



Canada Border  
Services Agency

Agence des services  
frontaliers du Canada

OTTAWA, January 15, 2019

AE 2018 SP

# STATEMENT OF ESSENTIAL FACTS

## SCOPE PROCEEDING – CERTAIN ALUMINUM EXTRUSIONS

**Aluminum Brackets included with unassembled  
Base Transceiver Station (BTS) Systems – Nokia Canada Inc.**

*Cette Déclaration des faits essentiels est également disponible en français.  
This Statement of Essential Facts is also available in French.*

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## **BACKGROUND**

[1] On February 16, 2009, the Canada Border Services Agency (CBSA) made final determinations of dumping and subsidizing in respect of certain aluminum extrusions originating in or exported from the People's Republic of China (China). Subsequently, on March 17, 2009 the Canadian International Trade Tribunal (CITT) made findings of injury concerning the dumping and subsidizing of certain aluminum extrusions from China in Inquiry No. NQ-2008-003, amended by its determination made on February 10, 2011 in Inquiry No. NQ-2008-003R. On March 17, 2014, the CITT continued its findings in respect of these goods in Expiry Review No. RR-2013-003. As such, anti-dumping and countervailing duties may be assessed on importations of subject aluminum extrusions from China.

[2] On September 27, 2018, the CBSA received an application for a scope ruling from Nokia Canada Inc. (Nokia), as to whether the aluminum brackets included with its unassembled Base Transceiver Station (BTS) systems, are subject to the CITT's order in respect of certain aluminum extrusions from China.

[3] The application for the scope ruling was found to be complete and met all requirements under the *Special Import Measures Act* (SIMA) to warrant the initiation of a scope proceeding. Specifically, the applicant provided arguments and evidence in support of its position that the aluminum brackets included with its unassembled BTS systems are not subject to the CITT's order.

[4] On October 26, 2018, pursuant to subsection 63(8) of SIMA, the CBSA initiated a scope proceeding with respect to the goods that are the subject of the application.

[5] The administrative record for this scope proceeding closed on December 17, 2018.

[6] On the basis of the information available on the record and the consideration of the relevant factors contained in section 54.6 of the *Special Import Measures Regulations* (SIMR) as well as other relevant factors, the CBSA's preliminary assessment is that the goods that are the subject of the application, namely the aluminum brackets included with Nokia's unassembled BTS systems, are not subject to the CITT's order in respect of certain aluminum extrusions from China.

## **DESCRIPTION OF THE GOODS THAT ARE THE SUBJECT OF THE APPLICATION**

[7] Nokia imports BTS systems, which are designed to enable wireless communication between user equipment and a network. These systems are imported unassembled, and include the components necessary for assembly and installation. The goods in question in this scope proceeding are the included brackets made of extruded aluminum originating in China, which are used to fasten the BTS system to a wall or pole.

[8] As the importer in Canada, Nokia requested the CBSA to consider whether the aluminum brackets included with its unassembled BTS systems, are subject to the CITT's order in respect of certain aluminum extrusions from China.

## **DESCRIPTION OF THE SUBJECT GOODS**

[9] For the purpose of this scope proceeding, the goods that are subject to the CITT order ("subject goods") are defined as:

"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 meter of 22 kilograms and a profile or cross-section which fits within a circle having a diameter of 254 mm, excluding the products identified below, originating in or exported from the People's Republic of China."

### **Exclusions:**

- aluminum extrusions produced from either a 6063 or a 6005 alloy type with a T6 temper designation, in various lengths, with a powder coat finish on both the interior and the exterior surfaces of the extrusion, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard, "Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels", for use in exterior railing systems;
- aluminum extrusions produced from a 6063 alloy type with a T5 temper designation, having a length of 3.66 m, with a powder coat finish, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard, "Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels", for use as head rails and bottom rails in fabric window shades and blinds where the fabric has a cross-sectional honeycomb or "cellular" construction;
- aluminum extrusions produced from a 6063 alloy type with a T5 temper designation and forming part of the Vario System™ 20, 30, 40, 45 and 60 series line of profiles, or equivalent, having a length of either 4.5 or 5.8 m and a straightness tolerance of +/-1.5 mm or less per 6.0 m of length, for use in those parts of mechanical systems and automated machinery, such as gantry systems and conveyors, where precise linear movement is required;
- aluminum extrusions produced from either a 6063 or a 6463 alloy type, having a length of 3 m, with a hand-applied gold and silver leaf finish, for use as picture frame mouldings;
- aluminum extrusions produced from a 6063 alloy type with either a T5 or a T6 temper designation, having a length of between 20 and 33 ft. (between 6.10 and 10.06 m), with a powder coat finish, which finish is certified to meet the American Architectural Manufacturers Association AAMA 2603 standard ("Voluntary Specification, Performance Requirements and Test Procedures for Pigmented Organic Coatings on Aluminum Extrusions and Panels"), for use in window frames;
- heat sinks imported under tariff item No. 8473.30.90 and weighing 700 g or less; and

- aluminum extrusions produced by China Square Industrial Ltd. from either a 6063 or a 6463 alloy type with a T5 temper designation, with a profile or cross-section which fits within a circle having a diameter of 100 mm, for use by MAAX Bath Inc. in the assembly of its shower enclosures. The list of these excluded products, as well as all of the other exclusions listed above, can be found in the Appendix at the following link:  
<http://www.citt-tcce.gc.ca/en/node/6412>

## **INTERESTED PARTIES**

### **Applicant**

[10] The name and address of the applicant is as follows:

Nokia Canada Inc.  
600 March Road  
Ottawa, ON  
K2K 2T6

[11] Nokia imports BTS systems, which include aluminum brackets originating in China, from its related party Nokia OY located in Finland. The BTS systems are sold to unrelated parties in the Canadian market.

[12] A copy of the non-confidential version of the scope ruling application filed by Nokia is available on the CBSA's Listings of Exhibits website at  
<http://www.cbsa-asfc.gc.ca/sima-lmsi/sp-pp/ae2018/ae2018-ex-eng.html>

[13] The CBSA sent clarifying questions to Nokia during the initial phase of the proceeding in the form of supplemental RFIs, to which Nokia provided full responses. This information was of a factual nature, to describe the condition of the good at the time of importation, including several ways in which the aluminum brackets may be imported (i.e. in BTS system kits, in bulk, etc.).

### **Canadian Industry**

[14] At the initiation of the scope proceeding, the CBSA identified 13 Canadian producers of like goods based on information collected during the most recent re-investigation concluded February 20, 2012.

[15] The CBSA sent a Producer Request for Information (RFI) to all producers of like goods. The CBSA received a joint submission from seven Canadian producers of aluminum extrusions, namely, Almag Aluminum Inc., Apel Extrusions Limited, Can Art Aluminum Extrusions LP, Dajcor Aluminum Ltd, Extrudex Aluminum Corp., Metra Aluminum Inc., and Spectra Aluminum Products Ltd./Spectra Anodizing Inc. (the "Domestic Producers").

[16] The Domestic Producers' joint submission outlined their position on the subjectivity of the goods in question.

## **Importers**

[17] At the initiation of the scope proceeding, the CBSA identified 80 potential importers of subject goods based on information collected during the most recent re-investigation concluded February 20, 2012.

[18] The CBSA sent an Importer RFI to all potential importers of subject goods. The CBSA received submissions from three importers of aluminum extrusions, namely, Sinobec Group Inc., Lincoln Industrial Corporation, and Canply Products Inc. The first two importers provided comments on the subjectivity of the goods in question, while the latter did not provide any comments in this regard.

## **Exporters and/or Foreign Producers**

[19] At the initiation of the scope proceeding, the CBSA identified 78 potential exporters and/or producers of subject goods based on information collected during the most recent re-investigation concluded on February 20, 2012.

[20] The CBSA sent an Exporter RFI to all potential exporters and/or producers. The CBSA did not receive any submissions from any exporters/producers.

## **POSITIONS OF THE PARTIES**

### **Parties Contending that the Goods in Question are Not Subject to the CITT Order**

#### **Applicant – Nokia**

[21] Nokia contends that “complete BTS systems are downstream products incorporating aluminum extrusions as an input”, and that the CITT’s order does not apply to its importations of BTS systems. Furthermore, Nokia contends that its position is:

*“...consistent with CITT’s interpretation of the CBSA’s definition of subject goods in inquiry No. NQ-2008-003 paragraphs 96-98, in which the CITT states that ‘downstream products’ – products that incorporate aluminum extrusion products as an input or that join together aluminum extrusions with other materials – are not in the scope of this particular SIMA measure.”<sup>1</sup>*

[22] Nokia contends that the aluminum brackets are a necessary component of the complete BTS systems, and that all the components necessary for the assembly and installation of the BTS system are imported together.

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<sup>1</sup> Exhibit 2 (NC) – AE 2018 SP Application; page 2.

[23] Nokia provided supporting documentation listing all of the components that are contained in the complete BTS systems it imports, including the aluminum brackets. Nokia indicated that aluminum brackets are a necessary part that is used to affix the BTS system to a wall or pole, and that without the aluminum brackets, the BTS system would not be complete. Nokia also contends that all BTS systems require brackets so that they can be affixed to a wall or pole.

#### Sinobec Group Inc.

[24] Sinobec Group Inc. (Sinobec) is an importer of aluminum extrusions from China.

[25] Sinobec supports Nokia's position that the BTS systems, which include aluminum brackets, are downstream products and that they should not be subject to the CITT's order.<sup>2</sup>

#### Lincoln Industrial Corporation

[26] Lincoln Industrial Group (Lincoln) is an importer of aluminum extrusions from China. In their submission, Lincoln indicated the following:

*"...finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of export/import should be considered excluded from the scope of the aluminum extrusions anti-dumping case. Further, finished merchandise which contains unassembled aluminum extrusions in the form of a 'finished goods kit' at the time of export/import should also be considered excluded..."<sup>3</sup>*

[27] They also indicated that in the US anti-dumping case on aluminum extrusions from China (A-570-967), 'finished goods kits' are defined as:

*"a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled 'as is' into a finished product."<sup>4</sup>*

[28] Lincoln supports Nokia's position, and contends that the BTS systems, which contain aluminum brackets, as described by Nokia, fit the above definition of 'finished goods kits', and should not be subject to the CITT's order.<sup>5</sup>

[29] Lincoln also submitted, however, that importing these brackets separately from BTS systems should still be considered subject goods.

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<sup>2</sup> Exhibit 16 (NC) – Response to RFI from Sinobec Group Inc.

<sup>3</sup> *Ibid.*, page 2.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

## **Parties Contending that the Goods in Question are Subject to the CITT Order**

### **The Domestic Producers**

[30] The Domestic Producers are of the view that the aluminum brackets themselves are subject to the CITT's order, and that at the time of importation, they are not downstream products nor are they assembled as part of a final good.<sup>6</sup>

[31] The Domestic Producers contend that the non-confidential version of the application does not provide sufficient detailed information, and for that reason the Domestic Producers' comments are based on a "general idea" of the characteristics of the aluminum brackets described in the application. They maintain that the brackets are not sufficiently further worked to be considered themselves downstream products. With respect to the BTS systems, the Domestic Producers contend that rather than being incorporated into a downstream product, the brackets

- 1) are intended for the base station;
- 2) may ship with base station, but are not integrated with or assembled as part of the base station at the time of importation; and
- 3) maintain a separate and distinct product ID from the base station.<sup>7</sup>

[32] With respect to the third point, the Domestic Producers note that the attachments to the application indicate that the aluminum brackets are part of a "mounting accessories for pole and/or wall installation" package, and that this package is listed as a separate item ID from the base transceiver.

[33] The Domestic Producers also provided an excerpt from the CITT's reasons for the original findings, which defines 'worked aluminum extrusions':

*"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."<sup>8</sup>*

[34] The Domestic Producers further provided, from the reasons issued respecting the CITT's decision in Appeal No. AP-2012-038 regarding *Colonial Élégance Inc.*, that for extrusions to be "further processed" to the point that they no longer retain the characteristics of extrusions, they must be processed beyond the description of a worked extrusion:

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<sup>6</sup> Exhibit 15 (NC) – Response from Almag Aluminum Inc., Apel Extrusions Limited, Can Art Aluminum Extrusions LP, Dajcor Aluminum Ltd, Extrudex Aluminum Corp., Metra Aluminum Inc., and Spectra Aluminum Products Ltd./Spectra Anodizing Inc.

<sup>7</sup> *Ibid.* page 2.

<sup>8</sup> *Ibid.*

*“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.”<sup>9</sup>*

[35] The Domestic Producers contend that the brackets are not assembled as part of the BTS system at the time of importation, nor have they been further worked or transformed beyond the CITT’s description of “worked extrusions”.

[36] The Domestic Producers conclude that the aluminum brackets should be considered separate from the BTS system, and that the brackets themselves are within the scope of the order at the time of importation.

### **CBSA’S PRELIMINARY ASSESSMENT**

[37] In making a scope ruling under subsection 66(1) of SIMA, subsection 66(6) provides that the CBSA shall take into account any prescribed factors as well as any other factor that is considered relevant in the circumstances. A copy of the factors prescribed in section 54.6 of the SIMR is found in the **Appendix**.

[38] Accordingly, the CBSA considered the following factors in making its preliminary assessment:

- The physical characteristics of the goods;
- The uses of the goods;
- The packaging, including any other goods contained in the packaging, along with the promotional material and documentation concerning the goods in respect of which the scope proceeding has been initiated;
- The description of the goods in the CITT finding;
- The reasons for the CITT finding; and
- Other relevant decisions by the CITT.

[39] The CBSA notes that Nokia, in its application, requested that the CBSA issue a scope ruling confirming that the complete BTS system constitutes a downstream product and that, as such, the aluminum extrusion components included in the system are not subject to the CITT’s order.<sup>10</sup>

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<sup>9</sup> *Ibid.* page 3.

<sup>10</sup> Exhibit 2 (NC) – AE 2018 SP Application; page 2.

[40] In making its preliminary assessment, the CBSA first considered whether the aluminum brackets themselves, as described in the application, are aluminum extrusions that meet the product definition of the CITT's order.

[41] Based on the information on the record for this proceeding, the aluminum brackets meet the product definition of the CITT's order. The brackets themselves retain the characteristics of an aluminum extrusion meeting the definition of subject goods in the CITT's findings and are not further worked or processed beyond the description of a worked extrusion.

[42] Since the aluminum brackets are subject to the CITT's order, the CBSA then considered whether the aluminum brackets are incorporated as an input into finished goods at the time of importation, as contended by Nokia.

[43] In paragraphs 96 and 97 of the CITT's reasons in *Aluminum Extrusions*, Inquiry No. NQ-2008-003, the CITT indicated the following in regards to finished 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.

97. Accordingly, the Tribunal is of the view that finished goods that incorporate aluminum extrusion products as an input or that join together aluminum extrusions with other materials are not like goods in relation to the subject goods. In the Tribunal's opinion, such goods are produced from aluminum extrusions by users of aluminum extrusions. As such, they constitute downstream products of a different nature. The evidence on the record does not indicate that such products, which are produced and sold by users or purchasers of aluminum extrusions and, as such, fulfil different customers' needs, closely resemble the subject goods in terms of physical and market characteristics.”<sup>11</sup>

[44] In its application, Nokia's position is that the complete BTS systems are downstream products incorporating aluminum extrusions as an input. However, Nokia further explained that at the time of importation, the components included in the shipment of the complete BTS system have not been assembled.<sup>12</sup> As such, the CBSA finds that, at the time of importation, the aluminum brackets have not been incorporated as an input into finished goods nor have they been joined together with other materials to form a downstream product.

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<sup>11</sup> CITT Reasons – Aluminum Extrusions – para. 96.

<sup>12</sup> Exh 23 NC – Response to SRFI #2. Page 1.

[45] Since the aluminum brackets are not incorporated into a downstream product at the time of importation, the CBSA then considered whether the components for assembly and installation of the BTS system, including the aluminum brackets, constitute a “kit”.

[46] In paragraph 351 of the CITT’s reasons in *Aluminum Extrusions*, Inquiry No. NQ-2008-003, the CITT indicated the following:

*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.<sup>13</sup>*

[47] In *Colonial Élégance Inc.*, Appeal No. AP-2012-038, the CITT was of the view that the goods at issue (aluminum panels) were not presented as kits but were packaged in bulk at the time of importation. One reason the goods were not considered a kit was due to the fact that, post-importation, Colonial Élégance Inc. repackaged the goods for retail sale in Canada.<sup>14</sup>

[48] Nokia presented supporting documentation as part of their application, including a packing list, which indicates that all the components necessary to assemble and install a complete BTS system are imported in one shipment. The packing lists provided identify the total number of separate packages or boxes that contain the various components of the complete BTS system and they are clearly numbered (ex. 1/7, 2/7, 3/7, etc.). The goods are unique and customized to fit the customer’s requirements, and, for this reason, the packaging configuration may differ from one shipment to another. In their response to the Supplemental RFI #4, Nokia further explained that these packages or boxes containing all of the components of a BTS system are shipped to their warehouse in Canada, and are subsequently shipped to customers without any repackaging or reconfiguration of the packaging.

[49] In this case, the documentation provided by Nokia in support of its application demonstrates that the BTS systems are ordered, sold, packaged, and shipped as complete systems. Nokia has demonstrated, by way of pictures and assembly/installation manuals, that the aluminum brackets in question play an important role in the installation of the BTS system.

[50] From the evidence on the record, the CBSA is of the view that the brackets are intended for the sole purpose of installation of the BTS system, that an appropriate number of brackets are included in the packaging for the installation of the BTS system, and that the brackets, when imported as part of the BTS systems, are not being imported in bulk, nor resold separately. Although the configuration of the packaging may not be consistent from shipment to shipment, all of the components necessary to form the “finished good” are included in each shipment.

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<sup>13</sup> CITT Reasons – Aluminum Extrusions – para. 351.

<sup>14</sup> *Colonial Élégance Inc.* – para. 69.

[51] In consideration of all information on the record, including the CITT's guidance in *Colonial Élégance Inc.* and its reasons in *Aluminum Extrusions*, the CBSA is of the view that at the time of importation the packages contained all of the components necessary for assembly and installation of a "finished good", i.e. the installed BTS system, and therefore constitute a "kit" as described in those reasons.

### **FUTURE ACTION**

[52] Comments on the *Statement of Essential Facts* (SEF) and responses to the comments on the SEF may be submitted by interested parties. Please note that the CBSA will not accept new factual information.

[53] Interested persons may submit comments on the SEF by noon, January 22, 2019, and responses to the comments on the SEF by noon, January 29, 2019. It is expected that the scope proceeding will be concluded by February 22, 2019.

### **INFORMATION**

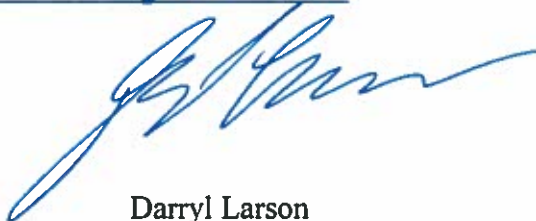
[54] This SEF is available through the CBSA's website at the address below. For further information, please contact the officer identified as follows:

**Mail:** SIMA Registry and Disclosure Unit  
Trade and Anti-dumping Programs Directorate  
Canada Border Services Agency  
100 Metcalfe Street, 11<sup>th</sup> floor  
Ottawa, Ontario K1A 0L8  
Canada

**Telephone:** Paul Pomnikow: 613-952-7547

**E-mail:** [simaregistry@cbsa-asfc.gc.ca](mailto:simaregistry@cbsa-asfc.gc.ca)

**Website:** [www.cbsa-asfc.gc.ca/sima-lmsi/](http://www.cbsa-asfc.gc.ca/sima-lmsi/)



Darryl Larson  
Director  
Anti-dumping and Countervailing Investigations  
Trade and Anti-dumping Programs Directorate

## APPENDIX – PRESCRIBED FACTORS IN SIMR

The SIMR section 54.6 provides the following:

**54.6** For the purpose of subsection 66(6) of the Act, the President may take the following factors into account in making a scope ruling:

**(a)** in all cases,

**(i)** the physical characteristics of the goods in respect of which the scope proceeding has been initiated, including their composition,

**(ii)** their technical specifications,

**(iii)** their uses,

**(iv)** their packaging, including any other goods contained in the packaging, along with the promotional material and documentation concerning the goods in respect of which the scope proceeding has been initiated, and

**(v)** their channels of distribution;

**(b)** for a ruling as to whether goods in respect of which the scope proceeding has been initiated are of the same description as goods to which an order of the Governor in Council or an order or finding of the Tribunal applies,

**(i)** the description of the goods referred to in that order or that order or finding,

**(ii)** in the case of an order or finding of the Tribunal, the reasons for the order or finding, and

**(iii)** any relevant decision by the Tribunal, the Federal Court of Appeal, the Supreme Court of Canada, or a panel under Part I.1 or II of the Act;

**(c)** for a ruling as to whether goods in respect of which the scope proceeding has been initiated are of the same description as goods to which an undertaking applies,

**(i)** the description of the goods referred to in the preliminary determination of dumping or subsidizing and in the undertaking, and

**(ii)** the reasons for the preliminary determination; and

**(d)** if the basis for a ruling referred to in paragraph (b) or (c) is whether goods in respect of which the scope proceeding has been initiated originate in a country that is subject to the applicable order, finding or undertaking or originate in a third country,

**(i)** the production activities undertaken in the third country in respect of the goods and undertaken in the subject country in respect of goods from which the goods are produced,

**(ii)** the nature of the goods when they were exported from the third country and of goods from which the goods are produced when they were exported from the subject country, and

**(iii)** the costs of production of the goods incurred in the third country.