



Canadian International  
Trade Tribunal

Tribunal canadien du  
commerce extérieur

CANADIAN  
INTERNATIONAL  
TRADE TRIBUNAL

# Dumping and Subsidizing

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## ORDERS AND REASONS

Expiry Review No. RR-2009-001

Certain Fasteners

*Orders and reasons issued  
Wednesday, January 6, 2010*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the findings made by the Canadian International Trade Tribunal on January 7, 2005, in Inquiry No. NQ-2004-005, concerning:

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

**ORDERS**

On April 22, 2009, the Canadian International Trade Tribunal gave notice that, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, it would initiate an expiry review of the above-mentioned findings.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its finding concerning certain carbon steel fasteners, originating in or exported from the People's Republic of China and Chinese Taipei, excluding the products described in the appendix.

Pursuant to subparagraph 76.03(12)(a)(ii) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby rescinds its finding concerning certain stainless steel fasteners originating in or exported from Chinese Taipei.

Ellen Fry  
Ellen Fry  
Presiding Member

Serge Fréchette  
Serge Fréchette  
Member

Jason W. Downey  
Jason W. Downey  
Member

Dominique Laporte  
Dominique Laporte  
Secretary

## APPENDIX

### CARBON STEEL SCREWS EXCLUDED FROM THE ORDER

- Acoustic lag screws (*Tire-fond anti-acoustiques*)
- Aster screws (*Vis Aster*)
- Chicago screws (*Vis « Chicago » [pour reliures]*)
- Collated screws (*Vis sur bande*)
- Connector screws (kd) (*Vis de connexion [démontables]*)
- Decor screws (*Vis de décoration*)
- Drawer handle screws (*Vis de poignée de tiroir*)
- Drive spikes RR (*Crampons torsadés CF*)
- Euro screws (*Eurovis*)
- Hex socket cap screws (*Vis creuses à tête hexagonale*)
- Instrument screws (*Vis d'instrument*)
- Knurled head screws (*Vis à tête moletée*)
- Machine screws with wings (*Vis mécaniques à oreilles*)
- Optical screws (*Vis d'optométrie*)
- Screw spikes RR (*Tire-fond CF*)
- Security screws (*Vis de fixation*)
- Self-clinching studs (*Goujons autoriveurs*)
- Socket cap screws (*Vis filetées sous tête, à tête creuse*)
- Socket set screws (*Vis de réglage à tête creuse*)
- Square-head set screws (*Vis de réglage à tête carrée*)
- Thumb screws (*Vis de serrage*)
- U-drive screws (*Vis de type U*)
- Wing screws (*Vis à oreilles*)
- Screws imported under tariff item Nos. 9952.00.00, 9964.00.00, 9969.00.00, 9972.00.00 and 9973.00.00 for use in the manufacture of snowmobiles, all-terrain vehicles, personal watercraft and three-wheeled motorcycles (*Vis importées dans les numéros tarifaires 9952.00.00, 9964.00.00, 9969.00.00, 9972.00.00 et 9973.00.00 devant servir dans la fabrication de motoneiges, de véhicules tout-terrain, de motomarines et de motocyclettes à trois roues*)
- R4™ screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent numbers 2 267 572 and 2 198 832 and a Climatek™ coating which is certified to meet the ICC Evaluation Service, Inc. (ICC-ES) "Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals" (AC257); or equivalent (*Vis R4<sup>MC</sup> commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés aux numéros de brevet canadiens 2 267 572 et 2 198 832 et un enduit Climatek<sup>MC</sup>, celui-ci respectant les exigences de la norme "Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals" (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l'équivalent*)

- RSS™ rugged structural screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent numbers 2 267 572 and 2 140 472 and a Climatek™ coating which is certified to meet the ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis de construction durables RSS<sup>MC</sup> commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés aux numéros de brevet canadiens 2 267 572 et 2 140 472 et un enduit Climatek<sup>MC</sup>, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l’équivalent*)
- MSS™ zip tip metal siding screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent numbers 2 267 572 and 2 478 635 and a Climatek™ coating which is certified to meet the ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis à pointe zip tip pour bardage en métal MSS<sup>MC</sup> commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés aux numéros de brevet canadiens 2 267 572 et 2 478 635 et un enduit Climatek<sup>MC</sup>, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l’équivalent*)
- MSS™ drill tip metal siding screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent numbers 2 267 572 and 2 478 635 and a Climatek™ coating which is certified to meet the ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis à pointe perçante pour bardage en métal MSS<sup>MC</sup> commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés aux numéros de brevet canadiens 2 267 572 et 2 478 635 et un enduit Climatek<sup>MC</sup>, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l’équivalent*)
- Pan™ head screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent number 2 267 572 and a Climatek™ coating which is certified to meet ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis à tête Pan<sup>MC</sup> commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés au numéro de brevet canadien 2 267 572 et un enduit Climatek<sup>MC</sup>, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l’équivalent*)
- Cabinet™ screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent number 2 267 572 and a Climatek™ coating which is certified to meet ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis Cabinet<sup>MC</sup> commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés au numéro de brevet canadien 2 267 572 et un enduit Climatek<sup>MC</sup>, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l’équivalent*)

- FIN/Trim™ head screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent number 2 267 572 and a Climatek™ coating which is certified to meet ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis à tête FIN/Trim<sup>MC</sup> commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés au numéro de brevet canadien 2 267 572 et un enduit Climatek<sup>MC</sup>, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l’équivalent*)
- White FIN/Trim™ head screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent number 2 267 572 and a Climatek™ coating which is certified to meet ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis à tête White FIN/Trim<sup>MC</sup> commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés au numéro de brevet canadien 2 267 572 et un enduit Climatek<sup>MC</sup>, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l’équivalent*)
- RT Composite™ Trim™ head screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent number 2 267 572 and a Climatek™ coating which is certified to meet ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis à tête RT Composite<sup>MC</sup> Trim<sup>MC</sup> commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés au numéro de brevet canadien 2 267 572 et un enduit Climatek<sup>MC</sup>, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l’équivalent*)
- White RT Composite™ Trim™ head screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent number 2 267 572 and a Climatek™ coating which is certified to meet ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis à tête White RT Composite<sup>MC</sup> Trim<sup>MC</sup> commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés au numéro de brevet canadien 2 267 572 et un enduit Climatek<sup>MC</sup>, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l’équivalent*)
- Vinyl Window™ screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent number 2 267 572 and a Climatek™ coating which is certified to meet ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis Vinyl Window<sup>MC</sup> commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés au numéro de brevet canadien 2 267 572 et un enduit Climatek<sup>MC</sup>, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l’équivalent*)

- Caliburn™ concrete screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent number 2 267 572 and a Climatek™ coating which is certified to meet ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis pour béton Caliburn<sup>MC</sup> commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés au numéro de brevet canadien 2 267 572 et un enduit Climatek<sup>MC</sup>, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l’équivalent*)
- Kameleon™ composite deck screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent number 2 267 572 and a Climatek™ coating which is certified to meet ICC-ES “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257); or equivalent (*Vis pour terrasses en matériaux composites Kameleon<sup>MC</sup> commercialisées par GRK Canada Limited, ayant les caractéristiques et éléments énoncés au numéro de brevet canadien 2 267 572 et un enduit Climatek<sup>MC</sup>, celui-ci respectant les exigences de la norme “Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals” (AC257) du ICC Evaluation Service, Inc. (ICC-ES); ou l’équivalent*)
- Sharp-pointed drywall screws with diameters ranging from #6 to #7, lengths ranging from 0.4375 in. to 2.25 in., with a coarse, fine or high-low thread, with a bugle, flat, pan, truss or wafer head, with a Phillips driver and a black phosphate or standard zinc finish (*Vis pointue à cloison sèche dont le diamètre varie de #6 à #7 et la longueur de 0.4375 po à 2.25 po, ayant un filet normal, fin ou « haut-bas » (high-low), une tête Phillips évasée, plate, cylindrique bombée, bombée ou mince, et un enduit de phosphate noir ou de zinc standard*)
- Self-drilling drywall screws with diameters ranging from #6 to #7, lengths ranging from 0.4375 in. to 2.25 in., with a fine thread, with a bugle, flat, flat truss, pan, pancake, truss or wafer head, with a Phillips driver and a black phosphate or standard zinc finish (*Vis autoperceuses à cloison sèche dont le diamètre varie de #6 à #7 et la longueur de 0.4375 po à 2.25 po, ayant un filet fin, une tête Phillips évasée, plate, plate bombée, cylindrique bombée, « galette », bombée ou mince, et un enduit de phosphate noir ou de zinc standard*)

All carbon steel screws that are *not within the parameters* of the following list are also *excluded* from the order.

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



|  |   |
|--|---|
| Place of Hearing:                      | Ottawa, Ontario   |
| Dates of Hearing:                      | November 16 to 19, 2009   |
| Tribunal Members:                      | Ellen Fry, Presiding Member<br>Serge Fréchette, Member<br>Jason W. Downey, Member |
| Research Director:                     | Rose Ritcey   |
| Lead Research Officer:                 | Martin Giroux   |
| Research Officers:                     | Gabrielle Nadeau<br>Paula Enright   |
| Senior Statistical Research Officer:   | Julie Charlebois  |
| Statistical Research Officers:         | Marie-Josée Monette<br>Stéphane Racette   |
| Statistical Research Support Officers: | Michael Rajch<br>Amanda Grochowish  |
| Counsel for the Tribunal:              | Alain Xatruch<br>Nick Covelli   |
| Manager, Registrar Office:             | Michel Parent   |
| Registrar Support Officer:             | Cheryl Unitt  |

**PARTICIPANTS:****Domestic Producers**

H. Paulin &amp; Co., Limited

Leland Industries Inc.

Standard Fasteners Ltd.

Visqué Inc.

**Counsel/Representatives**

Richard Paulin

Lawrence L. Herman

David Eveline

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**Importers/Exporters/Others**

Bombardier Recreational Products Inc.

Electrolux Canada Corp.

GRK Canada Limited

Robertson Inc.

Spaenaur

The Government of Chinese Taipei

**Counsel/Representatives**

Ronald C. Cheng

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Gordon LaFortune

C. J. Michael Flavell

Cyndee Todgham Cherniak

Corinne Brulé

Riyaz Dattu

C. J. Michael Flavell

Cyndee Todgham Cherniak

Hong-chi Yang

**Parties that Solely Requested Product Exclusions**

Canadian Tire Corporation, Limited

Chaen Wei Corporation

Hilti (Canada) Corporation

Starborn Industries, Inc.

Zyh Yin Enterprise Co., Ltd.

**Counsel/Representatives**

Riyaz Dattu

Grace Hung

Paul D. Burns

Dalton J. Albrecht

Chris Chen

**WITNESSES:**

Byron Nelson

President

Leland Industries Inc.

Dennis Ebata

Chief Financial Officer

Leland Industries Inc.

Joanna Yu

General Manager

Standard Fasteners Ltd.

Richard Paulin

President

H. Paulin & Co., Limited

Juan Andrejin

Engineering Manager

Leland Industries Inc.

Brad Ryan

President

Visqué Inc.

Larry Buganto

President

Formnet Inc.

**PRODUCT EXCLUSION WITNESSES:**

Mirco Walther  
President and Co-owner  
GRK Fasteners

Aaron Heilbrun  
Product Manager  
Hilti, Inc.

Byron Nelson  
President  
Leland Industries Inc.

Gregg Bourbonnais  
Market Manager Canada  
Hilti (Canada) Corporation

Brad Ryan  
President  
Visqué Inc.

Juan Andrejin  
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## STATEMENT OF REASONS

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,<sup>1</sup> of the findings made by the Canadian International Trade Tribunal (the Tribunal) on January 7, 2005, in Inquiry No. NQ-2004-005, concerning (1) the dumping of carbon steel fasteners, i.e. screws of carbon steel that are used to mechanically join two or more elements, excluding fasteners specifically designed for application in the automotive or aerospace industry, originating in or exported from the People's Republic of China (China) and Chinese Taipei (the subject carbon steel screws) and the subsidizing of such products originating in or exported from China, and (2) the dumping of stainless steel fasteners, i.e. screws of stainless steel that are used to mechanically join two or more elements, excluding fasteners specifically designed for application in the automotive or aerospace industry, originating in or exported from Chinese Taipei (the subject stainless steel screws) (collectively the subject goods).<sup>2</sup>

2. On April 22, 2009, the Tribunal initiated an expiry review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the findings was likely to result in injury or retardation and sent a notice of expiry review to known interested parties.<sup>3</sup> The Tribunal also sent letters requesting the Canadian producers and importers, and foreign producers and exporters to complete expiry review questionnaires. The Tribunal requested that, if the Canada Border Services Agency (the CBSA) found a likelihood of continued or resumed dumping and/or subsidizing, domestic producers, importers, foreign producers and exporters update their responses to questionnaires submitted to the CBSA to include data for the second quarters of 2008 and 2009 and that domestic producers complete Part E of the expiry review questionnaire for producers.

3. On April 23, 2009, the CBSA initiated an expiry review investigation to determine whether the expiry of the findings would likely result in the continuation or resumption of dumping and/or subsidizing.

4. On August 20, 2009, the CBSA determined that, pursuant to subsection 76.03(7) of *SIMA*, the expiry of the findings would likely result in the continuation or resumption of dumping and subsidizing.

5. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, from November 16 to 19, 2009.

6. Domestic producers Leland Industries Inc. (Leland), Visqué Inc. (Visqué) and Standard Fasteners Ltd. (Standard Fasteners) submitted evidence and made arguments in support of a continuation of the findings. These parties were represented by counsel and presented the following witnesses at the hearing: Mr. Byron Nelson, President of Leland, Mr. Dennis Ebata, Chief Financial Officer of Leland, Mr. Juan Andrejin, Engineering Manager of Leland, Mr. Brad Ryan, President of Visqué, Ms. Joanna Yu, General Manager of Standard Fasteners, and Mr. Larry Buganto, President of Formnet Inc.

7. H. Paulin & Co., Limited (Paulin), which is both a domestic producer and an importer, also made submissions in support of a continuation of the findings. The President of Paulin, Mr. Richard Paulin, represented Paulin and appeared as a witness.

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

2. Goods of these descriptions imported from other countries will be referred to as “non-subject goods”, “non-subject carbon steel screws” or “non-subject stainless steel screws”, as appropriate. Goods of these descriptions produced in Canada will be referred to as “like goods”, “like carbon steel screws” or “like stainless steel screws”, as appropriate. “Carbon steel screws” and “stainless steel screws” will refer to a broader range of goods that may not be identical in every respect to the subject goods.

3. C. Gaz. 2009.I.1345.

8. Robertson Inc. (Robertson), which during the period of review was both a domestic producer and an importer, and the importers, Spaenaur, GRK Canada Limited (GRK) and Electrolux Canada Corp., submitted evidence and made arguments in support of a rescission of the findings. Robertson, Spaenaur and GRK were represented by counsel, but did not present witnesses.

9. Bombardier Recreational Products Inc. (Bombardier), an importer, was represented by counsel, but did not submit evidence, make arguments or present witnesses in support of a rescission of the findings.

10. The Government of Chinese Taipei submitted evidence and made arguments in support of a rescission of the findings, but was not represented by counsel and did not present witnesses.

11. Nine parties filed requests for product exclusions in the event of a continuation of the findings: Bombardier, Canadian Tire Corporation, Limited (CTC), Chaen Wei Corporation (Chaen Wei), GRK, Hilti (Canada) Corporation (Hilti), Robertson, Spaenaur, Starborn Industries, Inc. (Starborn) and Zyh Yin Enterprise Co., Ltd. (Zyh Yin). Of these, CTC, Chaen Wei, Hilti, Starborn and Zyh Yin participated in the review solely in relation to requests for product exclusions.

12. The record of these proceedings consists of all relevant documents filed or accepted for filing by the Tribunal, including the following: 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 replies to these requests; documents with respect to the product exclusion process, witness statements and other exhibits; the Tribunal's findings and notice of expiry review; the transcript of the hearing; the exhibit list along with the public and protected pre-hearing staff reports prepared for Inquiry No. NQ-2004-005. Protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of confidential information.

## **PRODUCT**

### **Production Description**

13. The subject goods are carbon steel screws that are used to mechanically join two or more elements, excluding carbon steel screws specifically designed for application in the automotive or aerospace industry, originating in or exported from China and Chinese Taipei, excluding the products described in Appendix A to the findings in Inquiry No. NQ-2004-05, and stainless steel screws that are used to mechanically join two or more elements, excluding stainless steel screws specifically designed for application in the automotive or aerospace industry, originating in or exported from Chinese Taipei, excluding the products described in Appendix B to the findings in Inquiry No. NQ-2004-05.

### **Additional Product Information<sup>4</sup>**

14. A fastener is a mechanical device designed specifically to hold, join, couple, assemble or maintain equilibrium of two or multiple components.

15. A screw is a headed and externally threaded mechanical device that possesses capabilities which permit it to be inserted into holes in assembled parts, to be mated with a pre-formed internal thread or to form its own thread, and to be tightened or released by torquing its head. Screws are fastener products with

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4. The additional product information is from the CBSA's Expiry Review Decision. Tribunal Exhibit RR-2009-001-03A, Administrative Record, Vol. 1 at 195.

an external threading on the shank. Screws include machine screws, wood screws (including deck screws), self-drilling, self-tapping, thread forming, and sheet metal screws. Screws can either be used without any other part and fixed into wood (wood screws) or metal sheets (self-tapping screws) or be combined with a nut and washers to form a bolt. Screws may have a variety of head shapes (round, flat, hexagonal etc.), drives (slot, socket, square, Phillips, etc.), shank lengths and diameters. The shank may be totally or partially threaded. Some screws commonly designated as “bolts” (i.e. lag bolts, flange bolts, bin bolts, grain bin bolts, square and hex lag bolts, and stove bolts) are considered to be subject goods.

### **Production Process**

16. Carbon steel screws and stainless steel screws are produced from steel round wire or rod predominantly by cold forming and, to a lesser extent, by machining.

17. Cold forming is a process that forces the round wire through a series of dies and punches, causing the material to take the desired shape or design of the fastener. The machine used is called a cold header. It is necessary to change dies in order to switch from the production of one specific screw to another. The headed blanks are then fed into a thread-rolling machine.

18. Machining is a process that sheers off the unwanted material from the round wire to produce the desired screw.

19. Further steps, such as hardening (heat treating), plating, painting and, to a lesser degree, assembling (i.e. adding washers) can be performed in order to enhance certain qualities, such as product strength and corrosion resistance.

### **Product Applications**

20. Carbon steel screws and stainless steel screws are used in a wide variety of market sectors and industries, including general construction, machinery and equipment, household furniture and appliances. Potential uses are virtually limitless.

### **Marketing and Distribution**

21. There are three main distribution channels for both domestically produced and imported carbon steel screws and stainless steel screws: original equipment manufacturers (OEMs), industrial distributors and retail hardware stores. Some suppliers maintain networks of sales offices and distribution warehouses across Canada.

### **DOMESTIC PRODUCERS**

22. Leland was incorporated in 1984 as a manufacturer of fasteners serving many market sectors, including commercial, industrial, residential construction, agricultural and OEM industries. Leland currently manufactures carbon steel screws and stainless steel screws, as well as other fasteners, at its Toronto, Ontario, plant and operates painting and warehousing facilities in Joliette, Quebec, Edmonton and Calgary, Alberta, and the United States.

23. Visqué, of Montréal, Quebec, has been a producer of carbon steel screws and stainless steel screws since 1980. It is also a manufacturer of brass screws for specialized applications. Visqué's sales are mainly to OEMs in the Quebec and Ontario markets, but it also sells to distributors and individual clients.

24. Standard Fasteners, formerly Arrow Fasteners Ltd. (Arrow), was incorporated in 1987. At its plant in Surrey, British Columbia, it manufactures carbon steel screws and stainless steel screws, as well as carbon steel, stainless steel and non-ferrous bolts. Standard Fasteners sells mainly to distributors, but also sells to manufacturers and retailers.

25. Westland Steel Products Ltd. (Westland) was incorporated in 1982 and is located in Winnipeg, Manitoba. The company manufactures mainly carbon steel screws, but also manufactures stainless steel screws for special orders. It distributes custom and standard fasteners for industries such as furniture and cabinet manufacturing, agriculture, window and door manufacturing, construction, off-road, as well as transportation, military and various speciality requirements.

26. Paulin was founded in 1920, in Toronto and manufactures both standard and custom fasteners, including screws, bolts, nuts, washers, rivets and studs made from carbon steel, stainless steel, brass and silicon bronze. The company has four manufacturing divisions, all located in Ontario, as well as warehouses in Vancouver, British Columbia, Edmonton, Winnipeg, Toronto, Montréal, Moncton, New Brunswick, and the United States. Paulin is a supplier to the retail hardware market, mainly known within the industry as “big-box stores”, and to over 500 fastener distributors across Canada. It also supplies end users such as OEMs, the automotive aftermarket sector, and the furniture and window markets.

27. Robertson began manufacturing fasteners in 1908, in Milton, Ontario. Robertson ceased all manufacturing operations in Canada at the end of 2008 and now imports screws for the Canadian market, including from its Chinese manufacturing affiliate known as Robertson (Xiajing). Robertson supplies fasteners for the OEM, construction, furniture, distribution and retail markets.

## IMPORTERS AND EXPORTERS

28. Expiry review questionnaires were sent to 287 potential importers. Fifteen importers responded to the CBSA portion of the questionnaire. Twelve importers provided the Tribunal with the updated data requested for the second quarters of 2008 and 2009.

29. Following the initial response to questionnaires, the Tribunal sent an additional importers' questionnaire to 21 importers. Eleven of these importers provided the requested information.<sup>5</sup> Four indicated that they did not import the subject goods, and the others did not reply.

30. Expiry review questionnaires were sent to 313 potential foreign producers. Ten companies indicated that they did not produce the subject goods. Nine useable responses were received: six from producers located in Chinese Taipei and three from producers located in China. Only two of these respondents provided the Tribunal with the updated data requested for the second quarters of 2008 and 2009.

## SUMMARY OF PREVIOUS FINDINGS AND ORDERS

### Expiry Review No. RR-90-003

31. On January 25, 1991, the Tribunal rescinded the findings against dumped drywall screws from Chinese Taipei<sup>6</sup> which its predecessor, the Canadian Import Tribunal had made in Inquiry No. CIT-1-86.

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5. Three of these responses were received pursuant to orders issued by Tribunal.

6. *Drywall screws*, RR-90-003 (CITT).

**Inquiry No. NQ-2004-005**

32. The complaint was supported by Leland and several other domestic producers of fasteners, including: Infasco Division of Ifastgroupe and Company, Limited Partnership (Ifastgroupe Inc., General Partner) (Infasco), Arrow, Visqué, Westland, Hold-Tite Fasteners Limited (Hold-Tite) and Ready Rivet & Fastener Ltd. (Ready Rivet). The Canadian Fasteners Importers Coalition, which included many importers of fasteners, as well as Paulin, Robertson and Ideal Security Inc. (Ideal), opposed the complaint.

33. When the CBSA initiated its investigation in 2004, it defined carbon steel and stainless steel fasteners as a single class of goods. The Tribunal subsequently determined that there were four classes of goods for the purposes of its injury analysis: carbon steel screws, carbon steel nuts and bolts, stainless steel screws, and stainless steel nuts and bolts.

Carbon Steel Screws

34. The Tribunal found that a very high percentage of carbon steel screws sold by Hold-Tite, Ideal, Paulin and Robertson were subject carbon steel screws.<sup>7</sup> Therefore, the Tribunal decided to treat them as importers rather than part of the domestic industry, for the purposes of its injury analysis. It determined that the production of Arrow, Leland, Ready Rivet, Visqué and Westland formed a major proportion of the total domestic production of carbon steel screws and that, therefore, these five domestic producers constituted the domestic industry.

35. The Tribunal found that there had been a significant increase in the volume of imports of the subject carbon steel screws during the period of inquiry and that the prices of these screws had suppressed and eroded the prices of domestic carbon steel screws. As a result, the Tribunal concluded that the subject carbon steel screws had caused material injury to the domestic industry in the form of reduced domestic production, domestic sales, market share and gross margins.

Carbon Steel Nuts and Bolts

36. The Tribunal found that a very high percentage of carbon steel nuts and bolts sold by Paulin and Ready Rivet were subject carbon steel nuts and bolts.<sup>8</sup> Therefore, the Tribunal decided to treat them as importers rather than part of the domestic industry. It found that the production of Infasco and Leland constituted a major proportion of the total domestic production of carbon steel nuts and bolts and that these domestic producers constituted the domestic industry.

37. The Tribunal concluded that the subject carbon steel nuts and bolts had not caused injury to the domestic industry. It found that the worsening financial results in 2003 for Infasco, the largest domestic producer, were the result of its own particular circumstances and were not reflective of the market pressures faced by the domestic industry as a whole. Further, based on a stable market and the domestic industry's high gross margin returns, the Tribunal was not convinced that the subject carbon steel nuts and bolts threatened to cause injury.

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7. The subject carbon steel screws were dumped and subsidized carbon steel screws from China and dumped carbon steel screws from Chinese Taipei.

8. The subject carbon steel nuts and bolts were dumped and subsidized carbon steel nuts and bolts from China and dumped carbon steel nuts and bolts from Chinese Taipei.



### Stainless Steel Screws

38. The Tribunal found that a very high percentage of stainless steel screws sold by Hold-Tite and Paulin were subject stainless steel screws<sup>9</sup>. Therefore, the Tribunal decided to treat them as importers rather than part of the domestic industry. It found that the production of Arrow, Leland and Westland constituted a major proportion of the total domestic production of stainless steel screws and that these domestic producers constituted the domestic industry.

39. The Tribunal was not persuaded that there was a causal relationship between imports of the subject stainless steel screws and the injury sustained by the domestic industry in terms of loss of production, sales volume and market share. However, the Tribunal was of the view that imports of the subject stainless steel screws were likely to continue to grow and would therefore threaten injury to the domestic industry.

### Stainless Steel Nuts and Bolts

40. The Tribunal found that a very high percentage of stainless steel nuts and bolts sold by Paulin were subject stainless steel nuts and bolts.<sup>10</sup> Therefore, the Tribunal decided not to treat Paulin as part of the domestic industry. Given that Leland, the remaining producer of stainless steel nuts and bolts in 2004, did not claim injury or threat of injury, the Tribunal found that there was no injury or threat of injury to the domestic industry from the subject stainless steel nuts and bolts.

### **Inquiry No. NQ-2004-005R**

41. On March 21, 2006, the Federal Court of Appeal remanded to the Tribunal its decision in Inquiry No. NQ-2004-005 to deny GRK's requests for exclusions for stainless steel screws, stating that the Tribunal had failed to consider adequately the material before it relating to GRK's requests and had not addressed GRK's argument that no one in Canada had the right to manufacture the patented products.

42. On September 26, 2006, on the basis of the existing record, the Tribunal re-determined the matter and again denied GRK's requests for exclusions. While the Tribunal considered that patented features of GRK's stainless steel screws were unique from the perspective of patent law, it was not convinced that the screws were so unique or met such specific applications that they were not interchangeable with other types of stainless steel screws that were, or could be, manufactured by the domestic industry. Therefore, the Tribunal concluded that the patented screws for which GRK was seeking exclusions would likely compete with the stainless steel screws that the domestic industry currently produced or was capable of producing and that, therefore, granting the exclusions would threaten to cause injury to the domestic industry.

### **Interim Review RD-2006-005**

43. On May 11, 2007, the Tribunal decided not to amend its findings to grant an exclusion for HECO-FIX-plus<sup>®</sup> screws, as requested by Robertson.

44. The Tribunal concluded that the evidence did not suggest that HECO-FIX-plus<sup>®</sup> screws were differentiated from domestic production in performance or other relevant market factors, such as market segment and intended end uses. Consequently, the Tribunal concluded that there would be significant competition between HECO-FIX-plus<sup>®</sup> screws and domestic production and that this would cause injury to the domestic industry if the Tribunal were to grant the exclusion.

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9. The subject stainless steel screws were dumped stainless steel screws from Chinese Taipei.

10. The subject stainless nuts and bolts were dumped and subsidized stainless steel nuts and bolts from China and dumped stainless steel nuts and bolts from Chinese Taipei.

## Interim Review RD-2008-001

45. On October 24, 2008, the Tribunal decided not to amend its findings to grant an exclusion for certain coated sheet-metal screws, as requested by IJ Windows & Doors Ltd.

46. The Tribunal concluded that it would be unfair to grant a specific exclusion that would give the company an advantage over other importers of the goods. The Tribunal further considered that to grant a generic product exclusion for the requested screws and substitutable products could result in injury to the domestic industry, which produced directly substitutable products.

## PRELIMINARY MATTERS

### Request for Exclusion Adjustments

47. As part of their joint submissions made in response to the various product exclusion requests, Leland, Visqué and Standard Fasteners requested that the exclusions granted by the Tribunal in Inquiry No. NQ-2004-005 for Aster screws, connector screws, decor screws, drawer handle screws and euro screws (the specified items), be revoked on the basis that these screws are made, or capable of being made, by them.<sup>11</sup>

48. After receiving objections made by Robertson, Spaenaur and GRK regarding the appropriateness of making such a request in the context of the product exclusion process, the Tribunal invited parties to file written submissions on the issue of whether it is within the Tribunal's jurisdiction to revoke previously granted product exclusions. On November 5, 2009, Leland, Visqué and Standard Fasteners filed submissions with the Tribunal. On November 1, 2009, the Tribunal received submissions from Robertson and joint submissions from Spaenaur and GRK. On November 11, 2009, Leland, Visqué and Standard Fasteners filed reply submissions.

49. On November 13, 2009, the Tribunal informed parties that it had determined that it does not have jurisdiction to revoke the exclusions that were granted for the specified items in Inquiry No. NQ-2004-005.<sup>12</sup> The following are the Tribunal's reasons for its determination.

50. Leland, Visqué and Standard Fasteners submitted that the exclusions granted for the specified items can be revoked because the specified items are merely trade descriptions of screws that are within the "parameters" of the subject goods covered by the Tribunal's findings in Inquiry NQ-2004-005.<sup>13</sup> They submitted that, unlike the situation in *Certain Carbon Steel Plate and Alloy Steel Plate*,<sup>14</sup> where all carbon steel plate over 3.125 inches thick and all pressure vessel quality plate were excluded as "broad classes or categories of goods", the Tribunal's findings in Inquiry No. NQ-2004-005 excluded a selected number of individual items within the carbon steel screws and stainless steel screws classes of goods.<sup>15</sup> They further submitted that, in this instance, they are not seeking to expand the scope of the goods covered by the

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11. Leland, Visqué and Standard Fasteners requested that the specified items be removed from List A1 and List B1 of the Tribunal's findings in Inquiry No. NQ-2004-005. The screws that are listed in List A1 and List B1 are specifically excluded from the Tribunal's findings.

12. Tribunal Exhibit RR-2009-001-55, Administrative Record, Vol. 1A at 43.

13. Leland, Visqué and Standard Fasteners submitted that the specified items are screws that are within the parameters of List A2 and List B2 of the Tribunal's findings in Inquiry No. NQ-2004-005. Screws that are not within the parameters of List A2 and List B2 are excluded from the Tribunal's findings.

14. Procedural Order (12 December 1997), RR-97-006 (CITT) [*Carbon Steel Plate*].

15. Tribunal Exhibit RR-2009-001-52.01, Administrative Record, Vol. 1A at 3.

Tribunal's findings, but merely to have the coverage of the duties adjusted to include individual items that are within the range of goods "... in respect of which the Tribunal has made an order or finding ..." under sections 3 to 6 of *SIMA* and for which there is evidence that they can be and are being made by the domestic industry. They also submitted that, since the exclusions for the specified items were granted based on Leland's consent, that consent can now be withdrawn in the context of this expiry review.

51. Robertson submitted that Leland, Visqué and Standard Fasteners did not provide any authority that would suggest that the Tribunal erred in *Carbon Steel Plate* when it took the position that "... it does not have the power to increase or expand the scope of its review beyond the goods covered by the order or finding being reviewed. ..." It submitted that there is no legal basis for many of their assertions, such as the assertion that exclusions granted on the basis of a "selected number of individual items" can be eliminated in an expiry review but not "broad classes or categories" of products based on dimensions.<sup>16</sup> Robertson also submitted that it is clear from the Tribunal's findings in Inquiry No. NQ-2004-005 that Leland's consent to the exclusion of the specified items was only one of the factors considered by the Tribunal in deciding whether to grant the exclusions. In this respect, it submitted that the domestic producers are not in a position to give and take back their consent each time the Tribunal conducts an expiry review.

52. Spaenaur and GRK similarly submitted that this request should be rejected. They submitted that *adjusting* coverage by including goods that are not currently covered is, by definition, an expansion of the scope of the goods covered by the Tribunal's findings. They further submitted that the appropriate course of action would be for Leland, Visqué and Standard Fasteners to file a new complaint in respect of the specified items. They also submitted that some of the specified items were not, as suggested, excluded on consent during the product exclusion process.

53. In the Tribunal's opinion, it is clear that the request by Leland, Visqué and Standard Fasteners is simply a request to expand the scope of the goods covered by its findings in Inquiry No. NQ-2004-005. However, as the Tribunal stated in *Carbon Steel Plate*, goods that have been excluded cannot subsequently be covered by an expiry review:

It is clear, based on the words "order or finding described in any of sections 3 to 6" in the English version of subsection 76(2) of *SIMA* [now subsection 76.03(3)] and the words "*une ordonnance ou des conclusions rendues en vertu des articles 3 à 6*" in the French version of subsection 76(2), that a review is limited to an order or finding described in sections 3 to 6. ...

...

Section 3 of *SIMA* refers to duties being levied, collected and paid on dumped and subsidized goods in respect of which the Tribunal has made an order or finding of injury, retardation or threat of injury. Thus, the wording of section 3 specifically refers to goods in respect of which the Tribunal has made an injury finding and not to all goods subject to the order or finding generally. It is this distinction which lies at the heart of the issue before the Tribunal. With respect to the specific exclusions before the Tribunal in this motion, it cannot be said that the Tribunal has made an injury finding in respect of the goods covered by these exclusions. It follows that these goods are, therefore, not described in section 3 and, thus, they cannot be subject to review under subsection 76(2).

...

The Tribunal is of the view that, in a review, it has the power to rescind or continue an order or finding against some or all of the goods subject to the order or finding, *but it does not have the power to increase or expand the scope of its review beyond the goods covered by the order or finding being reviewed*. With respect to exclusions, this means that, if the Tribunal continues an order or finding, it

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16. Tribunal Exhibit RR-2009-001-53.01, Administrative Record, Vol. 1A at 16.

may leave an exclusion as it is or may exclude additional goods. If domestic producers subsequently become concerned about imports of goods that are subject to an exclusion, they may consider filing a new complaint in respect of such goods with the Department of National Revenue. For the above reasons, the Tribunal concludes that it does not have the power, in this review, to consider including, in any order that it may make continuing the finding in Inquiry No. NQ-92-007, subject plate exceeding 3.125 inches in thickness or PVQ plate, which were excluded from the Tribunal's injury finding.<sup>17</sup>

[Emphasis added]

54. Leland, Visqué and Standard Fasteners seek to distinguish the facts of the present case from those which existed in *Carbon Steel Plate* on the basis that, in the latter, certain goods were excluded as broad classes or categories of goods, whereas, in the present case, the specified items are individual items that are within the classes of goods comprising carbon steel screws and stainless steel screws. The Tribunal is of the view that this is not a valid distinction. Goods are either excluded or not excluded. The Tribunal's findings in Inquiry No. NQ-2004-005 specifically excluded the specified items.<sup>18</sup> Therefore, the specified items are not goods "... in respect of which the Tribunal has made an order or finding ..." under sections 3 to 6 of *SIMA* and cannot be the subject of the current expiry review.

55. Leland, Visqué and Standard Fasteners have argued that, since, in their view, the exclusions were granted based on Leland's consent, that consent can now be withdrawn. This argument does not have merit. Once the Tribunal has made an order, the fact that a party may have changed its position on whether the order should have been made is irrelevant.

56. In light of the foregoing, the Tribunal does not grant the request.

#### **Notice of Motion Concerning Evidence of Mr. Mirco Walther and a Related Matter**

57. On November 2, 2009, Leland filed a notice of motion with the Tribunal with regard to the injury portion of the hearing for an order requiring that Mr. Mirco Walther appear before the Tribunal at the hearing as a witness for GRK and that GRK file a witness statement for Mr. Walther. On November 10, 2009, the Tribunal issued an order dismissing the motion. The following are the Tribunal's reasons for its decision.

58. In support of the motion, Leland submitted that, since GRK had confirmed that Mr. Walther would be present at the hearing and would be "... available to answer any questions of Counsel or the Tribunal ..." and "... ready, willing and able to provide testimony to the Tribunal ...",<sup>19</sup> he was required to appear as a properly sworn witness, to file a witness statement and to be subject to cross-examination.

59. In opposition to the motion, GRK submitted that it proposed to make Mr. Walther available for the hearing in the event that Leland wished to cross-examine him on the evidence previously submitted. It submitted that a witness statement is not necessary where a witness does not intend to provide new evidence, but rather seeks only to answer questions in respect of material previously filed with the Tribunal.

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17. *Carbon Steel Plate* at 7-9. The Tribunal notes that, although there have been amendments to *SIMA* since the time of its decision in *Carbon Steel Plate*, these amendments do not affect the rationale which underpins that decision.

18. The Tribunal's findings in Inquiry No. NQ-2004-005 specifically excluded goods in List A1 and List B1 and also excluded all goods that were not within the parameters of List A2 and List B2. When these lists are read together, it is clear that, even though the goods in List A1 and List B1 may fall within the parameters of the goods covered by List A2 and List B2, they nonetheless remain excluded from the findings.

19. Importer's Exhibit G-01 at 5, Administrative Record, Vol. 13.

60. In proceedings before the Tribunal, parties can choose whether or not to call witnesses. A party may call a witness who testifies voluntarily or may request, under rule 20 of the *Canadian International Trade Tribunal Rules*,<sup>20</sup> that the Tribunal summon a person to testify by means of a subpoena. The Tribunal may also choose to invite or subpoena a person to appear as a Tribunal witness. In this instance, although GRK offered to have Mr. Walther "... available to answer any questions of Counsel or the Tribunal ...", it did not intend to call him as a witness.<sup>21</sup> Similarly, Leland did not intend to call Mr. Walther as a witness. Since Mr. Walther was not a witness, there was no requirement that he file a witness statement. Hence, the Tribunal dismissed Leland's motion.

61. On a related matter, Leland, Visqué and Standard Fasteners argued that it was unacceptable that opposing parties chose to participate entirely through their counsel rather than through witnesses. They submitted that, by doing so, opposing parties denied them the right to test their evidence and submissions and that, under these circumstances, little weight should be given to their evidence and submissions.

62. The Tribunal considered this issue in *Certain Corrosion-resistant Steel Sheet Products*,<sup>22</sup> where it stated the following:

59. ... While *SIMA* provides interested parties the right to participate in expiry review proceedings, it does not oblige them to call witnesses. Nor does *SIMA* contemplate any negative implications from a party's failure to provide witnesses.

60. This view is consistent with the Tribunal's past practice. ... However, as the Tribunal has stated previously, it can give evidence provided by a party, unsupported by oral testimony, only the weight that it considers appropriate in the circumstances.

[Footnotes omitted]

63. Consistent with its normal practice, this is the approach that the Tribunal will adopt in this case.

### **Treatment of Previous Findings by the CBSA and the Tribunal**

64. Leland, Visqué and Standard Fasteners submitted that the CBSA's factual determinations with respect to matters such as the capacity, production and export orientation of producers in China and Chinese Taipei should be taken into account in these proceedings. Further, they submitted that the Tribunal's findings of fact in Inquiry No. NQ-2004-005, which are on the record in this expiry review, should be taken into account.

65. Pursuant to subsection 76.03(7) of *SIMA*, the CBSA makes a determination as to whether the expiry of the order is likely to result in the continuation or resumption of dumping and subsidizing. If the CBSA makes a positive determination, the Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the order or finding is likely to result in injury or retardation. For this purpose, subsection 37.2(1) of the *Special Import Measures Regulations*<sup>23</sup> provides for a non-exhaustive list of factors that the CBSA may consider in rendering its determination concerning the continuation or resumption of dumping and subsidizing. In the same manner, factors that the Tribunal may consider in making its determination concerning the likelihood of injury are listed under subsection 37.1(2) of the *Regulations*.

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20. S.O.R./91-499.

21. After Leland had filed its notice of motion, the Tribunal decided to dedicate one day of hearing time to the issue of product exclusion requests. GRK decided to call Mr. Walther as a witness for this part of the hearing.

22. (27 July 2004), RR-2003-003 (CITT) at paras. 59-60.

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

66. It is important to remember that, although the CBSA and the Tribunal share common legislation, their legal mandates are distinct. The scope of the powers granted to them and duties imposed upon them under such legislation are different, even though there may be an overlap in the evidence that they consider in the exercise of their respective jurisdictions.

67. The Tribunal has no jurisdiction to review the CBSA's determination of likelihood of resumed dumping or subsidizing. However, while it takes into account all documentation on the record, it wishes to make clear that, in exercising its own jurisdiction, it is not bound by the facts and conclusions upon which the CBSA's determination is based and will give them the weight that it finds appropriate.

68. Thus, notwithstanding that the CBSA has, pursuant to subsection 37.2(1) of the *Regulations*, made findings of fact in respect of such factors as import volumes, prices, trends in production, capacity utilization, inventories and market share when making its determination that there is a likelihood of resumed or continued dumping or subsidizing, the Tribunal is not bound by those findings when considering the same factors, as set out in subsection 37.2(2) of the *Regulations*, in the context of its separate injury inquiry.

69. The Tribunal, unlike the CBSA, has the benefit of public hearings where witnesses are examined and cross-examined before the Tribunal, and parties have the possibility of presenting oral arguments. This process may give the Tribunal a more complete range of evidence than is available to the CBSA and a more complete opportunity to test the information collected by way of questionnaires.

70. Further, the evidence to which the Tribunal has access is typically more recent than that available to the CBSA because of the different time frames for the CBSA's investigation and the Tribunal's review. Hence, it may reflect changes in the industry or the market since the CBSA's determination. Accordingly, it is clear that, in areas where the Tribunal and the CBSA consider similar factual issues, they could come to different conclusions.

71. Similarly, in an expiry review, the Tribunal will take into account any evidence and factual findings from previous reviews or inquiries that are on the record. However, given that each Tribunal finding is based on evidence and market conditions that are relevant to the particular time frame under consideration, it is possible that the Tribunal may come to different conclusions concerning similar issues.

72. Therefore, while the CBSA's factual findings and the Tribunal's own previous findings are helpful to the Tribunal and are taken into account along with other evidence, the Tribunal wishes to indicate clearly that those findings are by no means conclusive for the purpose of its own considerations.

### **Reliability of the Data Compiled by the Tribunal**

73. GRK and Spaenaur argued that the Tribunal cannot find a likelihood of injury because the pre-hearing staff reports may have been "corrupted" by data from the domestic producers relating to domestically produced fasteners that are outside the scope of this expiry review.<sup>24</sup> Although the Tribunal is not convinced that there is evidence confirming this allegation, the Tribunal recognizes that it is always possible that mistakes are made in the submission of data. However, the evidence does not indicate that any such potential mistakes are likely to be significant in this case.<sup>25</sup> Mr. Nelson, for example, clarified that some items that are marketed as "bolts" are in fact screws. The Tribunal accepts that Leland has properly

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24. *Transcript of Public Argument*, Vol. 1, 19 November 2009, at 171-95.

25. Tribunal Exhibit RR-2009-001-03A, Administrative Record, Vol. 1 at 195; *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 82-92, 238-41, 295-96.

included data concerning these items in its reply to the questionnaire.<sup>26</sup> In considering this issue, the Tribunal also notes that CTC and Robertson submitted that they were content to accept the data on the record. Therefore, the Tribunal does not consider that this argument by GRK and Spaenaur has merit and will consider all the evidence on the record, as is its normal practice in cases under *SIMA*.

## ANALYSIS OF LIKELYHOOD OF INJURY

74. As noted above, there are two classes of goods in this case. On August 20, 2009, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the finding with respect to the subject carbon steel screws was likely to result in the continuation or resumption of dumping and subsidizing and that the expiry of the finding with respect to the subject stainless steel screws was likely to result in the continuation or resumption of dumping. Consequently, the Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of each finding is likely to result in injury or retardation, as the case may be, to the relevant domestic industry.<sup>27</sup>

75. The Tribunal is also required, pursuant to subsection 76.03(12) of *SIMA*, to make an order for each finding, either rescinding the finding if it determines that the expiry of the finding is unlikely to result in injury, or continuing the finding, with or without amendment, if it determines that the expiry of the finding is likely to result in injury.

76. Before proceeding with its analysis concerning the likelihood of injury, the Tribunal will first determine, for each class of goods, (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 injury analysis for each class of goods, and (3) whether the injury analysis should be done cumulatively or for each country separately.

### Like Goods and Classes of Goods—Carbon Steel Screws and Stainless Steel Screws

77. The Tribunal must determine whether there are domestically produced fasteners that are “like goods” in relation to the subject goods.

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

(a) goods that are identical in all respects to the other goods, or

(b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

79. In considering the issue of like goods, the Tribunal typically looks at the physical and market characteristics of the goods, including their appearance, composition, substitutability, pricing and distribution.

80. In Inquiry No. NQ-2004-005, the Tribunal found that the subject carbon steel screws and domestically produced carbon steel screws had the same physical characteristics, similar end uses, fulfilled the same or similar customer needs and generally competed directly with each other. The Tribunal made the

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26. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 82-92.

27. Subsection 2(1) of *SIMA* defines “injury” as “... material injury to a domestic industry” and “retardation” as “... material retardation of the *establishment* of a domestic industry” [emphasis added]. Given that there is currently an established domestic industry for each of the two classes of goods, the issue of whether the expiry of the findings is likely to result in retardation does not arise in this expiry review.

same finding in respect of the subject stainless steel screws. Having reviewed the evidence on the record of the present expiry review, the Tribunal is satisfied that this remains the case for each of these two classes of goods.

81. Accordingly, the Tribunal finds that domestically produced carbon steel screws are like goods in relation to the subject carbon steel screws and that domestically produced stainless steel screws are like goods in relation to the subject stainless steel screws.

82. The Tribunal will therefore assess the likely effect of the subject carbon steel screws in relation to domestically produced carbon steel screws and the likely effect of the subject stainless steel screws in relation to domestically produced stainless steel screws.

### **Domestic Industry—Carbon Steel Screws and Stainless Steel Screws**

83. The Tribunal must now consider (1) which domestic producers of the like goods constitute the “domestic industry” for the purposes of assessing the likely effect of the subject carbon steel screws in relation to domestically produced carbon steel screws and (2) which domestic producers of the like goods constitute the “domestic industry” for the purposes of assessing the likely effect of the subject stainless steel screws in relation to domestically produced stainless steel screws.

84. Subsection 2(1) of *SIMA* defines “domestic industry”, as follows:

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

85. Therefore, when a domestic producer is also an importer of dumped or subsidized goods, the Tribunal must decide whether to exclude the domestic producer from the “domestic industry”. In making this decision, the Tribunal has indicated that it will examine whether the domestic producer is essentially a producer of like goods in Canada or, instead, essentially an importer of dumped or subsidized goods.<sup>28</sup> Where the domestic producer’s role in the market is essentially that of an importer of dumped or subsidized goods, the Tribunal is of the view that it is in keeping with the underlying policy and objects of *SIMA* to exclude that producer from the definition of the “domestic industry” for the purposes of its likelihood of injury determination.<sup>29</sup>

86. Factors that the Tribunal typically considers when making its decision on whether to exclude a domestic producer from the definition of the “domestic industry” can be characterized as either “structural” (e.g. the ratio of the producer’s sales of dumped or subsidized goods to its total domestic sales; the ratio of the producer’s volume of dumped or subsidized goods to its production of like goods; and the producer’s share of the total volume of dumped or subsidized goods) or “behavioural” (e.g. whether the producer imported the goods as an aggressive measure, as opposed to a defensive measure, to capture market share from other domestic producers of like goods, whether the imports fill a niche, and whether the producer’s own like goods compete in the domestic market with its imports of dumped or subsidized goods).<sup>30</sup> The Tribunal will consider these factors separately for each class of goods.

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28. *Cross-linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT) at para. 56.

29. *Ibid.*

30. *Cross-linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT) at paras. 57-59.



### Carbon Steel Screws

87. Leland, Visqué, Standard Fasteners, Westland and Paulin are currently domestic producers of carbon steel screws

88. At the time of Inquiry No. NQ-2004-005, Robertson was a domestic producer of carbon steel screws, but it has since shut down its plant in Canada, and is not expected to produce carbon steel screws in Canada in the near to medium term. Therefore, the Tribunal does not consider Robertson a domestic producer of like goods for the purposes of the present expiry review.

89. In Inquiry No. NQ-2004-005, the Tribunal found it appropriate to exclude Paulin from the “domestic industry”. At the time, the Tribunal reasoned that (1) Paulin’s ratio of sales of the subject carbon steel screws to its total sales of carbon steel screws in the domestic market was very high and that (2) Paulin did not import the subject carbon steel screws as a defensive measure.<sup>31</sup>

90. In this review, after analyzing the evidence, the Tribunal finds that Paulin’s continued exclusion from the “domestic industry” for carbon steel screws is warranted. In terms of structural factors, Paulin’s ratio of sales of the subject carbon steel screws to its total sales of carbon steel screws in the domestic market is very high.<sup>32</sup> In terms of behavioural factors, Mr. Paulin testified that his company imports the subject goods because they cannot be competitively produced in Canada.<sup>33</sup> In the Tribunal’s view, given the high ratio of imports to domestic production, this business decision does not constitute a defensive measure against the subject goods, but rather an aggressive measure to increase Paulin’s competitiveness in the domestic market vis-à-vis other domestic producers.<sup>34</sup> In short, Paulin remains essentially an importer of the subject carbon steel screws, even though it supports the continuation of the findings.

91. The evidence indicates that Leland, Standard Fasteners, Visqué and Westland account for most of the domestic production of carbon steel screws.<sup>35</sup> The Tribunal therefore considers that Leland, Standard Fasteners, Visqué and Westland constitute the domestic industry in relation to this class of goods.<sup>36</sup>

### Stainless Steel Screws

92. Leland, Visqué, Standard Fasteners and Paulin are currently domestic producers of stainless steel screws.

93. In Inquiry No. NQ-2004-005, Robertson appeared as a domestic producer of stainless steel screws, but has since shut down its plant in Canada, and is not expected to produce stainless steel screws in Canada in the near to medium term. Therefore, the Tribunal does not consider Robertson a domestic producer of like goods for the purposes of the present expiry review.

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31. *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at para. 85.

32. *Protected Pre-hearing Staff Report*, revised 19 October 2009, Tribunal Exhibit RR-2009-001-06.02A (protected), Administrative Record, Vol. 2.1A at 216.

33. *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 340-42.

34. Indeed, Ms. Yu testified that Standard Fasteners lost sales at a major account to the subject goods imported by Paulin. *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 269, 284-85, 288, 330.

35. *Protected Pre-hearing Staff Report*, revised 19 October 2009, Tribunal Exhibit RR-2009-001-06.02A (protected), Administrative Record, Vol. 2.1A at 191.

36. A small domestic producer of carbon steel screws, Canadian Threadall Ltd., reported its production volumes of carbon steel screws to the Tribunal. Since it provided no other information, the Tribunal did not consider it in its assessment of the likelihood of injury.

94. In Inquiry No. NQ-2004-005, in relation to domestically produced stainless steel screws, the Tribunal found it appropriate to exclude Paulin from the definition of “domestic industry”. At the same time, the Tribunal reasoned that (1) Paulin’s ratio of sales of the subject stainless steel screws to its total sales of stainless steel screws in the domestic market was very high and that (ii) Paulin did not import the subject stainless steel screws as a defensive measure.<sup>37</sup> This no longer seems to be the case. The evidence on the record shows that, over the period of review, Paulin sold a much smaller volume of the subject stainless steel screws relative to the stainless steel screws that it produced in Canada.<sup>38</sup> The Tribunal finds that Paulin is essentially a domestic producer of stainless steel screws and, therefore, part of the “domestic industry” in relation to this class of goods.

95. The evidence indicates that Paulin, Leland, Standard Fasteners and Visqué account for the whole of the domestic production of stainless steel screws.<sup>39</sup> The Tribunal therefore considers that Paulin, Leland, Standard Fasteners and Visqué constitute the domestic industry in relation to this class of goods.

### **Cumulation—Carbon Steel Screws and Stainless Steel Screws**

96. Subsection 76.03(11) of *SIMA* provides that, for the purpose of its determination, the Tribunal shall make an assessment of the cumulative effect of the dumping or subsidizing of goods “. . . that are imported into Canada from more than one country if the Tribunal is satisfied that an assessment of the cumulative effect would be appropriate taking into account the conditions of competition . . .” between the goods imported into Canada from any of the countries and the goods from any other of the countries or between those goods and the like goods.

97. In the case of the subject stainless steel screws, which originate only in Chinese Taipei, cumulation is not an issue.

98. In the case of the subject carbon steel screws, however, which originate in both China and Chinese Taipei, the Tribunal must determine whether an assessment of the cumulative effect of the dumping and subsidizing of such screws would be appropriate.

99. In this respect, the Tribunal will consider the conditions of competition between the subject carbon steel screws imported from China and the subject carbon steel screws imported from Chinese Taipei, or between them and the like goods.

100. The conditions of competition that the Tribunal normally takes into account include the degree to which the subject goods from each country are interchangeable with each other and with the like goods, the presence or absence of sales or offers to sell in the same geographical markets of the subject goods from each country and of the like goods, the existence of common or similar channels of distribution, and any differences in the timing of the arrival of the subject goods from each country and of the availability of like goods.<sup>40</sup>

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37. *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at para. 89.

38. *Protected Pre-hearing Staff Report*, revised 19 October 2009, Tribunal Exhibit RR-2009-001-06.03A (protected), Administrative Record, Vol. 2.1B at 198.

39. *Ibid.*

40. *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at 16; *Stainless Steel Wire* (29 July 2009), RR-2008-004 (CITT) at 7.

101. There was considerable evidence of competition in the same geographical markets between the subject carbon steel screws from China and Chinese Taipei and between them and the like goods.<sup>41</sup> The evidence indicates that the subject carbon steel screws from China and Chinese Taipei and the like goods are generally interchangeable.<sup>42</sup> The subject carbon steel screws from China and Chinese Taipei and the like goods generally are commodity products and, therefore, generally compete largely on price.<sup>43</sup> They are sold through the same distribution channels.<sup>44</sup> The evidence did not address directly the relative timing of the arrival of the subject carbon steel screws and the availability of the like goods in the domestic market. However, it is clear that the subject carbon steel screws from both China and Chinese Taipei arrive in port by container and are shipped across Canada by rail; therefore, it is likely that the subject carbon steel screws from each country arrive at their destination during a similar time frame.<sup>45</sup> In addition, the evidence did not indicate a difference in availability between the subject carbon steel screws and like goods.

102. The evidence does not indicate that these conditions of competition are likely to change in the foreseeable future.

103. Spaenaur argued that a cumulative assessment would not be appropriate because the subject carbon steel screws from China are likely to be both dumped and subsidized, while the subject carbon steel screws from Chinese Taipei are likely to be dumped only.<sup>46</sup> The Tribunal has in the past expressed the view that there could be a situation where goods that are only subsidized would have a different effect from goods that are only dumped and that, in such circumstances, it would not be appropriate to “cross-cumulate” their effects.<sup>47</sup> However, in this case, the goods from China are likely to be both dumped and subsidized, and, therefore, it is unlikely that the effects of the dumped goods from China will be materially different from the effects of the dumped goods from Chinese Taipei.

104. Spaenaur and GRK also argued that the fact that there is a greater number of trade actions against carbon steel screws from China than against carbon steel screws from Chinese Taipei is evidence that there are different conditions of competition between the two countries.<sup>48</sup> Robertson argued that the Tribunal should also take into account differences in capacity utilization between producers in China and Chinese Taipei.<sup>49</sup> In the Tribunal’s view, both these arguments ignore the evidence of overlapping conditions of competition between the subject goods from China and Chinese Taipei, and between them and the like goods, in the domestic market.

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41. Manufacturer’s Exhibit C-04 (protected), paras. 9, 12, Administrative Record, Vol. 12; Manufacturer’s Exhibit A-07, para. 6, Administrative Record, Vol. 11; Manufacturer’s Exhibit B-03, para. 22, Administrative Record, Vol. 11.

42. Manufacturer’s Exhibit A-05, para. 28, Administrative Record, Vol. 11.

43. Manufacturer’s Exhibit A-04 (protected), para. 24, Administrative Record, Vol. 12; Manufacturer’s Exhibit B-04 (protected), para. 22, Administrative Record, Vol. 12; Manufacturer’s Exhibit A-07, para. 8, Administrative Record, Vol. 11. As discussed below under likely prices of carbon steel screws, although there are some differences in Chinese and Chinese Taipei pricing, this is not expected to make a significant difference in the conditions of competition.

44. Manufacturer’s Exhibit C-04 (protected), paras. 7, 13-15, Administrative Record, Vol. 12; Manufacturer’s Exhibit A-07, paras. 3-4, Administrative Record, Vol. 11; Manufacturer’s Exhibit B-04 (protected), para. 13, Administrative Record, Vol. 12; *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 321.

45. Manufacturer’s Exhibit C-03, para. 9, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 275, 278.

46. Importer’s Exhibit H-01 at 17, Administrative Record, Vol. 13.

47. *Stainless Steel Wire* (29 July 2009), RR-2008-004 (CITT) at 9.

48. Importer’s Exhibit H-01, para. 64, Administrative Record, Vol. 13; *Transcript of Public Argument*, Vol. 1, 19 November 2009, at 196.

49. *Transcript of Public Argument*, Vol. 1, 19 November 2009, at 229.

105. As a result, the Tribunal is satisfied that it is appropriate to assess the effect of the dumping and subsidizing of the subject carbon steel screws from China cumulatively with the effect of the dumping of the subject carbon steel screws from Chinese Taipei.

### **Likelihood of Injury—Carbon Steel Screws and Stainless Steel Screws**

106. Subsection 37.2(2) of the *Regulations* 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 or subsidizing. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

107. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally 18 to 24 months from the expiry of the finding or order.<sup>50</sup>

108. Leland, Visqué and Standard Fasteners submitted that, in this expiry review, given the difficulty of making longer forecasts due to the global recession, it would be appropriate for the Tribunal to focus on the circumstances that can be reasonably expected to occur over the next 12 months.

109. Although the Tribunal has used a period as short as 12 months in certain recent expiry review decisions<sup>51</sup> in light of uncertainties due to the recession, it considers that this is no longer required. As will be discussed below, the prevailing view is that the global and domestic economies will continue to improve gradually over the next 18 to 24 months, although at an uncertain pace. Accordingly, the Tribunal will focus on an 18-to-24-month period in this expiry review.

### **Changes in International and Domestic Market Conditions—Carbon Steel Screws and Stainless Steel Screws**

110. The Tribunal will first consider changes in international and domestic market conditions, as contemplated by paragraph 37.2(2)(j) of the *Regulations*. The Tribunal's analysis of the likelihood of injury from the subject carbon steel screws and the subject stainless steel screws will be affected in a similar way by changes in international and domestic conditions. Therefore, the Tribunal will consider this factor in common for the two classes of goods before assessing the impact of remaining factors separately for each class of goods.

#### International Market Conditions

111. During the period from January 2006 to June 2009, extensive changes took place in international market conditions. Between 2006 and 2007, the world economy grew by 5.2 percent. However, in the fourth quarter of 2008, a major global economic recession began, and annual growth slowed to 3.0 percent for that year.<sup>52</sup> This trend continued in the first quarter of 2009, as the global economy continued to contract, resulting in the deepest recession since the Second World War.<sup>53</sup> The economic downturn led to a major decline in commodity demand and prices.<sup>54</sup>

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50. *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.

51. *Structural Tubing* (22 December 2009), RR-2008-001 (CITT) at para. 48; *Stainless Steel Wire* (29 July 2009) RR-2008-004 (CITT) at para. 58; *Wood Slats* (15 July 2009), RR-2008-003 (CITT) at para. 45.

52. Tribunal Exhibit RR-2009-001-49.09, Administrative Record, Vol. 1 at 299.93.

53. Manufacturer's Exhibit A-02 at 8, Administrative Record, Vol. 11; Tribunal Exhibit RR-2009-001-49.05, Administrative Record, Vol. 1 at 299.19, 299.38; Tribunal Exhibit RR-2009-001-49.07, Administrative Record, Vol. 1 at 299.87.

54. Tribunal Exhibit RR-2009-001-49.05, Administrative Record, Vol. 1 at 299.26.

112. Led primarily by the Asian economies, a slow global recovery began around the second quarter of 2009, as the rate of growth turned positive again.<sup>55</sup> However, because of the depth of the contraction in the first part of 2009, recent forecasts by the International Monetary Fund (IMF) and the Bank of Canada indicate, respectively, that real global gross domestic product (GDP) will have contracted by 1.1 percent and 1.6 percent by the end of 2009.<sup>56</sup>

113. Considerable uncertainty still surrounds the exact pace of the global recovery over the next two years. However, recent forecasts predict growth rates of 3.1 percent in 2010 and 4 percent in 2011,<sup>57</sup> which would indicate a pace of the recovery that is more gradual than is normally the case for a recession.<sup>58</sup>

114. Considering the cost of ocean freight, which is one indicator of the changing economic conditions, the Tribunal notes that rates have increased compared to the low levels seen in 2008. The Baltic Dry Index, which measures daily changes in the cost of shipping raw materials, increased by 342 percent between November 2008 and November 2009.<sup>59</sup> As world economic activity builds again, and especially as oil prices increase, the cost of shipping is expected to continue to increase.<sup>60</sup>

115. Another indicator is the global trade in goods and services that the World Bank forecasts will have decreased by 9.7 percent by the end of 2009. As the recovery continues, the forecast is for global trade to increase by 3.8 percent and 6.9 percent in 2010 and 2011, respectively.<sup>61</sup>

116. In the United States, the recovery seems to have started in the third quarter of 2009. By the end of 2009, real GDP is forecast to have declined by 2.5 percent compared with 2008. Overall, the U.S. recovery is expected to be more gradual than the overall global recovery, with a slight growth of 1.8 percent in 2010. However, by 2011, growth in the U.S. economy is expected to approximate that of the global economy.<sup>62</sup>

117. The economic recovery in the European Union also seems to have started in the third quarter of 2009. Real GDP is forecast to have declined by 3.9 percent by the end of 2009 compared with 2008. The recovery in this region is forecast to be slower than in the United States and is expected to increase by only 0.9 percent in 2010 and by 2.4 percent in 2011.<sup>63</sup>

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55. Tribunal Exhibit RR-2009-001-49.09, Administrative Record, Vol. 1 at 299.87, 299.94.

56. Tribunal Exhibit RR-2009-001-49.09, Administrative Record, Vol. 1 at 299.93; Tribunal Exhibit RR-2009-001-49.11, Administrative Record, Vol. 1 at 299.183.

57. *Ibid.*

58. According to the World Bank, this recession followed a financial crisis, and such recessions tend to be deeper and longer lasting than other recessions. Also, this downturn affected virtually the entire world. Tribunal Exhibit RR-2009-001-49.05, Administrative Record, Vol. 1 at 299.20; Tribunal Exhibit RR-2009-001-49.11, Administrative Record, Vol. 1 at 299.183.

59. Tribunal Exhibit RR-2009-001-49.11, Administrative Record, Vol. 1 at 299.203; Tribunal Exhibit RR-2009-001-49.12 (single copy exhibit), Administrative Record, Vol. 1.01 at 49-53.

60. Tribunal Exhibit RR-2009-001-49.11, Administrative Record, Vol. 1 at 299.163.

61. Tribunal Exhibit RR-2009-001-49.05, Administrative Record, Vol. 1 at 299.38.

62. Tribunal Exhibit RR-2009-001-49.07, Administrative Record, Vol. 1 at 299.56; Tribunal Exhibit RR-2009-001-49.09, Administrative Record, Vol. 1 at 299.93; Tribunal Exhibit RR-2009-001-49.11, Administrative Record, Vol. 1 at 299.183.

63. *Ibid.*

118. In contrast, China's economy continued to expand throughout the recession, although GDP growth slowed from 13.0 percent in 2007 to 9.0 percent in 2008. The forecasts are that China's GDP will have grown by 8.1 percent by the end of 2009 and will expand by 8.9 percent in each of 2010 and 2011.<sup>64</sup> However, it is also forecast that, by the end of 2009, Chinese exports will have declined by 6.0 percent compared to 2008 because of the global recession. This compares with a 17.2 percent gain in Chinese exports seen in 2008.<sup>65</sup>

119. Chinese Taipei's economy suffered its biggest contraction on record in 2009 following a substantial decrease in its exports.<sup>66</sup> The IMF forecasts that the country's GDP will decrease by 4.1 percent in 2009, but then rise by 3.7 percent in 2010 due, in part, to the expected recovery from the recession.<sup>67</sup>

120. Witnesses appearing before the Tribunal agreed that the prices of fasteners generally follow the trends in prices of steel wire, which is the main input cost of these goods.<sup>68</sup>

121. Average global prices of carbon steel rod<sup>69</sup> fluctuated significantly during the period of review. In all regions, prices peaked in the third quarter of 2008, but then fell by 39 percent in the fourth quarter of 2008. Prices declined further in the first and second quarters of 2009, before partially recovering in the third quarter.

122. China consistently had the lowest prices globally of carbon steel rod during the period of review. Prices of carbon steel rod in Chinese Taipei were also lower than the global average, although they were consistently higher than those in China. Canadian prices were close to U.S. prices, at the high end of the price range.<sup>70</sup>

123. The forecasts are for prices of carbon steel rod to continue to increase in the first quarter of 2010.<sup>71</sup> Similarly, the prices of stainless steel rod are expected to fall slightly until the end of 2009. It is then expected that they will increase and eventually stabilize in the third and fourth quarters of 2010.<sup>72</sup>

124. In examining the carbon steel screw and stainless steel screw industries specifically, the data available to the Tribunal, both globally and with reference to China or Chinese Taipei individually, are limited. Accordingly, in this expiry review, the Tribunal has needed to rely on more general information concerning the fastener industry, as a whole, as the best available source of information.

125. In 2007, the Industrial Fasteners Institute (IFI), a large U.S. trade association, estimated that worldwide fastener demand was approximately US\$52 billion.<sup>73</sup>

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64. Tribunal Exhibit RR-2009-001-49.09, Administrative Record, Vol. 1 at 299.93; Tribunal Exhibit RR-2009-001-49.11, Administrative Record, Vol. 1 at 299.183.

65. Tribunal Exhibit RR-2009-001-15.01B, Administrative Record, Vol. 3A at 230. This reference only gives projections until the end of 2009.

66. Tribunal Exhibit RR-2009-001-49.11, Administrative Record, Vol. 1 at 299.155.

67. Tribunal Exhibit RR-2009-001-49.09, Administrative Record, Vol. 1 at 299.133.

68. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 134-35; *Transcript of In Camera Hearing*, Vol. 1, 16 November 2009, at 57-59; *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 214.

69. The price of steel wire rod is used as a proxy for the price of steel wire because rod is used to make wire.

70. Tribunal Exhibit RR-2009-001-49.10 (single copy exhibit), Administrative Record, Vol. 1.01 at 2-47.

71. Tribunal Exhibit RR-2009-001-49.11, Administrative Record, Vol. 1 at 299.164.

72. Tribunal Exhibit RR-2009-001-49.15 (single copy exhibit), Administrative Record, Vol. 1.01 at 124.

73. Tribunal Exhibit RR-2009-001-12.41, Administrative Record, Vol. 1 at 391.

126. According to the IFI, 37 percent of the demand relates to the automotive industry, 18 percent to construction activities, 12 percent to electrical products and 33 percent to aerospace, industrial machinery and other uses.<sup>74</sup> Testimony and other evidence confirmed that these uses are the major sources of fastener demand in Canada as well.<sup>75</sup> Since demand for fasteners generally reflects the overall state of the economy, the Tribunal is of the view that the recent recession resulted in a decreased demand for fasteners globally.

127. During the global economic downturn, the fastener industry in Chinese Taipei encountered significant difficulties. Demand went down substantially, especially in the automotive industry, real estate and manufacturing, which resulted in decreases in orders and production overcapacity.<sup>76</sup> The evidence also indicates that Chinese Taipei had to face price-cutting competition due to lower costs in China and non-subject countries, such as Malaysia and Vietnam.<sup>77</sup>

128. Finally, the Tribunal notes that, in 2009, new anti-dumping duties were imposed on imports of various carbon steel screws from China by the European Union and Columbia. These and other measures will be discussed below in the sections on likely volumes.

#### Domestic Market Conditions

129. Between 2006 and 2007, the Canadian economy grew by 2.5 percent. However, growth in 2008 was much lower at only 0.4 percent, reflecting the beginning of the recession in the fourth quarter of 2008.<sup>78</sup> Economic growth resumed in Canada in the third quarter of 2009. Nonetheless, because of the significant contraction experienced in the first half of the year, the Canadian economy is still forecast to have decreased by 2.4 percent by the end of 2009.<sup>79</sup>

130. The Bank of Canada recently estimated that Canadian GDP will grow by 3.0 percent in 2010 and by 3.3 percent in 2011, at which point the economy is expected to return to “full capacity”.<sup>80</sup> However, as is the case for the global economy, there is still considerable uncertainty as to whether the actual pace of Canada’s gradual recovery over the next two years will correspond to these specific estimates.<sup>81</sup>

131. Lower borrowing costs for consumers and fiscal incentives have helped to support an increase in renovation activity<sup>82</sup> and residential housing starts.<sup>83</sup> However, investment in non-residential, commercial and industrial construction declined in the first three quarters of 2009, with a return to normal levels not expected until 2011.<sup>84</sup>

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74. Tribunal Exhibit RR-2009-001-12.40, Administrative Record, Vol. 1 at 344.

75. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 146-47; *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 248; Manufacturer’s Exhibit B-03 at 63, Administrative Record, Vol. 11; Tribunal Exhibit RR-2009-001-010, Administrative Record, Vol. 1.3A at 79.

76. Manufacturer’s Exhibit A-02 at 85, 107, Administrative Record, Vol. 11.

77. Manufacturer’s Exhibit A-02 at 108, Administrative Record, Vol. 11; Exporter’s Exhibit J-01, para. 10, Administrative Record, Vol. 13.

78. Tribunal Exhibit RR-2009-001-49.02, Administrative Record, Vol. 1 at 299.7; Tribunal Exhibit RR-2009-001-49.07, Administrative Record, Vol. 1 at 299.56.

79. Tribunal Exhibit RR-2009-001-49.11, Administrative Record, Vol. 1 at 299.175, 299.186, 299.198.

80. Tribunal Exhibit RR-2009-001-49.11, Administrative Record, Vol. 1 at 299.175, 299.186.

81. Tribunal Exhibit RR-2009-001-49.11, Administrative Record, Vol. 1 at 299.200.

82. Tribunal Exhibit RR-2009-001-49.11, Administrative Record, Vol. 1 at 299.188, 299.193.

83. Tribunal Exhibit RR-2009-001-49.04, Administrative Record, Vol. 1 at 299.15-299.16.

84. Tribunal Exhibit RR-2009-001-49.11, Administrative Record, Vol. 1 at 299.157-299.159, 299.163.

132. The number of domestic producers of like goods has decreased since Inquiry No. NQ-2004-005. As noted above, Robertson ceased production of fasteners in Canada at the end of 2008. In addition, two other domestic producers, Ideal and Hold-Tite, appear to have ceased production in Canada.<sup>85</sup>

133. The Tribunal also notes that several witnesses testified that low-priced imports of both carbon steel screws and stainless steel screws from non-subject countries, such as Malaysia, Vietnam and Thailand, have increased their presence in the domestic market since the original findings.<sup>86</sup> Responses to the expiry review questionnaires indicate that imports from these three countries accounted for approximately one third of the domestic market for carbon steel screws and a significantly lower proportion of the domestic market for stainless steel screws.<sup>87</sup>

## CARBON STEEL SCREWS

### Likely Volumes of Dumped and Subsidized Goods

134. The Tribunal's assessment of the likely volumes of dumped and subsidized<sup>88</sup> imports encompasses the likely performance of the foreign industry,<sup>89</sup> potential for the foreign producers to produce goods in facilities that are currently used to produce other goods,<sup>90</sup> evidence of the imposition of anti-dumping or countervailing measures on carbon steel screws or similar goods in other jurisdictions,<sup>91</sup> and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject carbon steel screws to Canada.<sup>92</sup>

135. Leland, Visqué and Standard Fasteners submitted that production of carbon steel screws in China and Chinese Taipei remained high and continued to expand over the period of review. According to them, China and Chinese Taipei have some of the largest manufacturers of carbon steel screws in the world. In this regard, they submitted that the capacity of merely four of the subject country producers that responded to the expiry review questionnaire is greater than the entire Canadian market and that their production is more than six times the volume of domestic production. They submitted that there are thousands of fastener producers in the subject countries. They argued that the decline in global demand for fasteners, due to the recession and increased competition from other countries, has resulted in excess capacity in China and Chinese Taipei.

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85. Tribunal Exhibit RR-2009-001-15.08.01, Administrative Record, Vol. 3B at 166; Tribunal Exhibit RR-2009-001-15.06.01, Administrative Record, Vol. 3B at 160; Tribunal Exhibit RR-2009-001-11 (protected), Administrative Record, Vol. 2.3 at 18; Tribunal Exhibit RR-2009-001-16.06 (protected), Administrative Record, Vol. 4D at 222; Tribunal Exhibit RR-2009-001-16.08 (protected), Administrative Record, Vol. 4D at 231; Tribunal Exhibit RR-2009-001-14, Administrative Record, Vol. 3 at 2-3; producers' questionnaire replies found under collective Tribunal Exhibit RR-209-001-16 (protected), Administrative Record, Vol. 4. The Tribunal notes that Ready Rivet, which was a domestic producer at the time of Inquiry No. NQ-2004-005, did not respond to the producers' questionnaire.

86. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 28, 39, 119, 138-39; *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 246, 314-15.

87. *Protected Addendum to Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.02B (protected), Administrative Record, Vol. 2.1A at 317; *Protected Addendum to Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.03B (protected), Administrative Record, Vol. 2.1B at 317.

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

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

90. Paragraph 37.2(2)(f) of the *Regulations*.

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

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



136. Leland, Visqué and Standard Fasteners further submitted that China and Chinese Taipei are predominately export oriented, particularly Chinese Taipei, where the economy can only absorb a small portion of carbon steel screw production. They argued that producers in China and Chinese Taipei have access to extensive trading networks and noted that they continued to export substantial volumes of the subject carbon steel screws to Canada during the period of review. According to them, this demonstrates the continued interest in the Canadian market by the subject countries, notwithstanding the finding in place. They argued that, should the finding be rescinded, the likely volume of subject carbon steel screws would be substantial in absolute terms and would represent a virtual “flood” relative to the small size of the Canadian market.

137. The government of Chinese Taipei submitted that the recession had had an enormous negative impact on the country’s export markets and that fastener manufacturers had lowered their output to adapt to the decrease in demand. It submitted that a recent survey<sup>93</sup> shows that fastener manufacturers do not have enough extra inventories to be able to ship to Canada. This same survey shows that fastener manufacturers do not have idle production capacity and do not have plans to expand their production capacity because of the decreasing market demand and worldwide market uncertainty.

138. The Tribunal notes that, as indicated above, the information on the record regarding the likely performance of the carbon steel screw portion of the fastener industry in China and Chinese Taipei is limited. Therefore, in this regard the Tribunal has relied, for the most part, on evidence concerning the fastener industry in China and Chinese Taipei as a whole, which it considers to be the best available indicator of the trends and conditions in the carbon steel screw portion of the industry. In particular, the Tribunal notes that, except where otherwise indicated, references to subject country production, capacity and exports include a broader range of products than carbon steel screws.

139. The evidence indicates that producers in both China and Chinese Taipei have very large capacities to produce fasteners and that they are among the world’s largest producers of fasteners.<sup>94</sup>

140. According to the government of China, in 2008, that country produced 5.6 million tonnes of fasteners, valued at US\$7.5 billion.<sup>95</sup> The evidence also indicates that, in 2007, China’s fastener industry accounted for 25 percent of the global fastener market.<sup>96</sup> Other evidence indicates that China’s fastener industry expanded at an average rate of more than 25 percent between 2001 and 2007.<sup>97</sup>

141. In 2008, Chinese Taipei produced 1.24 million tonnes of fasteners, valued at US\$3.6 billion.<sup>98</sup> In 2008, the fastener industry in Chinese Taipei accounted for 15 percent of total global production.<sup>99</sup>

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93. Undertaken by the Taiwan Industrial Fastener Institute. Exporter’s Exhibit J-01, para. 8, Administrative Record, Vol. 13.

94. Manufacturer’s Exhibit A-01 at 23-26, Administrative Record, Vol. 11; Manufacturer’s Exhibit A-05 at 5-6, Administrative Record, Vol. 11; Tribunal Exhibit RR-2009-001-24.01, Administrative Record, Vol. 5.2 at 25; Tribunal Exhibit RR-2009-001-15.01B, Administrative Record, Vol. 3A at 150.

95. Tribunal Exhibit RR-2009-001-24.01, Administrative Record, Vol. 5.2 at 25.

96. Tribunal Exhibit RR-2009-001-15.01, Administrative Record, Vol. 3 at 107. When data for the fastener industry in China are provided for 2007, it is because data were not available for 2008 or subsequent years.

97. Tribunal Exhibit RR-2009-001-15.01B, Administrative Record, Vol. 3A at 182.

98. Tribunal Exhibit RR-2009-001-15.01B, Administrative Record, Vol. 3A at 149-50.

99. Tribunal Exhibit RR-2009-001-15.01B, Administrative Record, Vol. 3A at 163.

142. The Tribunal agrees with the submission of Leland, Visqué and Standard Fasteners that the capacity and production reported by even the few producers of the subject carbon steel screws responding to the expiry review questionnaire are several times larger than those of the domestic industry. It also notes that the responses received from these producers show an overall downward trend of capacity utilization between 2006 and 2008.<sup>100</sup>

143. Considering that China and Chinese Taipei undoubtedly have many potential producers and exporters that have not provided information to the Tribunal, the Tribunal is of the view that total capacity in the subject countries is likely to be substantial.<sup>101</sup>

144. The evidence also indicates that the fastener industries in China and Chinese Taipei are heavily export oriented. In the case of Chinese Taipei, for 2008, domestic demand represented 15 percent of the total production, leaving approximately 85 percent available for export.<sup>102</sup> In the case of China, it was reported that exports accounted for 38 percent of the volume and 47 percent of the value of the fastener industry's total output in 2007.<sup>103</sup>

145. Moreover, in absolute terms, China and Chinese Taipei exported very large volumes of fasteners. In 2008, exports of fasteners from China and Chinese Taipei were 1.583 million tonnes and 812,000 tonnes respectively.<sup>104</sup>

146. In 2008, the European Union was the most important destination for Chinese fasteners, accounting for 38 percent of total Chinese exports.<sup>105</sup> The second most important market was the United States, which accounted for 16 percent of total Chinese exports. In that same year, the United States and the European Union accounted for 47 percent and 27 percent, respectively, of total fastener exports from Chinese Taipei and were its first and second most important export destinations respectively.<sup>106</sup>

147. Despite the imposition of anti-dumping and countervailing duties in Canada, producers in China and Chinese Taipei have demonstrated their continued interest in the domestic market through sustained shipments to Canada throughout the period of review.

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100. Manufacturer's Exhibit A-15, para. 36, Administrative Record, Vol. 11; *Pre-hearing Staff Report*, revised 19 October 2009, Tribunal Exhibit RR-2009-001-05.02A, Administrative Record, Vol. 1.1A at 187-88; *Protected Pre-hearing Staff Report*, revised 19 October 2009, Tribunal Exhibit RR-2009-001-06.02A (protected), Administrative Record Vol. 2.1A at 191-94, 271-72, 274-75.

101. Tribunal Exhibit RR-2009-001-15.01B, Administrative Record, Vol. 3A at 182; Tribunal Exhibit RR-2009-001-20, Administrative Record, Vol. 5.1 at 2-12; Exporters' questionnaire replies found under collective Tribunal Exhibit RR-2009-001-22 (protected), Administrative Record, Vol. 6.1.

102. Tribunal Exhibit RR-2009-001-15.01B, Administrative Record, Vol. 3A at 149-50, 152.

103. Tribunal Exhibit RR-2009-001-15.01, Administrative Record, Vol. 3 at 107.

104. Tribunal Exhibit RR-2009-001-49.13 (single copy exhibit), Administrative Record, Vol. 1.01 at 66-98; Tribunal Exhibit RR-2009-001-49.14 (single copy exhibit), Administrative Record, Vol. 1.01 at 99-122. The data are compiled by the Iron and Steel Statistics Bureau and are at the 6-digit subheading level.

105. Tribunal Exhibit RR-2009-001-49.13 (single copy exhibit), Administrative Record, Vol. 1.01 at 66-98.

106. Tribunal Exhibit RR-2009-001-49.14 (single copy exhibit), Administrative Record, Vol. 1.01 at 99-122.

148. Although, from the perspective of producers in China and Chinese Taipei, Canada was not as important a destination for fastener exports as a number of other countries<sup>107</sup>, the exports to Canada of the subject carbon steel screws were large enough to account for more than 40 percent of the volume of the domestic market in every period from 2006 to the first half of 2009.<sup>108</sup>

149. These volumes are consistent with the testimony of a witness for Leland, to the effect that China and Chinese Taipei are not merely filling supply gaps in the Canadian market but are a significant part of the regular supply of carbon steel screws.<sup>109</sup> In this regard, it is clear that China and Chinese Taipei have well-established marketing and distribution channels in Canada.

150. Based on the foregoing, it is clear that producers in China and Chinese Taipei have the potential to ship significant volumes of the subject carbon steel screws to Canada and that they have an ongoing interest in the Canadian market. The issue for the Tribunal to consider is to what extent Canada will be an attractive export destination for the subject carbon steel screws in the next 18 to 24 months, if the finding is rescinded.

151. Although the absolute volumes of capacity and production of subject country producers and global demand are relevant to the Tribunal's assessment of the likely volumes of the subject goods in the absence of a finding, an important consideration is the extent to which production and demand will be in balance. If production in China and Chinese Taipei is likely to be in balance with demand in existing markets, this decreases the likelihood that they will face pressure to compete aggressively to increase sales in Canada if the finding is rescinded. On the other hand, if production is likely to exceed demand, the opposite result is likely.

152. As discussed above, global demand for fasteners fell during the recession. However, the Tribunal is of the view that, over the next 18 to 24 months, as the world economy gradually recovers, demand for fasteners, including carbon steel screws, is likely to increase to levels similar to those before the recession.

153. Leland, Visqué and Standard Fasteners submitted that the fastener industry is a capital-intensive industry and that a "production imperative" of the primary steel industry to maintain plant loading also applies to this industry. They argued that, because of the "production imperative", foreign producers of the subject carbon steel screws will not cut back their production if the demand decreases, but rather they will try to sell aggressively at dumped and subsidized prices in order to cover their fixed costs.

154. The parties opposed contested these views, arguing that there is no production imperative in the fastener industry. The government of Chinese Taipei argued that its fastener industry produces mainly to customer order requirements and that, consequently, a decrease in domestic sales would not inevitably result in an increase in export sales.

155. Unfortunately, the parties provided very limited evidence to support their allegations concerning the likely relationship between supply and demand for carbon steel screws.

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107. In 2008, Canada was the thirteenth most important destination for Chinese fasteners, accounting for 1 percent of total exports and the fourth most important destination for exports from Chinese Taipei, accounting for 4 percent of total exports. Tribunal Exhibit RR-2009-001-49.13 (single copy exhibit), Administrative Record, Vol. 1.01 at 66-98; Tribunal Exhibit RR-2009-001-49.14 (single copy exhibit), Administrative Record, Vol. 1.01 at 99-122.

108. *Pre-hearing Staff Report*, revised 19 October 2009, Tribunal Exhibit RR-2009-001-05.02A, Administrative Record, Vol. 1.1A at 165.

109. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 105-106, 145.

156. There is some evidence to indicate that fastener producers in China and Chinese Taipei reduced their output during the recent recession rather than trying to maintain sales as demand fell. In response to decreasing demand, fastener producers in Chinese Taipei reduced production by nearly 5 percent in 2008 compared to 2007.<sup>110</sup>

157. The evidence shows that four of the five producers from Chinese Taipei that responded to the expiry review questionnaire reduced their production in 2008 compared to 2007.<sup>111</sup> It was also reported that, since October 2008, the recession has had a great impact on the fastener industry in China and that many manufacturers have reduced their operations, resulting in a decline in fastener output of 10 percent.<sup>112</sup> Testimony at the hearing corroborates this view.<sup>113</sup>

158. Further, the data on fastener exports from China and Chinese Taipei indicates that exports for the first eight to nine months of 2009 were, on an annualized basis, at least 30 percent lower than in 2008.<sup>114</sup>

159. In the Tribunal's view, this type of behaviour does not appear consistent with an industry guided by a "production imperative".

160. The Tribunal is also of the view that, in terms of cost structure, the evidence does not support the contention that the fastener industry is a capital-intensive industry. Although, in economics, there is no single accepted measure of "capital intensity", the Tribunal examined the ratio of the domestic industry's expenditures on overhead (as a proxy for "capital") to both its expenditures on direct labour and its number of direct employees (as proxies for "labour").<sup>115</sup> The resultant ratios did not suggest to the Tribunal that this is a capital-intensive industry.

161. In view of the above, the Tribunal does not accept the argument that this is a capital-intensive industry whose nature requires a high level of throughput regardless of market conditions and which encourages mills to sell at prices low enough to find a market for their excess production, even if it does not generate a profit. However, the Tribunal does consider that, following normal commercial principles, fastener producers are likely to try to find markets for excess capacity, if it is profitable to do so.

162. In this regard, given the continuing interest of the subject country producers in the domestic market, as discussed above, the Tribunal believes that they will continue to target Canada in the absence of the finding, if they can do so on a commercially reasonable basis.

163. A significant factor that affects the likely demand-supply balance in the near to medium term, and one that will increase pressure to export to Canada, is the January 2009 anti-dumping finding by the European Union against steel fasteners from China. The Tribunal notes that the product description in the EU finding encompasses all the carbon steel screws covered by the Tribunal's finding, with the exception of wood coach screws.<sup>116</sup>

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110. Tribunal Exhibit RR-2009-001-15.01B, Administrative Record, Vol. 3A at 150.

111. *Protected Pre-hearing Staff Report*, revised 19 October 2009, Tribunal Exhibit RR-2009-001-06.02A (protected), Administrative Record, Vol. 2.1A at 187-88.

112. Manufacturer's Exhibit A-02 at 111-12, Administrative Record, Vol. 11.

113. *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 315.

114. Tribunal Exhibit RR-2009-001-49.13 (single copy exhibit), Administrative Record, Vol. 1.01 at 89-98; Tribunal Exhibit RR-2009-001-49.14 (single copy exhibit), Administrative Record, Vol. 1.01 at 117-122.

115. *Protected Pre-hearing Staff Report*, revised 19 October 2009, Tribunal Exhibit RR-2009-001-06.02A (protected), Administrative Record, Vol. 2.1A at 251-52, 254-56, 258, 267.

116. Tribunal Exhibit RR-2009-001-12.13, Administrative Record, Vol. 1.4 at 166, 170.

164. Given the large quantities of fasteners from China sold in the European Union, even a 10 percent decrease in EU sales due to the EU finding would likely represent a volume greater than the entire volume of imports of carbon steel screws into Canada.<sup>117</sup> It would be commercially reasonable for Chinese producers to seek an alternate market for sales lost in the European Union, and in doing so, to call upon their established distribution network in Canada. Therefore, the Tribunal is of the view that the EU measure has the potential to lead to a major diversion of the subject carbon steel screws to Canada if the Tribunal finding is rescinded.

165. Although fastener producers in Chinese Taipei will likely try to gain market share in the European Union because of decreased cost competition from Chinese product, as a result of the EU measure, the Tribunal is of the view that it remains to be seen whether they will be successful in the face of competition from other low-cost suppliers.<sup>118</sup>

166. Demand in the United States, a large market for fastener exports from both Chinese Taipei and China, is likely to increase as the U.S. economy gradually improves. However, given the uncertain pace of the recovery, the Tribunal is not convinced that subject country exporters will necessarily be able to look to increased demand in the United States to replace a significant portion of sales lost in the European Union.

167. The Tribunal notes that, in addition to the measure against Chinese carbon steel screws imposed by the European Union in January 2009, there is also a measure against carbon steel screws from China imposed by Columbia in March 2009.<sup>119</sup> These recent measures indicate to the Tribunal a propensity to engage in injurious dumping on the part of producers in China. Further, it notes that there are also measures in Peru and South Africa that may potentially cover some of the subject goods.<sup>120</sup>

168. Accordingly, the Tribunal believes that, given the demonstrated ability and desire of subject country producers to export to Canada, even with anti-dumping and countervailing duties in place, and the pressure caused by recent anti-dumping findings, producers in both China and Chinese Taipei would likely increase exports to Canada significantly if the finding is rescinded.

169. The Tribunal notes that it considered arguments that a propensity to engage in injurious dumping by China should be inferred from measures concerning products other than carbon steel screws and from investigations that have not yet resulted in decisions on whether a finding should be imposed. The Tribunal does not consider that these arguments are valid.

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117. The Tribunal considered data for 2008. Tribunal Exhibit RR-2009-001-49.13 (single copy exhibit), Administrative Record, Vol. 1.01 at 81-89; *Protected Pre-hearing Staff Report*, revised 19 October 2009, Tribunal Exhibit RR-2009-001-06.02A (protected), Administrative Record, Vol. 2.1A at 205.

118. Tribunal Exhibit RR-2009-001-49.14 (single copy exhibit), Administrative Record, Vol. 1.01 at 117-22.

119. The products covered by the Colombian measure are defined as "... carbon steel or alloy steel screws (diameter of 0.125-1 inch, or 3-25 mm), as well as the screws with thread (diameter maximum of 4 inches ...)" "of tariff No. 73181590.00." These screws are comparable to a portion of the screws covered by this finding. Tribunal Exhibit RR-2009-001-15.01B, Administrative Record, Vol. 3A at 193.

120. The Tribunal notes that Peru has maintained anti-dumping measures against "metal fasteners, other fasteners, zip fasteners and zip sliders" originating in or exported from China since 2002 and that South Africa has anti-dumping measures against "bolts and nuts of iron or steel" originating in or exported from China since 1999. South Africa has also maintained measures against "nuts of iron or steel" from Chinese Taipei since 1999. *Pre-hearing Staff Report*, 8 October 2009, Tribunal Exhibit RR-2009-001-05.01, Administrative Record, Vol. 1.1 at 11.

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

170. In assessing the effects that the likely prices of dumped or subsidized goods would have on prices of like goods, the Tribunal will examine whether the dumped and/or subsidized carbon steel screws are likely to significantly undercut, depress or suppress the prices of like carbon steel screws.<sup>121</sup>

171. Leland, Visqué and Standard Fasteners submitted that carbon steel screws are commodity goods and that, therefore, price is the decisive factor in the purchasing decision. They argued that, if the finding were rescinded, producers in China and Chinese Taipei would export significant volumes of carbon steel screws at prices that would be well below those of the domestic industry. Moreover, they submitted that the prices of the subject carbon steel screws would converge downwards to meet or undercut low-priced imports of carbon steel screws from other countries, such as Malaysia, Vietnam and Thailand. They cited various previous decisions of the Tribunal in support of their view that there would be a downward price convergence.<sup>122</sup>

172. Robertson argued that the current relationships among the prices of the subject carbon steel screws, the like carbon steel screws and the carbon steel screws from non-subject countries, are similar to the relationships that existed prior to the imposition of duties in 2005. Therefore, in Robertson's view, in the absence of the finding, the prices of the subject carbon steel screws would not fall to the levels of non-subject country prices. According to Robertson, there is no indication that producers in China and Chinese Taipei would not continue to price at a level that is profitable to them. It also disagreed that the cases cited by Leland, Visqué and Standard Fasteners support the likelihood of a price convergence.

173. According to the government of Chinese Taipei, the unit values of fastener exports from that country increased during the period of review, which indicates that the fasteners from Chinese Taipei have become "high-tech" products, as opposed to basic products.

174. The Tribunal agrees that price is generally a very important consideration in the purchase decision for carbon steel screws, assuming that factors such as quality and reliability of supply are comparable. In this regard, however, the Tribunal accepts the testimony that there is a distinction between "standard" carbon steel screws and "specials", i.e. screws that are custom manufactured to a client's specifications,<sup>123</sup> with price being a less significant consideration for the latter.<sup>124</sup>

175. In many instances, following the imposition of anti-dumping or countervailing duties, the presence of the subject goods in the domestic market acts merely as "gap-filling" and, therefore, the prices do not help the Tribunal to predict what the pricing would be in the absence of such measures. However, as discussed above, in this expiry review, the subject carbon steel screws are part of the normal supply of goods to the market and, therefore, the recent pricing is useful in helping the Tribunal to predict what the level of pricing would be without the finding.

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121. Paragraph 37.2(2)(b) of the *Regulations*.

122. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 180; *Structural Tubing* (22 December 2008), RR-2008-001 (CITT) at para. 116; Manufacturer's Exhibit A-01 at 34-35, Administrative Record, Vol. 11.

123. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 168; *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 302; Manufacturer's Exhibit A-05, Administrative Record, Vol. 11 at 8.

124. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 132, 168; *Transcript of In Camera Hearing*, Vol. 1, 16 November 2009, at 70-71.

176. The Tribunal observes that there is strong and consistent evidence that, over the period of review, prices of the subject carbon steel screws were lower than those of the like carbon steel screws.<sup>125</sup>

177. The Tribunal further observes that the prices of carbon steel screws from countries such as Malaysia, Thailand and Vietnam were consistently among the lowest in the market.<sup>126</sup> Moreover, a witness for Leland testified that the prices from countries such as Malaysia and Vietnam are currently lower than those from China.<sup>127</sup>

178. The responses to the expiry review questionnaires show that, during the period of review, the gap between the average prices of the subject carbon steel screws and the like carbon steel screws was 3 to 19 percent.<sup>128</sup>

179. There was also testimony concerning the relative prices of the subject carbon steel screws and the like carbon steel screws. The witness for Visqué, a major domestic producer that sells the like carbon steel screws in close competition with the subject carbon steel screws, testified that there is normally a 10 to 20 percent difference between the prices of its products and those of the subject carbon steel screws, even with the finding in place.<sup>129</sup>

180. Leland perceives a much larger difference between the prices of the subject carbon steel screws and the like carbon steel screws.<sup>130</sup> However, in this regard, the Tribunal notes that Leland sells in different niches of the market than other domestic producers and that, therefore, its prices may not be representative of the domestic industry as a whole.<sup>131</sup> However, Leland's perception of the limited premium that its customers are prepared to pay for the like carbon steel screws is generally consistent with Visqué's view of the price differential between the subject carbon steel screws and the like carbon steel screws.<sup>132</sup>

181. Testimony from witnesses for both Leland and Visqué indicates that it becomes increasingly difficult for them to maintain sales when this price differential exceeds 10 to 20 percent, even considering the added value components provided by the domestic industry, such as customer service, reduced lead times and product availability.<sup>133</sup>

182. Hence, in order for exporters of the subject carbon steel screws to gain sales volume in the absence of the finding, they would only need to lower their prices below the current duty-paid prices by a sufficient degree to overcome the premium now being paid for the like carbon steel screws.

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125. *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.02B (protected), Administrative Record, Vol. 2.1A at 315, 318; *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 138, 169-72; *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 340.

126. *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.02B (protected), Administrative Record, Vol. 2.1A at 321.

127. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 138-39.

128. *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.02B (protected), Administrative Record, Vol. 2.1A at 315, 318.

129. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 161; *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 243.

130. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 128-30, 145-46.

131. Tribunal's Exhibit RR-2009-001-15.01A, Administrative Record, Vol. 3 at 150; *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 28, 93.

132. *Transcript of In Camera Hearing*, Vol. 1, 16 November 2009, at 70-71.

133. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 133, 161-62; *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 222-24.

183. The Tribunal believes that exporters of the subject carbon steel screws would lower their prices enough to achieve this, although the Tribunal is not entirely convinced that this would result in a precipitous “race to the bottom” price scenario. The Tribunal notes that its previous decisions on this issue are of limited usefulness, because the likely price effects depend on the particular circumstances in the market for the given product and the given time period.

184. The Tribunal considered the likely level of the prices of the subject carbon steel screws in the absence of the finding by deducting an estimate of the anti-dumping and countervailing duties from the prices seen during the period of review. This analysis indicates that the gap between the prices of the subject carbon steel screws and the like carbon steel screws would increase to between 18 percent and 26 percent.<sup>134</sup>

185. In addition, it is significant that some exporters have shown themselves to be willing to charge prices much lower than the average for the subject carbon steel screws, resulting in likely additional downward pressure on prices. In this regard, the Tribunal notes that, during the period of review, many companies in both China and Chinese Taipei exported the subject carbon steel screws to Canada at dumped prices that resulted in the payment of very high anti-dumping duties of up to 170 percent, rather than seeking normal values. The evidence did not indicate why these exporters chose to “leave money on the table” rather than make more profit by raising their prices to a level that would either eliminate or reduce the anti-dumping duties payable by importers in Canada.

186. Regardless of why certain exporters behaved in this manner, the fact that they did so in the past is a strong indicator to the Tribunal that, should the finding be rescinded, a certain number of them would be willing to continue to export at similar price levels (i.e. at prices of up to 170 percent lower than the price now being paid for their goods in the domestic market). In the Tribunal’s view, the fact that exporters did this throughout the period of review and especially since the most recently completed reinvestigation by the CBSA in February 2009 shows a propensity to continue selling product in this manner.<sup>135</sup>

187. The witness for Visqué testified that countries such as Malaysia, Thailand and Vietnam currently have capacity limitations, although, in his view, their capacity is expected to increase.<sup>136</sup> The increasing capacity of these non-subject countries may also increase downward pressure on prices of the subject carbon steel screws in the absence of the finding.<sup>137</sup>

188. The Tribunal notes that its data indicate that, except for 2007, the prices of the subject carbon steel screws from China were lower than those from Chinese Taipei, although not always by a significant amount, the price difference ranging from 2 to 19 percent.<sup>138</sup> The testimony generally confirms that prices of the subject carbon steel screws from China are usually lower than those of the subject carbon steel screws

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134. Tribunal Exhibit RR-2009-001-36 (protected), Administrative Record, Vol. 2 at 44-133; *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.02B (protected), Administrative Record, Vol. 2.1A at 315, 318, 321. The CBSA data on the value of anti-dumping and countervailing duties imposed during the period of review do not distinguish between imports of carbon steel screws and imports of stainless steel screws. To conduct its analysis, the Tribunal assumed that the effective rates of duty applied equally to carbon steel screws and stainless steel screws.

135. Tribunal Exhibit RR-2009-001-36 (protected), Administrative Record, Vol. 2 at 44-133.

136. *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 246.

137. *Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.02B (protected), Administrative Record, Vol. 2.1A at 321.

138. *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-05.02B, Administrative Record, Vol. 1.1A at 321.



from Chinese Taipei.<sup>139</sup> This is consistent with evidence relating to relative prices of fasteners from China and Chinese Taipei in the U.S. and EU markets.<sup>140</sup> Also, there is some evidence on the record with respect to the inability of fastener producers generally in Chinese Taipei to compete with Chinese producers on the basis of price alone.<sup>141</sup> However, the Tribunal notes that some buyers in the domestic market may not perceive a difference between the prices of the subject carbon steel screws from China and those of the subject carbon steel screws from Chinese Taipei because they are buying from distributors that sell products from different countries at similar prices.<sup>142</sup>

189. Even though the prices of the subject carbon steel screws from Chinese Taipei were, on average, higher than those from China, the Tribunal is convinced that the former screws would actively participate with the latter in price-based injury if the finding were rescinded.

190. The Tribunal notes that, during the period of review, the imports of the subject carbon steel screws from Chinese Taipei that attracted a 170 percent rate of duty included imports from Chinese Taipei as well as imports from China.<sup>143</sup> Hence, the Tribunal expects that, notwithstanding average prices, in the absence of the finding, there are Chinese Taipei producers that would be able and willing to participate in price-based competition with Chinese producers at very low prices.

191. It is also worthwhile to note that, until the first half of 2009, the volume of imports of the subject carbon steel screws from Chinese Taipei was approximately three to four times larger than the volume from China.<sup>144</sup> Accordingly, increased sales from Chinese Taipei due to price-based competition could have a proportionately larger impact on the domestic market.

192. On the basis of the foregoing, the Tribunal concludes that, over the next 18 to 24 months, if the finding is rescinded, imports of the subject carbon steel screws will enter Canada at prices that will undercut the prices of the like subject carbon steel screws and, hence, will likely cause significant price depression.

### **Likely Performance of the Domestic Industry and Likely Impact of Dumped and Subsidized Goods on the Domestic Industry**

193. The Tribunal will now consider the likely impact that the subject carbon steel screws will have on the domestic industry if the finding is rescinded, taking into consideration the domestic industry's recent performance.<sup>145</sup> In its analysis, the Tribunal took into account relevant economic factors, including any potential decline in output, sales, market share, profits, productivity, return on investments and utilization of production capacity, and potential negative effects on cash flow, inventories, employment, wages, growth or the ability to raise capital.

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139. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 138-39; *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 313-14, 338-39.

140. Tribunal Exhibit RR-2009-001-49.13 (single copy exhibit), Administrative Record, Vol. 1.01 at 67-98; Tribunal Exhibit RR-2009-001-49.14 (single copy exhibit), Administrative Record, Vol. 1.01 at 100-122.

141. Manufacturer's Exhibit A-02 at 93-94, Administrative Record, Vol. 11.

142. *Transcript of Public Hearing*, Vol. 2, 17 November 2009, at 313.

143. Tribunal Exhibit RR-2009-001-36 (protected), Administrative Record, Vol. 2 at 44-133.

144. *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.02B (protected), Administrative Record, Vol. 2.1A at 304.

145. Paragraph 37.2(2)(c), (e) and (g) of the *Regulations*.

194. According to Leland, Visqué and Standard Fasteners, if the finding is rescinded, the excess capacity in China and Chinese Taipei will lead to unlimited volumes of the subject carbon steel screws flooding the domestic market at dumped and subsidized prices. They submitted that the result will be price deterioration, followed by declining revenues, margins and net income. In addition, in the absence of the finding, as production declines due to sales lost to dumped and subsidized competition, it is their submission that current employment levels will be at risk and that investments made by the domestic industry will lose significant value.

195. The government of Chinese Taipei submitted that production costs in Canada are much higher than in Chinese Taipei and that the domestic industry was not competitive enough during the economic crisis.

196. The Tribunal notes that, between 2006 and 2008, the domestic industry saw improvements in its financial performance, including both gross margins and net profits. The average price of the like carbon steel screws also increased over this period. However, at the same time, the domestic industry lost sales volume and market share and experienced lower employment and reduced capacity utilization. The Tribunal notes that the domestic industry's average productivity also declined during this period.<sup>146</sup>

197. More recently, the recession has increased pressure on the domestic industry's results, with additional decreases in key performance measures seen in the first six months of 2009 compared to the same period in 2008.<sup>147</sup>

198. The Tribunal anticipates that the demand in the domestic market will improve as Canada continues to recover from the recession.<sup>148</sup>

199. However, in the Tribunal's view, as discussed above in the sections on likely volumes and likely prices, the rescission of the finding would result in the importation of significant volumes of the subject carbon steel screws at prices that would undercut the prices of the like carbon steel screws. This would force the domestic producers either to lower their prices in order to compete or to lose sales volume and, hence, market share. In either scenario, the domestic industry would experience decreased production and utilization of production capacity and would sustain financial harm in terms of reduced revenues, margins and profits, and reduced ability to invest in future operations.

200. The Tribunal would like to emphasize that, given the small market share of the domestic industry in this case, approximately 10 percent, the volume effects of the low pricing of the subject carbon steel screws are likely to have more severe consequences than on a domestic industry with a stronger market position.<sup>149</sup>

201. The Tribunal has also taken into account the evidence that the domestic industry has been able to address the competition from the subject carbon steel screws over the period of review by focussing on the higher value portions of the market. For example, the witness for Visqué testified that, although the subject countries were dominant in supplying undifferentiated screws to the retail sector, it was able to compete by

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146. *Protected Pre-hearing Staff Report*, revised 19 October 2009, Tribunal Exhibit RR-2009-001-06.02A (protected), Administrative Record, Vol. 2.1A at 182, 235-36, 238, 267, 271-72, 274-75; *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.02B (protected), Administrative Record, Vol. 2.1A at 315, 317, 321.

147. *Ibid.*

148. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 175, 179-80.

149. *Protected Pre-hearing Staff Report*, revised 19 October 2009, Tribunal Exhibit RR-2009-001-06.02A (protected), Administrative Record, Vol. 2.1A at 163; *Transcript of In Camera Hearing*, Vol. 1, 16 November 2009, at 6, 8.

supplying “specials” to the OEM segment.<sup>150</sup> Similarly, a witness for Leland testified about a number of market sectors where it considered that it had a competitive advantage over the subject carbon steel screws.<sup>151</sup> However, in the Tribunal’s view, it is likely that, in the absence of the finding, the subject carbon steel screws would gradually take market share in the higher-value segments as well over the next 18 to 24 months. In this regard, the Tribunal notes the testimony of the witness for Visqué that the subject carbon steel screws had “conquered” the retail market and would do the same in sectors such as the OEM segment without continued protection.<sup>152</sup>

202. During the period of review, the domestic industry made investments in equipment and processes to enhance its production capacity, offer new product features and thus improve its competitiveness. Contrary to Robertson’s submissions, the Tribunal does not necessarily consider the value of these investments to be “minimal” in relation to the net profits generated by the domestic industry.<sup>153</sup> If the finding is rescinded, the domestic industry will not realize the expected returns on those investments.

203. In summary, the Tribunal is convinced that, if the finding on carbon steel screws is rescinded, the domestic industry will likely experience injury in terms of reduced production, sales, market share, profits, productivity, return on investment, capacity utilization, cash flow, employment, growth and the ability to raise capital and that such injury will likely be material.

### Other Factors

204. 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 the likely dumping and subsidizing that could instead be the cause of the likely injury to the domestic industry over the next 18 to 24 months.

205. GRK and Spaenaur submitted that the recession and imports of non-subject carbon steel screws are other factors that will likely cause injury to the domestic industry in the absence of the finding.

206. In the Tribunal’s view, the recession clearly had a negative impact on the domestic industry in 2008 and in the beginning of 2009. However, as discussed above, the evidence demonstrates a consensus that a gradual economic recovery is underway, even if the pace of that recovery is uncertain. Therefore, the Tribunal does not consider that the recession will be a major determining factor over the next 18 to 24 months. The Tribunal also notes that the low pricing of the subject carbon steel screws in the domestic market has not been confined to the time frame of the recession.

207. The impact of the presence of low-priced non-subject carbon steel screws was discussed above under likely prices.

### Conclusion

208. In view of the above, the Tribunal finds that it is likely that the resumed dumping or continued dumping and subsidizing of the subject carbon steel screws will cause material injury to the domestic

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150. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 168-69.

151. *Transcript of In Camera Hearing*, Vol. 1, 16 November 2009, at 66-71.

152. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 169.

153. *Protected Pre-hearing Staff Report*, revised 19 October 2009, Tribunal Exhibit RR-2009-001-06.02A (protected), Administrative Record, Vol. 2.1A at 235-36, 238-40, 242, 276-77, 279; *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 24; *Transcript of In Camera Hearing*, Vol. 1, 16 November 2009, at 66-68.

industry. Pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its finding with respect to the subject carbon steel screws, subject to the exclusions granted, as discussed below.

## STAINLESS STEEL SCREWS

### Introduction

209. Stainless steel screws are a significantly smaller portion of the overall market for screws than carbon steel screws. For example, in Canada, in 2008, the value of the market for stainless steel screws was less than one tenth the value of the market for carbon steel screws.<sup>154</sup> Stainless steel screws are used in some applications that are different from those for carbon steel screws, such as the marine industry. However, in the Tribunal's view, the drivers of demand are similar. The prices of stainless steel screws are on average significantly greater than those of carbon steel screws.<sup>155</sup>

210. Leland, Visqué and Standard Fasteners submitted that the market for stainless steel screws is important to them despite its relatively small size and that they will be injured if the finding is rescinded. GRK and Spaenaur submitted that, because the volume of domestic production of the like stainless steel screws is so small, the finding can be rescinded without causing injury to the domestic industry.

211. As is the case for carbon steel screws, the information on the record regarding the likely performance of the stainless steel screw portion of the fastener industry in Chinese Taipei is limited. Therefore, in this regard, the Tribunal has relied, for the most part, on evidence concerning the fastener industry in Chinese Taipei as a whole, which it considers to be the best available indicator of the trends and conditions in the stainless steel screw portion of the industry.

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

212. In assessing the effects that the likely prices of dumped or subsidized goods would have on prices of the like goods, the Tribunal will examine whether the dumped and/or subsidized stainless steel screws are likely to significantly undercut, depress or suppress the prices of the like stainless steel screws.<sup>156</sup>

213. The Tribunal notes that, as is the case for carbon steel screws, the subject stainless steel screws were present in the domestic market over the period of review in quantities that, in the view of the Tribunal, represent regular market supply rather than gap-filling. Therefore, prices during the period of review are good indicators of what market pricing would be without the finding.

214. The Tribunal is of the view that, as discussed above concerning carbon steel screws, price is generally a very important consideration in the purchase decision for stainless steel screws, assuming that factors such as quality and reliability of supply are comparable.

215. Throughout the period of review, the average prices of the subject stainless screws were consistently among the highest in the market and, in 2008, were the highest. With the exception of 2006, China was consistently the low-price leader in the market, with prices that were lower than those of either

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154. *Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-05.02B, Administrative Record, Vol. 1.1A at 318; *Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-05.03B, Administrative Record, Vol. 1.1B at 284.

155. *Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-05.02B, Administrative Record, Vol. 1.1A at 321; *Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-05.03B, Administrative Record, Vol. 1.1B at 287; *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 147.

156. Paragraph 37.2(2)(b) of the *Regulations*.

Chinese Taipei or the domestic industry. Further, unlike the situation for carbon steel screws, Chinese prices were even lower than the prices of stainless steel screws from third-country sources, including Thailand and Vietnam.<sup>157</sup>

216. As was discussed above concerning carbon steel screws, the relationship between the prices of stainless steel screws from China and those from Chinese Taipei in the domestic market is consistent with the relationship between the prices of fasteners from China and Chinese Taipei in the EU and U.S. markets. It is also consistent with the testimony of a witness for Leland.<sup>158</sup>

217. The Tribunal notes that, during the period of review, the gap between the prices of stainless steel screws from China and the subject stainless steel screws was between 10 and 71 percent.<sup>159</sup>

218. The Tribunal considered the likely level of the prices of the subject stainless steel screws in the absence of the finding by deducting an estimate of the anti-dumping duties from the prices seen during the period of review. Taking into account the results of this analysis, particularly the results for the most recent periods, the Tribunal is of the view, that, if the finding were rescinded, the prices of the subject stainless steel screws would remain the highest in the market, with the exception of U.S. prices. Further, there would still be a significant gap of 32 to 65 percent between the average prices of the non-subject stainless steel screws from China and those of the stainless steel screws from Chinese Taipei.<sup>160</sup>

219. Given the magnitude of this price differential, the evidence noted above in the discussion with respect to carbon steel screws that, in general, Chinese Taipei fastener producers cannot compete with Chinese fastener producers on the basis of price alone, and the absence of a “production imperative” as a pricing incentive, as discussed below under likely volumes, it is unlikely that producers in Chinese Taipei would lower their prices sufficiently to be competitive with the prices of Chinese stainless steel screws in the domestic market.

220. The role of Chinese stainless steel screws in the market over the period of review<sup>161</sup> tends to support the Tribunal’s conclusions concerning relative pricing. The Tribunal notes that, between 2006 and 2008, the share of the domestic market held by the subject stainless steel screws decreased by 10 percentage points, from 23 to 13 percent. During the same period, stainless steel screws from China gained significant market share, while the domestic industry’s share stayed essentially constant.<sup>162</sup>

221. Similar results were observed with respect to absolute sales volumes. Sales of stainless steel screws from China increased by approximately 165 percent between 2006 and 2008, at the same time as sales of

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157. *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.03B (protected), Administrative Record, Vol. 2.1B at 315, 318, 321.

158. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 141.

159. *Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-05.03B, Administrative Record, Vol. 1.1B at 287.

160. Tribunal Exhibit RR-2009-001-36 (protected), Administrative Record, Vol. 2 at 44-133; *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.03B (protected), Administrative Record, Vol. 2.1B at 315, 318, 321.

161. In coming to this conclusion, the Tribunal notes that during this time period, anti-dumping duties applied to the subject stainless steel screws.

162. *Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-05.03B, Administrative Record, Vol. 1.1B at 283; *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.03B (protected), Administrative Record, Vol. 2.1B at 315, 317.

the subject stainless steel screws decreased by 47 percent and sales of the like stainless steel screws increased by 5 percent.<sup>163</sup>

222. In the first six months of 2009, compared to the same period in 2008, the trends noted above with respect to market share generally continued although the domestic industry lost a small percentage of share. In terms of absolute volumes, sales of Chinese stainless screws decreased by 12 percent, significantly less than the 44 percent decrease for the subject steel stainless screws and 39 percent decrease for the like stainless steel screws.<sup>164</sup> Based on the foregoing analysis, it is clear that, over the period of review, low-priced imports of stainless steel screws from China predominantly increased their market share at the expense of imports from Chinese Taipei.

223. Given the above analysis of the price relationships in the market, it is the Tribunal's view that, if the finding were rescinded, it is unlikely that Chinese Taipei exporters would lower their prices to a level that would cause material injury through either price depression or price suppression.

### **Likely Volumes of Dumped Goods**

224. The Tribunal's assessment of the likely volumes of dumped and subsidized<sup>165</sup> imports encompasses the likely performance of the foreign industry,<sup>166</sup> potential for the foreign producers to produce goods in facilities that are currently used to produce other goods,<sup>167</sup> evidence of the imposition of anti-dumping or countervailing measures on stainless steel screws or similar goods in other jurisdictions,<sup>168</sup> and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject stainless steel screws to Canada.<sup>169</sup>

225. With respect to the likely performance of the foreign industry, the Tribunal notes that, in 2008, the production of three of the Chinese Taipei producers that responded to the expiry review questionnaire was almost the same size as the production of the domestic industry. Likewise, the capacity of these foreign producers alone was significantly greater than that of the domestic industry<sup>170</sup> and many times the size of the Canadian market.<sup>171</sup>

226. In addition, the Tribunal notes that, in its consideration of the likely volumes of the subject carbon steel screws, it concluded that fastener producers in China and Chinese Taipei have a very large capacity

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163. *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.03B (protected), Administrative Record, Vol. 2.1B at 315.

164. *Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-05.03B, Administrative Record, Vol. 1.1B at 282; *Protected Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-06.03B (protected), Administrative Record, Vol. 2.1B at 315, 317.

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

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

167. Paragraph 37.2(2)(f) of the *Regulations*.

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

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

170. *Protected Pre-hearing Staff Report*, revised 19 October 2009, Tribunal Exhibit RR-2009-001-06.03A (protected), Administrative Record, Vol. 2.1B at 173, 251-52, 254; *Protected Pre-hearing Staff Report*, revised 19 November 2009, Tribunal Exhibit RR-2009-001-06.03C (protected), Administrative Record, Vol. 2.1B at 298; *Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-5.03C, Administrative Record Vol. 1.1B at 298. There were four producers in Chinese Taipei that responded to the expiry review questionnaire. However, only three provided information in units of measure that were comparable to those for the domestic industry.

171. *Addendum to the Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-05.03B, Administrative Record, Vol. 1.1B at 281.

and export significant quantities of fasteners. Some of this capacity could be used by producers in Chinese Taipei to produce the subject stainless steel screws.

227. The Tribunal notes that anti-dumping duties are currently imposed on imports of stainless steel screws from Chinese Taipei into the European Union.<sup>172</sup> This measure is an indicator of a propensity to engage in injurious dumping.

228. Further, as discussed above with respect to carbon steel screws, the presence of the subject stainless steel screws in the domestic market throughout the period of review indicates that Chinese Taipei producers have well-established distribution networks in Canada and had a continuing interest in the domestic market.

229. Although the above considerations, if viewed on their own, might suggest that there would be an increase in the volume of the subject stainless steel screws in the absence of the finding, this is not the Tribunal's conclusion when other important factors are taken into account.

230. First, the Tribunal does not expect that Chinese Taipei producers would be able to engage in effective price competition with Chinese producers in the absence of the finding, as discussed above. In this regard, the Tribunal notes, among other things, the declining market share for the subject stainless steel screws during the period of review, as discussed above. The Tribunal does not think it likely that the Chinese producers would lower their prices sufficiently to reverse this trend if the finding were rescinded.

231. As discussed above for carbon steel screws, the Tribunal does not consider that the stainless steel screw industry is capital intensive and does not consider that producers in Chinese Taipei will be under pressure to respond to a "production imperative" in terms of their future exports to Canada.

232. Finally, since the EU measure has been in place since 1998, Chinese Taipei producers are likely to have had sufficient time to offset the effect of that measure. Therefore, it is unlikely that the EU measure would lead to a diversion of stainless steel screws from that market to Canada in the event of a rescission of the finding.

233. Considering all the above factors, the Tribunal considers that there will likely be little or no increase in the volume of imports of the subject stainless steel screws.

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

234. The Tribunal will now consider the likely impact that the subject stainless steel screws will have on the domestic industry if the finding is rescinded, taking into consideration the domestic industry's recent performance.<sup>173</sup>

235. Since, as discussed above, the rescission of the finding is likely to cause little or no increase in the import volume of the subject stainless steel screws or price undercutting, price suppression or price depression, the negative effects on the domestic industry in terms of factors such as production, sales, market share, profits, productivity, return on investments, utilization of production capacity, cash flow, employment and growth would be immaterial.

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172. *Pre-hearing Staff Report*, Tribunal Exhibit RR-2009-001-05.01, Administrative Record, Vol. 1.1 at 11.

173. Paragraph 37.2(2)(c), (e) and (g) of the *Regulations*.

236. The Tribunal notes that a witness for Leland testified that it is common for certain of its customers to order carbon steel screws and stainless steel screws at the same time. This might suggest that the expiry of the finding concerning stainless steel screws could cause injury to sales of carbon steel screws.<sup>174</sup>

237. Even if there were convincing evidence that this practice were widespread in the market, which there is not, the Tribunal notes that, in this expiry review, it is dealing with two classes of goods. Therefore, the Tribunal is required to base its decision of whether to continue or rescind the finding on stainless steel screws solely on its consideration of the factors relating to those goods, i.e. whether a rescission of the finding on stainless steel screws would injure the domestic stainless steel screw industry. It is not permitted to take into consideration any potential injurious effects of rescinding this finding on the other class of goods, i.e. the domestic carbon steel screw industry.

### Conclusion

238. In view of the above, the Tribunal finds that it is not likely that the resumed or continued dumping of the subject stainless steel screws will result in material injury to the domestic industry. Accordingly, pursuant to subparagraph 76.03(12)(a)(ii) of *SIMA*, the Tribunal hereby rescinds its finding concerning stainless steel screws originating in or exported from Chinese Taipei.

### EXCLUSIONS

239. The Tribunal received 42 requests to exclude products from orders continuing the existing finding. It received exclusion request from 9 parties, namely Bombardier, CTC, Chaen Wei, GRK, Hilti, Robertson, Spaenaur, Starborn and Zyh Yin. However, in light of the fact that the Tribunal has rescinded its finding in respect of the subject stainless steel screws, it only considered requests for product exclusions pertaining to the subject carbon steel screws. There were 26 such requests emanating from the same 9 parties. Leland, Visqué and Standard Fasteners responded jointly to all the requests and opposed all of them, except those made by Bombardier. Paulin responded only to the requests made by Hilti and Robertson, which it opposed.<sup>175</sup>

240. On September 2, 2009, the Tribunal published on its Web site instructions regarding the filing of product exclusion requests, wherein it indicated that, at that time, it intended to proceed with requests for product exclusions by way of written submissions and not hear oral testimony and argument on those requests. However, on November 3, 2009, the Tribunal informed parties that had participated in the product exclusion process that it would provide them with an opportunity to address their requests, responses or replies by providing oral testimony and/or argument at the hearing. CTC, GRK, Hilti, Robertson, Leland, Visqué and Standard Fasteners availed themselves of this opportunity.

241. Before addressing the individual requests for product exclusions, the Tribunal will outline certain general principles upon which it relied when determining whether or not to grant product exclusions in the context of the current expiry review.

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174. *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 20.

175. As Paulin has been excluded from the domestic industry for carbon steel screws, its responses to the product exclusion requests filed by Hilti and Robertson were not taken into account by the Tribunal for purposes of determining whether to grant these requests.



## General Principles Concerning Product Exclusion Requests

242. In *Stainless Steel Wire*,<sup>176</sup> 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]

243. The onus is upon the requester to demonstrate that imports of the specific goods for which the exclusion is requested are not likely to be injurious to the domestic industry, despite the general conclusion that, should the order or finding expire, the continued or resumed dumping and subsidizing of the goods covered by the order or finding are likely to result in injury to the domestic industry.

244. Leland, Visqué and Standard Fasteners submitted that some of the requests for product exclusions were the same requests that had been previously rejected by the Tribunal in Inquiry No. NQ-2004-005. They submitted that the Tribunal should reject such requests because resubmitting requests that have been previously rejected is not a legitimate use of the product exclusion process. The Tribunal disagrees. In its view, it is entirely appropriate to file, in the context of an expiry review, a request for product exclusion that may be identical or similar to a request that had been rejected in an injury inquiry or a prior expiry review. It is clear that, during the five-year period which separates an injury inquiry and an expiry review, or successive expiry reviews, factual circumstances may change sufficiently to have an impact on the Tribunal’s consideration of the factors normally taken into account in determining whether to grant product exclusions. Furthermore, the Tribunal may be provided with evidence that leads to a different conclusion from the evidence provided in relation to a previous product exclusion request.

245. Moreover, the factors to be considered in determining whether goods are likely to be injurious to the domestic industry, or the weight given to these factors, may be different in the context of an expiry review as compared to an injury inquiry. As noted in the cited passage from *Stainless Steel Wire*, factors such as whether the domestic industry produces the products for which exclusions are requested, whether it produces substitutable or competing products, whether it is an “active supplier” of the products and whether it has the capability of producing the products may be considered in determining whether a product exclusion is likely to cause injury to the domestic industry.

246. In Inquiry No. NQ-2004-005, the Tribunal placed much emphasis on whether the domestic industry had the capability to produce products which were identical to or substitutable for the products for which exclusions were requested. While such emphasis may be appropriate in the context of an injury inquiry, the Tribunal is of the view that a domestic industry’s capability to produce a certain product is much less relevant in the context of an expiry review.

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176. (30 July 2004), NQ-2004-001 (CITT) at para. 96.

247. In an injury inquiry, the Tribunal may find that the domestic industry's lack of production of a certain product is a manifestation of injury that likely results from the dumped and/or subsidized goods. However, an expiry review takes place after anti-dumping and/or countervailing measures have been in place for almost five years, during which time it must be presumed that the domestic industry was not prevented from producing a product because of injury due to dumping and/or subsidizing.

248. Injury is a relative term. The question before the Tribunal in considering a product exclusion request in an expiry review is whether the domestic industry would be worse off in the next 18 to 24 months than it was during the period of review if the exclusion were granted. If, after five years of protection against injurious dumping and subsidizing (which includes the period of review), the domestic industry has not produced the product in question or a substitutable product, it is difficult to understand how it would be injured if it fails to sell the product or a substitutable product in the 18 to 24 months that follow.

249. With respect to the actual requests for product exclusions that were filed, many involved products for which some form of intellectual property right or protection was claimed. In these instances, the Tribunal considered primarily whether the domestic industry produces products that are substitutable for the products for which exclusions were requested. As the Tribunal indicated in the *Fasteners* remand,<sup>177</sup> the fact that a product is patented does not mean that the Tribunal will automatically grant an exclusion and that, even though a patented product may have certain features or physical attributes that make it distinct under patent law, a domestically manufactured product may have the same end uses, fulfill most of the same customer needs and compete in the marketplace with the patented product. The Tribunal is of the view that this reasoning is equally applicable to other forms of intellectual property protection, including trademarks.

### **Analysis of Specific Product Exclusion Requests**

250. The Tribunal will now address the product exclusion requests pertaining to the subject carbon steel screws that it received from each of the 9 parties indicated above.

#### **Bombardier**

251. Bombardier filed two requests for product exclusions, only one of which pertained to the subject carbon steel screws. This request was for screws imported under tariff item No. 9973.00.00 for use in the manufacture of three-wheeled motorcycles. Bombardier submitted that, after the Tribunal issued its findings in Inquiry No. NQ-2004-005 where exclusions were granted for screws used in the manufacture of snowmobiles, all-terrain vehicles and personal watercraft, it began manufacturing three-wheeled motorcycles. It submitted that the screws used in the manufacture of three-wheeled motorcycles are, for the most part, identical to the screws already excluded. Leland, Visqué and Standard Fasteners consented to Bombardier's product exclusion request.

252. Given Leland, Visqué and Standard Fasteners' consent, and the fact that the screws covered by the present request are in fact the same as the ones which were previously excluded, the Tribunal considers that the granting of Bombardier's product exclusion request is not likely to be injurious to the domestic industry. For these reasons, the Tribunal grants an exclusion for screws imported under tariff item No. 9973.00.00 for use in the manufacture of three-wheeled motorcycles.

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177. (26 September 2006), NQ-2004-005R (CITT) at 3 [*Fasteners Remand*].

CTC

253. CTC requested an exclusion for the subject goods that are, at the time of importation, specially packaged for retail sale to consumers for home repairs and maintenance. CTC submitted that the packages are usually plastic containers which have a CTC stock keeping number and UPC barcode printed on them and which include pre-determined and limited quantities of screws, nuts and bolts.

254. As a basis for its request, CTC submitted that the packaging performed prior to importation adds considerable value to the goods, so as to make them different products for sale to retail consumers and not fasteners that are for use in industry or larger scale applications. It submitted that Leland has made no effort to enter the retail market segment in the last five years and has provided no evidence which indicates that it is able to supply the wide range of fasteners in very small numbers per package that CTC requires or that it is able to supply the integral services that CTC requires for its retail program. It further submitted that there is no evidence that, by allowing the requested exclusion, it would be easy to circumvent the Tribunal's order. In its view, there would simply be no benefit to be gained in pulling apart the costly retail packaged fasteners to use them in the industrial or commercial segment of the market. As for the invoices filed by Leland, Visqué and Standard Fasteners, CTC submitted that they were not for products packaged and prepared for retail sale to consumers for home repairs and maintenance in accordance with CTC's requirements.

255. Leland, Visqué and Standard Fasteners opposed the request on the basis that CTC did not identify the precise type of the subject goods for which the request is filed. They submitted that CTC's claim that goods should be excluded because they are put in packages or boxes is untenable, given that packaging does not change the essential character of the goods. They added that there is nothing in the requests that suggests that packaged screws are not the same as domestically produced screws or used in special applications such that they would not cause injury to the domestic industry. They also noted that industry witnesses did testify at the hearing that their goods are sold through various trade channels, including by their distributors, into the retail segment.

256. The Tribunal notes that CTC's product exclusion request does not allege that the domestic industry does not produce screws that are similar to those which are packaged for CTC. CTC's request simply questions whether the domestic industry sells pre-packaged screws prepared for retail sale to consumers for home repairs and maintenance. The Tribunal notes that Leland's product literature clearly indicates that it does offer packaging programs where screws can be packaged in various containers, including "clam shells" and plastic bags.<sup>178</sup> While this, in itself, does not constitute evidence of actual production, Mr. Nelson did testify that Leland sells bulk or pre-packaged screws to distributors that, in turn, may package the screws and sell them into a wide range of areas, including at the retail level.<sup>179</sup> Similarly, Mr. Ryan testified that Visqué supplies distributors in the Canadian marketplace that package the screws and sell them to retailers.<sup>180</sup>

257. The evidence on the record does not indicate that such packaged screws do not compete with the products for which CTC requested exclusions. Moreover, the Tribunal notes that there is no requirement in *SIMA* that injury to the domestic industry only occur at a specific trade level or at the same trade level at which products for which exclusions have been requested are sold. In the present circumstances, the Tribunal believes that the granting of CTC's product exclusion request would likely be injurious to the domestic industry, with such injury manifesting itself in the form of lost sales to distributors. For these reasons, the Tribunal denies CTC's product exclusion request.

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178. Tribunal Exhibit RR-2009-001-42.01, Administrative Record, Vol. 1.5C at 328.

179. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 519-21.

180. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 520-21.

Chaen Wei

258. Chaen Wei requested an exclusion for carbon steel tapping screws which it described as follows: “Multi-Mate Fasteners (incl. Backer On as brand name): Phillips (or Square) drive Wafer (or Double Countersunk or Pan) Head Tapping Screws with Saw-Toothed Threads and Gimlet Point.”<sup>181</sup> Chaen Wei submitted that the request concerns a patented product and that its customer, the ITW Group (ITW), is the one that owns the patent. It further submitted that, since the agreement that it has in place with ITW prohibits it from selling the product to companies other than ITW’s sister companies, there is no reason why importations of this product should cause injury to the domestic industry.

259. Leland, Visqué and Standard Fasteners opposed the request on the basis that there is nothing unique about this product in terms of application and that nothing differentiates these tapping screws from the same category of goods made by the domestic industry. They submitted that the fact that this product is made under patent is irrelevant, given that these types of goods (i.e. tapping screws used in the construction industry) are one of the main product lines made by Leland, Visqué and Standard Fasteners. They added that, even if patented, the product for which an exclusion is requested is completely substitutable for domestically produced tapping screws.

260. The Tribunal notes that, while Chaen Wei argued that importations of the product for which it requested an exclusion should not cause injury to the domestic industry, it did not provide any evidence which would suggest that goods produced by the domestic industry are not substitutable for this product. However, Leland’s invoices do provide evidence that Leland produces and sells similar goods.<sup>182</sup> Consequently, the Tribunal is of the view that imports of the product for which Chaen Wei requests an exclusion would likely be injurious to the domestic industry. As such, the Tribunal denies Chaen Wei’s product exclusion request.

GRK

261. GRK filed 19 requests for product exclusions, of which 13 pertained to the subject carbon steel screws. These 13 requests were for products that were identified primarily by their trademarked names: R4™, Pan™ Head, RSS™ Rugged Structural, Cabinet™, FIN/Trim™, MSS™ Zip Tip, MSS™ Drill Tip, RT Composite™ Trim™, Vinyl Window™, Caliburn™, Kameleon™, White FIN/Trim™ and White RT Composite™ Trim™. GRK also provided a more general description that applied to all 13 products (i.e. the identical description for each product). It reads as follows:

... A screw which is not a standard product and for which technical drawings are required to manufacture the screw because at least one feature of the screw is custom or proprietary in nature and is not set out in any industry publication for standard products (such as the IFI Handbook or American National Standards Institute publications).<sup>183</sup>

262. As a basis for its requests, GRK submitted that these products, or comparable products, are not available from domestic producers. It submitted that, since its trademarked and patented products are priced much higher than standard screws produced by the domestic industry, are not competing in the same market segment and are sold only in small quantities in Canada, they should not cause injury to the domestic industry.

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181. Tribunal Exhibit RR-2009-001-40.02, Administrative Record, Vol. 1.5 at 50.

182. See, for example, product line numbers 3260 to 3263 and sample invoice number 3261 at Tribunal Exhibit RR-2009-001-42.01C, Administrative Record, Vol. 1.5E at 71, 245.

183. Tribunal Exhibit RR-2009-001-40.05, Administrative Record, Vol. 1.5 at 146.

263. It further submitted that Leland, Visqué and Standard Fasteners' response to the product exclusion requests failed to include any evidence to substantiate their claims that they produce, or have the capability to produce, identical or substitutable goods. With respect to the Leland invoices, GRK submitted that these were inadequate because, among other things, they pertained to non-subject goods, to goods shipped outside of Canada or goods that are not substitutable for the products for which GRK requested exclusions.

264. Leland, Visqué and Standard Fasteners opposed all 13 requests on the basis that these products are substitutable for domestically produced goods and are for use in the same standard applications, such as decks, fences and general construction. They submitted that screws are essentially a commodity product and that slight differences in drive configuration, threads and other features do not alter the fact that they are all for use in standard applications.

265. They further submitted that GRK's requests did not comply with the Tribunal's instructions, as they each pertained to more than one category of screws and failed to provide generic descriptions for the products. Leland invoices also provided evidence of production for a variety of screws from a range of categories. In the view of Leland, Visqué and Standard Fasteners, these screws are fully substitutable for the products for which GRK requested exclusions.

266. The Tribunal notes that, since all the products for which GRK has requested exclusions possess at least one patented feature, the domestic industry cannot, without infringing patent law, manufacture identical products.

267. Therefore, the question that must be answered is whether the domestic industry produces products that are substitutable for the products for which exclusions were requested. Based on the evidence before it, the Tribunal is of the view that it does not. In the Tribunal's opinion, the products which are the subject of the exclusion requests are high performance, high-end products, which are sold at significantly higher price points than the products identified as comparable by the domestic industry.

268. The information submitted by GRK for each of its requests,<sup>184</sup> which included detailed product characteristics and promotional materials, as well as Mr. Walther's testimony,<sup>185</sup> indicates that the products for which GRK requests exclusions are high-end products that possess innovative features and that perform at a higher level than standard screws. According to Mr. Walther, GRK does not design or sell base commodity products.<sup>186</sup> It caters to the high-end market, e.g. building professionals such as custom home builders, where it does not encounter any of the domestic producers.<sup>187</sup>

269. Mr. Walther testified that GRK has the most expensive products in the market, which, in some cases, are as much as 300 percent higher priced than other similar products.<sup>188</sup> At the hearing, GRK was asked by the Tribunal to provide approximate Canadian selling prices (without taking into account the application of anti-dumping and countervailing duties) for some of the products for which it requested exclusions.<sup>189</sup> Leland was then asked to provide approximate Canadian selling prices of goods which it considered comparable to, or substitutable for, those same products.<sup>190</sup> On the basis of this information, which was adjusted for comparison on a dollars per pound basis, it is clear that GRK's products are sold at significantly higher prices than what are alleged to be comparable goods sold by Leland.

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184. See, generally, Tribunal Exhibit RR-2009-001-40.05, Administrative Record, Vol. 1.5.

185. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 355, 390, 394.

186. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 377.

187. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 420, 433, 436, 438, 459-60.

188. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 377, 438, 442-45.

189. *Transcript of In Camera Hearing*, Vol. 3, 18 November 2009, at 209-15.

190. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 531-37.

270. In the *Fasteners Remand*, the Tribunal maintained its prior decision not to grant similar product exclusion requests filed by GRK. It found that “. . . the evidence did not indicate that the products for which GRK is seeking exclusions were so specialized or served such distinct markets that they did not compete with the products offered by the domestic producers. . . .”<sup>191</sup> However, the Tribunal now has more evidence at its disposal. On the basis of this evidence, it has come to a different conclusion.

271. Considering Leland, Visqué and Standard Fasteners’ arguments to the effect that the applications in which GRK’s screws and certain domestically produced screws are used are the same, the Tribunal is of the view that the products for which GRK requests exclusions perform at a higher level, are aimed at a different market and cost significantly more than domestically produced screws. In light of the foregoing, the Tribunal considers that the granting of GRK’s product exclusion requests is not likely to be injurious to the domestic industry. It therefore grants exclusions for the 13 products covered by GRK’s product exclusion requests.

272. The Tribunal notes that its “Product Exclusion Request Form” clearly asked that parties requesting product exclusions provide a proposed generic description of the products for which the requests were made. This reflects the Tribunal’s established view that any exclusion to an order or finding should normally be defined as generically as possible to avoid potential trade distortions and unfair competitive advantages.<sup>192</sup> However, in all of its requests, GRK simply stated that there was no generic description for a patented product and instead opted to rely on the trademarked names. It also provided a more general description, which was identical for all 13 products, as already noted above.

273. The Tribunal is of the view that these are inadequate responses to its request for generic product descriptions, as they are either too narrow, and thus create possible unfair competitive advantages, or too broad, and thus allow for the possibility of injury to the domestic industry. In these circumstances, the Tribunal has drafted its own generic descriptions of the products, based on the information on the record. These descriptions are found in the appendix to the Tribunal’s order.

### Hilti

274. Hilti requested exclusions for two types of carbon steel tapping screws, which it described as follows: (1) sharp-pointed interior finish screws, including drywall screws (framing and fastening of various materials to wood and steel frame); and (2) self-drilling interior finish screws, including drywall screws (framing and fastening of various materials to wood and steel frame). At the hearing, one of the witnesses for Hilti amended the scope of both requests by reducing the range of diameters and lengths covered and eliminating a driver type and a particular finish.<sup>193</sup> During argument, Hilti confirmed these amendments and made a further amendment by changing the wording of the generic descriptions of the products for which exclusions are sought, which now read as follows: (1) sharp-pointed drywall screws; and (2) self-drilling drywall screws.<sup>194</sup>

275. In support of its requests, Hilti submitted that the products for which it seeks exclusions will not cause injury to the domestic industry because, on the evidence before the Tribunal, (1) the domestic industry does not produce the particular products for which the exclusions are requested, (2) the domestic industry does not produce substitutable products or products that compete at the same level of trade or through the

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191. *Fasteners Remand* at para. 20.

192. See *Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (17 January 2003), RD-2002-003 (CITT) at 3.

193. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 464.

194. *Transcript of Public Argument*, Vol. 1, 19 November 2009, at 17, 18.

same channels of distribution, (3) the domestic industry is not an “active supplier” of the products, and (4) even if the domestic industry has the capability of producing the products, it has not done so during the last five years nor has it shown any indication of an imminent intention to do so in the near or foreseeable future. Hilti added that, while one invoice submitted by Leland makes reference to drywall screws, it appears that these screws have both a “Quadrex” drive and high corrosion-resistant finish, both characteristics that are outside the scope of its requests.

276. Leland, Visqué and Standard Fasteners opposed the requests on the basis that these products are standard kinds of screws that are within a category of self-tapping screws that they produce and are capable of producing. They submitted that Leland’s wood screws, and self-tapping and self-drilling products are used or capable of being used in the same applications as Hilti’s products. They further submitted that the issue is not one of precise dimensions or specifications, but one of substitutability. In this respect, they submitted that the evidence demonstrates that the drywall screws for which Hilti requested exclusions are used and capable of being used in numerous other standard fastening applications in the same way as tapping screws or self-drilling screws made by Leland on a substantial and ongoing basis.

277. The Tribunal notes that Hilti does not contest the fact that the domestic industry has the capability to produce the products for which Hilti has requested exclusions.<sup>195</sup> However, based on the evidence on the record, the Tribunal is of the view that the domestic industry does not currently produce goods that are either identical to or substitutable for the products for which exclusions are requested. In fact, there is correspondence on the record in which Leland acknowledges that it and other North American fastener manufacturers were driven out of the drywall screw market 20 years ago.<sup>196</sup>

278. Although Leland did provide one invoice which specifically mentions drywall screws, these particular screws have a different drive, dimensions and finish from those of the drywall screws which are the subject of the exclusion requests.<sup>197</sup> As discussed below, there is compelling evidence to the effect that the screws that appear in the above-mentioned invoice are not the types of screws regularly used by interior finishing contractors.

279. The Tribunal has considered carefully Leland, Visqué and Standard Fasteners’ submissions concerning capability to produce, but, as indicated above, the domestic industry’s capability to produce is a much less relevant consideration in the context of an expiry review, which takes place after protective measures have been in place for five years and, in this case, in the absence of production during this time.

280. Leland, Visqué and Standard Fasteners argued that Leland’s wood screws, along with self-tapping and self-drilling products, are currently used, or at least could be used, in the same applications as Hilti’s products. However, Mr. Aaron Heilbrun testified that interior finishing contractors that purchase drywall screws are not willing to accept screws which fall outside the specifications of the products for which exclusions are requested because they may cost more, require more force to insert, require equipment that is not standard in the drywall industry and generally prevent them from doing their work quickly and consistently.<sup>198</sup> According to Mr. Heilbrun, the screws produced by Leland, including the “drywall screws” that were mentioned on the invoice provided by Leland, do not fall within those specifications.<sup>199</sup>

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195. *Transcript of Public Hearing*, 18 November 2009, at 488-89.

196. Tribunal Exhibit RR-2009-001-44.01, Administrative Record, Vol. 1.5D at 11.

197. See sample invoice number 3575 at Tribunal Exhibit RR-2009-001-42.01C, Administrative Record, Vol. 1.5E at 262; *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 469-70.

198. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 469-70, 498-99, 510-11.

199. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 511.

281. The Tribunal accepts Mr. Heilbrun's testimony in this respect and concludes that the products for which exclusions are requested are mostly intended to be used by a very specific segment of the market, by very specific trades people, in very specific applications (i.e. drywall installation), often with very specific equipment.

282. Concerning Leland, Visqué and Standard Fasteners' argument that drywall screws for which Hilti requested exclusions are used and capable of being used in other standard fastening applications in competition with Leland's products, the Tribunal accepts Mr. Heilbrun's testimony that Hilti's drywall screws could be used in other applications, but that this may not work well.<sup>200</sup> Thus, the Tribunal is of the view that the use of such screws in other applications will be minimal at most.

283. In light of the foregoing, the Tribunal considers that the granting of Hilti's product exclusion requests is not likely to be injurious to the domestic industry. It therefore grants exclusions for sharp-pointed drywall screws and self-drilling drywall screws that fall within the parameters identified in the appendix to the Tribunal's order.

#### Robertson

284. Robertson filed two requests for product exclusions that pertain to the subject carbon steel screws. These two requests were for products described as follows: (1) Robertson® Drive fasteners for use with Robertson® Drive products; and (2) Recex® Drive fasteners for use with Robertson® Drive products.

285. As a basis for its requests, Robertson submitted that the Robertson® Drive fasteners and Recex® Drive fasteners are niche and specialized products, sold at premium prices, which are used exclusively with the Robertson® Drive products. It submitted that, since the products are proprietary to Robertson, they cannot be manufactured by the domestic industry. It further submitted that the goods produced by Leland are not substitutable for Robertson's products.

286. Leland, Visqué and Standard Fasteners opposed the requests on the basis that these products are nothing more than run-of-the-mill screws with Robertson® (i.e. square recessed) and Recex® (i.e. Quadrex or square/Phillips combination) drives made for the building, construction and furniture industries. They submitted that these products are no different in application than screws with a slotted, Phillips, star-shaped or other type of drive that can be purchased at any hardware store or retail building supplier. They further submitted that, while the products are sold under Robertson trade names, the fact remains that they are standard screws that compete directly in the marketplace with a whole range or category of screws made by the domestic industry.

287. The Tribunal is of the view that Robertson has failed to substantiate its claim that the goods produced by the domestic industry are not substitutable for the products for which it requests exclusions.

288. In the Tribunal's view, the evidence on the record does not indicate that these trademarked products are so specialized that they do not compete with the goods produced by the domestic industry. Testimony from witnesses for Leland and Visqué made it clear that they regularly produce screws with a square-recessed drive or a combination square/Phillips drive that are fully substitutable for Robertson's products.<sup>201</sup> Consequently, the Tribunal is of the view that imports of the products for which Robertson requests exclusions would likely be injurious to the domestic industry. Therefore, the Tribunal denies Robertson's product exclusion requests.

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200. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 499-504.

201. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 517-19.



Spaenaur

289. Spaenaur filed three requests for product exclusions, which pertained to the subject carbon steel screws. These three requests were for products described as follows: (1) square and hex lag screws; (2) thread rolling screws; and (3) self-drilling tapping screws.

290. As a basis for its requests, Spaenaur submitted that these products are not available from domestic producers in the quantities required by its customers. It submitted that, since its Canadian sales for the products for which it requests exclusions are insignificant compared to the market as a whole, the granting of its requests should not cause injury to the domestic industry. It also submitted that the Leland invoices should be rejected because they either relate to sales made outside Canada or do not relate to the sale of products similar to those for which exclusions are requested.

291. Leland, Visqué and Standard Fasteners opposed the requests on the basis that these products are standard items in the same category of screws listed in the Tribunal's findings in Inquiry No. NQ-2004-005 and regularly made by the domestic industry. They submitted that the materials that were filed, which include sample invoices, product catalogues and tooling lists, clearly demonstrate their current and potential production of screws within the categories covered by Spaenaur's product exclusion requests.

292. With respect to the invoices, Leland, Visqué and Standard Fasteners submitted that these were meant to be indicative and not exhaustive of Leland's production. The invoices were said to be only a sample of larger production. Regarding Spaenaur's argument that the products are not available from domestic producers in the desired quantities, they submitted that this is an irrelevant consideration because the Tribunal has previously confirmed that the domestic industry is not obliged to supply the entire or even a major part of the market.

293. The Tribunal is of the view that Spaenaur has not provided sufficient evidence to demonstrate that the domestic industry does not produce the products for which it has requested exclusions or substitutable products.

294. Firstly, the Tribunal notes that Spaenaur's requests simply covered broad categories of the subject goods, which were specifically listed in List A2 to the Tribunal's findings in Inquiry No. NQ-2004-005. Spaenaur did not attempt to identify distinct characteristics or attributes that make the products distinguishable from goods produced by the domestic industry.

295. In addition, while Spaenaur argued that the products for which it requests exclusions are not available, or are not available in the quantities required by its customers, it provided no evidence that it attempted to purchase these products from domestic producers. Instead, it simply stated that it had not been approached by either Leland or Standard Fasteners.<sup>202</sup> On the other hand, Mr. Nelson did testify that Leland produces the same goods as those for which exclusions are requested and that it competes with Spaenaur in the marketplace.<sup>203</sup> Moreover, the Tribunal notes that, in addition to the invoices filed in response to Spaenaur's requests, Leland, Visqué and Standard Fasteners filed, as part of their response to the product exclusion requests, invoices representing broad categories of screws produced by Leland, which coincide with the categories covered by Spaenaur's requests.<sup>204</sup>

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202. Tribunal Exhibit RR-2009-001-40.06, Administrative Record, Vol. 1.5B at 7, 13, 19.

203. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 516.

204. Tribunal Exhibit RR-2009-001-43.01 (protected), Administrative Record, Vol. 2.5E at 206.

296. For all these reasons, the Tribunal is of the view that imports of the products for which Spaenaur requested exclusions would likely be injurious to the domestic industry. Therefore, the Tribunal denies Spaenaur's product exclusion requests.

Starborn

297. Starborn filed one request for a product exclusion, which pertained to the subject carbon steel screws. This request was for a product described as follows: "Carbon steel deck fasteners with transverse threads (threads are cut both clockwise and counter-clockwise and augur point) for composite decks, powder coated to match the type of composite decking material."<sup>205</sup>

298. As a basis for its request, Starborn submitted that its trademarked product is unique and designed for a niche market of high-end deck builders that require the highest quality deck screws in head colors that precisely match the decking material used. It submitted that it has not been able to find a similar product in Canada and that, while Leland does produce basic deck screws for use with pressure-treated wood, these screws are not specifically designed to be used in composite decking materials nor are they powder-coated in the specific colors that match each of the decking materials available on the market.

299. Leland, Visqué and Standard Fasteners opposed the request on the basis that this product is the same kind of standard wood screw that they produce and that is used in the same applications (i.e. deck fasteners). They submitted that the only distinguishing feature is that the product is trademarked by Starborn. In their view, this is irrelevant, as domestically produced wood screws are within the same category of goods and fully substitutable for this product. They added that, even if the wood screws and decking screws produced by Leland do not have exactly the same colour coating or thread configuration as the product for which an exclusion is requested, they are nonetheless fully substitutable for this product.

300. The Tribunal is of the view that Starborn has failed to provide sufficient evidence to demonstrate that the goods produced by the domestic industry are not substitutable for the product for which it requests an exclusion. In particular, it failed to convince the Tribunal that its products, by virtue of their price and quality, are used only by high-end deck builders.

301. The evidence on the record clearly indicates that Leland does possess the necessary equipment to powder coat its screws and that it does offer this service, in a large number of colours.<sup>206</sup> Further, when asked at the hearing if Leland produced screws like those for which Starborn requests an exclusion, Mr. Nelson responded that not only does it produce the product but it also does the colour coating.<sup>207</sup> Mr. Nelson also stated that Leland does produce special screws for the composite deck industry.<sup>208</sup> In light of the foregoing, the Tribunal is of the view that imports of the product for which Starborn requests an exclusion would likely be injurious to the domestic industry. For these reasons, the Tribunal denies Starborn's product exclusion request.

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205. Tribunal Exhibit RR-2009-001-40.09, Administrative Record, Vol. 1.5B at 122.

206. Tribunal Exhibit RR-2009-001-06.02 (protected), Administrative Record, Vol. 2.1A at 125; Tribunal Exhibit RR-2009-001-42.01, Administrative Record, Vol. 1.5C at 329; *Transcript of Public Hearing*, Vol. 1, 16 November 2009, at 26, 27.

207. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 515-16.

208. *Transcript of Public Hearing*, Vol. 3, 18 November 2009, at 526.

Zyh Yin

302. Zyh Yin requested exclusions for two types of carbon steel wood screws, which it described as follows: (1) higher fastening screw; and (2) screw for use in non-metal objects. Zyh Yin submitted that both requests concern products for which it has filed patent applications in Canada. It submitted that, since these products are proprietary and cannot be manufactured by the domestic industry without infringing patent law, it is unlikely that importations of the products will cause injury to the domestic industry.

303. Leland, Visqué and Standard Fasteners opposed the requests on the basis that the products, which are wood screws for use in standard construction applications, are completely substitutable for domestically produced wood screws. They submitted that there is nothing special about these products and that they produce similar products that are used in identical applications.

304. The Tribunal notes that, while Zyh Yin argued that importations of the products for which it requested exclusions were unlikely to cause injury to the domestic industry, it did not provide any evidence which would suggest that goods produced by the domestic industry are not substitutable for these products. On the other hand, Leland, Visqué and Standard Fasteners did provide evidence that they do produce and sell similar goods.<sup>209</sup> Consequently, the Tribunal is of the view that imports of the products for which Zyh Yin requests exclusions would likely be injurious to the domestic industry. Therefore, the Tribunal denies Zyh Yin's product exclusion requests.

**CONCLUSION**

305. Pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its finding concerning certain carbon steel fasteners, originating in or exported from China and Chinese Taipei, excluding the products described in the appendix.

306. Pursuant to subparagraph 76.03(12)(a)(ii) of *SIMA*, the Tribunal hereby rescinds its finding concerning certain stainless steel fasteners originating in or exported from Chinese Taipei.

Ellen Fry

Ellen Fry  
Presiding Member

Serge Fréchette

Serge Fréchette  
Member

Jason W. Downey

Jason W. Downey  
Member

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209. See, for example, sample invoice number 3246 at Tribunal Exhibit RR-2009-001-42.01C, Administrative Record, Vol. 1.5E at 242.