.
3. PSD and WHET's request for an interim review was held in abeyance pending the outcome of Interim Review Nos. RD-2011-001 and RD-2011-003, which the Tribunal had combined into a single proceeding.³ On November 15, 2012, the Tribunal issued an order whereby it made no amendment to the findings.⁴ The Tribunal issued its reasons on November 29, 2012.
4. On November 30, 2012, the Tribunal determined that PSD and WHET's request for an interim review was properly documented in the manner prescribed by subrule 70(1) of the *Canadian International Trade Tribunal Rules*⁵ and, on December 3, 2012, in accordance with subrule 70(2), it informed all parties to *Aluminum Extrusions Inquiry* of its receipt of the request and gave them an opportunity to make representations concerning the request.
5. On December 20, 2012, Almag Aluminum Inc., Apel Extrusions Limited (Apel), Can Art Aluminum Extrusions Inc., Extrudex Aluminum, Metra Aluminum Inc., Sapa Canada Inc., Spectra Aluminum Products Ltd./Spectra Anodizing Inc. (Spectra) (the domestic extruders) collectively filed submissions opposing the initiation of an interim review.
6. On January 4, 2013, LIV Outdoor (International) Inc. (LIV) filed reply submissions to the submissions of the domestic extruders. On January 7, 2013, PSD and WHET also filed reply submissions.

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

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

3. This interim review was conducted further to requests made by MAAX Bath Inc. (MAAX Bath) and Aluminart Products Limited for the exclusion of certain products from the scope of the findings. The Tribunal notes that PSD participated in the interim review by filing submissions, providing evidence and making arguments in support of product exclusions. It also presented a witness at the hearing held in Ottawa, Ontario, from April 10 to 12, 2012.

4. *Aluminum Extrusions* (15 November 2012), RD-2011-001 and RD-2011-003 (CITT) [*Aluminum Extrusions Interim Review*].

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

POSITIONS OF PARTIES

Submissions in Support of the Initiation of an Interim Review

7. PSD and WHET submitted that an interim review was warranted on two main grounds. First, they submitted that, subsequent to the Tribunal's issuance of the findings, PSD established WHET, a Chinese company that now exports products to PSD without any possibility of dumping or subsidizing.

8. Second, PSD and WHET stated that, in Inquiry No. NQ-2008-003R,⁶ which took place after the Tribunal issued the findings, MAAX Bath was granted exclusions for certain aluminum extrusions used in the assembly of shower enclosures on the basis that it had specific requirements that could not be met by the domestic industry. They asserted that, like MAAX Bath, they too have specific requirements that cannot be met by the domestic industry.

9. More specifically, PSD and WHET maintained that they require the services of a single fully integrated extruder that can produce every product required to every specification in order to guarantee that all parts fit together visually and mechanically and that they are delivered properly packaged and free of defects. They submitted that none of the domestic extruders have made the investments that are necessary to meet their requirements or have otherwise shown an interest in serving the narrow shower door segment of the market. In this regard, they noted that all the domestic extruders, except Spectra, declined to provide PSD with a quote and that, while Spectra did provide PSD with a quote, it demanded that PSD finance a set of dies and refused to guarantee that it could meet PSD's quality requirements. In their view, only a few firms cater to the narrow shower door segment of the market, none of which are in Canada.

10. PSD and WHET also submitted that the anticipated volumes of PSD's imports will not be significant for many years and that, as a result, the granting of the requested product exclusions will not cause injury to the domestic industry.

11. In reply to the domestic extruders' submissions in opposition to the initiation of an interim review, PSD and WHET contended that the Tribunal's decision in *Aluminum Extrusions Interim Review* is of little, if any, relevance in the present case, given that MAAX Bath is a large company with high volume requirements, whereas the opposite is true of PSD. They further argued that the domestic extruders failed to provide any information to demonstrate that they have the ability to supply PSD or have any interest in ever doing so.

12. Finally, PSD and WHET noted that, in *Aluminum Extrusions Inquiry*, the Tribunal granted a number of exclusions for aluminum extrusions despite the fact that they could theoretically be produced by the domestic industry.

13. For its part, LIV simply stated that it supports PSD and WHET's request for an interim review.

Submissions in Opposition to the Initiation of an Interim Review

14. The domestic extruders stated that they are opposed to the initiation of an interim review. They submitted that the Tribunal has made it clear, in previous decisions, that an interim review will only be initiated if, in addition to meeting the factors set out in the *Rules*, it is likely that the requested product exclusions would be granted. They added that the Tribunal has also made it clear that product exclusions will only be granted if they do not cause injury to the domestic industry.

6. *Aluminum Extrusions* (10 February 2011) (CITT) [*Aluminum Extrusions Remand*].

15. The domestic extruders submitted that the materials filed by PSD and WHET in support of their request for an interim review fail to demonstrate that they validly have a requirement for a fully integrated extruder and fail to disclose sufficient facts upon which the Tribunal could grant product exclusions. They stated that, in any event, there are “fully integrated” extruders which are part of the domestic industry, such as Apel and Spectra.

16. The domestic extruders further submitted that certain aspects of the Tribunal’s decision in *Aluminum Extrusions Interim Review* make it particularly clear that, if an interim review was initiated, it is extremely unlikely that the product exclusions requested by PSD and WHET would be granted. More specifically, they argued that the decision in *Aluminum Extrusions Interim Review* shows that the domestic extruders can supply the shower door segment of the market and meet all the alleged requirements for aluminum extrusions, even those of the largest customers, such as MAAX Bath. They therefore maintained that the domestic industry would be injured by the granting of the product exclusions requested by PSD and WHET.

ANALYSIS

Legal Framework

17. 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 cannot conduct an interim review unless the requester satisfies the Tribunal that the interim review is warranted.

18. In assessing whether the requester has discharged this onus, the Tribunal is guided by 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.

19. Similarly, the Tribunal’s *Guideline on Interim Reviews* states 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.

20. The Tribunal has consistently held that an interim review will only be undertaken when it is satisfied that there are sufficiently compelling reasons 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 there are sufficient facts,

which, although in existence at the time of the previous expiry review or injury inquiry, were not put in evidence in those proceedings because they were not discoverable by the exercise of reasonable diligence.⁷

21. 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.⁸

22. In short, 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 warrant an interim review. Such facts or changed circumstances must also be sufficiently compelling to indicate that an interim review, if conducted, would likely result in the Tribunal's order or finding being amended or, in the context of the present request for interim review, would likely result in the granting of product exclusions.

23. In *Stainless Steel Wire*,⁹ 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]

24. 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.

New Facts or Changed Circumstances

25. The Tribunal accepts that, at the very least, when PSD and WHET filed their request for an interim review, the fact that MAAX Bath had, in *Aluminum Extrusions Remand*, been granted exclusions for certain aluminum extrusions used in the assembly of shower enclosures constituted a significant changed circumstance. Indeed, the Tribunal acknowledged, in *Aluminum Extrusions Interim Review*, that its determination in *Aluminum Extrusions Remand* could provide a changed circumstance insofar as it indicated

7. *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.

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

9. (30 July 2004), NQ-2004-001 (CITT) at para. 96.

that a second attempt at obtaining a product exclusion could now potentially prove successful.¹⁰ When PSD and WHET filed their request for an interim review, it was reasonable for them to believe that the Tribunal's granting of product exclusions to MAAX Bath in *Aluminum Extrusions Remand* meant that they could now potentially be granted similar product exclusions.

26. Although the Tribunal has accepted that there was a significant changed circumstance when PSD and WHET filed their request for an interim review, that changed circumstance, as well as the totality of the information presented in the request, must indicate that an interim review, if conducted, would likely result in the granting of product exclusions.

Likelihood that Product Exclusions Would Be Granted if an Interim Review Were Conducted

27. In *Aluminum Extrusions Interim Review*, which came after *Aluminum Extrusions Remand*, the Tribunal determined that MAAX Bath, which, like PSD and WHET, requested exclusions for aluminum extrusions used in the assembly of shower doors/enclosures, required that its aluminum extrusions be provided by a single extruder (that may outsource certain operations to the same contractor) that could apply a number of finishes to the extrusions, perform certain fabrication operations, supply the required volume, provide individual packaging and ensure low rejection rates, while maintaining certain quality standards with respect to consistency of fit and finish.¹¹ The Tribunal then found that these specific requirements could be met by a number of the domestic extruders, including both Spectra and Apel, which had the individual ability to meet the requirements without the need to outsource any operations to a third party.¹²

28. In the Tribunal's view, PSD and WHET's specific requirements with respect to the aluminum extrusions for which they are currently seeking product exclusions are no more stringent than those of MAAX Bath. Although PSD and WHET did claim that they required the services of a single *fully integrated* extruder (i.e. a single extruder that performs all operations under one roof), the Tribunal does not consider this to be a real or legitimate requirement. As stated in *Aluminum Extrusions Interim Review*, the ultimate requirement is that the aluminum extrusions meet certain standards in terms of quality and consistency of fit and finish.¹³ Whether this is achieved by a single fully integrated extruder or not is irrelevant. Therefore, in the present case, it does appear likely that PSD and WHET's specific requirements can be met, at the very least, by Spectra and Apel.

29. The Tribunal also does not agree with PSD and WHET's contention that the Tribunal's decision in *Aluminum Extrusions Interim Review* is not relevant in the present case because, contrary to MAAX Bath, PSD is a small company with low volume requirements. While an argument could be made that an ability to meet low volume requirements does not necessarily translate into an ability to meet higher volume requirements, the opposite is not true. In other words, if some of the domestic extruders have been found to have the ability to meet MAAX Bath's high volume requirements, it is difficult to foresee why they would not also have the ability to meet PSD's lower volume requirements. Moreover, a low *anticipated* volume of imports does not, in and of itself, provide a sufficient basis upon which to grant a product exclusion, as there is no guarantee that the volume will actually remain low. In this regard, it is important to note that products

10. *Aluminum Extrusions Interim Review* at para. 41.

11. *Ibid.* at para. 102.

12. *Ibid.* at paras. 122, 124.

13. *Ibid.* at paras. 101, 106.

which have been excluded from the scope of an order or finding cannot subsequently be the subject of an interim review (i.e. they cannot be re-included).¹⁴

30. PSD and WHET also claimed that none of the domestic extruders have shown an interest in supplying PSD because they either declined to provide it with a quote or demanded that it finance a set of dies. The Tribunal is not persuaded that there is no interest in supplying PSD. For example, during the hearing for *Aluminum Extrusions Interim Review*, a witness for Apel testified in response to questions posed by PSD that, while Apel is willing and able to produce shower door parts, it had refused to provide PSD with a quote because the requirements that had been presented by PSD by way of a blind e-mail were not taken seriously.¹⁵ As for the demand that PSD finance a set of dies, this appears to be the norm for custom-shaped aluminum extrusions.¹⁶

31. In light of the above, the Tribunal finds that the information submitted by PSD and WHET does not indicate that the domestic industry is unable to produce the products for which exclusions were requested. Consequently, the information does not indicate a likelihood that product exclusions would be granted if an interim review were conducted.

32. The Tribunal notes that PSD and WHET made additional submissions which the Tribunal did not consider relevant for purposes of the current request for an interim review. For example, they submitted that, as a result of PSD establishing WHET, a related Chinese company, there is no longer any possibility of dumping or subsidizing. However, the Tribunal cannot verify whether this claim is legitimate. Only the Canada Border Services Agency (CBSA) possesses the legislative authority to calculate margins of dumping and amounts of subsidy. In the event that these margins or amounts are nil, PSD would no longer require product exclusions, as no anti-dumping and countervailing duties would be payable on aluminum extrusions that are of the same description as those to which the findings apply.

33. As a further example, PSD and WHET submitted that, in *Aluminum Extrusions Inquiry*, the Tribunal granted some product exclusions despite the fact that the domestic industry could, in theory, produce those products. However, as the Tribunal stated in *Fasteners*,¹⁷ each request for product exclusion must be considered on its own merits and, even in cases where similar products have previously been excluded, the fundamental issue must remain whether the products for which exclusions are requested will be injurious to the domestic industry. In the present case, the Tribunal finds that injury to the domestic industry will likely result from the granting of the product exclusions requested by PSD and WHET.

34. While the Tribunal will not conduct an *interim* review of the findings, it notes that, on June 5, 2013, it initiated an *expiry* review¹⁸ of the findings and that, should the CBSA determine that the expiry of the findings is likely to result in the continuation or resumption of dumping or subsidizing of the subject goods, the Tribunal will then determine if there is a likelihood of injury or retardation. At that time, all parties, including PSD and WHET, will be given a new opportunity to file requests for product exclusions.

14. *Certain Fasteners* (1 March 2010), RD-2009-004 (CITT) at para. 11.

15. *Aluminum Extrusions Interim Review, Transcript of Public Hearing*, Vol. 2, 11 April 2012, at 378-79.

16. *Aluminum Extrusions Inquiry* at para. 109.

17. (11 May 2007), RD-2006-005 (CITT).

18. Expiry Review No. RR-2013-003.

DECISION

35. For the foregoing reasons, the Tribunal is not satisfied that an interim review is warranted and, therefore, pursuant to subsections 76.01(3) and (4) of *SIMA*, has decided not to conduct an interim review of the findings.

Jason W. Downey

Jason W. Downey

Presiding Member

Serge Fréchette

Serge Fréchette

Member

Stephen A. Leach

Stephen A. Leach

Member