



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Interim Review No. RD-2009-001

Aluminum Extrusions

*Order and reasons issued
Friday, July 24, 2009*

TABLE OF CONTENTS

ORDERi
STATEMENT OF REASONS1
 BACKGROUND.....1
 ANALYSIS2

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 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 June 9, 2009, Pacific Shower Doors (1995) 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 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.

André F. Scott

André F. Scott
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Diane Vincent

Diane Vincent
Member

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STATEMENT OF REASONS

BACKGROUND

1. On June 9, 2009, the Canadian International Trade Tribunal (the Tribunal) received a request from Pacific Shower Doors (1995) Ltd. (PSD) for an interim review under paragraph 76.01(1)(b) of the *Special Import Measures Act*¹ of the Tribunal's findings in *Aluminum Extrusions*² to exclude from their scope certain extruded aluminum shapes used solely as components in PSD's proprietary lines of shower enclosures.³

2. In its request, PSD argued that there is no domestic producer capable of supplying its requirements of extruded aluminum parts and that, as a result, the products that it imports from the People's Republic of China (China) are not causing injury to the domestic industry. PSD noted that this was the basis for its request for product exclusion in the injury inquiry, which request was denied by the Tribunal. However, PSD submitted that, contrary to representations made by the domestic producers of aluminum extrusions in the injury inquiry, since the Tribunal's findings, it has obtained evidence that no domestic producer is capable of supplying or willing to supply PSD's requirements of aluminum extrusions.

3. Specifically, PSD filed its request for an interim review with the Tribunal on the basis that the only two domestic producers that replied to its invitation for quotation, Spectra Aluminum Products Inc. (Spectra) and Daymond Aluminum (Daymond),⁴ cannot commit to producing an identical product to meet PSD's strict requirements, which include producing identical shapes without modification and without minimum volume requirements, providing a firm pricing structure for several years, supplying free dies, exactly matching existing finishes, having further processing capabilities, and meeting its quality and packaging requirements. According to PSD, Spectra and Daymond can, at best, produce similar products which, in its view, are not good enough to meet the high quality standards of its customers.

4. Furthermore, PSD alleged that neither Spectra nor Daymond was willing to meet or capable of meeting its requirements on the basis that neither firm requested a full set of drawings or samples of the finishes before quoting, provided samples or made any attempt to demonstrate its ability to produce high-end finishes, nor followed up on its quotation. PSD also submitted that the significant difference between the quotation that it received from Spectra and Daymond illustrates that these two firms are not able to formulate a proper price structure and are not genuinely equipped to produce the types of products or serve the market niche required by PSD.

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

2. (17 March 2009), NQ-2008-003 (CITT) [the injury inquiry].

3. PSD attached to its request an appendix listing the products for which it seeks an exclusion and submitted that the definition of the products that should be excluded from the scope of the Tribunal's findings on completion of the interim review should read as follows: "Extruded aluminum shapes for use solely as component parts in [PSD's] proprietary Lines of shower enclosures and visually matching products which for clarity includes [sic] all those parts listed in Appendix 11 plus future parts that are clearly designed to be a part of those lines but excludes [sic] any shapes PSD imports that cannot be clearly demonstrated as being part of those line[s]. . . ." PSD's *Request for Commencement of an Interim Review – A Renewed Request for Product Exclusion* at para. 39.1.

4. On or after March 17, 2009, PSD sent a formal invitation for quotation to all the domestic producers that supported injury findings during the injury inquiry. Only Spectra and Daymond provided a quotation for similar products. All other domestic producers contacted declined to provide a quotation. In its request for an interim review, PSD noted that it did not request a quotation from Kawneer Company Canada Ltd. and Kromet International Inc. because these domestic producers focus on other market niches and did not support injury findings. PSD's *Request for Commencement of an Interim Review – A Renewed Request for Product Exclusion* at para. 31, Appendices 1 to 10.

5. In summary, according to PSD, the Tribunal's denial of its request for product exclusion was based on false representations made by the domestic producers in the injury inquiry with respect to their capability of producing products identical to those that PSD imports from China for use as components in its lines of shower doors. Consequently, based on the evidence that is now before the Tribunal, PSD is of the view that an interim review is warranted in order to exclude such products from the scope of the Tribunal's findings.

ANALYSIS

6. The Tribunal notes that 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.

7. As the first step in determining whether an interim review is warranted, the Tribunal must determine whether PSD's request for an interim review is properly documented. In this connection, the Tribunal first examined whether PSD had fulfilled the documentary requirements under subrule 70(1) of the *Canadian International Trade Tribunal Rules*,⁵ which indicates that:

A request . . . shall set out the following information:

- (a) the name, address for service, telephone number and fax number, if any, of the person making the request and of their counsel, if any;
- (b) the nature of their interest in the order or finding;
- (c) 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
- (d) the nature of the order or finding that the person believes the Tribunal should make under subsection 76.01(5) or 76.02(4) of the *Special Import Measures Act* on completion of the review.

8. In accordance with these requirements, the Tribunal is of the view that PSD's request for an interim review is properly documented.

9. Subrule 70(2) of the *Rules* states the following:

On receipt of a properly documented request referred to in subrule (1), the Tribunal shall inform each party to the inquiry or review that resulted in the order or finding of its receipt of the request and shall give them an opportunity to make representations to the Tribunal concerning the request.

10. However, the Tribunal is of the view that, in light of the circumstances of this matter, it does not need to distribute PSD's request to the parties for comment, as would ordinarily be the case pursuant to the above subrule. The Tribunal is of the opinion that dispensing with representations from other parties and proceeding immediately to determine whether an interim review is warranted will expedite the matter at hand without treating any party unfairly. In this regard, the Tribunal notes that the present request for an interim review concerns an aspect of the findings that only affects PSD and that the parties likely to oppose the request will not be adversely affected by the Tribunal's disposition of the request. In deciding to proceed in this manner, the Tribunal relied on rule 6 of the *Rules*, which states the following:

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

The Tribunal may dispense with, vary or supplement any of these 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.

11. In determining whether an interim review is warranted, the Tribunal's practice is to take into consideration the grounds listed in rule 72 of the *Rules*, which are also found in the Tribunal's *Guideline on Interim Reviews* (the *Guideline*).

12. Rule 72 of the *Rules* states the following:

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.

13. Similarly, the *Guideline* 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.

14. The Tribunal has consistently held that interim reviews will only be undertaken when there are sufficiently compelling reasons to persuade the Tribunal 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, were not put in evidence in the original proceedings because they were not discoverable by the exercise of reasonable diligence.⁶

15. The Tribunal has also previously 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

16. In other words, the mere existence of new facts or changed circumstances, or facts that were not reasonably discoverable, does not necessarily mean that there will be a review; these facts must also be sufficient to warrant a review. As such, they must disclose a likelihood that an amendment to the Tribunal's order or finding would occur if an interim review were conducted.

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 Tuft Carpeting* (August 21, 2000), RD-2000-001 (CITT) at 3.

17. Having regard to the foregoing, the Tribunal has carefully examined the request made by PSD. The Tribunal considers that PSD attempted, with this process, to reargue its initial request for product exclusion, which, as already mentioned, the Tribunal denied as part of its injury inquiry. The Tribunal observes that PSD largely reintroduced the same arguments in its request for an interim review as in its initial request for product exclusion and its response to the reply to its request that was filed by the domestic producers in the injury inquiry. In summary, these arguments relate to the domestic extruders' inability and unwillingness to produce PSD's full range of products or perfectly match the custom fit and finish required by its customers, and the long list of detailed requirements that cannot be met fully by any of the domestic producers. PSD also emphasized the negative effects that it will experience as a result of the injury findings.

18. The Tribunal is of the view that similar submissions were considered but not accepted during the injury inquiry on the basis of the Tribunal's assessment of the evidence that was on the record of that inquiry.

19. The Tribunal notes however that PSD provided additional evidence in support of its request for product exclusion together with its request for an interim review, that is, evidence that was obtained after the injury inquiry. In particular, it filed with the Tribunal responses to formal invitations for quotations that it received from various domestic producers of aluminum extrusions since the issuance of the Tribunal's findings. In PSD's view, these responses demonstrate that, as it argued all along, there is no domestic producer that has the capacity of producing or willingness to produce products that are identical to or substitutable for the products for which it requested an exclusion. According to PSD, this development amounts to "new events justifying an interim review".⁸

20. The Tribunal considers that this information concerns facts that were alleged to exist at the time of the injury inquiry but that were not substantiated with evidence of this sort at that time. In this situation, for the purpose of determining whether an interim review is warranted, the first issue to be addressed is whether this evidence was discoverable earlier by the exercise of reasonable diligence.

21. The Tribunal notes that, in its request, PSD has not alleged that it could not have discovered this evidence by the exercise of reasonable diligence at the time of the injury inquiry or otherwise addressed this issue. Furthermore, PSD has failed to explain why its formal invitations for quotations were sent to domestic producers after the injury inquiry only.

22. The Tribunal notes that the *Product Exclusion Request Form* used in the injury inquiry specified that documentation should have been provided to support any claim that an attempt had been made to purchase from domestic producers the products for which an exclusion request was filed. Thus, at the early stages of the injury inquiry, the Tribunal notified parties seeking an exclusion on the basis that the domestic producers did not produce certain goods, that they were expected to provide documentary evidence that domestic producers had been contacted, and that they had indicated that they could not produce the goods in question or did not intend to produce them.

23. In the Tribunal's opinion, there is no indication that the facts that PSD now seeks to put in evidence, for the purpose of justifying an exclusion from the Tribunal's findings, consist of information that it could not have reasonably discovered at the time of the injury inquiry, should the formal invitations for quotations been sent by PSD at that time.

8. PSD's *Request for Commencement of an Interim Review – A Renewed Request for Product Exclusion* at paras. 30-38.

24. Based on the foregoing analysis, the Tribunal finds the facts that PSD now seeks to put in evidence, for the purpose of justifying an exclusion from the Tribunal's findings for the above-mentioned extruded aluminum shapes, consist of information that was either known to PSD at the time of the injury inquiry or, at the very least, easily discoverable by the exercise of reasonable diligence on its part. In the Tribunal's view, it is therefore not information that is sufficient to warrant an interim review.

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

André F. Scott

André F. Scott
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Diane Vincent

Diane Vincent
Member