



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-2012-001

Aluminum Extrusions

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

TABLE OF CONTENTS

ORDERi

STATEMENT OF REASONS 1

 BACKGROUND.....1

 POSITIONS OF PARTIES.....2

 Submissions in Support of the Initiation of an Interim Review2

 Submissions in Opposition to the Initiation of an Interim Review2

 ANALYSIS3

 Legal Framework.....3

 Preliminary Matter—Whether the Subject Balusters Are Subject Goods.....4

 New Facts or Changed Circumstances.....4

 Likelihood that Product Exclusions Would Be Granted if an Interim Review Were Conducted.....4

DECISION6

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 July 18, 2012, LIV Outdoor (International) Inc. 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
Secretary

Tribunal Members:	Jason W. Downey, Presiding Member Serge Fréchette, Member Stephen A. Leach, Member
Counsel for the Tribunal:	Alain Xatruch Alexandra Pietrzak
Manager, Registrar Programs and Services:	Michel Parent
Registrar Officer:	Lindsay Vincelli

Please address all communications to:

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

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

STATEMENT OF REASONS

BACKGROUND

1. On July 18, 2012, the Canadian International Trade Tribunal (the Tribunal) received a request from LIV Outdoor (International) Inc. (LIV) 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. LIV specifically requested that the Tribunal initiate an interim review and exclude from the scope of the findings consumer-ready packaged balusters (the subject balusters). It also requested that the product exclusions be granted with retroactive effect. In the alternative, LIV requested that the Tribunal reject its request for an interim review on the basis that the subject balusters are not covered by the findings (i.e. are not of the same description as goods to which the findings apply).
3. LIV'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 LIV'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 and 1093776 Alberta Inc. o/a McLean Contracting (2004) (McLean) filed reply submissions to the submissions of the domestic extruders.

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 (Aluminart) for the exclusion of certain products from the scope of the findings. LIV 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. LIV submitted that an interim review was warranted on two main grounds. First, LIV argued that the subject balusters are not subject goods. In particular, LIV asserted that the President of the Canada Border Services Agency (CBSA) had previously informed LIV that the subject balusters were not subject goods, as they are finished goods which are sold to the consumer in the same condition in which they are imported, though the CBSA subsequently reversed its position.⁶

8. Second, LIV contended that the domestic industry does not have the ability to produce the subject balusters, and the associated parts, and provide the lifetime warranty which is required to support sales of the subject balusters. As there are no domestic producers of the subject balusters, LIV argued that there cannot be any injury to the domestic aluminum extrusions industry if LIV's request for a retroactive exclusion is granted.

9. In its reply to the domestic extruders' submissions in opposition to the initiation of an interim review, LIV noted that the domestic extruders made no submissions whatsoever concerning the subject balusters being subject goods. As a result, LIV argued that the Tribunal must infer that the domestic industry does not object to the characterization of the subject balusters as non-subject goods.

10. LIV further argued that the domestic producers provided no convincing information to support the position that the domestic industry was capable of producing the subject balusters. While LIV acknowledged that Spectra provided it with a quotation with respect to the production of aluminum extrusions, LIV asserted that the quotation is misleading, is unclear with regard to what is actually included and, at the very least, does not incorporate all the different models of the subject balusters. In addition, LIV contended that the quotation does not provide for the production of necessary ancillary items, such as matching screws and spacers, consumer-ready packaging, and a warranty or buy-back program. Finally, LIV maintained that the testimony of witnesses during the previous interim review demonstrated that the quotation "... wasn't really an honest quote" and contained pricing that was "absurd."⁷

11. For its part, McLean stated that it supports LIV's request for an interim review. It submitted that the products for which LIV is seeking exclusions appear to be non-subject goods. Moreover, McLean asserted that an interim review is warranted because the Tribunal did not, and could not, clearly foresee the effect that the findings would have on the downstream fencing and railing systems industry.

Submissions in Opposition to the Initiation of an Interim Review

12. The domestic extruders 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.

13. The domestic extruders maintained that the materials filed by LIV in support of its request for an interim review fail to demonstrate that it has a valid requirement for a fully integrated extruder. On these grounds, the domestic extruders asserted that LIV's submissions fail to disclose sufficient facts upon which the Tribunal could grant exclusions.

6. In an appeal filed with the Tribunal (AP-2012-050), LIV appealed the CBSA's decision.

7. Tribunal Exhibit RD-2012-001-06.01, Administrative Record, Vol. 1 at para. 14.

14. Moreover, the domestic extruders contended that the quotation provided by Spectra demonstrates that Spectra can produce all the items sought by LIV. As a result, the domestic extruders argued that the domestic industry would be injured if the Tribunal were to grant the product exclusions requested by LIV.

ANALYSIS

Legal Framework

15. 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.

16. 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.

17. 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.

18. New facts or changes in circumstances are not, in and of themselves, enough to warrant an interim review. The Tribunal will initiate an interim review if the new facts or changes in circumstances are sufficiently compelling to warrant an interim review or if 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.⁸ The information must indicate that, if an interim review were conducted, the order or finding would likely be amended.⁹

19. 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. In *Stainless Steel Wire*,¹⁰ the Tribunal summarized its views on the matter of product exclusions as follows:

8. *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.

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

10. (30 July 2004), NQ-2004-001 (CITT) at 22.

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]

Preliminary Matter—Whether the Subject Balusters Are Subject Goods

20. On September 11, 2013, the Tribunal issued its decision in *Universal Consumer Products, Inc., LIV Outdoor (International) Inc. and Maine Ornamental, LLC v. President of the Canada Border Services Agency*. At issue in one of the appeals, which was filed by LIV pursuant to subsection 61(1) of *SIMA*, was whether the subject balusters were subject to the findings in *Aluminum Extrusions Inquiry*. In particular, LIV argued that the goods were imported as kits which could be assembled to form finished goods and had been further processed to the point that they no longer possessed the characteristics of the subject goods and that, therefore, they should not be deemed to be subject goods.¹¹

21. In the appeals, the Tribunal concluded that the subject balusters were in fact subject goods.

22. As both the appeals and LIV’s request for an interim review concern the subject balusters, the Tribunal’s decision in the appeals is applicable to this request for interim review. Therefore, the subject balusters are subject goods, and the Tribunal need not examine this particular issue any further.

New Facts or Changed Circumstances

23. The Tribunal accepts that LIV was not an importer during the original injury inquiry; therefore, facts regarding the subject balusters were not put into evidence during that proceeding. The Tribunal further takes note of LIV’s claim that, while the CBSA originally informed LIV that the subject balusters were not subject goods, the CBSA subsequently reversed its position in 2010 and found that the subject balusters were indeed subject goods.¹² It is important to recognize that, for the purpose of the present request for interim review, the CBSA was not a party to this case and, therefore, could not challenge this claim. To this end, the Tribunal will give the benefit of the doubt to LIV with respect to this argument.¹³ In the Tribunal’s view, these two circumstances, when taken together, constitute significant new facts that have arisen since the Tribunal made the findings.

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

24. Nevertheless, those new facts, as well as the totality of the information presented in the request, do not indicate that an interim review, if conducted, would likely result in the granting of product exclusions.

25. In the previous interim review, the Tribunal was required to determine whether domestic extruders could meet the requirements of MAAX Bath and Aluminart regarding finishing, tolerances, packaging and multiple fabrication operations. Despite these requirements being very demanding, the Tribunal found that

11. AP-2013-039, AP-2012-050 and AP-2012-059 (CITT) [the appeals].

12. Tribunal Exhibit RD-2012-001-06.01, Administrative Record, Vol. 1 at para. 29.

13. During the appeals, to which the CBSA was a party, the CBSA challenged LIV’s claim on this ground. At paragraphs 76 to 77 of the appeals, the Tribunal concluded that LIV did not provide sufficient evidence to establish that the alleged correspondence from the CBSA was written in relation to the subject goods.

both Spectra and Apel had the ability to meet all of MAAX Bath's and Aluminart's specific requirements.¹⁴ In so doing, the Tribunal stated that "... domestic extruders need not perform all operations under 'one roof' in order to meet ..." the specific requirements.¹⁵

26. LIV has submitted that the domestic producers have not provided any information that they "actually produce" the subject balusters.¹⁶ However, the question is not simply whether the domestic producers currently produce the subject balusters. It is sufficient to deny a product exclusion request if a domestic producer has the *capability* to produce the subject balusters or a substitutable product.

27. The witness for Spectra in *Aluminum Extrusions Interim Review* stated that Spectra not only had the capability to produce the subject balusters but also had previously produced products in packaging similar to that requested by LIV.¹⁷ This testimony, together with the quotation provided by Spectra to LIV in the current proceeding,¹⁸ indicates that the domestic industry does indeed have the capability to produce the subject balusters.

28. While LIV has alleged that the quotation provided by Spectra does not include the production of colonial balusters, there is no evidence on the record that LIV specifically requested a quotation for the production of colonial balusters.

29. Moreover, it is immaterial whether Spectra is able to produce screws and connectors to be packaged with the balusters. Screws and connectors are not subject goods. The question before the Tribunal is whether or not the domestic industry can produce the subject goods or a substitutable product. The Tribunal is satisfied that the packaging of these simple ancillary goods with the balusters would not transform the balusters into a different product.

30. As for LIV's claimed requirement for a supplier that can offer a lifetime warranty for the goods that it produces, the provision of such a service may impact the retail price of the subject balusters, but it would not transform the goods into a different product. Moreover, LIV has the option of providing the warranty service itself or purchasing it from a third party. Finally, as for LIV's contention that it should not have to finance the extrusion tooling cost and fabrication tooling charges, this appears to be the norm for custom-shaped aluminum extrusions.¹⁹

31. In light of the above, it does appear likely that LIV's requirements can be met, at the very least, by Spectra. Therefore, the Tribunal finds that the information submitted by LIV 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. While the Tribunal will not conduct an *interim* review of the findings, it notes that, on June 5, 2013, it initiated an *expiry* review²⁰ 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,

14. *Aluminum Extrusions Interim Review* at para. 124.

15. *Ibid.* at para. 126.

16. Tribunal Exhibit RD-2012-001-06.01, Administrative Record, Vol. 1 at para. 30.

17. *Aluminum Extrusions Interim Review, Transcript of Public Hearing*, 11 April 2012, at 392.

18. Tribunal Exhibit RD-2012-001-05.01 (protected), Administrative Record, Vol. 2, tab 7.

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

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

the Tribunal will then determine if there is a likelihood of injury or retardation. At that time, all parties, including LIV, will be given a new opportunity to file requests for product exclusions.

DECISION

33. 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