



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Request for Interim Review
No. RD-2004-009

Certain Fasteners

*Order and reasons issued
Wednesday, April 20, 2005*

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IN THE MATTER OF a request for an interim review, under subsection 76.01(1) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on January 7, 2005, in Inquiry No. NQ-2004-005, concerning:

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

ORDER

On March 24, 2005, Swan Secure Products, Inc. filed a request for an interim review of the findings made by the Canadian International Trade Tribunal in Inquiry No. NQ-2004-005 concerning the above-noted goods.

Pursuant to subsection 76.01(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal has decided not to conduct an interim review of the above findings.

Richard Lafontaine

Richard Lafontaine
Presiding Member

James A. Ogilvy

James A. Ogilvy
Member

Meriel V. M. Bradford

Meriel V. M. Bradford
Member

Hélène Nadeau

Hélène Nadeau
Secretary

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STATEMENT OF REASONS

BACKGROUND

1. On February 25, 2005, the Canadian International Trade Tribunal (the Tribunal) received a request from Swan Secure Products, Inc. (Swan Secure) for an interim review of the Tribunal's findings made on January 7, 2005, in Inquiry No. NQ-2004-005 (the inquiry), with respect to certain fasteners. In its request, Swan Secure sought an exclusion from the Tribunal's findings for two lines of stainless steel screws (i.e. the "Swaneze Outdoor" and the "Woodpecker") that it imports from Chinese Taipei, on the basis that they are specialty screws supplied to the "high end niche market" for residential decking and outdoor construction. Furthermore, Swan Secure was of the opinion that these lines of screws were exclusive to it and that they were not produced in Canada or the United States. It also submitted that these screws were not reviewed at the time of the Tribunal's inquiry, as the Canadian market was too small and none of the manufacturers in Canada was producing them.

2. On March 16, 2005, the Tribunal requested that Swan Secure provide an explanation of the grounds on which it believed that an interim review was warranted, as set out in the Tribunal's *Guideline on Interim Reviews* (the *Guideline*) and required under paragraph 70(1)(c) of the *Canadian International Trade Tribunal Rules*.¹

3. On March 24, 2005, in reply to the Tribunal's request, Swan Secure submitted that the facts pertaining to its screws were not put in evidence during the Tribunal's inquiry, as the Tribunal did not even classify them as screws. It reiterated that Swan Secure is the only source for these screws, since its factory in Chinese Taipei is the only producer. Finally, Swan Secure claimed that, at the current rate of anti-dumping duty, its presence in the Canadian market was in jeopardy.

ANALYSIS

4. The Tribunal notes that subsection 76.01(1) of the *Special Import Measures Act*² provides that the Tribunal may conduct an interim review of a finding or order and that such an interim review may concern the whole finding or order or any aspect of it. However, pursuant to subsection 76.01(3), the Tribunal shall not conduct an interim review unless the requester satisfies the Tribunal that the review is warranted.

5. As the first step in determining whether an interim review is warranted, the Tribunal must determine whether the request for interim review is properly documented. In this connection, the Tribunal decides whether the requester has fulfilled the documentary requirements under subrule 70(1) of the *Rules*, which indicates that:

A request . . . shall set out the following information:

- (a) the name, address for service, telephone number and fax number, if any, of the person making the request and of their counsel, if any;
- (b) the nature of their interest in the order or finding;
- (c) the grounds on which the person believes initiation of the review is warranted and a statement of the facts on which the grounds are based; and
- (d) the nature of the order or finding that the person believes the Tribunal should make under subsection 76.01(5) or 76.02(4) of the *Special Import Measures Act* on completion of the review.

1. S.O.R./91-499 [*Rules*].

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

6. In accordance with these requirements, the Tribunal is of the view that Swan Secure's request is properly documented.

7. Subrule 70(2) of the *Rules* states the following:

On receipt of a properly documented request referred to in subrule (1), the Tribunal shall inform each party to the inquiry or review that resulted in the order or finding of its receipt of the request and shall give them an opportunity to make representations to the Tribunal concerning the request.

8. However, the Tribunal is of the view that, in light of the circumstances of this matter, it need not distribute Swan Secure's request to the parties for comment, as would ordinarily be the case pursuant to the above subrule. The Tribunal is of the view that proceeding immediately to determine whether an interim review is warranted would expedite the matter at hand without treating any party unfairly. In deciding to proceed in this manner, the Tribunal relied on rule 6 of the *Rules*, which states:

The Tribunal may dispense with, vary or supplement any of these Rules if it is fair and equitable to do so or to provide for a more expeditious or informal process, as the circumstances and considerations of fairness permit.

9. In determining whether an interim review is warranted, the Tribunal's practice is to take into consideration the grounds listed in rule 72 of the *Rules*, which are also found in the *Guideline*.

10. Rule 72 of the *Rules* states:

In order to decide whether an interim review under section 76.01 of the *Special Import Measures Act* is warranted, the Tribunal may request the parties to provide information concerning

- (a) whether changed circumstances or new facts have arisen since the making of the order or finding;
- (b) facts that were not put in evidence in the original proceedings and that were not discoverable by the exercise of reasonable diligence; and
- (c) any other matter that is relevant to the review.

11. Similarly, the *Guideline* indicates:

An interim review may be warranted where there is a reasonable indication that sufficient new facts have arisen or that there has been a sufficient change in the circumstances that led to the order or finding. . . . An interim review may also be warranted where there are sufficient facts that, although in existence, were not put into evidence during the previous review or inquiry and were not discoverable by the exercise of reasonable diligence at that time.

12. The Tribunal has examined the submissions made by Swan Secure in response to the Tribunal's request that it supply the information referred to in rule 72 and the *Guideline*. The Tribunal is of the view that the submissions failed to contain any new facts that may have arisen since it made its findings in the inquiry. Nor did the submissions contain any evidence of a change in circumstances since the findings. The Tribunal also observes that it notified Swan Secure of the inquiry and that the latter did not participate in the inquiry. The facts that Swan Secure now seeks to put in evidence, for the purpose of justifying an exclusion from the Tribunal's findings for the above lines of screws, consist of information that was either known to Swan Secure at the time of the inquiry or, at the very least, easily discoverable by the exercise of reasonable diligence on its part. In the Tribunal's view, it is therefore not information that is sufficient to warrant an interim review.

13. For the foregoing reasons, the Tribunal has decided, pursuant to subsection 76.01(4) of *SIMA*, not to conduct an interim review of its findings made on January 7, 2005.

Richard Lafontaine
Richard Lafontaine
Presiding Member

James A. Ogilvy
James A. Ogilvy
Member

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