



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2011-002

Bicycles

*Order and reasons issued
Friday, December 7, 2012*

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IN THE MATTER OF an expiry review, pursuant to section 76.03 of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on December 10, 2007, in Expiry Review No. RR-2006-001, continuing, with amendment, its order made on December 9, 2002, in Expiry Review No. RR-2002-001, continuing, with amendment, its order made on December 10, 1997, in Review No. RR-97-003, continuing, with amendment, its finding made on December 11, 1992, in Inquiry No. NQ-92-002, concerning:

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

ORDER

The Canadian International Trade Tribunal, pursuant to section 76.03 of the *Special Import Measures Act*, has conducted an expiry review of its order made on December 10, 2007, in Expiry Review No. RR-2006-001, concerning bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Chinese Taipei and the People's Republic of China, excluding bicycles with an FOB Chinese Taipei or People's Republic of China selling price exceeding CAN\$225 and excluding bicycles with foldable frames and stems.

Pursuant to paragraph 76.03(12)(b) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby continues its order in respect of the aforementioned goods.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Jason W. Downey
Jason W. Downey
Member

Dominique Laporte
Dominique Laporte
Secretary

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	October 15 to 17, 2012
Tribunal Members:	Pasquale Michael Saroli, Presiding Member Serge Fréchette, Member Jason W. Downey, Member
Research Director:	Audrey Chapman
Research Manager:	Manon Carpentier
Senior Research Officer:	Gary Rourke
Senior Statistical Research Officer:	Julie Charlebois
Statistical Research Officers:	Marie-Josée Monette Vedranka Zec
Counsel for the Tribunal:	Alain Xatruch
Manager, Registrar Programs and Services:	Michel Parent
Registrar Officer:	Haley Raynor
Registrar Support Officer:	Jade Realffe

PARTICIPANTS:**Domestic Producer**

Raleigh Canada Limited

Counsel/Representatives

C. J. Michael Flavell, Q.C.

Geoffrey C. Kubrick

J. Peter Jarosz

Jonathan O'Hara

Monica Podgorny

Importers/Exporters/OthersTaiwan Bicycle Exporters' Association
Giant Bicycle Canada Inc.

Action Traders Ltd.

Hangzhou Joykie Industrial & Trading Co., Ltd.

Joying Canada Inc.

Joysun Bicycle Manufacturing Co., Ltd.

Shenzhen Taifeng Yongda Bicycles Co., Ltd.

Tianjin Golden Wheel X-D Bicycle Co., Ltd.

Yong Qi (Chang Zhou) Bicycle Industrial Co.,
Ltd.**Counsel/Representatives**

Peter Clark

Peter Clark

Renée Clark

Canadian Tire Corporation, Limited	Riyaz Dattu Stephanie Fularczuk
FGL Sports Ltd.	Riyaz Dattu
Specialized Bicycle Components Canada, Inc.	Paul K. Lepsoe
Centrale des syndicats démocratiques	François Vaudreuil
Syndicat démocratique des employés des Industries Raleigh du Canada ltée	Luc Desautels

WITNESSES:

Chris Enoksen President Raleigh Canada Limited	Kenneth B. Morrison Vice President, Finance Raleigh Canada Limited
François Vaudreuil President Centrale des syndicats démocratiques	Luc Desautels President Syndicat démocratique des employés des Industries Raleigh du Canada ltée
Ron Kunstadt Principal Kunstadt Sports	Andy Huang General Manager, Finance Giant Global Group
Mike Millar National Sales Manager/Ontario Sales Representative Giant Bicycle Canada Inc.	Sui-Yu Wu Partner Wu & Partners, Attorneys at Law
Nadine Brown Category Manager—Sporting Goods Wal-Mart Canada Corp.	

Please address all communications to:

The Secretary
Canadian International Trade Tribunal
333 Laurier Avenue West
15th Floor
Ottawa, Ontario
K1A 0G7

Telephone: 613-993-3595
Fax: 613-990-2439
E-mail: secretary@citt-tcce.gc.ca

STATEMENT OF REASONS

BACKGROUND

1. This is an expiry review, pursuant to section 76.03 of the *Special Import Measures Act*,¹ of the order made by the Canadian International Trade Tribunal (the Tribunal) on December 10, 2007, in Expiry Review No. RR-2006-001, concerning the dumping of bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Chinese Taipei and the People's Republic of China (China), excluding bicycles with an FOB Chinese Taipei or China selling price exceeding CAN\$225 and excluding bicycles with foldable frames and stems (the subject goods).
2. The Tribunal initiated this expiry review on March 28, 2012,² notifying the Canada Border Services Agency (CBSA), and sending letters to known domestic producers, importers, foreign producers and exporters, requesting that they complete expiry review questionnaires for the period from January 1, 2009, to March 31, 2012. The Tribunal requested that, if the CBSA found a likelihood of continued or resumed dumping, domestic producers, importers, foreign producers and exporters update their responses to questionnaires submitted to the CBSA to include data up to June 30, 2012. The Tribunal's period of review (POR) covers the period from January 1, 2009, to June 30, 2012. The Tribunal also requested that domestic producers complete Part E of the expiry review questionnaire for Canadian producers.
3. On March 29, 2012, the CBSA initiated an investigation to determine whether the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods.
4. On July 26, 2012, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods.
5. On July 27, 2012, following the CBSA's determination, the Tribunal began its expiry review to determine, pursuant to subsection 76.03(10) of *SIMA*, whether the expiry of the order was likely to result in injury or retardation. On July 30, 2012, the Tribunal directed domestic producers and importers which had completed an expiry review questionnaire to reply to supplemental questions, and importers which had not replied to the expiry review questionnaire to complete a short form importers' questionnaire.
6. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, from October 15 to 17, 2012.
7. Raleigh Canada Limited (Raleigh) submitted evidence and made arguments in support of the continuation of the order. Raleigh was represented by counsel at the hearing and presented, as witnesses, Mr. Chris Enoksen, President, and Mr. Kenneth B. Morrison, Vice President, Finance. Raleigh also presented as one of its witnesses Mr. Ron Kunstadt, Principal of Kunstadt Sports, an independent bicycle dealer (IBD).
8. The Centrale des syndicats démocratiques and the Syndicat démocratique des employés des Industries Raleigh du Canada ltée were also present at the hearing. They were not represented by counsel, but their respective presidents, Messrs. François Vaudreuil and Luc Desautels, submitted evidence in support of a continuation of the order.

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

2. C. Gaz. 2012.I.864.

9. The Taiwan Bicycle Exporters' Association (TBEA) and Giant Bicycle Canada Inc. (Giant Canada) submitted evidence, were represented by counsel at the hearing and argued against a continuation of the order in respect of Chinese Taipei. They presented as witnesses Mr. Andy Huang, General Manager, Finance, of Giant Global Group, who was accompanied by Mr. Sui-Yu Wu, attorney at law, and Mr. Mike Millar, National Sales Manager/Ontario Sales Representative of Giant Canada.

10. Action Traders Ltd. (Action), Hangzhou Joykie Industrial & Trading Co., Ltd. (Hangzhou), Joying Canada Inc. (Joying), Joysun Bicycle Manufacturing Co., Ltd. (Joysun), Shenzhen Taifeng Yongda Bicycles Co., Ltd. (Shenzhen), Tianjin Golden Wheel X-D Bicycle Co., Ltd. (Tianjin) and Yong Qi (Chang Zhou) Bicycle Industrial Co., Ltd. (Yong Qi) filed a joint submission with the Tribunal and were represented by counsel at the hearing, but did not call any witnesses³ or take a clear position during the proceedings with respect to a continuation or rescission of the order.

11. Canadian Tire Corporation, Limited (CTC) and FGL Sports Ltd. were represented by counsel at the hearing, but did not file a submission with the Tribunal, call any witnesses or take a clear position during the proceedings with respect to a continuation or rescission of the order.

12. Specialized Bicycle Components Canada, Inc. (Specialized), which was represented by counsel during the proceedings but not at the hearing, was not present at the hearing and did not file any submissions in support of, or in opposition to, a continuation of the order.

13. Ms. Nadine Brown, Category Manager—Sporting Goods of Wal-Mart Canada Corp. (Wal-Mart), appeared at the hearing as a Tribunal witness in response to a subpoena issued by the Tribunal.

14. The Tribunal did not receive any requests for product or country exclusions.

15. 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, public statement of reasons, index of background information and related documents; the Tribunal's notice of expiry review; the protected and public replies to the expiry review questionnaires, supplemental questions and short form importers' questionnaires; the public and protected pre-hearing staff reports prepared for this expiry review and subsequent revisions thereto; witness statements and other exhibits; and the exhibit list and Tribunal's order, statement of reasons and public and protected pre-hearing staff reports, as revised, prepared for Expiry Review No. RR-2006-001.

16. Protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of confidential information.

PRODUCT

Product Definition

17. The goods subject to this expiry review are defined as bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Chinese Taipei and China, excluding bicycles with an FOB Chinese Taipei or China selling price exceeding CAN\$225 and excluding bicycles with foldable frames and stems.

3. Mr. Shaun Morris, President of Action, was scheduled to appear as a witness at the hearing, but had to withdraw for business reasons. *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 71.

Product Information

18. A bicycle is a two-wheeled vehicle, consisting of a frame, drive train, wheels, a saddle, handlebars and brakes, each of which in turn consists of several parts. Bicycle frames are the major component of any bicycle and are normally composed of two triangular structures, made of steel, alloy steel or aluminum, which are either welded together to form a rigid frame or held together by a bolt in the case of suspension frames.

19. The design, appearance and construction of bicycles continue to evolve. Aluminum and carbon fibre frames are becoming increasingly common, as is the presence of front and rear shock absorbers and disc brakes. The following types of bicycles are marketed by the industry: BMX, cruiser, mountain, hybrid, junior, racer and touring. Within each type of bicycle, there is a wide variety of models, and among types of bicycles, there is some overlap.

Production Process

20. The production process for domestically produced bicycles begins with the assembly and finishing of two primary components—wheels and frames. Wheels are produced using rims, hubs, spokes, nipples, tires and tubes. All frames used in the domestic production of bicycles are imported. Most aluminum or steel frames are imported unpainted. They are painted and decorated at the factory. Each bicycle is then assembled using the wheels, frame and most major components. The bicycle, which, at this point, is considered 90-percent assembled, is then placed in a carton with the remaining unassembled components and is ready for shipping.

Marketing and Distribution

21. The marketing and distribution of bicycles in Canada are carried out through two main distribution channels: mass merchants (which include multi-sport retailers) and IBDs.

22. Mass merchants and multi-sport retailers sell both imported and domestically produced bicycles.

23. Numerous IBDs, located across Canada, specialize in selling and servicing bicycles and related equipment. These companies source their bicycles from domestic producers and/or importer-distributors. There is some overlap in the price ranges of bicycles sold through the mass merchant and IBD distribution channels; however, mass merchants generally sell the lower-priced product, while IBDs tend to focus on mid-range to higher-priced bicycles.

DOMESTIC PRODUCER

24. During the POR, Raleigh, of Oakville, Ontario, was the only identified domestic producer of bicycles with manufacturer's suggested retail prices (MSRPs) of CAN\$400 or less.⁴

4. During the POR, Groupe Procycle Inc. (Division Industries R.A.D. Inc.) (Procycle) and Cervélo Cycles Inc. produced bicycles with MSRPs of CAN\$401 or greater. With respect to Cycles Argon-18 Inc. (Cycles Argon) and O.G.D. Bicycle Accessories Ltd. (O.G.D.), the evidence on the record does not indicate clearly whether, during the POR, they produced such bicycles. Norco Products Ltd. (Norco) informed the Tribunal that it did not assemble any bicycles during the POR. *Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-05A, Administrative Record, Vol. 1.1A at 16-18; Tribunal Exhibit RR-2011-002-17.02, Administrative Record, Vol. 3A at 7; Tribunal Exhibit RR-2011-002-17.03A, Administrative Record, Vol. 3A at 12-13; Tribunal Exhibit RR-2011-002-17.05, Administrative Record, Vol. 3 at 23; Tribunal Exhibit RR-2011-002-18.05 (protected), Administrative Record, Vol. 4A at 152; Tribunal Exhibit RR-2011-002-23.06A, Administrative Record, Vol. 5.1 at 110-12; Tribunal Exhibit RR-2011-002-23.09, Administrative Record, Vol. 5.1 at 138.

Raleigh

25. Raleigh was acquired by the international Raleigh organization in 1973, when it began the production of bicycles at its manufacturing facility in Waterloo, Quebec. On May 23, 2012, Raleigh and its parent company, Raleigh Cycle Limited, were acquired by Accell Group N.V. (Accell) of Heerenveen, Netherlands. Raleigh currently produces and markets bicycles under the brand names Raleigh, Diamondback and Triumph. Raleigh and Diamondback brand bicycles are distributed coast-to-coast through an IBD network. Raleigh also produces private-label bicycles under different brands, primarily for mass merchants.

26. During the POR, Raleigh imported small quantities of bicycles from China.

IMPORTERS AND EXPORTERS

27. Importers of bicycles can be broadly categorized into two groups: importer-mass merchants that import bicycles directly for retail sale and importer-distributors, which include large IBDs, that import and re-sell bicycles.

28. A total of 38 potential importers were requested to complete an expiry review questionnaire. Two mass merchants, CTC and Wal-Mart, and nine importer-distributors, Action, Dorel Distribution Canada, Genesis Cycle Inc., Giant Canada, Joying, Specialized, Stoneridge Cycle Ltd., Trek Bicycle Corp. and World Bicycle Sports Inc., responded to the expiry review questionnaire and, subsequently, provided responses to supplemental questions.

29. The Tribunal directed 27 importers that had not replied to the expiry review questionnaire to complete a short form importers' questionnaire. One mass merchant, Zellers Inc. (Zellers), and seven importer-distributors, Cycles Argon, INA International Ltd., Louis Garneau Sports Inc., Mica Sport Canada Inc., Norco, O.G.D. and TBG The Bicycle Group Inc., responded to the short form importers' questionnaire. The Tribunal also received import data from Procycle. Three other companies, Asama Bicycles, BMW Canada Inc. and Décor Parent, replied that they did not import bicycles or only minimal quantities during the POR.

30. A total of 148 foreign producers/exporters were requested to reply to an expiry review questionnaire. A total of 15 foreign producers/exporters provided responses, of which 4 were from Chinese Taipei—Giant Manufacturing Co., Ltd. (Giant Taiwan); Kenstone Metal Co., Ltd.; Taioku Manufacturing Co., Ltd.; United Engineering Corp.—and 11 were from China—Alliance Cycle Industry Corporation Limited; Chitech Industries II, Ltd.; Giant (China) Co., Ltd. (Giant China); Giant (Kunshan) Co., Ltd.; Hangzhou, which also replied on behalf of Joysun; Overlord Industries (Shen Zhen) Co., Ltd.; Oyama Bicycles (Taicang) Co., Ltd.; Shenzhen; Taioku Manufacturing (Jiangsu) Co., Ltd.; Tianjin; Yong Qi.

SUMMARY OF PREVIOUS FINDING AND ORDERS

Original Finding

31. 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 Chinese Taipei and China, excluding bicycles with an FOB Chinese Taipei and China selling price exceeding CAN\$325, had caused, was causing and was likely to cause injury to the

production in Canada of like goods and that the dumping in Canada of bicycle frames, originating in or exported from Chinese Taipei and China, had not caused, was not causing, but was likely to cause injury to the production in Canada of like goods. Since the finding, in addition to the current expiry review, the Tribunal has conducted three expiry reviews.

Previous Expiry Reviews—Orders

32. On December 10, 1997, in Review No. RR-97-003, the Tribunal continued its finding made on December 11, 1992, with an amendment to exclude bicycle frames with an FOB Chinese Taipei or China selling price exceeding CAN\$100. In reaching its decision, the Tribunal determined that the like goods included all domestically produced bicycles with MSRPs of CAN\$800 or less.

33. On December 9, 2002, in Expiry Review No. RR-2002-001, the Tribunal continued its order made on December 10, 1997, with amendments to exclude bicycles with an FOB Chinese Taipei or China selling price exceeding CAN\$225, bicycles with foldable frames and stems, and bicycle frames with an FOB Chinese Taipei or China selling price exceeding CAN\$50. With respect to the exclusions, the Tribunal found that virtually all the injury would occur from subject bicycles competing at MSRPs of CAN\$400 or less, which it equated to FOB Chinese Taipei or China selling prices of CAN\$225. Bicycle frames for such bicycles were equated to FOB Chinese Taipei or China selling prices of CAN\$50 or less.

34. On December 10, 2007, in Expiry Review No. RR-2006-001, the Tribunal continued its order made on December 9, 2002, in respect of bicycles but rescinded the order in respect of bicycle frames. The Tribunal concluded that the threat of circumvention no longer existed with regard to the importation of bicycle frames to produce bicycles with MSRPs of CAN\$400 or less.

ANALYSIS

35. On July 26, 2012, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods. Consequently, the Tribunal is required, pursuant to subsection 76.03(10), to determine whether the expiry of the order is likely to result in injury or retardation, as the case may be, to the domestic industry.⁵

36. The Tribunal is also required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the order issued in Expiry Review No. RR-2006-001, if it determines that its expiry is unlikely to result in injury, or continuing the order, with or without amendment, if it determines that its expiry is likely to result in injury.

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

5. 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, the issue of whether the expiry of the order is likely to result in retardation does not arise in this expiry review.

Preliminary Matter

38. The TBEA submitted that the CBSA's determination of July 26, 2012, that the expiry of the order was likely to result in the continuation or resumption of dumping of the subject goods was seriously flawed. While it did recognize that the Tribunal had to accept the CBSA's determination, it submitted that the CBSA had not conducted a fair and objective assessment based on positive evidence and had presented its findings in a manner which was not supported by reasonable analysis. In this regard, it commented on and criticized several aspects of the CBSA's reasons for its decision relating to Chinese Taipei.

39. In response, Raleigh submitted that the TBEA was inviting the Tribunal into jurisdictional error by suggesting that it revisit the CBSA's determination. It submitted that the appropriate avenue to express disagreement with that determination would have been an application for judicial review but that, since the period within which to file such an application had already expired, the matter was now closed by operation of law.

40. The Tribunal agrees that it has no jurisdiction to review the CBSA's determination of likelihood of resumed dumping. However, while *SIMA* makes it clear that responsibility for such determinations resides exclusively with the CBSA, the Tribunal is not bound by all of the opinions and conclusions underpinning those determinations. As previously explained by the Tribunal in *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products*:⁶

68. *The Tribunal clearly has no jurisdiction to review the CBSA's determination of likelihood of resumed dumping. However, it wishes to make clear that it is not bound by all the facts and opinions upon which the CBSA's determination is based, and can give them the weight it finds appropriate.* Under paragraphs 37.2(1)(d) and 37.2(2)(d) of the [*Special Import Measures*] Regulations, both the CBSA and the Tribunal may consider evidence relating to the likely performance of the foreign industry, including trends in production, capacity utilization, prices, inventories, market share, exports and profits. Given the overlap in the factors that may be considered by each body, as well as the differences in methodology employed by the CBSA and the Tribunal to gather evidence, it is very likely that the two may come to different or, in some cases, contradictory conclusions regarding some of the factors. The Tribunal has the benefit of adversarial proceedings, and questions are put directly to witnesses by way of cross-examination or questions from the Tribunal. This can help in corroborating the information collected by way of questionnaires. Further, the evidence to which the Tribunal has access is typically more recent than that available to the CBSA and may reflect changes in the industry or the marketplace since the CBSA's determination.

69. Other factors, such as the likely volume of dumped or subsidized goods, and whether there is likely to be a significant increase in the volume of those goods, go to the core of the Tribunal's mandate in the context of an expiry review. *For example, although the CBSA may be satisfied that there is a likelihood of resumed dumping and that the imports will come to Canada at dumped prices, the Tribunal can be of the opinion that the volume of dumped imports will be insufficient to cause injury. The Tribunal is neither bound by the factual findings made by the CBSA, nor by the opinions that support its determination, except for the very determination of likelihood of resumed dumping itself or other factual determinations that rest entirely within the CBSA's jurisdiction.* Such other factual determinations would include the margins of dumping and volumes of any dumped goods while a finding was in place.

[Emphasis added]

6. (30 June 2004), RR-2003-002 (CITT). See also *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at paras. 64-72, where the Tribunal addressed this issue at length.

Like Goods

41. Subsection 2(1) of *SIMA* defines “like goods”, in relation to any other goods, as follows: “. . . (a) goods that are identical in all respects to the other goods, or (b) in the absence of any [such] goods . . . goods the uses and other characteristics of which closely resemble those of the other goods.”

42. In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods (such as composition and appearance) and their market characteristics (such as substitutability, pricing, distribution channels, end uses and whether they fulfill the same customer needs).⁷

43. In Expiry Review No. RR-2006-001, the Tribunal stated that it was of the opinion that domestically produced bicycles with MSRPs of CAN\$400 or less had very similar physical characteristics, had similar market characteristics in terms of methods of distribution, sales outlets and marketing, and fulfilled the same customer needs, when compared to the subject goods.⁸

44. The evidence on the record in this expiry review indicates that, during the POR, Raleigh continued to focus on the production and sale of bicycles with MSRPs of CAN\$400 or less.⁹

45. While there is some evidence on the record to suggest that FOB Chinese Taipei or China selling prices of CAN\$225 or less might now equate to MSRPs which can, at times, exceed CAN\$400,¹⁰ none of the parties to this expiry review suggested that the CAN\$400 MSRP threshold established in Expiry Review No. RR-2002-001¹¹ and maintained in Expiry Review No. RR-2006-001 should be modified to include higher retail prices. Notwithstanding evidence of some sales of the subject goods having occurred at MSRPs of CAN\$401 or greater, the Tribunal notes that sales of subject bicycles from China, which accounted for the large majority of sales of subject goods during the POR, were, for the most part, concentrated at MSRPs of CAN\$400 or less.¹²

46. Consequently, the Tribunal continues to be of the view that domestically produced bicycles with wheel diameters of 16 inches (40.64 cm) and greater with MSRPs of CAN\$400 or less constitute like goods in relation to the subject goods.

Domestic Industry

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

7. See, for example, *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 66; *Stainless Steel Sinks* (24 May 2012), NQ-2011-002 (CITT) at para. 52.

8. *Bicycles and Frames* (10 December 2007), RR-2006-001 (CITT) at para. 57.

9. *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 28, 96, 104, 106.

10. *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 97; *Pre-hearing Staff Report*, revised 12 October 2012, Tribunal Exhibit RR-2011-002-05B, Administrative Record, Vol. 1.1A at 134; *Protected Pre-hearing Staff Report*, revised 12 October 2012, Tribunal Exhibit RR-2011-002-06B (protected), Administrative Record, Vol. 2.1A at 134.

11. *Bicycles and Frames* (9 December 2002), RR-2002-001 (CITT).

12. *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 97.

producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods”

48. The evidence on the record indicates that Raleigh is now the only known domestic producer of like goods¹³ and, as such, constitutes the domestic industry for the purposes of this expiry review.

Cumulation

49. In accordance with subsection 76.03(11) of *SIMA*, the Tribunal is required to make an assessment of the cumulative effect of the dumping of goods from more than one country if it is satisfied that such an assessment would be appropriate, taking into account the conditions of competition between the goods imported from any of the countries and the goods from any other of those countries, or like goods of domestic producers.

50. If the Tribunal is not satisfied that such an assessment would be appropriate, it must then assess the effects of dumping for each country separately.

51. In considering the conditions of competition between goods, the Tribunal typically takes into account the following factors, as applicable: the degree to which the goods are interchangeable; the extent to which the goods are sold, or offered for sale, into the same geographical markets; the existence of common or similar channels of distribution for the goods; and differences in the timing, if any, of the availability of the goods. However, the Tribunal has stated that other factors may be considered and that no single factor is necessarily determinative.¹⁴

52. In the context of expiry reviews, the Tribunal has also stated that the effect of continued or resumed dumping must be looked at prospectively and that, therefore, its assessment of the conditions of competition must be prospective.¹⁵ Moreover, as noted in *Certain Carbon Steel Welded Pipe*, when the Tribunal makes a prospective assessment of the conditions of competition in expiry reviews, “[i]t is obvious that any examination of conditions of competition presupposes that competition will actually exist, i.e. that goods from competing producers will be in the same market at the same time.”¹⁶

53. Consequently, in order to examine the conditions of competition and determine whether it is appropriate to make an assessment of the cumulative effect of the dumping of subject bicycles from Chinese Taipei and China, the Tribunal must first be persuaded that goods from both of these countries will likely be present in the Canadian market if the order is rescinded.

54. The Tribunal notes that none of the parties argued that, if the order is rescinded, subject bicycles from China will not be present in the Canadian market. Indeed, the evidence on the record demonstrates that, during the POR, large quantities of subject bicycles were imported from China and sold in the

13. *Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-05A, Administrative Record, Vol. 1.1A at 16-18; Tribunal Exhibit RR-2011-002-17.02, Administrative Record, Vol. 3A at 7; Tribunal Exhibit RR-2011-002-17.03A, Administrative Record, Vol. 3A at 12-13; Tribunal Exhibit RR-2011-002-17.05, Administrative Record, Vol. 3 at 23; Tribunal Exhibit RR-2011-002-18.05 (protected), Administrative Record, Vol. 4A at 152; Tribunal Exhibit RR-2011-002-23.06A, Administrative Record, Vol. 5.1 at 110-12; Tribunal Exhibit RR-2011-002-23.09, Administrative Record, Vol. 5.1 at 138.

14. See, for example, *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at para. 80.

15. See *Certain Carbon Steel Welded Pipe* (24 July 2001), RR-2000-002 (CITT) at 6-7.

16. *Certain Carbon Steel Welded Pipe* at 7.

Canadian market at MSRPs of CAN\$400 or less.¹⁷ As will be further explained in the section of the reasons entitled “Likely Volumes of Dumped Goods”, the Tribunal is of the opinion that, if the order is rescinded in respect of China, subject bicycles from that country will continue to be present in the Canadian market, in significant quantities.

55. With respect to Chinese Taipei, the TBEA and Giant Canada submitted that imports of subject bicycles from that country should not be cumulated with those from China, as they have been absent from the mass merchant segment of the Canadian market—where Raleigh’s core business is focused—and will not return to this segment of the market, even if the order is rescinded in respect of Chinese Taipei. In this regard, they submitted that higher costs in Chinese Taipei, as compared to China, have pushed exporters in Chinese Taipei into the high-end segment of the market.

56. Raleigh submitted that imports of subject bicycles from Chinese Taipei should be cumulated with those from China, as a rescission of the order in respect of Chinese Taipei will likely result in the shipment of non-negligible quantities of subject bicycles from that country to Canada. It submitted that the existence of significant excess production capacity in Chinese Taipei, combined with the existence of significant relationships between bicycle producers in both countries, is likely to result in the production of some bicycles destined for Canada being shifted from China to Chinese Taipei if the order in respect of Chinese Taipei is rescinded.

57. In Expiry Review No. RR-2006-001, the Tribunal stated the following in respect of imports of subject bicycles from Chinese Taipei:

66. While the Tribunal accepts that many producers in Chinese Taipei have moved to the production of higher-priced bicycles that are sold through the IBD distribution channel, during the review period, notable volumes of bicycles from Chinese Taipei were sold in the Canadian market at prices under [CAN]\$400. The information on the record indicates that, at these prices, the volume of sales from imports of bicycles from Chinese Taipei accounted for 5 percent of the market in 2004 and 4 percent of the market in the first six months of 2007.

[Footnote omitted]

58. On the basis of replies that importers provided in their expiry review questionnaires, the Tribunal notes that, during the POR, particularly beginning in 2010, negligible quantities of subject bicycles from Chinese Taipei were imported and sold in the Canadian market at MSRPs of CAN\$400 or less.¹⁸ These quantities also accounted for a negligible share (i.e. a significantly lower share than the Tribunal found in Expiry Review No. RR-2006-001) of total imports of subject goods sold at MSRPs of CAN\$400 or less.¹⁹

59. The fact that producers in Chinese Taipei appear to have virtually abandoned the mass merchant segment of the Canadian market, which is occupied by Raleigh and its Chinese competition, and migrated towards the high-end IBD segment of the market, was also acknowledged by a witness for Raleigh, who

17. *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 29, 37, 97; *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 29-30.

18. *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 29, 37, 97.

19. *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 39; Tribunal Exhibit RR-2011-002-10, Administrative Record, Vol. 1.3A at 49, 51.

testified that Raleigh had not seen bicycles from Chinese Taipei in its core marketplace where it actively competes.²⁰

60. As noted above, however, the Tribunal need only be persuaded, on the evidence, that subject bicycles from Chinese Taipei will likely be present in the Canadian market in non-negligible volumes if the order is rescinded. In other words, it is not the *actual* or *current* volume of imports that the Tribunal must be concerned with, but rather the *likely* volume of imports if the order is rescinded.

61. On the basis of the evidence on the record, and as will be further explained in the section of the reasons entitled “Likely Volumes of Dumped Goods”, the Tribunal is of the opinion that, if the order is rescinded in respect of Chinese Taipei, subject bicycles from that country will likely be present in the mass merchant segment of the Canadian market in more than negligible quantities in the near to medium term.

62. In this respect, the evidence regarding factors such as the existence of excess production capacity in Chinese Taipei,²¹ affiliations between producers in Chinese Taipei and China,²² the continuing presence of bicycles from Chinese Taipei in the Canadian market²³ and the shipment of significant quantities of low-priced bicycles from Chinese Taipei to several other countries²⁴ support the conclusion that producers in Chinese Taipei have both the capability and inclination to export more than negligible quantities of subject bicycles for sale in the Canadian market at MSRPs of CAN\$400 or less if the order in respect of Chinese Taipei is rescinded.

63. In terms of the actual conditions of competition between the subject goods and the like goods, the Tribunal recalls the following statement it made in Expiry Review No. RR-2006-001:

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

20. *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 24, 31.

21. *Protected Pre-hearing Staff Report*, revised 12 October 2012, Tribunal Exhibit RR-2011-002-06B (protected), Administrative Record, Vol. 2.1A at 132-33; *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 110-11, 113; Tribunal Exhibit RR-2011-002-03A at paras. 138-39, Administrative Record, Vol. 1A.

22. Manufacturer’s Exhibit A-08 at 24, Administrative Record, Vol. 11; Tribunal Exhibit RR-2011-002-03A at para. 151, Administrative Record, Vol. 1A; Tribunal Exhibit RR-2011-002-15.10 (single copy, protected), Administrative Record, Vol. 2.01; Tribunal Exhibit RR-2011-002-26.01, Administrative Record, Vol. 5.2 at 43; Tribunal Exhibit RR-2011-002-26.02, Administrative Record, Vol. 5.2 at 130; *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 37-38.

23. *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 37, 97, 101; *Protected Pre-hearing Staff Report*, revised 12 October 2012, Tribunal Exhibit RR-2011-002-06B (protected), Administrative Record, Vol. 2.1A at 128, 130; Tribunal Exhibit RR-2011-002-27.03A (protected), Administrative Record, Vol. 6.2A at 269; Tribunal Exhibit RR-2011-002-27.08 (protected), Administrative Record, Vol. 6.2C at 192; Tribunal Exhibit RR-2011-002-27.13 (protected), Administrative Record, Vol. 6.2E at 73; Tribunal Exhibit RR-2011-002-27.15 (protected), Administrative Record, Vol. 6.2F at 7-8.

24. Tribunal Exhibit RR-2011-002-17.01A, Administrative Record, Vol. 3 at 141-43; Manufacturer’s Exhibit A-10 at 1, 2, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 114-19, 140-41.

64. The Tribunal received no evidence and heard no argument that would lead it to believe that, if the order is rescinded, the conditions of competition, as it had found them to exist in Expiry Review No. RR-2006-001, will not continue to adhere for the foreseeable future. The Tribunal is therefore of the opinion that, if the order is rescinded, imports of subject bicycles from Chinese Taipei and China will not only be present in the mass merchant segment of the Canadian market, but will also compete directly against each other and with the like goods.

65. That being the case, the Tribunal is satisfied that it is appropriate to make an assessment of the cumulative effect of the dumping of subject bicycles from Chinese Taipei and China in its analysis of likelihood of injury.

Likelihood of Injury

66. As noted above, the Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the order is likely to result in injury to the domestic industry.

67. In a procedural order in *Certain Dishwashers and Dryers*, the Tribunal stated that, in its view, “. . . subsections 76.03(7) and 76.03(10) of *SIMA* clearly indicate that the analyses conducted by the CBSA and the Tribunal in an expiry review are forward-looking.”²⁵ In making its assessment of the likelihood of injury, the Tribunal has consistently taken the view that the focus must be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally considered to be 18 to 24 months from the expiry of the finding or order.²⁶ The Tribunal heard no argument that it should consider a different time period in this expiry review.

68. In *Copper Pipe Fittings*, the Tribunal stated that “[i]t follows from the forward-looking nature of expiry reviews that evidence from the POR, during which an order or a finding was being enforced, is relevant only insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.”²⁷ The Tribunal also explained in *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* that “. . . there is no presumption of injury in an expiry review and . . . [the Tribunal’s] findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization”²⁸ (WTO).

69. Subsection 37.2(2) of the *Special Import Measures Regulations*²⁹ lists the factors that the Tribunal may consider in addressing the question of likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping. The factors that the Tribunal considers relevant in this expiry review are discussed below.

Changes in Market Conditions

70. In arriving at its view on the likely volumes and prices of the subject goods and their impact on the domestic industry if the order is rescinded, the Tribunal will first consider changes in international and domestic market conditions, as contemplated by paragraph 37.2(2)(j) of the *Regulations*.

25. (25 April 2005), RR-2004-005 (CITT) at para. 16.

26. *Wood Slats* (15 July 2009), RR-2008-003 (CITT) at para. 45; *Preformed Fibreglass Pipe Insulation* (17 November 2003), RR-2002-005 (CITT) at 11; *Certain Prepared Baby Foods* (28 April 2003), RR-2002-002 (CITT) at 8; *Certain Solder Joint Pressure Pipe Fittings* (16 October 1998), RR-97-008 (CITT) at 10.

27. *Copper Pipe Fittings* at para. 56.

28. (16 August 2006), RR-2005-002 (CITT) at para. 59.

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

International Market Conditions

71. As was the case in Expiry Review RR-2006-001, China's bicycle market and bicycle industry remain the largest in the world. China's production, which was estimated at 79.5 million units in 2006, increased to 83.45 million units in 2011. Similarly, its exports, which stood at about 52.0 million units in 2006, increased to 55.7 million units in 2011. China's exports represented 65 percent of its total domestic production in 2006. This ratio increased to 67 percent in 2011.³⁰

72. The domestic market for bicycles in China is softening, as the emerging middle class opts for automobiles over bicycles as its preferred mode of transportation. Furthermore, the rate of growth in China's economy from April to June 2012 has been the weakest since the 2008-2009 global recession. China recently cut its interest rates to counter its weak economic performance.³¹

73. In its statement of reasons, dated August 10, 2012, the CBSA reported that, based on the data from the Facility for Information Retrieval Management (FIRM), there were 136 exporters that exported bicycles from China to Canada in 2011, down from 190 exporters in 2006.³²

74. There is evidence to suggest that labour costs in China have risen since Expiry Review No. RR-2006-001. While labour costs are still greater in Chinese Taipei, wages are rapidly climbing in China, and the income gap between the two is narrowing.³³

75. Furthermore, with the coming into force of the *China-Taiwan Free Trade Agreement* in 2012, Chinese Taipei bicycle producers have free access to the Chinese bicycle market. To be competitive in mainland China, Chinese Taipei producers will have to match the prices at which Chinese producers sell their bicycles. If they are successful, Chinese bicycle producers will need to turn to export markets to recover domestic sales lost to Chinese Taipei producers. Indeed, Chinese Taipei producers are reported to be increasingly competing for sales in mainland China.³⁴

76. There is also evidence that, due to strikes over wages, rising labour costs, labour shortages and the abolishment of tax incentives for foreign-owned companies in China, the country is losing much of its attractiveness as a production base. Consequently, some Chinese Taipei producers, which had established facilities in China, are repatriating some of their production operations from mainland China to Chinese Taipei. They are, however, keeping their headquarters in place with the hope of seeing the Chinese market rebound in the future.³⁵

30. Tribunal Exhibit RR-2011-002-03A at para. 118, Administrative Record, Vol. 1A; Tribunal Exhibit RR-2011-002-26.01, Administrative Record, Vol. 5.2 at 48; Tribunal Exhibit RR-2011-002-26.07, Administrative Record, Vol. 5.2A at 66; Manufacturer's Exhibit A-08 at 10, Administrative Record, Vol. 11; *Bicycles and Frames* (10 December 2007), RR-2006-001 (CITT) at paras. 74-75.

31. Manufacturer's Exhibit A-08 at 11, 16, 19, Administrative Record, Vol. 11.

32. Tribunal Exhibit RR-2011-002-03A at para. 129, Administrative Record, Vol. 1A; Tribunal Exhibit RR-2011-002-15.14 (protected), Administrative Record, Vol. 2.4BB at 8-238; Tribunal Exhibit RR-2011-002-15.14A (protected), Administrative Record, Vol. 2.4CC at 1-215; Tribunal Exhibit RR-2011-002-15.14B (protected), Administrative Record, Vol. 2.4DD at 1-99; *Bicycles and Frames* (10 December 2007), RR-2006-001 (CITT) at para. 76.

33. *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 37-38; *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 77; Tribunal Exhibit RR-2011-002-17.01A, Administrative Record, Vol. 3 at 158; Manufacturer's Exhibit A-08 at 15, Administrative Record, Vol. 11; Manufacturer's Exhibit A-10 at 3, Administrative Record, Vol. 11; Exporter's Exhibit B-01 at para. 42, Administrative Record, Vol. 13.

34. Manufacturer's Exhibit A-08 at 3, 15, 24, Administrative Record, Vol. 11.

35. Manufacturer's Exhibit A-08 at 15, Administrative Record, Vol. 11.

77. The Chinese Taipei bicycle industry is recognized as being among the most technologically advanced in the world, and many of its producers appear to be focusing on high-quality and high value-added production and moving away from the low-price market.³⁶ The evidence shows that Chinese Taipei had average annual shipments of over 4.2 million units from 2009 to 2011.³⁷

78. Finally, the CBSA's latest normal value reinvestigation, which it concluded on July 7, 2011, revealed that the relationship between producers in Chinese Taipei and plants in China is strong. In fact, of the 28 Chinese exporters that the CBSA examined, 12 were found to have associations with Chinese Taipei exporters.³⁸

Domestic Market Conditions

79. Since Expiry Review No. RR-2006-001, and during the POR, a number of key changes and developments have occurred in Canada, in general, and in the Canadian bicycle market in particular.

80. In the Canadian bicycle market, a major change occurred in 2009, when Raleigh stopped producing frames. In this regard, it discontinued the use of its robotic laser tube machine to cut steel tubing and its eight robotic MIG machines to weld bicycle frames. As a result, it now imports all of its unpainted steel and aluminum alloy frames and paints them on its electrostatic paint line. Raleigh also started importing small quantities of frames already painted.³⁹ Furthermore, rather than importing low-volume higher-priced bicycles, as was found to be the case in Expiry Review No. RR-2006-001, Raleigh commenced producing them.⁴⁰

81. The second major set of changes in the Canadian bicycle market occurred in the mass merchant segment. In 2011, CTC purchased the Forzani Group, a major multi-sport retailer that sells bicycles in its SportChek, Sport Mart and Sports Experts stores. Furthermore, in the fall of 2012, Zellers announced the sale of most of its prime store locations to Target.⁴¹ The exit of Zellers from the mass merchant segment of the Canadian bicycle market is likely to exacerbate the already strong price competition at the opening price point (OPP) segment of the bicycle market between the other two large mass merchants, CTC and Wal-Mart. At this point, it is uncertain if Target will participate in the Canadian bicycle market⁴² and, if so, what its impact will be on the Canadian bicycle market in the near to medium term.⁴³

82. The third major change in the Canadian bicycle market has been the official acquisition of Raleigh by Accell on May 23, 2012. Accell is active internationally in the mid-range and higher segments of the

36. Tribunal Exhibit RR-2011-002-03A at para. 138, Administrative Record, Vol. 1A; Tribunal Exhibit RR-2011-002-17.01A, Administrative Record, Vol. 3 at 129; Tribunal Exhibit RR-2011-002-26.03, Vol. 5.2 at 242-44.

37. Tribunal Exhibit RR-2011-002-03A at para. 138, Administrative Record, Vol. 1A; Tribunal Exhibit RR-2011-002-26.03, Vol. 5.2 at 242-44.

38. Tribunal Exhibit RR-2011-002-03A at para. 151, Administrative Record, Vol. 1A; Tribunal Exhibit RR-2011-002-15.10 (single copy, protected), Administrative Record, Vol. 2.01.

39. Tribunal Exhibit RR-2011-002-17.01, Administrative Record, Vol. 3 at 34; Tribunal Exhibit RR-2011-002-18.01 (protected), Administrative Record, Vol. 4 at 10.

40. *Bicycles and Frames* (10 December 2007), RR-2006-001 (CITT) at para. 29; Tribunal Exhibit RR-2011-002-17.01, Administrative Record, Vol. 3 at 38.

41. *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 168; Tribunal Exhibit RR-2011-002-17.01, Administrative Record, Vol. 3 at 43; Tribunal Exhibit RR-2011-002-18.01 (protected), Administrative Record, Vol. 4 at 237.

42. *Transcript of In Camera Hearing*, Vol. 2, 16 October 2012, at 85-86; Tribunal Exhibit RR-2011-002-17.01, Administrative Record, Vol. 3 at 43; Tribunal Exhibit RR-2011-002-18.01 (protected), Administrative Record, Vol. 4 at 19.

43. Tribunal Exhibit RR-2011-002-17.01, Administrative Record, Vol. 3 at 43; Tribunal Exhibit RR-2011-002-18.01 (protected), Administrative Record, Vol. 4 at 19-20; *Transcript of In Camera Hearing*, Vol. 2, 16 October 2012, at 84-85.

bicycle, part and accessory, and fitness equipment markets. It has production facilities in the Netherlands, Germany, France, Hungary, Turkey and Canada. Given that this acquisition is so recent, Raleigh does not know the full impact that this change will have on its domestic production of bicycles or on its parts and components sourcing. However, Raleigh is looking to work more closely with its sister company, Raleigh U.S., on a North American basis, to streamline, among other things, their product offerings as well as marketing and advertisement expenses.⁴⁴

83. Finally, in Expiry Review No. RR-2006-001, the Tribunal found that bicycles from the subject countries had a dominant position in the Canadian market, with a 60-percent market share in 2007. In this expiry review, the Tribunal observes that, in every period of the POR, bicycles from the subject countries had market shares that were larger than 60 percent. More importantly, compared to five years ago, the Tribunal notes that, in this expiry review, bicycles from the subject countries were able to attain larger market shares in a smaller Canadian bicycle market.⁴⁵

84. While the Canadian economy is faring better than others, its growth is, and will continue to be, restricted by larger international economic problems. Annual economic growth rates over the next two years are expected to be the lowest since the recession of 2008. In the retail sector, recent news is even less encouraging as sales are falling instead of increasing. There is unlikely to be a significant expansion in bicycle demand and spending in the near to medium term in Canada.⁴⁶

Likely Volumes of Dumped Goods

85. The Tribunal's assessment of the likely volumes of dumped imports encompasses the likely performance of the foreign industry, potential for the foreign producers to produce goods in facilities that are currently used to produce other goods, evidence of the imposition of anti-dumping or countervailing measures on bicycles or similar goods in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.⁴⁷

86. With respect to Chinese Taipei, the TBEA argued that, since the original finding in Inquiry No. NQ-92-002, and even more so since Expiry Review No. RR-2006-001, imports of subject bicycles from that country have virtually been eliminated, especially with respect to subject bicycles that are sold in the Canadian market at MSRPs of CAN\$400 or less. According to the TBEA, the erosion of Chinese Taipei's position in the Canadian market is clear, steady and undeniable.

87. Raleigh submitted that the negligible volume of imports from Chinese Taipei while the order has been in place is evidence that producers in Chinese Taipei are unable to compete in the Canadian market without dumping. Raleigh added that the Tribunal must be concerned with the likely, not the actual, volume of imports from Chinese Taipei.

88. With respect to the total volume of subject goods imported into Canada during the POR, the evidence shows that, in absolute terms, it trended slightly downward from 2009 to 2011, before increasing by almost 30 percent in the first six months of 2012 compared to the first six months of 2011. The market

44. Manufacturer's Exhibit A-05 at paras. 2-3, Administrative Record, Vol. 11; Exporter's Exhibit J-02 at Tab 1, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 12-14.

45. Tribunal Exhibit RR-2011-002-10, Administrative Record, Vol. 1.3A at 49, 51; *Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-05A, Administrative Record, Vol. 1.1A at 37; *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 39.

46. Manufacturer's Exhibit A-08 at 21, 23, Administrative Record, Vol. 11; *Transcript of In Camera Hearing*, Vol. 2, 16 October 2012, at 85-86.

47. Refer to paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

share captured by the subject goods during the POR followed a similar trend.⁴⁸ This downward pressure is attributed to the bad weather that delayed the 2011 bicycle season. The volume of subject goods imported into Canada during the POR exceeded substantially that observed during the time period examined in Expiry Review No. RR-2006-001.⁴⁹

89. In each period of the POR, the total volume of subject goods surpassed the volume of domestic production and sales of like goods. From the first six months of 2011 to the first six months of 2012, the ratio of imports of the subject goods to domestic production increased by more than one third and the ratio of imports of the subject goods to domestic consumption increased by more than two thirds.⁵⁰ The Tribunal notes that this trend reflects a decline in domestic production and sales of like goods in the face of significant increases of imports of subject goods.

90. Furthermore, from the first six months of 2011 to the first six months of 2012, the Tribunal observes that sales of imports from the subject countries at MSRPs of CAN\$400 or less displaced domestic shipments of like goods. The volume of subject goods imported at FOB selling prices of CAN\$225 or less increased by 29 percent, their sales in the Canadian market at MSRPs of CAN\$400 or less increased by 19 percent, while Raleigh's sales of domestic production of like goods with MSRPs of CAN\$400 or less declined by 25 percent, and the size of the Canadian market increased by only 4 percent.⁵¹

91. Replies to the exporters' expiry review questionnaire demonstrate that bicycles exported from Chinese Taipei were sold in the Canadian market at every MSRP level.⁵²

92. Information provided by three of the four Chinese Taipei producers/exporters that replied to the expiry review questionnaire indicates that these producers/exporters, including Giant Taiwan, exported bicycles at every MSRP, including those less than CAN\$150 up to CAN\$400, during the POR. In fact, their

48. *Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-05A, Administrative Record, Vol. 1.1A at 30; *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 29, 31.

49. *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 29; Tribunal Exhibit RR-2011-002-10, Administrative Record, Vol. 1.3A at 33; Tribunal Exhibit RR-2011-002-17.01, Administrative Record, Vol. 3 at 43-44.

50. *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 28, 29, 37.

51. *Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-05A, Administrative Record, Vol. 1.1A at 30; *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 29, 37; *Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-05A, Administrative Record, Vol. 1.1A at 38.

52. The Tribunal notes that the import data in the *Pre-hearing Staff Report* were provided by four importers and, clearly, do not capture all subject bicycles that were exported to Canada from Chinese Taipei during the POR. In fact, the CBSA identified 39 exporters from Chinese Taipei, but only 4 replied to the expiry review questionnaire. These four companies reported to have exported subject bicycles with MSRPs of CAN\$400 or less in much larger volumes than those reported by importers. Tribunal Exhibit RR-2011-002-03A at para. 147, Administrative Record, Vol. 1A; *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 37; *Protected Pre-hearing Staff Report*, revised 12 October 2012, Tribunal Exhibit RR-2011-002-06B (protected), Administrative Record, Vol. 2.1A at 128, 130; Tribunal Exhibit RR-2011-002-27.03A (protected), Administrative Record, Vol. 6.2A at 269; Tribunal Exhibit RR-2011-002-27.08 (protected), Administrative Record, Vol. 6.2C at 192; Tribunal Exhibit RR-2011-002-27.13 (protected), Administrative Record, Vol. 6.2E at 73; Tribunal Exhibit RR-2011-002-27.15 (protected), Administrative Record, Vol. 6.2F at 7-8.

exports at MSRPs of CAN\$400 or less represented between 30 percent and 78 percent of their total exports to Canada during the POR.⁵³

93. The Tribunal notes that some Chinese Taipei producers have shown an interest in the MSRP of CAN\$400 or less segment of the market. For example, there is evidence that Chinese Taipei bicycles do compete directly with Chinese subject bicycles and the like goods, in the same distribution channels where the upper-end price points of the mass merchant segment often overlap with the lower-end price points of the IBD segment.⁵⁴ There is also evidence that Chinese Taipei producers sell children's bicycles that compete with Chinese bicycles in other markets.⁵⁵

94. However, responses to the importers' expiry review questionnaire indicate that negligible volumes of subject bicycles from Chinese Taipei were imported and sold at MSRPs of CAN\$400 or less during the POR.⁵⁶ This supports the view that Chinese Taipei has largely gravitated to the production of higher-priced bicycles (i.e. those with MSRPs of CAN\$401 or greater) sold through mainly the IBD segment of the Canadian bicycle market.⁵⁷

95. Furthermore, Giant Canada indicated that it is not interested in the MSRP CAN\$400 or less segment of the Canadian market, as it is structurally committed to high-end production and its sales concentrated at higher MSRPs.⁵⁸

96. On the basis of the evidence on the record provided by both importers and Chinese Taipei producers/exporters that replied to the expiry review questionnaires, the Tribunal is of the view that the continuing presence, in the Canadian market, of large volumes of Chinese Taipei bicycles with MSRPs of CAN\$400 or less and MSRPs of CAN\$401 or greater is indicative of a continuing interest on the part of at least certain Chinese Taipei producers in these segments of the Canadian market.

97. The Tribunal is also of the view that the presence of Chinese Taipei bicycles in higher-priced segments of the Canadian market (i.e. MSRPs of CAN\$401 or greater) is proof that Chinese Taipei producers are capable and inclined to return to greater and non-negligible volumes at lower price points if the order is rescinded, especially given their existing and well-established Canadian distribution networks.

53. The fourth Chinese Taipei producer/exporter exported small volumes of bicycles at various MSRPs over the POR, but its exports of bicycles at MSRPs of CAN\$400 or less represented between 69 percent and 100 percent of its total exports. Tribunal Exhibit RR-2011-002-27.03A (protected), Administrative Record, Vol. 6.2A at 269; Tribunal Exhibit RR-2011-002-27.08 (protected), Administrative Record, Vol. 6.2C at 192; Tribunal Exhibit RR-2011-002-27.13 (protected), Administrative Record, Vol. 6.2E at 73; Tribunal Exhibit RR-2011-002-27.15 (protected), Administrative Record, Vol. 6.2F at 7-8.

54. *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 63-64; *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 90-92; *Transcript of In Camera Hearing*, Vol. 2, 16 October 2012, at 48-49.

55. Manufacturer's Exhibit A-10 at 1, 2, Administrative Record, Vol. 11; Tribunal Exhibit RR-2011-002-17.01A, Administrative Record, Vol. 3 at 141-43; Tribunal Exhibit RR-2011-002-26.02, Administrative Record, Vol. 5.2 at 128; *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 97-99, 114-19, 140-41.

56. *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 29, 37; *Protected Pre-hearing Staff Report*, revised 12 October 2012, Tribunal Exhibit RR-2011-002-06B (protected), Administrative Record, Vol. 2.1A at 128, 130.

57. Exporter's Exhibit at J-02 at paras. 9, 14-16, 27, Administrative Record, Vol. 13.

58. *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 77-78, 90; Exporter's Exhibit at J-02 at paras. 9, 16, 27, Administrative Record, Vol. 13.

98. Turning to the likely performance of the foreign industry, Raleigh argued that there is massive excess capacity in both Chinese Taipei and China relative to the size of the Canadian market, and that the excess capacity in either one of those markets could easily devastate the Canadian bicycle market.

99. In this respect, the evidence indicates that China has an annual production capacity of 100 to 110 million bicycles. As noted above, in 2011, its annual production was about 80 million units (of which 25 million units were destined for the Chinese domestic market). This left approximately 55 million units for export markets, representing 69 percent of China's domestic production, and an estimated 20 million units to 30 million units of excess capacity.⁵⁹

100. To put this in perspective, China's excess capacity represented more than 20 to 30 times the size of the Canadian market in 2011.⁶⁰ Furthermore, the evidence reports a decline of over 2 million units in sales of bicycles in the Chinese domestic market from 2009 to 2011.⁶¹

101. Moreover, the European Union observed, in its 2011 expiry review of the anti-dumping measures on bicycles originating in China, that new capacity can be easily added in China through the employment of additional workforce, in case of an increased demand.⁶² The evidence shows that there have been announcements that nearly 60 facilities located in the Industrial Park of Jinghai (municipality of Tianjin) will increase their production capacity from 10 million units to 30 million units by the end of 2012,⁶³ that Chongqing Kang Park Bike Company will add 600,000 units to its capacity for the export markets only and that Giant China has plans to expand its annual capacity to 3.6 million units.⁶⁴ The Tribunal notes that even if a small portion of this additional capacity is directed toward the production of subject bicycles, it would be significant in terms of the Canadian market.

102. Turning more specifically to the Canadian market, information compiled by the Chinese Bicycles Association shows an increase of 0.5 percent in the number of bicycles exported from China to Canada from 2010 to 2011. According to this information, 1.1 million bicycles were exported to Canada in 2011, which is 200,000 more units than the entire size of the Canadian market in that year.⁶⁵

103. While this information relates to all exporters from China, the data provided by the 11 Chinese producers/exporters that replied to the expiry review questionnaire show the same trends. An analysis of the data for the POR reveals significant increases in their production capacity, production of subject bicycles and of other bicycles. In 2011 alone, with a production capacity of 13.1 million units and production at almost 8.0 million subject bicycles and 3.0 million other bicycles, these 11 Chinese producers had an excess capacity of over 2.0 million units. In the first six months of 2012, China's excess capacity for these

59. Tribunal Exhibit RR-2011-002-03A at paras. 53, 119, Administrative Record, Vol. 1A; Tribunal Exhibit RR-2011-002-17.01A, Administrative Record, Vol. 3 at 125; Tribunal Exhibit RR-2011-002-26.01, Administrative Record, Vol. 5.2 at 51.

60. *Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-05A, Administrative Record, Vol. 1.1A at 37.

61. Tribunal Exhibit RR-2011-002-26.01, Administrative Record, Vol. 5.2 at 51.

62. Tribunal Exhibit RR-2011-002-17.01A, Administrative Record, Vol. 3 at 125.

63. No indication what percentage of this additional capacity will be destined for the subject bicycles. Manufacturer's Exhibit A-08 at 28, Administrative Record, Vol. 11.

64. Manufacturer's Exhibit A-08 at 2, 29, Administrative Record, Vol. 11.

65. *Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-05A, Administrative Record, Vol. 1.1A at 37; Tribunal Exhibit RR-2011-002-26.07, Administrative Record, Vol. 5.2A at 67.

11 producers was reduced to almost 500,000 units, but the Tribunal notes that this is still more than half of the size of the Canadian market for that interim period.⁶⁶

104. As was noted in Expiry Review No. RR-2006-001, given the size of the bicycle industry in China, even a relatively small amount of excess capacity can be injurious to the domestic industry if used to produce subject bicycles that would be sold in the Canadian market at MSRPs of CAN\$400 or less, if the order is rescinded. Indeed, having regard to the fact that the entire Canadian market for bicycles with MSRPs of CAN\$400 or less is less than 1 million units, the record points to sufficient idle capacity in China alone to overwhelm and cause serious disruption to the Canadian market. The Tribunal notes that, as a result of this excess capacity, Chinese producers will likely continue to look to export markets in order to maintain their production levels.

105. With respect to the Chinese Taipei bicycle industry, the evidence shows that, on an aggregate level, it is heavily export-oriented. Even though the TBEA reports that total exports from Chinese Taipei declined from 5.1 million units in 2010 to 4.4 million units in 2011, the Tribunal notes that these latter exports are still significant.⁶⁷ The Ministry of Finance, Directorate General of Customs, in Chinese Taipei reports that exports to Canada were 110,000 units, 73,000 units and 89,000 units, from 2009 to 2011, respectively.⁶⁸

106. An analysis of the data provided by the four Chinese Taipei producers/exporters that responded to the expiry review questionnaire shows a relatively stable production capacity, a decline in production of subject bicycles, but an increase in the production of other bicycles over the POR. However, in every single period of the POR, the four Chinese Taipei producers/exporters had excess production capacity sufficient to adversely affect the domestic industry and the Canadian market should the order be rescinded in respect of Chinese Taipei.⁶⁹

107. The record includes further evidence that some Chinese Taipei producers/exporters would have the capability and inclination to export non-negligible volumes of bicycles with MSRPs of CAN\$400 or less in the Canadian market if the current order in respect of that country were rescinded. In 2011, Chinese Taipei exported a total of more than 450,000 children's and simple adult city bicycles at FOB selling prices of less than US\$200 to 14 different countries.⁷⁰

108. Furthermore, and as alluded to earlier, trade publications point to the fact that certain Chinese Taipei producers that were operating in mainland China may now be repatriating production to Chinese Taipei because of increasing costs of production in China.⁷¹

109. There is also evidence on the record that the many affiliations with producers of low-cost parts in mainland China, which account for at least 75 percent of the cost of a bicycle, will improve the ability of

66. *Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-05A, Administrative Record, Vol. 1.1A at 37, 72; *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 114-24.

67. Manufacturer's Exhibit A-10 at 2, Administrative Record, Vol. 11.

68. Tribunal Exhibit RR-2011-002-26.03, Administrative Record, Vol. 5.2 at 239-414.

69. *Protected Pre-hearing Staff Report*, revised 12 October 2012, Tribunal Exhibit RR-2011-002-06B (protected), Administrative Record, Vol. 2.1A at 132-33; *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A, Administrative Record, Vol. 2.1A at 110-11, 113.

70. Manufacturer's Exhibit A-10 at 1, 2, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 114-19, 140-41.

71. Manufacturer's Exhibit A-08 at 15, Administrative Record, Vol. 11.

Chinese Taipei producers to compete at mass merchant market retailer price points, if the order in respect of Chinese Taipei is rescinded.⁷²

110. Corroborating evidence indicates that, in 2011, anti-dumping duties were collected on shipments from 77 Chinese exporters, of which at least 15 were exporting bicycles to Canada on a regular basis.⁷³ With respect to Chinese Taipei, FIRM data for 2011 indicate that anti-dumping duties were collected on bicycles from 16 exporters out of a total of 39, of which 3 were exporting to Canada on a regular basis.⁷⁴

111. Furthermore, there is evidence that authorities in other countries have recently imposed or maintained measures that are directed at bicycles from China and Chinese Taipei. Of note, the European Union has extended its anti-dumping measures for a further five-year period, maintaining its 48.5-percent duty on bicycles exported from China.⁷⁵ Brazil has also raised its import duty rates from 20 percent to 35 percent on bicycles from both Chinese Taipei and China.⁷⁶ This, in the Tribunal's view, could result in further shipments to Canada of subject bicycles with MSRPs of CAN\$400 or less.

112. Accordingly, the Tribunal is of the view that the continuing interest of Chinese and Chinese Taipei producers in the Canadian market, as demonstrated, in particular, by the continuing presence of subject goods from these two countries in the Canadian market, the shipment of significant quantities of subject goods to Canada and of bicycles at FOB selling prices of less than US\$200 to several other countries, significant excess capacity in the bicycle industries of both Chinese Taipei and China, and the network of affiliations between producers in these two countries all support the conclusion that the likely volumes of subject bicycles that will be exported to Canada from the subject countries in the near to medium term if the order is rescinded will be significant in relation to the size of the Canadian market and significantly higher than the level observed over the POR.

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

113. In assessing the effects that the likely prices of dumped goods will have on prices of the like goods if the order is rescinded, the Tribunal will examine whether the subject goods are likely to significantly undercut, depress or suppress the prices of the like goods.⁷⁷

114. Raleigh argued that, if the order is rescinded, the likely prices of dumped goods will significantly undercut and depress the prices of the like goods. Raleigh added that the price pressures that existed in the

72. *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 92-100, 139-40, 145-46; Tribunal Exhibit RR-2011-002-03A at para. 151, Administrative Record, Vol. 1A.

73. Tribunal Exhibit RR-2011-002-03A at para. 129, Administrative Record, Vol. 1A; Tribunal Exhibit RR-2011-002-15.14 (protected), Administrative Record, Vol. 2.4BB at 8-238; Tribunal Exhibit RR-2011-002-15.14A (protected), Administrative Record, Vol. 2.4CC at 1-215; Tribunal Exhibit RR-2011-002-15.14B (protected), Administrative Record, Vol. 2.4DD at 1-99.

74. Tribunal Exhibit RR-2011-002-03A at para. 147, Administrative Record, Vol. 1A; Tribunal Exhibit RR-2011-002-15.14 (protected), Administrative Record, Vol. 2.4BB at 8-238; Tribunal Exhibit RR-2011-002-15.14A (protected), Administrative Record, Vol. 2.4CC at 1-215; Tribunal Exhibit RR-2011-002-15.14B (protected), Administrative Record, Vol. 2.4DD at 1-99.

75. Manufacturer's Exhibit A-08 at 1, Administrative Record, Vol. 11; Tribunal Exhibit RR-2011-002-17.01A, Administrative Record, Vol. 3 at 122-38.

76. Manufacturer's Exhibit A-08 at 5-6, 8, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 42.

77. Refer to paragraph 37.2(2)(b) of the *Regulations*.

Canadian market in Expiry Review No. RR-2006-001 (e.g. the importance of low prices to mass merchants) are still present in this expiry review.

115. Raleigh estimated that it might have to lower its prices by 10 percent if the order is rescinded. It submitted that, even if this price depression was not coupled with a loss of volume, it would be disastrous for its overall financial performance.

116. The TBEA and Giant Canada argued that, given that the preponderance of exports from Chinese Taipei are sold at MSRPs of CAN\$401 or greater, they are not likely to cause injury to the domestic industry.

117. As the Tribunal has already determined that Chinese Taipei producers have the capability and inclination to export to Canada bicycles with MSRPs of CAN\$400 or less, it will include its analysis of the likely prices of Chinese Taipei bicycles in its analysis of Chinese bicycles.

118. Over the POR, Raleigh's average unit selling prices of bicycles with MSRPs of CAN\$400 or less trended rapidly downward as it attempted to compete with low-priced subject bicycles from China and retain market share, this notwithstanding the fact that an order was in place. While it was able to reduce the gap between its average unit selling prices and those of the subject bicycles from China towards the end of the POR, Raleigh's efforts did not translate into a gain in market share. Throughout the POR, the average unit selling prices of the subject bicycles from China undercut Raleigh's average unit selling prices and were, by far, the lowest in the Canadian market.⁷⁸

119. There were anti-dumping duties collected on imports of subject bicycles from both China and Chinese Taipei in the Canadian market during the POR.⁷⁹ The collection of these duties demonstrates, in the view of the Tribunal, the continued interest of Chinese exporters of subject bicycles in the Canadian market and their apparent inability to compete in the Canadian market at non-dumped prices. It also indicates that some Chinese Taipei exporters were dumping while the order was in place.

120. Evidence on the record and testimony heard during the hearing reconfirmed the Tribunal's conclusions in Expiry Review No. RR-2006-001 that, for purchasers of subject goods and like goods, price continues to be a determining factor, particularly in the mass merchant segment of the market. The evidence also clearly demonstrates that there is a high degree of price competitiveness and that mass merchants must be able to match or better the price and specifications offered by competitors in order to retain or gain retail market share.

121. Wal-Mart, which services the mass merchant segment of the Canadian market at OPPs less than CAN\$200, testified that the bicycle market is very price-sensitive.⁸⁰ It endeavours to have the lowest-cost bicycle possible to be able to offer its customers a bicycle with the best quality and technical specifications at the lowest possible retail price.⁸¹ This can mean, at times, sourcing from multiple suppliers, requesting of them multiple quotes, including their lowest cost for Wal-Mart's OPPs. This occurs in an environment

78. *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 39, 43; *Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-05A, Administrative Record, Vol. 1.1A at 43.

79. Tribunal Exhibit RR-2011-002-03A at paras. 127, 148, Administrative Record, Vol. 1A; *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 30-31.

80. *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 155-56, 159-60.

81. *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 163-64.

where mass merchants are facing increasing price pressures to retain their position in a very competitive market.⁸²

122. This focus on continued pressure to lower prices is corroborated by various foreign producers. Giant China indicated in its response to the exporters' expiry review questionnaire that it is satisfied with the current order;⁸³ however, a natural corollary is that its profitable pricing would not be possible if other exporters could enter the Canadian market at lower prices in the absence of the order. At least three other Chinese exporters expressed similar concerns about potential underselling by other exporters of subject bicycles.⁸⁴

123. The evidence on the record leads the Tribunal to conclude that, given the price sensitivities at the OPP end of the Canadian market, a rescission of the order in respect of China will result in the intensification of price undercutting in this segment and will ultimately result in further price depression in the Canadian market. Furthermore, given the strong price competition in the Canadian market that will ensue between the subject bicycles from China and Chinese Taipei and the like goods, the Tribunal is of the view that there will be adverse price effects in both the mass merchant and IBD segments of the Canadian market.

124. The Tribunal notes that, if the order is rescinded, the adverse effects resulting from the intensification of Chinese-induced OPP pressures will be exacerbated by the likely return of non-negligible Chinese Taipei volumes at higher mass merchant price points where Raleigh earns much of its profits.⁸⁵ Indeed, as discussed earlier, Chinese Taipei exported more than 450,000 bicycles at FOB selling prices of less than US\$200 to 14 different countries in 2011. Even if Chinese Taipei exported only half of this volume to the Canadian market, it would dwarf the number of units that Raleigh sells at MSRPs of CAN\$151 to CAN\$400.⁸⁶

125. In this context, and in response to Raleigh's assertion that the differential in nominal wages between China and Chinese Taipei has been narrowing,⁸⁷ the Tribunal does not see an increase in exports of price-sensitive OPP bicycles from Chinese Taipei as marking a fundamental shift in comparative advantage in respect of the production of OPP bicycles in the short to medium term, given the still sizeable wage

82. Tribunal Exhibit RR-2011-002-18.01A (protected), Administrative Record, Vol. 4A at 23-24; *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 156-64; *Transcript of In Camera Hearing*, Vol. 1, 15 October 2012, at 5-7; *Transcript of In Camera Hearing*, Vol. 2, 16 October 2012, at 80-81, 84-89; Manufacturer's Exhibit A-04 (protected) at para. 13, Administrative Record, Vol. 12; Manufacturer's Exhibit A-05 at para. 8, Administrative Record, Vol. 11; Manufacturer's Exhibit A-06 (protected) at para. 8, Administrative Record, Vol. 12.

83. Tribunal Exhibit RR-2011-002-26.01, Administrative Record, Vol. 5.2 at 43-44.

84. Tribunal Exhibit RR-2011-002-27.07 (protected), Administrative Record, Vol. 6.2C at 15; Tribunal Exhibit RR-2011-002-27.14 (protected), Administrative Record, Vol. 6.2E at 109, 115; Tribunal RR-2011-002-27.17 (protected), Administrative Record, Vol. 6.2G at 9.

85. *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 26, 30-32, 40-41; *Transcript of In Camera Hearing*, Vol. 1, 15 October 2012, at 5-7; *Transcript of Public hearing*, Vol. 3, 17 October 2012, at 179-80; Manufacturer's Exhibit A-05 at para. 8, Administrative Record, Vol. 11; Manufacturer's Exhibit A-06 (protected) at para. 8, Administrative Record, Vol. 12; Tribunal Exhibit RR-2011-002-17.01, Administrative Record, Vol. 3 at 37; Tribunal Exhibit RR-2011-002-18.01 (protected), Administrative Record, Vol. 4 at 235, 243.

86. *Protected Pre-hearing Staff Report*, revised 12 October 2012, Tribunal Exhibit RR-2011-002-06B (protected), Administrative Record, Vol. 2.1A at 128; Manufacturer's Exhibit A-10 at 1, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 114-19, 140-41.

87. Manufacturer's Exhibit A-09 at paras. 26-27, Administrative Record, Vol. 11.

difference. In this regard, evidence on the record indicates that wages in Chinese Taipei were many times the average in China over the period 2007 to 2009.⁸⁸

126. Furthermore, the change that the CBSA made in 2004 in respect of the way it calculates normal values for subject bicycles from China, i.e. using domestic selling prices and costs of production in China rather than in a “surrogate” country,⁸⁹ cemented, in the view of the Tribunal, China’s comparative advantage (and, by extension, Chinese Taipei’s relative disadvantage) in the production of price-sensitive OPP bicycles.

127. On the basis of the foregoing, the Tribunal is persuaded that there is positive evidence on the record showing that both Chinese and Chinese Taipei producers/exporters are capable of producing bicycles and exporting them at FOB selling prices of CAN\$225 or less for sale in the Canadian market at MSRPs of CAN\$400 or less.

128. Therefore, the Tribunal concludes that, if the order is rescinded in respect of China and Chinese Taipei, the subject countries will likely export subject bicycles to Canada at dumped prices well below current values and well below Raleigh’s prices.

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

129. The Tribunal will next turn to an assessment of the likely impact that the above volumes and prices will have on the domestic industry if the order is rescinded, taking into consideration the likely performance of the domestic industry.⁹⁰

130. In considering the likely performance of the domestic industry and the likely impact of dumped goods on the domestic industry, the Tribunal took into account relevant economic factors, including any potential decline in output, sales, market share, utilization of production capacity and profits.

131. Raleigh argued that, if the order is rescinded, its performance will rapidly deteriorate with declining production, capacity utilization, employment levels, sales, market share and profits.

132. Raleigh submitted that its ability to continue producing bicycles in Canada largely depends on significant OPP mass merchant volumes for plant loading, as well as a contribution from higher-priced bicycles in both the mass merchant and IBD segments of the Canadian market. However, it argued that this can only be achieved if the order is continued.

133. The evidence on the record shows that total domestic production of like goods increased by 25 percent from 2009 to 2011, but decreased by 9 percent in the first six months of 2012 as compared with the first six months of 2011. While its capacity utilization fluctuated over the POR, Raleigh had ample

88. Exporter’s Exhibit B-01 at para. 42, Administrative Record, Vol. 13.

89. Exporter’s Exhibit B-01 at para. 13, Administrative Record, Vol. 13; Exporter’s Exhibit B-03 at para. 12, Administrative Record, Vol. 13; Tribunal Exhibit RR-2011-002-03A at para. 32, Administrative Record, Vol. 1A; *Bicycles and Frames* (10 December 2007), RR-2006-001 (CITT) at para. 81.

90. Refer to paragraph 37.2 (2)(c), (e) and (g) of the *Regulations*.

capacity to double its output. Over the POR, its number of employees decreased, but its productivity increased.⁹¹

134. From 2009 to 2011, Raleigh saw its sales of like goods fluctuate with the size of the Canadian market. However, in 2011, Raleigh's sales decreased at a much faster rate than the size of the Canadian market. In the first six months of 2012, as compared with the first six months of 2011, Raleigh's sales trend ran counter to that of the Canadian market. While its sales were reduced by 25 percent, the size of the Canadian market increased by 4 percent.⁹²

135. The Tribunal notes that, over the POR, Raleigh managed to remain profitable, but its margins were eroded. On an aggregate level and per-unit basis, its gross margin fell, with its lowest margin experienced in the first six months of 2012.⁹³

136. Raleigh testified that it is under severe price pressure due to the aggressive pricing of OPP bicycles in the mass merchant segment of the Canadian market. This intense price competition, coupled with the imminent exit of Zellers from the mass merchant segment, will render price increases difficult for Raleigh and will exacerbate the negative impact on its financial performance.⁹⁴

137. If the order is rescinded, the Tribunal has no doubt that the price pressures discussed above will be intensified, as lower-priced imports from the subject countries will enter the Canadian market in larger volumes. Given Raleigh's vulnerability, its prices will likely be depressed to a point where it will not be able to continue producing bicycles profitably in Canada. Faced with such a deterioration in its financial performance, Raleigh will eventually have no choice but to cease domestic production and rely on imports of subject bicycles, as have other domestic producers over the last 10 years.

Other Factors

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

139. Raleigh itself acknowledged that a number of factors, not attributable to dumping, may have contributed to a disadvantageous competitive situation.

Changes in Raleigh's Manufacturing Process and Marketing Arrangements

140. As discussed earlier, in 2009, Raleigh discontinued cutting steel tubing and welding bicycle frames at its Waterloo facility. As a result, it stopped using its robotic laser tube cutting machine and MIG welders,

91. *Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-05A, Administrative Record, Vol. 1.1A at 28, 67; *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 28, 67, 68.

92. *Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-05A, Administrative Record, Vol. 1.1A at 37, 38; *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 37.

93. *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 60.

94. *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 29-31; *Transcript of In Camera Hearing*, Vol. 1, 15 October 2012 at 3, 6; *Transcript of Public Hearing*, Vol. 2, 16 October 2012, at 164; *Transcript of In Camera Hearing*, Vol. 2, 16 October 2012, at 84-86; Manufacturer's Exhibit A-05 at para. 8, Administrative Record, Vol. 11; Manufacturer's Exhibit A-06 (protected) at para. 8, Administrative Record, Vol. 12.

and began importing both painted and unpainted steel and aluminum alloy frames, the latter of which it paints on its electrostatic paint line.⁹⁵ This business decision to start importing frames no longer subject to anti-dumping measures helped Raleigh reduce its cost of goods sold during the POR.⁹⁶

141. As noted earlier, Raleigh was also able to increase its productivity during the POR. This was achieved by working with the workers' union to optimize the organization of the work in its plant to ensure competitiveness. Raleigh improved the final assembly time of its work stations, eliminated unnecessary downtime in material handling, installed robotic wheel building machinery and developed a new paint system thereby reducing the cost for painting OPP bicycles. Raleigh also expanded its product range to include several offers of city/urban and road bikes, and 29-inch wheel models to keep up with market trends.⁹⁷

142. The Tribunal is of the view that Raleigh undertook positive initiatives and made good strategic and tactical business decisions over the POR. Raleigh's manufacturing and marketing arrangement changes over the POR were beneficial to its performance as it was able to reduce its cost of goods sold. The Tribunal has not doubt that these changes permitted Raleigh to remain profitable while the order is in place. Therefore, the Tribunal does not see this factor as contributing to the injury to the domestic industry.

143. Over the POR, Raleigh also entered into a new strategic arrangement with Wal-Mart to provide affordable quality Raleigh branded-product for Wal-Mart's stores across Canada. Wal-Mart sells these bicycles, which are assembled with quality components, at MSRPs of less than CAN\$300.⁹⁸

Imports From Non-subject Countries

144. The Tribunal heard testimony and there is evidence on the record that suggest that imports from countries other than China and Chinese Taipei were also negatively affecting the domestic industry during the POR.

145. During the POR, there were imports of bicycles sold in the Canadian market at MSRPs of CAN\$400 or less originating in Bangladesh, Cambodia, Indonesia, the Philippines, Thailand, the United States and Vietnam. However, the combined total volume of imports from these non-subject countries represented a small share of the Canadian market. Their weighted average unit selling values were, except for 2009, higher than the average unit selling values of the domestic industry. Compared to the average unit selling values of Chinese and Chinese Taipei subject bicycles, they were between CAN\$28 and CAN\$84 higher-priced.⁹⁹

95. Tribunal Exhibit RR-2011-002-17.01, Administrative Record, Vol. 3 at 34; Tribunal Exhibit RR-2011-002-18.01 (protected), Administrative Record, Vol. 4 at 10; *Transcript of In Camera Hearing*, Vol. 1, 15 October 2012, at 20-21.

96. *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 60.

97. Tribunal Exhibit RR-2011-002-17.01, Administrative Record, Vol. 3 at 37-38; Manufacturer's Exhibit N-01 at 7-8, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 47-52.

98. Tribunal Exhibit RR-2011-002-17.01, Administrative Record, Vol. 3 at 37.

99. Collective Tribunal Exhibit RR-2011-002-21 (protected), Administrative Record, Vol. 6 at 1-175, Vol. 6A at 1-208, Vol. 6B at 1-212.13, Vol. 6C at 1-202, Vol. 6D at 1-152; Collective Tribunal Exhibit RR-2011-002-24 (protected), Administrative Record, Vol. 6.1 at 1-120, Vol. 6.1A at 1-145; *Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-05A, Administrative Record, Vol. 1.1A at 43; *Protected Pre-hearing Staff Report*, revised 27 September 2012, Tribunal Exhibit RR-2011-002-06A (protected), Administrative Record, Vol. 2.1A at 37, 39, 43; *Protected Pre-hearing Staff Report*, revised 12 October 2012, Tribunal Exhibit RR-2011-002-06B (protected), Administrative Record, Vol. 2.1A at 128-31.

146. At the hearing, Raleigh testified that the only imports from non-subject countries it had seen in the Canadian market originate from Bangladesh, Cambodia and Vietnam.¹⁰⁰ However, it added that these imports were sporadic and, for the most part, constituted small volumes.¹⁰¹ Bangladesh was the only non-subject country that Raleigh could recall having recently sold a larger volume of bicycles.¹⁰² Their MSRPs were between CAN\$169 and CAN\$179.¹⁰³

147. The Tribunal recognizes that Raleigh may have experienced, and may continue to experience in the near to medium term, some competition and injury as a result of small quantities of low-priced imports of bicycles from non-subject countries; however, it does not consider that this injury eliminates the potential injury attributable to the likely volume of dumped goods that will enter the Canadian market if the order is rescinded.

Usefulness of Order

148. The TBEA and Giant Canada argued that, after 20 years of protection, the current order has outlived its usefulness and that it must now be rescinded. In this regard, they referred to Article 11.1 of the *WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*,¹⁰⁴ which provides that “[a]n anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.”

149. The Tribunal is cognizant of the fact that the current measure has been in place for 20 years and will now be in place for another 5 years. However, it is important to note that, unlike in the case of a safeguard measure, which is intended to afford a domestic industry a period of protection in which to adjust to the injurious effects of *fairly* traded goods,¹⁰⁵ where the CBSA has determined that the expiry of an order or finding under *SIMA* is likely to result in the continuation or resumption of *unfair* trade (i.e. dumping),¹⁰⁶ the domestic industry is entitled to continued protection provided the Tribunal finds that the continuation or resumption of dumping is likely to result in injury.

150. Therefore, while the Tribunal agrees that the current measure should not be extended any longer than necessary, the evidence on the record in this expiry review supports the conclusion that protection continues to be necessary to prevent likely injury.

REQUESTS FOR EXCLUSIONS

151. The Tribunal did not receive any requests for exclusions.

100. *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 15-16.

101. *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 16.

102. *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 16.

103. *Transcript of Public Hearing*, Vol. 1, 15 October 2012, at 16.

104. 15 April 1994, online: World Trade Organization <http://www.wto.org/english/docs_e/legal_e/final_e.htm>.

105. Safeguard measures are intended to protect domestic industries against injury caused by an increase in the volume of imports. It is not necessary for the imports to have been dumped or subsidized.

106. See, for example, *Refined Sugar* (4 April 1996), PB-95-002 (CITT) at 4, where the Tribunal expressed the view that “. . . the central or primary object of *SIMA* is the protection of a domestic industry from unfairly traded imports.”

CONCLUSION

152. On the basis of the foregoing analysis, and pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its order in respect of bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Chinese Taipei and China, excluding bicycles with an FOB Chinese Taipei or China selling price exceeding CAN\$225 and excluding bicycles with foldable frames and stems.

Pasquale Michaele Saroli
Pasquale Michaele Saroli
Presiding Member

Serge Fréchette
Serge Fréchette
Member

Jason W. Downey
Jason W. Downey
Member