



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

FINDINGS AND REASONS

Inquiry No. NQ-2004-005

Certain Fasteners

*Findings issued
Friday, January 7, 2005*

*Reasons issued
Friday, January 21, 2005*

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IN THE MATTER OF an inquiry, under section 42 of the *Special Import Measures Act*, respecting:

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

FINDINGS

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping in Canada of carbon steel and stainless steel fasteners, i.e. screws, nuts and bolts of carbon steel or stainless steel that are used to mechanically join two or more elements, excluding fasteners specifically designed for application in the automotive or aerospace industry, originating in or exported from the People's Republic of China and Chinese Taipei and the subsidizing of such products originating in or exported from the People's Republic of China have caused injury or retardation or are threatening to cause injury to the domestic industry.

This inquiry is pursuant to the issuance by the President of the Canada Border Services Agency of a preliminary determination dated September 10, 2004, and of a final determination dated December 9, 2004, that the aforementioned products originating in or exported from the People's Republic of China and Chinese Taipei have been dumped and, in the case of the People's Republic of China, that the aforementioned products have also been subsidized and that the margin of dumping and the amount of subsidy on the products from the subject countries are not insignificant.

The Canadian International Trade Tribunal determines, pursuant to subsection 42(4.1) of the *Special Import Measures Act*, that the volume of dumped and subsidized aforementioned stainless steel screws originating in or exported from the People's Republic of China is negligible. Consequently, the Canadian International Trade Tribunal hereby terminates its inquiry regarding the dumping and subsidizing of stainless steel screws originating in or exported from the People's Republic of China.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that:

- the dumping in Canada of the aforementioned carbon steel screws originating in or exported from the People's Republic of China and Chinese Taipei and the subsidizing of such products originating in or exported from the People's Republic of China, excluding the products described in Appendix A to these findings, have caused injury to the domestic industry;
- the dumping in Canada of the aforementioned carbon steel nuts and bolts originating in or exported from the People's Republic of China and Chinese Taipei and the subsidizing of such products originating in or exported from the People's Republic of China have not caused injury and are not threatening to cause injury to the domestic industry;
- the dumping in Canada of the aforementioned stainless steel screws originating in or exported from Chinese Taipei, excluding the products described in Appendix B to these findings, is threatening to cause injury to the domestic industry;

- the dumping in Canada of the aforementioned stainless steel nuts and bolts originating in or exported from the People's Republic of China and Chinese Taipei and the subsidizing of such products originating in or exported from the People's Republic of China have not caused injury and are not threatening to cause injury to the domestic industry.

Richard Lafontaine

Richard Lafontaine
Presiding Member

James A. Ogilvy

James A. Ogilvy
Member

Meriel V. M. Bradford

Meriel V. M. Bradford
Member

Hélène Nadeau

Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

APPENDIX A

PRODUCTS EXCLUDED FROM THE FINDING FOR CARBON STEEL SCREWS

All carbon steel screws that are listed under List A1 are *specifically excluded*.¹

LIST A1

- Acoustic lag screws (*Tire-fond anti-acoustiques*)
- Aster screws (*Vis Aster*)
- Chicago screws (*Vis « Chicago » [pour reliures]*)
- Collated screws (*Vis sur bande*)
- Connector screws (kd) (*Vis de connexion [démontables]*)
- Decor screws (*Vis de décoration*)
- Drawer handle screws (*Vis de poignée de tiroir*)
- Drive spikes RR (*Crampons torsadés CF*)
- Euro screws (*Eurovis*)
- Hex socket cap screws (*Vis creuses à tête hexagonale*)
- Instrument screws (*Vis d'instrument*)
- Knurled head screws (*Vis à tête moletée*)
- Machine screws with wings (*Vis mécaniques à oreilles*)
- Optical screws (*Vis d'optométrie*)
- Screw spikes RR (*Tire-fond CF*)
- Security screws (*Vis de fixation*)
- Self-clinching studs (*Goujons autoriveurs*)
- Socket cap screws (*Vis filetées sous tête, à tête creuse*)
- Socket set screws (*Vis de réglage à tête creuse*)
- Square-head set screws (*Vis de réglage à tête carrée*)
- Thumb screws (*Vis de serrage*)
- U-drive screws (*Vis de type U*)
- Wing screws (*Vis à oreilles*)
- Screws imported under tariff item Nos. 9952.00.00, 9964.00.00, 9969.00.00 and 9972.00.00 for use in the manufacture of snowmobiles, all-terrain vehicles and personal watercraft (*Vis importées dans les numéros tarifaires 9952.00.00, 9964.00.00, 9969.00.00 et 9972.00.00 devant servir dans la fabrication de motoneiges, de véhicules tout-terrain et de motomarines*)

1. The Tribunal's decision with respect to these exclusions is based on the evidence in its record. One of the factors considered by the Tribunal was Leland Industries Inc.'s consent to these requests in its various submissions, with the exception of collated screws.

All carbon steel screws that are *not within the parameters* of List A2 are also *excluded*.

LIST A2

	Imperial		Metric	
	Diameter	Length	Diameter	Length
Wood Screws (<i>Vis à bois</i>)	#4 - #24	3/8 - 8 in.	M3 - M10	10 mm - 200 mm
Square and Hex Lag Screws (<i>Tire-fond à tête carrée et à tête hexagonale</i>)	#14 - #24	3/4 - 4 in.	M6 - M10	20 mm - 100 mm
Sheet Metal/Tapping Screws (<i>Vis à tôle/ autotaraudeuses</i>)	#4 - #24	3/8 - 8 in.	M3 - M10	10 mm - 200 mm
Thread Forming Screws (<i>Vis formant le filet</i>)	#4 - #24	3/8 - 3 in.	M3 - M10	10 mm - 75 mm
Thread Cutting Screws (<i>Vis taillant le filet</i>)	#4 - #24	3/8 - 3 in.	M3 - M10	10 mm - 75 mm
Thread Rolling Screws (<i>Vis roulant le filet</i>)	#4 - #24	3/8 - 3 in.	M3 - M10	10 mm - 75 mm
Self-drilling Tapping Screws (<i>Vis pour le filetage par roulage</i>)	#4 - #24	3/8 - 3 in.	M3 - M10	10 mm - 75 mm
Machine Screws (<i>Vis mécaniques</i>)	#4 - 3/8 in.	3/8 - 8 in.	M3 - M10	10 mm - 200 mm
Flange Screws (<i>Vis d'accouplement</i>)	1/4 - 5/8 in.	3/8 - 4 in.	M6 - M16	10 mm - 100 mm

APPENDIX B

PRODUCTS EXCLUDED FROM THE FINDING FOR STAINLESS STEEL SCREWS

All stainless steel screws that are listed under List B1 are *specifically excluded*.²

LIST B1

- Acoustic lag screws (*Tire-fond anti-acoustiques*)
- Aster screws (*Vis Aster*)
- Chicago screws (*Vis « Chicago » [pour reliures]*)
- Collated screws (*Vis sur bande*)
- Connector screws (kd) (*Vis de connexion [démontables]*)
- Decor screws (*Vis de décoration*)
- Drawer handle screws (*Vis de poignée de tiroir*)
- Drive spikes RR (*Crampons torsadés CF*)
- Euro screws (*Eurovis*)
- Hex socket cap screws (*Vis creuses à tête hexagonale*)
- Instrument screws (*Vis d'instrument*)
- Knurled head screws (*Vis à tête moletée*)
- Machine screws with wings (*Vis mécaniques à oreilles*)
- Optical screws (*Vis d'optométrie*)
- Screw spikes RR (*Tire-fond CF*)
- Security screws (*Vis de fixation*)
- Self-clinching studs (*Goujons autoriveurs*)
- Socket cap screws (*Vis filetées sous tête, à tête creuse*)
- Socket set screws (*Vis de réglage à tête creuse*)
- Square-head set screws (*Vis de réglage à tête carrée*)
- Socket set shoulder screws (*Vis à épaulement, à tête creuse*)
- Thumb screws (*Vis de serrage*)
- T-U screws (*Vis « T-U »*)
- U-drive screws (*Vis de type U*)
- Wing screws (*Vis à oreilles*)
- Screws imported under tariff item Nos. 9952.00.00, 9964.00.00, 9969.00.00 and 9972.00.00 for use in the manufacture of snowmobiles, all-terrain vehicles and personal watercraft (*Vis importées dans les numéros tarifaires 9952.00.00, 9964.00.00, 9969.00.00 et 9972.00.00 devant servir dans la fabrication de motoneiges, de véhicules tout-terrain et de motomarines*)

2. The Tribunal's decision with respect to these exclusions is based on the evidence in its record. One of the factors considered by the Tribunal was Leland Industries Inc.'s consent to these requests in its various submissions, with the exception of collated screws.

All stainless steel screws that are *not within the parameters* of List B2 are also *excluded*.

LIST B2

	Imperial		Metric	
	Diameter	Length	Diameter	Length
Wood Screws (<i>Vis à bois</i>)	#4 - #24	3/8 - 8 in.	M3 - M10	10 mm - 200 mm
Square and Hex Lag Screws (<i>Tire-fond à tête carrée et à tête hexagonale</i>)	#14 - #24	3/4 - 4 in.	M6 - M10	20 mm - 100 mm
Sheet Metal/Tapping Screws (<i>Vis à tôle/ autotaraudeuses</i>)	#4 - #24	3/8 - 8 in.	M3 - M10	10 mm - 200 mm
Thread Forming Screws (<i>Vis formant le filet</i>)	#4 - #24	3/8 - 3 in.	M3 - M10	10 mm - 75 mm
Thread Cutting Screws (<i>Vis taillant le filet</i>)	#4 - #24	3/8 - 3 in.	M3 - M10	10 mm - 75 mm
Thread Rolling Screws (<i>Vis roulant le filet</i>)	#4 - #24	3/8 - 3 in.	M3 - M10	10 mm - 75 mm
Self-drilling Tapping Screws (<i>Vis pour le filetage par roulage</i>)	#4 - #24	3/8 - 3 in.	M3 - M10	10 mm - 75 mm
Machine Screws (<i>Vis mécaniques</i>)	#4 - 3/8 in.	3/8 - 8 in.	M3 - M10	10 mm - 200 mm
Flange Screws (<i>Vis d'accouplement</i>)	1/4 - 5/8 in.	3/8 - 4 in.	M6 - M16	10 mm - 100 mm

Place of Hearing: Ottawa, Ontario
Dates of Hearing: December 6 to 14, 2004

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James A. Ogilvy, Member
Meriel V. M. Bradford, Member

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Mortie Chaikelson Vice-President Infasco, Division of Ifastgroupe and Company, Limited Partnership (Ifastgroupe Inc., General Partner)	Joanna Yu General Manager Arrow Fasteners Ltd.
Sandra Gunn General Manager Hold-Tite Fasteners Limited	Dan Greer Controller Hold-Tite Fasteners Limited
Tim Brennan Vice-President Ready Rivet & Fastener Ltd.	Bradford Ryan President Visqué Inc.
Louis Picard General Manager Visqué Inc.	Jimmy Ko Vice-President Tong Hwei Enterprise Co., Ltd.
Ben Urbanietz President Westland Fasteners, Div. of Westland Steel Products Ltd.	Wayne Golden Owner Star Stainless Screw Co.
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STATEMENT OF REASONS

BACKGROUND

1. The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,³ has conducted an inquiry to determine whether the dumping in Canada of carbon steel and stainless steel fasteners (certain fasteners) originating in or exported from the People's Republic of China (China) and Chinese Taipei, and the subsidizing of such products originating in or exported from China, have caused injury or retardation or are threatening to cause injury to the domestic industry.

2. On April 28, 2004, the Canada Border Services Agency (CBSA), following a complaint filed by Leland Industries Inc. (Leland), initiated an investigation to determine whether imports of certain fasteners from China and Chinese Taipei had been dumped and subsidized. On April 29, 2004, pursuant to subsection 34(2) of *SIMA*, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping and subsidizing of certain fasteners from China and Chinese Taipei had caused injury or retardation or were threatening to cause injury to the domestic industry. On June 28, 2004, pursuant to subsection 37.1(1), the Tribunal determined that the evidence disclosed a reasonable indication that the dumping and subsidizing of certain fasteners from China and Chinese Taipei had caused injury to the domestic industry.

3. On September 10, 2004, the CBSA issued a preliminary determination of dumping and subsidizing with respect to certain fasteners from China and Chinese Taipei. As a result of this investigation, the CBSA was satisfied that certain fasteners from China and Chinese Taipei had been dumped and subsidized.

4. On September 13, 2004, the Tribunal issued a notice of commencement of inquiry with respect to the dumping and the subsidizing of certain fasteners from China and Chinese Taipei.⁴ The Tribunal's period of inquiry covered a three-and-a-half-year period, from January 1, 2001, to June 30, 2004. As part of the inquiry, the Tribunal sent questionnaires to the domestic producers and to importers, purchasers and foreign producers of certain fasteners. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

5. In its notice of commencement of inquiry, the Tribunal indicated that it intended to proceed by way of written submissions with respect to requests for product exclusions and did not anticipate hearing oral testimony on product exclusions unless, in its opinion, it was required.

6. On October 29, 2004, the Tribunal informed parties that, in order to facilitate the conduct of the inquiry, it would issue a ruling on classes of goods prior to the hearing and invited parties to make submissions on the matter. On December 1, 2004, the Tribunal determined that the like goods should be divided into four classes: carbon steel screws, carbon steel nuts and bolts, stainless steel screws, and stainless steel nuts and bolts.

7. On December 9, 2004, the CBSA issued a final determination that certain fasteners from China and Chinese Taipei had been dumped and that the margins of dumping were not insignificant. The CBSA also issued a final determination that certain fasteners from China had been subsidized and that the amounts of

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

4. C. Gaz. 2004.I.2589.

subsidy were not insignificant. On the same date, the CBSA terminated the subsidizing investigation of certain fasteners from Chinese Taipei.⁵

8. A hearing, with public and *in camera* testimony, was held in Ottawa, Ontario, from December 6 to 14, 2004, to hear submissions and testimony. Leland, Infasco, Division of Ifastgroupe and Company, Limited Partnership (Ifastgroupe Inc., General Partner) (Infasco), Arrow Fasteners Ltd. (Arrow) and Visqué Inc. (Visqué), domestic producers of certain fasteners, made submissions, testified and were represented by counsel at the hearing. Westland Steel Products Ltd., also a domestic producer of certain fasteners, made submissions and testified at the hearing in support of the domestic industry. Witnesses from two other domestic producers of certain fasteners, Hold-Tite Fasteners Limited (Hold-Tite) and Ready Rivet & Fastener Ltd. (Ready Rivet), also testified at the hearing in support of the domestic industry.

9. The Canadian Fasteners Importers Coalition (the Coalition),⁶ which opposed an injury finding, made submissions and was represented by counsel at the hearing. The Tribunal heard testimony from witnesses from the following companies on behalf of the Coalition: Star Stainless, Paulin, Robertson, Ideal, Whitesell, Fastener Warehouse, Accurate, Cardinal and Spaenaur. A witness from Tong Hwei Enterprise Co., Ltd. (Tong Hwei) also testified at the hearing in opposition to any finding of injury.

10. Bombardier Recreational Products Inc. (BRP), an end user of certain fasteners, was represented by counsel, made submissions and provided a witness who testified at the hearing.

11. The following were also represented by counsel: ITW Construction Products, a broker/distributor/wholesaler of certain fasteners; Fleetwood Canada Ltd. (Fleetwood), an end user of certain fasteners; Canadian Tire Corporation, Limited (Canadian Tire), a retailer of certain fasteners; the Government of the People's Republic of China; the Government of Taiwan; and Shanghai Ben Yuan Metal Products Co., Ltd. (Ben Yuan).

12. The record of this inquiry consists of Tribunal exhibits, including the public and protected record of the preliminary injury inquiry on certain fasteners (PI-2004-002), public and protected replies to questionnaires, requests for information and product exclusions and replies thereto, witness statements and exhibits filed by the parties throughout the inquiry and the transcript of the hearing. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

13. The Tribunal issued its findings on January 7, 2005.

5. Tribunal Exhibit NQ-2004-005-04, Administrative Record, Vol. 1 at 215.1-215.21.

6. The members of the Coalition are: Accurate Fasteners Ltd. (Accurate), Les Attaches Viscan Inc. (Viscan), Cardinal Fasteners, Division of Talbot Sales Limited (Cardinal), Direct Fasteners (Direct), Evolution Fasteners Inc. (Evolution), Fastener Warehouse Ltd. (Fastener Warehouse), Fasteners and Fittings, GRK Canada Ltd. (GRK), Ideal Security Inc. (Ideal), Langtry Industries Ltd. (Lily Fasteners) (Langtry), Nissen Industrial Fasteners Inc. (Nissen), Optimum Fixations Inc. (Optimum), H. Paulin & Co. Limited (Paulin), Reliable Fasteners (Division of Richelieu Hardware Ltd.) (Reliable), Robertson Inc. (Robertson), Spaenaur Inc. (Spaenaur), Star Stainless Screw Co. (Star Stainless), Trillium Screw Mfg. Co. Ltd. (Trillium), UCAN Fastening Products (UCAN), USCAN Industrial Fasteners Limited (USCAN) and Whitesell Canada Corporation (Whitesell). Importers' Exhibit D-01A at Tab 15, Administrative Record, Vol. 13.

RESULTS OF THE CBSA'S INVESTIGATION

14. The CBSA's dumping investigation covered imports of the subject goods released into Canada from January 1 to December 31, 2003. The subsidizing investigation covered the period from January 1, 2003, to March 31, 2004.

15. The CBSA determined that 98.23 percent of the volume of certain fasteners from China was dumped and that the weighted average margin of dumping, expressed as a percentage of the export price, was 71.95 percent. The CBSA also determined that 97.58 percent of the volume of certain fasteners from Chinese Taipei was dumped and that the weighted average margin of dumping, expressed as a percentage of the export price, was 68.94 percent.

16. The CBSA determined that 100 percent of certain fasteners from China were subsidized and that the amount of subsidy was not insignificant. The CBSA determined that sufficient information was not provided to determine an amount of subsidy in the prescribed manner for certain fasteners exported from China, based on information provided by exporters and the Government of China. Therefore, the amount of subsidy was determined according to a ministerial specification pursuant to subsection 30.4(2) of *SIMA*. The amount of subsidy is equal to 1.25 Chinese renminbi per kilogram of goods, which is the amount by which the raw material and processing costs, as estimated by the CBSA at the initiation of its investigation, exceed the average export price of the goods, as determined by the CBSA for its period of investigation. The amount of subsidy represents 31.53 percent of the export price of the goods.

17. In the case of Chinese Taipei, the CBSA found two actionable subsidies: excessive drawback and a tax deduction contingent on the use of equipment made in Chinese Taipei. The CBSA determined that the amount of subsidy was 0.37 percent of the export price and was therefore insignificant. As a result, the subsidizing investigation was terminated, under paragraph 41(1)(b) of *SIMA*, respecting imports from Chinese Taipei.

PRODUCT

Product Definition and Technical Information

18. For purposes of this inquiry, the subject goods are defined as carbon steel and stainless steel fasteners, i.e. screws, nuts and bolts of carbon steel or stainless steel that are used to mechanically join two or more elements, excluding fasteners specifically designed for application in the automotive or aerospace industry, originating in or exported from China and Chinese Taipei.

19. A screw is a headed and externally threaded mechanical device that possesses capabilities which permit it to be inserted into holes in assembled parts, to be mated with a pre-formed internal thread or to form its own thread, and to be tightened or released by torquing its head. Screws include machine screws, wood screws, self-drilling, self-tapping, thread forming, and sheet metal screws. Screws may have a variety of head shapes (round, flat, hexagonal, etc.), drives (slot, socket, square, phillips, etc.), shank lengths and diameters. The shank may be totally or partially threaded.

20. A nut is a perforated block (usually of metal) that possesses an internal thread for the purpose of tightening or holding two or more bodies in definite positions. A nut is used in conjunction with a bolt.

21. A bolt is a headed and externally threaded mechanical device designed for insertion through holes in assembled parts to mate with a nut and is normally intended to be tightened by turning that nut.

22. According to the CBSA, washers, rivets, pins, studs and custom formed parts are not included in the definition of the subject goods.

23. There are many types of fasteners, each one being defined by its specific physical and technical characteristics and the type and grade of material from which it is made. Fasteners are used in a wide range of final applications and, depending on the usage, they may be unhardened or heat-treated, either bare or plated, with or without extra corrosion protection, shipped and distributed in bulk or custom packaged and labelled.

Production Process

24. Fasteners are produced from steel round wire or rod predominantly by cold forming and, to a lesser extent, by machining.

25. Cold forming is a process that forces the round wire through a series of dies and punches, causing the material to take the desired shape or design of the fastener. The headed blanks are then fed into a thread-rolling machine. Screws are typically manufactured on a machine called a cold header. Bolts are typically manufactured on a multi-station machine called a boltmaker or boltformer. Nuts⁷ are typically formed on a nut former and then fed into nut tappers for the cutting of threads. It is necessary to change dies in order to switch from the production of one specific fastener to another.

26. Machining is a process that sheers off the unwanted material from the round wire to produce the desired fastener. This process produces tighter tolerances, but is significantly slower and generates more waste metal. In addition, machined threads are not as strong as rolled threads.

27. Further steps, such as hardening (heat treating), plating and painting, can be performed in order to enhance certain qualities, such as corrosion resistance.

Product Application

28. Fasteners are used by a variety of industries in a wide range of final applications. Three broad categories of user industries are: general industrial, automobile-related industries and the aerospace industry. General industrial fasteners have the widest range in terms of end use. The wide variety of fastener applications in general industry include construction, rural buildings, grain bins, machinery and equipment, and household furniture. Fasteners used in the automotive and aerospace industries are specialized products that meet the requirements for distinct use in each of these two industries.

DOMESTIC PRODUCERS

29. Leland was incorporated in 1984 as a distributor of fasteners. Beginning in 1985, with two cold headers and two thread-rolling machines, Leland began manufacturing fasteners, initially focussing on products used in the agricultural market. From 1986 to 2004, Leland added more cold headers and thread-rolling machines and expanded its product lines with respect to standard fasteners, as well as with respect to more specialized products. Leland currently manufactures fasteners at its Toronto, Ontario, plant and operates painting and warehousing facilities in Joliette, Quebec, Edmonton and Calgary, Alberta, and the United States.

7. Nuts can also be produced by hot forging.

30. Infasco (previously known as Industrial Fasteners Ltd.) is the largest Canadian manufacturer of standard nuts and bolts and the largest manufacturer of standard bolts in the world.⁸ Located in Marieville, Quebec, Infasco began producing nuts and bolts in 1958. Infasco is a division of Ifastgroupe and Company, Limited Partnership (Ifastgroupe Inc., General Partner) (Ifastgroupe LP).⁹ Most of Infasco's steel requirements are met by an affiliated company, Ivaco Rolling Mills, also located in Marieville. Annealing, pickling, cold forming and heat treating are conducted at Infasco's plant, while zinc electroplating, phosphating and hot dip galvanizing are done at Galvano, another affiliated company, which is located in Beloeil, Quebec. Infasco operates five warehouses across Canada, as well as facilities in the United States, through an affiliated company.

31. Ingersoll, of Ingersoll, Ontario, another division of Ifastgroupe LP, manufactures parts to customer specifications and sells to the automotive industry, as well as to distributors. Its product range covers bolts and studs.

32. Paulin was founded in 1920, in Toronto, Ontario. The company has four manufacturing divisions, all located in Ontario, as well as warehouses in Vancouver, British Columbia, Edmonton, Alberta, Winnipeg, Manitoba, Toronto, Ontario, Montréal, Quebec, Moncton, New Brunswick, and Cleveland, Ohio. Paulin manufactures both standard and custom fasteners, including bolts, nuts, screws, washers, rivets and studs, in both carbon and stainless steel.

33. Robertson was established in 1908, as a privately owned Canadian company that manufactures and distributes carbon steel screws made with its patented Robertson head. Robertson's head office is located in Milton, Ontario, and the company operates a manufacturing plant in LaSalle, Quebec, which produces light industrial screws and special order products. In addition to the above facilities, Robertson also has warehouses and sales offices in Alberta and British Columbia. In 2002, Robertson opened a fastener manufacturing plant in Jiashan, China. Robertson is part of the Marmon Group of Companies, whose head office is located in Chicago, Illinois.

34. Visqué, of Montréal, Quebec, has been a producer of carbon steel screws and stainless steel screws since 1980. Arrow, of Surrey, British Columbia, manufactures carbon steel screws and stainless steel screws. Hold-Tite, of Concord, Ontario, makes carbon steel screws and stainless steel screws. During the period of inquiry, Ready Rivet, of Kitchener, Ontario, made carbon steel screws, carbon steel nuts and bolts, and stainless steel nuts and bolts. Westland, of Winnipeg, Manitoba, makes carbon steel screws and stainless steel screws. Ideal, of LaSalle, Quebec, manufactures carbon steel screws. Other domestic producers of certain fasteners include Canadian Threadall Ltd. (Canadian Threadall), of Waterloo, Ontario, and Pacific Bolt Manufacturing (1988) Ltd. (Pacific), of New Westminster, British Columbia.

IMPORTERS AND EXPORTERS

35. The majority of fasteners are imported for resale. The Tribunal sent questionnaires to 76 importers, and the imports of the subject goods during the period of inquiry by the 34 companies that responded accounted for approximately one third of the total volume of all imports reported by Statistics Canada over

8. *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 327.

9. Ivaco Inc. (Ivaco) and certain of its affiliates, including Ifastgroupe LP, filed for protection from creditors under the *Companies' Creditors Arrangement Act (CCAA)* on September 16, 2003. Infasco, Ingersoll Fasteners Inc. (Ingersoll), Infasco Nut, and Galvano are divisions of Ifastgroupe, LP. The general partner of Ifastgroupe LP is Ifastgroupe Inc., and the limited partner is Ivaco. On December 2, 2004, Ifastgroupe LP was sold to Ifastgroupe 2004 LP, a wholly owned subsidiary of The Heico Companies LLP (Importer's Exhibit D-23, Administrative Record, Vol. 13; Tribunal Exhibit NQ-2004-005-53, Administrative Record, Vol. 1 at 430-32).

the period of inquiry for the applicable tariff items, which include non-subject goods such as fasteners specifically designed for the automotive industry.

36. The Tribunal sent questionnaires to 73 foreign producers of the subject goods. It received responses from 9 producers in China¹⁰ and from 11 producers in Chinese Taipei.¹¹

MARKETING AND DISTRIBUTION

37. There are three main distribution channels for both domestically produced and imported fasteners: original equipment manufacturers (OEMs), industrial distributors and retail hardware stores. Inside staff, outside commissioned sales representatives and sales agents carry out the marketing functions for certain fasteners. Marketing activities are aided by catalogues, brochures, Web sites and product samples, as well as exhibitions at trade shows. A number of suppliers maintain networks of sales offices and distribution warehouses across Canada.

POSITIONS OF THE PARTIES¹²

Parties in Support of an Injury Finding

38. Parties that supported an injury finding argued that the subject goods have caused material injury and are threatening to cause material injury to the domestic industry with respect to the following three classes of goods: carbon steel screws, carbon steel nuts and bolts, and stainless steel screws. They did not claim injury with respect to stainless steel nuts and bolts. It is their position that, for the three remaining classes of goods, imports of the subject goods were facilitated by their commodity nature, their relatively low shipping costs, the ease with which they were distributed in the market, and the fact that foreign manufacturers have huge production capacity.

39. They argued that North America, being one of the largest and most buoyant construction markets in the world, is consequently a target for exports from China and Chinese Taipei. Over the period of inquiry, the dumping and subsidizing of the subject goods have allowed exporters to become the major factor in the market. Thus, Leland and the other domestic producers have had no choice but to reduce prices. This resulted in price erosion, price suppression and a loss of market share. In addition, as the domestic market grew, the subject goods took most of the growth, and the domestic producers saw their production being steadily reduced to serving more and more restricted segments of the fastener business. This led to a decline in sales volumes in major market sectors, to reduced economies of scale and to stagnating or deteriorating financial margins and operating income.

40. Furthermore, it was submitted that the Tribunal should take into account the declines in the domestic industry's market share that had occurred in the 1980s and 1990s, given that the domestic industry had already been relegated to a minority position in its own market by the beginning of the period of inquiry. Regarding imports from the United States, parties in support of an injury finding asserted that the

10. Ningbo Fastener Factory, Ningbo Toyofast Co. Ltd., Pinghu Zhapu Nut Factory, Robertson (Jiaxing) Inc., Shandong Welltrade Knitwears & Home Textiles Imp. & Exp. Company, Shanghai (Wisechain Fasteners), Ben Yuan, Yantaixinfu Standard Fasteners Company, Zhuji Ouyang Hardware Co. Ltd.

11. Chia-Lou Industrial Co. Ltd., CPC Fasteners, Far East Metal International, Fong Prean Industrial Co. Ltd., Homn Reen Enterprise Company Ltd. – Taiwan, Midas Union Trading Co., Newfast, Min Hwei Enterprise Company Ltd., Taiwan Shin Yin International, Tong Hwei, Your Choice Fasteners & Tools Ltd.

12. This portion of the text is intended to outline a number of key submissions made by the parties. It is not intended to be exhaustive.

revised data presented in the Tribunal's staff report corroborated testimony to the effect that imports from the United States had not had a negative impact on the domestic industry. With regard to the question of import penetration, they claimed that, because the subject goods enter the market at various levels in the distribution chain and are sold to distributors, as well as to OEMs and retail stores, it is difficult for the domestic industry to compete.

41. As to the attempt by the Coalition to explain the injury caused to the domestic industry by reference to factors other than dumping and subsidizing, parties in support of an injury finding first submitted that the Coalition's evidence focused solely on Leland and ignored the other domestic producers. Second, they submitted that most of the allegations regarding Leland, such as its lack of respect for distribution channels, an overly aggressive marketing approach, quality issues, missed deliveries and customer service problems, were unsubstantiated and based on industry rumours. Third, regarding other factors and allegations, such as vendor managed inventory (VMI) systems, all-or-nothing quotes and domestic producers being niche suppliers and unable to supply the market, they stated that these were irrelevant considerations that could not explain the injury suffered by the domestic industry. Parties that supported an injury finding maintained that they did not profess to be able to supply the entire market and that, under *SIMA*, it is not necessary for a domestic industry to supply the entire market in order to be entitled to relief.

42. Finally, as to the threat of injury, parties in support of an injury finding alleged that exporters are targeting the domestic market and that a multitude of anti-dumping orders are currently in force against China and Chinese Taipei for various products in many jurisdictions around the world.

43. As for Infasco, it stressed that it was a high volume manufacturer and that its volume directly affected its cost structure and its competitiveness with the subject goods. Infasco pointed out that it had the capacity to supply the entire Canadian market for the goods that it produces. Unlike the situation during other economic downturns, where Infasco was less profitable than under normal circumstances, but was still able to keep producing and selling into the market at a profit, Infasco claimed that, during the period of inquiry, the dumped and subsidized imports severely aggravated the difficult economic downturn. Infasco further submitted that imports of the subject goods had increased substantially during the period of inquiry, and more dramatically during the economic downturn faced by the industry, which had led to Infasco's negative financial position and significant losses in 2003.

44. While it acknowledged that it was the price leader in the market, Infasco argued that importers are not entitled to compete on price when they do so by dumping and subsidizing. As to the alleged impact of the proceedings under the *CCAA*, in which Infasco and the Ivaco Group had been involved, Infasco noted that it was only a division of one entity within the group, that it operated as a stand-alone profit centre and that, further, there was no evidence that these proceedings were a source of injury to Infasco.

Parties Opposed to an Injury Finding

45. The Coalition urged the Tribunal to make a no injury finding for the three classes of goods under consideration.

46. For carbon steel screws, the Coalition acknowledged that the value of the total domestic production had declined, but stated that the fall in the value of the apparent market between 2001 and 2002, the decrease in the market share held by the subject goods and the upward trend observed for non-subject countries must be taken into account in interpreting this former decline. In light of testimony that domestic prices track U.S. prices, the Coalition stated that it was difficult to conclude that prices in the domestic market were being driven down by the prices of the subject goods.

47. For carbon steel nuts and bolts, the Coalition noted that Infasco dominates this industry and is the price leader. In the Coalition's view, this is inconsistent with the argument that prices are being driven by low-priced imports, which result in price erosion or suppression. To the contrary, the Coalition submitted that Infasco was able to increase prices at the end of 2003 and at the beginning of 2004. The Coalition also stated that the levels of domestic production and imports of the subject goods had been fairly steady over the period of inquiry. Although imports of the subject goods increased during the first half of 2004, Infasco's gross margin for this period reveals that the domestic industry did not suffer injury. The Coalition further submitted that, even if the domestic industry attempted to downplay the proceedings under the *CCAA*, they had had a material effect on Infasco during the latter part of the period of inquiry, and maintained that the causes underlying these proceedings had nothing to do with the subject goods.

48. For stainless steel screws, the Coalition questioned whether, in light of the small production volume, there really exists a domestic industry.

49. Moreover, the Coalition submitted that the Tribunal should pay particular attention to the huge variety of goods covered by the inquiry in contrast to what the domestic industry actually produces. Given that the domestic industry cannot produce all types of fasteners and cannot supply the entire market, the Coalition stressed the importance of imports and the need for alternative sources of supply.

50. The Coalition argued that, since the product mix of fasteners from even one source is not consistent over the period of inquiry, and the unit price for some of the classes of goods can vary by a factor of up to 40, it is difficult to draw any conclusions about the effect of the prices of imports on domestic prices.

51. As to other sources of injury, the Coalition submitted that the domestic industry produces a limited range of products and is consequently unable to respond to requests for all-or-nothing quotes in the same manner as distributors. It also contended that the slowdown in the agricultural business, attributable in part to the outbreak of mad cow disease, had a negative impact on Leland. Sales have also been lost due to the fact that some producers do not offer VMI systems to their customers. Late deliveries, a lack of respect for the distribution channels and a failure to pursue business were issues raised in respect of Leland. The Coalition further contended that the lack of modernization by the domestic industry has affected its ability to compete in the marketplace and that steel shortages, higher prices for steel, electricity, fuel and delivery, and the U.S. dollar exchange rate were also important factors other than dumping and subsidizing that had affected the domestic industry's situation.

52. Finally, in its written argument, the Government of China submitted that the Tribunal should terminate its inquiry regarding the subsidizing of stainless steel screws and stainless steel nuts and bolts from China because their volumes were negligible. The Government of Taiwan and the Taiwan Industrial Fasteners Institute submitted in their written arguments that imports from Chinese Taipei have not caused and will not cause material injury or, in the alternative, that the Tribunal should exclude imports from Chinese Taipei from the scope of its injury finding. They also noted the absence of causality between injury and the subject goods, especially in light of the performance of the domestic industry over the first half of 2004 when import levels reached a record high.

ANALYSIS

Preliminary Matter

53. Under subsection 42(4.1) of *SIMA*, the Tribunal shall terminate its inquiry if it determines that the volume of either dumped or subsidized imports from a country is negligible.¹³

54. For the purpose of determining whether the volume of dumped goods from China and Chinese Taipei is negligible in respect of each of the four classes of goods under consideration, the Tribunal applied the percentage of dumped goods determined by the CBSA for all fasteners to the data that it had gathered on import volumes for each class of goods, measured in kilograms.¹⁴ The volume of dumped stainless steel screws from China, measured in kilograms, represents 2.44 percent of the total volume of stainless steel screws that were released into Canada from all countries during 2003 and that are of the same description as the dumped goods.

55. Since the relevant volume falls below the threshold of 3 percent of the total volume of goods that were released into Canada from all countries and that are of the same description as the dumped goods, the Tribunal determines that the volume of dumped imports of stainless steel screws from China is negligible.

56. The CBSA determined that all fasteners from China were subsidized. Applying the same approach as outlined above, the volume of subsidized stainless steel screws from China, measured in kilograms, represents 2.48 percent of the total volume of stainless steel screws that were released into Canada from all countries during 2003 and that are like products to the subsidized goods.

57. *SIMA* defines “negligible” in respect of the volume of dumped goods only, and no definition is provided for “negligible” in respect of subsidized goods. However, paragraph 10 of Article 27 of the World Trade Organization (WTO) *Agreement on Subsidies and Countervailing Measures*¹⁵ provides for a 4 percent negligibility threshold for developing countries, which include China.¹⁶

13. Subsection 2(1) of *SIMA* which defines “negligible”, reads in part as follows:

“negligible” means, in respect of the volume of *dumped goods* of a country,

(a) less than three per cent of the total volume of goods that are released into Canada from all countries and that are *of the same description as the dumped goods*. [Emphasis added]

14. The Tribunal gathered data on imports measured in both kilograms and thousands of units. However, it is of the view that kilograms are a more appropriate measure of the volume of imports in this instance because its approach to estimate volume is based on the volume of imports reported by Statistics Canada, which is measured in kilograms.

15. 15 April 1994, online: World Trade Organization <http://www.wto.org/English/docs_e/legal_e/final_e.htm> [*Subsidies Agreement*]. Paragraph 10 of Article 27 reads in part as follows:

Any countervailing duty investigation of a product originating in a developing country Member shall be terminated as soon as the authorities concerned determine that:

(b) the volume of the subsidized imports *represents less than 4 per cent* of the total imports of the like product in the importing Member, unless imports from developing country Members whose individual shares of total imports represent less than 4 per cent collectively account for more than 9 per cent of the total imports of the like product in the importing Member. [Emphasis added]

16. As China is listed under Part I of the Development Assistance Committee’s List of Aid Recipients maintained by the Organisation for Economic Co-operation and Development, the CBSA extended developing country status to China for purposes of this investigation.

58. In the Tribunal's view, the 4 percent negligibility threshold for developing countries is applicable to China. This is consistent with section 41.2 of *SIMA*, which provides that the CBSA shall, in an investigation respecting the subsidizing of any goods, take into account the provisions of paragraph 10 of Article 27 of the *Subsidies Agreement*. Accordingly, since *SIMA* provides that the CBSA must terminate its investigation if the volume of the subsidized imports into Canada from a developing country represents less than 4 percent of the total imports of the like products, the Tribunal is of the opinion that it should interpret subsection 42(4.1) of *SIMA* in light of section 41.2 of *SIMA* and apply the same threshold. Accordingly, the Tribunal determines that the volume of subsidized imports of stainless steel screws from China is negligible.

59. Having determined that the volume of both dumped and subsidized imports of stainless steel screws from China is negligible, pursuant to subsection 42(4.1) of *SIMA*, the Tribunal hereby terminates its inquiry in respect of those goods.

Like Goods and Classes of Goods

60. In the preliminary injury inquiry,¹⁷ the Tribunal noted that the arguments made in support of more than one class of goods merited further consideration. Accordingly, the Tribunal requested the CBSA to collect additional information on the dumping and subsidizing of the subject goods in terms of several potential classes of goods. On October 29, 2004, the Tribunal informed parties that, in order to facilitate the conduct of the inquiry, it would issue a ruling on classes of goods prior to the hearing. The Tribunal invited parties to make submissions on the matter. Leland, the Coalition and Star Pipe Products Inc. (Star Pipe) responded.

61. Leland claimed that there was only a single class of goods. It argued, among other things, that all types of fasteners are made largely by the same producers, have common methods of manufacture, have the same channels of distribution, share the same physical characteristics, and have the same end use, namely, joining or fastening metal, wood or other materials. Leland submitted that there is substitutability between screws and bolts, as well as between stainless steel fasteners and carbon steel fasteners. Leland further submitted that jurisprudence indicates that the practical considerations in favour of determining whether there is more than one class of goods must be taken into account.

62. On the other hand, the Coalition submitted that the like goods should be divided into the following four classes: carbon steel screws, carbon steel nuts and bolts, stainless steel screws, and stainless steel nuts and bolts. With respect to carbon steel fasteners and stainless steel fasteners, the Coalition contended that they are not manufactured using the same input material, in that stainless steel is highly corrosion-resistant and fasteners made of this material are used in applications where corrosion is a concern. Even if an application does not require the attributes of stainless steel, no substitution between carbon and stainless steel will take place because stainless steel is substantially more expensive. Comparing screws to nuts and bolts, the Coalition submitted that they are distinct products with distinct characteristics; that is, screws are not comparable to nuts and bolts in terms of either physical characteristics or end uses.

63. Star Pipe argued that, if the Tribunal were to determine that alloy steel fasteners are part of the subject goods, a separate class of goods, alloy steel fasteners, should be created.

64. The Tribunal must determine whether domestically produced fasteners are "like goods" to the fasteners imported from China and Chinese Taipei.

17. *Fasteners* (28 June 2004), PI-2004-002 (CITT).

65. Subsection 2(1) of *SIMA* defines “like goods”, in relation to any other goods, as follows:

- (a) goods that are identical in all respects to the other goods, or
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

66. In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods, their method of manufacture, their market characteristics (such as substitutability, pricing and distribution) and whether the goods fulfil the same customer needs.

67. The evidence indicates that, for each specific type of fastener, domestically produced fasteners are manufactured by methods and according to standards that also apply to the subject goods; they have the same physical characteristics, they have similar end uses; and they fulfil the same or similar customer needs.¹⁸ It is clear to the Tribunal that the various types of fasteners produced by domestic producers generally compete directly with the comparable types of the subject goods.¹⁹

68. Accordingly, the Tribunal finds that domestically produced fasteners are like goods to the fasteners imported from China and Chinese Taipei.

69. In addressing the issue of classes of goods, the Tribunal must determine whether the alleged separate classes of goods constitute “like goods” to each other.

70. Consequently, in determining whether there is more than one class of goods, the Tribunal will look at the factors that it generally considers in connection with the issue of like goods.²⁰ If the allegedly separate classes of goods constitute “like goods” to each other, they will be regarded as comprising a single class of goods.²¹ In the event that the Tribunal finds that there is more than one class of goods, a separate injury analysis will have to be conducted in respect of each class of goods.

71. First, comparing screws to nuts and bolts, it is clear that they do not possess the same physical characteristics. Screws and nuts and bolts have major differences. A bolt is defined under the *Inch Fastener Standards*²² as a headed and externally threaded mechanical device designed for insertion through holes in assembled parts to mate with a nut and is normally intended to be tightened or released by turning that nut. A screw is a headed and externally threaded mechanical device possessing capabilities which permit it to be inserted into holes in assembled parts, of mating with a preformed internal thread or forming its own thread, and of being tightened or released by torquing its head. In addition to differences in terms of head and thread design, a major distinction between screws and nuts and bolts is that bolts are normally mated together with a nut in order to fasten, while a screw will fasten on its own. Bolts may also be used without a nut if the bolt

18. *Transcript of Public Hearing*, Vol. 6, 13 December 2004, at 1319.

19. *Transcript of Public Hearing*, Vol. 4, 9 December 2004, at 879, 964, 965; *Transcript of Public Hearing*, Vol. 5, 10 December 2004, at 1117.

20. See, for example, *Hot-rolled Carbon Steel Plate* (27 June 2000), NQ-99-004 at 18 (CITT).

21. See, for example, *Thermal Insulation Board* (11 April 1997), NQ-96-003 at 10 (CITT). In reaching its decision on classes of goods in the present inquiry, the Tribunal took into consideration the responses to the request for information sent on June 9, 2004, to parties to the preliminary injury inquiry and to selected purchasers of carbon steel and stainless steel screws, nuts and bolts. The request sought additional information on fasteners made of carbon steel and stainless steel, and on screws, nuts and bolts, with respect to their physical characteristics, methods of manufacture, channels of distribution, prices, end uses, competition in the market and substitutability.

22. Industrial Fasteners Institute, 7th ed. at N-50—N-53.

is inserted into a receptacle that is internally threaded to match the external thread of the bolt.²³ Moreover, the Tribunal notes that screws and nuts and bolts do not fulfill the same customer needs. With regard to this last point, when asked whether screws and nuts and bolts fulfill the same customer needs, 37 respondents to the Tribunal's request for information in the preliminary injury inquiry regarding the characteristics and uses of these fasteners answered in the negative, while only 4 respondents answered in the affirmative.²⁴

72. As to market characteristics, although screws and nuts and bolts are sold through the same channels of distribution, there exist significant differences in prices between them. When asked whether there are differences in price between screws and nuts and bolts, 39 respondents answered in the affirmative, while only 1 responded in the negative.²⁵ For example, Cardinal qualified its response by observing that the costs for the material to make screws, nuts and bolts are the same, but the manufacturing costs are very different. Bolts are generally heavier, use more steel and are larger in diameter as they are used for their strength.²⁶ Accordingly, the Tribunal determines that one division of the like goods should be between screws, on the one hand, and nuts and bolts, on the other.²⁷

73. Dealing now with carbon steel fasteners and stainless steel fasteners, the Tribunal notes that, given the particular corrosion-resistant properties of stainless steel fasteners, they cannot be said to have the same physical characteristics as carbon steel fasteners. The evidence also shows that stainless steel fasteners are not substitutable for carbon steel fasteners in applications where strength is an issue and that, even in those applications where they are substitutable, the higher price is definitely an obstacle to their use.²⁸ When asked whether carbon steel fasteners and stainless steel fasteners fulfil the same customer needs, 36 respondents to the Tribunal's request for information answered in the negative, while only 4 respondents answered in the affirmative.

74. Despite the fact that carbon steel fasteners and stainless steel fasteners are generally manufactured using the same equipment²⁹ and have the same channels of distribution, the Tribunal finds that these similarities are offset by the important differences noted above in terms of physical characteristics, end uses and pricing. The Tribunal is therefore of the opinion that, on the basis of these distinctions, the like goods should further be divided between stainless steel and carbon steel fasteners.

75. For the above reasons, the Tribunal determines that the like goods should be divided into four classes: carbon steel screws, carbon steel nuts and bolts, stainless steel screws, and stainless steel nuts and bolts. The Tribunal will therefore conduct a separate analysis for each of these four classes of goods.

23. Tribunal Exhibit NQ-2004-005-49 (single copy exhibit), Administrative Record of Preliminary Injury Inquiry No. PI-2004-002, Vol. 5A at 64.

24. Tribunal Exhibit NQ-2004-005-49 (single copy exhibit), Administrative Record of Preliminary Injury Inquiry No. PI-2004-002, Vols. 5 and 5A.

25. Tribunal Exhibit NQ-2004-005-49 (single copy exhibit), Administrative Record of Preliminary Injury Inquiry No. PI-2004-002, Vols. 5 and 5A.

26. Tribunal Exhibit NQ-2004-005-49 (single copy exhibit), Administrative Record of Preliminary Injury Inquiry No. PI-2004-002, Vol. 5A at 47.

27. Although it could be said that a nut and a bolt do not have the same physical characteristics, the Tribunal is of the view that they complement each other, and nuts cannot be used without bolts. This is, in the Tribunal's view, sufficient for nuts and bolts together to constitute a class on their own.

28. Tribunal Exhibit NQ-2004-005-49 (single copy exhibit), Administrative Record of Preliminary Injury Inquiry No. PI-2004-002, Vols. 5 and 5A.

29. Twenty-one respondents answered "Yes" to this question, and nine respondents answered "No".

Domestic Industry

76. Subsection 2(1) of *SIMA* defines “domestic industry” in part as follows:

the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

77. The Tribunal must therefore assess injury against the domestic producers as a whole, or those domestic producers whose production represents a major proportion of the total production of like goods. In the present inquiry, since the Tribunal has determined that there are four classes of goods, it must identify the domestic producers that constitute the domestic industry for each of: carbon steel screws, carbon steel nuts and bolts, stainless steel screws, and stainless steel nuts and bolts.

78. As part of its directions for argument, the Tribunal invited submissions on whether it is appropriate in the present inquiry to exclude any producers from the domestic industry, given that some producers are themselves importers of dumped or subsidized fasteners, or might be related to exporters of such goods.

79. Parties in support of an injury finding submitted that the Tribunal’s discretion to exclude a producer from the domestic industry should be interpreted in light of the facts and that the Tribunal should exclude those producers that oppose an injury finding. As to those producers that import the subject goods and support an injury finding, parties referred to the Tribunal’s decision in *Copper Pipe Fittings*,³⁰ where the Tribunal concluded that to disentitle a producer from relief under *SIMA* because that producer imports subject goods would be denying that producer recourse to the Tribunal. In light of that case, the parties in support of an injury finding argued that the producers such as Hold-Tite, which import the subject goods, must be included as part of the domestic industry.

80. Infasco made reference to *Refill Paper*,³¹ in which the Tribunal stated that its discretion to exclude a producer from the domestic industry must be exercised in good faith and in such a way as to promote the policy and object of *SIMA*. In light of this reasoning, Infasco argued that it should not be excluded from the domestic industry, given the small proportion of its sales of the subject goods compared to its total sales and the fact that it was essentially engaged in defensive imports. By contrast, Infasco argued that Paulin and Robertson should be excluded from the domestic industry because their imports are significantly larger than their own domestic production and similarly because their sales from imports are much larger than their sales of domestic production in Canada. Moreover, Infasco asserted that Paulin’s and Robertson’s motives to import were aggressive rather than defensive and were intended to better position themselves against Infasco.

81. On the other hand, the Coalition stressed the importance of imports in the market, given that the domestic industry cannot produce all types of fasteners. The Coalition’s position was that the Tribunal should not exclude any producer from the domestic industry. It submitted that this provision in subsection 2(1) of *SIMA*, which was derived from a provision of the former anti-dumping agreement that was carried forward to the current WTO agreement, was intended to prevent a domestic industry being deprived of a legitimate remedy because of the imports of another producer. With respect to Paulin and

30. (18 October 1993), NQ-93-001 (CITT).

31. (27 September 1996), NQ-96-001 (CITT).

Robertson, the Coalition emphasized that they were significant players in the domestic industry and that their experience was relevant in the context of the Tribunal's injury assessment.

82. In order to determine whether it is appropriate to exclude the producers that imported the subject goods over the period of inquiry, the Tribunal took into consideration the following criteria: whether the exclusion of one or more domestic producers would negate the existence of a domestic industry; whether the goods that were imported were manufactured by other domestic producers; and whether the goods were imported as a defensive measure against other imports of the subject goods. In order to determine whether the volume of imports of the subject goods by a domestic producer justifies its exclusion from the domestic industry, the Tribunal paid special attention to the criteria that were considered in *Refill Paper* and in particular to the ratio of a producer's sales of imports of the subject goods to its total sales in the domestic market.

83. The fact that a producer is claiming injury is not a factor to be weighed by the Tribunal when it exercises its discretion to exclude from the domestic industry a producer that imports the subject goods or is related to an exporter of such goods, except when excluding this producer would negate the existence of a domestic industry.

84. On the basis of the foregoing, the Tribunal will determine what constitutes the domestic industry for the purposes of assessing injury for each of the four classes of goods.

Carbon Steel Screws

85. The Tribunal finds it appropriate to exclude Hold-Tite, Ideal, Paulin and Robertson from the domestic industry. Over the period of inquiry, sales³² of imports of the subject carbon steel screws, as a percentage of total sales of carbon steel screws, were very high for each of these four companies.³³ In the Tribunal's view, given their relative volumes over the period of inquiry, these goods were not imported as a defensive measure.

86. The Tribunal finds that the production of Arrow, Leland, Ready Rivet, Visqué and Westland, which are all claiming injury, constitutes a major proportion of the total domestic production of carbon steel screws³⁴ and that these five companies therefore constitute the domestic industry for purposes of an injury analysis in this product class.

Carbon Steel Nuts and Bolts

87. The Tribunal finds it appropriate to exclude Paulin and Ready Rivet from the domestic industry. For each of these two companies, the proportion of sales of imports of the subject carbon steel nuts and bolts to their total sales of carbon steel nuts and bolts was very high over the period of inquiry.³⁵ The Tribunal sees no reason however to exclude Infasco, given that its sales of imports of the subject carbon steel nuts

32. The Tribunal only collected data on sales of imports and sales of domestically produced goods measured in thousands of units, reflecting standard industry selling practices.

33. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41B (protected), Administrative Record, Vol. 2.1A at 535.

34. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41B (protected), Administrative Record, Vol. 2.1A at 525.

35. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41B (protected), Administrative Record, Vol. 2.1A at 546.

and bolts represented a far less significant proportion of its total sales of carbon steel nuts and bolts. Moreover, the Tribunal is of the view that these goods were not imported as an aggressive measure.³⁶

88. The Tribunal finds that the production of Infasco and Leland, which are claiming injury, constitutes a major proportion of the total domestic production of carbon steel nuts and bolts³⁷ and that these companies therefore constitute the domestic industry for purposes of an injury analysis in this product class.

Stainless Steel Screws

89. The Tribunal finds it appropriate to exclude Hold-Tite and Paulin from the domestic industry. Over the period of inquiry, sales of imports of the subject stainless steel screws for each of these two companies, as a percentage of their total sales of stainless steel screws, were very high.³⁸ Moreover, the Tribunal is of the view that these goods were not imported as a defensive measure, given their relative volumes during the period of inquiry.

90. The Tribunal finds that the production of Arrow, Leland and Westland, which are claiming injury, constitutes a major proportion of the total domestic production of stainless steel screws³⁹ and that these companies therefore constitute the domestic industry for purposes of an injury analysis in this product class.

91. The Coalition contended that to exclude Paulin from the stainless steel screw domestic industry would be unfair. It argued that, had the complaint that led to this case initially been made only in respect of stainless steel screws, the CBSA might never have initiated an investigation in respect of this product. The Tribunal sees no merit to this argument, as it is based on mere speculation.

Stainless Steel Nuts and Bolts

92. The Tribunal finds it appropriate to exclude Paulin from the domestic industry. The sales of imports of the subject stainless steel nuts and bolts for this company as a percentage of its total sales of stainless steel nuts and bolts were very high during the period of inquiry. The Tribunal is also of the view that, given their relative volumes over the period of inquiry, these goods were not imported as a defensive measure.

93. Given that Leland, the remaining producer of stainless steel nuts and bolts in 2004, is not claiming injury or threat of injury from any injury finding issued by the Tribunal in this inquiry in respect of this class of goods, the Tribunal consequently finds that there is no injury or threat of injury to the domestic industry for stainless steel nuts and bolts.

94. Accordingly, for the remainder of its injury analysis, the Tribunal will deal with only three classes of goods: carbon steel screws; carbon steel nuts and bolts; and stainless steel screws.

36. *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 356-57.

37. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41A (protected), Administrative Record, Vol. 2.1A at 414.

38. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41B (protected), Administrative Record, Vol. 2.1A at 554.

39. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41A (protected), Administrative Record, Vol. 2.1A at 427 (for Leland and Westland); Tribunal Exhibit NQ-2004-005-08.09B (protected), Administrative Record, Vol. 4 at 253.11 (for Arrow, converted to kilograms by the Tribunal's staff).

Cumulation

95. Pursuant to subsection 42(3) of *SIMA*, the Tribunal is required, when conducting an inquiry under subsection 42(1), to make an assessment of the cumulative effect of the dumping or subsidizing of the goods that are imported into Canada from more than one country if it is satisfied that the following conditions are met:

(a) the margin of dumping or the amount of the subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and

(b) an assessment of the cumulative effect would be appropriate taking into account the conditions of competition between goods to which the preliminary determination applies that are imported into Canada from any of those countries and

(i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or

(ii) like goods of domestic producers.

96. Given the Tribunal's decision in paragraph 59 above with respect to stainless steel screws from China, a separate assessment of the cumulative effect of the dumping and subsidizing of the goods is required for the two classes of goods where cumulation is an issue, i.e. carbon steel screws and carbon steel nuts and bolts.

97. The CBSA's final determination indicates that the margins of dumping and the amounts of subsidy in relation to the subject goods from China are not insignificant.⁴⁰ The CBSA's final determination also indicates that the margin of dumping in relation to the goods from Chinese Taipei is not insignificant.⁴¹

98. Applying the approach explained above in the preliminary matter section of this statement of reasons, the Tribunal considered for cumulation the volume of imports of the subject goods from both China and Chinese Taipei, for each of the two classes of goods, from a dumping and, where applicable, from a subsidizing perspective. The Tribunal has determined that the volumes for these two countries were not negligible with respect to carbon steel screws and carbon steel nuts and bolts.

99. If the Tribunal determines that the requirements for cumulation are satisfied, it will make an assessment of the cumulative effects of the dumped and subsidized imports.⁴²

40. Subsection 2(1) of *SIMA* defines the term "insignificant" in part to mean "in relation to a margin of dumping, a margin of dumping that is less than two per cent of the export price of the goods" and "in relation to an amount of subsidy, an amount of subsidy that is less than one per cent of the export price of the goods". However, in this inquiry, as China is considered a developing country, the threshold for an amount of subsidy to be considered insignificant is 2 percent.

41. The CBSA did not provide separate margins of dumping for the separate classes of goods. However, the final determination shows that 98.23 percent of the subject imports from China were dumped, with a weighted average margin of dumping of 71.95 percent and that the totality of these imports was subsidized. In light of this very high percentage, and on the basis of the best available information, the Tribunal concludes that the margins of dumping and the amounts of subsidy in relation to the imports for each class of goods from China would also not be insignificant. The same is equally applicable with respect to the margins of dumping in relation to imports from Chinese Taipei for each of the separate classes of goods.

42. See *Grain Corn* (7 March 2001), NQ-2000-005 at 13-14 (CITT); *Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 at 14 (CITT); *Stainless Steel Wire* (30 July 2004), NQ-2004-001 at 9-11 (CITT).

100. In determining whether it would be appropriate to make an assessment of the cumulative effect on the domestic industry of the dumping and subsidizing of the subject goods, the Tribunal must consider the conditions of competition in the domestic marketplace between the subject goods, as well as between the subject goods and the like goods. In making this assessment, the Tribunal typically considers the following factors: the degree to which goods from each subject country are interchangeable with goods from the other subject countries and with the like goods; the presence or absence of sales or offers to sell in the same geographical markets of imports from different subject countries and of the like goods; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries and of the availability of like goods supplied by the domestic industry.⁴³ However, the Tribunal does not consider that this list of factors is necessarily exhaustive or that any single factor is necessarily determinative.⁴⁴

101. There was considerable evidence of competition in the same geographical markets between domestically produced carbon steel screws and carbon steel screws imported from China and Chinese Taipei, and between imports of carbon steel screws from each of those two countries. The evidence indicates that, for the same type of carbon steel screw, domestic carbon steel screws and carbon steel screws imported from China and Chinese Taipei are generally fungible. Domestically produced carbon steel screws generally compete head-to-head with carbon steel screws imported from China and Chinese Taipei in terms of pricing and quality, and are sold through the same distribution channels. The same applies in respect of the competition that takes place between carbon steel screws imported from China and those imported from Chinese Taipei.⁴⁵

102. The Tribunal is of the view that, taking into account the overall conditions of competition, it is appropriate to make an assessment of the cumulative effect of the dumping and subsidizing of carbon steel screws from China and Chinese Taipei. The rationale expressed above to cumulate imports of carbon steel screws from China and Chinese Taipei is also, *mutatis mutandis*, applicable with respect to the cumulation of imports of carbon steel nuts and bolts from China and Chinese Taipei.⁴⁶

Injury

103. Subsection 37.1(1) of the *Special Import Measures Regulations*⁴⁷ prescribes certain factors for the purposes of determining whether the dumping or subsidizing of goods has caused injury to the domestic industry. Subsection 37.1(3) also requires the Tribunal to consider factors other than the dumping and the subsidizing to ensure that any injury caused by those other factors is not attributed to the effects of the dumped or subsidized imports.

104. As already indicated, the Tribunal will assess injury separately for carbon steel screws, carbon steel nuts and bolts and stainless steel screws.

105. As noted above in its consideration of negligibility, the Tribunal is of the view that kilograms are a more appropriate unit of measure for import volumes than thousands of units. Accordingly, for better consistency when assessing import volumes and production volumes, the Tribunal will refer to production measured in kilograms, rather than in thousands of units. The Tribunal will also consider dollars per

43. See *Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 at 16 (CITT).

44. See *Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 at 16 (CITT).

45. *Transcript of Public Hearing*, Vol. 4, 9 December 2004, at 682, 879, 965; *Transcript of Public Hearing*, Vol. 5, 10 December 2004, at 1138; *Transcript of Public Hearing*, Vol. 6, 13 December 2004, at 1231.

46. *Transcript of Public Hearing*, Vol. 5, 10 December 2004, at 984, 1117, 1119.

47. S.O.R./84-927 [*Regulations*].

kilogram rather than dollars per thousand units when assessing unit import costs. The Tribunal assessed the domestic market only in terms of thousands of units, given that it was the unit of measure in which data were generally available from producers and importers, reflecting the industry practice of accounting for sales in thousands of units.

106. The Tribunal notes that product mix is an issue of concern in most *SIMA* cases because it is unusual to find either a domestic industry or a group of importers that produces or imports, respectively, the identical assortment of goods year after year. That said, the Tribunal acknowledges the especially large number of different products at play in this case, and the potential impact on the comparability of results over time. To address this issue, the Tribunal compared the trends in domestic production over the period of inquiry measured in kilograms and thousands of units and did the same with respect to imports. It found that, for the most part, there was little difference in the overall direction of change regardless of the units of measure. Accordingly, the Tribunal is not convinced that any year-to-year variations in product mix are of a sufficient magnitude to prevent it from drawing conclusions about trends in key performance indicators, including domestic production, imports and sales, as well as unit import costs and selling prices.

Carbon Steel Screws⁴⁸

– Volume of Dumped and Subsidized Goods

107. The subject countries were the principal source of imports of carbon steel screws throughout the period of inquiry, accounting for at least 60 percent of the total volume of imports. Between 2001 and 2003, imports from the subject countries increased steadily, growing by some 16 million kg, or by nearly 60 percent. By comparison, imports from non-subject countries were essentially flat, increasing by only 500,000 kg.⁴⁹

108. Between 2001 and 2003, the domestic market for carbon steel screws grew by 6 billion units, or by 30 percent. Notwithstanding the robust market growth, both the domestic industry's production⁵⁰ and sales declined steadily, each falling by approximately 15 percent between 2001 and 2003. The situation improved in the first six months of 2004, as the domestic industry was able to benefit in some measure from the expanding market, which grew by more than 20 percent.⁵¹

109. The Tribunal notes that the percentage decreases in production and related sales by the producers that it determined are not part of the domestic industry were at least twice what they were for the producers that constitute the domestic industry.⁵² Further, the Tribunal notes that, between 2001 and 2003, the producers in the former group generally increased their reliance on imports from the subject countries as a

48. Information in this section relating to the "domestic industry" was derived from data contained in the Tribunal's staff report tables and from protected information contained in the questionnaire responses of the five domestic producers that the Tribunal determined constituted the domestic industry for carbon steel screws.

49. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 51.

50. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40B, Administrative Record, Vol. 1.1A at 525; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41B (protected), Administrative Record, Vol. 2.1A at 525; *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 56.

51. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 56.

52. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41B (protected), Administrative Record, Vol. 2.1A at 525; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41 (protected), Administrative Record, Vol. 2.1 at 170.

means of serving the domestic market.⁵³ In the Tribunal's view, this supports the conclusion that the domestic producers that it excluded from the domestic industry had chosen to abandon domestic production of carbon steel screws in favour of imports from the subject countries.

110. The Tribunal considers that most of the growth in the domestic market for carbon steel screws that occurred over the period of inquiry was taken up by imports from the subject countries. In this regard, the Tribunal notes that the market share held by the domestic industry declined by more than one third over the period of inquiry. In comparison, the market share held by the subject countries rose from 46 percent in 2001 to 56 percent in 2003, having reached a high of 62 percent in the first half of 2003, and then fell back to approximately 50 percent in the first six months of 2004. The increase in the market share held by the subject countries was fuelled by a 60 percent increase in their sales between 2001 and 2003.⁵⁴

111. The Coalition submitted that the decrease in market share held by carbon steel screws from non-subject countries between 2001 and 2003 suggests that they were "the ones that lost out to subject goods", as opposed to the domestic industry.⁵⁵ The Tribunal is not persuaded by this argument and is of the view that the significant increase in the volume of the subject carbon steel screws not only displaced domestic market share but also had an impact on the market share of non-subject countries, which declined by some 10 percentage points, from 39 percent in 2001 to a low of 29 percent in the first half of 2003, with countries other than the United States leading the decline.⁵⁶

112. In sum, the Tribunal concludes that the declines in domestic production, domestic sales and domestic market share seen during the period of inquiry resulted from the significant increase in the volume of carbon steel screws imported from the subject countries.

– Effects of Dumped and Subsidized Goods on Prices

113. The Tribunal first notes that unit import costs for carbon steel screws were largely flat between 2001 and 2003, with virtually no change for the subject countries and only a 4 percent increase for non-subject countries. However, the trends diverged in the first six months of 2004, as unit import costs for the subject carbon steel screws rose by 10 percent, while those for non-subject goods fell by 9 percent, led by a 15 percent decline for goods from countries other than the United States.⁵⁷

114. The Tribunal also notes that unit import costs for the subject countries and non-subject countries other than the United States were generally of a similar value throughout the period of inquiry, whereas those for the United States were at least three times higher.⁵⁸ The Tribunal considers that these results could support the view that the product mix of carbon steel screws imported from the subject countries is similar to that of imports from non-subject countries other than the United States, whereas the product mix of imports from the United States is different.

115. In the Tribunal's opinion, the subject carbon steel screws and domestic carbon steel screws are, for the most part, commodity products driven by price. There was testimony by witnesses from Paulin, Robertson and others that the subject carbon steel screws compete with domestic carbon steel screws in the

53. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41B (protected), Administrative Record, Vol. 2.1A at 535.

54. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 56.

55. *Transcript of Public Argument*, 14 December 2004, at 110.

56. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 56.

57. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 54.

58. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 54.

market on the basis of price.⁵⁹ Further, the Tribunal notes that, in response to its market characteristics questionnaire, purchasers of carbon steel screws unanimously gave the advantage to imports from the subject countries in terms of having the lowest price.⁶⁰

116. The Tribunal does not consider that, in any particular year, the mix of products imported from the subject countries would have been identical to that produced by the domestic industry. However, the Tribunal is of the view that, over the entire range of carbon steel screws, there was sufficient competition between the subject and domestic carbon steel screws that the prices of the former directly affected the latter. The Tribunal also is of the view that products can often be imported in large quantities and kept in inventory and, even if they are not imported in the same year in which competing products are manufactured by the domestic industry, they can still have an impact on market prices.

117. Within the above context, the Tribunal notes that selling prices of imports from the subject countries fell steadily between 2001 and 2003, decreasing by some 14 percent, and undercut selling prices of the carbon steel screws produced by the domestic industry by at least 10 percent in each of 2002 and 2003. Over the same period, the domestic industry's selling prices for its carbon steel screws were generally stagnant, falling by 3 percent.⁶¹ The Tribunal therefore disagrees with the characterization by a witness from Robertson that there was stability for "price levels . . . in Canada" between 2001 and 2003, noting that, in fact, only the domestic industry's selling prices remained flat.⁶² The Tribunal is of the view that the inability of the domestic industry to increase selling prices for its carbon steel screws over this period, despite the strengthening market, was the result of price suppression and erosion caused by imports from the subject countries, which competed with domestic carbon steel screws primarily on the basis of price.

118. As to the possible effects of selling prices of imports from non-subject countries, the Tribunal first notes that the selling prices of imports from the United States were consistently above the domestic industry's selling prices for its carbon steel screws.⁶³ Accordingly, the Tribunal does not consider that the decline in U.S. selling prices by about one quarter over the period of inquiry⁶⁴ could have been responsible for the domestic industry's stagnant selling prices.

119. In comparison, the Tribunal notes that the selling prices of imports from other non-subject countries were the lowest in the market throughout the period of inquiry. The Tribunal also notes that the selling prices of carbon steel screws from other non-subject countries increased by only 5 percent between 2001 and 2003 and were essentially flat in the first half of 2004.⁶⁵ The Tribunal is of the view that imports from the subject countries were also competing on the basis of dumped and subsidized selling prices with imports from non-subject countries other than the United States. Although the low selling prices of imports from these other non-subject countries may have had an impact on the selling prices of the domestic industry, the Tribunal is of the opinion that the dumped and subsidized prices of carbon steel screws from the subject countries had a more significant impact.

120. Even in the first six months of 2004, the Tribunal notes that, on average, the domestic industry reported that it was unable to achieve an increase in the selling price of its carbon steel screws. During this

59. *Transcript of Public Hearing*, Vol. 1, 6 December 2004, at 294, Vol. 4, 9 December 2004, at 691-92, 806-807, 880, 894, 1004-1006, Vol. 6, 13 December 2004, at 1237.

60. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40A, Administrative Record, Vol. 1.1A at 324.

61. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 58.

62. *Transcript of Public Hearing*, Vol. 4, 9 December 2004, at 796-97.

63. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 58.

64. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 58.

65. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 58.

period, selling prices of imports from the subject countries, the United States and other non-subject countries saw, respectively, an increase of more than 20 percent, a decrease of 16 percent and an increase of 2 percent. Of note is that selling prices for the subject carbon steel screws rose above the domestic industry's selling prices for the first time since 2001.⁶⁶ In the Tribunal's view, one possible explanation for these results is that the domestic industry strove to regain market share by not matching the price increases of the subject countries, while at the same time responding to heightened competition from imports from the United States, which also gained market share in the first six months of 2004.

121. On the basis of the foregoing, the Tribunal concludes that the decline in selling prices of imports from the subject countries between 2001 and 2003 suppressed and eroded the selling prices of the domestic industry for its carbon steel screws over the same period and, further, that it facilitated the significant increase in imports and sales of the subject carbon steel screws and the concomitant loss of production, sales and market share by the domestic industry.

– Impact on the Domestic Industry

122. The Tribunal is of the view that the increasing presence of imports of carbon steel screws from the subject countries had widespread negative impacts on the domestic industry. In fact, the Tribunal notes that the parties opposing the complaint were not denying so much that the domestic industry had suffered injury as they were arguing that the cause of that injury rested with factors other than the presence of the subject carbon steel screws in the market. While noting these other factors, some of which are dealt with below, the Tribunal is nevertheless of the view that the dumped and subsidized carbon steel screws were a very significant cause of injury to the domestic industry.

123. First, the decrease in production volumes previously noted would have caused lower capacity utilization and, therefore, higher unit costs of production. The Tribunal heard testimony on the negative consequences of shorter production runs and of letting machines remain idle.⁶⁷

124. Moreover, there is evidence that the domestic industry is gradually being forced to abandon the high volume or "bread and butter" products and has been relegated to the role of fill-in supplier or producer of specialty products.⁶⁸ The Tribunal also heard testimony that the domestic industry has the capacity to expand production significantly and would do so if anti-dumping and countervailing measures remained in place.⁶⁹

125. The Tribunal notes the domestic industry's plummeting gross margin over the period of inquiry, which stood some 75 percent lower in mid-2004 than in 2001. In the Tribunal's view, these losses, which represent some \$3 million over the period of inquiry, are material, given that the domestic industry's total

66. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 58.

67. *Transcript of Public Hearing*, Vol. 3, 8 December 2004, at 504-505, 508, 509, 511, 513-14; *Transcript of In Camera Hearing*, Vol. 3, 10 December 2004, at 282; Producer's Exhibit V-01, para. 14, Administrative Record, Vol. 11A.

68. *Transcript of Public Hearing*, Vol. 3, 8 December 2004, at 508-511, 629-30; *Transcript of In Camera Hearing*, Vol. 2, 8 December 2004, at 159, 160, 253; *Transcript of Public Hearing*, Vol. 1, 6 December 2004, at 20, 235, 236, 268, 269; *Transcript of In Camera Hearing*, Vol. 1, 7 December 2004, at 75, 76, 79, 112, 113; Producer's Exhibit A-03, paras. 32, 72, 73, 74, 75, 76, Administrative Record, Vol. 11.

69. *Transcript of Public Hearing*, Vol. 1, 6 December 2004, at 235-36; *Transcript of In Camera Hearing*, Vol. 1, 7 December 2004, at 54-58; *Transcript of In Camera Hearing*, Vol. 3, 8 December 2004, at 193-95.

sales were \$58 million over the same three and a half years.⁷⁰ It is reasonable to conclude that the decline of the domestic industry's gross margins over the period of inquiry was largely due to the dumped and subsidized imports from China and Chinese Taipei.

126. With respect to other indicators of injury, the Tribunal notes the testimony of a witness from Visqué, among others, as to the lay-offs and work sharing programs that were implemented during the period of inquiry.⁷¹

127. In sum, the Tribunal is persuaded that the domestic industry incurred injury during the period of inquiry, which injury is attributable to the dumped and subsidized imports of carbon steel screws from the subject countries.

– Factors Other Than Dumping and Subsidizing

128. Parties opposed to an injury finding submitted that a variety of other factors were responsible for the injury suffered by the domestic fastener industry, without necessarily indicating to which specific classes of goods their submissions applied. However, the Tribunal is of the view that the following factors can be appropriately discussed in the context of carbon steel screws, even if parties did not explicitly refer to carbon steel screws in their submissions on these factors.

Imports from Non-subject Countries

129. The Tribunal notes that the sales of carbon steel screws from the United States rose by more than one third between 2001 and 2003, while those from other non-subject countries increased by only 3 percent. However, in the first six months of 2004, sales of carbon steel screws from all non-subject countries increased significantly, rising by more than 85 percent compared to the same period in 2003. Between 2001 and 2003, the selling prices from the United States fell by nearly 30 percent, while those from other non-subject countries increased by 5 percent. In the first half of 2004, the selling prices for U.S. carbon steel screws continued to decline, while those for carbon steel screws from other non-subject countries were essentially flat.⁷²

130. The Tribunal is of the view that, although these results may have contributed to the injury suffered by the domestic industry during this period, in light of the competition between the subject countries and the non-subject countries other than the United States, the impact is not material, given that these other non-subject countries appeared to be at the very low end of the market. Imports from the United States traded at much higher prices than domestic goods. Accordingly, the Tribunal does not consider that carbon steel screws from non-subject countries were the cause of the price erosion and suppression suffered by the domestic industry, nor were they the cause of the declines seen in the domestic industry's gross margin.

Export Sales

131. The Tribunal did not collect information on export sales by class of goods. However, the evidence on the record indicates that the vast majority of exports by the domestic fastener industry are carbon steel

70. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41B (protected), Administrative Record, Vol. 2.1A at 537.

71. *Transcript of Public Hearing*, Vol. 3, 8 December 2004, at 515; *Transcript of In Camera Hearing*, Vol. 2, 8 December 2004, at 259.

72. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 58.

nuts and bolts destined for the United States.⁷³ Accordingly, any fluctuations in export sales of carbon steel screws that occurred during the period of inquiry would not have had a material impact on the performance of the domestic carbon steel screw industry.

VMI

132. The Coalition argued that VMI services are an important development in fastener distribution that provide importers/distributors with a competitive advantage over the domestic industry.⁷⁴ The Tribunal heard extensive evidence on the range of services offered under the umbrella of VMI, including the use of electronic data interchange, as well as various tracking systems and other inventory management techniques. VMI services are offered to varying degrees by both importers/distributors and domestic producers. For example, there was evidence that both Leland and Visqué hold stock for customers and will deliver it on an as-requested basis. The Tribunal notes that, while domestic producers do not generally offer VMI services to the same extent as some distributors, the level of VMI services offered tended to depend on the degree to which the producer was engaged in the distribution function, over and above manufacture. That said, the Tribunal notes testimony in support of keeping these functions separate.⁷⁵

133. The Tribunal notes that purchasers, especially distributors, do not always demand VMI services. Moreover, there is nothing to preclude any seller from providing VMI services with domestically produced fasteners rather than with imported fasteners.

134. In the Tribunal's view, although VMI is an important service required by some customers, it does not represent a significant factor in the injury caused to the domestic industry. The Tribunal is of the further view that the domestic industry, facing constant pressure from the dumped and subsidized imports on its gross margin, was constrained in its ability to invest in these value-added services.⁷⁶

Skilled Labour

135. Robertson submitted that a shortage of skilled labour limits the domestic industry's ability to produce, which is in contrast to countries like China and Chinese Taipei, where there is an abundance of skilled labour to produce goods as they are required.⁷⁷ Paulin submitted that it was unable to run at full capacity due to a lack of skilled labour.⁷⁸ Whitesell and Ideal argued that, even if the domestic industry had sufficient capacity to produce, it would not be able to meet demand due to the lack of skilled labour.⁷⁹ Whitesell noted that it closed its manufacturing operations in 1999 due, in part, to a lack of qualified labour to run its manufacturing equipment.⁸⁰ Upon cross-examination, however, Robertson acknowledged that it

73. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41A (protected), Administrative Record, Vol. 2.1A at 273; *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 341.

74. *Transcript of Public Argument*, Vol. 1, 14 December 2004, at 150-54.

75. *Transcript of Public Hearing*, Vol. 1, 6 December 2004, at 283; *Transcript of Public Hearing*, Vol. 6, 13 December 2004, at 1353-54; *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 397-98; *Transcript of Public Hearing*, Vol. 3, 8 December 2004, at 568, 640-42.

76. *Transcript of Public Hearing*, Vol. 3, 8 December 2004, at 630-31. Tribunal Exhibit NQ-2004-005.08.08.A (protected), Administrative Record, Vol. 4 at 35.

77. Importer's Exhibit D-19, para. 14, Administrative Record, Vol. 13.

78. *Transcript of Public Hearing*, Vol. 5, 10 December 2004, at 1035.

79. Importer's Exhibit D-09, paras. 25-26, Administrative Record, Vol. 13; Importer's Exhibit D-07, para. 20, Administrative Record, Vol. 13.

80. Tribunal Exhibit NQ-2004-005-13.23, Administrative Record, Vol. 5A at 472.

had no evidence to substantiate its claim of a labour shortage,⁸¹ and Ideal admitted that it had had no problem in hiring skilled labour.⁸²

136. Leland and other witnesses for the domestic industry submitted that a lack of skilled labour was not a factor that limited increases in production.⁸³ Only Westland testified to facing a shortage of skilled labour, but, as the witness noted, this was likely due to the company's geographically isolated location.⁸⁴ Witnesses for the domestic industry also testified that increased production would not require additional skilled labour, but was a matter of using the currently available labour more efficiently.⁸⁵

137. Notwithstanding the differing views that the Tribunal heard on this subject, it is of the opinion that the supply of skilled labour is not a significant factor that affected the performance of the domestic industry.

Distribution Channels

138. A number of witnesses for the Coalition submitted that they were reluctant to purchase from the domestic industry, in particular from Leland, because of concerns that the supply chain would not be respected.⁸⁶ In other words, the concern was that, once a customer and its needs had been established, the domestic industry would seek to bypass the distributor and make sales directly to that end user.

139. Even accepting that there was some validity to the concerns expressed by some distributors, the Tribunal notes that these allegations were directed principally towards one producer and not towards the industry as a whole. In fact, according to witnesses from the Coalition, the domestic industry was largely well regarded.⁸⁷ Moreover, the Tribunal is not convinced that the concerns expressed by some of the distributors were entirely well founded in fact, although they might be honestly held beliefs. In any event, the Tribunal is of the view that such incidents, had they taken place, would have had little effect on the domestic industry's performance.

Mad Cow Disease and Droughts

140. The Coalition and several of its witnesses asserted that mad cow disease and droughts had had a negative impact on the domestic industry, in particular Leland, and to a lesser extent Westland, producers that focused on the agricultural sector.⁸⁸

141. First, the Tribunal notes that mad cow disease became an issue in Canada only in May 2003 and that droughts have been a concern in Western Canada for the past several years. Evidence adduced at the

81. *Transcript of Public Hearing*, Vol. 4, 9 December 2004, at 969.

82. *Transcript of Public Hearing*, Vol. 4, 9 December 2004, at 907.

83. *Transcript of Public Hearing*, Vol. 1, 6 December 2004, at 286; *Transcript of Public Hearing*, Vol. 3, 8 December 2004, at 595.

84. *Transcript of Public Hearing*, Vol. 4, 9 December 2004, at 710.

85. *Transcript of Public Hearing*, Vol. 1, 6 December 2004, at 286; *Transcript of Public Hearing*, Vol. 3, 8 December 2004, at 594-98.

86. Importer's Exhibit D-07, para. 16, Administrative Record, Vol. 13; Importer's Exhibit D-15, para. 13, Administrative Record, Vol. 13; Importer's Exhibit D-05, para. 12, Administrative Record, Vol. 13.

87. *Transcript of Public Hearing*, Vol. 6, 13 December 2004, at 1255, 1321.

88. Importer's Exhibit D-29, Administrative Record, Vol. 13; Importer's Exhibit D-01A, Tab 13, Administrative Record, Vol. 13; Importer's Exhibit D-21, para. 9, Administrative Record, Vol. 13; Importer's Exhibit D-03, para. 29, Administrative Record, Vol. 13; Importer's Exhibit D-07, para. 22, Administrative Record, Vol. 13.

hearing indicated that only 25 to 30 percent of Leland's total business addresses the agricultural sector⁸⁹ and that it has not experienced any significant decline in its agriculture-related business activity since the outbreak of mad cow disease.⁹⁰ In any event, to the extent that domestic producers, such as Leland, were affected by events in the agricultural sector, their performance is not reflective of the industry as a whole.

142. Further, the Tribunal notes the evidence of Fastener Warehouse, a distributor based in Western Canada, 80 percent of whose business is based on sales to the agricultural sector.⁹¹ Over the period of inquiry, Fastener Warehouse estimated that its sales had declined by only 10 percent as a result of mad cow disease.⁹²

143. In light of the above, the Tribunal is of the view that these particular difficulties in the agricultural sector did not have a significant effect on the performance of the domestic industry.

Exchange Rates

144. Between January 2003 and July 2004, the value of the Canadian dollar increased by approximately 15 percent relative to the U.S. dollar.⁹³ The Coalition argued that the appreciation in the value of the Canadian dollar had a negative impact on the financial performance of domestic producers that had a significant dependence on exports to the U.S. market.⁹⁴

145. As noted above, the Tribunal does not consider that exports are an especially significant factor in the domestic carbon steel screw industry. In any event, evidence before the Tribunal indicates that certain domestic carbon steel screw producers were able to increase export prices to help offset the effects of shifts in the exchange rate.⁹⁵ In other cases, the appreciation of the Canadian dollar had the effect of eroding the price premium earned on sales to the United States when those revenues were expressed in Canadian dollars.⁹⁶

All-or-nothing quotes

146. Witnesses from the Coalition submitted that domestic producers were unable to meet requests for all-or-nothing quotes (i.e. quotes on a full range of goods) and that the trend toward "one stop shopping" was growing.⁹⁷ The Coalition submitted that, since each domestic producer manufactures a limited range of products, they are unable to respond to such requests in the same manner as distributors.

147. The Tribunal notes that all-or-nothing quotes may include products not included within the scope of the goods covered by this inquiry, such as washers, rivets, caulking and other related products required by

89. *Transcript of Public Hearing*, Vol. 1, 6 December 2004, at 100.

90. *Transcript of Public Hearing*, Vol. 1, 6 December 2004, at 222.

91. *Transcript of Public Hearing*, Vol. 5, 10 December 2004, at 1163.

92. *Transcript of Public Hearing*, Vol. 5, 10 December 2004, at 1164.

93. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40A, Administrative Record, Vol. 1.1 at 300.

94. Importer's Exhibit D-11, para. 10, Administrative Record, Vol. 13; Importer's Exhibit F-01A, para. 24, Administrative Record, Vol. 13A; Importer's Exhibit D-03, para. 22, Administrative Record, Vol. 13.

95. *Transcript of In Camera Hearing*, Vol. 1, 7 December 2004, at 59; *Transcript of Public Hearing*, Vol. 3, 8 December 2004, at 585.

96. *Transcript of Public Hearing*, Vol. 3, 8 December 2004, at 660-61.

97. Importer's Exhibit D-17, para. 27, Administrative Record, Vol. 13; Importer's Exhibit D-05, para. 14, Administrative Record, Vol. 13; Importer's Exhibit D-04A (protected), para. 38, Administrative Record, Vol. 14A.

OEMs or do-it-yourself retailers. Notwithstanding that requests for such quotes represent a small proportion of all requests, domestic producers that also act as distributors are able to respond to all-or-nothing quotes simply by purchasing products that they do not manufacture from either other domestic producers or distributors, as necessary.⁹⁸ Also, the Tribunal is not convinced that requests for quotes on an all-or-nothing basis are standard practice between manufacturers and their customers. Further, in the Tribunal's view, there is nothing precluding distributors from offering "one-stop shopping" to their customers based on products produced by the domestic industry.

148. In light of the above, the Tribunal largely discounts any effect that such quotes may have had, if any, on the domestic industry's performance.

– Conclusion

149. The Tribunal is of the view that, taken together, these other factors may have contributed to the domestic industry's injury but that the dumping and subsidizing of carbon steel screws from the subject countries, taken alone, were a very significant cause of injury.

Carbon Steel Nuts and Bolts⁹⁹

– Volume of Dumped and Subsidized Goods

150. The Tribunal notes that, with the exception of the first six months of 2004, imports from the subject countries accounted for less than 50 percent of the total volume of imports of carbon steel nuts and bolts, with the United States being the single largest source of imports.¹⁰⁰

151. The volume of imports from the subject countries varied considerably between 2001 and 2003, rising by 13 percent in 2002 and then falling back by 18 percent in 2003. Overall, between 2001 and 2003, the volume of carbon steel nuts and bolts from the subject countries declined by 7 percent or by 1.5 million kg. Imports from non-subject countries also fell, but only by some 1.0 million kg, as imports from the United States declined by 1.6 million kg, while those from other non-subject countries increased by 600,000 kg.¹⁰¹

152. In 2002, domestic production of carbon steel nuts and bolts increased substantially, rising by 17 percent, which growth was all taken up by Infasco, the largest¹⁰² domestic producer. In the following year, however, production volumes contracted, so that, between 2001 and 2003, production was essentially stable.¹⁰³

153. The domestic market for carbon steel nuts and bolts, after declining by 20 percent in 2002, returned in 2003 to its 2001 level, thus showing no net growth between 2001 and 2003. Sales from domestic production largely tracked total market activity between 2001 and 2003, falling in 2002 and rebounding

98. *Transcript of Public Hearing*, Vol. 1, 6 December 2004, at 205; *Transcript of Public Hearing*, Vol. 3, 8 December 2004, at 598-99.

99. Information in this section relating to the "domestic industry" was derived from data contained in the Tribunal's staff report tables and from protected information contained in the questionnaire responses of the two domestic producers that the Tribunal determined constituted the domestic industry for carbon steel nuts and bolts.

100. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 59.

101. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 59.

102. *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 423.

103. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41A (protected), Administrative Record, Vol. 2.1A at 414.

in 2003. Over the three years, the respective market shares of the domestic industry, the subject countries and non-subject countries showed little change. Total sales from domestic production declined slightly between 2001 and 2003, while sales from the subject countries increased correspondingly. The Tribunal also notes the loss in sales between 2001 and 2003 of 100 million units from the United States, which appear to have been taken up mostly by other non-subject countries.¹⁰⁴

154. In the first six months of 2004, sales of imports from the subject countries showed a strong upward trend, increasing by nearly 40 percent. Although the domestic industry's sales also increased, they lagged behind the increases experienced by both the subject and non-subject countries. Sales from all non-subject countries rose by 8 percent. As a result, the share of the market held by the domestic industry fell by two percentage points compared to the same period in 2003. On the other hand, the share of the market held by the subject countries increased to nearly 60 percent, which was the highest level seen during the period of inquiry.¹⁰⁵

155. In light of the foregoing analysis, the Tribunal considers that there was very little net displacement of domestic production between 2001 and 2003, as the domestic market for carbon steel nuts and bolts essentially remained stable, with little growth and little movement in market shares. The situation was different however in the first six months of 2004, as the subject countries were able to capture the majority of the growth in the market. Although the domestic industry and non-subject countries also increased their sales, this increase was at a significantly lower rate. However, the Tribunal notes that there was no displacement of either domestic production volumes or sales from domestic production. In fact, there was growth in both instances.

– Effects of Dumped and Subsidized Goods on Prices

156. Turning next to the effects of the subject carbon steel nuts and bolts on prices of like carbon steel nuts and bolts, the Tribunal first notes that unit import costs for the subject carbon steel nuts and bolts fell by 5 percent between 2001 and 2003, while unit import costs for goods from non-subject countries displayed the opposite trend, increasing by 11 percent.¹⁰⁶

157. A comparison of unit import costs shows that, throughout the period of inquiry, those for the United States were generally at least 75 percent greater than those for either the subject countries or other non-subject countries, which were very similar in value.¹⁰⁷ In the Tribunal's view, this suggests that the product mix of carbon steel nuts and bolts imported from the United States differs from that imported from either the subject countries or other non-subject countries.

158. In examining selling prices in the market, the Tribunal notes that the domestic industry's selling prices for its carbon steel nuts and bolts fell continuously from 2001 to 2003, declining by some 7 percent. On the other hand, selling prices for imports from the subject countries rose by an almost equal amount over the same period. Selling prices of imports from the subject countries, along with selling prices from the United States, peaked in 2002 before slumping in 2003, though to levels that were greater than in 2001.¹⁰⁸

159. In view of testimony from both Infasco witnesses and other witnesses that Infasco, the largest Canadian manufacturer, is the price leader in the market, the Tribunal was unable to reconcile the decline in

104. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 64.

105. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 64.

106. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 62.

107. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 62.

108. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 66.

the domestic industry's selling prices for its carbon steel nuts and bolts with the increase in selling prices for imports from the subject countries.¹⁰⁹

160. In the first six months of 2004, the domestic industry was able to reverse the trend of the previous three years and increase its selling prices by 17 percent. In this regard, witnesses from Infasco indicated that the company increased its prices several times in 2004 and that these were the first increases since some time prior to 2000.¹¹⁰ At the same time, selling prices of imports from the subject countries and non-subject countries rose, respectively, by 15 percent and by 5 percent.¹¹¹

161. The Tribunal notes the significant gap that existed throughout the period of inquiry between the selling prices of the domestic industry for its carbon steel nuts and bolts and the selling prices for imports from the subject countries, with the former being approximately two and a half times as high. In fact, the domestic industry's selling prices were by far the highest in the market. The selling prices of imports from the United States were for the most part well below those of the domestic industry throughout the period of inquiry, although they were higher than those for either the subject countries or other non-subject countries.¹¹² The Tribunal has already made reference to the possibility that there is a difference in product mix between the United States and other import sources, including the subject countries. These trends suggest that there could also be a significant difference in product mix between domestic sales and subject country imports. The Tribunal will address the issue of product mix below.

162. In sum, the Tribunal does not consider that the prices of the subject carbon steel nuts and bolts were the cause of the declines in the prices of domestic carbon steel nuts and bolts between 2001 and 2003.

– Impact on the Domestic Industry

163. Before considering what impact the dumped and subsidized carbon steel nuts and bolts had on the domestic industry, the Tribunal will first assess how the industry fared during the period of inquiry.

164. The domestic industry's financial performance improved in 2002, as the gross margin rose by four percentage points from 2001. The following year, however, performance deteriorated significantly and the gross margin fell by several percentage points. In the Tribunal's view, the decline in gross margin experienced by the domestic industry in 2003, and entirely the result of Infasco's poor financial performance, is material. In the first six months of 2004, the domestic industry recovered to a substantial degree, and the gross margin attained its highest level of the period of inquiry.¹¹³

165. As to other measures of performance with regard to carbon steel nuts and bolts, the Tribunal notes the declines in capacity utilization between 2001 and 2003 at Infasco, the only producer in the domestic industry whose output consists solely of carbon steel nuts and bolts.¹¹⁴ Similarly, employment levels at this producer declined between 2001 and 2003, before partially recovering in the first six months of 2004.¹¹⁵

109. *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 371, 422.

110. *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 411-12, 423-24.

111. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 66.

112. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 66.

113. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41B (protected), Administrative Record, Vol. 2.1A at 548.

114. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41A (protected), Administrative Record, Vol. 2.1A at 292.

115. Tribunal Exhibit NQ-2004-005-08.13C (protected), Administrative Record, Vol. 4B at 59.20.

166. Finally, the Tribunal notes that, in support of their case, the two producers constituting the domestic industry submitted allegations of injury at specific accounts. The Tribunal has examined the evidence pertaining to these allegations and does not find it to be persuasive. Examination of the injury allegations submitted by Infasco revealed that these allegations generally did not relate specifically to 2003, the period in which, in the Tribunal's view, most of the injury took place. The allegations filed by Leland include two instances of lost sales of bolts at the same account and to the same competitor, only one of which occurred in 2003.¹¹⁶ The witness from Paulin testified that this sale was lost for non-price reasons.¹¹⁷

167. In sum, the domestic industry, because of Infasco, experienced poor results with regard to several performance measures in 2003. However, in light of its above conclusions with respect to the volumes and price effects of the subject carbon steel nuts and bolts, the Tribunal concludes that the injury sustained by the domestic industry during the period of inquiry cannot be attributed to the imports from the subject countries.

– Factors Other Than Dumping

168. In examining the non-dumping factors that could be responsible for the injury sustained by the domestic industry, the Tribunal focused on Infasco, by reason of its dominance and poor financial performance in 2003.

169. The witnesses from Infasco described the company's situation in the period leading up to the CCAA proceedings in September 2003: "We lost sales. Cash flow was reduced. We had to do something to improve our liquidity. We were forced to reduce our inventories, and to do that we had to reduce production. The consequences were layoffs and shortages of material. We had cash problems. We had problems meeting payments to our suppliers. We still had the notes to pay."¹¹⁸

170. The Infasco witnesses went on to argue that imports from the subject countries had played a "major role" in causing the financial crisis in 2003.¹¹⁹ The Tribunal is not persuaded by this argument.

171. First, the Tribunal notes the significant economic downturn underway by 2002 in both Canada and the United States, the destination for three quarters¹²⁰ of Infasco's production. Evidence on the record suggests that the downturn was especially severe in those sectors of the economy that use large quantities of nuts and bolts.¹²¹ It appears to the Tribunal that Infasco ended 2002 with surplus inventory because of the slowdown in both of its main markets, namely, Canada and the United States.

172. In 2003, when Infasco cut back on production to try to liquidate inventories,¹²² its unit costs would naturally have increased, as there was a smaller volume of production over which to absorb costs,¹²³ which, in turn, would have had a negative impact on its gross margin. The Tribunal is not convinced that Infasco's inability to recover its higher costs by sufficiently raising prices in 2003 was brought about by the dumping and subsidizing. In this regard, the Tribunal again refers to the fact that Infasco designated itself as the price leader in the market. Further, the Tribunal notes that Leland, the other domestic producer included by the Tribunal in the domestic industry that is claiming injury with respect to carbon steel nuts and bolts, did not

116. Tribunal Exhibit NQ-2004-005-08.08 (protected), Administrative Record, Vol. 4 at 1-22.

117. *Transcript of In Camera Hearing*, Vol. 3, 10 December 2004, at 325-27.

118. *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 350.

119. *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 351.

120. *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 341.

121. *Transcript of Public Hearing*, Vol. 5, 10 December 2004, at 1029-31.

122. *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 434.

123. *Transcript of In Camera Hearing*, Vol 1, 7 December 2004, at 133.

experience comparable financial difficulties in 2003.¹²⁴ This reinforces the Tribunal's view that Infasco's worsening results in 2003, which culminated in the *CCAA* proceedings in September 2003, were the result of its own particular circumstances, and those of the broader Ifastgroupe, and were not reflective of the market pressures faced by the domestic industry as a whole.

173. With regard to the *CCAA* proceedings, the Tribunal notes that the Third Report of the Monitor, October 9, 2003, ascribes the decline in the performance and liquidity of the various Ivaco entities to several factors "including, but not limited to" currency, U.S. anti-dumping duties on exports of wire rod, increases in scrap metal prices and energy costs, increased labour costs and substantial pension costs.¹²⁵ There is no mention of the negative impact of imports of carbon steel nuts and bolts from the subject countries on Infasco. Given that witnesses from the company characterized Infasco as the "cash cow" for the Ivaco group,¹²⁶ the Tribunal questions the importance of the alleged impact of these imports, since the Monitor failed to mention it as a factor.

174. Infasco's situation was no doubt exacerbated by the appreciation of the Canadian dollar in 2003, which would have made its exports to the United States less competitive. In the Tribunal's view, unlike the case of carbon steel screws, the impact of exchange rates did play an important part in the injury sustained by the carbon steel nut and bolt industry, whose main player, Infasco, is highly dependent on export sales.¹²⁷

175. Another factor that leads the Tribunal not to attribute the domestic industry's injury to the dumping and subsidizing is the apparent difference in product mix between domestic production, at least for Infasco, and imports from the subject countries. A witness from Infasco submitted that the subject countries are the predominant suppliers of Grade 2 bolts, the least expensive bolts, but supply very few Grade 8 bolts, the most expensive bolts, and a key product area for Infasco.¹²⁸ Accordingly, the Tribunal wonders why Infasco, as the price leader and largest producer in the market, was not able to increase its prices sufficiently in 2003 to maintain its gross margins.

176. There is no evidence on the record indicating that VMI services, mad cow disease or shortage of skilled labour played any significant role in Infasco's downturn in 2003.

177. Based on the foregoing, the Tribunal is not persuaded that the injury sustained by the domestic industry can be attributed to the dumping and subsidizing of carbon steel nuts and bolts from the subject countries.

– Threat of Injury

178. Having found that dumping and subsidizing have not caused injury, the Tribunal must consider whether the dumping and subsidizing of carbon steel nuts and bolts from the subject countries are threatening to cause injury. The Tribunal is guided in its consideration by subsection 37.1(2) of the *Regulations*, which prescribes factors to take into account for the purposes of determining whether the dumping and subsidizing of goods is threatening to cause injury. Further, the Tribunal notes that subsection 2(1.5) of *SIMA* requires that the circumstances in which dumping and subsidizing of goods would cause injury must be clearly foreseen and imminent.

124. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41B (protected), Administrative Record, Vol. 2.1A at 548.

125. Importer's Exhibit D-23, Administrative Record, Vol. 13 at 4-5.

126. *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 347.

127. *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 341.

128. Producer's Exhibit B-04, paras. 11, 12, 15, Administrative Record, Vol. 11A.

179. Based on the current state of the domestic industry and the market, the Tribunal is not convinced that the dumping and subsidizing of the subject carbon steel nuts and bolts are threatening to cause injury.

180. The Tribunal notes that, in the first six months of 2004, the value of the domestic industry's sales of its carbon steel nuts and bolts increased by more than 20 percent over the same period in 2003.¹²⁹ Further, the Tribunal notes that, during this period, the industry's gross margin was 15 percentage points higher than at any other time during the period of inquiry.¹³⁰ Infasco, as the dominant industry producer, participated in the upturn in performance. Moreover, the Tribunal notes that, as of December 2004, Infasco is no longer under CCAA protection.¹³¹

181. As to the increase in the volume of imports from the subject countries in the first six months of 2004, the Tribunal does not take this as evidence that supports a threat of injury because prices for the subject carbon steel nuts and bolts were also rising during that period. In this regard, there is nothing on the horizon to indicate that Infasco will forfeit its position as the price leader in the market and that prices for imports from the subject countries will begin to exert a disproportionate downward pull on domestic prices.

182. As to the other threat factors, the Tribunal acknowledges that the capacity of the fastener industry in Chinese Taipei and China, including that for carbon steel nuts and bolts, is enormous compared to the capacity of the domestic industry. Foreign producers' responses to the Tribunal's questionnaire indicated an increase in fastener production and capacity during the period of inquiry.¹³² However, the Tribunal finds no evidence on the record to indicate that the subject countries are likely in the near future to change their traditional patterns of exporting to target Canada for increased sales of carbon steel nuts and bolts.

183. Finally, with respect to anti-dumping measures imposed by other jurisdictions, the Tribunal notes an outstanding finding in South Africa on "nuts of iron and steel" from Chinese Taipei.¹³³ The Tribunal does not view this single finding as compelling evidence to support a finding that Chinese Taipei threatens to cause injury to the domestic industry. Although there are measures against various carbon steel products from China and Chinese Taipei in other jurisdictions,¹³⁴ the Tribunal considers the products in question to be sufficiently dissimilar to carbon steel nuts and bolts as to preclude drawing any inferences about the likelihood of the subject countries to injuriously dump the carbon steel nuts and bolts, and in the case of China, to injuriously subsidize them.

– Alloy Steel

184. The Tribunal notes that Infasco¹³⁵ argued that, despite the fact that the CBSA had distinguished between carbon steel and alloy steel nuts and bolts, nuts and bolts made of alloy steel should be found to be

129. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 65.

130. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41B (protected), Administrative Record, Vol. 2.1A at 548.

131. *Transcript of Public Hearing*, Vol. 2, 7 December 2004, at 351-52.

132. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41A (protected), Administrative Record, Vol. 2.1A at 303, 306.

133. The finding in South Africa was implemented on August 6, 1999. Producer's Exhibit A-11, Tab7, Administrative Record, Vol. 11A.

134. Producer's Exhibit A-11, Tab 7, Administrative Record, Vol. 11A.

135. Leland also argued that "fasteners" made of alloy steel are like goods, without specifying the class of goods to which they referred. However, based on the evidence on the record, the Tribunal is of the view that the issue of alloy fasteners concerns the class of carbon steel nuts and bolts.

like goods, as they were affected by imports of the subject goods. It was further argued that the Tribunal should assess injury on this basis.¹³⁶

185. The Tribunal notes that the question as to whether fasteners made of alloy steel are part of the subject goods is a matter to be dealt with by the CBSA. For the purpose of determining what are like goods in conducting its injury analysis, the Tribunal notes that, based on the responses to its requests for information, Infasco included alloy steel nuts and bolts as part of its domestic production volumes.¹³⁷

186. Based on the evidence on the record, nuts and bolts made of alloy steel, including Grade 8 products, are more expensive than carbon steel nuts and bolts, including Grade 2 and Grade 5 products.¹³⁸ Accordingly, if the Tribunal had conducted its injury analysis without the nuts and bolts made from alloy steel, the domestic industry's average selling prices possibly would have been lower, depending on which products were sold in the domestic market and which were exported. However, the Tribunal is not persuaded that the change would be significant enough to alter its assessment of the pricing trends in the domestic market over the period of inquiry. The Tribunal would still be of the view that the dumping and subsidizing have not caused injury and are not threatening to cause injury to the domestic industry, as there still would be a significant gap between the domestic industry's selling prices and those of the subject countries.

– Conclusion

187. The Tribunal is therefore of the view that the dumping and subsidizing of carbon steel nuts and bolts from the subject countries have not caused and are not threatening to cause injury to the domestic industry.

Stainless Steel Screws¹³⁹

– Volume of Dumped Goods¹⁴⁰

188. In considering the imports of stainless steel screws from Chinese Taipei, the Tribunal first notes that volumes increased in each of 2002 and 2003, for a total increase between 2001 and 2003 of more than 45 percent.¹⁴¹

189. In 2002, domestic production of stainless steel screws fell by 45 percent. It recovered partially in 2003, rising by nearly 20 percent. However, the domestic industry still suffered a net decrease in production of one third between 2001 and 2003. The Tribunal notes that a single dominant stainless steel

136. *Transcript of Public Argument*, 14 December 2004, at 84-85.

137. Tribunal Exhibit NQ-2004-005-RI-02A (protected), Administrative Record, Vol. 10 at 8.

138. Tribunal Exhibit NQ-2004-005-27.02, Administrative Record, Vol. 1.2V.

139. Information in this section relating to the "domestic industry" was derived from data contained in the Tribunal's staff report tables and from protected information contained in the questionnaire responses of the three domestic producers that the Tribunal determined constituted the domestic industry for stainless steel screws.

140. Since the Tribunal terminated its inquiry against dumped and subsidized stainless steel screws from China on the basis of negligibility and the CBSA determined that no fasteners from Chinese Taipei were subsidized, the Tribunal's injury analysis with respect to stainless steel screws concerns only dumping from Chinese Taipei.

141. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 67.

screw producer accounted for virtually all of this decrease, as the other two domestic producers achieved marginal increases in production.¹⁴²

190. The domestic industry's sales followed a trend analogous to that for production, falling by 40 percent in 2002, before rising by 5 percent in 2003. Despite the solid growth in the market, which increased by 69 million units or by some 15 percent between 2001 and 2003, the domestic industry's share fell by two thirds in 2002 and remained at that level in 2003. As was the case with production, the decrease in domestic market share reflected losses at the industry's dominant producer, with the other two producers enjoying increases in sales. At the same time, the share of the domestic market accounted for by Chinese Taipei rose by some 7 percentage points in 2003.¹⁴³

191. Circumstances changed in the first six months of 2004, as the volume of imports from Chinese Taipei surged by approximately 80 percent, compared to the same period in 2003. In the market, sales of imports of stainless steel screws from Chinese Taipei nearly doubled in the first six months of 2004, propelling that country to a position of dominance, as its share of the market increased by 12 percentage points compared to the same period in 2003. Overall, the domestic market for stainless steel screws expanded by nearly 60 percent in the first six months of 2004.¹⁴⁴

192. Despite the surge in imports, the domestic industry retained its market share in the first six months of 2004 and even increased its sales of stainless steel screws by more than one third compared to the same period in 2003. All three producers of stainless steel screws that comprise the domestic industry were able to increase sales in the first six months of 2004.¹⁴⁵

193. In light of the foregoing, the Tribunal is of the view that the growth in the market for stainless steel screws that occurred during the period of inquiry was, for the most part, taken up by imports from Chinese Taipei.

– Effects of Dumped Goods on Prices

194. First, the Tribunal notes that unit import costs for stainless steel screws from Chinese Taipei fell by nearly 20 percent between 2001 and 2003. Further, the Tribunal notes that unit import costs for the United States were generally the highest throughout the period of inquiry, whereas those for China were by far the lowest. For the most part, unit import costs for the United States and other non-subject countries, except China, were of a comparable value. However, unlike the previous two classes of goods, an assessment of the unit import costs together with the selling prices for stainless steel screws from each of these sources, including China, does not, in the Tribunal's opinion, support the view that there are differences in product mix among imports from these sources.¹⁴⁶

142. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41A (protected), Administrative Record, Vol. 2.1A at 427 (for Leland and Westland); Tribunal Exhibit NQ-2004-005-8.09B (protected), Administrative Record, Vol. 4 at 253.11 (for Arrow, converted to kilograms by the Tribunal's staff).

143. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41C (protected), Administrative Record, Vol. 2.1B at 72.

144. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 72.

145. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41B (protected), Administrative Record, Vol. 2.1A at 554.

146. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-40D, Administrative Record, Vol. 1.1B at 70; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41C (protected), Administrative Record, Vol. 2.1B at 74.

195. The Tribunal heard no evidence to persuade it that stainless steel screws do not compete primarily on price, given comparable levels of quality.

196. A review of the domestic industry's selling prices for its stainless steel screws reveals steady and substantial increases throughout the period of inquiry, such that, by 2004, prices were nearly 60 percent higher than in 2001. Selling prices of imports from Chinese Taipei displayed the opposite trend, declining steadily from 2001 onwards, achieving a total decrease of nearly 15 percent over the period of inquiry. The domestic industry was even able to increase selling prices for its stainless steel screws by 15 percent in the first six months of 2004, despite the enormous increase in the volume of lower-priced imports from Chinese Taipei. However, the Tribunal notes that the latter increase in the average domestic selling price is largely attributable to a significant increase in prices at one domestic producer.¹⁴⁷

197. The Tribunal further notes that selling prices of imports from Chinese Taipei were nearly 25 percent greater than the selling prices for the domestic industry's stainless steel screws in 2001 and remained 4 percent greater even in 2002, when the domestic industry experienced its major declines in production and market share. Although the selling prices of imports from Chinese Taipei fell below the selling prices of the domestic industry in 2003 and remained there during the first six months of 2004, as noted above, the domestic industry was able nonetheless to increase its production and to maintain its market share during both periods.¹⁴⁸

198. On the basis of the foregoing analysis, the Tribunal is of the view that the domestic industry did not suffer any price erosion from imports of stainless steel screws from Chinese Taipei during the period of inquiry and emphasizes that, in fact, the domestic industry was able to increase the selling prices for its stainless steel screws during the three and a half years examined by the Tribunal.

– Impact on the Domestic Industry

199. Turning now to the impact of imports of stainless steel screws from Chinese Taipei on the state of the domestic industry, the Tribunal notes that the financial results for two domestic producers¹⁴⁹ indicate that their average gross margins declined significantly in 2002, but improved in 2003, and continued to improve in 2004. The Tribunal notes that these two producers of stainless steel screws were generally successful in attaining a healthy gross margin during the period of inquiry.¹⁵⁰ Nonetheless, the Tribunal considers the decline in gross margin in 2002 to be significant. Additionally, as noted above, although the total market increased by more than 15 percent between 2001 and 2003, the domestic industry's volume of sales declined by about 35 percent, its production fell by approximately the same percentage, and its share of the market was reduced by two thirds. This, in the Tribunal's view, clearly shows that the domestic industry suffered injury in terms of a diminution of its production, sales volume and market share.

200. In view of the fact that the selling prices of imports from Chinese Taipei were nearly 25 percent greater than the selling prices of the domestic industry for its stainless steel screws in 2001 and remained 4 percent greater even in 2002, when the domestic industry experienced its worst year, the Tribunal is not

147. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41C (protected), Administrative Record, Vol. 2.1B at 74.

148. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41C (protected), Administrative Record, Vol. 2.1B at 74.

149. One of the domestic producers of stainless steel screws was unable to provide separate information for this class of goods.

150. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41A (protected), Administrative Record, Vol. 2.1A at 439.

persuaded that there is a causal relationship between the dumping and the injury sustained by the domestic industry. This view is reinforced by the fact that, after the selling prices of imports from Chinese Taipei fell below domestic selling prices in 2003, the domestic industry was able to maintain its market share and even improved its gross margin and sales volumes.¹⁵¹

201. In sum, the Tribunal is not persuaded that imports from Chinese Taipei were responsible for the injury experienced by the domestic industry.

– Factors Other Than Dumping

202. The Tribunal is of the view that one important non-dumping factor that influenced the domestic industry's poor performance in 2002 is the nearly 130 percent increase in the volume of sales of stainless steel screws from China in that year.¹⁵² Although the increase was partially at the expense of sales of U.S. stainless steel screws, the Tribunal considers that the domestic industry must also have been negatively affected. The Tribunal notes not only that the domestic industry had to contend with the significant increase in volumes but also that the selling prices of the Chinese product were the lowest prices for imports in the market in that year and significantly undercut the domestic industry's selling prices.¹⁵³ The selling prices of stainless steel screws from Chinese Taipei, as mentioned previously, were still above the domestic industry's selling prices for its stainless steel screws at that time.

– Threat of Injury

203. Since the Tribunal is not convinced that the injury suffered by the domestic industry was caused by the dumping of the stainless steel screws from Chinese Taipei, the Tribunal must consider whether the dumping of these same goods is threatening to cause injury. As noted in its analysis of injury with respect to carbon steel nuts and bolts, the Tribunal is guided in its consideration by subsections 37.1(2) and (3) of the *Regulations* and subsection 2(1.5) of *SIMA*.

204. The most compelling evidence of a threat to the domestic industry is the nearly twofold increase in sales of stainless steel screws from Chinese Taipei in the domestic market in the first six months of 2004. Given the long lead time¹⁵⁴ between orders and delivery for offshore goods, the Tribunal is of the view that it is likely that the majority of these screws would have been ordered before the CBSA announced on April 28, 2004, that it was initiating an investigation into certain fasteners. Although, as suggested by one domestic industry witness, there may have been some "hedging" taking place in the market against rising steel prices,¹⁵⁵ the Tribunal is not convinced that this phenomenon explains the magnitude of the surge in imports from Chinese Taipei.

205. In the Tribunal's view, there is a threat of ever-increasing volumes of imports of stainless steel screws from Chinese Taipei, which would pose, in the short term, a significant risk to a domestic industry that has already been relegated to only a very small share of the market.

151. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41A (protected), Administrative Record, Vol. 2.1A at 439; *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41C (protected), Administrative Record, Vol. 2.1B at 72.

152. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41C (protected), Administrative Record, Vol. 2.1B at 72.

153. *Protected Pre-hearing Staff Report*, Tribunal Exhibit NQ-2004-005-41C (protected), Administrative Record, Vol. 2.1B at 74.

154. *Transcript of Public Hearing*, Vol. 4, 9 December 2004, at 735.

155. *Transcript of In Camera Hearing*, Vol. 2, 8 December 2004, at 203-204.

206. The Tribunal notes that, despite worldwide increases in steel costs, the selling prices of imports of stainless steel screws from Chinese Taipei in the domestic market fell in the first quarter of 2004, extending the downward trend that they displayed throughout the period of inquiry. This is a critical consideration for the Tribunal and is one of the major factors that distinguishes its assessment of threat of injury for this class of goods from that for carbon steel nuts and bolts, which also saw an increase of subject country imports in the first half of 2004. As previously noted, the rate of increase in the volume of subject country imports of carbon steel nuts and bolts was much smaller and was accompanied by rising selling prices in the domestic market for these subject country imports.

207. Further, as noted above, the apparent increase in the domestic industry's selling prices for its stainless steel screws in the first six months of 2004 obscures the fact that two producers were able only to maintain their prices. This suggests to the Tribunal that, as the volume of imports from Chinese Taipei continues to grow, the domestic industry as a whole will not be able to withstand the price-suppressive and price-erosive effects of these goods in the market. Because of the domestic stainless steel screw industry's very small size, and the fact that none of its producers is the price leader in the market, as is the case for Infasco in the domestic carbon steel nuts and bolts industry, the Tribunal considers that it will be especially vulnerable to unfair competition from dumped imports in the future.

208. The Tribunal is of the view that imports of the subject stainless steel screws from Chinese Taipei are likely to continue to grow, and therefore threaten to injure the domestic industry.

209. With respect to anti-dumping measures imposed by other jurisdictions, the Tribunal notes that the European Union initiated an investigation on stainless steel fasteners from Chinese Taipei in August 2004. In fact, this was the second such case in the European Union against Chinese Taipei for stainless steel fasteners, the first set of measures having ended in November 2000. There is also an outstanding finding in Turkey on "self-drilling screws".¹⁵⁶ Moreover, the Tribunal notes the existence of measures on other stainless steel products from Chinese Taipei in a variety of jurisdictions, but these are not screws.¹⁵⁷

210. In sum, the Tribunal is convinced that, in the absence of anti-dumping measures, imports of stainless steel screws from Chinese Taipei will continue to surge into Canada and, in the short term, are likely to force the domestic industry to lower its prices to meet the competition from dumping, thus negatively affecting its gross margins and other measures of performance. The Tribunal also notes that resumed imports from China might constitute a factor that could negatively affect the domestic industry's performance in the future. However, the Tribunal is of the opinion that, in and of itself, the dumping of stainless steel screws from Chinese Taipei is threatening to cause injury to the domestic industry.

– Conclusion

211. The Tribunal is not convinced that the dumping of stainless steel screws from Chinese Taipei has caused injury, but the Tribunal is of the view that it threatens to cause injury to the domestic industry.

156. The finding in Turkey was implemented on November 10, 2000. Producer's Exhibit A-11, Tab 7, Administrative Record, Vol. 11A.

157. Producer's Exhibit A-11, Tab 7, Administrative Record, Vol. 11A.

EXCLUSIONS

Product Exclusions

212. In light of the fact that it finds injury for carbon steel screws and threat of injury for stainless steel screws, the Tribunal has addressed the requests for product exclusions that relate to these two classes of goods. This section provides the Tribunal's rationale in deciding to grant or to reject such requests for product exclusions.

213. At the outset, the Tribunal notes that it has indicated in past decisions that exclusions are granted in exceptional circumstances. The Tribunal further notes that a finding of injury does not prohibit goods from being imported from the subject countries. It simply requires that they be imported from these countries at normal values.

214. In *Stainless Steel Wire*, the Tribunal summarized its views on the matter of product exclusions as follows:

It is well established that the Tribunal has the discretion to grant product exclusions under subsection 43(1) of *SIMA*. The fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry. The Tribunal has granted product exclusions for particular products in circumstances when, for instance, the domestic industry does not produce those particular products. The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an "active supplier" of the product or whether it normally produces the product or whether the domestic industry has the capability of producing the product.¹⁵⁸ [Footnotes omitted]

215. The Tribunal accepts that the domestic industry produces or is capable of producing the goods that are within the parameters set out in Appendices A and B to its findings herein. In reaching this conclusion, the Tribunal has relied on invoices and equipment lists provided to it by the domestic industry. The Tribunal is satisfied that the documentation provided by the domestic industry shows that it has the capability to produce the aforementioned like goods. The Tribunal further notes that the dies and other tooling required to produce the goods are either in the possession of the domestic producers or readily available in the marketplace without major investments of capital. Moreover, no convincing evidence was supplied by requesters of exclusions to refute the domestic industry's claim that it produces or is capable of producing the goods mentioned above.

216. The Tribunal also notes that, in past cases, it has decided that the domestic industry need not serve the entire market. Nor does it have to accept every purchase order. Moreover, there is evidence on the record that, well before the period of inquiry, the subject countries had penetrated certain segments of the market in which the domestic industry can no longer compete on the basis of price, although it is still capable of producing those products.¹⁵⁹

217. In this case, the Tribunal established separate procedures to deal with product exclusion requests. The time frames within which the Tribunal must hand down its findings and reasons in dumping and subsidizing cases do not lend themselves conveniently to prolonged hearings or protracted proceedings.

158. *Stainless Steel Wire* at 22.

159. Producer's Exhibit A-03, para. 7, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 6 December 2004, at 235-36; *Transcript of In Camera Hearing*, Vol. 1, 7 December 2004, at 112-13.

218. The number of individual requests in the case at hand exceeded 20,000. The scope of the inquiry covered a large number of stock-keeping units that spanned four classes of goods and that one witness estimated at 150,000.¹⁶⁰ Consequently, the Tribunal decided to adopt a separate, paper-based process for considering product exclusion requests.

219. As this was a paper-based process, the Tribunal is of the view that it was reasonable to expect requesters to supply documentary evidence in support of their claims and requests. It decided that mere allegations or unsupported claims would not suffice. The “Product Exclusion Request Form” itself specifically asks for supporting documentation if an attempt has been made to purchase from domestic producers the product for which an exclusion request is made.

220. For the most part, the Tribunal rejected exclusion requests in this case where there was a lack of documentary evidence in support of the requesters’ claims. For example, a requester that indicated that the domestic industry did not produce the goods was expected to provide documentary evidence that domestic producers had been contacted and that they had indicated that they could not produce the goods in question or did not intend to produce them. The Tribunal also kept in mind that the domestic industry need not answer every quote or supply all the market. However, overall, the requesters documented very few responses from the domestic industry in the form of “no quotes”.

221. The Tribunal also considered a number of requests that involved some form of proprietary design or drawing. In most cases, the Tribunal was unable to determine who owned the rights to the design, drawing or patent. Where it was able to do so, such as in the case of a number of domestic producers, it rejected the requests in light of the fact that the domestic producers were producing the goods domestically in small quantities and had decided to have them produced in larger quantities offshore, particularly in the subject countries, in competition with the domestic industry. Those domestic producers were not prepared to dedicate their equipment to the production of large quantities of these goods, nor were they prepared to have the domestic industry produce those goods under licence. The Tribunal was thus of the view that this approach by some of the domestic producers opposing the complaint should not benefit from the granting of an exclusion, as it was tantamount to those domestic producers stepping into the shoes of the subject country producers that are competing against the domestic industry.

222. Where the requester indicated that the product was made to order, sometimes in conjunction with a design or drawing owned by the customer, the Tribunal was of the view that as it was potentially a custom-formed part, it was a matter for the CBSA to decide either at the time of or prior to importation.

223. Where the requesters indicated that quality was an issue, the Tribunal was generally of the view that there was insufficient documentary evidence to support the claims. Only in one instance is the Tribunal prepared to accept that quality is of such critical importance that it will grant a product exclusion. That is in the case of collated screws, where the Tribunal is satisfied that there is enough evidence to support such a request.

224. The Tribunal distinguishes the exclusion request for collated screws from that for pre-packaged fasteners put up for retail sale on the following grounds. First, the Tribunal has credible evidence on the record that there is packaging capability in Canada.¹⁶¹ Second, the Tribunal is of the view that by allowing an exclusion for such pre-packaged goods, it would be relatively easy to circumvent its findings, unlike in

160. *Transcript of Public Hearing*, Vol. 5, 10 December 2004, at 1078.

161. Tribunal Exhibit NQ-2004-005-RI-01A (protected), Administrative Record, Vol. 10 at 5; *Transcript of Public Hearing*, Vol. 3, 8 December 2004, at 630; *Transcript of In Camera Hearing*, Vol. 1, 7 December 2004, at 51.

the case of collated screws which are intended for a specific end use, namely, their use in a particular automatic fastening tool. Third, the additional value added by collating screws prior to their importation would make it unlikely that presentation of screws in this collated format would be used to circumvent the findings.

225. To the extent that the Tribunal considered the goods to be non-subject by reason of either the material of which they are made (e.g. brass), their shape (e.g. screws without a head) or the fact that they are other types of fasteners (e.g. rivets), they were not further addressed by the Tribunal and will be a matter for the CBSA to address upon importation.

226. The Tribunal notes that the domestic industry consented to a number of product exclusion requests. The Tribunal reviewed these requests, and to the extent that the products were within the scope of these findings and consistent with the Tribunal's overall treatment of all other requests, it granted them. These products for which exclusions are granted are listed in Appendices A and B to the findings.

227. The Tribunal also excludes all products that the domestic industry does not produce or is not capable of producing. Accordingly, all carbon steel screws that are *not within the parameters* set out in Appendices A and B to the findings are also excluded.

Country Exclusion

228. The Government of Taiwan and the Taiwan Industrial Fasteners Institute submitted that the Tribunal should exclude imports from Chinese Taipei from its findings. The Tribunal does not consider this to be appropriate. As discussed above, exclusions are only granted under exceptional circumstances, and the fundamental principle is that they will be granted only when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry. Since the Tribunal has found that imports of carbon steel screws from Chinese Taipei have caused injury to the domestic industry and that imports of stainless steel screws from Chinese Taipei are threatening to cause injury, it will not grant this request.

CONCLUSION

229. Pursuant to subsection 42(4.1) of *SIMA*, the Tribunal determines that the volume of dumped and subsidized subject stainless steel screws originating in or exported from China is negligible and hereby terminates its inquiry regarding the dumping and subsidizing of stainless steel screws originating in or exported from China.

230. Pursuant to subsection 43(1) of *SIMA*, the Tribunal finds that:

- the dumping in Canada of the aforementioned carbon steel screws originating in or exported from China and Chinese Taipei and the subsidizing of such products originating in or exported from China, excluding the products described in Appendix A to these findings, have caused injury to the domestic industry;
- the dumping in Canada of the aforementioned carbon steel nuts and bolts originating in or exported from China and Chinese Taipei and the subsidizing of such products originating in or exported from China have not caused injury and are not threatening to cause injury to the domestic industry;
- the dumping in Canada of the aforementioned stainless steel screws from Chinese Taipei, excluding the products described in Appendix B to these findings, is threatening to cause injury to the domestic industry;

- the dumping in Canada of the aforementioned stainless steel nuts and bolts originating in or exported from China and Chinese Taipei and the subsidizing of such products originating in or exported from China have not caused injury and are not threatening to cause injury to the domestic industry.

Richard Lafontaine

Richard Lafontaine
Presiding Member

James A. Ogilvy

James A. Ogilvy
Member

Meriel V. M. Bradford

Meriel V. M. Bradford
Member