Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry No. LE-2013-002

Mattress Innerspring Units

Order issued
Wednesday, March 12, 2014

Reasons issued
Thursday, March 27, 2014

Canada

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IN THE MATTER OF a notice of expiry, pursuant to subsection 76.03(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on November 24, 2009, in Inquiry No. NQ-2009-002, concerning:

MATTRESS INNERSPRING UNITS, WITH OR WITHOUT EDGEGUARDS, USED IN THE MANUFACTURE OF INNERSPRING MATTRESSES, ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA

ORDER

On January 21, 2014, the Canadian International Trade Tribunal issued a notice of expiry seeking submissions on whether it should initiate an expiry review in the above-mentioned matter. Upon examination of all arguments and evidence presented by parties that filed submissions, the Canadian International Trade Tribunal is not satisfied that an expiry review is warranted and, pursuant to subsection 76.03(5) of the *Special Import Measures Act*, has therefore decided not to initiate an expiry review.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Ann Penner
Ann Penner
Member

Daniel Petit
Daniel Petit
Member

Dominique Laporte
Dominique Laporte
Secretary

The statement of reasons will be issued within 15 days.

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Importers/Others	**Counsel/Representatives**
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Matelas Mirabel Mattress Restwell Sleep Products	Vincent Routhier
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STATEMENT OF REASONS

BACKGROUND

1. On January 21, 2014, the Canadian International Trade Tribunal (the Tribunal) gave notice that its finding made on November 24, 2009, in Inquiry No. NQ-2009-002, concerning mattress innerspring units (MIUs), with or without edgeguards, used in the manufacture of innerspring mattresses, originating in or exported from the People's Republic of China (China) (the subject goods) was scheduled to expire on November 23, 2014, unless an expiry review was initiated before that date. Persons or governments requesting or opposing the initiation of an expiry review were invited to file submissions containing information, opinions and arguments on all relevant factors.[1]

2. The Tribunal received submissions requesting the initiation of an expiry review from SSH Bedding Canada Co. (SSH), a Canadian producer of mattress innerspring units, and from Globe Spring, a division of Leggett & Platt Canada Co. (Globe Spring), an importer of MIUs that are not subject to the finding. The Tribunal received submissions opposing the initiation of an expiry review from Owen & Company Limited and a joint submission from Matelas Mirabel Mattress (Mirabel) and Restwell Sleep Products (Restwell), all of which are Canadian manufacturers of finished mattresses and importers of the subject goods.[2]

3. At the time of Inquiry No. NQ-2009-002 (the MIU inquiry), the following six domestic producers of MIUs were identified: Globe Spring, Simmons Canada Inc. (Simmons), Les Ressorts Alpha Inc. (Alpha), Les Ressorts Primeau inc. (Primeau), Marshall Ventilated Mattress Company Limited (Marshall) and Park Avenue Furniture (Park Avenue). Globe Spring, Alpha and Primeau produced MIUs for the merchant market. Simmons, Marshall and Park Avenue produced MIUs exclusively, or almost exclusively, for further internal processing.[3] Globe Spring was the largest domestic producer of MIUs, holding over 90 percent of the production and sales for the domestic merchant market.[4]

4. The domestic industry has changed substantially since the Tribunal issued its finding in the MIU inquiry. Most significantly, Globe Spring has since ceased all production of MIUs in Canada. Simmons is now part of SSH and produces MIUs exclusively for its own internal use. It would appear that domestic production of MIUs for the merchant market is limited to Alpha and Ressorts National (National) (formerly Primeau), even though Mirabel and Restwell claim that National has actually ceased production altogether.[5]

ANALYSIS

Legal Principles

5. An order or a finding is deemed to have been rescinded at the expiry of five years following the day on which it was made, unless the Tribunal has initiated an expiry review.[6] The Tribunal may initiate the expiry review of an order or a finding at the request of any person.[7]

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1. The relevant factors are set out in rule 73.2 of the *Canadian International Trade Tribunal Rules*, S.O.R./91-499 [*Rules*].
2. Restwell stated that it produces certain types of MIUs, but that its own production capacity cannot meet its entire needs for MIUs. Exhibit LE-2013-002-04.01 at para. 5, Vol. 1.
3. MIU inquiry at para. 56.
4. *Ibid.* at paras. 59, 88.
5. Exhibit LE-2013-002-02.02 at para. 5, Vol. 1; Exhibit LE-2013-002-12.01 at 1, Vol. 1B.
6. See subsection 76.03(1) of the *Special Import Measures Act*, R.S.C., 1985, c. S-15 [*SIMA*].
7. Paragraph 76.03(3)(*b*) of *SIMA*.

6. Subsection 76.03(4) of *SIMA* provides that "[t]he Tribunal shall not initiate an expiry review at the request of any person or government unless the person or government satisfies the Tribunal that a review is warranted." Accordingly, there is an onus on the domestic industry to make a persuasive case, supported by substantive evidence and not mere allegations, to justify the initiation of an expiry review.[8]

7. In its notice of expiry, the Tribunal requested parties to address all the factors relevant to the issue of whether an expiry review was warranted,[9] including the following:

- the likelihood of continued or resumed dumping of the goods;
- the likely volume and price ranges of dumped imports if dumping were to continue or resume;
- the domestic industry's recent performance, including supporting data and statistics showing trends in production, sales, market share, domestic prices, costs and profits;
- the likelihood of injury to the domestic industry if the finding were allowed to expire, having regard to the anticipated effects of a continuation or resumption of dumped imports on the industry's future performance;
- any other developments affecting, or likely to affect, the performance of the domestic industry;
- changes in circumstances, domestically or internationally, including changes in the supply of or demand for the goods, and changes in trends in, and sources of, imports into Canada; and
- any other matter that is relevant.

8. These factors constitute the basis upon which the Tribunal issues its order, as well as the fundamental elements that the parties requesting an expiry review need to address in order to satisfy the Tribunal that an expiry review is warranted.

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8. See, for example, *Waterproof Rubber Footwear* (31 January 2007), LE-2006-001 (CITT) at para. 6; *Stainless Steel Round Bar* (18 January 2005), LE-2004-008 (CITT); *Refill Paper* (16 November 1999), LE-99-005 (CITT); *12-Gauge Shotshells* (29 August 2003), LE-2003-002 (CITT); *Leather Footwear* (12 April 2006), LE-2005-005 (CITT); *Wooden Toothpicks* (22 October 1996), LE-96-003 (CITT). The view that an onus exists on the requesting parties to duly substantiate that an expiry review is warranted is consistent with Canada's obligations under the World Trade Organization *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (*Antidumping Agreement*), which posits the general rule that anti-dumping duties must be terminated not later than five years from the date on which they were imposed. In particular, Article 11.3 provides that "... any definitive anti-dumping duty *shall be terminated* on a date not later than five years from its imposition ... *unless* the authorities determine, in a review initiated before that date ... upon a duly substantiated request made by or on behalf of the domestic industry ... that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury" [emphasis added]. The Appellate Body has stated that Article 11.3 provides that the continuation of an anti-dumping duty is an *exception* to the otherwise-mandated expiry of the duty after five years. See *United States - Sunset Review of Anti-dumping duties on Corrosion-resistant Carbon Steel Flat Products From Japan* (15 December 2003), WT/DS244/AB/R [*U.S. Sunset Review on Steel Products*] at para. 104; *United States - Sunset Reviews of Anti-dumping Measures on Oil Country Tubular Goods From Argentina* (29 November 2004), WT/DS268/AB/R at para. 178.

9. Pursuant to rule 73.2 of the *Rules*.

9. In short, in order to show that an expiry review is warranted, the requesting parties must show both a reasonable indication that the expiry of the finding will likely result in continued or resumed dumping and a reasonable indication that injury to the domestic industry will likely ensue.[10]

Application in This Case

10. Even assuming, for the purposes of the analysis, that the expiry of the finding would result in continued or resumed dumping, the requesting parties have not provided sufficient available information to show that an expiry review is warranted.

11. For an expiry review of a finding to be warranted, there must be a reasonable indication that a continuation or resumption of dumping will likely result in material injury to those domestic producers whose collective production of MIUs constitutes the whole or a major proportion of the total domestic production of MIUs.[11]

12. As indicated above, and consistent with the Tribunal's decision in the MIU inquiry, the Tribunal considers that the domestic industry in this case comprises the domestic producers that produce MIUs in Canada, whether for sale in the merchant market or for further internal processing and consumption.[12] Therefore, the domestic industry comprises, at a minimum, Alpha, National, SSH and Marshall.

13. An important step in considering whether injury to these domestic producers is likely to result from the expiry of the finding is to assess the state of the domestic industry. In order to do this, the Tribunal requires, as is made clear by paragraph 73.2(*c*) of the *Rules*, information on performance indicators, such as trends in production, sales, market share and profits.

14. In its submission, SSH included statements from National and Alpha, the only two domestic producers of MIUs for the merchant market at the present time. However, these statements provide practically no information on the recent performance of these two companies and, in particular, on indicators such as trends in production, sales, market share and profits. Accordingly, they do not provide a

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10. This is consistent with Article 11.3 of the *Antidumping Agreement*. See also, for example, *U.S. Sunset Review on Steel Products* at para. 104, which states as follows: ". . . Members are required to terminate an anti-dumping duty within five years of its imposition '*unless*' the following conditions are satisfied: first, that a review be initiated before the expiry of five years from the date of the imposition of the duty; second, that in the review the authorities determine that the expiry of the duty would be likely to lead to continuation or recurrence of *dumping*; and third, that in the review the authorities determine that the expiry of the duty would be likely to lead to continuation or recurrence of *injury*. If any one of these conditions is not satisfied, the duty must be terminated." [Underlining added for emphasis]
11. Indeed, section 2 of *SIMA* defines "injury" as ". . . material injury to a domestic industry", which is in turn defined as ". . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods . . . ." Regard must be had to these definitions in determining whether an expiry review under subsection 76.03(3) of *SIMA* is warranted and, accordingly, in addressing paragraphs 73.2(*c*) and (*d*) of the *Rules*.
12. This is consistent with the well-established rule that the domestic industry must be defined by reference to the domestic production of the like goods as a whole, or a major proportion thereof, and not by reference to production for particular segments only; similarly, the determination of material injury cannot be limited to an examination of injury to only particular segments of the domestic industry. See, for example, *United States – Anti-dumping Measures on Certain Hot-rolled Steel Products from Japan*, WT/DS184/AB/R (24 July 2001) at para. 190; Panel Report in *Mexico – Anti-dumping Investigation of High Fructose Corn Syrup (HFCS) From the United States*, WT/DS132/R (28 January 2000) at para. 7.157; *Certain Refrigerators, Dishwashers and Dryers* (16 January 2002), CDA-USA-2000-1904-04 (Ch. 19 Panel) at 19.

sufficient basis to show a reasonable indication that injury to these producers in the merchant market is likely, should the finding be allowed to expire.

15. In any event, it seems unlikely that any injury in the merchant market resulting from the expiry of the finding will be sufficient to constitute material injury to the domestic industry. The limited evidence, on the whole, implies that the combined production and sales of Alpha and National in the merchant market represent a very small proportion of total domestic production of MIUs. By contrast, in the MIU inquiry, the injury caused by dumping was concentrated in the merchant market where the subject goods competed directly with the MIUs that Globe Spring was producing in large volumes relative to the other domestic producers. However, as previously noted, Globe Spring no longer produces MIUs. Therefore, on the basis of the limited evidence available to the Tribunal, it is reasonable to conclude that domestic production for the merchant market no longer constitutes a major proportion of total domestic production.

16. Furthermore, SSH has failed to show a reasonable indication that those domestic producers whose production of MIUs is destined for internal consumption (i.e. SSH itself and Marshall) would likely be injured by potential dumped imports of MIUs.[13] While SSH did provide certain information as to its recent financial performance for its *mattress* production, it failed to indicate how this performance relates to MIUs specifically, how the subject goods have impacted or are likely to impact its operations and performance, or in what respect exactly SSH competes with the subject goods. Indeed, most of SSH's submissions on the likelihood of injury focused on the impact of resumed dumping on the domestic producers producing for the merchant market.[14] SSH provided, in the confidential version of its submissions, but a single example of a potential impact on SSH from resumed dumping.[15] However, this single allegation was just that—an allegation devoid of sufficient detail or explanations or, for that matter, of any supporting evidence. The Tribunal finds that this falls short of providing a reasonable indication that injury to the domestic industry is likely to result if the finding is allowed to expire.

17. Consequently, even proceeding on the assumption that the expiry of the finding would result in continued or resumed dumping, the Tribunal finds that an expiry review is not warranted because the requesting parties have not shown a reasonable indication that the expiry of the finding is likely to result in material injury to the domestic industry.

18. This being said, for the sake of completeness, the Tribunal will briefly explain why it finds that SSH and Globe Spring have also failed to show a reasonable indication that dumping is likely to continue or resume.

19. SSH argued that Chinese producers of MIUs are export-oriented, have large idle capacity and have attempted to circumvent anti-dumping duties in Canada and elsewhere, all of which indicates, according to SSH, that they are unable to sell into the Canadian market without dumping. Globe Spring similarly argued

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13. While the Tribunal has indicated in previous instances that it will focus on the impact of dumping on the domestic merchant market, because the subject goods will only have a direct impact on the prices of like goods sold in the domestic merchant market, and will only assess materiality of any injury caused by dumping against the domestic industry's production of like goods as a whole, the Tribunal has not excluded the possibility that captive domestic production *could*, in theory, be impacted by a resumption of dumping. See MIU inquiry at para. 65, confirming the Tribunal's reasoning in *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 13, in accordance with *Certain Refrigerators, Dishwashers and Dryers* (16 January 2002), CDA-USA 2000-1904-04 (Ch. 19 Panel) at 17-23.
14. Exhibit LE-2013-002-02.02 at paras. 37-41, Vol. 1.
15. Exhibit LE-2013-002-03.02 (protected) at para. 41, Vol. 2; Exhibit LE-2013-002-11.02 (protected) at para. 10, Vol. 2.

that there is evidence of attempts by Chinese producers to circumvent the finding, indicating a propensity to dump, which would be further exacerbated by a recent increase of imports of MIUs from Turkey and India. SSH also raised the fact that an anti-dumping duty order against Chinese MIUs is currently being reviewed in the United States and argued that demand for MIUs in Canada is weak.

20. However, the statistical evidence submitted by SSH[16] for subheading Nos. 9404.10, 9404.29 and 7320.20[17] of the schedule to the *Customs Tariff*[18] shows that imports from China have increased in value since 2009 and have remained the second most important source of imports of MIUs in Canada, after the United States. While these data likely cover a range of items broader than the subject goods, SSH itself submitted that they constitute the best available evidence and that they indicate that the ". . . subject imports have maintained a substantial presence in Canada while dumping protection has been in place . . . ."[19] Since such imports would have either entered the Canadian market at or above normal values or triggered anti-dumping duties, it must be presumed that they were sold in the Canadian market at fair prices. This indicates that Chinese exports are capable of competing in the Canadian market at undumped prices.

21. As for the allegations of circumvention put forward by SSH and Globe Spring, the Tribunal notes that the Canada Border Services Agency (CBSA) is responsible for the enforcement of anti-dumping duties, including the investigation of alleged instances of circumvention. There is no indication that the CBSA has found any significant circumvention in this case. In any event, the Tribunal finds these allegations to be largely unsubstantiated and anecdotal,[20] or to be broad allegations that concern other countries or other goods.[21] Even assuming that some circumvention has occurred in the form of transshipment of Chinese goods through other countries, including Malaysia, as suggested by SSH and Globe Spring, the consistently strong presence of imports from China in the Canadian market indicates that circumvention of the finding, if any, has not been a systemic occurrence that would indicate a general propensity to dump. This conclusion is further supported when the data for imports from Malaysia and the other countries from which disguised Chinese MIUs have purportedly been sourced are examined; since 2009, imports from these other sources have remained marginal relative to total imports and relative to imports of goods from China classified in the relevant subheadings.[22]

22. SSH and Globe Spring did not bring forward any other relevant matters.

16. Exhibit LE-2013-002-02.02, tab P7, Vol. 1; Exhibit LE-2013-002-02.02, tab P7, Vol. 1A; Exhibit LE-2013-002-10.02, tab 1, Vol. 1B.
17. SSH's case brief contained information for subheading No. 7320.90, although, in its reply submission, it submitted information for subheading No. 7320.20. While subheading No. 7320.20 is relevant to the subject goods, subheading No. 7320.90 is not.
18. S.C. 1997, c. 36.
19. Exhibit LE-2013-002-02.02 at para. 16, Vol. 1.
20. See, for example, the statements, relied on by SSH, from National and Marshall. Exhibit LE-2013-002-03.02 (protected), tab 2, Vol. 2; Exhibit LE-2013-002-02.02, tab 3, Vol. 1.
21. Exhibit LE-2013-002-02.01, Exhibits 3, 4, Vol. 1; Exhibit LE-2013-002-03.01 (protected), Exhibit 2, Vol. 2.
22. Exhibit LE-2013-002-10.02, tab 1, Vol. 1B. Based on the combined value of imports for subheading Nos. 7320.20, 9404.10 and 9404.29, imports from Malaysia decreased from 2009 to 2013 and represented, in 2013, only 0.15 percent of all imports. Further, the value of imports from Malaysia was only 0.68 percent of the value of imports from China. The value of imports in 2013 from the other countries mentioned by SSH and Globe Spring as sources of clandestine Chinese MIUs show similarly small percentages.

CONCLUSION

23. The Tribunal is of the view that the requesting parties have not met the onus of establishing that an expiry review is warranted.

24. Pursuant to subsection 76.03(5) of *SIMA*, the Tribunal has decided not to initiate an expiry review.

Pasquale Michaele Saroli
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Presiding Member

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