



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2014-001

Certain Fasteners

*Order issued
Monday, January 5, 2015*

*Reasons issued
Tuesday, January 20, 2015*

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IN THE MATTER OF an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on January 6, 2010, in Expiry Review No. RR-2009-001, continuing, with amendment, its findings made on January 7, 2005, in Inquiry No. NQ-2004-005, concerning:

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

ORDER

The Canadian International Trade Tribunal, pursuant to subsection 76.03(3) of the *Special Import Measures Act*, has conducted an expiry review of its order made on January 6, 2010, in Expiry Review No. RR-2009-001, continuing, with amendment, its findings made on January 7, 2005, in Inquiry No. NQ-2004-005, concerning the dumping of certain carbon steel fasteners originating in or exported from the People's Republic of China and Chinese Taipei and the subsidizing of such products originating in or exported from the People's Republic of China, excluding the products described in Appendix 1 to this order.

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, excluding the products described in Appendix 2 to this order.

Stephen A. Leach

Stephen A. Leach
Presiding Member

Jason W. Downey

Jason W. Downey
Member

Jean Bédard

Jean Bédard
Member

The statement of reasons will be issued within 15 days.

APPENDIX 1

PRODUCTS EXCLUDED FROM THE FINDING FOR CARBON STEEL SCREWS IN INQUIRY NO. NQ-2004-005 AND THE ORDER IN EXPIRY REVIEW NO. RR-2009-001

All carbon steel screws that are listed under List A1 are *specifically excluded*.

LIST A1

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

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

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

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

All carbon steel screws that are *not within the parameters* of List A2 are also *excluded*.

LIST A2

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

APPENDIX 2

EXCLUSIONS FROM THIS ORDER

All carbon steel screws that are listed below are *specifically excluded*.

- TOPLoc™ or Splitstop™ composite decking fasteners for exclusive use in conjunction with TimberTech® composite material decking systems (*Pièces d'attache pour terrasses en matériaux composites TOPLoc^{MC} ou Splitstop^{MC} devant être utilisées exclusivement avec les systèmes de terrasses en matériaux composites TimberTech^{MD}*)

Titen HD™ (THD) heavy-duty carbon steel screw anchors for concrete, manufactured for and imported by Simpson Strong-Tie, bearing Canadian trademark number TMA614622 and Canadian patent number CA2349358, with diameters of between 0.25 in. (1/4 in.) and 0.375 in. (3/8 in.), inclusive (i.e. between 6.35 mm and 9.525 mm, inclusive), and lengths of between 1.25 in. and 8.00 in., inclusive (i.e. between 31.75 mm and 203.2 mm, inclusive), tested or assessed in accordance with one or more of: ASTM E488 (“Standard Test Methods for Strength of Anchors in Concrete and Masonry Elements”); AC106 (“Acceptance Criteria for Predrilled Fasteners (Screw Anchors) in Masonry Elements”); AC193 (“Acceptance Criteria for Mechanical Anchors in Concrete Elements”); or ACI 355.2/ACI 355.2R (“Qualification of Post-Installed Mechanical Anchors in Concrete”) as amended or replaced from time to time (*Vis d'ancrage en acier au carbone robuste Titen HD^{MC} (THD) pour le béton, fabriquées pour Simpson Strong-Tie et importées par celle-ci, portant le numéro d'enregistrement de marque de commerce canadien TMA614622 et le numéro de brevet canadien CA2349358, dont le diamètre varie de 0,25 po (1/4 de po) à 0,375 po (3/8 po), inclusivement (6,35 mm à 9,525 mm, inclusivement), et la longueur de 1,25 po à 8,00 po, inclusivement (31,75 mm à 203,2 mm, inclusivement), testées ou évaluées selon l'une ou plusieurs des normes suivantes : ASTM E488 (« Standard Test Methods for Strength of Anchors in Concrete and Masonry Elements »), AC106 (« Acceptance Criteria for Predrilled Fasteners (Screw Anchors) in Masonry Elements »), AC193 (« Acceptance Criteria for Mechanical Anchors in Concrete Elements ») ou ACI 355.2/ACI 355.2R (« Qualification of Post-Installed Mechanical Anchors in Concrete »), telles que modifiées ou remplacées de temps à autre*)

Place of Hearing:	Ottawa, Ontario
Dates of Hearing:	November 17 to 20, 2014
Tribunal Members:	Stephen A. Leach, Presiding Member Jason W. Downey, Member Jean Bédard, Member
Director, Trade Remedies Investigations:	Randolph W. Heggart
Senior Trade Remedies Investigations Officers:	Shawn Jeffrey Shiu-Yeu Li Josée St-Amand Gary Rourke
Trade Remedies Investigations Officer:	Julie Charlebois
Research Assistants:	Andrew McCabe Boris Petkovic
Counsel for the Tribunal:	Eric Wildhaber Laura Little Cassandra Baker (student-at-law)
Registrar Officer:	Alexis Chénier

PARTICIPANTS:**Domestic Producers**

Leland Industries Inc.
Standard Fasteners Ltd.
Visqué Inc.

Counsel/Representatives

Lawrence L. Herman
Joanna Yu
Bradford Ryan

Importers/Exporters/Others

Jau Yeou Industry Co., Ltd.
Kwantex Research Inc.
Racing Point Industry Co., Ltd.
Robertson Inc.
Robertson Inc. Jiajiang
Sealtite Building Fasteners
Spaenaur Inc.
Star Stainless Steel Co.
Simpson Strong-Tie Canada, Limited

Counsel/Representatives

Yang Shih-Ching
Cherry Cheng
Robert Shiou
Riyaz Dattu
Michael Milne
Cyndee Todgham Cherniak
Mara Chadnick
Susan M. Hutton
Alexander Sarabura

Parties that Requested Product Exclusions

Kwantex Research Inc.

Robertson Inc.

Robertson Inc. Jiajiang

Sealtite Building Fasteners

Simpson Strong-Tie Canada, Limited

TimberTech Limited

Counsel/Representatives

Cherry Cheng

Riyaz Dattu

Michael Milne

Cyndee Todgham Cherniak

Mara Chadnick

Susan M. Hutton

Alexander Sarabura

Vincent M. Routhier

Patrick Goudreau

WITNESSES:

Byron Nelson

President

Leland Industries Inc.

Dennis Ebata

Chief Financial Officer

Leland Industries Inc.

Duane Porritt

President

Wm P. Somerville 1996

Bradford Ryan

President

Visqué Inc.

Fred Tai

Sales Manager – Canada

Simpson Strong-Tie Canada, Limited

Juan Andrejin

Engineering Manager

Leland Industries Inc.

Ted Robinson

President

Fasteners & Fittings Inc.

Joanna Yu

General Manager

Standard Fasteners Ltd.

Jonathan Spaetzel

President

Spaenaur Inc.

Please address all communications to:

The Registrar

Canadian International Trade Tribunal

333 Laurier Avenue West

15th Floor

Ottawa, Ontario K1A 0G7

Telephone: 613-993-3595

Fax: 613-990-2439

E-mail: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

INTRODUCTION

1. This is an expiry review, pursuant to subsection 76.03(3) of the *Special Import Measures Act*,¹ of an order made by the Canadian International Trade Tribunal (the Tribunal) on January 6, 2010, in Expiry Review No. RR-2009-001, continuing, with amendment, its findings made on January 7, 2005, in Inquiry No. NQ-2004-005, concerning the dumping of certain carbon steel fasteners originating in or exported from the People's Republic of China (China) and Chinese Taipei and the subsidizing of such products originating in or exported from China, excluding the products described in Appendix 1 to this order (the subject goods).

PROCEDURAL BACKGROUND

2. The Tribunal initiated the expiry review on April 23, 2014.² It notified the Canada Border Services Agency (CBSA) and sent letters to known domestic producers, importers, foreign producers and exporters requesting that they complete expiry review questionnaires.

3. On April 24, 2014, the CBSA initiated its investigation to determine whether the expiry of the Tribunal's order was likely to result in a continuation or resumption of the dumping and subsidizing of the subject goods.

4. On August 21, 2014, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the order was likely to result in a continuation or resumption of the dumping and subsidizing of the subject goods.

5. On August 22, 2014, following the CBSA's determinations, 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. The Tribunal's period of review (POR) is from January 1, 2011, to June 30, 2014.

6. The CBSA and the Tribunal issued their expiry review questionnaires separately, at the initiation of their respective investigations.³ As part of these proceedings, the Tribunal sent its *Expiry Review Questionnaire – Producers' Questionnaire* to 30 potential domestic producers of carbon steel screws. In addition, the Tribunal sent its *Expiry Review Questionnaire – Importers' Questionnaire* to 67 potential importers of carbon steel screws, including the 26 companies that replied to the CBSA's expiry review questionnaire. The Tribunal also sent its *Expiry Review Questionnaire – Foreign Producers' Questionnaire* to 329 potential foreign producers of carbon steel screws located in either China or Chinese Taipei.

7. The Tribunal held a hearing, with public and *in camera* testimony, in Ottawa, Ontario, from November 17 to 20, 2014.

8. Leland Industries Inc. (Leland), a domestic producer, filed written submissions, witness statements and made arguments in support of the continuation of the order. Counsel for Leland called the following witnesses who testified at the hearing: Mr. Byron Nelson, President of Leland; Mr. Dennis Ebata, Chief Financial Officer at Leland; Mr. Juan Andrejin, Engineering Manager at Leland; and Mr. Duane Porritt, President of Wm. P. Somerville 1996, a distributor of carbon steel screws.

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

2. C. Gaz. 2014.I.1110.

3. Exhibit RR-2014-001-05A, Vol. 1.1A at 10-11.

9. Visqué Inc. (Visqué) and Standard Fasteners Ltd. (Standard Fasteners), both self-represented domestic producers, filed separate submissions in support of a continuation of the order after the due dates set out in the Tribunal's notice of expiry review.

10. Visqué filed its submission after having failed to comply with two interlocutory orders issued by the Tribunal for the completion of an *Expiry Review Questionnaire – Producers' Questionnaire*. Visqué ultimately provided most of the requested information after significant delay. The resulting disruption to these proceedings was a matter of serious concern to the Tribunal, as discussed further below. However, in order to ensure that it had the best evidence on the record, the Tribunal allowed both Visqué and Standard Fasteners to file their late submissions and present witnesses at the hearing, namely, Mr. Bradford Ryan, President of Visqué, and Ms. Joanna Yu, General Manager of Standard Fasteners. The Tribunal also gave the parties that oppose the continuation of the order concerning the subject goods the opportunity to respond to the late submissions and to cross-examine these witnesses at the hearing.

11. Mr. Ted Robinson, President of Fasteners & Fittings Inc., an importer/distributor of carbon steel screws, was summoned by subpoena to appear before the Tribunal, at the request of Leland, pursuant to subrule 20(1) of the *Canadian International Trade Tribunal Rules*.⁴ He provided testimony in support of the continuation of the order.

12. Robertson Inc. (Robertson), Spaenaur Inc. (Spaenaur) and Sealtite Building Fasteners (Sealtite) each filed written submissions and made arguments in opposition to the continuation of the order. Mr. Jonathan Spaetzel, President of Spaenaur, testified at the hearing.

13. The Tribunal received 12 requests for product exclusions, which were filed by Kwantex Research Inc. (Kwantex) (four requests), Simpson Strong-Tie Canada, Limited (Simpson Strong-Tie) (two requests), Sealtite (one request), TimberTech Limited (TimberTech) (one request) and Robertson (four requests). Leland and Standard Fasteners filed responses to these requests, with the exception of the requests filed by Sealtite and Robertson to which only Leland responded in writing. All requesters for product exclusions, except Robertson, filed replies to the responses of domestic producers.

14. On November 6, 2014, the Tribunal invited the parties to present *viva voce* evidence in support of or in rebuttal to product exclusion requests at the hearing. The Tribunal heard the testimony of Mr. Fred Tai, Sales Manager – Canada, Simpson Strong-Tie.

15. Sealtite and TimberTech were represented by counsel and made arguments in support of their respective requests for product exclusions. Counsel for Leland, supported by testimony from witnesses for Leland, argued against the requests for exclusions. At the hearing, Ms. Yu of Standard Fasteners testified in opposition to the requests filed by Sealtite and Robertson.

16. 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; written Tribunal communications; the Tribunal's notice of expiry review; the protected and public replies to the expiry review questionnaires; the public and protected pre-hearing investigation reports for this expiry review, as well as the revisions and supplements thereto; requests for product exclusions and replies thereto; witness statements and other exhibits; and the exhibit list and the Tribunal's findings/order, statements of reasons and public and protected staff reports prepared for Inquiry No. NQ-2004-005 and Expiry Review No. RR-2009-001. All public exhibits were

4. S.O.R./91-499 [Rules].

made available to interested parties, while protected exhibits were provided only to counsel who had filed a declaration and undertaking with the Tribunal in respect of the protection of confidential information.

Visqué's Failure to Comply with Interlocutory Orders of the Tribunal

17. Visqué failed to provide a completed questionnaire by the deadline of September 15, 2014, that had been fixed by the Tribunal in its notice of commencement of expiry review. In the previous expiry review, Expiry Review No. RR-2009-001, Visqué was a major domestic producer of carbon steel screws. For this reason, the Tribunal found it important that Visqué produce a completed questionnaire for the present expiry review.

18. The Tribunal therefore issued an order on September 26, 2014, directing a duly authorized representative of Visqué to make and deliver to the Tribunal a completed *Expiry Review Questionnaire – Producers' Questionnaire* by October 3, 2014, unless Visqué satisfied the Tribunal that the order should not have been issued or that the required information could not be reasonably provided.⁵ Visqué ignored that order.

19. On October 16, 2014, the Tribunal wrote to Visqué indicating that it was prepared to commence contempt proceedings against it due to its non-compliance.⁶

20. The Tribunal issued a second order on October 20, 2014, reiterating the directions contained in its order of September 26, 2014.⁷

21. Visqué did not provide any meaningful response to the Tribunal until October 30, 2014, despite the Tribunal's repeated attempts to follow up with Mr. Ryan and other officers of the company. However, Visqué's response of October 30, 2014, provided to the Tribunal only limited information regarding its production and sales. Additional information and revisions continued to trickle in from Visqué up until November 12, 2014, which was only five days before the start of the hearing.⁸ As a result, numerous revisions to the investigation report were required. A final version was issued to all parties on November 13, 2014.

22. On November 7, 2014, Visqué filed a letter with the Tribunal, which it characterized as being a "reply submission" (even though it was filed outside the required time frames).⁹ In this letter, Visqué indicated its support for a continuation of the order and stated its intention to have Mr. Ryan appear at the hearing. Spaenaur objected to Visqué's late filing, as well as that of Standard Fasteners. As mentioned above, the Tribunal decided to allow, pursuant to rules 6 and 8 of the *Rules*, the submissions to be filed on the record and the testimony of the witness at the hearing, due to their relevance in these proceedings.¹⁰

23. The Tribunal recognized that Visqué's failure to provide the requested information in a timely manner, as well as its late submission, had repercussions on parties to these proceedings. The Tribunal therefore took steps to ensure that all parties had the opportunity, albeit under tighter time limits than originally set out for these proceedings in the notice of expiry review, to receive, review and respond to the information filed by Visqué, both in writing and at the hearing.¹¹ The Tribunal further notified all parties

5. Exhibit RR-2014-001-24.14.02, Vol. 3 at 286; Exhibit RR-2014-001-24.14.04, Vol. 3 at 300.

6. Related Correspondence, Vol. 20B.

7. Exhibit RR-2014-001-24.14.04, Vol. 3 at 298.

8. *Transcript of Public Hearing*, Vol. 3, 19 November 2014, at 420.

9. Exhibit RR-2014-001-C-01, Vol. 11A.

10. Exhibit RR-2014-001-62, Vol. 1A at 50-51.

11. *Ibid.*

that, given the delayed participation of Visqué and Standard Fasteners, it would give their documents and witness testimony the weight that they deserved.¹²

24. During the hearing, the Tribunal set out its serious concerns about Visqué's failure to comply with the interlocutory orders in a timely manner and how this had led the Tribunal to contemplate commencing contempt proceedings against Visqué. In particular, the Tribunal stated that its investigations under *SIMA* are largely predicated on its ability to gather information and that it can typically count on timely responses from industry participants, particularly the key players in the domestic industry.¹³ The Tribunal stated that, if those participants fail to cooperate in the completion of questionnaires, the Tribunal's processes can be compromised and, at its extreme, a failure to collaborate could have irredeemable consequences for the integrity of the Tribunal's investigation, the record before the Tribunal and the integrity of Canada's trade remedy regime.

25. On rare occasions, the Tribunal has had to order parties to complete questionnaires. To date, companies have always complied with such orders in a timely and reasonable manner. In fact, in the present case, similar circumstances arose with respect to Fastenal Canada Company (Fastenal), a major importer that initially failed to provide a response to the *Expiry Review Questionnaire – Importer*.

26. On September 26, 2014, the Tribunal ordered Fastenal to provide the required information by October 3, 2014.¹⁴ After Fastenal failed to meet that deadline, the Tribunal indicated to Fastenal, on October 22, 2014, that it was prepared to commence contempt proceedings should it not immediately comply with the order.¹⁵ Fastenal thereafter communicated with Tribunal investigators and worked with them to provide the required information. In the Tribunal's view, Fastenal eventually provided the requested information and did so within a reasonable time frame following the Tribunal's order.

27. In contrast, Visqué's prolonged lack of responsiveness and its failure to comply with two Tribunal orders was unprecedented.

28. At the hearing, the Tribunal stated that the effects of Visqué's failure to comply with the orders would likely not be clear until all evidence, particularly Visqué's documentary and *viva voce* evidence, had been tested by parties and fully considered by the Tribunal.¹⁶

29. The Tribunal invited counsel for those parties represented at the hearing to comment, in closing argument, on the consequences of Visqué's delayed and deficient participation in these proceedings. The common view expressed by counsel in argument was that Visqué's delayed response made preparation for these proceedings a challenge, especially insofar as late filings and witnesses were allowed.¹⁷

30. According to counsel for Spaenaur, the process "... may have been compromised ..." by Visqué's late filings.¹⁸ Spaenaur went on to challenge the veracity of some of the information provided by Visqué and argued that the Tribunal should not rely on such compromised data.¹⁹ However, none of the parties

12. *Ibid.* at 50.

13. *Transcript of Public Hearing*, Vol. 3, 19 November 2014, at 418-22.

14. Exhibit RR-2014-001-27.52.03, Vol. 5B at 114.

15. Exhibit RR-2014-001-27.52.04, Vol. 5B at 121.13.

16. *Transcript of Public Hearing*, Vol. 3, 19 November 2014, at 421.

17. *Ibid.*, Vol. 4, 20 November 2014, at 425, 450, 493, 531-32.

18. *Ibid.* at 450.

19. *Ibid.* at 464-65.

went so far as to submit that the overall integrity of the Tribunal's expiry review investigation was compromised due to the inaction of Visqué.

31. The Tribunal notes that it is not unusual to have errors or omissions in responses to Tribunal questionnaires. Typically, Tribunal investigators must follow up multiple times to resolve issues with incomplete or inaccurate data, within a tight time frame necessitated by the legislative deadlines in *SIMA*. Where it is not possible to resolve these issues with the questionnaire respondent, Tribunal investigators will compare the data received to data from past related proceedings, or other sources, in order to assist the Tribunal and parties in ascertaining that the data provided are reliable.

32. In the present case, the Tribunal is satisfied that the data provided by Visqué are reliable and that errors or omissions, if any, are relatively small and have not compromised the data provided by Visqué nor the consolidated data for the domestic industry as a whole, as presented in the investigation report. This was an important consideration in the Tribunal's decision not to commence contempt proceedings against Visqué, as indicated in a letter to parties dated November 27, 2014.²⁰

33. Additionally, the Tribunal also considered the reasons given by Visqué for not complying with the Tribunal's orders in a timely fashion and the apology delivered by Mr. Ryan at the hearing.²¹ Mr. Ryan explained that Visqué's small office staff had limited availability to take the necessary steps to comply with the Tribunal's orders and complete the questionnaire in a timely manner since it was also the company's fiscal year end.²² Similarly, Ms. Yu of Standard Fasteners testified that, currently, she is the only full-time office staff at the company, with one other person in training, which made participation in these proceedings difficult.²³

34. The Tribunal accepts the testimonies of Mr. Ryan of Visqué and Ms. Yu of Standard Fasteners that, due to a small office staff, it is a challenge to simultaneously meet the demands of operating a small and medium-sized enterprise and complete Tribunal questionnaires on a timely basis. Indeed, the Tribunal recognizes that some small or medium-sized enterprises, particularly those which do not have the benefit of legal counsel, have difficulties in completing Tribunal questionnaires. However, this is not a valid excuse for failing to respond to Tribunal orders.

35. The Tribunal warns that parties failing to comply with Tribunal orders risk being found in contempt. The Tribunal's reasons for not commencing contempt proceedings against Visqué in this case are limited to its finding that Visqué's data are reliable and that parties had the opportunity to examine Mr. Ryan on all relevant matters, including Visqué's data.

PRODUCT

Product Definition

36. The goods that are subject to this expiry review are defined as certain carbon steel fasteners originating in or exported from China and Chinese Taipei, excluding fasteners specifically designed for application in the automotive or aerospace industry, as well as the products described in Appendix 1 to this order.

20. Exhibit RR-2014-001-87, Vol. 1A at 204.

21. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 220-21.

22. *Ibid.* at 221.

23. *Ibid.* at 153, 185.

Product Information

37. As stated by the Tribunal in Expiry Review No. RR-2009-001:

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

15. A screw is a headed and externally threaded mechanical device that possesses capabilities which permit it to be inserted into holes in assembled parts, to be mated with a pre-formed internal thread or to form its own thread, and to be tightened or released by torquing its head. Screws are fastener products with an external threading on the shank. Screws include machine screws, wood screws (including deck screws), self-drilling, self-tapping, thread forming, and sheet metal screws. Screws can either be used without any other part and fixed into wood (wood screws) or metal sheets (self-tapping screws) or be combined with a nut and washers to form a bolt. Screws may have a variety of head shapes (round, flat, hexagonal etc.), drives (slot, socket, square, Phillips, etc.), shank lengths and diameters. The shank may be totally or partially threaded. Some screws commonly designated as “bolts” (i.e. lag bolts, flange bolts, bin bolts, grain bin bolts, square and hex lag bolts, and stove bolts) are considered to be subject goods.

...

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

38. Carbon steel screws have a wide range of final applications in a variety of industries, including general construction, machinery and equipment, household furniture and appliances. Depending on the end use, further steps, such as hardening (heat-treating), plating, painting and, to a lesser degree, assembling (i.e. adding washers) can be performed in order to enhance certain qualities, such as product strength and corrosion resistance.

LEGAL FRAMEWORK

39. The Tribunal is required, pursuant to subsection 76.03(10) of *SIMA*, to determine whether the expiry of the order in respect of the subject goods is likely to result in injury or retardation.²⁴

40. The Tribunal is also required, pursuant to subsection 76.03(12) of *SIMA*, to make an order either rescinding the order in Expiry Review No. RR-2009-001, if it determines that its expiry is unlikely to result in injury, or continuing the order, with or without amendment, if it determines that the expiry of the order is likely to result in injury.

41. Given that the likelihood of injury to a domestic industry must be assessed in relation to domestic producers of like goods in relation to the subject goods, before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what constitutes “like goods”. Once that determination has been made, the Tribunal must determine which domestic producers of the like goods constitute the “domestic industry”.

42. The Tribunal must next determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods (i.e. whether it will cross-cumulate the effect).

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

43. The Tribunal must also determine whether it is appropriate to assess the likely effect of the resumed or continued dumping and subsidizing of the subject goods from all subject countries cumulatively (i.e. whether it will conduct a single analysis of the likely effect or a separate analysis for each subject country).

LIKE GOODS AND CLASSES OF GOODS

44. In order for the Tribunal to determine whether the resumed or continued dumping and subsidizing of the subject goods is likely to cause material injury to the domestic producers of like goods, it must determine which domestically produced goods, if any, constitute like goods in relation to the subject goods. The Tribunal must also assess whether there is, within the subject goods and the like goods, more than one class of goods.²⁵

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

- (a) goods that are identical in all respects to the other goods, or
- (b) in the absence of any goods described in paragraph (a), goods the uses and other characteristics of which closely resemble those of the other goods.

46. In deciding the issue of like goods, as well as whether there is more than one class of goods,²⁶ the Tribunal typically considers 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 the goods fulfill the same customer needs).²⁷

47. In the original injury inquiry and in the 2009 expiry review, the Tribunal treated carbon steel screws as a single class of goods and held that domestically produced carbon steel screws were like goods in relation to the subject carbon steel screws. As the basis for its determination, the Tribunal found that the subject carbon steel screws and domestically produced carbon steel screws had the same physical characteristics, similar end uses, fulfilled the same or similar customer needs and generally competed directly with each other.²⁸ The parties did not present any new evidence or argument in this regard.

48. Leland’s arguments and evidence were made on the basis of a single class of domestically produced carbon steel screws that are like goods in relation to the subject goods and were not contradicted by any evidence or arguments in favour of more than one class of goods.

49. Spaenaur alluded to an overly broad product scope but did not present any evidence in this regard and did not elaborate on this in argument or make any submissions or arguments for multiple classes of goods.

25. Should the Tribunal determine that there is more than one class of goods in this expiry review, it must conduct a separate injury analysis and make a decision for each class that it identifies. See *Noury Chemical Corporation and Minerals & Chemicals Ltd. v. Pennwalt of Canada Ltd. and Anti-dumping Tribunal*, [1982] 2 F.C. 283 (F.C.).

26. In order to decide whether there is more than one class of goods, the Tribunal must determine whether goods potentially included in separate classes of goods constitute “like goods” in relation to each other. If they do, they will be regarded as comprising one class of goods. See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 115; *Thermal Insulation Board* (11 April 1997), NQ-96-003 (CITT) at 10.

27. See, for example, *Copper Pipe Fittings* (19 February 2007), NQ-2006-002 (CITT) at para. 48.

28. *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at para. 67; see, also, *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 80.

50. Consequently, the Tribunal finds that the record contains nothing to warrant a departure from the Tribunal's past conclusions on the issue of like goods or classes of goods concerning carbon steel screws. Accordingly, the Tribunal finds a single class of domestically produced carbon steel screws that are like goods in relation to the subject goods.

DOMESTIC INDUSTRY

51. Subsection 2(1) of *SIMA* defines "domestic industry" as follows:

... the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, "domestic industry" may be interpreted as meaning the rest of those domestic producers.

52. The Tribunal must therefore determine whether there is a likelihood of injury to the domestic producers as a whole or those domestic producers whose production represents a major proportion of the total production of like goods.²⁹

53. In the present expiry review, the evidence indicates that there are four known producers of carbon steel screws covered by the product definition. These are Leland,³⁰ Standard Fasteners, Visqué and H. Paulin, a division of the Hillman Group Canada ULC (Paulin). Together, these producers account for all known domestic production of like goods.³¹

54. In Inquiry No. NQ-2004-005 and Expiry Review No. RR-2009-001, the Tribunal excluded Paulin from the "domestic industry" on the basis that it was essentially an importer of carbon steel screws.³²

55. During the POR, Paulin had a change in ownership. In February 2013, Paulin was purchased by U.S.-based The Hillman Group, Inc. and is now a division of The Hillman Group Canada ULC (hereinafter referred to as HG Canada).³³ According to HG Canada, under the new corporate structure, Paulin is responsible for imports, and two other divisions located in Canada are dedicated to manufacturing (i.e. Precision Fasteners and Capital Metals Industries).³⁴

29. The term "major proportion" means an important, serious or significant proportion of total domestic production of like goods and not necessarily a majority. See *Japan Electrical Manufacturers Assoc. v. Canada (Anti-Dumping Tribunal)*, [1982] 2 FC 816 (F.C.A.); *China – Anti-dumping and Countervailing Duties on Certain Automobiles from the United States* (23 May 2014), WTO Doc. WT/DS440/R, Report of the Panel at para. 7.207; *European Community – Definitive Anti-dumping Measures on Certain Iron or Steel Fasteners from China* (15 July 2011), WTO Doc. WT/DS397/AB/R, Report of the Appellate Body at paras. 411, 419, 430; *Argentina – Definitive Anti-dumping Duties on Poultry from Brazil* (22 April 2003), WTO Doc. WT/DS241/R, Report of the Panel at paras. 7.341-7.344.

30. During the POR, Leland acquired Canadian Threadall Limited, a producer of threaded products, and certain equipment from Westland, which was in receivership at the time and has since ceased operations. Exhibit RR-2014-001-05, Vol. 1.1 at 27; *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 45-46.

31. Exhibit RR-2014-001-06C (protected), Table 17, Vol. 2.1A.

32. *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at para. 85; *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 90.

33. Exhibit RR-2014-001-05A, Vol. 1.1A at 27; Exhibit RR-2014-001-15.02, Vol. 7.1B at 20; Exhibit RR-2014-001-24.13B, Vol. 3 at 264.

34. Exhibit RR-2014-001-05A, Vol. 1.1A at 27; Exhibit RR-2014-001-15.02, Vol. 7.1B at 3.

56. The Tribunal finds that, despite the new corporate structure, there is no evidence that HG Canada behaves any differently from the way in which the Tribunal found Paulin to have behaved in Inquiry No. NQ-2004-005 and Expiry Review No. RR-2009-001. Accordingly, HG Canada will be considered a single corporate entity for the purposes of this expiry review.³⁵

57. During the POR, HG Canada continued to import significant volumes of carbon steel screws into Canada.³⁶ In order to determine whether to exclude HG Canada from the definition of the domestic industry again in the present expiry review, the Tribunal considered the characteristics of the domestic market and HG Canada's place in that market.³⁷

58. In particular, the Tribunal considered the ratio of HG Canada's imports of the subject goods relative to domestic production of the like goods. Upon review of the evidence on the record, the Tribunal finds that the volume of subject goods imported by HG Canada was significantly greater than the volume of its total domestic production and sales of the like goods during the POR.³⁸

59. The Tribunal also considered HG Canada's behaviour in the domestic market. Without any evidence on the record indicating that the high ratio of imports of the subject goods to production and sales of the like goods is a defensive measure against competition from the subject goods, the Tribunal can only conclude that it is part of HG Canada's corporate strategy and it finds accordingly.

60. For those reasons, the Tribunal finds that HG Canada, like Paulin in the previous expiry review, is essentially an importer of the subject carbon steel screws. The Tribunal has therefore decided to exclude HG Canada from the scope of the domestic industry on this basis.

61. In light of HG Canada's exclusion, the Tribunal finds that Leland, Visqué and Standard Fasteners constitute the "domestic industry", pursuant to the definition of that term in subsection 2(1) of *SIMA*.³⁹

CUMULATION

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

63. 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 from each subject country are interchangeable with the subject goods from the other subject countries or with the like goods; the presence or absence of sales of imports from different subject countries and of the like goods into the same

35. In a similar vein, the Tribunal decided, in *Silicon Metal* (19 November 2013), NQ-2013-003 (CITT) at paras. 40-42, that three related entities with divided responsibilities for domestic production and sales of like goods on the domestic market and export markets should be considered together as constituting the domestic industry.

36. Exhibit RR-2014-001-06D (protected), Schedule 4, Vol. 2.1B.

37. *Cross-linked Polyethylene Tubing* (29 September 2006), NQ-2006-001 (CITT) at paras. 56-59.

38. Exhibit RR-2014-001-06B (protected), Table 1, Vol. 2.1A.

39. The Tribunal notes that, if it had determined that the information provided by Visqué was not reliable, the investigation would not have been compromised because, even in the absence of Visqué, Leland and Standard Fasteners together represent a "major proportion" of total domestic production, HG Canada excluded. See Exhibit RR-2014-001-06E (protected), Table 5, Vol. 2.1B.

geographical markets; the existence of common or similar channels of distribution; and differences in the timing of the arrival of imports from a subject country and of those from the other subject countries, and of the availability of like goods supplied by the domestic industry.

64. In the present expiry review, there was no argument or evidence to suggest the opportunity for a departure from the Tribunal's previous approach in making a cumulative assessment of the dumping and subsidizing of goods from China and Chinese Taipei.

65. In particular, there was no evidence of a change in the conditions of competition since the 2009 expiry review. The Tribunal finds that the subject goods from each of the subject countries remain substitutable for each other and the like goods because they are commodity products, which are typically sold on the basis of price. The evidence of Mr. Nelson,⁴⁰ Mr. Porritt⁴¹ and Mr. Ryan⁴² supports this finding.

66. Furthermore, the evidence on sales by trade level shows that, over the POR, carbon steel screws imported from both China and Chinese Taipei were generally sold through the same distribution channels as the like goods in the domestic market, including distributors/wholesalers, original equipment manufacturers (OEMs) and retailers.⁴³

67. There were some differences in the relative share of different distribution channels for the subject goods and the like goods. For instance, sales of the like goods are more concentrated in sales to distributors/wholesalers and OEMs, whereas imports of the subject goods account for the bulk of sales to large retailers.⁴⁴ However, the Tribunal is satisfied that there was sufficient overlap in distribution channels during the POR to allow for a reasonable comparison.

68. This is supported by Mr. Porritt's evidence that importers and domestic producers compete directly for the same customers at various levels of trade.⁴⁵ In addition, Standard Fasteners submitted that it competes directly with the subject goods at distributor and wholesale accounts.⁴⁶

69. In terms of geographical markets, the evidence shows that the regional distribution of sales of the like goods was broadly similar to that of imports from the subject countries during the POR.⁴⁷

70. In light of the above, the Tribunal finds that, over the POR, the subject goods from China and Chinese Taipei continued to be present in the Canadian market, sold through the same distribution channels, and competed directly with each other and the like goods, primarily on the basis of price, in the same geographic markets and at similar trade levels.

40. Exhibit RR-2014-001-A-03 at para. 11, Vol. 11.

41. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 105-106.

42. *Ibid.* at 226.

43. Exhibit RR-2014-001-06D (protected), Schedules 20, 23, 26, 29, Vol. 2.1B; Exhibit RR-2014-001-06C (protected), Schedules 32, 35, Vol. 2.1A.

44. Exhibit RR-2014-001-06D (protected), Schedules 20, 23, 26, 29, Vol. 2.1B; Exhibit RR-2014-001-06C (protected), Schedules 32, 35, Vol. 2.1A; *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 25-26, Vol. 2, 18 November 2014, at 228-29.

45. Exhibit RR-2014-001-A-05 at paras. 15-16, Vol. 11.

46. Exhibit RR-2014-001-B-01 at paras. 5-6, Vol. 11A.

47. Exhibit RR-2014-001-05C, Table 38, Vol. 1.1A.

CROSS-CUMULATION

71. The Tribunal must also determine whether it will make an assessment of the cumulative effect of the dumping and subsidizing of the subject goods.

72. In the related past proceedings, the Tribunal conducted a cumulative assessment of both the dumped and subsidized goods.⁴⁸

73. In the present expiry review, the CBSA has determined that both China and Chinese Taipei are likely to dump the subject goods if the order is allowed to expire. The Tribunal finds that there is no positive cogent evidence allowing the Tribunal to differentiate the effects caused by the dumping of goods from those caused by the subsidizing for the purposes of its analysis, especially given the absence of any arguments or evidence from the parties in this regard. As the Tribunal has previously stated, these effects are so closely intertwined that it was impossible to unravel them so as to allocate specific or discrete portions to the dumping and subsidizing.⁴⁹

74. The Tribunal is aware of the recent Appellate Body decision at the World Trade Organization in *United States - Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products from India*,⁵⁰ in which the Appellate Body found that cross-cumulating imports that were subject to a dumping investigation with those subject to a subsidizing investigation constituted a violation of the *Agreement on Subsidies and Countervailing Measures*. The Tribunal has in the past expressed the view that there could be a situation where goods that are only subsidized would have a different effect from goods that are only dumped and that, in such circumstances, it would not be appropriate to “cross-cumulate” their effects.⁵¹ However, in the present case, and as previously stated by the Tribunal in Expiry Review No. RR-2009-001,⁵² the goods from China are likely to be both dumped and subsidized; therefore, it is unlikely that the effects of the dumped goods from China will be materially different from the effects of the dumped goods from Chinese Taipei.

75. Accordingly, the Tribunal finds it appropriate to assess the effect of the dumping and subsidizing of the subject carbon steel screws from China cumulatively with the effect of the dumping of the subject carbon steel screws from Chinese Taipei.

LIKELIHOOD OF INJURY ANALYSIS

76. An expiry review is forward-looking.⁵³ It follows that evidence from the POR during which an order or a finding was being enforced is relevant insofar as it bears upon the prospective analysis of whether the expiry of the order or finding is likely to result in injury.⁵⁴

48. *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at paras. 99, 102; *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 105.

49. See *Seamless Carbon or Alloy Steel Oil and Gas Well Casing* (10 March 2008), NQ-2007-001 (CITT) at paras. 76-77.

50. (8 December 2014), WTO Doc. WT/DS436/AB/R, Report of the Appellate Body.

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

52. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 103.

53. *Certain Dishwashers and Dryers*, procedural order (25 April 2005), RR-2004-005 (CITT) at para. 16.

54. *Copper Pipe Fittings* (17 February 2012), RR-2011-001 (CITT) at para. 56. In *Thermoelectric Containers* (9 December 2013), RR-2012-004 (CITT) [*Thermoelectric Containers*] at para. 14, the Tribunal stated that the analytical context pursuant to which an expiry review must be adjudged often includes the assessment of retrospective evidence supportive of prospective conclusions. See also *Aluminum Extrusions* (17 March 2014), RR-2013-003 (CITT) [*Aluminum Extrusions*] at para. 21.

77. There is no presumption of injury in an expiry review; findings must be based on positive evidence, in compliance with domestic law and consistent with the requirements of the World Trade Organization.⁵⁵ In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.⁵⁶

78. In making its assessment of likelihood of injury, the Tribunal has consistently taken the view that the focus should be on circumstances that can reasonably be expected to exist in the near to medium term, which is generally considered to be from 12 to 24 months from the expiry of the finding or order.

79. Subsection 37.2(2) of the *Special Import Measures Regulations*⁵⁷ lists the factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that the expiry of the order or finding is likely to result in a continuation or resumption of dumping or subsidizing. These factors include the following: changes in international and domestic market conditions; the likely volumes of dumped or subsidized goods; the likely prices of dumped or subsidized goods; the likely impact of the dumped or subsidized goods on the domestic industry; the likely performance of the domestic industry, taking into account that industry's recent performance (including trends in production, capacity utilization, employment, exports, etc.); and the diversion of dumped or subsidized goods caused by anti-dumping or countervailing measures taken by the authorities in other countries. The factors that the Tribunal considers relevant in this expiry review are discussed in detail below.

Changes in Market Conditions

80. In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the order were allowed to expire, the Tribunal will first consider changes in international and domestic market conditions.⁵⁸

International Market Conditions

81. The recovery of the world economy from the recession in 2008 is ongoing, with moderate growth expected over the next five years. World gross domestic product (GDP) growth decreased from 4.1 percent in 2011 to 3.3 percent in 2013 and was projected by the International Monetary Fund (IMF) to level out in 2014 before increasing to 3.8 percent in 2015 and 4.0 percent in 2019.⁵⁹ The Bank of Canada has forecasted slightly lower world GDP growth from 2.9 percent in 2014 to 3.7 percent in 2016.⁶⁰

55. *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (16 August 2006), RR-2005-002 (CITT) at para. 59.

56. *Thermoelectric Containers* at para. 14; *Aluminum Extrusions* at para. 21.

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

58. Paragraph 37.2(2)(j) of the *Regulations* states that the Tribunal may consider "...any changes in market conditions domestically or internationally, including changes in the supply of and demand for the goods, as well as any changes in trends and in sources of imports into Canada"

59. Exhibit RR-2014-001-05A, Table 7, Vol. 1.1A.

60. Exhibit RR-2014-001-05C, Table 8, Vol. 1.1A.

82. The CBSA noted, in its decision in the present expiry review, that “[t]he projected growth of many countries around the world should spur growth in durable goods output which largely determines worldwide fastener demand.”⁶¹ With respect to the outlook for the global market for industrial fasteners, the CBSA stated as follows:⁶²

[63] The global market for industrial fasteners is expected to climb 5.2% per year to US\$82.9 billion in 2016. The industrial fastener demand in the USA is projected to rise 4.3% per year to US\$14.8 billion in 2017, while sales of industrial fasteners in Canada are forecasted to increase 2.2% per year through 2016 to US\$1.9 billion.

[Footnotes omitted]

83. Similarly, Leland filed uncontested evidence that forecasts increasing world demand for industrial fasteners.⁶³ According to trends presented in *World Industrial Fasteners*, a study from The Freedonia Group, Inc., the Asia/Pacific region, led by China, is projected to account for the fastest demand gains from 2011 to 2016, followed by North America and Western Europe.⁶⁴ However, it is notable that the demand for fasteners in the Asia/Pacific region is expected to grow more slowly (7.4 percent per year, on average) between 2011 and 2016 than it did from 2006 to 2011 (8.3 percent per year, on average).⁶⁵ Conversely, the North American and Western European markets are projected to see increased rates of demand over the 2011-2016 period compared with the 2006-2011 period.

84. Although international demand for fasteners is expanding, the world market remains subject to a certain degree of volatility, as recovery from the global recession in 2008 continues to take hold. In addition, Leland filed undisputed evidence that rising geopolitical tensions in Ukraine, Russia and the Middle East are having a destabilizing effect on global markets, particularly in Europe due to its close proximity.⁶⁶ The post-recession recovery in Europe has been weak due to the legacy of high debt, the anemic state of demand, unemployment and low inflation.⁶⁷ Following a decline in 2012 and 2013, GDP growth for the euro area is projected to increase by 0.8 percent in 2014, 1.3 percent in 2015 and 1.6 percent in 2019.⁶⁸

85. In the United States, the economic recovery is gaining momentum. During the POR, GDP growth increased from 1.6 percent in 2011 to 2.2 percent in 2013, and is projected to reach 3.1 percent in 2015.⁶⁹ According to evidence filed by Leland, these improvements are being driven by steadily improving economic conditions, including the normalization of monetary policy, favourable financial conditions, reduced fiscal drag, increased demand and a healthier housing market.⁷⁰

86. Recent economic conditions in China support the evidence of slowing domestic demand for industrial fasteners. Although the Chinese economy remains strong and is expanding at a rapid pace, its growth moderated during the POR, from 9.3 percent in 2011 to a projected 7.4 percent in 2014.⁷¹ In

61. Exhibit RR-2014-001-03A, Vol. 1 at 199.

62. *Ibid.*

63. Exhibit RR-2014-001-A-07 at 51, Vol. 11A.

64. *Ibid.* at 50-51.

65. *Ibid.* at 51.

66. *Ibid.* at 8, 45, 63, 191-95.

67. *Ibid.* at 12, 19, 38.

68. Exhibit RR-2014-001-05A, Table 7, Vol. 1.1A; Exhibit RR-2014-001-05C, Table 8, Vol. 1.1A.

69. *Ibid.*

70. Exhibit RR-2014-001-A-07 at 11, 28, 35-37, 174, Vol. 11.

71. Exhibit RR-2014-001-05A, Table 7, Vol. 1.1A.

addition, China's growth projections were lowered after a weaker than expected first quarter in 2014, and growth is forecast to moderate to 7.1 percent in 2015 and 6.3 percent in 2019.

87. The deceleration of the Chinese economy has had adverse effects on other economies in the Asia/Pacific region with strong trade and financial linkages to China.⁷² In Chinese Taipei, for example, GDP growth fell from 4.2 percent in 2011 to 1.5 percent in 2012, but is projected to rise steadily to 3.5 percent in 2014 and 4.5 percent in 2019.⁷³

88. Despite the overall economic slowdown in the subject countries during the POR, fastener producers have maintained high levels of output and, in the case of China, significantly increased total output. China's production rose by 191 percent from 2007 to 2013 and increased further from 6.4 million tons (5.8 million metric tonnes) in 2013 to 7.0 million tons (6.4 million metric tonnes) in 2014. In Chinese Taipei, production levels remained consistently high during the POR, totalling 128.7 billion New Taiwan dollars (NT\$) in 2011, NT\$121.3 billion in 2012 and NT\$123.9 billion in 2013.⁷⁴

89. According to the uncontroverted evidence filed by Leland, fastener producers in the subject countries have huge capacity and a strong export orientation.⁷⁵ The evidence also shows that there are hundreds of fastener factories in China and Chinese Taipei.⁷⁶ More than 90 percent of Chinese Taipei's production of fasteners was exported during the CBSA's period of review, which amounted to approximately 1.5 million metric tonnes valued at US\$3.9 billion in 2013.⁷⁷ Chinese exports of fasteners accounted for 2.6 million tons (2.36 million metric tonnes), or 41 percent of that country's total production of fasteners in 2013, according to a report noted by the CBSA in its decision.⁷⁸ The Iron and Steel Statistics Bureau (ISSB) Limited data included in the investigation report indicates that China exported 1.48 million metric tonnes of fasteners valued at CAN\$2.7 billion in 2013.⁷⁹

90. Another market condition that affects fastener exports and prices is international ocean freight rates. In 2011, the Baltic Dry Index (BDI) average was 1,553; it dropped to 921 in 2012, before increasing to 1,214 in 2013.⁸⁰ The 2013 and 2014 interim periods also showed an increase in ocean freight costs, from an index of 840 to 1,343. However, Leland filed historical averages of the BDI showing that, in the third quarter of 2014, ocean freight costs were virtually at their lowest level since 2003.⁸¹

91. In light of the above, the Tribunal finds that the subject countries have, together, increased their output of the subject goods since the 2009 expiry review, significantly contributing to a large increase in the international supply of the subject goods.

72. Exhibit RR-2014-001-A-07, tab 5, Vol. 11.

73. Exhibit RR-2014-001-05A, Table 7, Vol. 1.1A.

74. Exhibit RR-2014-001-03A, Vol. 1 at 201, 202, 206.

75. Exhibit LE-2013-003-02.01A, tabs 7, 8, 9, Vol. 1A; Exhibit RR-2014-001-A-07, tabs 4, 5, 6, Vol. 11A.

76. Exhibit RR-2014-001-A-07, tabs 4, 5, 6, Vol. 11A. In addition, the CBSA's determination referred to reports of nearly 500 fastener manufacturers in China and more than 1,250 fastener factories in Chinese Taipei. Exhibit RR-2014-001-03A, Vol. 1 at 201, 206.

77. Exhibit RR-2014-001-03A, Vol. 1 at 206; Exhibit RR-2014-001-A-01 at para. 78, Vol. 11; Exhibit LE-2013-003-02.01A, tab 8, Vol. 1A.

78. Exhibit RR-2014-001-03A, Vol. 1 at 201.

79. Tables 66 and 68 of the investigation report represent fastener exports under HS codes 7318.11, 7318.12, 7318.14 and 7318.15, which include both subject and non-subject goods. See Exhibit RR-2014-001-05A, Tables 66, 68, Vol. 1.1A.

80. Exhibit RR-2014-001-05A, Table 12, Vol. 1.1A.

81. Exhibit RR-2014-001-A-11 at para. 24 and attachment, Vol. 11A.

92. The Tribunal also finds that the slowing of the Chinese economy and dampened domestic demand for fasteners in China, together with the negative implications for regional demand, including for Chinese Taipei, are likely to result in the need for producers in the subject countries to increase their exports to foreign markets, including Canada.

Domestic Market Conditions

93. While the Canadian economy continues to recover from the 2008 recession, economic growth slowed during the POR. The IMF published GDP growth figures in October 2014 showing that Canada's GDP growth dropped from 2.5 percent in 2011 to 2.0 percent in 2013.⁸² The Bank of Canada reported comparable figures in July 2014.⁸³ The Canadian economy is expected to show moderate growth of 2.3 percent and 2.4 percent in 2014 and 2015, respectively, and will decline slightly to 2.0 percent by 2019.⁸⁴

94. Recent reports by Statistics Canada, the Bank of Canada and TD Economics indicate that the domestic economy is showing signs of moderate improvement in manufacturing sales, business activity, exports and household spending, though business investment and employment are weaker areas of economic performance.⁸⁵

95. Going forward, moderate growth in Canada's manufacturing sector is expected despite declining GDP in the 2013 and 2014 interim periods for fabricated metal product manufacturing (which includes the like goods) and residential building construction.⁸⁶ Non-residential building construction (a major consumer of industrial fasteners) experienced modest improvement over the POR and the 2014 interim period. A recent Statistics Canada report on building permits, dated June 2014, indicates a likely increase in non-residential construction.⁸⁷

96. According to testimony, conditions in the domestic market for carbon steel screws have improved and stabilized since the original findings, and this trend continued over the POR.⁸⁸ While the domestic industry has become increasingly concentrated,⁸⁹ domestic sales from domestic production of the like goods maintained a small but stable share of the apparent market over the POR, which was comparable to the domestic industry's share of approximately 10 percent in the last expiry review.⁹⁰

97. Imports from the subject countries held the majority of the balance, representing between 65 percent and 74 percent of the apparent market in terms of volume during the POR and the 2013 and 2014

82. Exhibit RR-2014-001-05A, Table 7, Vol. 1.1A.

83. Exhibit RR-2014-001-05C, Table 8, Vol. 1.1A.

84. Exhibit RR-2014-001-05A, Table 7, Vol. 1.1A; Exhibit RR-2014-001-A-07 at 15, 37, 137, 162, Vol. 11.

85. Exhibit RR-2014-001-A-07 at 122, 136, 161, 169, 171, 173, Vol. 11.

86. Exhibit RR-2014-001-05C, Tables 9, 10, Vol. 1.1A.

87. Exhibit RR-2014-001-A-07 at 150, 159, Vol. 11.

88. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 26, 70, 103, 107, Vol. 2, 18 November 2014, at 138, 224, 231.

89. Exhibit RR-2014-001-05A, Vol. 1.1A at 26, 27; Exhibit RR-2014-001-05C, Vol. 1.1A at 184; *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 45-47. In Expiry Review No. RR-2009-001, the Tribunal noted that the number of domestic producers of like goods had decreased since Inquiry No. NQ-2004-005. See *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 132.

90. Exhibit RR-2014-001-06E (protected), Tables 16, 19, Vol. 2.1B; *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 61, Vol. 2, 18 November 2014, at 224, 260; *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 200.

interim periods.⁹¹ Non-subject imports from the United States represented a minimal market share, between 1 percent and 4 percent in volume terms, and other countries, including Malaysia, Thailand and Vietnam⁹² accounted for between 13 percent and 20 percent. The Tribunal notes that this is consistent with the evidence on the record in Expiry Review No. RR-2009-001, at which time imports from these three countries accounted for approximately one third of the domestic market for carbon steel screws.⁹³

Likely Performance of the Domestic Industry

98. Paragraph 37.2(2)(c) of the *Regulations* directs the Tribunal to examine the likely performance of the domestic industry, taking into account the industry's recent performance, including trends in production, capacity utilization, employment levels, prices, sales, inventories, market share, exports and profits.

99. For the purposes of this analysis, the Tribunal will first consider the domestic industry's recent performance and then assess the likely performance of the domestic industry if the order were to remain in effect.⁹⁴ In both cases, the Tribunal will look at whether there are any relevant factors other than the dumping and subsidizing of the subject goods affecting or likely to affect the domestic industry's performance in the near to medium term.⁹⁵ Such other factors may include the following: the likely volumes or prices of imports from non-subject countries; changes in demand for the goods or like goods (e.g. shift to substitutable goods); changes in the pattern of consumption of the goods or like goods; trade-restrictive practices of, and competition between, foreign and domestic producers; developments in technology; the export performance and productivity of the domestic industry in respect of the like goods; and/or exchange rate variations.

100. Leland submitted that the order has provided pricing stability, allowing the domestic industry to fairly compete with the subject goods and maintain its market share. During the POR, Leland performed well financially and recently reinvested earnings in its production facilities. Even so, Leland submitted that, with the duties in place, it has still lost sales or was forced to reduce its prices in order to match price offerings of the subject goods in the domestic market.

101. Standard Fasteners submitted that, despite ongoing low prices for the subject goods since the original findings, there is a price floor on carbon steel screws in the Canadian market, which has in turn helped to maintain fair market conditions. Standard Fasteners' production and capacity utilization have been stable, but it submitted that import competition from the subject countries has prevented it from investing in additional capacity and improving its capacity utilization rate.⁹⁶

102. Spaenaur alleged that intra-industry competition and an unreasonably high minimum order size requirement by Leland are non-dumping/subsidizing factors that have hindered the performance of the

91. Exhibit RR-2014-001-05E, Table 16, Vol. 1.1B.

92. Exhibit RR-2014-001-03A, Vol. 1 at 202; *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 65, 82; Exhibit RR-2014-001-B-01 at para. 13, Vol. 11A; Exhibit RR-2014-001-27.51, Vol. 5B at 101; Exhibit RR-2014-001-27.54, Vol. 5B at 153.

93. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 133.

94. See *Hot-rolled Carbon Steel Plate and High-Strength Low-alloy Steel Plate* (7 January 2014), RR-2013-002 (CITT) at para. 85. In *Thermoelectric Containers* at para. 14, the Tribunal stated that the requirement in an expiry review is that the Tribunal draw logical conclusions from the relevant information before it, and that information will often appropriately include the performance of the domestic and foreign industries during the POR, when anti-dumping and countervailing duties are in place; see, also, *Aluminum Extrusions* at para. 21.

95. See paragraph 37.2(2)(k) of the *Regulations*.

96. Exhibit RR-2014-001-B-01 at paras. 6, 11, 13, Vol. 11A.

domestic industry, and Leland in particular. Specifically, Spaenaur submitted that Leland, when asked to quote a list of products, required a minimum order size that was much higher than that of other domestic producers, such as Visqué and HG Canada which supplied Spaenaur on several occasions during the POR.⁹⁷

103. Leland responded that Spaenaur, by its own admission, had requested low-volume, hard-to-find items of Leland.⁹⁸ It argued that the domestic industry should not be expected to serve the entire market or to produce every possible item within the wide range of subject goods, especially not oddball and/or niche items.⁹⁹ Leland further noted that minimum order sizes are standard in the industry and that, while Spaenaur found the minimum requirements of Visqué and HG Canada to be “more reasonable”, it did not provide any evidence of having purchased or even inquired about the same low-volume items from those producers.¹⁰⁰

– Production, Pricing and Sales

104. The domestic industry’s production for domestic sales and export sales grew over the POR. Total domestic production rose by 14 percent in 2012, year over year, and by 2 percent in 2013.¹⁰¹ Production for domestic sales grew by 20 percent in 2012 and decreased by 1 percent in 2013, whereas production for exports showed a steadier increase in year-over-year growth (4 percent in 2012 and 8 percent in 2013).¹⁰² In addition, a 14 percent increase in total domestic production between the 2013 and 2014 interim periods was largely driven by production for export sales, which jumped by 37 percent.

105. The domestic industry had a steady and larger share of production intended for domestic sales than for export sales over the POR, with the exception of the 2014 interim period, which saw a notable drop in the gap between the shares of domestic sales and export sales as compared to the norm during the POR.¹⁰³

106. According to Mr. Nelson’s evidence, Leland has performed well since the last expiry review, expanding production, developing new products, increasing direct employment and investing in production facilities and equipment.¹⁰⁴ Mr. Nelson testified that the additional capacity is intended to meet the growing demands of its export business, particularly in Europe.¹⁰⁵ In a similar vein, Mr. Ryan testified that Visqué has been able to survive by developing its export business, with Mexico representing a large customer base, which includes customers that recently relocated from Canada to Mexico.¹⁰⁶

97. Exhibit RR-2014-001-H-01 at paras. 29-30, 35-36, Vol. 13; Exhibit RR-2014-001-H-02 (protected), tabs 5, 6, Vol. 14; *Transcript of Public Hearing*, Vol. 4, 20 November 2014, at 467.

98. Spaenaur itself made specific reference to “low-volume” items covered by its request to Leland. See *Transcript of Public Hearing*, Vol. 4, 20 November 2014, at 467; Exhibit RR-2014-001-H-01 at paras. 35-37, Vol. 13.

99. Exhibit RR-2014-001-A-11 at 12, Vol. 11A; see, also, *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at para. 216.

100. Exhibit RR-2014-001-A-11 at 13, Vol. 11A; *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 22-23.

101. Exhibit RR-2014-001-05E, Table 4, Vol. 1.1B.

102. *Ibid.*

103. Exhibit RR-2014-001-06E (protected), Table 5, Vol. 2.1B.

104. Exhibit RR-2014-001-A-03 at paras. 23-30, 34, 38, 42-43, Vol. 11.

105. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 11.

106. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 224.

107. Although export sales have become increasingly important to the domestic industry, domestic sales from domestic production also increased over the POR, rising by 16 percent and 3 percent in 2012 and 2013, respectively, and increasing by 1 percent between the 2013 and 2014 interim periods.¹⁰⁷

108. Witnesses for the domestic industry, as well as Mr. Robinson, testified that the duties have ensured price stability in the domestic market, allowing the domestic producers to compete with imports of the subject goods and concentrate on the development of new products—conditions that would likely continue if the duties remained in place.¹⁰⁸

109. The investigation report indicates that, while there is pricing disparity between the domestic producers, which the Tribunal finds is likely due to product mix,¹⁰⁹ the most notable trend throughout the POR is the sales price stability experienced by each of the domestic producers.¹¹⁰ During the POR, average selling prices in the domestic market rose from CAN\$25.65 per thousand units in 2011 to CAN\$28.72 per thousand units in 2013, reaching CAN\$33.00 per thousand units during the 2014 interim period, a 14 percent increase from the same period in 2013.¹¹¹

110. The Tribunal finds that, during the POR, the domestic industry was able to increase its production for domestic sales due to stable pricing in the domestic market, but had limited opportunity to re-gain sales lost to the subject goods.¹¹²

111. The Tribunal finds that the evidence on the record does not support Spaenaur's submission that Leland's minimum order size requirement caused it to lose sales to domestic competitors. While Mr. Spaetzle testified that Spaenaur chose not to purchase certain low-volume like goods from Leland because of its minimum size requirements, upon cross-examination, he admitted that Spaenaur purchased like goods from another domestic producer with a similar minimum order size requirement.¹¹³ The Tribunal prefers the testimony of Mr. Nelson who stated that the purchase request that Leland received from Spaenaur was for a long list of different types of non-standard carbon steel screws for which it was standard in the industry to require a minimum order size.¹¹⁴

112. Furthermore, the Tribunal finds no evidence that intra-industry competition limited the domestic industry's performance during the POR. On the contrary, the evidence showed that the domestic producers

107. Exhibit RR-2014-001-05E, Table 15, Vol. 1.1B.

108. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 23-25, 70-71, Vol. 2, 18 November 2014, at 215-16, 258-60.

109. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 223; *Transcript of In Camera Hearing*, Vol. 1, 17 November 2014, at 3, 20-21, 47; Exhibit RR-2014-001-A-04 (protected) at paras. 36-39, Vol. 12. This finding is consistent with the Tribunal's conclusion in Expiry Review No. RR-2009-001, in which the Tribunal determined that "...Leland sells in different niches of the market than other domestic producers and that, therefore, its prices may not be representative of the domestic industry as a whole", *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 180.

110. Exhibit RR-2014-001-06E (protected), Table 20, Vol. 2.1B; Exhibit RR-2014-001-05E, Table 21, Vol. 1.1B.

111. Exhibit RR-2014-001-05E, Tables 20, 21, Vol. 1.1B.

112. *Transcript of In Camera Hearing*, Vol. 1, 17 November 2014, at 13-17; Exhibit RR-2014-001-A-03 at para. 39, Vol. 11; Exhibit RR-2014-001-A-04 (protected) at para. 60 and attachments, Vol. 12.

113. *Transcript of Public Hearing*, Vol. 3, 19 November 2014, 282-83; Exhibit RR-2014-001-H-01 at para. 36, Vol. 13.

114. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 21-22.

had different product mixes and also served different market segments with some variation in geographic markets (i.e. Standard Fasteners in Western Canada, Visqué in Ontario and Quebec).¹¹⁵

113. On the basis of this evidence, the Tribunal finds that continuation of the order would likely result in continuing domestic price stability, allowing the domestic industry to fairly compete for market share. The domestic industry would likely see increased production for domestic sales in line with Canada's economic growth forecasts, especially non-residential building construction, but limited by the continued presence of the subject goods at normal values. In addition, the domestic industry's sales in the domestic market will likely be restricted by intensifying competition from imports of non-subject goods from countries other than the United States, including Malaysia, Vietnam and Thailand.¹¹⁶

114. The Tribunal also finds a likelihood of modest growth of the domestic industry's export sales, which can be expected to continue playing an important role in the performance of the domestic industry.¹¹⁷

– Market Share

115. The domestic market for carbon steel screws remained fairly constant at approximately 8.6 billion units in 2011, 8.7 billion units in 2012 and 8.8 billion units in 2013.¹¹⁸ As mentioned above, the domestic industry retained a small but stable market share over the course of the POR.¹¹⁹ Similar to the 2009 expiry review imports, the vast majority of the domestic market is served by imports. In 2011, the subject goods held a 67 percent market share, which grew to a 69 percent market share by 2013. The subject goods peaked at 74 percent of domestic market share during the 2013 interim period.¹²⁰ Over the POR, imports from non-subject countries were stable, holding at between 18 percent and 22 percent domestic market share (with the exception of January to June 2013, during which time non-subjects imports fell to 15 percent).¹²¹ In sum, the domestic industry held onto its clear minority market share, accounting for no more than 10 percent of the domestic market during the POR.¹²²

116. According to Mr. Nelson's evidence, Leland has strategically concentrated on higher-value products and market sectors in which it has a competitive advantage, such as the agriculture sector in Western Canada.¹²³ His testimony also indicated that the domestic industry's historical loss of sales for various types of high-volume carbon steel screws to the subject goods, i.e. prior to the initial injury inquiry in 2004, represents business that the domestic industry has irreversibly lost as a result of duties not being in place.¹²⁴

117. Nevertheless, witnesses for the domestic industry were confident that, if the order were continued, their businesses would be able to maintain their respective share of the domestic market partially based on

115. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 135, 140, 222-23, 227-29, 245; *Transcript of In Camera Hearing*, Vol. 1, 17 November 2014, at 13-17, 69-70; Exhibit RR-2014-001-A-04 (protected) at para. 60 and attachments, Vol. 12.

116. Exhibit RR-2014-001-03A, Vol. 1 at 202; *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 65, 82; Exhibit RR-2014-001-B-01 at para. 13, Vol. 11A.

117. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 11, Vol. 2, 18 November 2014, at 224.

118. Exhibit RR-2014-001-05E, Tables 14, 15, Vol. 1.1B.

119. *Ibid.*, Table 16.

120. *Ibid.*, Tables 14, 16.

121. *Ibid.*, Table 16.

122. *Transcript of Public Hearing*, Vol. 2, 17 November 2014, at 151, 224, 260; Exhibit RR-2014-001-05E, Table 16, Vol. 1.1B.

123. Exhibit RR-2014-001-A-03 at para. 9, Vol. 11.

124. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 29-31, 88, 93.

benefits other than price, such as a local source of supply and because of an ongoing strategic focus on higher-value niche product markets in Canada.¹²⁵ Mr. Porritt gave the example of buying from a domestic producer that offers shorter response times in order to service smaller distributors when they run out of a certain type of screw and need to replenish their stocks quickly.¹²⁶

118. In light of the above, the Tribunal finds that it is likely that the domestic industry's market share would remain stable or, at best, increase a nominal amount if the order were to be continued, given the ongoing presence of the subject goods at normal values with the order in place, together with the presence of carbon steel screws from non-subject countries at significantly lower prices.

– Profitability

119. The Tribunal finds that the profitability of the domestic industry increased over the POR. Witnesses for the domestic industry testified that, under the current order, their businesses are profitable and will continue to make money as long as the order remains in place.¹²⁷ Mr. Robinson had the same outlook from the perspective of an importer/distributor of carbon steel fasteners.¹²⁸

120. Between 2011 and 2013, the domestic industry demonstrated strong and improving financial performance, both in terms of gross margins and net income before taxes.¹²⁹ Both indicators enjoyed a further upswing between the 2013 and 2014 interim periods.¹³⁰

121. The evidence indicates that the cost of goods sold was fairly steady, with only a slight decrease, over the POR.¹³¹ As steel is the major material component in the production of carbon steel screws, the total cost of inputs is largely dependent on world steel prices.¹³² The evidence on the record shows that the average unit cost of steel, as reported by domestic producers, fluctuated during the POR but declined overall.¹³³ According to various articles on the steel market and fasteners filed by Leland, global steel prices declined during the POR due to falling demand, with overcapacity in the Chinese steel industry adding downward pressure.¹³⁴ Mr. Ryan testified that world steel prices have steadied in the past two years, as compared to chaotic pricing over the last decade, and have recently started to trend upwards.¹³⁵ This is

125. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 38, 61, 138, Vol. 2, 18 November 2014, at 215, 226, 241-42, 260.

126. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 101.

127. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 137, 224; *Transcript of In Camera Hearing*, Vol. 1, 17 November 2014, at 3-4.

128. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 69, 71.

129. This includes gross margin and net income before taxes in absolute terms, calculated as a percentage of net sales value or in dollars per thousand units. See Exhibit RR-2014-001-06E (protected), Table 1, Vol. 2.1B; Exhibit RR-2014-001-06A (protected), Schedules 38, 40, Vol. 2.1A; Exhibit RR-2014-001-06D (protected), Schedule 41, Vol. 2.1B.

130. Exhibit RR-2014-001-06E (protected), Tables 1, 2, Vol. 2.1B.

131. The cost of goods sold is expressed as a percentage of net sales value or in dollars per thousand units. Exhibit RR-2014-001-06E (protected), Table 1, Vol. 2.1B; *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 59, Vol. 2, 18 November 2014, at 230-32.

132. Exhibit RR-2014-001-06D (protected), Tables 51, 53, Vol. 2.1B; *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 231-32, 258-59.

133. Exhibit RR-2014-001-06D (protected), Tables 51, 53, Vol. 2.1B.

134. Exhibit RR-2014-001-A-07 at 53-54, 59-60, Vol. 11; Exhibit RR-2014-001-15.01, Vol. 7.1 at 249, 262; Exhibit RR-2014-001-15.01A, Vol. 7.1A at 166.

135. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 231.

consistent with the MEPS (International) Ltd.'s *International Steel Review*, which shows that global prices of steel wire rod declined in 2014, with moderate increases forecasted in 2015.¹³⁶

122. In light of the above, the Tribunal considers that, if the order is continued, the profitability of the domestic industry would likely stabilize and continue at current levels due to continued competition from the subject goods at normal values and low-priced imports from non-subject countries other than the United States, including Malaysia, Vietnam and Thailand.

– Capacity Utilization

123. The domestic industry's consolidated capacity utilization rate for carbon steel screws, while not available on the public record, remained relatively stable during the 2011 to 2013 period and showed that the domestic producers had significant excess production capacity.¹³⁷ The 2013 and 2014 interim periods showed moderate improvement in the domestic industry's capacity utilization rates.

124. According to Mr. Nelson, price competition from imports of the subject goods has prevented Leland from maximizing its capacity utilization rate and contributed to excess production capacity.¹³⁸

125. Nevertheless, the domestic industry, and Leland in particular, made significant investments in its production capacity during the POR, which has increased since 2011.¹³⁹ Leland also projects a major 50,000 square foot plant expansion begun in 2014 to carry into 2015.¹⁴⁰ Mr. Ryan indicated in his testimony that, in 2013, Visqué moved its production plant and "doubled" its floor space.¹⁴¹

126. The Tribunal finds that the domestic industry's capacity utilization has stabilized and, if the order is continued, is likely to remain at current levels, or appreciate slightly, due to ongoing competition from the subject goods at normal values and imports of low-priced non-subject carbon steel screws from countries such as Malaysia, Vietnam and Thailand.

– Inventories

127. The domestic industry's consolidated inventories fluctuated narrowly in terms of both volumes and values from December 31, 2010, to December 31, 2013, and remained stable between the 2013 and 2014 interim periods.¹⁴²

128. In the Tribunal's view, if the order is continued, the domestic industry's inventory levels will likely remain at current levels, given the expectation of stable domestic market demand.

136. Exhibit RR-2014-001-36.11, Vol. 1.01A at 3, 4, 6, 8, 10, 12, 14, 16, 18, 20; Exhibit RR-2014-001-05A, Table 14, Vol. 1.1A.

137. Exhibit RR-2014-001-05D, Table 58, Vol. 1.1B.

138. Exhibit RR-2014-001-A-03 at para. 32, Vol. 11.

139. Exhibit RR-2014-001-06D (protected), Table 59, Vol. 2.1B; Exhibit RR-2014-001-06E (protected), Table 1, Vol. 2.1B.

140. Exhibit RR-2014-001-06D (protected), Table 59, Vol. 2.1B; Exhibit RR-2014-001-A-03 at para. 31, Vol. 11; *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 11.

141. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 223.

142. Exhibit RR-2014-001-06C (protected), Schedules 66, 67, Vol. 2.1A.

– Employment

129. The evidence shows that there was no marked change in direct employment for the majority of the domestic producers over the POR, despite a jump in Visqué's employment during the 2014 interim period that drove an uptick overall.¹⁴³ In terms of person-hours worked and wages paid, there were moderate increases of both indicators for the domestic industry as a whole over the POR.¹⁴⁴

130. The Tribunal finds it unlikely that there will be any significant change in the domestic industry's employment levels in the near future, if the order is continued.

Likely Import Volume of Dumped and Subsidized Goods

131. Paragraph 37.2(2)(a) of the *Regulations* directs the Tribunal to consider the likely volume of the dumped or subsidized goods if the order is allowed to expire and, in particular, whether there is likely to be a significant increase in the volume of imports of the dumped or subsidized goods, either in absolute terms or relative to the production or consumption of like goods.

132. The Tribunal's assessment of the likely volumes of dumped and subsidized imports encompasses the likely performance of the foreign industry, the 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 and/or countervailing measures in other jurisdictions, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.¹⁴⁵

133. The underlying theme of Leland's argument is that weak demand in the subject countries' domestic markets and in their traditional export markets, such as the European Union, together with the vast production capacity and excess capacity of the fastener industry in China and Chinese Taipei, will compel producers/exporters in those countries to look increasingly to other foreign markets, especially those where they have well-established distribution networks, such as Canada.

134. Leland submitted that, despite the duties in place, high volumes of the subject goods have been imported into Canada over the past five years, often priced below normal values, resulting in the payment of substantial duties under *SIMA*. In fact, Leland argued that its total domestic sales of the like goods during the POR paled in comparison to the export value of the subject goods from China and Chinese Taipei during the same period.¹⁴⁶ In its view, if the order were allowed to expire, the volume of subject goods into Canada would increase substantially, by "... many millions of units ...",¹⁴⁷ given that foreign producers/exporters in the subject countries have a propensity to dump and are known to be aggressive exporters.

135. Robertson, the only opposing party that provided submissions on likely import volumes, argued that the domestic industry has failed to demonstrate that volumes of the subject imports from China would likely increase significantly if the order were to expire. In particular, it relied on a noticeable drop in imports of the subject goods into Canada, in terms of value for duty, between 2012 and 2014,¹⁴⁸ arguing that this

143. Exhibit RR-2014-001-05E, Table 2, Vol. 1.1B; Exhibit RR-2014-001-05D, Table 54, Vol. 1.1B.

144. Exhibit RR-2014-001-05E, Table 2, Vol. 1.1B.

145. Paragraphs 37.2(2)(a), (d), (f), (h) and (i) of the *Regulations*.

146. Exhibit RR-2014-001-A-01 at paras. 125-28, Vol. 11; Exhibit RR-2014-001-A-02 (protected) at paras. 125-28, Vol. 12.

147. Exhibit RR-2014-001-A-01 at para. 88, Vol. 11.

148. Exhibit RR-2014-001-J-01 at para. 15, Vol. 13; Exhibit RR-2014-001-05A, Table 5, Vol. 1.1A.

downward trend is likely to continue due to higher shipping costs from China to Canada and growing demand in other markets.

Likely Performance of the Foreign Industry

136. The evidence on the record regarding the likely performance of the carbon steel screw industry in China and Chinese Taipei is limited, as it was in the previous expiry review. As a result, the Tribunal has relied primarily on evidence concerning the overall fastener industry in China and Chinese Taipei, which it considers to be the best available indicator of the performance of the foreign industry. In particular, the Tribunal notes that, except where otherwise indicated, its references to subject country production, capacity and exports covers a broader range of products than carbon steel screws.

137. The likely volume of the subject goods available for export markets is primarily driven by production capacity relative to domestic demand. As noted above, total output of fasteners in the subject countries, collectively, increased during the POR and, yet, fasteners in both countries have substantial excess capacity in terms of volume and are highly export oriented.

138. The Tribunal received, in response to its *Foreign Producers' Questionnaire*, information on capacity and utilization rates specific to carbon steel screws from 10 producers in China and Chinese Taipei.¹⁴⁹ Responses from even these few foreign producers confirmed the huge production capacity of producers in both subject countries, which greatly exceeded the domestic industry's total production (including both domestic and export sales) in the same period.¹⁵⁰

139. Over the POR, capacity utilization rates for carbon steel screws remained high, particularly in China.¹⁵¹ There was no evidence before the Tribunal indicating that this would change in the near future. However, the Tribunal acknowledges that its sample sizes for each of the subject countries are very small compared to their overall market size and purportedly large numbers of manufacturers. With respect to Chinese Taipei, Mr. Robinson testified that there are literally "thousands of fastener producers" in that country based on his experience as a distributor/importer that frequently purchases from manufacturers in Chinese Taipei and has travelled there for business on multiple occasions.¹⁵² This evidence is in line with the CBSA's determination, which referred to reports of nearly 500 fastener manufacturers in China and more than 1,250 fastener factories in Chinese Taipei.¹⁵³

140. Furthermore, the CBSA cited some examples of producers in China and Chinese Taipei that had indicated unused production capacity of carbon steel fasteners and the addition of production capacity for such goods during its period of review.¹⁵⁴ The CBSA concluded that, even if only a fraction of this capacity were directed towards Canada, it would dwarf the domestic producers' sales in the Canadian market.

141. The Tribunal finds that, despite the limited evidence available on the record, the excess production capacity reported by the seven Chinese Taipei producers that responded to the Tribunal's questionnaire

149. In the investigation report, data on consolidated capacity and utilization rates for foreign producers are based on usable replies from three Chinese producers and seven producers in Chinese Taipei. See Exhibit RR-2014-001-05A, Tables 62, 63, Vol. 1.1A.

150. Exhibit RR-2014-001-06E (protected), Tables 1, 3, Vol. 2.1B; Exhibit RR-2014-001-06A (protected), Tables 62, 63, Vol. 2.1A.

151. Exhibit RR-2014-001-06A (protected), Table 62, Vol. 2.1A.

152. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 73-74.

153. Exhibit RR-2014-001-03A, Vol. 1 at 201, 206.

154. *Ibid.* at 201-202, 207.

alone either exceeded or was comparable to the domestic production for domestic and export sales during the POR.¹⁵⁵

142. In addition, the witnesses for the domestic industry testified that the same machinery and tooling can be used to produce both subject and non-subject goods. According to Mr. Nelson, Leland uses the same cold-heading and roll-threading machines to produce approximately 10,000 to 12,000 line items, of which at least 8,000 to 9,000 are subject goods.¹⁵⁶ Leland produces some non-subject goods, such as stainless steel screws.¹⁵⁷ Similarly, Ms. Yu testified that Standard Fasteners uses its heading machines to produce 5,000 distinct items, including non-subject goods made of, for example, stainless steel.¹⁵⁸ Ms. Yu also suggested that Standard Fasteners could increase its production capacity by 50 percent by adding another shift.¹⁵⁹ The Tribunal thus finds a strong likelihood that the same equipment used by foreign producers to manufacture non-subject goods, such as stainless steel fasteners,¹⁶⁰ could easily be changed to increase production of the subject goods.

143. As a result, despite apparently high rates of capacity utilization for the sample of reporting producers in the subject countries, the potential for increasing volumes of exports of the subject goods is significant in comparison to the domestic industry's sales in the domestic market.

144. Given that the subject countries' economies have been experiencing slower growth conditions and weakened domestic demand for fasteners, producers in China and Chinese Taipei are likely to continue to be heavily export-oriented, as the global market demand for fasteners is expected to see moderate growth over the next few years.

145. According to data from the ISSB, China's primary export markets for fasteners are the United States, Russia and Japan, which together accounted for between 32 and 38 percent of China's fastener exports.¹⁶¹ Comparable information was not available for Chinese Taipei; however, Leland filed evidence on the record from various articles and reports on the market for fasteners that indicated that Chinese Taipei's largest export markets, in 2013, are the United States, Europe (primarily Germany) and Japan.¹⁶²

146. The Tribunal finds that producers in the subject countries are likely to be drawn to the North American market in the event that the order is rescinded, given the attractive pricing that can be obtained for carbon steel screws in Canada, in addition to the fact that non-subject goods (excluding those from the United States) have established a price point well below the prices of the subject imports and domestically produced goods.¹⁶³ The overall decline in international ocean freight prices, as compared to historical averages over the past decade, provides an additional incentive for the subject countries to export to North America.¹⁶⁴

155. Exhibit RR-2014-001-06E (protected), Tables 1, 3, Vol. 2.1B; Exhibit RR-2014-001-06A (protected), Table 63, Vol. 2.1A.

156. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 11-12.

157. *Ibid.* at 35; Exhibit RR-2014-001-24.10, Vol. 3 at 48.

158. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 135, 152, 190-91.

159. *Ibid.* at 140.

160. *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) at para. 74.

161. Exhibit RR-2014-001-05A, Tables 66, 67, Vol. 1.1A, represents fastener exports under HS codes 7318.11, 7318.12, 7318.14 and 7318.15, which includes both subject and non-subject goods.

162. Exhibit RR-2014-001-A-07 at 59, 67, 69, Vol. 11A.

163. Exhibit RR-2014-001-06E (protected), Table 20, Vol. 2.1B; Exhibit RR-2014-001-05E, Table 20, Vol. 1.1.B.

164. Exhibit RR-2014-001-A-11 at para. 24 and attachment, Vol. 11A.

147. Given the projected tempered increase in global demand, the recent stabilization of world steel prices during the POR, and the fact that major markets, particularly the United States, remain open to exports of the subject goods from China and Chinese Taipei, the Tribunal does not expect the likely sales performance and profitability of the foreign industry to change appreciably.

Risk of Trade Diversion

148. Pursuant to paragraphs 37.2(2)(h) and (i) of the *Regulations*, the Tribunal may consider evidence of the imposition of anti-dumping or countervailing duties by the authorities in other countries in respect of goods of the same description as the subject goods or in respect of similar goods, and whether such measures are likely to cause a diversion of the dumped and subsidized goods into Canada.

149. Other jurisdictions, including the European Union, South Africa and Colombia, have imposed measures on fasteners and closely related goods from China and Chinese Taipei.¹⁶⁵ The European Union imposed anti-dumping duties on imports of certain iron or steel fasteners from China in 2009, covering the same products as the subject goods, with the exception of wood coach screws.¹⁶⁶ In 2011, the European Union extended those duties to imports of such fasteners originating in China but consigned from Malaysia, whether declared as originating in Malaysia or not.¹⁶⁷ The European Union's duties on imports from China were reduced in 2012, following a WTO Appellate Body decision, but remain in effect between 22.9 percent and 74.1 percent with an all-others rate of 74.1 percent.¹⁶⁸

150. Leland submitted that the European Union's measures continue to pose a risk of major trade diversion of carbon steel screws to the Canadian market, as in the previous expiry review.¹⁶⁹ Robertson countered that there is less risk of diversion, given the reduction in the European Union's duties and the fact that, in November 2009, the United States found no reasonable indication of injury for certain steel fasteners from China and Chinese Taipei.¹⁷⁰

151. The Tribunal finds that anti-dumping measures imposed in other countries in respect of goods of the same description as, or similar to, the subject goods are likely to cause a diversion of the subject goods imported into Canada if the order is allowed to expire. In particular, the European Union's duties against China, despite having been reduced in 2012, continue to pose a risk of diversion. The Tribunal previously stated that "... even a 10 percent decrease in EU sales due to the EU finding would likely represent a volume greater than the entire volume of imports of carbon steel screws into Canada."¹⁷¹ It maintains this view in the present case.

152. Mr. Nelson and Ms. Yu provided uncontested evidence that circumvention practices are already present in the Canadian market, with imports of the subject goods from China and Chinese Taipei having

165. Exhibit RR-2014-001-05A, Table 1, Vol. 1.1A.

166. Council Implementing Regulation, EU No. 91/2009, 26 January 2009, Official Journal of the European Union. See also Exhibit RR-2014-001-A-01 at para. 137, Vol. 11.

167. Council Implementing Regulation, EU No. 723/2011, 18 July 2011, Official Journal of the European Union. See also Exhibit RR-2014-001-A-01 at para. 143, Vol. 11.

168. Council Implementing Regulation, EU No. 924/2012, 4 October 2012, Official Journal of the European Union. See also Exhibit RR-2014-001-A-01 at paras. 137, 139, Vol. 1.

169. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at paras. 163-64.

170. *Certain Standard Steel Fasteners from China and Taiwan* (November 2009), USITC Investigation Nos. 701-TA-472 and 731-TA-1171-1172 (Preliminary).

171. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 164.

been transhipped through other countries in the Asia/Pacific region, including Malaysia, Vietnam and Thailand, and falsely described as originating in those other countries.¹⁷²

153. On the basis of this evidence, and given the European Union's imposition of anti-circumvention measures against imports from China transhipped through Malaysia, the Tribunal finds that there is a real possibility that some imports of carbon steel screws from non-subject countries into Canada may have actually originated in China or Chinese Taipei and been transhipped through another country.

Apparent Imports and Likely Volumes

154. Imports of carbon steel screws maintained a strong and relatively stable presence in the Canadian market over the POR, accounting for between 87 and 89 percent of the apparent market in volume terms, and a slightly higher share in value terms between 89 percent and 91 percent.¹⁷³ The volume of total imports increased from roughly 6.1 billion units in 2011 to 6.7 billion units in 2012 and 7.6 billion units in 2013, but declined by 14 percent over the 2013 and 2014 interim periods.¹⁷⁴

155. The volume of imports of the subject goods noticeably increased between 2011 and 2013, before declining in the first half of 2014 as compared to same period in 2013.¹⁷⁵ The imports of the subject goods represented the bulk of total imports during the POR, peaking at 83 percent in interim 2013, before declining to 79 percent in interim 2014, the same percent share as in 2013.¹⁷⁶ This loss of import share in the first half of 2014 was regained by imports of non-subject goods, which had fallen since 2013.¹⁷⁷

156. Incoming volumes of the subject goods relative to the production and consumption of the like goods also increased by at least 10 percent from 2011 to 2013, followed by a drop between the 2013 and 2014 interim periods.¹⁷⁸ Despite this drop, it is notable that the volume of the subject goods imported from China and Chinese Taipei in the first half of 2014 was still more than five times greater than total domestic sales from domestic production during the same period.¹⁷⁹

157. Recent trends in the unit values of the subject goods in the domestic market show that, for the three full years, prices stabilized over the POR, as some foreign producers sought and received normal values.¹⁸⁰ Under these conditions of stable pricing, Mr. Robinson testified that Fasteners & Fittings Inc. has continued to import the subject goods over the last 10 years, at normal values, with virtually no change for its business.¹⁸¹

158. On the whole, the Tribunal finds that the subject goods hold a dominant share of the Canadian market, which is unlikely to change appreciably in the near to medium term if the order is continued, given the data over the POR as compared to the last review.¹⁸² This is supported by the undisputed evidence led

172. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 26-27, Vol. 2, 18 November 2014, at 212; Exhibit RR-2014-001-A-03 at paras. 75-78, Vol. 11.

173. Exhibit RR-2014-001-05E, Tables 16, 19, Vol. 1.1B.

174. *Ibid.*, Tables 6, 7.

175. *Ibid.*, Table 7.

176. *Ibid.*, Table 8.

177. *Ibid.*, Tables 7, 8.

178. Exhibit RR-2014-001-06E (protected), Tables 3, 6, 14, Vol. 2.1B.

179. *Ibid.*, Tables 6, 14.

180. Exhibit RR-2014-001-05E, Table 20, Vol. 1.1B.

181. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 67-68, 75-76.

182. Exhibit RR-2014-001-06E (protected), Table 16, Vol. 2.1B.

by the domestic industry that the market share of the subject goods can be expected to remain stable with the measures in place.¹⁸³

159. Mr. Robinson and Mr. Porritt testified that, from the perspective of distributors in the Canadian market, the pricing stability that was apparent over the POR would disappear almost immediately if the order is allowed to expire.¹⁸⁴ According to Mr. Porritt, whose view was also shared by Mr. Robinson, the domestic manufacturers would simply not be able to compete on the basis of both prices and volumes.¹⁸⁵ It follows that sales of the like goods would likely decrease in direct proportion to the significant increase in the volume of imports of the subject goods. The Tribunal finds that, in light of this evidence and given the recent export-driven behaviour of producers in China and Chinese Taipei, the rescission of the order would likely result in a significant increase in the volume of imports of the subject goods into Canada.

Likely Price Effects of Dumped and Subsidized Goods and the Effects on Prices of Like Goods

160. The Tribunal must consider whether, if the order is allowed to expire, the dumping or subsidizing of goods is likely to significantly undercut the prices of like goods, depress those prices or suppress them by preventing increases in those prices that would likely have otherwise occurred.¹⁸⁶ In this regard, the Tribunal distinguishes the price effects of the dumped or subsidized goods from any price effects that would likely result from other factors affecting prices.

161. The domestic producers submitted that the subject goods are commodity products that are fully substitutable for the like goods, with the lowest price being the deciding factor in a transaction. This gives the dumped and subsidized goods a huge commercial advantage, allowing importers and distributors to undercut the price of the like goods and take sales from domestic producers.

162. According to the domestic producers, Canadian prices will converge at the lowest offered price of the subject goods if the order is allowed to expire, with nothing to prevent a further drop in prices to compete with even lower-priced non-subject goods (excluding the United States). The domestic producers contended that this will result in price erosion and suppression and/or lost sales, causing irreparable injury to the domestic producers.

163. Spaenaur's position was that the pricing information in the investigation report does not provide a useful basis for comparison of the subject goods and the like goods because it does not account for or distinguish between product scope, product mix, and product weight and size.¹⁸⁷

164. Robertson submitted that the domestic industry has not demonstrated that, if the order is rescinded, the future importation of the subject goods would likely undercut, depress or suppress the prices of the like goods. However, it did not elaborate on or provide any evidence to substantiate its position.

165. The Tribunal, in Expiry Review No. 2009-001, stated as follows:

174. The Tribunal agrees that price is generally a very important consideration in the purchase decision for carbon steel screws, assuming that factors such as quality and reliability of supply are comparable. In this regard, however, the Tribunal accepts the testimony that there is a distinction

183. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 61, 138, Vol. 2, 18 November 2014, at 260.

184. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 71-72, Vol. 2, 18 November 2014, at 103-105.

185. *Ibid.*

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

187. *Transcript of Public Hearing*, Vol. 4, 20 November 2014, at 452-53.

between “standard” carbon steel screws and “specials”, i.e. screws that are custom manufactured to a client’s specifications, with price being a less significant consideration for the latter.

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

[Footnotes omitted]

166. The Tribunal finds that there was no positive evidence before it to warrant a departure from its previous conclusion that the subject goods trade largely on the basis of price, assuming that factors such as quality, customer specifications and reliability of supply are comparable.¹⁸⁸ The Tribunal also maintains the view that recent pricing is useful in predicting what the level of pricing would be without the order in the present expiry review, given that the subject carbon steel screws continue to account for a steady and dominant share of the domestic market.

167. The average prices of the subject carbon steel screws were CAN\$21.24 per thousand units in 2011, CAN\$22.66 in 2012 and CAN\$21.69 in 2013.¹⁸⁹ Those prices were usually well below the consolidated prices of the carbon steel screws produced by the domestic industry in each year, although the size of the gap decreased over the POR.¹⁹⁰ In the first half of 2014, the price of the subject goods attained a peak price of CAN\$25.11 per thousand units, having increased by 8 percent over the 2013 interim period. This was driven by a significant increase in the Chinese price, whereas the Chinese Taipei price remained stable; however, the consolidated import price was still lower than that of the domestically produced goods and the Chinese price was still lower than that of one domestic producer.

168. As an example of the price competition between the subject goods and the like goods in the domestic market, despite the measures currently in effect, Mr. Porritt, in his testimony, referred to Leland’s price offering of approximately CAN\$12 per thousand units for an eight and a half pan self-drilling screw that is covered by the subject goods.¹⁹¹ Not only was this significantly higher than the price of CAN\$6 per thousand units that Wm. P. Somerville 1996 normally paid for the imported product, but Mr. Porritt recently received a quote from another importer of the subject goods from China that was offering CAN\$3.75 per thousand units.

169. The Tribunal observes that the prices of carbon steel screws from non-subject countries other than the United States¹⁹² were consistently among the lowest in the market: CAN\$16.03 per thousand units in 2011, CAN\$14.87 in 2012 and CAN\$18.21 in 2013.¹⁹³ Those prices were also stable between CAN\$18.00 and CAN\$19.00 over the 2013 and 2014 interim periods.

188. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 79-80, 105-106, 122, 228-29, Vol. 2, 18 November 2014, at 269-70, Vol. 3, 19 November 2014, at 346-47.

189. Exhibit RR-2014-001-05E, Table 20, Vol. 1.1A.

190. Exhibit RR-2014-001-06E (protected), Table 20, Vol. 2.1A.

191. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 125-26. The Tribunal notes that Mr. Porritt referred to the product in question as a “half pan self-drilling screw” and a “half pan socket screw” interchangeably.

192. The Tribunal notes that the data on unit values for imports of carbon steel screws from the United States were unusually high and appear to be totally out of sync with the rest of the apparent market pricing. This anomaly could not be explained by any of the witnesses. Accordingly, the Tribunal found it appropriate to attribute minimal weight to this evidence.

193. Exhibit RR-2014-001-05E, Table 20, Vol. 1.1A.

170. The witnesses for domestic industry testified that, without the order, the prices of the subject goods would converge downwards to the prices of imports from non-subject countries such as Malaysia, Vietnam and Thailand, at which point the domestic producers would be unable to compete.¹⁹⁴

171. The prices of imports from non-subject countries (other than the United States) were between 16 percent and 34 percent lower than the prices of the subject goods during the POR.¹⁹⁵ This is indicative of the potential drop in pricing of the subject goods if the order is allowed to expire.

172. Coupled with the effects of the likely increased volumes, the Tribunal notes that even a relatively small increase in volumes of the subject goods at markedly lower prices could quickly overtake the small market share held by the domestic industry.

173. In this regard, the Tribunal accepts Mr. Robinson's testimony of the likelihood that removal of the order would cause the price floor in the market to drop significantly, by as much as 20 percent.¹⁹⁶ Mr. Ryan further confirmed that such a drop in prices would essentially wipe out the profitability of the domestic producers.¹⁹⁷

174. The overwhelming evidence is that the pricing stability attained because of the order would quickly dissipate if it were allowed to expire. This is reflected in the unit values of the subject goods which significantly undercut prices of the like goods throughout the POR.¹⁹⁸ The Tribunal finds that the likely pricing of the subject goods, absent the order, would be similar to that of imports from non-subject countries (other than the United States) and namely those from the Asia/Pacific region exporting to North America.

175. Mr. Robinson testified that removal of the duties would immediately cause the devaluation of the considerable inventories of the subject goods held by importers in Canada.¹⁹⁹ For example, in 2013, the consolidated inventories of the importers that responded to the questionnaires totalled over 3 billion units valued at CAN\$70 million.²⁰⁰ As stated by Mr. Robinson, devaluation of up to 20 percent would be "a catastrophic hit" for importers that would then be forced to sell off their products at a heavily discounted price, potentially even lower than a 20 percent reduction.²⁰¹ The Tribunal considers this to be a further indicator of the potential for the subject goods to significantly undercut the prices of the like goods in the domestic market if the order is allowed to expire.

176. For the reasons indicated above, the Tribunal finds that there would likely be price undercutting if the order is allowed to expire.

177. The Tribunal further finds that price depression is also likely to occur if the order is allowed to expire. Although there was no clear correlation between the movement in selling prices of the like goods and that of the subject goods over the POR, the evidence leads the Tribunal to conclude that the domestic industry will likely have to lower the prices of the like goods in order to compete with the subject goods in

194. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 71-72, 74, 92; Exhibit RR-2014-001-B-01 at para. 13, Vol. 11A.

195. Exhibit RR-2014-001-05E, Table 20, Vol. 1.1B.

196. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 71-72.

197. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 224.

198. Exhibit RR-2014-001-06E (protected), Table 20, Vol. 2.1B.

199. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 76-77.

200. Exhibit RR-2014-001-05C, Table 61, Vol. 1.1A.

201. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 76-78.

the domestic market if the order is allowed to expire. In those circumstances, the domestic industry's gross margin would likely be erased.²⁰²

178. Finally, despite some evidence of price suppression for one domestic producer, the Tribunal finds that there was no significant price suppression for the domestic industry as a whole,²⁰³ as the percent changes in the costs of production in unit values were nearly matched by the percent changes in the selling prices of the domestically produced goods in unit values.²⁰⁴

179. Moreover, witnesses for the domestic industry testified that they expect their cost of goods sold to remain relatively normal in the near to medium term.²⁰⁵ Despite projections of moderate increases in world steel prices in the near future, as mentioned above, the evidence on the record shows that input prices, including steel, have stabilized overall. In light of the evidence, the Tribunal finds no likelihood of price suppression.

Likely Impact of the Dumped and Subsidized Goods on the Domestic Industry if the Order is Allowed to Expire

180. The Tribunal will now assess the likely impact of the above volumes and prices on the domestic industry if the order is allowed to expire,²⁰⁶ taking into consideration the likely performance of the domestic industry if the order were continued, as discussed above. In this analysis, the Tribunal distinguishes the likely impact of the dumped or subsidized goods from the likely impact of any other factors affecting or likely to affect the domestic industry.²⁰⁷

181. Leland submitted that the likely impact from the dumped and subsidized goods if the order is allowed to expire would include reduced domestic production, sales, gross margins, profits, productivity, capacity utilization, cash flow and employment and a reduction in the ability to raise capital. It argued that the likely harm from the volumes of low-priced imports of the subject goods would be magnified by the domestic industry's small market share. In particular, Leland claimed that the subject goods would likely capture Leland's niche markets, such as the high-end carbon steel screw market and the agriculture sector in Western Canada, posing a serious risk to the expected return on its recent plant and equipment investments.

182. Standard Fasteners and Visqué agreed that the likely low-priced import volumes of the dumped and subsidized goods in the absence of the order would result in decreased sales and production volumes, which would in turn wipe out the domestic industry's margins and profitability, resulting in a net loss before taxes scenario and forcing the domestic producers to reduce employment.²⁰⁸

183. Sealtite submitted that the expiry of the order would not result in the collapse of prices in the Canadian market for carbon steel screws, given that no such collapse has occurred in the U.S. market for carbon steel screws despite a lack of duties on imports from China and Chinese Taipei. According to

202. Exhibit RR-2014-001-06E (protected), Table 1, Vol. 2.1B.

203. Exhibit RR-2014-001-06E (protected), Table 20, Vol. 2.1B; Exhibit RR-2014-001-06A (protected), Schedules 38, 40, 54, 56, Vol. 2.1A; Exhibit RR-2014-001-06D (protected), Schedules 41, 57, Vol. 2.1B.

204. Exhibit RR-2014-001-06E (protected), Table 20, Vol. 2.1B; Exhibit RR-2014-001-06A (protected), Schedules 38, 40, 54, 56, Vol. 2.1A; Exhibit RR-2014-001-06D (protected), Schedules 41, 57, Vol. 2.1B.

205. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 59, Vol. 2, 18 November 2014, at 230-32.

206. See paragraphs 37.2(2)(e) and (g) of the *Regulations*.

207. See paragraph 37.2(2)(k) of the *Regulations*.

208. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 150, 223.

Sealtite, the ability of Canadian producers to sell in the United States, which they did during the POR,²⁰⁹ is indicative of what would happen in the Canadian market if the duties are removed.²¹⁰ There was however no evidence provided by Sealtite regarding the structure of the U.S. market, the strength of its domestic industry, the dynamics of the market and its pricing structure. As a result, the Tribunal is unable to establish if the conditions of the U.S. market would be replicated in Canada if the order were allowed to expire. In the absence of supporting evidence, the Tribunal cannot give any weight to these arguments presented by Sealtite.

184. The Tribunal finds that, as discussed above in the sections on likely volumes and likely price effects, the expiry of the order would result in an almost immediate increase in the importation of significant volumes of the subject goods at prices similar to those of non-subject goods from other Asia/Pacific countries and that such pricing would undercut and depress the prices of the like goods. This would likely result in an immediate decline of the domestic industry's output, as the domestic producers attempt to compete against the dumped and subsidized goods by either lowering their prices to meet import prices or losing sales and, in turn, market share.

185. The Tribunal is satisfied that the domestic industry's attempts to compete in such a marketplace would be altogether unsuccessful. As such, they would likely see a more or less immediate, sustained decline in output, very possibly leading to a full cessation of activity.

186. The potential for a loss of market share is therefore significant in this case. The domestic industry's historical loss of business for certain high-volume carbon steel screws to the subject goods and their experience with non-subject stainless steel screws are likely to be replayed yet again. In this regard, Mr. Nelson testified that imports have fully captured the market for certain self-drilling screws, sheet metal and tapping screws and standard flathead framing wood screws, with no possibility of the domestic industry regaining sales of those products.²¹¹ This was supported by Mr. Robinson's testimony that the domestic industry no longer competes for those products.²¹² The Tribunal considers this to be symptomatic of what would happen to the domestic market for carbon steel screws if the order is allowed to expire.

187. The Tribunal finds that the financial performance of the domestic industry is likely to suffer almost immediate effects in the form of reduced revenues, margins and profits. Although the domestic industry's financial and economic performance appeared healthy during the POR, its relatively small market share means that the likely volume effects of lower-priced subject goods in the absence of the order would likely have more serious consequences than they would on a domestic industry with a stronger market position. This outlook is consistent with the Tribunal's conclusion in the 2009 expiry review.²¹³

188. The domestic industry accounts for no more than 10 percent of the domestic market and has managed to hold onto this share largely due to its strategic focus on niche product markets in Canada, its close proximity to customers and certain other non-price benefits.²¹⁴ However, witnesses for the domestic industry, as well as Mr. Robinson and Mr. Porritt, testified that, all else being equal, price is the deciding

209. Exhibit RR-2014-001-06E (protected), Table 3, Vol. 2.1B; Exhibit RR-2014-001-06C (protected), Tables 39-41, Vol. 2.1A. The Tribunal notes that all of Leland's exports are to the U.S. market. See Exhibit RR-2014-001-24.10, Vol. 3 at 51.

210. *Transcript of Public Hearing*, Vol. 4, 20 November 2014, at 477.

211. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 29-31.

212. *Ibid.* at 93-94.

213. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 200.

214. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 38, 61, 101, Vol. 2, 18 November 2014, at 215, 226, 241-42, 260.

factor.²¹⁵ Accordingly, the Tribunal finds that, given the small market share of the domestic industry, the effects of even a minor change in the overall market would be amplified and likely cause material injury to the domestic industry. For example, if the subject goods were to gain an additional 1 percent of the total market at the expense of the domestic industry, it would mean an approximately 10 percent decrease in the domestic industry's sales.

189. The Tribunal finds that the domestic industry's inability to increase its market share since the previous expiry review indicates that it is unlikely to appreciably increase its market share even if the order is continued. The static market share of the domestic industry during the POR was largely due to the ongoing presence of the subject goods at normal values in the domestic market despite the current order, as well as lower-priced carbon steel screws from non-subject countries, other than the United States.

190. Although the low-priced imports from non-subject countries are a factor other than the likely dumping and subsidizing of the subject goods, the Tribunal finds that they will simply exacerbate the price effects of the subject goods, which are likely to converge at some point significantly below the domestic industry's recent pricing, putting at risk the higher value portions of the market on which some of the domestic producers rely. Ultimately, with the measure no longer in place, the likely volumes and prices of the subject goods themselves would be expected to result in a decline in the domestic industry's sales, apparent market share, production, gross margin, profits and cash flow in the near to medium term.

191. Reduced output would in turn likely jeopardize the domestic industry's recent investments in production facilities and equipment, as well as recent product development efforts,²¹⁶ made possible, to some extent, by the stable domestic market pricing that has been established since the original findings. The Tribunal is satisfied that the domestic industry cannot survive if it is forced to rely exclusively on export sales; in other words, the domestic industry's business model is first and foremost predicated upon its ability to compete fairly in the domestic market. The Tribunal finds that, without an ability to compete fairly in Canada, the domestic industry's production for export would unlikely be sufficient to cover its fixed costs. If the domestic industry cannot cover its fixed costs, it will likely cease to exist, resulting in other clearly foreseeable negative effects.

192. It follows that the expected loss of the pricing stability under the order would likely result in negative effects on the domestic industry's ability to raise capital, since the impacts of the dumped and subsidized goods would be almost instantaneous and readily apparent to lenders and investors. In such circumstances, the domestic industry would presumably liquidate inventories at significant discount, until the return from scrapping them becomes more attractive than the cost of managing their piecemeal sale in a bottomed-out market.

193. In terms of capacity utilization, as a result of likely plant closures, and the likely complete, or almost complete, cessation of production by the domestic industry, cutbacks to the number of shifts would almost immediately occur, resulting in increasing excess capacity and a decline in the domestic industry's direct employment levels.²¹⁷

215. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 79-80, 104, 122, Vol. 2, 18 November 2014, at 226; Exhibit RR-2014-001-A-03 at para. 54, Vol. 11.

216. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 23-24.

217. *Ibid.* at 10, Vol. 2, 18 November 2014, at 150. See also Exhibit RR-2014-001-C-01 at 4, Vol. 11A.

194. On the basis of the foregoing analysis, the Tribunal finds that, if the order is allowed to expire, the likely resumption or continuation of the dumping and subsidizing of the subject goods from China and Chinese Taipei would likely cause material injury to the domestic industry.

EXCLUSIONS

195. The Tribunal received 12 requests to exclude products from an order continuing the existing order.

General Principles

196. *SIMA* implicitly authorizes the Tribunal to grant exclusions from the scope of an order or a finding.²¹⁸ Exclusions are an extraordinary remedy that may be granted at the Tribunal's discretion, i.e. when the Tribunal is of the view that such exclusions will not cause injury to the domestic industry.²¹⁹ In the context of an expiry review, the rationale is that, despite the general conclusion that all goods covered by a finding or an order are likely to cause injury to the domestic industry, there may be case-specific evidence that imports of particular products captured by the definition of the goods are not likely to cause injury.

197. In determining whether an exclusion is likely to cause injury to the domestic industry, the Tribunal considers such factors as whether the domestic industry produces, actively supplies or is capable of producing like goods in relation to the subject goods for which the exclusion is requested.²²⁰

198. The onus is upon the requester to demonstrate that imports of the specific goods for which the exclusion is requested are not likely to be injurious to the domestic industry.²²¹ Thus, there is an evidentiary burden on the requester to file evidence in support of its request.²²² However, there is also an evidentiary burden on the domestic producers to file evidence in order to rebut the evidence filed by the requester.²²³

199. Ultimately, the Tribunal must determine whether it will exercise its discretion to grant product exclusions on the basis of its assessment of the totality of the evidence on the record.

200. The Tribunal will now address each of the product exclusion requests pertaining to the subject goods.

218. *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA); *Sacilor Acières v. Anti-dumping Tribunal* (1985) 9 C.E.R. 210 (CA); Binational Panel, *Induction Motors Originating In or Exported From the United States of America (Injury)* (11 September 1991), CDA-90-1904-01; Binational Panel, *Certain Cold-Rolled Steel Products Originating or Exported From the United States of America (Injury)* (13 July 1994), CDA-93-1904-09.

219. See, for example, *Aluminum Extrusions* (17 March 2009), NQ-2008-003 (CITT) at para. 339.

220. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 245.

221. *Ibid.* at para. 243.

222. *Aluminum Extrusions* at para. 192. The Tribunal will generally reject product exclusion requests where there is a lack of cogent case-specific evidence concerning the likely non-injurious effect of imports of particular products covered by the definition of the subject good in support of the requesters' claims. Indeed, a failure to provide sufficient information prevents the parties opposing the request from adequately responding and leaves the Tribunal in a position where it lacks evidence to find that imports of particular products for which exclusions are requested are not likely to cause injury to the domestic industry.

223. A failure to do so could result in the requested exclusions being granted. In any case, much like its conclusion on the issue of whether the expiry of the order in respect of the subject goods considered as a whole is likely to result in injury to the domestic industry, the Tribunal's decision on exclusion requests must be based on positive evidence, irrespective of the party that filed them.

Analysis of Specific Product Exclusion Requests

Kwantex

201. Kwantex submitted four requests for product exclusions.²²⁴ The requests were for the Cutter screw, the IPE screw, the Torpedo screw and the Torpedo + ATY-17 screw. In each of the requests, Kwantex submitted that the specialized processing required for each type of screw creates extra cost and, thus, a higher selling point. Kwantex additionally relied on its U.S. and European patents.²²⁵

202. The Tribunal notes that Kwantex's requests relied heavily on its assertion that like goods are not substitutable for its fasteners because of its U.S. and European registered intellectual property, but notably offered little or no explicit evidence of similar protection in Canada. Leland, in response, argued that the existence of any patent or trademark does not affect the substitutability of Leland's products.

203. The Tribunal finds that, while the existence of intellectual property protection may preclude the domestic industry from producing identical goods, the mere existence of a patent, in and of itself, does not address the domestic industry's ability to produce a substitutable product. Furthermore, the rights granted to patent owners does not include a right to import the patented goods into Canada at dumped prices. The Tribunal has previously stated as follows in the related proceedings:²²⁶

17. . . . the fact that a product is patented does not mean that the Tribunal will automatically grant an exclusion. Even though an imported patented product may have certain features or physical attributes that make it distinct under patent law, a domestically manufactured product may have the same end uses, fulfil most of the same customer needs and compete in the marketplace with the patented product. Therefore, even if a request for a product exclusion concerns a patented product, the Tribunal still needs to determine whether the circumstances of the case are such that granting the exclusion could cause or threaten to cause injury to the domestic industry. If the fact that a domestic industry cannot produce a specific product because it is patented were to lead automatically to an exclusion from an injury determination, the exclusion would, in the Tribunal's view, undermine the purpose of *SIMA* and the protection associated with it in cases where the domestic industry produces substitutable products that are being injured by dumped or subsidized patented products.

18. Accordingly, the key question that must be answered by the Tribunal in deciding whether to grant a product exclusion in the case of a patented product is not whether the patented product is unique or if the domestic industry can, without infringing patent law, manufacture this product. Rather, it is whether the domestic industry manufactures or is capable of manufacturing a substitutable product that, while it may not have all the attributes of the patented product, still competes with the patented product and fulfils most of the same customer needs. If these conditions are met, the Tribunal should deny the request for product exclusion, as granting it is likely to lead to injury or threat of injury to the domestic industry.

204. Kwantex provided no cogent evidence regarding the non-injurious effects of the fasteners for which it is seeking exclusions. In its requests, it indicated that whether or not the domestic industry supports or consents to each request was "[n]ot applicable" and stated that ". . . we do not have any information about the domestic industry."²²⁷ In the Tribunal's view, Kwantex simply provided insufficient evidence to warrant the granting of the requested exclusions.

224. Exhibit RR-2014-001-39.01, Vol. 1.5 at 3-14.

225. *Ibid.* at 7, 12, 18, 24.

226. *Certain Fasteners* (26 September 2006), NQ-2004-005R (CITT) at paras. 17-18.

227. Exhibit RR-2014-001-39.01, Vol. 1.5 at 7, 13, 18, 24.

205. In contrast, Leland provided positive and uncontroverted evidence that it produces goods of the same dimensions and overall configuration, made of the same material and sold to the same end users at the same trade level as the four Kwantex products.²²⁸ Leland maintained that, while it does not produce exactly the same screws in every respect, as it only produces goods to fill purchase orders, it is nevertheless capable of producing the exact same products described using existing machinery with corresponding tooling. In fact, Mr. Nelson testified that Leland's products are fully substitutable for Kwantex's products.²²⁹ In this regard, Leland submitted a brochure of similar products and sample invoices.²³⁰

206. Standard Fasteners submitted that it has, in the past, produced products under custom orders that were identical to the Cutter screw, the Torpedo screw and the Torpedo + ATY-17 screw.²³¹ It further maintained that the purported benefits that allegedly differentiate the Kwantex screws from those produced by the domestic industry are mere marketing gimmicks.²³² Although the Tribunal finds Ms. Yu a credible witness, Standard Fasteners failed to include any other evidence to support Ms. Yu's testimony²³³ and its response to Kwantex's product exclusion requests. Consequently, the Tribunal gives little weight to the submissions made by Standard Fasteners in response to these exclusion requests.

207. In light of the foregoing, the Tribunal denies the four requests made by Kwantex.

Simpson Strong-Tie

208. Simpson Strong-Tie submitted product exclusion requests for its TitenTM and Titen HDTM screws.²³⁴ Both products are described as self-undercutting, high-strength concrete screws, with the Titen HDTM referred to as "heavy duty" concrete screws.²³⁵ Simpson Strong-Tie argued that these are high-end products that do not compete with the like goods and that the domestic industry does not make substitutable products. In this regard, it emphasized the testing standards that both products undergo and argued that, since Leland had "...not provided equivalent technical information...; it can and should be inferred... that Leland has no evidence that its products perform at the same level and are substitutable in the applications..." for which the TitenTM and Titen HDTM are used.²³⁶ Additionally, Simpson Strong-Tie proposed alternate generic descriptions in its reply, which included, among other changes, certain testing standards for each product.²³⁷

209. Leland and Standard Fasteners initially objected to the two requests, maintaining that they already produced identical or substitutable products.²³⁸ Standard Fasteners submitted a single invoice to support

228. Exhibit RR-2014-001-41.01, Vol. 1.5A at 139, 150, 161, 172.

229. *Transcript of Public Hearing*, Vol. 1, 17 November 2014, at 377.

230. Exhibit RR-2014-001-41.01, Vol. 1.5A at 141-47, 152-58, 163-69, 174-80; Exhibit RR-2014-001-42.01, Vol. 2.5 (protected) at 118-44.

231. Standard Fasteners chose not to respond to the request for the IPE screw because it does not make self-drillers. See *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 165.

232. Exhibit RR-2014-001-41.02, Vol. 1.5A at 256, 261, 266.

233. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 165-66.

234. Exhibit RR-2014-001-39.02, Vol. 1.5 at 76-91.

235. *Ibid.* at 79, 87.

236. Exhibit RR-2014-001-43.04, Vol. 1.5B at 133-34, 139-40.

237. ICC-ES Acceptance Criteria AC106 or equivalent for the TitenTM and ACI 355.2 or equivalent for the Titen HDTM, Exhibit RR-2014-001-43.04, Vol. 1.5B at 134, 140.

238. Exhibit RR-2014-001-41.01, Vol. 1.5A at 181, 192-95; Exhibit RR-2014-001-41.02, Vol. 1.5A at 267-71, 272-76. Standard Fasteners only opposed the exclusions for up to 4 in. in length for both requests and up to 5/6 in. in diameter for the Titen HDTM, as its current equipment cannot produce fasteners outside that range.

Ms. Yu's testimony opposing the requests.²³⁹ Again, while the Tribunal finds Ms. Yu a credible witness, on balance, Standard Fasteners has not provided sufficient evidence to support its objection to these exclusion requests.

210. At the hearing, counsel for Leland and Simpson Strong-Tie indicated a willingness to further explore a mutually acceptable description of the products to be excluded.²⁴⁰ The Tribunal therefore invited Leland and Simpson Strong-Tie to provide an agreed upon re-formulation of the description of the products.²⁴¹ On November 27, 2014, counsel for Simpson Strong-Tie indicated that an agreement had been reached on a product description for the Titen HDTM only,²⁴² this description is found in Appendix 2 to the order.

211. While the Tribunal's usual practice is to avoid granting exclusions of particular brands of products, its goal of ensuring that the granting of exclusions will not harm the domestic industry is paramount. In this instance, particularly in light of Leland's consent, the Tribunal finds that, with the description agreed upon by Leland and Simpson Strong-Tie, this exclusion will not harm the domestic industry and thus grants the exclusion as described in Appendix 2 to the order.

212. In the case of the TitenTM screw, Leland did not consent to Simpson Strong-Tie's request in either its original or its proposed alternate forms.²⁴³ While Simpson Strong-Tie acknowledged that the TitenTM is for a "lighter specialized application" than the Titen HDTM, it maintained that TitenTM is still a high-end product because it is subjected to a more rigorous testing standard than the screws marketed by Leland.²⁴⁴ Simpson Strong-Tie submitted that its unsuccessful attempt to buy a substitutable product from the domestic producers is evidence that the domestic industry is not capable of producing a substitutable product.²⁴⁵

213. Mr. Tai testified that it is part of his due diligence as an engineer to ensure that a product meets all necessary codes since "[i]t's imperative for [its customers] to have 100 per cent assurance that the product will work as it's intended to work."²⁴⁶ He further testified that he was unable to make such determinations by examining Leland's product information charts or examining Leland's physical product catalogues during cross-examination.²⁴⁷

214. Leland submitted that it produces similar screws that are the "same products in every essential respect" as the TitenTM, despite slightly different configurations, due to the fact that Leland's screws were produced to other customer specifications and requirements.²⁴⁸ Leland provided evidence of its substitutable

239. Exhibit RR-2014-001-55.01, Vol. 1.5B at 151-52; *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 169-72.

240. *Transcript of Public Hearing*, Vol. 4, 20 November 2014, at 541-46.

241. *Ibid.* at 545-46; Exhibit RR-2014-001-84, Vol. 1A at 191.

242. Exhibit RR-2014-001-86, Vol. 1A at 198, 201.

243. In addition to the alternate proposed description in its reply, Simpson Strong-Tie proposed another alternate description after the hearing on November 27, 2014. Exhibit RR-2014-001-86, Vol. 1A at 198-99.

244. *Transcript of Public Hearing*, Vol. 4, 20 November 2014, at 499, 501, 517, 519-20.

245. Exhibit RR-2014-001-39.02, Vol. 1.5 at 80-81, 88-89; Exhibit RR-2014-001-39.02, Vol. 1.5A at 54, 65-70, 80-81.

246. *Transcript of Public Hearing*, Vol. 3, 19 November 2014, at 298.

247. *Ibid.* at 314-15, 355-60.

248. Exhibit RR-2014-001-41.01, Vol. 1.5A at 183.

screws, including its product brochure catalogue,²⁴⁹ sample invoices²⁵⁰ and a public version of those invoices.²⁵¹

215. In addition, Mr. Andrejin testified that there are two types of standards by which screws are tested, consensus-based production standards for fasteners and end-use/application standards, and that, as a manufacturer, Leland concentrates on the former and leaves the application testing for the distributors on the basis of the specifications and/or requirements of a particular customer.²⁵² In this regard, Mr. Nelson also testified that, where Leland manufactures fasteners to customer drawings and specifications, it does not get involved in product testing for any application standards that may be required by the end user.²⁵³

216. The Tribunal assigns little weight, if any, to Simpson Strong-Tie's product request correspondence to the domestic producers. With respect to the requests sent to Leland and Visqué, Simpson Strong-Tie appears to have abandoned those requests when follow-up documents were requested.²⁵⁴ In addition, the fact that the requests were sent to all domestic producers in the months leading up to these proceedings raises questions as to whether Simpson Strong-Tie made them in contemplation of the hearing rather than the normal course of business.

217. Simpson Strong-Tie argued that the Tribunal should grant the requested exclusions because the evidence in this case is similar to that submitted by GRK Canada Limited (GRK) in Expiry Review No. RR-2009-001. In that case, the Tribunal found that the domestic industry did not produce substitutable products based on the evidence provided by GRK, which showed that its high-performance, high-end products were sold at significantly higher price points than the products identified as comparable by the domestic industry—in some cases as much as 300 percent higher—and that it did not encounter domestic producers in the high-end market to which it catered.²⁵⁵

218. However, the Tribunal finds that the present case is very different from the case submitted by GRK. The most cogent evidence submitted by Simpson Strong-Tie regarding the substitutability of the like goods for the TitenTM screw was the evidence of Mr. Tai, who testified during cross-examination that he could not determine if the Leland products were substitutable for the TitenTM screw on the basis of examining Leland's product information charts or examining Leland's physical product catalogues.²⁵⁶

219. Similarly to GRK, Simpson Strong-Tie argued that the TitenTM is a premium product with a higher price point than domestically produced concrete screws.²⁵⁷ However, unlike GRK, Simpson Strong-Tie did not provide sufficient probative evidence of the pricing comparison, particularly with respect to Leland's

249. *Ibid.* at 185-91.

250. Exhibit RR-2014-001-42.01 (protected), Vol. 2.5 at 146-55.

251. Exhibit RR-2014-001-43.04A, Vol. 1.5B at 149.2.

252. *Transcript of Public Hearing*, Vol. 3, 19 November 2014, at 384-86. Mr. Andrejin also testified that the ICC standard, as referred to in the first alternate proposed description for the TitenTM is an application standard, not a consensus-based production standard.

253. *Transcript of Public Hearing*, Vol. 3, 19 November 2014, at 387.

254. Exhibit RR-2014-001-39.02, Vol. 1.5A at 65-69, 80-81.

255. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at paras. 268-69.

256. *Transcript of Public Hearing*, Vol. 3, 19 November 2014, at 314-15, 355-60.

257. Exhibit RR-2014-001-39.02, Vol. 1.5 at 80.

products²⁵⁸ to allow the Tribunal to conclude that the domestic producers do not produce a substitutable product or that the granting of the exclusion request would not injure the domestic industry.

220. Lastly, unlike the evidence before the Tribunal in the case of GRK, the domestic industry, particularly Leland, submitted evidence, including relevant brochures and invoices, and provided uncontroverted testimony that its screws are substitutable screws for the TitenTM screws.

221. In light of the foregoing, the Tribunal denies Simpson Strong-Tie's exclusion request for the TitenTM screw.

Sealtite

222. Sealtite submitted one product exclusion request for "duds/blanks". It proposed a generic description as follows:

Duds/blanks are unfinished headed & threaded carbon steel inputs manufactured in Chinese Taipei to engineered, proprietary specifications. They are imported into the United States for the sole [purpose] of further processing/enhancement in the United States into fastener systems. The USA enhancements/modifications include, but are not limited to, cleaning, galvanizing, assembly of a USA made G-90 Galvanized Steel/EPDM bonded captive washer, head painting, & packaging. For greater certainty, over 50% of the value of the fastener system is added in the United States of America. For further clarity, the duds/blanks are not to be resold in the same condition as imported in the United States.²⁵⁹

223. Counsel for Sealtite explained that "Sealtite prepared a product exclusion request that is drafted to identify the characteristics of the item that it has imported into the United States"²⁶⁰ and submitted that Sealtite is "collateral damage" to an order which was not intended to capture products manufactured in the United States.²⁶¹ Sealtite maintained that the domestic industry is unable to supply such unfinished duds/blanks²⁶² and, therefore, asked the Tribunal to conclude that the domestic industry would not be harmed by the exclusion.

224. Leland argued that it produces finished products that are similar to those that Sealtite ultimately imports into Canada.²⁶³ It further submitted that the Tribunal's findings in *Ideal Roofing Company Limited and Havelock Metal Products Inc. v. President of the Canada Border Services Agency*,²⁶⁴ subjectivity appeals related to these proceedings in which the same goods were at issue, demonstrate that the "duds/blanks" are not to be considered as distinct from the finished product.²⁶⁵ In those appeals, the Tribunal stated as follows:

51. Moreover, while the washers are components of the goods in issue, the Tribunal agrees with the CBSA that the presence of the washers does not alter the fundamental physical and

258. For example, Simpson Strong-Tie could have led Leland's witnesses through a pricing comparison during cross-examination (*in camera*), but chose not to pursue this line of questioning.

259. Exhibit RR-2014-001-39.03, Vol. 1.5A at 86. At *Transcript of Public Hearing*, Vol. 4, 20 November 2014, at 484, counsel for Sealtite corrected a mistake in its product exclusion request by inserting the word "purpose" instead of "process".

260. *Transcript of Public Hearing*, Vol. 4, 20 November 2014, at 483.

261. *Ibid.* at 484.

262. Exhibit RR-2014-001-43.03, Vol. 1.5B at 95.

263. Exhibit RR-2014-001-41.01, Vol. 1.5A at 133.

264. (10 July 2014), AP-2013-008 and AP-2013-009 (CITT) [*Ideal Roofing*].

265. Exhibit RR-2014-001-41.01, Vol. 1.5A at 132-33; *Transcript of Public Hearing*, Vol. 4, 20 November 2014, at 443.

technical characteristics of the duds/blanks. The duds/blanks fell within the scope of the subject goods in *Certain Fasteners*, based on their physical and technical characteristics, when they were exported to the United States from Chinese Taipei. Notwithstanding the additional processes that they underwent in the United States, including the addition of washers, when imported into Canada, the goods in issue retained those same characteristics that brought them within the scope of the subject goods. In other words, the addition of the washers may have enhanced certain qualities of the goods in issue, but it does not impact whether the goods in issue are of the same description as the subject goods because it does not alter any of the characteristics that make the goods in issue of the same description as the subject goods.

225. The Tribunal re-affirms its findings in *Ideal Roofing* and agrees with Leland's interpretation that, for the purposes of the product exclusion request, the duds/blanks and finished product are indistinguishable. The injury analysis must be conducted on the basis of whether the finished product, as imported into Canada, will cause injury to the domestic industry.

226. Sealtite submitted no evidence in this regard, as its argument focused solely on its inability to source the unfinished duds/blanks from a producer in North America. Counsel for Sealtite, in cross-examining Mr. Nelson, asked whether Leland produced identical or similar duds/blanks, but did not pose the question or provide any evidence as to whether the domestic industry produces like goods to the finished product that Sealtite sells into Canada.²⁶⁶ Given the Tribunal's finding in *Ideal Roofing*, these are the relevant questions before the Tribunal.

227. It would be contrary to the intent of the exclusion process to allow a company to import unfinished screws into the United States at a cost advantage and then subsequently export the finished screws to Canada to compete with the domestic industry. Leland has argued that this is exactly what would occur if the exclusion were granted²⁶⁷ and that Sealtite has failed to provide any evidence to suggest that the finished product, ultimately imported into Canada, would not compete with the domestic industry or be a source of injury to it.

228. The request is therefore denied.

Robertson

229. Robertson submitted four requests for product exclusions.

230. The first request was to exclude "[a]ll screws produced by Robertson [Inc.'s] manufacturing arm, Robertson [Inc.] Jiajiang."²⁶⁸ The Tribunal would only consider such a blanket request for a foreign producer/importer in very rare circumstances. In the present case, the complete lack of evidence submitted in support of this request does not justify the existence of such circumstances. The first request is therefore denied.

231. Robertson's second and third requests were as follows: Recex[®] Drive fasteners for use with Robertson[®] Drive products; and Robertson[®] Drive fasteners for use with Robertson[®] Drive products.²⁶⁹ Both requests were previously submitted in Expire Review No. RR-2009-001²⁷⁰ and were denied at that

266. *Transcript of Public Hearing*, Vol. 3, 19 November 2014, at 390-402.

267. Exhibit RR-2014-001-41.01, Vol. 1.5A at 205; *Transcript of Public Hearing*, Vol. 4, 20 November 2014, at 444-45.

268. Exhibit RR-2014-001-39.05, Vol. 1.5A at 107.

269. Exhibit RR-2014-001-39.06, Vol. 1.5A at 115, 120.

270. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 284.

time on the basis of Robertson's failure "...to substantiate its claim that the goods produced by the domestic industry are not substitutable for the products for which it requests exclusions."²⁷¹ In the present case, the Tribunal was presented with no evidence of a change in circumstances or no evidence demonstrating that the domestic industry would not be injured by the granting of those two requests. Therefore, the requests are denied.

232. Finally, Robertson submitted a request for "[s]harp-pointed drywall screws and self-drilling drywall screws with diameters of #8 and #10."²⁷² Robertson argued that its request should be granted because the 6 gauge and 7 gauge levels are already excluded and that, therefore, it should follow that the 8 gauge and 10 gauge levels also be excluded.²⁷³ Leland argued this was not an appropriate inference because the 8 gauge and 10 gauge levels have substitutes which Leland produces.²⁷⁴ The Tribunal accepts that the domestic industry produces substitutable products and finds that Robertson has presented insufficient evidence to prove that the domestic industry would not be harmed if the exclusion were granted. The request is therefore denied.

TimberTech

233. TimberTech submitted one product exclusion request. The initial technical product description submitted was the following: "TOPLOCTM or SPLITSTOPTM Composite Decking fastener for use in conjunction with Timbertech[®] Composite Material Decking Systems. The fastener is a 6 lobe T20 Drive screw with an undercut head, 3 annular rings, a knurled shaft between the rings and the threads and ends in a trilobe type 17 point."²⁷⁵ TimberTech argued that the request is similar to the exclusion granted to GRK in Expiry Review No. RR-2009-001 for the KameleonTM, a composite deck screw. TimberTech also argued that its TOPLOCTM/SPLITSTOPTM fasteners are high-performance and highly sophisticated products sold exclusively for use with its decking system and, therefore, that an exclusion for these products would not harm the domestic industry.²⁷⁶

234. Standard Fasteners did not consent to the request, arguing that it produces identical products²⁷⁷ and that the proprietary names described by TimberTech are marketing devices as opposed to real distinctions between the goods.²⁷⁸ Even though Ms. Yu provided credible testimony at the hearing,²⁷⁹ Standard Fasteners provided no further evidence to support its position. Consequently, the Tribunal gives little weight to Standard Fasteners' submissions objecting to this exclusion request.

235. In its response submission, Leland agreed to the proposed generic description in the exact terms described in the product description and "...with the important proviso that the item is imported exclusively for use in the Timbertech[®] Composite Material Decking Systems" (underlining in original).²⁸⁰

236. TimberTech subsequently proposed an alternative description in its reply submission, suggesting that "TOPLocTM/SplitstopTM composite deck screws marketed by TimberTech Ltd. which have the features

271. *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) at para. 287.

272. Exhibit RR-2014-001-39.06, Vol. 1.5A at 125.

273. *Ibid.*

274. Exhibit RR-2014-001-41.01, Vol. 1.5A at 241, 243-44.

275. Exhibit RR-2014-001-39.04, Vol. 1.5A at 95.

276. Exhibit RR-2014-001-39.04, Vol. 1.5A at 96, 101; Exhibit RR-2014-001-43.01, Vol. 1.5B at 7.

277. Exhibit RR-2014-001-41.02, Vol. 1.5A at 278.

278. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 164; Exhibit RR-2014-001-41.02, Vol. 1.5A at 281.

279. *Transcript of Public Hearing*, Vol. 2, 18 November 2014, at 163-65.

280. Exhibit RR-2014-001-41.01, Vol. 1.5A at 135.

and characteristics described in Canadian patent number 2 467 318”²⁸¹ may be more in line with the Tribunal’s usual preference for generic product descriptions.

237. Leland objected to the changed wording and, in a letter dated November 12, 2014, repeated the terms of its original consent and stated “Leland’s consent remains as set out above. It does not agree to this latest re-formulation.”²⁸² During cross-examination, counsel for TimberTech attempted to confirm the status of Leland’s consent.²⁸³ The Tribunal is satisfied that Leland’s consent to the initial wording in an exclusive use context demonstrates that it will not be harmed by such a narrow exclusion.

238. In light of the foregoing, the exclusion is granted as follows: “TOPLocTM or SplitstopTM composite decking fasteners for exclusive use in conjunction with TimberTech[®] composite material decking systems”.

CONCLUSION

239. Pursuant to paragraph 76.03(12)(b) of *SIMA*, the Tribunal hereby continues its order in respect of carbon steel screws originating in or exported from China and Chinese Taipei, with the exception of the product exclusions granted in the appendices to the order.

Stephen A. Leach
Stephen A. Leach
Presiding Member

Jason W. Downey
Jason W. Downey
Member

Jean Bédard
Jean Bédard
Member

281. Exhibit RR-2014-001-43.01, Vol. 1.5B at 7. Subsequently, TimberTech, in its letter dated November 11, 2014, (Exhibit RR-2014-001-66, Vol. 1A at 65) made an additional slight change to the alternate description proposed in its reply submission: “TOPLocTM/SplitstopTM,” was changed to “TOPLocTM or SplitstopTM”).

282. Exhibit RR-2014-001-67, Vol. 1A at 69-70.

283. *Transcript of Public Hearing*, Vol. 3, 19 November 2014, at 402-405.