



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

DETERMINATION AND REASONS

Preliminary Injury Inquiry
No. PI-2004-002

Certain Fasteners

*Determination issued
Monday, June 28, 2004*

*Reasons issued
Monday, July 12, 2004*

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IN THE MATTER OF a preliminary injury inquiry, under subsection 34(2) of the *Special Import Measures Act*, respecting:

**THE DUMPING AND SUBSIDIZING OF CERTAIN FASTENERS
ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF
CHINA AND CHINESE TAIPEI**

PRELIMINARY DETERMINATION OF INJURY

The Canadian International Trade Tribunal, under the provisions of subsection 34(2) of the *Special Import Measures Act*, has conducted a preliminary injury inquiry into whether the evidence discloses a reasonable indication that the dumping and subsidizing of carbon steel and stainless steel fasteners, i.e. screws, nuts and bolts of carbon steel or stainless steel that are used to mechanically join two or more elements, excluding fasteners specifically designed for application in the automotive or aerospace industry, originating in or exported from the People's Republic of China and Chinese Taipei, have caused injury or retardation or are threatening to cause injury to the domestic industry.

This preliminary injury inquiry is pursuant to the notification, on April 28, 2004, that the President of the Canada Border Services Agency had initiated an investigation into the alleged injurious dumping and subsidizing of the above-mentioned goods.

Pursuant to subsection 37.1(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby determines that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the above-mentioned goods have caused injury to the domestic industry.

The Canadian International Trade Tribunal finds that the question of whether there should be more than one class of goods merits further consideration. The Canadian International Trade Tribunal, therefore, requests the Canada Border Services Agency to collect separate information on the dumping and subsidizing of (1) carbon steel screws, (2) carbon steel nuts and bolts, (3) stainless steel screws, and (4) stainless steel nuts and bolts. The Canadian International Trade Tribunal also requests aggregated information for (1) carbon steel screws and stainless steel screws combined, and (2) carbon steel nuts and bolts and stainless steel nuts and bolts combined. The Canadian International Trade Tribunal further requests that the information be aggregated for carbon steel fasteners as a whole and for stainless steel fasteners as a whole. Additionally, the Canadian International Trade Tribunal requests that the information be aggregated for carbon steel fasteners and stainless steel fasteners as a whole. The Canadian International Trade Tribunal requests the information by both weight and unit/piece.

Richard Lafontaine
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Presiding Member

James A. Ogilvy
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Meriel V. M. Bradford
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The statement of reasons will be issued within 15 days.

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Chun Yu (DongGuan) Metal Products Co., Ltd.
GEM-Year Industries Co., Ltd.
JiangSu Overseas Group Hai Tong International
Trade Co., Ltd.
HaiYan Dayu Fasteners Co., Ltd.
HaiYan County Eastern Fasteners Co., Ltd.
Shanxi Tianli Industries Co., Ltd.
Haiyan Fu Hong Fasteners Co., Ltd.
Haiyan Import & Export Co., Ltd.
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STATEMENT OF REASONS

BACKGROUND

1. On June 28, 2004, pursuant to subsection 37.1(1) of the *Special Import Measures Act*,¹ the Canadian International Trade Tribunal (the Tribunal) issued a preliminary determination of injury relating to the dumping and subsidizing of carbon steel and stainless steel fasteners, i.e. screws, nuts and bolts of carbon steel or stainless steel that are used to mechanically join two or more elements, excluding fasteners specifically designed for application in the automotive or aerospace industry, originating in or exported from the People's Republic of China (China) and Chinese Taipei (the subject goods).

2. On April 28, 2004, the President of the Canada Border Services Agency (CBSA) initiated an investigation into the alleged injurious dumping and subsidizing of the subject goods following a complaint filed by Leland Industries Inc. (Leland) on March 24, 2004.

3. On April 29, 2004, the Tribunal issued a notice of commencement of preliminary injury inquiry.² On June 9, 2004, the Tribunal issued a request for information to parties in this inquiry and to selected purchasers of carbon steel and stainless steel screws, nuts and bolts. The request sought additional information on fasteners made of carbon steel and stainless steel, and on screws, nuts and bolts, with respect to their physical characteristics, methods of manufacture, channels of distribution, prices, end-uses, competition in the market and substitutability.

CBSA'S DECISION

4. The CBSA estimated margins of dumping for the period from January 1, 2003, to December 31, 2003. The estimated margins of dumping, when expressed as a percentage of the export price, were 103 percent for China and 180 percent for Chinese Taipei. The estimated volume of dumped goods from each of the subject countries was not negligible, and the estimated weighted average margin of dumping for each country was not insignificant.

5. The estimated amount of subsidy over the same period for the producers of the subject goods, when expressed as a percentage of the export price, was 32 percent for China and 50 percent for Chinese Taipei. The estimated volume of subsidized goods from each of the subject countries was not negligible, and the estimated amount of subsidy for each country was not insignificant.³

SUBMISSIONS

Domestic Industry

6. In its complaint, Leland submitted that the dumped and subsidized subject goods have caused and threaten to cause injury to the domestic industry. In support of its allegations, Leland provided evidence of increased volumes of dumped and subsidized imports from both subject countries, loss of sales, price erosion, price suppression, reduced profitability, capacity underutilization and loss of employment.

1. R.S.C. 1985, c. S-15 [*SIMA*].

2. C. Gaz. 2004.I.1432.

3. Since the CBSA considered China a developing country, the thresholds for negligibility and insignificance for China were 4 percent and 2 percent, respectively.

Parties Opposed to the Complaint

7. The Tribunal received nine submissions from the following parties opposed to Leland's complaint: The Canadian Fasteners Importers Coalition (Coalition), the Government of China, Chinese exporters,⁴ the Government of Taiwan, the Taiwan Industrial Fasteners Institute, ITW Construction Products, Robertson Inc., Muro North America Inc., Velan Inc., Kindred, and IFI & Morgan Ltd.

8. Submissions were made on the issues of domestic industry, product definition, classes of goods and alleged subsidy programs. Parties opposed submitted that the evidence does not disclose a reasonable indication that the dumping or subsidizing of the subject goods has caused injury or threatens to cause injury.

ANALYSIS

9. The Tribunal's mandate, at the preliminary stage of an injury inquiry, is set out under subsection 34(2) and section 37.1 of *SIMA*, which require the Tribunal to determine whether the evidence discloses a reasonable indication that the dumping or subsidizing of the subject goods has caused injury or retardation or is threatening to cause injury. Subsection 2(1) of *SIMA* defines "injury" as "material injury to a domestic industry" and "domestic industry", as the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers. Therefore, the Tribunal must identify the like goods as well as the domestic industry that produces those goods before addressing the question of injury.

10. The Tribunal first addressed the argument that there is more than one class of goods to be considered in the inquiry. The Coalition and other parties opposed submitted, among other issues, that the subject goods should be divided into six classes, i.e. carbon steel screws, carbon steel nuts, carbon steel bolts, stainless steel screws, stainless steel nuts and stainless steel bolts.

11. The Tribunal notes that the CBSA indicated in its statement of reasons that it was of the opinion that there are no separate classes of goods based on use, physical characteristics or other factors. As the Tribunal has stated in past cases, it is not bound by the CBSA's determination on the issue of class of goods.

12. The Tribunal finds that the arguments made in support of more than one class of goods merit further consideration. However, on the basis of the existing record, the Tribunal is unable to conclude that there is more than one class of goods. It will require further evidence before being able to come to a definitive conclusion. For the purpose of determining whether there is a reasonable indication of injury, the Tribunal will consider the subject goods as being composed of one single class of goods, as determined by the CBSA. Based on the evidence on the record, the Tribunal is of the view that the goods produced by the domestic producers are "like goods" to the subject goods.

13. The Tribunal is aware that its decision to keep open the question of classes of goods will have implications for the conduct of this case. The Tribunal will therefore request the CBSA to collect additional

4. Chinese exporters include the following 10 parties: Shanghai Fasteners Import & Export Co., Ltd., Chun Yu (DongGuan) Metal Products Co., Ltd., GEM-Year Industries Co., Ltd., JiangSu Overseas Group Hai Tong International Trade Co., Ltd., HaiYan Dayu Fasteners Co., Ltd., HaiYan County Eastern Fasteners Co., Ltd., Shanxi Tianli Industries Co., Ltd., Haiyan Fu Hong Fasteners Co., Ltd., Haiyan Import & Export Co. Ltd. and Tapoo Metal Products (Shanghai) Co., Ltd.

information on the dumping and subsidizing of the subject goods, as set out in the Tribunal's conclusion herein.

14. On the question of what constitutes the domestic industry, *SIMA* confers on the Tribunal the discretion to interpret the term "domestic industry" as meaning only the domestic producers that are not related to an exporter or importer of dumped or subsidized goods, or that are not importers of such goods. The Tribunal notes that, in its decision to initiate the investigation, the CBSA contacted, in addition to Leland, eight other domestic producers of fasteners that were not themselves importers of the subject goods. The Tribunal further notes that, based on the analysis of information provided in the complaint, as well as a survey of the domestic producers that do not import the subject goods, the CBSA is of the view that Leland's production represents more than 50 percent of the domestic production of the like goods.

15. At this preliminary stage, the Tribunal will interpret "domestic industry" by applying the methodology that was used by the CBSA regarding the treatment of domestic producers that imported the subject goods. The Tribunal will revisit this issue during the phase of the inquiry under section 42 of *SIMA*, following a preliminary determination of dumping and/or subsidizing, if any, by the CBSA. On the basis of the information on the record, the Tribunal is therefore satisfied that Leland's production accounts for a major proportion of the total domestic production of like goods. Should this case proceed, following a preliminary determination of dumping and/or subsidizing by the CBSA, the Tribunal intends to gather information from domestic producers about their imports of the subject goods.

16. The Tribunal next considered the question of injury. In its complaint, Leland submitted that the dumping and subsidizing of the subject goods have caused material injury or are threatening to cause material injury to the domestic industry. The injury indicators cited are loss of sales, price erosion, price suppression, reduced profitability, capacity underutilization and loss of employment.

17. The Tribunal notes that the data available at this stage show that imports⁵ of the subject goods have increased in volume and in percentage share of total Canadian imports. From 2001 to 2002, the combined volume of imports from the subject countries increased by 34 percent. In 2003, on an annual basis, China and Chinese Taipei appeared to have maintained the 2002 import volumes. As for the combined share of imports from the subject countries, it increased from about 17 percent in 2000 to about 22 percent in 2002. In 2003, the CBSA estimated that their combined imports accounted for 27 percent of the volume of total Canadian imports.

18. The evidence shows that the unit values of these dumped and subsidized goods from both subject countries declined from 2000 to 2002. The evidence filed by Leland demonstrates numerous specific instances of lost sales and price erosion. It also indicates that Leland lost several large customer accounts whose aggregated yearly purchases were significant.⁶ The evidence also indicates that the presence of dumped and subsidized imports caused price suppression, which prevented Leland from raising its prices in order to cover the increase in costs. These factors appear to have contributed to the domestic industry's low profitability. The Tribunal further notes evidence of loss of skilled labour and capacity underutilization.

19. In light of the foregoing, the Tribunal is of the view that there is a reasonable indication that the dumped and subsidized imports from China and Chinese Taipei had a negative impact on the domestic industry.

5. Tariff Item No. 7318.15 (Other screws and bolts, whether or not with their nuts or washers).

6. Tribunal Exhibit PI-2004-002 (protected), Administrative Record, Vol. 2A at 246-66.

20. The Tribunal is of the view that other factors, such as the significant increase in price of raw material, have also had a negative impact on the domestic industry. However, the Tribunal notes that, while the worldwide price of steel wire has increased, the price of the subject goods continues to decline. Based on the evidence, the Tribunal finds that there is a correlation between the overall increase in dumped and subsidized imports and the injury factors described above, and more particularly, the loss of market share suffered by the domestic industry.⁷

21. Finally, the Tribunal notes that it will address any request for product exclusion within the context of an inquiry under section 42 of *SIMA*, if a preliminary determination of dumping or subsidizing is issued by the CBSA.

CONCLUSION

22. Having regard to the foregoing, the Tribunal finds that there is evidence that discloses a reasonable indication that the dumping and subsidizing of the subject goods have caused injury to the domestic industry.

23. The Tribunal finds that the question of whether there should be more than one class of goods merits further consideration. The Tribunal, therefore, requests the CBSA to collect separate information on the dumping and subsidizing of (1) carbon steel screws, (2) carbon steel nuts and bolts, (3) stainless steel screws, and (4) stainless steel nuts and bolts. The Tribunal also requests aggregated information for (1) carbon steel screws and stainless steel screws combined, and (2) carbon steel nuts and bolts and stainless steel nuts and bolts combined. The Tribunal further requests that the information be aggregated for carbon steel fasteners as a whole and for stainless steel fasteners as a whole. Additionally, the Tribunal requests that the information be aggregated for carbon steel fasteners and stainless steel fasteners as a whole. The Tribunal requests the information by both weight and unit/piece.

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7. Tribunal Exhibit PI-2004-002 (protected), Administrative Record, Vol. 2B at 15.