



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Safeguards

DECISION ON COMMENCEMENT OF INQUIRY AND REASONS

Safeguard Inquiry
No. CS-2005-001

Certain Outdoor Barbeques

*Decision and reasons issued
Monday, July 11, 2005*

Canada

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IN THE MATTER OF a safeguard inquiry in respect of China, under subsection 30.22(3) of the *Canadian International Trade Tribunal Act*, respecting:

CERTAIN OUTDOOR BARBEQUES

DECISION TO COMMENCE A SAFEGUARD INQUIRY IN RESPECT OF CHINA

On May 30, 2005, pursuant to subsection 30.22(1) of the *Canadian International Trade Tribunal Act*, Onward Manufacturing Company Limited submitted a complaint requesting that the Canadian International Trade Tribunal initiate a safeguard inquiry in respect of China into whether the importation of self-standing barbeques for outdoor use originating in the People's Republic of China was causing or threatening to cause market disruption to the producers of the like or directly competitive goods.

In response to a letter from the Canadian International Trade Tribunal dated June 13, 2005, Onward Manufacturing Company Limited provided further clarification and additional information on June 20, 2005.

Upon consideration of the complaint and the additional information provided by Onward Manufacturing Company Limited, the Canadian International Trade Tribunal has determined, pursuant to subsection 30.22(2) of the *Canadian International Trade Tribunal Act*, that the complaint is properly documented.

Moreover, the Canadian International Trade Tribunal is satisfied that the conditions listed in subsection 30.22(3) of the *Canadian International Trade Tribunal Act* are satisfied. Therefore, the Canadian International Trade Tribunal hereby commences an inquiry into the complaint.

Pierre Gosselin
Pierre Gosselin
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Hélène Nadeau
Hélène Nadeau
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STATEMENT OF REASONS

BACKGROUND

1. On May 30, 2005, pursuant to subsection 30.22(1) of the *Canadian International Trade Tribunal Act*,¹ Onward Manufacturing Company Limited (Onward) submitted a complaint requesting that the Canadian International Trade Tribunal (the Tribunal) initiate a safeguard inquiry in respect of China into whether the importation of certain self-standing barbeques for outdoor use originating in the People's Republic of China (China) was causing or threatening to cause market disruption to the producers of like or directly competitive goods in Canada.

PRODUCT

Product Definition and Description

2. The products that are the subject of the complaint are self-standing barbeques for outdoor use, consisting of a metal lid, base and frame, fuelled by either propane or natural gas, with primary cooking space between 200 and 1,500 square inches (1,290 and 9,675 square centimetres), in assembled or knocked-down condition (the subject goods).

Production Process

3. Onward submitted that the manufacturing process is virtually the same in Canada as it is in China. The subject goods are made from a combination of materials, including aluminum, cold-rolled steel and steel tubing. The production process is technically complex and involves many separate steps, from the manufacturing of a wide variety of parts and sub-assemblies that make up the final barbeque unit, to the packaging of the product in a "consumer friendly" configuration for ease of assembly. Production of the subject goods consists of the following main operations: metal stamping, aluminum die casting, tube bending and piercing, robotic welding, powder painting, burner crimping, light assembly operations and packaging.

Classification of Imports and Tariff Treatment

4. The subject goods are imported under classification No. 7321.11.90.30, and possibly under other numbers, including classification No. 7321.11.90.90, of the schedule to the *Customs Tariff*.² The Most-Favoured-Nation tariff rate of customs duty applicable to imports of the subject goods in 2005 is 8 percent, whereas the General Preferential Tariff rate is 5 percent. The subject goods enter duty free under all other tariffs.

DOMESTIC PRODUCERS

5. According to the complaint, the Canadian producers of the subject goods are Onward, Fiesta Barbeques Limited (Fiesta), CFM Corporation, Napoleon Appliance Corporation, Crown Verity Inc., Sherwood Industries Ltd. and Jackson Grills Inc.

1. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].

2. S.C. 1997, c.36.

PROPERLY DOCUMENTED COMPLAINT

6. On May 30, 2005, Onward, as part of its complaint, filed with the Tribunal its submissions, as well as its responses to the Tribunal's questionnaire on market disruption, with respect to its request that the Tribunal initiate a safeguard inquiry in respect of China into the importation of the subject goods. Onward's complaint package also included submissions from Fiesta supporting the complaint.

7. As part of its examination of the complaint to determine whether it was properly documented, the Tribunal requested, on June 13, 2005, that Onward provide additional information, including data updated to the most recent time period. On June 20, 2005, Onward provided the information requested by the Tribunal.

8. Upon consideration of the complaint and the additional information provided by Onward, the Tribunal determined, pursuant to subsection 30.22(2) of the *CITT Act*, that the complaint is properly documented.

INITIATION

Position of Onward and Fiesta³

9. Onward alleged that it and Fiesta accounted for the majority of the domestic production.

10. Onward alleged that the subject goods are being imported from China in such increased quantities and under such conditions as to cause or threaten to cause market disruption to domestic producers of like or directly competitive goods.

11. Onward submitted that import data clearly demonstrates that there has been a rapid increase of imports of the subject goods from China into Canada, both in absolute terms and relative to Canadian production. According to Onward, this import surge has taken the market share of the subject goods from China from Canadian producers.

12. Onward further submitted that, given the high degree of substitutability between domestic and imported product, particularly in the competitive mass-merchant market, there is a causal relationship between the increasing presence of imports from China on the Canadian market and the declining sales volumes from Canadian production.

13. Onward contended that it has suffered material injury as a result of the increased imports of low-priced subject goods from China and that, further, it is threatened with significant financial harm in the coming season as a result of the importation of these same goods.

14. Fiesta submitted that there is a direct relationship between the penetration of imports from China and its overall sales declines. It further submitted that the selling prices of the subject goods from China have also undercut Fiesta's prices to the major retailers.

15. Fiesta submitted that, together with lost sales, Fiesta's income and sales data show price suppression and erosion, as well as deterioration of financial performance in terms of net sales revenues, gross margins and net operating profits.

3. This section outlines a number of key submissions made by Onward and Fiesta. It is not intended to be exhaustive.

ANALYSIS

16. Pursuant to subsection 30.22(3) of the *CITT Act*, the Tribunal shall commence an inquiry into the complaint if it is satisfied:

(a) that the information provided by the complainant and any other information examined by the Tribunal discloses a reasonable indication that the goods originating in the People's Republic of China that are the subject of the complaint are being imported in such increased quantities or under such conditions as to cause or threaten to cause market disruption to domestic producers of like or directly competitive goods;

(b) that the complaint is made by or on behalf of domestic producers who produce a major proportion of domestic production of the like or directly competitive goods; and

(c) where an inquiry [...] in relation to like or directly competitive goods has been completed or terminated during the twelve-month period preceding the date of receipt of the complaint, that the circumstances are sufficiently different to warrant a new inquiry.

Like or Directly Competitive Goods

17. The Tribunal's jurisdiction under subsection 30.22(3) of the *CITT Act* is to inquire into complaints concerning market disruption or threat thereof to "domestic producers of like or domestically competitive goods" by goods imported from China.

18. Onward submitted that the subject goods from China are identical to those produced in Canada, as they have the same physical characteristics, are highly substitutable and fulfill the same customer needs. Onward further submitted that the manufacturing process is virtually the same in Canada and China.

19. Based on the information on the record, the Tribunal finds that the subject goods produced in Canada are like or competitive goods with regard to the subject goods from China.

Reasonable Indication of Increased Imports

20. Onward's complaint indicates that imports of subject goods from China rose from 10,849 units in 2001, to 78,148 units in 2002 and to 192,158 units in 2003. This trend continued in 2004 with imports from China increasing to 361,688 units. Furthermore, imports from China increased from 190,971 units in the first three months of 2004 to 238,714 units in the first three months of 2005.

21. In contrast to the increasing trend of imports from China, domestic production of the subject goods showed a declining trend throughout the period 2001 to 2004. Accordingly, imports of the subject goods as a percentage of domestic production increased steadily during this period.

Reasonable Indication of Market Disruption or Threat of Market Disruption

22. Pursuant to paragraph 30.22(3)(a) of the *CITT Act*, the Tribunal must determine whether the evidence discloses a reasonable indication that the subject goods from China are causing or threatening to cause market disruption to domestic producers of the subject goods.

23. The *CITT Act* defines "market disruption" as:

a rapid increase in the importation of goods that are like or directly competitive with goods produced by a domestic industry, in absolute terms or relative to the production of those goods by a domestic

industry, so as to be a significant cause of material injury, or threat of material injury, to the domestic industry.

24. The CITT *Act* defines “significant cause” as:

in respect of a material injury or threat thereof, an important cause that need not be as important as, or more important than, any other cause of the material injury or threat.

25. The Tribunal reviewed data contained in the complaint concerning domestic production, loss of market share, employment, reduced prices, price suppression, lost sales, and reduced revenues, margins and net income.

26. Between 2001 and 2004, domestic production of the subject goods, as estimated by Onward, decreased by 22 percent. Data in the complaint and those obtained by the Tribunal from Statistics Canada indicated that, in a slowly expanding market, the domestic producers’ share of the market fell by about 20 percent in this period.

27. In its submission, Fiesta reported employment losses during the first six months of 2004, when compared to the same period in 2003, which it attributed mainly to imports of goods from China.

28. In their submissions, Fiesta and Onward made allegations of injury concerning lost sales volumes, price suppression and price erosion suffered by domestic producers, at a number of major accounts, due to imports from China.

29. The evidence in the complaint also shows that the domestic producers suffered reduced margins and net income. In addition, both Onward and Fiesta reported decreases in capacity utilization during this period.

30. In light of the foregoing, the Tribunal determines that the evidence on the record demonstrates that there is evidence of a rapid increase of imports from China. The evidence also shows that the domestic producers experienced decreased production, loss of market share, reduced profits, and price suppression and erosion.

31. Accordingly, the Tribunal is satisfied that there is a reasonable indication that the subject goods are being imported from China in such increased quantities and under such conditions as to cause or threaten market disruption to domestic producers of like or directly competitive goods.

Standing

32. Pursuant to paragraph 30.22(3)(b) of the *CITT Act*, the Tribunal must be satisfied that the complainant, Onward, together with Fiesta, the supporter of the complaint, account for a major proportion of domestic production of the like or directly competitive goods. Information in the complaint indicates that the volume of domestic production accounted for by Onward and Fiesta is over 50 percent.

33. On the basis of this information, the Tribunal is satisfied that the complaint is made by or on behalf of producers that produce a major proportion of domestic production of the like or directly competitive goods.

No Recent Similar Cases

34. Finally, paragraph 30.22(3)(c) of the *CITT Act* provides that, if the Tribunal has completed or terminated an inquiry under this act in relation to like or directly competitive goods, during the 12-month period preceding the date of receipt of the complaint, it has to be satisfied that the circumstances are sufficiently different to warrant a new inquiry. In this regard, the Tribunal has never conducted a safeguard inquiry in respect of the subject goods from China.

CONCLUSION

35. Based on the foregoing, pursuant to subsection 30.22(3) of the *CITT Act*, the Tribunal has decided to commence a safeguard inquiry in respect of China into the complaint on the subject goods from China.

Pierre Gosselin
Pierre Gosselin
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member