Canadian International Trade Tribunal
Tribunal canadien du commerce extérieur

CANADIAN INTERNATIONAL TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry Review No. RR-2019-002

Carbon Steel Screws

Order issued
Wednesday, September 2, 2020

Reasons issued
Thursday, September 17, 2020

Canada

TABLE OF CONTENTS

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 5, 2015, in Expiry Review No. RR-2014-001, continuing, with amendment, its order made on January 6, 2010, in Expiry Review No. RR-2009-001, continuing, with amendment, its finding made on January 7, 2005, in Inquiry No. NQ-2004-005, concerning:

CARBON STEEL SCREWS ORIGINATING IN OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA AND THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

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 5, 2015, in Expiry Review No. RR-2014-001, continuing, with amendment, its order made on January 6, 2010, in Expiry Review No. RR-2009-001, continuing, with amendment, its finding made on January 7, 2005, in Inquiry No. NQ-2004-005, concerning the dumping of carbon steel screws that are used to mechanically join two or more elements, originating in or exported from the People's Republic of China and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the subsidizing of such products originating in or exported from the People's Republic of China, excluding carbon steel screws specifically designed for application in the automotive or aerospace industry and 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.

Georges Bujold

Georges Bujold
Presiding Member

Rose Ann Ritcey

Rose Ann Ritcey
Member

Serge Fréchette

Serge Fréchette
Member

The statement of reasons will be issued within 15 days.

APPENDIX 1

PRODUCTS EXCLUDED IN INQUIRY NO. NQ-2004-005, IN EXPIRY REVIEWS NO. RR-2009-001 AND RR-2014-001, AND IN INTERIM REVIEWS NO. RD-2016-001 AND RD-2016-003

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

- 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*)

- RSS™ rugged structural screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent numbers 2 267 572 and 2 140 472 and a Climatek™ coating which is certified to meet the ICC-ES "Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals" (AC257); or equivalent (*Vis de construction durables RSS[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*)
- MSS™ zip tip metal siding screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent numbers 2 267 572 and 2 478 635 and a Climatek™ coating which is certified to meet the ICC-ES "Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals" (AC257); or equivalent (*Vis à pointe zip tip pour bardage en métal MSS[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*)
- MSS™ drill tip metal siding screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent numbers 2 267 572 and 2 478 635 and a Climatek™ coating which is certified to meet the ICC-ES "Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals" (AC257); or equivalent (*Vis à pointe perçante pour bardage en métal MSS[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*)
- Pan™ head screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent number 2 267 572 and a Climatek™ coating which is certified to meet ICC-ES "Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals" (AC257); or equivalent (*Vis à tête Pan[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*)
- Cabinet™ screws marketed by GRK Canada Limited which have the features and characteristics described in Canadian patent number 2 267 572 and a Climatek™ coating which is certified to meet ICC-ES "Acceptance Criteria for Corrosion-resistant Fasteners and Evaluation of Corrosion Effects of Wood Treatment Chemicals" (AC257); or equivalent (*Vis Cabinet[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*)
- 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)

- Shoulder bolts made of steel, grade 5, and zinc-plated, with a hexagonal head, an unthreaded cylindrical shoulder section ranging from 1/4 inch to 3/4 inch in diameter, and a threaded section that is smaller in diameter than the shoulder ranging from 3/8 inch to 7/8 inch in length and between 10-24 and 5/8-11 in common thread sizes (*Boulons à épaulement en acier, grade 5, revêtus de zinc, constitués d'une tête hexagonale, d'un épaulement cylindrique non fileté dont le diamètre varie de 1/4 de pouce à 3/4 de pouce et d'une section filetée dont le diamètre est inférieur à celui de l'épaulement, dont la longueur varie de 3/8 de pouce à 7/8 de pouce et dont la taille de filet commun varie de 10-24 à 5/8-11*)
- Squeeeeek No More® square-drive wood screws, manufactured by or on behalf of O'Berry Enterprises Inc. under U.S. patent Nos. 5,371,992, 5,372,466 or 6,250,186, for use in wood flooring, with scoring above the threaded portion of the screw that allows the upper portion of the screw and head to be easily broken off, 3" or 3.5" in length, of a #8 or #9 diameter, threaded in part with 8 threads per inch and in part with 9 threads per inch, with the remainder unthreaded, and covered in a Gleitmo 615 lubricant coating (or equivalent coating) and imported in packages of 500 screws or less (*Vis à bois à empreinte carrée Squeeeeek No More®, fabriquées par O'Berry Enterprises Inc. ou au nom de celle-ci en vertu des brevets américains no 5 371 992, 5 372 466 ou 6 250 186, pour les planchers de bois, dont la partie supérieure de la tige est amincie pour que la tête puisse facilement être enlevée, de 3 à 3,5 pouces de longueur, de calibre 8 ou 9, à filetage partiel de 8 filets par pouce et de 9 filets par pouce, le reste de la tige n'étant pas filetée, enduites de lubrifiant Gleitmo 615 (ou enduit équivalent) et importées en paquets d'au plus 500 vis*)

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

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

APPENDIX 2

PRODUCTS EXCLUDED IN THE CURRENT EXPIRY REVIEW

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

- Screws designed by 1833236 Ontario Inc. d.b.a. U2 Fasteners and marketed under the trade name Construction Screw™, which have the features and characteristics described in Canadian patent number 2 979 899, a U-Gold™ coating, and are certified to comply with the most recent versions of the International Building Code® and the International Residential Code® and recognized for use in wood chemically treated with waterborne alkaline copper quaternary, type D (ACQ-D); or equivalent (*Vis conçues par 1833236 Ontario Inc. s/n U2 Fasteners et commercialisées sous la marque Construction Screw^{MC}, ayant les caractéristiques et éléments énoncés au numéro de brevet canadien 2 979 899, un revêtement U-Gold^{MC} et qui sont certifiées conformes aux versions les plus récentes du International Building Code^{MD} et du International Residential Code^{MD} et reconnues pour être utilisées avec du bois traité chimiquement au cuivre alcalin quaternaire par procédé hydrique, type D (ACQ-D), ou l'équivalent*)
- Screws designed by 1833236 Ontario Inc. d.b.a. U2 Fasteners and marketed under the trade name Vinyl Extrusion Screw™, which have the features and characteristics described in Canadian patent number 2 979 899 and a proprietary coating; or equivalent (*Vis conçues par 1833236 Ontario Inc. s/n U2 Fasteners et commercialisées sous la marque Vinyl Extrusion Screw^{MC}, ayant les caractéristiques et éléments énoncés au numéro de brevet canadien 2 979 899 et un revêtement exclusif, ou l'équivalent*)
- Composite deck screws with a dual coarse thread design, a counter boring head, a #20 TORX® ttap® drive and in lengths of 2.5 in. or 3 in., packaged together with color matched plugs made from the same material as the deck boards, and a setting tool designed to drive the screw to the appropriate level below the surface of the board, as part of the Cortex® Hidden Fastening System for Decking; or equivalent (*Vis pour terrasses en matériaux composites à double filetage normal, ayant une tête qui s'enfonce, une empreinte #20 TORX^{MD} ttap^{MD}, de 2,5 po ou 3 po de longueur, empaquetées ensemble avec des bouchons de couleur correspondante faits des mêmes matériaux que ceux de la terrasse, et un outil pour la pose conçu pour faire pénétrer la vis à la profondeur voulue dans la planche, le tout faisant partie du Cortex^{MD} Hidden Fastening System for Decking, ou l'équivalent*)
- PVC trim screws with a dual coarse thread design, a counter boring head, a #20 TORX® ttap® drive and in lengths of 2 in. or 2.75 in., packaged together with color matched plugs made from the same material as the PVC trim, and a setting tool designed to drive the screw to the appropriate level below the surface of the trim, as part of the Cortex® Hidden Fastening System for PVC Trim; or equivalent (*Vis pour moulures en PVC à double filetage normal, ayant une tête qui s'enfonce, une empreinte #20 TORX^{MD} ttap^{MD}, de 2 po ou 2,75 po de longueur, empaquetées ensemble avec des bouchons de couleur correspondante faits des mêmes matériaux que ceux des moulures en PVC, et un outil pour la pose conçu pour faire pénétrer la vis à la profondeur voulue dans la moulure, le tout faisant partie du Cortex^{MD} Hidden Fastening System for PVC Trim, ou l'équivalent*)
- Fascia board screws with a coarse thread design, a flat head, a #20 TORX® ttap® drive and in a length of 1.75 in., packaged together with color matched plugs made from the same material as the fascia board, a counterbore tool designed to create a hole for the screw and plug, and a setting tool designed to drive the screw to the appropriate level below the surface of the board, as part of the Cortex® Hidden Fastening System for Fascia; or equivalent (*Vis pour planches de bordure à filetage normal, ayant une tête plate, une empreinte #20 TORX^{MD} ttap^{MD}, de 1,75 po de longueur, empaquetées ensemble avec des bouchons de couleur correspondante faits des mêmes matériaux que ceux des planches de bordure, un outil à lamer conçu pour percer un trou pour la vis et le bouchon, et un outil pour la pose conçu pour faire*

pénétrer la vis à la profondeur voulue dans la planche, le tout faisant partie du Cortex[MD] Hidden Fastening System for Fascia, ou l'équivalent)

- TrapEase® 3 composite deck screws with a dual coarse thread design, a color matched counter boring head, a #20 TORX® ttap® drive and in lengths of 2.5 in. or 3 in., packaged together with a driver bit; or equivalent (*Vis pour terrasses en matériaux composites TrapEase[MD] 3 à double filetage normal, ayant une tête qui s'enfonce de couleur correspondante, une empreinte #20 TORX[MD] ttap[MD], de 2,5 po ou 3 po de longueur, empaquetées ensemble avec un embout pour tournevis, ou l'équivalent*)
- TrapEase® FASCIA screws with a dual coarse thread design, a color matched flat head, a #20 TORX® ttap® drive and in a length of 1.75 in., packaged together with a counterbore tool designed to create a pilot hole for screw placement and a driver bit; or equivalent (*Vis pour planches de bordure TrapEase[MD] FASCIA à double filetage normal, ayant une tête plate de couleur correspondante, une empreinte #20 TORX[MD] ttap[MD], de 1,75 po de longueur, empaquetées ensemble avec un un outil à lamer conçu pour percer un trou pilote pour enfoncer la vis et un embout pour tournevis, ou l'équivalent*)
- TimberLOK® heavy duty structural wood screws with a coarse thread design, a blank shank diameter of approximately 0.189 in., a countersinking hex washer head with a 5/16" drive and a head marking indicating overall length in inches, in various lengths, which are certified to comply with the most recent versions of the International Building Code® and the International Residential Code® and recognized for use in wood chemically treated with waterborne alkaline copper quaternary, type D (ACQ-D), packaged together with a driver bit; or equivalent (*Vis à bois structurelles robustes TimberLOK[MD] à filetage normal, dont le diamètre de la partie lisse de la tige est approximativement de 0,189 po, ayant une tête hexagonale à rondelle qui s'enfonce avec une empreinte de 5/16" et dont la longueur en pouces est indiquée sur la tête, de diverses longueurs, qui sont certifiées conformes aux versions les plus récentes du International Building Code[MD] et du International Residential Code[MD] et reconnues pour être utilisées avec du bois traité chimiquement au cuivre alcalin quaternaire par procédé hydrique, type D (ACQ-D), empaquetées ensemble avec un embout pour tournevis, ou l'équivalent*)
- HeadLOK® heavy duty structural wood screws with a coarse thread design, a blank shank diameter of approximately 0.191 in., a flat head with an 8 lobe SpiderDrive™ and a head marking indicating overall length in inches, in various lengths, which are certified to comply with the most recent versions of the International Building Code® and the International Residential Code® and recognized for use in wood chemically treated with waterborne alkaline copper quaternary, type D (ACQ-D), packaged together with a driver bit; or equivalent (*Vis à bois structurelles robustes HeadLOK[MD] à filetage normal, dont le diamètre de la partie lisse de la tige est approximativement de 0,191 po, ayant une tête plate avec une empreinte SpiderDrive[MC] à 8 dents et dont la longueur en pouces est indiquée sur la tête, de diverses longueurs, qui sont certifiées conformes aux versions les plus récentes du International Building Code[MD] et du International Residential Code[MD] et reconnues pour être utilisées avec du bois traité chimiquement au cuivre alcalin quaternaire par procédé hydrique, type D (ACQ-D), empaquetées ensemble avec un embout pour tournevis, ou l'équivalent*)
- FlatLOK® structural wood screws with a coarse thread design, a blank shank diameter of approximately 0.227 in., a flat head with a #40 TORX® ttap® drive and a head marking indicating overall length in inches, in various lengths, which are certified to comply with the National Building Code of Canada and recognized for use in wood chemically treated with waterborne alkaline copper quaternary (ACQ), packaged together with a driver bit; or equivalent (*Vis à bois structurelles FlatLOK[MD] à filetage normal, dont le diamètre de la partie lisse de la tige est approximativement de 0,227 po, ayant une tête plate avec une empreinte #40 TORX[MD] ttap[MD] et dont la longueur en pouces est indiquée sur la tête, de diverses longueurs, qui sont certifiées conformes au Code national du bâtiment – Canada et reconnues*

pour être utilisées avec du bois traité chimiquement au cuivre alcalin quaternaire par procédé hydrique (ACQ), empaquetées ensemble avec un embout pour tournevis, ou l'équivalent)

- LedgerLOK® structural wood screws with a coarse thread design, a blank shank diameter of approximately 0.228 in., a hex washer head with a 5/16" drive or a flat head with a #40 TORX® ttap® drive, and a head marking indicating overall length in inches, in lengths of 3.625 in. or 5 in., which are certified to comply with the most recent versions of the International Building Code® and the International Residential Code® and recognized for use in wood chemically treated with waterborne alkaline copper quaternary, type D (ACQ-D), packaged together with a driver bit; or equivalent (*Vis à bois structurelles LedgerLOK^MD à filetage normal, dont le diamètre de la partie lisse de la tige est approximativement de 0,228 po, ayant une tête hexagonale à rondelle avec une empreinte de 5/16" ou une tête plate avec une empreinte #40 TORX^MD ttap^MD et dont la longueur en pouces est indiquée sur la tête, de 3,625 po ou 5 po de longueur, qui sont certifiées conformes aux versions les plus récentes du International Building Code^MD et du International Residential Code^MD et reconnues pour être utilisées avec du bois traité chimiquement au cuivre alcalin quaternaire par procédé hydrique, type D (ACQ-D), empaquetées ensemble avec un embout pour tournevis, ou l'équivalent*)
- ThruLOK® structural wood screws with a unique thread design, a Paddle Point™ tip, a blank shank diameter of approximately 0.228 in., a hex washer head with a 5/16" drive and a head marking indicating overall length in inches, in various lengths, which are certified to comply with the most recent versions of the International Building Code® and the International Residential Code® and recognized for use in wood chemically treated with waterborne alkaline copper quaternary, type D (ACQ-D), packaged and used together with ThruLOK® washers and nuts; or equivalent (*Vis à bois structurelles ThruLOK^MD à filetage unique, une pointe Paddle Point^MC, dont le diamètre de la partie lisse de la tige est approximativement de 0,228 po, ayant ayant une tête hexagonale à rondelle avec une empreinte de 5/16" et dont la longueur en pouces est indiquée sur la tête, de diverses longueurs, qui sont certifiées conformes aux versions les plus récentes du International Building Code^MD et du International Residential Code^MD et reconnues pour être utilisées avec du bois traité chimiquement au cuivre alcalin quaternaire par procédé hydrique, type D (ACQ-D), empaquetées et utilisées ensemble ave des rondelles et des écrous ThruLOK^MD, ou l'équivalent*)
- KWIK HUS-EZ high-strength self-tapping/undercutting carbon steel screw anchors for cracked concrete, uncracked concrete, seismic, concrete over metal deck, and grouted masonry applications, with a hex washer head, bearing Canadian trademark number TMA1011376 and having the features and characteristics described in Canadian patent number CA2738182, with a diameter of 0.25 in. and lengths ranging from 1.875 in. to 4 in., tested or assessed in accordance with one or more of: ASTM E488 ("Standard Test Methods for Strength of Anchors in Concrete and Masonry Elements"); ICC-ES AC106 ("Acceptance Criteria for Predrilled Fasteners (Screw Anchors) in Masonry Elements"); ICC-ES AC193 ("Acceptance Criteria for Mechanical Anchors in Concrete Elements"); American Concrete Institute (ACI) 355.2 ("Qualification of Post-Installed Mechanical Anchors in Concrete"), or National Building Code of Canada (NBCC) requirement outlined in Canadian Standards Association (CSA) A23.3-14 Annex D as amended or replaced from time to time; or equivalent (*Vis d'ancrage en acier au carbone robuste autotaradeuses KWIK HUS-EZ pour béton fissuré, béton non fissuré, résistance aux séismes, plancher en béton à ossature métallique et maçonnerie jointoyée, ayant une tête hexagonale à rondelle, portant le numéro de marque de commerce canadien TMA1011376 et ayant les caractéristiques et éléments énoncés au numéro de brevet canadien CA2738182, dont le diamètre est de 0,25 po et dont la longueur varie de 1,875 po à 4 po, 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 »); ICC-ES AC106 (« Acceptance Criteria for Predrilled Fasteners (Screw Anchors) in Masonry Elements »); ICC-ES AC193 (« Acceptance Criteria for Mechanical Anchors in Concrete Elements »); American Concrete Institute (ACI) 355.2 (« Qualification of Post-Installed Mechanical*

Anchors in Concrete »), ou selon les exigences du Code national du bâtiment – Canada énoncées aux dispositions de l'annexe D de la norme A23.3-14 de l'Association canadienne de normalisation telles que modifiées ou remplacées de temps à autre, ou l'équivalent)

- KWIK HUS-EZ P high-strength self-tapping/undercutting carbon steel screw anchors for cracked concrete, uncracked concrete, seismic, concrete over metal deck, and grouted masonry applications, with a pan washer head and Torx® drive, bearing Canadian trademark number TMA1011376 and having the features and characteristics described in Canadian patent number CA2738182, with a diameter of 0.25 in. and lengths of 1.875 in. or 2.625 in., tested or assessed in accordance with one or more of: ASTM E488 ("Standard Test Methods for Strength of Anchors in Concrete and Masonry Elements"); ICC-ES AC106 ("Acceptance Criteria for Predrilled Fasteners (Screw Anchors) in Masonry Elements"); ICC-ES AC193 ("Acceptance Criteria for Mechanical Anchors in Concrete Elements"); ACI 355.2 ("Qualification of Post-Installed Mechanical Anchors in Concrete"), or NBCC requirement outlined in CSA A23.3-14 Annex D as amended or replaced from time to time; or equivalent (*Vis d'ancrage en acier au carbone robuste autotaradeuses KWIK HUS-EZ P pour béton fissuré, béton non fissuré, résistance aux séismes, plancher en béton à ossature métallique et maçonnerie jointoyée, ayant une tête cylindrique large à rondelle et une empreinte Torx^{MD}, portant le numéro de marque de commerce canadien TMA1011376 et ayant les caractéristiques et éléments énoncés au numéro de brevet canadien CA2738182, dont le diamètre est de 0,25 po, de 1,875 po ou 2,625 po de longueur, 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 »); ICC-ES AC106 (« Acceptance Criteria for Predrilled Fasteners (Screw Anchors) in Masonry Elements »); ICC-ES AC193 (« Acceptance Criteria for Mechanical Anchors in Concrete Elements »); American Concrete Institute (ACI) 355.2 (« Qualification of Post-Installed Mechanical Anchors in Concrete »), ou selon les exigences du Code national du bâtiment – Canada énoncées aux dispositions de l'annexe D de la norme A23.3-14 de l'Association canadienne de normalisation telles que modifiées ou remplacées de temps à autre, ou l'équivalent*)
- KWIK HUS-EZ E high-strength self-tapping/undercutting carbon steel screw anchors for cracked concrete, uncracked concrete, seismic and concrete over metal deck applications, with an externally threaded stud with hex washer head, bearing Canadian trademark number TMA1011376 and having the features and characteristics described in Canadian patent number CA2738182, with a diameter of 0.25 in. and a length of 1.625 in., tested or assessed in accordance with one or more of: ASTM E488 ("Standard Test Methods for Strength of Anchors in Concrete and Masonry Elements"); ICC-ES AC193 ("Acceptance Criteria for Mechanical Anchors in Concrete Elements"); ACI 355.2 ("Qualification of Post-Installed Mechanical Anchors in Concrete"), or NBCC requirement outlined in CSA A23.3-14 Annex D as amended or replaced from time to time; or equivalent (*Vis d'ancrage en acier au carbone robuste autotaradeuses KWIK HUS-EZ E pour béton fissuré, béton non fissuré, résistance aux séismes et plancher en béton à ossature métallique, ayant un filet extérieur et une tête hexagonale à rondelle, portant le numéro de marque de commerce canadien TMA1011376 et ayant les caractéristiques et éléments énoncés au numéro de brevet canadien CA2738182, dont le diamètre est de 0,25 po, d'une longueur de 1,625 po, 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 »); ICC-ES AC193 (« Acceptance Criteria for Mechanical Anchors in Concrete Elements »); American Concrete Institute (ACI) 355.2 (« Qualification of Post-Installed Mechanical Anchors in Concrete »), ou selon les exigences du Code national du bâtiment – Canada énoncées aux dispositions de l'annexe D de la norme A23.3-14 de l'Association canadienne de normalisation telles que modifiées ou remplacées de temps à autre, ou l'équivalent*)
- KWIK HUS-EZ I high-strength self-tapping/undercutting carbon steel screw anchors for cracked concrete, uncracked concrete, seismic and concrete over metal deck applications, with an internally

threaded hex washer head, bearing Canadian trademark number TMA1011376 and having the features and characteristics described in Canadian patent number CA2738182, with a diameter of 0.25 in. and lengths of 1.625 in. or 2.5 in., tested or assessed in accordance with one or more of: ASTM E488 ("Standard Test Methods for Strength of Anchors in Concrete and Masonry Elements"); ICC-ES AC193 ("Acceptance Criteria for Mechanical Anchors in Concrete Elements"); ACI 355.2 ("Qualification of Post-Installed Mechanical Anchors in Concrete"), or NBCC requirement outlined in CSA A23.3-14 Annex D as amended or replaced from time to time; or equivalent (*Vis d'ancrage en acier au carbone robuste autotaradeuses KWIK HUS-EZ I pour béton fissuré, béton non fissuré, résistance aux séismes et plancher en béton à ossature métallique, ayant un filet intérieur et une tête hexagonale à rondelle, portant le numéro de marque de commerce canadien TMA1011376 et ayant les caractéristiques et éléments énoncés au numéro de brevet canadien CA2738182, dont le diamètre est de 0,25 po, de 1,625 po ou 2,5 po de longueur, 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 »); ICC-ES AC193 (« Acceptance Criteria for Mechanical Anchors in Concrete Elements »); American Concrete Institute (ACI) 355.2 (« Qualification of Post-Installed Mechanical Anchors in Concrete »), ou selon les exigences du Code national du bâtiment – Canada énoncées aux dispositions de l'annexe D de la norme A23.3-14 de l'Association canadienne de normalisation telles que modifiées ou remplacées de temps à autre, ou l'équivalent*)

- Hangermate® case hardened carbon steel screw anchors, produced from a single piece of steel, with type 17 gimlet or self-drilling points, diameters ranging from 3/16 in. to 5/16 in., lengths ranging from 1 in. to 4 in., and various heads with threaded rod coupler sizes ranging from 1/4 in. to 1/2 in. or acoustical ceiling eyelets, approved by FM Approvals or Underwriters Laboratory, coated with a zinc plating according to ASTM B633, SC1, Type III (Fe/Zn5), for vertical, horizontal, side or variable mounting in steel or wood and intended for use in hanging applications; or equivalent (*Vis d'ancrage en acier au carbone cémenté Hangermate^{MD}, fabriquées à partir d'une seule pièce de métal, ayant une vrille ou une pointe autotaradeuse de type 17, dont le diamètre varie de 3/16 po à 5/16 po et la longueur de 1 po à 4 po, et ayant diverses têtes avec un coupleur fileté de dimensions allant de 1/4 po à 1/2 po ou des œillets de plafond acoustique, approuvées par FM Approvals ou Underwriters Laboratory, plaquées zinc selon la norme ASTM B633, SC1, type III (Fe/Zn5), pour un montage à la verticale, à l'horizontale, de côté ou variable dans le métal ou le bois et destinées à être utilisées pour suspendre, ou l'équivalent*)
- Hangermate®+ case hardened carbon steel screw anchors, produced from a single piece of steel, with diameters of 1/4 in. or 3/8 in., lengths ranging from 1.625 in. to 2.5 in., and internally or externally threaded heads with threaded rod coupler sizes ranging from 1/4 in. to 1/2 in., certified to comply with the most recent versions of the International Building Code® and the International Residential Code®, tested or assessed in accordance with ASTM E488 ("Standard Test Methods for Strength of Anchors in Concrete and Masonry Elements"), ICC-ES AC193 ("Acceptance Criteria for Mechanical Anchors in Concrete Elements"), and ACI 355.2 ("Qualification of Post-Installed Mechanical Anchors in Concrete"), evaluated and qualified by an accredited independent testing laboratory for recognition in cracked and uncracked concrete including seismic and wind loading and for reliability against brittle failure, approved by FM Approvals, coated with a zinc plating according to ASTM B633, SC1, Type III (Fe/Zn5), for vertical mounting in normal-weight concrete, sand-lightweight concrete and concrete over steel deck, and intended for use in hanging applications; or equivalent (*Vis d'ancrage en acier au carbone cémenté Hangermate^{MD}+, fabriquées à partir d'une seule pièce de métal, dont le diamètre est de 1/4 po ou 3/8 po et la longueur varie de 1,625 po à 2,5 po, ayant des têtes avec filetage intérieur ou extérieur avec un coupleur fileté de dimensions allant de 1/4 po à 1/2 po, qui sont certifiées conformes aux versions les plus récentes du International Building Code^{MD} et du International Residential Code^{MD}, testées ou évaluées selon la norme ASTM E488 (« Standard Test Methods for Strength of Anchors in Concrete and Masonry Elements »), ICC-ES AC193 (« Acceptance Criteria for Mechanical*

Anchors in Concrete Elements »), et ACI 355.2 (« Qualification of Post-Installed Mechanical Anchors in Concrete »), évaluées et qualifiées par un laboratoire indépendant accrédité pour utilisation dans du béton fissuré et non fissuré, y compris la résistance aux séismes et à la charge exercée par le vent et pour contrer la fragilisation, approuvées par FM Approvals, plaquées zinc selon la norme ASTM B633, SC1, Type III (Fe/Zn5), pour un montage à la verticale dans du béton de poids normal, de poids léger et pour les planchers en béton à ossature métallique, et destinées à être utilisées pour suspendre, ou l'équivalent)

- Screw-Bolt+™ case hardened carbon steel anchors, produced from a single piece of steel, with diameters ranging from 1/4 in. to 5/8 in., lengths ranging from 1.25 in. to 8 in., and a hex washer head or a flat head, certified to comply with the most recent versions of the International Building Code® and the International Residential Code®, tested or assessed in accordance with ICC-ES AC193 ("Acceptance Criteria for Mechanical Anchors in Concrete Elements") and ACI 355.2 ("Qualification of Post-Installed Mechanical Anchors in Concrete"), evaluated and qualified by an accredited independent testing laboratory for recognition in cracked and uncracked concrete including seismic and wind loading and for reliability against brittle failure, coated with a zinc plating according to ASTM B633, SC1, Type III (Fe/Zn5) or a mechanically galvanized zinc plating according to ASTM B695, Class 55, for mounting in normal-weight concrete, lightweight concrete, concrete over steel deck, grouted concrete masonry and brick masonry; or equivalent (*Vis d'ancrage en acier au carbone cémenté Screw-Bolt+^{MC}, fabriquées à partir d'une seule pièce de métal, dont le diamètre varie de 1/4 po à 5/8 po et la longueur de 1,25 po à 8 po, ayant une tête hexagonale à rondelle ou une tête plate, qui sont certifiées conformes aux versions les plus récentes du International Building Code^{MD} et du International Residential Code^{MD}, testées ou évaluées selon les normes ICC-ES AC193 (« Acceptance Criteria for Mechanical Anchors in Concrete Elements ») et ACI 355.2 (« Qualification of Post-Installed Mechanical Anchors in Concrete »), évaluées et qualifiées par un laboratoire indépendant accrédité pour utilisation dans du béton fissuré et non fissuré, y compris la résistance aux séismes et à la charge exercée par le vent et pour contrer la fragilisation, plaquées zinc selon la norme ASTM B633, SC1, Type III (Fe/Zn5) ou placage de zinc galvanisé par procédé mécanique selon la norme ASTM B695, classe 55, pour montage dans du béton de poids normal, de poids léger, pour les planchers en béton à ossature métallique, maçonnerie en béton jointoyée et maçonnerie en brique, ou l'équivalent*)

Place of Hearing:	Ottawa, Ontario
Date of Hearing:	July 7, 2020
Tribunal Panel:	Georges Bujold, Presiding Member Rose Ann Ritcey, Member Serge Fréchette, Member
Support Staff:	Alain Xatruch, Counsel Shawn Jeffrey, Lead Analyst Rhonda Heintzman, Analyst Chelsea Lappin, Analyst Patrick Stidwill, Data Service Advisor

PARTICIPANTS:

Domestic Producers	**Counsel/Representatives**
Infasco, a division of Ifastgroupe 2004 L.P. Standard Fasteners Ltd. Visqué Inc.	Gerry Stobo Christopher J. Kent Christopher J. Cochlin Andrew M. Lanouette Marc McLaren-Caux Cynthia Wallace E. Melissa Celebican Andrew Paterson
Leland Industries Inc.	Lawrence L. Herman Gerry Stobo Christopher J. Kent Christopher J. Cochlin Andrew M. Lanouette Marc McLaren-Caux Cynthia Wallace E. Melissa Celebican Andrew Paterson

Importers/Exporters/Others	**Counsel/Representatives**
Hilti (Canada) Corporation	Paul D. Burns Brian J. Cacic Quentin Vander Schueren
ITW Construction Products Canada Robertson Inc. Robertson (Jiaxing) Inc.	Riyaz Dattu
OMG Inc.	Jean-Guillaume Shooner Candace Cerone

Simpson Strong-Tie Canada Limited Simpson Strong-Tie Co., Inc.	Jesse Goldman Jacob Mantle Julia Webster Samuel Levy
Stanley, Black & Decker Canada Inc.	Gordon LaFortune
The Hillman Group Canada ULC	Greg Kanargelidis Patrick Lapierre Amy Lee Skye Sepp Philippe Dubois

Parties that Requested Product Exclusions	**Counsel/Representatives**
1833236 Ontario Inc. d.b.a. U2 Fasteners	Swen Ruhmann Uli Walther
Hilti (Canada) Corporation	Paul D. Burns Brian J. Cacic Quentin Vander Schueren
OMG Inc.	Jean-Guillaume Shooner Candace Cerone
Stanley, Black & Decker Canada Inc.	Gordon LaFortune

Please address all communications to:

The Registrar
Secretariat to the 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, conducted pursuant to subsection 76.03(3) of the *Special Import Measures Act*,[1] of the order made by the Canadian International Trade Tribunal on January 5, 2015, in Expiry Review No. RR-2014-001, continuing, with amendment, its order made on January 6, 2010, in Expiry Review No. RR-2009-001, continuing, with amendment, its finding made on January 7, 2005, in Inquiry No. NQ-2004-005, concerning the dumping of carbon steel screws[2] originating in or exported from the People's Republic of China (China) and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei), and the subsidizing of such products originating in or exported from China (the subject goods).[3]

[2] Under *SIMA*, findings of injury or threat of injury and the associated protection in the form of anti-dumping or countervailing duties expire five years from the date of the finding or, if one or more orders continuing the finding have been made, the date of the last order made under paragraph 76.03(12)(b), unless the Tribunal initiates an expiry review before that date. The order in Expiry Review No. RR-2014-001 was scheduled to expire on January 4, 2020.

[3] The Tribunal's mandate in this expiry review is to determine whether the expiry of the order is likely to result in injury to the domestic industry and then, accordingly, to make an order either continuing or rescinding the order, with or without amendment.

PROCEDURAL BACKGROUND

[4] The Tribunal issued its notice of expiry review on October 28, 2019. This notice triggered the initiation of an investigation by the Canada Border Services Agency (CBSA) on October 29, 2019, to determine whether the expiry of the Tribunal's order was likely to result in the continuation or resumption of dumping or subsidizing of the subject goods.

[5] On March 26, 2020, the CBSA determined, pursuant to paragraph 76.03(7)(a) of *SIMA*, that the expiry of the order was likely to result in the continuation or resumption of dumping and subsidizing of the subject goods.[4]

[6] On March 27, 2020, 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 to the domestic industry.

---

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

2 The Tribunal has changed the name of this case from "Certain Fasteners" to "Carbon Steel Screws" as this better reflects the goods that are subject to this expiry review (and that were also subject to the previous expiry review). The use of "Certain Fasteners" was appropriate at the time of the Tribunal's injury inquiry as the subject goods were then comprised of carbon steel and stainless steel screws, nuts and bolts, which were divided into four classes of goods: carbon steel screws, carbon steel nuts and bolts, stainless steel screws, and stainless steel nuts and bolts. However, since the conclusion of the Tribunal's expiry review in 2010, only its finding in respect of carbon steel screws has been continued. Therefore, the Tribunal is of the view that the use of "Carbon Steel Screws" is more appropriate in these circumstances. The Tribunal notes that this change does not impact the product definition or the scope of the subject goods.

3 The complete product description is set out in paragraph 15.

4 Exhibit RR-2019-002-03, Vol. 1 at 5.

[7] The period of review (POR) for the Tribunal's expiry review covered three full calendar years, from January 1, 2017, to December 31, 2019.

[8] The Tribunal sent questionnaires to known domestic producers and importers of carbon steel screws meeting the product definition, and to known foreign producers of the subject goods. The Tribunal received seven replies to the domestic producers' questionnaire from companies stating that they produced carbon steel screws meeting the product definition during the POR. The Tribunal received 24 replies to the importers' questionnaire from companies stating that they imported subject goods and/or carbon steel screws meeting the product definition from non-subject countries during the POR. Finally, the Tribunal received six replies to the foreign producers' questionnaire from firms indicating that they produce the subject goods in Chinese Taipei and one reply from a firm indicating that it produces the subject goods in China.

[9] The Tribunal notes that this expiry review was conducted during the COVID-19 pandemic,[5] which resulted in some questionnaire recipients being unable to provide a response, or only being able to provide partial responses or estimates of the requested information. To ensure that the best possible data was collected, staff of the Canadian International Trade Tribunal Secretariat of the Administrative Tribunals Support Service of Canada assisted questionnaire recipients by providing guidance on completing questionnaires and, upon request, offered extensions for applicable deadlines for submitting questionnaire responses to the Tribunal. Although these protocols are standard for any *SIMA* proceeding, the COVID-19 pandemic meant that a relatively higher number of questionnaire recipients required assistance and were offered extensions.

[10] Using the questionnaire responses and other information on the record, staff prepared public and protected versions of the investigation report, which were placed on the record on May 19, 2020. However, due to the number of extensions that were offered to companies to complete their questionnaire responses, several substantial responses and revisions to questionnaires remained outstanding at the time the investigation report was issued. Once these responses and revisions were received, revised public and protected versions of the investigation report were prepared. These reports were placed on the record on June 17, 2020.

[11] Domestic producers Leland Industries Inc. (Leland) and The Hillman Group Canada ULC (HG Canada) filed written submissions and witness statements in support of the continuation of the order. Domestic producers Infasco, a division of Ifastgroupe 2004 L.P. (Infasco), Standard Fasteners Ltd. (Standard Fasteners) and Visqué Inc. (Visqué) filed letters indicating their support for the position taken by Leland in this expiry review. The Tribunal did not receive any submissions opposing the continuation of the order.[6]

[12] On May 19, 2020, the Tribunal had advised parties that, due to the COVID-19 situation, the hearing that was previously scheduled to begin on June 22, 2020, would now proceed by way of written submissions. The Tribunal invited the parties to provide comments on draft procedures for the conduct of the file hearing, which allowed parties to suggest questions for the Tribunal to address to other parties, as well as to submit final legal pleadings in written form. As the Tribunal only

---

5 On March 11, 2020, the World Health Organization declared the global outbreak of COVID-19 a pandemic. See https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.

6 The Tribunal received notices of participation from eight other parties, none of which filed submissions opposing the continuation of the order. Some of these parties did, however, file requests for product exclusions.

received comments from counsel to domestic producers Leland, Infasco, Standard Fasteners and Visqué, and did not receive any submissions opposing the continuation of the order, it made the decision, on June 5, 2020, to proceed by way of a "traditional" file hearing, without the presence or participation of the parties. It also indicated that those parties in support of the continuation of the order that had already filed case briefs would be given an opportunity to file additional submissions in relation to the revised investigation report that had yet to be issued at that time. Both Leland and HG Canada filed additional submissions on June 24, 2020, following the issuance of the revised investigation report on June 17, 2020. The Tribunal held a file hearing, pursuant to rule 25.1 of the *Canadian International Trade Tribunal Rules*,[7] on July 7, 2020.

[13] The Tribunal received 28 requests for product exclusions, which were filed by 1833236 Ontario Inc. d.b.a. U2 Fasteners (U2 Fasteners) (7 requests), OMG Inc. (OMG) (12 requests), Hilti (Canada) Corporation (Hilti) (4 requests) and Stanley, Black & Decker Canada Inc. (SBD) (5 requests). Leland filed responses opposing all of the 28 requests, with Standard Fasteners and Visqué providing letters of support for Leland's position. All requesters filed replies to Leland's responses.

[14] The record of these proceedings consists of all relevant documents filed or accepted for filing by the Tribunal. All public exhibits were 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.

PRODUCT

Product definition

[15] The goods that are subject to this expiry review (i.e. the subject goods) are carbon steel screws that are used to mechanically join two or more elements, originating in or exported from China and Chinese Taipei, excluding carbon steel screws specifically designed for application in the automotive or aerospace industry and the products described in Appendix 1 to this order.

Additional product information[8]

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

[17] 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 preformed 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

---

7 SOR/91-499 [*Rules*].

8 See *Certain Fasteners* (6 January 2010), RR-2009-001 (CITT) [*Fasteners 2009 Review*] at paras. 14-21.

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.

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

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

[20] There are three main distribution channels for both domestically produced and imported carbon steel screws: distributors/wholesalers, end users/original equipment manufacturers (OEMs) and retailers.

LEGAL FRAMEWORK

[21] 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 for the domestic industry.[9] Pursuant to subsection 76.03(12), if the Tribunal determines that the expiry of the order is unlikely to result in injury, it is required to rescind the order. However, if it determines that the expiry of the order is likely to result in injury, the Tribunal is required to continue the order, with or without amendment.

[22] Before proceeding with its analysis of the likelihood of injury, the Tribunal must first determine what domestically produced goods are "like goods" in relation to the subject goods and whether there is more than one class of goods. Once those determinations have been made, the Tribunal must determine what constitutes the "domestic industry".

[23] The Tribunal must also determine whether it will make an assessment of the cumulative effects of the dumping of the subject goods from China and Chinese Taipei, and whether it will make an assessment of the cumulative effects of the dumping and subsidizing of the subject goods from China, i.e. whether it will cross-cumulate the effects for the Chinese subject goods.

LIKE GOODS AND CLASSES OF GOODS

[24] 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.[10]

---

9 Subsection 2(1) of *SIMA* defines "injury" as "material injury to the domestic industry" and "retardation" as "material retardation of the *establishment* of a domestic industry" [emphasis added]. Given that there is currently an established domestic industry, the issue of whether the expiry of the order is likely to result in retardation does not arise in this expiry review.

10 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 (FC).

[25] 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.

[26] In deciding the issue of like goods when goods are not identical in all respects to the other goods, 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 fulfil the same customer needs).[11] These same factors are also considered in deciding whether there is more than one class of goods.[12]

[27] In Inquiry No. NQ-2004-005, the Tribunal, upon consideration of the above factors, found that domestically produced carbon steel screws, defined in the same manner as the subject goods, constituted like goods in relation to the subject goods.[13] It also treated carbon steel screws as a single class of goods.[14] These conclusions were maintained in Expiry Reviews No. RR-2009-001 and RR-2014-001.[15]

[28] Leland submitted that there have been no material developments since the time of the 2014 expiry review that would warrant a departure from these conclusions. It added that evidence on the record continues to show that imports of subject goods and domestically produced like goods are interchangeable and compete with one another.

[29] The Tribunal is satisfied that there is no evidence on the record of the present expiry review that would warrant departing from the conclusions it reached in the injury inquiry and two subsequent expiry reviews. Accordingly, the Tribunal remains of the view that domestically produced carbon steel screws are like goods in relation to the subject goods and that there is a single class of goods.

DOMESTIC INDUSTRY

[30] 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

---

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

12 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 (or that have previously been included in separate classes of goods) constitute "like goods" in relation to each other. If they do, they will be regarded as comprising a single class of goods. See, for example, *Certain Fasteners* (7 January 2005), NQ-2004-005 (CITT) [*Fasteners Inquiry*] at para. 70.

13 *Fasteners Inquiry* at paras. 67-68.

14 Carbon steel screws constituted one of the four classes of goods into which the Tribunal divided the like goods (i.e. the domestically produced fasteners). See *Fasteners Inquiry* at para. 75.

15 *Fasteners 2009 Review* at para. 81; *Certain Fasteners* (5 January 2015), RR-2014-001 (CITT) [*Fasteners 2014 Review*] at para. 50.

> 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.

[31] 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.[16] However, the Tribunal may decide to exclude a domestic producer from the domestic industry if that producer would contribute to, or benefit from, the potentially injurious continued or resumed dumping and subsidizing, either directly as an importer or indirectly through related companies.[17]

[32] The evidence indicates that, during the POR for the present expiry review, there were seven known domestic producers of carbon steel screws covered by the product definition. These are Elam M. Martin Machine Shop Inc. (Elam), HG Canada, Infasco, Leland, Slacan Industries Inc. (Slacan), Standard Fasteners and Visqué.

[33] Leland submitted that the record evidence in this expiry review demonstrates that HG Canada and Slacan should be excluded from the domestic industry for purposes of assessing the likelihood of injury as their role in the market is essentially that of importers of subject goods. It therefore submitted that the domestic industry within the meaning of subsection 2(1) of *SIMA* should be the remaining five domestic producers, namely, Elam, Infasco, Leland, Standard Fasteners and Visqué.

[34] In Inquiry No. NQ-2004-005 and Expiry Review No. RR-2009-001, the Tribunal excluded H. Paulin & Co., Limited (Paulin) from the domestic industry on the basis that it was essentially an importer of the subject carbon steel screws.[18] In 2013, Paulin was purchased by the U.S.-based The Hillman Group, Inc. and became a division of HG Canada.[19] In Expiry Review No. RR-2014-001, the Tribunal excluded HG Canada from the domestic industry on the basis that it was, like Paulin in the 2009 expiry review, essentially an importer of the subject carbon steel screws.[20]

[35] On May 29, 2020, HG Canada filed a request, pursuant to rule 23.1 of the *Rules*, for a decision or order of the Tribunal confirming that it should be excluded from the domestic industry for the purposes of this expiry review.[21] On June 5, 2020, the Tribunal issued an order granting HG Canada's request, finding that it is essentially an importer of the subject carbon steel screws and excluding it from the domestic industry. The Tribunal also noted that this change would be

---

16 The term "major proportion" means an important or significant proportion of total domestic production of the like goods and not necessarily a majority of these goods: *Japan Electrical Manufacturers Assn. v. Canada (Anti-Dumping Tribunal)*, [1986] F.C.J. No. 652 (FCA); *McCulloch of Canada Limited and McCulloch Corporation v. Anti-Dumping Tribunal*, [1978] 1 F.C. 222 (FCA); *China – Anti-dumping and Countervailing Duties on Certain Automobiles from the United States* (23 May 2014), WTO Docs. 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 Docs. WT/DS397/AB/R, Report of the Appellate Body at paras. 411, 412, 419; Argentina – Definitive Anti-dumping Duties on Poultry from Brazil (22 April 2003), WTO Docs. WT/DS241/R, Report of the Panel at para. 7.341.

17 *Carbon and Alloy Steel Line Pipe* (29 March 2016), NQ-2015-002 (CITT) [*Line Pipe*] at para. 70; *Photovoltaic Modules and Laminates* (3 July 2015), NQ-2014-003 (CITT) [*Photovoltaic Modules*] at para. 56.

18 *Fasteners Inquiry* at para. 85; *Fasteners 2009 Review* at para. 90.

19 *Fasteners 2014 Review* at para. 55.

20 *Ibid.* at para. 60.

21 HG Canada explained that an early determination of this issue would assist the participants in any submissions and arguments made during the proceedings, as well as clarify whether HG Canada should be responding to the requests for product exclusions that were filed. See Exhibit RR-2019-002-39, Vol. 1 at 1.

incorporated into its revised investigation report.[22] The reasons for the Tribunal's order are found below.

[36] The Tribunal typically treats a domestic producer of like goods as if it were not part of the domestic industry and limits its likelihood-of-injury analysis to the other domestic producers, if the producer is first and foremost a conduit for the importation of the subject goods. In previous cases, the Tribunal has considered both structural and behavioural factors to assist in making a decision on whether to exclude a domestic producer from the scope of the domestic industry.[23] Whereas structural factors are concerned with the characteristics of the market and the producer's place in that market (expressed by various ratios of imports of subject goods, domestic production and sales of both), behavioural factors focus on the behaviour of the producer, including whether the producer imports the subject goods as a defensive or aggressive measure and whether it imports the subject goods to fill a specific market niche or to compete broadly with the like goods produced by other domestic producers.

Exclusion of HG Canada from the domestic industry

[37] In its request pursuant to rule 23.1 of the *Rules*, HG Canada submitted that it continues to be a significant importer of carbon steel screws, from both subject and non-subject countries and that, as such, the factual basis for the Tribunal's previous decisions to exclude it from the domestic industry continues to apply.

[38] Leland agreed with HG Canada, submitting that there is nothing on the record in the present expiry review that would alter the conclusions reached by the Tribunal in the injury inquiry and previous expiry reviews that, despite having manufacturing capability in Canada, HG Canada acts primarily as an importer of subject goods.

[39] Indeed, the evidence on the record clearly demonstrates that HG Canada remains foremost an importer of subject goods. Throughout the POR, the volume of subject goods it imported was significantly greater than the volume of its total domestic production of like goods.[24] Moreover, in terms of value, its sales of subject goods represented a very large proportion of its total sales in the Canadian market over the POR.[25]

[40] In terms of behavioural factors, it is apparent that the importation of subject goods forms part of HG Canada's continuing corporate market strategy for Canada rather than being a defensive measure against competition from the subject goods. In his witness statement, Mr. Scott Ride, President of HG Canada, states that "Paulin was importing fasteners from various Asian countries since the 1960's".[26] As HG Canada maintained its import activities following its acquisition of Paulin (as evidenced by its imports during the POR), the Tribunal can only conclude that it has made a business decision to remain a significant importer of subject goods.

---

22 In the Tribunal's revised investigation report, issued on June 17, 2020, HG Canada's production activity was removed from consolidated domestic industry data and its imports were presented as imports made by importers.

23 *Line Pipe* at para. 72; *Hot-rolled Carbon Steel Plate and High-strength Low-allow Steel Plate* (6 January 2016), NQ-2015-001 (CITT) at para. 57; *Photovoltaic Modules* at para. 59.

24 Exhibit RR-2019-002-19.41B (protected), Vol. 6 at 9, 15; Exhibit RR-2019-002-16.05A (protected), Vol. 4 at 7.

25 Exhibit RR-2019-002-19.41B (protected), Vol. 6 at 9, 15; Exhibit RR-2019-002-16.05A (protected), Vol. 4 at 9.

26 Exhibit RR-2019-002-D-03 at para. 16, Vol. 11.

[41] In light of the foregoing, the Tribunal finds that, even though it supports the continuation of the order, HG Canada is essentially an importer of the subject carbon steel screws and its continued exclusion from the domestic industry is therefore warranted.

Whether Slacan should also be excluded from the domestic industry

[42] Leland submitted that the Tribunal should exclude Slacan from the domestic industry based on existing structural and behavioural factors. In terms of structural factors, it drew the Tribunal's attention to the volume of subject goods imported by Slacan in 2019 and the impact it had on the ratio of its imports of subject goods to its total domestic production of like goods for that year. With respect to behavioural factors, it submitted that Slacan's imports of subject goods in 2019, together with other evidence, suggested that its role in the market is essentially that of an importer of subject goods.

[43] The Tribunal notes that Leland's submissions on this issue were largely misguided due to the fact that it made an error in transcribing the volume of subject goods imported by Slacan in 2019. As a result, Leland mistakenly considered the selling value, rather than the volume, of Slacan's imports of subject goods for that year.[27]

[44] In reality, the evidence on the record indicates that, while the volume of subject goods imported by Slacan over the POR was not negligible, it remained significantly lower than the volume of its total domestic production of like goods throughout this period.[28] Additionally, in terms of value, Slacan's sales of subject goods represented a relatively minor proportion of its total sales in the Canadian market during that period.[29]

[45] In terms of behavioural factors, there is little, if any, evidence indicating that Slacan's imports of subject goods reflect a deliberate and aggressive strategy to capture market share from other domestic producers of like goods. In fact, the slight increase in Slacan's total domestic production of like goods over the POR, together with a decrease in its imports of subject goods, suggests otherwise.[30]

[46] Accordingly, the Tribunal finds no reason to exclude Slacan from the domestic industry.

Composition of the domestic industry

[47] Given HG Canada's exclusion from the domestic industry, there remain six known domestic producers of like goods, namely, Elam, Infasco, Leland, Slacan, Standard Fasteners and Visqué. However, as Visqué's questionnaire response could not be used in the investigation report,[31] it is not possible to include it as part of the domestic industry.

[48] In these circumstances, the Tribunal finds that Elam, Infasco, Leland, Slacan and Standard Fasteners account for a major proportion of the total domestic production of the like goods and, thus,

---

27 In the importers' questionnaire, the net delivered selling value of subject imports is reported directly below the volume of those imports.

28 Exhibit RR-2019-002-19.21 (protected), Vol. 6 at 7; Exhibit RR-2019-002-16.07 (protected), Vol. 4 at 6.

29 Exhibit RR-2019-002-19.21 (protected), Vol. 6 at 7; Exhibit RR-2019-002-16.07 (protected), Vol. 4 at 8.

30 Exhibit RR-2019-002-05A, Schedule 29, Vol. 1.1; Exhibit RR-2019-002-19.21 (protected), Vol. 6 at 7.

31 See Exhibit RR-2019-002-06A (protected), Vol. 2.1 at 12, for the explanation as to why Visqué's questionnaire response could not be included in the investigation report.

constitute the "domestic industry" for the purposes of this expiry review.[32] The Tribunal adds that, even if it only considered those domestic producers whose financial results could be included in the investigation report as forming part of the domestic industry, these producers would still account for a major proportion of the total domestic production of the like goods.

CUMULATION AND CROSS-CUMULATION

[49] 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 [subject goods] that are imported into Canada from any of those countries and
>
> (a) [subject goods] that are imported into Canada from any other of those countries; or
>
> (b) like goods of domestic producers.

[50] 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 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. In the context of an expiry review, the assessment of conditions of competition is forward-looking.[33]

[51] This expiry review involves subject goods from China and Chinese Taipei for which the CBSA determined that the expiry of the order was likely to result in the continuation or resumption of dumping. The CBSA also separately determined that the expiry of the order was likely to result in the continuation or resumption of subsidizing of the subject goods from China.

[52] The issue that arises is whether, pursuant to subsection 76.03(11) of *SIMA*, it is appropriate for the Tribunal to cumulatively assess the effect of the dumping *and* subsidizing of the subject goods from China *and* Chinese Taipei in a single injury analysis or whether the Tribunal must instead conduct two separate analyses: one assessing the effect of the dumping of the subject goods from Chinese Taipei, and a separate analysis assessing the effect of the dumping and subsidizing of the subject goods from China.

[53] In Inquiry No. NQ-2004-005 and Expiry Reviews No. RR-2009-001 and RR-2014-001, the Tribunal found that it was appropriate to perform a single injury analysis on the basis that the subject goods from China and Chinese Taipei generally competed head-to-head with each other and with the like goods in terms of pricing and quality, and were sold through the same distribution channels.[34]

---

32 As HG Canada was excluded from the domestic industry, its domestic production was not taken into account (i.e. it did not form part of the denominator).

33 *Flat Hot-rolled Carbon and Alloy Steel Sheet and Strip* (12 August 2016), RR-2015-002 (CITT) at paras. 46-47; see also *Refined Sugar* (30 October 2015), RR-2014-006 (CITT) at paras. 32-33.

34 *Fasteners Inquiry* at paras. 101-102; *Fasteners 2009 Review* at paras. 101, 105; *Fasteners 2014 Review* at paras. 70, 75.

[54] However, since the Tribunal's decision in Expiry Review No. RR-2014-001, the Tribunal has fully endorsed the second approach mentioned above, i.e. the one requiring that it conduct two separate analyses. In *Carbon Steel Welded Pipe*, the Tribunal thoroughly articulated its view that, interpreted in light of Canada's international obligations under the World Trade Organization (WTO) *Agreement on Subsidies and Countervailing Measures*[35] and *Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994*[36] and, consistent with its interpretation and approach under subsection 42(3) of *SIMA* (the almost identical provision governing cumulation in inquiries conducted pursuant to section 42), it would not be appropriate under subsection 76.03(11) to conduct a cumulative assessment of the effects of goods from a country that have been dumped *and* subsidized with the effects of goods from another country that are only dumped or only subsidized.[37]

[55] The Tribunal followed this approach in *Circular Copper Tube*, which was, until the current expiry review, the only subsequent expiry review in which this issue has arisen.[38]

[56] Leland submitted that the clear wording of subsection 76.03(11) of *SIMA* constitutes proof of parliamentary intent requiring the Tribunal to cumulate and cross-cumulate (i.e. to cumulatively assess the effect of the dumping and subsidizing of subject goods from all countries in a single injury analysis) when the evidence establishes that the conditions of competition for all subject goods are the same, irrespective of whether international law might make it impermissible to perform a cumulative assessment of the effects of goods from a country that have been dumped and subsidized with the effects of goods from another country that are only dumped. It submitted that performing a single injury analysis in the present expiry review would also be consistent with the Tribunal's approach in the 2014 expiry review.

[57] However, the Tribunal notes that Leland's submissions do not address the reasoning and guidance provided in *CSWP* and *Copper Tube*, much less provide arguments that would call into question the reasonableness of the Tribunal's interpretation of subsection 76.03(11) of *SIMA* and conclusion on this issue in those two cases. Fundamentally, the majority remains unconvinced that subsection 76.03(11) compels what Leland purports. Moreover, although the Tribunal did perform a single injury analysis in Expiry Review No. RR-2014-001, this predated its decisions in *CSWP* and *Copper Tube*.

[58] For these reasons, the Tribunal will separately assess the effect of the likely continued or resumed dumping of the subject goods from Chinese Taipei, and the effect of the likely continued or resumed dumping and subsidizing of the subject goods from China,[39] on the domestic industry should the order be rescinded. In other words, the Tribunal will perform a separate likelihood-of-injury analysis for each set of subject goods.

---

35 Online at: https://www.wto.org/english/docs_e/legal_e/24-scm.pdf [*SCM Agreement*].

36 Online at: https://www.wto.org/english/docs_e/legal_e/19-adp.pdf [*AD Agreement*].

37 *Carbon Steel Welded Pipe* (15 October 2018), RR-2017-005 (CITT) [*CSWP*] at paras. 26-54.

38 *Circular Copper Tube* (25 September 2019), RR-2018-005 (CITT) [*Copper Tube*] at para. 30. The Tribunal has followed the same overall approach in a number of injury inquires as well. See *Certain Fabricated Industrial Steel Components* (25 May 2017), NQ-2016-004 (CITT) [*FISC*] at paras. 65-70; *Silicon Metal* (2 November 2017), NQ-2017-001 (CITT) [*Silicon Metal*] at paras. 51-55; *Polyethylene Terephthalate Resin* (16 March 2018), NQ-2017-003 (CITT) [*PET Resin*] at paras. 33-37.

39 It bears noting that, as reflected in past cases, the Tribunal reads WTO jurisprudence as allowing a cross-cumulative assessment of the effects of dumping and subsidizing of the same goods from a single country. See *CSWP* at para. 55; *Copper Tube* at paras. 31-32.

SEPARATE OPINION OF MEMBER BUJOLD ON CUMULATION

[59] With respect, I am unable to agree with my colleagues' analysis on the issue of cumulation. In my opinion, taking into account Canada's international obligations, WTO jurisprudence and the language in *SIMA*, there is simply no impediment to making, in this expiry review, an assessment of the cumulative effect of goods from China, which are likely to be both dumped and subsidized, and of goods from Chinese Taipei which are likely to be dumped only.

[60] Moreover, even if Canada's international obligations precluded such a cumulative assessment (which is clearly not the case in an expiry review for the reasons discussed below), subsection 76.03(11) of *SIMA*, not WTO provisions, panel or Appellate Body reports, is the governing provision which must be given effect on this issue.

[61] In this regard, my conclusion is that subsection 76.03(11) *mandates* an assessment of the cumulative effect of the dumping of goods from both subject countries in the circumstances of this expiry review. In my opinion, the wording of *SIMA* clearly compels this result, regardless of the fact that the goods from China are also likely to be subsidized, and despite the Tribunal's conclusion on the meaning of Canada's international obligations in *CSWP*.

[62] Therefore, I am persuaded that subsection 76.03(11) *cannot* be interpreted and applied to allow the Tribunal to conduct a separate analysis of the effect of the dumping of subject goods from China and Chinese Taipei, which is, in my respectful view, the erroneous result of my colleagues' interpretation. In my analysis below, I will also lay out the legal basis for my conclusion that the Tribunal incorrectly found in *CSWP* that the relevant provisions of *SIMA* only mandate a cumulative assessment in circumstances that would not, at the same time, risk contravening provisions of the *SCM Agreement* or the *AD Agreement*. For this reason, unlike my colleagues, I consider that *CSWP* and, for that matter, other cases in which the Tribunal adopted a similar approach, should not be followed.[40]

Relevance of international trade obligations to the interpretation of *SIMA*

[63] The Tribunal is bound to apply *SIMA*, which may be interpreted, when necessary, with reference to relevant treaty obligations. This principle was enunciated by the Supreme Court of Canada in *National Corn Growers Assn. v. Canada (Import Tribunal)*:[41]

> [I]n circumstances where the domestic legislation is unclear it is reasonable to examine any underlying international agreement. In interpreting legislation which has been enacted with a view towards implementing international obligations, as is the case here, it is reasonable for a tribunal to examine the domestic law in the context of the relevant agreement to clarify any uncertainty. Indeed *where the text of the domestic law lends itself to it*, one should also strive to expound an interpretation which is consonant with the *relevant international obligations*.
>
> [Emphasis added]

---

40 These are *FISC*, *Silicon Metal*, *PET Resin* and *Copper Tube*. I was one of the members of the Tribunal who made the orders in *Copper Tube*. It bears emphasizing that *Copper Tube* was an unopposed proceeding and, contrary to the situation in the present expiry review, the domestic industry in that case endorsed the Tribunal's approach from *CSWP*. Given the submissions of the only participant on the issue of cumulation, it was not necessary for the Tribunal to have another look at the merits of its approach from recent precedents. In this expiry review, Leland's submissions call for a reconsideration of the issue.

41 [1990] 2 SCR 1324 [*National Corn Growers*] at 1371.

[64] Recently, in *Nova Tube Inc./Nova Steel Inc. v. Conares Metal Supply Ltd.*,[42] the Federal Court of Appeal confirmed that, in principle, that is, "*where possible*", domestic legislation such as *SIMA* "*should*" be interpreted in light of Canada's international obligations. The Court cautioned, however, that this principle is subject to a crucial exception: Parliamentary supremacy requires giving effect to an unambiguous statutory provision, even if the result is to default on an international obligation.

[65] It is useful to quote verbatim the pertinent excerpts of the reasons of the Federal Court of Appeal on this issue:

> Canada's international obligations, including obligations in relation to international trade, are relevant in the contextual interpretation of Canadian laws: *B010 v. Canada (Citizenship and Immigration)* at para. 47. It is well-established that, where possible, domestic legislation should be interpreted in light of both Canada's international obligations and the underlying principles of international law. This is particularly so when the legislation, like SIMA, was enacted ". . . with a view towards implementing international obligations": *B010* at para. 47, quoting from *National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 S.C.R. 1324 at 1371, 74 D.L.R. (4th) 449.
>
> However, as this Court recently restated in *Tapambwa v. Canada (Citizenship and Immigration)*, 2019 FCA 34, there is an ". . . important counter-weight to these principles – the doctrine of Parliamentary supremacy. An unambiguous provision must be given effect even if it is contrary to Canada's international obligations or international law" (at para. 44, citing, among other authorities, *Németh v. Canada (Justice)*, 2010 SCC 56 at para. 35, [2010] 3 S.C.R. 281).[43]

[66] From these authorities, it is manifest that Canada's international trade obligations are merely an aid to interpretation that may be resorted to only to the extent that certain conditions are met. These conditions are set out in another recent Federal Court of Appeal decision, *Entertainment Software Assoc. v. Society Composers*.[44] In that case, Stratas J.A. explains that international law enters legal debates before courts and administrative decision makers only in "specific, defined ways."[45] He also notes that international instruments enter into the analysis of the text, context and purpose of legislation "only in specific ways for specific purposes" and that only in "defined circumstances" is international law appropriately considered as part of that method of interpretation.[46] These circumstances are the following:

> *Sometimes the text of a legislative provision explicitly adopts the international instrument wholesale. In such a case, there is no doubt and so the task of legislative interpretation boils down to interpreting the international instrument.*[47]

[67] Examples of this situation include *Office of the Children's Lawyer v. Balev*.[48] In that case, the Supreme Court considered provincial legislation that adopted and incorporated, explicitly, wholesale

---

42 2019 FCA 52 [*Nova Tube*].
43 *Ibid.* at paras. 57-58.
44 2020 FCA 100 [*Entertainment Software*].
45 *Ibid.* at para. 77.
46 *Ibid.* at paras. 81, 92.
47 *Ibid.* at 82.
48 2018 SCC 16, [2018] 1 S.C.R. 398.

and without modification, the *Convention on the Civil Aspects of International Child Abduction*. Thus, in that case, the statutory interpretation exercise required the Court to interpret the Convention itself. Similarly, in *B010 v. Canada (Citizenship and Immigration)*,[49] at issue was the interpretation of provisions of the *Immigration and Refugee Protection Act*.[50] Paragraph 3(2)(b) of the *IRPA* expressly identifies one of the objectives of the statute as "to fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement". Moreover, paragraph 3(3)(f) instructs courts to construe and apply the *IRPA* in a manner that "complies with international human rights instruments to which Canada is signatory." In this situation as well, the statutory interpretation exercise requires interpreting the relevant international instruments.

[68] This is not the case here. *SIMA* does not explicitly adopt or incorporate the *SCM Agreement* or the *AD Agreement* wholesale, nor does it instruct the Tribunal to construe and apply its provisions in a manner that complies with Canada's international obligations. As aptly noted by Stratas J.A. in *Entertainment Software*, just because Canadian domestic legislation is enacted against the backdrop of a treaty that Canada has signed, it cannot be assumed that Parliament has adopted the treaty wholesale, no more and no less. Parliament, in fact, "may have whittled down the provisions of the treaty or may have extended them. Indeed, it may have done something completely different."[51] For this reason, the Tribunal's task in this case is *not* to interpret and apply the provisions of the WTO agreements, it is to discern the authentic meaning of subsection 76.03(11) of *SIMA*.

> *Sometimes the text of a legislative provision is ambiguous but international law may have influenced its purpose or context. In such a case, the relevant international instrument should be examined as part of the overall task of discerning the authentic meaning of the legislation.*[52]

[69] Thus, if legislation is unclear, and international law "may have influenced its purpose or context", international law could enter the interpretive task. It warrants noting that it is the relevant "international instrument" that should be examined as part of the context of an ambiguous provision. Indeed, in *B010*, the Supreme Court indicated that "the values and principles of customary and conventional international law form part of the context in which Canadian laws are enacted."[53] The principles of conventional international law are set out in treaties, not in international jurisprudence. Therefore, the focus of any reference to international law as relevant context to the interpretation of domestic law should be on treaty text.

> *Sometimes the text of a provision seems clear but there is international law surrounding the subject-matter of the provision. In such a case, one should still examine the international law to see whether there are latent ambiguities in the legislative text to be resolved and, if so, to use it alongside other elements of context and purpose to resolve the latent ambiguity.*[54]

---

49 2015 SCC 58, [2015] 3 S.C.R. 704 [*B010*].
50 S.C. 2001, c. 27 [*IRPA*].
51 *Entertainment Software* at para. 74.
52 *Ibid.* at para. 83.
53 *B010* at para. 47.
54 *Entertainment Software* at para. 84.

[70] According to Stratas J.A., this is nothing more than a particular application of the general rule that even where the legislative text is clear, the context and purpose of the legislation nevertheless must be examined in order to see whether there are latent ambiguities that must be resolved.[55]

[71] It follows that if, after interpreting the domestic legislation in this way, the Court or administrative decision maker concludes that the legislation is clear and has no patent or latent ambiguities, it must give it its authentic meaning and apply it. This must be done even if it conflicts with international law. The presumption of compliance with international law relied upon by the Tribunal in *CSWP* does not mean that it has an obligation to interpret and apply *SIMA* in a manner that is in conformity with Canada's international obligations or that there is a requirement for the Tribunal to interpret *SIMA* so that it aligns with the pronouncements of the WTO's Appellate Body.

[72] As noted by Stratas J.A., properly seen, the presumption requires administrative decision makers to take into account any relevant international law as part of the "context surrounding the enactment of legislation", in the circumstances described above, unless the legislation is clear to the contrary. In regards to the limits of this presumption, Stratas J.A made the following important remarks:

> [T]he presumption does not permit those interpreting domestic legislation to leap to the conclusion, without analysis, that its authentic meaning is the same as some international law. Nor does it permit them to twist or amend the authentic meaning of domestic law to make it accord with international law. These would be steps too far: something forbidden under our constitutional arrangements and fundamental orderings.[56]

[73] With respect, I am of the view that the approach adopted by the Tribunal on the issue of cumulation in *CSWP* and other similar cases (and followed by my colleagues in this case) inappropriately relies on this presumption of conformity to make interpretations of the provisions of the *SCM Agreement*, which are not self-executing in Canadian law, prevail over the clear text of subsections 42(3) and 76.03(11) of *SIMA*.

[74] Applying the above analytical framework, I will now examine the two questions that, in my view, must be addressed in order to determine whether and how subsection 76.03(11), the applicable provision in an expiry review, may be interpreted with reference to Canada's international obligations under the *SCM Agreement* or the *AD Agreement*:

(1) Are there relevant international obligations that shed light on the meaning and purpose of this provision as part of the context surrounding the enactment of *SIMA*?

(2) If so, is there a patent or latent ambiguity in the text of subsection 76.03(11) that make it necessary to examine any such obligations to discern the meaning of the provision?

No international obligation to perform two separate likelihood-of-injury analyses—one involving subject goods that were dumped only, and a second involving subject goods that were both dumped and subsidized

[75] The impetus for the Tribunal's approach on the issue of cumulation in *CSWP* is the view that it is mandated by Canada's international obligations, as interpreted by the WTO's Appellate Body in

---

55 *Ibid.*

56 *Ibid.* at paras. 91-92.

U.S. – Carbon Steel (India) on this issue.[57] While the Tribunal acknowledged that the Appellate Body's decision in *U.S. – Carbon Steel (India)* involved an original investigation (that is, in Canada, an inquiry conducted pursuant to section 42 of *SIMA*), and not what *SIMA* refers to as an expiry review, the Tribunal found a way to interpret subsection 76.03(11) of *SIMA* in order to avoid, in an expiry review, what it described as the mischief that this Appellate Body report suggests ought to be avoided by investigating authorities in the context of an original investigation.

[76] To reach this conclusion, the Tribunal began its analysis by referring to its finding in *PET Resin* that subsection 42(3) of *SIMA*, which governs cumulation in injury inquiries, ought to be construed in accordance with Canada's international obligations as interpreted by the Appellate Body in the above-mentioned decision. In particular, the Tribunal noted the Appellate Body's finding that "being subject to simultaneous countervailing duty investigations is a necessary precondition for a cumulative assessment to be undertaken consistently with Article 15.3 of the [WTO's SCM Agreement]."[58] It then reasoned that this finding meant that, in an inquiry, WTO provisions do not permit a cumulative assessment of the effects of goods of a country from which they are both dumped and subsidized with the effects of goods originating in another country from which they are only dumped or only subsidized.[59]

[77] The Tribunal then correctly noted that there are no specific provisions in the *SCM Agreement* requiring it to analyze, in an expiry review, the likelihood of injury from goods that are dumped only separately from the likelihood of injury from goods that are both dumped and subsidized. As such, the Tribunal was satisfied that a failure to do so in the context of an expiry review would not contravene the provisions of the *SCM Agreement*.[60]

[78] Nonetheless, the Tribunal went on to find that that the absence of a WTO prohibition against cumulation under these circumstances does not necessarily lead to the conclusion that cumulation is appropriate in an expiry review. The basis for this conclusion was the view that a decision to resort to cumulation in an expiry review must be, according to the Appellate Body in another report, supported by positive evidence and a sufficient factual basis:

> In *U.S. – OCTG Sunset Reviews*,[61] the Appellate Body said that investigating authorities do not have *carte blanche* to make cumulative assessments during expiry reviews; the decision to resort to cumulation in an expiry review must be supported by positive evidence and a sufficient factual basis. Arguably, a likelihood of injury determination based on the cumulative assessment of goods from countries that are not simultaneously subject to the same type of investigation would be a determination that is not supported by positive evidence or a sufficient factual basis because the causes of injury have been conflated.[62]

---

57 *United States – Countervailing Measures on Certain Hot-rolled Carbon Steel Flat Products from India* (8 December 2014), WTO Docs. WT/DS436/AB/R, Appellate Body Report [*U.S. – Carbon Steel (India)*].

58 *CSWP* at para. 27.

59 *Ibid.* at paras. 28-30. It should be noted that nowhere in its analysis did the Tribunal address the issue of whether subsection 42(3) lent itself to this interpretation.

60 *Ibid.* at para. 48.

61 Appellate Body Report, *United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina* [*U.S. – OCTG Sunset Reviews*], (29 November 2004), WTO Docs. WT/DS268/AB/R at para. 302.

62 *CSWP* at para. 49.

[79] In support of its conclusion that subsection 76.03(11) of *SIMA* should be construed to make cumulation of all subject countries inappropriate in these circumstances, the Tribunal also stated that it would be absurd to interpret subsections 76.03(11) and 42(3) of *SIMA* differently:

> If the Tribunal were to interpret subsection 76.03(11) of *SIMA* with reference to Canada's international obligations under the *SCM Agreement* and conclude that it should cumulate all subject countries since the *SCM Agreement* does not prohibit cumulation in expiry reviews, such an approach would lead to an absurd interpretation of two almost identical provisions under *SIMA*.
>
> . . .
>
> It bears noting that the provision of *SIMA* that mandates cumulation in expiry reviews is, in all material respects, identical to the language used in injury inquiries. Thus, to adopt the interpretation advocated by the domestic industry leads to the result that two very similar provisions of *SIMA*, namely subsections 42(3) and 76.03(11), are interpreted and applied differently. Such an interpretation cannot be sustained.[63]

[80] With respect, I disagree with the Tribunal's analysis in *CSWP* for the following reasons.

[81] First, rather than attempting to discern the authentic meaning of subsection 76.03(11) starting with its text and see if its meaning could contextually be influenced by a relevant international obligation, the Tribunal made the Appellate Body report in *U.S. – Carbon Steel (India)* and WTO requirements the focal point of its analysis. The Tribunal then inappropriately turned to the interpretation of the *SCM Agreement* and, in my view, read into the text of this agreement a prohibitive requirement that does not exist.

[82] The Appellate Body's decision and reasoning in *U.S. – Carbon Steel (India)* does not apply to expiry reviews as it concerned the application of Article 15 of the *SCM Agreement*, which governs original injury investigations. The Tribunal stated as much in *CSWP*. Its finding that the *SCM Agreement* does not require to analyze the likelihood of injury from goods that are dumped-only separately from the likelihood of injury from goods that are both dumped and subsidized in expiry reviews should have been sufficient to settle the issue of whether and how it should apply the Appellate Body's findings in *U.S. – Carbon Steel (India)* in the context of an expiry review.[64] The Tribunal should have concluded that these findings were not relevant to the contextual interpretation of subsection 76.03(11) of *SIMA*.

[83] Simply put, neither the *SCM Agreement* nor the *AD Agreement* contains any provision governing cumulation in expiry reviews. Consequently, there are no international trade obligations that are directly relevant to the interpretation of subsection 76.03(11) of *SIMA* with respect to cumulation.

[84] WTO jurisprudence confirms that the specific provision considered, and determined to have been breached by the United States in *U.S. – Carbon Steel (India)*, Article 15.3, does not apply to expiry reviews (which are referred to as "sunset" reviews in the United States).[65]

---

63 *Ibid.* at paras. 51, 53.

64 *Ibid.* at para. 32.

65 Article 15.3 has a sister provision in the *AD Agreement*, Article 11.3.

[85] In fact, the WTO panel that initially examined the matter in *U.S. – Carbon Steel (India)* noted that investigating authorities were not required to follow the provisions of Article 15 of the *SCM Agreement* when making a likelihood-of-injury determination under Article 21.3 of that agreement, the provision which sets out the relevant WTO disciplines for investigating authorities in expiry reviews. This interpretation has recently been adopted by another WTO panel, in *U.S. – Pipe and Tube (Turkey)*, where it was again confirmed that the disciplines contained in Article 15 (which apply to injury inquiries) need not be followed in the context of expiry reviews.[66]

[86] Notably, the panel in *U.S. – Pipe and Tube (Turkey)* explicitly stated that it did "not consider that the Appellate Body's findings in U.S. – Carbon Steel (India) regarding cumulation of subsidized and dumped, non-subsidized imports in injury determinations in original investigations are relevant" to an assessment under Article 21.3 of the *SCM Agreement*. For this reason, the panel decided not to address Turkey's arguments in this regard. These arguments were based on the object and purpose of the *SCM Agreement* and the relevant negotiating history.

[87] In fairness, the panel report in *U.S. – Pipe and Tube (Turkey)* was issued after the Tribunal's made its order in *CSWP*. The fact remains, however, that the Tribunal's insistence on interpreting subsection 76.03(11) as if Canada had international obligations in this regard was misplaced. For example, the Tribunal continued its analysis to determine how the *SCM Agreement* might still influence its decision on the issue of cumulation and the conduct of the injury analysis in *CSWP*. After discussing the object and purpose of the agreement and referring to another Appellate Body report (*U.S. – OCTG Sunset Reviews*), the Tribunal concluded that a failure to conduct separate injury analyses may "arguably" result in a WTO-inconsistent determination, without specifying which provision would be breached in that event.

[88] The Tribunal's task is not to interpret the *SCM Agreement* and determine the meaning of its provisions, it is to interpret and apply subsection 76.03(11) of *SIMA*. Jurisprudence interpreting the *SCM Agreement* is not necessarily or automatically relevant to the interpretation of *SIMA* provisions. In *CSWP*, the Tribunal did not explain on what basis the Appellate Body reports it relied upon in its analysis formed part of the context surrounding the enactment of subsection 76.03(11) of *SIMA* and were therefore relevant in the interpretative exercise. In other words, in the absence of a relevant obligation in the international agreements, it is doubtful that these materials legitimately entered into the analysis of the text, context and purpose of the provision.

[89] In these circumstances, it is not the Tribunal's role to scrutinize WTO jurisprudence and opine on its arguable meaning and potential repercussions. It was therefore inappropriate for the Tribunal to speculate as to whether, despite the undeniable absence of a prohibitive requirement, the *SCM Agreement* or *AD Agreement* could perhaps indirectly preclude, in expiry reviews, a cumulative assessment of goods from countries that were not simultaneously subject to the same type of investigation. This goes far beyond examining whether the provisions of an underlying international agreement might clarify the meaning of *SIMA* provisions.

[90] In any event, I reviewed the Appellate Body's report in *U.S. – OCTG Sunset Reviews* relied upon by the Tribunal and a few comments are warranted. In that case, the Appellate Body actually found that the requirements of Article 3.3 of the *AD Agreement* (which mirrors Article 15.3 of the *SCM Agreement*) do not apply to likelihood-of-injury determinations in sunset reviews under

---

66 *United States – Countervailing Measures on Certain Pipe and Tube Products from Turkey* (18 December 2018), WTO Docs. WT/DS523/R, Report of the Panel [*U.S. – Pipe and Tube (Turkey)*], at paras. 7.322-7.330.

Article 11.3 of the *AD Agreement* (which mirrors Article 21.3 of the *SCM Agreement*). As such, this report *supports* the view that Canada's international obligations do not prohibit a cumulative assessment of the effect of subsidized and dumped imports from different subject countries in expiry reviews.

[91] The Appellate Body's remark that this does not mean that WTO members have *carte blanche* to make cumulative assessments during expiry reviews was made in rejecting Argentina's argument in that case that finding that Article 3.3 of the *AD Agreement* does not apply in sunset reviews would have that result. Argentina maintained that this outcome would be contrary to the text of Article 11 and the object and purpose of the *AD Agreement*. The Appellate Body disagreed and referred to certain basic requirements that apply in the context of a determination under Article 11.3. Essentially, on my review, this remark simply means that a decision to resort to cumulation in sunset reviews must be grounded on the evidence before an investigating authority and supported by a reasoned explanation. This is precisely what is envisioned by subsection 76.03(11) of *SIMA*: the Tribunal will only cumulate if certain preconditions are met.

[92] In other words, when examined in context, the Appellate Body's comment merely indicates that the "positive evidence" and "sufficient factual basis" requirements apply to a decision to resort to cumulation, which is an aspect of a likelihood-of-injury determination. It does not imply that a likelihood-of-injury determination based on the cumulative assessment of goods from countries that were not simultaneously subject to the same type of investigation would be a determination that is not supported by positive evidence or a sufficient factual basis because the causes of injury have been conflated.

[93] Besides, cumulation is a threshold issue in any expiry review, which is to be determined before the injury analysis is conducted and the evidence on causation examined. As such, the evidence on the broader issues of likely injury and causation is not germane to a decision to cumulate under subsection 76.03(11) of *SIMA*. For this reason, I am of the view that, even if this Appellate Body report was relevant to the contextual interpretation of subsection 76.03(11) of *SIMA* (which it is not), the Tribunal's comments based on this decision do not support its conclusion on how this provision should be interpreted and applied.

[94] Accordingly, I fail to see how the *SCM Agreement* constrains the Tribunal's ability to cumulate, in this expiry review, all subject goods as was done in the original inquiry and the two prior expiry reviews in this case. The perplexing result of the Tribunal's decision in *CSWP* is that a failure to conduct a separate likelihood-of-injury analysis (one involving subject goods that were dumped only, and a second involving subject goods that were both dumped and subsidized) in expiry reviews is deemed WTO-inconsistent, which it is not according to two WTO panels tasked with interpreting the relevant WTO provisions.

[95] As for the issue of the requisite consistency in the interpretation of two *SIMA* provisions that are drafted very similarly which was also relied upon by the Tribunal in reaching its decision, I will address it below in discussing whether subsection 42(3) can and should be interpreted as was determined by the Tribunal in *CSWP* and other recent cases. If it does not, the Tribunal's concern about the necessity to avoid an unsustainable different interpretation of two almost identical provisions disappears.

The requirements of subsections 42(3) and 76.03(11) of *SIMA*

[96] In any case, even assuming that such a prohibitive WTO requirement existed, I will now provide the reasons why, in my view, both subsections 42(3) and 76.03(11) of *SIMA cannot* be interpreted and applied to allow the Tribunal to conduct the separate injury analyses that the Tribunal deemed permissible in *CSWP*, which is the approach preferred by my colleagues in this case. To paraphrase the Supreme Court in *R. v. Hape*, I consider that the words of these provisions are incapable of supporting such a construction.

[97] Again, the authorities make it clear that unambiguous domestic legislation takes precedence over Canada's international obligations. The Tribunal stated as much in *CSWP* and the other cases that follow the same approach on the issue of cumulation: "Canadian legislation will be presumed, and thus be construed, to conform with international law obligations unless the wording of the statute clearly compels a different result."[67]

[98] However, nowhere in these cases did the Tribunal analyze the wording of either subsection 42(3) or subsection 76.03(11) to assess whether it can be interpreted consistently with the Appellate Body's findings in *U.S. – Carbon Steel (India)*. The Tribunal concluded that this interpretation was possible without considering what is mandated (or prohibited) by the applicable *SIMA* provisions. In other words, the Tribunal failed to assess whether the presumption of compliance with international law it invoked was rebutted based on the words of the statute.

[99] For example, in *FISC*, the Tribunal just noted that the fact that the Tribunal can conduct a separate analysis is contemplated by subsection 42(3) of *SIMA*: "[W]here the Tribunal is not satisfied that an assessment of the cumulative effects is appropriate, the Tribunal may proceed with separate (or de-cumulated) assessments of the effects of the dumping or subsidizing of goods imported from more than one country."[68] This statement was sufficient for the Tribunal to draw the following conclusion:

> Given the WTO findings discussed above and the Tribunal's obligation to interpret and apply *SIMA* in a manner that is in conformity with Canada's international obligations (except where *SIMA* clearly conveys a contrary intent, which is not the case here), the Tribunal is of the view that assessing the effects of imports from China, which are both dumped and subsidized, cumulatively with the effects of dumped imports from Korea and Spain would not be appropriate.[69]

[100] A similar conclusion, i.e. that *SIMA* does not convey a contrary intent, was made in the other cases where this issue arose since *FISC*, without examining the full text and intent of the provisions in order to determine what they actually require. Consistent with the modern approach to statutory interpretation, it is necessary to proceed with such an analysis before concluding that it is open to the Tribunal to interpret either subsection 42(3) or 76.03(11) in a manner that is conformity with any international obligations. In this case, this exercise leads to the inescapable conclusion that *SIMA requires* assessing the effects of goods imported from China, which are both dumped and subsidized, cumulatively with the effect of dumped imports from Chinese Taipei.

---

67 *CSWP* at para. 29.
68 *FISC* at para. 69.
69 *Ibid.* at para. 70.

[101] The text of *SIMA* should be the point of departure of the analysis, not what the Appellate Body determined Article 15.3 of the *SCM Agreement* meant. As stated by the Federal Court of Appeal in *Entertainment Software*, "when domestic law and international law both potentially bear upon a legal problem, one must always start by discerning the authentic meaning of the domestic law."[70] The first issue to consider is whether the text of either subsection 42(3) or 76.03(11) is unclear or ambiguous, such that resort to Canada's international trade obligations to interpret it would be justified. As shall be seen, it is not. [71]

[102] Subsection 42(3) of *SIMA* provides as follows:

> In making or resuming its inquiry under subsection (1), the Tribunal *shall* make an *assessment of the cumulative effect of the dumping or subsidizing of goods to which the preliminary determination applies* that are imported into Canada from more than one country *if the Tribunal is satisfied that*
>
> (a) the margin of dumping or the amount of subsidy in relation to the goods from each of those countries is not insignificant and the volume of the goods from each of those countries is not negligible; and
>
> (b) *an assessment of the cumulative effect would be appropriate taking into account the conditions of competition* between goods to which the preliminary determination applies that are imported into Canada from any of those countries and
>
> (i) goods to which the preliminary determination applies that are imported into Canada from any other of those countries, or
>
> (ii) like goods of domestic producers.
>
> [Emphasis added]

[103] This provision clearly mandates an assessment of the cumulative effect of dumped or subsidized goods to which the CBSA's preliminary determination applies if the conditions stipulated are met ("The Tribunal shall make"). Subsection 76.03(11) also makes cumulation mandatory in expiry reviews if similar preconditions are met:

> [T]he Tribunal *shall make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the determination of the President described in subsection (9) applies 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 goods to which the order or finding applies that are imported into Canada from any of those countries and

---

70 *Entertainment Software* at para. 78.

71 Incidentally, prior to the issuance of the Appellate Body report in *U.S. – Carbon Steel (India)*, the Tribunal never suggested that recourse shall be had to the provisions of the *SCM Agreement* or the *AD Agreement* to clarify the meaning of subsection 42(3) or 76.03(11) of *SIMA*. The Tribunal consistently interpreted *SIMA* as allowing a cumulative assessment of goods from countries that are both dumping and subsidizing with goods from other countries that are only dumped.

> (a) goods to which the order or finding applies that are imported into Canada from any other of those countries; or
>
> (b) like goods of domestic producers.
>
> [Emphasis added]

[104] Subsections 42(3) and 76.03(11) contemplate two possibilities: the Tribunal shall make an assessment of the cumulative effect of either the dumping or the subsidizing of goods from multiple countries to which the relevant determination of the CBSA applies. Thus, in an expiry review such as these proceedings, the first step to determine if the Tribunal is compelled to make an assessment of the cumulative effect of either the dumping or the subsidizing of subject goods is to examine the applicable determination of the President of the CBSA. This determination will indicate the assessment of the cumulative effect of which goods, from which countries and of which type (dumping or subsidizing) is mandated. In an original injury inquiry, subsection 42(3) directs the Tribunal to review the CBSA's preliminary determination to make this assessment.

[105] In this case, the determination of the President of the CBSA has two components. The President decided that the expiry of the order in Expiry Review No. RR-2014-001 is likely to result in:

- the continuation or resumption of dumping of certain carbon steel fasteners originating in or exported from China and Chinese Taipei; and
- the continuation or resumption of subsidizing of certain carbon steel fasteners originating and exported from China.

[106] Therefore, the issue for the Tribunal's consideration is whether it shall make an assessment of the cumulative effect of the dumping of the subject goods from China and Chinese Taipei pursuant to subsection 76.03(11) of *SIMA*. The issue of whether it shall make a cumulative assessment of the effect of the subsidizing of certain subject goods does not arise because the applicable determination of the CBSA does not apply to subsidized goods imported into Canada from more than one country.

[107] Per the terms of the provision, the next step in this analysis is to examine whether making an assessment of the cumulative effect of the dumping of the goods from China and Chinese Taipei is appropriate taking into account the "conditions of competition" between goods from those countries imported into Canada or the like goods of the domestic producers. Both subsections 42(3) and 76.03(11) of *SIMA* confer a degree of discretion to the Tribunal in making this determination.

[108] However, this discretion is limited. *SIMA* does not contemplate that the Tribunal may proceed with separate (or decumulated) assessments of the effects of the dumping of goods imported from more than one country simply by declaring that it is not satisfied that a cumulative assessment would be appropriate. The statute compels the Tribunal to look into the relevant "conditions of competition" in order to substantiate any decision on cumulation.

[109] The flaw in the approach followed by the Tribunal in *CSWP* is that, under this approach, a cumulative assessment of the effect of the dumping of the goods from China and Chinese Taipei is *precluded* irrespective of the conditions of competition between them, and between them and the like goods. In this case, my colleagues do not even reach this mandatory step in the analysis since

cumulation is deemed impermissible because the dumped goods from China are also subsidized. Interestingly, in *CSWP*, the Tribunal found that the relevant conditions of competition suggested that the Tribunal could employ a cumulative approach in its analysis of the effect of all the subject goods.[72] This should have been sufficient to conclude that a cumulative assessment of the effect was appropriate under subsection 76.03(11) of *SIMA*.

[110] The result of the approach that the Tribunal described as the "most appropriate" in *CSWP* is that certain dumped goods to which the CBSA's determination applies (dumped goods from China in this case) are excluded from consideration for a cumulative assessment because they happen to be also subsidized. In my opinion, this interpretation is not permitted by the unambiguous terms of subsections 42(3) and 76.03(11). Even if they are also subsidized, as a matter of law, *SIMA* directs the Tribunal to examine whether it would be appropriate, in light of the relevant conditions of competitions, to assess the effect of the dumping of the Chinese subject goods cumulatively with the effect of the dumping of the subject goods from Chinese Taipei. Put another way, regardless of this fact, *SIMA* mandates an assessment of the cumulative effect of dumped goods from *all* subject countries to which the determination of the CBSA applies if the Tribunal is satisfied that it would be appropriate taking into account the relevant conditions of competition.

[111] Subsections 42(3) and 76.03(11) do not give the Tribunal the authority to ignore the question of the conditions of competition in considering whether making a cumulative assessment would be appropriate or to base its decision in this regard on factors other than the relevant conditions of competition. To conclude that the Tribunal has the discretion to conduct separate assessments of the effects of the dumping of goods imported from more than one country on the mere grounds that it is not satisfied that an assessment of the cumulative effects is appropriate given WTO Appellate Body findings like the Tribunal did in *CSWP* is therefore, in my respectful view, contrary to plain terms of the provisions.

[112] This conclusion is also contrary to the intent of the provisions. A review of their legislative history confirms that Parliament did not give such broad discretion to the Tribunal. As noted by the Tribunal in *Refined Sugar*,[73] initially, when subsection 42(3) was added to *SIMA* in 1994, it did provide the Tribunal with the discretion to decide whether a cumulative assessment was warranted even if the preconditions are met. At that time, the provision did not use the word "shall":

> One of the amendments made to SIMA by the WTO Implementation Act was the addition of subsection 42(3), which provides the Tribunal with the discretion to make an assessment of the cumulative effect of the dumping or subsidizing of goods to which a preliminary determination applies. Subsection 42(3) of SIMA provides as follows:
>
> (3) In making or resuming its inquiry under subsection (1), the Tribunal *may* make an assessment of the cumulative effect of the dumping or subsidizing of goods to which the preliminary determination applies that are imported into Canada from more than one country if . . . .
>
> [Emphasis added]

---

72 *CSWP* at para. 26.

73 (6 November 1995), NQ-95-002 (CITT) at 19-20.

[113] However, in March 1999, *SIMA* was amended again and it is reported in the summary of the *Act to Amend the Special Import Measures Act and the Canadian International Trade Tribunal Act*[74] that the key elements of the enactment included the following:

> (e) *mandatory cumulation* in Canadian International Trade Tribunal inquiries and expiry reviews of existing orders and findings, of the injurious effects of the dumping or subsidizing of goods imported into Canada from more than one country;
>
> [Emphasis added]

[114] Parliament's intention to make cumulation mandatory in inquiries and reviews is also supported by the preparatory work that led to the 1999 amendments to *SIMA*. In particular, the Sub-Committees of the House of Commons Standing Committee on Finance and Standing Committee on Foreign Affairs and International Trade that undertook a review of *SIMA* noted the following: "Currently, cumulation is discretionary in injury inquiries under section 42(3) of SIMA, although it is mandatory in U.S. law". The Sub-Committees then made the following recommendation: "The Sub-Committees recommend that SIMA be amended to make cumulation mandatory in the CITT's procedures for determining injury." A similar recommendation was made for mandatory cumulation in expiry reviews: "The Sub-Committees further recommend that section 76 of SIMA be amended to require the CITT to assess the cumulative injurious effects of dumping/subsidizing in conducting interim and expiry reviews."[75]

[115] The actual relevant amendments made were to replace the word "may" with the word "shall" in subsection 42(3) and adding subsection 76.03(11) to *SIMA*, as it reads today, including the phrase "The Tribunal shall make". Therefore, the Tribunal cannot interpret and apply the relevant provisions as if cumulation had not been made mandatory in 1999 and still afforded it with broad discretion on this issue. This is a situation in which Parliament decided not to provide the Tribunal with the authority it has established in *CSWP*, that is, interpret subsection 43(2) or 76.03(11) in conformity with the findings of the Appellate Body in *U.S. – Carbon Steel (India)*.

[116] The 1999 amendments also highlight the major difference between, on the one hand, subsections 42(3) and 76.03(11) of *SIMA*, and the relevant provisions of the *SCM Agreement* and the *AD Agreement* on the other. Both Article 15.3 of the *SCM Agreement* and 3.3 of the *AD Agreement* provide that an investigating authority *may* cumulatively assess the effects of dumped (in the case of Article 3.3) or subsidized (in the case of Article 15.3) imports from more than one country to the extent that the stipulated conditions are met.

[117] In contrast, whereas the use of the word "may" signals that the provisions of the *SCM Agreement* and the *AD Agreement* give discretion to an investigating authority on whether to cumulate even if the above-noted conditions are met, subsections 42(3) and 76.03(11) of *SIMA* mandate cumulation if those same conditions are met ("shall make [a cumulative assessment]"). In my view, the fact that *SIMA* does not track the language of the WTO provisions is significant and clearly means that Parliament did not implement them into Canadian law without modification. Accordingly, the wording of *SIMA* conveys a different intent than that of the relevant WTO

---

74 R.S. 1999, c. 12, ss. 26, 36; *Canada Gazette*, Part III (11 June 1999), Vol. 22, No. 1.

75 The minutes of the proceedings and evidence of the Sub-Committees, including the final report on *SIMA* are available online: https://www.ourcommons.ca/Content/archives/committee/352/fore/reports/04_1996-12/chap3-e.html and https://www.ourcommons.ca/Content/archives/committee/352/fore/reports/04_1996-12/chap5-e.html.

provisions. This alone casts serious doubt on the view that, as it relates to the issue of cumulation, *SIMA* must be construed to comply with Canada's international trade obligations or that such obligations provide useful context for the interpretation of either subsection 42(3) or 76.03(11) of *SIMA*.

[118] In summary:

- Where the relevant CBSA determination applies to dumped goods from more than one country, as in this case, goods from *all* such countries must be considered by the Tribunal in determining whether an assessment of the cumulative effect of dumping is appropriate pursuant to either subsection 42(3) or 76.03(11) of *SIMA*.

- Regardless of whether they are also subsidized, it is this legal conclusion of the CBSA that triggers the application of these provisions to these goods. Neither subsection 42(3) nor subsection 76.03(11) gives the Tribunal the discretion to exclude dumped goods imported from any country to which the CBSA's determination applies from its assessment under these provisions; there is no legal basis to limit the scope of the relevant CBSA determination to goods that are only dumped.

- The Tribunal's discretion under subsections 42(3) and 76.03(11) is constrained by the words of the statute.

- *SIMA* does not contemplate that the Tribunal can conduct separate injury analyses of the effect of the dumping of goods to which the CBSA determinations applies whenever it finds that a cumulative assessment would not be appropriate for any reason.

- The Tribunal's discretion under subsections 42(3) and 76.03(11) is limited to determining whether a cumulative assessment of the effect of the dumped goods imported from multiple countries would be appropriate "taking into account the conditions of competition" between the goods referred to in paragraph 42(3)(b) or paragraphs 76.03(11)(a) and (b).[76]

- The phrase "would be appropriate" is expressly linked to the relevant conditions of competition. In this way, the statute defines, and thereby limits, the factors that the Tribunal may consider in order to determine whether cumulation is appropriate.

- The fact that certain of the goods to which the relevant CBSA determination applies are both dumped and subsidized is not a legally relevant factor. In itself, this fact does not preclude cumulatively assessing their effect with the effect of imported goods from other countries that are only dumped, to the extent that this assessment would be appropriate taking into account the relevant conditions of competitions.

- *SIMA* mandates the Tribunal to make an assessment of the cumulative effect of all dumped goods from multiple countries to which the relevant CBSA determination applies if it is satisfied that similar conditions of competition between the dumped subject goods and between these subject goods and the like goods exist (in the context of an injury inquiry) or are likely to exist (in the context of an expiry review).

---

[76] In the case of subsection 42(3), assuming that the margin of dumping or amount of subsidization for each subject country is not insignificant and their respective volume of dumped goods is not negligible, as required by paragraph 42(3)(a) of *SIMA*.

[119] The meaning of the phrase "conditions of competition" is not ambiguous and is well-established. Conditions of competition refer to how the goods compete in the marketplace. 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 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.

[120] While there may be other factors that the Tribunal could consider in considering the conditions of competition between goods in order to decide whether or not the dumped imports from a particular country should be cumulated, the fact that certain dumped imports are also subsidized is not a relevant factor in this assessment. In my view, the fact that certain dumped goods are also subsidized might render them more competitive in the marketplace, but it does not impact the overall conditions of competition between the subject goods and the like goods. This fact does not make the dumped and subsidized goods distinguishable from other subject goods in the marketplace or result in them competing under different or unique conditions. As such, it does not provide a basis to find that the effect of dumped and subsidized goods should not be assessed cumulatively with that of other dumped goods.

[121] Therefore, I see no ambiguity that would justify resort to Canada's international obligations to interpret either subsection 42(3) or 76.03(11). The meaning of the terms of these provisions is clear and their wording compels a different result than the Tribunal's conclusion in *CSWP*.

[122] In *CSWP*, the Tribunal referred to a statement made by Gonthier J. in *National Corn Growers* to find that, although the language of *SIMA* does not contain any prohibition on cumulating in circumstances where one group of goods is dumped and another is dumped and subsidized, "it is only when the provisions of SIMA are interpreted with reference to the obligations in the SCM Agreement and the jurisprudence of the WTO that the issue with respect to how cumulation is addressed in SIMA becomes apparent."[77] While it is reasonable to make reference to an international agreement at the very outset of an inquiry to determine if there is any ambiguity, even latent, in the domestic legislation, I would note that the "issue" that becomes apparent when reference is made to the provisions of the *SCM Agreement* is not a latent ambiguity in the relevant provisions of *SIMA*. Rather, what becomes apparent is the potential inconsistency of the manner in which they shall be interpreted and applied with the Appellate Body's interpretation of the provisions of the *SCM Agreement*.

[123] In this situation, the Tribunal is required to give effect to the unambiguous provisions of domestic legislation. With respect, it is not possible to find that *SIMA* compels the Tribunal to cumulate only in circumstances that would not, at the same time, risk contravening provisions of the *SCM Agreement* or the *AD Agreement*. This outcome is tantamount to considering the Appellate Body's view on the meaning of provisions of these agreements to be the superior law that governs domestically in Canada and making the domestic statute passed by Parliament fit with that meaning.[78]

---

77 *CSWP* at para. 50.

78 *Entertainment Software* at para. 71.

[124] Turning to the application of subsection 76.03(11) of *SIMA* to the facts of this case, conditions of competition do not have to be identical in every aspect and goods do not have to be equally present in every market circumstance for conditions of competition to make cumulation appropriate.[79] Applying this standard, overall, there is sufficient evidence to support a finding that the subject goods from China and Chinese Taipei compete against each other and with the like goods and that the conditions of competition between these goods are similar.

[125] In particular, the subject goods and like goods are generally interchangeable and are commodity products traded largely on the basis of price across Canada.[80] Subject and like goods are sold through similar channels of distribution, even though the like goods are concentrated in sales to distributors/wholesalers and end users/OEMs, imports from Chinese Taipei are primarily sold to retailers, and imports from China are mostly sold to distributors/wholesalers and to end users/OEMs. Overall, there is a sufficient overlap in distribution channels to support a finding that there is enough competition under the same basic conditions between subject goods from China and subject goods from Chinese Taipei and with the like goods to support a finding of cumulation.[81] On balance, the evidence indicates that, in the near to medium term, the subject goods from both subject countries are likely to continue to compete among themselves and with the like goods in overlapping geographical areas and would be sold through similar channels of distribution.

[126] I am therefore satisfied that an assessment of the cumulative effect of the dumped goods would be appropriate in this case taking into account the conditions of competition between all the goods. Accordingly, a single injury analysis is required in this expiry review.

[127] As for the fact that the subject goods from China are also subsidized, I consider that it is impossible to differentiate the effects likely to be caused by the dumping of these goods from those caused by their subsidizing for the purpose of this analysis. This is consistent with the Tribunal's long-standing view that the effects of dumping and subsidizing of the same goods from a particular country are manifested in a single set of injurious price effects, and it is not possible to isolate the effects caused by the dumping from the effects caused by the subsidizing. For that reason, the Tribunal's practice is to cumulatively assess the effects of dumping and the effects of subsidizing.

[128] By necessary implication, *SIMA* therefore mandates a cumulative assessment of subject imports from China, that are both dumped and subsidized, with subject imports from Chinese Taipei, that are only dumped, in the circumstances of this case. There is no legal or factual basis to segregate the effect of the subject imports from China in the analysis. Whether this approach results in a WTO-inconsistent likelihood-of-injury analysis is a matter to be addressed by Parliament, not this Tribunal.[82]

[129] Finally, I agree with my colleagues for the reasons provided in the injury analysis below that, even if the effect of goods from China and Chinese Taipei is analyzed separately, the expiry of the order is likely to result in material injury to the domestic industry. It follows that the outcome of this

---

79 See e.g. *Corrosion-resistant Steel Sheet* (21 February 2019), NQ-2018-004 (CITT) at para. 45; *Cold-rolled Steel* (21 December 2018), NQ-2018-002 (CITT) at para. 39.

80 Exhibit RR-2019-002-06A (protected), Tables 27, 29 and 31, Vol. 2.1.

81 Exhibit RR-2019-002-15.09, Vol. 3 at 8; Exhibit RR-2019-002-05A, Tables 2, 3 and 4, Vol. 1.1.

82 For example, *SIMA* could be amended to provide the Tribunal with more discretion to analyze the effect of goods from each subject country separately.

expiry review would be the same if the Tribunal were to make an assessment of the cumulative effect of the dumping of the goods from both subject countries.

[130] In these circumstances, it is appropriate for me to exercise judicial economy and refrain from providing an alternative likelihood-of-injury analysis in which the effect of the subject goods from both subject countries would be assessed cumulatively even if, in my view, such an analysis is warranted.

LIKELIHOOD-OF-INJURY ANALYSIS

[131] An expiry review is forward-looking.[83] It follows that evidence from the period 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.[84]

[132] There is no presumption of injury in an expiry review; findings must be based on positive evidence, in compliance with domestic law and in accordance with the requirements of the applicable WTO agreements.[85] In the context of an expiry review, positive evidence can include evidence based on past facts that tend to support forward-looking conclusions.[86]

[133] 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 a period that can extend up to 24 months from the date on which the order or finding would be rescinded. In this case, the Tribunal was not presented with any argument that it should consider limiting its examination to a shorter period. It will therefore focus its analysis on the next 24 months.

[134] Subsection 37.2(2) of the *Special Import Measures Regulations*[87] lists factors that the Tribunal may consider in addressing the likelihood of injury in cases where the CBSA has determined that there is a likelihood of continued or resumed dumping or subsidizing. The factors that the Tribunal considers relevant in this expiry review are discussed below.

[135] The discussion of these factors will, for the most part, apply to subject goods from both China and Chinese Taipei. However, as the Tribunal must ultimately make a separate assessment of the effect of the likely continued or resumed dumping of the subject goods from Chinese Taipei, and the effect of the likely continued or resumed dumping and subsidizing of the subject goods from China, it will, where appropriate, make relevant distinctions between the subject goods from China and those from Chinese Taipei and ensure not to attribute the effect of one to the other.

---

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

84 *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 2013 Review*] at para. 21.

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

86 *Thermoelectric Containers* at para. 14; *Aluminum Extrusions 2013 Review* at para. 21.

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

Changes in market conditions

[136] In order to assess the likely volumes and prices of the subject goods and their impact on the domestic industry if the order is rescinded, the Tribunal will first consider changes in international and domestic market conditions that occurred during the POR and that are likely to occur over the next 24 months.[88] These changes provide some general context for the Tribunal's analysis and are likely to occur whether the order is continued or rescinded.

International market conditions

[137] Leland submitted that, even before the COVID-19 pandemic, global demand for fasteners had weakened since the time of the Tribunal's last expiry review. It submitted that, after the COVID-19 pandemic, the global economic situation has worsened significantly, as the world economy enters the deepest recession since the Great Depression.

[138] According to Leland, demand for fasteners fluctuates in line with general economic growth because it is driven by the varied downstream applications for fasteners, including general construction, machinery and equipment manufacturing, and household furniture and appliances manufacturing.[89] The Tribunal concurs with that view.

[139] Already in January 2020, the International Monetary Fund (IMF), in its World Economic Outlook Report, downgraded its 2020 and 2021 global GDP growth forecasts to 3.3 and 3.4 percent, respectively, which were 0.1 and 0.2 percentage points lower than its October forecasts.[90] With respect to China, the IMF made reference to an "ongoing structural slowdown" and projected GDP growth of 6.0 percent in 2020 and 5.8 percent in 2021, down from an estimated 6.1 percent in 2019.[91]

[140] Leland submitted that, in addition to sluggish growth in overall economic activity prior to the COVID-19 pandemic, the ongoing U.S.-China trade dispute has had a compounding impact on global demand for fasteners. On September 24, 2018, the United States imposed a 10 percent tariff on various products from China—including screws that fall within the scope of the goods covered by the Tribunal's order—with an annual trade value of approximately $200 billion.[92] This tariff, imposed under the authority of section 301 of the *Trade Act of 1974* (the section 301 tariff), was subsequently increased to 25 percent on May 10, 2019.[93]

[141] In response to the section 301 tariff, China levied retaliatory tariffs of 5 to 10 percent on exports of various U.S. origin goods (not including fasteners) and increased its export tax rebate

---

88 See paragraph 37.2(2)(j) of the *Regulations*.

89 Exhibit RR-2019-002-15.09, Vol. 3 at 10. See also Exhibit RR-2019-002-15.06, Vol. 3 at 10, where Standard Fasteners states that demand for fasteners is affected by construction activity and the general health of the economy.

90 Exhibit RR-2019-002-B-07, Vol. 11 at 16, 22.

91 *Ibid.* at 17.

92 Exhibit RR-2019-002-B-07, Attachment 5, Vol. 11. The HS codes for the products subject to the section 301 tariff include the codes under which the subject goods are commonly classified. See Exhibit RR-2019-002-05A, Vol. 1.1 at 11.

93 Exhibit RR-2019-002-B-07, Attachment 6, Vol. 11.

applicable to steel products (including fasteners) from 5 to 13 percent in a number of successive steps, with the last increase occurring in March 2020.[94]

[142] In January 2020, the IMF stated that "[h]igher tariff barriers between the United States and its trading partners, notably China, have hurt business sentiment and compounded cyclical and structural slowdowns underway in many economies over the past year."[95] Concretely, the section 301 tariff appears to have disrupted China's exports of coach screws and wood screws to the United States, as evidenced by U.S. import data showing a roughly 22 percent decline in the volume of imports of these screws through the first nine months of 2019, as compared to the same period in 2018 (before the tariff was imposed).[96] The risk that these exports will be diverted to Canada should the order be rescinded did not exist at the time of the last expiry review.

[143] The COVID-19 pandemic has now manifestly exacerbated the situation, with the IMF revising, in April 2020, its 2020 global GDP growth forecast to a contraction of 3 percent, a downgrade of 6.3 percentage points from its January 2020 forecast.[97] It projected a partial recovery in 2021 with growth of 5.8 percent, but noted that this was based on the assumption that the pandemic would fade in the second half of 2020 and that policy actions taken around the world would be effective in preventing widespread economic losses.[98] For China and Chinese Taipei, the IMF projected growth of only 1.2 percent and a contraction of 4 percent in 2020, respectively.[99] In May 2020, it stated that incoming economic data for many countries was below its already pessimistic assessment for 2020.[100]

[144] The evidence on the record indicates that global demand for fasteners dropped markedly beginning in March 2020, in line with reduced global industrial activity resulting from the COVID-19 pandemic. Indeed, several major global producers of fasteners reported reductions in orders and sales in the order of 10 percent for the month of March or the first quarter of 2020[101] and, in European countries hardest hit by the virus, the reported declines in demand for fasteners were as high as 80 percent.[102] As for China and Chinese Taipei, demand in manufacturing and construction, which drive demand for fasteners, also declined as the virus took hold. For example, in Chinese Taipei, new orders for manufactured goods fell in April 2020 at the fastest rate since the global financial crisis.[103]

[145] In summary, the above-noted evidence and forecasts clearly illustrate the damaging effects that the COVID-19 pandemic has had, and continues to have, on the global economic outlook and, of particular significance in the context of this expiry review, demand for fasteners in the near future.

---

94 *Ibid.*, Attachment 8, Vol. 11; Exhibit RR-2019-002-B-08 (protected), Vol. 12 at 305, 306, 629.
95 Exhibit RR-2019-002-B-07, Vol. 11 at 19.
96 *Ibid.*, Attachment 14, Vol. 11. The U.S. import data provided by Leland is for HS codes that cover coach screws and wood screws but do not distinguish between carbon steel and stainless steel screws.
97 Exhibit RR-2019-002-B-07, Vol. 11 at 353, 573.
98 *Ibid.* at 353, 573, 580.
99 *Ibid.* at 382, 595.
100 *Ibid.* at 604.
101 Exhibit RR-2019-002-B-08 (protected), Vol. 12 at 30, 391, 394, 397.
102 Exhibit RR-2019-002-B-07, Attachments 24 and 25, Vol. 11.
103 *Ibid.*, Attachment 19, Vol. 11.

Domestic market conditions

[146] The investigation report indicates that the Canadian apparent market for carbon steel screws decreased by 24 percent in 2018 and by a further 3 percent in 2019.[104] The significant decrease in the apparent market in 2018 was largely attributable to a 35 percent decrease in importers' sales of subject goods, as domestic producers' sales from domestic production increased by 14 percent in that same year. However, it should be noted that the decrease in importers' sales of subject goods resulted almost entirely from the activities of a single importer[105] and should therefore not be considered as being representative of a broader market trend.

[147] The share of the apparent market held by importers of both subject and non-subject goods, including HG Canada's sales from domestic production, decreased from 94 percent in 2017 to 91 percent in 2018 and 2019.[106] Conversely, the domestic industry's share of the market increased from 6 percent in 2017 to 9 percent in 2018 and 2019. As the observed shift in market share that took place from 2017 to 2018 is, in large part, attributable to the activities of the single importer mentioned above, the respective share of the market held by importers and domestic producers remained rather stable throughout the POR. In fact, the domestic industry's share of the market in 2018 and 2019 was comparable to its share of approximately 10 percent in the previous two expiry reviews.[107]

[148] Average market pricing increased throughout the POR, with a large jump of 37 percent in 2018 and a further 1 percent gain in 2019.[108] The significant increase in pricing in 2018 was largely attributable to a 58 percent increase in importers' prices for sales of subject goods which, again, resulted almost entirely from the single importer mentioned above who sold a large additional volume of subject goods at much lower prices in 2017. Domestic producer pricing remained relatively flat throughout the POR and, save for 2017, so too did importer pricing.[109] There was significant pricing disparity between the domestic producers as some had average prices that were many orders of magnitude higher than those of others.[110] The Tribunal has previously ascribed such pricing disparity to product mix issues and there is no reason to believe that this is not the case here as well.[111]

[149] In January 2020, the IMF forecasted modest GDP growth of 1.8 percent for Canada in 2020 and in 2021.[112] However, in April 2020, after the COVID-19 pandemic was declared, it forecasted a contraction of 6.2 percent in 2020, with a partial recovery in 2021 with growth of 4.2 percent.[113] For its part, Export Development Canada, in its April 30, 2020, Global Economic Outlook, forecasted a

---

104 Exhibit RR-2019-002-05A, Table 12, Vol. 1.1.

105 This importer imported and sold a large additional volume of subject goods in 2017, as compared with the volume it imported and sold in 2018 and 2019. Year-to-year data on volumes and average unit pricing for this importer suggests that these additional goods were imported and sold at significantly lower prices than its other imports.

106 Exhibit RR-2019-002-05A, Table 13, Vol. 1.1.

107 See *Fasteners 2014 Review* at paras. 96, 115; *Fasteners 2009 Review* at para. 200.

108 Exhibit RR-2019-002-05A, Table 26, Vol. 1.1.

109 *Ibid.*, Table 25, Vol. 1.1.

110 Exhibit RR-2019-002-06A (protected), Table 25, Vol. 2.1. However, prices for each domestic producer remained relatively stable throughout the POR.

111 *Fasteners 2014 Review* at para. 109.

112 Exhibit RR-2019-002-B-07, Vol. 11 at 22.

113 *Ibid.* at 375.

contraction of 9.4 percent in 2020, with growth of 5.2 percent in 2021 assuming, among other things, that strict containment measures related to COVID-19 begin to ease in most countries throughout the second half of 2020.[114]

[150] Leland submitted that downstream demand for fasteners in Canada has already been significantly affected as both the manufacturing and construction sectors have been adversely impacted by the COVID-19 pandemic, with uncertainty continuing throughout 2020 and 2021. For example, as a result of the pandemic, Ontario severely curtailed construction activity beginning in early April 2020.[115] By the end of April 2020, the Canadian oil and gas sector had also suffered greatly, with claims that over $7 billion of capital investment had already been cancelled from budgets and forecasts of significant drops in expected activity for oil wells in 2020 versus 2019.[116]

[151] Looking forward, the evidence on the record indicates that domestic demand for carbon steel screws will likely be weak over the next 12 to 24 months as manufacturers are generally more pessimistic about their prospects due to uncertainty about the length of customer shutdowns and other measures taken to halt the spread of COVID-19.[117] According to Mr. Byron Nelson, President of Leland, the pandemic will only amplify customers' focus on price for fasteners as they will be looking to reduce costs given decreased demand in their own downstream space.[118]

[152] From this evidence, the Tribunal finds that changes in market conditions since the last expiry review, including the severe recession that the world and Canadian economies have entered, and the likely heightened demand for low-priced carbon steel screws due to the effect of the COVID-19 pandemic on downstream users in the Canadian market, will result in pressure on the domestic industry that did not exist to the same extent at the time of the last expiry review.

[153] Therefore, the Tribunal finds that the current and foreseeable international and domestic market conditions are likely to increase the domestic industry's vulnerability to the resumed or continued dumping of the subject goods from Chinese Taipei or the resumed or continued dumping and subsidizing of the subject goods from China.

Likely import volume of the subject goods

[154] 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.

[155] The Tribunal's assessment of the likely volumes of the subject goods 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 in respect of goods of the same description or

---

114 *Ibid.* at 411, 427.
115 Exhibit RR-2019-002-B-07, Attachment 31, Vol. 11.
116 *Ibid.*, Attachment 32, Vol. 11.
117 Exhibit RR-2019-002-B-07, Vol. 11 at 503.
118 Exhibit RR-2019-002-B-03 at para. 15, Vol. 11.

similar goods, and whether measures adopted by other jurisdictions are likely to cause a diversion of the subject goods to Canada.[119]

[156] Leland submitted that, if the order is rescinded, current international and domestic market conditions are such that there is an even greater likelihood that devastating volumes of subject goods will be imported from China and Chinese Taipei than there was during the Tribunal's last expiry review. In its submissions, Leland addressed a number of factors which it believes will have an impact on likely import volumes, namely, the significant and growing excess production capacity of producers in China and Chinese Taipei, their export orientation and their conduct during the COVID-19 pandemic, as well as declining ocean freight rates, trade measures in other jurisdictions and the dominant position of the subject goods within the Canadian market. HG Canada addressed many of the same factors in its submissions.

[157] For the reasons set out below, the Tribunal finds that the rescission of the order would likely result in a significant increase in the volume of imports of both the dumped goods from Chinese Taipei and the dumped and subsidized goods from China in the next 24 months.

[158] First, China and Chinese Taipei are both leading producers of fasteners[120] and have sufficient excess capacity, which would allow their producers to increase production significantly above current levels. As noted by the CBSA, there are more than 8,000 fastener enterprises in China and over 1,650 in Chinese Taipei.[121]

[159] The evidence on the record indicates that, over the POR, even the single producer from China and six producers from Chinese Taipei who responded to the Tribunal's foreign producers' questionnaire collectively manufactured a larger quantity of goods meeting the product definition than the domestic industry's total production of like goods.[122] In fact, these foreign producers' collective excess production capacity alone exceeded the domestic industry's total production of like goods over this period. Therefore, considering the sheer number of producers present in both the Chinese and Chinese Taipei markets, it is not unreasonable to conclude that, even with high capacity utilization rates, producers from either of these markets would, on their own, have sufficient excess capacity to easily overtake the entire Canadian market.

[160] Second, there is evidence to suggest that producers and exporters of subject goods in both China and Chinese Taipei have begun to accumulate large inventories due to continued production despite reduced demand resulting from the effects of the COVID-19 pandemic on downstream users of fasteners. Producers and exporters will be seeking alternative markets to export these inventories.

[161] Specifically, with respect to China, it was projected that, by the end of March 2020, finished and semi-finished steel inventories held by steelmakers, rolling and processing plants and traders would have tripled year-over-year to 100 million tonnes.[123] Moreover, it was posited that, even if domestic demand and exports were to increase by 30 percent in the following months, such strong

---

119 See paragraphs 37.2(2)(d), (f), (h) and (i) of the *Regulations*.

120 Given the absence of information pertaining to the carbon steel screw industry in China and Chinese Taipei, the Tribunal has primarily relied, as it did in Expiry Review No. RR-2014-001, on evidence concerning the overall fastener industry in China and Chinese Taipei. Therefore, references to their production, capacity and exports covers a broader range of products than carbon steel screws. See *Fasteners 2014 Review* at para. 136.

121 Exhibit RR-2019-002-03A at paras. 91, 117, Vol. 1.

122 Exhibit RR-2019-002-06A (protected), Tables 36, 40-41, Vol. 2.1.

123 Exhibit RR-2019-002-B-07, Vol. 11 at 506-507.

demand would drive up steel production, thereby slowing the drawdown of inventories.[124] In these circumstances, producers will look to increase their export volumes to maintain sales and prevent inventory devaluation. Indeed, there is evidence that this is already being seen in Europe as "catch up" shipments of fasteners from China have resulted in increasing inventories in the EU.[125]

[162] As for Chinese Taipei, it is not unreasonable to assume that, since economic activity, including the production of fasteners, continued during the COVID-19 pandemic,[126] fastener producers will likely have placed their production into inventory as economic shutdowns affected shipping and sales across the globe. Thus, similar to China, producers in Chinese Taipei will also actively look to increase their export volumes to prevent accruing large inventory carrying costs and to minimize the risk of inventory devaluation.

[163] Third, producers in China and Chinese Taipei are highly export-oriented and must therefore continually seek export markets for their fasteners. Although the Tribunal has previously noted that the fasteners industry is not a capital-intensive industry guided by a production imperative, it has acknowledged that "following normal commercial principles, fastener producers are likely to try to find markets for excess capacity, if it is profitable to do so."[127]

[164] The fact that producers in China and Chinese Taipei tend to be highly export-oriented is supported by an abundance of evidence. Not only did the seven foreign producers who responded to the Tribunal's questionnaire indicate that they exported all, or nearly all, their production of goods meeting the product definition,[128] the CBSA concluded, in its expiry review investigation, that China continues to be dependent on the export of its fasteners and that Chinese Taipei is one of the most important exporters of fasteners in the world with over 90 percent of its production destined for export markets.[129]

[165] China's export orientation is further demonstrated by the fact that China's Ministry of Commerce estimated that the EU anti-dumping measure previously imposed on fasteners from China affected $1 billion worth of exports and more than 100,000 jobs in China.[130] Added to the foregoing are the maintenance of policies by the Chinese government aimed at increasing exports, such as the previously mentioned export tax rebate, which was increased from 5 to 13 percent for a number of steel products, including fasteners, in response to the section 301 tariff imposed by the United States.

[166] Looking forward, the dismal GDP growth projected by the IMF for China and Chinese Taipei as a result of the COVID-19 pandemic, and the consequent decrease in demand for fasteners in these and other markets will, without question, increase the volume of carbon steel screws available for export in the near to medium term.

[167] Fourth, a decline in international ocean freight rates provides an additional incentive for producers in China and Chinese Taipei to export to Canada. The Tribunal came to a similar

---

124 *Ibid.* at 507.
125 *Ibid.* at 397.
126 Exhibit RR-2019-002-B-07, Attachments 36, 37, Vol. 11.
127 *Fasteners 2009 Review* at paras. 159-161.
128 Exhibit RR-2019-002-06A (protected), Tables 36, 40-42, Vol. 2.1.
129 Exhibit RR-2019-002-03A at paras. 95, 117, 120, Vol. 1.
130 Exhibit RR-2019-002-B-07, Vol. 11 at 607.

conclusion in Expiry Review No. RR-2014-001, where it noted that the Baltic Dry Index (BDI)[131] had ranged from 840 to 1,553 during the period of review but that, in the third quarter of 2014, ocean freight costs were virtually at their lowest level since 2003.[132]

[168] The evidence on the record in the present expiry review indicates that, in February 2020, the BDI dropped to a new all-time low of 553 due to reduced demand, an oversupply of ships and lower commodity prices.[133] In May 2020, two months after the COVID-19 pandemic had been declared, the BDI stood at 477 and was expected to drop to 348 over the next 12 months, making it even less expensive for exporters to ship subject goods to Canada.[134]

[169] Fifth, trade measures in other jurisdictions are likely to cause a diversion of the subject goods into Canada if the order is rescinded. Although the EU anti-dumping measure against fasteners from China was repealed in 2016,[135] new measures have been put in place by both the United States and South Africa in the last year.

[170] The United States imposed anti-dumping measures against carbon alloy steel threaded rod from China, India, Chinese Taipei and Thailand and countervailing measures against those goods from China and India.[136] As noted above, it also imposed a 25 percent tariff (i.e. the section 301 tariff) on various products from China, including screws that fall within the scope of the subject goods. For its part, South Africa applied a safeguard measure on imports of bolt ends and screw studs, screw studding and other hexagon nuts or iron or steel from all sources, including China and Chinese Taipei.[137]

[171] Given that producers and exporters from China and Chinese Taipei have access to well-established distribution channels in Canada, these measures significantly increase the risk that subject goods will be diverted to Canada should the order be rescinded.

[172] Sixth, the continued strong presence of the subject goods throughout the POR, notwithstanding the Tribunal's order, indicates that not only have producers in China and Chinese Taipei maintained an interest in the Canadian market, but that they have also maintained a competitive position within this market. This is borne out by the data in the investigation report, which indicates that importers' sales from imports of subject goods accounted for the lion's share of the apparent market over the POR.[138] While sales from imports of subject goods from Chinese Taipei

---

131 The BDI provides a benchmark for the price of moving major raw materials by sea. It takes into account 23 different shipping routes carrying coal, iron ore, grains and many other commodities. See Exhibit RR-2019-002-B-07, Vol. 11 at 541.

132 *Fasteners 2014 Review* at paras. 90, 146.

133 Exhibit RR-2019-002-B-07, Vol. 11 at 528-529.

134 *Ibid.* at 540, 543, 545.

135 While the investigation report indicates that the EU currently has a measure in place against certain iron or steel fasteners from China, this measure was repealed in 2016. See Exhibit RR-2019-002-05A, Table 44, Vol. 1.1; Commission Regulation (EU) No. 2016/278 of 26 February 2016, Official Journal of the European Union, L52/24.

136 Exhibit RR-2019-002-B-07, Vol. 11 at 550.

137 *Ibid.* at 551-555.

138 Exhibit RR-2019-002-06A (protected), Table 13, Vol. 2.1. Imports of subject goods by importers also accounted for a major proportion of all imports of subject goods over the POR. See Exhibit RR-2019-002-06A (protected), Table 9, Vol. 2.1.

represented a much larger proportion of that share, sales from imports of subject goods from China were nonetheless significant.

[173] In light of the fact that the subject goods from both China and Chinese Taipei have continued to be imported in relatively large quantities during the POR, and in many cases at prices below normal values (or without normal values), as attested by the CBSA's collection of anti-dumping and countervailing duties totalling over $35 million during this period, the Tribunal finds that the volume of subject imports will likely increase should the order be rescinded.

[174] Further, the statements made by the witnesses in this proceeding are consistent with the other evidence on the record on the issue of likely volumes. For example, Mr. Nelson of Leland stated that producers in China and Chinese Taipei have the capacity to export massive amounts of fasteners and that, if the order is rescinded, imports of subject goods will "easily overtake the entire Canadian market, even in the niche areas such as the agricultural sector where [Leland has] spent years investing in product offerings and relationships."[139] Similarly, Mr. Ride, President of HG Canada, was of the view that there are "ample factors to support a likely increase in the volume of subject imports into Canada should the Order be rescinded."[140]

[175] In summary, the Tribunal finds that all of these conditions together make it very likely that the rescission of the order would result in a significant increase in the volume of subject carbon steel screws imported from both China and Chinese Taipei in the next 12 to 24 months.

Likely price effects of the subject goods

[176] The Tribunal must consider whether, if the order is rescinded, the dumping and subsidizing of the subject 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.[141] In this regard, the Tribunal distinguishes the price effects of the subject goods from any price effects that would likely result from other factors affecting prices.

[177] The Tribunal will first determine the relative importance of price in purchasing decisions for carbon steel screws.

[178] Leland and HG Canada submitted that the Tribunal has consistently found that fasteners are commodity products that are largely traded on the basis of price. They submitted that the nature of fasteners has not changed since the last expiry review and that price remains the defining characteristic in a purchasing decision.

[179] In Expiry Review No. RR-2009-001, the Tribunal agreed that "price is generally a very important consideration in the purchase of carbon steel screws, assuming that factors such as quality and reliability of supply are comparable", but also accepted testimony that price is a less significant consideration for screws that are custom manufactured to a client's specifications.[142] It also expressed the view that, because the subject carbon steel screws were part of the normal supply of goods to the market, recent pricing was useful in helping it predict what prices would be without the finding.[143] In

139 Exhibit RR-2019-002-B-03 at para. 33, Vol. 11.
140 *Ibid.* at para. 40, Vol. 11.
141 Paragraph 37.2(2)(b) of the *Regulations*.
142 *Fasteners 2009 Review* at para. 174.
143 *Ibid.* at para. 175.

Expiry Review No. RR-2014-001, the Tribunal found that there was no positive evidence before it to warrant a departure from these previous conclusions.[144]

[180] Once more, the Tribunal finds that there is no evidence on the record of the present expiry review that would warrant departing from the conclusions it reached in the previous two expiry reviews on this matter. On the contrary, Mr. Nelson of Leland confirmed that fasteners still trade primarily on the basis of price and that, "in virtually every instance, the lowest price offered to a fastener customer in Canada will win a sale."[145]

[181] Therefore, for the purposes of its analysis, the Tribunal will continue to consider that, subject to few exceptions, carbon steel screws trade largely on the basis of price and that, consequently, customers would likely switch suppliers solely on this basis, particularly in the current and foreseeable market conditions. Further, since the subject goods continue to account for a dominant share of the domestic market, the Tribunal considers that recent pricing is helpful in predicting what prices would be in the absence of the order.

[182] Leland also submitted that, despite the continued and significant presence of the subject goods, the order continues to maintain a measure of price stability in the Canadian market, which allows the domestic industry to fairly compete for market share. It noted that the Tribunal had concluded as much in the 2014 expiry review.

[183] There can be no doubt that the order continued to foster domestic price stability throughout the POR. Indeed, Mr. Nelson confirms that Leland has been able to succeed in the Canadian market precisely due to what he refers to as "the minimal price stability" provided by the order in those segments where it profitably competes.[146] The investigation report also clearly shows that, save for Elam and Infasco, whose prices varied slightly more, all other domestic producers, including HG Canada, experienced sales price stability throughout the POR.[147]

[184] The question is whether this state of affairs would continue should the order be rescinded. The Tribunal finds that, if the order is rescinded, the subject goods from both China and Chinese Taipei would be imported at prices that significantly undercut and depress the prices of like goods. There is also some evidence suggesting that the rescission of the order would likely result in price suppression.

Price undercutting

[185] Leland submitted that the aforementioned price stability is likely to disappear should the order be rescinded. It submitted that, given the undercutting that occurred during the POR, the willingness of importers to pay substantial amounts of anti-dumping and countervailing duties during this period, and the competition that will likely take place between the subject imports and between these imports and other low-priced import sources, the increased volume of subject imports will likely be at pricing that will significantly undercut the price of like goods.

[186] Data from the investigation report shows that the average unit values of importers' sales of subject imports from China and Chinese Taipei were both below the average unit values of the

144 *Fasteners 2014 Review* at para. 166.
145 Exhibit RR-2019-002-B-03 at para. 15, Vol. 11.
146 *Ibid.* at para. 20, Vol. 11.
147 Exhibit RR-2019-002-05A, Table 26, Vol. 1.1.

domestic industry's sales from domestic production throughout the POR.[148] This price undercutting is corroborated by a number of importers who indicated in their responses to the Tribunal's importers' questionnaire that imported fasteners are less expensive than domestically produced fasteners.[149] It therefore stands to reason that, in the absence of the price discipline imposed by the order, any increased volume of subject imports would be at pricing that is likely to significantly undercut domestic pricing.

[187] The Tribunal notes that this conclusion remains valid even if the results of the above comparison, when performed for sales at each trade level, i.e. for sales to distributors/wholesalers, end users/OEMs and retailers, do not always show price undercutting for subject imports from China. In the case of subject goods from Chinese Taipei, the situation is clear. The average unit values of importers' sales of subject goods were always below the average unit values of the domestic industry's sales from domestic production and were, in nearly all cases, the low-priced leaders even with the floor prices established by the order. [150] If producers and exporters from Chinese Taipei are not constrained by normal values and/or anti-dumping and countervailing duties, it is likely that they will decrease their prices even further to retain or gain market share.

[188] In the case of subject goods from China, the average unit values of importers' sales of subject goods were, at some trade levels and for some years, above the average unit values of the domestic industry's sales from domestic production. That being said, the Tribunal has previously considered the likely prices of the subject carbon steel screws in the absence of the order by deducting an estimate of the anti-dumping and countervailing duties from the prices seen during the POR.[151] In the present case, the evidence on the record indicates that the duties collected on imports of subject goods from China and Chinese Taipei during the CBSA's period of investigation (from January 2016 to June 2019) represented approximately 37 and 22 percent of their respective total import value.[152] If the estimated average duties of 37 percent payable on imports of subject goods from China are deducted from importers' selling prices for these goods over the POR, the resulting prices would have undercut the domestic industry's selling prices at all trade levels and for all years.[153]

[189] As the anti-dumping and countervailing duties collected on imports of subject goods from China represented a larger percentage of their total value than duties collected on imports of subject goods from Chinese Taipei, importers' selling prices of subject goods from China are likely to decrease, on average, more than those of subject goods from Chinese Taipei. In that event, competition among subject goods will likely increase and create additional downward price pressure, thus further undercutting the domestic industry's selling prices.

[190] The evidence on the record also suggests that, should the order be rescinded, further price undercutting will likely result from competition between subject imports and non-subject imports from countries other than the United States. The data show that, for sales by importers to end

---

148 Exhibit RR-2019-002-06A (protected), Table 25, Vol. 2.1.

149 See, for example, Exhibit RR-2019-002-18.16, Vol. 5 at 7; Exhibit RR-2019-002-18.19, Vol. 5 at 5; Exhibit RR-2019-002-18.23, Vol. 5 at 8; Exhibit RR-2019-002-18.25, Vol. 5 at 5.

150 Exhibit RR-2019-002-06A (protected), Tables 27, 29 and 31, Vol. 2.1.

151 *Fasteners 2009 Review* at para. 184.

152 Exhibit RR-2019-002-03A, Vol. 1 at 9-10.

153 Exhibit RR-2019-002-06A (protected), Tables 27, 29 and 31, Vol. 2.1. The Tribunal notes that the estimated average duties payable are the result of some importers paying anti-dumping duties at the rate of 170 percent pursuant to a ministerial specification and others, who purchased from exporters that had cooperated with the CBSA and were issued normal values, paying little or no anti-dumping duties.

users/OEMs and retailers, the average unit values of non-subject imports from countries other than the United States were below the average unit values of subject imports from China throughout the POR.[154] They were also in close proximity to the average unit values of subject imports from Chinese Taipei at the retailer level. Moreover, there is evidence that certain importers have purchased carbon steel screws from countries other than the United States, such as Vietnam, Malaysia, Thailand and India, at prices that were sometimes below those of subject imports from both China and Chinese Taipei. At the very least, the foregoing indicates that, to compete and make sales in certain segments of the Canadian market, exporters of subject goods from China will likely have to lower their prices.

[191] In sum, without the benefit of the order, the domestic industry will likely face price undercutting from subject imports in all market segments, even in those niche markets that have allowed them to maintain their market share during the POR, thereby eroding the pricing stability it has enjoyed. Accordingly, on the basis of the evidence, it is likely that, should the order be rescinded, the subject goods from China and Chinese Taipei will each be sold on the Canadian market at prices that will consistently and significantly undercut the domestic industry's selling prices.

Price depression

[192] Leland submitted that the rescission of the order and the likely significant increase in underselling will undoubtedly lead to significant price depression.

[193] Having found that the subject goods from China and Chinese Taipei are each likely to significantly undercut the prices of like goods should the order be rescinded, the Tribunal finds it reasonable to project that the domestic industry's prices would also be forced down by a significant amount below the prices that would otherwise prevail. Indeed, in this scenario, given customers' price sensitivity, the domestic industry will have no other choice but to reduce its prices in order to maintain sales and production.

[194] The evidence on the record clearly supports this view. According to Mr. Nelson, Leland would have to reduce its prices in order to remain competitive in a market where subject goods increasingly undercut the price of like goods.[155] This was echoed by Infasco who similarly stated that it forecasts significant price depression due to increased subject imports in the event the order is rescinded.[156] HG Canada also confirms that price stability in the market would collapse if the order is rescinded.[157]

[195] Simply put, reducing its prices will likely be the domestic industry's only option in order to remain competitive, even in the niche markets in which it was able to remain a relatively important supplier. The Tribunal therefore concludes that the likely significant price undercutting by the subject goods from both China and Chinese Taipei that will result from the rescission of the order will lead to significant price depression.

Price suppression

[196] Leland submitted that the continued and significant presence of subject goods, as well as new low-priced sources of non-subject goods, suppressed domestic pricing in 2019. It further submitted

---

154 Exhibit RR-2019-002-06A (protected), Tables 29 and 31, Vol. 2.1.
155 Exhibit RR-2019-002-B-03 at paras. 33-34, Vol. 11.
156 Exhibit RR-2019-002-15.08, Vol. 3 at 11.
157 Exhibit RR-2019-002-18.41B, Vol. 5 at 9.

that, should the order be rescinded, it does not anticipate being able to pass any of the additional cost increases that are expected on the horizon, such as the Government of Ontario raising the minimum wage on October 1, 2020.[158]

[197] The Tribunal notes that Leland's claims regarding its inability to increase its selling price to offset cost increases in 2019 are not relevant in the context of this expiry review. By definition, any price suppression occurring during the POR, or at any time when the order is in place, cannot be attributed to the effects of the dumping and subsidizing of the subject goods. This is because the price discipline imposed by the order eliminates the price effects caused by the dumping and subsidizing of the subject goods.

[198] That being said, the Tribunal agrees that, to the extent that Leland or other domestic producers face increased costs in the near to medium term, the rescission of the order would likely result in the subject goods from both China and Chinese Taipei suppressing the price of the like goods by preventing price increases that would otherwise likely have occurred.

Conclusion

[199] Accordingly, on the basis of the evidence, the Tribunal finds that the rescission of the order would likely result in the subject goods from China and Chinese Taipei each being imported at prices that would cause significant adverse price effects over the next 24 months.

Likely impact of the subject goods on the domestic industry

[200] The Tribunal will now assess the likely impact of the above volumes and prices on the domestic industry should the order be rescinded, taking into consideration the recent performance of the domestic industry.[159] In this analysis, the Tribunal distinguishes the likely impact of the subject goods from the likely impact of any other factors affecting or likely to affect the domestic industry.[160]

Recent performance of the domestic industry

[201] The large majority of the financial results and other indicators pertaining to the performance of the domestic industry that are contained in the investigation report were properly designated as confidential by the Tribunal in these proceedings.[161] As such, the amount of information that can be conveyed within these reasons is limited.

[202] Over the POR, the domestic industry saw improvement in certain key performance indicators. While its total production declined and its capacity utilization remained the same, its domestic sales from domestic production, direct employment and wages paid all increased.[162] It also made significant investments in its manufacturing facilities to offer new products and improve

---

158 Exhibit RR-2019-002-B-07, Attachment 41, Vol. 11.

159 See paragraphs 37.2(2)(c), (e) and (g) of the *Regulations*.

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

161 As explained in the investigation report, such designations are made based on the number of respondents whose data is presented in the tables or where there is dominance, i.e. a situation where a single or small number of firms account for a very large portion of any data field such that confidential information could be revealed by means of reverse engineering. See Exhibit RR-2019-002-05A, Vol. 1.1 at 21.

162 Exhibit RR-2019-002-05A, Tables 12 and 37, Vol. 1.1; Exhibit RR-2019-002-06A (protected), Table 37, Vol. 2.1.

production processes.[163] As previously mentioned, the domestic industry's share of the market increased from 6 percent in 2017 to 9 percent in 2018 and 2019,[164] a level comparable to the share it held in the previous two expiry reviews.

[203] The domestic industry's financial performance remained positive throughout the POR, although gross margins and net income for domestic sales declined somewhat, both at the aggregate and per unit levels.[165]

[204] From this evidence, it is clear that the order was of some benefit to the domestic industry as it provided it with the necessary price stability to increase sales volumes, increase employment and make important investments in their operations and facilities. While the order also allowed the domestic industry to increase prices slightly, these increases did not keep pace with rising costs, resulting in diminished profitability.

[205] The issue that the Tribunal must address is whether the domestic industry is likely to be able to continue to perform within an acceptable range or maintain relatively satisfactory financial results if the order is rescinded. As explained below, the Tribunal finds that, if the order is rescinded, the domestic industry would be materially injured by the resumed or continued dumping of the subject goods from Chinese Taipei or the resumed or continued dumping and subsidizing of the subject goods from China.

Likely impact of the rescission of the order on the domestic industry

[206] According to Leland and HG Canada, the continuation of the order is critical to keeping price stability in the Canadian market so that the domestic industry has the fair market pricing basis upon which to recover from the economic effects of the COVID-19 pandemic along with the Canadian economy as a whole.

[207] Leland and HG Canada submitted that, if the order is rescinded, significant volumes of low-priced dumped and subsidized imports would quickly overwhelm the domestic industry, decreasing sales, prices and profitability, which would not only jeopardize recent investments that were made, but threaten its very viability.

[208] The Tribunal finds that this position is supported by credible and compelling evidence. Notably, it finds that the increased demand for low-priced carbon steel screws by Canadian purchasers responding to the economic pressures of the COVID-19 pandemic will amplify the domestic industry's vulnerability to the likely importation of significant volumes of low-priced subject goods from both China and Chinese Taipei should the order be rescinded. In this event, the domestic industry will be forced to either lower its prices at the expense of profitability or resist price declines and see important volumes of domestic production being displaced by sales of subject goods.

[209] Leland estimated the likely impact that a reduction in domestic prices and sales volumes would have on the domestic industry's profitability by performing two "but for" analyses using Leland's most recent financial data for 2019. For the first analysis, it assumed that the rescission of

---

163 Exhibit RR-2019-002-06A (protected), Table 36, Vol. 2.1; Exhibit RR-2019-002-B-04 (protected) at paras. 9, 22, Vol. 12; Exhibit RR-2019-002-16.06 (protected), Vol. 4 at 24.

164 Exhibit RR-2019-002-05A, Table 13, Vol. 1.1.

165 Exhibit RR-2019-002-06A (protected), Table 33, Vol. 2.1.

the order would result in a price decrease of 25 percent, which represents the total amount of anti-dumping and countervailing duties assessed on subject imports from China and Chinese Taipei as a percentage of their combined import value from January 2016 to June 2019, but no reduction in sales volume. For the second analysis, it assumed that the rescission of the order would result in a 2 percentage point decrease in the domestic industry's market share, which translates into a 20 percent loss of sales volume for each producer (including Leland), but no reduction in prices. Under both scenarios, Leland calculated that its gross margin and net income would fall significantly.[166]

[210] The Tribunal performed its own analyses by making slightly more conservative assumptions and applying them to the domestic industry's consolidated financial results for 2019. For the first analysis, it assumed that prices would decrease by 10 percent instead of the 25 percent proposed by Leland. For the second analysis, it assumed the same 20 percent loss of sales volume, but with a 10 percent reduction in the cost of goods sold (on the assumption that 50 percent of these costs are fixed). Under both of these scenarios, the domestic industry's gross margins would be substantially reduced, resulting in net losses.

[211] The Tribunal therefore finds that the reduction in domestic prices or sales volumes that is likely to result from the resumed or continued dumping of the subject goods from Chinese Taipei or the resumed or continued dumping and subsidizing of the subject goods from China would be sufficient to cause material injury to the domestic industry.

[212] The Tribunal finds that the reduced profitability and output likely to be caused by the subject goods, if considered separately on a per subject country basis, would also jeopardize the domestic industry's recent investments, lead to decreases in capacity utilization and employment and reduce its ability to raise capital.

[213] The Tribunal notes that the responses provided by several domestic producers confirm that the rescission of the order would destabilize the entire Canadian market and allow the subject goods to overtake the remaining share of the market held by the domestic industry.[167] As acknowledged by the Tribunal in Expiry Review No. 2014-001, the domestic industry is more vulnerable to the importation of significant volumes of low-priced subject goods given its relatively small market share.[168]

[214] In summary, the Tribunal is satisfied that, if the order is rescinded, the domestic industry will likely experience injury in terms of reduced production, capacity utilization, sales, profitability, employment, return on investment and ability to raise capital and that such injury will be material.

Factors other than the dumping and subsidizing

[215] Pursuant to paragraph 37.2(2)(k) of the *Regulations*, the Tribunal may consider any other factors that are relevant in the circumstances. While Leland and HG Canada did not explicitly identify such factors, and given the lack of any submissions opposing the continuation of the order, the Tribunal, on its own initiative, considered whether there were some factors unrelated to the

---

166 Exhibit RR-2019-002-B-06 (protected), Vol. 12 at 6-8.

167 See Exhibit RR-2019-002-15.06, Vol. 3 at 11; Exhibit RR-2019-002-15.08, Vol. 3 at 11; Exhibit RR-2019-002-15.05, Vol. 3 at 10.

168 *Fasteners 2014 Review* at para. 187.

dumping and subsidizing of the subject goods that could adversely affect the domestic industry in the next 24 months. The Tribunal ensured not to attribute the effects of such factors to an eventual rescission of the order.

[216] The Tribunal first considered whether competition from low-priced imports of carbon steel screws from non-subject countries other than the United States, such as Vietnam, Malaysia, Thailand and India, could have an adverse impact on the domestic industry over the next 24 months. As the Tribunal noted above, there is evidence that certain importers have purchased carbon steel screws from these countries at prices that were sometimes below those of subject goods from China and Chinese Taipei. However, given the Tribunal's findings that the rescission of the order will likely result in subject goods entering the Canadian market in significant volumes and at low prices, the market share held by low-priced imports from non-subject countries will inexorably be eroded. While injury could, in theory, result from such low-priced imports in the near term, the price stability witnessed in the market over the POR, as well as the domestic industry's stable market share, suggest that this would not be the case.[169]

[217] The Tribunal next considered the potential impact of the COVID-19 pandemic on the domestic industry's performance over the next 24 months. Although the pandemic has seriously affected both the international and Canadian markets, at least in the short term, there is nothing to suggest that this would have a disproportionate impact on the domestic industry. Rather, the injury that will likely be caused by the subject goods, if the order is rescinded, will be, in and of itself, of a magnitude sufficient to amount to material injury that will be in addition to any injury resulting from the COVID-19 pandemic.

[218] Finally, the Tribunal considered the domestic industry's likely export performance over the next 24 months. However, there is simply insufficient information pertaining to the domestic industry's historical export performance for the Tribunal to conclude that, if the order is rescinded, the likely injury to the domestic industry could be attributed to an eventual inability to maintain adequate export sales. There is similarly no basis to find that any likely injury would be self-inflicted due to a failure on the part of the domestic industry to pursue opportunities to increase sales on export markets.

[219] Having accounted for the impact of the above factors and ensured not to attribute their effects to an eventual rescission of the order, the Tribunal finds that the resumption or continuation of the dumping of the subject carbon steel screws from Chinese Taipei will likely result, in and of itself, in material injury to the domestic industry over the next 24 months. The Tribunal also finds that the resumed or continued dumping and subsidizing of these goods from China will likely result, in and of itself, in material injury to the domestic industry over the same period.

EXCLUSIONS

[220] As noted previously, the Tribunal received a total of 28 requests from U2 Fasteners, OMG, Hilti and SBD to exclude products from any order continuing its order made in Expiry Review No. RR-2014-001. Leland, Standard Fasteners and Visqué opposed each of these product exclusion requests on the basis that their granting would likely cause injury to the domestic industry. For the reasons set out further below, the Tribunal has decided to grant 20 of the 28 product exclusions that were requested.

---

169 Exhibit RR-2019-002-05A, Tables 13 and 25, Vol. 1.1.

[221] Before addressing these requests, the Tribunal will outline certain general principles and the relevant factors it took into consideration when determining whether to grant the requested product exclusions. The Tribunal will also address some issues that were common to a number of requests.

General principles and relevant factors

[222] *SIMA* implicitly authorizes the Tribunal to grant exclusions from the scope of an order or finding.[170] 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.[171] In the context of an expiry review, the rationale is that, despite the general conclusion that all goods covered by 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.

Evidentiary burden

[223] As the Tribunal has already found that, should the order be rescinded, imports of the subject carbon steel screws from China and Chinese Taipei are each likely to cause injury to the domestic industry, cogent case-specific evidence concerning the likely non-injurious effect of imports of particular products covered by the definition of the subject goods is required for exclusions to be granted.

[224] There is thus an evidentiary burden on the requester to file sufficient evidence in support of its request.[172] However, there is also an evidentiary burden on the domestic industry to file sufficient evidence in order to rebut the evidence filed by the requester.[173] A failure to do so may result in the requested exclusion being granted. 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.[174]

[225] In this expiry review, as will be elaborated upon below, the Tribunal found that, in many instances, the evidence filed by the domestic industry fell short of the mark. Indeed, in many cases, the detailed and voluminous evidence provided in support of the requests was not adequately countered by the domestic industry. The Tribunal notes that Leland was the only domestic producer forming part of the domestic industry to file responses to the requests for production exclusions. Although Standard Fasteners and Visqué both provided letters expressing their support for Leland's position and stated that they opposed all the requests on the basis that the granting of those

---

170 *Hetex Garn A.G. v. The Anti-dumping Tribunal*, [1978] 2 F.C. 507 (FCA); *Sacilor Aciéries 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.

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

172 *Fasteners 2009 Review* at para. 243. The fact that the Tribunal may have previously granted exclusions for products that are similar to those covered by the present requests does not, in and of itself, constitute sufficient evidence. Past decisions are not binding and create no entitlement to a given outcome on any specific request.

173 *Fasteners 2014 Review* at para. 198.

174 *Aluminum Extrusions 2013 Review* at para. 195.

exclusions would cause injury to the domestic industry, neither filed any evidence in support of their statements.[175]

[226] Given that the Tribunal's decisions on requests for product exclusions must be based on positive evidence, irrespective of the party that filed it, the Tribunal found in several cases that, on balance, imports of many of the products for which exclusions were requested are not likely to be injurious to the domestic industry.

Relevant injury factors

[227] The Tribunal typically considers the following factors to determine whether the exclusion of a specific product is likely to cause injury to the domestic industry: whether the domestic industry produces the identical products for which exclusions are requested, whether it produces substitutable or competing products, whether it is an "active supplier" of identical or substitutable products and whether it has the capability of producing such products.[176] However, the relevance of each of these factors and the weight that the Tribunal will ascribe to any of them will depend on the facts and circumstances of each case.

[228] In this expiry review, the Tribunal's approach was to first examine whether the evidence indicates that the domestic industry currently produces the same products as those for which exclusions are requested (i.e. whether it produces identical products). As a general rule, the Tribunal denies requests for product exclusions where there is domestic production of identical products as it is safe to conclude that there will be head to head competition between such products and those for which the exclusions are requested. In that situation, it seems apparent that granting the requested product exclusions would likely cause injury to the domestic industry and undermine the remedial effect of the order. However, in the present case, it became clear that the domestic industry does not produce products that are identical to any of those for which exclusions were requested, such that this factor was largely irrelevant.[177]

[229] In the absence of production of identical products, the next factor considered by the Tribunal was whether the domestic industry currently produces products that are substitutable for, or compete with, the products for which exclusions are requested. In this regard, the Tribunal is mindful of its findings that domestically produced carbon steel screws are like goods in relation to the subject goods and that there is a single class of goods.

[230] This implies that, broadly considered, subject goods and goods produced by the domestic industry have similar physical characteristics and end uses, fulfil the same customer needs and, in a general or collective sense, compete with each other. Simply put, they are all carbon steel screws that share the same basic attributes and, overall, have the same general end use (i.e. to mechanically join two or more elements). This does not mean, however, that the "basket" of domestically produced like goods is identical to the "basket" of subject goods or that the goods produced by the domestic industry are always interchangeable with specific goods captured by the definition of the subject goods.

---

175 Exhibit RR-2019-002-35.01, Vol. 1.5 at 136, 138.

176 *Stainless Steel Wire* (30 July 2004), NQ-2004-001 (CITT) at para. 96; *Fasteners 2009 Review* at para. 245; *Aluminum Extrusions 2013 Review* at para. 188.

177 The Tribunal notes that all of the products for which exclusions were being requested appear to be subject to some form of intellectual property protection, which effectively creates a roadblock to the production of identical products by the domestic industry.

[231] The primary purpose of the product exclusion process is to address this issue. It is a mechanism through which the Tribunal may tailor its order to ensure that it is not overly broad. The idea is to confine the assessment of anti-dumping and countervailing duties to those goods that are likely to cause injury to the domestic industry and thereby avoid capturing goods that, despite falling within the scope of the subject goods, are unlikely to cause such injury for discrete reasons.

[232] For example, it may be that the domestic industry does not manufacture a specific screw that can be used for the same specific application, fulfil the same particular or unique customer need, or otherwise compete in the marketplace with a product for which an exclusion is being requested. This possibility cannot be ignored, especially in cases such as this where the subject goods and like goods come in hundreds, if not thousands, of varieties and may be used in a wide range of applications and fulfil markedly different customer needs.[178]

[233] In other words, in order to assess whether the domestic industry produces products that are substitutable for, or compete with, the products for which exclusions are requested, the Tribunal essentially performs a case-specific like-goods analysis, i.e. an analysis that is specific to the product in question. It reviews the specific evidence on the record regarding the physical characteristics and market characteristics (such as quality, price, market segment and end uses) of the products to gauge the degree of competition between them.[179] Insofar as this review indicates that there is a product currently being produced domestically that appears to compete, or is likely to compete with, the product for which an exclusion is requested, the request should normally be denied.

[234] The rationale is that, much like the situation where there is domestic production of identical products, the demonstration of probable competition between domestically produced products and those products for which the exclusions are requested leads to the conclusion that the granting of the exclusions would likely cause injury to the domestic industry and thus undermine the remedial effect of the order.

[235] That being said, another factor the Tribunal typically considers is whether the level of production of substitutable or competing products by the domestic industry is such that it can be considered an "active supplier" of these products.[180] Insignificant levels of production by the domestic industry are not sufficient for it to be regarded as an active supplier. The absence of sufficient production (i.e. production that is more than a one-off occurrence) would normally indicate that the granting of exclusions would not result in injury to the domestic industry.

[236] In the absence of production of substitutable or competing products, the last factor normally considered by the Tribunal is whether the domestic industry has the capability of producing products

---

178 During the Tribunal's injury inquiry, which covered four classes of goods (carbon steel screws, carbon steel nuts and bolts, stainless steel screws, and stainless steel nuts and bolts), it received over 20,000 individual requests for product exclusions. See *Fasteners Inquiry* at para. 218.

179 The Tribunal has previously stated that, 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, the fact that a product is patented, or subject to other forms of intellectual property protection, does not mean that it will automatically be granted an exclusion. See *Certain Fasteners* (26 September 2006), NQ-2004-005R (CITT) at para. 17; *Aluminum Extrusions Inquiry* at para. 354.

180 The Tribunal may also consider this factor in cases where the domestic industry produces identical products. This question does not arise here as the domestic industry does not produce products that are identical to any of those for which exclusions were requested.

that are identical to, or substitutable for, the products for which exclusions are requested. The weight to be given to this factor should, however, be more limited in an expiry review than in an injury inquiry.

[237] In Expiry Review No. RR-2009-001, the Tribunal indicated that the domestic industry's capability to produce a certain product is much less relevant in the context of an expiry review for the following reasons:[181]

> 247. In an injury inquiry, the Tribunal may find that the domestic industry's lack of production of a certain product is a manifestation of injury that likely results from the dumped and/or subsidized goods. However, an expiry review takes place after anti-dumping and/or countervailing measures have been in place for almost five years, during which time it must be presumed that the domestic industry was not prevented from producing a product because of injury due to dumping and/or subsidizing.
>
> 248. Injury is a relative term. The question before the Tribunal in considering a product exclusion request in an expiry review is whether the domestic industry would be worse off in the next 18 to 24 months than it was during the period of review if the exclusion were granted. If, after five years of protection against injurious dumping and subsidizing (which includes the period of review), the domestic industry has not produced the product in question or a substitutable product, it is difficult to understand how it would be injured if it fails to sell the product or a substitutable product in the 18 to 24 months that follow.

[238] The Tribunal is of the view that this reasoning is still applicable.[182] In this case, the domestic industry has been the beneficiary of *SIMA* protection for over 15 years. It is therefore difficult to understand, without specific evidence, how it would be injured by the granting of exclusions covering products for which there has not been any domestic production of identical or substitutable products during this time. In these circumstances, it is reasonable to infer that it is not the dumping or subsidizing of the subject goods but rather other factors that explain the domestic industry's absence in the market for certain specific types of carbon steel screws.[183]

[239] Nevertheless, there could be circumstances in the context of an expiry review where it may not be appropriate to have the protection afforded by *SIMA* be entirely dependent on whether the

---

181 *Fasteners 2009 Review* at paras. 247-248.

182 In both an interim review and an expiry review of the Tribunal's findings in Inquiry No. NQ-2008-003 with respect to aluminum extrusions, the Tribunal was of the view that this reasoning should not apply for a number of reasons, none of which the Tribunal considers relevant in the present expiry review. See *Aluminum Extrusions* (15 November 2012), RD-2011-001 and RD-2011-003 (CITT) at paras. 68-72; *Aluminum Extrusions 2013 Review* at paras. 204-205.

183 In *Aluminum Extrusions Inquiry* at para. 353, the Tribunal stated that, where requesters owned the rights to some form of intellectual property protection and were not themselves the producers, or related to the producers, it was of the view that, ". . . barring any constraints relating to the domestic industry's technical ability to produce the products, it was not appropriate to grant exclusions on the basis that the requesters were not prepared to have the domestic industry produce those products under licence." The Tribunal is of the view that, in the context of an expiry review where like goods and subject goods are competing on a level playing field, a requester's refusal to have the domestic industry produce, under licence, the products that are the subject of the request is more likely than not based on factors other than the dumping or subsidizing of the subject goods. Therefore, for the purposes of an expiry review, such a refusal does not automatically lead to a conclusion that the very purpose of the protection offered by *SIMA* would be frustrated by granting the exclusion.

domestic industry already produces and sells products that are identical to, or substitutable for, the products for which exclusions are requested. For example, there could be situations where there is emerging demand for a specific type of product not currently produced by the domestic industry or where a new type of product is introduced to the market. In certain situations, evidence of planned domestic production of identical or substitutable products, or evidence indicating that the domestic industry intends to become an active supplier of such products in the near to medium term, may thus form a sufficient basis to deny the requested exclusions.

[240] As there is no evidence on the record indicating that the latter circumstances are present in the current expiry review, evidence of the domestic industry's mere capability to produce products that are identical to, or substitutable for, the products for which exclusions are requested was considered insufficient to deny a request.[184] On the other hand, evidence of the domestic industry's inability to produce identical or substitutable products simply served to confirm that no injury could result from the granting of exclusions.

Compliance with codes and standards

[241] U2 Fasteners, OMG, Hilti and SBD noted that some or all of the products for which they requested exclusions were evaluated by organizations such as the ICC Evaluation Service, Inc. (ICC-ES) and the International Association of Plumbing and Mechanical Officials Uniform Evaluation Service (IAPMO-UES) and found to comply with certain codes, such as the International Building Code® (IBC), the International Residential Code® (IRC) and the National Building Code of Canada (NBCC), and standards established by various organizations, such as the ICC-ES, the American Concrete Institute (ACI) and the Canadian Standards Association (CSA).

[242] Leland submitted that reliance on code approvals or standards serve as marketing tactics adopted by vendors to distinguish their products in the marketplace and should not be taken into consideration by the Tribunal in addressing whether product exclusions should be granted. According to Mr. Nelson of Leland, the only required accreditation for the production of fasteners in Canada is that awarded by the Standards Council of Canada, which represents consensus-based production standards.[185] Mr. Nelson adds that all other standards and accreditations, including those referenced in the product exclusion requests, represent end-use and application-based protocols offered by third parties and are not necessary for fasteners to be sold in the Canadian market.[186]

[243] The Tribunal is of the view that, while compliance with codes and standards does not, on its own, impart on carbon steel screws any special quality or feature, it can have an impact on the market characteristics of the screws. As explained above, in order to assess whether the domestic industry produces products that are substitutable for, or compete with, the products for which exclusions are requested, the Tribunal considers the physical and market characteristics of the

---

184 Similarly, the lack of any attempt on the part of requesters to purchase the products from the domestic industry was not considered an important factor. As stated above, when an order or finding is in place, it is presumed that the like goods and subject goods compete on a level playing field such that a decision to not purchase the product domestically is most likely based on factors other than the dumping or subsidizing of the subject goods. In these circumstances, it would serve little purpose to force requesters to first attempt to purchase the products domestically before looking abroad. There is nothing in *SIMA* that suggests that the domestic industry should be bestowed with a right of first refusal when an order or finding is in place.

185 Exhibit RR-2019-002-35.01, Annex B at paras. 10-11, Vol. 1.5.

186 *Ibid.* at para. 12, Vol. 1.5.

products to gauge the degree of competition between them. Market characteristics include pricing, end uses and whether the products fulfil the same customer needs.

[244] The evidence on the record confirms that compliance with codes and standards for carbon steel screws can be a key differentiator that is relied upon by end users in order to ensure that the screws that are purchased can be used for their intended purpose.[187] Therefore, it is reasonable to conclude that it can affect the degree of competition between products.

[245] The Tribunal notes that a number of previously granted exclusions for carbon steel screws make reference to criteria established by the ICC-ES and testing done in accordance with a number of standards.[188] In fact, in the case of Simpson Strong-Tie's Titen HD™ heavy-duty carbon steel screw anchors, Leland consented to the granting of the exclusion as well as to the specific description of the product.[189] This suggests that Leland viewed these criteria and standards as relevant distinguishing characteristics.

Terms of the exclusions

[246] The Tribunal's "Product Exclusion Request Form" requires that the proposed descriptions of the products for which exclusions are requested to be contained in the Tribunal's order be in generic or non-proprietary terms. This reflects the Tribunal's established view that any exclusion from an order or finding should normally be defined as generically as possible to avoid potential trade distortions and unfair competitive advantages.[190]

[247] In this case, a number of requests for product exclusions failed to include generic or non-proprietary descriptions for the products for which they were seeking exclusions. Yet, some other requests did not include descriptions that were sufficiently detailed, resulting in descriptions that were perhaps too broad. Descriptions of the sort are also problematic as they may allow for certain products that were not originally intended to be covered by the exclusion to be imported without being subject to the price discipline imposed by the order and thus cause injury to the domestic industry.

[248] In order to avoid the potential problems noted above, the Tribunal endeavoured to strike the right balance between descriptions that are too narrow and those that are too broad by referring, when appropriate, to trade names or trademarks, patent numbers, applicable codes and standards, and end uses, but adding the words "or equivalent" in order to allow others who import substantially the same product to benefit from the exclusion.[191]

---

187 Exhibit RR-2019-002-37.01A, Appendix B at paras. 4-8, Vol. 1.5; Exhibit RR-2019-002-37.02A, Vol. 1.5 at 89; Exhibit RR-2019-002-37.03A, Appendix A at paras. 6-8, Vol. 1.5; Exhibit RR-2019-002-37.04A, Vol. 1.5 at 1-2.

188 See Appendix 1 to this order for exclusions previously granted to GRK Canada Limited and Simpson Strong-Tie.

189 *Fasteners 2014 Review* at para. 211.

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

191 In its Importers' Questionnaire response, ITW Construction Products Canada (ITW) requested that, to the extent the Tribunal decides to grant any exclusions for concrete screws in the present expiry review, these exclusions should include its own Tapcon™ concrete screws. See Exhibit RR-2019-002-18.32B, Vol. 5 at 4. Although ITW did not file any requests for product exclusions in the current proceedings, it could benefit from the exclusions granted to Hilti and SBD, provided it imports products that are equivalent to those specifically covered by the exclusions. This will be a matter for the CBSA to address upon importation.

[249] The Tribunal will now address each of the product exclusions requests pertaining to the subject goods.

Analysis of specific product exclusion requests

U2 Fasteners

[250] U2 Fasteners submitted requests for the exclusion of the following seven of its products:

1. Cap Screw™
2. Construction Screw™
3. Fine Screw™
4. Re-fine Screw™
5. Steel Siding Screw™
6. Universal Screw™
7. Vinyl Extrusion Screw™

[251] U2 Fasteners submitted that these products are original, patented and expensive premium fasteners used by professional builders and that it has not seen any evidence that domestic producers would be able to manufacture these fasteners such that they would achieve certification by the IAPMO-UES. It added that these products are similar to fasteners marketed by GRK Canada Limited (GRK), which were granted exclusions in Expiry Review No. RR-2009-001.

[252] Leland submitted that U2 Fasteners failed to provide positive evidence in support of its requests for product exclusions, including proper descriptions of the products and other supporting documentation, which has limited the domestic industry's ability to respond to the requests. It submitted that U2 Fasteners has also failed to indicate how its products are similar to those already excluded by the Tribunal. It further submitted that, based on publicly available information regarding these products, it can and does produce on a regular basis similar, substitutable, and competing products that fulfil the same end uses and most, if not all, of the same customer needs.

[253] U2 Fasteners replied that its fasteners have many features that are not found on fasteners made by the domestic industry and that its customers need assurance that its products meet or exceed building codes, which is accomplished by expensive third party testing. It added that it was unable to find any places where both Leland's and its products are sold, which, in its view, suggests that they are serving different markets.

[254] The Tribunal finds that, for most of the products for which U2 Fasteners requested exclusions, it failed to provide sufficient evidence to show that imports of these products would likely not cause injury to the domestic industry. Specifically, its requests for product exclusions consisted mainly of a few brief statements regarding the nature of its products and contained no documentation to support its claims that its products are used by professional builders and that they are similar to, or even better than, GRK's products, which were previously granted exclusions by the Tribunal.[192] This understandably hindered Leland's ability to adequately respond to the requests.[193]

---

192 See Exhibit RR-2019-002-31.01, Vol. 1.5.

193 According to Mr. Nelson, since U2 Fasteners' requests for product exclusions did not contain sufficient information to allow Leland to determine whether it produced the goods in question, it resorted to reviewing U2 Fasteners' product catalogue posted on their Web site. See Exhibit RR-2019-002-35.01, Annex B at para. 14, Vol. 1.5.

While U2 Fasteners did ultimately provide more fulsome submissions and some evidence with its reply, the domestic industry had already filed its submissions by then.

[255] Moreover, the evidence indicates that all but one of the products for which U2 Fasteners requested exclusions were sold in the Canadian market at prices that were generally comparable to Leland's average prices.[194] Therefore, even if the Tribunal were to accept, despite a lack of evidence, that U2 Fasteners' products are premium fasteners that are similar to GRK's products and that serve a different market than Leland's products, their relatively low prices could result in Leland's customers deciding to purchase U2 Fasteners' allegedly premium screws instead and thus cause injury.

[256] The Tribunal notes that, for product No. 5 (Steel Siding Screw™), U2 Fasteners even acknowledged that, under certain conditions, Leland's Master Grippers® screw might be substitutable in metal roofing applications.[195] According to Mr. Nelson, Leland produces a very large amount of its Master Grippers® screw in a given year and these screws have the same end uses as U2 Fasteners' Steel Siding Screw™, namely to affix metal panel to wood, girt or purlin.[196] On balance, the evidence on the record, including the product literature provided by Leland,[197] suggests that the domestic industry produces screws that are substitutable for, and compete with, the Steel Siding Screw™ and most of U2 Fasteners' other products such that the granting of exclusions for these products would likely cause injury to the domestic industry.

[257] Notwithstanding the foregoing, the Tribunal is satisfied that the evidence on the record supports the granting of exclusions for products No. 2 (Construction Screw™) and No. 7 (Vinyl Extrusion Screw™). The evidence indicating that U2 Fasteners' Construction Screw™ was sold in the Canadian market at prices that were significantly higher than Leland's average prices was sufficient to persuade the Tribunal that this product likely serves a different market and therefore does not compete with Leland's products.[198] This product is also certified by the IAPMO-UES to comply with the most recent versions of the IBC and IRC.[199] There is no indication that Leland's standard tapping screw, which Leland claimed is substitutable for, and competes with, the Construction Screw™, is certified to comply with these codes or otherwise exhibits the same structural performance characteristics.[200]

[258] As for U2 Fasteners' Vinyl Extrusion Screw™, the evidence indicates that it is a specialty product with unique features and characteristics that are manifestly not found on Leland's alleged competing product, the Master Grippers MDP® screw.[201] Notably, the head, the area under the head and the placement of the threads are significantly different. According to U2 Fasteners, the area under the head is designed to grab the vinyl from a window frame and to allow for adjustments over

---

194 Exhibit RR-2019-002-32.01A (protected), Vol. 2.5 at 1, 3-7; Exhibit RR-2019-002-06A (protected), Table 25, Vol. 2.1.

195 Exhibit RR-2019-002-37.04A, Vol. 1.5 at 8.

196 Exhibit RR-2019-002-35.01, Annex B at para. 20, Vol. 1.5.

197 *Ibid.*, Attachments K, L and M, Vol. 1.5.

198 Exhibit RR-2019-002-32.01A (protected), Vol. 2.5 at 2; Exhibit RR-2019-002-06A (protected), Table 25, Vol. 2.1.

199 See Exhibit RR-2019-002-31.01, Vol. 1.5 at 4-5 and Exhibit RR-2019-002-37.04A, Vol. 1.5 at 4, where reference is made to the publicly available IAPMO-UES Evaluation Report No. 454.

200 Exhibit RR-2019-002-35.01, Attachment K, Vol. 1.5.

201 Exhibit RR-2019-002-37.04A, Vol. 1.5 at 6.

time by inserting the screw further or by retracting it.[202] When comparing pictures of both products, it is clear that Leland's Master Grippers MDP® screw does not have these important features and therefore does not allow for adjustments as the Vinyl Extrusion Screw™ does. Given these facts, the Tribunal is satisfied that Leland does not currently produce a screw that is substitutable for, or competes with, U2 Fasteners' Vinyl Extrusion Screw™. While this product was sold in the Canadian market at prices that were generally comparable to Leland's average prices, its unique features and single end use make it very unlikely that it would lead to lost sales or price depression for Leland's Master Grippers MDP® screw.

[259] In light of the foregoing, the Tribunal grants exclusions for U2 Fasteners' products No. 2 (Construction Screw™) and No. 7 (Vinyl Extrusion Screw™). The other five requests for product exclusions made by U2 Fasteners are denied.

OMG

[260] OMG submitted requests for the exclusion of the following 12 of its products, which were identified primarily by their trademarked names:

1. Cortex® Deck
2. Cortex® Trim
3. Cortex® Fascia
4. TrapEase® 3
5. TrapEase® FASCIA
6. GuardDog®
7. TimberLOK®
8. HeadLOK®
9. FlatLOK®
10. LedgerLOK®
11. Flat Head LedgerLOK®
12. ThruLOK®

[261] OMG submitted that these 12 products, which are all wood screws, offer a number of features and have certain physical characteristics that help to distinguish them from domestically produced goods such that the granting of exclusions will not cause injury to the domestic industry. It submitted that its products do not actually compete with domestically produced goods, but rather with other imported products that already benefit from exclusions granted by the Tribunal. In its view, the refusal to grant the requested product exclusions will only result in a continued advantage for these other imported products rather than preventing injury to the domestic industry. It further submitted that, although domestic producers may claim to have the capability to produce identical or substitutable products, as the Tribunal has previously stated, such a factor is much less relevant in the context of an expiry review.

[262] Leland submitted that, not only does it have the capability to produce identical products, it does currently produce and actively supply substitutable and competing products. With respect to its capability to produce identical products, Leland submitted that the Tribunal should reject all of the requests on the basis that OMG, which is the owner or assignee of its trademarks and patents, is not prepared to have the domestic industry produce the products under licence. It added that OMG has

---

202 *Ibid.*

failed to establish any constraints relating to the domestic industry's ability to produce the products for which exclusions were requested.

[263] Leland further submitted that many of its wood screws which it currently produces and sells, including the Master Deckers® and the Round Quadrex Washer Head Lo-Root (Type HTA) Shank Slot (Shank Slot) wood screw, have similar physical characteristics, are sold to the same end users, meet the same customer needs and are ultimately sold into the same market as the products for which OMG seeks exclusions. It submitted that OMG's attempt to distinguish its products from those of the domestic industry on the basis of aesthetics and product packaging is irrelevant to the issue of substitutability.

[264] OMG replied that, notwithstanding 15 years of protection, the domestic industry has failed to manufacture any fasteners that are substitutable for OMG's products. It submitted that Leland's argument to the effect that it produces directly substitutable and competing products appears preposterous for anyone working in the industry. It added that, while Leland's various wood screws appear to be base commodity products, OMG's products are high-end and highly specialized screws that are priced well above the current domestic product offerings and thus do not compete with the "generic wood screws" manufactured by Leland.

[265] The Tribunal finds that, on the whole, the evidence provided by OMG in support of its requests for product exclusions was detailed, precise and generally more probative than the statements and evidence filed by the domestic industry. Other than for product No. 6 (GuardDog®), the Tribunal did not find that OMG's evidence was adequately rebutted, which led to the Tribunal's decision to grant 11 of the 12 requests filed by OMG.

[266] The Tribunal also notes that the domestic industry's response focused on its capability to produce identical goods. However, as explained above, this factor should be given very little weight in the context of this expiry review. The Tribunal is also unable to accept Leland's argument that OMG's refusal to allow the domestic industry to produce its screws under licence should suffice to deny all requests. In the Tribunal's view, in this case, it is reasonable to infer from the totality of the evidence that OMG's decision to not offer or provide licensing to the domestic industry during the POR is based on factors other than the dumping or subsidizing of the subject goods.

[267] The Tribunal will now turn to OMG's specific product exclusion requests. Products No. 1, No. 2 and No. 3 (Cortex® Deck, Cortex® Trim and Cortex® Fascia) are hidden fastening systems for composite decking, polyvinyl chloride (PVC) trim and composite fascia boards, respectively. These "systems" are engineered to secure different brands of composite decking, PVC trim and fascia boards to a substructure using special screws, colour matched and pre-aligned grain plugs made from the same material as the decking, trim and fascia boards, and a setting tool designed to drive the screws to the appropriate level below the surface of the board or trim.[203] Once the screws are properly installed, the plugs are placed into the holes made by the head of the screws or, in the case of the fascia boards, by a counterbore tool.

[268] The Tribunal finds that the domestic industry does not currently produce a product that is substitutable for, or competes with, the screws that form part of OMG's Cortex® systems. On the basis of the evidence before it, the Tribunal is persuaded that, whereas Leland's Master Deckers® (its claimed competing screws) are base commodity products, OMG's screws are high-end specialized

---

[203] Exhibit RR-2019-002-31.03, Vol. 1.5 at 4, 11, 218, 226, 433, 441.

products that respond to the needs of a niche market not served by the domestic industry and therefore do not actually compete with Leland's generic wood screws.

[269] Indeed, the screws that form part of OMG's Cortex® systems have specific features that allow them to function with the plugs, including a sharp point, a coarse lower thread, a reverse upper thread, tight head tolerances and, for two of the three products, a head with a sharp and concave underside.[204] A side-by-side comparison of these screws with Leland's Master Deckers® makes it clear that the latter do not have all the same features.[205] According to Mr. Hubert McGovern, President of OMG, a standard wood screw, like Leland's Master Deckers®, would leave a mound or "volcano" in composite material, or an unsightly indentation in PVC trim, and make it impossible to install a plug and leave a clean finish as desired by the end user.[206]

[270] In addition to the foregoing, the best available evidence indicates that OMG's Cortex® products are sold at prices that are significantly higher than Leland's selling prices for its Master Deckers®.[207] The Tribunal finds that this serves to confirm that OMG's Cortex® products likely do not compete with products sold by the domestic industry.

[271] Finally, the Tribunal notes that it has previously granted exclusions for very similar products, namely GRK's Kameleon™ composite deck screws and the TOPLoc™ or Splitstop™ composite decking fasteners, the latter being granted with Leland's consent.[208] This suggests that the domestic industry has likely not been present in this particular segment of the market since at least 2009.

[272] In light of the foregoing, the Tribunal grants exclusions for OMG's products No. 1, No. 2 and No. 3 (Cortex® Deck, Cortex® Trim and Cortex® Fascia).[209]

[273] Products No. 4 and No. 5 (TrapEase® 3 and TrapEase® FASCIA) are composite deck screws and composite fascia screws that are used to secure different brands of composite decking and fascia boards to a substructure.[210] They are essentially the same screws that are used in products No. 1 and No. 3 (Cortex® Deck and Cortex® Fascia), but with heads that are colour matched to the different brands of composite decking and fascia boards resulting in a clean finish when installed flush with the surface of the decking or boards.

[274] For the same reasons provided above for products No. 1, No. 2 and No. 3, the Tribunal finds that the domestic industry does not currently produce a product that is substitutable for, or competes with, OMG's TrapEase® screws. Whereas Leland's Master Deckers® are base commodity products,

---

204 Exhibit RR-2019-002-37.03A, Vol. 1.5 at 55-60, 76-78. The screws that form part of OMG's Cortex® Fascia hidden fastening system have a flat head. In this case, the holes to receive the plugs are made by a counterbore tool included with every package. See Exhibit RR-2019-002-31.03, Vol. 1.5 at 441.

205 Exhibit RR-2019-002-37.03A, Vol. 1.5 at 76-78.

206 *Ibid.* at 55-60.

207 Exhibit RR-2019-002-32.03 (protected), Vol. 2.5 at 7; Exhibit RR-2019-002-37.03A, Vol. 1.5 at 89, 91, 93; Exhibit RR-2019-002-36.01 (protected), Attachment N, Vol. 2.5.

208 *Fasteners 2009 Review* at paras. 261-273; *Fasteners 2014 Review* at paras. 233-238. See also Appendix 1 to the current order.

209 The Tribunal notes that these three product exclusions, and any other product exclusions which cover screws that are packaged or bundled with non-subject goods (plugs and a setting tool in the present case) are granted on the condition that the package or bundle is determined by the CBSA to be subject to the Tribunal's order at the time of importation.

210 Exhibit RR-2019-002-31.03, Vol. 1.5 at 448, 456, 510, 518.

OMG's screws are high-end specialized products that respond to the needs of a niche market not served by the domestic industry. The evidence clearly indicates that OMG's screws have specific features not found on Leland's Master Deckers®, which are necessary to avoid compromising the boards and to obtain the clean finish desired by end users.[211] The evidence also indicates that OMG's TrapEase® screws are sold at prices that are significantly higher than Leland's selling prices for its Master Deckers®.[212]

[275] In light of the foregoing, the Tribunal grants exclusions for OMG's products No. 4 and No. 5 (TrapEase® 3 and TrapEase® FASCIA).

[276] Product No. 6 (GuardDog®) is an exterior wood screw used in a variety of applications. It is, in essence, a general purpose wood screw. OMG claimed that the GuardDog®'s features such as its sharp point, PoziSquare® drive and acceptability for use in wood pressure treated with alkaline copper quaternary (ACQ), make it a high-end product performing at a higher level than standard wood screws like Leland's Master Deckers®.[213]

[277] However, the evidence indicates that Leland's Flat Quadrex Head Master Deckers® also have a sharp point, a drive very similar to the PoziSquare® and can be used in wood pressure treated with ACQ.[214] The evidence also indicates that Leland has made a number of sales of these screws in recent years.[215] From a visual standpoint, they are nearly identical to OMG's GuardDog® screw.[216] In addition, the GuardDog® screw is the least expensive of OMG's 12 products for which it requested exclusions and the difference in price with Leland's Flat Quadrex Head Master Deckers® is not nearly as significant as it is with OMG's other products.[217] The Tribunal therefore finds that Leland currently produces a product that is substitutable for, and competes with, OMG's GuardDog® screw such that the granting of an exclusion would cause injury to the domestic industry.

[278] Consequently, the Tribunal denies OMG's exclusion request for product No. 6 (GuardDog®).

[279] Products No. 7 to No. 12 (TimberLOK®, HeadLOK®, FlatLOK®, LedgerLOK®, Flat Head LedgerLOK® and ThruLOK®) are structural wood screws used for applications such as rafter/truss to top plate connections, multi-ply dimensional and engineering wood connections, ledger board to rim joist connections, and guardrail posts to rim joist connections.[218] They are intended to be faster and easier to install than traditional lag screws, carriage bolts or through bolts.[219]

[280] The Tribunal finds that structural wood screws comprising the OMG's LOK® line have several important characteristics that distinguish them from Leland's alleged competing products, namely its Master Deckers® and Shank Slot wood screws. First and foremost, OMG's structural wood screws have been tested and proven to comply with the requirements set out in the most recent

---

211 Exhibit RR-2019-002-37.03A, Vol. 1.5 at 61-64, 79-80.

212 Exhibit RR-2019-002-32.03 (protected), Vol. 2.5 at 450; Exhibit RR-2019-002-37.03A, Vol. 1.5 at 95, 97; Exhibit RR-2019-002-36.01 (protected), Attachment N, Vol. 2.5.

213 Exhibit RR-2019-002-31.03, Vol. 1.5 at 532; Exhibit RR-2019-002-37.03A, Vol. 1.5 at 64-65.

214 Exhibit RR-2019-002-35.01, Attachment L, Vol. 1.5.

215 Exhibit RR-2019-002-36.01 (protected), Attachment N, Vol. 2.5.

216 Exhibit RR-2019-002-37.03A, Vol. 1.5 at 81.

217 *Ibid.* at 99; Exhibit RR-2019-002-36.01 (protected), Attachment N, Vol. 2.5.

218 Exhibit RR-2019-002-31.03, Vol. 1.5 at 545, 558, 571, 584, 613.

219 *Ibid.* The ThruLOK® structural wood screw is slightly different than the other LOK® products as it is used with a washer and a unique nut to replace traditional carriage or through-bolts.

versions of the IBC and IRC as they pertain to each product's intended application.[220] As explained by Mr. McGovern of OMG, the applications for which the LOK® line of structural wood screws is designed are sensitive to building code approvals and require significant testing.[221] There is no evidence on the record which indicates that Leland's Master Deckers® and Shank Slot wood screws comply with the requirements of any building codes.

[281] OMG's structural wood screws also have head markings indicating the overall length of the screw in inches for code inspector review and approval.[222] According to Mr. McGovern, customers that purchase OMG's LOK® products are traditionally home builders or remodelers who are framing a wood structure, building a deck or making critical structural connections.[223] The Tribunal is of the view that, for such customers, the knowledge that the structural wood screws they are purchasing are code-compliant and can be identified by their head markings is an important purchasing consideration. As stated above, compliance with codes and standards can be a key differentiator that is relied upon by end users in order to ensure that the screws that are purchased can be used for their intended purpose.

[282] In terms of pricing, the best available evidence indicates that structural wood screws in OMG's LOK® line are sold at prices that are many orders of magnitude higher than Leland's selling prices for its Master Deckers® and Shank Slot wood screws.[224] Given their compliance with building codes and their very high prices, the Tribunal is persuaded that structural wood screws in OMG's LOK® line do not compete with products sold by the domestic industry. As a result, the granting of the requested exclusions will not cause injury to the domestic industry.

[283] In light of the foregoing, the Tribunal grants exclusions for OMG's products No. 7 to No. 12 (TimberLOK®, HeadLOK®, FlatLOK®, LedgerLOK®, Flat Head LedgerLOK® and ThruLOK®).

Hilti

[284] Hilti submitted requests for the exclusion of the following four of its products:

1. Kwik HUS-EZ (KH-EZ)
2. Kwik HUS-EZ E (KH-EZ E)
3. Kwik HUS-EZ I (KH-EZ I)
4. Kwik HUS-EZ P (KH-EZ P)

[285] These four products are all high-strength self-tapping/undercutting carbon steel screw anchors for cracked concrete, uncracked concrete, seismic, concrete over metal deck, and grouted masonry applications, with the only difference between them being the head type.[225] The KH-EZ and KH-EZ P anchors have a hex washer head and pan head, respectively, and are used to fasten or clamp fixtures to the aforementioned base materials. The KH-EZ E and KH-EZ I anchors have an

---

220 Exhibit RR-2019-002-31.03, Vol. 1.5 at 545, 558, 571, 584, 613; Exhibit RR-2019-002-37.03A, Appendix D, Vol. 1.5. See also the publicly available ICC-ES ESR-1078 report, which is referenced in OMG's marketing materials that are on the record.

221 Exhibit RR-2019-002-37.03A, Appendix A at paras. 84, 95, 105, 114, 128, 142, Vol. 1.5.

222 *Ibid.* at paras. 87, 117, 131, Appendix D, Vol. 1.5.

223 *Ibid.*, Appendix A at paras. 88, 96, 106, 118, 132, 143, Vol. 1.5.

224 *Ibid.*, Vol. 1.5 at 101, 103, 105, 107, 109, 111; Exhibit RR-2019-002-36.01 (protected), Attachments N, P, Vol. 2.5.

225 Exhibit RR-2019-002-31.02, Vol. 1.5 at 30-32.

externally threaded stud with a hex washer head and an internally threaded hex washer head, respectively, and are used for overhead attachments and coupling threaded rod.

[286] Hilti submitted that the granting of exclusions for these four products would not cause injury to the domestic industry as there is no evidence that it produces substitutable or competing products that are designed and tested to comply with the NBCC requirement outlined in CSA A23.3-14 Annex D or that have been tested to show compliance using other standards such as those established by the ICC-ES and the ACI. It added that, in Expiry Review No. RR-2014-001, the Tribunal granted a product exclusion to Simpson Strong-Tie for its Titen HD™ heavy-duty carbon steel screw anchor that competes with and performs functions that overlap with the four products for which Hilti requested exclusions.

[287] Leland submitted that the evidence filed by Hilti confirms that the domestic industry is currently capable of producing products No. 1 and No. 4 (KH-EZ and KH-EZ P) and that, to the extent that the other two products are protected by a patent or trademark, it would be capable of producing them provided Hilti licenses such production and provides the patented tool and die machining.

[288] Leland further submitted that it produces a full line of carbon steel concrete screws that have the same characteristics and end uses as, and that compete directly with, the products for which Hilti requested exclusions. It submitted that, while products No. 2 and No. 3 (KH-EZ E and KH-EZ I) have the added feature of being externally and internally threaded for coupling purposes, the core characteristics of the products remain that of concrete screw anchors such that they compete in the same markets as, and are fully substitutable with, domestically produced concrete screw anchors.

[289] Hilti replied that the Tribunal has previously stated that the capability to produce is much less relevant after protective measures have been in place for five years, let alone 15 years, as is the case here. It also noted that its requests for product exclusions are only for "heavy-duty" concrete screw anchors and not "light-duty" anchors, a distinction that was recognized by the Tribunal in the 2014 expiry review where it granted a product exclusion to Simpson Strong-Tie for its Titen HD™ heavy-duty carbon steel screw anchors but not for its Titen screws. It submitted that, although the products put forth as substitutable by Leland closely match the dimensions and physical appearance of standard light-duty anchors produced by Hilti, they are not fully substitutable for the products for which Hilti is requesting exclusions.

[290] As for products No. 2 and No. 3 (KH-EZ E and KH-EZ I), Hilti submitted that they have end uses and applications that distinguish them from concrete screw anchors that do not have the same internal or external threading. It added that, contrary to Leland's assertion, the threading on the head of these two products is not patented such that there is no impediment to Leland developing and producing its own similar product.

[291] Just as it did with OMG's requests for product exclusions, the Tribunal finds that, on the whole, the evidence provided by Hilti in support of its requests was detailed, thorough and significantly more probative than that filed by the domestic industry, which ultimately led the Tribunal to grant all four requests filed by Hilti. For the reasons previously mentioned, the Tribunal also gave little weight to the domestic industry's assertions that it is capable of producing the products for which Hilti requested exclusions.

[292] Turning to the specifics of Hilti's requests, the Tribunal begins by noting that, in addition to its differential treatment of the Titen HD™ heavy-duty carbon steel screw anchors and the Titen screws in the 2014 expiry review,[226] the evidence on the record in the current expiry review supports the finding that "heavy-duty" concrete screw anchors are distinct from "light-duty" concrete screw anchors. Indeed, according to Mr. Rutledge of Hilti North America, heavy-duty concrete screw anchors and light-duty concrete screw anchors are designed and tested for use in different applications and the latter cannot be used in applications where the former are specified.[227] Mr. Rutledge further explained that light-duty screw anchors are not specifically designed, produced and tested in accordance with prescribed standards applicable to heavy-duty concrete screw anchors and are therefore not typically substitutable in structural and life safety applications (e.g. safety railings, hanging of overhead attachments and other applications designed by a professional engineer).[228]

[293] Hilti provided uncontroverted evidence demonstrating that the four products for which it requested exclusions are heavy-duty concrete screw anchors that have undergone third-party testing and assessment in accordance with standards established by the ICC-ES and the ACI for cracked concrete, uncracked concrete, seismic, concrete over metal deck, and grouted masonry applications, and have been found to comply with the requirements set out in the most recent versions of the IBC and IRC.[229]

[294] Conversely, the Tribunal could find no evidence on the record indicating that Leland's concrete screw anchors have been tested and assessed in accordance with similar standards. This was corroborated by Mr. Rutledge who affirmed that he conducted an exhaustive search of the public databases of the ICC-ES and the IAPMO-UES, and could find no products from Leland, Standard Fasteners or Visqué.[230] This strongly suggests that Leland is not producing concrete screw anchors that can be used in structural and life safety applications.

[295] In fact, the product drawings and copies of invoices from the sale of Leland's concrete screws show that they have characteristics similar to those of light-duty concrete screw anchors.[231] This is made clear by Mr. Rutledge who included in his witness statement a table comparing both the dimensions and performance characteristics of a number of commercially available heavy-duty and light-duty concrete screw anchors, along with pictures for each of them, and concluded, on the basis of Leland's product drawings and invoice nomenclature, that it had produced some light-duty concrete screw anchors.[232] Interestingly, this table also shows that Hilti's KH-EZ anchor is almost identical in appearance to the Titen HD™ heavy-duty carbon steel screw anchor that was previously granted an exclusion, as well as to the Screw-Bolt+™ for which SBD requested an exclusion in the present expiry review.

---

226 See *Fasteners 2014 Review* at paras. 208-221.

227 Exhibit RR-2019-002-37.01A, Appendix B at para. 3, Vol. 1.5.

228 *Ibid.* at para. 6.

229 *Ibid.*, Attachments A and C, Vol. 1.5; Exhibit RR-2019-002-31.02, Vol. 1.5 at 32. The NBCC does, by reference, prescribe a standard established by the CSA which, in turn, prescribes a standard established by the ACI that is applicable to heavy-duty concrete screw anchors. See Exhibit RR-2019-002-37.01A, Appendix B at para. 8, Vol. 1.5.

230 Exhibit RR-2019-002-37.01A, Appendix B at para. 11, Vol. 1.5.

231 Exhibit RR-2019-002-35.01A, Vol. 1.5 at 5-27.

232 Exhibit RR-2019-002-37.01A, Vol. 1.5 at 34-35.

[296] As for pricing, the evidence indicates that Hilti's import purchase prices for the products for which it requested exclusions are significantly higher than Leland's selling prices for its concrete screws.[233] Considered together with the absence of evidence indicating that Leland's concrete screws have been tested and assessed in accordance with standards applicable to heavy-duty concrete screw anchors and the evidence indicating that its concrete screws appear to be light-duty concrete screw anchors, the Tribunal is satisfied that Hilti's carbon steel screw anchors do not have the same end uses, fulfil the same customer needs or otherwise compete with products sold by the domestic industry. As a result, the Tribunal finds that the granting of the requested exclusions will likely not cause injury to the domestic industry.

[297] Despite having already determined that the granting of exclusions for all four of Hilti's products will not cause injury to the domestic industry, the Tribunal is compelled to address Leland's argument to the effect that Hilti's products No. 2 and No. 3 (KH-EZ E and KH-EZ I), which have externally and internally threaded heads and are used for overhead attachments and coupling threaded rod, compete in the same market as, and are fully substitutable with, domestically produced concrete screw anchors that have regular heads. Leland made this argument after having acknowledged that it does not produce a product similar to the KH-EZ E and KH-EZ I anchors and that the domestic industry is not currently capable of producing these two products.[234]

[298] The Tribunal finds it improper to suggest that concrete screw anchors with regular heads compete directly with concrete screw anchors that have heads designed specifically for hanging applications. It is readily apparent that, without these externally and internally threaded heads, the anchors would not have the same end uses or fulfil the same customer needs. This is supported by Mr. Rutledge's statement that the internal and external threading of the KH-EZ E and KH-EZ I anchors is a "core product differentiator".[235]

[299] In light of the foregoing, the Tribunal grants exclusions for Hilti's products No. 1 to No. 4 (KH-EZ, KH-EZ E, KH-EZ I and KH-EZ P).

SBD

[300] SBD submitted requests for the exclusion of the following five of its DeWalt-branded products:

1. Hangermate®
2. Hangermate®+
3. Screw-Bolt+™
4. Ultracon®
5. Ultracon®+

[301] SBD submitted that no domestic producer produces, or is capable or willing to produce these five products, which are various types of screw anchors designed for use in concrete, steel or wood. It submitted that the domestic industry also does not produce screw anchors that are similar to, or that compete with, the products for which it requested exclusions and that, as a result, the granting of

---

233 Exhibit RR-2019-002-32.02 (protected), Vol. 2.5 at 6, 13, 20, 26; Exhibit RR-2019-002-36.01 (protected), Attachment D, Vol. 2.5.

234 See Exhibit RR-2019-002-35.01, Annex A at para. 35, Annex B at para. 24, Vol. 1.5.

235 Exhibit RR-2019-002-37.01A, Appendix B at para. 18, Vol. 1.5.

exclusions will not cause injury to the domestic industry. It further submitted that product No. 3 (Screw-Bolt+™) currently competes with the Titen HD™ heavy-duty carbon steel screw anchor that was previously excluded.

[302] Leland submitted that it opposes SBD's requests for product exclusions for the same reasons that it opposes Hilti's requests, i.e. because the domestic industry is capable of producing the products covered by the requests and because it produces substitutable and competing products. It submitted that, while it can partially manufacture products No. 1 and No. 2 (Hangermate® and Hangermate®+), SBD refused to have Leland finish these products at one of SBD's production facilities or to provide Leland with the patented machinery necessary to make the products. It submitted that these two requests should therefore be denied for this reason alone. It further submitted that it produces concrete screws, based on customer specifications, which have the same or similar characteristics, and that are substitutable for the five products for which SBD requested product exclusions.

[303] SBD replied that Leland has failed to provide evidence establishing that it produces substitutable products, that it is an "active supplier" of such products or that granting the requested exclusions would likely cause injury. Notably, it submitted that Leland failed to provide any technical performance data for any of its concrete screws and to provide evidence required to establish that its concrete screws are produced to standards comparable to those to which SBD's products adhere. It added that, by listing the same concrete screws as equivalent for each of the five products for which SBD requested product exclusions, Leland has conceded that it cannot identify the specific concrete screw that would be substitutable for each of these five products.

[304] SBD further submitted that the Tribunal has consistently found that, in the context of an expiry review, capability to produce is less important than the question of whether the domestic industry is an active supplier of the substitutable products. It submitted that, assuming that Leland's concrete screws are substitutable for SBD's products, which it denies, the evidence shows that Leland is not an active supplier of concrete screws.

[305] As was the case for OMG and Hilti's requests for product exclusions, the Tribunal finds that, on the whole, the evidence provided by SBD in support of its requests was detailed, thorough and, for three of the five products for which exclusions were requested, significantly more probative than that filed by the domestic industry. While the evidence filed by the domestic industry in opposition to SBD's requests was generally insufficient and unpersuasive, the Tribunal finds that it reached the necessary threshold for denying the granting of exclusions for the two other products. Once more, the Tribunal gave little weight to the domestic industry's claims with respect to its capability to produce the products for which SBD requested exclusions.

[306] Products No. 1 and No. 2 (Hangermate® and Hangermate®+) are screw anchors used for suspending steel threaded rod vertically overhead in pipe hanging, fire protection, electrical conduit and cable-tray applications.[236] The Hangermate® screw anchors are for use in steel and wood and are available with various internally threaded heads, which allow for threaded rod to be mounted in a number of directions, or with an acoustical ceiling eyelet for hanging wires or cable attachments. The Hangermate®+ screw anchors are for use in concrete and are available with either an externally or internally threaded head, which allow for threaded rod to be mounted vertically. For all intents and

---

236 Exhibit RR-2019-002-31.04, Vol. 1.5 at 3, 8, 52, 56.

purposes, the Hangermate®+ screw anchors are identical to Hilti's KH-EZ E and KH-EZ I concrete screw anchors.

[307] The Tribunal finds that there is no evidence on the record which indicates that the domestic industry produces screw anchors that are substitutable for, or compete with, SBD's Hangermate® and Hangermate®+ screw anchors. Leland did not provide any drawings or invoices showing products that have externally or internally threaded heads. In fact, Mr. Nelson acknowledged that Leland does not produce a product that competes directly with the Hangermate® and Hangermate®+ screw anchors.[237]

[308] As the Tribunal stated above when addressing Hilti's requests for product exclusions, anchors that do not have externally and internally threaded heads cannot be used in hanging applications and thereby cannot have the same end uses or fulfil the same customer needs as products that have such heads. This is supported by Mr. Chris Mania of SBD who states that the externally and internally threaded heads are the essential elements of the Hangermate® and Hangermate®+ screw anchors and that, without them, these anchors could not be used for their primary purpose of accepting threaded rods to suspend things like pipes and conduit from ceilings, walls or beams.[238] As there is no evidence that the domestic industry produces substitutable or competing screw anchors, the Tribunal finds that the granting of the requested exclusions is not likely to cause injury to the domestic industry.

[309] In light of the foregoing, the Tribunal grants exclusions for SBD's products No. 1 and No. 2 (Hangermate® and Hangermate®+).

[310] Product No. 3 (Screw-Bolt+™) is a heavy-duty carbon steel screw anchor that has either a hex washer head or a flat head and is intended for use in normal-weight concrete, lightweight concrete, concrete over steel deck, grouted concrete masonry and brick masonry.[239] It is very similar in appearance and design to Hilti's KH-EZ and KH-EZ P concrete screw anchors and Simpson StrongTie's Titen HD™ heavy-duty carbon steel screw anchors,[240] all of which have now been excluded, primarily on the basis of being recognized as "heavy-duty" anchors.

[311] The Tribunal finds that the evidence indicates that the Screw-Bolt+™ is also a heavy-duty concrete screw anchor that has undergone third-party testing and assessment in accordance with standards established by the ICC-ES and the ACI for cracked concrete, uncracked concrete, seismic, wind loading, and grouted masonry applications, and found to comply with the requirements set out in the most recent version of the IBC and IRC.[241] According to Mr. Mania, the Screw-Bolt+™ is a heavy-duty product intended for use in construction projects and whose primary competition is the Titen HD™ heavy-duty carbon steel screw anchor.[242]

[312] Given the Tribunal's earlier findings regarding the absence of evidence indicating that Leland's concrete screws have been tested and assessed in accordance with standards applicable to heavy-duty concrete screw anchors and the evidence indicating that its concrete screws appear to be light-duty concrete screw anchors, which findings are equally applicable here, the Tribunal is

---

237 Exhibit RR-2019-002-35.01, Annex B at paras. 25, 26, Vol. 1.5.
238 Exhibit RR-2019-002-37.02A, Vol. 1.5 at 87.
239 Exhibit RR-2019-002-31.04, Vol. 1.5 at 92.
240 See Exhibit RR-2019-002-37.01A, Vol. 1.5 at 34.
241 Exhibit RR-2019-002-31.04, Vol. 1.5 at 92.
242 *Ibid.* at 399.

satisfied that the Screw-Bolt+™ does not have the same end uses, fulfil the same customer needs or compete with products sold by the domestic industry. The granting of the requested exclusion is therefore not likely to be injurious to the domestic industry.

[313] In light of the foregoing, the Tribunal grants an exclusion for SBD's product No. 3 (Screw-Bolt+™).

[314] Products No. 4 and No. 5 (Ultracon® and Ultracon®+) are screw anchors that are available in a variety of head styles and are used for light to medium duty applications in concrete, masonry and wood base materials.[243] The main differences between the two are that the Ultracon® screw anchors have a larger diameter and that the Ultracon®+ screw anchors are available in several colours and finishes.[244]

[315] Unlike some of the other concrete screw anchors that have already been excluded, the evidence indicates that the Ultracon® and Ultracon®+ screw anchors are not heavy-duty anchors intended to be used in structural and life safety applications. Indeed, they are described in their own product literature as being for use in light-to medium-duty applications and their general applications and uses are listed as including window frames, shelving and racking, shutters and guards, interior hand rails and interior lighting fixtures.[245] Although the Ultracon®+ screw anchor has undergone third-party testing and assessment in accordance with previously mentioned standards, this would appear to be of lesser significance when the product is intended to be used in light- to medium-duty applications.

[316] As the Tribunal found above, the product drawings and copies of invoices from the sale of Leland's concrete screws show that they have characteristics similar to those of light-duty concrete screw anchors.[246] The Tribunal also notes that these drawings and invoices show concrete screws with three head styles, which are similar to those of the products for which exclusions were requested. While Mr. Mania does not agree that Leland's concrete screws are substitutable for either the Ultracon® or Ultracon®+ screw anchors, he does concede that they have a similar appearance.[247] The Tribunal notes that the Ultracon® and Ultracon®+ screw anchors, which can be used in wood, are also similar in appearance to some of Leland's wood screws.[248]

[317] In terms of pricing, the evidence indicates that SBD's import purchase prices are such that there could be real competition between the Ultracon® and Ultracon®+ screw anchors and Leland's concrete screws.[249] Therefore, for the preceding reasons, the Tribunal finds that, even if it were to accept that Leland's concrete screws do not have all of the same features and characteristics of the Ultracon® and Ultracon®+ screw anchors as SBD claimed, it would still come to the conclusion that they compete with one another.

---

243 *Ibid.* at 137, 174.

244 *Ibid.* at 137, 174, 399.

245 *Ibid.* at 137, 174. Although not as probative in this instance, evidence submitted by Hilti in these proceedings also suggests that the Ultracon®+ screw anchor is a light-duty anchor. See Exhibit RR-2019-002-37.01A, Vol. 1.5 at 34.

246 Exhibit RR-2019-002-35.01A, Vol. 1.5 at 5-27.

247 Exhibit RR-2019-002-37.02A, Vol. 1.5 at 88.

248 This means that the granting of exclusions for the Ultracon® and Ultracon®+ screw anchors could result in increased competition with Leland's wood screws, thereby likely causing injury to the domestic industry.

249 Exhibit RR-2019-002-32.04 (protected), Vol. 2.5 at 22, 28; Exhibit RR-2019-002-36.01 (protected), Attachment D, Vol. 2.5.

[318] The Tribunal also finds that, although Leland could have provided more evidence to show that it normally produces concrete screws, the Tribunal remains satisfied that the number of invoices provided and the quantities of concrete screws sold[250] by Leland in recent years is sufficient for it to be considered an active supplier of this product, such that the granting of exclusions for SBD's Ultracon® and Ultracon®+ screw anchors would likely result in injury to the domestic industry.

[319] Consequently, the Tribunal denies SBD's exclusion requests for products No. 4 and No. 5 (Ultracon® and Ultracon®+).

CONCLUSION

[320] 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, excluding the products described in the appendices to the order.

Georges Bujold
Georges Bujold
Presiding Member

Rose Ann Ritcey
Rose Ann Ritcey
Member

Serge Fréchette
Serge Fréchette
Member

[250] Exhibit RR-2019-002-36.01 (protected), Attachment D, Vol. 2.5.