



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry No. LE-2013-003

Certain Fasteners

*Order and reasons issued
Wednesday, March 26, 2014*

TABLE OF CONTENTS

ORDER i
STATEMENT OF REASONS 1

IN THE MATTER OF a notice of expiry, pursuant to subsection 76.03(2) 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;

AND IN THE MATTER of a request made by Mr. Gregory Kanargelidis to have access in these proceedings to information designated as confidential pursuant to paragraph 46(1)(a) of the *Canadian International Trade Tribunal Act*.

CERTAIN FASTENERS

ORDER

The request is denied.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Member

Daniel Petit
Daniel Petit
Member

Dominique Laporte
Dominique Laporte
Secretary

STATEMENT OF REASONS

1. On March 10, 2014, Mr. Gregory Kanargelidis filed with Canadian International Trade Tribunal (Tribunal), among other documents, a Declaration and Undertaking (Form III) in these proceedings indicating that he acted as counsel of record for the party Marco Industries Canada Inc. and requesting access to the confidential information in the record.
2. The issue is whether Mr. Kanargelidis is eligible for such access.
3. Subsection 45(3) of the *Canadian International Trade Tribunal Act* stipulates that the Tribunal may disclose confidential information to counsel for a party to the proceedings for use by that counsel in the proceedings, subject to any conditions that the Tribunal considers reasonably necessary or desirable to ensure that the information will not, without the written consent of the person who provided the information to the Tribunal, be disclosed by counsel to any person in a manner that is calculated or likely to make it available to any party to the proceedings, including a party who is presented by that counsel, or any business competitor or rival of any person to whose business or affairs the information relates.
4. According to subsection 45(4) of the Act, in subsection 45(3), “counsel” means any person, *other than a director, servant or employee of the party*, who acts in the proceedings on behalf of the party.
5. Rule 16 of *Canadian International Trade Tribunal Rules* provides that, for the purposes of section 45 of the Act, “a counsel for a party, *other than a counsel who is not a resident of Canada or who is a director, servant or employee of the party*, who wishes access to confidential information provided to the Tribunal shall provide the Tribunal with a declaration and undertaking on the relevant Tribunal form”. [Emphasis added.]
6. The relevant form is the Declaration and Undertaking (Form III). The Tribunal’s guideline entitled *Designation, Protection, Use and Transmission of Confidential Information* explains Form III as follows:

In essence, the Declaration and Undertaking is a binding commitment by counsel not to disclose any confidential information received, except to a person granted access by the Tribunal to such information. Counsel cannot obtain such access if they are a director, servant or employee of a party.
7. In short, the Tribunal will not grant access to the confidential information in the record to a counsel if the counsel is a director of a party.
8. By his own admission, Mr. Kanargelidis is a director of the party Marco Industries Canada Inc. In his letter accompanying Form III he wrote as follows:

In connection with the Form III, please note that I have modified the “Declaration” to indicate that while *I am a director of Marco Industries Canada Inc.* [Marco Industries], there is a Unanimous Shareholder Declaration [USD] in place which, among other things, provides that the “powers of ...directors of the Corporation... are hereby restricted to the fullest extent permitted by law and the Directors are relieved of their duties and liabilities.” [Emphasis added.]

9. On March 11, 2014, the Tribunal wrote to Mr. Kanargelidis to acknowledge receipt of his letter of March 10, 2014, and accompanying documents, and to address the matter of his position with Marco Industries as follows:

The Tribunal requests a copy of the [USD] that you have referenced in your letter of March 10, 2014, along with a submission as to why the Tribunal should allow you access to the confidential record in this matter given that your request appears to be contrary to the Tribunal's *Guideline Designation, Protection, Use and Transmission of Confidential Information* [Guideline]... in respect of Form III (Declaration and Undertaking).

10. On March 12, 2014, Mr. Kanargelidis filed representations in response to the Tribunal's letter of March 11, 2014, as well as the USD.

11. The deadline for filing notices of participation and representation in these proceedings was March 18, 2014. On March 19, 2014, the Tribunal wrote to counsel of record requesting any comments on Mr. Kanargelidis' request. Counsel for Leland Industries Inc. (Leland) wrote to the Tribunal to indicate that Leland would "rely on the Tribunal to decide this matter in accordance with the Guideline." No other comments were filed. Mr. Kanargelidis had until March 24, 2014, to file any comments in reply. None were received by the Tribunal.

12. The proper discharge of the Tribunal's functions is predicated on the safeguarding of confidential information provided to it in accordance with the Act, the Rules, and the commitments set out in the Guideline, the latter of which clearly states that "Counsel cannot obtain such access if they are a director, servant or employee of a party [emphasis added]."

13. The prohibition on granting access to a director of a party is clear. The wording in the legislation is imperative; leaving the Tribunal with no room to make exceptions for certain types of directors, including directors in the circumstances of Mr. Kanargelidis. Because Mr. Kanargelidis is a director of Marco Industries, the Tribunal must treat him as such.

14. Even if the Tribunal had discretion in the matter, Mr. Kanargelidis has given no compelling reason why the prohibition should be waived for his purposes. Mr. Kanargelidis relies on a USD that purportedly qualifies his position as a director of Marco Industries. Granting this request would require the Tribunal to not only correctly interpret the USD (a private commitment to which the Tribunal is not party), but would also require it to police its enforcement into an indeterminate future. In the event that anyone were to question why the Tribunal accepted to deviate from the application of the Guideline in this instance, the Tribunal would also be faced with the difficult task of justifying to third parties the reasons it granted such a waiver. The public's trust in the integrity of the Tribunal's process, and the honesty of the Guideline would risk serious and irreparable compromise, should the waiver be granted. The Tribunal cannot accept that it be placed in such a position.

15. In the perception of a reasonable participant in any aspect of Tribunal proceedings involving the exchange or entrusting of confidential information, a director of a party is a director of a party, notwithstanding how any USD may purport to diminish that title and role.

16. The request is denied.

Stephen A. Leach

Stephen A. Leach
Presiding Member

Pasquale Michael Saroli

Pasquale Michael Saroli
Member

Daniel Petit

Daniel Petit
Member