



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Interim Review No. RD-2016-001

Certain Carbon Steel Fasteners

*Order and reasons issued
Wednesday, February 15, 2017*

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IN THE MATTER OF an interim review, pursuant to subsection 76.01(1) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on January 5, 2015, in Expiry Review No. RR-2014-001, continuing, with amendment, its order made on January 6, 2010, in Expiry Review No. RR-2009-001, continuing, with amendment, its findings 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**

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.01(1) of the *Special Import Measures Act*, has conducted an interim review of its order concerning certain steel fasteners originating in or exported from the People's Republic of China and Chinese Taipei (the subject goods) made on January 5, 2015, in the five-year Expiry Review No. RR-2014-001, continuing, with amendment, its order made on January 6, 2010, in the first five-year Expiry Review No. RR-2009-001, continuing, with amendment, its findings made on January 7, 2005, in Inquiry No. NQ-2004-005 in respect of the subject goods.

Pursuant to paragraph 76.01(5)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby amends its order made on January 5, 2015, to exclude, effective May 16, 2016, the following goods: shoulder bolts made of steel, grade 5, and zinc-plated, with a hexagonal head, an unthreaded cylindrical shoulder section ranging from 1/4 inch to 3/4 inch in diameter, and a threaded section that is smaller in diameter than the shoulder ranging from 3/8 inch to 7/8 inch in length and between 10-24 and 5/8-11 in common thread sizes.

Jean Bédard
Jean Bédard
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Serge Fréchette
Serge Fréchette
Member

Tribunal Members: Jean Bédard, Presiding Member
Jason W. Downey, Member
Serge Fréchette, Member

Counsel for the Tribunal: Eric Wildhaber
Laura Little
Dustin Kenall

Registrar Officer: Sara Pelletier

PARTICIPANTS:**Domestic Producer**

Leland Industries Inc.

Counsel/Representative

Lawrence Herman

Importers/Exporters/Others

Canimex Inc.
Chan Liang Enterprise Co., Ltd.
Fong Preat Industrial Co., Ltd.
Jau Yeou Industry Co., Ltd.
Loyal Int'l Co., Ltd.
Racing Point Industry Co., Ltd.
Robertson Inc.
Spaenaur Inc.
U2 Fasteners
Zonbix Enterprise Co., Ltd.

Counsel/Representatives

Luc Simard
John Lin
Steffi Wang
Yang Shih-Ching
Stanley Wu
Robert Shiou
Riyaz Dattu
Gajan Sathanathan
Cyndee Todgham Cherniak
Ulrich Walther
Raymond Liu

Please address all communications to:

The Registrar
Secretariat to the Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario K1A 0G7
Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

INTRODUCTION

1. The Canadian International Trade Tribunal (the Tribunal) conducted this interim review, pursuant to subsection 76.01(1) of the *Special Import Measures Act*,¹ to determine whether to exclude shoulder bolts, described more specifically in this statement of reasons, from the order made by the Tribunal on January 5, 2015, in the five-year Expiry Review No. RR-2014-001 concerning certain carbon steel fasteners originating in or exported from the People's Republic of China (China) and Chinese Taipei (hereinafter "the 2015 order").

2. Canimex Inc. (Canimex), an importer, requested this interim review in the nature of an exclusion request on the basis that the domestic industry does not produce shoulder bolts² and, therefore, that the granting of an exclusion of such products from the 2015 order would not result in injury to the domestic industry.

3. For the reasons set out below, the Tribunal has decided to grant the request and amend the 2015 order to exclude fasteners described more specifically in this statement of reasons, which are known as "shoulder bolts".

PROCEDURAL BACKGROUND

4. Subsection 76.01(1) of *SIMA* states that, at any time after the making of an order or finding described in any of sections 3 to 6, the Tribunal may, on its own initiative or at the request of the Minister of Finance, the President of the Canada Border Services Agency (CBSA) or any other person or government, conduct an interim review of (a) the order or finding, or (b) any aspect of the order or finding. Further, subsection 76.01(3) states that the Tribunal shall not conduct an interim review at the request of any person or government unless the person or government satisfies the Tribunal that the review is warranted.

5. Between April 5 and May 16, 2016, the Tribunal received from Canimex various documents to substantiate a request for an interim review of the 2015 order.

6. The Tribunal first determined that the request was properly documented in the manner prescribed by subrule 70(1) of the *Canadian International Trade Tribunal Rules*.³ On June 27, 2016, in accordance with subrule 70(2), the Tribunal informed all parties to the five-year Expiry Review No. RR-2014-001 of its receipt of the request and gave them an opportunity to make representations concerning whether a review was warranted.

7. The Tribunal received submissions from only two parties other than Canimex—Spaenaur Inc. (Spaenaur) and Leland Industries Inc. (Leland)—neither of which opposed the present interim review of the 2015 order.

8. On the basis of the submissions received, the Tribunal decided that an interim review was indeed warranted and issued a notice of commencement of interim review on August 29, 2016.

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

2. See full product description in the section entitled "Product Description" below.

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

9. In accordance with paragraph 25(c) of the *Rules*, the Tribunal decided to proceed with a hearing by way of written submissions. Submissions already filed by interested parties were placed on the record of the interim review. Additional submissions were filed by the same parties, namely, Canimex, Leland and Spaenaur.

10. On September 15, 2016, the Tribunal held a file hearing in Ottawa, Ontario.

PRODUCT DESCRIPTION

11. The shoulder bolts covered by Canimex's request are described as follows:⁴

Shoulder bolts are composed of two distinct sections. The first section is the shoulder, which is not threaded, whereas the second section is threaded, which will eventually be held in place with a nut. Essentially, the shoulder serves as a spacer or support for items that must move freely on that shoulder. It has almost the same function as a bearing. The second section is the one on which a nut is screwed to hold the bolt in place. Thus the threaded section allows to fasten the bolt to a unit while the unthreaded section allows a component to rotate freely on the shoulder. The first section, namely, the shoulder, is always larger in diameter than the threaded section.

...

These bolts are made of steel, grade 5, and are zinc-plated. They always have a hexagonal head. A socket must be used for screwing and unscrewing.

[Translation]

12. In terms of size dimensions, Canimex's request relates to shoulder bolts with a cylindrical shoulder section ranging from 1/4 inch to 3/4 inch in diameter, and a threaded section that is smaller in diameter than the shoulder ranging from 3/8 inch to 7/8 inch in length and between 10-24 and 5/8-11 in common thread sizes.⁵

POSITIONS OF THE PARTIES

13. Canimex's position, supported by Spaenaur, was that the exclusion of shoulder bolts from the 2015 order issued as a result of the five-year Expiry Review No. RR-2014-001 would not adversely affect the domestic production of carbon steel fasteners because the domestic industry does not produce shoulder bolts.

14. Canimex further submitted that it had not filed a product exclusion request prior to, or during, the five-year Expiry Review No. RR-2014-001 given that it never considered its imports of shoulder bolts to be subject goods⁶ and because it was only a few months *after* the 2015 order that the CBSA began to impose anti-dumping duties on its imports of shoulder bolts.

15. Canimex did not challenge the CBSA's determination that the shoulder bolts were subject goods by appealing that decision before the Tribunal, pursuant to the subjectivity appeal provisions under *SIMA*.

4. Exhibit RD-2016-001-01C, Vol. 1.

5. Exhibit RD-2016-001-01, Vol. 1; Exhibit RD-2016-001-01C, Vol. 1.

6. The Tribunal notes that Spaenaur, in its submission, was of the view that the shoulder bolts were not, in fact, subject goods in relation to the 2015 order. Exhibit RD-2016-001-04.02, Vol. 1 at 1.

Instead, Canimex plainly requested the exclusion of such goods from the 2015 order, retroactive to the date the anti-dumping duties were first imposed by the CBSA.⁷

16. Leland, the only domestic producer to make submissions in this interim review, consented to the exclusion on a limited basis, as follows: hex-head shoulder bolts with a thread size of 3/8-16, in accordance with the specifications and drawing filed by Canimex, and the exclusion should cover no more than 20,000 pieces imported by Canimex per year. Leland did not make submissions on the matter of retroactivity.

ANALYSIS

17. The purpose of an interim review is to determine whether the circumstances require a finding or order to be rescinded, continued with amendment, or continued without amendment.⁸ In this regard, the Tribunal typically considers whether sufficient new relevant facts have arisen since the issuance of the existing finding or order, or that there has been sufficient change in the circumstances that led to the finding or order in question.⁹ Other considerations may include whether there are sufficient facts that, although in existence, were not put into evidence during the previous five-year review or inquiry and were not discoverable by the exercise of reasonable diligence at that time, or any other matter that is relevant to the review.¹⁰

18. In this case, Canimex alleged that there is no domestic production of shoulder bolts in Canada. This allegation was supported by e-mail correspondence dated between March and April of 2016, in which each of the three known domestic producers of like goods in relation to the 2015 order—Leland, Visqué Inc. (Visqué) and Infasco Nut (Infasco)—declined Canimex's request to order shoulder bolts, stating that they were not capable of producing the requested product.¹¹ Specifically, Canimex had requested that they provide quotes for the purchase of hex-head shoulder bolts in 3/8-16 thread size in accordance with the technical specifications provided with its request, in the amount of approximately 20,000 pieces per year.¹²

19. The evidence filed by Canimex was undisputed. Further, none of the domestic producers disputed Canimex's allegation that there is no domestic production of shoulder bolts of any of the size dimensions covered by Canimex's request, or submitted that they could or would likely commence production in the near future. This included Leland, the complainant in the original injury inquiry and the only domestic producer that filed submissions in this interim review.

20. Although the original injury inquiry included carbon steel and stainless steel nuts and bolts, there was no indication that shoulder bolts, specifically, were considered part of the product definition¹³.

7. Exhibit RD-2016-001-06.01, Vol. 1; Exhibit RD-2016-001-01A, Vol. 2 (protected).

8. Subsection 76.01(5) of *SIMA*.

9. Rule 72 of the *Rules*; see also Canadian International Trade Tribunal, *Guidelines on Interim Reviews*, available online at http://www.citt-tcce.gc.ca/en/Interim_Review_Guidelines_e.

10. *Ibid.*

11. Exhibit RD-2016-001-01, Vol. 1; Exhibit RD-2016-001-01B, Vol. 1.

12. *Ibid.*

13. In Inquiry No. NQ-2004-005, Leland filed a list of all categories of screws, nuts and bolts that it considered to be included as subject goods, for the purposes of the product exclusion process. That list, which was filed by Spaenaur in this interim review, makes no specific reference to shoulder bolts. Exhibit RD-2016-04.02, Vol. 1.

Furthermore, the Tribunal notes that it found no injury or threat of injury caused by the dumping or subsidizing of carbon steel and stainless steel nuts and bolts.¹⁴

21. In the context of the five-year Expiry Review No. RR-2009-001, the Tribunal observed that “[s]ome screws commonly designated as ‘bolts’ (i.e. lag bolts, flange bolts, bin bolts, grain bin bolts, square and hex lag bolts, and stove bolts) are considered to be subject goods.”¹⁵ Again, there was no specific mention of shoulder bolts on the record in that expiry review order or, more recently, the 2015 order. Accordingly, there is no indication that the issue of shoulder bolts was raised before the Tribunal prior to Canimex’s present exclusion request.

22. Given the uncontroverted evidence that there is no current domestic production of shoulder bolts, in any of the size dimensions covered by Canimex’s product exclusion request, and as there is no indication that domestic production is likely to commence in the near future, the Tribunal finds that the preponderance of evidence indicates that granting the exclusion will not result in injury to the domestic industry. Moreover, this conclusion is supported by the lack of opposition to the exclusion request.

23. The Tribunal also took into consideration the fact that the finding and orders in Inquiry No. NQ-2004-005 involved a product definition that was very broad in scope and an exceptional number of exclusion requests.¹⁶ Accordingly, in the particular circumstances of this case, it is reasonable that the evidence with respect to imported shoulder bolts was not on the record during the initial inquiry or the subsequent five-year expiry reviews and was not discoverable by the exercise of reasonable diligence at that time, by either Canimex, the domestic industry, or, for that matter, the Tribunal.

24. In light of the above, the Tribunal finds that the circumstances justify an amendment of the 2015 order so as to exclude shoulder bolts.¹⁷

25. As mentioned above, Leland requested that the Tribunal limit the scope of the exclusion to 20,000 pieces per year and to shoulder bolts with a thread size of 3/8-16. The Tribunal notes that the limitation sought by Leland mirrors the annual quantity and product dimensions indicated by Canimex in its request for quotes from the domestic producers.

26. The Tribunal sees no basis for limiting the scope of the exclusion in the manner requested by Leland. Given the undisputed arguments and evidence on the record that there is no current or foreseen domestic production of shoulder bolts, in general, the Tribunal does not see how the exclusion of such

14. In the original injury inquiry, the Tribunal found that the dumping and subsidizing of carbon steel screws had caused injury, and the dumping and subsidizing of stainless steel screws was threatening to cause injury to the domestic industry. *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT). The finding against stainless steel screws was rescinded in 2009 in Expiry Review No. RR-2009-001. Accordingly, the 2015 order only applies to carbon steel screws.

15. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 15.

16. Over 20,000 individual exclusion requests were received by the Tribunal in the original injury inquiry alone. *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at para. 218.

17. In accordance with Article 11 of the *World Trade Organization Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* and Article 21 of the *Agreement on Subsidies and Countervailing Measures*, anti-dumping or countervailing duties “shall remain in force only as long as and to the extent necessary” to counteract dumping or subsidization which is causing injury. For the continuation of a finding or order to be necessary, it must be determined that the injury to the domestic industry would be likely to continue or recur if the duties were removed or amended.

goods would result in a likelihood of injury to the domestic industry, regardless of where they fall in the range of size dimensions referred to by Canimex.

27. In particular, Leland did not make any submissions regarding the other sizes of shoulder bolts covered by the request (i.e. other than thread size 3/8-16), nor did it argue that injury would become likely should the exclusion not be limited in the manner it requested.

28. In *Welded Large Diameter Carbon and Alloy Steel Line Pipe*,¹⁸ the Tribunal was also asked to consider quantitative limits to the scope of some of the exclusion requests that were made in that matter. For the reasons given in its decision, the Tribunal decided not to impose quantitative restrictions in that case. The Tribunal sees no reason to depart from that approach in the present case. Accordingly, it has decided the exclusion granted below will not include any quantitative restrictions.

29. For the foregoing reasons, the Tribunal finds that, in the context of this case, the preponderance of evidence indicates that granting the exclusion for shoulder bolts, without restriction to the quantity or the specific size requested by Leland, will not result in injury to the domestic industry.

30. Should a domestic producer seek to commence domestic production of shoulder bolts, and if it believes that injurious dumping or subsidization has occurred or is likely to occur, its recourse would then be to seek remedial action under *SIMA*.

31. Finally, Canimex's request that the exclusion, if granted, be retroactive to the date that anti-dumping duties were imposed is denied. Through this request, Canimex is essentially asking the Tribunal to put it in the same position as if it had successfully challenged the CBSA's subjectivity determination through an appeal pursuant to section 61 of *SIMA*.

32. An interim review cannot serve as a substitute to an appeal pursuant to section 61 of *SIMA*. After an assessment of anti-dumping and/or countervailing duties has been made, *SIMA* provides for several levels of re-determinations and appeals, whereby an appeal to the Tribunal under section 61 may be made after the CBSA makes a re-determination under section 59.¹⁹

33. However, Canimex's decision to request an exclusion from the 2015 order, instead of taking the steps indicated above in order to properly challenge a determination of subjectivity, essentially demonstrates its tacit acceptance of the CBSA's decision that shoulder bolts are subject goods. Therefore, the only question properly before the Tribunal in this interim review is whether granting an exclusion for shoulder bolts, in light of the new facts that have arisen since the issuance of the 2015 order, is likely to cause injury to the domestic industry.

34. The evidence submitted by Canimex demonstrates that there is no current domestic production but it is unclear from the evidence on the record precisely since when that has been the case. Nevertheless, the Tribunal finds that this has been the case since April 6, 2016, i.e. the date of Infasco's e-mail indicating it cannot produce the requested shoulder bolts, it being the last of the domestic producers to respond to Canimex's request.

18. (20 October 2016), NQ-2016-001 (CITT) [LDLP].

19. Sections 57 to 61 of *SIMA*; CBSA, "Re-determinations and Appeals Under the *Special Import Measures Act*", Memorandum D14-1-3 (28 June 2016), at paras. 40-51, available online: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d14/d14-1-3-eng.html>.

35. The Tribunal received the last document from Canimex to perfect its request in this matter on May 16, 2016. Furthermore, the Tribunal notes the fact that Canimex's request was not contested by the domestic industry. In fact, Leland consented to the exclusion. Although Leland's consent was based on the specific size cited by Canimex in its request for estimates, there are no submissions or evidence on the record indicating that the domestic industry makes the other sizes covered by Canimex's request or that the domestic industry would likely be injured should those other sizes of shoulder bolts be excluded.

36. In these circumstances, the Tribunal finds that it is unlikely that the domestic producers will suffer any prejudice if the exclusion is granted retroactively to May 16, 2016, which is the date on which the Tribunal received the last document from Canimex to support its request in this matter. For those reasons, the Tribunal finds it appropriate to grant the exclusion effective May 16, 2016.

CONCLUSION

37. For the foregoing reasons, pursuant to paragraph 76.01(5)(b) of *SIMA*, the Tribunal amends its order made on January 5, 2015, in the five-year Expiry Review No. RR-2014-001 to exclude, effective May 16, 2016, the following goods: shoulder bolts made of steel, grade 5, and zinc-plated, with a hexagonal head, an unthreaded cylindrical shoulder section ranging from 1/4 inch to 3/4 inch in diameter, and a threaded section that is smaller in diameter than the shoulder ranging from 3/8 inch to 7/8 inch in length and between 10-24 and 5/8-11 in common thread sizes.

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