



Ottawa, Wednesday, December 10, 1997

Review No.: RR-97-003

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on December 11, 1992, in Inquiry No. NQ-92-002, concerning:

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

ORDER

The Canadian International Trade Tribunal, under the provisions of subsection 76(2) of the *Special Import Measures Act*, has conducted a review of its finding made on December 11, 1992, in Inquiry No. NQ-92-002.

Pursuant to subsection 76(4) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues, without amendment, its finding concerning bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Taiwan and the People's Republic of China, excluding bicycles with an FOB Taiwan or People's Republic of China selling price exceeding CAN\$325. The Tribunal also continues its finding concerning bicycle frames originating in or exported from the aforementioned countries, with an amendment to exclude bicycle frames with an FOB Taiwan or People's Republic of China selling price exceeding CAN\$100.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Raynald Guay

Raynald Guay
Member

Patricia M. Close

Patricia M. Close
Member

Michel P. Granger

Michel P. Granger
Secretary

The Statement of Reasons will be issued within 15 days.



Ottawa, Wednesday, December 24, 1997

Review No.: RR-97-003

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

Special Import Measures Act - Whether to rescind or continue, with or without amendment, the finding made by the Canadian International Trade Tribunal on December 11, 1992, in Inquiry No. NQ-92-002.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: October 15 to 17 and 20, 1997
Date of Order: December 10, 1997
Date of Reasons: December 24, 1997

Tribunal Members: Arthur B. Trudeau, Presiding Member
Raynald Guay, Member
Patricia M. Close, Member

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Paul M. Lalonde
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for Canadian Bicycle Manufacturers Association
Raleigh Industries of Canada Limited
Groupe Procycle Inc.
Victoria Precision Inc.

Steve Kushneryk
BKH Summit Distributors

(Domestic Manufacturers)

Darrel H. Pearson
Jeffery D. Jenkins
Peter Collins
for Retail Council of Canada

Peter Clark
Chris Hines
Sui-Yu Wu
for Taiwan Bicycle Exporters' Association

James P. McIlroy
for Canadian Association of Specialty Bicycle
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Paul K. Lepsoe
for Specialized Bicycle Components Canada, Inc.

Greg A. Tereposky
Serge L. Fréchette
for Dynacraft Industries, Inc.
Shun Lu Bicycle Company

Shen Miaosen
Chen Yi
Shanghai Forever Bicycle Co., Ltd.

Dennis R. Abbas
CSA Canada

(Importers/Exporters/Others)

Witnesses:

Raymond Dutil
President
Groupe Procycle Inc.

Ephrem Busque
Vice-President - Operations
Groupe Procycle Inc.

Louis Nolet
Controller
Victoria Precision Inc.

Daniel Maheux
Financial Director
Groupe Procycle Inc.

Philip Stanimir
President and Chief Executive Officer
Victoria Precision Inc.

Kenneth B. Morrison
Vice-President, Finance
Raleigh Industries of Canada Limited

Ron Hanson
Vice-President
Sales, Marketing & Distribution
Raleigh Industries of Canada Limited

Jim Wilkinson
Manager
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Raleigh Industries of Canada Limited

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Bicycles & Fitness
Leisure Products Division
Canadian Tire Corporation, Limited

Dennis R. Abbas
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Ottawa, Wednesday, December 24, 1997

Review No.: RR-97-003

IN THE MATTER OF a review, under subsection 76(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on December 11, 1992, in Inquiry No. NQ-92-002, concerning:

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

TRIBUNAL: ARTHUR B. TRUDEAU, Presiding Member
RAYNALD GUAY, Member
PATRICIA M. CLOSE, Member

STATEMENT OF REASONS

BACKGROUND

This is a review, under subsection 76(2) of the *Special Import Measures Act*¹ (SIMA), of the finding made by the Canadian International Trade Tribunal (the Tribunal) in Inquiry No. NQ-92-002,² concerning bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, and frames thereof, originating in or exported from Taiwan and the People's Republic of China (China), excluding bicycles with an FOB Taiwan or China selling price exceeding CAN\$325.

Pursuant to subsection 76(2) of SIMA, the Tribunal initiated a review of the finding and issued a notice of review³ on May 15, 1997. This notice was forwarded to all known interested parties.

As part of this review, the Tribunal sent comprehensive questionnaires to Canadian manufacturers, importers and purchasers of the bicycles and frames under review. Questionnaires were also sent to the Embassy of the People's Republic of China, the Taipei Economic and Cultural Office and the Taiwan Bicycle Exporters' Association (TBEA). From the replies to these questionnaires and other sources, including the Department of National Revenue (Revenue Canada) and Statistics Canada, the Tribunal's research staff prepared public and protected pre-hearing staff reports. In addition, parties exchanged interrogatories with respect to matters relevant to the review.

The record of this review consists of all Tribunal exhibits, including the finding in Inquiry No. NQ-92-002. Also included in the record are the notice of review, the public and protected replies to the questionnaires for the 1997 review, the public and protected pre-hearing staff reports for the 1992 inquiry and the 1997 review, the interrogatories and the public and protected responses thereto. All public exhibits were made available to interested parties, while protected exhibits were provided only to independent counsel who had filed a declaration and undertaking with the Tribunal.

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1. R.S.C. 1985, c. S-15.
 2. *Finding*, December 11, 1992, *Statement of Reasons*, December 29, 1992.
 3. *Canada Gazette* Part I, Vol. 131, No. 21, May 24, 1997, at 1589.

Public and *in camera* hearings were held in Ottawa, Ontario, from October 15 to 17 and on October 20, 1997.

The Canadian Bicycle Manufacturers Association (CBMA) and its member companies, Groupe Procycle Inc. (Procycle), Raleigh Industries of Canada Limited (Raleigh) and Victoria Precision Inc. (Victoria), were represented by counsel at the hearing. Parties submitted evidence and counsel made arguments in support of continuing the finding.

The Retail Council of Canada (Retail Council), the TBEA, the Canadian Association of Specialty Bicycle Importers (CASBI), Specialized Bicycle Components Canada, Inc. (Specialized) and Dynacraft Industries, Inc. and Shun Lu Bicycle Company (Dynacraft/Shun Lu) were represented by counsel at the hearing. Parties submitted evidence and counsel made arguments in support of rescinding the finding.

CSA Canada attended the hearing, submitted evidence and made arguments in support of excluding the "autobike" from the finding if it were continued.

PRODUCTS

The products that are the subject of this review are bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, and frames thereof, originating in or exported from Taiwan and China. Bicycles with an FOB Taiwan or China selling price exceeding CAN\$325 were excluded from the finding.

DOMESTIC PRODUCERS

The three largest domestic producers of bicycles are Procycle, Raleigh and Victoria. As indicated above, they are members of the CBMA. These firms produce bicycles for market sales, as well as frames for their own production of bicycles. Each of these companies markets brand-name and private-label bicycles to the retail industry.

In addition to the members of the CBMA, there are several smaller producers of bicycles. Some of these smaller producers manufacture frames for market sales, as well as for their own production of bicycles.

Procycle

Procycle is a Canadian corporation with its manufacturing facility and head office in Saint-Georges, Beauce, Quebec. It is a wholly owned subsidiary of Gestion Pro-Vélo Inc. Procycle began assembling bicycles in 1971. In 1977, it began manufacturing its own frames. In 1982, Procycle acquired the rights to the CCM brand. Currently, the company markets its products under the brand names Oryx, Mikado, Peugeot, Vélo Sport and CCM through independent dealers, mass merchandisers and buying groups. In July 1997, Procycle acquired Rocky Mountain Bicycle Co. Ltd. (Rocky Mountain).

Raleigh

Raleigh is part of the worldwide Raleigh organization. The organization has trading/manufacturing operations in seven countries and also maintains distribution and franchise agreements throughout the world. The Raleigh organization is owned by Derby International Corporation S.A., a Luxembourg-based private corporation. Raleigh's head office and a distribution warehouse are located in Oakville, Ontario. The

Canadian company's production facility is in Waterloo, Quebec. Bicycles are the only product manufactured by Raleigh in Canada. The company markets its products through two distribution channels. Raleigh brand names include Raleigh and Triumph which are marketed exclusively through an independent dealer network, while private-label products are sold primarily to mass merchandisers.

Victoria

Victoria is located in Montréal, Quebec. It started in 1941 as a machine shop that produced precision equipment for the war effort. Following the war, it began producing children's tricycles and, some two decades later, children's bicycles. In the early 1980s, the company expanded its production line to include adult bicycles, which have now become its principal product. Victoria markets its bicycles under the brand names Leader, Minelli and Precision through independent dealers, buying groups and mass merchandisers.

Norco Products Ltd.

Norco Products Ltd. (Norco) was founded in 1964 and began manufacturing bicycles at its plant in Langley, British Columbia, in 1977. The company has distribution offices at its head office in Port Coquitlam, British Columbia, and in Woodbridge, Ontario, and Boucherville, Quebec. Norco's products range from low- to high-end mountain bicycles, hybrids, competition bicycles and children's bicycles. Its domestically assembled bicycles are marketed under the brand names Norco, Nishiki and Caribou.⁴ Norco also imports a line of mountain bicycles from Taiwan which are marketed under the brand name Hoffman Bikes.

Rocky Mountain

Rocky Mountain is located in Port Coquitlam. The company was incorporated in 1981 and privately owned until its assets were acquired by Procycle on July 1, 1997. Rocky Mountain specializes in high-end mountain bicycles. Its bicycles are distributed through an exclusive dealer network in Canada.

SUMMARY OF THE FINDING

On December 11, 1992, in Inquiry No. NQ-92-002, the Tribunal found that the dumping in Canada of bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Taiwan and China, excluding bicycles with an FOB Taiwan or China selling price exceeding CAN\$325, had caused, was causing and was likely to cause material injury to the production in Canada of like goods. The Tribunal also found that the dumping in Canada of bicycle frames, originating in or exported from the aforementioned countries, had not caused, was not causing, but was likely to cause material injury to the production in Canada of like goods.

The Tribunal noted a dramatic and rapid shift in market share over the period from 1988 to mid-1992. During that period, the industry's market share fell from 75 to 37 percent, a loss of 38 percentage points, while imports from Taiwan and China nearly tripled and their combined market share increased by 39 percentage points. The evidence showed that increased demand for lower-priced bicycles was met by the subject imports which were concentrated in the highly price-sensitive, low-price segment of the market. The Tribunal found a clear causal link between the dumped imports and the material injury suffered by domestic

4. Norco eliminated the Fiori brand in 1994.

manufacturers in the form of lost sales, market share and revenue, a consequent drop in gross profits and a decline in employment levels. Respecting the future, the Tribunal noted that this was the second inquiry involving the injurious dumping of bicycles from Taiwan, the first finding having been rescinded in 1984.⁵ The Tribunal observed that, after a hiatus of several years with no finding in place, the dumping from Taiwan had resumed. The Tribunal noted that several of the major production facilities in China were financed by Taiwanese capital. Based on the historical record, the Tribunal concluded that, in the absence of a finding of a likelihood of injury, the dumping would continue.

The Tribunal concluded that the future dumping of frames from Taiwan and China could undermine the injury finding respecting bicycles. The Tribunal noted that, in 1977, the Anti-dumping Tribunal (ADT) made a finding of a likelihood of injury respecting imports of frames to ensure that the finding on completed bicycles was not undermined. The Tribunal concluded that this rationale was equally applicable to the case at hand and found a likelihood of injury from the dumping of frames.

The Tribunal excluded bicycles in the high-price segment of the market because it was of the view that material injury had not been suffered in this segment. The exclusion applied to bicycles with an FOB Taiwan or China selling price over CAN\$325 per bicycle. The exclusion did not apply to frames.

POSITION OF PARTIES

Domestic Producers

Counsel for the CBMA argued that the finding should be continued because the evidence demonstrates a likelihood of resumed dumping of the subject bicycles which would be injurious to the domestic producers.

The history of dumping by Taiwan and China in Canada and other countries indicated to counsel for the CBMA a likelihood of resumed dumping. They noted the ADT's finding of material injury against Taiwan and the Republic of Korea (Korea) in 1977 and the ADT's expressed hope when it rescinded the finding in 1984 that the finding would deter the countries in question from such further activity. They submitted that the Revenue Canada enforcement data demonstrated that Taiwan and China have continued to dump in Canada since the 1992 finding. The enforcement data list over 60 companies that have paid in excess of \$10,000 in anti-dumping duties since the finding. As well, counsel noted instances where the circumstances surrounding the importation of certain bicycles and bicycle components suggested a circumvention of the finding by China.⁶

5. *Bicycles, Assembled or Unassembled, and Bicycle Frames, Forks, Steel Handlebars and Wheels (not Including Tires and Tubes), Originating in or Exported from the Republic of Korea and Taiwan*, Anti-dumping Tribunal, Inquiry No. ADT-11-77, *Finding and Statement of Reasons*, November 8, 1977, and Review No. ADT-11B-77, *Review Finding and Statement of Reasons*, February 17, 1984.

6. See *Zellers Inc. v. The Deputy Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-94-351, January 25, 1996; *Paulmar Cycle Inc., Division of Marr's Leisure Holdings Inc. and Marr's Leisure Products Inc. v. The Deputy Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-95-008, November 8, 1996; and *Marr's Leisure Products Inc. v. The Deputy Minister of National Revenue*, Canadian International Trade Tribunal, Appeal No. AP-95-084, November 8, 1996.

With respect to other countries, counsel for the CBMA noted that China was found to be dumping in the European Union, Mexico and the United States, while Taiwan was found to be dumping in Argentina. The European Union expanded its finding against China to include frames because frames were being imported as a means of circumventing its finding against bicycles.

Overcapacity in China and Taiwan also indicated to counsel for the CBMA a likelihood of resumed dumping. In its finding of a likelihood of injury in 1992, the Tribunal referred to the enormous production capacity of China and Taiwan. The same concern exists today, as there is massive world overcapacity, and the dumping in other countries by Taiwan and China suggests that there is overcapacity in the subject countries.

Turning to the issue of likelihood of material injury, counsel for the CBMA noted that the impact of the finding was that imports from Taiwan and China declined dramatically after the finding was issued in 1992, while, at the same time, domestic producers' sales volumes and profits increased. If the finding were rescinded, counsel concluded that sales from Taiwan and China would increase, resulting in a decline in prices that would eliminate the profit of every domestic producer.

Price, in the view of counsel for the CBMA, is critical in the purchasing decisions of buyers. The importers' suppliers make quality bicycles, have good reputations and can deliver on time, which leaves price as the critical element. A change to a lower-priced supplier by a large competitive purchaser would be matched by other buyers. Although there was some preference expressed for Canadian product and a premium has been paid by buyers for domestic bicycles, the premium would not cover the difference in prices if the finding were rescinded and import prices returned to where they were before the 1992 finding. Counsel submitted that price competition is strongest in the low-price segment of the market and held that a price difference of \$10 between domestic and imported adult bicycles at the opening price point would have to be considered by buyers. Price pressures from non-subject countries would increase the vulnerability of the Canadian industry to a resumption of dumping from Taiwan and China.

In addition to the price effects of a resumption of dumping, counsel for the CBMA argued that domestic producers were vulnerable to a decline in profitability due to reduced sales volumes. For example, a loss of 100,000 units, even if there were no price decline, would eliminate industry profits. That such a drop in domestic producers' sales would occur if the finding were rescinded is indicated by the massive shift in sourcing patterns cited in the Tribunal's statement of reasons after provisional anti-dumping duties were imposed in 1992.

Importers/Exporters/Others

Retail Council of Canada

Counsel for the Retail Council argued that the finding on bicycles and frames should be rescinded in its entirety. Domestic producers are not vulnerable to a resumption of dumping because they have won back the confidence of retailers. They have addressed the complaints raised during the 1992 inquiry regarding product, customer relations, service, responsiveness to specifications or needs of retailers, and capacity constraints on supply. Since the finding, domestic producers have made many investments and improvements, including robot MIG and TIG welding equipment, laser tube-cutting machines, powder painting and other new painting techniques, computer-controlled production equipment and computer-aided design, improved quality inspection, and ISO certification and product innovations.

Counsel for the Retail Council submitted that the major mass merchandisers do not represent a potential loss of sales volume of any significant magnitude. These merchandisers would not readily switch from domestic to imported bicycles for a price difference of \$10 per unit on adult models without considering a range of non-price considerations that affect the purchasing decision. Although the mass merchandisers are continuing to import, the imports are at normal values and largely of children's bicycles. Moreover, the decline in the Canadian dollar relative to the US dollar in recent years has reduced the interest of Canadian retailers in purchasing in Taiwan and China. The evidence that price quotes by factories in China are the same whether or not they have normal values indicates that prices will not fall if the finding is rescinded.

The situation at Canadian Tire Corporation, Limited (Canadian Tire), Wal-Mart and Zellers Inc. (Zellers) was reviewed by counsel for the Retail Council. These firms account for the bulk of the purchases at the mass merchandiser trade level. They will be selling bicycles year-round, thereby raising prospects for increased sales for domestic producers. Raleigh's increased capacity will allow it to supply both Zellers and Wal-Mart with additional volumes. Zellers has an excellent relationship with Raleigh. Wal-Mart has a "Buy Canadian" policy. Canadian Tire has partnered with Procycle for the CCM brand and is expected to give Procycle a large amount of the Supercycle business so as to keep Procycle viable and ensure the future of Canadian Tire's access to the CCM brand.

Counsel for the Retail Council argued that there have been a number of changes to the market for bicycles since the finding which reduce the vulnerability of domestic producers. These changes include: (1) a shifting of the market to better quality bicycles, which has increased demand and allowed higher margins at both the wholesale and the retail levels; (2) reduced demand for in-line skates; (3) an expectation of market growth by producers and retailers; and (4) the entry of Wal-Mart to the market with its "Buy Canadian" policy. In addition, counsel pointed to the ability of domestic producers to compete against low-priced imports from new foreign sources such as Thailand, the Philippines, Malaysia, Indonesia and India.

Counsel for the Retail Council submitted that the Revenue Canada enforcement data do not suggest a likelihood of resumed dumping if the finding is rescinded. The anti-dumping duties paid on imports from Taiwan and China were *de minimis* as a percentage of value for duty or on a dollar-per-unit basis. There were problems obtaining normal values from Revenue Canada, particularly in 1993, which resulted in inadvertent dumping. These problems were largely corrected, which is reflected in the declining anti-dumping duty figures after 1993. Counsel further suggested that US market prices are lower than Canadian prices, yet little or no dumping was found in the US Department of Commerce investigation in 1996.

Further, in respect of the likelihood of resumed dumping, counsel for the Retail Council noted that the US International Trade Commission (USITC) analysis of capacity and utilization in its 1996 investigation respecting China shows that the Chinese producers investigated had high capacity utilization rates. Counsel questioned why Taiwanese producers would dump from Taiwan when they can sell bicycles made in transplanted Taiwanese plants in third countries at cheaper prices.

Taiwan Bicycle Exporters' Association

Counsel for the TBEA argued that the finding should be rescinded with respect to Taiwan. According to counsel, there is no recent evidence to support a continuation of the finding against Taiwan. Argentina's decision is of limited value because it pertains to imports prior to 1994 and was made

unilaterally without an investigation or consultation with Taiwan. More recently, neither the United States nor the European Union included Taiwanese imports in their dumping investigations. In addition, as a result of higher manufacturing costs, some Taiwanese plants have been closed down or have moved abroad, for example, to China and the Philippines, resulting in a reduction in production capacity in Taiwan. Taiwanese manufacturers are wary about making further investments and creating excess capacity because of concerns over dumping allegations. Even if there was excess capacity in China, it is unlikely that it would be used to produce bicycles to dump in the Canadian market, given the increasing demand for bicycles in the Chinese market. Counsel questioned whether the prices of bicycles from Taiwan would fall to the prices of bicycles from Thailand, Indonesia and the Philippines. Counsel also submitted that Taiwan is being forced to produce more sophisticated and expensive bicycles.

The low ratio of fixed to variable costs in the industry, in the view of counsel for the TBEA, removes any incentive for Taiwanese manufacturers to engage in price discounting in order to fill unused capacity if the finding is rescinded. A significant 13.2 percent *ad valorem* duty on the subject imports entering Canada must also be taken into account in this context. With respect to the enforcement data, counsel argued that they show only *de minimis* amounts of dumping. The margins of dumping, as well as the values per unit, are insignificant and can be explained away by a variety of technical reasons. Moreover, the fairly high levels of dumping during the initial period covered by the finding are skewed because Revenue Canada's system to obtain interim normal values did not include the 1993 model year.

With respect to vulnerability of the industry, the evidence points to a healthy industry that has continued to improve its situation since the finding, notwithstanding the presence of very low-priced competition from new low-cost suppliers.

Canadian Association of Specialty Bicycle Importers

Counsel for CASBI argued that the 1992 finding should be rescinded in its entirety or, in the alternative, rescinded with respect to Taiwan. If the Tribunal decides not to rescind the finding, counsel argued that the exclusion price point for bicycles should be lowered from CAN\$325 to CAN\$120 FOB Taiwan or China.

Counsel for CASBI submitted that only *de minimis* amounts of anti-dumping duties have been collected since the finding and that the amount has declined over the last five years. The anti-dumping duties paid reflect difficulties in obtaining normal values in a timely fashion from Revenue Canada, misclassifications and retroactive assessments. The total anti-dumping duties over the five years amounted to about 2 percent of the value for duty of imports. On the alleged attempts to circumvent the finding, counsel argued that no evidence was provided regarding CASBI members and Specialized. Respecting anti-dumping decisions in other countries: (1) only the Argentinian case involved Taiwan; and (2) in the US case, only three of the nine Chinese exporters had "any kind" of dumping margins and these were in the range of 2 to 3 percent.

The improved production, sales, market share and profit performance since the finding demonstrated to counsel for CASBI that the domestic industry has regained its financial health and is no longer vulnerable to a resumption of dumping. The market share of the subject imports declined from 56 percent in 1992 to 20 percent in 1997, while domestic producers gained 26 percentage points, and the share held by non-subject imports grew by 10 percentage points. The resilience of the Canadian producers is also shown by the fact that they have maintained a market share of over 60 percent during the past three years, although the market declined between 1995 and 1997. US producers were shown to have a slightly lower share of the US market between 1992 and 1997, yet the USITC found no injury from dumped Chinese bicycles.

Notwithstanding the decline in Canadian production, the domestic producers have achieved strong and consistent profitability since the finding. Counsel for CASBI submitted that a careful examination of the general, sales and administrative costs and the financial expenses demonstrates an even stronger financial performance for the industry than suggested by the bottom lines.

In assessing the likelihood of injury to domestic producers, counsel for CASBI held that the Tribunal should consider the impact of the following: (1) the 1996 US decision not to impose anti-dumping duties on imports from China removes the possibility of dumped Chinese bicycles being diverted from the United States into Canada; (2) Taiwan is no longer a force in the market for the subject goods, as its share declined from 40 to 7 percent between 1991 and 1997; (3) the growth of low-priced imports from non-subject countries; (4) the CBMA members' high concentration of private-label products in light of the importance of manufacturing internationally known brand names; (5) the domestic producers' failure to increase their exports in spite of excess production capacity; (6) the appreciation of the US dollar, which counsel alleged has increased the protection afforded by the CAN\$325 FOB exclusion price point over the protection afforded five years ago; (7) the protection afforded domestic producers by the 13.2 percent MFN tariff on bicycles, unchanged since 1992 and the low or zero duty on parts that they import; and (8) the concentration of CBMA members' sales of bicycles in the under \$300 retail price segment and the focus on sales of no-name bicycles to mass merchandisers rather than on sales to independent bicycle dealers.

Counsel for CASBI argued that, since the finding, the market has been compartmentalized into two retail price segments: (1) the under \$300 segment, which is the mass market and the focus of domestic producers; and (2) the \$300 to \$800 segment, which is the independent bicycle dealers' (IBD) market and the focus of distributor/importers. Rising costs have led Taiwanese exporters to concentrate on the \$300 to \$800 segment. Thus, counsel argued, the finding should be rescinded with respect to Taiwan or, at a minimum, the exclusion price point should be lowered at the retail level from \$800 to \$300 (or CAN\$120 FOB Taiwan or China).

Specialized Bicycle Components Canada, Inc.

Counsel for Specialized argued that the finding should be rescinded or, in the alternative, the exclusion price point should be lowered to CAN\$225 FOB Taiwan or China.

On the likelihood of resumed dumping from Taiwan, counsel for Specialized argued that the most compelling evidence is that the US dumping investigation respecting imports from China in 1996 was not extended to cover Taiwan, although the United States is a huge market for Taiwanese bicycles. Similarly, the European Union's anti-dumping action against China did not include Taiwan. The Argentinian action was dismissed by counsel, since no translation of the official record was provided. In addition, the presence of excess capacity, in counsel's view, does not automatically lead to dumping and is not evidence of a propensity to dump in the absence of sufficient evidence of dumping in third countries.

Counsel for Specialized submitted that there is considerable evidence by mass merchandisers outlining the benefits of dealing with domestic producers. Moreover, the domestic producers are themselves responsible for any vulnerability, due, in part, to intercorporate transactions and not developing export markets, particularly in the United States where they have a tariff advantage over China and Taiwan.

Counsel for Specialized argued that domestic producers and importers, such as Specialized and members of CASBI, supply completely different market segments. The enthusiasts' segment is characterized by bicycles designed for more rigorous cycling. Suppliers to this market focus on the

promotion of global brand names, and bicycle sales are concentrated in the \$500 to \$800 retail price segment. By comparison, the domestic producers supply the family recreational cycling market segment. They do not promote global brand names, but focus on sales to mass merchandisers that do not sell bicycles that are priced in the \$500 to \$800 retail price segment. As there is no likelihood of injury to producers in the \$500 to \$800 retail price segment, the exclusion price point should be lowered to CAN\$225 FOB.

Dynacraft Industries, Inc. and Shun Lu Bicycle Company

Counsel for Dynacraft/Shun Lu argued that the Tribunal's finding should be rescinded. Alternatively, the finding should be rescinded with respect to bicycles originating in or exported from China.

The evidence, in the view of counsel for Dynacraft/Shun Lu, did not support a finding of a likelihood of resumed dumping of bicycles from China. The Revenue Canada enforcement data established clearly that there was no practice of dumping in Canada. Moreover, among the dumping findings in third countries, the one with the most probative value was that of the United States. In that case, all of the Chinese exporters examined had *de minimis* or close to *de minimis* margins of dumping. The USITC analysis of capacity and utilization in the 1996 investigation indicated that there was no overcapacity problem in China that would lead to dumping. Finally, Canada is a small export market for China, which, considering the proximity to the United States, did not warrant dumping.

Counsel for Dynacraft/Shun Lu also claimed that the evidence did not support a finding that the domestic industry would be materially injured if dumping resumed. Five years of protection allowed the Canadian industry to strengthen its competitive position against the subject imports. Innovations and investments led to increased efficiency and productivity. As a result, the industry increased production and sales, recaptured market share and improved its financial position. In addition, tariff-free access to the US market, starting in 1998, will give Canadian exporters an advantage in that market, thereby reducing their vulnerability and improving their already positive situation. They also pointed to the evidence of the mass merchandisers that: (1) Canadian bicycle producers were competitive and produced bicycles of a high quality; and (2) price was not the only factor determining the source of supply.

PRELIMINARY MATTER

A number of parties that made submissions in response to the Tribunal's notice of expiry made requests which, if granted by the Tribunal, would have had the effect of expanding the coverage of the finding to include bicycles and frames that are not currently subject to anti-dumping duties. Specifically, the Tribunal received requests to amend the finding:

- (1) to include bicycles with wheel diameters exceeding 14 inches;
- (2) to include all bicycles that compete with Canadian-made 16-inch bicycles;
- (3) to include imports of frames from Mexico and Brazil; and
- (4) either to remove the exclusion for imports of bicycles with a selling price exceeding CAN\$325 FOB Taiwan or China or to increase this amount to CAN\$500 or CAN\$600 FOB Taiwan or China.

In its notice of review, the Tribunal requested submissions from parties on the question of whether it had jurisdiction to consider any or all of these requests. After considering those submissions and the responses, the Tribunal issued its reasons for decision on July 3, 1997. The Tribunal found that it did not

have jurisdiction to grant the first three requests, and a majority of the Tribunal decided that it did not have jurisdiction to grant the fourth request in this case. As a preliminary issue at the outset of the public hearing, counsel for the CBMA requested that the Tribunal confirm its view on its jurisdiction. In response, the Tribunal reiterated its decision of July 3, 1997.⁷

ANALYSIS

Section 76 of SIMA provides that, on completion of a review, the Tribunal shall rescind or continue an order or finding, with or without amendment. In making its decision in this matter, the Tribunal must deal with two fundamental questions. It must first determine whether there is a likelihood of resumed dumping, if the finding is rescinded. If the Tribunal finds that there is a likelihood of resumed dumping, it must then determine whether such dumping is likely to cause material injury to the domestic industry.

In this case, there are two preliminary matters that the Tribunal will address before answering these two questions. First, the Tribunal will determine what domestically produced goods are like goods to the subject imports. Second, the Tribunal will determine what is the domestic industry.

Like Goods

Prior to the hearing, the Tribunal asked parties to address the issue of whether domestically produced bicycles with a suggested retail price exceeding \$800 should be considered to be like goods in this review. The Tribunal noted that, as is usual in these circumstances, it would reserve its decision on this matter until after it had received all the evidence and heard argument.

The Tribunal notes that, in the reasons for its 1992 decision in this matter, it stated that, “[g]iven the low volume of sales by the complainants and the low degree of price sensitivity, the Tribunal is of the opinion that material injury has not been suffered in the high price range segment of the market.⁸” The words “material injury has not been suffered in the high price range segment of the market” indicate that the Tribunal considered the high-price segment of the market to be distinct from the lower-priced segment of the market. This distinction is reflected in factors such as the low degree of price sensitivity. In this review, the Tribunal received no indication that this situation has changed. Therefore, the Tribunal is of the opinion that bicycles in the high-price segment of the market are not identical to the subject imports and that they do not have uses and characteristics that closely resemble those of the subject imports. Furthermore, counsel that made submissions concerning this issue, including counsel for the domestic manufacturers, were of the view that domestically produced bicycles in the high-price segment should not be considered like goods in this review.

Consequently, the Tribunal concludes that domestically produced bicycles with wheel diameters of 16 inches and greater and a suggested retail selling price of \$800 and less constitute like goods in this case.

Domestic Industry

It follows that the domestic industry, for purposes of this review, includes domestic producers of bicycles with wheel diameters of 16 inches and greater and a suggested retail selling price of \$800 and less. For the purposes of this review, the domestic industry consists of these companies. The Tribunal received

7. *Transcript of Public Hearing*, Vol. 1, October 15, 1997, at 71.

8. *Supra* note 2, *Statement of Reasons* at 21.

complete financial information concerning sales of bicycles with a suggested retail selling price of \$800 and less from three of these manufacturers, namely, Procycle, Raleigh and Victoria. It also received production and sales information, but not complete financial data, concerning bicycles with a suggested retail selling price of \$800 and less from Norco and Rocky Mountain and some production and sales information from several smaller manufacturers of bicycles. However, the Tribunal notes that the three manufacturers that submitted complete financial data represent the vast majority of the production in Canada of bicycles with wheel diameters of 16 inches and greater and a suggested retail selling price of \$800 and less.

Likelihood of Resumed Dumping

In considering whether there would be a likelihood of resumed dumping if the finding were rescinded, the Tribunal looks at various factors, including the activities of foreign suppliers in Canada during the enforcement of the finding, the activities of exporters in markets other than Canada and the available production capacity of producers in the subject countries.

The evidence indicates that, in the case of exports from both Taiwan and China, numerous exporters have paid anti-dumping duties over the course of the finding. The Tribunal examined the confidential lists of exporters whose sales to Canada have been assessed anti-dumping duties since 1993 and found that over 60 exporters that had sold bicycles and frames to Canada had each been assessed \$10,000 or more in anti-dumping duties.⁹ In total, since 1993, almost \$3 million in anti-dumping duties have been assessed on bicycles and frames imported from Taiwan, while imports from China were assessed over \$1 million.¹⁰

Counsel for the TBEA and counsel for CASBI argued that the anti-dumping duties paid, when expressed as a percentage of the value of the imports or when examined on a per unit basis, were very small. The Tribunal notes that the enforcement data contain only the total volume and value of all imports entered under the applicable classification numbers and the total amount of anti-dumping duties paid. The total volume and value figures contain both the subject goods and non-subject goods. Furthermore, the volume and value figures include not only those goods that were found to be dumped but also those that were not dumped. Therefore, due to the limitations of the data, it was only possible to calculate the absolute minimum margins of dumping that occurred during the term of the finding on either a percentage or a per unit basis. Thus, the Tribunal can only note that anti-dumping duties were assessed over the five-year period, and it takes note of the total amount assessed, which is net of all refunds.

The Tribunal recognizes that, in this case, the incidence of anti-dumping duties being assessed on imports of bicycles and frames from Taiwan and China declined over the term of the finding. However, it remains a fact that anti-dumping duties continue to be assessed on imports from the two countries. Of particular note, during the period between January 1 and July 18, 1997, the latest period for which data are available, imports of the subject bicycles and frames from Taiwan were assessed over \$66,000 in anti-dumping duties, while imports of the subject bicycles and frames from China were assessed over \$122,000 in anti-dumping duties. Thus, the evidence is clear that at least some exporters in Taiwan and China continue to dump the subject bicycles and frames in Canada.

9. Revenue Canada enforcement data, Tribunal Exhibit RR-97-003-4 (protected), Administrative Record, Vol. 2 at 2-9.

10. Revenue Canada enforcement data, Tribunal Exhibit RR-97-003-3A, Administrative Record, Vol. 1 at 143-44.

Bicycles and bicycle parts, including frames, have been the subject of several dumping investigations in other jurisdictions since the Tribunal's 1992 injury finding. With regard to exports from Taiwan, the Tribunal notes that, in 1995, Argentina imposed anti-dumping duties or minimum export prices on shipments of bicycles from that country. While there was much debate about the nature of the action taken by Argentina, it is clear to the Tribunal that the government of Argentina took definitive anti-dumping measures against imports of bicycles from Taiwan.¹¹ Bicycle imports from China into Argentina were also subject to the anti-dumping measures imposed in 1995.¹²

Definitive anti-dumping duties were applied to imports of bicycles from China into the European Union in 1993. Early in 1997, the European Union released the results of an investigation that revealed that bicycle parts and accessories from China had been imported into the European Union in an attempt to circumvent the anti-dumping duties. Consequently, bicycle parts and accessories, including bicycle frames, were added to the products that are subject to the definitive anti-dumping duties in the European Union.¹³

The Tribunal also learned of the imposition of anti-dumping duties on imports of bicycles into Mexico from China. These definitive anti-dumping duties were put in place in 1994.¹⁴

The most recent case concerned imports of assembled or unassembled bicycles, including bicycle frames, into the United States from China.¹⁵ The Tribunal notes that, while the US Department of Commerce found low or zero margins of dumping for the nine exporters whose sales it examined, it did not investigate all Chinese bicycle exporters.¹⁶ Moreover, imports into Canada from these nine exporters, taken together, were assessed almost \$200,000 in anti-dumping duties during the last three years.¹⁷

In light of the foregoing evidence, it is clear to the Tribunal that exports of bicycles and bicycle frames from both Taiwan and China have been subject to definitive anti-dumping actions in other jurisdictions in recent years.

To aid it in its assessment of the likelihood of a resumption of dumping in this review, the Tribunal sent questionnaires to the Taipei Economic and Cultural Office, the TBEA and the Embassy of the People's Republic of China, requesting information concerning the production, sales and capacity of the bicycle and bicycle frame industries in Taiwan and China.

11. World Trade Organization, "Semi-Annual Report Under Article 16.4 of the Agreement - Argentina," September 24, 1996, Tribunal Exhibits RR-97-003-32 and RR-97-003-43, Administrative Record, Vol. 1A at 21-28 and 75-81 respectively.

12. *Ibid.*

13. Manufacturer's Exhibits B-5 and B-9, Administrative Record, Vol. 11.

14. World Trade Organization, "Semi-Annual Report Under Article 16.4 of the Agreement - Mexico," August 18, 1997, and "Semi-Annual Report Under Article 16.4 of the Agreement - Mexico," June 20, 1995, Tribunal Exhibit RR-97-003-42, Administrative Record, Vol. 1A at 62-74.

15. The USITC found that the dumping was not causing and was not threatening to cause material injury.

16. "Bicycles from China," Investigation No. 731-TA-731 (Final), USITC Publication 2968, June 1996, Tribunal Exhibit RR-97-003-40 (single copy), Administrative Record, Vol. 7 at 45.

17. The enforcement data on a company-specific basis were not segregated by country of origin. Consequently, the sales to Canada by the named exporters that were assessed anti-dumping duties may have originated in either Taiwan or China. Tribunal Exhibit RR-97-003-4 (protected), Administrative Record, Vol. 2 at 13-25.

The TBEA responded to the Tribunal's questionnaire, but was unable to provide any information concerning bicycle and bicycle frame production capacity or capacity utilization. The TBEA did state that, during the 1990s, more than 93 percent of the Taiwanese bicycle industry's output has been sold in export markets,¹⁸ demonstrating a high dependence on export sales.

The Tribunal heard that Giant Mfg. Co., Ltd. (Giant) had closed one plant in Taiwan and that another Taiwanese plant, owned by Ideal Bike Corporation (Ideal), had recently been destroyed by fire. The capacity lost by Giant's plant was more than offset by the addition of a plant in China with twice the production of the old plant in Taiwan.¹⁹ The effect of the Ideal plant fire is still uncertain, but the evidence submitted indicates that Ideal would be running at alternate sites within 30 days.²⁰ The evidence on the record indicates that there is overcapacity in Taiwan and that the industry is facing severe price competition. As stated in one article, "[f]or the Taiwanese cycle industry which heavily relies on exports, the worldwide drop in demand is by all means painful... Regardless of the drop in demand, supplies have continued to increase, and so each manufacturer tries to sell every bicycle it has, by unavoidably having to go into price competition."²¹ The article also states that many manufacturers are selling at prices below manufacturing costs, that some manufacturers have gone out of business and that still more are expected to declare bankruptcy before the industry rationalization is complete.

While counsel for the TBEA argued that the industry expects to rationalize and decrease capacity, the Tribunal agrees with counsel for the CBMA that, until this rationalization takes place, the Taiwanese manufacturers will likely attempt to use their existing capacity to the greatest extent possible. Counsel for the TBEA also submitted that the Taiwanese bicycle manufacturers were unlikely to resume dumping the subject bicycles and bicycle frames in Canada because they were concentrating on the higher end of the bicycle market. It was submitted that, because of increased costs of production in Taiwan, the Taiwanese bicycle manufacturers were no longer competitive in the low end of the bicycle market. The Tribunal notes the testimony of the witness for Giant who stated that "the Taiwan bicycle industry is moving upward, so I think Taiwan in the future will be very good in the middle and high-end products."²² The witness also testified that Giant's bicycles start at a retail selling price of approximately \$350.²³ In addition, the evidence indicates that Taiwanese bicycle exporters are selling bicycles in the low end of the Canadian market, as evidenced by sales of children's bicycles in the "up to \$69" segment of the market and adult bicycles in the "up to \$129" segment of the market.²⁴ In the Tribunal's view, Taiwanese exporters are likely to continue supplying bicycles within the range of goods covered by the Tribunal's finding.

Finally, the Tribunal notes that the 1992 dumping investigation, and subsequent injury inquiry, was not the first time that the Taiwanese bicycle industry had been found to be injuriously dumping bicycles in the Canadian market. In 1977, the ADT found that imports of dumped bicycles and bicycle parts, including frames, from Taiwan and Korea had caused, were causing and were threatening to cause material injury to the production in Canada of like goods. This finding was reviewed and rescinded in 1984. However, in 1992, the

18. Tribunal Exhibit RR-97-003-23.1, Administrative Record, Volume 5.2 at 18.

19. *Transcript of Public Hearing*, Vol. 3, October 17, 1997, at 475 and 492-93.

20. Exporter's Exhibit G-10, Administrative Record, Vol. 13.

21. "Taiwan Cycle Industry Trend, Excessive Competition Continues to 'Saturation,'" Manufacturer's Exhibit B-11, Administrative Record, Vol. 11.

22. *Transcript of Public Hearing*, Vol. 3, October 17, 1997, at 485.

23. *Ibid.* at 486.

24. *Public Pre-Hearing Staff Report*, September 9, 1997, Tribunal Exhibit RR-97-003-5, Administrative Record, Vol. 1A at 0.50.

Taiwanese bicycle industry was once again found to have dumped bicycles and frames in Canada and caused material injury to the domestic production of like goods. In the Tribunal's view, this behaviour indicates an inclination on the part of the Taiwanese bicycle industry to maintain production and sales volumes, even at the risk of giving rise to anti-dumping actions in export markets.

The Tribunal did not receive a response to its questionnaire concerning the Chinese bicycle industry. In the absence of specific information from a questionnaire response, the Tribunal relied on published information. The information on the record indicates that the production capacity in China is approximately 70.0 million units, while production in 1995 was 37.3 million units, including 12.0 million units for export markets.²⁵ Even considering that a significant proportion of the production capacity may be limited to the production of single-speed bicycles for the domestic market, these figures still indicate that there is considerable underutilized capacity for the production of multi-speed bicycles in China. Further, the large proportion of export sales to total production indicates that bicycle producers in China are export-oriented.

Counsel for the Retail Council argued that the USITC report²⁶ concerning bicycles indicated very high capacity utilization percentages for China which did not demonstrate a propensity to dump products in export markets. The Tribunal examined this evidence and the analysis presented in the reply brief of the CBMA.²⁷ The record reveals that, in 1992, the exports to Canada from the 20 Chinese exporters included in the USITC analysis accounted for only 88,000 bicycles²⁸ of total imports from China of 360,000 bicycles during the first six months of 1992,²⁹ or 24 percent of the total exports to Canada from China during that period. The Tribunal notes that these 20 Chinese exporters account for less than 45 percent of total Chinese production in 1995.³⁰ Thus, the evidence indicates that there are other significant sources of export-quality bicycles in China.

In the Tribunal's view, the evidence on the record of this review gives a clear indication that both the Taiwanese and Chinese bicycle industries have available capacity and that there is severe competition in these industries³¹ to sell bicycles in any available market in order to maintain production volumes.

In summary, the Tribunal finds that some exporters in Taiwan and China have dumped bicycles and frames in the Canadian market during the last five years, including during the first 6 1/2 months of 1997. The bicycle industries in Taiwan and China have both been the subject of anti-dumping actions in other jurisdictions during the past few years. Further, there is available production capacity and an export orientation demonstrated by the bicycle industries in both of those countries. Consequently, the Tribunal is of the view that, if the finding is rescinded, it is likely that the dumping of bicycles and frames from Taiwan and China will resume.

25. Manufacturer's Exhibit B-10, Administrative Record, Vol. 11.

26. "Bicycles from China," Investigation No. 731-TA-731 (Final), USITC Publication 2968, June 1996, Tribunal Exhibit RR-97-003-40 (single copy), Administrative Record, Vol. 7 at 114-20.

27. Manufacturer's Exhibit A-2 at 2, par. 5-7, Administrative Record, Vol. 11.

28. "Bicycles from China," Investigation No. 731-TA-731 (Final), USITC Publication 2968, June 1996, Tribunal Exhibit RR-97-003-40 (single copy), Administrative Record, Vol. 7 at 116.

29. *Public Pre-Hearing Staff Report*, September 9, 1997, Tribunal Exhibit RR-97-003-5, Administrative Record, Vol. 1A at 0.78.

30. Total production of 20 exporters equals 16,542,000 units, divided by total production of 37,270,000 units, equals 44.4 percent. "Bicycles from China," Investigation No. 731-TA-731 (Final), USITC Publication 2968, June 1996, Tribunal Exhibit RR-97-003-40 (single copy), Administrative Record, Vol. 7 at 116; and *Public Pre-Hearing Staff Report*, September 9, 1997, Tribunal Exhibit RR-97-003-5, Administrative Record, Vol. 1A at 0.74.

31. Manufacturer's Exhibit B-11, Administrative Record, Vol. 11.

Likelihood of Material Injury to the Domestic Industry

Having found that the rescission of the finding is likely to lead to the resumption of dumping of bicycles and frames by Taiwanese and Chinese exporters, the Tribunal now turns to the question of whether the resumption of dumping is likely to cause material injury to the domestic industry.

The following table presents selected economic indicators for the Canadian bicycle market since 1988. It should be noted that the information for the period from 1988 to the first half of 1992 relates to all bicycles with wheel diameters of 16 inches and greater, for the calendar years indicated. The information for the 1993-97 period relates to the model years from July 1, 1992, to June 30, 1997, for bicycles with wheel diameters of 16 inches and greater and a suggested retail selling price of \$800 and less for Canadian production and non-subject imports or an FOB Taiwan or China selling price of CAN\$325 for imports from Taiwan and China.

CANADIAN BICYCLE INDUSTRY SELECTED ECONOMIC INDICATORS^{1,2}										
	1988	1989	1990	1991	1992³	1993	1994	1995	1996	1997
Total Apparent Market (000 units)	1,557	1,457	1,541	1,334	1,297	1,239	1,492	1,587	1,162	1,214
Producers' Market Share (%)	75	66	55	43	37	60	58	67	66	63
Market Share - Imports from Taiwan (%)	16	23	33	40	28	18	11	8	7	7
Market Share - Imports from China (%)	1	1	1	9	28	0	12	11	15	14
Importers' Market Share from Non-Subject Countries (%)	8	10	11	8	7	22	19	14	12	17
Total Market Share - Importers (%)	25	34	45	57	63	40	42	33	34	37
Industry Production ⁴ (000 units)	1,271	1,033	896	629	432	753	863	1,069	790	724
Domestic Industry ⁵ Gross Profit (index 1988 = 100)	100	117	129	89	67 ⁶	87	102	135	114	111
Domestic Industry ⁵ (net income before taxes) (index 1988 = 100)	100	83	88	12	6 ⁶	29	43	84	55	62

Notes:

1. Data for 1988-92 are reported in calendar years; data for 1993-97 are reported in model years.
2. In 1997, the production of bicycles with a retail selling price of \$800 and less accounted for 96 percent of the total Canadian production of bicycles with a wheel diameter of 16 inches and greater.
3. Information is for January to June. The vast majority of bicycle production, imports and sales take place in the first six months of the year.
4. Includes production for domestic and export markets.
5. Procycle, Raleigh and Victoria.
6. Full fiscal year estimate.

Source: Public and protected pre-hearing staff reports, as revised, for Inquiry No. NQ-92-002 and Review No. RR-97-003.

The Tribunal notes that production has increased from its 1991 level, that sales are up, that profits have increased and that the domestic industry has regained market share. Thus, the Tribunal finds that the Canadian industry has taken advantage of the protection from dumped imports.

In argument, counsel for CASBI used five-year averages to compare the period before the finding to the period subsequent to the finding to illustrate his view that the Canadian industry was no longer vulnerable to the injurious effects of dumping, if dumping were to resume. In the Tribunal's view, it is more appropriate to examine the annual data comparing results reported for recent years with those reported in prior years, both before and after the 1992 injury finding.

As shown in the preceding table, the evidence reveals that the market has contracted substantially, dropping from approximately 1.5 million units from 1988 to 1990, to 1.2 million units in model year 1997.³² Consequently, the market participants are all battling for a larger piece of a shrinking pie. The domestic industry has not regained the production volumes that it once had. In 1997, it reported production volumes that were 43 percent below those reported in 1988 and almost 20 percent below those reported in 1990. The domestic industry has not been able to regain the market share that it once held. In model years 1995 and 1996, it accounted for approximately two thirds of the market, while, in model year 1997, this declined to 63 percent of the market. In contrast, in 1988, the domestic industry held 75 percent of the Canadian market for all bicycles.

Imports from the subject countries have maintained approximately 20 percent of the market since the finding, down from approximately 50 percent of the market in 1991 and the first half of 1992. Imports from non-subject countries have fluctuated since the finding, accounting for between 12 and 22 percent of the market since 1993, up from the 7 to 11 percent range prior to the Tribunal's finding.

Counsel for the Retail Council submitted that the domestic industry currently supplies the majority of the mass merchandisers' requirements for bicycles and that these large retailers are unlikely to switch back to dumped products from Taiwan or China. The Tribunal heard a considerable amount of testimony about the factors that are considered when mass merchandisers make their purchasing decisions. Various witnesses testified that factors such as knowledgeable service representatives, "1-800" telephone numbers, quick response time on replacement or repair parts and other service factors are very important considerations.³³

Several witnesses for the mass merchandisers testified that they were willing to pay a premium to the domestic producers to gain the advantages of having a domestic supplier with all the attendant service advantages.³⁴ However, the evidence reveals that the amount of premium that a mass merchandiser is willing to pay is limited.³⁵ In fact, the premium is substantially less than the margins of dumping reported by Revenue Canada in its final determination concerning imports of the subject bicycles from Taiwan and China.³⁶

32. The trends identified in the following analysis hold true whether one uses the data for all bicycles or for bicycles with a retail selling price of \$800 and less for the 1993-97 period.

33. *Transcript of Public Hearing*, Vol. 3, October 17, 1997, at 443; and *Transcript of In Camera Hearing*, Vol. 2, October 16, 1997, at 227 and 255, and Vol. 3, October 17, 1997, at 395 and 410.

34. *Transcript of Public Hearing*, Vol. 2, October 16, 1997, at 387-88; and Vol. 3, October 17, 1997, at 442.

35. Importer's Exhibit F-1 (protected), par. 26, Administrative Record, Vol. 14; and *Transcript of In Camera Hearing*, Vol. 2, October 16, 1997, at 241 and 245-47.

36. Department of National Revenue, *Final Determination of Dumping and Statement of Reasons*, November 10, 1992, Tribunal Exhibit NQ-92-002-4, Administrative Record for Inquiry No. NQ-92-002, Vol. 1 at 200.15 and 200.17.

In the final analysis, the Tribunal believes that the determining factor is price, especially if the foreign producers offer quality bicycles with adequate service, as is the case with imports from Taiwan and China.³⁷ The Tribunal heard of the intense level of competition among the retailers in the Canadian market. It is apparent that the situation has not changed since 1992 when, in relation to mass merchandisers, the Tribunal stated: "If one of their major competitors finds a cheap source of goods, they have little choice but to seek out equally cheap or cheaper sources, whether domestic or foreign, in order to stay competitive."³⁸ This is evident in the children's bicycle segment of the Canadian market. For the most part, the major retailers source a large proportion of their children's bicycle requirements from offshore sources, including Taiwan and China. Several witnesses testified that the reason for purchasing these models offshore is that the domestic manufacturers are not price-competitive in the children's models.^{39,40}

The Tribunal is also convinced that, with the exception of certain brand names, such as CCM, which are not available from offshore sources, the major retailers would also purchase their adult bicycle models from offshore sources if the domestic manufacturers did not continue to be price-competitive. Therefore, if low-priced, dumped imports from Taiwan or China were available, the Tribunal believes that the major retailers in Canada would either purchase the dumped imports or use the threat of purchasing them to obtain lower prices from Canadian producers.

The Tribunal found it interesting that, in 1984, when the ADT was conducting a review of its 1977 injury finding concerning bicycles from Taiwan and Korea, it was submitted that "the mass merchandisers are now virtually totally supplied by Canadian producers; and that there is a preference for domestic supply because of the advantages in distribution, warranty and account servicing."⁴¹ However, history proved that, despite this preference for domestic suppliers, once the discipline of anti-dumping measures was removed, the mass merchandisers switched to import sources in the late 1980s and early 1990s. It was subsequently found that two of those sources, Taiwan and China, were dumping bicycles and that the dumping was materially injurious to the domestic industry.

The evidence indicates that, as was the case in 1992, mass merchandisers account for the preponderant proportion of the sales in the Canadian market. Consequently, intensified price competition for their business will have a significant effect on the results of the domestic industry as it struggles to maintain production volumes or price levels. Lower sales volumes or reduced selling prices for this sector of the market would affect both the gross margins earned by the domestic industry and its reported net income before taxes.

Sales to the IBDs, nevertheless, still account for an important share of the domestic bicycle industry's sales, representing between 18 and 25 percent of the domestic industry's sales during the 1995-97 model years.⁴² Intensified price competition for the business of IBDs will also affect the results of the domestic industry.

37. *Transcript of Public Hearing*, Vol. 3, October 17, 1997, at 454-55; and *Transcript of In Camera Hearing*, Vol. 2, October 16, 1997, at 235-36, and Vol. 3, October 17, 1997, at 493.

38. *Supra* note 2, *Statement of Reasons* at 16.

39. *Transcript of Public Hearing*, Vol. 3, October 17, 1997, at 438-39; and Importer's Exhibits F-1 (protected), par. 12; F-3 (protected), par. 25; F-5 (protected), par. 6; and F-7 (protected), par. 10, Administrative Record, Vol. 14.

40. The evidence indicates that the Canadian producers do not manufacture children's bicycles at the opening price point, nor do they intend to do so. Regardless, to exclude such bicycles from the finding would likely put downward pressure on the higher-priced children's bicycles produced in Canada.

41. *Supra* note 5, Review No. ADT-11B-77, *Statement of Reasons* at 3.

42. Tribunal Exhibits RR-97-003-RI-2G (protected), RR-97-003-RI-3G (protected) and RR-97-003-RI-4G (protected), Administrative Record, Vol. 10.1 at 5, Vol. 10.2 at 8-9 and Vol. 10.3 at 6 respectively.

Individual IBDs will lose sales if they do not respond to the lower prices offered by the mass merchandisers and competing IBDs selling dumped Taiwanese and Chinese bicycles. In turn, the IBDs will exert pricing pressures on the domestic bicycle industry.

The likely effects of rescinding the finding are not limited to the production and financial effects outlined above. With lower production levels, the Canadian producers would be forced to reduce employment or shorten their production periods during the year, both of which would result in fewer employment dollars being spent. Further, a decline in profits would handicap the industry's research and development efforts which, in the long run, would affect the competitiveness and viability of this industry.

The Tribunal acknowledges the arguments of various counsel that there are other factors that have affected the performance of the domestic industry and that will continue to affect its performance, regardless of whether dumping from Taiwan and China resumes. The bicycle market in Canada and worldwide appears to be in a decline, whether due to competing products such as in-line skates, other economic factors or simply market saturation. The declining demand has exacerbated over-supply problems. Another factor affecting the domestic industry is the rise in imports of low-cost bicycles from non-subject sources. The Tribunal believes that the increased volume of imports from these low-cost sources only reinforces its view that customers in Canada actively seek the lowest prices available. In the Tribunal's view, these circumstances make the domestic industry more vulnerable to low-priced competition from dumped products.

Counsel for CASBI also argued that the net income reported by the domestic industry was affected by financial transactions and expenses that had nothing to do with the manufacture and sale of bicycles. The Tribunal carefully examined the consolidated income statements submitted by Procycle, Raleigh and Victoria, as well as the statements regarding the domestic sales of bicycles with a suggested retail price of \$800 and less. The Tribunal agrees that a certain percentage of the expenses incurred by these companies relate to items that are unrelated to the production and sale of bicycles in Canada, such as the redemption of shares and inter-company dealings. Notwithstanding these expenses, the Tribunal is of the view that the intensified price competition from the resumed dumping of the subject bicycles and frames from Taiwan and China will have a significant effect on the results of the domestic industry, as it struggles to maintain production volumes or price levels.

Consequently, the Tribunal finds that the resumption of dumping is likely to cause material injury to the domestic industry through reduced selling prices or reduced production volume and market share, either of which will reduce the financial returns that the industry has been able to earn. In addition, the reduced financial returns will likely lead to lower employment and decreased research and development activities by the domestic industry.

FRAMES

In its 1992 finding, the Tribunal found that the dumping of bicycle frames was likely to cause material injury to the production in Canada of like goods. It reasoned that, as frames are important and substantial parts of completed bicycles, the dumping of bicycle frames would effectively frustrate the finding of material injury concerning complete bicycles.⁴³

43. *Supra* note 2, *Statement of Reasons* at 21.

The evidence presented in this review indicates that the domestic producers continue to produce frames, mainly for their own use in the production of complete bicycles.⁴⁴ In addition, a small volume of frames is sold on the replacement market and to other bicycle manufacturers.⁴⁵ Based on this evidence, the Tribunal is convinced that the finding concerning frames should be continued to prevent the frustration of the finding concerning complete bicycles.

EXCLUSIONS

The Tribunal received a request for an exclusion from CSA Canada for a product called an “autobike.” The autobike is a bicycle with a gear-changing mechanism that operates automatically based on the pressure exerted on the pedals by the rider. CSA Canada submitted that the Canadian producers do not make a bicycle with an automatic gear-changing mechanism. Furthermore, the company submitted that the autobike does not compete with regular bicycles and should have no impact on regular standard-gear bicycles in Canada.⁴⁶

In the Tribunal’s opinion, however, the evidence indicates that the autobike is a bicycle similar to the bicycles made in Canada except for the automatic derailleur and weights on the wheels.⁴⁷ Moreover, the Tribunal is of the view that the autobike does compete with bicycles produced in Canada, especially those with the newer derailleurs that are easier to shift that have been available in recent years. Consequently, the exclusion is not granted.

Counsel for CASBI requested that, if the finding is not rescinded, the Tribunal lower the price point at which bicycles are excluded from the finding to CAN\$120 FOB Taiwan or China. Counsel argued that the domestic industry did not have a meaningful presence in the segment of the bicycle market above \$300 suggested retail selling price.

Counsel for Specialized made a request that the exclusion price point be lowered to CAN\$225 FOB Taiwan or China on the basis that there is no likelihood of injury to the Canadian manufacturers from imported bicycles sold in the \$500 to \$800 retail price segment.

In considering these requests, the Tribunal examined the relationship between FOB Taiwan or China prices and retail selling prices in Canada for complete bicycles. The evidence presented in this review has confirmed the validity of the Tribunal’s 1992 determination concerning the relationship between FOB Taiwan or China selling prices and suggested retail selling prices in Canada.⁴⁸ These prices were CAN\$325 FOB Taiwan or China and in the \$800 suggested retail price range in Canada. The Tribunal notes that counsel for CASBI and counsel for Specialized, in making requests for exclusions, used a ratio between these two numbers to calculate the FOB Taiwan or China selling price that would be roughly equivalent to the lower end of Canadian retail selling price ranges that their clients wished to have excluded from the finding.

44. *Public Pre-Hearing Staff Report*, September 9, 1997, Tribunal Exhibit RR-97-003-5, Administrative Record, Vol. 1A at 0.17; and *Transcript of Public Hearing*, Vol. 2, October 16, 1997, at 268-69.

45. *Protected Pre-Hearing Staff Report*, September 9, 1997, Tribunal Exhibit RR-97-003-6 (protected), Administrative Record, Vol. 2 at 49-50.

46. Tribunal Exhibit RR-97-003-41, Administrative Record, Vol. 1A at 51.

47. *Transcript of Public Hearing*, Vol. 2, October 16, 1997, at 400.

48. *Transcript of Public Hearing*, Vol. 3, October 16, 1997, at 466, 503 and 535-36; and *Transcript of In Camera Hearing*, Vol. 3, October 17, 1997, at 480.

The evidence indicates that the domestic industry produces bicycles in both the \$300 to \$499 and \$500 to \$800 suggested retail selling price ranges.⁴⁹ The Tribunal is persuaded that these bicycles compete with imported bicycles in the Canadian market, as evidenced by the fact that the domestic industry sells a significant proportion of the bicycles in both of these retail price ranges.^{50, 51} In the Tribunal's view, these sales made an important contribution to the overall financial results of the industry. Consequently, the exclusion requests made by counsel for CASBI and Specialized are not granted.

While no parties made submissions requesting a limitation of the scope of the finding concerning bicycle frames during the review, the Tribunal believes that such a limitation is warranted.⁵² In its view, the finding concerning bicycle frames should be limited to those frames that would normally be used in the production of bicycles that have a suggested retail price of \$800 and less, in line with the scope of the finding concerning complete bicycles.

The Tribunal examined the relationship between the price of a complete bicycle and the price of a similar model of frame, as found in price lists submitted by several parties to this review. Based on this information⁵³ and testimony during the hearing⁵⁴, the Tribunal estimates that the price of a bicycle frame that would be used in the production of a complete bicycle with an FOB Taiwan or China price of CAN\$325 is approximately CAN\$100 FOB Taiwan or China.

Consequently, the Tribunal excludes from the finding bicycle frames with an FOB Taiwan or China selling price exceeding CAN\$100.

CONCLUSION

The Tribunal believes that, if the finding is rescinded, there is a likelihood that the dumping of bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Taiwan and China, excluding bicycles with an FOB Taiwan or China selling price of CAN\$325, will resume. It also believes that the dumping of bicycle frames from the aforementioned countries will resume. Further, it believes that the resumed dumping of bicycles and frames is likely to cause material injury to the Canadian industry.

Consequently, the Tribunal continues, without amendment, its finding made on December 11, 1992, in Inquiry No. NQ-92-002, concerning bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Taiwan and China, excluding bicycles with an FOB Taiwan or China selling price exceeding CAN\$325.

49. *Public Pre-Hearing Staff Report*, September 9, 1997, Tribunal Exhibit RR-97-003-5, Administrative Record, Vol. 1A at 0.47 and 0.108; and *Protected Pre-Hearing Staff Report*, September 9, 1997, Tribunal Exhibit RR-97-003-6 (protected), Administrative Record, Vol. 2 at 134.

50. *Ibid.*

51. The Tribunal notes that one company provided two different responses to the "price segment" question in the Tribunal's questionnaires, one in a manufacturer's questionnaire and one in an importer's questionnaire. Regardless of which of this company's data sets are used, the conclusion that the domestic industry accounts for a significant proportion of the bicycles in both the \$300 to \$499 and \$500 to \$800 suggested retail price ranges is substantiated.

52. Since the finding was made in 1992, Norco and Rocky Mountain have made submissions requesting that this aspect of the finding be reviewed.

53. Tribunal Exhibits RR-97-003-18.14 (protected) and RR-97-003-18.15 (protected), Administrative Record, Vol. 6A at 175 and 236 respectively.

54. *Transcript of In Camera Hearing*, Vol. 3, October 17, 1997, at 504-5.

The Tribunal also continues its finding concerning bicycle frames originating in or exported from the aforementioned countries, with an amendment to exclude bicycle frames with an FOB Taiwan or China selling price exceeding CAN\$100.

Arthur B. Trudeau

Arthur B. Trudeau
Presiding Member

Raynald Guay

Raynald Guay
Member

Patricia M. Close

Patricia M. Close
Member