



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Interim Review No. RD-2020-002

Refined Sugar

*Order and reasons issued
Tuesday, April 27, 2021*

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IN THE MATTER OF an interim review, pursuant to subsection 76.01(1) of the *Special Import Measures Act*, of the orders made by the Canadian International Trade Tribunal on October 30, 2015, in Expiry Review No. RR-2014-006, concerning:

REFINED SUGAR

ORDER

On November 2 and 10, 2020, and January 12, 2021, The Salt Cellar filed a request for an interim review, pursuant to subsection 76.01(1) of the *Special Import Measures Act (SIMA)*, of the orders made by the Canadian International Trade Tribunal on October 30, 2015, in Expiry Review No. RR-2014-006 concerning the dumping of refined sugar, refined from sugar cane or sugar beets, in granulated, liquid and powdered form, originating in or exported from the United States of America, Denmark, the Federal Republic of Germany, the Netherlands and the United Kingdom, and the subsidizing of the aforementioned goods originating in or exported from the European Union.

Pursuant to subsections 76.01(3) and (4) of *SIMA*, the Tribunal has decided not to conduct an interim review of the above orders.

Cheryl Beckett

Cheryl Beckett

Presiding Member

Peter Burn

Peter Burn

Member

Randolph W. Heggart

Randolph W. Heggart

Member

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STATEMENT OF REASONS

BACKGROUND

[1] On November 2 and 10, 2020, and January 12, 2021, The Salt Cellar, an importer of refined sugar, requested that the Canadian International Trade Tribunal initiate an interim review of its orders made on October 30, 2015, in Expiry Review No. RR-2014-006, in order to exclude flavoured cane sugar, branded as Essential CaneTM Sugar, in bags of up to 20 pounds.¹

[2] On January 26, 2021, the Tribunal provided the parties to the expiry review (RR-2014-006) with a copy of the request, notified them that it had determined that the request was properly documented,² and set forth a schedule for submissions on whether the request should be granted.

[3] On February 12, 2021, the Canadian Sugar Institute (CSI) filed submissions opposing the request on behalf of its members.³ In arguing that an interim review is not warranted, the CSI submitted that the exclusion request underlying The Salt Cellar's request for an interim review should not be granted because the domestic industry is capable of producing products that are identical or equivalent to the flavoured sugar products identified in the exclusion request. Moreover, the CSI submitted that domestically produced refined sugar is directly substitutable and competes directly with flavoured sugars in any application because the flavouring matter can easily be added as a separate ingredient.

[4] The CSI further submitted that the domestic industry may be willing to consent to an exclusion for specialty sugar products containing certain added flavouring matter imported in small retail-ready containers, but that additional information was required from The Salt Cellar before such an exclusion could be formulated. The CSI submitted that the exclusion, as currently drafted, could pose a significant risk of circumvention of the anti-dumping and countervailing duty orders and result in unintended injury to the domestic industry. The CSI suggested that the exclusion be reconsidered as part of the Tribunal's ongoing expiry review of the refined sugar orders (RR-2020-003), which was initiated on March 2, 2021.

[5] On March 11, 2021, The Salt Cellar informed the Tribunal that it had been in contact with domestic sugar producers in order to determine whether they could manufacture the products for which it had requested the exclusion. The Salt Cellar indicated that this process would take some time and requested an extension of approximately three months to its deadline to provide a response to the CSI's submissions.⁴

[6] On March 25, 2021, the Tribunal responded that it was unable to accommodate the extension request, but noted that The Salt Cellar could refile its request for an exclusion once it had received its response from the domestic industry, either as part of the ongoing expiry review or as a new request for an interim review.⁵

¹ Exhibit RD-2020-002-01B at 2.

² In accordance with subrule 70(2) of the *Canadian International Trade Tribunal Rules*, SOR/91-499 [Rules].

³ The two members of the CSI are the domestic refined sugar producers Lantic, Inc. and Redpath Sugar Ltd.

⁴ Exhibit RD-2020-003-09.

⁵ Exhibit RD-2020-003-10.

ANALYSIS

[7] Subsection 76.01(1) of the *Special Import Measures Act*⁶ 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. If the Tribunal decides not to conduct an interim review, subsection 76.01(4) requires the Tribunal to make an order to that effect and give reasons for its decision.

[8] An interim review may be warranted where changed circumstances or new facts have arisen since the making of the order or finding, or where there are facts that, although in existence, were not put in evidence in the original proceedings and were not discoverable by the exercise of reasonable diligence.⁷ In the context of interim reviews based on a product exclusion request, the Tribunal has stated that there must be new facts or changes in circumstances that are compelling enough to indicate that the product exclusion will likely be granted.⁸

[9] Product exclusions are not granted where the exclusion will cause injury to the domestic industry. In assessing whether the exclusion will cause injury to the domestic industry, the Tribunal may consider whether the domestic industry produces the product or a substitutable product, or whether the domestic industry is capable of producing the product. Therefore, the information provided to substantiate a request for an interim review based on a product exclusion request 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 products.⁹

[10] In this case, The Salt Cellar submitted evidence that it had contacted several Canadian companies in an attempt to source the flavoured sugar products domestically, rather than from its supplier based in the United States. However, these companies appear to be distributors or retail providers of sugar products, and not actual producers.¹⁰ On the other hand, the domestic producers have submitted evidence that they currently produce or have produced flavoured sugar blends, such as cinnamon sugar and cocoa sugar, and that they have the facilities necessary to produce the flavoured sugar products for which the exclusion is requested.¹¹ As noted above, The Salt Cellar is currently in discussions with these producers to determine whether they can produce the flavoured sugar products that it requires.

[11] As a result, the Tribunal finds that, at this time, The Salt Cellar has not provided sufficient evidence to indicate a likelihood that the domestic industry does not have the capability to produce the products for which the exclusion is requested. Accordingly, an interim review is currently not warranted.

⁶ R.S.C., 1985, c. S-15 [*SIMA*].

⁷ The Tribunal takes guidance from rule 72 of the *Rules*; see also *Oil Country Tubular Goods* (25 October 2017), RD-2017-001 (CITT) at para. 9; *Aluminum Extrusions* (12 September 2013), RD-2012-001 (CITT) at paras. 16-18.

⁸ *Aluminum Extrusions* (12 September 2013), RD-2011-006 (CITT) at para. 25.

⁹ *Ibid.* at paras. 26-27.

¹⁰ Exhibit RD-2020-002-01 at 5-24.

¹¹ Exhibit RD-2020-002-06.01 at 4, 6.

[12] As set out in the Tribunal's letter of March 25, 2021, should The Salt Cellar be in possession of evidence that the domestic producers are not able to produce flavoured sugar products, it may file a request for a product exclusion as part of the Tribunal's ongoing expiry review, or refile its request for an interim review.

DECISION

[13] 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 orders.

Cheryl Beckett

Cheryl Beckett
Presiding Member

Peter Burn

Peter Burn
Member

Randolph W. Heggart

Randolph W. Heggart
Member