



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2006-001

Bicycles and Frames

*Order and reasons issued
Monday, December 10, 2007*

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IN THE MATTER OF an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on December 9, 2002, in Expiry Review No. RR-2002-001, continuing, with amendment, its order made on December 10, 1997, in Review No. RR-97-003, continuing, with amendment, its finding made on December 11, 1992, in Inquiry No. NQ-92-002, concerning:

**BICYCLES AND FRAMES ORIGINATING IN OR EXPORTED FROM
CHINESE TAIPEI AND THE PEOPLE'S REPUBLIC OF CHINA**

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its order made on December 9, 2002, in Expiry Review No. RR-2002-001, concerning bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Chinese Taipei and the People's Republic of China, excluding bicycles with an FOB Chinese Taipei or People's Republic of China selling price exceeding CAN\$225 and excluding bicycles with foldable frames and stems, and bicycle frames originating in or exported from Chinese Taipei and the People's Republic of China, excluding bicycle frames with an FOB Chinese Taipei or People's Republic of China selling price exceeding CAN\$50.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby:

- (1) continues its order concerning bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Chinese Taipei and the People's Republic of China, excluding bicycles with an FOB Chinese Taipei or People's Republic of China selling price exceeding CAN\$225 and excluding bicycles with foldable frames and stems; and
- (2) rescinds its order concerning all bicycle frames originating in or exported from Chinese Taipei and the People's Republic of China.

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James A. Ogilvy
Presiding Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Serge Fréchette
Serge Fréchette
Member

Susanne Grimes
Susanne Grimes
Acting Secretary

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	October 15 to 18, 2007
Tribunal Members:	James A. Ogilvy, Presiding Member Meriel V. M. Bradford, Member Serge Fréchette, Member
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Cervélo SA
Norco Products Ltd.
Pride International Inc.
Retail Council of Canada

Specialized Bicycle Components Canada, Inc.
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Shaun Morris
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A. Mordo & Son Ltd.

Pete Lilly
President
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Daniel Maheux
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STATEMENT OF REASONS

1. This is an expiry review, under subsection 76.03(3) of the *Special Import Measures Act*,¹ of the order made by the Canadian International Trade Tribunal (the Tribunal) on December 9, 2002, in Expiry Review No. RR-2002-001, continuing, with amendment, its order made on December 10, 1997, in Review No. RR-97-003, continuing, with amendment, its finding made on December 11, 1992, in Inquiry No. NQ-92-002, concerning bicycles and frames originating in or exported from Chinese Taipei and the People's Republic of China (China) (the subject goods).
2. On March 28, 2007, the Tribunal decided to initiate an expiry review and sent a notice of expiry review to all interested parties.² The Tribunal also sent letters directing the Canadian producers, importers and exporters/foreign producers of bicycles and frames to complete an expiry review questionnaire. These questionnaires and the replies thereto formed part of the expiry review records of both the Tribunal and the Canada Border Services Agency (CBSA).
3. On March 29, 2007, the CBSA initiated an expiry review investigation to determine whether the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods.
4. On July 26, 2007, the CBSA determined, pursuant to subsection 76.03(7) of *SIMA*, that the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods.
5. On July 27, 2007, following the CBSA's determination, the Tribunal proceeded with its expiry review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the order respecting the subject goods was likely to result in injury or retardation. As part of this process, the Tribunal requested domestic producers, importers and exporters to update their responses to questionnaires submitted to the CBSA to include data for the first six months of 2006 and 2007.
6. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, from October 15 to 18, 2007.
7. Witnesses for Raleigh Canada Limited (Raleigh) and Canadian Tire Corporation, Limited (CTC) were present at the hearing and were represented by counsel. Both companies replied to the expiry review questionnaire. Witnesses for the Centrale des syndicats démocratiques were also present at the hearing. All three organizations submitted evidence and made arguments in support of a continuation of the order.
8. A. Mordo & Son Ltd. (Mordo), the Canadian Association of Specialty Bicycle Importers (CASBI), the Retail Council of Canada (RCC) and the Taiwan Bicycle Exporters' Association (TBEA) were represented by counsel at the hearing. Mordo replied to the expiry review questionnaire and called a witness to support its submissions. CASBI called witnesses from Louis Garneau Sports Inc. (Louis Garneau) and Sweet Pete's Bicycle Shop (Sweet Pete's). The RCC called witnesses from Wal-Mart Canada Corp. (Wal-Mart), Zellers Inc., the Hudson's Bay Company (Zellers) and Toys "R" Us Canada Ltd. (Toys "R" Us). The TBEA called a witness from Giant Bicycle of Canada, Inc. All these organizations submitted evidence and made arguments in support of a rescission of the order.
9. Counsel for Pride International Inc. and Specialized Bicycle Components of Canada, Inc. were also present at the hearing, but did not call witnesses or file submissions.

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

2. C. Gaz. 2007.I.795.

10. Norco Products Ltd. (Norco), a domestic producer, was a party to this inquiry. It provided a submission in support of a rescission of the order, but was not represented at the hearing. The Bicycle Trade Association of Canada also provided a submission in support of a rescission of the order, but was not represented at the hearing.

11. The Tribunal invited Mr. Daniel Maheux, Finance Director for Groupe Procycle Inc. and Rocky Mountain Bicycle Co. Ltd. (Procycle), to testify at the hearing.

12. CASBI and Norco requested that the Tribunal consider and grant various product exclusions and a country exclusion.

13. The record of these proceedings consists of the following: all relevant documents, including the CBSA's protected Expiry Review Report, statement of reasons, index of background information and related documents; the protected and public replies to the expiry review questionnaires; the public and protected pre-hearing staff reports prepared for this expiry review; requests for information and parties' replies in accordance with the Tribunal's directions; witness statements and exhibits filed by the parties throughout the expiry review; the Tribunal's order and notice of expiry review; and the public and protected pre-hearing staff reports prepared for Expiry Review No. RR-2002-001 and the transcript of that hearing. All public exhibits were made available to the interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of protected information.

PRODUCT

Product Definition and Description

14. The products under review are bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Chinese Taipei and China, excluding bicycles with an FOB Chinese Taipei or China selling price exceeding \$225³ and excluding bicycles with foldable frames and stems, and bicycle frames originating in or exported from Chinese Taipei and China, excluding bicycle frames with an FOB Chinese Taipei or China selling price exceeding \$50.

15. Bicycles consist of a frame, a drive train, wheels, a seat, handlebars and brakes, each of which consists of several parts. The design, appearance and construction of bicycles continue to evolve. In addition to frames made of steel and its various alloys, frames made of aluminum and carbon fibre are becoming increasingly common, as are front and rear shock absorbers and disk brakes. Differences in the quality of materials used and the technology employed account in large part for the wide range of prices seen in the Canadian market, while different end uses largely dictate the many different types and models available. Types of bicycles include: BMX, cruiser, mountain, hybrid, racer, junior and touring bicycles. Within each type, there is a wide variety of models. In addition, since "types" of bicycles are not rigidly defined, there is a certain degree of overlap between them.

3. All references to dollar values are in Canadian dollars unless otherwise indicated.

Production Process

16. Notwithstanding the differences in the engineering, design, appearance and materials used in the construction of various bicycles, the basic production process for bicycles is generally similar throughout the world and at all levels of quality and price. It begins with the construction and finishing of the two major components: frames and wheels.

17. Most frames are constructed by welding together the three main tubes (top tube, seat tube and down tube), and then attaching the rear triangle, often using robotic welders. Normally, an unpainted bicycle frame is chemically cleaned, primed and painted with a finish coat, then baked. The frame and fork are painted and polished separately, and decals are applied before the parts are joined.

18. The construction of the wheel begins with the hubs and rims to which nipples and spokes are attached. This process is often automated, although certain manufacturers still do it by hand. The assembled wheels are individually tested to ensure balance, and inner tubes and tires are then mounted on the rims before the wheels are attached to the frame.

19. Other components, such as the handlebars, seat, drive train and brake system, themselves assembled from several constituent parts, are then attached. These components are purchased from specialized suppliers, located mainly in Asia.

20. The production of bicycles in Canada follows similar production processes. However, not all frames used in the domestic production of bicycles are produced in Canada. Canadian producers of both like goods and other bicycles frequently import bicycle frames. Producers other than Raleigh normally import finished frames, whereas Raleigh imports unfinished frames, whether made of steel or aluminum, and then paints and finishes them in Canada.

Product Applications

21. Bicycles with different designs and features and those constructed of various materials may be used by people in numerous ways. For example, a road bicycle requires specifications distinct from those of a mountain bicycle, and an avid cyclist would look for features different from those sought by the average teenager or casual bicycle rider. In certain disciplines, such as racing or mountain biking, individual riders have preferences for certain models, specifications and features. These preferences can extend beyond the specifications and features of a particular model, as bicycles are a fashion item for some consumers and, for others, the choice of a particular bicycle is based on a reputation that is linked to the brand name.

Marketing and Distribution

22. The marketing and distribution of bicycles in Canada are carried out through two distribution channels: mass merchants, including general sporting equipment retailers, and independent bicycle dealers (IBDs).

23. Mass merchants, such as CTC, Wal-Mart, Zellers and Toys “R” Us, sell both imported and domestically produced bicycles. General sporting equipment retailers include companies such as Sport Chek, Sport Mart and Sports Experts, which are all part of The Forzani Group Ltd. These retailers source their bicycles both from Canadian manufacturers and through importer-distributors. For mass merchants, bicycles and related equipment represent only one segment of their overall sales.

24. Numerous IBDs, located across Canada, specialize in selling and servicing bicycles and related equipment. These companies source their bicycles from domestic producers and/or importer-distributors. There is some overlap in the price ranges of bicycles sold through the IBDs and mass merchant distribution channels. Certain bicycles sold by IBDs sell at price points similar to those of certain bicycles sold by mass merchants.

25. Retail sales of frames in the domestic market are minimal. They are generally for the replacement of a damaged frame or an upgrade of a current frame. Sales of frames are geared towards avid cyclists who have particular preferences. Consequently, the sale of frames typically occurs through the IBD distribution channel for higher-valued bicycles.

DOMESTIC PRODUCERS

26. Raleigh, Procycle, Norco and Cycles Devinci Inc. (Devinci) are the principal producers of bicycles in Canada. However, during the period of review, Procycle replaced almost all its production of like goods with imports.

27. Victoria Precision Inc. (Victoria), of Montréal, Quebec, a producer during the previous expiry review, ceased operations in May 2004.

Raleigh

28. Raleigh, of Oakville, Ontario, was acquired by the international Raleigh organization in 1973, when it began production of bicycles at its manufacturing facility in Waterloo, Quebec. Currently, the company manufactures and markets bicycles under the brand names of Raleigh and Diamondback. During the period of review, Raleigh also manufactured and sold Triumph branded bicycles. Raleigh and Diamondback brand products are distributed coast-to-coast through mass merchants and an IBD network. Raleigh also produces private label bicycles that are sold to a variety of customers, but the great majority are sold through the mass merchant distribution channel.

29. Most steel frames used in Raleigh's production of bicycles are produced at its Waterloo factory. It imports subject and non-subject unpainted aluminum frames, some finished frames and the remaining components used in the manufacture of its bicycles from Asian, European and North American sources. Raleigh imports a small number of bicycles when production runs are too small to warrant the tooling set-up costs.

Procycle

30. Procycle, of Saint-Georges, Quebec, has facilities in Saint-Georges and in Delta, British Columbia. Procycle manufactures bicycles that retail above \$400. During the period of review, it imported subject bicycles and subject frames. Currently, the company markets its products under the brand names Miele and Rocky Mountain through IBDs and its CCM-branded products through mass merchants.

Norco

31. Norco's plant is located in Langley, British Columbia. It produces the wheels that are assembled onto imported frames. Norco's domestically produced bicycles are adult-sized and are sold to consumers through IBDs only. Norco imports subject bicycles and subject frames.

Devinci

32. Devinci manufactures frames and bicycles in Chicoutimi, Quebec. It markets bicycles in Canada under its own brand name through IBDs. During the period of review, Devinci imported non-subject frames.

DOMESTIC ASSEMBLERS**Cycles Argon 18 Inc.**

33. Cycles Argon 18 Inc., of Montréal, Quebec, designs bicycle frames and assembles road bicycles. During the period of review, it imported subject frames.

Cervélo Cycles Inc.

34. Cervélo Cycles Inc., of Toronto, Ontario, assembles and markets road bicycles. It does not import subject bicycles or subject frames.

Italcycle Inc.

35. Italcycle Inc., of Westmount, Quebec, is an assembler of bicycles. It does not import subject bicycles or subject frames.

Accessoires pour vélos O.G.D. Ltée

36. Accessoires pour vélos O.G.D. Ltée (O.G.D.), of Saint-Laurent, Quebec, is an importer, assembler and supplier of bicycles and bicycling products to IBDs. O.G.D. imports non-subject finished bicycle frames and assembles bicycles under the Opus brand. During the period of review, O.G.D. imported subject bicycles. In 2005, O.G.D. began importing complete Opus brand bicycles.

IMPORTERS AND EXPORTERS

37. Of the 167 companies that were sent an Importers' Questionnaire, 29 responded. In 2006, these 29 companies represented approximately 95 percent of total imports of all bicycles, including non-subject goods, and 100 percent of the subject goods. Importers of bicycles can be broadly categorized into two groups: importer-retailers that import directly for retail sale and importer-distributors that import and re-sell to retailers.

38. There were only two importer-retailers: CTC and Wal-Mart. The 27 importer-distributors included: Giant Bicycle Canada, Inc. (Giant), Iron Horse Bicycle Company, LLC, Mordo, Stoneridge Cycle Ltd. and Trek Bicycle Corporation (Trek).

39. In 2006, Raleigh, Norco and Procycle were the major importers of subject frames.

40. Of the 159 exporters that were sent an Exporters' Questionnaire, the following 4 from Chinese Taipei provided responses: Fairly Bike Manufacturing Co., Ltd., Giant Manufacturing Co., Ltd., Ideal Bike Corporation and Willing Industrial Company Ltd.; and the following 6 from China provided responses: Ace Bicycle (Taicang) Co., Ltd., Giant (China) Company Ltd., Hua Chin Bicycle (Shenzhen) Co. Ltd., Ideal Bicycle (Dong Guan) Corporation, Oyama Bicycles (Taicang) Co., Ltd., and Yong Qi (Changzhou) Bicycle Industrial Co., Ltd (Yong Qi).

SUMMARY OF PREVIOUS FINDING AND ORDERS

41. Anti-dumping measures on imports of bicycles and bicycle frames have been in place in Canada since December 1992. The following is a summary of the Tribunal's finding and previous orders respecting bicycles and frames.

Inquiry No. NQ-92-002

42. On December 11, 1992, the Tribunal found that the dumping in Canada of bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Taiwan and China, excluding bicycles with an FOB Taiwan and China selling price exceeding \$325, had caused, was causing and was likely to cause material injury to the production in Canada of like goods and that the dumping in Canada of the subject bicycle frames, originating in or exported from Taiwan and China, had not caused, was not causing, but was likely to cause material injury to the production in Canada of like goods.

Review No. RR-97-003

43. On December 10, 1997, the Tribunal continued, with amendment, its finding made on December 11, 1992. The Tribunal continued the finding with respect to the dumping of bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater and frames originating in or exported from Taiwan and China, excluding bicycles with an FOB Taiwan or China selling price exceeding \$325, and with respect to the dumping of bicycle frames, originating in or exported from Taiwan and China, excluding frames with an FOB Taiwan or China selling price exceeding \$100.

44. The Tribunal determined that the like goods included all domestically produced bicycles with a suggested retail price of \$800 or less. Regarding frames, the Tribunal was of the view that the order should be limited to those frames that would normally be used in the production of bicycles that have a suggested retail price of \$800 or less, in line with the scope of the order concerning complete bicycles. Consequently, the Tribunal excluded from the order frames with an FOB Taiwan or China selling price exceeding \$100.

Expiry Review No. RR-2002-001

45. On December 9, 2002, the Tribunal conducted an expiry review of its order made on December 10, 1997. The Tribunal continued its order concerning bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Chinese Taipei and China, with an amendment to exclude bicycles with an FOB Chinese Taipei or China selling price exceeding \$225 and to exclude bicycles with foldable frames and stems originating in or exported from Chinese Taipei and China, and continued its order concerning bicycle frames, originating in or exported from Chinese Taipei and China, with an amendment to exclude bicycle frames with an FOB Chinese Taipei or China selling price exceeding \$50.

46. With respect to exclusions, the Tribunal was persuaded that, if the order were rescinded, virtually all the injury likely to be caused by the dumped subject goods would occur as a result of the subject goods competing at a suggested retail price of \$400 or less. The evidence indicated that, for 2001, 95 percent of the domestic industry's sales, in volume, were made at or below the \$400 suggested retail price point, which equated to an FOB Chinese Taipei or China selling price of \$225. Frames for bicycles with a suggested retail price point of \$400 equated to an FOB Chinese Taipei or China selling price of \$50 or less.

47. Lastly, the Tribunal granted an exclusion for folding bicycles.

SUMMARY OF GLOBAL SAFEGUARD INQUIRIES

48. On February 10, 2005, following a complaint filed by the Canadian Bicycle Manufacturers Association (CBMA), the Tribunal commenced Safeguard Inquiry No. GS-2004-001 into the importation of bicycles and bicycle frames. On March 24, 2005, following a second complaint filed by the CBMA, the Tribunal commenced Safeguard Inquiry No. GS-2004-002 into the importation of finished painted bicycle frames. Also on March 24, 2005, the Tribunal decided to combine both proceedings.

49. On September 1, 2005, the Tribunal issued a determination that the increased imports of bicycles were a principal cause of serious injury to domestic producers of bicycles, but that the increase in the imports of finished bicycle frames was insufficient to threaten serious injury to domestic producers. As a remedy, the Tribunal recommended, with certain product and source country exclusions, a surtax of 30 percent in the first year, 25 percent in the second year and 20 percent in the third year, applied to imports of bicycles, assembled or unassembled, with a wheel diameter greater than 38.1 centimetres (15 inches) with an FOB value of \$225 or less (equivalent to \$400 retail).

50. On May 29, 2006, the Government of Canada announced that it would not impose special trade restrictions on imports of bicycles.

ANALYSIS

51. On July 26, 2007, the CBSA determined that, pursuant to paragraph 76.03(7)(a) of *SIMA*, the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods. Consequently, the Tribunal is required, pursuant to subsection 76.03(10), to determine whether the expiry of the order is likely to result in injury⁴ or retardation⁵ to the domestic industry. Given that there is currently an established domestic industry, the issue of whether the expiry of the order is likely to result in retardation does not arise in this expiry review.

52. Therefore, the Tribunal is required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the order issued in 2002, if it determines that the expiry of that order is unlikely to result in injury, or continuing that order, with or without amendment, if it determines that its expiry is likely to result in injury.

53. Before proceeding with its analysis concerning the likelihood of injury, the Tribunal will first determine (1) what domestically produced goods are “like goods” in relation to the subject goods, (2) what constitutes the “domestic industry” for the purposes of its analysis, and (3) whether the analysis must be done separately for each subject country or cumulatively for both countries.

Like Goods

54. 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 [such] goods . . . , goods the uses and other characteristics of which closely resemble those of the other goods”.

4. Subsection 2(1) of *SIMA* defines “injury” as “material injury to a domestic industry”.

5. Subsection 2(1) of *SIMA* defines “retardation” as “material retardation of the *establishment* of a domestic industry” [emphasis added].

55. In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods, their market characteristics and whether the domestic goods fulfil the same customer needs as the subject goods.

56. The Tribunal notes that, during the period of review, Raleigh continued to focus its main business on the production and sale of bicycles that retail for \$400 or less. In the current expiry review, none of the parties suggested that the \$400 retail price threshold established in Expiry Review No. RR-2002-001 had changed or should be revised.

57. Basing its view on the evidence, the Tribunal is of the opinion that domestically produced bicycles with a retail price of \$400 or less and domestically produced frames which are used in the production of bicycles that retail for \$400 or less have very similar physical characteristics, have similar market characteristics in terms of methods of distribution, sales outlets and marketing, and fulfill the same customer needs, when compared to the subject goods.

58. Consequently, the Tribunal concludes that domestically produced bicycles with wheel diameters of 16 inches (40.64 cm) and greater that retail for \$400 or less, and domestically produced bicycle frames for use in the production of bicycles that retail for \$400 or less, constitute like goods in relation to the subject goods.

Domestic Industry

59. Having decided what constitutes the like goods in this expiry review, the Tribunal must now consider which producers constitute the domestic industry. Subsection 2(1) of *SIMA* defines “domestic industry”, in part, as follows: “. . . the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods”

60. The evidence indicates that Raleigh is the dominant producer in the domestic market, accounting for almost all domestic production of like goods.⁶

61. Since the last review, other companies that were part of the domestic industry have either shut down their operations, as did Victoria, or changed business strategies by focusing on importing goods from subject as well as non-subject countries rather than producing like goods, as did Procycle.⁷ Consequently, the Tribunal finds that, for the purposes of this expiry review, Raleigh accounts for the major proportion of the total domestic production of like goods and, therefore, constitutes the domestic industry.

Cumulation

62. In accordance with subsection 76.03(11) of *SIMA*, the Tribunal is required to make an assessment of the cumulative effect of the dumping of goods from more than one country if it is satisfied that such an assessment would be appropriate, taking into account the conditions of competition between the goods imported from any of the countries and the goods from any other of those countries, or like goods of domestic producers. If the Tribunal is not satisfied that such an assessment would be appropriate, then it must assess the effects of dumping for each country separately.

6. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-06 (protected), Administrative Record, Vol. 2.1 at 30.

7. *Transcript of Public Hearing*, Vol. 3, 17 October 2007 at 498-99; Tribunal Exhibit RR-2006-001-03A, Administrative Record, Vol. 1 at 139; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-06 (protected), Administrative Record, Vol. 2.1 at 30.

63. In considering the conditions of competition between goods, the Tribunal typically takes into account the following factors: the degree to which the goods from each subject country are interchangeable with the subject goods from the other subject countries or with the like goods; the presence or absence of sales of imports from different subject countries and of the like goods into the same geographical markets, or the presence or absence of offers to sell such goods; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry. As the Tribunal has previously stated in other cases, it recognizes that there may be other factors that it can consider in deciding whether the exports of a particular country should be cumulated and that no single factor may necessarily be determinative.⁸

64. Raleigh argued in favour of an assessment by the Tribunal of the cumulative effect of the dumping of subject goods from China and Chinese Taipei. CTC was also of the view that the impact of the goods from both countries should be cumulatively assessed. Raleigh submitted that the evidence on the record is clear that, at retail price points under \$400, subject bicycles from Chinese Taipei compete directly against subject goods from China and that subject bicycles from both Chinese Taipei and China compete directly against like goods. Raleigh added that there is significant competition from subject goods at all price levels, including in the upper end of the subject goods price range, and that this competition exists in both the IBD and the mass merchant segments of the market.

65. The TBEA argued against a cumulative assessment, as it is of the view that there is no direct competition between subject goods from China and those from Chinese Taipei. It submitted that the evidence on the record demonstrates that bicycle producers in Chinese Taipei produce bicycles that are different from the bicycles made by producers in China and that the former bicycles are sold into a different segment of the market through different distribution channels, to different consumers and using different marketing techniques. The TBEA argued that producers in Chinese Taipei have moved to the production of technologically advanced, higher-value and higher-priced bicycles that are generally sold through the IBDs, as opposed to lower-priced Chinese bicycles which are sold through the mass merchants. It added that bicycles are no longer commodity products, as they are now distinguished on the basis of quality, design and factors other than price.

66. While the Tribunal accepts that many producers in Chinese Taipei have moved to the production of higher-priced bicycles that are sold through the IBD distribution channel, during the review period, notable volumes of bicycles from Chinese Taipei were sold in the Canadian market at prices under \$400. The information on the record indicates that, at these prices, the volume of sales from imports of bicycles from Chinese Taipei accounted for 5 percent of the market in 2004 and 4 percent of the market in the first six months of 2007.⁹

67. The TBEA further submitted that the sales from Chinese Taipei in the first six months of 2007 were likely of improperly labelled bicycles originating in China and transhipped through Chinese Taipei and that it was investigating this matter.

8. See, for example, *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at 12.

9. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 51.

68. A detailed review of the confidential record clearly indicates to the Tribunal that these low-valued imports originated in Chinese Taipei and competed directly with like goods through the same channel of distribution, specifically, the mass merchant distribution channel.¹⁰

69. The Tribunal is therefore of the view that the evidence on the record clearly indicates that, at retail price points under \$400, subject goods from China and Chinese Taipei compete directly against each other, and against like goods. The Tribunal considers that the subject goods from both countries are generally interchangeable with each other and with the like goods. They perform the same functions and, although they may have different designs and varying levels of quality, the bicycles subject to this review compete mainly on price.

70. On the basis of the above, the Tribunal is satisfied that it is appropriate to make an assessment of the cumulative effects of the dumping of the subject goods.

Likelihood of Injury

71. Subsection 37.2(2) of the *Special Import Measures Regulations*¹¹ lists the factors that the Tribunal may consider in addressing the question of likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this case are discussed below under the following headings: changes in market conditions, likely volumes of dumped goods, likely prices of dumped goods and effects on prices of like goods, likely performance of the domestic industry and likely impact of the dumped goods on the domestic industry, and other factors.

72. In making its assessment of the likelihood of injury, the Tribunal has consistently taken the view that the focus must be on circumstances that can reasonably be expected to exist in the near to medium term, generally 18 to 24 months.¹²

Changes in Market Conditions

73. In coming to its view on the likely volumes and prices of subject goods and their impact on the domestic industry if the order were rescinded, the Tribunal first reviewed both international and domestic market conditions pursuant to paragraph 37.2(2)(j) of the *Regulations*.

International Market Conditions

74. Over the past five years, the volume of the production of bicycles in the major bicycle-producing countries¹³ increased from 87.9 million units in 2002 to an estimated 101.3 million units in 2006. In 2006, China produced an estimated 79.5 million units, an increase of 26 percent over 2002. The European Union produced an estimated 10.0 million units in 2006, down from 10.2 million units in 2002. Chinese Taipei produced 4.3 million units in 2006, down from the 4.4 million units that it had produced in 2002. The

10. *Ibid.* at 33; Tribunal Exhibit RR-2006-001-13.12 (protected single copy exhibit), Administrative Record, Vol. 2.4E; Tribunal Exhibit RR-2006-001-13.13 (protected), Administrative Record, Vol. 2.4E at 125, 260-61.

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

12. *Preformed Fibreglass Pipe Insulation* (17 November 2003), RR-2002-005 (CITT) at 11; *Prepared Baby Foods* (28 April 2003), RR-2002-002 (CITT) at 8; *Solder Joint Pressure Pipe Fittings* (16 October 1998), RR-97-008 (CITT) at 10.

13. China, Chinese Taipei, European Union, United States, Japan, Italy, Germany and France.

United States produced 0.3 million units in 2006, down from 0.4 million units in 2002.¹⁴ The evidence on the record indicates that annual global demand has fluctuated between 110 and 120 million units over the past 10 years.¹⁵

75. As the largest producer of bicycles in the world, China remains the dominant exporter with an estimated export volume of 52.0 million units or 65 percent of its domestic production. In comparison, Chinese Taipei exported 4.1 million units or 95 percent of its domestic production.¹⁶ The CBSA reported that Chinese Taipei is the third largest producer of bicycles after China and India.¹⁷ Since the last review, the data show that both China and Chinese Taipei continue to be highly export-dependent.

76. In its statement of reasons, dated August 10, 2007, the CBSA reported that, based on data from the Facility for Information Retrieval Management (FIRM), there were approximately 190 exporters that exported bicycles from China to Canada in 2006, up from 174 exporters in 2005.¹⁸ Given the great number of producers in China, competition within China is severe. As reported by the CBSA, one Chinese producer stated that “relentless cost-cutting, coupled with fierce competition for domestic and foreign orders, has created a hothouse environment where only the nimblest companies survive—and clever upstarts can topple dominant, state-run business.” Another producer stated that it is suspected that some bicycle makers are selling without profit or at a loss to keep their market share intact as they wait for rivals to collapse.¹⁹

77. Declines in domestic sales volume also affect the level of competition in China. In part, the increase in prosperity in China has caused a shift to automobiles and electric bicycles. In 2006, China’s annual domestic demand for bicycles was an estimated 25 million units. As more and more factories move to locations outside the big cities, making commuting longer for most employees, demand is declining. As a result, it is expected that conventional bicycle sales will fall to 20 million units in 3 to 4 years.²⁰

78. With respect to Chinese Taipei, FIRM data indicate that there were 144 Chinese Taipei exporters of bicycles to Canada in 2006.²¹ Generally, Chinese Taipei bicycle producers are transforming their operations to focus on high-value products²² and, in the past few years, most Chinese Taipei producers exporting to Canada have been selling high-end bicycles to IBDs.

Domestic Market Conditions

79. A number of key changes and developments have occurred in the Canadian domestic market since the last review.

14. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 96.

15. Manufacturer’s Exhibit A-05 at Tab 6, Administrative Record, Vol. 11.

16. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 96.

17. Tribunal Exhibit RR-2006-001-03A, Administrative Record, Vol. 1 at 152.

18. *Ibid.* at 151; Tribunal Exhibit RR-2006-001-13.04 (protected), Administrative Record, Vol. 2.4 at 64-315; Tribunal Exhibit RR-2006-001-13.04 (protected), Administrative Record, Vol. 2.4A at 2-315.

19. Tribunal Exhibit RR-2006-001-03A, Administrative Record, Vol. 1 at 151.

20. Manufacturer’s Exhibit A-05 at Tab 6, Administrative Record, Vol. 11.

21. Tribunal Exhibit RR-2006-001-03A, Administrative Record, Vol. 1 at 153; Tribunal Exhibit RR-2006-001-13.04 (protected), Administrative Record, Vol. 2.4 at 64-315; Tribunal Exhibit RR-2006-001-13.04 (protected), Administrative Record, Vol. 2.4A at 2-315.

22. Exporter’s Exhibit J-01 at para. 127 and Tab 1, Administrative Record, Vol. 13.

80. Most importantly, the composition of the domestic industry in 2007 is very different from what it was in 2002. Since the last review, two major producers for the mass merchant segment of the market have stopped producing like goods. Specifically, Victoria ceased production of bicycles altogether and Procycle, with respect to bicycles that retail for \$400 or less, is now principally an importer of subject bicycles. Accordingly, Raleigh is virtually the only remaining domestic producer of like goods.

81. The second major change in the domestic market occurred in 2004 when the CBSA changed the way in which it calculated normal values for subject goods originating in China. Historically, normal values for subject goods from China were determined pursuant to section 20 of *SIMA*, which meant that normal values for Chinese exporters were established based on costs or prices of bicycles sold in a third country (i.e. a “surrogate” country), more specifically Chinese Taipei. However, in 2004, the CBSA found no evidence to suggest that domestic prices of bicycles in China were substantially determined by the Government of China and, since August 31, 2004, the CBSA has determined normal values on a model year²³ basis for subject goods originating in China pursuant to sections 15, 16 and 19 using domestic selling prices and costs of production in China. As a result, between the 2004 and 2005 model years, normal values for subject goods from China decreased by approximately 40 percent.²⁴

82. The third major change in the domestic market since the last review relates to decisions that the mass marketers have taken regarding branding strategies. Specifically, during the last review period, CTC sold CCM, but now only Wal-Mart²⁵ sells that brand, while CTC sells the Raleigh and Schwinn brands.²⁶

83. The fourth major change is that the Canadian dollar has appreciated relative to the U.S. dollar to levels not seen in the past 30 years, and this trend accelerated during 2007. The Canadian dollar has also appreciated relative to the subject countries’ currencies.²⁷ The strengthening Canadian dollar has had implications for the range of goods covered by the order over the past five years. Essentially, today the order covers a broader range of goods than it did five years ago.

84. The fifth major change in the domestic market has been the noticeable progression over the past five years in the technology and features available on bicycles that retail for \$400 or less. Evidence on the record shows that features and components with advanced technology have become less expensive over time, with the result that the bicycles available to the consumer at prices lower than \$400 are more sophisticated or more fully featured than the bicycles available at the same price points in 2002.²⁸ In addition, the Tribunal heard that, today, bicycles and frames have evolved for ergonomic and stylistic reasons and that, in accordance with the importance attached to the branding and licensing of products, some bicycles are considered to be “fashion” items.²⁹

23. The model year is defined as September 1 to August 31. Production is from late fall to spring, while the bulk of the shipments are made in the spring and early summer. Tribunal Exhibit RR-2006-001-03A, Administrative Record, Vol. 1 at 140.

24. Tribunal Exhibit RR-2006-001-03A, Administrative Record, Vol. 1 at 141.

25. *Transcript of Public Hearing*, Vol. 2, 16 October 2007 at 248; *Transcript of In Camera Hearing*, Vol. 3, 17 October 2007 at 307-308; Tribunal Exhibit RR-2006-001-12.18, Administrative Record, Vol. 1.4 at 154.

26. *Transcript of Public Hearing*, Vol. 2, 16 October 2007 at 211.

27. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 101-103.

28. *Transcript of Public Hearing*, Vol. 2, 16 October 2007 at 226-27.

29. *Transcript of Public Hearing*, Vol. 2, 16 October 2007 at 275; *Transcript of Public Hearing*, Vol. 3, 17 October 2007 at 380-82; Importer’s Exhibit B-03 at para 5, Administrative Record, Vol. 13.

85. Finally, with respect to participation in the domestic market, the Tribunal observes that, whereas the subject bicycles had a strong position in the market five years ago, they now have a dominant position. The subject countries' share of the bicycle market increased from 36 percent in 2004 to 60 percent in 2007.³⁰

Likely Volumes of Dumped Goods

86. The Tribunal's assessment of the likely volumes of dumped imports³¹ encompasses the likely performance of the foreign industry,³² evidence of the imposition of anti-dumping measures on bicycles and frames in other jurisdictions³³ and the likelihood of trade diversion.³⁴

87. First, with respect to the actual volume of subject goods imported into Canada, the evidence shows that the volume trended upward throughout the entire period of review in both absolute numbers and market share. Notwithstanding the existence of the order, by 2006, the volume of subject goods had increased by more than 39 percent above 2004 levels, and the volume in the first half of 2007 exceeded that reached during the same period of 2006 by 15 percent.³⁵

88. The largest increase in the volume of subject goods occurred between 2004 and 2005 when imports from China increased by 28 percent.³⁶ This significant increase coincided with the change in the way in which the CBSA determined normal values for China. The Tribunal is convinced by the evidence and argument that this policy change was a contributing factor to the strong increase in imports from China between 2004 and 2005.

89. The Tribunal notes that, as imports from China increased in 2005, imports from Chinese Taipei decreased significantly. Although subject goods from Chinese Taipei decreased by 74 percent from 2004 to 2005, volumes began to recover in 2006 and continued to increase during the first half of 2007 to a point where these imports were more than four times their volume in the first half of 2006.³⁷

90. The TBEA argued that this sharp increase in imports from Chinese Taipei during the first half of 2007 should be put in perspective, as these imports represent a small share of subject goods. The TBEA further submitted, as noted above, that it believes that these imports were actually imports that were improperly labelled and that they were, in fact, transhipped product that did not originate in Chinese Taipei.

91. The Tribunal acknowledges that Chinese Taipei's share of subject goods does not approach the volume of imports from China. However, Chinese Taipei exported significant volumes of subject bicycles during the period of review and, as evidenced by the increase in volume during the first six months of 2007, it has the ability to continue to increase its exports in the foreseeable future. The CBSA noted that one exporter in particular began to sell bicycles to a mass merchandiser of subject goods. This exporter sold a considerable number of bicycles to Canada from September 1, 2006 to April 30, 2007, and now is the largest bicycle exporter from Chinese Taipei to Canada.³⁸ Furthermore, the Tribunal notes that the detailed

30. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 51.

31. Paragraph 37.2(2)(a) of the *Regulations*.

32. Paragraph 37.2(2)(d) of the *Regulations*.

33. Paragraph 37.2(2)(h) of the *Regulations*.

34. Paragraph 37.2(2)(i) of the *Regulations*.

35. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 33-34.

36. *Ibid.*

37. *Ibid.* at 33.

38. Tribunal Exhibit RR-2006-001-03A, Administrative Record, Vol. 1 at 153.

protected evidence on the record confirms that, for the first six months of 2007, bicycles imported from Chinese Taipei were in fact bicycles that originated from that exporter and that these bicycles were sold in the mass merchant segment of the market.³⁹

92. It is important to note that the volume of the imports of subject bicycles trended upward significantly at a time when the domestic market essentially remained flat.⁴⁰ As a result, the market share of the sales from imports from the subject countries increased from 36 to 57 percent from 2004 to 2006 and from 54 to 60 percent during the interim periods in 2006 and 2007,⁴¹ to a point where they are now the dominant force in the Canadian market. The Tribunal observes that sales from imports from the subject countries replaced both domestic shipments and sales from non-subject countries during the period of review.

93. Turning to the likely performance of the foreign industry, Raleigh submitted that, as a result of the strain felt by decreasing domestic sales in China and a reduction in exports by Chinese Taipei between 2005 and 2006, there is excess production capacity in these countries. Given the relative size of these industries, even a small amount of excess capacity would allow them to ship increased volumes to Canada that would be injurious to the relatively small and flat Canadian market.

94. The Tribunal notes that the record shows a decrease in production of bicycles in China from 2005 to 2006 of 1.2 million units and a decrease in production in Chinese Taipei of 400,000 units. These decreases have created excess capacity in the subject countries.⁴²

95. Additionally, the Tribunal notes that the record contains specific evidence for 10 foreign producers that replied to the Tribunal's foreign producer's questionnaire. The consolidated results of the six Chinese respondents indicate that their practical plant capacity for subject goods increased by 8 percent between 2004 and 2006 and that their capacity utilization rate for subject goods fluctuated between 75 percent and 86 percent.⁴³ Between 2004 and 2006, their excess capacity, taking into account production for subject bicycles and other products produced on the same equipment, ranged between 500,000 units and 1.5 million units. For the interim 2007 period, the excess capacity for these producers was under 500,000 units. The high utilization rates for the four respondents from Chinese Taipei, during the period of review, resulted in a minimal amount of excess capacity.⁴⁴ Although the Tribunal recognizes that this supports the testimony of the witness for the TBEA, it also notes that the sample of producers is very small and that other evidence on the record indicates the use of existing capacity to produce bicycles that are exported in considerable volumes to Canada at low price levels.

39. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 33; Tribunal Exhibit RR-2006-001-13.12 (protected single copy exhibit), Administrative Record, Vol. 2.4E; Tribunal Exhibit RR-2006-001-13.13 (protected), Administrative Record, Vol. 2.4E at 125, 260-61.

40. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 49.

41. *Ibid.* at 51.

42. Tribunal Exhibit RR-2006-001-03A, Administrative Record, Vol. 1 at 150-52; *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 96.

43. *Revised Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05A, Administrative Record, Vol. 1.1 at 177.

44. *Revised Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-06A (protected), Administrative Record, Vol. 2.1 at 180.

96. Given that the entire Canadian market for bicycles retailing at \$400 or less is only about 1 million bicycles, if the subject countries directed their excess capacity to the production of subject bicycles, they could supply more than the entire Canadian market.⁴⁵

97. On a related issue, Raleigh submitted that, due to the proximity of the U.S. market, where there are no anti-dumping duty measures in place, a rescission of the order would lead to an influx of subject goods from U.S. inventories. Raleigh further submitted that Wal-Mart would be the mass merchant best positioned to import subject bicycles immediately from China and Chinese Taipei from inventories in the United States. In reply, Wal-Mart submitted that this hypothetical scenario would not transpire, as it does not have the ability to procure product from its U.S. warehouses.⁴⁶ In addition to noting Wal-Mart's assertion that this type of purchasing arrangement cannot be made, the Tribunal notes that there is no positive evidence on the record indicating that there are inventories of unsold subject bicycles in the United States to warrant Raleigh's concern of an immediate influx of subject goods from U.S. inventories.

98. Finally, the record contains information regarding anti-dumping measures imposed by authorities in countries other than Canada in respect of the same or similar goods from China and Chinese Taipei.⁴⁷ The Tribunal notes that most of these anti-dumping measures commenced prior to the period of review and that the definitions of the goods subject to these measures are different from the definition of the goods subject to this review. For instance, the European Union's measure against China includes all bicycles.⁴⁸ The Tribunal believes that possible diversion of the subject goods as a result of these measures is really not a current threat in this case. Therefore, the Tribunal is of the view that there is no evidence to substantiate the likelihood of a diversion of subject goods from either country.

99. The Tribunal is of the view that Canada is and will continue to be an attractive export destination for bicycles from the subject countries. Given the above-noted increasing trends in imports, which have persisted since 2000,⁴⁹ the Tribunal believes that the volume of subject goods is likely to continue to rise and displace sales from domestic production if the order is rescinded.

Likely Prices of Dumped Goods and Effects on Prices of Like Goods

100. A review of the total market pricing data on the record shows that, on an aggregate level, average unit selling values in the domestic market during the period of review trended downward. The average unit selling value in the first six months of 2007 was 6.9 percent below what it was in 2004. Average values ranged from a high of \$118 per unit in 2005 to a low of \$108 per unit during the first six months of 2007.

101. The trend observed for the total average unit selling values also applies to the average unit selling values for subject goods; however, in the latter case, the trend is even more pronounced. The average unit selling value for subject goods in the first six months of 2007 was 11.6 percent below the 2004 average unit selling value.⁵⁰

45. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 49.

46. *Transcript of Public Hearing*, Vol. 2, 16 October 2007 at 269-70.

47. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 15.

48. Importer's Exhibit J-01 at Tab 2, Tab 3, Administrative Record, Vol. 13.

49. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-10A, Administrative Record, Vol. 1.3 at 145; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-06 (protected), Administrative Record, Vol. 2.1 at 33; Tribunal Exhibit RR-2006-001-12.18, Administrative Record, Vol. 1.4 at 144.

50. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 55.

102. Throughout the period of review, except for 2006, the average unit selling value of subject bicycles was below the average selling value of bicycles from domestic production. This price gap ranged between 1 and 5 percent.⁵¹ Over the period of review, the average selling value of subject bicycles decreased each year.⁵²

103. Between 2004 and the first six months of 2007, the average unit selling value of bicycles that retail for \$400 or less in the domestic market dropped by \$8. At the same time, average unit selling values of bicycles from subject countries dropped by \$14.⁵³

104. Protected evidence on the record clearly shows that bicycles can be sourced from China at FOB prices of less than US\$30.⁵⁴

105. Mordo argued that a major exporter to Canada, Yong Qi, has actual selling prices that are well above its normal values and that this gap would have to be eliminated before dumping would occur.⁵⁵ Therefore, major price decreases could occur and Yong Qi's exports would still be at undumped prices. It was further argued that, if Raleigh lost sales to these imports, they would be sales lost to low-cost imports, not dumped imports.

106. The Tribunal notes that Yong Qi may be a significant Chinese exporter of bicycles to Canada, but that it is only one of many exporters. The two next largest exporters are in a very different position in terms of the gap between their actual selling prices and normal values. Specifically, the CBSA reported that, in 2006, the second and third largest exporters in China were selling bicycles to Canada at an average of 1.2 percent and 4.0 percent, respectively, above their normal values. Given this small gap, the CBSA determined that it is very likely that these exporters will sell into Canada at dumped prices if the order is rescinded.⁵⁶

107. The CBSA noted in its decision that, when exporters make a request for interim normal values, they are requested to provide a "proposed selling price" for each model of bicycle or bicycle frame that they intend to ship to Canada in the upcoming season.⁵⁷ In a number of cases, the proposed selling prices for certain bicycle models were very close to and, in certain cases, lower than the interim normal values. An analysis of the data used in the CBSA's interim normal value review for 2007 indicates that, for over 45 percent of all models, the proposed selling prices were less than 5 percent above the interim normal values. These data include data for the second and third largest Chinese exporters.⁵⁸ Given this evidence, the Tribunal believes that it is reasonable to assume that, if the order were rescinded, exporters of subject goods would likely lower their selling prices from the current FOB prices.

51. *Ibid.* at 27.

52. *Ibid.* at 55.

53. *Ibid.*

54. Manufacturer's Exhibit A-04 (protected) at para. 12, Administrative Record, Vol. 12; Tribunal Exhibit RR-2006-001-13.12 (protected single copy exhibit), Administrative Record, Vol. 2.4E.

55. Tribunal Exhibit RR-2006-001-04 (protected), Administrative Record, Vol. 2 at 28; *Transcript of Public Argument*, Vol. 1, 18 October 2007 at 611-13.

56. Tribunal Exhibit RR-2006-001-03A, Administrative Record, Vol. 1 at 151.

57. *Ibid.* at 140.

58. Tribunal Exhibit RR-2006-001-13.07 (protected), Administrative Record, Vol. 2.4C at 304-84; Tribunal Exhibit RR-2006-001-13.12 (protected single copy exhibit), Administrative Record, Vol. 2.4E.

108. The Tribunal further notes, as mentioned above, that there were over 330 companies in China and Chinese Taipei that exported bicycles to Canada in 2006. The majority did not have interim normal values. The Tribunal believes that, if the order were rescinded, many of these exporters would have the potential to export subject bicycles to Canada at dumped prices, as they try to gain market share.

109. Given the presence of three important factors, i.e. (1) the fact that many models have proposed selling prices marginally above or below normal values; (2) the significant number of potential exporters in China and Chinese Taipei vying for market share in Canada; and (3) the limited number of Canadian players in the market, especially in the mass merchant segment, the Tribunal is convinced, notwithstanding Yong Qi's higher profit margins, that it is reasonable to assume that Yong Qi would also likely lower its prices to compete with the dumped prices of other exporters of subject bicycles in order to retain its share of the market. Furthermore, by Yong Qi's own admission, it would not be bound by any floor price if the order were rescinded.⁵⁹ Given the seasonal nature of the industry in Canada, the Tribunal believes that this change would likely not be gradual but would occur in the next 18 to 24 months.

110. Another telling observation with respect to meeting new floor prices is that, from 2004 to 2005, when the normal values for subject goods from China were reduced by an estimated 40 percent, the average import price of subject goods from China fell, with import prices declining by 28 percent, from \$125 per unit in 2004 to \$93 per unit in 2006.⁶⁰ This decline clearly indicates to the Tribunal that, following the change in normal values, Chinese exporters immediately reduced their prices to meet these new normal values. The Tribunal is persuaded, in light of that evidence, that exporters in China and Chinese Taipei would likely continue to reduce prices, should the floor price or normal values be removed with the rescission of the order.

111. With respect to Chinese Taipei, the TBEA claimed that its bicycle industry is moving upscale to produce higher-priced and higher-quality bicycles. However, notwithstanding this claim, the Tribunal notes that average import unit values declined by 17 percent from 2005 to 2006 and then dropped by 39 percent in the first six months of 2007 compared to the same period in 2006.⁶¹ Evidence on the record provides specific account information for purchases from Chinese Taipei for the interim 2007 period where value-for-duty prices were on average less than \$100.⁶² This specific account information shows that, whereas, in general, the Chinese Taipei industry is moving up-market, producers in Chinese Taipei still have significant capacity to produce bicycles in the lower price ranges.

112. Evidence and testimony presented during this expiry review reconfirmed that, for purchasers of subject goods and like goods, price continues to be a determining factor, particularly in the mass merchant segment of the market. Evidence clearly demonstrates that there is a high degree of price competitiveness and that mass merchants must be able to match or better the price and specifications offered by competitors in order to retain or gain market share.⁶³

113. Testimony in general, but that of the witness from Louis Garneau in particular,⁶⁴ leads the Tribunal to believe that the rescission of the order would lead to lower prices, with the consequence that more imported goods would compete with like goods selling for less than \$400 retail. The witness for CTC

59. Tribunal Exhibit RR-2006-001-21.05, Administrative Record, Vol. 5.1 at 249.

60. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 39.

61. *Ibid.* at 40.

62. Tribunal Exhibit RR-2006-001-13.13 (protected), Administrative Record, Vol. 2.4E at 125, 260-61.

63. *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 59, 114; *Transcript of Public Hearing*, Vol. 2, 16 October 2007 at 227-28, 252-58.

64. *Transcript of Public Hearing*, Vol. 3, 17 October 2007 at 488-89.

testified that he had received offers from exporters that currently sell into the U.S. market at prices that are below existing prices in Canada, indicating that they would be interested in selling to Canada if the order were rescinded.⁶⁵ Furthermore, in the event that the order is rescinded, given the strong price competition in the marketplace in both the mass merchant and IBD distribution channels, the Tribunal is of the view that the combined competitive forces in both distribution channels would further erode prices in the market for bicycles that retail for less than \$400.

114. On the basis of the foregoing, the Tribunal believes that there is positive evidence which shows that exporters in China and Chinese Taipei are capable of exporting subject goods at prices below FOB \$225 and that they are likely to continue to do so in the next 18 to 24 months.

115. Therefore, the Tribunal is persuaded that, should the order be rescinded, both Chinese and Chinese Taipei exporters would likely export subject bicycles to Canada at dumped prices well below current values and well below Raleigh's prices.

Likely Performance of the Domestic Industry and Likely Impact of the Dumped Goods on the Domestic Industry

116. The Tribunal now turns to the likely impact that the above volumes and prices will have on the domestic industry if the order is rescinded,⁶⁶ taking into consideration the domestic industry's likely performance.⁶⁷ The Tribunal will also consider the potential negative effects of the dumped goods on existing development and production efforts.⁶⁸

117. During the period of review, total production in Canada steadily declined, as Procycle moved to importing greater volumes of bicycles that retailed for \$400 or less rather than producing them. As for Raleigh, its capacity utilization remained unchanged over most of the period of review and then, in the first six months of 2007, decreased significantly compared to the first six months of 2006. The number of Raleigh employees decreased steadily during the period of review.⁶⁹

118. Raleigh's financial position was relatively stable and profitable during the review period. Its total gross margin peaked in 2005 before falling in 2006 to a level below that of 2004. It improved slightly in the first six months of 2007 in comparison to the same period in 2006. On a per unit basis, the gross margin remained unchanged between 2004 and 2006. The gross margin per unit earned in the first six months of 2007 showed a significant improvement over the same period in 2006, as well as the period between 2004 and 2006.⁷⁰ A combination of factors, including improvements in productivity and a decrease in general, selling and administrative costs,⁷¹ accounts for this improvement.

65. *Transcript of In Camera Hearing*, Vol. 2, 16 October 2007 at 173; Manufacturer's Exhibit N-01 at para 25, Administrative Record, Vol. 11.

66. Paragraph 37.2(2)(e) of the *Regulations*.

67. Paragraph 37.2(2)(c) of the *Regulations*.

68. Paragraph 37.2(2)(g) of the *Regulations*.

69. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 29.

70. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-06 (protected), Administrative Record, Vol. 2.1 at 81.

71. *Ibid.* at 81, 90.

119. Raleigh's volume of sales during the period of review peaked in 2005 and, in 2006, fell back to the levels experienced in 2004. This decline continued in the first six months of 2007, when the level dropped below the level experienced in the first six months of 2006. Raleigh's net sales showed a similar trend; however, the decline between the first six months of 2006 and the first six months of 2007 was less pronounced.⁷² The domestic industry's market share peaked in 2005 before falling in 2006 and falling again by a significant amount in the first six months of 2007 in comparison to the first six months of 2006.⁷³

120. Raleigh made certain investments in its facilities during the period of review. It submitted that having the order in place has given it the confidence to make decisions to invest⁷⁴ and that, if the order were rescinded, it would likely have a negative impact on Raleigh's decisions regarding future investments. The Tribunal believes that Raleigh's inability to invest in its business with any confidence will diminish its ability to compete effectively in the Canadian market.

121. With respect to the near future, Raleigh has sales commitments for the 2008 model year (September 2007 to August 2008), for which supply contracts have been finalized.⁷⁵ The five-year contract with CTC expires at the end of 2008.⁷⁶ Therefore, with respect to the next 18 to 24 months, the outlook for Raleigh is highly uncertain.

122. The Tribunal believes that the likely volumes of imports that would enter Canada if the order were rescinded would have a major negative impact on Raleigh. During the hearing, a witness who testified on behalf of Raleigh stated that there is a minimum annual production volume that must be maintained in order to sustain the company's production of bicycles in Canada.⁷⁷ Given the size and capacity of exporters in China and Chinese Taipei and the increasing dominance of subject goods in the Canadian market, the Tribunal is convinced that the gap between Raleigh's current production volume and the volume necessary to maintain production in Canada could easily be filled in a very short time by the likely volumes of subject goods if the order were rescinded.

123. The likely increased volumes of subject goods, together with the likely continuation of price pressure from these imports, would place severe pressure on Raleigh. Raleigh submitted that it is currently competing at extremely low margins and that there have been instances when it simply could not compete with subject goods.⁷⁸ In addition to increased volumes, Raleigh must now compete with imported bicycles that are enhanced with additional components and features and offered at price points that are lower than in the last review, in 2002.⁷⁹

124. If the order were rescinded, the pressures discussed above would be exacerbated, as lower import prices would make it easier for exporters to supply more fully featured bicycles at existing retail price points. Alternatively, retail price points could be lowered for bicycles with existing features that would likely be imported at lower prices. Under either scenario, it is the Tribunal's view, considering Raleigh's high degree of vulnerability, that its prices would likely erode to a point where the possibility of recovering

72. *Ibid.* at 81.

73. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 29.

74. *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 45.

75. *Ibid.* at 151.

76. *Transcript of Public Hearing*, Vol. 2, 16 October 2007 at 234.

77. *Transcript of In Camera Hearing*, Vol. 1, 15 October 2007 at 120-21.

78. *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 44, 150; *Transcript of In Camera Hearing*, Vol. 1, 15 October 2007 at 3.

79. *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 157-58; *Transcript of Public Hearing*, Vol. 3, 17 October 2007 at 384.

increased costs would be impossible, that domestic production would be rendered uncompetitive and that Raleigh would become unprofitable. If this occurred, the Tribunal is persuaded that Raleigh would likely cease to produce like goods and would import subject bicycles, as do its sister companies, in their respective countries, and former producers of like goods.⁸⁰

125. In summary, based on the above, the Tribunal is of the view that the expiry of the order is likely to have a significant negative impact on domestic production with respect to the factors listed in paragraphs 37.2(2)(c) and (e) of the *Regulations*.

Other Factors

126. Pursuant to paragraph 37.2(2)(k) of the *Regulations*, the Tribunal may consider any other factors relevant in the circumstances. Accordingly, the Tribunal reviewed certain factors unrelated to dumping that could adversely affect the domestic industry.

Currency Exchange

127. The TBEA submitted that the appreciation of the Canadian dollar against the U.S. dollar since 2004 has created more favourable conditions for importers who buy product from producers in China and Chinese Taipei. As most purchases are made in U.S. dollars, Canadian importers have had an apparent advantage. In this respect, the TBEA submitted that the Canadian bicycle industry has been affected negatively by the significant appreciation of the Canadian dollar.

128. The Tribunal notes that, with the exception of frames, virtually all components used in the manufacture of bicycles in the subject countries and in Canada are manufactured in Asia, with limited amounts coming from Europe and the United States.⁸¹ Consequently, the apparent advantage to importers of the changes in exchange rates is mitigated by the fact that Raleigh, though it builds bicycles in Canada, has purchased its components in the same market and using the same currency as the importers.

129. Although the Tribunal sees this as a possible factor contributing to injury caused to Raleigh, it does not consider that it cancels out the potential injury from the likely volume of dumped goods that would enter the Canadian market if the order were rescinded.

Competition From Low-cost Imports

130. Mordo and the RCC accepted that Raleigh may be vulnerable, but argued that Raleigh is vulnerable to low-cost, undumped imports, not to likely volumes of dumped imports.

131. The RCC submitted that the Tribunal's safeguard finding reconfirmed that low-cost, undumped imports would be a cause of serious injury to the domestic industry. It submitted that, while it accepts that prices of subject goods will eventually fall to dumped levels, it believes that Raleigh will suffer injury before prices ever reach these levels, as Raleigh simply cannot compete on a cost basis with the low-cost, undumped imports from China.

80. Manufacturer's Exhibit A-03 at paras. 9, 13, Administrative Record, Vol. 11.

81. Tribunal Exhibit RR-2006-001-13.12 (protected single copy exhibit), Administrative Record, Vol. 2.4E; *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 101; *Transcript of Public Hearing*, Vol. 2, 16 October 2007 at 221-22.

132. First, with respect to low-cost imports, the RCC referred to the testimony of Mr. Maheux in which he stated that, from his personal experience, he knows that normal values in China are lower than the costs of production in Canada.⁸² Second, with respect to Raleigh being able to compete, the RCC relied on evidence which indicates that even a modest decrease in prices would be fatal to Raleigh. Indeed, a large volume of Raleigh's sales is of private-label bicycles, and the margins on these sales are relatively thin. Raleigh acknowledged that it is surviving, but it is close to the line in terms of the level of profit which its officers and stakeholders find acceptable. The profit margins are such that a modest decrease in price could mean the end of the production of Raleigh bicycles in Canada.⁸³ The RCC argued that, in these circumstances, the requisite causal connection between the dumping predicted by the CBSA and the resulting likelihood of injury to the domestic industry is non-existent.

133. The Tribunal notes that Raleigh's cost structure for like bicycles is higher than that of manufacturers in China and Chinese Taipei⁸⁴ and has undoubtedly contributed to Raleigh's disadvantage in the face of imports from China and, to a lesser extent, Chinese Taipei. Nevertheless, the financial evidence on the record indicates that, with the order in place, Raleigh can compete and is currently competing with foreign producers and is making a profit. The Tribunal acknowledges that this may not have been the case for Procycle. In this respect, not long after the CBSA changed its policy regarding normal values for bicycles from China, Procycle changed its business model, which led to a decrease in production of like goods, an increase in imports of subject bicycles and the implementation of other business strategies.⁸⁵

134. In response to arguments from Mordo about the low-cost Chinese producer, Yong Qi, the Tribunal observes that it is only one of many suppliers to the Canadian market. Notwithstanding its generous margins over normal values, other exporters to Canada currently sell close to their normal values, so that a modest decrease in price would result in dumping.⁸⁶ Therefore, the Tribunal recognizes that Raleigh may experience some injury as a result of lost sales to low-cost, undumped product from Yong Qi, but this would not nullify the negative impact of other exporters to Canada that would likely dump increased volumes of subject bicycles into the Canadian market if the order were rescinded.

Freight and Fuel Costs

135. The witnesses from Raleigh, CTC and Mordo indicated that freight and fuel costs increased during the period of review⁸⁷, making it more expensive to ship bicycle frames and components used in the production of bicycles to Canada. Indications are that it is likely that freight and fuel costs will not be going down in the next 18 to 24 months.⁸⁸

136. The Tribunal notes that the increases in fuel and freight costs will affect importers of subject bicycles as well as Raleigh. Therefore, as the domestic industry and the importers of subject goods incur similar freight and fuel costs, the Tribunal does not see this factor as contributing to injury to the domestic industry.

82. *Transcript of Public Hearing*, Vol. 3, 17 October 2007 at 538-39.

83. Manufacturer's Exhibit A-03 at paras. 9, 13, Administrative Record, Vol. 11.

84. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-06 (protected), Administrative Record, Vol. 2.1 at 85; Tribunal Exhibit RR-2006-001-13.12 (protected single copy exhibit), Administrative Record, Vol. 2.4E; *Transcript of Public Argument*, Vol. 1, 18 October 2007 at 552.

85. *Transcript of Public Hearing*, Vol. 3, 17 October 2007 at 498-99; *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-06 (protected), Administrative Record, Vol. 2.1 at 30.

86. Tribunal Exhibit RR-2006-001-03A, Administrative Record, Vol. 1 at 151.

87. *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 46, 108; *Transcript of Public Hearing*, Vol. 2, 16 October 2007 at 228-29; *Transcript of Public Hearing*, Vol. 3, 17 October 2007 at 386-87.

88. *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 147-48.

Raleigh's Business Strategies

137. The Tribunal is of the view that, as a result of many of the business decisions that Raleigh took during the period of review, Raleigh has contributed to its own vulnerability with respect to its position in the Canadian bicycle market. The Tribunal observes that many of the positive initiatives undertaken by Raleigh were a reaction to demands made by its principal customer, CTC, as a condition of becoming a qualified supplier to this company.⁸⁹ Evidence of proactive management and consistent strategic and tactical business decision making is lacking. On the other hand, the Tribunal also notes that the union together with the employees testified to the importance of optimal organization of work in the plant to ensure competitiveness.⁹⁰

138. The Tribunal heard testimony that, as a result of its contract with CTC, Raleigh focused its brand management efforts primarily on the Raleigh brand and CTC's needs, thus making itself more vulnerable. In addition, the decision to supply CTC with the Raleigh brand alienated Raleigh's existing IBD customers, which in turn limited Raleigh's sales of the Diamondback brand to IBDs. The witness from Sweet Pete's submitted that IBDs cannot compete with the Raleigh brand when CTC is selling it at lower prices. With respect to the Diamondback brand, the witness testified that, because Raleigh has not adequately promoted or developed this brand, his company does not purchase it. Furthermore, the Diamondback brand would compete with brands such as Giant, Kona and Trek that Sweet Pete's currently sells.⁹¹

139. With respect to marketing to other mass merchants such as Wal-Mart or Zellers, the Tribunal notes that Raleigh has not taken proactive steps to provide these retailers with a desirable brand. For example, Wal-Mart stopped purchasing Raleigh's Triumph brand because it did not consider this brand to be recognized in the marketplace.⁹² The Tribunal is of the view that Raleigh's efforts to gain business with Zellers are weak and appear to rely on the customer pursuing the supplier, rather than the supplier seeking to meet the customer's particular needs. The evidence indicates that Raleigh shows limited interest in pursuing this business. For example, the witness from Zellers testified that the solicitation from Raleigh sales staff arrived too late in its annual bicycle purchasing schedule to receive serious consideration.⁹³

140. CASBI submitted that Raleigh has failed to develop export markets and is therefore restricted to the seasonal Canadian market. During the period of review, Raleigh exported a small number of bicycles to the United States and the Caribbean.⁹⁴ Raleigh stated that it cannot effectively compete head-to-head with the extremely low prices of Chinese bicycles that are sold in the U.S. market.⁹⁵ These low prices coupled with certain inherent limitations within the Raleigh group of companies effectively render Raleigh uncompetitive in the U.S. market.⁹⁶

89. *Ibid.* at 142-44.

90. *Ibid.* at 189, 195-96.

91. *Transcript of Public Hearing*, Vol. 3, 17 October 2007 at 412-13; Importer's Exhibit C-03 at paras. 5, 21, Administrative Record, Vol 13.

92. *Transcript of Public Hearing*, Vol. 2, 16 October 2007 at 265-66.

93. Importer's Exhibit H-04 at paras. 10-11, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 2, 16 October 2007 at 278-79.

94. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-06 (protected), Administrative Record, Vol. 2.1 at 66; *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 42, 80-81.

95. *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 120-24.

96. *Transcript of In Camera Hearing*, Vol. 2, 16 October 2007 at 153.

141. In addition, CASBI submitted that Raleigh has made no effort to invest in manufacturing advanced higher-end bicycle frames. Currently, Raleigh imports all its aluminum frames⁹⁷ while, at the same time, importers can import complete bicycles with aluminum frames.

142. The Tribunal is of the view that the lack of brand diversification and brand development, the alienation of IBD business, poor marketing to mass merchants other than CTC, limited export sales and the lack of investment in the production of higher-end bicycle frames may contribute to further injury to Raleigh. However, it does not consider that this minimizes the potential injury from the likely volume of dumped goods that would enter the Canadian market if the order were rescinded.

Made in Canada

143. Raleigh submitted that bicycles that are designated “made in Canada” provide an advantage to its company. Even though Raleigh believes that most of its customers would not pay a premium for the “made in Canada” distinction, Raleigh’s factory location allows it to provide prompt delivery of its Canadian-made bicycles to its customers and improves flexibility and customer service.⁹⁸ CTC submitted that it would consider paying a premium for domestic supply because it provides flexibility and improved customer service.⁹⁹

144. The TBEA argued that Raleigh’s position has improved because it no longer faces competition from other Canadian producers. The Tribunal agrees that, due to changes within the domestic industry, Raleigh faces less competition from Canadian producers than it did at the time of the 2002 review and that this can work to Raleigh’s advantage through the “made in Canada” designation. However, the Tribunal notes that Procycle is still an active player in the market with CCM bicycles, a well-recognized Canadian brand, even though this brand of bicycles is now entirely produced in China.

145. Although the evidence suggests that some customers such as CTC would consider paying a premium for the “made in Canada” designation, the Tribunal is of the view that, given the price-competitive nature of bicycles with a retail price of \$400 or less, this premium would be eroded very quickly if the order were rescinded. Therefore, the Tribunal is of the view that the “made in Canada” designation seems to be a feature that is nice to have rather than a benefit for which retailers are willing to pay.

Conclusion

146. Notwithstanding any losses or injury that may be attributable to the above factors, individually or collectively, the Tribunal does not consider that they eliminate the potential injury from the likely volume of dumped goods that would enter the Canadian market if the order were rescinded.

EXCLUSIONS

147. Two parties, CASBI and Norco, made requests for exclusions. CASBI requested the following three exclusions: (1) bicycles with an FOB Chinese Taipei or China selling price exceeding \$125; (2) non-steel frames and non-steel frame bicycles; and (3) frames and bicycles originating in or exported from Chinese Taipei. Norco requested the following two exclusions: (1) bicycles with an FOB Chinese Taipei or China selling price exceeding \$140 or some other realistic value that correlates with the \$400 retail target; and (2) all frames or, at a minimum, aluminum frames.

97. *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 38.

98. *Ibid.* at 116-17, 165.

99. *Transcript of Public Hearing*, Vol. 2, 16 October 2007 at 233.

148. Since the product exclusion requests made by Norco and CASBI are similar, the Tribunal will deal with them together. The Tribunal will then address CASBI's country exclusion request.

Product Exclusion Requests

149. In *Stainless Steel Wire*,¹⁰⁰ the Tribunal summarized its views on the matter of product exclusions as follows:

The fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry. The Tribunal has granted product exclusions for particular products in circumstances when, for instance, the domestic industry does not produce those particular products. The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an "active supplier" of the product or whether it normally produces the product or whether the domestic industry has the capability of producing the product.

[Footnotes omitted, emphasis added]

Bicycles With an FOB Chinese Taipei or China Selling Price Exceeding \$125 or \$140

150. CASBI submitted that, in the event that the Tribunal continues the order, the exclusion threshold for bicycles should be reduced to an FOB Chinese Taipei or China selling price exceeding \$125. It argued that the current "multiplier" of 1.78 (i.e. the number by which the current FOB Chinese Taipei or China selling price exclusion threshold of \$225 is multiplied in order to arrive at the current retail price threshold of \$400)¹⁰¹ is too low and does not reflect all of the costs incurred and mark-ups applied by IBDs such as the costs to land the bicycles and dealer mark-ups. It submitted that the current FOB exclusion threshold of \$225 is subjecting certain bicycles to anti-dumping duties, although they retail well above \$400. CASBI also argued that an increase of approximately 50 percent in the value of the Canadian dollar relative to the U.S. dollar since 2002 has caused the exclusion threshold to capture more bicycles, given that purchases are normally quoted and paid for in U.S. dollars.

151. For its part, Norco submitted that the exclusion threshold for bicycles should be reduced from an FOB Chinese Taipei or China selling price exceeding \$225 to a more realistic value that correlates with the \$400 retail price threshold. It proposed that \$140 be used.

152. Raleigh opposed the requests made by CASBI and Norco. It submitted that, from a mass merchant perspective and based on numbers provided by Mordo in testimony, an FOB selling price of \$225 still equates to a retail selling price close to the \$400 threshold. Raleigh submitted that, while a lower FOB selling price may be desirable for IBDs, the fact that mass merchants constitute the lion's share of the market and that their multipliers tend to be lower, a lower FOB selling price would clearly result in mass merchants being able to dump at prices well below \$400 and that this would cause material injury to production in Canada.

153. In considering this request, the Tribunal examined the rationale for the thresholds adopted in the previous review. In 2002, the Tribunal excluded bicycles with an FOB Chinese Taipei or China selling price exceeding \$225 on the basis that it equated to a retail price of \$400 or less. At that time, the Tribunal was persuaded that, if the order were rescinded, virtually all the injury likely to be caused by the subject goods

100. (30 July 2004), NQ-2004-001 (CITT) at 22.

101. *Bicycles and Frames* (9 December 2002), RR-2002-001 (CITT) at 15-16.

would occur as a result of the subject goods competing at a retail price of \$400 or less. Accordingly, the Tribunal decided that the protection afforded to the domestic industry should be limited to this retail price segment. The Tribunal re-examined this equivalency in the current review.

154. The Tribunal first determined the retail price level below which injury to domestic production would occur. Following a detailed examination of the evidence, the Tribunal remains of the opinion that the appropriate level below which protection for the domestic industry is required is a retail price of \$400. Given that, during the period of review, the vast majority of domestically produced bicycles were sold below this value and at prices approaching it,¹⁰² and since it appears that this situation will continue into the foreseeable future, virtually all injury would likely occur in the range of prices below and approaching \$400.

155. Next, the Tribunal considered the FOB selling price that corresponds to a retail price of \$400 in today's market. In conducting this analysis, the Tribunal noted that there were changes in exchange rates during the period of review. In the Tribunal's view, exchange rates do not have an impact on the relationship between FOB prices and retail prices, since both are expressed in Canadian dollars. While a stronger Canadian dollar may result in companies being able to purchase better-equipped bicycles for the same number of Canadian dollars, or being able to purchase the same bicycles at a lower price, this fact has no bearing on the relationship between Canadian FOB prices and Canadian retail prices. As clearly presented by parties during the hearing, the relationship between these two prices is influenced by the intervening costs and mark-ups that occur during the steps that follow the purchase of a bicycle at an FOB price. These costs include freight, handling, brokerage, insurance, duty, dealer mark-up (where applicable) and retail mark-up.

156. In addition, the Tribunal notes that there is more evidence on the record than there was in the last review regarding differences in the respective mark-ups earned by mass merchants and IBDs. In order to determine the FOB price that corresponds to a retail price of \$400, the Tribunal questioned witnesses and conducted a detailed examination of the record. Many parties and witnesses provided the Tribunal with multipliers that they believed best quantified the relationship between their individual FOB and retail prices.¹⁰³ These multipliers tended to be higher for IBDs than for mass merchants. This is not surprising, given that the volume of sales at IBDs is much smaller than it is for mass merchants and that IBDs usually include in their retail prices an amount for after-sale service at a level that is not offered by most mass merchants.¹⁰⁴

157. In determining the appropriate threshold for the FOB price, the Tribunal took into account the fact that the volumes of bicycles sold by mass merchants far outweigh the volumes sold by IBDs. Therefore, in its calculations, the Tribunal weighted the various multipliers in accordance with the volumes of the importer in relation to total imports.

102. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-06 (protected), Administrative Record, Vol. 2.1 at 30, 49; *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 154.

103. Tribunal Exhibit RR-2006-001-16.01B (protected), Administrative Record, Vol. 4A at 75; *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 28; *Transcript of Public Hearing*, Vol. 3, 17 October 2007 at 389, 396-98, 411, 432-35; *Transcript of In Camera Hearing*, Vol. 1, 15 October 2007 at 74-75; *Transcript of In Camera Hearing*, Vol. 2, 16 October 2007 at 181, 183, 226, 240-41, 251, 258, 267-70; *Transcript of In Camera Hearing*, Vol. 3, 17 October 2007 at 313-14; Manufacturer's Exhibit A-10 (protected) at 2, Administrative Record, Vol. 12.

104. *Transcript of Public Hearing*, Vol. 3, 17 October 2007 at 411.

158. For each company that provided information to calculate multipliers, this information was used in conjunction with the company's respective import volumes to calculate that company's individual overall weighted multiplier. For certain importers that sell to mass merchants, the Tribunal did not have specific multiplier information. Where the information was lacking, the Tribunal applied the multiplier used by the importer's customer to that importer's volumes, as the Tribunal regarded this as the closest proxy available. For instance, the multiplier provided by Toys "R" Us was used for its importer. In cases where there was no information for importers that sell to mass merchants, import volumes were multiplied by the average multiplier as calculated for mass merchants. For importers that sell to IBDs, multipliers were determined by using their import volumes multiplied by the multipliers calculated for Louis Garneau and Sweet Pete's.¹⁰⁵ The average of all the weighted averaged multipliers calculated for mass merchants and IBDs was 2.1. The Tribunal notes that, when considering a retail price of \$400, this multiplier yields an FOB price of approximately \$190.

159. In an effort to validate the information provided by parties, the Tribunal conducted a separate exercise. For a number of major importers, it determined multipliers for actual transactions, by model, for those bicycles that had proposed selling prices close to the FOB \$225 threshold or retail prices close to the \$400 threshold.¹⁰⁶ In some instances, the resulting multipliers were significantly higher than the multipliers provided during the hearing and, in other cases, the Tribunal discovered that some companies had multipliers that were near and below 1.78.

160. With these varying results in mind, the Tribunal returned to the basic question that it must answer. Given that it has determined that the rescission of the order would likely result in injury to the domestic industry, at what FOB price is protection needed? The Tribunal notes that an FOB price of \$225 and a retail price of \$400 are thresholds. The Tribunal is mindful that, by its nature, a threshold represents an end point of a range rather than the midpoint or any other point within it. While mean values and weighted averages can provide a useful guide to the way the market operates and act as a verification tool for assumptions and estimates, they do not ultimately provide the answer to determine at what FOB price protection is necessary.

161. The Tribunal notes that the purpose of the order is to ensure that the domestic industry will not be injured from the likely volumes of dumped imports. Were the Tribunal to use a multiplier that is higher than the current 1.78 to calculate a new, lower FOB threshold, it is convinced that the prices of dumped imports would constitute a threat to like goods at the upper end of their price range. This is supported by the fact that certain prominent players in the mass merchant segment of the market have multipliers near or at 1.78.

105. Witnesses from Louis Garneau and Sweet Pete's only provided multipliers from their purchase cost to retail prices. To determine the FOB value and the resulting IBD multiplier, the Tribunal backed out costs for average landed dealer margins as provided by Mordo and Procycle, freight costs of \$15 and customs duties of 8.5 percent. Louis Garneau and Sweet Pete's retail prices and this calculated FOB value were used in the calculation of the IBD multiplier.

106. Tribunal Exhibit RR-2006-001-13.12 (protected single copy exhibit), Administrative Record, Vol. 2.4E; Tribunal Exhibit RR-2006-001-16.01 (protected), Administrative Record, Vol. 4 at 66, 70; Tribunal Exhibit RR-2006-001-16.03A (protected), Administrative Record, Vol. 4B at 124-28; Tribunal Exhibit RR-2006-001-18.15, Administrative Record, Vol. 5F at 51-60; Tribunal Exhibit RR-2006-001-19.02A (protected), Administrative Record, Vol. 6F at 32-34; Tribunal Exhibit RR-2006-001-19.03 (protected), Administrative Record, Vol. 6A at 66, 68, 132, 144; Tribunal Exhibit RR-2006-001-19.04 (protected), Administrative Record, Vol. 6B at 84-86; Tribunal Exhibit RR-2006-001-19.05A (protected), Administrative Record, Vol. 6B at 168-70; Tribunal Exhibit RR-2006-001-19.14 (protected), Administrative Record, Vol. 6D at 197-200; Tribunal Exhibit RR-2006-001-19.19 (protected), Administrative Record, Vol. 6E at 156.

162. The Tribunal is mindful that, because IBDs may have higher multipliers, it is possible for a bicycle with an FOB price of \$225 to retail for more than \$400 but still be subject to anti-dumping measures. However, in the Tribunal's opinion, it would not be appropriate to try to accommodate the different distribution channels by introducing different exclusion thresholds, given that a portion of the bicycles imported at \$225, irrespective of their channel of distribution, compete with like goods. The Tribunal notes moreover that, since the vast majority of subject bicycles are sold through the mass merchant segment of the market, such an accommodation would pose significant risks of circumvention.

163. Given that an exclusion of this nature must prevent subject goods from escaping the disciplines of the order within the designated range (i.e. up to a retail price of \$400) and ensure that the subject goods are not permitted to enter the country at values that would be injurious to the domestic industry, the Tribunal will maintain the exclusion threshold at an FOB Chinese Taipei or China selling price of \$225.

Bicycles With Non-steel Frames

164. CASBI submitted that, in the event that the Tribunal continues the order, it should grant exclusions for bicycles with non-steel frames because Raleigh only manufactures bicycles with steel frames.

165. Raleigh responded by stating that it does in fact produce bicycles with aluminum frames.

166. The Tribunal notes that the evidence on the record clearly indicates that Raleigh does produce a significant number of bicycles with imported unfinished aluminum frames, which it paints and finishes, and that a large portion of these bicycles sell for less than \$400.¹⁰⁷ The Tribunal therefore finds that an exclusion for all non-steel frame bicycles would likely cause injury to the domestic industry. The Tribunal will therefore not grant CASBI's request for the exclusion of all non-steel frame bicycles from the order.

All Frames or All Non-steel Frames

167. CASBI submitted that, in the event that the Tribunal continues the order, it should grant exclusions for all non-steel frames.

168. For its part, Norco submitted that all frames should be excluded from the order to encourage Canadian assembly and employment. It also submitted that, should this not be possible, aluminum frames should be excluded, given that they are not produced by Raleigh.

169. The Tribunal notes that, in the original inquiry, in 1992, it found that frames had not caused, were not causing but were likely to cause injury to the production in Canada of like goods and that, since frames constituted a major part of bicycles, their non-inclusion in the finding could have threatened the effectiveness of the finding of material injury on bicycles.¹⁰⁸ In subsequent reviews, the Tribunal maintained that there was a threat of injury if dumped imports of frames were to enter the Canadian market.

170. In the current review, Raleigh acknowledged that the finding against frames was always intended to prevent circumvention of the finding in respect of bicycles and was not related to any possible injury to domestic frame production. Raleigh opposed the exclusion requests pertaining to frames. It agreed however

107. Manufacturer's Exhibit A-09 (protected) at 1, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 154-55; *Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-05, Administrative Record, Vol. 1.1 at 17.

108. *Bicycles and Frames* (11 December 1992), NQ-92-002 (CITT) at 20-21.

that an exclusion for unpainted aluminum frames would not cause it injury, as it views its own painting of aluminum frames as a significant value-added feature that would prevent any possible attempts to circumvent the order in respect of bicycles.

171. The Tribunal is of the view that, in principle, if imported frames were used in the assembly of bicycles that sell for \$400 or less and the sale of these bicycles caused injury to domestic producers, it would be necessary to continue the order with respect to frames. However, the Tribunal observes that opportunities existed during the period of review for companies to import low-cost undumped frames from both subject and non-subject countries for use in the assembly of bicycles that retail for \$400 or less. The Tribunal notes that frames were imported from non-subject countries and that their average unit import prices were significantly lower than Chinese prices.¹⁰⁹ However, despite this cost advantage, there is no evidence showing that importers or distributors have availed themselves of this opportunity in the past or any indications that, in the future, these companies will import frames with an FOB price of \$50 or less in order to assemble bicycles that retail for \$400 or less. The Tribunal also observes that there have been situations where companies, such as Norco, import subject frames, but the evidence indicates that they are used in the assembly of bicycles that retail for more than \$400.¹¹⁰

172. Basing its conclusion on the foregoing, the Tribunal is satisfied that the threat of circumvention no longer exists and that rescission of the order in respect of frames would not cause injury to the domestic industry. The Tribunal will therefore rescind its order concerning all bicycle frames originating in or exported from Chinese Taipei and China.

Country Exclusion Request

173. CASBI submitted that, in the event that the Tribunal continues the order, it should exclude all frames and bicycles originating in or exported from Chinese Taipei because the expiry of the order regarding such goods is unlikely to cause injury to the domestic industry. For its part, Mordo stated that it would not object to an exclusion for frames and bicycles for Chinese Taipei.

174. Raleigh submitted that such an exclusion would not be appropriate, given that it was of the view that the Tribunal should cumulatively assess the effects of the dumping of the subject goods.

175. As discussed above, exclusions are only granted under exceptional circumstances, and the fundamental principle is that they will be granted only when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry. In this case, there is significant evidence that imports of subject bicycles from Chinese Taipei entered the market during the period of review and that these imports competed directly with like goods. Furthermore, the Tribunal has found that imports of bicycles from Chinese Taipei are likely to result in injury should the order be rescinded. Therefore, the Tribunal will not grant this request.

109. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-06 (protected), Administrative Record, Vol. 2.1 at 47; *Transcript of Public Hearing*, Vol. 1, 15 October 2007 at 68-69.

110. *Protected Pre-hearing Staff Report*, Tribunal Exhibit RR-2006-001-06 (protected), Administrative Record, Vol. 2.1 at 105-10; Tribunal Exhibit RR-2006-001-15.03B, Administrative Record, Vol. 3A at 25.

CONCLUSION

176. Based on the foregoing analysis and pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby:

- (1) continues its order concerning bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Chinese Taipei and China, excluding bicycles with an FOB Chinese Taipei or China selling price exceeding \$225 and excluding bicycles with foldable frames and stems; and
- (2) rescinds its order concerning all bicycle frames originating in or exported from Chinese Taipei and China.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Serge Fréchette
Serge Fréchette
Member