



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## ORDER AND REASONS

Interim Review No. RD-2019-001

Certain Fasteners

*Order and reasons issued  
Friday, October 11, 2019*

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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 findings made by the Canadian International Trade Tribunal on January 5, 2015, in Expiry Review No. RR-2014-001, concerning:

**THE DUMPING OF CERTAIN FASTENERS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA AND CHINESE TAIPEI AND THE SUBSIDIZING OF CERTAIN FASTENERS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

**ORDER**

On April 24, 2019, ITW Construction Products Canada filed a request for an interim review, pursuant to subsection 76.01(1) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on January 5, 2015, in Expiry Review No. RR-2014-001, concerning the dumping of certain fasteners originating in or exported from the People's Republic of China and Chinese Taipei and the subsidizing of certain fasteners originating in or exported from the People's Republic of China.

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 findings.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Randolph W. Heggart  
Randolph W. Heggart  
Member

Cheryl Beckett  
Cheryl Beckett  
Member

Tribunal Panel: Serge Fréchette, Presiding Member  
Randolph W. Heggart, Member  
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## STATEMENT OF REASONS

### BACKGROUND

1. On April 24, 2019, ITW Construction Products Canada (ITW), an importer of certain fasteners, requested that the Canadian International Trade Tribunal initiate an interim review to exclude three models of Tapcon™ carbon steel screw anchors (hereinafter the “Tapcon fasteners”) from the order made by the Tribunal in Expiry Review No. RR-2014-001 concerning certain carbon steel fasteners originating in or exported from the People’s Republic of China and Chinese Taipei (the “order”).
2. ITW submitted that, at the time of the review in No. RR-2014-001, it sourced the Tapcon fasteners from the United States, where they were produced by ITW’s U.S. division and were therefore not subject to the order. ITW submitted that the Tapcon fasteners can no longer be supplied exclusively from the United States and must be purchased from Taiwan, causing them to become subject to the order. ITW also submitted that the domestic industry does not produce the Tapcon fasteners, nor do they compete with like products produced by the domestic industry, as they are patented and highly specialized goods sold at higher prices.
3. On May 21, 2019, the Tribunal provided the parties to the fasteners expiry review with a copy of ITW’s request, notified them that it had determined that the request was properly documented, and set forth a schedule of submissions on whether the request should be granted.
4. On June 12, 2019, Leland Industries Inc. (Leland), a domestic producer, filed submissions opposing ITW’s request. In arguing that an interim review was not warranted, Leland submitted that the exclusion request underlying the request for an interim review should not be granted, as Leland is capable of producing products to the same specifications as the Tapcon fasteners. Leland also submitted that there are no changes in circumstances that warrant an interim review.<sup>1</sup>
5. On June 21, 2019, ITW responded to Leland’s submissions, arguing that the Tapcon fasteners do not compete with products sold by Leland.

### PRODUCT DESCRIPTION

6. The three Tapcon fasteners at issue are as follows:
  - Tapcon™ Original Screws – Light-duty heat-treated carbon steel screw anchors for concrete and masonry substrates with diameters of between 0.19 inch and 0.25 inch, inclusive, and lengths of between 1.25 inches and 6.00 inches, inclusive;
  - Tapcon+™ – Heavy-duty heat-treated carbon steel screw anchors for concrete and masonry substrates, with diameters of between 0.25 inch and 0.50 inch, inclusive, and lengths of between 2.25 inches and 6.00 inches, inclusive; and
  - Large Diameter Tapcon™ – Heavy-duty heat-treated carbon steel screw anchors for concrete and masonry substrates with diameters of between 0.375 inch and 0.75 inch, inclusive, and lengths of between 1.75 inches and 6.25 inches, inclusive.

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1. Spaeneur Inc., Simpson Strong-Tie Canada, Limited, and Simpson Strong-Tie Co., Inc. filed notices of participation, but did not make any submissions in these proceedings.

## ANALYSIS

### Legal standard for initiating an interim review

7. Subsection 76.01(1) of the *Special Import Measures Act*<sup>2</sup> 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 cannot conduct an interim review unless the requester satisfies the Tribunal that the interim review is warranted.

8. An interim review may be warranted where changed circumstances or new facts have arisen since the making of the order or finding, or where there are facts that, although in existence, were not put in evidence in the original proceedings and were not discoverable by the exercise of reasonable diligence.<sup>3</sup> In the context of interim reviews based on a product exclusion request, the Tribunal has stated that there must be new facts or changes in circumstances that are compelling enough to indicate that the product exclusion will likely be granted.<sup>4</sup>

9. In this regard, the Tribunal notes that product exclusions are an extraordinary remedy that is granted only when the Tribunal finds that such exclusions will not cause injury to the domestic industry. Therefore, the information provided to substantiate a request for an interim review based on a product exclusion request must indicate a likelihood that the domestic industry does not produce, and does not have the capability to produce, the product for which an exclusion is requested or a substitutable product.<sup>5</sup> The onus is on the requester to demonstrate that imports of the goods for which the exclusion is sought are not likely to be injurious to the domestic industry.<sup>6</sup>

10. In considering whether granting a product exclusion for a specific good is likely to cause injury to the domestic industry, the Tribunal typically considers whether the domestic industry produces the goods or substitutable or competing products; whether the domestic industry is an “active supplier” of the goods; whether the domestic industry has the capability to produce the goods; and whether domestic producers have been contacted and indicated that they cannot produce the goods. The Tribunal has broad discretion on the issue of exclusions<sup>7</sup> and may grant them with or without the consent of the domestic industry, or refuse to grant them despite such consent.

### Interim review is not warranted

11. In the present case, the Tribunal is not convinced that the facts presented by ITW are such that they warrant an interim review.

12. First, the Tribunal is not convinced that the exclusion is likely to be granted if a review were conducted.

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

3. The Tribunal takes guidance from rule 72 of the *Canadian International Trade Tribunal Rules* (SOR/91-499); see also *Oil Country Tubular Goods* (25 October 2017), RD-2017-001 (CITT) at para. 9; *Aluminium Extrusions* (12 September 2013), RD-2012-001 (CITT) at paras. 16-18.

4. *Aluminium Extrusions* (12 September 2013), RD-2011-005 at para. 25.

5. *Ibid.* at paras. 26-27.

6. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 43.

7. *Owen & Company Limited v. Globe Springs & Cushion Co. Ltd.*, 2010 FCA 288, at para. 13.

13. ITW argued that the Tapcon fasteners are patented goods that do not compete with products produced by Leland. In this regard, ITW submitted that the Tapcon fasteners are highly specialized and higher-priced products sold to customers and niche market segments in which ITW and Leland do not compete. On this basis, ITW submitted that imports of the Tapcon fasteners would not injure the domestic industry.

14. In response to ITW's request, Leland submitted that it sells concrete anchors with the same end uses as the Tapcon fasteners as part of its regular business, and noted that it has the production equipment and could readily acquire the tooling necessary to produce goods to the same specifications as the Tapcon fasteners. In addition, Leland submitted that it never received an inquiry from ITW requesting a quote on producing the Tapcon fasteners in Canada.

15. Although the Tapcon fasteners are patented, the Tribunal is not satisfied that they would not, or do not, compete with like goods produced by the domestic industry. As noted above, the onus is on the requester to demonstrate that imports of specific goods for which an exclusion is sought are not likely to injure the domestic industry. In support of its claim that the Tapcon fasteners are higher-priced, ITW submitted price comparisons between ITW and two offshore suppliers. This does not establish the degree of competition with like products produced by the domestic industry.

16. Furthermore, Leland provided evidence that it sells products similar to the Tapcon fasteners.<sup>8</sup> ITW responded that Leland's products do not compete in the market with the higher performance of the patented Tapcon fasteners. However, the Tribunal does not find that ITW has rebutted Leland's assertion that it is capable of producing like goods. The Tribunal also notes in this regard that there is no evidence that ITW reached out to any domestic producers, including Leland, to ascertain whether they are capable of producing like products.

17. Secondly, the fact that ITW has decided to source its products from Taiwan for commercial purposes does not justify commencing an interim review. ITW submitted that it is unable to continue importing the Tapcon fasteners from the United States and must now source them from Taiwan. ITW explained that its U.S. division has determined that its operations will be devoted to high-volume fastener production, and that low-volume production, which includes the Tapcon fasteners, will be moved to Taiwan.

18. The Tribunal recognizes that relocating production of the Tapcon fasteners to Taiwan presented ITW with a new set of circumstances that resulted in a change of its sourcing strategy. However, the terms of the order were clear from the commencement of the Tribunal's investigation in No. RR-2014-001, that is to say, ITW was or should have been aware that the Tapcon fasteners would not be subject to the order while imported from the United States, but would become subject goods once imported from Taiwan.

19. In the Tribunal's view, it is an expected consequence of antidumping orders that affected commercial parties may find themselves in a position where they must adjust their business practices, including those in respect of sourcing products.

20. Based on the foregoing, ITW has failed to convince the Tribunal that imports of the Tapcon fasteners would not cause injury to the domestic industry.

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8. The Tribunal does note that these invoices provided no further aid as to the pricing comparison between the Tapcon fasteners and like goods produced by the domestic industry, as Leland redacted the prices of its similar goods and did not otherwise respond to the allegation that the Tapcon fasteners are higher-priced goods.

**DECISION**

21. Pursuant to subsections 76.01(3) and (4) of *SIMA*, the Tribunal has decided not to conduct an interim review.

Serge Fréchette  
Serge Fréchette  
Presiding Member

Randolph W. Heggart  
Randolph W. Heggart  
Member

Cheryl Beckett  
Cheryl Beckett  
Member