



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## FINDINGS AND REASONS

Inquiry No. NQ-2010-002

Steel Grating

*Findings issued  
Tuesday, April 19, 2011*

*Corrigendum issued  
Thursday, April 28, 2011*

*Reasons issued  
Wednesday, May 4, 2011*

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

**THE DUMPING AND SUBSIDIZING OF STEEL GRATING ORIGINATING IN  
OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

**FINDINGS**

The Canadian International Trade Tribunal, pursuant to section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping and subsidizing of metal bar grating of carbon, alloy, or stainless steel, consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, 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 preliminary determinations dated December 20, 2010, and of final determinations dated March 21, 2011, that the aforementioned goods have been dumped and subsidized and that the margin of dumping and the amount of subsidy 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 stainless steel grating 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 grating 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 and subsidizing of metal bar grating of carbon and alloy, consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, originating in or exported from the People's Republic of China have caused injury to the domestic industry.

Stephen A. Leach

Stephen A. Leach  
Presiding Member

Serge Fréchette

Serge Fréchette  
Member

Jason W. Downey

Jason W. Downey  
Member

Dominique Laporte

Dominique Laporte  
Secretary

The statement of reasons will be issued within 15 days.

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

**THE DUMPING AND SUBSIDIZING OF STEEL GRATING ORIGINATING IN  
OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA**

**FINDINGS**

**CORRIGENDUM**

The third and fourth paragraphs of the Findings should read as follows:

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 stainless steel bar grating 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 bar grating 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 and subsidizing of carbon steel bar grating and alloy steel bar grating consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, originating in or exported from the People's Republic of China have caused injury to the domestic industry.

By order of the Tribunal,

Dominique Laporte

Dominique Laporte  
Secretary

Place of Hearing: Ottawa, Ontario  
Dates of Hearing: March 21 to 24, 2011

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Jason W. Downey, Member

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Fisher &amp; Ludlow Ltd.

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## STATEMENT OF REASONS

1. The Canadian International Trade Tribunal (the Tribunal), pursuant to section 42 of the *Special Import Measures Act*,<sup>1</sup> has conducted an inquiry to determine whether the dumping and subsidizing of metal bar grating of carbon, alloy, or stainless steel, consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, originating in or exported from the People's Republic of China (China) (the subject goods) have caused injury or retardation or are threatening to cause injury to the domestic industry.
2. On September 20, 2010, the President of the Canada Border Services Agency (CBSA), following a complaint filed by Fisher & Ludlow Ltd. (Fisher & Ludlow) of Burlington, Ontario, initiated investigations into whether the subject goods had been dumped or subsidized. The complaint was supported by Borden Metal Products (Canada) Limited (Borden Metal).
3. On September 21, 2010, 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 the subject goods had caused injury or retardation or were threatening to cause injury. On November 19, 2010, pursuant to subsection 37.1(1), the Tribunal determined that there was evidence that disclosed a reasonable indication that the dumping and subsidizing of the subject goods had caused injury.
4. On December 20, 2010, the CBSA issued preliminary determinations that the subject goods had been dumped and subsidized, that the margin of dumping and the amount of subsidy were not insignificant and that the import volumes of the subject goods were not negligible.
5. On December 21, 2010, the Tribunal issued a notice of commencement of inquiry.<sup>2</sup> The Tribunal's period of inquiry (POI) covers three full years, from January 1, 2007, to December 31, 2009, and two interim periods, January 1 to September 30, 2009, and the corresponding period in 2010.
6. As part of its inquiry, the Tribunal requested domestic producers, importers, distributors, service centres, and foreign producers of steel grating to complete questionnaires. The Tribunal also requested purchasers of steel grating in Canada to complete a questionnaire on market characteristics. From the replies to the questionnaires and other information on the record, the Tribunal's staff prepared public and protected staff reports.
7. On February 24, 2011, the Tribunal requested the CBSA to provide certain exhibits on dumping and subsidizing that could assist the Tribunal in its inquiry. The exhibits related to information submitted by one importer (Accurate Screen Ltd. [Accurate Screen]) for the purposes of CBSA's investigations. The CBSA transferred the exhibits to the Tribunal on March 4, 2011.
8. On February 28, 2011, the Tribunal distributed supplementary questionnaires to certain domestic producers, importers and purchasers that had filed complete responses during the first round of questionnaires. These supplementary questionnaires were distributed to obtain information relating to the following three possible separate classes of steel grating: (i) galvanized carbon or alloy steel grating; (ii) non-galvanized carbon or alloy steel grating; and (iii) stainless steel grating.

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

2. C. Gaz. 2011.I.8.

9. The Tribunal noted Fisher & Ludlow's submission that, "[b]ecause of its high cost, galvanized grating is used in more specialized applications where rust resistance is an important element."<sup>3</sup> Therefore, the Tribunal invited views on whether galvanized carbon or alloy steel grating, non-galvanized carbon or alloy steel grating and stainless steel grating constitute separate classes of goods.

10. The Tribunal also requested that importers, distributors and service centres confirm that the import and sales information filed reflects the state of steel grating upon importation and does not include any information on further processing that might have been performed in Canada prior to the sale of the goods in the Canadian market and, if necessary, that they provide such information.

11. In addition, the Tribunal invited the filing of submissions on the significance, if any, of the processing that is performed on the subject goods in Canada prior to their sale in the Canadian market.

12. On March 2, 2011, the Tribunal requested that the CBSA provide, in addition to the single class of goods defined at the time of initiation, separate information, in the event of final determinations, on the dumping and subsidizing of (i) galvanized carbon or alloy steel grating, (ii) non-galvanized carbon or alloy steel grating and (iii) stainless steel grating.

13. On March 17, 2011, from the replies received from one producer, two importers and nine purchasers, the Tribunal's staff prepared and issued public and protected staff reports for each of the three potential classes of goods. On that same date, the Tribunal's staff issued an addendum to the staff report which contained information on sales of imported steel grating sold "as imported".

14. On March 21, 2011, the CBSA issued final determinations of dumping and subsidizing.

15. A hearing, with public and *in camera* testimony, was held in Ottawa, Ontario, from March 21 to 24, 2011.

16. Fisher & Ludlow filed written submissions, including a submission on classes of goods, provided evidence and made arguments in support of findings of injury and, alternatively, threat of injury. It was represented by counsel and presented witnesses at the hearing.

17. An importer of the subject goods, Accurate Screen, filed a submission on classes of goods, and its president appeared at the hearing as a Tribunal witness.

18. Mr. Glenn MacKay, of Amico Canada Inc. (Amico Canada), also appeared as a Tribunal witness during the hearing.

19. The record of this inquiry consists of all Tribunal exhibits, including the record of the preliminary injury inquiry (PI-2010-001), replies to questionnaires, certain exhibits from the CBSA's dumping and subsidizing administrative records, public and protected versions of the staff report and its addendum, public and protected versions of the staff reports on the three classes of goods, requests for information and replies to requests for information, witness statements, all other exhibits filed by the party and the Tribunal throughout the inquiry, and the transcript of the hearing.

20. All public exhibits were made available to Fisher & Ludlow and Accurate Screen. Protected exhibits were made available only to counsel who had filed a declaration and confidentiality undertaking with the Tribunal in respect of confidential information. Although Accurate Screen was not represented by counsel, the Tribunal provided Accurate Screen with its own confidential information (see section on preliminary matters), including that obtained from the CBSA.

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3. Manufacturer's Exhibit A-01 at para. 25, Administrative Record, Vol. 11.



21. The Tribunal did not receive any requests for product exclusions.
22. The Tribunal issued its findings on April 19, 2011.

## RESULTS OF THE CBSA'S INVESTIGATIONS

23. On March 21, 2011, the CBSA determined that 87.46 percent of the subject goods released into Canada from July 1, 2009, to June 30, 2010, had been dumped at an overall weighted average margin of dumping of 70.63 percent, when expressed as a percentage of the export price.
24. The CBSA also determined that 100 percent of the subject goods released into Canada from January 1, 2009, to June 30, 2010, had been subsidized at a weighted average amount of subsidy of 174.99 percent, when expressed as a percentage of the export price.
25. The CBSA concluded that the overall margin of dumping and amount of subsidy were not insignificant.<sup>4</sup>
26. In response to the Tribunal's request, the CBSA provided protected information regarding the dumping and subsidizing of (i) galvanized carbon or alloy steel grating, (ii) non-galvanized carbon or alloy steel grating and (iii) stainless steel grating.<sup>5</sup>

## PRODUCT

### Product Definition

27. The goods subject to this inquiry are defined as follows:  
metal bar grating of carbon, alloy, or stainless steel, consisting of load-bearing pieces and cross pieces, produced as standard grating or heavy-duty grating, in panel form, whether galvanized, painted, coated, clad or plated, originating in or exported from China.

### Additional Product Information<sup>6</sup>

28. The subject goods (commonly referred to as "steel grating", "metal bar grating" or simply "bar grating") are a downstream steel product consisting of two or more pieces of steel, including load-bearing pieces (commonly referred to as "bearing bars") and cross pieces (commonly referred to as "cross-bars"), that are joined to form a "panel" or "mat" (these terms are used interchangeably across the industry).
29. The subject goods are designed and manufactured to support and distribute the weight (commonly referred to as "load") of objects or people; this is achieved through varying dimensions and spacing of both the bearing bars and cross-bars.
30. The subject goods are produced as either standard bar grating or heavy-duty bar grating. Standard bar grating is commonly manufactured in Canada according to American National Standards Institute (ANSI) and National Association of Architectural Metal Manufacturers (NAAMM) Metal Bar Grating (MBG) 531 specifications with maximum bearing bar thickness of 3/16 in. (4.76 mm). Heavy-duty bar grating is commonly made in Canada according to ANSI/NAAMM MGB 532 specifications with maximum bearing bar thickness of 3/8 in. (9.53 mm).

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4. Tribunal Exhibit NQ-2010-002-04A, Administrative Record, Vol. 1 at 135.33, 135.39, 135.40.

5. Tribunal Exhibit NQ-2010-002-05 (protected), Administrative Record, Vol. 2 at 18.13-18.14.

6. The information in this section and the two subsequent sections is derived, in part, from the CBSA's statement of reasons for its final determinations. Tribunal Exhibit NQ-2010-002-04A, Vol. 1 at 135.28-135.30.

31. The subject goods are produced and sold in “panel” or “mat” form. The mats or panels are typically made in standard sizes, and the most common panel size is 3 ft. (0.91 m) wide by 24 ft. (7.32 m) long, although mats may also be made in 20-ft. (6.1-m) lengths. In accordance with the aforementioned ANSI/NAAMM specifications, the bearing bars usually range in size from 1/8 in. (3.18 mm) thick and 3/4 in. (19.05 mm) wide to 3/8 in. (9.53 mm) thick and 5 in. (127 mm) wide, depending on the load requirements.<sup>7</sup>

32. In addition to ANSI/NAAMM specifications, the subject goods may be produced to other recognized standards, such as Chinese, U.K. and Australian specifications.<sup>8</sup>

33. The subject goods may be imported and sold even if not made or certified to the ANSI/NAAMM or other recognized standards. Non-certified product includes secondary material or other kinds of “non-spec” grating. These goods lack the requisite mill tests or other proof of compliance with international standards.

34. Excluded from the definition of the subject goods are the following: (1) expanded metal grating comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded and not consisting of welding or joining of multiple pieces of steel; and (2) plank-type safety grating comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, pierced and cold-formed and without welding or joining of multiple pieces of steel.

### **Product Applications**

35. The subject goods have a multitude of load-bearing and load distribution end uses, including industrial flooring, walkways, mezzanines, catwalks, stairways, trenches, platform for overhead signs (such as highway signs) and fire escapes. The goods may serve as decking and support for heavy-duty applications, such as drainage pit covers, boat-landing ramps, motor vehicle bridges, railway rolling stock, flooring, etc.

36. Primary markets consist of private industrial and commercial applications, including large-scale oil production structures and systems (for example, the Alberta oil sands and offshore drilling), electric power generating plants, steel mills, cement plants, saw mills, pulp and paper mills, mining, automotive plants and other industrial or manufacturing facilities. Although used in large industrial projects, smaller-scale commercial and residential applications are also commonplace.

### **Production Process**

37. The goods are manufactured on specialized machinery which involves the joining of two components to form a section of grating into a panel or mat. The main components of the panel are the following: (1) bearing bars which extend across the length of the grating section; and (2) cross-bars that transverse (typically perpendicular to) the bearing bars. The joining of the bearing bars and cross-bars is commonly done through either welding or riveting or by hydraulic press (lock) joining processes.<sup>9</sup>

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7. According to Fisher & Ludlow, the most common configuration for domestic steel grating and the subject goods comprises bearing bars that are 3/16 in. (4.76 mm) thick and 1 1/4 in. (31.75 mm) wide. Preliminary Injury Inquiry No. PI-2010-001, Administrative Record, Vol. 1 at 15.

8. The subject goods are produced in China in accordance with the foregoing ANSI/NAAMM specifications and other standards, including the following: YB/T 4001.1-2007 (China), BWS4592 (United Kingdom) and AS-1657 (Australia). Preliminary Injury Inquiry No. PI-2010-001, Administrative Record, Vol. 1 at 15.

9. Steel grating is commonly manufactured in Canada in accordance with the aforementioned ANSI/NAAMM specifications, notwithstanding the manufacturing process (welding, hydraulic pressing or riveting).

38. Manufacturing generally includes three phases: (1) slitting; (2) forming, welding and other methods of joining; and (3) finishing.

39. The first phase involves the sizing of the panel or mat. Hot-rolled steel coils used for the main bearing bars are unrolled and slit lengthwise into the appropriate width and then cut into the appropriate length. Flat steel bars may also be used, pre-cut to the prerequisite lengths and widths. Steel bars or rods used as the cross-bars are also cut to size. For grating that utilizes twisted cross-bars, the rod or bar may be placed into a twisting machine and physically twisted before being cut to length. As with the lengthwise bearing bars, pre-cut and pre-twisted steel cross rods may be employed.

40. The bearing bars are placed into a setter which ensures that the bars are properly spaced. In the case of welded grating, the bars are then run through a high-voltage electrical welder which heats the same spot across each of the bearing bars to high heat. Immediately after heating, the cross-bars are machine-pressed into the heated bearing bars. The pressing of the cross-bars into the bearing bars completes the welding process, forming the semi-finished steel grating into a panel or mat. Next, the panel or mat undergoes testing and inspection to ensure the integrity of the welds and to ensure that it possesses proper tensile strength, that the bearing bars are aligned correctly and that, as a whole, it can withstand load tolerances.

41. There are other joining methods which can be used to produce steel grating. In “pressure-locked” grating, which is produced using a form of hydraulic pressing, the bearing bars and cross-bars are hydraulically pressed together to create a secure bond between the bearing bars and the cross-bars, basically locking them into place. In “swage-locked” grating, another form of hydraulic pressing, the cross-bars are hydraulically driven through the bearing bars (usually through the centre).

42. In the riveting process, reticulated cross-bars are riveted to the bearing bars. The bearing bars are pre-punched with a round hole prior to being placed in the jig. The cross-bar is pressed into a “W” shape and placed between the bearing bars. The height of the “W” becomes the bar spacing. A rivet is used at the apex of the “W” through the hole that was punched in the bearing bar to lock the cross-bar to the bearing bar.

43. The production processes for hydraulically pressed grating and riveted grating are similar to those for welded grating. In each case, the longitudinal bearing bars are placed in a jig that holds the bars in place. The cross-bars are then joined to the bearing bars through each of the various processes: welding, pressing and/or riveting. Hydraulic pressing and riveting are older forms of production, are more labour intensive and entail larger material costs than welding.

44. The final phase of manufacturing may involve painting, galvanizing or end finishing. Painted panels are dipped into a bath of lacquer and then air dried. Galvanized panels are dipped into an electrolytically charged bath of zinc to protect against corrosion. End finishing operations may include the addition of end bands, small weldments or basic cut-outs.

45. Additional processing can be performed on the panel or mat before it is sold, e.g. it can be cut, welded and shaped to size. Typically, these additional steps take place subsequent to the forming of the panel or mat and prior to the final phase of manufacturing. For instance, if a panel is to be cut to size, this step in the production is typically performed prior to painting or galvanizing the panel.

## DOMESTIC PRODUCERS

46. There are two domestic producers of steel grating in Canada, namely, Fisher & Ludlow and Borden Metal. Fisher & Ludlow provided complete replies to the Tribunal's producers' questionnaire on steel grating and to the Tribunal's producers' questionnaire on classes of steel grating. Borden Metal provided complete replies to the first questionnaire.

### Fisher & Ludlow

47. Fisher & Ludlow was established in 1954 as a privately owned Canadian manufacturer of grating and is the largest Canadian manufacturer of steel grating. It has a plant in Burlington, Ontario, where it manufactures standard, heavy-duty and stainless steel grating, using primarily the welded method, and other products, such as aluminum grating, safety grating and expanded metal grating. The company has another plant in Wetaskiwin, Alberta, where it has manufactured standard steel grating since 2006.

48. Fisher & Ludlow is a division of Harris Steel ULC, which, in turn, is wholly owned by Nucor Corporation, of Charlotte, North Carolina. It is also affiliated with Fisher & Ludlow Inc., a manufacturer of grating located in Wexford, Pennsylvania.

49. Fisher & Ludlow began exporting steel grating to its U.S. affiliate around 1980. In 2006, it also began importing small volumes of specialized grating from its U.S. affiliate to supply a number of smaller-volume Canadian customers.<sup>10</sup>

### Borden Metal

50. Borden Metal was incorporated in 1955 and is located in Beeton, Ontario. It manufactures heavy-duty and stainless steel grating using the riveting and pressure locking methods. Since 1973, Borden Metal has also produced steel grating using resistance welding.

51. Borden Metal imported small amounts of steel grating from China between 2008 and the middle of 2010. The company also exports small amounts of riveted and pressure-locked steel grating to the United States.

## IMPORTERS

52. The Tribunal requested 46 potential importers of steel grating to complete the importers', distributors' and/or service centres' questionnaire on steel grating. The Tribunal received 35 replies, including 26 replies from companies that do not import steel grating.

53. The Tribunal sent a short-form importers', distributors' and/or service centres' questionnaire to 17 potential importers. The Tribunal received 14 replies, including 9 replies from companies that do not import steel grating.

54. The Tribunal requested that 23 importers, distributors and service centres confirm that the import information filed reflects the state of steel grating upon importation and does not include any information on further processing that might have been performed in Canada prior to the sale of the goods in the Canadian market and, if necessary, that they provide information in concordance with the aforementioned. From the replies, and other information on the record, the Tribunal's staff prepared public and protected addendums to the staff report which contained information on sales of imported steel grating sold "as imported".

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10. Tribunal Exhibit NQ-2010-002-11.02, Administrative Record, Vol. 3 at 56.

55. The Tribunal sent the importers', distributors' and/or service centres' questionnaire on classes of steel grating to Amico Canada, Russel Metals Inc. (Russel Metals) and Accurate Screen. Replies were received from Amico Canada and Russel Metals.

### **Accurate Screen**

56. Accurate Screen was the only importer of any significance of steel grating from China during the Tribunal's POI.

57. Accurate Screen was incorporated in 2001 in Calgary, Alberta, and now has two other locations, one in Langley, British Columbia, and one in Mississauga, Ontario.

58. Accurate Screen is an importer, distributor and further processor of steel grating. In 2008, it began importing steel grating from China. Accurate Screen sells imported steel grating to steel distributors, service centres and end users (including further processors and fabricators).

### **Amico Canada**

59. Amico Canada was founded in 1989 and is located in Burlington, Ontario. It is wholly owned by Alabama Metal Industries of Birmingham, Alabama.

60. Amico Canada is an importer and master distributor, and imports steel grating from its U.S. parent company to sell with other related products that it manufactures in Canada, e.g. plank grating and expanded metal grating. Amico Canada does not purchase steel grating manufactured in Canada.

### **Russel Metals**

61. Russel Metals was incorporated in 2002, following the amalgamation of its predecessor of the same name with A.J. Forsyth and Company Limited, a subsidiary with Canadian service centre operations, and three non-operating subsidiaries. Russel Metals also conducts business under the name of Acier Leroux, in Quebec, and A.J. Forsyth, in British Columbia.

62. Russel Metals sells steel grating in Canada through its 50 service centres located in 9 provinces. It purchases domestically produced steel grating from Fisher & Ludlow and imported steel grating from Accurate Screen and Amico. Russel Metals also imports steel grating from the United States.

### **PURCHASERS**

63. The Tribunal requested 25 companies identified as potential purchasers of steel grating to complete the purchasers' questionnaire on market characteristics. It received 16 replies, 10 from steel-grating distributors and service centres and 2 from end users. The 4 remaining replies included intermediate and structural steel suppliers.

64. The Tribunal sent the purchasers' questionnaire on classes of steel grating to 16 purchasers and received 9 replies.

## FOREIGN PRODUCERS

65. The Tribunal requested 61 potential foreign producers and exporters to complete the foreign producers' questionnaire. It received 4 replies from companies that indicated that they were either not producers or not exporters of the steel grating covered by the Tribunal's inquiry.

## MARKETING AND DISTRIBUTION

### Domestic Product

66. In the Canadian market, the domestic producers offer the same range of products as importers of steel grating.

67. Domestically produced steel grating products are sold directly to end users (such as fabricators) or marketed through distributors/service centres, which may distribute the steel grating to other distributors or other smaller service centres or further process the steel grating and supply smaller end users, fabricators, contractors, etc.

68. The domestic producers sell to customers either on a freight prepaid (delivered) basis or free on board (FOB), whichever the customer prefers. They market steel grating products through their sales forces, which either contact customers directly or receive customer requests on a regular basis.

69. Although there is a range of product mix of domestically produced steel grating products, which can vary from period to period to reflect market demand, steel grating is commonly sold to distributors/service centres as standard (dimension, size, product type, etc.) steel grating panels or mats (hereinafter referred to as "standard steel grating").

70. During the POI, between 50 and 60 percent of the total domestic production of steel grating for sale in the merchant market was sold directly to distributors/service centres and 40 to 50 percent to end users.<sup>11</sup>

### Imported Product

71. As is the case with domestically produced steel grating, imported steel grating products are sold directly to end users or distributors/service centres. Similarly, imported steel grating products may take the form of standard steel grating or may be imported as grating that is already further processed in order to meet specific customer needs.

72. Importers sell their steel grating products in a variety of ways. Certain importers source the products, determine the availability and prices from foreign suppliers, respond to customer inquiries, requests or orders, and then source the products accordingly. Therefore, the steel grating products that they import are effectively pre-sold. Other importers utilize sales agents or a dedicated sales force to contact customers and seek orders. This is typically done when they have steel grating products in inventory or they learn of shipments that are en route to Canada. Other importers, such as Accurate Screen, operate in both ways, both filling and soliciting orders.<sup>12</sup>

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11. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Vol. 2.2 at 82, 87; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 92, 97.

12. *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 184, 225-28, 289.

73. Importers can ship the products directly to their customers from the source manufacturers, sell FOB the unloading dock in Canada, sell FOB their warehouses or sell on a prepaid freight (delivered) basis, whichever the customer prefers.

74. During the POI, more than half of all imported steel grating was sold to distributors/service centres.<sup>13</sup>

75. As regards imports of the subject goods, during the POI, there was a significant shift in their product mix towards standard steel grating. This substantial variation in product mix was the direct result of a change in Accurate Screen's business model for steel grating products.

76. In 2009, Accurate Screen developed its own capacity to further process steel grating in Canada and significantly expanded its inventory capacity.<sup>14</sup> Consequently, since August 2009, the vast majority of Accurate Screen's imports of steel grating have been standard steel grating panels.<sup>15</sup>

## PRICING

77. In the steel grating industry, the vast majority of sales (whether sourced domestically or imported) are made on a "spot price" basis.<sup>16</sup> Each sale made this way is negotiated individually with the client. Purchasers typically request quotations in order to establish transaction prices. They may also negotiate prices with their suppliers on the basis of available market intelligence.

78. Generally, the prices of steel grating are negotiated on the basis of prevailing market prices. The price of steel grating typically consists of a "base price" for standard grating, to which charges are added for a variety of features that may be specified by the customer to meet the technical requirements of the application for which the steel grating is intended. The important features in determining the price of steel grating are grade, thickness, width, product type, coating, surface finish and the amount of further processing required.

79. Published price lists are not commonly used in the industry.<sup>17</sup>

## ANALYSIS

80. The Tribunal is required, pursuant to subsection 42(1) of *SIMA*, to inquire as to whether the dumping and subsidizing of the subject goods have caused injury or retardation or are threatening to cause injury, with "injury" being defined, in subsection 2(1), as "... material injury to a domestic industry". In this regard, "domestic industry" is defined in subsection 2(1) by reference to the domestic production of "like goods".

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13. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 82, 87; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 92, 97; Tribunal Exhibit NQ-2010-002-15.30D (protected), Administrative Record, Vol. 6B at 144.4; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33.

14. *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 211.

15. *Ibid.* at 211-12.

16. Although less common, in addition to facilitating the sale of steel grating and the logistics of moving the product between a producer or importer and purchaser, steel grating may also be sold as part of a "bundle" of products.

17. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-49, Administrative Record, Vol. 1.2 at 17; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-51, Administrative Record, Vol. 1.3 at 19.

81. Accordingly, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must determine what constitutes the “domestic industry” for purposes of its injury analysis. The Tribunal can then assess whether the dumping of the subject goods has caused injury to the domestic industry. Should the Tribunal arrive at a finding of no injury, it will determine whether there exists a threat of injury to the domestic industry.<sup>18</sup> If necessary, the Tribunal will consider the question of retardation.<sup>19</sup>

82. Given that the CBSA has determined that the subject goods were dumped and subsidized, the Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effects) in this inquiry.

83. In conducting its injury analysis, the Tribunal will also examine other factors that might have had an impact on the domestic industry to ensure that any injury caused by such factors is not attributed to the effects of the dumping of the subject goods.

### Like Goods and Classes of Goods

84. Given that the Tribunal must determine whether the dumping and subsidizing of the subject goods have caused or are threatening to cause injury to the domestic producers of like goods, the Tribunal must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods. Should the Tribunal determine that there is more than one class of goods in this inquiry, it must conduct a separate injury analysis and make a decision for each class that it identifies.<sup>20</sup>

85. 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.

86. When goods are not identical in all respects to the other goods, the Tribunal typically considers a number of factors to determine likeness, such as the physical characteristics of the goods (e.g. their composition and appearance), their market characteristics (e.g. substitutability, pricing, distribution channels and end uses) and whether the goods fulfill the same customer needs.<sup>21</sup>

87. In its preliminary injury inquiry, the Tribunal found that domestically produced steel grating constitutes like goods in relation to the subject goods. The evidence adduced during the final inquiry stage in relation to the relevant factors supports the Tribunal’s preliminary finding on this issue. In fact, the evidence indicates that steel grating produced in Canada closely resembles the subject goods in that it is physically

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18. Injury and threat of injury are distinct findings; the Tribunal is not required to make a finding relating to threat of injury pursuant to subsection 43(1) of *SIMA* unless it first makes a finding of no injury.

19. Subsection 2(1) of *SIMA* defines “retardation” as “. . . material retardation of the establishment of a domestic industry”. Therefore, should the Tribunal determine that a domestic industry is already established, it will not need to consider the question of retardation.

20. *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

21. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at 8; *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at 7; *Mattress Innerspring Units* (24 November 2009), NQ-2009-002 (CITT) at 6.



almost identical when produced to the required specifications. The subject goods and domestically produced steel grating are also fully substitutable in the marketplace, fulfill the same customer needs and are distributed through the same channels.<sup>22</sup> Accordingly, for the purposes of this injury inquiry, the Tribunal finds that domestically produced steel grating, defined in the same manner as the subject goods, constitutes like goods in relation to the subject goods.

88. Concerning the issue of classes of goods, the Tribunal found, for the purposes of its preliminary injury inquiry, that the subject goods constitute a single class of goods. However, during the course of the present inquiry, the Tribunal noted that, in its submissions to the Tribunal, Fisher & Ludlow stated that galvanized steel grating is used in “specialized applications” because of its higher cost and corrosion-resistant characteristics.<sup>23</sup> The evidence filed by Fisher & Ludlow also indicated that stainless steel grating and galvanized coated grating command a higher price than non-galvanized carbon and alloy steel grating.<sup>24</sup>

89. In view of the above-referenced statement and evidence, on February 28, 2011, the Tribunal distributed supplementary questionnaires relating to the possible existence of three separate classes of goods in this inquiry, namely, (i) galvanized carbon or alloy steel grating; (ii) non-galvanized carbon or alloy steel grating; and (iii) stainless steel grating. On March 1, 2011, the Tribunal requested the domestic producers and certain importers and purchasers to provide submissions on the issue of whether these goods constituted separate classes. On March 2, 2011, the Tribunal requested the CBSA, in the event of the issuance of a final determination of dumping and subsidizing, to provide the volumes, dumping margins and subsidy amounts for each potential class of goods.

90. On March 5, 2011, the Tribunal received submissions on the issue of classes of goods from Accurate Screen and Fisher & Ludlow.

91. Accurate Screen submitted that there are two separate classes of goods, that is, carbon and alloy steel grating and stainless steel grating. Accurate Screen stated that galvanized steel grating and non-galvanized steel grating are similar goods because the only difference between them is the finish. In Accurate Screen’s view, galvanized steel grating is usually preferred for increased rust resistance in exterior applications or where there is potential contact with certain chemicals. In its opinion, galvanization was nothing more than a coating applied to the product in order to increase its resistance to corrosion. It further submitted that stainless steel grating could be considered a separate class of goods because it is made from a different material (stainless steel bar), is a lot more expensive and is used for very specific applications (e.g. food processing industry).

92. Fisher & Ludlow submitted that there is a single class of goods. Its submission in this regard can be summarized as follows:

- the Tribunal should not separate goods into classes absent extraordinary and compelling reasons and only in the clearest and most obvious cases;
- as a matter of fairness and reasonable application of Canada’s trade remedy regime, there should be consistency between the subject goods as defined by the CBSA and the like goods defined by the Tribunal;

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22. Manufacturer’s Exhibit A-03 at paras. 20-21, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 202.

23. Manufacturer’s Exhibit A-01 at para. 25, Administrative Record, Vol. 11.

24. Manufacturer’s Exhibit A-07 at paras. 25-26, Administrative Record, Vol. 11.

- there are no clearly distinguishable technical, physical and end-use factors among the three potential classes of goods identified by the Tribunal;
- the Tribunal should follow the broad approach to assessing the issue of like goods used in *Aluminum Extrusions*<sup>25</sup> where it is stated that the fact that certain goods may not be fully substitutable for each other for some end uses is not, in and of itself, a sufficient basis for determining that there exists multiple classes of goods;
- although galvanizing enhanced rust resistance and galvanized grating commands a higher price, galvanized steel grating is the same product as non-galvanized steel grating because it is made with the same steel, has the same load-bearing properties and the same end uses, and is subject to the same ANSI/NAAMM specifications;
- although stainless steel grating is made with a different kind of steel from carbon and alloy steel grating and is more expensive because of its particular corrosion-resistant properties, such grating is subject to the same ANSI/NAAMM specifications, conform to the same load-bearing requirements, have virtually the same applications, are made on the same equipment and are sold through the same distribution channels.

93. In addressing the issue of classes of goods, the Tribunal typically examines whether goods potentially included in separate classes of goods constitute “like goods” in relation to each other. If those goods are “like goods” in relation to each other, they will be regarded as comprising a single class of goods.<sup>26</sup>

94. The Tribunal notes that there are no rigid rules applicable to the analysis of the issue of classes of goods. Instead, there are numerous criteria, based upon subsection 2(1) of *SIMA*, which have been developed by the Tribunal to assist in the analysis of the evidence in each case. None of these criteria, which pertain to the physical and market characteristics of the goods, is predominant.<sup>27</sup>

95. It is therefore necessary to weigh separately each of the criteria relevant to a class of goods determination and then, at the end, to take a step back and make a decision that is supported by the evidence and consistent with the provisions and purposes of *SIMA*.

96. Following this approach, the Tribunal considered whether there are sufficient differences on the basis of an analysis of the evidence on the above-mentioned factors for determining “likeness” to justify separating non-galvanized carbon and alloy steel grating, galvanized carbon and alloy steel grating and stainless steel grating into different classes.

97. With respect to the physical characteristics of the goods, the evidence before the Tribunal is uncontroverted and clear. The three potential classes of goods are virtually indistinguishable from each other.<sup>28</sup> However, stainless steel grating obviously has a different chemical composition since it is made of a different metal.<sup>29</sup>

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25. *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) [*Aluminum Extrusions*].

26. *Aluminum Extrusions* at 19; see, also, *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

27. In *Sarco Canada Limited v. Anti-dumping Tribunal*, [1979] 1 F.C. 247 (F.C.), the Federal Court of Canada held that a determination of like goods requires a consideration of all the physical and market characteristics of the goods and, while emphasis may be placed on certain characteristics, the totality of the characteristics must be taken into account.

28. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 39-40, 43-44, 47-48, 65-66, 90-91; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 159-60; *Transcript of In Camera Hearing*, Vol. 1, 21 March 2011, at 62-63.

29. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 39-40; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 159.

98. With respect to methods of production, the evidence is also uncontroverted and clear. There are no differences in the manufacturing processes of the three potential classes of goods. The products in each potential class are made on the same equipment.<sup>30</sup>

99. With respect to marketing methods and distribution channels, the documentary evidence and the testimony of each of the witnesses support the finding that the marketing methods and distribution channels are the same for each of the three potential classes of goods. There is no evidence indicating otherwise on the record.

100. Turning to end uses, performance characteristics and consumer preferences, the Tribunal notes that the general end use of all steel grating products in each of the three potential classes of goods is exactly the same, that is, to provide a weight-bearing surface upon which to walk.<sup>31</sup>

101. Further, as indicated by the witnesses, once goods in each of the three potential classes of goods meet the same set of ANSI/NAAMM standards, they are virtually the same in terms of size of panel, size of cross and bearing bars, and load-bearing capabilities.<sup>32</sup>

102. However, the evidence indicates that, for certain specific applications, customers will prefer or require either galvanized grating or stainless steel grating.<sup>33</sup> In the Tribunal's opinion, the reason for this is to account for the single factor that distinguishes all three potential classes of goods from each other—the level of corrosion protection.

103. The evidence indicates that a coating of paint is typically applied to non-galvanized grating to provide a minimal level of corrosion resistance. The next level of corrosion protection is achieved through another type of coating—galvanization.<sup>34</sup> The highest level of corrosion resistance is achieved through a change from carbon and alloy steel to stainless steel.

104. Considering the above criteria as a whole, the Tribunal is of the view that different coatings—painting or galvanization—are insufficient to create a separate class of goods. Indeed, on the basis of the unanimous testimony of the witnesses, it is reasonable to characterize painting and galvanization strictly as customer preferences that relate to how long the structure is expected or needed to last.

105. However, a change in chemical composition—carbon and alloy to stainless – is not a preference but a requirement for a very specific end use, such as in the food processing industry. Therefore, on balance, the evidence pertaining to end uses and customer preferences supports a finding that stainless steel grating is a separate class of goods.

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30. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 40, 44; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 159; *Transcript of In Camera Hearing*, Vol. 1, 21 March 2011, at 62-63.

31. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 39, 40, 42, 43; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 128-130; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 204.

32. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 39-40, 90-91; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 159.

33. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 128-31; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 160.

34. The only difference between non-galvanized and galvanized grating is that the latter is dipped in a zinc bath. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 29, 40, 44-48; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 160.

106. With respect to pricing, the differences between the three potential classes of goods specifically relate to the level of corrosion protection previously discussed.

107. Witnesses testified that there is an 8 to 10 percent price premium for painting, a 30 to 35 percent price premium for galvanization and a significantly higher price premium for stainless steel.<sup>35</sup> The price premiums for galvanization and stainless steel reflect a perception in the marketplace of differences between products, and the evidence suggests that the greater the price premium, the more likely it is that the products are not substitutable.<sup>36</sup>

108. Indeed, the witnesses all agreed that, because stainless steel is so much more expensive than carbon and alloy steel, the result can only be a much higher price for stainless steel grating. However, the witnesses also noted that, unlike stainless steel, which has a different chemical composition from carbon and alloy steel, galvanization is merely a type of coating and that its price is primarily related to the cost of zinc.

109. Therefore, the Tribunal considers that price and interchangeability are separate but related considerations and a different price premium between products does not necessarily lead to a conclusion that the products in question are not substitutable.

110. In fact, on the issue of substitutability, there is no evidence on the record of technical barriers to using non-galvanized carbon and alloy steel, galvanized carbon and alloy steel and stainless steel in place of each other. On the contrary, a reasonable interpretation of the evidence is that non-galvanized carbon and alloy steel, galvanized carbon and alloy steel and stainless steel are all interchangeable because they have the same end use. The point made by each witness was not that goods in each of the three potential classes are not substitutable but, rather, that it was unlikely that anyone would pay a price premium for the different levels of corrosion resistance if this was not a concern.<sup>37</sup>

111. The only exception noted by the witnesses was in respect of the food processing and chemical industries,<sup>38</sup> where stainless steel appears to be a requirement, and therefore customers cannot use carbon and alloy steel grating. It is this exception, which is based on the need for a product of a different chemical composition, a significant price differential and a specialized use that, in the Tribunal's opinion, justifies the finding of a separate class for stainless steel grating.

112. However, on the basis of its analysis of the evidence on the record, the Tribunal considers that non-galvanized steel grating and galvanized steel grating are interchangeable and may compete with each other in the marketplace. Given that the only difference between non-galvanized steel grating and galvanized steel grating is the level of corrosion resistance, which is reflected in a price premium between them, it is conceivable that, unlike the high price premium for stainless steel, the price premium for galvanization could be reduced so that galvanized grating could compete with non-galvanized grating.

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35. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 44; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 160-61; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 199, 231.

36. *Ibid.*; *Transcript of In Camera Hearing*, Vol. 2, 22 March 2011, at 108; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 171.

37. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 45-48; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 131, 164-65; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 201-204.

38. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 43; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 160-61; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 197-98.

113. This is further evidenced by the importers' margins on each of the three potential classes of goods, which are such that it would be possible for them to offer galvanized products at a price that competes with non-galvanized grating and still maintain a reasonable profit.<sup>39</sup>

114. It must also be borne in mind that non-galvanized steel grating is the major input for galvanized steel grating and that, therefore, low-priced imports of non-galvanized steel grating may result in equivalently lower-priced galvanized steel grating in the marketplace.

115. In summary, the evidence indicates that manufacturing methods, physical characteristics, distribution channels and end uses are the same for non-galvanized steel grating and galvanized steel grating, that these products are substitutable and that they could realistically compete with each other. On balance, the Tribunal finds that these goods are like goods in relation to each other.

116. As for stainless steel grating, the production methods, distribution channels and end uses are the same as for non-galvanized steel grating and galvanized steel grating. However, the physical composition is very different, which results in such a substantial price premium that only those customers that specifically require stainless steel, such as those in the food processing industry, order it.<sup>40</sup> These important differences are sufficient to find that stainless steel grating constitutes a separate class of goods.

117. Lastly, the Tribunal notes that Fisher & Ludlow asked the Tribunal to consider the administrative and cost implications, particularly for the domestic industry, that result from the creation of multiple classes of goods in inquiries under section 42 of *SIMA*.

118. While these are valid concerns, they are not determinative from a legal perspective. They do, however, highlight the fact that it is important to listen to people who work with the subject goods on a daily basis, such as those who participated in this inquiry. These participants were unanimous in stating that there is no difference in the marketplace between non-galvanized grating and galvanized grating and acknowledged that stainless steel grating is a niche product for specialized uses.

119. For these reasons, the Tribunal finds that there are two classes of goods in this inquiry: carbon and alloy steel bar grating and stainless steel bar grating.

### **Separate Opinion of Member Fréchette on Classes of Goods**

120. Unlike my colleagues, I find that there are three classes of goods in this inquiry: galvanized carbon and alloy steel grating, non-galvanized carbon and alloy steel grating, and stainless steel grating. Before detailing my reasons for my opinion on this issue, it is important to state at the outset, the determinations of the majority which follow and with which I agree:

- Pursuant to subsection 42(4.1) of *SIMA*, the volume of dumped and subsidized stainless steel grating from China is negligible; therefore, the inquiry in respect to this class of goods is terminated;

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39. *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 170; pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 50; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 52; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33.

40. This finding is supported by the small volume of stainless steel grating actually sold in the domestic market during the POI. Pre-hearing staff report, *Stainless Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-54 (protected), Administrative Record, Vol. 2.4 at 40, 50.

- Fisher & Ludlow's production constitutes a major proportion of the total domestic production of the like goods; and
- The domestic industry has suffered material injury because of the dumped and subsidized galvanized steel grating and non-galvanized steel grating, and the injury analysis set out in this statement of reasons, which aggregates the data with regard to non-galvanized steel grating and galvanized steel grating, is sound.

121. On the basis of my review of the evidence on the record, it is also my view that a separate injury analysis with respect to galvanized steel grating would result in a finding that the dumping and subsidizing of the subject galvanized steel grating have caused or are threatening to cause injury to the domestic industry. As a consequence of the above, providing a separate injury analysis for galvanized carbon and alloy steel grating would serve no purpose. I also note that, even if such an analysis were to lead me to conclude that the dumped and subsidized galvanized steel grating did not cause and is not threatening to cause injury to the domestic industry, such a conclusion would have no legal effect. It is the majority's injury analysis and findings in this matter that have a bearing on whether duties will be collected on the subject goods. In these circumstances, it is therefore appropriate for me to exercise judicial economy and refrain from providing a separate injury analysis even if, in my view, there is a third class of goods in this inquiry.

122. With respect, I am however unable to agree with the conclusion of my colleagues on the issue of classes of goods primarily because, in my view, the differences between galvanized steel grating and non-galvanized steel grating in terms of specific applications, coating and pricing should be given more weight in the analysis. I consider that these differences demonstrate that galvanized steel grating and non-galvanized steel grating are not interchangeable and do not usually compete in the marketplace because these two categories of products do not fulfill the same customer needs. In short, I disagree with my colleagues' conclusion that galvanized steel grating and non-galvanized steel grating are substitutable products.

123. In this regard, I am of the opinion that the key point of any analysis of the product characteristics in the context of an examination of the issue of classes of goods is ultimately to determine whether the goods are interchangeable, substitutable for one another or compete with one another in the marketplace. I consider that, despite the many similarities between galvanized steel grating and non-galvanized steel grating discussed by my colleagues, particularly in terms of method of manufacture, physical characteristics, distribution channels and general end use, the characteristics that most influence the conditions of competition in this inquiry are the differences in ultimate application, finishing and chemical composition of the three potential classes of goods. The evidence indicates that these differences are reflected in significant price differences between them.

124. The evidence also indicates that the specific applications of steel grating products in each of the three potential classes are different and that customers may require grating with a different finish or chemical composition depending on the environmental conditions in which it will be used (i.e. interior or exterior use, or use in a sanitized environment). The witnesses testified that one would *not* pay the price premiums for either galvanized steel grating or stainless steel grating unless it is determined that those types of grating are absolutely required for a given application.<sup>41</sup>

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41. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 43, 47, 48; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 131, 164-65; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 203-204.

125. I conclude from this evidence that galvanized steel grating and non-galvanized steel grating are not interchangeable goods, since non-galvanized steel grating will not be used in applications for which galvanized steel grating is necessary from a customer's perspective. In other words, it is my view that, like stainless steel grating, which is only used in specialized applications, galvanized steel grating does not compete with non-galvanized steel grating in the marketplace. Therefore, the three types of steel gratings covered in the product definition are not like goods in relation to one another.

126. I also note that, in *Fasteners*,<sup>42</sup> the Tribunal distinguished among the types of fasteners that were at issue on the basis of how they were designed and how they were ultimately used. The Tribunal stated the following:

[73] . . . 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. 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 equipment 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. . . .

[Footnotes omitted]

127. On the basis of my interpretation of the evidence on the record, it is my view that this reasoning applies by analogy to the conditions of competition between galvanized steel grating and non-galvanized steel grating. In particular, I am of the opinion that non-galvanized steel grating is not substitutable for galvanized steel grating or stainless steel grating where corrosion resistance is an issue.

128. While I note that all witnesses stated that, in their respective opinion, despite these differences, galvanized steel grating and non-galvanized steel grating constitute a single class of goods, and I respect such opinions, it warrants emphasizing that whether there is more than one class of goods in this inquiry is a legal determination and that, therefore, the Tribunal is not bound by the opinion of the witnesses on this issue. It must conduct its own analysis of the evidence and draw its own conclusions.

129. Finally, while I am mindful of the practical burden that a finding of multiple classes of goods may have on the domestic industry in terms of administrative and cost implications, I consider that this factor cannot result in the Tribunal ignoring its responsibility to reach decisions that are sound in fact and in law. In other words, such considerations cannot, in my view, cancel out a finding supported by relevant evidence that galvanized steel grating, non-galvanized steel grating and stainless steel grating are not like goods in relation to one another.

### **Negligibility**

130. In accordance with 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.<sup>43</sup>

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42. *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT).

43. Subsection 2(1) of *SIMA* defines "negligible" 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.

131. For the purpose of determining whether the volume of dumped goods from China is negligible in respect of each of the two classes of goods under consideration, the Tribunal applied the percentage of dumped goods determined by the CBSA for each class of steel grating to the data that it had gathered on import volumes.<sup>44</sup>

132. As there were no imports of stainless steel grating from China, the volume of dumped stainless steel grating from China represents 0 percent of the total volume of stainless steel grating that was released into Canada from all countries during the period from July 1, 2009, to June 30, 2010, and that is of the same description as the dumped goods.<sup>45</sup>

133. Since the relevant volume falls below the prescribed 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 imports of stainless steel grating from China is negligible.

134. The CBSA determined that all steel grating from China was subsidized. Applying the same approach as outlined above, as there were no imports of stainless steel grating from China, the volume of subsidized stainless steel grating from China represents 0 percent of the total volume of stainless steel grating that was released into Canada from all countries during the period from January 1, 2009, to June 30, 2010, and that is of the same description as the subsidized goods.

135. *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*<sup>46</sup> provides for a 4 percent negligibility threshold for developing countries, which include China.<sup>47</sup>

136. 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 grating from China is negligible.

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44. The Tribunal notes that the CBSA was only able to separate import volumes by category for those exporters and importers that provided such information.

45. The Tribunal conducted a detailed review of the record and found no evidence of imports of stainless steel grating from China.

46. 7 April 2011, online: World Trade Organization <[http://www.wto.org/English/docs\\_e/legal\\_e/final\\_e.htm](http://www.wto.org/English/docs_e/legal_e/final_e.htm)> [*Subsidies Agreement*]. Paragraph 10 of Article 27 reads 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.

47. 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 the investigation.



137. Having determined that the volume of both dumped and subsidized imports of stainless steel grating from China is negligible, pursuant to subsection 42(4.1) of *SIMA*, the Tribunal hereby terminates its inquiry in respect of those goods.<sup>48</sup>

### Domestic Industry

138. Subsection 2(1) of *SIMA* defines “domestic industry” 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.

139. In view of the Tribunal’s determination that there are two classes of goods in this inquiry, and the termination of its inquiry in respect of the dumping and subsidizing of stainless steel grating, the Tribunal must identify the domestic producers that constitute the “domestic industry” for carbon and alloy steel grating in order to be in a position to conduct its injury analysis.

140. On the basis of the evidence on the record of this inquiry, the Tribunal finds that Fisher & Ludlow and Borden Metal are the only domestic producers of carbon and alloy steel grating. Thus, these producers are considered to constitute the domestic industry.

141. The Tribunal also finds that Fisher & Ludlow itself accounts for a major proportion of the total domestic production of like goods.<sup>49</sup> The Tribunal notes that Borden Metal supported the issuance of an injury finding. However, the evidence on the record, which was supported by testimony from the witness from Borden Metal indicates that Borden Metal has not yet suffered injury.<sup>50</sup> Indeed, Fisher & Ludlow stated that the evidence with respect to Borden Metal merely supports a finding of threat of injury.

142. In this regard, since Fisher & Ludlow’s production alone constitutes a major proportion of the total domestic production of like goods, a finding that the dumping and subsidizing of the subject goods have caused injury to Fisher & Ludlow’s production would be sufficient to conclude that dumping and subsidizing of the subject goods have caused injury to the domestic industry. Therefore, the Tribunal will restrict its analysis of injury to the evidence pertaining to Fisher & Ludlow’s production.

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48. In light of the Tribunal’s termination of its inquiry in respect of the dumping and subsidizing of stainless steel grating, the Tribunal continues its inquiry in respect of the dumping and subsidizing of carbon and alloy steel grating. For this reason, hereinafter, the term “subject goods” does not include stainless steel grating and refers to carbon and alloy steel bar grating.

49. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 34; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 36; pre-hearing staff report, *Stainless Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-54 (protected), Administrative Record, Vol. 2.4 at 34; pre-hearing staff report, *Steel Grating*, Tribunal Exhibit NQ-2010-002-07A (protected), Administrative Record, Vol. 2.1A at 50.

50. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 102-106.

### Cross-cumulation

143. As noted above, the Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods, i.e. whether it will cross-cumulate the effects. While subsection 42(3) of *SIMA* addresses cumulation, which constitutes the assessment of the effects of the dumping of goods from more than one country, taken together, or of the subsidizing of goods from more than one country, taken together, there are no legislative provisions that directly address the issue of cross-cumulation.

144. However, as noted in previous cases, subsections 37.1(1) and (2) of the *Special Import Measures Regulations*<sup>51</sup> prescribe certain factors for the Tribunal to consider in making its findings. These factors have, as their focus, the effects that dumped or subsidized goods have had or may have on a number of economic indices. In this regard, the effects of dumping and subsidizing of the same goods from a particular country (in this case China) is manifested in a single set of effects caused by pricing. It is therefore the Tribunal's view that, in the conduct of an injury analysis, it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. In reality, they are so closely intertwined as to render it impossible to allocate discrete portions to the dumping and the subsidizing respectively.<sup>52</sup>

145. Therefore, consistent with its long-standing view on the matter, the Tribunal will cross-cumulate the effects of the dumping and subsidizing of the subject goods in its injury analysis.

### INJURY

146. The Tribunal will now determine whether the dumping and subsidizing of the subject goods have caused injury to the domestic industry, taking into account the factors prescribed by subsection 37.1(1) of the *Regulations*. Section 37.1 prescribes that, in determining whether the dumping and subsidizing of the subject goods have caused material injury to the domestic industry, the Tribunal is to consider the volume of subject goods, their effects on the price of the like goods in the domestic market and their resulting impact on the domestic industry, including actual or potential declines in domestic sales, market share, profits and financial performance. Subsection 37.1(3) also directs the Tribunal to consider other factors not related to the dumping and subsidizing to ensure that any injury caused by these other factors is not attributed to the dumped imports.

147. After having considered all relevant factors, the Tribunal will examine whether any injury suffered by the domestic industry during the POI is "material", as contemplated by section 42 of *SIMA*.<sup>53</sup> In this regard, the Tribunal notes that *SIMA* does not define the term "material". However, the Tribunal considers that both the extent of injury during the relevant time frame and the timing and duration of the injury are relevant considerations in determining whether any injury is "material".

### Preliminary Considerations

148. This inquiry presented several challenges for the Tribunal, including for its assessment of injury. Therefore, before proceeding with the injury analysis, the Tribunal will address certain preliminary challenges that arose during the inquiry.

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

52. See, for example, *Aluminum Extrusions* at 24.

53. The term "injury" in section 42 of *SIMA* is defined as "material injury to a domestic industry" in subsection 2(1).

Validity and Reliability of Data Provided by Accurate Screen

149. The Tribunal would like to stress that this case underlined the critical importance of Tribunal questionnaires in the inquiry process. Indeed, the Tribunal relies upon respondents to use their best efforts to provide accurate, adequate, valid and reliable responses. However, the Tribunal is also acutely aware that this is a time-consuming and sometimes difficult task, as it most certainly was in this inquiry.

150. This case also underscores the role of Tribunal staff in assisting questionnaire respondents as they complete their questionnaires. The Tribunal notes that the approach of gathering and compiling data in this case was no different from that used in previous injury inquiries conducted by the Tribunal.

151. The product-specific data provided by questionnaire respondents in this case, as in all cases before the Tribunal, have been attested to be complete and correct to the best knowledge and belief of the respondents. The Tribunal staff, through extensive follow-up with all questionnaire respondents, initially assessed the accuracy, reasonableness and reliability of the data provided. However, there are limitations to what research staff can do in supporting the respondents' efforts in responding to the questionnaires. Research staff must ultimately accept responses "as provided". In that sense, the Tribunal is of the view that the proper forum for questioning and resolving the veracity, validity or reliability of the information before the Tribunal, including questionnaire responses, is during the hearing.

152. On February 16, 2011, the Tribunal received protected correspondence from Fisher & Ludlow that drew attention to alleged discrepancies between the information that Accurate Screen had provided to the CBSA for purposes of its investigations and that which it had provided to the Tribunal.<sup>54</sup>

153. In order to ensure that it had the best information available, on February 24, 2011, the Tribunal requested that the CBSA provide certain relevant dumping and subsidizing exhibits that could assist the Tribunal in its inquiry. The CBSA transferred the exhibits to the Tribunal on March 4, 2011. The Tribunal placed this information on the record of its proceedings, advised Accurate Screen and provided it with its own confidential information.

154. During the hearing, through cross-examination of the witness from Accurate Screen by counsel for Fisher & Ludlow, and because the witness provided forthright responses, it became clear that the information (including questionnaire responses) which Accurate Screen provided to the Tribunal contained numerous inaccuracies.

155. Indeed, the witness agreed that the data that Accurate Screen provided to the CBSA for purposes of its investigation were reliable, while the data that Accurate Screen provided to the Tribunal were not.<sup>55</sup> For this reason, the Tribunal's analysis that follows is based upon the data that Accurate Screen reported to the CBSA and the evidence gathered during the hearing.<sup>56</sup>

156. In light of the above, the Tribunal acknowledges the fact that certain variations, discrepancies and disparities in data which are atypical in inquiries pursuant to section 42 of *SIMA*, exist in this case. For this reason, the Tribunal's injury analysis is, to some extent, different than in other inquiries in that it focuses on the most appropriate and reliable data and does not include all the standard comparisons between, and

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54. Letter dated February 16, 2011 (protected), Related Correspondence, Vol. 21.

55. *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 298-300.

56. Tribunal Exhibit NQ-2010-002-05 (protected), Administrative Record, Vol. 2 at 18.13; Tribunal Exhibit NQ-2010-002-43 (single copy), Administrative Record, Vol. 7 at 1-190; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 1-221.

appraisal of, data sets compiled by the Tribunal staff. However, the Tribunal is of the view that the totality of evidence on the record represents the best information available and provides a sufficient and reliable factual basis for its assessment of injury.<sup>57</sup>

#### Further Processing of Imported Steel Grating

157. Because most standard steel grating panels, regardless of their source, whether domestically produced or imported, do not meet the specific needs of all end users (i.e. standard steel grating panels are not of the dimensions, coating or surface finish needed by all end users), they will require some further processing (or fabrication).

158. Further processing covers a wide range of value-added activities that vary in complexity and range of production dependent on specific end-user requirements, such as cutting, welding and banding activities, from the simple cutting to length of a panel of steel grating to more complex operations, such as cutting openings in the grating to allow objects to pass through them.<sup>58</sup>

159. Steel grating products may be sold in the open or merchant market or may be produced by the domestic producers and/or imported by importers for their own consumption or further processing.<sup>59</sup>

160. The Tribunal notes that product mix is an issue of concern in this case, as in most *SIMA* cases, because it is unusual to find either a domestic industry or a group of importers that produce or import, respectively, the identical assortment of goods year after year. That stated, the Tribunal acknowledges the especially large variety of products at play in this case and the potential impact on the comparability of results over time.

161. To address this issue, the Tribunal compared data sets at the macro and micro levels (this will be discussed below in greater detail under the following heading: effects of subject goods on the price of like goods) for domestic production and did the same with the information available respecting imports. It found that, for the most part, there was little difference in the overall trends or direction of change. Accordingly, the Tribunal is not convinced that any 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, sales, unit import costs and selling prices.

162. The Tribunal notes that certain domestic producers produce steel grating exclusively or almost exclusively for their own consumption or further processing purposes and do not sell standard steel grating in the merchant market.

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57. Due to the small number of domestic producers and importers involved in this inquiry, most of the import, sales, pricing, production and financial data, even in aggregate form, cannot be disclosed in order to protect their confidentiality. Where possible, the approximate percentage or general range of magnitude will be given.

58. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 51-53. Typically, further processing is carried out on non-galvanized steel grating, as the welding process on galvanized grating produces toxic fumes. For this reason, the vast majority of steel grating sold to distributors/service centres is sold in non-galvanized form.

59. The Tribunal collected information from domestic producers on the volume and value of the production of steel grating, including production for the merchant market in Canada, for export and for further processing in Canada. As well, regarding production of steel grating, the Tribunal collected information on other economic indicators, such as inventories, production costs, employment, investment and capacity, and capacity utilization. Finally, information on imports of steel grating made by Fisher & Ludlow and importers, whether destined for further processing or for sale in the merchant market, was also requested and included in total imports from all countries.

163. The Tribunal possesses the discretion to determine injury with respect to combined production destined for the merchant market and captive production or production destined for the merchant market exclusively. This issue has already been addressed clearly in previous cases.<sup>60</sup> In this case, as it has done in previous cases, the Tribunal chooses to focus its injury analysis on the impact of dumping and subsidizing on the merchant market.

164. The Tribunal also notes that certain importers import steel grating for sale in the merchant market and for further processing in Canada. As previously mentioned, Accurate Screen imports a mix of steel grating products, including standard steel grating and further processed steel grating products, and further processes steel grating products in Canada.

165. The Tribunal notes that, during the POI, a significantly greater proportion of Accurate Screen's imports of steel grating were in the form of standard steel grating panels and were further processed by Accurate Screen into value-added products that were then made available for sale in the merchant market.

166. As in previous cases, the Tribunal collected import and sales information that reflects the state of steel grating upon importation and does not include any information on further processing that might have been performed in Canada prior to the sale of the goods in the Canadian market.<sup>61</sup> Where applicable, a distinction will be made between the subject goods that were sold in the merchant market "as imported", i.e. steel grating that was imported and sold in Canada without being further processed domestically, and that which was destined for further processing in Canada.

### **Volume of Imports of the Subject Goods**

167. Pursuant to paragraph 37.1(1)(a) of the *Regulations*, in conducting its injury analysis, the Tribunal will consider the volume of the subject goods and, in particular, whether there has been a significant increase in the volume of imports of the subject goods, either in absolute terms or relative to the production or consumption of the like goods.

168. Fisher & Ludlow claimed that imports of the subject goods increased every year during the POI. Fisher & Ludlow contended that the evidence before the Tribunal demonstrates that there were no imports of the subject goods prior to 2008 and that, in subsequent periods, there was a significant increase in imports of the subject goods.

169. During the hearing, the witness from Fisher & Ludlow testified that it was by mid-2008 that the company realized that it was competing with Chinese steel grating products and that imports of the subject goods continued to increase steadily in 2009, growing rather dramatically in 2010.<sup>62</sup> This was not disputed.

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60. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (17 August 2001), NQ-2001-001 (CITT) at 13; *Re Refrigerators, Dishwashers and Dryers* (2002), CDA-USA 2000-1904-04 (Ch. 19 Panel) at 17-23.

61. As previously stated, additional processing can be performed on steel grating before it is sold, e.g. it can be cut, welded, shaped to size, etc. Typically, these additional steps take place subsequent to the forming of the "panel" or "mat" and prior to the final phase of manufacturing. These additional steps are performed to meet specific customer requirements.

62. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 12-13.

170. Indeed, the witness from Accurate Screen confirmed, in oral testimony, that the company started importing the subject goods during the second half of 2008, importing two containers of steel grating from China, which represented approximately 50 metric tonnes.<sup>63</sup> Fisher & Ludlow characterized that shipment as the starting point of injury caused to the domestic industry by the subject goods. The witness from Accurate Screen confirmed that imports of the subject goods increased steadily throughout 2009 and 2010.<sup>64</sup>

171. It is clear from the evidence on the record that, in absolute terms, the volume of imports of the subject goods was practically non-existent in 2007 and grew steadily during the POI.<sup>65</sup> Moreover, the increasing trend in the volume of imports of the subject goods was even greater in the most recent period, i.e. between mid-2009 and mid-2010, when the volume of imports demonstrated a substantial increase of nearly 300 percent.

172. The increase in import volumes of the subject goods coincided with a decline in overall import volumes of steel grating from 2007 to 2009 and an increase in overall import volumes in the first three quarters of 2010.<sup>66</sup>

173. The Tribunal notes that, on an annual basis, imports of steel grating from the United States were the largest source of imports into Canada during the POI, accounting for the vast majority of the total imports.<sup>67</sup> These imports and imports of the subject goods represented practically all of the total imports between mid-2009 and mid-2010.

174. While imports of steel grating from the United States represented virtually all of the imports in 2007, they declined steadily over the POI to approximately three quarters by the end of September 2010.<sup>68</sup>

175. As for imports from other non-subject countries, the evidence indicates that they are minimal, and witnesses did not view them as significant factors in the Canadian market. The Tribunal is of the view that

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63. *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 184, 251-53.

64. *Ibid.* at 245; *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 159-61.

65. *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 183-84; *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 159-61.

66. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 74; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 84; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33.

67. Imports of the subject goods were the second largest source of imports during the POI. Pre-hearing staff report, *Steel Grating*, revised 16 March 2011, Tribunal Exhibit NQ-2010-002-07A (protected), Administrative Record, Vol. 2.1A at 102; pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 74; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 84; pre-hearing staff report, *Stainless Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-54 (protected), Administrative Record, Vol. 2.4 at 72.

68. Pre-hearing staff report, *Steel Grating*, revised 16 March 2011, Tribunal Exhibit NQ-2010-002-07A (protected), Administrative Record, Vol. 2.1A at 102, 104; pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 74, 76; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 84, 86; pre-hearing staff report, *Stainless Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-54 (protected), Administrative Record, Vol. 2.4 at 72, 74; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33.

the global recession in the second half of 2008 and 2009 is also likely to have played a role in the decrease in imports.

176. In contrast, the evidence indicates that imports of the subject goods represented an increasingly significant portion of the total imports throughout the POI. Further, their share increased significantly, by almost 15 percentage points from mid-2009 to mid-2010, accounting for approximately one fifth of total imports during the first half of 2010.<sup>69</sup> This trend was corroborated by the oral testimony of the witness from Accurate Screen.<sup>70</sup>

177. The Tribunal is of the view that the significant increase in the volume of imports of the subject goods had a negative impact on the overall share of imports from the United States and other non-subject countries.<sup>71</sup>

178. It is also clear from the evidence on the record that the volume of imports of the subject goods increased relative to both domestic production and consumption.<sup>72</sup>

179. As regards the ratio of the volume of imports of the subject goods relative to the volume of domestic production of the like goods, the evidence shows that, in the first half of 2010, the ratio increased more than threefold when compared to the second half of 2009. Further, the ratio reached nearly 16 percent

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69. Such an increase far outpaced non-residential construction activity for the concurrent period. Pre-hearing staff report, *Steel Grating*, revised 16 March 2011, Tribunal Exhibit NQ-2010-002-06A, Administrative Record, Vol.1.1A at 46; pre-hearing staff report, *Steel Grating*, revised 16 March 2011, Tribunal Exhibit NQ-2010-002-07A (protected), Administrative Record, Vol. 2.1A at 102; pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 74; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 84; pre-hearing staff report, *Stainless Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-54 (protected), Administrative Record, Vol. 2.4 at 72; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33.

70. *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 245; *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 159-61.

71. Pre-hearing staff report, *Steel Grating*, revised 16 March 2011, Tribunal Exhibit NQ-2010-002-07A (protected), Administrative Record, Vol. 2.1A at 102, 104; pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 74, 76; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 84, 86; pre-hearing staff report, *Stainless Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-54 (protected), Administrative Record, Vol. 2.4 at 72, 74; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33.

72. The Tribunal examined the ratio of the volume of imports of the subject goods relative to the domestic production of like goods and the consumption of like goods. The Tribunal calculated ratios for four consecutive quarters, that is, from the third quarter of 2009 to the second quarter of 2010, adjusting production and sales figures from domestic production to ensure comparability. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 34, 40; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 36, 42; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33.

in the second quarter of 2010, as the volume of imports of the subject goods increased and represented almost a fifth of domestic production in terms of volume.<sup>73</sup>

180. A similar trend is demonstrated by the ratio of import volumes of the subject goods relative to the domestic consumption of the like goods in the Canadian market, where the ratio experienced a fourfold increase during the same period, representing approximately a quarter of the sales of domestic production in mid-2010.<sup>74</sup>

181. The evidence on the record indicates that, in 2009, during a period of contraction (recession) in market demand for steel grating, the volume of imports of the subject goods increased, while overall imports, domestic sales and production decreased. The data reflect that imports of the subject goods gained significant market share over the POI and that these market share gains have come primarily at the expense of the market share held by the domestic industry.<sup>75</sup>

182. Basing its conclusion on the foregoing, the Tribunal is of the view that there was a significant increase in the volume of imports of the subject goods in absolute terms, as well as an increase in the relative volume of imports of the subject goods compared to the production and consumption of like goods.

### **Effects of the Subject Goods on the Price of Like Goods**

183. Pursuant to paragraph 37.1(1)(b) of the *Regulations*, the Tribunal must consider the effects of the subject goods on the price of like goods and, in particular, whether the subject goods have significantly undercut or depressed the price of like goods, or suppressed the price of like goods by preventing the price increases for those like goods that would otherwise likely have occurred.

184. Fisher & Ludlow contended that the prices of the subject goods have been continually lower than the average prices of like goods, resulting in significant price undercutting from 2008 to interim 2010.<sup>76</sup> Fisher & Ludlow submitted that imports of the subject goods have caused depression and suppression of the

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73. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 34; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 36; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33.

74. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 40; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 42; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33.

75. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 34, 40, 74; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 36, 42, 84; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33.

76. Manufacturer's Exhibit A-01 at para. 89, Administrative Record, Vol. 11; Manufacturer's Exhibit A-02 (protected) at para. 89, Administrative Record, Vol. 12.



prices of like goods.<sup>77</sup> It also submitted that the subject goods have caused it to lose orders and reduce the selling prices of like goods to retain customers.<sup>78</sup>

185. To demonstrate the negative effects that the competition of the subject goods had on its selling prices during the POI, and to substantiate its claims of price undercutting, depression and suppression and lost sales, Fisher & Ludlow provided confidential evidence, including specific import activity reports for the period from 2009 to the first half of 2010 and specific instances where the subject goods were offered and, in certain instances, sold to customers at prices that were significantly lower than the selling prices of Fisher & Ludlow's like goods during the corresponding period.<sup>79</sup> In addition, Fisher & Ludlow submitted that the subject goods have had an increasing presence in the Canadian market since 2008 and that prices of the subject goods have been declining since that time.<sup>80</sup>

186. Fisher & Ludlow submitted that, once steel grating meets recognized specifications<sup>81</sup> such as ANSI/NAAMM specifications, it is a commodity product that is fully interchangeable<sup>82</sup> and highly price sensitive, with price as a main factor affecting buying decisions.<sup>83</sup> Fisher & Ludlow contended that, since the arrival of the subject goods in Canada, price competition has been significant. As indicated above, in the discussion on "like goods", the Tribunal heard testimony during the hearing that domestically produced steel grating is substitutable for the subject goods.<sup>84</sup>

187. There was extensive evidence on the record as to the importance of price in the buying decision of purchasers. The Tribunal also heard testimony which corroborates the view that price is a major factor that dictates purchasing decisions for steel grating. Fisher & Ludlow stated that, for a minimal price difference, the subject goods would "take the sale".<sup>85</sup>

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77. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 9-11, 39; Manufacturer's Exhibit A-01 at paras. 94-95, Administrative Record, Vol. 11; Manufacturer's Exhibit A-02 (protected) at paras. 94-95, Administrative Record, Vol. 12.

78. Manufacturer's Exhibit A-03 at para. 19, Administrative Record, Vol. 11.

79. Preliminary Injury Inquiry No. PI-2010-001, Administrative Record, Vol. 2 at 150-69; Manufacturer's (Exhibit A-04 (protected) at para. 36, Administrative Record, Vol. 12; Tribunal Exhibit NQ-2010-002-12.02 (protected), Administrative Record, Vol. 4 at 164-76; Tribunal Exhibit NQ-2010-002-12.02E (protected), Administrative Record, Vol. 4 at 220; Tribunal Exhibit NQ-2010-002-11.02, Administrative Record, Vol. 3 at 71-83; Tribunal Exhibit NQ-2010-002-11.02B, Administrative Record, Vol. 3 at 186.

80. Manufacturer's Exhibit A-01 at paras. 89-90, Administrative Record, Vol. 11; Manufacturer's Exhibit A-02 (protected) at paras. 89-90, Administrative Record, Vol. 12.

81. Steel grating that is in the form of standard steel grating, i.e. in panel or mat form, in industry standard sizes and dimensions.

82. Manufacturer's Exhibit A-01 at para. 31, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 10.

83. Manufacturer's Exhibit A-01 at paras. 31-34, Administrative Record, Vol. 11; Manufacturer's Exhibit A-02 (protected) at paras. 31-34, Administrative Record, Vol. 12.

84. Manufacturer's A-03 at paras. 20-21, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 202.

85. Manufacturer's Exhibit A-01 at para. 33, Administrative Record, Vol. 11; Manufacturer's Exhibit A-02 (protected) at para. 33, Administrative Record, Vol. 12, *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 155-56.

188. The witness from Accurate Screen confirmed that price was an important factor in buying decisions and stated that Accurate Screen's steel grating products are more attractive than Fisher & Ludlow's products due to their low price.<sup>86</sup> In addition, several other witnesses agreed that price is a major factor in purchasing decisions.<sup>87</sup>

189. Likewise, the importance of price was corroborated by responses to the Tribunal's purchasers' questionnaire on market characteristics, where "lowest price" was rated as a "very important" factor in the buying decision of almost half of the respondents.<sup>88</sup> Correspondingly, 11 out of 15 purchasers reported that they "always" or "usually" buy the lowest-priced steel grating product.<sup>89</sup>

190. Furthermore, 60 percent of questionnaire respondents indicated that a price difference of 5 percent or more would be sufficient for price to become the primary factor outweighing all other factors in purchasing decisions, i.e. to make them switch suppliers.<sup>90</sup>

191. The Tribunal heard testimony to the effect that the subject goods are generally priced lower than the like goods when comparing offers of similar steel grating products (i.e. those with the same standards, dimensions, coating, surface finishing, etc.) at the same trade level and within the same time period.<sup>91</sup>

192. The Tribunal carefully considered the evidence relating to price competition among the domestically produced steel grating and the subject goods and, despite the generally accepted price sensitivity of steel grating, there is evidence that non-price factors also play a role in the purchasing decision.

193. The Tribunal heard testimony that competition in the steel grating market may be influenced by non-price factors, such as application, quality (or perception of quality), service and delivery. For example, the witness from Accurate Screen testified that the company differentiated its product through marketing and product availability and by responding to the service needs of its customers.<sup>92</sup>

194. The Tribunal also heard testimony that steel grating is offered for sale according to specific customer preferences and specifications.<sup>93</sup> Further, the Tribunal heard testimony from a witness that there are regional preferences for certain types of steel grating, for example, in Western Canada, there is a

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86. *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 157; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 257-58.

87. *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 136-39, 155-56.

88. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-49, Administrative Record, Vol. 1.2 at 21; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-51, Administrative Record, Vol. 1.3 at 23.

89. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-49, Administrative Record, Vol. 1.2 at 25; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-51, Administrative Record, Vol. 1.3 at 27.

90. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-49, Administrative Record, Vol. 1.2 at 27, pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-51, Administrative Record, Vol. 1.3 at 29.

91. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 107, 108; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 116-17, 124-25, 139-40.

92. *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 183-87, 191, 210-12.

93. *Ibid.* at 183-87; *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 51-53, 83-84, 97-99.

preference for painted and serrated steel grating, while in Eastern Canada, there is a preference for smooth grating. According to the witness, these preferences do not appear related to any regional price differences.<sup>94</sup>

195. The Tribunal also notes that steel grating may be purchased as part of a larger “bundle” of products, which may include the subject and non-subject goods. In transactions involving “bundling”, the price of steel grating is only one of many components of the total price of the “bundle”.<sup>95</sup> However, the evidence is inconclusive as to the effects on price and purchasing behaviour and whether “bundling” is used as a selling tool in the steel grating industry.

196. As previously discussed, Accurate Screen began by importing a range of subject goods but then shifted its focus to importing standard grating. The Tribunal notes that Accurate Screen’s change in focus had the effect of exacerbating the competition between Accurate Screen and Fisher & Ludlow because standard grating comprises the highest sales volume of steel grating products in the Canadian market and is a core offering of Fisher & Ludlow.<sup>96</sup>

197. Fisher & Ludlow submitted that the market is transparent with regard to the pricing of steel grating, which exacerbates the effects of dumping and subsidizing because, in instances where the subject goods have lower prices than domestic goods, customers use their knowledge to negotiate lower prices or switch sources.

198. The Tribunal heard corroborating testimony that a relatively small volume of the subject goods, offered at a slightly lower price than the domestically produced steel grating, can have a significant impact on the Canadian steel grating market.<sup>97</sup> In other words, the incidence of any low pricing caused by dumping or subsidizing becomes known quickly throughout the market and creates a “ripple effect” on the prices of like goods.<sup>98</sup>

199. Several witnesses stated that it was common for purchasers of domestically produced steel grating to use these low price offerings as leverage in negotiating with domestic producers or to switch sources.<sup>99</sup> Based on such testimony, the Tribunal finds that there is a certain degree of pricing transparency in the steel grating market and that this could exacerbate the effects of low price offerings in the market.

200. On the basis of the foregoing, the Tribunal is of the view that steel grating products are commodity products which are highly price-sensitive.

201. In this context, the Tribunal will now consider which data are the most appropriate for use in analyzing the relative pricing of the subject goods and the like goods, along with the impact of prices of the subject goods on the prices of the like goods.

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94. *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 185, 229.

95. *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 122, 123, 124.

96. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 75-76, 80-81; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 203, 210-12.

97. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 15, 16; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 136-39.

98. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 21, 67-8, 100; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 113-14, 117-18, 174-76.

99. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 74-75; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 124-25, 136-37.

202. Fisher & Ludlow filed with the Tribunal a compilation of injury allegations based on specific import activity reports and reports from its customers of transaction and offer prices for the subject goods, which, they submitted, are reliable evidence of the relative pricing of the subject goods and like goods during POI.

203. While the Tribunal accepts that the injury allegations submitted by Fisher & Ludlow help support evidence of specific instances of price undercutting and lost sales (this will be discussed below in greater detail under the heading “Impact of the Imports of the Subject Goods on the Domestic Industry”), it does not accept them as reliable evidence for the purposes of calculating and comparing the relative pricing of the subject goods and like goods during the POI.

204. The Tribunal cannot assess the validity of the information contained in the import activity reports, and the injury allegations only cover a limited number of transactions and therefore may not be indicative of price trends throughout the POI.

205. Furthermore, even though Fisher & Ludlow indicated that the specific injury allegations were representative, the Tribunal cannot assess the validity of the methodology used by Fisher & Ludlow to select them, since it was not provided.

206. As indicated previously, the data provided to the Tribunal by Accurate Screen was, during the course of the hearing, found to contain numerous inaccuracies, and was therefore unreliable. As a result, in order to consider the effects of the dumped and subsidized prices of the subject goods in relation to the price of like goods pursuant to paragraph 37.1(1)(b) of the *Regulations*, the Tribunal had to rely on other evidence on the record to construct the selling prices of the subject goods.

207. Therefore, on the basis of the evidence on the record relating to Accurate Screen’s import purchase prices (i.e. CIF landed prices of imports of the subject goods),<sup>100</sup> and applying all appropriate adjustments for differences, physical or otherwise, including for intra-Canada delivery, margin of profit and level of trade<sup>101</sup> affecting price comparability with the domestic like product, the Tribunal constructed unit selling prices for the subject goods.

208. These selling prices will hereinafter be referred to as the Tribunal’s “adjusted selling prices of the subject goods”. It is these adjusted selling prices that the Tribunal will use in its comparison of the average unit selling prices of the like goods and those of the subject goods.<sup>102</sup>

209. Another issue regarding average unit selling prices relates to Fisher & Ludlow’s argument that average prices for steel grating disguise the real effect of import prices because they do not take into

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100. *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 170-72; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33.

101. The adjustments were based on Accurate Screen’s own evidence, including that provided in oral public and *in camera* testimony. *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 170-72, 183-84; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 231.

102. To obtain the “adjusted selling prices of the subject goods”, the Tribunal began with the information that Accurate Screen provided to the CBSA (Tribunal Exhibit NQ-2010-002-44 [single copy] [protected], Administrative Record, Vol. 8 at 123-33), which, in the Tribunal’s opinion, represents Accurate Screen’s purchasing price. In order to obtain Accurate Screen’s selling prices, the Tribunal added a certain amount for inland freight and profit on the basis of information contained in the record, with adjustments for distribution channels, where appropriate. In the case of the benchmark products, the Tribunal also had to make conversions in order to obtain prices on the basis of volume expressed in metric tonnes. Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 1-221; *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 170-72, 183-84; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 231.

consideration the impact of product mix.<sup>103</sup> To address this issue, the Tribunal analyzed prices to distributors/service centres and end users at a micro level and examined the pricing information that it gathered for specific benchmark products representing the product range for both Fisher & Ludlow, whose production constitutes, as noted above, a major proportion of the total domestic production of like goods, and Accurate Screen.<sup>104</sup>

210. The information for domestically produced benchmark products constitutes quarterly data from 2009 to the third quarter of 2010, and for the subject benchmark products, quarterly data for the second half of 2009 and first half of 2010. In particular, the Tribunal carefully examined pricing data, for concurrent time periods,<sup>105</sup> with respect to five of the most common benchmark products in the industry, i.e. those sold by Fisher & Ludlow and Accurate Screen.

211. With the removal of potential product mix influences, the Tribunal was able to undertake a comprehensive examination of “apples-to-apples” comparisons between the subject goods and the like goods.

212. The Tribunal also considered how North American prices of hot-rolled steel sheet, as the primary input material for steel grating and globally traded commodity product, and North American prices of steel grating affect prices in the Canadian market. In this regard, the evidence indicates that the price of hot-rolled steel sheet and steel grating in Canada closely tracks that of the same products in the United States. The Tribunal also heard testimony that corroborated this view.<sup>106</sup>

213. Last, the Tribunal considered that the evidence on the record and the testimony of several witnesses supported the submission by domestic producers that the U. S. and Canadian steel grating markets are integrated into a single North American market and therefore, that the Canadian steel grating industry is sensitive to the risk of trade diversion of steel grating from the United States to Canada.<sup>107</sup>

214. With the above in mind, and on the basis of the foregoing information, the Tribunal will examine the prices of imports of the subject goods and their impact on the prices of the like goods during the POI.

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103. Manufacturer’s Exhibit 40.05 at 176.20, 176.9, Administrative Record, Vol. 1.

104. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 57-58; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 59-68; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 231, *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 170-72, 183-84.

105. Due to the limited information contained on the record for Accurate Screen, the best information available only allowed selling price data comparisons to be made for a one-year period, namely, the last two quarters of 2009 and the first two quarters of 2010.

106. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 38-39, 58-59; Tribunal Exhibit NQ-2010-002-15.29A (protected), Administrative Record, Vol. 6B at 63; Tribunal Exhibit NQ-2010-002-27.09, Administrative Record, Vol. 1 at 138.2; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 114-16, 149-50, 169-71.

107. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 58-9; *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 149-50. Fisher & Ludlow also made reference to the imposition, in the United States, of anti-dumping and countervailing duties on steel grating from China and the likely threat of diversion of the subject goods into the Canadian market. Manufacturer’s Exhibit A-01 at paras. 8-9, Administrative Record, Vol. 11.

### Price Undercutting, Depression and Suppression

215. Turning to price undercutting and price depression, the Tribunal analyzed the pricing evidence on the record from macro and micro perspectives.

216. The total market pricing data on record show that, during the POI, Fisher & Ludlow's average unit selling prices in the domestic market increased at the beginning and trended downwards during the second half of the period.

217. The pricing data show that, between 2007 and 2008, the domestic unit selling prices of steel grating increased considerably. However, this trend reversed after 2008, the year in which imports from China started to enter the Canadian market and the domestic producers' unit selling price started a steady and significant decline until the end of interim 2010, to a price level just above that of 2007.<sup>108</sup> The pricing data demonstrated the same trend in the domestic producers' selling prices in both distribution channels.<sup>109</sup>

218. Accurate Screen's unit selling price of the subject steel grating declined significantly during the second half of 2009. The selling prices of the subject goods increased in the first quarter of 2010 and remained relatively stable until mid-2010. However, overall, there was a decline in the unit selling prices of the subject goods over the period.<sup>110</sup>

219. The Tribunal compared the pricing data, at an aggregate level, relating to the sales of the subject goods and the like goods in the Canadian market. The evidence shows that the average unit adjusted selling price of the subject goods was consistently (with one exception) and significantly lower than the average selling price of the like goods during the period from the second half of 2009 until mid-2010.<sup>111</sup>

220. An examination of the pricing data for both end-user and service centre distribution channels shows a similar trend, i.e. that the adjusted selling price of the subject goods was consistently and significantly lower than that of the like goods and that the margins of price undercutting were relatively high.<sup>112</sup> The

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108. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 50-51; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 52-53.

109. While trends remain the same for both distribution channels, the Tribunal notes that domestic selling price levels in interim 2010, for the end-user channel, stayed below the selling prices in 2007. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 52-55; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 54-57.

110. Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33; *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 170-72, 183-84.

111. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 50; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 52; Tribunal Exhibit NQ-2010-002-44 (protected), Administrative Record, Vol. 8 at 123-33; *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011 at 170-72, 183-84. The Tribunal notes that the only reliable pricing data for Accurate Screen cover data from the third quarter of 2009 to the second quarter of 2010. Consequently, valid comparisons of adjusted selling prices, between subject goods and like goods, could only be made with regard to that period.

112. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 52, 54; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 54, 56;

evidence suggests to the Tribunal that the subject goods were being offered at “more aggressive” prices in order to gain market share.

221. In addition to its macro consideration of average market prices, the Tribunal examined micro pricing data with respect to the benchmark products for price undercutting and price depression. This evidence confirms the pricing trends previously noted, i.e. that there was consistent price undercutting by the subject goods.

222. It is clear from the data with respect to benchmark products that domestic selling prices began to decline significantly, with few exceptions, from the first quarter of 2009 to the end of the third quarter of 2010.<sup>113</sup> Again, this decline coincided with the entry into the Canadian market of the subject goods. The pricing data for the subject goods show an opposite trend to that of the like goods, generally increasing between the third quarter of 2009 and mid-2010, with few exceptions, while remaining consistently below domestic prices.<sup>114</sup>

223. The data collected on benchmark products resulted in a total of 11 points of comparison between the subject goods and the like goods for each distribution channel; therefore, a total of 22 points of comparison were considered. A review of the data shows that the unit values of sales of the subject goods were consistently and significantly lower than the unit values of sales of the like goods by Fisher & Ludlow, in all points of comparison. Furthermore, the unit values of import sales to end users and distributors/service centres were considerably lower than the unit values from domestic production.<sup>115</sup>

224. The Tribunal notes that the evidence on price undercutting is corroborated by the witness from Accurate Screen, who testified that part of its business strategy is to lower the selling prices of the subject goods to compete with, and obtain sales from, the domestic industry, while achieving the maximum amount of profit.<sup>116</sup> The witness further testified that Accurate Screen would typically need to lower its selling prices by only a minimal percentage in order to secure sales that otherwise would have gone to the domestic industry.<sup>117</sup> This also suggests to the Tribunal that, all things being equal, price differences are very important and, in most instances, more than sufficient to entice customers to switch sources.

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Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33; *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 170-72, 183-84.

113. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 57-58; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 59-68.

114. Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33; pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 57-58; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 59-68; *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 170-72, 183-84.

115. Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33; pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 57-58; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 59, 61-64, 66-68; *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 170-72, 183-84.

116. *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 157, 170-72; *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 245, 283-85. *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 157.

117. *Transcript of In Camera Hearing*, Vol. 3, 23 March 2011, at 157.

225. The Tribunal notes that the adjusted selling prices of the subject goods show significant price undercutting margins despite the pricing strategy reflected in the testimony noted above.<sup>118</sup> This suggests to the Tribunal that there is considerable room to lower the price of the subject goods to further undercut domestic selling prices and still earn a reasonable amount of profit. This suggests to the Tribunal that, all things being equal, price differences are very important and, in most instances, more than sufficient to entice customers to switch sources.

226. With regard to price suppression, the Tribunal is of the view that there is some evidence to suggest that imports of the subject goods have prevented Fisher & Ludlow from increasing its prices, as it likely otherwise would have done during the POI.<sup>119</sup> The evidence indicates that Fisher & Ludlow incurred increased costs and expenses during the POI, and that there was a need to recover some or all of these cost increases. Instead, unit selling prices declined over the corresponding period.<sup>120</sup>

227. The evidence also indicates that a comparison of steel grating with other steel products not impacted by dumping or subsidizing shows price trends that are contrary to the declines in steel grating prices. For example, the market prices of hot-rolled steel sheet in North America improved in 2010 over 2009, while steel grating prices declined.<sup>121</sup>

228. In the Tribunal's view, the inability of Fisher & Ludlow to increase its prices, despite increased costs and market trends, is likely due to it having to counter the effects of Accurate Screen's aggressive pricing of the subject goods. The Tribunal finds that there is evidence to suggest that expected price increases have not occurred as a result of competition from the lower-priced subject goods.

229. On the basis of the foregoing, the Tribunal finds that the subject goods significantly undercut, depressed and suppressed the price of the like goods.

### **Impact of the Imports of the Subject Goods on the Domestic Industry**

230. In accordance with paragraph 37.1(1)(c) of the *Regulations*, the Tribunal will now consider the resulting impact of the imports of the subject goods in light of all relevant economic factors and indices that have a bearing on the state of the domestic industry.

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118. As the witness from Accurate Screen testified, the company's objective was to obtain "the sale" while maintaining a higher pricing trend and consequently a higher profit margin. In other words, the objective is to slightly undercut domestic selling prices to a point where it is enough to achieve sales, not to significantly undercut competition and lose profit margins. *Transcript of Public Hearing*, Vol. 3, 23 March 2011, at 283-85.

119. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 106, 114; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 132, 140.

120. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 50, 52, 54, 106, 114; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 52, 54, 56, 132, 140.

121. Manufacturer's Exhibit A-01 at paras. 127, 171, Administrative Record, Vol. 11; Manufacturer's Exhibit A-11, tab 6, Administrative Record, Vol. 11; pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 50; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 52.



231. Fisher & Ludlow submitted that the imports of the subject goods had a widespread negative impact on the domestic industry which was manifested in the form of significantly reduced and eroded prices, lost sales, revenues and market share and led to deterioration in both gross margins and net income. Fisher & Ludlow stated that decreased production and unused production capacity led to declines in employment and wages. Fisher & Ludlow also noted that its financial performance had declined significantly since 2008 and that it suffered financial losses on these goods.<sup>122</sup>

#### Production, Capacity and Capacity Utilization

232. Fisher & Ludlow submitted that production and capacity utilization fell during the POI due to imports of the subject goods,<sup>123</sup> even though the evidence on the record indicates that Fisher & Ludlow made significant investments over the POI to improve plant and equipment and efficiency of production. Fisher & Ludlow further argued that the continued presence of the dumped and subsidized subject steel grating could put these investments and efficiency improvements at risk.<sup>124</sup>

233. The Tribunal notes that, despite investments made by Fisher & Ludlow to improve its plant and equipment over the POI, its overall production capacity remained stable, while domestic production of the like goods declined steadily and substantially from 2007 to 2009, with the exception of a small gain in interim 2010. The evidence shows an abrupt contraction in production activity in 2009, which coincides with the arrival of the subject goods in the Canadian market.<sup>125</sup>

234. The Tribunal notes Fisher & Ludlow's decision to eliminate one shift per day at the Wetaskiwin plant in 2009-2010.<sup>126</sup>

235. The data show a significant decline in capacity utilization rates over the POI, despite the slight increase in interim 2010. Even when taking into consideration the captive production of steel grating, the Tribunal notes that the domestic industry had significant unused capacity towards the end of the POI.<sup>127</sup>

236. Therefore, the Tribunal finds that it was the prevalence of the subject goods in the Canadian market, especially in 2008 and 2009, which had a significant negative impact on the production and capacity utilization rates of Fisher & Ludlow and, as a result, of the domestic industry.

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122. Manufacturer's Exhibit A-01 at 1, 2, 36, 38, 40, Administrative Record, Vol. 11; Manufacturer's Exhibit A-02 (protected) at 1, 2, 36, 38, 40, Administrative Record, Vol. 12.

123. Manufacturer's Exhibit A-01 at 36-38, Administrative Record, Vol. 11; Manufacturer's Exhibit A-02 (protected) at 36-38, Administrative Record, Vol. 12.

124. Manufacturer's Exhibit A-01 at 39, Administrative Record, Vol. 11; Tribunal Exhibit NQ-2010-002-11.02, Administrative Record, Vol. 3 at 69.

125. The evidence suggests that the increase in 2010 was due to the slow recovery of the steel grating market. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 34, 123; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 36, 149.

126. Manufacturer's Exhibit A-01 at 37-38, Administrative Record, Vol. 11; Manufacturer's Exhibit A-02 (protected) at 37-38, Administrative Record, Vol. 12.

127. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 34, 68; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 36, 78.

### Sales from Domestic Production and Market Share

237. Fisher & Ludlow stated that imports of the subject goods entered the Canadian market in 2008 and increased throughout the POI. It argued that the market share captured by the subject goods was taken at its expense.<sup>128</sup>

238. The Tribunal notes that, over the POI, the market for steel grating increased from 2007 to 2008, followed by a significant contraction in 2009 and slight recovery in interim 2010. While the evidence shows that the domestic industry accounted for the greatest share of the total Canadian market during the POI, its market share started to decline in 2008 and continued to do so until interim 2010. This is corroborated by sales data which demonstrate that the volume of sales from domestic production of the like goods was relatively stable in 2007 and 2008, and deteriorated sharply in 2009 and interim 2010.<sup>129</sup>

239. The volume of domestic sales from domestic production decreased by over 25 percent in 2009 and continued to decline in interim 2010, for an overall decrease of nearly 50 percent from 2008 to interim 2010. This decline corresponds with the entry and prevalence of the subject goods in the Canadian market. The Tribunal notes, however, that Fisher & Ludlow still occupies a dominant position in the Canadian steel grating market.<sup>130</sup>

240. The evidence on the record demonstrates that, throughout the POI, the volume of imports of the subject goods increased in both absolute terms and relative to domestic production and consumption. Imports of the subject goods were able to capture and gain market share over the POI, especially from mid-2009 to mid-2010, by undercutting the domestic industry's selling prices. Therefore, much of this market penetration came at the expense of the domestic industry, whose market share deteriorated steadily throughout the POI.<sup>131</sup>

241. The Tribunal notes that the decline in market share experienced by Fisher & Ludlow is consistent with the testimony presented during the hearing to the effect that Fisher & Ludlow was unable to compete with the very low prices of the subject goods and could not reduce its prices any further.<sup>132</sup> The Tribunal is of the view that the significant increase in the volume of imports of the subject goods had a negative impact on Fisher & Ludlow and displaced its market share.

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128. *Transcript of Public hearing*, Vol. 1, 21 March 2011, at 12-14, 67-8; Manufacturer's Exhibit A-01 at 28-29, Administrative Record, Vol. 11; Manufacturer's Exhibit A-02 (protected) at 28-29, Administrative Record, Vol. 12.

129. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Vol. 2.2 at 40-42; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 42-44; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Vol. 8 at 123-33.

130. *Ibid.*

131. Tribunal Exhibit NQ-2010-002-44 (protected), Administrative Record, Vol. 8 at 123-33. The Tribunal also notes that the price undercutting was also experienced by imports from the United States. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Vol. 2.2 at 40-2, 50; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 42-4, 52; Tribunal Exhibit NQ-2010-002-44 (single copy) (protected), Administrative Record, Vol. 8 at 123-33; pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 40, 42; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 42, 44.

132. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 35.

242. The Tribunal notes that Fisher & Ludlow submitted numerous field reports and specific injury allegations to show that the presence of the subject steel grating resulted in price undercutting and lost sales.<sup>133</sup>

243. For the reasons previously discussed, the Tribunal did not accept these injury allegations as reliable evidence for purposes of calculating the differential between prices of the subject goods and those of the like goods during the POI.

244. However, the Tribunal does accept that these injury allegations help support other evidence on the record showing that price competition took place between the domestic and imported steel grating on specific orders and accounts. The fact that certain allegations relate to lost sales, rather than discounted sales, appears to corroborate the evidence that the domestic industry was unable to meet the aggressive pricing of the subject goods, which resulted in lost sales and a subsequent loss of market share.

245. The Tribunal finds that the dumping and subsidizing of the subject goods have resulted in lost sales and market share for the domestic industry.

#### Financial results

246. Fisher & Ludlow submitted that, during the POI, imports of the subject steel grating negatively affected its financial performance. Fisher & Ludlow argued that, while the injury was initially felt in Western Canada, the impact of the subject goods spread eastward and caused price reductions and declines in financial performance throughout Fisher & Ludlow's operations. According to Fisher & Ludlow, there were significant drops in its gross margins, especially in 2009.<sup>134</sup>

247. The evidence on the record shows that, at the beginning of the POI, the domestic industry was relatively healthy, with gross margin and net income experiencing significant increases from 2007 to 2008. However, in 2009, when imports of the subject goods increased, both the gross margin and net income declined sharply, largely the result of decreased net revenues and increased cost of goods sold. Fisher & Ludlow incurred some financial losses over the POI even though the data showed some sign of recovery in interim 2010.<sup>135</sup>

248. The Tribunal examined the financial data at a micro-economic level and found, on a per-unit, metric tonne basis, similar trends for unit gross margin and net income. Indeed, both indices increased in 2008 before declining significantly in 2009. While both indices increased slightly in interim 2010, they remained below 2009 levels during the period.<sup>136</sup>

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133. Preliminary Injury Inquiry, No. PI-2010-001, Administrative Record, Vol. 1 at 150-69; Manufacturer's Exhibit A-04 (protected) at para. 36, Administrative Record, Vol. 12; Tribunal Exhibit NQ-2010-002-12.02 (protected), Administrative Record, Vol. 4 at 164-76; Tribunal Exhibit NQ-2010-002-12.02E (protected), Administrative Record, Vol. 4 at 220; Tribunal Exhibit NQ-2010-002-11.02, Administrative Record, Vol. 3 at 71-83; Tribunal Exhibit NQ-2010-002-11.02B, Administrative Record, Vol. 3 at 186.

134. Manufacturer's Exhibit A-01 at 2, 44, Administrative Record, Vol. 11; Manufacturer's Exhibit A-02 (protected) at 44, Administrative Record, Vol. 12.

135. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Vol. 2.2 at 106; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 132; Manufacturer's Exhibit A-01 at para. 3, Administrative Record, Vol. 1.

136. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ2010-002-50 (protected), Vol. 2.2 at 106; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 132.

249. Fisher & Ludlow admitted that the 2008-2009 recession had an impact on the overall Canadian demand for steel grating, but nevertheless attributed the injury that it experienced to the dumping and subsidizing of the subject goods.<sup>137</sup> Fisher & Ludlow stated that, while the estimated size of the Canadian market declined by an estimated 23.0 percent in 2009, imports of the subject goods increased significantly, from 3.4 percent of the market to almost 9.0 percent, largely at the expense of the domestic industry.<sup>138</sup>

250. The Tribunal recognizes that the Canadian market experienced an economic downturn during the POI, which contributed to the domestic industry experiencing a worsening of its financial situation in 2009. Notwithstanding, the Tribunal is of the view that the presence of the subject goods in the market had a significant negative impact on Fisher & Ludlow and, as a result, on the domestic industry's financial performance throughout the POI.

251. Indeed, the Tribunal considers that, absent the subject goods and despite the recession, the domestic industry would have been in a position to generate additional revenues and achieve higher margins and would not have experienced and sustained the significant deterioration experienced in 2009 and interim 2010.

252. The Tribunal notes that, in 2009-2010, while other steel products demonstrated recovery from the economic downturn in terms of prices, steel grating did not. For example, as the domestic industry's gross margins dropped in respect to non-subject safety grating during the POI, these margins recovered slightly in 2010. A similar recovery, however, did not take place in respect of the like goods, which can only be explained by the presence of the subject goods.<sup>139</sup>

253. The Tribunal finds that this price undercutting translated into lost sales and decreased market share for the domestic industry along with price erosion and suppression. This, in turn, resulted in lost revenues, which had a significant negative impact on the domestic industry's gross margins and net income.

254. In view of the foregoing, the Tribunal finds that imports of the subject goods negatively impacted the financial performance of the domestic industry in 2009 and interim 2010.

#### Employment and Productivity

255. Fisher & Ludlow argued that declines in production and sales in 2009 and 2010 resulted in a corresponding decline in employment in 2009, both in direct and indirect operations. The domestic producer explained that, while the evidence appeared to show improvement in employment in interim 2010, the actual situation remained the same, as it was masked by the presence of a "workshare program" at the Wetaskiwin plant.<sup>140</sup>

256. The Tribunal examined the employment data on the record and found the same trends. In regard to employment, the Fisher & Ludlow figures increased slightly in 2008 and decreased sharply in 2009. In

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137. Manufacturer's Exhibit A-01 at 61, Administrative Record, Vol. 11.

138. Preliminary Injury Inquiry No. PI-2010-001, Administrative Record, Vol. 1 at 59; Manufacturer's Exhibit A-01 at paras. 83, 169, Administrative Record, Vol. 11.

139. *Transcript of the Public Hearing*, Vol. 1, 21 March 2011, at 37-38.

140. Manufacturer's Exhibit A-01 at 37, 38, Administrative Record, Vol. 11; Manufacturer's Exhibit A-02 at 37-38, Administrative Record, Vol. 12.

interim 2010, there were fewer employees employed by Fisher & Ludlow than at the beginning of the period of inquiry. Trends for both direct and indirect employment are similar.<sup>141</sup>

257. The Tribunal is of the view that the reduction in employment in 2009 is linked to the reduction in production and sales in that period due to the presence of the subject goods in the market. Indeed, the testimony of Fisher & Ludlow corroborates this view, which stated that, during this period, the company experienced a reduction of production and sales due to the presence of the subject goods, which translated into the reduction of employment by eliminating one shift per day in 2009 and 2010 and implementing a work-share program at the Wetaskiwin plant.<sup>142</sup>

258. The Tribunal examined productivity in terms of both metric tonnes per employee and metric tonnes per hour worked. Both measures of productivity declined during the POI, showing no signs of recovery.<sup>143</sup>

259. The Tribunal finds that the decrease in productivity, as a direct consequence of the decline in production, is linked to the negative impact of the presence of the subject goods in the market.

260. The Tribunal finds that the declines in employment and productivity experienced by Fisher & Ludlow over the POI reflects the decrease in production and sales caused by the presence of the subject goods in the Canadian market.

#### Other Indicators

261. Paragraph 37.1(1)(c) of the *Regulations* prescribes that the Tribunal consider certain other factors, in addition to those discussed above, in its assessment of the impact of the subject goods on the domestic industry. These factors include any actual or potential decline in return on investment, negative effects on cash flow, inventories, wages, growth or the ability to raise capital, and the magnitude of the margin of dumping in respect of the dumped goods.

262. As regards inventories, the evidence indicates that the domestic industry's inventories increased in 2008 but declined in 2009. At the end of interim 2010, Fisher & Ludlow still had considerable inventories when compared to its sales in the Canadian market.<sup>144</sup>

263. Furthermore, the ratio of the domestic industry's inventories of non-galvanized steel grating to the volume of domestic production increased between 2008 and interim 2010.<sup>145</sup> When considered over the whole period, the Tribunal is of the view that the absolute and relative increase of Fisher & Ludlow's inventory during the POI is attributable to the decrease in sales of domestic production caused by price undercutting from the subject goods.<sup>146</sup>

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141. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Vol. 2.2 at 118; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Vol. 2.3 at 144.

142. Manufacturer's Exhibit A-01 at 37, 38, Administrative Record, Vol. 11.

143. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Vol. 2.2 at 67; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 77.

144. Pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 79.

145. *Ibid.* at 36, 79; *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 40.

146. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 40, 69; pre-hearing staff report, *Non-galvanized*

264. Subparagraph 37.1(1)(c)(ii.1) of the *Regulations* also prescribes that the Tribunal consider in its assessment “. . . the magnitude of the margin of dumping or amount of subsidy in respect of the dumped or subsidized goods . . .” The Tribunal notes that the CBSA’s confidential information for the subject goods shows that the weighted average margin of dumping and amount of subsidizing were significant.<sup>147</sup>

265. The Tribunal is of the view that the magnitude of the margins of dumping and amounts of subsidizing exacerbated the negative impact of the subject goods on the domestic industry and further hampered its efforts to recover from the recession.

266. Finally, the Tribunal notes that Fisher & Ludlow claimed to have experienced negative effects with respect to some other indicators of injury, namely, poor return on capital investments in plant and equipment.<sup>148</sup> In light of the Tribunal’s conclusions regarding the fact that the presence of the subject goods resulted in declining domestic sales, loss of market share and deteriorating financial performance, the Tribunal is of the view that the subject goods also negatively impacted Fisher & Ludlow, and, as a result, the domestic industry’s return on investments.

### Conclusion

267. On the basis of the foregoing, the Tribunal finds that the subject goods resulted in decreased production and capacity utilization, reduced sales from domestic production and lost market share, deteriorating financial performance and reduced employment and productivity, and negative effects on return on investment and other indicators.

268. The Tribunal also finds that the dumping and subsidizing of the subject goods have caused material injury.

### **Other Factors**

269. Subsection 37.1(3) of the *Regulations* directs the Tribunal to consider factors other than the dumping and subsidizing to ensure that any injury or threat of injury caused by those factors is not attributed to the effects of the subject goods. Following is the Tribunal’s assessment of the relevant factors.

### Recession

270. As previously mentioned, several witnesses testified that during a portion of the POI, the recession had a negative impact on the demand for steel products, including steel grating, and hence on the domestic industry’s production and sales.

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*Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3, at 42, 79. The domestic industry had no inventories of galvanized steel grating over the POI. The Tribunal heard testimony that Fisher & Ludlow does not keep galvanized goods in inventory since the galvanization process is contracted out and galvanized steel grating is ordered on demand. *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 40.

147. Tribunal Exhibit NQ-2010-002-05 (protected), Administrative Record, Vol. 2 at 18.13-18.14; Tribunal Exhibit NQ-2010-002-09, Administrative Record, Vol. 1, at 135.35, 135.39.

148. Pre-hearing staff report, *Galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-50 (protected), Administrative Record, Vol. 2.2 at 70; pre-hearing staff report, *Non-galvanized Carbon/Alloy Steel Grating*, 17 March 2011, Tribunal Exhibit NQ-2010-002-52 (protected), Administrative Record, Vol. 2.3 at 80; Manufacturer’s Exhibit A-01 at 1-2, Administrative Record, Vol. 11.

271. However, the Tribunal also heard testimony that while sales and prices of steel products in Canada have since generally improved, the sales of steel grating have not, and the selling prices of steel grating remain depressed and suppressed.<sup>149</sup>

### Conclusion

272. Notwithstanding the accumulative losses suffered by the domestic steel grating industry that are attributable to the recession, the Tribunal concludes that the dumping and subsidizing of the subject goods have, in and of themselves, caused material injury.

### CONCLUSION

273. Pursuant to subsection 43(1) of *SIMA*, the Tribunal hereby finds that the dumping and subsidizing of the subject carbon steel bar grating and alloy steel bar grating have caused injury to the domestic industry.

Stephen A. Leach  
Stephen A. Leach  
Presiding Member

Serge Fréchette  
Serge Fréchette  
Member

Jason W. Downey  
Jason W. Downey  
Member

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149. *Transcript of Public Hearing*, Vol. 2, 22 March 2011, at 114-15; *Transcript of Public Hearing*, Vol. 1, 21 March 2011, at 8-10, 102.