



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Interim Review No. RD-2016-003

Certain Carbon Steel Fasteners

*Order and reasons issued
Wednesday, July 12, 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 the date of this order, the following goods: Squeeeek No More[®] square-drive wood screws, manufactured by or on behalf of O'Berry Enterprises Inc. under U.S. patent Nos. 5,371,992, 5,372,466 or 6,250,186, for use in wood flooring, with scoring above the threaded portion of the screw that allows the upper portion of the screw and head to be easily broken off, 3" or 3.5" in length, of a #8 or #9 diameter, threaded in part with 8 threads per inch and in part with 9 threads per inch, with the remainder unthreaded, and covered in a Gleitmo 615 lubricant coating (or equivalent coating) and imported in packages of 500 screws or less.

Jean Bédard

Jean Bédard
Presiding Member

Jason W. Downey

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Member

Serge Fréchette

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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 Squeeeeeek No More[®] square-drive wood screws (OBI screws) manufactured by or on behalf of O'Berry Enterprises Inc. (OBI), 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. OBI, a U.S. vendor and potential exporter to Canada of the OBI screws (designed and intended for noise-dampening uses, not construction) originating in Chinese Taipei, requested this interim review in the nature of an exclusion request on the basis that the domestic industry does not produce noise-dampening screws² 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 the OBI screws as defined and described more specifically in this statement of reasons.

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. On September 1, 2016, the Tribunal received a request from OBI for an interim review of the 2015 order excluding the following product:

Square-drive wood screws, scored so that the upper portion of the screw and head can be easily snapped off, 3" or 3.5" in length, of a #8 or #9 diameter, threaded in part with 8 threads per inch and in part with 9 threads per inch, with the remainder unthreaded, and covered in a Gleitmo 615 lubricant coating (or equivalent coating).

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 September 9, 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.

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*].

7. The Tribunal received submissions from only three parties other than OBI: Spaenaur Inc. (Spaenaur), Leland Industries Inc. (Leland) and Visqué Inc. (Visqué), the latter two of which opposed the commencement of an interim review.

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 February 17, 2017.

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 only OBI and Leland. Leland informed the Tribunal that, after discussions with OBI, it now consented to OBI's exclusion request, subject to the following revised wording:

Squeeeeeek No More[®] square-drive wood screws, manufactured by or on behalf of O'Berry Enterprises Inc. under U.S. patent Nos. 5,371,992, 5,372,466 or 6,250,186, for use in wood flooring, with scoring above the threaded portion of the screw that allows the upper portion of the screw and head to be easily broken off, 3" or 3.5" in length, of a #8 or #9 diameter, threaded in part with 8 threads per inch and in part with 9 threads per inch, with the remainder unthreaded, and covered in a Gleitmo 615 lubricant coating (or equivalent coating) and imported in packages of 500 screws or less.

10. On May 17, 2017, the Tribunal held a file hearing in Ottawa, Ontario.

PRODUCT DESCRIPTION

11. The OBI screws are either 3" or 3.5" in length and are either a #8 or #9 in thickness (approximately 1/8" to 9/64"). They use a square-drive style. Four important characteristics distinguish them from generic wood screws: 1) the top of the screws snap off; 2) the screws use two different thread pitches; 3) a coating of Gleitmo 615 lubricant covers the screws; and 4) the screws are significantly higher priced than generic wood screws.⁴

POSITIONS OF THE PARTIES

12. OBI's position, supported by Leland and Spaenaur, was that the exclusion of the OBI screws from the 2015 order issued as a result of the five-year Expiry Review No. RR-2014-001 would not adversely affect the domestic producers of carbon steel fasteners because the domestic industry does not produce screws designed and intended for noise-dampening applications rather than construction.

13. OBI submitted that it had not filed a product exclusion request prior to, or during, the five-year Expiry Review No. RR-2014-001 because to date OBI has sold OBI screws exclusively in the United States and did not begin to consider expanding into the Canadian market until June of 2016.⁵

14. Leland, the only domestic producer to make submissions in this interim review, ultimately consented to the exclusion on the basis of the negotiated wording quoted above. The amended wording differs from OBI's originally requested exclusion language by linking the exclusion to screws specifically

4. Exhibit RD-2016-003-01, Vol. 1 at paras. 16-18 at p. 5 and attachment 2 at p. 16.

5. *Ibid.* at paras. 13-14 at p. 4.

manufactured by or on behalf of OBI, under one of three specific U.S. patent numbers, and limited to packages of 500 screws or less—all of which, OBI submits, corroborates the goods' niche, limited application.

15. No party opposed OBI's exclusion request at the review phase. However, at the preliminary phase, Visqué did oppose the Tribunal commencing an interim review, arguing that interim reviews for exclusions should be exceptional, that OBI had only a hypothetical interest in the Canadian market, and that OBI had not demonstrated that its screws would not compete with or injure domestic producers.⁶

ANALYSIS

16. 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.⁷ 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.⁸ 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.⁹

17. On the preliminary issue of the timing of OBI's request, it is undisputed that OBI is a U.S.-based business with no Canadian sales or operations and, as such, was not a party to the original injury inquiry or either of the subsequent two five-year expiry reviews and in a position to make its exclusion request then. There is also no evidence contradicting OBI's representation that it only began considering entry into the Canadian market after the conclusion of the most recent expiry review for fasteners. Further, no party has submitted any reason for why a prospective new entrant to the Canadian market should be required to participate in an injury hearing or expiry review before they have any intention of entering the Canadian market. In these circumstances, the Tribunal finds that granting OBI's request would not, as the Tribunal guards against in interim reviews, "create an unacceptable level of uncertainty in the duration and durability of a finding or order and would [not] be costly for the parties involved."¹⁰

18. On the merits of OBI's request, in *Stainless Steel Wire*¹¹ the Tribunal summarized its views on when product exclusions should be granted as follows:

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. Exhibit RD-2016-003-04.03, Vol. 1.

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

8. 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.

9. *Ibid.*

10. *Machine Tufted Carpeting* (21 August 2000), RD-2000-001 (CITT) at 3.

11. (30 July 2004), NQ-2004-001 (CITT) at para. 96.

19. OBI has alleged that there is no domestic production of OBI screws or their equivalents in Canada. While Leland initially expressed concern regarding a potential overlap between the OBI screws and its Master Decker™ wood screws, it withdrew its objection upon negotiation of the revised exclusion wording with OBI. Further, although Visqué characterized OBI's evidence of no competing domestic screws as inadequate and hypothetical, the Tribunal notified each of the parties to Expiry Review No. RR-2014-001 of OBI's request, and none of the domestic fastener producers participating therein provided any evidence to rebut OBI's allegation that there is any domestic production of an equivalent noise-dampening wood screw, or submitted that they could or would likely commence production of such a product in the near future.

20. OBI also argued that the four distinguishing characteristics of the OBI screws render them complements to domestically produced wood screws rather than substitute competing goods; that is, the OBI screws are designed and intended, as their installation instructions confirm,¹² for nailing floorboards down to prevent them from making noise when stepped on, not for nailing lumber together to construct a floor or deck.

21. The heads of the OBI screws are scored so that they easily snap off to prevent the screw from sticking up from the flooring when nailed in. The loss of the top part of the screw compromises its ability to secure two pieces of wood together, as traditional wood screws do.¹³ The dual thread pitch is designed to minimize squeaking by pulling and holding wood tightly against joists but has diminished securing functionality compared to uniformly threaded screws.¹⁴ The OBI screws' lubricant, Gleitmo 615, enables them to easily pass through carpet and wood without causing significant damage, but is not suitable for external deck use in Canada.¹⁵ Finally, OBI screws are approximately three times the price (20 cents versus 7 cents) of generic wood screws sold in the U.S.¹⁶ No party filed any evidence contradicting any of the above facts.

22. Given the uncontroverted evidence that there is no current domestic production of OBI screws or their equivalent or that domestic production is likely to commence in the near future, and given that the distinguishing characteristics of the OBI screws corroborate that their intended design and use are as complements (screws for noise dampening) for—and not substitutes (screws for construction) to—generic wood screws, the Tribunal finds that the preponderance of evidence indicates that granting the exclusion will not result in injury to the domestic industry.

23. In light of the above, the Tribunal finds that the circumstances justify an amendment of the 2015 order so as to exclude OBI screws.¹⁷

12. Exhibit RD-2016-003-01, Vol. 1, attachment 6.

13. *Ibid.*, attachments 2 and 6; Exhibit RD-2016-003-06.01, Vol. 1 at paras. 11-15 at pp. 4-5.

14. Exhibit RD-2016-003-06.01, Vol. 1 at para. 21 at p. 6.

15. Exhibit RD-2016-003-01, Vol. 1 at para. 25 at p. 7; Exhibit RD-2016-003-06.01, Vol. 1 at paras. 16-20 at pp. 5-6.

16. Exhibit RD-2016-003-01, Vol. 1 at paras. 26-27 at p. 7 and attachments 3-5; Exhibit RD-2016-003-06.01, Vol. 1 at para. 22 at p. 6.

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.

CONCLUSION

24. 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 the date of this order, the following goods:

Squeeeeeek No More[®] square-drive wood screws, manufactured by or on behalf of O'Berry Enterprises Inc. under U.S. patent Nos. 5,371,992, 5,372,466 or 6,250,186, for use in wood flooring, with scoring above the threaded portion of the screw that allows the upper portion of the screw and head to be easily broken off, 3" or 3.5" in length, of a #8 or #9 diameter, threaded in part with 8 threads per inch and in part with 9 threads per inch, with the remainder unthreaded, and covered in a Gleitmo 615 lubricant coating (or equivalent coating) and imported in packages of 500 screws or less.

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