

Canada-U.S. Blog

LEGAL DEVELOPMENTS AFFECTING CANADA-U.S. CROSS BORDER TRADE

CITT Finds Reduction or Elimination of Rebar AD/CVD Duties in British Columbia Not In Public Interest

By Cyndee Todgham Cherniak on December 31st, 2015

Posted in Trade Remedies



On December 22, 2015, the Canadian International Trade Tribunal (“CITT”) issued the long awaited decision in the Certain Rebar Public Interest Inquiry (CITT File No. PB-2014-001). On January 9, 2015, the CITT made an injury finding in NQ-2014-001 “Certain Rebar” originating in or exported from China, Korea and/or Turkey. On February 23, 2015, the CITT received a joint request for a public interest inquiry from the British Columbia Ministry of International Trade and the Independent Contractors and Business Association to eliminate or reduce the duties imposed on imported rebar from China, Korea and Turkey for final use in British Columbia. The CITT held a hearing in Vancouver British Columbia in July 27-31, 2015.

The CITT decided that it would not prepare a report for the Minister of Finance because “it is of the opinion that the public interest does not warrant a reduction or elimination of the anti-dumping and countervailing duties” imposed in NQ-2014-001.

Under Canadian law, an interested party may file a request for a public interest inquiry pursuant to section 45 of the *Special Import Measures Act* within 45 days after the issuance of an injury order or finding to:

” initiate a public interest inquiry if ...there are reasonable grounds to consider that the imposition of an anti-dumping or countervailing duty, or the imposition of such a duty in the full amount provided for by any of those sections, in respect of the goods would not or might not be in the public interest.”

The CITT considers factors prescribed in subsection 40.1(3) of the *Special Import Measures Regulations*. If the CITT is of the opinion that the imposition of the duties, or the imposition of duties in the full amount, would not or might not be in the public interest, the CITT may prepare a report for the Minister of Finance, who might act on the report and reduce or eliminate the duties.

Since there is no definition of “public interest” in the *Special Import Measures Act* or *Special Import Measures Regulations*, the CITT has given the phrase the interpretation it wishes. In paragraph 85 of the decision, the CITT states “... the Tribunal considers it established that the imposition of duties following an inquiry under section 42 of SIMA is in the public interest.” In other words, the CITT made its decision in the original injury inquiry.

The Tribunal then states in paragraph 86 of the decision that “[t]he purpose of a public interest inquiry is to determine whether the duties have unintended consequences such that it would be in the public interest to consider their elimination or reduction. If such is the case, the Tribunal will need to assess whether and in what way these public interest concerns can be mitigated.”

In the final analysis, the rebar AD/CVD duties remain in place in British Columbia without adjustment. the CITT did not accept the arguments presented by the three interested groups (downstream users of rebar inn BC, purchasers of condominium units in BC, and government/taxpayers in BC).

What this means is that the bar is very high for anyone seeking a reduction in the amount of AD.CVD duties imposed by the Canada Border Services Agency. A public interest inquiry is rarely successful for the requester (based on the history of cases). The only opportunity to present public interest evidence is in the few months following the CITT injury decision and order (the request was filed in February 2015 and the hearing was held in late July 2015). Another opportunity does not arise after the 45 day limitation period for filing public interest inquiries. The only other mechanism available to importers would be an interim review (which have a similarly low success rate).

Tags: Canadian International Trade Tribunal, CITT, public interest inquiry, rebar

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