

CLIENT ALERT - INTERNATIONAL BUSINESS & TRADE LAW BULLETIN

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CANADA PLAYS IT SAFE ON SAFEGUARDS

In our December 2005 Bulletin,¹ we described how Chinese imports were causing a flurry of trade safeguard cases. At that time, the Government of Canada was considering decisions from the Canadian International Trade Tribunal (CITT) that recommended the imposition of sizeable surtax safeguards on imports of Bicycles² and Barbeques³ from China. In addition, the Canadian Council of Furniture Manufacturers had launched a complaint against Chinese residential furniture imports.⁴ The intervening months have not been kind to the domestic complainants.

Government Declines to Implement Recommended Protection

On May 29th, the Ministers of Finance and International Trade jointly announced that they would not impose the safeguards recommended by the CITT in the Bicycles and Barbeques cases.⁵ The Government decided that safeguards would not provide a competitive long-term solution for local manufacturers and would harm Canadian retailers and consumers.

Finance Minister Flaherty said that safeguards are not needed because the "Government believes there is a better way. To ensure Canada remains competitive in the global marketplace, we are reducing taxes and providing additional support for education and the skilled trades." While this type of competitive infrastructure is important, it is noteworthy that safeguards were never envisioned as a long-term solution. In both Bicycles and Barbeques, the proposed safeguards would have applied for only three years. Safeguards are a legitimate trade remedy which Canada is entitled to use to provide domestic manufacturers with time to adapt to a sudden rise in imports flooding the Canadian market.

Decisions Demonstrate Importance of Post-CITT Recommendation Lobbying

The Government decisions on Bicycles and Barbeques underscores that success at the CITT does not guarantee that a safeguard will be imposed. The Bicycles and Barbeques cases are a setback for Canadian manufacturers struggling to maintain their competitive position against Chinese imports. Launching a safeguard case is time consuming and expensive and a business is often in rough financial shape by the time they consider pursuing a safeguard. Therefore, the recent cases demonstrate the need for the complainants to develop an effective post-CITT recommendation lobbying strategy. The same is also true for respondents who can turn a loss at the CITT into victory if they can convince the Government not to impose the safeguard.

CITT Raises Bar for Initiation of Safeguard Investigation

On March 15, 2006 after a five and half month review period, the CITT refused to initiate an investigation into the Residential Furniture from China complaint because it found that the complaint was not "properly documented".⁶

¹"Chinese Imports Cause Flurry of Safeguard Cases", December 2005, available online at www.mcmbm.com/Upload/Publication/Chinese%20imports_12-20-05.pdf.

² *Global Safeguard Inquiry into the Importation of Bicycles and Finished Painted Bicycle Frames*, (Safeguard Inquiry No. GS-2004-001 and GS-2004-002, September 2005).

³ *Market Disruption Safeguard Inquiry into Barbeques Originating in the People's Republic of China*, (Safeguard Inquiry No. CS-2005-001, October 2005).

⁴ *Market Disruption Safeguard Inquiry into Residential Furniture Originating in the People's Republic of China*, (Safeguard Inquiry No. CS-2005-003, October 2005).

⁵ Government of Canada - Department of Finance, Press Release, "Government of Canada Rejects Trade Restrictions on Imported Bicycles and Barbeques" (29 May 2006).

⁶ Complaint Not Properly Documented Letter from CITT in *Residential Furniture*, *supra* note 4, dated March 15, 2006 available online at http://www.citt-tcce.gc.ca/safeguar/marinq/complaint/cs2f003_e.asp.

The CITT decided that residential furniture consisted of more than one class of goods. For example, bedroom furniture was a separate class of goods from living room furniture. As a result, the complainant was asked to file specific information about each of these classes of goods. The complainant was unable to provide information such as market share estimates for each of these classes. This case demonstrates that complainants will need to structure complaints very carefully and support them thoroughly in order to meet the "properly documented" standard.

While the flurry of safeguards that we saw last year has cleared up, it is likely that the pressure many Canadian industries feel from offshore imports are sufficiently intense that we expect other safeguard cases will continue to emerge.

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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