



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry review RR-2023-008

Corrosion-Resistant Steel Sheet

*Order and reasons issued
Monday, March 17, 2025*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(1) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on February 21, 2019, in inquiry NQ-2018-004, concerning:

**CORROSION-RESISTANT STEEL SHEET ORIGINATING IN OR EXPORTED
FROM THE PEOPLE'S REPUBLIC OF CHINA, THE SEPARATE CUSTOMS
TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU
(CHINESE TAIPEI), THE REPUBLIC OF INDIA AND THE REPUBLIC OF
KOREA**

ORDER

WHEREAS subsection 17(1) of the *Canadian International Trade Tribunal Act* (CITT Act) prescribes that the Tribunal is a court of record;

AND WHEREAS, pursuant to subsection 17(2) of the CITT Act, the Tribunal has, regarding the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record;

AND WHEREAS subsection 20.1(1) of the *Canadian International Trade Tribunal Rules* (Rules) provides that the Tribunal may order that a party or a non-party fill out a questionnaire to obtain information in a proceeding;

AND WHEREAS on August 8, 2024, the Tribunal issued a production order (Production Order) to T.Co Metals LLC requiring that it complete the Tribunal's importers' questionnaire by 12 p.m. ET on August 14, 2024;

AND WHEREAS on August 9, 2024, T.Co Metals LLC was personally served with the Production Order;

AND WHEREAS T.Co Metals LLC did not comply with the Tribunal Production Order despite having been personally served;

AND WHEREAS on September 23, 2024, the Tribunal issued an order to T.Co Metals LLC that it attend a hearing to show cause and answer why it should not be found to be in contempt of the Tribunal;

AND WHEREAS on October 11, 2024, T.Co Metals LLC attended and participated in a show cause hearing at the Tribunal;

AND WHEREAS having heard and considered the oral testimony of Richard Thypin, the principal of T.Co Metals LLC, and submissions made by counsel acting for T.Co Metals LLC;

THE TRIBUNAL DECIDES AND ORDERS THAT:

1. T.Co Metals LLC has failed to show cause why it should not be found in contempt of the Tribunal for failing to comply with the Production Order issued August 8, 2024, and served on T.Co Metals LLC on August 9, 2024.

2. T.Co Metals LLC is accordingly liable for contempt of the Tribunal for failing to comply with the Production Order of the Tribunal issued on August 8, 2024, and served on T.Co Metals LLC on August 9, 2024, at 215 Nassau St., Princeton, NJ 08542, USA, in accordance with the Rules and Article 10 of the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.
3. The Tribunal will conduct a penalty phase for the hearing of any interested party to determine any penalty that should be imposed on T.Co Metals LLC, pursuant to the Tribunal's finding of contempt. The penalty phase will proceed as follows:
 - (a) T.Co Metals LLC may file a written request for an oral hearing at which it may be heard regarding what penalty for contempt, if any, may be imposed by the Tribunal. Any such request must be filed by no later than five working days after the date of this order. Upon receipt of any such request for an oral hearing, the Tribunal will schedule a hearing which will take place within twenty calendar days after the date of the filing of a request for an oral hearing.
 - (b) In the alternative, if T.Co Metals LLC wishes to proceed without an oral hearing, it may serve all parties that filed a notice of participation in RR-2023-008 and file written materials with the Tribunal no later than ten working days after the date of this order for the Tribunal's consideration in rendering its decision regarding what penalty for contempt, if any, the Tribunal may impose.
 - (c) Any materials submitted by any person for the purposes of the penalty phase must be filed with the Tribunal, using one or more of the following means of transmission, and served on all other parties that filed a notice of participation in RR-2023-008:
 - The Tribunal's Secure E-filing Service, available at <https://e-filingdepot-electronique.citt-tcce.gc.ca/submitNonRegisteredUser-eng.aspx>.
 - Email to CITT-TCCE@tribunal.gc.ca, should T.Co Metals LLC be prepared to accept the inherent associated risks.
 - Courier, hard or digital copy, to the following address:

Registrar
Canadian International Trade Tribunal
333 Laurier Avenue West
17th Floor
Ottawa, Ontario K1A 0G7

4. T.Co Metals LLC may, in accordance with sections 43 to 49 of the CITT Act, designate as confidential certain information it provides.

Serge Fréchette

Serge Fréchette
Presiding Member

Susan D. Beaubien

Susan D. Beaubien
Member

Susana May Yon Lee

Susana May Yon Lee
Member

STATEMENT OF REASONS

OVERVIEW

[1] This contempt proceeding arises from the failure of an importer of certain steel goods, T.Co Metals LLC (T.Co), to comply with a production order issued by the Canadian International Trade Tribunal in a trade remedy proceeding.¹

[2] In the course of a trade remedy proceeding, the Tribunal is empowered by statute to collect and analyze relevant economic data and market information from persons having such information, including producers, distributors and importers. The Tribunal must comply with stringent, and non-extendable, statutory deadlines in conducting its inquiries and reviews and making its findings.

[3] In conducting this trade remedy review with respect to corrosion-resistant steel sheet, the Tribunal required information from T.Co. As T.Co was non-responsive to requests that it complete an importers' questionnaire, the Tribunal issued a production order (Production Order) to compel the provision of information that was needed for the purposes of its inquiry.

[4] The Production Order was clearly worded but T.Co did not respond or comply as ordered, despite it being served on T.Co at its place of business.

[5] T.Co appeared before the Tribunal on October 11, 2024, and participated in a show cause hearing for contempt regarding its failure to comply with the Tribunal's Production Order. T.Co's explanation for failure to comply with the order was its prioritization of other business activities.

[6] Having considered the submissions of T.Co and the oral testimony of Richard Thypin during the show cause hearing, and for the reasons that follow here, the Tribunal finds that T.Co is liable for contempt of the Tribunal for failing to comply with the Tribunal's Production Order.

FACTUAL BACKGROUND

[7] On February 21, 2019, the Tribunal issued a finding from inquiry NQ-2018-004 (COR 2018) concerning the dumping of certain corrosion-resistant steel sheet (COR)² originating in or exported from the People's Republic of China (China), the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), the Republic of India (India) and the Republic of Korea (Korea), referred to as the "subject goods" below.

[8] Pursuant to section 76.03 of the *Special Import Measures Act*³ (SIMA), the Tribunal was required to initiate an expiry review of its finding in COR 2018 before the expiry of a five-year period.

[9] On January 15, 2024, the Tribunal issued a notice to initiate an expiry review of its finding in COR 2018. The Tribunal's mandate in the expiry review was to determine whether the expiry of the finding in COR 2018 was likely to result in injury to the domestic industry and then to make an order either continuing the finding, with or without amendment, or rescinding it.

¹ *Corrosion-resistant Steel Sheet* (20 November 2024), RR-2023-008 (CITT).

² See Exhibit RR-2023-008-02 for the product description of the goods subjected to the Tribunal's finding.

³ R.S.C., 1985, c. S-15.

[10] The Tribunal's January 15, 2024, notice triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) on January 16, 2024, to determine whether the expiry of the Tribunal's finding was likely to result in the continuation or resumption of dumping of the subject goods.

[11] The CBSA found on June 13, 2024, that the continuation or resumption of dumping of the subject goods from China, Chinese Taipei, India and Korea was likely to occur in the event the finding were to expire.⁴

[12] Accordingly, on June 14, 2024, the Tribunal began its portion of the expiry review to determine whether the expiry of the finding was likely to result in injury to the domestic industry.⁵

[13] The Tribunal also issued on June 14, 2024, its request for the completion of its questionnaires to potential domestic producers and importers of COR. Questionnaires were also sent as to potential foreign producers of the subject goods and to unions representing workers employed by domestic producers.⁶ T.Co was one of the importers asked by the Tribunal to complete an importers' questionnaire.

[14] Between June 20, 2024, and July 16, 2024, staff of the Secretariat to the Tribunal contacted T.Co at least six times by phone and email to request that it complete the questionnaire.

[15] T.Co. did not reply to the questionnaire by the deadline of July 5, 2024.

[16] On July 31, 2024, the Tribunal requested by email that T.Co confirm its intention to provide a completed questionnaire by August 1, 2024, or potentially face the issuance of a production order.⁷

[17] In its letter of July 31, 2024, the Tribunal set out in detail the statutory power of the Tribunal to enforce its orders and explained why the Tribunal required data from T.Co pertaining to its Canadian imports of COR from non-subject countries. T.Co was advised as follows:

The Tribunal is constituted by federal statute as a court of record and has the following authority pursuant to the *Canadian International Trade Tribunal Act* (CITT Act):

17 (1) The Tribunal is a court of record and shall have an official seal, which shall be judicially noticed.

Powers

(2) The Tribunal has, as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

⁴ Exhibit RR-2023-008-03, p. 1–2. The CBSA made its determination pursuant to paragraph 76.03(7)(a) of SIMA.

⁵ Exhibit RR-2023-008-11, p. 2. The Tribunal undertook its expiry review pursuant to subsection 76.03(10) of SIMA.

⁶ Exhibit RR-2023-008-14.

⁷ Exhibit RR-2023-008-15.23.05.

In order to assess the effects of [COR] dumping, **the Tribunal must consider the effects of dumping in the overall context of the entire Canadian market for [COR]. As such, it requires economic data concerning the production, manufacture and importation of [COR] from all sources relevant to the Canadian marketplace, including imports from non-subject countries** [emphasis added]. This enables the Tribunal to form a comprehensive understanding of the Canadian market for [COR] for the purposes of this expiry review.

T.Co Metals LLC's imports of [COR] from non-subject countries account for a significant percentage of imports of [COR] from non-subject countries during the period of January 1, 2021, to March 31, 2024 [emphasis added].⁸

[18] T.Co. did not confirm its intention to provide the Tribunal with a completed questionnaire by the August 1, 2024, deadline and still had not responded by August 8, 2024.

[19] On August 8, 2024, the Tribunal issued a Production Order to T.Co. It required T.Co to submit a completed Importers' Questionnaire to the Tribunal for receipt by noon ET on August 14, 2024.⁹

[20] T.Co was personally served with the Production Order at 215 Nassau St., Princeton, NJ 08542, USA,¹⁰ in accordance with the *Canadian International Trade Tribunal Rules*¹¹ (Rules) and Article 10(c) of the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention).¹² Service was effected on August 9, 2024.

[21] T.Co did not comply with the Production Order and failed to respond to the Tribunal by noon ET on August 14, 2024, as required.

[22] The Tribunal therefore continued its expiry review without the benefit of the information that T.Co could have provided. Following the completion of a file hearing in the expiry review, the Tribunal closed the record in the expiry review on September 20, 2024.

[23] The Tribunal decided to continue the finding, without amendment, on November 20, 2024 (COR RR 2023).¹³

Issuance of show cause order

[24] Despite having been contacted on several occasions by the staff of the Secretariat to the Tribunal through various means and having been served with a Production Order, T.Co ignored the Tribunal's attempts to collect the information relevant to the expiry review.

⁸ *Ibid.*

⁹ Exhibit RR-2023-008-15.23.06.

¹⁰ This address is registered as the head office or principal place for T.Co.

¹¹ SOR/91-499.

¹² Exhibit RR-2023-008-15.23.06A.

¹³ *Corrosion-resistant Steel Sheet* (20 November 2024), RR-2023-008 (CITT).

[25] As T.Co did not comply with the Production Order, the Tribunal issued an order to T.Co on September 23, 2024, requiring it to attend a hearing to show cause and answer why it should not be found in contempt of the Tribunal (Show Cause Order).

[26] The Show Cause Order required a representative of T.Co to appear at a hearing in person on October 11, 2024, to show cause and answer why T.Co should not be found in contempt of the Tribunal for:

- (a) failing to obey the production order of the Tribunal issued on August 8, 2024, and personally served upon T.Co Metals LLC on August 9, 2024, at 215 Nassau St., Princeton, NJ 08542, USA, in accordance with the Rules and Article 10 of the Hague Service Convention; and/or
- (b) conducting itself in a manner calculated to, or with reckless disregard for whether the conduct would, interfere with the course of justice in relation to this proceeding underway before the Tribunal in expiry review RR-2023-008 by withholding from the Tribunal the information sought in the production order issued August 8, 2024, and duly served personally, being a matter that is necessary or proper for the due exercise of the Tribunal's statutory jurisdiction.¹⁴

[27] On September 27, 2024, T.Co wrote to the Tribunal in response to the Production Order and the Show Cause Order and provided some information purporting to explain its lack of response to the Tribunal to date.¹⁵

[28] Mr. Thypin, on behalf of T.Co in the letter of September 27, 2024, apologized to the Tribunal for T.Co's delay in responding and provided several reasons for the delay, including that T.Co is a small company. Upon receipt of the Production Order, T.Co was preparing numerous tax filings and had not imported the subject goods into Canada during the period of review (POR).¹⁶

[29] On October 2, 2024, T.Co sought to file its completed questionnaire as a purported response to the Production Order.¹⁷

[30] On October 7, 2024, the Tribunal notified the parties to the expiry review of T.Co's questionnaire response. The Tribunal invited submissions from the parties as to whether the late questionnaire response should be accepted on the record of the Tribunal's expiry review.¹⁸

[31] Submissions were received on October 10, 2024, from ArcelorMittal Dofasco G.P. (AMD), Stelco Inc. (Stelco) and the United Steelworkers (USW).¹⁹

[32] The domestic industry objected to the Tribunal admitting T.Co's response to the importers' questionnaire to the evidentiary record at such a late stage in the inquiry. The USW did not object

¹⁴ Exhibit 2024-09-23-1: Show Cause Hearing Order.

¹⁵ Exhibit 2024-09-27: T.Co Metals LLC - Public Response to Tribunal Order.

¹⁶ *Transcript of Public Hearing*, p. 12-13.

¹⁷ Exhibit 2024-10-02-2: T.Co Metals LLC - Public questionnaire response.

¹⁸ Exhibit 2024-10-07: CITT - Letter to parties regarding T.Co questionnaire response.

¹⁹ Letter from Conlin Bedard LLP to the Tribunal on behalf of AMD and Stelco regarding T.Co's questionnaire response and the reopening of the record dated October 10, 2024. Letter from Logie & Associates to the Tribunal on behalf of the USW regarding written submissions on T.Co's questionnaire response dated October 10, 2024.

provided that all parties be given the opportunity to review and comment on the substance of the proposed evidence.

[33] Having considered the submissions of the parties, the Tribunal declined on October 16, 2024, to accept T.Co's late questionnaire response on the record of the expiry review for reasons of procedural fairness.²⁰

Show cause hearing

[34] T.Co sought and was granted permission by the Tribunal for its representative, Richard Thypin, to appear by videoconference for the show cause hearing. On October 11, 2024, T.Co attended and participated in a show cause hearing at the Tribunal. T. Co was represented by legal counsel. Mr. Thypin provided oral testimony by videoconference on behalf of T.Co, and T.Co's counsel made submissions to the Tribunal in person.

T.Co's position

Testimony of Richard Thypin

[35] The Tribunal did not initially put any questions to Mr. Thypin in the hearing.

[36] After hearing initial submissions from T.Co's counsel, T.Co was provided with the opportunity to lead testimony from Mr. Thypin, identified by counsel as the principal of T.Co,²¹ to explain T.Co's conduct, if it chose to do so.

[37] Following a short break in the hearing to allow Mr. Thypin to confer with his counsel, T.Co elected to lead testimony from Mr. Thypin. The Tribunal then posed follow-up questions to Mr. Thypin.

[38] Mr. Thypin began by apologizing on behalf of T.Co for not responding to the Tribunal's Production Order.²² He explained that he had three individuals working for him in the T.Co business. However, he also ran approximately 30 other companies. He stated that he only has one individual working to comply with financial reporting for T.Co and the other 30 companies.²³

[39] Mr. Thypin also stated that in the United States, the deadline for submitting tax returns for limited liability companies and partnerships is September 15. Therefore, during the summer months, the financial reporting worker was "extraordinarily" busy preparing tax returns in conjunction with accountants, and Mr. Thypin was operating in a review capacity.²⁴

²⁰ Exhibit 2024-10-16: Tribunal letter declining acceptance of T.Co questionnaire. On November 20, 2024, the Tribunal issued its order and reasons in the above-noted expiry review, including additional reasons regarding the decision not to accept T.Co's late questionnaire response to the record of the expiry review. See *Corrosion-resistant Steel Sheet* (20 November 2024), RR-2023-008 (CITT), paras. 15–26.

²¹ *Transcript of Public Hearing*, p. 5.

²² *Ibid.*, p. 37.

²³ *Ibid.*, p. 37.

²⁴ *Ibid.*, p. 37.

[40] Mr. Thypin testified that T.Co had experience with the Tribunal in previous trade remedy proceedings and was familiar with the “system”.²⁵

[41] When the Tribunal’s importers’ questionnaire, correspondence and Production Order arrived in June, July and August of 2024, Mr. Thypin stated that he looked at them, but prioritized other business issues, in part because T.Co did not import the subject goods into Canada during the POR. Mr. Thypin submitted that T.Co had only imported COR from non-subject countries into Canada during the POR.

[42] Mr. Thypin also indicated that, based on his experience with the Tribunal, preparing a response to the importers’ questionnaire was “onerous”.²⁶ He stated that T.Co’s goal was to cooperate with the Tribunal but admitted that T.Co made a mistake in this case by not responding to the Production Order.²⁷

[43] Mr. Thypin stated that he did receive the email correspondence Tribunal staff sent to T.Co in the summer of 2024.²⁸ In conclusion, Mr. Thypin stated the following: “I knew that we owed the Tribunal a questionnaire, but I just didn’t have the time and resources to do it. And that was a misallocation of resources.”²⁹

Submissions of T.Co

[44] Counsel for T.Co provided submissions directed to the issue of whether T.Co should be found liable for contempt in the circumstances of this case.

[45] T.Co accepted the facts as recited by the Tribunal in the opening statement of the hearing.³⁰ T.Co provided some additional facts by pointing to the letter dated September 27, 2024, that, T.Co sent to the Tribunal. In that letter, T.Co set out its response to the Production Order and Show Cause Order, including its apology and explanations. This was later followed by T.Co’s response to the importers’ questionnaire.³¹

[46] T.Co conceded that the Tribunal had the statutory authority to request information regarding its imports of COR from non-subject countries.³²

[47] T.Co submitted that its conduct was not contemptuous of the Tribunal, referencing submissions from the parties to the expiry review that did not mention the lack of data from T.Co as being problematic.³³ T.Co also asserted that other importers did not respond to the Tribunal, and it is

²⁵ *Ibid.*, p. 38.

²⁶ *Ibid.*, p. 38.

²⁷ *Ibid.* p. 37.

²⁸ *Ibid.*, p. 39.

²⁹ *Ibid.*, p. 40.

³⁰ *Ibid.*, p. 5–9, 11–12.

³¹ See paras. 28–29 above.

³² *Transcript of Public Hearing*, p. 13.

³³ This misperception on the part of T.Co was corrected in the show cause hearing (*Transcript of Public Hearing*, p. 28), pointing to the submissions alleging unreliability of the investigation report in the expiry review specifically in relation to a lack of response from T.Co. See Exhibit RR-2023-008-A-01, p. 16.

not common practice for the Tribunal to find entities in contempt if they fail to respond to the Tribunal's questionnaires.

[48] T.Co pointed to the Tribunal's decision in *Certain Fasteners*³⁴ as being analogous. In that case, a late response from a domestic producer to the Tribunal's two production orders did not result in a finding of contempt. T.Co argued that the circumstances were similar to this case in that an apology was made by the company, the company was small and was burdened by responding, the delay was of similar duration, and the parties had an opportunity to review data that was provided late.

[49] As in *Certain Fasteners*, T.Co contended that the Tribunal's investigative process and the administration of justice in this case remained intact despite T.Co's late response. T.Co also argued that the public nature of the show cause hearing itself was a sufficient deterrent mechanism for T.Co and other companies to respect the authority of the Tribunal.

[50] T.Co submitted that all these factors mitigate against a finding of contempt.

[51] In the alternative, T.Co argued that if the Tribunal were to find contempt in this case, then only the test for civil contempt was met, but not the test for criminal contempt. Referring to the decision of the Supreme Court of Canada (SCC) in *United Nurses of Alberta v. Alberta (Attorney General)*³⁵ (*United Nurses*), T.Co submitted that it had not committed a public act of defiance of the Tribunal (*actus reus*), nor was there any evidence that it had the requisite intent to interfere with the course of justice (*mens rea*).³⁶ While conceding that the missing of a court-ordered deadline can constitute civil contempt, T.Co argued that such an omission should not be considered a public act of defiance under a criminal definition of contempt.³⁷

[52] T.Co indicated that it did not take a position on whether its response to the importers' questionnaire should be placed on the record of the expiry review.³⁸ T.Co's counsel argued, however, that information provided by importers of the subject COR (as opposed to information provided by importers of COR from non-subject countries) should have a higher degree of relevance to expiry review proceedings.

[53] For the following reasons, and having considered the submissions and testimony provided by T.Co, the Tribunal finds that T.Co is liable for contempt of the Tribunal for failing to comply with its Production Order.

ANALYSIS

[54] The issue for the Tribunal to determine is whether T.Co should be in contempt of the Tribunal for:

- a. failing to comply with the Production Order of the Tribunal; and/or
- b. conducting itself in a manner calculated to, or with reckless disregard for whether the conduct would, interfere with the course of justice in relation to this proceeding underway before the Tribunal in expiry review RR-2023-008 by withholding from the

³⁴ *Certain Fasteners* (5 January 2025), RR-2014-001 (CITT) [*Certain Fasteners*].

³⁵ 1992 CanLII 99 (SCC), [1992] 1 SCR 901, p. 910.

³⁶ *Transcript of Public Hearing*, p. 16–17.

³⁷ *Ibid.*, p. 22–23.

³⁸ *Ibid.*, p. 23–24.

Tribunal the information sought in the Production Order, being a matter that is necessary or proper for the due exercise of the Tribunal's statutory jurisdiction.

[55] There are four issues for the Tribunal to decide:

- (a) What is the basis of the Tribunal's contempt power?
- (b) Was the purpose of the Production Order sufficiently important to consider exercising the Tribunal's contempt power?
- (c) Is T.Co liable for contempt on either of the two grounds listed in the Show Cause Order?
- (d) If so, should the Tribunal exercise its discretion not to find T.Co in contempt?

Tribunal's contempt power

[56] Given the novelty of the situation, the Tribunal considers that it would be instructive to provide the basis of its contempt power in this instance.

[57] A Canadian administrative tribunal can try matters of contempt if it is a court of record.³⁹ Where a statute has given a tribunal all such powers, rights and privileges as are vested in a superior court of record to enforce its order and other matters necessary or proper to the due exercise of its jurisdiction, such powers include the power to try matters of contempt at common law, provided that such statutory powers do not oust the inherent jurisdiction of the superior courts.⁴⁰

[58] As a quasi-judicial tribunal created by the CITT Act,⁴¹ the Tribunal is empowered as a court of record by section 17 of the CITT Act to make orders and enforce them in the due exercise of its jurisdiction. The Tribunal's statutory authority is provided by section 17 of the CITT Act, which states the following:

Court of record

17 (1) The Tribunal is a court of record and shall have an official seal, which shall be judicially noticed.

Powers

(2) The Tribunal has, as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its jurisdiction, all such powers, rights and privileges as are vested in a superior court of record.

[59] The "powers, rights and privileges" afforded to the Tribunal by section 17 of the CITT Act are in support of its mandate under SIMA (among other mandates), including for the conduct of

³⁹ Miller, Jeffrey, *The Law of Contempt in Canada*, 3rd Ed. (Toronto: Thomson Reuters, 2023), p. 309.

⁴⁰ *Ibid.*, p. 310; *Chrysler Canada Ltd. v. Canada (Competition Tribunal)*, 1992 CanLII 68 (SCC), [1992] 2 SCR 394, p. 405 (see also the dissent, p. 421).

⁴¹ R.S.C. 1985, c. 47 (4th Supp.); *Canada (Attorney General) v. Best Buy Canada Ltd.*, 2021 FCA 161, para. 44.

expiry reviews of existing findings under section 76.03 to determine whether their expiry is likely to result in injury to the domestic industry in question.

[60] Therefore, by virtue of section 17 of the CITT Act, the Tribunal is empowered to address matters of contempt pertaining to the “enforcement of its orders” and “other matters necessary or proper for the due exercise of its jurisdiction” over which the Tribunal is granted “all such powers, rights and privileges as are vested in a superior court of record.”⁴²

Contempt of Tribunal

[61] In the law of contempt, there is a distinction between criminal and civil contempt. Criminal contempt is generally defined as contempt which tends to “bring the administration of justice into scorn” or “interfere with the due course of justice.”⁴³ To establish criminal contempt, the moving party must prove that the accused defied or failed to comply with a court order in a public way (the *actus reus*), with intent, knowledge or recklessness as to the fact that the public disobedience would tend to depreciate the authority of the court (the *mens rea*).⁴⁴

[62] In contrast, civil contempt is focused on disobedience of the court’s orders or rules of procedure that affect other parties to the proceeding. Its object is to secure compliance with the process of a tribunal, and it is “coercive rather than punitive”.⁴⁵ Defying a court order is sufficient to bring a party into civil contempt.⁴⁶

[63] To establish civil contempt, the party alleging the contempt bears the burden of establishing the following three elements beyond a reasonable doubt (requiring more than proof of probable guilt):

- (1) the order or judgment that is alleged to have been breached must state clearly and unequivocally what should be done or not done;
- (2) the alleged contemnor must have had actual knowledge of the order or judgment; and
- (3) the alleged contemnor must have intentionally done or omitted to do the act compelled by the order or judgment.⁴⁷

[64] While civil contempt does not generally concern the broader administration of justice, imposing a penalty for civil contempt can be necessary to underscore the serious threat that disobedience of the court’s order can pose to the court’s process.⁴⁸ Thus, deterrence is not generally

⁴² See *Chrysler Canada Ltd. v. Canada (Competition Tribunal)*, 1992 CanLII 68 (SCC), [1992] 2 SCR 394, p. 411–412.

⁴⁵ Miller, Jeffrey, *The Law of Contempt in Canada*, 3rd Ed. (Toronto: Thomson Reuters, 2023), p. 29; *Carey v. Laiken*, 2015 SCC 17 (CanLII), [2015] 2 SCR 79, para. 31.

⁴⁶ *United Nurses*, p. 910.

⁴⁷ *Carey v Laiken*, 2015 SCC 17 [*Carey v Laiken*], paras. 32–35; *Teamsters Canada Rail Conference v. Canadian Pacific Railway Company*, 2023 FC 796, para. 60, overturned on other grounds in *Canadian Pacific Railway Company v. Teamsters Canada Rail Conference*, 2024 FCA 136 [*Canadian Pacific Railway Company FCA*]. The Tribunal notes that while the terms “actus reus” and “mens rea” are most often found in cases discussing criminal contempt, they do also appear in discussions of civil contempt but are typically not used to describe the act and mental elements of civil contempt to avoid confusion. See *Canadian Pacific Railway Company FCA*, para. 32. In this decision, the Tribunal has avoided using the terms “actus reus” and “mens rea” in discussing civil contempt.

⁴⁸ Miller, Jeffrey, *The Law of Contempt in Canada*, 3rd Ed. (Toronto: Thomson Reuters, 2023), p. 31.

applicable as a principle in the liability phase of a civil contempt proceeding but can play a role in the penalty phase.⁴⁹ As discussed below, the Tribunal finds that criminal contempt does not arise on the facts of this case; therefore, it will not be explored further in the Tribunal's analysis.⁵⁰

The Production Order was sufficiently important to consider contempt

[65] In the course of its submissions to the Tribunal, T.Co argued that the Tribunal should take into consideration that its information regarding imports of COR into Canada did not pertain to "subject goods". In T. Co's view, data regarding its "non-subject" COR imports should have a lower degree of relevance for the expiry review proceeding, which is focused on whether the Tribunal's order covering the "subject goods" should be rescinded or continued.⁵¹ T.Co's argument implies that a finding of contempt should not be made because its imports consisted of goods meeting the product description of the measure in force from non-subject countries—which it referred to as "non-subject" COR—and therefore its data is not as relevant for the Tribunal's analysis in this expiry review.

[66] The Tribunal does not accept this submission. As described above, the Tribunal must consider the effects of the likely dumping of COR in the overall context of the entire Canadian market. The ability of the Tribunal to assess the market conditions in which all COR products compete, regardless of origin, requires that the Tribunal have data that is both quantitatively and qualitatively sufficient and relevant, that is, COR from both subject and non-subject countries.

SIMA statutory context

[67] The Tribunal's inquiries and expiry reviews under SIMA are largely predicated on its ability to gather information. Absent accurate data, the Tribunal's ability to conduct expiry reviews is undermined, thus impacting the integrity of Canada's overall trade remedy regime.

[68] The language in subsection 37.2(2) of the *Special Import Measures Regulations* (Regulations) is permissive, listing factors that the Tribunal "may" consider in the context of an

⁴⁹ *Boily v. Carleton Condominium Corporation 145*, 2014 ONCA 574, para. 90.

⁵⁰ A further distinction is made in the law of contempt in Canada between contempt committed in the face of the court (*in facie*) and contempt committed out of the face of the court (*ex facie*). *In facie* contempt has been described as contempt in the "cognizance" of the court: Miller, Jeffrey, *The Law of Contempt in Canada*, 3rd Ed. (Toronto: Thomson Reuters, 2023), p. 37. The judge presiding over the court need not personally witness the contempt *per se*, but it must at least be reported by officers of the court and the "circumstances of the alleged contempt" must be in the "personal knowledge of the court": Miller, Jeffrey, *The Law of Contempt in Canada*, 3rd Ed. (Toronto: Thomson Reuters, 2023), p. 37, citing *McKeown v. The Queen*, 1971 CanLII 194 (SCC), [1971] SCR 446, p. 448. In this case, the order in question is somewhat unique: it is the Production Order requiring the completion of an importers' questionnaire. Unlike typical production orders in civil courts, the Production Order here is not an order that one party produce material to another party, but rather, it is analogous to a court issuing written questions to a party. The main purpose of the Production Order is for T.Co to produce certain information to the Tribunal directly. Therefore, the Production Order and whether it has been complied with is a matter in the cognizance of the Tribunal and is analogous to a summons to appear: Lorne Sossin, et al., *Practice and Procedure Before Administrative Tribunals*, § 40:7. Contempt in the Presence of the Court (2024 Thomson Reuters Canada Limited), online (WL Can): <https://nextcanada.westlaw.com/Browse/Home/TextsandAnnotations/LitigationSpecialtyPracticeandGeneralTextsandAnnotations/PracticeandProcedureBeforeAdministrativeTribunals160160>. Thus, the Tribunal finds that the Production Order and the determination of the issue of contempt in relation to it is a question of *in facie* contempt.

⁵¹ *Transcript of Public Hearing*, p. 26.

expiry review. However, the Tribunal considers the examination of an accurate and reliable investigation report (IR) prior to exercising its discretion on whether to consider all the factors in subsection 37.2(2) of the Regulations when an integral part of its decision-making process when conducting SIMA proceedings.

[69] For inquiries and expiry reviews alike, the Tribunal—not the parties—has the responsibility to make decisions on the basis of all the information before it, including information it gathered.⁵² The Tribunal’s determinations of injury under SIMA must be based on “positive evidence”, consistent with Canada’s international obligations,⁵³ which have been adopted by the Tribunal’s own jurisprudence.⁵⁴

[70] In the context of an expiry review, positive evidence includes market data for the POR on which the Tribunal may base forward-looking conclusions.⁵⁵ To analyze the market for a product in Canada, the Tribunal examines data relating not only to goods from subject countries that are subject to a trade remedy measure, but also to domestic like goods and imported goods from non-subject countries meeting the product description of the measure in force. Therefore, the Tribunal has a significant interest in ensuring that the information underlying its decisions is reliable.

[71] The Tribunal collects information from various sources related to the goods and industry in question. As part of its inquiries and reviews, the Tribunal notably collects commercial, economic and financial data to assess the injury factors prescribed under the Regulations.⁵⁶ This investigation process results in the production of an IR by staff of the Secretariat to the Tribunal, aimed at presenting a detailed and accurate picture of the Canadian commercial market for the goods in question over the chosen POR.

[72] To collect the data which informs the IR, the Tribunal asks various players in the industry to complete questionnaires, including domestic producers and importers of goods that correspond to the product definition of the measure in force. For example, in an expiry review conducted under section 73.03 of SIMA, subsection 20.1(1) of the Rules states that the Tribunal may order that a party or a non-party fill out a questionnaire for the purpose of obtaining information in a proceeding.

[73] The ability of the Tribunal to populate the IR with sound commercial, economic and financial information depends, in large measure, on being able to obtain enough completed questionnaires. This, in turn, forms part of the factual foundation for the Tribunal’s findings and determinations.

⁵² *Concrete Reinforcing Bar* (4 June 2021), NQ-2020-004 (CITT), para. 24. See also *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT), para. 34, where the Tribunal similarly stated that no party has the onus to prove its position in the context of an expiry review. No party has the onus to prove that injury would resume or continue should the findings expire. The Tribunal will make its determination on this issue on the basis of all information before it, including that which it seeks and gathers. In other words, the Tribunal must conduct its own inquiry and reach a conclusion on the basis of its assessment of all the evidence before it.

⁵³ See Article 3.1 of the World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, online: www.wto.org/english/docs_e/legal_e/19-adp.pdf.

⁵⁴ See also COR RR 2023, para. 46; *Structural Tubing* (16 October 2019), RR-2018-006 (CITT), para. 146.

⁵⁵ *Hot-rolled Carbon Steel Plate* (13 March 2020), RR-2019-001 (CITT), para. 51. See also the factors set out in subsection 37.2(2) of the Regulations, SOR/84-927; COR RR 2023, para. 49.

⁵⁶ See also the factors set out in subsection 37.2(2) of the Regulations; COR RR 2023, para. 49.

[74] Similarly, the inadequacy of the questionnaire responses, either in terms of the quality of the response or of the rate of response from industry players can, in certain circumstances, detract from the quality of the IR and create unnecessary complications to the Tribunal's injury or likelihood of injury analysis.

[75] The Tribunal's findings of injury or determinations of likelihood of injury, which establish whether a trade remedy on certain imports is imposed or continued, affect various stakeholders. These include the importers of the goods in question and the domestic industry benefitting from the protection afforded by SIMA, as well as others in the wider economy.

[76] Furthermore, the comprehensive data gathering process on complex economic issues in the Tribunal's inquiries and expiry reviews must, by law, take place within strict time constraints.

[77] The Tribunal cannot therefore consider lightly the refusal by an importer to complete or respond to a questionnaire when ordered to do so by the Tribunal. As stated previously by the Tribunal, a lack of compliance and collaboration from entities with the relevant data that is necessary for the Tribunal's analysis could have "irredeemable consequences for the integrity of the Tribunal's investigation, the record before the Tribunal and the integrity of Canada's trade remedy regime."⁵⁷

COR RR 2023

[78] Information available to the Tribunal at the beginning of this expiry review indicated that T.Co had likely imported a significant percentage of COR⁵⁸ from non-subject countries during the POR.⁵⁹ Accordingly, the Tribunal requested information from T.Co about its imports of COR to aid its understanding and analysis of the Canadian market for COR to fulfill the Tribunal's mandate in this expiry review.⁶⁰ Given the relevance of this information, it was particularly important that T.Co submit a timely and complete response to the importers' questionnaire.

[79] The Tribunal must comply with stringent, and non-extendable, statutory deadlines. As such, it had little choice but to resort to the exercise of its powers under the CITT Act, including the power to issue production orders and seek compliance with those orders.

The importance of a reliable and accurate investigation report in this context

[80] The accuracy and reliability of the IR were one of the Tribunal's primary concerns throughout this expiry review. T.Co's import data for COR could have been particularly important in this expiry review because T. Co appeared to have imported a significant percentage of COR from non-subject countries during the POR based on the information available to the Tribunal at the beginning of this review.

⁵⁷ *Certain Fasteners*, para. 24.

⁵⁸ Based on the information available to the Tribunal, T.Co is a Canadian non-resident importer (NRI) of COR with its place of business listed as New Jersey, United States of America. As an NRI, T.Co assumes responsibility for customs clearance and other import-related requirements in Canada.

⁵⁹ The POR in the Tribunal's expiry review covered three full years, from January 1, 2021, to December 31, 2023, as well as the period from January 1, 2024, to March 31, 2024. For comparative purposes, information was also collected for the period of January 1, 2023, to March 31, 2023.

⁶⁰ Exhibit RR-2023-008-15.23.05.

[81] The absence of T.Co's import data could have compromised the reliability and accuracy of the overall IR. This is because the lack of data of an importer that imported and sold a significant percentage of the volume of COR in Canada during the POR (even if only for specific periods) could have greatly impacted the calculation of the Canadian market, as reported in the IR.

[82] The Tribunal's ability to consider several factors under subsection 37.2(2) of the Regulations in this expiry review rested on the premise of a reliable estimated market size for COR in the IR. In the Tribunal's view, a reliable estimate of the total Canadian market for COR, as defined in this expiry review, could only have been obtained with accurate estimations of the volume of imports and the sales of imports of COR from non-subject countries (i.e., the total Canadian market for COR during each period of the POR was a sum of the domestic sales of domestic production, sales of subject imports and sales of imports from non-subject countries).⁶¹

[83] This accurate market estimate allowed the Tribunal to analyze the changes in trends and sources of imports into Canada over the POR. The estimate also allowed the Tribunal to comprehend the impact of any forecasted absolute or relative increase in imports and sales of imports of COR from subject countries over the next 12 to 24 months, should the order be rescinded, on the domestic industry.

[84] In addition, given that the Tribunal decided on November 20, 2024, to continue its finding in COR, the IR, as prepared for this expiry review, may be relevant in a future expiry review or interim review of this finding. As such, it is of primary importance that the Tribunal was able to obtain an accurate snapshot of the Canadian market for COR during the POR of this expiry review. This way, in a future review, the Tribunal will be able to reliably understand how the Canadian COR market evolved over time.

The CBSA import data was not an appropriate substitute for questionnaire data

[85] The CBSA collected SIMA enforcement data for imports of all goods subject to the COR2018 order throughout the POR.⁶² For the purpose of this expiry review, the Tribunal obtained enforcement data for the POR from the CBSA for the subject goods, pursuant to paragraph 107(4)(b) of the *Customs Act*. As such, the Tribunal was able to include these data in the IR.

[86] Based on the Tribunal's understanding, these data were not collected by the CBSA at the time of importation of COR imported from non-subject countries because they were not subject to SIMA duties.⁶³ In addition, because of incongruity between the production definition and the tariff classification numbers in this expiry review, the CBSA import data for the POR were not considered the most reliable source for calculating estimates of the volume and value of imports from non-subject countries.

⁶¹ See Exhibit RR-2023-008-05.B, tables 12–14; Exhibit RR-2023-08-06.B (protected), tables 12–14.

⁶² Import statistics for SIMA measures in force, online: www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/mif-mev-stats-eng.html#cor.

⁶³ Some subject imports into Canada from Vietnam and certain exporters from Türkiye may be tracked by the CBSA, as those goods to subject to the COR2 SIMA measure. However, the Tribunal notes that the "product definition" of COR1 and COR2 are not completely the same, and certain exporters were excluded from the measure.

[87] The product definition⁶⁴ in the order issued by the Tribunal in COR 2018 is the authoritative description of the subject goods for the purpose of the Tribunal's expiry review. This definition, which is subject to specific exclusions, does not fully align with the relevant tariff classification numbers in the *Customs Tariff*.⁶⁵ Accordingly, there was a high likelihood that the CBSA import data for non-subject countries included a large amount of goods that did not meet the same product definition as the subject goods or the domestic like goods.⁶⁶

[88] Specifically, the product definition in the COR 2018 order is subject to several specific exclusions, such as unpassivated COR products. The product definition is also subject to end-use exclusions, including COR products for use in the manufacture of passenger automobiles, buses, trucks, and ambulances or hearses or chassis therefor, or parts thereof, or accessories or parts thereof. The CBSA Facility Information Retrieval Management (FIRM) import data for the tariff classification numbers under which COR subject to this order is normally classified included goods to which end-use exclusions applied. In this regard, the staff of the Secretariat to the Tribunal removed any excluded goods data from the CBSA FIRM import data and noted as follows in its IR report:

The HS numbers under which [COR] products covered by this expiry review were commonly classified during the POR also covered [COR] products for use in the manufacture of passenger automobiles, buses, trucks, ambulances or hearses or chassis, which are excluded from the product definition. As a result of research or information received from individual companies, when it has been determined that a company imported only these excluded goods, the CBSA [FIRM] data associated with such companies was removed from the total FIRM amount for all [COR] products covered by this expiry review.⁶⁷

[89] Because of the high likelihood that CBSA FIRM import data included non-subject goods, information provided by importers' questionnaires was considered more reliable than CBSA import data for non-subject countries in this expiry review. However, without import data from certain importers such as T.Co, the Tribunal did not have a large amount of import data for COR from non-subject countries, as would have been optimal.

[90] The Tribunal's standard methodology to determine estimates of the volume of imports and sales of imports from non-subject countries in expiry reviews requires the use of replies to Tribunal importers' questionnaires and CBSA FIRM import value data.⁶⁸ The application of this standard methodology includes the creation of an adjustment factor calculated by dividing the total value of imports reported in the questionnaire replies by the total FIRM value for surveyed importers. An importer is considered to have been surveyed if it submitted a reply to the Tribunal's importers' questionnaire or if it indicated that it did not import goods corresponding to the product definition

⁶⁴ Online: www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/cor-eng.html.

⁶⁵ See Exhibit RR-2023-008-05.B, p. 5, Part I, Note 1(b) for the list of tariff classification under which goods corresponding to the production definition of this order are normally classified. In this regard, the Tribunal noted in the IR that the tariff classification numbers under which the goods are commonly classified changed as follows: first, between January 1, 2021, and February 3, 2021; then between February 4, 2021, and December 31, 2021; and beginning January 1, 2022. See also online: www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/cor-eng.html.

⁶⁶ See online: www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/cor-eng.html.

⁶⁷ Exhibit RR-2023-008-05.B, p. 8.

⁶⁸ See online: www.citt-tcce.gc.ca/en/anti-dumping-injury-inquiries/determining-volume-imports-and-sales-imports-investigation-reports.

during the POR. This adjustment factor and the unit values from responses to the importers' questionnaire are used to estimate the total volume of imports and sales of imports from non-subject countries for each period of the POR. Importantly, the adjustment factor assumes that the ratio of FIRM value data for goods corresponding to the product definition to FIRM value data for goods not corresponding to the product definition is the same as for non-surveyed importers,⁶⁹ including importers asked to complete a Tribunal importers' questionnaire but did not do so in a timely manner, such as T.Co.

[91] Where an end-use exclusion results in the complete removal of certain known importers because they did not import goods corresponding to the product definition, the adjustment factor applied to non-surveyed importers may be less reliable than it would be in the absence of such an end-use exclusion in the product description of an order. This is because certain non-surveyed importers may have only imported goods subject to the end-use exclusion but were still assumed, through the application of the adjustment factor, to have imported a portion of goods corresponding to the product definition.⁷⁰

[92] It was only after the closure of the record in the expiry review and the initiation of this contempt proceeding that it was shown that T.Co had imported goods corresponding to the product definition from non-subject countries during the POR. However, the application of the Tribunal's standard methodology would have been less reliable in the context of this COR order given the end-use exclusion if T.Co had imported goods subject only to the end-use exclusion.

Tribunal's finding of contempt

[93] The Tribunal must determine two grounds of contempt in this instance: the first ground (subparagraph 1[a] of the Show Cause Order) concerns whether T.Co's disobedience of the Production Order constitutes contempt of the Tribunal; and the second (subparagraph 1[b] of the Show Cause Order) addresses whether T.Co's disobedience of the Production Order was in contempt of the Tribunal in a manner calculated to interfere with the course of justice in the expiry review proceeding.

Second ground of contempt

[94] The Tribunal accepts the evidence and submissions of T.Co that while it knowingly disregarded the Production Order, it was to prioritize the resourcing of competing business activities and not calculated to interfere with the course of justice *per se*. Therefore, the Tribunal finds that T.Co is not liable for contempt on the second ground, as its disobedience of the Production Order was not calculated to interfere with the course of justice in the expiry review.

[95] Therefore, the Tribunal will only examine further whether in the circumstances of this case T.Co should be found liable on the first ground for civil contempt on proof beyond a reasonable doubt.

⁶⁹ See online: www.citt-tcce.gc.ca/en/anti-dumping-injury-inquiries/determining-volume-imports-and-sales-imports-investigation-reports.

⁷⁰ In this regard, the 2023 summary of the CBSA enforcement data indicated that "[t]he majority of the non-subject goods imported meet one of the specific exclusions", with only about 64%, based on value for duty, of the monitored goods by the CBSA being subjected to SIMA duties. See online: www.cbsa-asfc.gc.ca/sima-lmsi/mif-mev/mif-mev-stats-eng.html#cor.

First ground of contempt

[96] As noted above, civil contempt requires establishing the following three elements beyond a reasonable doubt:

- (1) the order or judgment that is alleged to have been breached must state clearly and unequivocally what should be done or not done;
- (2) the alleged contemnor must have had actual knowledge of the order or judgment; and
- (3) the alleged contemnor must have intentionally done or omitted to do the act compelled by the order or judgment.⁷¹

[97] A final step of a finding of civil contempt set out in by the SCC is whether the Tribunal should exercise its discretion to decline to impose a contempt finding where it would work an injustice in the circumstances of the case.⁷²

[98] The Tribunal finds that all the elements of civil contempt on the first ground of contempt have been met beyond a reasonable doubt.

The Production Order was clear and unequivocal

[99] The Tribunal's Production Order stated clearly and unequivocally what was required to be done in filing a response to the importers' questionnaire and T.Co did, in fact, after substantial delay and long after the closure of the record under fixed statutory deadlines, file a questionnaire response without any apparent difficulty understanding the Production Order. While Mr. Thypin testified that he had initial doubts about whether information regarding imported COR from non-subject countries was relevant to the Tribunal's inquiry,⁷³ the correspondence of the Tribunal dated July 31, 2024, explained in no uncertain terms that information on these goods were relevant and sought by the Tribunal in the context of this expiry review.

[100] The Production Order clearly stated that T.Co's questionnaire response was sought because T.Co was an importer of goods with the same product description as those that are subject to the Tribunal's expiry review and that the Tribunal had attempted multiple times to communicate with it, including the July 31, 2024, letter explaining in clear terms the requirement of data for imported COR from non-subject countries.⁷⁴

[101] Mr. Thypin, in his testimony, admitted to receiving the Tribunal's correspondence as well as the Production Order requiring information about non-subject goods and honestly acknowledged that disregarding the Production Order was "wrong".⁷⁵ The Tribunal finds that any confusion regarding

⁷¹ *Carey v Laiken*, paras. 32–35; *Teamsters Canada Rail Conference v. Canadian Pacific Railway Company*, 2023 FC 796, para. 60.

⁷² *Carey v Laiken*, para. 37.

⁷³ *Transcript of Public Hearing*, p. 37–38.

⁷⁴ Exhibit 2024-09-23-1: Show Cause Hearing Order.

⁷⁵ *Transcript of Public Hearing*, p. 37–39.

subject and imported COR from non-subject countries was not due to any ambiguity in the Production Order.

[102] Therefore, the Tribunal finds that the Production Order was clear and unequivocal beyond a reasonable doubt.

T.Co had actual knowledge of the Production Order

[103] T.Co was personally served with the Production Order in the State of New Jersey during business hours on August 9, 2024.⁷⁶

[104] In T.Co's letter dated September 27, 2024, the Production Order dated August 8, 2024, was clearly referenced, and T.Co explicitly wrote its letter of September 27, 2024, in response to that Production Order. The Tribunal found that Mr. Thypin, in his testimony, was honest and forthright that the Production Order was served on T.Co and reviewed by Mr. Thypin in a timely manner, but ultimately it was disregarded due to T.Co's decision to prioritize other commercial matters. Mr. Thypin admitted in his testimony that, in hindsight, that was wrong.

[105] Therefore, the Tribunal finds that T.Co had actual knowledge of the Production Order beyond a reasonable doubt.

T.Co intentionally failed to comply with the Production Order

[106] While failing to comply with a prohibitory court order can, in some cases, be enough to establish intent, failing to comply with a mandatory order—such as the Production Order—may not always, on its own, support an inference of intent to fail to comply.⁷⁷ For example, the courts require consideration of whether an alleged contemnor who makes diligent efforts to comply with an order (or takes reasonable steps in good faith) but still fails may avoid a finding of contempt.⁷⁸ Intent in civil contempt can also be established by evidence of deliberateness, recklessness or wilful blindness.⁷⁹ Therefore, the Tribunal must look at the surrounding circumstances of T.Co's disobedience of the Production Order to determine whether T.Co intentionally failed to comply with the Production Order.

[107] The Tribunal finds that it was clear by Mr. Thypin's testimony that he understood the Production Order and knowingly disregarded it in favour of focusing on other commercial priorities. The Tribunal finds that Mr. Thypin was honest and forthright in his admission that his decision to disregard the Production Order was wrong.⁸⁰ His counsel also acknowledged that the test for civil contempt was applicable to the facts of this case.⁸¹ The Tribunal considers these admissions to be sufficient to establish the requirement of intentional disobedience by T.Co beyond a reasonable doubt.

⁷⁶ Exhibit RR-2023-008-15.23.06A, p. 1.

⁷⁷ See *Canadian Pacific Railway Company FCA*, paras. 36–37, 42.

⁷⁸ *Canadian Pacific Railway Company FCA*, paras. 42–45.

⁷⁹ *Canadian Pacific Railway Company FCA*, para. 35.

⁸⁰ *Transcript of Public Hearing*, p. 37–39.

⁸¹ *Ibid.*, p. 22–23, 42.

[108] The Tribunal nevertheless considers it important to examine the circumstances surrounding T.Co's failure to comply with the Production Order in order to conclude, beyond a reasonable doubt, that T.Co intentionally failed to comply with the Production Order.⁸²

[109] The evidence established that T.Co is a small company with limited manpower. The Tribunal, in *Certain Fasteners*, observed the following: "Indeed, the Tribunal recognizes that some small or medium-sized enterprises, particularly those which do not have the benefit of legal counsel, have difficulties in completing Tribunal questionnaires. However, this is not a valid excuse for failing to respond to Tribunal orders."⁸³

[110] Therefore, while an entity's small size may affect its ability to respond to the Tribunal, it does not excuse a failure to comply with a Tribunal order. However, it is a contextual fact that the Tribunal considers in assessing whether an alleged contemnor took reasonable steps to comply in the circumstances.

[111] T.Co's personnel responsible for financial reporting was shared across 30 of Mr. Thy-pin's other corporations. While the Tribunal accepts that evidence, the Tribunal also notes that its importers' questionnaire was issued to T.Co on June 14, 2024, two months before the September 15, 2024, deadline for tax filings in the United States.⁸⁴ Thus, while a lack of personnel could make responding to the Tribunal challenging, in this instance there was sufficient time for T.Co to manage its resources accordingly.

[112] When the Tribunal served the Production Order on T.Co on August 9, 2024, T.Co had another opportunity to decide how to manage competing demands on its resources. It could act in good faith and take reasonable steps to comply with the Production Order or knowingly disregard it. Given that T.Co acknowledged that it had been contacted by Tribunal staff previously in the summer of 2024,⁸⁵ one such reasonable step in good faith could have been to contact the Tribunal to discuss how it could comply in whole or in part with the Production Order in the circumstances.

[113] T.Co chose not to do that and instead disregarded the Production Order deadline of August 14, 2024, entirely, knowing that the Tribunal's case would go ahead without the benefit of its information.

[114] T.Co's decision not to take such basic reasonable steps is concerning in itself to the Tribunal. However, this concern is compounded by the circumstances that unfolded in September of 2024. The evidence of Mr. Thy-pin was that T.Co did not respond to the Tribunal's questionnaire because of a prioritization of its tax returns due on September 15, 2024. After that date, T.Co was no longer managing competing priorities regarding tax filings and was able to produce a questionnaire response—albeit well after the Tribunal's August 14, 2024, deadline.

[115] Therefore, from September 16, 2024, to September 20, 2024, T.Co had the opportunity to complete its questionnaire response and submit it to the Tribunal at the "last minute", along with a request for late filing, by the time of the file hearing on September 20, 2024. However, T.Co chose not to do that. Therefore, the Tribunal, being without any reasonable communication from T.Co in

⁸² *Canadian Pacific Railway Company FCA*, para. 40.

⁸³ *Certain Fasteners*, para. 34.

⁸⁴ Exhibit RR-2023-008-14.

⁸⁵ *Transcript of Public Hearing*, p. 39–40.

the weeks and months prior, closed the record due to the pressing statutory deadlines for a final decision in this expiry review to be rendered. The Tribunal then issued the Show Cause Order on September 23, 2024, which was served on T.Co in the State of New Jersey during business hours on September 24, 2024.⁸⁶

[116] T.Co began to respond to the Tribunal only days after receiving the Show Cause Order.

[117] The Tribunal finds that these circumstances, in addition to the admissions of T.Co, establish beyond a reasonable doubt that T.Co, through Mr. Thypin, its directing mind,⁸⁷ intentionally disregarded and failed to comply with the Production Order, and showed no sign of taking any reasonable steps to respond to the Production Order until it was faced with a contempt proceeding.

[118] Therefore, the Tribunal finds that T.Co intentionally failed to comply with the Production Order beyond a reasonable doubt. In the alternative, the Tribunal finds beyond a reasonable doubt that T.Co was deliberate and reckless in breaching the Production Order.

Discretion not to find T.Co in contempt

[119] T.Co submits that, even if the Tribunal were to find it in contempt, it should exercise its discretion not to make such a finding in these circumstances. In addition to the factual circumstances concluded above, T.Co argued that this case was analogous to *Certain Fasteners*⁸⁸, where the breach of two production orders did not result in a contempt finding by the Tribunal.

[120] The Tribunal finds that *Certain Fasteners* is distinguishable on two particularly important points. First, in that case, the domestic producer was served with two production orders, but the Tribunal never initiated contempt proceedings because the domestic producer began responding with information before that became necessary (although the Tribunal noted that such delinquency by the domestic producer requiring two production orders was “unprecedented”).⁸⁹ While there were two production orders, the key consideration in not initiating contempt proceedings was the fact that the domestic producer responded to the Tribunal with information prior to the hearing and the closing of the record. Therefore, there was no contempt finding to be made by the Tribunal because contempt proceedings were never initiated.

[121] Second, the domestic producer in *Certain Fasteners* not only responded to the Tribunal with information, but did so days prior to the expiry review hearing. As a result of that provision of information to the Tribunal, albeit late, the prejudice suffered by the parties to the expiry review could be ameliorated by permitting other parties to file responding information and to examine the domestic producer’s witness at the hearing.

[122] In contrast, T.Co’s disobedience of the Production Order in this case meant that the Tribunal had to take the unprecedented step of initiating a contempt proceeding to seek compliance from T.Co. Thus, while in *Certain Fasteners* no contempt proceeding was initiated, here, one was initiated. In addition, while in *Certain Fasteners* the domestic producer provided information in time

⁸⁶ Exhibit 2024-09-25: Affidavit of Service.

⁸⁷ *Canadian Pacific Railway Company* FCA, para. 53.

⁸⁸ *Certain Fasteners*.

⁸⁹ *Ibid.*, para. 27. The Tribunal notes that T.Co’s argument that foreign producers that do not respond to Tribunal questionnaires are often not found in contempt is unpersuasive for the same reason that *Certain Fasteners* is distinguishable: contempt findings only arise when a production order has been made and disregarded.

for the Tribunal and parties to fairly consider it, here, T.Co made no efforts to do so until after the completion of the expiry review file hearing, making it impossible for the Tribunal to fairly consider the information after the fact.

[123] Therefore, the Tribunal considers that T.Co's behaviour is sufficiently grave, and the nature of the Production Order, in relation to the statutory deadlines of the SIMA procedure, do not support the Tribunal exercising its discretion to avoid a finding of contempt.⁹⁰ Accordingly, the Tribunal declines to exercise its discretion not to find T.Co in contempt.

CONCLUSION AND NEXT STEPS

[124] For these reasons the Tribunal finds that T.Co is liable for contempt for failing to comply with the Production Order of the Tribunal issued on August 8, 2024.

[125] Having found T.Co liable for contempt, the Tribunal must next consider the appropriate penalty to impose in this case. The Tribunal notes that T.Co provided submissions regarding mitigating factors during the show cause hearing on October 11, 2024. The Tribunal acknowledges the presence of certain mitigating factors in this case and is considering (but has not decided) whether the most appropriate and flexible penalty in the circumstances would be a fine payable by T.Co. The Tribunal will entertain written or oral submissions from T.Co regarding the appropriate factors for determining a sentence for civil contempt, the range of penalties in like circumstances, and any other submissions related to penalty which T.Co may wish to make.

[126] The Tribunal will therefore conduct a penalty phase for the hearing of any interested party for the purpose of determining any penalty that should be imposed on T.Co, pursuant to the Tribunal's finding of contempt. The penalty phase will proceed as follows:

- (a) T.Co may file a written request for an oral hearing at which it may be heard regarding what penalty for contempt, if any, may be imposed by the Tribunal. Any such request must be filed no later than five working days after the date of this order. Upon receipt of any such request for an oral hearing, the Tribunal will schedule a hearing which must take place within **twenty calendar days** after the date of filing a request for an oral hearing.
- (b) If T.Co wishes to proceed without an oral hearing, it may serve on all parties that filed a notice of participation in RR-2023-008 and file written materials with the Tribunal no later than ten working days after the date of this order for the Tribunal's consideration in rendering its decision regarding what penalty for contempt, if any, may be imposed by the Tribunal.
- (c) Any materials submitted by any person for the purposes of the penalty phase must be filed with the Tribunal, using one or more of the following means of transmission, and served on all other parties that filed a notice of participation in RR-2023-008:
 - The Tribunal's Secure E-filing Service, available at <https://e-filingdepot-electronique.citt-tcce.gc.ca/submitNonRegisteredUser-eng.aspx>.

⁹⁰ *Canadian Pacific Railway Company* FCA, para. 69.

- Email to CITT-TCCE@tribunal.gc.ca, should T.Co be prepared to accept the inherent associated risks.
- Courier, hard or digital copy, to the following address:

Registrar
Canadian International Trade Tribunal
333 Laurier Avenue West
17th Floor
Ottawa, Ontario K1A 0G7

[127] T.Co Metals LLC may, in accordance with sections 43 to 49 of the CITT Act, designate as confidential certain information it provides.

Serge Fréchette

Serge Fréchette
Presiding Member

Susan D. Beaubien

Susan D. Beaubien
Member

Susana May Yon Lee

Susana May Yon Lee
Member