



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal No. AP-2012-038

Colonial Éléance Inc.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Wednesday, September 11, 2013*

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IN THE MATTER OF an appeal heard on June 4, 2013, pursuant to section 61 of the *Special Import Measures Act*, R.S.C. 1985, c. S-15;

AND IN THE MATTER OF 12 decisions of the President of the Canada Border Services Agency, dated July 31, 2012, with respect to requests for further re-determination pursuant to section 59 of the *Special Import Measures Act*.

BETWEEN

COLONIAL ÉLÉGANCE INC.

Appellant

AND

**THE PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

DECISION

The appeal is dismissed.

Jason W. Downey
Jason W. Downey
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Daniel Petit
Daniel Petit
Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing: Ottawa, Ontario
Date of Hearing: June 4, 2013

Tribunal Members: Jason W. Downey, Presiding Member
Serge Fréchette, Member
Daniel Petit, Member

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Manager, Registrar Programs and Services: Michel Parent

Registrar Officer: Haley Raynor

PARTICIPANTS:

Appellant	Counsel/Representative
Colonial Éléance Inc.	Jean-Marc Clément
 Respondent	 Counsel/Representative
President of the Canada Border Services Agency	Talitha Nabbali

WITNESS:

Luc Desrosiers
President
Colonial Éléance Inc.

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STATEMENT OF REASONS

BACKGROUND

1. This is an appeal filed by Colonial Élégance Inc. (Colonial) with the Canadian International Trade Tribunal (the Tribunal) pursuant to section 61 of the *Special Import Measures Act*¹ from 12 decisions made on July 31, 2012, by the President of the Canada Border Services Agency (CBSA).
2. In order to determine whether duties are payable, pursuant to subsection 61(3) of *SIMA*, the Tribunal must determine whether aluminum parts imported from the People's Republic of China (China) by Colonial, for use as columns and rails for sliding doors (together, the goods in issue), are of the same description as the aluminum extrusions described in the Tribunal's findings in *Aluminum Extrusions*² (the subject goods).
3. The CBSA determined that the goods in issue were of the same description as the subject goods and that those duties were therefore payable.
4. Colonial argued that the subject goods are in the nature of production inputs and therefore do not encompass finished goods or consumer goods, such as the goods in issue. In the alternative, Colonial argued that the aluminum panels for assembly as columns do not fall within the scope of the findings, because they are "kits" comprising the necessary parts to be assembled into finished goods, as defined in paragraph 351 of the statement of reasons in *Aluminum Extrusions*.

PROCEDURAL HISTORY

5. The goods in issue were imported between May 2009 and June 2010.
6. Beginning on May 16, 2011, pursuant to section 57 of *SIMA*, the CBSA sent detailed adjustment statements in which it determined that the goods in issue were of the same description as the subject goods.
7. Following a request made by Colonial pursuant to section 58 of *SIMA*, the CBSA, on July 31, 2012, issued detailed adjustment statements pursuant to section 59, confirming the previous decisions that the goods in issue were of the same description as the subject goods.
8. On October 16, 2012, Colonial appealed those decisions.
9. The Tribunal held a public hearing in Ottawa, Ontario, on June 4, 2013. Colonial called Mr. Luc Desrosiers, President of Colonial, as a witness. The CBSA did not call any witnesses.

TRIBUNAL'S ANALYSIS

Legislative Framework

10. On March 17, 2009, the Tribunal issued a decision in *Aluminum Extrusions*, in which it found that the dumping and subsidizing of the subject goods had caused injury to the domestic industry.
11. The issue in this appeal is whether the goods in issue are of the same description as the subject goods.

1. R.S.C. 1985, c. S-15 [*SIMA*].
2. (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*].

12. It is well established that the Tribunal's analysis in this regard must be based on an examination of the characteristics of the goods, including physical description, end-use applications, interchangeability, competition in the marketplace, price and marketing.³ In certain cases, not all these factors are relevant. For instance, in some cases, goods may be described on the more limited basis of technical specifications or industry standards.⁴

13. In *Aluminum Extrusions*, the subject goods were defined according to a special production process. More specifically, the subject goods were described as having been produced via an extrusion process. Although the production process is neither a physical characteristic nor a market characteristic, it nonetheless has to be considered, because the subject goods were defined specifically according to the extrusion production process. Therefore, the Tribunal will examine the production process of the goods in issue to determine whether they are goods of the same description as the subject goods.

14. The relevant reference point is the state of the goods at the time of importation.⁵

15. It is also well established that, where a finding is unclear, the Tribunal may refer to the statement of reasons to find the clarifications required for its analysis.⁶

16. In such circumstances, the statement of reasons may clarify the intended meaning of an ambiguous finding. However, the Tribunal has also indicated that relevant parts of the administrative record may be helpful in establishing the meaning of ambiguous findings where it cannot be clarified by reference to the statement of reasons.⁷

Findings in Aluminum Extrusions

17. The findings define the subject goods as follows:

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that:

- the dumping and subsidizing in Canada of custom-shaped aluminum extrusions originating in or exported from . . . China have caused injury to the domestic industry; and
- the dumping and subsidizing in Canada of standard-shaped aluminum extrusions originating in or exported from . . . China have caused injury to the domestic industry.

3. See, for example, *Nikka Industries Ltd. v. Deputy M.N.R.C.E.* (20 August 1991), AP-90-018 (CITT); *Macsteel International (Canada) Limited v. Commissioner of the Canada Customs and Revenue Agency* (16 January 2003), AP-2001-012 (CITT); *Zellers Inc. v. Deputy M.N.R.* (25 January 1996), AP-94-351 (CITT); *Cobra Anchors Co. Ltd. v. President of the Canada Border Services Agency* (8 May 2009), AP-2008-006 (CITT); *Aluminart Products Limited v. President of the Canada Border Services Agency* (19 April 2012), AP-2011-027 (CITT); *Powers Industries Limited v. President of the Canada Border Services Agency* (22 April 2013), AP-2012-010 (CITT) [*Powers Industries*] at para. 21.

4. *Powers Industries* at para. 21; *Toyota Tsusho America, Inc. v. President of the Canada Border Services Agency* (18 November 2011), AP-010-063 (CITT).

5. See *Deputy M.N.R.C.E. v. MacMillan & Bloedel (Alberni) Ltd.*, [1965] S.C.R. 366. See, also, *Tiffany Woodworth v. President of the Canada Border Services Agency* (11 September 2007), AP-2006-035 (CITT) at para. 21.

6. *Powers Industries* at para. 23; *Regal Ideas Inc. v. President of the Canada Border Services Agency* (27 May 2013), AP-2012-025 (CITT) [*Regal Ideas*] at para. 29.

7. *Powers Industries* at para. 24; *Regal Ideas* at para. 30. See, also, *Blueberry River Indian Bank v. Canada (Department of Indian Affairs and Northern Development)*, 2001 FCA 67, [2001] 4 FC 455 [FCA]. Although it was issued in a different context, this decision of the Federal Court of Appeal supports the Tribunal's opinion, whereby, if a particular aspect of a Tribunal finding is not settled by reference to the statement of reasons, it may be helpful to refer to parts of the administrative record, when the Tribunal made the finding, which speak directly to the ambiguity.

18. The Tribunal also added the following to the description:

... aluminum extrusions produced via an extrusion process of alloys having metallic elements falling within the alloy designations published by The Aluminum Association commencing with 1, 2, 3, 5, 6 or 7 (or proprietary or other certifying body equivalents), with the finish being as extruded (mill), mechanical, anodized or painted or otherwise coated, whether or not worked, having a wall thickness greater than 0.5 mm, with a maximum weight per metre of 22 kg and a profile or cross-section which fits within a circle having a diameter of 254 mm (aluminum extrusions), originating in or exported from ... China.⁸

19. Moreover, the Tribunal indicated in its statement of reasons that goods imported in the form of kits comprising the necessary parts to be assembled into finished goods and products that have been further processed to the extent that they no longer possess the nature and physical characteristics of aluminum extrusions are not covered by the findings.⁹

20. The Tribunal also excluded a number of products from the findings. However, they are not relevant in this case.¹⁰

Goods in Issue

21. The first type of goods in issue consists of aluminum panels intended to interlock to form round or square columns, which will serve support or decorative functions in homes.¹¹ The panels are painted and present different decorative motifs, but are not worked in any way. The panels are imported in boxes containing a large number of them,¹² all stacked on top of each other. They are packed in a polystyrene bag, which then contains the 2, 3 or 4 panels necessary, depending on the model, to form a column during subsequent assembly.¹³ Once they enter Canada, these parts are packed in individual boxes for retail sale.

22. The second type of goods in issue consists of aluminum sections for use as rails for sliding doors. The corners of the rails are curved. These rails enter Canada in bulk, in large boxes. They are then sold by the unit by various retailers, directly to consumers, or shipped to a local subcontractor that uses them to make retractable door frames,¹⁴ which themselves will be sold to consumers for assembly with doors (sold separately).¹⁵

23. Colonial filed the following five samples:

- Column components shipped from China (A-01)
- Column components packaged for retail sale (A-02)
- Assembled column (A-03)
- Sliding door rail (A-04)
- Column advertising panels (A-05)

8. *Aluminum Extrusions* at para. 1.

9. *Ibid.* at paras. 351, 365.

10. The list of exclusions is attached to *Aluminum Extrusions* and *Aluminum Extrusions Remand*, NQ-2008-003R (CITT).

11. To facilitate reading of these reasons, the aluminum panels intended to form columns will sometimes be designated simply as “columns”. However, it continues to be understood that these columns were all imported in an unassembled state, as panels.

12. Exhibit AP-2012-038-11A, appendix 6.

13. *Ibid.* at paras. 20-28.

14. Colonial does not explain the difference, if any, between “retractable doors” and “sliding doors”.

15. Exhibit AP-2012-038-11A at paras. 29-38.

24. Colonial also filed a report on compression tests performed on certain types of columns¹⁶ and a video demonstrating the post-importation column packaging process for retail sale.

25. It is understood that the goods in issue were produced by aluminum extrusion and that their physical features fall within the range of compositions, finishes, further processing, walls thicknesses, weights and dimensions described in the findings.

Positions of Parties

Colonial

26. To summarize, Colonial submitted that the subject goods do not encompass finished goods or consumer goods. Since the goods in issue are finished goods and consumer goods, they are not of the same description as the subject goods.

27. First, Colonial based its position on the definition of the subject goods. According to Colonial, an object produced by an extrusion process is not necessarily an extrusion covered by the findings.

28. Colonial instead argued that the word “extrusion”, when used to designate the *objects* obtained by the process of the same name, refers to an incomplete part, which ultimately will be transformed and will serve as a manufacturing input for a different product, and which is mainly defined in relation to its extrusion production process¹⁷. Colonial therefore submitted that the word “extrusion” excludes finished consumer goods.

29. According to Colonial, the goods in issue are finished consumer goods. Because they are known to consumers as columns or rails, they therefore cannot be designated by the term “extrusion”, which is not synonymous with the terms column and rail.

30. Colonial added that the goods in issue differ from extrusions by their market characteristics, in particular, competition in the marketplace, prices, distribution channels and marketing.

31. Moreover, according to Colonial, the reasons in support of the findings also indicate that extrusions must not be confused with finished products, the two products being mutually exclusive. Colonial emphasizes paragraph 96 of the statement of reasons in *Aluminum Extrusions*, in which the Tribunal indicates “... *that the definition of the subject goods cannot be reasonably interpreted to include finished aluminum goods* ...”. The Tribunal notes at the outset that Colonial’s submissions at the hearing disregarded the second part of this passage, which reads as follows: “... that are processed or manufactured to such an extent that they ... have become a different product.” This issue will be discussed below.

32. Moreover, Colonial suggested that finished goods are goods that have gone through their last step of processing.¹⁸ In this case, since the goods in issue will not undergo any more processing before they are offered for sale or used by consumers, these are finished goods not subject to the findings.

33. With regard to the columns, Colonial also submitted that they are explicitly exempted from the findings, due to the fact that they are kits comprising the necessary parts to be assembled into finished goods, described in paragraph 351 of the statement of reasons in *Aluminum Extrusions*. Colonial submitted

16. Exhibit AP-2012-038-19A, tab 6.

17. Exhibit AP-2012-038-11A at para. 77.

18. *Transcript of Public Hearing*, 4 June 2013, at 64-65.

that, since all the parts of a column in the unassembled state are packed in polystyrene bags and all the parts are an integral and essential part of the column and its capacity to support a roof or give a house an attractive appearance,¹⁹ these are kits not subject to the findings.

CBSA

34. The CBSA submitted that extrusions are goods meeting the criteria (regarding the production process, composition, finish, wall thickness, etc.) set out in the findings. The CBSA added that neither the name given to the goods nor their end use are relevant to the issue of whether they are extrusions subject to the findings, since the key consideration instead is the objective description of the goods at the time of importation.

35. According to the CBSA, Colonial is putting forward an erroneous interpretation of paragraph 96 of the statement of reasons in *Aluminum Extrusions*. According to the CBSA, the Tribunal indicated that goods “manufactured to such an extent” that they no longer possess the nature and physical characteristics of an aluminum extrusion but have become finished goods are not subject to the findings.

36. Therefore, according to the CBSA, it is erroneous to submit that any product intended for consumption or that has gone through its last finishing step is a finished product and no longer an extrusion, since the determining consideration is whether the goods are manufactured to such an extent that they no longer possess the nature and physical characteristics of an extrusion but have become a different product.²⁰ According to the CBSA, the goods in issue are neither processed nor manufactured to such an extent that they no longer possess the physical characteristics of an extrusion.

37. Finally, the CBSA submitted that the columns in issue are not kits “. . . [comprising] the necessary parts to assemble finished goods . . .” within the meaning of paragraph 351 of the statement of reasons in *Aluminum Extrusions*. According to the CBSA, the Tribunal defined “finished goods” in paragraph 97 as goods “. . . that incorporate aluminum extrusion products as an input or that join together aluminum extrusions with other materials . . .” However, the columns in issue are imported without any other parts and, even when assembled, they retain the nature and physical characteristics of an aluminum extrusion.

Analysis

38. As indicated above, to resolve the issue of whether the goods in issue are of the same description as the subject goods, the Tribunal must first refer to the text of the findings and, to the extent that the findings contain an ambiguity relevant to the facts of this case, to the statement of reasons.

39. The Tribunal accepts that, in this case, the word “extrusion” designating the subject goods is not unambiguous. As noted by Colonial,²¹ several common French language dictionaries define the term “extrusion” as an extrusion production *process*.²² However, since the findings use the word “extrusion” only to designate *objects*, it will be useful to refer to the statement of reasons to clarify the exact scope of the term in this context.

19. *Ibid.* at 77.

20. *Transcript of Public Hearing*, 4 June 2013, at 96-98.

21. Exhibit AP-2012-038-11A at paras. 52-53.

22. See, for example, the word “extrusion” in *Le Grand Robert de la Langue française*, 2d ed. : “2.a) Production of metal parts by causing metal to flow into an extrusion die” [translation]; in *Le Petit Robert 2011*, “2. (Production of metal parts by causing metal to flow into an extrusion die – Process of forming an object, a food, that consists of forcing the material to be fluidized through a die” [translation].

40. Moreover, Colonial's second argument pertains to the concept of kits. As the Tribunal indicated in *Universal Consumer Products, Inc., Liv Outdoor (International) Inc. and Maine Ornamental, LLC v. President of the Canada Border Services Agency*,²³ the text of the findings is unclear on the issue of whether kits fall within the scope of the findings.

The argument that the goods in issue are not of the same description as the subject goods because they are consumer products or finished products

41. Colonial claims that the word "extrusion" does not designate the specific finished consumer products, but rather incomplete parts and manufacturing inputs, and that anything that is a finished product, i.e. any product that has gone through its last step of processing, is no longer an extrusion within the meaning of the decision. The first argument is mainly based on the interpretation of the word "extrusion", while the second argument is mainly based on the interpretation of paragraph 96 of the statement of reasons in *Aluminum Extrusions*.

42. Concerning the interpretation of the word "extrusion", the Tribunal agrees with Colonial when it states that, given that the word "extrusion" is normally defined in French as a production process, it is reasonable to conclude that, when the term is used nonetheless to designate objects, it refers to objects obtained by the extrusion process. This interpretation is consistent with the English version of the findings. Indeed, the English term "extrusion" is defined, in particular, as "a form or product produced by this process [of extruding]".²⁴

43. However, Colonial's argument regarding the interpretation of the word "extrusion" as an object does not stop there. According to Colonial, because an extrusion is mainly defined in relation to its production process, this word therefore must refer to "... an incomplete part, which ultimately will be transformed and will serve as a manufacturing input for a different product which is not yet formed"²⁵ [translation], and it "... cannot mean finished consumer goods, such as columns or rails"²⁶ [translation].

44. The Tribunal cannot accept this argument. Rather, the Tribunal is of the opinion that the word "extrusion" is simply used generically, to provide an abbreviated designation of the objects obtained by an extrusion process.

45. As indicated, the reasonable interpretation of the word "extrusion" is that it simply designates a product obtained by the extrusion process, and this concept does not have inherent boundaries regarding the function of the product thus obtained or the trade level for which it is intended.

46. In this regard, the fact that the word "extrusion" is not used in common everyday language to designate common products, such as the goods in issue, which have more specific names, does not mean that the word "extrusion" does not designate these goods in the context of the findings.

47. It is well established that, in an appeal pursuant to *SIMA* regarding the applicability of findings, the issue is whether the goods in issue meet the definition of the goods subject to the findings of the decision in question, and not which name or designation an importer, manufacturer or consumer would give to the

23. (11 September 2013), AP-2012-039, AP-2012-050 and AP-2012-059 (CITT) [*Universal, Liv and Maine*] at para. 35.

24. See the definition of the word "extrusion" in *Merriam-Webster's Collegiate Dictionary*, 11th ed.

25. See, for example, Exhibit AP-2012-038-11A at para. 64.

26. *Ibid.* at para. 55.

goods in issue.²⁷ Therefore, nothing *a priori* prevents the word “extrusion” from designating objects obtained by extrusion that have recognizable forms or functions and that are designated by specific names.

48. Moreover, neither the text of the findings nor the statement of reasons indicates that the Tribunal sought to exclude products intended for the consumer market, which are recognized or recognizable as serving specific functions.

49. Indeed, the Tribunal considers that the excerpts of the statement of reasons on which Colonial relied to state that consumer goods, as opposed to “production inputs”, are not goods of the same description as the subject goods, do not support Colonial’s position.

50. In particular, Colonial relied on certain excerpts from paragraphs 24 and 26 of the statement of reasons in *Aluminum Extrusions*,²⁸ which it argued would make a distinction between finished products, on the one hand, and the extrusions that they contain, on the other hand.

51. These excerpts instead describe the use of extrusions and indicate that they are found in a wide range of products. For example, in paragraph 24 of the statement of reasons in *Aluminum Extrusions*, the Tribunal indicated that “[u]ses for aluminum extrusions in the building and construction industry cover a wide range of products, including windows, doors”

52. However, when the Tribunal gives such an example of aluminum extrusions that may be found in windows, nothing indicates that it implies at the same time that the extrusions must necessarily be present only as parts or inputs. Furthermore, nothing indicates that the Tribunal sought to imply that, if an entire window were obtained by extrusion, it could not be an extrusion subject to the findings solely due to the fact that it takes the form of a “product” identifiable by a common name and that it might qualify as a consumer product.

53. On the contrary, other excerpts of the statement of reasons that expressly indicate that the extrusions of specialized forms, that have a single, specific end use, are subject to the findings, support the Tribunal’s conclusion that extruded sections, the form and function of which allow them to be offered on the (consumer) market, remain within the scope of the findings. Thus, the Tribunal’s reasoning in the following paragraph may be transposed entirely to this instance:

... the Tribunal notes that the definition of the subject goods, as clarified by the additional product information, does not limit the scope of the subject goods on the basis of end use. In the Tribunal’s opinion, the definition is sufficiently broad to include goods that have a single use. Indeed, custom-shaped aluminum extrusions, which are clearly subject goods, are typically manufactured to serve a specific use. In other words, while aluminum inputs that have a single, specific end use may be considered aluminum parts as opposed to aluminum extrusions by the requesting parties, such goods may still meet the conditions of the definition of the subject goods.²⁹

54. As the Tribunal stated in *Universal, Liv and Maine*,³⁰ the findings and statement of reasons instead indicate that the real limiting factor³¹ of the subject goods is defined according to the *production processes* that they may undergo while still being considered as aluminum extrusions.

27. See, for example, *Powers Industries* at para. 27.

28. See *Transcript of Public Hearing*, 4 June 2013, at 67-69.

29. *Aluminum Extrusions* at para. 77.

30. At para. 44.

31. Beyond the physical specifications regarding the composition, finish, wall thickness, etc., described in the conclusions.

55. This emerges clearly from the statement of reasons, in which the Tribunal elaborates on the scope of the subject goods. The section titled “Product Description” simply covers the production process of the subject goods. The Tribunal first indicates what is involved in the extrusion process:

18. Extrusion is the process of shaping heated material by forcing it through a shaped opening in a die with the material emerging as an elongated piece with the same profile as the die cavity. . . .

56. The Tribunal then specifies, in paragraphs 21 and 23 of the statement of reasons in *Aluminum Extrusions*, certain additional production processes that these extruded aluminum sections may undergo, without ceasing to possess the nature of an extrusion. In particular, in paragraph 23, the Tribunal states the following:

23. Working or fabricating extrusions includes any operation performed other than mechanical, anodized, painted or other finishing, prior to utilization of the extrusion in a finished product. These can include precision cutting, machining, punching, drilling and bending.

57. Other details are provided in paragraphs 95 and 96 of the statement of reasons in *Aluminum Extrusions*, where the Tribunal clarifies the idea that an extrusion that is *processed to the extent that it no longer possesses the characteristics of an extrusion*, is no longer subject to the findings. The Tribunal states as follows:

95. In light of this definition and additional information, the Tribunal is of the view that the subject goods . . . *include aluminum extrusion products that have been further processed, but only to a certain extent*. For example, the wording of the definition and the contextual guidance provided by the additional product information make it clear that aluminum extrusion products that have been anodized, painted or otherwise coated, and worked (e.g. precision cut, machined, punched and drilled) are included in the scope of the like goods.

96. However, the Tribunal considers that *the definition of the subject goods cannot be reasonably interpreted to include finished aluminum goods that are processed or manufactured to such an extent that they no longer possess the nature and physical characteristics of an aluminum extrusion* as such but have become a different product. *The additional product information supports this conclusion by limiting the relevant working and fabricating operations to steps that occur prior to the utilization of the extrusions in a finished product. The Tribunal further notes that the fact that the additional product information does not refer to the assembly of aluminum extrusions with other components, also supports this conclusion.*

[Emphasis added]

58. Therefore, an extrusion product will not be excluded from the findings unless it has been *further processed* beyond the description in the findings and the statement of reasons, *to such an extent that it no longer possesses the nature and physical characteristics of an aluminum extrusion* or else, unless it has been *assembled with other components*. A product obtained by an extrusion process and possessing the physical characteristics described in the findings is therefore an extrusion subject to the findings, regardless of its use, its form, its designation or its distribution channels.

59. As such, even accepting that the goods in issue are consumer products, this categorization would not prevent them from being subject to the findings. Colonial’s first argument must therefore be dismissed.

60. A reading in their entirety of paragraphs 23, 95 and 96 of the statement of reasons in *Aluminum Extrusions* is sufficient to dismiss Colonial’s second argument as well, namely, that paragraph 96 states that finished products, by definition, are not extrusions, *and* moreover, that “finished products” mean products that have gone through their last step of processing.

61. In the Tribunal's opinion, Colonial takes the words "finished aluminum goods" as they appear in paragraph 96 of the statement of reasons in *Aluminum Extrusions* out of context and gives them a meaning that is incompatible with this context.

62. When paragraph 96 of the statement of reasons in *Aluminum Extrusions* is read in its entirety, and together with paragraphs 95 and 23, it becomes obvious that the Tribunal contemplated that "finished aluminum goods" different from extrusions are defined by the qualitative issue of whether the *further processing* of the product, beyond its production by an extrusion process or by one or more of the processes cited in the product description,³² means that the product no longer possesses the nature and physical characteristics of an aluminum extrusion. As such, contrary to Colonial's interpretation, within the meaning of paragraph 96, products are considered to be finished goods or finished products—and to no longer possess the nature or the physical characteristics of an extrusion—*due to* their degree of processing or additional finishing, and *not* due to the fact that they have gone through their last step of processing before marketing.

63. In this instance, the goods in issue were not further processed beyond the production processes described in the findings and the statement of reasons. Consequently, they are not products that no longer possess the nature or the physical characteristics of an extrusion, despite the fact that they have gone through their last processing. Therefore, the goods in issue are goods subject to the findings.

64. Finally, Colonial's argument that the goods in issue differ from the subject goods because of their market characteristics³³ cannot be accepted either. As the Tribunal indicated in *Universal, Liv and Maine*, at paragraph 52 :

... the subject goods are specifically defined by way of the production processes applied and their physical characteristics. Since the goods in issue were produced via the processes set out in the findings and still possess the same physical characteristics as defined in *Aluminum Extrusions*, these characteristics are determinative. While the goods in issue may possess other qualities, such as market characteristics which are unique to them, these other characteristics cannot operate to trump or override the very definition set out in the findings.

65. For these reasons, the Tribunal finds that the goods in issue fall within the scope of the findings.

The argument that the columns in issue are exempted from the findings because they are kits

66. In paragraph 351 of the statement of reasons in *Aluminum Extrusions*, the Tribunal indicated the following:

351. With respect to products which were alleged to be parts of a "kit", the Tribunal took the view, consistent with what it previously stated in the section addressing like goods and classes of goods, that if, at the time of importation, the kit comprised the necessary parts to assemble finished goods, they were finished goods rather than extrusions and, thus, not covered by the definition of the subject goods.

32. Namely, anodizing, painting or further finishing by precision cutting, machining, punching, drilling, or bending (paragraphs 22 and 23 of the statement of reasons in *Aluminum Extrusions*).

33. Exhibit AP-2012-038-11A at paras. 80-86; *Transcript of Public Hearing*, 4 June 2013, at 75-77.

67. Colonial argued that the sets of 2, 3 or 4 aluminum panels, packaged in polystyrene bags or styrofoam at the time of importation and intended to form columns of different dimensions, comprise the necessary parts to be assembled into finished goods, and thus correspond to kits within the meaning of paragraph 351 of the statement of reasons in *Aluminum Extrusions*.

68. The Tribunal does not share this opinion.

69. In the first place, it is important to mention that, at the time of importation, the goods in issue are not presented as “kits” but rather in bulk. The column parts are imported in a “master carton” containing several hundred parts. These parts are all stacked on top of each other to maximize the space in the containers intended for importation. At the factory, the Chinese manufacturer will have simply attached 2, 3 or 4 of these parts in a polystyrene bag before stacking them, packed in this manner, in the master carton. It is only upon importation of the goods into Canada that Colonial removes these parts, or rather groups of parts, from the master carton and packages them in boxes intended for retail sale. The polystyrene packaging that combines 2, 3 or 4 parts serves to protect the parts during shipping and to facilitate the transfer of the parts from the master carton to the boxes intended for the retail market in a single operation on Canadian soil. At the time of importation, these parts are essentially in bulk.

70. Moreover, as indicated in paragraph 351 of the statement of reasons in *Aluminum Extrusions* cited above, a kit is a set of parts forming “finished goods” when assembled. This idea of “finished goods” is directly related to paragraph 96, cited above,³⁴ which shows that what the Tribunal calls finished goods or finished products are products obtained by extrusion, and which have been either assembled with other components, or have been further processed beyond the processes described in the findings and the statement of reasons.

71. In this case, the fact of assembling a few aluminum panels to obtain a new form does not change the nature and the characteristics of these goods in any way.³⁵ Regardless of whether they are found in an assembled or unassembled state, these column parts retain the nature and the physical characteristics of the extrusions described in the findings and the statement of reasons.

72. Therefore, the columns in issue are not kits within the meaning of paragraph 351 of the statement of reasons in *Aluminum Extrusions*. The column parts in issue are goods subject to the findings.

34. The Tribunal sates this practically explicitly in paragraph 351 of the statement of reasons in *Aluminum Extrusions* when it refers to its remarks in the section concerning similar goods and categories of goods, which includes paragraph 96. Paragraph 96 (with the paragraphs related to it) is the only excerpt of this section that may be relevant to the discussion of kits.

35. Similarly, the Tribunal found in *Universal, Liv and Maine* that the mere addition of accessories, such as fasteners, to goods that essentially are aluminum extrusions, cannot change the nature of these goods and transform them into “kits” within the meaning of paragraph 351 of the statement of reasons in *Aluminum Extrusions*. See *Universal, Liv and Maine* at para. 57.

DECISION

73. For the foregoing reasons, the appeal is dismissed.

Jason W. Downey

Jason W. Downey
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Daniel Petit

Daniel Petit
Member