Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Interim Review No. RD-2018-001

Concrete Reinforcing Bar

Order and reasons issued
Thursday, April 18, 2019

Canada

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IN THE MATTER OF 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 9, 2015, in Inquiry No. NQ-2014-001 and on May 3, 2017, in Inquiry No. NQ-2016-003, concerning:

CERTAIN CONCRETE REINFORCING BAR ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA, THE REPUBLIC OF KOREA AND THE REPUBLIC OF TURKEY

and

CONCRETE REINFORCING BAR ORIGINATING IN OR EXPORTED FROM THE REPUBLIC OF BELARUS, CHINESE TAIPEI, THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA, JAPAN, THE PORTUGUESE REPUBLIC AND THE KINGDOM OF SPAIN

ORDER

On November 26 and 30, and December 28, 2018, LMS Limited Partnership 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 9, 2015, in Inquiry No. NQ-2014-001 concerning certain concrete reinforcing bar originating in or exported from the People's Republic of China, the Republic of Korea and the Republic or Turkey, and on May 3, 2017, in Inquiry No. NQ-2016-003 concerning concrete reinforcing bar originating in or exported from the Republic of Belarus, Chinese Taipei, the Hong Kong Special Administrative Region of the People's Republic of China, Japan, the Portuguese Republic and the Kingdom of Spain.

On March 11, 2019, LMS Limited Partnership filed a request to terminate the interim review proceedings.

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.

Ann Penner
Ann Penner
Presiding Member

Peter Burn
Peter Burn
Member

Randolph W. Heggart
Randolph W. Heggart
Member

Tribunal Panel:	Ann Penner, Presiding Member Peter Burn, Member Randolph W. Heggart, Member
Support Staff:	Kalyn Eadie, Lead Counsel Greg Gallo, Lead Analyst

PARTICIPANTS:

Domestic Producers	**Counsel/Representatives**
Max Aicher (North America) Limited	Geoffrey C. Kubrick Jonathan P. O'Hara Lisa Page Lucas Kokot
Moly-Cop AltaSteel Ltd. (dba AltaSteel)	Benjamin P. Bedard Linden Dales Shannel Rajan
ArcelorMittal Long Products Canada	Paul Conlin David Plotkin
Gerdau Ameristeel Corporation	Christopher J. Kent Christopher J. Cochlin Gerry Stobo Andrew M. Lanouette Marc McLaren-Caux Susana May Yon Lee Cynthia Wallace Darren D'Sa

Importers/Exporters/Others	**Counsel/Representative**
LMS Limited Partnership	Donald J. Goodwin

Please address all communications to:

The Registrar
Secretariat to the Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

BACKGROUND

1. On November 26, 30 and December 28, 2018, LMS Limited Partnership (LMS), an importer and end user of concrete reinforcing bar (rebar), requested that the Canadian International Trade Tribunal initiate an interim review of its findings in Inquiry No. NQ-2014-001 and Inquiry No. NQ-2016-003 in order to exclude cryogenic rebar made to ASTM International standard WK59016 or its equivalent. According to LMS, cryogenic rebar is for use in cold weather applications with temperatures ranging from -50 degrees Celsius to -165 degrees Celsius, when building liquid propane gas and liquid natural gas (LNG) storage tanks and similar vessels.[1] LMS submitted that cryogenic rebar will be required for the construction of the LNG export terminal in Kitimat, British Columbia, which received final approval in October of 2018.[2]

2. On January 24, 2019, the Tribunal provided the parties to the rebar inquiries with a copy of LMS's request, notified them that it had determined that the request was properly documented,[3] and set forth a schedule for submissions on whether the request should be granted.

3. On February 27, 2019, four members of the domestic rebar industry filed submissions opposing LMS's request.[4] In arguing that an interim review was not warranted, all of the parties opposed submitted that the exclusion request underlying LMS's request for an interim review should not be granted because the domestic industry is capable of producing cryogenic rebar. In particular, Max Aicher (North America) Limited (MANA) submitted that it had produced cryogenic rebar in Canada, and submitted test results from March 2017 to support this claim.

4. On March 11, 2019, LMS requested that the Tribunal terminate the interim review proceedings, provided that the Tribunal accept that the evidence submitted by MANA demonstrates that it is capable of producing cryogenic rebar in Canada. LMS also requested that the Tribunal monitor imports of cryogenic rebar to ensure the injury findings do not provide protection to foreign mills associated with any of the Canadian producers who may supply cryogenic rebar to customers in Canada.

5. On March 21, 2019, the parties opposed to the initiation of an interim review filed submissions on LMS's request to terminate the proceedings. All of the parties opposed consented to the request to terminate the proceedings. However, they unanimously submitted that the Tribunal does not have the authority to monitor imports in the manner suggested by LMS.

ANALYSIS

Is LMS's request for an interim review warranted?

6. Subsection 76.01(1) of the *Special Import Measures Act*[5] 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. If the Tribunal decides not to

1. Exhibit RD-2018-001-01C, Vol. 1 at 1.
2 Exhibit RD-2018-001-01, Vol. 1 at 2; Exhibit RD-2018-001-04.01, Vol. 1 at 19.
3. In accordance with subrule 70(2) of the *Canadian International Trade Tribunal Rules* (the *Rules*).
4. The four parties opposed are ArcelorMittal Long Products Canada, Gerdau Ameristeel Corporation, Max Aicher (North America) Limited, and Moly-Cop AltaSteel Ltd.
5. R.S.C., 1985, c. S-15 [*SIMA*].

conduct an interim review, subsection 76.01(4) requires the Tribunal to make an order to that effect and give reasons for its decisions.

7. There is no provision in section 76.01 of *SIMA* that explicitly provides for the termination of an interim review or permits a party that has requested an interim review to withdraw its request. The section simply provides that, upon receipt of a properly documented request, the Tribunal must decide if an interim review is warranted or not.

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.[6] 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.[7]

9. A product exclusion is not granted where the exclusion will cause injury to the domestic industry. In assessing whether the exclusion will cause injury to the domestic industry, the Tribunal may consider whether the domestic industry produces the product or a substitutable product, or whether the domestic industry is capable of producing the product. Therefore, the information provided to substantiate a request for an interim review based on a product exclusion request has to 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.[8]

10. As mentioned above, MANA submitted laboratory test certificates to support its claim that it has produced cryogenic rebar.[9] LMS accepted MANA's statement that it is able to produce cryogenic rebar in Canada. As such, the Tribunal finds that LMS has effectively conceded that an interim review is not warranted. However, LMS made its request to terminate these proceedings conditional on the Tribunal's acceptance of MANA's evidence. The Tribunal has been presented with no other facts that put MANA's evidence into question. Accordingly, the Tribunal accepts that the domestic industry has produced and is capable of producing cryogenic rebar.

11. It appears that LMS did not attempt to contact any of the domestic producers to determine whether they produce cryogenic rebar before submitting its request for an interim review. The Tribunal cannot help but observe that, had LMS done so, it would have saved itself, the Tribunal and the parties opposed the time and effort expended in these proceedings thus far.

12. As a result, the Tribunal finds that an interim review is not warranted.

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6. The Tribunal takes guidance from rule 72 of the *Rules*; 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.
7. *Ibid.* at para. 25.
8. *Ibid.* at paras. 26-27.
9. Exhibit RD-2018-001-04.04, Vol 1 at 5; Exhibit RD-2018-001-05.04 (protected), Vol. 2 at 5-20; Exhibit RD-2018-001-10, Vol. 1 at 1. ArcelorMittal Long Products Canada also submitted that it was capable of producing cryogenic rebar: Exhibit RD-2018-001-04.01, Vol. 1 at 15-16; Exhibit RD-2018-001-04.01A, Vol. 1 at 3.

Can the Tribunal monitor imports of rebar?

13. LMS requested that the Tribunal monitor imports of cryogenic rebar to "ensure the injury finding does not provide protection to any mills not in Canada but associated with any of the Canadian producers who might supply the cryogenic type rebar to customers in Canada."[10] According to the evidence on the record, one domestic producer has a foreign affiliate that produces cryogenic rebar; however, this company, ArcelorMittal Poland, is not located in a country subject to the findings in Inquiry No. NQ-2014-001 or Inquiry No. NQ-2016-003.[11] LMS appears to be asking that the Tribunal monitor whether the domestic industry or other importers are purchasing cryogenic rebar from this company.

14. The Tribunal cannot grant LMS's request. The Tribunal has no mandate to ensure that importers do not purchase non-subject goods to fulfill Canadian requirements. The Tribunal does not engage in ongoing monitoring of importations of any goods, whether they are subject to injury findings or not. As noted by the parties opposed, the Canada Border Services Agency (CBSA) is responsible for the enforcement of injury findings and, as Canada's customs authority, has access to the data on imports that would be necessary to engage in this type of monitoring. LMS did not identify any statutory authority that would allow the Tribunal to request this information from the CBSA or directly from the importers outside the context of a proceeding.

DECISION

15. For the foregoing reasons, the Tribunal is not satisfied that an interim review is warranted and, therefore, pursuant to subsections 76.01(3) and (4) of *SIMA*, has decided not to conduct an interim review of the findings.

Ann Penner
Ann Penner
Presiding Member

Peter Burn
Peter Burn
Member

Randolph W. Heggart
Randolph W. Heggart
Member

10. Exhibit RD-2018-001-06, Vol. 1 at 1.
11. Exhibit RD-2018-001-04.01, Vol. 1 at 16; Exhibit RD-2018-001-04.01A, Vol. 1 at 3.