



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Interim Review No. RD-2009-004

Certain Fasteners

*Order and reasons issued
Monday, March 1, 2010*

TABLE OF CONTENTS

ORDERi
STATEMENT OF REASONS1
 BACKGROUND.....1
 ANALYSIS1
 DECISION3

IN THE MATTER OF a request for an interim review, under subsection 76.01(1) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on January 6, 2010, in Expiry Review No. RR-2009-001, continuing, with amendment, its finding made on January 7, 2005, in Inquiry No. NQ-2004-005, concerning:

**THE DUMPING OF CERTAIN CARBON STEEL 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 January 22, 2010, Leland Industries Inc. filed a request for an interim review of the order made by the Canadian International Trade Tribunal in Expiry Review No. RR-2009-001 concerning certain carbon steel fasteners originating in or exported from the People's Republic of China and Chinese Taipei.

Pursuant to subsections 76.01(3) and (4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal has decided not to conduct an interim review of the above order.

Ellen Fry

Ellen Fry
Presiding Member

Serge Fréchette

Serge Fréchette
Member

Jason Downey

Jason Downey
Member

Dominique Laporte

Dominique Laporte
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STATEMENT OF REASONS

BACKGROUND

1. On January 6, 2010, the Canadian International Trade Tribunal (the Tribunal) made an order, in Expiry Review No. RR-2009-001,¹ continuing, with amendment, its finding made on January 7, 2005, in Inquiry No. NQ-2004-005, concerning certain carbon steel fasteners originating in or exported from the People's Republic of China and Chinese Taipei (the order). The order excluded certain products in addition to those that had already been excluded on January 7, 2005. Among these additional products were the following:

- sharp-pointed drywall screws with diameters ranging from #6 to #7, lengths ranging from 0.4375 in. to 2.25 in., with a coarse, fine or high-low thread, with a bugle, flat, pan, truss or wafer head, with a Phillips driver and a black phosphate or standard zinc finish
- self-drilling drywall screws with diameters ranging from #6 to #7, lengths ranging from 0.4375 in. to 2.25 in., with a fine thread, with a bugle, flat, flat truss, pan, pancake, truss or wafer head, with a Phillips driver and a black phosphate or standard zinc finish

2. On January 22, 2010, the Tribunal received a request from Leland Industries Inc. (Leland) for an interim review, under subsection 76.01(1) of the *Special Import Measures Act*,² of the order. Leland requested that the Tribunal amend the wording of the exclusions for drywall screws to refer to sharp-pointed and self-drilling drywall screws with “bugle” and “pan” heads only.

3. In its request, Leland submitted that, on September 17, 2009, Hilti (Canada) Corporation (Hilti) submitted two requests for product exclusions which covered a much broader range of goods than drywall screws and included screws with a number of different head types. Subsequently, on November 18 and 19, 2009, during the course of the Tribunal's public hearing for the expiry review, in Leland's view, Hilti amended its requests to cover only “drywall screws”. Leland submitted that it is clear Hilti produces and imports drywall screws with “bugle” and “pan” heads only.

4. Leland submitted that, given the timing of Hilti's amended requests, it was impossible for it and the other domestic producers to assess and respond to those amendments. It submitted that it was only when the order was issued that it was able to compare the scope of the exclusions granted by the Tribunal with the evidence on the record of Hilti's production and sale of drywall screws.

ANALYSIS

5. Subsection 76.01(1) of *SIMA* 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 interim review is warranted.

1. *Certain Fasteners* [the expiry review].
2. R.S.C. 1985, c. S-15 [*SIMA*].

6. As the first step in determining whether an interim review is warranted, the Tribunal must determine whether Leland's request for an interim review is properly documented. Subrule 70(1) of the *Canadian International Trade Tribunal Rules*³ requires that certain documentary requirements be fulfilled in order for a request to be considered properly documented. The Tribunal is of the view that Leland's request for an interim review meets these requirements and, as such, is properly documented.

7. The Tribunal notes that subrule 70(2) of the *Rules* requires that all other parties to the expiry review that resulted in the order be informed of the receipt of a properly documented request and given an opportunity to make representations to the Tribunal concerning such request. However, rule 6 allows the Tribunal to dispense with, vary or supplement any of the *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.

8. In this case, the Tribunal has decided, applying rule 6 of the *Rules*, not to distribute the request for an interim review to the parties for comment. Any party that may oppose the request will not be adversely affected by the Tribunal's disposition of the request. The Tribunal is therefore of the view that no parties will be treated unfairly and, further, that dispensing with representations from other parties will expedite the matter.

9. In determining whether an interim review is warranted, the Tribunal's practice is to take into consideration the factors listed in rule 72 of the *Rules*, as well as any other relevant circumstances. However, as a preliminary matter, in the Tribunal's view, it is clear that a review is not warranted where it is not within the Tribunal's jurisdiction to make the order sought in the request for an interim review.

10. In this case, Leland requested an interim review for purposes of having the Tribunal amend the description of the drywall screws covered by the exclusions to refer to sharp-pointed and self-drilling drywall screws with "bugle" and "pan" heads only. In other words, Leland is requesting that the Tribunal revoke the exclusions granted for drywall screws with "flat", "truss", "flat truss", "pancake" and "wafer" heads.

11. If this request were granted, it would expand the scope of the goods currently covered by the order. As the Tribunal stated clearly in its reasons for the order⁴ and previously in *Certain Carbon Steel Plate and Alloy Steel Plate*⁵ (in the context of an expiry review) and *Fresh Garlic*⁶ (in the context of a request for an interim review), goods that have been excluded cannot subsequently be the subject of a review. On this basis, the Tribunal therefore concludes that it does not have the jurisdiction to amend the description of the drywall screws covered by the exclusions, in the manner sought by Leland.

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

4. *Supra* note 1, paras. 53, 54.

5. Procedural Order (12 December 1997), RR-97-006 (CITT) at 7-9.

6. (12 June 2000), RD-99-002 (CITT) at 5.

DECISION

12. For the foregoing reasons, pursuant to subsections 76.01(3) and (4) of *SIMA*, the Tribunal has decided not to conduct an interim review of the order.

Ellen Fry
Ellen Fry
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Jason Downey
Jason Downey
Member