



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Request for Interim Review
Nos. RD-2012-002 and
RD-2012-003

Bicycles

*Order and reasons issued
Wednesday, March 27, 2013*

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IN THE MATTER OF requests for an interim review, pursuant to subsection 76.01(1) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on December 7, 2012, in Expiry Review No. RR-2011-002, continuing its order made on December 10, 2007, in Expiry Review No. RR-2006-001, continuing, with amendment, its order made on December 9, 2002, in Expiry Review No. RR-2002-001, continuing, with amendment, its order made on December 10, 1997, in Review No. RR-97-003, continuing, with amendment, its finding made on December 11, 1992, in Inquiry No. NQ-92-002, concerning:

**BICYCLES ORIGINATING IN OR EXPORTED FROM CHINESE TAIPEI AND
THE PEOPLE'S REPUBLIC OF CHINA**

ORDER

On January 22 and 30, 2013, Outdoor Gear Canada and Trek Bicycle Corporation, respectively, filed requests for an interim review of the order made by the Canadian International Trade Tribunal in Expiry Review No. RR-2011-002 in respect of the dumping of bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Chinese Taipei and the People's Republic of China, excluding bicycles with an FOB Chinese Taipei or the People's Republic of China selling price exceeding CAN\$225 and excluding bicycles with foldable frames and stems.

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 order.

Pasquale Michaele Saroli

Pasquale Michaele Saroli
Presiding Member

Daniel Petit

Daniel Petit
Member

Ann Penner

Ann Penner
Member

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STATEMENT OF REASONS

BACKGROUND

1. The Canadian International Trade Tribunal (the Tribunal) received two requests, pursuant to subsection 76.01(1) of the *Special Import Measures Act*,¹ for an interim review and, ultimately, the rescission of the order that it issued in *Bicycles*² in respect of the dumping of bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Chinese Taipei and the People's Republic of China (China), excluding bicycles with an FOB Chinese Taipei or China selling price exceeding CAN\$225 and excluding bicycles with foldable frames and stems (the subject goods).

2. On January 22, 2013, the Tribunal received the first request for an interim review from Outdoor Gear Canada (OGC), an importer of the subject and non-subject goods.³

3. On January 30, 2013, the Tribunal received an essentially identical request for an interim review as that filed by OGC from Trek Bicycle Corporation (Trek), a non-resident importer of the subject and non-subject goods.⁴

4. On January 29 and 31, 2013, respectively, the Tribunal determined that OGC's and Trek's requests for an interim review were properly documented in the manner prescribed by subrule 70(1) of the *Canadian International Trade Tribunal Rules*.⁵ In addition, and in accordance with subrule 70(2), the Tribunal informed all parties to *Bicycles* of its receipt of the requests and afforded them an opportunity to make representations in respect of same.

5. On January 31, 2013, in accordance with rule 6.1 of the *Rules*, the Tribunal informed all parties to *Bicycles* that it was joining OGC's and Trek's requests for an interim review given their similarities.

6. On February 8, 12 and 13, 2013, respectively, the Tribunal received submissions opposing the initiation of an interim review from Raleigh Canada Limited (Raleigh), the sole domestic producer in *Bicycles*,⁶ the Centrale des syndicats démocratiques (CSD), which represents Raleigh's employees⁷ and Action Traders Ltd. (Action Traders), an importer of bicycles from China.⁸

7. On February 15, 2013, OGC and Trek filed reply submissions.⁹

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

2. (7 December 2012), RR-2011-002 (CITT).

3. Tribunal Exhibit RD-2012-002-01, Administrative Record, Vol. 1 at 2.

4. Tribunal Exhibit RD-2012-003-01, Administrative Record, Vol. 1 at 2-8.

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

6. Tribunal Exhibit RD-2012-002-06.01, Administrative Record, Vol. 1 at 45-50.

7. Tribunal Exhibit RD-2012-002-06.03, Administrative Record, Vol. 1 at 58.

8. Tribunal Exhibit RD-2012-002-06.02, Administrative Record, Vol. 1 at 52-56; Tribunal Exhibit RD-2012-002-07.02 (protected), Administrative Record, Vol. 2 at 2-3.

9. Tribunal Exhibit RD-2012-002-09, Administrative Record, Vol. 1 at 64-68; Tribunal Exhibit RD-2012-002-08, Administrative Record, Vol. 1 at 60-62.

POSITIONS OF PARTIES

Submissions in Support of the Initiation of an Interim Review

8. OGC and Trek requested that the Tribunal initiate an interim review and, specifically, that it rescind the order on the basis of the announcement made by Raleigh's foreign parent, Accell Group N.V. (Accell), on January 15, 2013, that Raleigh, the sole domestic producer of *like goods* in relation to the *subject goods*, would be ceasing Canadian production at the end of the normal seasonal production cycle in June 2013.¹⁰

9. OGC and Trek submitted that, with the cessation of Raleigh's domestic production and with no other known emerging domestic producer in the Canadian market, the protection provided by the order was no longer required.

10. Trek further asked that the rescission of the order be immediate or, at a minimum, within the next 30 days, to enable suppliers to effect the necessary changes to their business models in time for the ordering of bicycles by retailers and consumers for the 2014 selling season.

11. In reply to Raleigh's submission in opposition to the initiation of an interim review, both OGC and Trek submitted that the rescission of the order in *Bicycles* would have no effect on the 2013 selling season, as all customer orders have been received, with no possibility of obtaining additional orders.

12. OGC and Trek also asserted that it was unlikely that other Canadian companies would be interested in replacing Raleigh in the production of low-priced bicycles for the Canadian mass merchant market, given the differences in labour costs between domestically produced and imported bicycles targeting this segment of the market.

Submissions in Opposition to the Initiation of an Interim Review

13. Raleigh's and Action Traders' opposition to the initiation of an interim review was principally based on the claim that the requests for an interim review were premature, considering that there is ongoing domestic production that will continue at least until the end of June 2013.

14. Raleigh submitted that, as long as there continues to be production in Canada of like goods, anti-dumping measures must remain in place to counteract injurious dumping. In support of its position, Raleigh referred to the Tribunal's decision in *Copper Pipe Fittings*,¹¹ where the Tribunal held that actual termination of production in Canada, and not mere plans to terminate such production, was required to justify an interim review. In this regard, Raleigh indicated that it plans to produce 135,000 units in 2013.

15. Raleigh acknowledged that its future plans may give rise to a request for an interim review once it permanently terminates its production in Canada, noting, however, that the initiation of any such review should be based on the market situation prevailing in Canada at that time, including the possibility of new domestic producers filling the void left by Raleigh's exit from the Canadian market, to establish production in Canada of like goods.

16. Action Traders submitted that an interim review would be premature, it being unclear as to when, in 2013, Raleigh would cease domestic production. Furthermore, an interim review at this time would

10. For 2014 and beyond, Accell indicated that Raleigh would retain a distribution and order fulfillment presence in the Canadian market for bicycles to be sourced offshore from predominantly Asian suppliers.

11. (5 February 2010), RD-2009-002 (CITT) at paras. 18-19.

disrupt the current delicate balance in the Canadian bicycle market. In this respect, Action Traders considers that the 2013 season is complete, as all orders have been received, and it is currently shipping goods for the 2013 season under the existing rules.

17. The CSD also submitted that the requests for an interim review were premature and noted, in this regard, that it was exploring options for keeping Raleigh's plant in Waterloo, Quebec, operational. To this end, the CSD indicated that it intends to commission a feasibility study with a view to establishing the commercial viability of the Waterloo operation.

ANALYSIS

Legal Framework

18. Subsection 76.01(1) of *SIMA* provides that the Tribunal may conduct an interim review of an order or a finding and that such an interim review may concern the whole order or finding, 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.

19. 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.

20. In the same vein, 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.

21. 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.¹²

12. 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.

22. With respect to the sufficiency of the information provided in support of a request for interim review, the Tribunal has stated the following:

... 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.¹³

23. The same holds true for a request seeking the rescission of an order or finding in its entirety, which would have to be sufficiently compelling to indicate a likelihood that such rescission would occur if an interim review were indeed to be conducted.

24. 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 order or finding being amended or rescinded.

Preliminary Considerations

25. In order to put OGC's and Trek's requests for an interim review into perspective, the Tribunal finds it necessary to reiterate the determinations that it made in *Bicycles* regarding the issues of "like goods" and "domestic industry".

Like Goods

26. The Tribunal determined that domestically produced bicycles with wheel diameters of 16 inches (40.64 cm) and greater with manufacturers' suggested retail prices (MSRPs) of CAN\$400 or less constituted *like goods* in relation to the *subject goods* (i.e. bicycles imported from Chinese Taipei or China with FOB selling prices of CAN\$225 or less).

Domestic Industry

27. The Tribunal determined that Raleigh was the only producer of bicycles with wheel diameters of 16 inches (40.64 cm) and greater with MSRPs of CAN\$400 or less, and, therefore, constituted the domestic industry.

New Facts or Changed Circumstances

28. The Tribunal is of the view that Accell's announcement that Raleigh would cease production of like goods in Canada in 2013 constitutes a significant changed circumstance. That said, this change in circumstances must indicate a likelihood that an interim review would result in the rescission of the order.

Status of Domestic Production of Like Goods

29. The Tribunal has previously found that the initiation of an interim review was warranted when there was a reasonable indication that domestic production had ceased.¹⁴

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

14. See *Refrigerators, Dishwashers and Dryers* (19 March 2003), RD-2002-005 (CITT) at 2.

30. In this case and despite the discrepancy between Accell's announced closure date of June 2013 and the subsequent statement by Raleigh's President that the production of like goods would continue through 2013 with final production by December 2013,¹⁵ it is uncontested that Raleigh is continuing its production of like goods in Canada at least until June 2013.¹⁶

31. Given the fact that Raleigh is still producing like goods and that the outcome of the CSD's efforts to keep the plant operational is unknown, the Tribunal is not in a position, at this juncture, to know with certainty what the characteristics of the Canadian industry will be when Raleigh does cease production. In this regard, it is not inconceivable that another domestic producer might emerge to occupy the space vacated by Raleigh in the entry level segment of the domestic market, especially given the continuing efforts of the CSD to keep the plant in operation.

32. The Tribunal accepts Raleigh's submission that the fact that a producer intends to terminate production at a future date does not derogate from the likelihood that injury would result from a rescission of the order while Canadian production continues.¹⁷ Given Raleigh's continuing domestic production of like goods, efforts in the meantime by the CSD to keep the plant operational and the conceivability of other producers entering into the domestic production of *like goods* once Raleigh is gone, the recently announced plans to shut down Raleigh's Canadian operation does not, in the Tribunal's view, indicate that an interim review would likely result in a rescission of the order.

33. The Tribunal therefore finds that the current requests for an interim review are premature. This, however, does not foreclose the possibility of a future request for interim review on the basis of the circumstances prevailing at that time, including the actual cessation of Raleigh's domestic production of *like goods*.

DECISION

34. 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 its order made on December 7, 2012.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Daniel Petit
Daniel Petit
Member

Ann Penner
Ann Penner
Member

15. Tribunal Exhibit RD-2012-002-06.01, Administrative Record, Vol. 1 at 49.

16. Tribunal Exhibit RD-2012-003-01, Administrative Record, Vol. 1 at 4, 5.

17. Tribunal Exhibit RD-2012-002-06.01, Administrative Record, Vol. 1 at para. 7.