



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## ORDER AND REASONS

Expiry Review No. RR-2004-005

Certain Dishwashers and Dryers

*Order issued  
Monday, April 25, 2005*

*Reasons issued  
Monday, May 9, 2005*

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IN THE MATTER of an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on August 1, 2000, in Inquiry No. NQ-2000-001, as amended on March 19, 2003, in Interim Review No. RD-2002-005, concerning certain dishwashers and dryers originating in or exported from the United States of America and produced by, or on behalf of, White Consolidated Industries, Inc. and Whirlpool Corporation, their respective affiliates, successors and assigns;

AND IN THE MATTER OF a motion by Electrolux Home Products, Inc. and Electrolux Canada Corp. filed on March 22, 2005, for an order rescinding the findings.

### ORDER

The motion of Electrolux Home Products, Inc. and Electrolux Canada Corp. for a rescission of the Canadian International Trade Tribunal's findings made on August 1, 2000, in Inquiry No. NQ-2000-001, as amended on March 19, 2003, in Interim Review No. RD-2002-005, is dismissed.

Richard Lafontaine  
Richard Lafontaine  
Presiding Member

James A. Ogilvy  
James A. Ogilvy  
Member

Ellen Fry  
Ellen Fry  
Member

Hélène Nadeau  
Hélène Nadeau  
Secretary

The statement of reasons will be issued within 15 days.

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## STATEMENT OF REASONS

### BACKGROUND

1. On August 1, 2000, the Canadian International Trade Tribunal (the Tribunal), in Inquiry No. NQ-2000-001, made findings of injury, pursuant to subsection 43(1) of the *Special Import Measures Act*,<sup>1</sup> respecting certain refrigerators, dishwashers and dryers originating in or exported from the United States of America and produced by, or on behalf of, White Consolidated Industries, Inc., and Whirlpool Corporation, their respective affiliates, successors and assigns (the subject companies).
2. On March 19, 2003, the Tribunal, in Interim Review No. RD-2002-005, made an order, pursuant to paragraph 76.01(5)(b) of *SIMA*, to exclude refrigerators from the scope of the above findings.
3. On September 28, 2004, in Expiry No. LE-2004-006, the Tribunal gave notice of the expiry of the above findings and invited submissions on whether a review of the findings was warranted pursuant to subsection 76.03(2) of *SIMA*. The subject companies and the domestic industry filed submissions on the issue. Basing its decision on the available information, including representations made by interested parties, the Tribunal decided that an expiry review was warranted and, on November 17, 2004, gave notice of the initiation of Expiry Review No. RR-2004-005 pursuant to subsection 76.03(3) of *SIMA*.
4. On December 22, 2004, Camco Inc., the sole domestic producer that constituted the domestic industry in the initial inquiry, sent a letter to the Canada Border Services Agency (CBSA) stating that it would not be participating in the expiry review.
5. On March 17, 2005, the CBSA determined that the expiry of the above findings was unlikely to result in the continuation or resumption of dumping of the goods. On April 1, 2005, the CBSA issued its statement of reasons for its determination.
6. On March 18, 2005, the Tribunal sent a letter to the interested parties advising them that, as a result of the CBSA's determination, and without further consideration of the matter, the Tribunal would issue, on July 29, 2005, an order rescinding its findings made in Inquiry No. NQ-2000-001, as amended.
7. On March 22, 2005, Electrolux Home Products, Inc. and Electrolux Canada Corp., the successors and assigns of White Consolidated Industries, Inc. (collectively, Electrolux), filed a motion asking the Tribunal to issue, in Expiry Review No. RR-2004-005, an order rescinding the above findings "immediately", which, Electrolux indicated, meant effective March 17, 2005. This statement of reasons deals with that motion. In the alternative, Electrolux asked the Tribunal, pursuant to section 76.01 of *SIMA*, for the immediate initiation of an interim review of the findings. The order and statement of reasons issued by the Tribunal in Interim Review No. RD-2004-010 deal with Electrolux's request for an interim review.

### POSITION OF ELECTROLUX

8. In its motion, Electrolux contended that the Tribunal should take into account the change in legislation that created a "bifurcated" process, whereby the CBSA determines whether the expiry of the order or finding is likely to result in the continuation or resumption of dumping, and the Tribunal determines

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

whether the expiry of the order or finding is likely to result in injury or retardation.<sup>2</sup> Electrolux noted that, as a result of the change in legislation, there is a gap between the scheduled dates for the CBSA's determination and the ultimate order by the Tribunal, whereas, in the past, no such gap existed. Electrolux acknowledged that *SIMA* is silent as to whether and how the Tribunal should close that gap. However, it submitted that the Tribunal is vested with jurisdiction to close it and should issue its rescission order immediately upon receipt of a negative determination from the CBSA.

9. Electrolux also argued that, in circumstances where there exists no likelihood of continued or resumed dumping, anti-dumping measures should be terminated immediately as they are no longer necessary. Electrolux referred to Article 11.1 of the World Trade Organization *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*<sup>3</sup> as authority for its position.

## ANALYSIS

10. Subsection 76.03(1) of *SIMA* reads in part as follows:

If the Tribunal has not initiated an expiry review under subsection (3) with respect to an order or finding described in any of sections 3 to 6 before the expiry of *five years* after whichever of the following days is applicable, the order or finding is deemed to have been rescinded *as of the expiry of the five years*. [Emphasis added]

That provision clearly establishes that, if the Tribunal has not initiated an expiry review, an order or finding has a duration of five years.

11. Where an expiry review is conducted, its goal is to determine whether the order or finding should be continued or rescinded. In this connection, the CBSA and the Tribunal are charged with specific mandates. Pursuant to subsection 76.03(7) of *SIMA*, the CBSA shall determine whether the *expiry of the order or finding* is likely to result in the continuation or resumption of dumping. If the CBSA makes an affirmative determination, the Tribunal is mandated to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the *expiry of the order or finding* is likely to result in injury or retardation.

12. If both the CBSA and the Tribunal issue affirmative determinations, the order or finding under review will be continued for a further five-year period. If one of the two authorities issues a negative determination, the order or finding will be rescinded by the Tribunal.

13. In these proceedings, the CSBA determined on March 17, 2005, that the expiry of the findings was unlikely to result in the continuation or resumption of dumping of the subject goods. Therefore, pursuant to subparagraph 76.03(12)(a)(i) of *SIMA*, the Tribunal is required to make an order rescinding the findings. The issue raised by Electrolux's motion concerns the effective date of that rescission order. Should the Tribunal issue a rescission order effective immediately upon issuance of the CBSA's negative determination or only at the expiry of a five-year period after the issuance of the findings under review? Subparagraph 76.03(12)(a)(i) is silent on that matter.

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2. S.C. 1999, c. 12, s. 36, c. 17, s. 184.

3. 15 April 1994, online: World Trade Organization <[http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/english/docs_e/legal_e/final_e.htm)> [Anti-dumping Agreement].

14. This is not the first time that the Tribunal has considered this question. In *Polyiso Insulation Board*<sup>4</sup> and in *Machine Tufted Carpeting*,<sup>5</sup> the Canada Customs and Revenue Agency (now the CBSA) found that it was unlikely that the expiry of the order and finding in issue would result in the continuation or resumption of dumping. In both cases, the Tribunal issued rescission orders only at the expiry of the respective five-year periods from the date of issuance of the order and the finding in issue.

15. In the current expiry review, the Tribunal advised the interested parties on March 18, 2005, that, as a result of the CBSA's determination, the Tribunal would issue an order rescinding its findings on July 29, 2005.

16. In the Tribunal's view, subsections 76.03(7) and 76.03(10) of *SIMA* clearly indicate that the analyses conducted by the CBSA and the Tribunal in an expiry review are forward-looking. They examine what would likely result from the expiry of the order or finding. As clearly indicated in subsection 76.03(1), the expiry of the order or finding refers to the expiry of a five-year period. Given that the CBSA's analysis examines whether dumping is likely to continue or resume at the end of the five-year period, in this case, after July 29, 2005, a negative determination does not justify the rescission of the findings before the expiry of that period.

17. In support of its request for the early rescission of the findings, Electrolux referred to Article 11.1 of the *Anti-dumping Agreement*, which reads as follows: "An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury." In the Tribunal's view, to rescind the findings on the date from which the CBSA has determined that it was unlikely that the dumping would continue or resume is consistent with Article 11.1.

18. The Tribunal also notes Article 11.3 of the *Anti-dumping Agreement*, which deals specifically with expiry reviews and provides in part:

*any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition . . . unless the authorities determine . . . that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. [Emphasis added]*

19. The Tribunal's decision to rescind its findings five years after their issuance is consistent with Article 11.3 of the *Anti-dumping Agreement*.

20. Having considered the relevant provisions of *SIMA* and the arguments presented by Electrolux, the Tribunal confirms that it will issue its rescission order effective July 29, 2005.

21. A person seeking the amendment or rescission of an order or finding before its expiry must proceed by way of a request for an interim review. In this case, Electrolux did request, as an alternative to its request in these proceedings, that the Tribunal conduct an interim review of the findings. As indicated earlier, the Tribunal deals with that request in Interim Review No. RD-2004-010.

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4. (10 April 2002), RR-2001-002 (CITT).

5. (22 April 2002), RR-2001-003 (CITT).

**CONCLUSION**

22. For the foregoing reasons, Electrolux's motion for the rescission of the Tribunal's findings made on August 1, 2000, in Inquiry No. NQ-2000-001, as amended on March 19, 2003, in Interim Review No. RD-2002-005, is dismissed.

Richard Lafontaine \_\_\_\_\_

Richard Lafontaine  
Presiding Member

James A. Ogilvy \_\_\_\_\_

James A. Ogilvy  
Member

Ellen Fry \_\_\_\_\_

Ellen Fry  
Member