



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Interim Review No. RD-2006-005

Fasteners

*Order issued
Friday, May 11, 2007*

*Reasons issued
Friday, May 25, 2007*

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IN THE MATTER OF 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 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

The Canadian International Trade Tribunal, under the provisions of paragraph 76.01(1)(b) of the *Special Import Measures Act*, has conducted an interim review of the above-mentioned findings.

Pursuant to paragraph 76.01(5)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby makes no amendment to its findings.

Ellen Fry
Ellen Fry
Presiding Member

Elaine Feldman
Elaine Feldman
Member

Serge Fréchette
Serge Fréchette
Member

Hélène Nadeau
Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

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GRK Canada Limited

Fasteners and Fittings Inc.

H. Paulin & Co. Limited

Yow Chern Co., Ltd.

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STATEMENT OF REASONS

BACKGROUND

1. On November 28, 2006, the Canadian International Trade Tribunal (the Tribunal) received a request from Robertson Inc. (Robertson) for an interim review of the Tribunal's findings in Inquiry No. NQ-2004-005¹ to exclude HECO-FIX-plus[®] screws by amending the exclusion for Aster screws to read "Aster screws and equivalent screws, including HECO-FIX-plus[®] screws". The Tribunal decided, on December 11, 2006, that the request was properly documented and invited comments from interested parties on Robertson's request. One submission was received from Leland Industries Inc. (Leland), a domestic screw producer, stating that it opposed the request. Robertson replied on January 12, 2007, and on February 6, 2007, Leland made an additional reply.

2. Section 76.01 of the *Special Import Measures Act*² gives the Tribunal jurisdiction to conduct an interim review if it is satisfied that a review is warranted. Based on Robertson's request and the submissions received, the Tribunal decided, on February 23, 2007, that an interim review was warranted and issued a notice of commencement of interim review.³ The purpose of the interim review was to determine if the findings should be amended to exclude the product for which an exclusion had been requested. The submissions already filed by the parties prior to the initiation of the interim review were placed on the record of the interim review. In accordance with paragraph 25(c) of the *Canadian International Trade Tribunal Rules*,⁴ the Tribunal decided to proceed with a hearing by way of written submissions. Any further submissions by interested parties and any subsequent reply submissions were requested by March 9 and 23, 2007, respectively. In response to requests from parties, the Tribunal twice extended the deadline for reply submissions—first to March 29, 2007, and then to April 12, 2007. Both Robertson and Leland filed further submissions and reply submissions. GRK Canada Limited filed a submission supporting Robertson's request and seeking to expand the scope of the exclusion. Fasteners and Fittings Inc., H. Paulin & Co. Limited and Yow Chern Co., Ltd. filed submissions opposing the request.

REASONS FOR DECISION

3. Robertson submitted that HECO-FIX-plus[®] screws are physically and functionally equivalent to Aster screws, which the Tribunal excluded in *Fasteners*. Robertson contended that, since it is the Tribunal's practice to grant exclusions in a generic manner to avoid creating trade distortions and unfair competitive advantages, it should also exclude HECO-FIX-plus[®] screws. Robertson noted that Leland consented to the exclusion for Aster screws in *Fasteners* and submitted that Leland does not manufacture screws that are equivalent to HECO-FIX-plus[®] screws.

4. Leland submitted that the issue before the Tribunal is not the equivalency of Aster screws and HECO-FIX-plus[®] screws, but whether an exclusion for HECO-FIX-plus[®] screws would be injurious to the domestic industry. Leland contended that it produces screws that compete with the patented HECO-FIX-plus[®] screws and that an exclusion would cause it injury. Leland asserted that it consented to the exclusion for Aster screws by mistake, based on a misperception that the screws were speciality fasteners.

1. *Fasteners* (7 January 2005) (CITT) [*Fasteners*].
2. R.S.C. 1985, c. S-15 [*SIMA*].
3. C. Gaz. 2007.I.468.
4. S.O.R./91-499.

5. The Tribunal's practice with regard to granting product exclusions was summarized in *Stainless Steel Wire* as follows:⁵

It is well established that the Tribunal has the discretion to grant product exclusions under subsection 43(1) of *SIMA*. The fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry. The Tribunal has granted product exclusions for particular products in circumstances when, for instance, the domestic industry does not produce those particular products. The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an "active supplier" of the product or whether it normally produces the product or whether the domestic industry has the capability of producing the product.

[Footnotes omitted]

6. Likewise, in its determination in *Certain Fasteners* (remand), the Tribunal summarized its practice with regard to exclusions for patented products as follows:⁶

However, the fact that a product is patented does not mean that the Tribunal will automatically grant an exclusion. Even though an imported patented product may have certain features or physical attributes that make it distinct under patent law, a domestically manufactured product may have the same end uses, fulfil most of the same customer needs and compete in the marketplace with the patented product. Therefore, even if a request for a product exclusion concerns a patented product, the Tribunal still needs to determine whether the circumstances of the case are such that granting the exclusion could cause or threaten to cause injury to the domestic industry. . . .

7. Although the circumstances of this interim review are highly unusual in light of the argument that a similar product has already been excluded, the Tribunal emphasizes that, nonetheless, when considering requests for product exclusions, the fundamental issue must remain whether the excluded products will be injurious to the domestic industry. Each request must be considered on its own merits. Accordingly, the Tribunal considered whether the domestic industry produces or is capable of producing substitutable or competing screws that would be injured by imports of HECO-FIX-plus[®] screws.

8. First, the Tribunal notes that HECO-FIX-plus[®] screws are generally within the range of dimensions that, as determined by the Tribunal in *Fasteners*, are made, or capable of being made, by the domestic industry.⁷

9. Further, the product literature submitted by Robertson indicates that HECO-FIX-plus[®] screws are intended for "universal use" in a "wide range of professional and industrial applications in different materials", with "beech, chipboard, oak, aluminium, multiplex, pine [and] MDF board" specifically named.⁸ Similarly, the product literature submitted by Leland refers to its screws being intended for applications such as attaching roof or wall panels to wood frames and as being "fully compatible with . . . all existing pressure-treated materials".⁹

5. (30 July 2004), NQ-2004-001 (CITT) at para. 96.

6. (26 September 2006), NQ-2004-005R (CITT) at para. 17.

7. *Fasteners* at 215.

8. Tribunal Exhibit RD-2006-005.21.05, Administrative Record, Vol. 1 at 295, 297.

9. Tribunal Exhibit RD-2006-005.05.01, Administrative Record, Vol. 1 at 58, 70.

10. Moreover, the Tribunal notes that Robertson submitted an exclusion request for HECO-FIX-plus® screws in *Fasteners*, which stated that the screws were used in “all wood applications, especially woods with high density”.¹⁰

11. Finally, the Tribunal notes that the evidence on the nature of the purchasers to which Robertson is marketing HECO-FIX-plus® screws is not indicative of specialized market segments requiring specialized fasteners.¹¹

12. Accordingly, in the Tribunal’s view, the evidence does not indicate that HECO-FIX-plus® screws are differentiated significantly from domestic screws by their performance or other relevant market factors, such as market segment and intended end uses. The Tribunal therefore considers that there would be significant competition between HECO-FIX-plus® screws and domestic production and that HECO-FIX-plus® screws would cause injury to the domestic industry if the Tribunal were to grant an exclusion. Therefore, the Tribunal does not grant the requested exclusion.

13. The Tribunal notes that, in recent years, it has been its practice, when granting exclusions for patented or brand-name products, to allow for the possibility that there might be other goods that are equivalent to the excluded products, generally by including the phrase “or equivalent” in the description of the excluded products. However, even though it is the Tribunal’s usual practice to describe excluded products in a generic manner, before granting such exclusions, the Tribunal nonetheless turns its mind to whether the exclusion in its entirety, including both the specific patented or brand-name products and all “or equivalent” products that might be imported, would be injurious to the domestic industry. In *Fasteners*, based on the evidence before it at the time, the Tribunal granted an exclusion for Aster screws, but did not grant an exclusion for equivalent products. The Tribunal notes that, in *Fasteners*, an exclusion was requested for HECO-FIX-plus® screws, on their own merits. The exclusion was not granted.

CONCLUSION

14. For the foregoing reasons, pursuant to paragraph 76.01(5)(b) of *SIMA*, the Tribunal hereby makes no amendment to its findings.

Ellen Fry
Ellen Fry
Presiding Member

Elaine Feldman
Elaine Feldman
Member

Serge Fréchette
Serge Fréchette
Member

10. Tribunal Exhibit RD-2006-005.05.02, Administrative Record, Vol. 1 at 98.

11. Tribunal Exhibit RD-2006-005.22.05 (protected), Administrative Record, Vol. 2 at 44.