



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Interim review RD-2023-001

Photovoltaic Modules and
Laminates

*Order issued
Monday, June 10, 2024*

*Reasons issued
Friday, June 21, 2024*

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IN THE MATTER OF a request for 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 March 25, 2021, in expiry review RR-2020-001, concerning:

PHOTOVOLTAIC MODULES AND LAMINATES

ORDER

On February 1 and 23, 2024, and March 5, 2024, Kings Solar Solutions Inc. filed a request for an interim review, pursuant to subsection 76.01(1) of the *Special Import Measures Act* (SIMA), of the order made by the Canadian International Trade Tribunal on March 25, 2021, in expiry review RR-2020-001 concerning the dumping and subsidizing of photovoltaic modules and laminates consisting of crystalline silicon photovoltaic cells, including laminates shipped or packaged with other components of photovoltaic modules, and thin-film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS), originating in or exported from the People's Republic of China, excluding modules, laminates or thin-film products with a power output not exceeding 100 W, and also excluding modules, laminates or thin-film products incorporated into electrical goods where the function of the electrical goods is other than power generation and these electrical goods consume the electricity generated by the photovoltaic product. In accordance with the Tribunal's finding in inquiry NQ-2014-003, the product definition also excludes 195 W monocrystalline photovoltaic modules made of 72 monocrystalline cells, each cell being no more than 5 inches in width and height.

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

Georges Bujold
Georges Bujold
Presiding Member

Susana May Yon Lee
Susana May Yon Lee
Member

Frédéric Seppey
Frédéric Seppey
Member

The statement of reasons will be issued at a later date.

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STATEMENT OF REASONS

BACKGROUND

[1] On February 1, 2024, the Canadian International Trade Tribunal received a request from Kings Solar Solutions Inc. (KSS) to initiate an interim review of the Tribunal's finding in *Photovoltaic Modules and Laminates*¹ to exclude from the scope of the finding certain flexible solar panels intended for installation on transport truck fairings.² KSS claimed that there was no Canadian supplier of this product.³

[2] On February 19, 2024, the Tribunal requested that KSS provide additional information, including a full technical description of the product for which it was seeking an exclusion, before the Tribunal could consider the request properly documented.⁴

[3] On February 23, 2024, and March 5, 2024, the Tribunal received the requested information from KSS, along with a revised Product Exclusion Request Form seeking an exclusion for “[f]lexible [s]olar panels that will affix to curved surfaces, namely transport truck fairings”.⁵ KSS claimed that these panels are only available from one specific manufacturer in China.⁶ KSS detailed the physical characteristics of the product as being “[f]lexible, (1/8”) thick solar panels that can be custom designed to fit specific truck models and adhered to the curved surfaces of transport truck fairings, allowing all telematics, tail gates, batteries and the ‘hotel’ all to be self powered without having to run the engine to keep the batteries charged.”⁷

[4] After reviewing the additional information received from KSS, the Tribunal determined that the request for an interim review was properly documented.⁸ On March 12, 2024, the Tribunal informed all parties to expiry review RR-2020-001 of its receipt of the request for an interim review⁹ and gave those parties an opportunity to make representations to the Tribunal.¹⁰

[5] On April 10, 2024, Silfab Solar Inc. (Silfab) and Heliene Inc. (Heliene), domestic producers of like goods, filed submissions opposing KSS's request. In arguing that an interim review is not warranted, they submitted that the exclusion request underlying KSS's request for an interim review should not be granted because the product falls within the product definition of the Tribunal's findings, being laminates, and the domestic industry is capable of producing an identical product. In particular, the domestic producers submitted that they are capable of producing an identical or substitutable product, with identical or similar physical characteristics, that can fulfil the same customer needs as the product for which KSS requested an exclusion.¹¹ To support these claims, the

¹ *Photovoltaic Modules and Laminates* (3 July 2015), NQ-2014-003 (CITT), continued in *Photovoltaic Modules and Laminates* (25 March 2021), RR-2020-001 (CITT).

² Exhibit RD-2023-001-01.

³ *Ibid.* at 9.

⁴ Exhibit RD-2023-001-03.

⁵ Exhibit RD-2023-001-01.B at 2.

⁶ *Ibid.* at 2.

⁷ *Ibid.* at 4.

⁸ Exhibit RD-2023-001-04.

⁹ In accordance with subrule 70(2) of the *Canadian International Trade Tribunal Rules* (the Rules).

¹⁰ Exhibit RD-2023-001-04.

¹¹ Exhibit RD-2023-001-05.01 at 9–11.

domestic producers submitted evidence through witness statements from Paolo Maccario of Silfab and Martin Pochtaruk of Heliene.¹²

[6] The domestic producers further submitted that KSS did not contact them to inquire about the product for which it was seeking an exclusion, nor did it appear that KSS made any effort to contact a domestic producer regarding sourcing the product.¹³

[7] On April 24, 2024, KSS responded to the domestic producers' submissions, expressing doubt regarding the domestic producers' ability to manufacture the product for which it was seeking an exclusion. In particular, KSS argued that its product requires specific capabilities in order to "satisfy the rigorous demands" of its solar applications such as travelling on a truck at high speed (as opposed to solar panels that are stationary), as well as custom laser cutting (for reasons of aerodynamics) which is currently supplied by its manufacturer.¹⁴ KSS also argued that the domestic producers' websites lack marketing material relating to flexible solar panels.¹⁵

[8] After the submission deadlines set out by the Tribunal had passed, on May 23, 2024, KSS sought leave for the late filing of certain documents.¹⁶ The domestic producers objected to these requests on May 31, 2024.¹⁷ On June 4, 2024, counsel for KSS filed correspondence, which the Tribunal also interpreted as a motion requesting leave for late filing.¹⁸ On June 6, 2024, the Tribunal denied the requests on the basis that they failed to set out why the submissions in question were not filed within the applicable time limit, the relevance of the submissions to the proceeding, or why the late filings should be permitted. In addition, the Tribunal considered that the submissions did not add any material arguments or evidence to the existing record.¹⁹

ANALYSIS

[9] Subsection 76.01(1) of the *Special Import Measures Act*²⁰ (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 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.

[10] 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

¹² Exhibit RD-2023-001-05.02; Exhibit RD-2023-001-05.04; Exhibit RD-2023-001-06.02 (protected); Exhibit RD-2023-001-06.04 (protected).

¹³ Exhibit RD-2023-001-05.01 at 5.

¹⁴ Exhibit RD-2023-001-05.05 at 1.

¹⁵ *Ibid.* at 1.

¹⁶ Exhibit RD-2023-001-07.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Exhibit RD-2023-001-11.

²⁰ R.S.C., 1985, c. S-15.

diligence.²¹ 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.²²

[11] 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.²³

[12] In this case, the Tribunal finds that, at this time, KSS has not provided sufficient evidence to indicate a likelihood that the domestic industry does not produce, or does not have the capability to produce, the products for which the exclusion is requested. Accordingly, an interim review is currently not warranted.

[13] There is no evidence that the domestic producers cannot produce the product for which KSS is seeking an exclusion or do not intend to produce the product. Rather, the evidence filed by the domestic producers indicates that the domestic industry is capable of producing, or in Heliene's case has produced, an identical or substitutable product to KSS's requested exclusion for flexible 1/8" thick solar panels for end use in transport truck fairings.²⁴ Based on Heliene and Silfab's submissions, witness statements and supporting evidence, the Tribunal also makes the following findings of fact:

- KSS is requesting a product exclusion of a laminate.²⁵
- Flexibility is a function of the thickness of the laminate.
- The domestic industry is capable of producing in Canada and selling a laminate that is 1/8" thick.
- The domestic industry is capable of producing laminates with generating capacity up to, and well in excess of, the capacity (160 watts) of the products for which KSS is seeking an exclusion.

²¹ 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.

²² *Aluminum Extrusions* (12 September 2013), RD-2011-006 (CITT) [RD-2011-006] at para. 25.

²³ RD-2011-006 at paras. 26–27.

²⁴ Exhibit RD-2023-001-05.01 at 10; Exhibit RD-2023-001-06.04 (protected) at 5–7; Exhibit RD-2023-001-06.02 (protected) at 4–8.

²⁵ Based on the evidence, the product for which KSS is seeking an exclusion is a laminate, i.e., an unframed photovoltaic (solar) module. The product definition in the Tribunal's order includes laminates from China. The Tribunal therefore rejects the argument that the flexible solar panels in question are distinct from the goods subject to the order.

[14] Therefore, the evidence indicates that the domestic industry is capable of producing a flexible laminate identical or similar to the one specified by KSS.

[15] On that basis, granting the exclusion requested by KSS would likely cause injury to the domestic industry because the information on the record indicates that the domestic producers already produce flexible panels that are similar to, or substitutable for, those that KSS wishes to import from China or, at the very least, they are capable of producing such products.

[16] The other arguments made by KSS do not address factors relevant to the Tribunal's decision on whether to grant a product exclusion request. While they show that KSS requires a specific type of solar panel for a particular end use that would result in numerous benefits for its customers, none of the information provided by KSS calls into question the domestic producers' claims to have the capability to produce the flexible solar panels that KSS requires, or substitutable products. To the extent that KSS argues that the unit prices and fees that are likely to be quoted by the domestic producers would be too high, this is not a consideration that is relevant for the purposes of determining whether to grant product exclusions.²⁶

[17] Finally, KSS stated the following in its reply submissions:

... I would ask both Heliene and SilFab *where are your monocrystalline cells sourced from?* There are *only a few countries, at present, that can capably manufacture these cells*. If one of them is Canada, specifically SilFab and/or Heliene, then by all means, let's discuss. Otherwise, the cells themselves should be the subject of discussion, and "manufacturing" in the broadest sense, is merely assembling them onto flexible panels and mounting them into glass covered aluminum frames here in Canada. Our application, hardly being an infringement on this manufacturing process.²⁷

[Emphasis added]

[18] This argument is not relevant for the Tribunal's decision. The goods subject to the Tribunal's order and resulting SIMA duties are "photovoltaic modules and laminates". The legislation does not permit the Tribunal to take into consideration where the domestic producers source their raw materials (in this case, monocrystalline cells) in deciding whether the domestic producers are capable of producing an identical or substitutable product to the one for which an exclusion has been requested.

[19] In light of the above, the Tribunal finds that, at this time, KSS 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 not warranted. Should KSS, in the future, be in possession of evidence that the domestic producers are not able to produce goods identical to, or substitutable for, the solar panels it seeks to obtain, it may refile a request for an interim review at a later date. KSS may also participate in the future expiry review of the current order, which, in accordance with paragraph 76.03(1)(b) of SIMA, must be initiated no later than March 24, 2026.

²⁶ *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 339.

²⁷ Exhibit RD-2023-001-05.05 at 1.

DECISION

[20] For the foregoing reasons, the Tribunal is not satisfied that an interim review is warranted. Therefore, the Tribunal has decided not to conduct an interim review of the order, pursuant to subsections 76.01(3) and (4) of SIMA.

Georges Bujold

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Presiding Member

Susana May Yon Lee

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Frédéric Seppey

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