

**GLOBAL SAFEGUARD  
INQUIRY INTO THE  
IMPORTATION OF  
BICYCLES AND FINISHED  
PAINTED BICYCLE  
FRAMES**

**GS-2004-001 AND GS-2004-002**

**SEPTEMBER 2005**

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## FOREWORD

On February 10, 2005, following a complaint filed by the Canadian Bicycle Manufacturers Association, the Canadian International Trade Tribunal commenced a global safeguard inquiry into the importation of certain bicycles and certain bicycle frames. On March 24, 2005, following a second complaint filed by the Canadian Bicycle Manufacturers Association regarding certain bicycle frames, the Canadian International Trade Tribunal issued its notice of decision to commence a global safeguard inquiry into the importation of certain finished painted bicycle frames. Also on March 24, 2005, the Canadian International Trade Tribunal decided, pursuant to rule 6.1 of the *Canadian International Trade Tribunal Rules*, to combine the proceedings with respect to the two complaints.

On May 10, 2005, the Governor General in Council, on the recommendation of the Minister of Finance and the Minister for International Trade, pursuant to subsection 27(3) of the *Canadian International Trade Tribunal Act*, referred to the Canadian International Trade Tribunal two matters concerning certain bicycles and certain finished painted bicycle frames. The first matter was that of determining whether, in the event of an affirmative injury determination, the determination would remain the same if goods imported from a country subject to the *North American Free Trade Agreement*, Israel or another beneficiary of the *Canada-Israel Free Trade Agreement*, or Chile were excluded. The second matter was that of recommending the most appropriate remedy to address any injury or threat of injury over a period of three years, in accordance with Canada's rights and obligations under international trade agreements. The Canadian International Trade Tribunal dealt with the matters referred by the Governor General in Council in the same proceedings as those into the complaints filed by the Canadian Bicycle Manufacturers Association.

The purpose of the global safeguard inquiry was to determine whether the goods subject to the inquiry are being imported into Canada in such increased quantities and under such conditions as to be a principal cause of serious injury, or threat thereof, to domestic producers of like or directly competitive goods and to make a recommendation on the appropriate remedy in the event of an affirmative injury determination. This report contains the Canadian International Trade Tribunal's determinations and recommendations.

Fifty parties filed notices with the Canadian International Trade Tribunal indicating that they wished to participate in the global safeguard inquiry. Participants included domestic and foreign producers, importers, mass merchants, independent bicycle dealers, domestic and foreign trade associations, a union and the governments of several countries.

The Canadian International Trade Tribunal thanks all the parties and their counsel and witnesses who participated in this inquiry. The members would like to thank the team of the Canadian International Trade Tribunal staff that responded to the demands of this global safeguard inquiry for its dedication and professionalism and the excellent quality of its work.

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**Ellen Fry**

Ellen Fry

Presiding Member

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**Pierre Gosselin**

Pierre Gosselin

Member

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**Richard Lafontaine**

Richard Lafontaine

Member

## EXECUTIVE SUMMARY

Following the receipt of complaints filed by the Canadian Bicycle Manufacturers Association (CBMA) and a referral by the Governor General in Council, the Canadian International Trade Tribunal (the Tribunal) has completed a global safeguard inquiry into the importation of bicycles, assembled or unassembled, with a wheel diameter greater than 38.1 centimetres (15 inches) and finished painted bicycle frames, whether assembled or unassembled.

The purpose of this global safeguard inquiry is to determine whether the goods subject to the inquiry are being imported into Canada in such increased quantities and under such conditions as to be a principal cause of serious injury, or threat thereof, to domestic producers of like or directly competitive goods and, in the event of an affirmative injury determination, to make a recommendation on the appropriate remedy.

On May 10, 2005, the Governor General in Council referred to the Tribunal two matters concerning bicycles and finished painted bicycle frames: (1) to determine whether an affirmative injury determination by the Tribunal would remain the same if goods imported from a country subject to the *North American Free Trade Agreement*<sup>1</sup>, Israel or another beneficiary of the *Canada-Israel Free Trade Agreement*,<sup>2</sup> or Chile were excluded; and (2) to recommend to the Government the most appropriate remedy to address any injury or threat of injury over a period of three years, in accordance with Canada's rights and obligations under international trade agreements.

The Tribunal issued questionnaires to 12 potential bicycle and finished painted bicycle frame producers, 31 importers, 41 foreign producers and 26 purchasers. Although the Tribunal sent out questionnaires to only 26 purchasers, it received responses from 155 purchasers. The Tribunal held a nine-day public hearing from June 20 to 24 and June 27 to 30, 2005. During the hearing, the Tribunal heard and questioned witnesses for domestic and foreign producers, importers, mass merchants, independent bicycle dealers (IBDs), domestic and foreign trade associations, a union and the governments of several countries on the key issues being addressed in the inquiry. Counsel for parties were provided with the opportunity to examine and cross-examine witnesses and make argument.

## SUMMARY OF DETERMINATIONS AND REASONS

The Tribunal's determinations are summarized as follows.

### Bicycles

The Tribunal determined that increased imports of bicycles (as defined in Chapter II) were a principal cause of serious injury to domestic producers of like or directly competitive

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1. *North American Free Trade Agreement Between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America*, 17 December 1992, 1994 Can. T.S. No. 2 (entered into force 1 January 1994) [NAFTA].
  2. *Free Trade Agreement between the Government of Canada and the Government of the State of Israel*, 31 July 1996, 1997 Can. T.S. No. 49 (entered into force 1 January 1997) [CIFTA].

goods. A review of the import trends during the period of inquiry indicated that total imports of bicycles increased in each year, such that, by 2004, imports of bicycles had grown by almost 98 percent compared to the volume of imports in 2000. In particular, two significant surges in imports occurred, one in 2001 and the other in 2003. Accordingly, the Tribunal found that there had been a recent, sharp, sudden and significant increase in imports of bicycles into Canada, both in absolute terms and relative to the production in Canada of like goods.

The Tribunal found that the domestic producers of bicycles suffered significant overall impairment and, thus, incurred serious injury. This injury took the form of a serious deterioration in production, capacity utilization, sales volume, market share, sales revenue, cash flow, employment, and ability to invest. As well, gross margins and net income were not at the levels that the domestic producers could have achieved in the absence of the increased imports. In addition to examining the impact of increased imports on domestic producers of like or directly competitive goods, the Tribunal examined the following factors alleged to have caused injury to domestic producers: brand management decisions; intra-industry competition; the availability of licensed products; and the failure of domestic producers to offer innovative designs and features. The Tribunal found that none of these factors constituted a principal cause of the injury suffered by the domestic producers.

Based on the evidence on the record, the Tribunal determined that the increase in imports of bicycles was a principal cause of the serious injury suffered by the domestic producers of like or directly competitive goods. (See Chapter II)

With respect to Canada's obligations under the *General Agreement on Tariffs and Trade 1994*,<sup>3</sup> the Tribunal found that the significant increase in imports of bicycles was due to unforeseen developments and resulted from the effect of the obligations incurred by Canada under *GATT 1994*.

### **Finished Painted Bicycle Frames**

The Tribunal found that there had been a recent, sharp, sudden and significant increase in imports of finished painted bicycle frames (as defined in Chapter III) in absolute terms and relative to the production in Canada of like or directly competitive goods. The imports increased by 133 percent over the period of inquiry. While imports increased, domestic production of finished painted bicycle frames declined dramatically. Over the period of inquiry, imports of finished painted bicycle frames relative to domestic production increased from 5 percent in 2001 to 21 percent in 2004.

The CBMA did not allege serious injury to the production of finished painted bicycle frames, nor did the evidence indicate that such injury had occurred. However, in its complaints, the CBMA submitted that, if imported finished painted bicycle frames were not subject to safeguard protection, their importation would pose a threat of circumvention of the protection afforded to complete bicycles because the assembly in Canada of bicycles from imported

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3. Hereinafter *GATT 1994*. This agreement includes notably the provisions in the *General Agreement on Tariffs and Trade 1947*.

finished painted bicycle frames could quickly and easily be established and that these assembled bicycles would displace Canadian production of finished painted bicycle frames.

The Tribunal found that domestic producers accounted for an increasing proportion of total imports each year during the period of inquiry. The Tribunal considered that there can be no threat of injury to domestic producers by goods imported by domestic producers themselves. After deducting imports of finished painted bicycle frames by domestic producers, the remaining volume and increase in imported finished painted bicycle frames were not sufficient, relative to the volume of domestic frame production, to threaten injury. Therefore, the Tribunal determined that finished painted bicycle frames were not being imported in such increased quantities and under such conditions as to be a principal cause of threat of serious injury to the domestic producers of finished painted bicycle frames. (See Chapter III)

## **NAFTA AND OTHER FREE TRADE AGREEMENT PROVISIONS**

In accordance with *NAFTA*, *CIFTA*, the *Canada-Chile Free Trade Agreement*<sup>4</sup> and the *Canadian International Trade Tribunal Act*,<sup>5</sup> the Tribunal determined that the quantity of bicycles imported from each of the United States, Mexico, Israel or another *CIFTA* beneficiary, and Chile does not account for a substantial share of total imports of bicycles. Accordingly, imports from these countries should be excluded from a safeguard remedy.

The Tribunal also determined that its finding was not changed by the exclusion of imports from the United States, Mexico, Israel or another *CIFTA* beneficiary, and Chile.

## **DEVELOPING COUNTRIES**

Article 9.1 of the World Trade Organization (WTO) *Agreement on Safeguards* provides that a safeguard measure “shall not be applied against a product originating in a developing country Member as long as its share of imports . . . does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports”.

According to the import data, China, Mexico, the Philippines, Thailand and Vietnam were the only other developing countries whose individual shares of total imports exceeded the 3 percent threshold during the 2001-2004 period. As discussed above, Mexico should be excluded from any safeguard remedy.

For all other developing countries, the data indicate that their individual shares of total imports of bicycles were below the 3 percent threshold and that their collective imports did not exceed 9 percent of total imports during the 2001-2004 period. Therefore, imports from these other developing countries should be excluded from any safeguard remedy.

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4. *Free Trade Agreement between the Government of Canada and the Government of the Republic of Chile*, 4 December 1996, 1997 Can. T.S. No. 50 (entered into force 5 July 1997) [*CCFTA*].

5. R.S.C. 1985 (4th Supp.), c. 47 [*CITT Act*].

## PRODUCT EXCLUSIONS

The Tribunal received 26 requests to exclude certain types of bicycles from the remedy. These exclusion requests covered the following types of bicycles: bicycles above certain FOB selling prices (at foreign point of direct shipment), folding bicycles, tandem bicycles, recumbent bicycles, bicycles made with specific materials, specific models, custom-designed bicycles, bicycles with a patented suspension and bicycles made with tungsten inert gas (TIG) welded frames. After considering the submissions of both the requesters and the domestic producers, the Tribunal recommends that the Government grant, in full or in part, 12 requests that certain types of bicycles be excluded from any safeguard remedy. (See Chapter IV)

## REMEDY RECOMMENDATION

Having regard to all the relevant factors, the Tribunal considers the most appropriate remedy in this case to be a surtax set at 30 percent in the first year of application, 25 percent in the second year and 20 percent in the third year.

The Tribunal recommends that the surtax be applied to imports of bicycles, assembled or unassembled, with a wheel diameter greater than 38.1 centimetres (15 inches) with an FOB value of CAN\$225 or less (equivalent to CAN\$400 retail), subject to the exclusion of imports from free-trade agreement partners and certain developing countries (see Chapter V), and the exclusion of certain types of bicycles (see Chapter IV). The recommended remedy is set at a level that, in the Tribunal's view, does not exceed what is necessary to remove the serious injury.

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## CHAPTER I

### INTRODUCTION

#### **BACKGROUND**

1. On November 22, 2004, pursuant to subsection 23(1) of the *CITT Act*, the CBMA submitted a complaint to the Tribunal alleging that certain bicycles and certain finished painted bicycle frames were being imported in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive goods and requesting that the Tribunal initiate a global safeguard inquiry into the complaint. The CBMA represents two domestic producers, Groupe Procycle Inc. (Groupe Procycle) and Raleigh Canada Limited (Raleigh).
2. Upon consideration of the complaint and additional information subsequently provided by the CBMA, the Tribunal determined, on January 11, 2005, pursuant to subsection 25(1) of the *CITT Act*, that the complaint was properly documented.
3. On February 10, 2005, the Tribunal commenced a global safeguard inquiry into the complaint (GS-2004-001). In its statement of reasons supporting its decision to commence an inquiry, the Tribunal noted that the only allegation in the complaint with respect to certain finished painted bicycle frames was that these imports were threatening to cause injury to domestic producers of bicycles. The Tribunal indicated that it would only have jurisdiction to inquire into this allegation if bicycles were determined to be “like or directly competitive goods” in relation to finished painted bicycle frames.
4. In a letter dated February 17, 2005, the CBMA indicated that, in its view, bicycles and finished painted bicycle frames were not “like goods”.
5. On March 3, 2005, the CBMA submitted a second complaint to the Tribunal alleging that certain finished painted bicycle frames were being imported in such increased quantities and under such conditions as to threaten serious injury to domestic producers of like or directly competitive goods and requesting that the Tribunal initiate a global safeguard inquiry into the complaint.
6. The Tribunal determined, on March 24, 2005, pursuant to subsection 25(1) of the *CITT Act*, that the complaint was properly documented. The notice of receipt of a properly documented complaint and the notice of decision to commence a global safeguard inquiry (GS-2004-002) were issued on March 24, 2005. On April 8, 2005, the Tribunal issued its statement of reasons for the decision.
7. On March 24, 2005, the Tribunal decided, pursuant to rule 6.1 of the *Canadian International Trade Tribunal Rules*,<sup>6</sup> to combine the proceedings of Safeguard Inquiry No. GS-2004-002 with those of Safeguard Inquiry No. GS-2004-001.

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6. S.O.R./91-499 [*Rules*].

## REFERRAL ORDER

8. On May 10, 2005, pursuant to subsection 27(3) of the *CITT Act*, the Governor General in Council, on the recommendation of the Minister of Finance and the Minister for International Trade, referred to the Tribunal the two matters concerning bicycles and finished painted bicycle frames set out in the Order in Council (the Referral Order) reproduced in Appendix I.

9. The first matter in the Referral Order concerns the issue of whether any injury determination by the Tribunal would remain the same if goods imported from a country subject to *NAFTA*, Israel or another beneficiary of *CIFTA*, or Chile were excluded. The second matter is that of recommending the most appropriate remedy to address any injury or threat of injury over a period of three years, in accordance with Canada's rights and obligations under international trade agreements.

10. The Tribunal decided to conduct its proceedings as required under the Referral Order concurrently with its proceedings into injury, given that the injury and remedy questions in this global safeguard inquiry were likely to require similar background information and many of the same witnesses. The Tribunal considered that this would be less burdensome on the parties and would allow for a more timely recommendation on remedy in the event of an injury determination. Throughout this report, the Tribunal will refer to the concurrent proceedings collectively as the "global safeguard inquiry".

## CONDUCT OF THE GLOBAL SAFEGUARD INQUIRY

### Participation

11. Fifty parties filed notices with the Tribunal indicating that they wished to participate in the global safeguard inquiry. Participants included domestic and foreign producers, importers, mass merchants, IBDs, domestic and foreign trade associations, a union and the governments of several countries. The CBMA and the Syndicat des Métallos filed briefs supporting an injury determination and the associated remedy, while 35 parties filed submissions opposing any injury determination or remedy.<sup>7</sup> Appendix II lists all the parties that participated in the global safeguard inquiry.

12. The Tribunal received 37 requests for exclusions from any remedy imposed on bicycles or finished painted bicycle frames. The CBMA responded to several of these requests, and parties requesting the exclusions were given the opportunity to reply to the CBMA's response.

### Public Hearing

13. The Tribunal held a public hearing from June 20 to 24 and June 27 to 30, 2005. The Tribunal heard and questioned witnesses for the domestic and foreign producers, importers, mass merchants, IBDs, associations and other related organizations on the key issues being

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7. During the course of this global safeguard inquiry, the Tribunal also received nine letters from non-parties opposing the complaints.

addressed in the inquiry. Counsel for parties were provided with the opportunity to examine and cross-examine witnesses and make argument.

14. Appendix III lists the witnesses who appeared before the Tribunal at the public hearing.

### Information Gathered by the Tribunal

15. The Tribunal gathered basic data through a survey of domestic producers, importers, foreign producers, and purchasers of bicycles and finished painted bicycle frames. The Tribunal issued questionnaires to 12 potential bicycle and finished painted bicycle frame producers, 31 importers, 41 foreign producers and 26 purchasers. The Tribunal received 4 replies to its domestic producers' questionnaire, 32 replies to its importers' questionnaire and 29 replies to its foreign producers' questionnaire. Although the Tribunal sent out only 26 questionnaires to purchasers of bicycles and finished painted bicycle frames, it received 155 replies. The names of those that responded to the various Tribunal questionnaires can be found in Appendix IV.

16. Questionnaire respondents were asked to provide information for the period covering the years 2000 to 2004 inclusive.

17. On May 12, 2005, the Tribunal issued a pre-hearing staff report for parties to use as a common factual starting point in addressing the issues in the inquiry.<sup>8</sup>

### Preliminary Matters

#### Motion for an Adjournment of the Global Safeguard Inquiry

18. On May 9, 2005, Specialized Bicycle Components Canada, Inc. (Specialized) filed a motion under subsection 28(1) of the *CITT Act*, requesting that the Tribunal adjourn the global safeguard inquiry and refer the complaints to the Canada Border Services Agency (CBSA) for consideration under the *Special Import Measures Act*<sup>9</sup> on the basis that the injury alleged in the complaints appeared to be caused by dumping.

19. Subsection 28(1) of the *CITT Act* provides as follows:

28. (1) Where, at any time during an inquiry into a complaint, the Tribunal forms the opinion that the injury or threat of injury alleged in the complaint appears to be caused by the dumping or subsidizing of goods within the meaning of the *Special Import Measures Act*, the Tribunal shall forthwith adjourn the inquiry, give notice thereof to the complainant and each other interested party and, by notice in writing, refer the complaint to the [President of the CBSA] for consideration under the *Special Import Measures Act*.

20. On May 27, 2005, the Tribunal advised parties that it was denying the motion. The reasons for that decision follow.

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8. On May 24 and June 3, 2005, the Tribunal issued revisions to the pre-hearing staff report. On May 31, 2005, the Tribunal issued supplemental information on the features and prices of bicycles and finished painted bicycle frames. On June 13, 2005, the Tribunal issued supplemental quarterly import data and first quarter financial data for 2004 and 2005.

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

21. Pursuant to subsection 2(1) of *SIMA*, goods are dumped when their normal value exceeds their export price. When the motion was filed, there was little or no information on the record concerning normal values or related costs of foreign producers with respect to their exports to Canada. The Tribunal further notes that no significant additional information on these matters was filed after the motion was filed by Specialized. Therefore, without the necessary information on normal values or foreign producer costs, the Tribunal could not form an opinion as to whether imports were dumped or not.

Request for an Order Regarding the Participation of Heenan Blaikie LLP

22. On March 18, 2005, the CBMA made a request to the Tribunal, pursuant to section 23.1 of the *Rules*, for an order regarding the participation of Heenan Blaikie LLP (Heenan Blaikie), a law firm representing parties opposed to the complaints in these proceedings. The order sought would have required Heenan Blaikie to establish an “ethical screen” to isolate Mr. Paul Lalonde, and certain other lawyers alleged to be in a position of conflict of interest, from work relating to these proceedings. The Tribunal notes that, on March 7 and 29, 2005, Heenan Blaikie notified the Tribunal that it had erected ethical screens to isolate from the proceedings the lawyers subject to the request pending its determination.

23. With respect to the establishment of an ethical screen to isolate Mr. Lalonde, the CBMA argued that, previously, while a partner with Flavell Kubrick & Lalonde (FKL), Mr. Lalonde had acted on behalf of members of the CBMA in a matter relating to the current proceedings, that is, Review No. RR-97-003 (the 1997 Review).<sup>10</sup> In addition, the CBMA argued that Mr. Lalonde had obtained relevant confidential information in his capacity as counsel for the CBMA up to the date of his departure from the firm in January 2000. The CBMA, citing subrules 2.04(4) and (5) of the Ontario *Rules of Professional Conduct*, contended that Mr. Lalonde’s role as past counsel for the CBMA placed him and Heenan Blaikie in a conflict of interest position relative to these proceedings, given that, in this global safeguard inquiry, Heenan Blaikie represented parties adverse in interest to the CBMA.

24. The CBMA also requested that a similar ethical screen be established to isolate some lawyers at Heenan Blaikie who, allegedly, had provided, and continued to provide, advice to Raleigh, one of the two current members of the CBMA. The CBMA submitted that, by representing clients with adverse interests, Heenan Blaikie offended the *Rules of Professional Conduct* and contravened the common law duty of loyalty owed to a client by a lawyer.

25. On April 29, 2005, Heenan Blaikie indicated that it was prepared to maintain, for the duration of the proceedings, the ethical screen isolating lawyers and staff involved in the representation of Raleigh. Accordingly, it was not necessary for the Tribunal to make a ruling concerning this portion of the CBMA’s request.

26. On May 3, 2005, the Tribunal denied the request to order Heenan Blaikie to establish an ethical screen to isolate Mr. Lalonde from these proceedings. The reasons for this decision follow.

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10. *Bicycles and Frames* (10 December 1997) (CITT).

27. The Tribunal considers it very important that counsel who appear before it be free from conflicts of interest.<sup>11</sup> Because the Tribunal is a court of record, its jurisdiction to consider all issues necessary to the fulfillment of its mandate includes the ability to consider matters regarding participation and appearance of parties and counsel before the Tribunal.<sup>12</sup>

28. A lawyer's duty to avoid conflicts of interest includes, notably, a general duty of loyalty and a duty of confidentiality. With respect to the duty of loyalty, it is recognized that lawyers must act in the best interests of their clients by avoiding conflict situations. Pursuant to that duty, a lawyer who has acted for clients in previous matters must not act against those clients in a related matter. With respect to the duty of confidentiality, a lawyer who has acted for a client must not thereafter act against the client in a new matter, if the confidential information received during the previous relationship is relevant to the matter at hand.<sup>13</sup>

29. While a member of FKL, Mr. Lalonde was one of the counsel of record representing the CBMA in the 1997 Review. This was a case heard by the Tribunal in 1997 to review the injury findings concerning certain bicycles and frames imported from the People's Republic of China (China) and Chinese Taipei. At that time, the CBMA consisted of its two current members and also of Victoria Precision Inc. (Victoria Precision). The outcome of this case was the issuance of an order continuing the finding for five years. In January 2000, Mr. Lalonde left FKL to join Heenan Blaikie. In 2002, the Tribunal reviewed its order concerning bicycles and frames in Expiry Review No. RR-2002-001 (the 2002 Review).<sup>14</sup> Mr. Lalonde was not a counsel of record in the 2002 Review.

30. With respect to the duty of loyalty, the key issue is whether the current proceedings are related to those in the 1997 Review. The goods in that review and this global safeguard inquiry are similar, and a number of parties have been involved in both proceedings. Both the 1997 Review and this global safeguard inquiry cover goods imported from China and Chinese Taipei, although this inquiry has a significantly greater geographical and product scope. While the issues in an expiry review of injury findings and in a global safeguard inquiry are not the same, they have common elements, given that, in both proceedings, the Tribunal's analysis concerns the relationship between imports and any injury to domestic producers.

31. However, a crucial point to consider is that the period covered by this global safeguard inquiry differs significantly from the period covered by the 1997 Review. In the 1997 Review, the period of review was from 1993 to 1996. The parties had to rely on data from that period as the basis for arguments to the Tribunal on the likelihood of resumed dumping and injury within a horizon of 18 to 24 months. In the current proceedings, the period of inquiry is from 2000 to 2004, and it is this period that the Tribunal must examine. Thus, there is no overlap between the periods covered by this global safeguard inquiry and the 1997 Review.

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11. "The sine qua non of the justice system is that there be an unqualified perception of its fairness in the eyes of the general public." *O'Dea v. O'Dea* (1987), 68 Nfld. & P.E.I.R. 67 (Nfld. Unif. Fam. Ct.) at 75, aff'd Nfld. C.A., June 6, 1988; cited with approval in *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235 at 1256.

12. *466353 Ontario Ltd. v. Ontario (Municipal Board)*, [2005] O.J. No. 979 (Ont. Sup. Ct.).

13. *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235 at 1260-61.

14. *Bicycles and Frames* (9 December 2002) (CITT).

32. Therefore, in the Tribunal's view, for the purposes of determining whether Mr. Lalonde would be in breach of his duty of loyalty if he acted for parties opposed to the complaints in these proceedings, the 1997 Review and the current proceedings should not be considered to be related proceedings. Consequently, the Tribunal would not consider the representation by Mr. Lalonde of parties opposed to the complaints as a breach of his duty of loyalty.

33. With respect to the duty of confidentiality, the Tribunal notes that Mr. Lalonde left FKL in January 2000, the first month of the five-year period of inquiry in these proceedings, and more than four years before the complaints were filed that initiated this inquiry. Consequently, any confidential information to which Mr. Lalonde may have had access during that month would be highly unlikely to have more than trivial relevance to this inquiry. As a consequence, the Tribunal is of the view that the representation by Mr. Lalonde of parties opposed to the complaints would not constitute a breach of his duty of confidentiality.

## SUMMARY OF MEASURES REGARDING BICYCLES AND BICYCLE FRAMES

### Canada

34. Anti-dumping measures on imports of certain bicycles and certain bicycle frames have been in place in Canada since December 1992. The following is a brief summary.

#### Inquiry No. NQ-92-002

35. On December 11, 1992, in Inquiry No. NQ-92-002, the Tribunal found that the dumping in Canada of bicycles, assembled or unassembled, with wheel diameters of 16 inches (40.64 cm) and greater, originating in or exported from Chinese Taipei and China, excluding bicycles with an FOB Chinese Taipei or China selling price exceeding CAN\$325, had caused, was causing and was likely to cause material injury to the production in Canada of like goods and that the dumping in Canada of the subject bicycle frames<sup>15</sup> originating in or exported from the aforementioned countries had not caused, was not causing, but was likely to cause material injury to the production in Canada of like goods.

#### The 1997 Review

36. On December 10, 1997, in the 1997 Review, the Tribunal continued its finding in Inquiry No. NQ-92-002, with an amendment to exclude bicycle frames with an FOB Chinese Taipei or China selling price exceeding CAN\$100.

#### The 2002 Review

37. On December 9, 2002, the Tribunal conducted an expiry review of its order in the 1997 Review. The Tribunal continued its order concerning bicycles, with an amendment to exclude bicycles with an FOB Chinese Taipei or China selling price exceeding CAN\$225 and to exclude bicycles with foldable frames and stems.

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15. The subject goods included both painted and unpainted bicycle frames.

38. The Tribunal also continued its order concerning bicycle frames, with an amendment to exclude bicycle frames with an FOB Chinese Taipei or China selling price exceeding CAN\$50.

#### The CBSA's Reinvestigation

39. On March 8, 2004, the CBSA initiated a reinvestigation to update the normal values and export prices of bicycles and bicycle frames from Chinese Taipei and China being exported to Canada. In the past, China had been considered a non-market economy; therefore, normal values for Chinese exporters had been established on the basis of costs or prices of bicycles sold in a third country with a market economy (i.e. a "surrogate" country, which, in this case, was Chinese Taipei). On September 1, 2004, the CBSA concluded that it found no evidence to demonstrate that the Government of China substantially controlled the pricing of bicycles and bicycle frames. Therefore, normal values were based on prices or costs in China, not on prices or costs of bicycles sold in a third country with a market economy. As a result of the reinvestigation, the Chinese exporters with specific normal values are now able to sell to Canada at lower prices than previously without being subject to an anti-dumping duty.

### **Other Jurisdictions**

#### Europe

40. On April 29, 2004, the European Union initiated an interim review of its anti-dumping measures applicable to imports of bicycles originating in China.<sup>16</sup> The products under review are bicycles and other cycles (including delivery tricycles), not motorized. The investigation will determine whether or not there is a need for the continuation, removal or amendment of the existing measures.

#### Mexico

41. On September 22, 1994, the Government of Mexico<sup>17</sup> imposed an anti-dumping duty of 144 percent on certain bicycles imported from China.<sup>18</sup>

42. On December 15, 2000, Mexico decided to maintain the duties for an additional five years. An expiry review of this anti-dumping duty was in process at the date of the Tribunal's hearing.

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16. 29 April 2004, O.J.C. 103/04.

17. Through the *Secretaría de Economía* (formerly the *Secretaría de Comercio y Fomento Industrial*).

18. The subject goods are classified under tariff item Nos. 8712.00.01, 8712.00.02, 8712.00.03, 8712.00.04 and 8712.00.99 of the *Ley de los Impuestos Generales de Importación y de Exportación* (Mexican tariff schedule).



## CHAPTER II

### BICYCLES

#### PRODUCT AND MARKET

##### Product Description

43. The goods subject to the inquiry are bicycles, assembled or unassembled, with wheel diameters greater than 38.1 centimetres (15 inches).

44. Bicycles consist of a frame, a fork, a drive train, wheels, a seat, handlebars and brakes, each of which, in turn, consists of several parts. Differences in materials and technology employed and quality of the frame, drive train and wheels are factors that account for a wide range of bicycle models and prices.

45. The design, appearance and construction of bicycles have been evolving rapidly in recent years. In addition to steel and its various alloys, aluminum, carbon and titanium frames are becoming more common, as well as front and rear shock absorbers and disk brakes. Types of bicycles that are generally marketed in Canada include: BMX, road, cruiser, mountain, comfort, hybrid, race, tandem, folding and touring bicycles.

##### Bicycle Producers

46. Respondents to the domestic producers' questionnaire are listed in Appendix IV. The following provides a brief description of the major producers of bicycles.

47. **Groupe Procycle** is a Canadian corporation with a manufacturing facility and head office in Saint-Georges, Quebec. Groupe Procycle began producing bicycles in 1971. It produces bicycles with wheel diameters ranging from 16 to 26 inches. In 1997, Groupe Procycle acquired the assets of Rocky Mountain Bicycle Co. Ltd. (Rocky Mountain), of Delta, British Columbia. Rocky Mountain specializes in the production of high-end mountain bicycles. It also produces road and hybrid bicycles with wheel diameters of 26 inches and 700C, using frames constructed of steel, aluminum or carbon fibre. Currently, Groupe Procycle<sup>19</sup> markets its products under the CCM, Miele and Rocky Mountain brand names. The Miele and Rocky Mountain brands are available exclusively at IBDs. Groupe Procycle also produces private-label bicycles.

48. **Raleigh** is a Canadian corporation with its manufacturing facility in Waterloo, Quebec, and head office in Oakville, Ontario. It began the production of bicycles in 1973. Raleigh is part of the International Raleigh organization. The company markets bicycles under the Raleigh, Diamondback and Triumph brand names. Raleigh also produces private-label bicycles. Raleigh produces a full range of bicycle sizes, from 16- to 26-inch wheel sizes.

49. **Cycles Devinci Inc.** (Cycles Devinci) is a Canadian corporation with its head office and manufacturing facility in Chicoutimi, Quebec. Founded in 1987, the company

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19. References to Groupe Procycle throughout this report include its division, Rocky Mountain, unless otherwise noted.

manufactures high-end bicycles for sale under its own brand name. Cycles Devinci only produces bicycles with wheel diameters over 24 inches.

50. **Norco Products Ltd.** (Norco) is a Canadian corporation with its head office in Port Coquitlam, British Columbia, and its manufacturing facility in Langley, British Columbia. It began manufacturing bicycles in 1977. Its domestically assembled bicycles are primarily adult-sized bicycles and are marketed under the Norco, Nishiki and Caribou brand names. Norco products are sold through IBDs. Since 2000, Norco has manufactured bicycles in the 20- to 26-inch and 700C wheel size range.

51. **Victoria Precision** ceased operations as a result of bankruptcy in May 2004. It was located in Montréal, Quebec. In the early 1980s, the company extended its production line to include adult bicycles. In 1999, the company was purchased by V. P. Sports Inc., of Florida. Victoria Precision marketed its bicycles under the Leader, Minelli and Precision brand names.

52. In addition, the following companies reported to the Tribunal that, during the period of inquiry, they assembled high-end bicycles and sold them through IBDs: Cycles Argon 18 Inc. (Cycles Argon) of Montréal, Quebec, Cervélo Cycles Inc. (Cervélo), of Toronto, Ontario, and Italcycle Inc. (Italcycle), of Westmount, Quebec. Accessoires pour Vélo O.G.D. Ltée (dba Outdoor Gear Canada) (Outdoor Gear Canada), of Saint-Laurent, Quebec, is also an assembler and supplier of bicycles.

### **Importers**

53. Importers of bicycles can be broadly categorized into two groups: importer-retailers and importer-distributors. Appendix IV lists the importers that responded to the importers' questionnaire.

#### Importer-retailers

54. Canadian Tire Corporation, Limited (CTC), Wal-Mart Canada Corp. (Wal-Mart) and Zellers Inc. (Zellers) accounted for over 40 percent of total imports in 2004. Costco Wholesale Canada Ltd. (Costco), London Drugs Ltd. (London Drugs) and Toys "R" Us Canada Ltd. (Toys "R" Us) are also major retailers that sell imported bicycles; however, these companies are not importers of record.

#### Importer-distributors

55. A. Mordo & Son Ltd., Giant Bicycle Canada, Inc., Iron Horse Bicycle Company, LLC, Specialized and Trek Bicycle Corporation (Trek) accounted for approximately 33 percent of total imports in 2004.

56. Although not an importer of record, Pride International Inc. works with several companies to import a significant volume of bicycles into Canada.

### **Foreign Producers**

57. The Tribunal received 29 questionnaire responses from foreign producers, as listed in Appendix IV.

58. Major foreign producers that exported the subject goods to Canada during the period of inquiry include: Always Co., Ltd., Asama Yuh Jium International Vietnam Co., Ltd. and Liyang (Vietnam) Industries Co., Ltd. of Vietnam; Bangkok Cycle Industrial Company Limited of Thailand; Giant Manufacturing Co., Ltd. (Giant Manufacturing) and United Engineering Corp. (United Engineering) of Chinese Taipei; Liyang (Shen Zhen) Machinery Co., Ltd. of China; and Trek of the United States.

### **Marketing and Distribution**

59. The Canadian market for bicycles consists of two main marketing channels, namely, mass merchants, together with general sporting equipment retailers, and IBDs.

60. Mass merchants, such as CTC, Wal-Mart, Zellers, Costco, London Drugs and Federated Co-operatives Limited, accounted for approximately 68 percent of bicycle sales in Canada in 2004. These companies sell both imported and domestically produced bicycles. General sporting equipment retailers include companies such as Sport Chek, Sports Mart and Sports Experts, which are all part of The Forzani Group Ltd. General sporting equipment retailers source their bicycles both from Canadian manufacturers and directly from offshore suppliers, or through importer-distributors.

61. According to the Bicycle Trade Association of Canada, there are over 1,000 IBDs in Canada. These companies source their bicycles from domestic producers and/or from importer-distributors.

## **ANALYSIS**

62. Pursuant to paragraph 27(1)(a) of the *CITT Act*, the Tribunal is required to determine whether bicycles are being imported in such increased quantities and under such conditions as to be a principal cause of serious injury, or threat thereof, to domestic producers of like or directly competitive goods.

63. Before proceeding with its analysis concerning increased imports and serious injury, the Tribunal will first determine: (1) what are the domestically produced like or directly competitive goods in relation to the bicycles subject to the inquiry; (2) whether there is a single class of goods; and (3) what constitutes domestic production of like or directly competitive goods and who are the domestic producers of those goods.

### **Like or Directly Competitive Goods**

64. The definition of “like or directly competitive goods” found at section 3 of the *Canadian International Trade Tribunal Regulations*<sup>20</sup> reads as follows:

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

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20. S.O.R./93-602 [*Regulations*].

65. In considering the issue of like or directly competitive goods, the Tribunal has looked at a number of factors, including the physical characteristics of the goods, their method of manufacture, their market characteristics (such as substitutability, pricing and distribution) and whether the goods fulfill the same customer needs.<sup>21</sup>

66. On the basis of the evidence on the record, the Tribunal finds that domestically produced bicycles closely resemble the imported bicycles in terms of method of manufacture, physical and market characteristics, and customer needs being fulfilled. Therefore, the Tribunal concludes that bicycles produced in Canada are like or directly competitive goods in relation to the imported bicycles subject to this global safeguard inquiry.

### Classes of Goods

67. In their submissions, a number of parties argued that there is more than one class of goods. Parties submitted that classes of goods should be created based on: (1) the materials used to produce bicycles (e.g. steel, aluminum); (2) the types of bicycles (e.g. road, mountain, BMX); (3) the different channels of distribution (mass merchants, IBDs); and (4) price points.

68. In addressing the issue of classes of goods, the Tribunal determines whether the goods that are subject to a global safeguard inquiry constitute like or directly competitive goods in relation to one another. To conduct this analysis, the Tribunal looks at the factors that have been mentioned above in connection with the issue of like or directly competitive goods. It is only when the goods that are part of an alleged class of goods do not constitute “like or directly competitive goods” in relation to other goods that are subject to a global safeguard inquiry that separate classes of goods are established.<sup>22</sup>

69. First, the Tribunal is not convinced that classes of goods should be created in this case based on the materials used in the production of the bicycles. While a bicycle with a steel frame has different physical characteristics from a bicycle with an aluminum frame, the two bicycles may have similar methods of manufacture, may be substitutable for one another, may have pricing that is not markedly different and may be found in the same channel of distribution.

70. Second, while different types of bicycles, such as road bicycles and mountain bicycles, may exhibit differences in some physical characteristics, are not fully substitutable and can be seen as fulfilling different customer needs, they still have a significant number of similar physical characteristics and remain substitutable to a certain extent. In addition, they generally have a similar method of manufacture, may have similar pricing and can often be found in the same channels of distribution. Accordingly, it is the Tribunal’s view that the resemblance between bicycles of different types remains sufficiently close for them to be part of a single class of goods.

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21. *Safeguard Inquiry into the Importation of Certain Steel Goods* (August 2002), GC-2001-001 at 15 (CITT) [Steel Safeguard]. The Tribunal has considered the same factors in the context of inquiries and expiry reviews conducted under SIMA, e.g. *Laminate Flooring* (16 June 2005), NQ-2004-006 (CITT) at para. 65, and *Hot-rolled Carbon Steel Plate* (27 June 2005), RR-2004-004 (CITT) at para. 50 [*Carbon Steel Plate*].

22. *Steel Safeguard* at 12. The Tribunal has considered the same factors in the context of inquiries and expiry reviews conducted under SIMA, e.g. *Laminate Flooring* at para. 65, and *Carbon Steel Plate* at para. 50.

71. Third, the Tribunal is not convinced that classes of goods should be constituted in this case along the lines of channels of distribution. The Tribunal heard evidence that an identical bicycle may be found for sale at a mass merchant and at an IBD.<sup>23</sup> Further, bicycles sold by mass merchants may be very similar to those sold by IBDs in terms of physical characteristics and method of manufacture. Although their prices may differ, those bicycles may also be of the same type and, therefore, may have a high degree of substitutability.

72. Finally, the Tribunal is not of the view that the establishment of separate classes of goods along the lines of price points is warranted. Bicycles sold at different prices may share physical characteristics, methods of manufacture and channels of distribution and may be substitutable for one another.

73. Given the above, the Tribunal finds that the bicycles subject to the inquiry constitute a single class of goods.

### **Domestic Producers**

74. Some parties opposed to the complaint argued that the members of the CBMA are not domestic producers of bicycles because they simply assemble bicycles without manufacturing the major components of a bicycle. Other parties, including the CBMA, submitted that all companies that assembled bicycles in Canada during the period of inquiry should constitute “domestic producers” for the purpose of this inquiry.

75. The *Canadian Oxford Dictionary* defines “produce” as follows: “**1** bring (something) into existence. **2** manufacture (goods) from raw materials etc.”<sup>24</sup> The *Gage Canadian Dictionary* defines “produce” as follows: “make; bring into existence”.<sup>25</sup> In the Tribunal’s view, the assembly of bicycles constitutes production of bicycles, since it does constitute making bicycles or bringing them into existence.<sup>26</sup>

76. Accordingly, the domestic producers of bicycles during the period of inquiry were the companies listed in the “Bicycle Producers” section at the beginning of this chapter.

### **Increased Imports**

77. Paragraph 5(1)(a) of the *Regulations* provides that the Tribunal shall examine the volume of the goods imported into Canada. Subsection 5(2) indicates that, when examining the volume of imports, the Tribunal shall consider whether there has been a significant increase in the importation into Canada of the goods. If there has been such an increase, subsection 5(2) requires that the Tribunal consider the rate and amount of the increase, either absolutely or relative to the production in Canada of like or directly competitive goods.

78. Parties supporting the complaint argued that there was a surge in imports of bicycles over the period of inquiry and, in particular, significant surges in 2001 and 2003. The CBMA

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23. *Transcript of Public Hearing*, Vol. 1, 20 June 2005, at 227.

24. Second ed., s.v. “produce”.

25. 2000, s.v. “produce”.

26. In *Wood Venetian Blinds and Slats* (18 June 2004), NQ-2003-003 (CITT) at para. 63, the Tribunal found that the assembly of custom blinds using imported components constituted domestic production of custom blinds.

submitted that, at the start of the period of inquiry, domestic producers were the dominant force in the overall bicycle market, but that, as a result of a significant surge in imports in 2001, Canadian production dropped dramatically. This decline continued throughout the period of inquiry and into 2005, while, at the same time, the market share of imports increased.

79. Parties opposing the imposition of safeguard measures argued that there has been no recent, sharp, sudden and significant increase in imports of bicycles into Canada.

80. Further, the Retail Council of Canada submitted that, while imports increased year to year throughout the period of inquiry, the increase was gradual, contrary to the legal safeguard requirement, which is intended to protect domestic producers from sudden and significant increases in imports.

81. Table 1 shows total apparent imports of bicycles into Canada compared to levels of domestic production for the years 2000 to 2004. Unless otherwise specified, the data presented in this section include information for the following domestic producers: Outdoor Gear Canada, Cycles Argon, Cervélo, Cycles Devinci, Groupe Procycle, Italcycle, Norco, Raleigh and Victoria Precision.

**Table 1**  
**Total Apparent Imports and Domestic Production of Bicycles**  
**(units)**

	2000	2001	2002	2003	2004
<b>Total Apparent Imports</b>	538,523	718,631	807,907	1,002,279	1,063,768
% Change		33	12	24	6
Producers' Imports	78,098	104,792	99,664	128,184	94,429
% Share	15	15	12	13	9
% Change		34	(5)	29	(26)
Net Imports <sup>1</sup>	460,425	613,839	708,243	874,095	969,339
% Change		33	15	23	11
<b>Total Domestic Production</b>	740,150	757,348	581,851	598,141	480,878
% Change		2	(23)	3	(20)
<b>Total Imports Relative to Domestic Production (%)</b>	73	95	139	168	221

1. Net imports equals total imports less producers' imports.

Source: *Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-07, Administrative Record, Vol. 1.1 at 37; *Pre-hearing Staff Report*, revised 3 June 2005, Tribunal Exhibit GS-2004-001/002-07C, Administrative Record, Vol. 1.1 at 328.

82. A review of the import trends during the period of inquiry indicates that total apparent imports of bicycles increased in each year, such that, by 2004, apparent imports of bicycles had grown by almost 98 percent compared with the volume of imports in 2000. Over the five-year period, the Tribunal notes that, in particular, there were two significant surges in imports, one in 2001 and the other in 2003. Imports in 2001 increased by over 180,000 units, or 33 percent, compared with imports in 2000. Imports increased a further 12 percent in 2002. Then, in 2003,

imports increased by over 194,000 units, or 24 percent, compared with 2002, and in 2004, imports of bicycles increased by over 61,000 units, or 6 percent.

83. Although producers' imports increased by almost 21 percent over the period of inquiry, their share of total apparent imports declined from approximately 15 percent in 2000 to just under 9 percent in 2004. The Tribunal notes that removing imports by domestic producers from its analysis of increased imports does not materially change the trend in total apparent imports discussed above.

84. Between 2001 and 2002, domestic production of bicycles declined by 23 percent, with production experiencing another 20 percent decline in 2004 compared with 2003. Over the entire period of inquiry, production declined by just over 259,000 units, or 35 percent. As imports grew over the period and production declined, bicycle imports relative to domestic production of bicycles increased greatly, from 73 percent in 2000 to 221 percent in 2004.

85. Based on the above, the Tribunal finds that there has been a recent, sharp, sudden and significant increase in imports of bicycles into Canada, both in absolute volume and relative to the production in Canada of like goods.

86. The Tribunal notes that Article XIX of *GATT 1994* imposes certain requirements in the context of Canada's international trade obligations in addition to the requirements under the *CITT Act* that are addressed above. In the Tribunal's view, these additional requirements have also been fulfilled and are discussed at the end of this chapter.

### Serious Injury

87. Section 2 of the *CITT Act* defines "serious injury" as meaning, in relation to domestic producers of like or directly competitive goods, a significant overall impairment in the position of the domestic producers.

88. Paragraph 5(1)(b) and subsection 5(3) of the *Regulations* provide that the Tribunal shall examine the effect of the imported goods on prices of like or directly competitive goods and consider:

- whether the prices of the imported goods have significantly undercut the prices of like or directly competitive goods produced and sold in Canada; and
- whether the effect of the importation of those goods into Canada has been (1) to depress significantly the prices of like or directly competitive goods produced and sold in Canada, or (2) to limit to a significant degree increases in the prices of like or directly competitive goods produced and sold in Canada.

89. The Tribunal has considered the price effects of imported goods in a subsequent section of this chapter, which analyzes the principal cause of serious injury.

90. In addition, in accordance with paragraph 5(1)(c) and subsection 5(4) of the *Regulations*, in its examination as to whether domestic producers suffered serious injury, the Tribunal is required to evaluate all relevant factors that have a bearing on domestic producers of like or directly competitive goods, including the actual changes in the level of production,

employment, sales, market share, profits and losses, productivity, return on investments, utilization of production capacity, cash flow, inventories, wages, growth or the ability to raise capital or investments. The following sections analyze the relevant non-price factors with respect to the domestic production of bicycles.

91. Table 2 presents key economic indicators for domestic bicycle producers. The financial performance of domestic producers is shown in a separate table.

**Table 2**  
**Economic Indicators**

	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>Production (units)</b>	740,150	757,348	581,851	598,141	480,878
% Change		2	(23)	3	(20)
<b>Practical Capacity<sup>1</sup> (indexed - units)</b>	100	100	100	103	106
<b>Capacity Utilization Rate<sup>1</sup> (indexed - %)</b>	100	95	68	69	65
<b>Inventories<sup>1</sup> (units)</b>	112,511	122,391	89,604	85,068	85,768
% Change		9	(27)	(5)	1
<b>Direct Employment<sup>1</sup></b>	671	628	514	467	478
% Change		(6)	(18)	(9)	2
<b>Total Employment<sup>1</sup></b>	830	784	704	661	637
% Change		(6)	(10)	(6)	(4)
<b>Hours Worked - Total Employment<sup>1</sup> (000)</b>	1,087	1,010	846	765	797
% Change		(7)	(16)	(10)	4
<b>Productivity<sup>1</sup> (units/direct employment hour)</b>	0.72	0.76	0.71	0.80	0.71
% Change		5	(7)	13	(11)
<b>Average Hourly Wage Rate<sup>1,2</sup> (\$/hour)</b>	13.79	13.86	14.09	15.86	15.42
% Change		0	2	13	(3)
<b>Apparent Market (units)</b>	1,275,527	1,445,388	1,414,440	1,573,991	1,549,834
% Change		13	(2)	11	(2)
<b>Sales From Domestic Production (units)</b>	738,774	729,009	607,877	592,774	471,318
% Change		(1)	(17)	(2)	(20)
Market Share (%)	58	50	43	38	30

1. Includes Cycles Devinci, Groupe Procycle, Norco and Raleigh.

2. Wages paid before deductions of any kind (e.g. Canada Pension Plan, Employment Insurance, union dues), including wages paid directly for overtime, holidays, vacations and sick leave.

Source: *Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-07, Administrative Record, Vol. 1.1 at 55, 120, 123, 126; *Pre-hearing Staff Report*, revised 3 June 2005, Tribunal Exhibit GS-2004-001/002-07C, Administrative Record, Vol. 1.1 at 328; *Protected Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-08 (protected), Administrative Record, Vol. 2.1 at 127, 129.

Production, Capacity, Capacity Utilization and Inventories

92. As noted above, domestic production of bicycles declined over the period of inquiry, from 740,000 units in 2000 to 481,000 units in 2004, a decline of 259,000 units, or 35 percent.

93. Table 2 shows the annual changes in practical capacity and capacity utilization of bicycles in Canada for the period from 2000 to 2004<sup>27</sup> for the producers that provided these data to the Tribunal. These producers represented, on average, 75 percent of total production over the period of inquiry.

94. Total practical capacity remained constant between 2000 and 2002. In 2003, practical capacity increased by 3 percentage points and then increased by an additional 3 percentage points in 2004. The capacity utilization rate for the domestic production of bicycles declined over the period of inquiry to 65 percent of its 2000 level. The Tribunal notes that these data do not reflect the decrease of capacity as a result of the closure of Victoria Precision in 2004.<sup>28</sup>

95. The level of inventories held by the domestic producers during the 2000-2004 period was relatively stable, representing between 14 and 18 percent of sales from domestic production.

Employment, Hours Worked, Productivity and Wages

96. Over the period of inquiry, direct employment by domestic producers declined by 193 employees, or 29 percent.<sup>29</sup> Total employment and hours worked followed a similar pattern to direct employment. The Tribunal notes that productivity declined by 7 and 11 percent, respectively, after the surges of imports in 2001 and 2003, although productivity in 2004 was essentially the same as in 2000. Average hourly wages declined by 3 percent in 2004 after the second surge, although there was a net increase in wages from 2000 to 2004.

Sales and Market Share

97. The total apparent market increased throughout the period of inquiry and demonstrated two notable increases that coincided with the increases in imports in 2001 and 2003.

98. Although the domestic market grew by over 274,000 units, or 22 percent, between 2000 and 2004, domestic producers did not benefit from this growth. Sales from domestic production accounted for 58 percent of the apparent market in 2000 and declined significantly to 30 percent in 2004.

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27. *Protected Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-08 (protected), Administrative Record, Vol. 2.1 at 127.

28. The capacity figure for Victoria Precision can be found at Tribunal Exhibit GS-2004-001/002-30.04 (protected), Administrative Record, Vol. 2A at 60.

29. Does not include Victoria Precision. The Tribunal notes that the losses in employment and hours worked would have been significantly greater had the effect of Victoria Precision's bankruptcy been included.

Financial Performance Indicators

99. Table 3 presents financial performance indicators for domestic producers of bicycles.

<b>Table 3</b> <b>Bicycles</b> <b>Consolidated Income Statement</b> <b>Domestic Sales</b>					
	(\$000)				
	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
Volume of Sales (units)	612,149	562,018	448,278	436,761	420,880
<b>Net Sales</b>	<b>97,069</b>	<b>94,078</b>	<b>79,363</b>	<b>81,963</b>	<b>76,075</b>
Cost of Goods Sold	79,322	74,115	65,392	61,704	56,451
<b>Gross Margin</b>	<b>17,747</b>	<b>19,963</b>	<b>13,971</b>	<b>20,259</b>	<b>19,624</b>
GS&A Expenses	16,568	19,340	14,048	18,833	18,296
Financial Expenses	3,030	2,470	1,563	1,670	1,693
<b>Net Income (Loss) Before Taxes</b>	<b>(1,851)</b>	<b>(1,847)</b>	<b>(1,640)</b>	<b>(244)</b>	<b>(365)</b>
<b>% CHANGE</b>					
Volume of Sales (units)		(8)	(20)	(3)	(4)
<b>Net Sales</b>		(3)	(16)	3	(7)
Cost of Goods Sold		(7)	(12)	(6)	(9)
<b>Gross Margin</b>		12	(30)	45	(3)
GS&A Expenses		17	(27)	34	(3)
Financial Expenses		(18)	(37)	7	1
<b>Net Income (Loss) Before Taxes</b>		0	11	85	(50)
<b>% SHARE</b>					
Volume of Sales (units)					
<b>Net Sales</b>	100	100	100	100	100
Cost of Goods Sold	82	79	82	75	74
<b>Gross Margin</b>	18	21	18	25	26
GS&A Expenses	17	21	18	23	24
Financial Expenses	3	3	2	2	2
<b>Net Income (Loss) Before Taxes</b>	<b>(2)</b>	<b>(2)</b>	<b>(2)</b>	<b>(0)</b>	<b>(0)</b>
<b>\$/UNIT</b>					
<b>Net Sales</b>	158.57	167.39	177.04	187.66	180.75
Cost of Goods Sold	129.58	131.87	145.87	141.28	134.13
<b>Gross Margin</b>	28.99	35.52	31.17	46.38	46.63
GS&A Expenses	27.07	34.41	31.34	43.12	43.47
Financial Expenses	4.95	4.39	3.49	3.82	4.02
<b>Net Income (Loss) Before Taxes</b>	<b>(3.02)</b>	<b>(3.29)</b>	<b>(3.66)</b>	<b>(0.56)</b>	<b>(0.87)</b>

Note: Includes Groupe Procycle, Norco and Raleigh.  
Source: *Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-07, Administrative Record, Vol. 1.1 at 107.

100. The Tribunal notes that total net sales revenue for domestic producers declined over the period of inquiry, falling by more than 21 percent between 2000 and 2004. In 2001, net sales declined by 3 percent and then, following the surge in imports in that year, net sales declined by 16 percent in 2002. Net sales revenue increased by 3 percent in 2003, and then in 2004,

following the surge in imports in 2003, net sales revenue declined by 7 percent. The two years in which net sales revenue declined most, that is, in 2002 and 2004, coincide with declines in gross margins. The Tribunal notes that domestic producers were in a loss position, continuously, throughout the period of inquiry and, in total, lost over CAN\$5.9 million.

101. Concurrent with the major increase in imports in 2001, the data show an increase in net losses before taxes on a per unit basis of 9 percent, followed by an additional increase in per unit losses of 11 percent in 2002. Domestic producers of bicycles continued to incur losses on a per unit net income basis in 2003 and 2004.

102. The net loss of the domestic producers was smaller in 2004 than in 2000, both overall and on a per unit basis. In addition, their overall and unit gross margins were greater in 2004 than in 2000. However, the Tribunal notes that, in 2004 alone, had domestic producers been able to maintain the 58 percent market share that they held in 2000, this would have represented 426,000 additional units, or 91 percent more sales than actually realized that year. Similarly, if the domestic producers had lost market share, but been able to maintain the sales volume that they had in 2000, this would have represented 267,000 additional units in 2004, or 57 percent more sales than actually realized in that year. In either case, this substantial additional sales volume would have enabled the domestic producers to achieve unit costs, gross margin and net income from 2001 to 2004 that were substantially better than the results that they were actually able to achieve.

103. The Tribunal notes that domestic producers, as a whole, have not earned any profit in the past five years. Given the overall poor financial performance of domestic producers, there is no doubt that the loss of sales volumes and the loss of revenues and net income had a direct negative impact on cash flow and their ability to invest.<sup>30</sup>

#### Tribunal's Conclusion on Serious Injury

104. On the basis of the above analysis of performance indicators, the Tribunal finds that the domestic producers of bicycles suffered significant overall impairment and, thus, incurred serious injury. This injury took the form of a serious deterioration in production, capacity utilization, sales volume, market share, sales revenue, cash flow, employment and ability to invest, as well as a serious decrease in the gross margins and net income that the domestic producers would otherwise have been able to achieve.

105. Parties opposed submitted that, in the absence of injury or threat of injury to one of its members, Raleigh, the CBMA cannot be said to have suffered serious injury in the sense of "significant overall impairment". In this regard, the Tribunal notes that the performance of individual domestic producers may have varied over the period, with some producers being injured more than others. However, the *CITT Act* requires the Tribunal to determine whether there has been serious injury to the domestic producers as a whole, rather than to each individual producer. This is the approach taken in the Tribunal's analysis.

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30. *Protected Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-08 (protected), Administrative Record, Vol. 2.1 at 131; *Transcript of Public Hearing*, Vol. 2, 21 June 2005, at 459-63.

## PRINCIPAL CAUSE OF INJURY

106. Given that the Tribunal has found that the domestic producers have suffered serious injury, it must now assess whether the increased imports are a principal cause of that serious injury. Pursuant to subsection 19.01(1) of the *CITT Act*, “principal cause” is defined as meaning an important cause that is no less important than any other cause of the serious injury.

107. For the purposes of determining whether there is a causal link between the increased imports and the serious injury, the Tribunal will first examine the effect of the increased imports on the domestic producers. In order to ensure that any injury caused by other factors is not attributed to the increase in imports, the Tribunal will also examine other factors potentially causing injury. The Tribunal will then evaluate whether the impact of any of the other injurious factors was more important than the impact of the increase in imports.

### Injury Due to Increased Imports

108. As previously noted, the total apparent market for bicycles in Canada increased by 22 percent between 2000 and 2004. Over that period, the market share of imports increased continuously, from 42 percent in 2000 to 70 percent in 2004, whereas sales from domestic production declined from 58 percent of the apparent market in 2000 to 30 percent in 2004. Producers’ sales from imports remained relatively stable, fluctuating between 6 and 8 percent of the apparent market.

109. Following the surge in imports in 2001, domestic producers’ sales from domestic production declined by 121,000 units, or 17 percent. While domestic producers’ sales declined by a further 2 percent in 2003, the surge in imports in that year led to an additional decline of 121,000 units, or 20 percent, in sales from domestic production in 2004. Although this decline in sales from domestic production is mainly reflective of the loss of sales due to Victoria Precision’s bankruptcy, the fact remains that domestic producers were largely unable to capture Victoria Precision’s former sales volume,<sup>31</sup> as it was effectively captured by increased imports.

110. The evidence clearly indicates that domestic producers were not able to take advantage of any of the growth that occurred in the apparent market over the period of inquiry. They lost sales while the market was growing. As noted above, had domestic producers been able to maintain the 58 percent market share that they held in 2000, the growth in the apparent market would have provided domestic producers with more than 1 million units of additional bicycle sales over the period of inquiry. In 2004 alone, this would have represented 426,000 additional units, or 91 percent more sales than actually realized that year.

111. As noted above, the *Regulations* require that the Tribunal examine the effect of the imported goods on prices of like or directly competitive goods. In this respect, the Tribunal examined the data and evidence on the record relating to the impact of imported goods on the prices of bicycles in Canada.

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31. *Transcript of In Camera Hearing*, Vol. 3, 23 June 2005, at 173; *Protected Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-08 (protected), Administrative Record, Vol. 2.1 at 46.

112. Table 4 presents the average unit values of sales by importers (and purchases by retailers that import directly) and domestic producers.

	<b>Table 4</b> <b>Sales From Imports and Domestic Production - Unit Value</b> <b>(\$/unit)</b>				
	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>LEVELS</b>					
Sales From Domestic Production	167	171	181	190	209
Sales/Purchases From Imports <sup>1</sup>	239	231	208	196	187
<b>% CHANGE</b>					
Sales From Domestic Production		3	6	5	10
Sales/Purchases From Imports <sup>1</sup>		(3)	(10)	(6)	(5)

1. Excludes sales of imports by domestic producers.  
Source: *Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-07, Administrative Record, Vol. 1.1 at 46, 49, 55; *Pre-hearing Staff Report*, revised 3 June 2005, Tribunal Exhibit GS-2004-001/002-07C, Administrative Record, Vol. 1.1 at 320, 321.

113. Over the period of inquiry, the average unit value of imports by importers declined continuously, from an average of CAN\$239 per unit in 2000 to CAN\$187 per unit in 2004. The average unit selling price of domestic producers, on the other hand, increased from CAN\$167 per unit in 2000 to CAN\$209 per unit in 2004.

114. In determining whether the prices of the imported goods have significantly undercut the prices of like or directly competitive goods produced and sold in Canada, the Tribunal observes that the declining average unit value of imports and the increasing average unit value of sales from domestic production are indicative of the injury caused by the increased imports. Witnesses for the CBMA testified that they lost sales and faced severe competition from imports in the low-priced segment of the market. In this respect, the witness from Raleigh stated that sales of opening price point (OPP) bicycles represent significant volumes and that these volumes are important to the absorption of domestic producers' factory overhead costs.<sup>32</sup> The loss of sales at the lower price points is therefore a major concern for domestic producers.<sup>33</sup>

115. Further, the Tribunal notes that the loss of volume of sales at the low-priced end of the market, in particular the highly price-competitive OPP segment, is reflected in the significant increase in the total average unit selling values by domestic producers, as shown in Table 4. In contrast, the declining average unit selling values of importers clearly reflect their use of low-priced imports to gain volume and market share, such that, by 2004, the average unit selling value of imports dropped below that of domestic producers for the first time since 2000.

32. *Transcript of Public Hearing*, Vol. 1, 20 June 2005, at 24-25.

33. *Transcript of Public Hearing*, Vol. 1, 20 June 2005, at 183.

A witness from Groupe Procycle testified that it was no longer competitive in the OPP because of the price of imports.<sup>34</sup>

116. The importance of price in the high-volume, mass merchant segment of the market is clear. For example, the witness from Costco<sup>35</sup> stated that Costco's marketing philosophy over the last number of years has been to provide high-quality branded products at prices that are lower than the competition. The witness from Wal-Mart stated that Wal-Mart's marketing philosophy is to offer the lowest price on competing products.<sup>36</sup> Zellers noted that a lower price offering by its competitors would be met through either a price reduction or a special promotion that lowered the price to the consumer.<sup>37</sup> Indeed, even CTC, which competes primarily through product differentiation and branding, stated that, if faced with a competitive offering of a similar product at a lower price, it would have to respond to that price competition.<sup>38</sup>

117. The Tribunal observes that the evidence clearly demonstrates that major mass merchants, Wal-Mart, Zellers and Costco, compete strongly on price and that the lower cost of imports is one of the main factors that have fuelled this competition.<sup>39</sup>

118. The Tribunal also notes that, over the period of inquiry, imported bicycles offered more features at a given price than domestic bicycles.<sup>40</sup> In selecting their bicycle offerings, mass merchants seek to offer a bicycle with the most features for the lowest possible price. As the witness from Wal-Mart testified, Wal-Mart sourced from imports because domestic producers could not produce a bicycle with the desired features that met the required price point.<sup>41</sup> The pressure among mass merchants to seek the lowest-cost product in order to remain competitive was also evident when Zellers submitted that it must be able to match or better the price of similarly specified bicycles offered by competitors and to offer differentiated products with strong value and quality incentives for its customers.<sup>42</sup> Wal-Mart submitted that it has a policy to respond to competitive offers by providing an additional 5 percent discount. In this regard, the witness from Wal-Mart testified that, if the necessary price concession could not be obtained from the domestic producers, Wal-Mart would have no hesitation in sourcing the lower-cost product from offshore.<sup>43</sup>

119. Based on the above, the Tribunal is convinced that the high-volume, price-sensitive OPP segment of the market was captured by low-priced imports that undercut domestic prices. An analysis of the evidence concerning the degree of price undercutting by imports follows in Chapter V.

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34. *Transcript of Public Hearing*, Vol. 1, 20 June 2005, at 183.

35. *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 790-91.

36. *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 860-61.

37. *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 871-72.

38. *Transcript of Public Hearing*, Vol. 7, 28 June 2005, at 1265-67.

39. *Transcript of In Camera Hearing*, Vol. 7, 28 June 2005, at 1283-84.

40. *Protected Supplemental Information on Features of Bicycles and Finished Painted Frames*, Tribunal Exhibit GS-2004-001/002-08B (protected), Administrative Record, Vol. 2.1 at 263-313.

41. Importer's Exhibit Q-09, paras. 28, 29, Administrative Record, Vol. 13E.

42. Importer's Exhibit Q-11, para. 3, Administrative Record, Vol. 13E.

43. *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 860-63.

120. In determining whether the effect of the importation of bicycles into Canada has either depressed or suppressed the prices of like or directly competitive goods produced and sold in Canada, the Tribunal observes that domestic producers could not compete head on with price in the low-priced segment of the market and, therefore, lost significant volume and market share rather than reduce prices.

121. In the Tribunal's view, the decreases in production, sales and market share of the domestic producers explain their poor financial performance throughout the period of inquiry. As indicated above, if the domestic producers had been able to maintain their production and sales or market share, their financial results would have been significantly better than what they actually have been.

122. Accordingly, the Tribunal is convinced that the increase in imports is an important cause of the serious injury suffered by the domestic producers.

### **Other Causes of Injury**

123. Parties opposing the complaint argued that there were factors other than imports that caused injury to the domestic producers. The principal factors are discussed below.

#### Brand Management Decisions

- Restricting National Brand

124. Mass merchants submitted that the importance of obtaining a national brand grew over the period of inquiry and that access to national brands was important to maintaining their competitive market position. The domestic producers' refusal to make their national brands available to some mass merchants was cited as an invitation by domestic producers for mass merchants to source product from imports.

125. As noted by the Tribunal in the 2002 Review, a decision by producers to protect the value of their national brands is not unique to the bicycle industry and can form part of a normal commercial marketing strategy that seeks to diversify and maximize the return on sales. For each brand, in order to maintain its value, there needs to be a match between the retailer's marketing strategy and the supplier's brand strategy. Raleigh explained that, in its view, supplying its Raleigh brand to mass merchants such as Zellers and Wal-Mart, with very low OPPs, would cannibalize other sales of the brand and diminish its value.<sup>44</sup> Groupe Procycle indicated that it has only made the CCM brand available to mass merchants when it made commercial sense to do so.<sup>45</sup>

126. The Tribunal accepts that brands are important in bicycle retailing. However, it does not consider that domestic producers' refusal to supply the CCM or Raleigh brand at particular accounts was a significant factor that caused the increase in imports. The Tribunal notes that mass merchants submitted that, in order to remain competitive, they need to offer unique and

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44. *Transcript of Public Hearing*, Vol. 1, 20 June 2005, at 270-72; Manufacturer's Exhibit A-13, para. 13, Administrative Record, Vol. 11.

45. Manufacturer's Exhibit A-11, para. 2, Administrative Record, Vol. 11.

exclusive products.<sup>46</sup> Given the large number of mass merchants and the limited number of domestically produced national brands, it would not be possible for each of the mass merchants to have exclusive access to a domestic national brand. However, the evidence indicates that access by a mass merchant to a national brand does not necessarily need to be exclusive, given that, in some instances during the period of inquiry, domestic or imported national brands, such as CCM and Dyno, were marketed by more than one mass merchant over the same time period.<sup>47</sup>

127. The Tribunal is not convinced that mass merchants increased their imports principally as a result of their desire to have a national brand. The argument that mass merchants need national brands does not explain their shift from domestically sourced private labels to offshore sources. The Tribunal notes that, prior to acquiring the CTC account, when Raleigh first began selling its Raleigh brand to mass merchants, Raleigh had lost a significant volume of sales and that most of this lost volume was private-label business at mass merchant accounts.

128. The evidence indicates that CTC increased its imports more than fourfold over the period of inquiry, with significant increases in imports in both 2001 and 2003. The Tribunal notes that CTC's imports increased notwithstanding the fact that it had access to the CCM and Raleigh brands during the period of inquiry.<sup>48</sup>

129. The behaviour of the mass merchants confirms the fact that national brands were not as important a factor in the switch to imports, as alleged.<sup>49</sup> CTC dropped CCM Pro, its "best" brand in 1999, and went without a "best" brand until it acquired the Schwinn brand in 2003, while maintaining the CCM brand for its "better" brand. The evidence suggests that Zellers went without a national brand until it introduced Mongoose in 2003. Similarly, Wal-Mart did not market a national brand until it began selling CCM and Dyno in 2004.<sup>50</sup> Furthermore, the evidence suggests that the sale of private-label bicycles by mass merchants accounts for a large portion of their total bicycle sales from imports.<sup>51</sup>

130. Based on the above, it is clear to the Tribunal that the volume of bicycle sales lost by the domestic producers to imports is far more significant than the volume of imported national-brand bicycles. The Tribunal is therefore convinced that the loss of this significant volume was not principally a result of mass merchants' need for national brands.

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46. *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 906; Importer's Exhibit G-01, paras. 9-10, Administrative Record, Vol. 13.

47. *Transcript of Public Hearing*, Vol. 1, 20 June 2005, at 64; *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 840; *Transcript of Public Hearing*, Vol. 8, 29 June 2005, at 1605.

48. Tribunal Exhibit GS-2004-001/002-14.23B (protected), Administrative Record, Vol. 6C at 208.4.

49. Importer's Exhibit Q-11, para. 37, Administrative Record, Vol. 13E; Importer's Exhibit Q-05, para. 24, Administrative Record, Vol. 13E.

50. Tribunal Exhibit GS-2004-001/002-14.27 (protected), Administrative Record, Vol. 6D at 126-69.

51. Tribunal Exhibit GS-2004-001/002-14.04 (protected), Administrative Record, Vol. 6 at 85, 86; Tribunal Exhibit GS-2004-001/002-14.30 (protected), Administrative Record, Vol. 6E at 180, 181.

– Movement of National Brands to the Mass Merchant Distribution Channel

131. Parties opposed to the complaint argued that moving national brands to the mass merchant distribution channel cost domestic producers sales in the IBD channel of distribution. For example, the witness from Trek submitted that national brands that cross over to the mass merchant market lose value in the IBD channel. According to the witness, nobody has successfully transitioned a brand from the IBD to the mass merchant market and maintained the value of that brand in the IBD channel.<sup>52</sup>

132. The Tribunal agrees that there are certain differences between the needs of mass merchants and IBDs. However, despite these differences, the Tribunal notes that both Raleigh and Groupe Procycle successfully sold bicycles to IBDs during the period of inquiry, demonstrating their ability to service both channels of distribution, although not necessarily with the same brand at the same time.

133. As mentioned below, Groupe Procycle's sales to IBDs did not fluctuate significantly over the period of inquiry. Raleigh acknowledged that it lost sales to IBDs following its decision to sell the Raleigh brand to CTC. The Tribunal notes however that Raleigh's sales to IBDs were on the decline prior to the introduction of the Raleigh brand at CTC and that obtaining the CTC account occurred only in the last year of the period of inquiry, after a substantial portion of the increase in imports had occurred.<sup>53</sup>

134. Based on the above, the Tribunal finds that the movement of the Raleigh brand to the mass merchant channel does not explain the steady and significant loss of sales by domestic producers over the period of inquiry and prior to Raleigh's move to CTC.

– Groupe Procycle's Brand Proliferation

135. The Tribunal heard submissions from parties opposed to the complaint that Groupe Procycle was the author of its own injury due to the proliferation of brands that it marketed in the IBD distribution channel at one time or another. These brands have included Peugeot, Vélo Sport, Mikado, Miele, Oryx, Balfa and CCM.

136. The Peugeot brand was produced under licence from the French automaker of the same name and later sublicensed from Cycle-Europe. The licensing agreement was phased out by the licensor over a two- to three-year period, which led Groupe Procycle to create the Oryx brand as a replacement for Peugeot. The Oryx, Mikado and Vélo Sport brands were primarily marketed in IBDs in Quebec and, therefore, generally did not compete with Groupe Procycle's more global brand, Rocky Mountain. Groupe Procycle, following a market study, decided to optimize its brand portfolio. Groupe Procycle's resulting brand rationalization strategy was implemented in 2004 and has resulted in the CCM brand being exclusive to the mass merchant channel of distribution, the Miele brand being the entry level product in the IBD channel, and Rocky Mountain being its high-end product.

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52. *Transcript of Public Hearing*, Vol. 6, 27 June 2005, at 1149-50.

53. Tribunal Exhibit GS-2004-001/002-11.04E (protected), Administrative Record, Vol. 4A at 322-23.

137. The Tribunal notes that, prior to the rationalization of brands by Groupe Procycle, its sales to IBDs fluctuated over the 2000-2003 period by less than 10 percent of its average sales over the period, indicating that its portfolio of brands did not lead to declining sales. The Tribunal also notes that Groupe Procycle's sales to IBDs in 2004 were in line with its sales throughout the 2000-2003 period.<sup>54</sup> This demonstrates that the number of brands offered by Groupe Procycle did not have any significant negative impact on its sales.

138. In summary, in the Tribunal's opinion, the brand management issues raised by parties opposed to the complaint did not contribute significantly to the serious injury suffered by domestic producers of bicycles.

#### Intra-industry Competition

139. Parties opposing the complaint argued that the injury to the domestic producers was caused by intra-industry competition, specifically, the shift of the CTC account from Groupe Procycle to Raleigh, as well as shifts at other accounts, such as Wal-Mart.

140. While there is no doubt in the Tribunal's mind that the loss of the CTC account was a blow to Groupe Procycle and that there was some shifting of volumes between Raleigh, Victoria Precision and Groupe Procycle at various accounts over the period of inquiry, the shifting of volumes between domestic producers does not explain the poor performance of domestic producers as a whole throughout the period of inquiry. The surge in imports, which captured a significant share of the apparent market, left domestic producers as a whole with significantly less volume. Domestic producers lost more than 267,000 units over the period of inquiry. Indeed, the Tribunal notes that Raleigh and Groupe Procycle had already lost a significant proportion of these sales to imports before the transfer of the CTC account.

141. Based on the above, the Tribunal finds that intra-industry competition did not play a significant role in the serious injury suffered by domestic producers of bicycles.

#### Availability of Licensed Product

142. Parties opposing the complaint submitted that Raleigh and Groupe Procycle's reluctance to supply licensed bicycles has resulted in lost sales to imported product.

143. The Tribunal notes that the type of licensed product being referred to is "toy" licences that allow a manufacturer to use the name and depiction of popular toy or movie personalities, such as Barbie, Spiderman and the Incredible Hulk, on their products. Neither Groupe Procycle nor Raleigh offers "toy" licensed products.<sup>55</sup>

144. Witnesses for the CBMA submitted that a large portion of the market for licensed products is for bicycles with wheel diameters of 12 inches, which are non-subject bicycles.<sup>56</sup> This was supported by various mass merchants. The witness from Toys "R" Us testified that 100 percent of that company's sales of licensed bicycles were bicycles with wheel diameters

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54. Tribunal Exhibit GS-2004-001/002-11.05A (protected), Administrative Record, Vol. 4B at 263.18-263.19.

55. *Transcript of Public Hearing*, Vol. 2, 21 June 2005, at 443-44.

56. *Transcript of Public Hearing*, Vol. 2, 21 June 2005, at 442.

under 16 inches.<sup>57</sup> Evidence submitted by Zellers and Wal-Mart also indicates that the volume of licensed product in sizes that are subject to the inquiry is not large in relation to the rest of the market.<sup>58</sup>

145. Based on the evidence before it, the Tribunal is of the opinion that the market for licensed bicycles with wheel diameters of 16 inches and 20 inches is very limited. Therefore, the failure of the domestic producers to produce these bicycles could only have a small impact on them.

#### Failure to Offer Innovative Designs and Features

146. Several parties opposing the complaint submitted that Groupe Procycle and Raleigh lost sales to imports because of their failure to offer the innovative designs and features comparable to those available from imports. Zellers testified that Raleigh was consistently one or two seasons behind Zellers' overseas vendors with respect to introducing innovative designs and components on bicycles at price points carried by Zellers.<sup>59</sup> Wal-Mart testified that domestic producers have not been aggressive enough in introducing innovative designs, styles and trends, whereas their overseas suppliers have provided innovative designs and exclusivity.<sup>60</sup> The witnesses from Costco indicated that the bicycles sourced from Groupe Procycle have not offered sufficient high-quality features at certain price points.<sup>61</sup>

147. Evidence on the record with regard to Zellers, a very significant account of Raleigh prior to being lost to imports in 2002, indicated that the lower prices of imports were a determinative factor in Zellers' purchasing decision. In the Tribunal's opinion, it is not entirely coincidental that Zellers switched its purchasing completely to imports around the same time that it made a corporate decision to move to an "everyday low price" marketing strategy.

148. Notwithstanding the repeated allegations by mass merchants that domestic producers were consistently behind importer offerings in terms of innovative designs and features, mass merchants also repeatedly noted their efforts to source CCM or Raleigh bicycles.<sup>62</sup> If the domestic producers could not be relied upon to introduce the innovative designs and features demanded by the consumer, the Tribunal would not have expected their brands to be so eagerly sought after. The Tribunal also notes that CTC has chosen Raleigh as a major supplier. In this connection, the witness from CTC testified that Raleigh continues to drive innovation in the marketplace.<sup>63</sup> The Tribunal notes that Wal-Mart, as recently as 2003, welcomed the CCM brand to its line-up as its house brand.<sup>64</sup> The witness from Wal-Mart stated the following: "our

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57. *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 887. The next bicycle size with a wheel diameter of under 16 inches typically sold in Canada is a bicycle size with a wheel diameter of 12 inches.

58. Tribunal Exhibit GS-2004-001/002-14.04 (protected), Administrative Record, Vol. 6 at 85; Tribunal Exhibit GS-2004-001/002-14.30 (protected), Administrative Record, Vol. 6E at 180.

59. Importer's Exhibit Q-11, para. 18, Administrative Record, Vol. 13E.

60. *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 899-900.

61. *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 793-95.

62. Importer's Exhibit Q-11, paras. 18-19, Administrative Record, Vol. 13E; *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 809-10.

63. *Transcript of Public Hearing*, Vol. 7, 28 June 2005, at 1268.

64. *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 808.

customers have reached out and told us basically that they are happy that we have CCM in Wal-Mart Canada and we continue [to purchase from Groupe Procycle] and will grow their business.”<sup>65</sup> The Tribunal also notes that, although Costco indicated that it was not happy with sales of CCM bicycles, it continued to sell a CCM model into 2005.<sup>66</sup>

149. Moreover, the Tribunal notes that retailers, in particular mass merchants, work with producers to develop and select their product line.<sup>67</sup> Accordingly, the Tribunal is of the view that, if a particular domestically produced model did not sell well, this is probably more indicative of the buyer’s failure to fully understand current demand and trends in the marketplace rather than domestic producers not properly designing the product or providing the right features.

150. As noted above, the highly price-competitive mass merchant channel of distribution is primarily concerned with the value offered to consumers, that is, the most and best innovative designs and features at the lowest possible price. In the Tribunal’s opinion, lower cost for comparable features rather than superior features per se is essentially why imports gained volume and market share. Further, evidence before the Tribunal indicates that imports tend to offer additional features at a price that is the same as the comparable domestically produced bicycle, or lower. Thus, in the competitive bicycle retail environment, retailers were increasingly moving their purchasing offshore in order to obtain the value demanded in the marketplace.

151. Based on the above, the Tribunal concludes that any injury caused by a failure of domestic producers to offer innovative designs and features has not been significant.

### Tribunal’s Conclusion on Principal Cause

152. As indicated above, the Tribunal has found that the increase in imports of bicycles is an important cause of the serious injury to the domestic producers of bicycles. Having examined other factors potentially causing injury, the Tribunal found that no single other factor was an important cause of the serious injury to the domestic producers of bicycles.

153. Accordingly, it is clear that the increased imports constitute an important cause that is no less important than any other cause of serious injury. Therefore, the Tribunal determines that bicycles are being imported in such increased quantities and under such conditions as to be a principal cause of serious injury to domestic producers of bicycles.

### NAFTA AND OTHER FREE TRADE AGREEMENTS

154. In accordance with sections 20.01, 20.02 and 20.03 of the *CITT Act*, where the Tribunal determines that imports of a good from all sources are a principal cause of serious injury, the Tribunal shall determine whether imports of the good from a *NAFTA* country, Israel or another

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65. *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 809.

66. *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 793-94.

67. *Transcript of In Camera Hearing*, Vol. 6, 28 June 2005, at 665-66; *Transcript of In Camera Hearing*, Vol. 3, 23 June 2005, at 369; Importer’s Exhibit M-05A, paras. 3-4, Administrative Record, Vol. 13D.

*CIFTA* beneficiary,<sup>68</sup> and Chile each account for a substantial share of total imports of that good and contribute importantly to the serious injury.

155. Subsections 20.01(3), 20.02(4) and 20.03(5) of the *CITT Act* require that the Tribunal take fully into account the provisions of *NAFTA*, *CIFTA* and the *CCFTA* that establish criteria to determine whether imports from a party, considered individually, account for a substantial share of total imports. Article 802(2)(a) of *NAFTA* provides that imports from a *NAFTA* party normally shall not be considered to account for a substantial share of total imports if that party is not among the top five suppliers of the good subject to the proceedings, measured in terms of import share during the most recent three-year period. Article 4.6(2)(a) of *CIFTA* and Article F-02(2)(a) of the *CCFTA* provide for the same requirements. Therefore, the Tribunal examined the import volumes in order to determine whether the United States, Mexico, Israel or another *CIFTA* beneficiary, and Chile were among the top five suppliers of bicycles.

156. Data on the record<sup>69</sup> indicate that, for the most recent three-year period, the United States, Mexico, Israel or another *CIFTA* beneficiary, and Chile were not among the top five suppliers of bicycles to Canada. Accordingly, the Tribunal determines that the quantity of bicycles imported from each of the United States, Mexico, Israel or another *CIFTA* beneficiary, and Chile does not account for a substantial share of total imports of the subject bicycles.

157. As indicated by Article 802(1) of *NAFTA*, Article 4.6(2) of *CIFTA* and Article F-02(2) of the *CCFTA*, as implemented by subsection 59(1) of the *Customs Tariff*<sup>70</sup> and subsection 5(4) of the *Export and Import Permits Act*,<sup>71</sup> imports from a *NAFTA* country, Israel or another *CIFTA* beneficiary, or Chile must be excluded unless they meet both of the following criteria: (1) account for a substantial share of total imports; and (2) contribute importantly to the serious injury. Given that the first criterion is not met by the imports of any of the free trade partners just mentioned, it is not necessary to consider the second criterion for purposes of their exclusion.

## INJURY CAUSED BY IMPORTS FROM THE REST OF THE WORLD

158. The Referral Order directs the Tribunal, when it determines that imports of a good from a *NAFTA* country, Israel or another *CIFTA* beneficiary, or Chile do not account for a substantial share of total imports, to determine whether that good is imported into Canada from all sources not covered by such determination in such increased quantities and under such conditions as to be a principal cause of serious injury or threat thereof to domestic producers of like or directly competitive goods.

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68. The *Regulations Defining Certain Expressions for the Purposes of the Customs Tariff*, S.O.R./97-62, provide, under section 1, that “Israel or another CIFTA beneficiary” means “the territory where the customs laws of Israel are applied and includes the territory where those laws are applied in accordance with Article III of the Protocol on Economic Relations set out in Annex V of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, dated September 28, 1995, as that Protocol is amended from time to time.”

69. *Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-07, Administrative Record, Vol. 1.1 at 40.

70. S.C. 1997, c. 36.

71. R.S.C. 1985, c. E-19.

159. Imports into Canada from the United States decreased by close to 30 percent over the 2000-2004 period, representing only 1 percent of imports in 2004. The imports from Israel or another *CIFTA* beneficiary and Chile each represented an even smaller proportion of overall imports.

160. The Tribunal notes that imports from Mexico did increase in 2001 and 2003, but decreased substantially in 2004, representing only 1 percent of total imports. In addition, the majority of Mexican bicycles were imported by domestic producers and, by definition, have not caused injury to domestic producers.

161. In light of the above, the Tribunal's finding that increased imports were a principal cause of serious injury is not changed by the exclusion of imports from the United States, Mexico, Israel or another *CIFTA* beneficiary, and Chile.

162. Therefore, the Tribunal determines that bicycles are being imported from all sources other than the United States, Mexico, Israel or another *CIFTA* beneficiary, and Chile in such increased quantities and under such conditions as to be a principal cause of serious injury to domestic producers of bicycles.

#### **Article XIX of GATT 1994**

163. Article XIX of *GATT 1994* provides in part as follows:

1. (a) *If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concessions, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligation in whole or in part or to withdraw or modify the concession.* [Emphasis added]

#### Unforeseen Developments

164. Article XIX:1(a) of *GATT 1994* prescribes that safeguard measures can only be imposed where the increase in imports that caused the serious injury to the domestic producers results from "unforeseen developments". Unforeseen developments are "developments occurring after the negotiation of the relevant tariff concession which it would not be reasonable to expect that the negotiators of the country making the concession could and should have foreseen at the time when the concession was negotiated."<sup>72</sup> In this case, the issue is therefore whether the increase in imports that caused serious injury resulted from

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72. *Report of the Intersessional Working Party on the Complaint of Czechoslovakia Concerning the Withdrawal by the United States of a Tariff Concession under the Terms of Article XIX, ("Hatters' Fur")*, GATT/CP/106, adopted 22 October 1951, cited by the Appellate Body in *Argentina – Safeguard Measures on Imports of Footwear* (14 December 1999), WTO Doc. WT/DS121/AB/R at para. 96.

developments that could not have been reasonably foreseen by Canadian trade negotiators in 1994, the time that Canada bound the tariff applicable to bicycles.<sup>73</sup>

165. The CBMA submitted that, in this case, import penetration into the Canadian bicycle market resulted from a number of unforeseen developments that have occurred since 1994, notably: (1) the collapse of production in the United States in 2001; (2) the appearance of countries that did not traditionally export bicycles; (3) the status and capacity of China as a major player in the bicycle market; (4) the change in policy by the CBSA towards China and the flood of Chinese exports; (5) the removal of tariff protection as it existed in 1947; (6) the provision of the GPT to China; (7) the continued increase in imports despite anti-dumping protection; and (8) the surge of low-end imported bicycles into the IBD sector.

166. Parties opposed to the complaint submitted that the developments proposed by the CBMA were neither “unforeseen” nor linked to an increase in imports.

167. On the basis of the record in these proceedings, the Tribunal finds that the significant increase in imports during the period of inquiry was due to unforeseen developments concerning the global production of bicycles. Key developments were: (1) the increase in capacity and production of China;<sup>74</sup> and (2) the increase in capacity and production of new emerging countries that did not traditionally export significant quantities of bicycles, such as the Philippines<sup>75</sup> and Vietnam.<sup>76</sup>

168. In the Tribunal’s view, these unforeseen developments have resulted in the significant increase in imports of bicycles that caused serious injury to the domestic producers of bicycles. The increased capacity and production of bicycles in China resulted directly in increased exports by that country to Canada.<sup>77</sup> Similarly, the expansion of bicycle industries in countries such as the Philippines and Vietnam, which historically were not major exporters of bicycles, and the increase in their production capacity and actual production resulted in significantly increased exports to Canada.<sup>78</sup> Canadian trade negotiators could not reasonably have foreseen these developments in 1994.

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73. *Argentina – Definitive Safeguard Measure on Imports of Preserved Peaches – Report of the Panel* (14 February 2003), WTO Doc. WT/DS238/R at paras. 7.25-7.29; *United States – Definitive Safeguard Measures on Imports of Certain Steel Products* (11 July 2003), WTO Docs. WT/DS248/R, WT/DS249/R, WT/DS251/R, WT/DS252/R, WT/DS253/R, WT/DS254/R, WT/DS258/R, WT/DS259/R at para. 10.74 [*United States – Steel Safeguard*].

74. *Protected Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-08 (protected), Administrative Record, Vol. 2.1 at 134, 139.

75. *Protected Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-08 (protected), Administrative Record, Vol. 2.1 at 141.

76. *Protected Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-08 (protected), Administrative Record, Vol. 2.1 at 142.

77. *Protected Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-08 (protected) Administrative Record, Vol. 2.1 at 40, 134, 139.

78. *Protected Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-08 (protected), Administrative Record, Vol. 2.1 at 40, 141, 142.

Obligations Incurred Under GATT 1994

169. Parties opposing the complaint argued that increased imports did not result from tariff concessions made by Canada, as contemplated under Article XIX of *GATT 1994*. They argued that tariff concessions are limited to tariff reductions and do not include the binding of tariffs. In this connection, parties opposed to the complaint submitted that, while tariffs were bound against an increase, tariff rates with respect to bicycles remained virtually unchanged in the last 10 years.

170. The CBMA submitted that the mere existence of a bound tariff rate does constitute a tariff concession in the sense of Article XIX of *GATT 1994*.

171. The Tribunal notes that, in 1994, at the conclusion of the Uruguay Round of Multilateral Trade Negotiations, Canada bound the tariff applicable to bicycles at 13.2 percent.<sup>79</sup>

172. In the Tribunal's view, the binding of a tariff constitutes a tariff concession. The WTO *Dictionary of Trade Policy Terms* defines "binding" in part as follows:

**Binding:** also called **concession**. A legal obligation not to raise tariffs on particular products above the specified rate agreed in *WTO* negotiations and incorporated in a country's *schedule of concessions*.<sup>80</sup>

173. The fact that the binding of a tariff constitutes a tariff concession is also supported by the wording of Article XXVIII bis 2(a) of *GATT 1994*, which states in part: "The binding against increase of low duties or of duty-free treatment shall, in principle, be recognized as a concession equivalent in value to the reduction of high duties."

174. With respect to the issue of whether the increase in imports of bicycles results from Canada's tariff concessions with respect to bicycles, the Tribunal notes that, were it not for the binding of the tariff applicable to bicycles, it would have been possible for Canada to unilaterally increase that tariff to stem the flow of increased imports. Therefore, in the Tribunal's opinion, the increase in imports did result from Canada's tariff concessions with respect to bicycles.<sup>81</sup> This view is consistent with the statement by the WTO Panel in *United States – Steel Safeguard* that the logical connection between tariff concessions and increased imports causing serious injury is proven once there is evidence that the importing member has tariff concessions for the relevant product.<sup>82</sup>

175. On the basis of the above, the Tribunal finds that the significant increase in imports of bicycles that caused serious injury to the domestic producers of bicycles resulted from the effect of the obligations incurred by Canada under *GATT 1994*, more specifically, the tariff concessions granted with respect to bicycles.

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79. *Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994*, April 15, 1994, Schedule V – Canada, Part 1, Section II.

80. W. Goode, 4th ed. (Cambridge: Cambridge University Press, 2003) at 44.

81. *Steel Safeguard* at 18-19.

82. Panel Report, *United States – Steel Safeguard*, paras. 10.139-10.140.

## CHAPTER III

### FINISHED PAINTED BICYCLE FRAMES

#### PRODUCT AND MARKET

##### Product Description

176. The goods subject to the inquiry are finished painted bicycle frames, whether assembled or unassembled.

177. Bicycle frames generally consist of tubes welded together to create the structure of a bicycle, part of which includes the back triangle, which consists of backstays and chain stays that hold the rear wheel.

##### Domestic Producers

178. In response to the domestic producers' questionnaire, the following companies indicated that they produce finished painted bicycle frames.<sup>83</sup>

179. **Groupe Procycle** began producing steel bicycle frames in 1977. Currently, it imports unpainted frames, which are painted, decorated and then assembled into bicycles at its Saint-Georges, Quebec, facility. Rocky Mountain uses the bicycle frames that it constructs of steel, aluminum or carbon fibre to produce mountain, road and hybrid bicycles with wheel diameters of 26 inches and 700C. It also sells finished painted bicycle frames, primarily for export.

180. **Raleigh** manufactures steel bicycle frames. Most of the steel frames used in the production of bicycles by Raleigh are produced at its Waterloo, Ontario, factory. Unpainted aluminum frames and some finished painted frames are imported from Asian, European and North American sources.

181. **Cycles Devinci** manufactures high-end aluminum frames for bicycles that it sells under its own brand name. Cycles Devinci only produces frames with wheel diameters over 24 inches.

##### Importers

182. Domestic producers of bicycles that produced finished painted bicycle frames were the largest importers of finished painted bicycle frames during the period of inquiry. In 2004, these companies represented close to half of the total volume of imports of finished painted bicycle frames. Domestic producers of bicycles that did not produce finished painted bicycle frames accounted for the vast majority of the other imports of finished painted bicycle frames. A large

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83. During the period of inquiry, Victoria Precision also produced bicycle frames.

number of importers, most of which represented approximately 1 percent or less of total imports, accounted for the remainder of imports.<sup>84</sup>

### Foreign Producers

183. The Tribunal received 29 responses to its foreign producers' questionnaire, as listed in Appendix IV. Eleven of these companies reported exporting finished painted bicycle frames to Canada. These companies are identified with an asterisk in the appendix.

### Marketing and Distribution

184. Finished painted bicycle frames manufactured by domestic producers are primarily used internally for the production of bicycles. Whether domestically produced or imported, very limited quantities of finished painted bicycle frames are sold to third parties.

## ANALYSIS

185. Pursuant to paragraph 27(1)(a) of the *CITT Act*, the Tribunal is required to determine whether finished painted bicycle frames are being imported in such increased quantities and under such conditions as to be a principal cause of serious injury, or threat thereof, to domestic producers of like or directly competitive goods.

186. Before proceeding with its analysis concerning the increased imports and serious injury, the Tribunal will first determine what are like or directly competitive goods to the subject imports and who are the domestic producers of those goods.

### Like or Directly Competitive Goods

187. The evidence indicates that finished painted bicycle frames produced in Canada are like or directly competitive goods in relation to the finished painted bicycle frames subject to the inquiry.

### Domestic Producers of Like or Directly Competitive Goods

188. The Tribunal finds that, according to the evidence on the record, the major domestic producers of finished painted bicycle frames during the period of inquiry were the following companies: Cycles Devinci, Groupe Procycle, Raleigh and Victoria Precision.

### Increased Imports

189. Table 5 shows total apparent imports and domestic production of finished painted bicycle frames into Canada for the years 2000 to 2004.

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84. *Protected Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-08 (protected), Administrative Record, Vol. 2.1 at 67.

**Table 5**  
**Total Apparent Imports and Domestic Production of**  
**Finished Painted Bicycle Frames**

(units)

	2000	2001	2002	2003	2004
<b>Total Apparent Imports</b>	35,642	56,319	55,729	54,835	83,223
% Change		58	(1)	(2)	52
Producers' Imports	16,795	27,084	29,372	30,352	50,854
% Change		61	8	3	68
Net Imports <sup>1</sup>	18,847	29,235	26,357	24,482	32,369
% Change		55	(10)	(7)	32
% Share of Producers' Imports	47	48	53	55	61
% Share of Net Imports <sup>1</sup>	53	52	47	45	39
	100	100	100	100	100
<b>Total Domestic Production</b>	698,063	698,898	390,837	401,001	405,003
% Change		0	(44)	3	1
<b>Total Imports Relative to Production (%)</b>	5	8	14	14	21
<b>Net Imports<sup>1</sup> Relative to Production (%)</b>	2	4	7	6	8

1. Net imports equals total imports less producers' imports.

Source: *Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-07, Administrative Record, Vol. 1.1 at 64, 67.

190. Total imports of finished painted bicycle frames increased by 48,000 units, or 133 percent, during the period of inquiry. Over the five-year period, the Tribunal notes that there were two significant surge periods, one in 2001 and the other in 2004. Between 2000 and 2001, imports of finished painted bicycle frames increased by 21,000 units, or 58 percent. Imports then remained fairly stable at this higher level in 2002 and 2003, before increasing by 28,000 units, or 52 percent, in 2004.

191. While imports increased, domestic production of finished painted bicycle frames declined over the period of inquiry, from 698,000 units in 2000, to 405,000 units in 2004, a decline of 293,000 units, or 42 percent. The vast majority of the decline took place in 2002, the year following the first significant increase in imports.

192. Imports of finished painted bicycle frames relative to domestic production increased from 5 percent in 2001 to 21 percent in 2004.

193. Based on the foregoing, the Tribunal finds that there has been a recent, sharp, sudden and significant increase in imports of finished painted bicycle frames in absolute terms and relative to the production in Canada of like or directly competitive goods.

### Serious Injury

194. The CBMA did not allege serious injury to the production of finished painted bicycle frames, and the evidence did not indicate that such injury has occurred. Therefore, the Tribunal

concludes that increased imports of finished painted bicycle frames are not being imported in such increased quantities and under such conditions as to be a principal cause of serious injury to domestic producers of like or directly competitive goods.

### **Threat of Serious Injury**

195. Having found that increased imports were not a cause of serious injury to the domestic producers of finished painted bicycle frames, the Tribunal must determine whether there is a threat of serious injury caused by the increase in imports. In this respect, the *CITT Act* requires the Tribunal to determine whether the increased imports are a principal cause of threat of serious injury. Subsection 2(1) defines threat of serious injury as meaning serious injury that, on the basis of facts, and not merely of allegation, conjecture or remote possibility, is clearly imminent.

196. The CBMA alleged that finished painted bicycle frames are being imported in such increased quantities and under such conditions as to threaten to cause serious injury to domestic producers of like or directly competitive goods.

197. In its complaints, the CBMA submitted that, if imported painted frames are not subject to safeguard protection, their importation would pose a threat of circumvention of the protection afforded to complete bicycles, as there would be an insignificant cost barrier and a low capital outlay needed to assemble complete bicycles using imported frames. Should there be protection against imports of bicycles, assembly in Canada of bicycles from imported finished painted bicycle frames could quickly and easily be established, displacing Canadian production of finished painted bicycle frames.

198. An examination of the imports indicates that domestic producers accounted for an increasing proportion of total imports each year during the period of inquiry. Imports by domestic producers increased from 47 percent of total imports in 2000 to 61 percent in 2004. The Tribunal considers that there can be no threat of injury to domestic producers by goods imported by domestic producers themselves. After deducting imports of finished painted frames by domestic producers, the Tribunal is of the view that the remaining volume and increase in imported finished painted bicycle frames are not sufficient, relative to the volume of domestic frame production, to threaten injury.

199. Therefore, the Tribunal determines that finished painted bicycle frames are not being imported in such increased quantities and under such conditions as to be a principal cause of threat of serious injury to the domestic producers of finished painted bicycle frames.

## CHAPTER IV

### RECOMMENDATIONS ON REQUESTS FOR PRODUCT EXCLUSIONS

#### INTRODUCTION

200. In a notice issued May 3, 2005, the Tribunal outlined the exclusion request process for this global safeguard inquiry. The notice was sent to all persons who had been notified of the commencement of the inquiry. In addition, the exclusion request process and request forms were made available on the Tribunal's Web site.

201. The Tribunal received 26 exclusion requests for certain bicycles, 11 exclusion requests for certain finished painted bicycle frames and 5 exclusion requests for goods not subject to the inquiry.

202. In light of its determination that there has not been serious injury or threat of serious injury concerning certain finished painted bicycle frames, the Tribunal did not need to consider the exclusion requests for certain finished painted bicycle frames.

#### Basis of Assessing the Requests for Exclusions

203. The Tribunal recommends product exclusions only where it is of the view that such exclusions will not cause injury to the domestic producers. This approach is consistent with that adopted by the Tribunal in cases decided under *SIMA*. For example, in *Stainless Steel Wire*, the Tribunal stated:

The fundamental principle is that the Tribunal will grant product exclusions only when it is of the view that such exclusions will not cause injury to the domestic industry. The Tribunal has granted product exclusions for particular products in circumstances when, for instance, the domestic industry does not produce those particular products. The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods, whether the domestic industry is an "active supplier" of the product or whether it normally produces the product or whether the domestic industry has the capability of producing the product.<sup>85</sup> [Footnotes omitted]

#### TRIBUNAL RECOMMENDATIONS FOR THE EXCLUSION OF CERTAIN BICYCLES

204. Generally speaking, the exclusion requests covered the following types of bicycles: bicycles above certain FOB selling prices (at foreign point of direct shipment), folding bicycles, tandem bicycles, recumbent bicycles, bicycles made with specific materials, specific models, custom-designed bicycles, bicycles with a patented suspension and bicycles assembled with TIG welded frames. The following are the Tribunal's reasons for its recommendations concerning the exclusion requests.

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85. (30 July 2004), NQ-2004-001 (CITT) at para. 96.

205. First, the Tribunal considered the exclusion requests for bicycles with certain FOB selling prices. The Tribunal received three exclusion requests for complete bicycles with an FOB country of origin selling price exceeding CAN\$225. These requests were received from Giant Manufacturing, Taiwan Hodaka Ind. Co., Ltd. (Hodaka) and United Engineering. The Tribunal also received a request from Cervélo for an exclusion for high-end road and time trial bicycles. Based on evidence on the record, the Tribunal is satisfied that the bicycles for which Cervélo has requested an exclusion have an FOB country of origin selling price greater than CAN\$225.

206. In considering these requests, the Tribunal first determined that an FOB value of CAN\$225 is approximately equivalent to CAN\$400 retail. This FOB to retail price relationship is within the range of equivalences that were reported by respondents to the Tribunal's supplementary request for information relating to FOB to landed value and retail price relationships, as well as in witnesses' testimony.<sup>86</sup>

207. The Tribunal is mindful that the CAN\$225 FOB to CAN\$400 retail equivalence is unchanged from the relationship that it found three years ago in the 2002 Review, despite the fact that the Canadian dollar appreciated against the U.S. dollar during this time. In concluding that the appreciation of the Canadian dollar has not substantially altered the FOB/retail relationship that existed in 2002, the Tribunal notes that the evidence on the record does not indicate any change in importer-distributor and importer-retailer margins since that time. This indicates that a bicycle that cost CAN\$225 FOB in 2004 should retail at the same level, namely, CAN\$400, as a bicycle that cost CAN\$225 FOB in 2002.<sup>87</sup>

208. In considering these price point requests, the Tribunal examined the survey data collected on sales from domestic production and imports by wheel size and price ranges. The Tribunal examined sales from imports and domestic production of bicycles that retail as follows: (1) more than CAN\$1,000; (2) from CAN\$601 to CAN\$1,000; (3) from CAN\$401 to CAN\$600; and (4) CAN\$400 or less. The share of apparent imports of bicycles retailing in the various price segments was estimated using the ratio of annual sales from imports retailing in a

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86. The Tribunal has relied, in particular, on the information provided by mass merchants in that regard. Tribunal Exhibit GS-2004-001/002-14.11C (protected), Administrative Record, Vol. 6A at 118.7-118.12; Tribunal Exhibit GS-2004-001/002-14.16D (protected), Administrative Record, Vol. 6B at 106.1-106.7; Tribunal Exhibits GS-2004-001/002-14.22D (protected) and -14.23C (protected). Administrative Record, Vol. 6C at 111.15-111.18 and 208.33-208.50 respectively; Tribunal Exhibit GS-2004-001/002-14.27D (protected), Administrative Record, Vol. 6D at 294.32-294.46; Tribunal Exhibit GS-2004-001/002-14.31C (protected), Administrative Record, Vol. 6E at 245-47; Tribunal Exhibit GS-2004-001/002-17.073A (protected), Administrative Record, Vol. 6.1A at 49.1-49.15; Importer's Exhibit B-04 (protected), para. 74, Administrative Record, Vol. 14; Importer's Exhibit R-01, para. 6, Administrative Record, Vol. 13E; *Transcript of In Camera Hearing*, Vol. 2, 22 June 2005, at 83-87; *Transcript of In Camera Hearing*, Vol. 3, 23 June 2005, at 380-89; *Transcript of In Camera Hearing*, Vol. 7, 29 June 2005, at 748-49.
87. The major difference is that bicycles in 2004 have higher specifications than bicycles in 2002. The appreciation of the Canadian dollar has allowed importers to add features to imported bicycles without increasing their FOB Canadian costs or moving out of targeted retail price points.

particular price segment to total annual sales from imports,<sup>88</sup> as reported to the Tribunal in response to its questionnaires.

209. The analysis indicated that a very large proportion of the apparent market for bicycles retails for CAN\$400 or less. Over the period of inquiry, sales from imports that retailed for CAN\$400 or less increased from approximately 75 percent of total sales from imports to over 85 percent. Sales by domestic producers of bicycles that retailed for CAN\$400 or less fluctuated between 90 and 93 percent of total domestic producers' sales over the same period, and between 94 and 96 percent of the sales from domestic production of the domestic producers supporting the complaint.

210. In this regard, the Tribunal notes domestic producers' predominant and increasing focus on their sales in the mass merchant segment of the market (which sells primarily in the CAN\$400 or less retail segment), particularly in light of Raleigh's growing relationship with CTC and Groupe Procycle's growing relationship with Wal-Mart. Similarly, the evidence of the domestic producers concerning injury focused essentially on the mass merchant segment and on bicycles retailing for CAN\$400 or less.

211. Indeed, domestic production and sales from domestic production of bicycles that retail for more than CAN\$400 increased during the period of inquiry, while domestic production and sales from domestic production of bicycles that retail for CAN\$400 or less declined significantly.<sup>89</sup>

212. Consequently, the Tribunal finds that the domestic producers of bicycles experienced little or no injury with respect to bicycles that retail for over CAN\$400 and recommends that bicycles with an FOB selling price (at foreign point of direct shipment) exceeding CAN\$225 be excluded from the remedy.

213. Secondly, the Tribunal considered requests for exclusion for folding, tandem and semi and/or fully recumbent bicycles. The Tribunal recommends that folding, tandem and semi and/or fully recumbent bicycles be excluded from any remedy, as, in light of the limited domestic production, such exclusions would cause little or no injury to the domestic producers. Further, the Tribunal notes that the CBMA consented to these product exclusion requests.

214. Third, with regard to the exclusion requests for complete bicycles made fully or partially of carbon fibre or composite materials, monocoque aluminum and hydroformed aluminum, the Tribunal recommends that these bicycles not be excluded from any remedy because, in the Tribunal's view, the evidence indicates that the domestic industry makes substitutable products.

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88. Includes producers' imports. Tribunal questionnaire replies with respect to sales by price category represented, on average, over 75 percent of the apparent market.

89. Total sales of bicycles retailing for more than CAN\$400 increased by approximately 45,000 units, or 36 percent, during the period of inquiry. During this period, domestic producers increased their sales by over 3,000 units. Total sales of bicycles retailing for CAN\$400 or less increased by approximately 37 percent during the period of inquiry; however, sales from domestic production declined by almost 192,000 units over the same period. *Protected Pre-hearing Staff Report*, revised 24 May 2005, Tribunal Exhibit GS-2004-001/002-08A (protected), Vol. 2.1 at 241.

215. Fourth, the Tribunal recommends that the exclusions requested by Norco with regard to the bicycles listed below be denied because the Tribunal is satisfied that the domestic industry produces models that are substitutable for those bicycles for which exclusions were sought. They include those with:

- wheel sizes under 16 inches and FOB values over CAN\$22;<sup>90</sup>
- wheel sizes of 16 inches and over but under 20 inches and FOB values over CAN\$34;
- wheel sizes of 20 inches and over but under 24 inches and FOB values over CAN\$47;
- wheel sizes of 24 inches and FOB values over CAN\$59; and
- wheel sizes of 26 inches and FOB values over CAN\$78.

216. Fifth, for model-specific product exclusion requests from Kenton Bicycle Co., including its Chopper model, the Tribunal is satisfied that the domestic industry produces models that are substitutable for these types of bicycles and, therefore, recommends that these goods not be excluded from any remedy.

217. Sixth, the Tribunal recommends that “custom-designed” bicycles by Pt. Wijaya Indonesia Makmur Bicycle Industries (WIM) not be excluded from any remedy,<sup>91</sup> as it considers that substitutable products are available from domestic producers, such as private label bicycles made to third-party specifications.

218. Seventh, the Tribunal recommends that Norco bicycles with FSR four-bar link patented suspension from Specialized not be excluded from any remedy, as it considers that substitutable products are available from domestic producers. The Tribunal is satisfied that the domestic industry produces bicycles with dual suspension with four-bar link, which is substitutable for the patented suspension available from Specialized.

219. Finally, with respect to the exclusion request for bicycles with TIG welded frames, the Tribunal recommends that these goods not be excluded from any remedy, as it is satisfied that the bicycles produced with Metal Inert Gas welding by the domestic industry are substitutable products.

220. Table 6 lists the Tribunal’s recommendations on product exclusion requests.

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90. Bicycles with wheel diameters of 15 inches or less are not goods subject to this global safeguard inquiry.

91. To the extent that these “custom-designed” bicycles are not excluded as imports from a developing country.

**Table 6**  
**Recommendations Concerning Requests for Product Exclusions**

<b>Exhibit No. (Vol. 1.2)</b>	<b>Requester</b>	<b>Product</b>	<b>Tribunal's Recommendation</b>
31.07	Giant Manufacturing	• Bicycles with an FOB selling price greater than CAN\$225	Exclude from the remedy
31.05	Hodaka	• Bicycles with an FOB selling price greater than CAN\$225	Exclude from the remedy
31.08	United Engineering	• Bicycles with an FOB selling price greater than CAN\$225	Exclude from the remedy
31.12	Cervélo	• High-end road bicycles and high-end time trial bicycles of synthetic and aluminum materials	Exclude from the remedy if FOB selling price exceeds CAN\$225
31.01	Giatex Bicycles Inc.	• Folding bicycles	Exclude from the remedy
31.02	Pacific Waterhouse Intl. Trading Inc.	• Folding bicycles	Exclude from the remedy
31.04	Peakbuyer Co. Ltd.	• Folding bicycles	Exclude from the remedy
31.07	Giant Manufacturing	• Folding bicycles	Exclude from the remedy
31.08	United Engineering	• Folding bicycles	Exclude from the remedy
31.09	OYAMA Industrial Co. Ltd.	• Folding bicycles	Exclude from the remedy
31.08	United Engineering	• Tandem bicycles	Exclude from the remedy
31.07	Giant Manufacturing	• Recumbent bicycles	Exclude from the remedy
31.13	Norco	• Complete bicycles made fully or partially of carbon fibre or composite materials	Deny the exclusion request*
31.13	Norco	• Complete bicycles made fully or partially of monocoque aluminum or hydroformed aluminum	Deny the exclusion request*
31.03	Kenton Bicycle Co.	• 2600DH 26 inches aluminum 27 SPD Shimano LX Deore • DX 26 inches aluminum 24SPD Shimano Acera • Rocket 20 inches aluminum freestyle • Chopper	Deny the exclusion request*

**Table 6 (cont'd)**  
**Recommendations Concerning Requests for Product Exclusions**

<b>Exhibit No. (Vol. 1.2)</b>	<b>Requester</b>	<b>Product</b>	<b>Tribunal's Recommendation</b>
31.13	Norco	Bicycles of various sizes and corresponding FOB values: <ul style="list-style-type: none"> <li>• Wheel sizes under 16 inches and FOB values over CAN\$22</li> <li>• Wheel sizes of 16 inches and over but under 20 inches and FOB values over CAN\$34</li> <li>• Wheel sizes of 20 inches and over but under 24 inches and FOB values over CAN\$47</li> <li>• Wheel sizes of 24 inches and FOB values over CAN\$59</li> <li>• Wheel sizes of 26 inches and FOB values over CAN\$78</li> </ul>	Deny the exclusion request*
31.06	WIM	• Custom-designed bicycles with wheel diameters of 16 inches, 20 inches, 24 inches and 26 inches, pursuant to customer-supplied specifications	Deny the exclusion request*
31.13	Norco	• Finished painted bicycles using FSR four-bar link patented suspension from Specialized	Deny the exclusion request*
31.10	Canadian Association of Specialty Bicycle Importers (CASBI)	• TIG welded assembled bicycles with TIG welded frames	Deny the exclusion request*
31.10	CASBI	• Carbon fibre forks	Not subject to the inquiry
31.10	CASBI	• TIG welded cromoly forks	Not subject to the inquiry
31.14	Outdoor Gear Canada	• Carbon, kevlar or composite forks made with a specific manufacturing technique	Not subject to the inquiry
31.13	Norco	• Toy bicycles under classification No. 8712.00.00.11	Not subject to the inquiry
31.03	Kenton Bicycle Co.	• 20 inches Unicycle	Not subject to the inquiry

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\* The Tribunal recommends that any goods covered by these requests that have an FOB selling price (at foreign point of direct shipment) greater than CAN\$225 be excluded from the remedy.

## CHAPTER V

### RECOMMENDATION ON APPROPRIATE REMEDY

#### INTRODUCTION

221. As noted in Chapter I, the Tribunal's authority to address remedy in this global safeguard inquiry is found in the Referral Order, made on May 10, 2005, by the Governor General in Council, on the recommendation of the Minister of Finance and the Minister for International Trade, pursuant to subsection 27(3) of the *CITT Act*. Part (b) of the Referral Order refers to the Tribunal the matter of recommending to the Government the most appropriate remedy to address any injury or threat of injury that may be found in this case "over a period of three years, in accordance with Canada's rights and obligations under international trade agreements".

222. On May 13, 2005, the Tribunal published a notice of receipt of referral order, in which it advised parties and interested persons that it was conducting its injury and remedy proceedings concurrently. Parties were invited to make submissions on remedy at the same time as their submissions on injury. Further to the May 13, 2005, notice, the Tribunal received 2 remedy submissions on bicycles from parties supporting the complaint and 23 remedy submissions on bicycles from parties<sup>92</sup> opposing the complaint. At the hearing, the Tribunal also invited counsel to make, as part of their closing arguments, submissions on remedy.

223. In this chapter, the Tribunal provides its recommendation on remedy. In making its recommendation, the Tribunal is guided by the Referral Order and by Canada's obligations under *GATT 1994*, the *Agreement on Safeguards*, *NAFTA*, *CIFTA* and the *CCFTA*. The Tribunal has also taken into account all the remedy submissions on bicycles, as well as the total body of evidence on the record pertaining to both injury and remedy.

#### CHOICE OF REMEDY

224. The types of measures generally considered to remedy any injury found in a global safeguard inquiry include: (1) simple tariffs or surtaxes, which apply to all imports irrespective of their volume; (2) tariff-rate quotas (TRQs), which impose different tariff rates below and above a predetermined import volume threshold; and (3) quotas, which establish an upper limit on the absolute volume of imports that can enter the market within a given period of time. The Tribunal notes that almost all the submissions on bicycles in this case proposed a remedy in the form of either a surtax or a TRQ. One submission proposed a specific duty amount to be applied to all imports. There were no submissions from any parties that supported a remedy in the form of a quota alone.

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92. During the course of this global safeguard inquiry, the Tribunal also received eight letters from non-parties that provided their views on the negative impact that the application of a safeguard measure would have on their businesses and on the Canadian bicycle industry in general.

225. The CBMA indicated, in its principal remedy submission on bicycles,<sup>93</sup> that its preferred approach to remedy was a surtax. Several of the parties opposing the complaint also indicated that, if injury were found, a remedy in the form of a surtax was the most acceptable approach from their perspective. Generally speaking, those that supported a surtax indicated that they did so because they felt that it was fairer, simpler to administer, more transparent, less disruptive of market patterns and less trade distorting than other remedies. The Tribunal agrees that, in this case, a surtax is the most appropriate remedy to remove the injury that has been experienced by the domestic producers.

226. In terms of remedying the serious injury caused to domestic producers of bicycles, the Tribunal notes that the market segment where injury is most highly concentrated, bicycles selling for CAN\$400 or less retail, as discussed in Chapter IV, is cost-driven and highly price-sensitive.<sup>94</sup> Competition between domestic and imported bicycles within this segment is particularly intense at OPPs.<sup>95</sup> As previously noted in Chapter II, sales of bicycles at OPPs comprise substantial volumes of domestic producers' sales and are critical to minimizing unit costs and maintaining efficient plant operations.

227. The evidence shows that imports from the major source countries<sup>96</sup> have a significant cost advantage in this price segment stemming from their low labour costs.<sup>97</sup> Moreover, since 2002, the appreciation of the Canadian dollar has reinforced this underlying labour cost advantage by lowering the purchase cost of imported bicycles.<sup>98</sup> This has allowed imports to substantially undercut domestic prices on comparable bicycles and to offer more features than domestic bicycles at any given price point in the CAN\$400 or less retail segment.

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- 93. Manufacturer's Exhibit A-02, paras. 126-33, Administrative Record, Vol. 11. The CBMA also made submissions, in the alternative to a surtax, pertaining to a TRQ and a specific duty (Manufacturer's Exhibit A-02, paras. 134-37, Administrative Record, Vol. 11; *Transcript of Public Argument*, 30 June 2005, at 63-67).
  - 94. Manufacturer's Exhibit A-03 (protected), paras. 23-24, Administrative Record, Vol. 12; Manufacturer's Exhibit A-04, paras. 21-22, Administrative Record, Vol. 11; Importer's Exhibit B-03, para. 79, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 1, 20 June 2005, at 25, 65-66, 95, 98-99, 102, 183, 254; *Transcript of Public Hearing*, Vol. 2, 21 June 2005, at 414-15, 420, 422; *Transcript of Public Hearing*, Vol. 3, 22 June 2005, at 575; *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 859-63, 871-72; *Transcript of Public Hearing*, Vol. 6, 27 June 2005, at 1151; *Transcript of In Camera Hearing*, Vol. 7, 28 June 2005, at 1266-67.
  - 95. *Transcript of Public Hearing*, Vol. 1, 20 June 2005, at 24-25; *Transcript of Public Hearing*, Vol. 3, 22 June 2005, at 574, 581-82, 625-26, 648-49; *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 859-63; *Transcript of In Camera Hearing*, Vol. 2, 22 June 2005, at 37.
  - 96. In 2004, the five largest exporting countries to Canada were, by volume and order of importance, China, Vietnam, Chinese Taipei, the Philippines and Thailand. Ninety-six percent of imported bicycles with wheel diameters greater than 38.1 centimetres (15 inches) were sourced from these five countries in 2004. *Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-07, Administrative Record, Vol. 1.1 at 40.
  - 97. *Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-07, Administrative Record, Vol. 1.1 at 126; *Transcript of Public Hearing*, Vol. 2, 21 June 2005, at 425, 428-29.
  - 98. Canadian producers have also benefited, to some extent, from the appreciation of the Canadian dollar by lowering their Canadian dollar cost of imported bicycle components. Importer's Exhibit Q-09, para. 8, Administrative Record, Vol. 13E.

228. In the Tribunal's opinion, the simplest, most effective and direct way to address these advantages is to raise import costs through a surtax on all imports that sell in this price range. As it is impractical to impose the surtax at the retail level, the Tribunal is proposing that the surtax be applied, on an *ad valorem* basis, to the equivalent FOB price, which, as discussed in Chapter IV, is CAN\$225.

229. The degree to which the proposed surtax will affect retail prices, at any point in time over the three-year period, will be determined by the level of competition prevailing in the Canadian bicycle market. The greater the competition, the lower the likely impact on retail prices. In the Tribunal's opinion, the intense competition that prevails in this sector of the market should limit the price impact of this measure and should mean that this measure has only a limited effect on the wide range of choices available to consumers, given the numerous sources of supply available in the market.<sup>99</sup>

### RATE OF SURTAX PROPOSED

230. Having decided to recommend a surtax remedy, it remains to be established what level of tariff will afford the domestic producers the appropriate level of protection. The Referral Order directs the Tribunal to recommend the most appropriate remedy, but is silent on matters of remedy level or methodology to reach it. For its part, subsection 55(2) of the *Customs Tariff* only provides that the rate of surtax applied may not exceed the rate that is sufficient to prevent or remedy serious injury.

231. Similarly, Article 5.1 of the *Agreement on Safeguards* indicates that safeguard measures should be applied only "to the extent necessary to prevent or remedy serious injury". However, with respect to a surtax remedy, the *Agreement on Safeguards* is also silent on how to go about selecting a methodology and determining an appropriate level. Therefore, the matter of developing the appropriate surtax remedy is left essentially to the Tribunal's judgment.

232. In considering this matter, the Tribunal notes that a number of the submissions that proposed a surtax remedy also proposed a specific surtax level. More particularly, in supporting its complaint, the CBMA proposed a 48 percent surtax, applied on an FOB *ad valorem* basis.<sup>100</sup> This level was based on the level of anti-dumping duty that the European Union was expected to apply to bicycle imports from China at the conclusion of an interim review of existing EU anti-dumping measures against Chinese bicycles.<sup>101</sup> According to the CBMA, the 48 percent duty was required in Canada to prevent Chinese bicycles from being diverted in the future from the European Union to Canada.

233. The Tribunal considers that the result of the interim review conducted by the European Union with respect to bicycle imports from China should not influence the establishment of the

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99. *Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-07, Administrative Record, Vol. 1.1 at 43.

100. As noted earlier, the CBMA also put forward alternate proposals on a TRQ and on a specific or fixed duty approach to remedy. Since the Tribunal has decided on a surtax remedy, these alternate proposals are not considered further.

101. Disclosure made on April 28, 2005, by the EU on the interim review on imports of bicycles originating in China, Manufacturer's Exhibit A-15, Administrative Record, Vol. 11.

rate of the recommended surtax in this global safeguard inquiry, since any injury resulting from diversion would be in the future. The Tribunal has determined that the domestic producers have already suffered serious injury rather than that they are facing a threat of serious injury in the future. In devising an appropriate remedy, the Tribunal aims at remedying that past injury. Further, the CBMA's concern about trade diversion is a matter of speculation. In this connection, the evidence does not indicate that the EU market for bicycles resembles the Canadian market for bicycles<sup>102</sup> and, hence, there is no basis for drawing any meaningful inferences about the trade consequences for Canada of actions taken by the EU to protect its own market.

234. The Tribunal notes that some parties opposing the complaint submitted surtax proposals that ranged from a low of 0.2 percent<sup>103</sup> to a high of 15 percent.<sup>104</sup> The rationale for the 0.2 percent surtax was that it represented the amount by which the MFN tariff had declined since 1994. The justification advanced for the 15 percent surtax was that it was used by the Tribunal in *Steel Safeguard*. The Tribunal does not consider that either rationale is useful in addressing what amount of surtax would remedy the serious injury in this case. Overall, the proposals advanced by parties opposed to the complaint provide the Tribunal with little assistance in developing an appropriate surtax remedy.

235. As discussed in Chapter II, the Tribunal has found that the surge in import volumes was driven by low-priced imports throughout the period of inquiry and that, in particular, significant surges in imports occurred in 2001 and 2003. Accordingly, in developing the appropriate surtax, the Tribunal has focused on the pricing information on the record over the entire inquiry period, namely, from 2000 to 2004, and considered the following. The average landed value of imports<sup>105</sup> from all sources declined steadily from 2000 to 2004.<sup>106</sup> To restore import prices from the 2004 to the 2000 level on an FOB equivalent basis would require a tariff that the Tribunal estimates to be between 24 and 26 percent.<sup>107</sup> If values are calculated for the top

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102. Indeed, there is some evidence indicating that the markets are quite different. Specifically, average EU prices for bicycles are much higher than in Canada. Manufacturer's Exhibit A-015 at 3, Administrative Record, Vol. 11; *Pre-hearing Staff Report*, revised 3 June 2005, Tribunal Exhibit GS-2004-001/002-07C, Administrative Record, Vol. 1.1 at 321.

103. Exporters' Exhibits K-03/L-03/N-03/O-03, paras. 18, 20, Administrative Record, Vol. 13D.

104. Importer's Exhibit B-07, para. 8, Administrative Record, Vol. 13.

105. The costs associated with bringing a bicycle from the foreign point of direct shipment to a warehouse in Canada. Generally, these costs include ocean and inland freights, duty and incidentals, such as insurance and brokerage fees.

106. *Pre-hearing Staff Report*, revised 3 June 2005, Tribunal Exhibit GS-2004-001/002-07C, Administrative Record, Vol. 1.1 at 319.

107. The Tribunal has derived FOB values from weighted landed values based on its analysis of the evidence provided by several witnesses during the hearing regarding the estimated costs (ocean and inland freight, duty and incidentals, such as insurance and brokerage fees), associated with bringing the goods from a foreign point of direct shipment to a warehouse in Canada. *Pre-hearing Staff Report*, revised 3 June 2005, Tribunal Exhibit GS-2004-001/002-07C, Administrative Record, Vol. 1.1 at 319; *Transcript of Public Hearing*, Vol. 2, 21 June 2005, at 345-48; *Transcript of In Camera Hearing*, Vol. 2, 22 June 2005, at 68-70; *Transcript of In Camera Hearing*, Vol. 3, 23 June 2005, at 380-81; *Transcript of In Camera Hearing*, Vol. 5, 27 June 2005, at 622-25; *Transcript of In Camera Hearing*, Vol. 6, 28 June 2005, at 696-97.

five source countries, instead of from all sources, the estimated tariff required is between 31 and 35 percent.<sup>108</sup>

236. The Tribunal is mindful that these weighted average values include some bicycles that retail above CAN\$400, as well as bicycles at CAN\$400 or less. To obtain a picture of pricing in the CAN\$400 or less retail segment, the Tribunal has examined the data on the record on the volume and value of sales by retail price point. The values provided by respondents to the Tribunal's questionnaires reflect their weighted average unit wholesale selling prices<sup>109</sup> or wholesale purchase costs<sup>110</sup> in relation to specified retail price points.<sup>111</sup> According to these data, weighted average unit wholesale import prices of bicycles retailing for CAN\$400 or less consistently undercut weighted average unit wholesale domestic prices from 2000 to 2004 by significant amounts.<sup>112</sup> To eliminate this gap on an FOB basis would require a tariff that the Tribunal estimates to be in the range of 20 to 35 percent.<sup>113</sup>

237. In addition to the weighted average unit pricing information referred to in the previous paragraphs, the Tribunal considered information on the average unit wholesale price of domestic and imported bicycles with comparable features that were sold in specified retail price segments of CAN\$400 or less. This information showed that, from 2000 to 2004, there were 82 instances where CBMA members sold bicycles within the same period and the same retail price segment in competition with imported bicycles that the Tribunal considered to have

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- 108. *Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-07, Administrative Record, Vol. 1.1 at 40; *Pre-hearing Staff Report*, revised 3 June 2005, Tribunal Exhibit GS-2004-001/002-07C, Administrative Record, Vol. 1.1 at 318; *Transcript of Public Hearing*, Vol. 2, 21 June 2005, at 345-48; *Transcript of In Camera Hearing*, Vol. 2, 22 June 2005, at 68-70; *Transcript of In Camera Hearing*, Vol. 3, 23 June 2005, at 380-81; *Transcript of In Camera Hearing*, Vol. 5, 27 June 2005, at 622-25; *Transcript of In Camera Hearing*, Vol. 6, 28 June 2005, at 696-97.
  - 109. The price at which importer-distributors sell their bicycles to retailers. This price includes the cost of bringing the goods from a foreign point of direct shipment to a warehouse in Canada augmented by the importer-distributors' profit margin.
  - 110. The price at which importer-retailers import bicycles for retail sale to consumers. The importer-retailers' import purchase price is at the equivalent trade level to the wholesale selling price of importer-distributors.
  - 111. Domestic producers' replies to Schedule XIV of the domestic producers' questionnaire sent on March 8, 2005, and filed under collective Tribunal Exhibit GS-2004-001/002-11 (protected), Administrative Record, Vols. 4 to 4B; Importers' replies to Schedule V of the importers' questionnaire sent on March 8, 2005, and filed under collective Tribunal Exhibit GS-2004-001/002-14 (protected), Administrative Record, Vols. 6 to 6F.
  - 112. The data collected on bicycles retailing for CAN\$400 or less indicate that, during the 2000-2004 period, weighted average unit wholesale import prices ranged from CAN\$110 to CAN\$115, and weighted average unit wholesale domestic prices fluctuated between CAN\$130 and CAN\$136. These values do not include domestic producers' imports.
  - 113. Based on estimated cost information and importer-distributors' markups or profit margins provided by several witnesses during the hearing. *Transcript of Public Hearing*, Vol. 2, 21 June 2005, at 345-48; *Transcript of In Camera Hearing*, Vol. 2, 22 June 2005, at 67-70, 97-98; Tribunal Exhibit GS-2004-001/002-11.03C (protected), Administrative Record, Vol. 4A at 227; *Transcript of In Camera Hearing*, Vol. 3, 23 June 2005, at 380-82; *Transcript of In Camera Hearing*, Vol. 5, 27 June 2005, at 622-27; *Transcript of In Camera Hearing*, Vol. 6, 28 June 2005, at 690, 696-98, 708-709; Importer's Exhibit B-04 (protected), para. 74, Administrative Record, Vol. 14.

similar or superior features.<sup>114</sup> In 56 of these cases, or about 70 percent of the time, import prices were lower than the lowest domestic price and, in numerous cases, by more than 40 percent. The average margin of undercutting, as a percentage of import prices, over the 2000-2004 period, was in the order of 30 percent.

238. The Tribunal has also examined the specific injury allegations put forward by the CBMA in support of its complaint. These allegations show price undercutting by imports, often in the 20 to 30 percent range.<sup>115</sup> Finally, the Tribunal has taken note of the testimony of one industry witness regarding the cost of importing a bicycle compared to the cost of producing the same bicycle in Canada.<sup>116</sup> This *in camera* testimony reveals that imports are cheaper than Canadian-produced bicycles by an order of magnitude that is broadly consistent with the pricing data discussed above.

239. While the Tribunal is guided by the above pricing information, it considers that selecting a remedy in a global safeguard inquiry is not simply an accounting exercise that can be reduced to a precise mathematical calculation. Rather, it is an exercise in judgment that must take into account a wide range of factors.

240. The remedy must effectively remove the serious injury caused by imports, thereby providing the domestic producers with an opportunity to re-establish their ability to compete against imports. At the same time, it should not be set at a level that exceeds what is necessary to remove the serious injury.

241. Having regard to all the relevant factors, the Tribunal considers that the most appropriate remedy in this case is a surtax set at 30 percent in the first year of application and, thereafter, at 25 and 20 percent in the second and third years respectively. The Tribunal recommends that the surtax be applied to imports of bicycles, assembled or unassembled, with a wheel diameter greater than 38.1 centimetres (15 inches) with an FOB value of CAN\$225 or less (equivalent to CAN\$400 retail), subject to the exclusion of certain types of bicycles (see Chapter IV), and the exclusion of imports from free-trade agreement partners and certain developing countries, as discussed below.

242. Reducing the surtax by one third over the three-year period is liberalization consistent with Canada's obligations under the *Agreement on Safeguards*.<sup>117</sup> In the Tribunal's opinion, a more rapid pace of liberalization would not be appropriate, given the condition of the domestic producers and the recovery period that they are likely to need to make adjustments.

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114. *Protected Supplemental Information on Features of Bicycles and Finished Painted Frames*, Tribunal Exhibit GS-2004-001/002-08B (protected), Administrative Record, Vol. 2.1 at 264-72, 274-76, 278-80, 283-85, 288-89, 294-95, 300-301, 303-304.

115. The Tribunal is mindful that, in some cases, these allegations were contested by parties opposed to the complaint. However, the challenges generally did not put in question the validity of the import pricing cited by the industry. Rather, the challenges dealt with the extent to which pricing or other factors were driving the purchasing decision. Tribunal Exhibit GS-2004-001/002-02 (protected), Administrative Record, Vol. 2 at 24, 26-27, 114, 116, 118, 120, 124, 126, 141-45, 172, 174, 176, 178, 180; Tribunal Exhibit GS-2004-001/002-11.04 (protected), Administrative Record, Vol. 4A at 116-17; Tribunal Exhibit GS-2004-001/002-11.05 (protected), Administrative Record, Vol. 4B at 181-82, 184, 187, 188.

116. *Transcript of In Camera Hearing*, Vol. 3, 23 June 2005, at 212.

117. Article 7.4 of the *Agreement on Safeguards*.

243. The Tribunal notes that the Canadian bicycle industry operates on a seasonal selling cycle, with most orders negotiated in late spring, summer and early fall for delivery and sale in the following winter and spring.<sup>118</sup> This means that the 2006 bicycle season is well under way. Therefore, the question arises whether the safeguard remedy should be implemented as soon as possible or delayed until the 2007 season.

244. In this connection, the Tribunal notes that to wait to impose the surtax until the 2007 bicycle season would carry the risk of increased injury to the domestic producers over the interim period. In that event, the rate of surtax now being recommended by the Tribunal might well prove to be inadequate to address injury. Importers would have been well aware of this global safeguard inquiry when they placed orders for the 2006 season over the past few months, and it is reasonable to assume that they negotiated appropriate commercial terms to take into account the fact that a surtax could be imposed. Accordingly, the Tribunal encourages an early response to the recommendation that it has formulated.

### **IMPORTS FROM THE UNITED STATES, MEXICO, ISRAEL OR ANOTHER CIFTA BENEFICIARY, AND CHILE**

245. Article 802(1) of *NAFTA*, Article 4.6(2) of *CIFTA* and Article F-02(2) of the *CCFTA* require that imports of a product from parties to these agreements be excluded from safeguard measures unless imports from a party account for a substantial share of total imports and contribute importantly to the serious injury, or threat thereof, caused by imports. In other words, if either of these conditions is not met, the imports from a party must be excluded from a safeguard action. Subsection 59(1) of the *Customs Tariff* implements these obligations under Canadian law.

246. As indicated in Chapter II, the Tribunal has determined that the quantity of bicycles imported from each of the United States, Mexico, Israel or another *CIFTA* beneficiary, and Chile did not account for a substantial share of total imports of the subject bicycles. Therefore, imports from the United States, Mexico, Israel or another *CIFTA* beneficiary, and Chile should be excluded from any safeguard remedy.

### **DEVELOPING COUNTRIES**

247. In determining whether imports from a developing country should be subject to a safeguard measure, Article 9.1 of the *Agreement on Safeguards* provides that a safeguard measure “shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.” The developing country members to whom the above provision applies are identified in Part 1 of the OECD’s Development Assistance Committee list, as replicated in Appendix V.

248. The Tribunal notes that the *Agreement on Safeguards* does not specify over what time period the above 3 percent and 9 percent thresholds should be calculated. The Tribunal has

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118. *Transcript of Public Hearing*, Vol. 5, 24 June 2005, at 931-37; *Transcript of In Camera Hearing*, Vol. 6, 28 June 2005, at 689.

decided that it would be appropriate for the developing country exclusion to be based on the proportions derived from total imports from 2001 to 2004,<sup>119</sup> the period during which imports surged.

249. According to the import data<sup>120</sup> set out in Appendix V, China, Mexico, the Philippines, Thailand and Vietnam are the only five developing countries whose individual shares of total imports exceeded the 3 percent threshold during the 2001-2004 period.

250. For all other developing countries, the data indicate that their individual shares of total imports of bicycles were below the 3 percent threshold and that their collective imports did not exceed 9 percent of total imports during the 2001-2004 period.<sup>121</sup>

251. For the foregoing reasons, the proposed surtax should be applied to imports from China, the Philippines, Thailand and Vietnam, but not from other developing countries. The Tribunal has indicated above that imports from Mexico, as a result of the relevant *NAFTA* provisions, should be excluded from the application of the safeguard measure.

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119. That is, each developing country's total aggregate imports from 2001 to 2004 divided by total aggregate imports from all sources over the same period.

120. Although these data show the volume of imports of bicycles at all retail price points, evidence on the record indicates that the weighted average unit landed values of these imports ranged from a low of CAN\$69 to a high of CAN\$140 during the 2001-2004 period. This suggests that, in volume terms, the large majority of bicycles from these sources would have sold at retail prices at CAN\$400 or less. *Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-07, Administrative Record, Vol. 1.1 at 40; *Pre-hearing Staff Report*, revised 3 June 2005, Tribunal Exhibit GS-2004-001/002-07C, Administrative Record, Vol. 1.1 at 318.

121. The Tribunal notes that the CBMA has argued that imports from certain developing countries should not be excluded because their imports in the first quarter of 2005 had risen significantly. The Tribunal does not consider that any definitive conclusions about developing country exclusions should be drawn from import statistics covering only one calendar quarter. If, in the future, imports from certain developing countries exceed the exclusion threshold on a sustained basis, then the industry may consider the recourses that are available to it at that time.

**APPENDIX I**

**ORDER IN COUNCIL**

**P.C. 2005-804  
May 10, 2005**

Her Excellency the Governor General in Council, on the recommendation of the Minister of Finance and the Minister for International Trade, pursuant to subsection 27(3) of the *Canadian International Trade Tribunal Act* (the Act), hereby refers to the Canadian International Trade Tribunal the following matters in relation to the complaints into which inquiries were commenced by the Tribunal under subsection 26(1) of the Act on February 10, 2005 and March 24, 2005 respectively, and which concern the importation of bicycles, assembled or unassembled, with a wheel diameter greater than 38.1 cm or 15 inches, and the importation of finished painted bicycle frames, assembled or unassembled:

(a) in respect of each complaint, the matter of whether the determination referred to in sub-paragraph (i) remains the same if the goods in respect of which a determination referred to in sub-paragraph (ii) is made are excluded, in the event that the Tribunal:

(i) determines, under paragraph 27(1)(a) of the Act, that the goods that are the subject of the complaint are being imported into Canada in such increased quantities and under such conditions as to be a principal cause of serious injury, or threat thereof, to domestic producers of like or directly competitive goods, and

(ii) determines, under section 20.01, 20.02 or 20.03 of the Act, that the quantity of the specified goods imported from a NAFTA country, Israel or another CIFTA beneficiary or Chile, as the case may be, does not account for a substantial share of total imports of goods of the same kind or that those goods do not contribute importantly to the serious injury or threat thereof; and

(b) the matter of recommending the most appropriate remedies to address such injury or threat of injury over a period of three years, in accordance with Canada's rights and obligations under international trade agreements.

## APPENDIX II

### PARTICIPANTS

	<b>Counsel/Representative</b>
Raleigh Canada Limited Groupe Procycle Inc.	C.J. Michael Flavell, Q.C. Geoffrey C. Kubrick J. Peter Jarosz Bonnie R. Penfold Alain Poirier
Syndicat des Métallos	Pierre Lalonde
A. Mordo & Son Ltd.	Peter Clark
Yong Qi (Changzhou) Industrial Co., Ltd.	Chris Hines
Liyang (Shen Zhen) Machinery Co., Ltd.	Patrick Cuenco
Liyang (Vietnam) Industries Co., Ltd.	Wallis Stagg
Specialized Bicycle Components Canada, Inc.	Paul K. Lepsoe
Canadian Tire Corporation, Limited	Riyaz Dattu Alison Howell
Cervélo Cycles Inc.	Laughlin J. Campbell Nicholas C. Bader
Giant Manufacturing Co., Ltd.	Cyndee Todgham Cherniak Sui-Yu Wu Rajeev Sharma
Taiwan Bicycle Exporters' Association	Cyndee Todgham Cherniak Paul Lalonde Sui-Yu Wu Rajeev Sharma
Kenton Bicycle Co. Acebike Bicycle Co., Ltd.	Cyndee Todgham Cherniak Michelle Wong Michael C. Yang Li Li
Pride International Inc.	Cyndee Todgham Cherniak Cynthia Amsterdam Rajeev Sharma Adam Goodman
China Bicycle Association	Cyndee Todgham Cherniak Cynthia Amsterdam Michelle Wong Michael C. Yang Li Li
China Chamber of Commerce for Import & Export of Machinery & Electronic Products	Cyndee Todgham Cherniak Paul Lalonde Cynthia Amsterdam Rajeev Sharma Michelle Wong Michael C. Yang Li Li

<b>Counsel/Representative</b>	
Bangkok Cycle Industrial Company Limited	Cyndee Todgham Cherniak Cynthia Amsterdam Rajeev Sharma Michelle Wong Michael C. Yang Apisith John Sutham
Retail Council of Canada	Darrel H. Pearson Jesse I. Goldman Martha Harrison Michael Woods
Canadian Association of Specialty Bicycle Importers	James P. McIlroy
Trek Bicycle Corporation	Allan H. Turnbull
Cannondale Bicycle Corporation	Paul D. Burns
Giant Bicycle Canada, Inc.	
Astro Engineering Vietnam Co., Ltd. Asama Yuh Jium International Vietnam Co., Ltd. Always Co., Ltd. Vietnam Sheng Fa International Co., Ltd. Dragon Bicycles Vietnam Co. Ltd.	Dean Peroff
Genesis Cycle Inc.	Elio Moracci
Laidlaw Holdings Inc./To Wheels	J. Andrew Laidlaw
Duke's Cycle	Gary Duke
Norco Products Ltd.	Dave Overgaard
Ryder Distribution Inc.	John Morgado Susy Lopes
Office of Commercial Affairs, Royal Thai Consulate	Prayoth Benyasut
Bicicletas Mercurio, S.A. de C.V.	Gunter Fritz Maerker Hahne
Italcycle Inc.	Angelo Vandoni
Bicycle Trade Association of Canada	Janet O'Connell
The NAFTA Office of Mexico in Canada	Carlos Piñera
Giant China Co. Ltd.	Barton Cheng
Taipei Economic and Cultural Office, Canada	Tso-Chen Chen
.243 Racing Inc.	Eric Fox
Undersecretariat of the Prime Ministry for Foreign Trade (UFT) – Turkish Embassy – Office of the Commercial Counsellor	Veysel Parlak
Smooth Shifting Sports, Inc.	Peter Sejrup
Brantford Cyclepath	Richard Querney
Bayview Cycle Centre	Inder Soor
Independent Bicycle Dealer Association	
Primeau Vélo	Pierre Primeau
Cycles Devinci Inc.	Luc Sirois
Accessoires pour Vélo O.G.D. Ltée (dba Outdoor Gear Canada)	David Bowman
Bicycle Sports Pacific	Michael Theil

**APPENDIX III****WITNESSES AT THE PUBLIC HEARING**

Kenneth B. Morrison Vice-President, Finance Raleigh Canada Limited	Raymond Dutil President Groupe Procycle Inc.
Daniel Maheux Finance Director Groupe Procycle Inc.	Michel Arsenault Director United Steelworkers of America
Alain Poirier Research Services Syndicat des Métallos	Ghyslain Parent Union President Groupe Procycle Inc.
Claude Lévesque Permanent Syndicat des Métallos	Dave Overgaard Bicycle Division Manager Norco Products Ltd.
Félix Gauthier President and Chief Executive Officer Cycles Devinci Inc.	Gerard Vroomen Principal Cervélo Cycles Inc.
Rick Woods Assistant General Merchandise Manager Costco Wholesale Canada Ltd.	Éric St-Amand Buyer Costco Wholesale Canada Ltd.
Don Boyd Buyer – Bikes/In-Lines/Fitness/Snow Goods Zellers Inc.	Frank D'Amico Buyer – Toys Wal-Mart Canada Corp.
Tom Via Vice-President of Merchandising Toys "R" Us Canada Ltd.	Diane J. Brisebois President & CEO Retail Council of Canada
Percy J. Chien President Fairly Bike Manufacturing Co., Ltd.	Howard M.H. Sung Commercial Secretary, Economic Division Taipei Economic and Cultural Office, Canada
Ivy Hu China Bicycle Association	Zhang Peisheng Secretary General China Chamber of Commerce for Import & Export of Machinery & Electronic Products Household Machinery Branch
Liu Pengxu Legal Affairs Department China Chamber of Commerce for Import & Export of Machinery & Electronic Products	Shaun Morris Vice-President, Sales and Marketing A. Mordo & Son Ltd.
Mike Millar National Sales Team Manager Giant Bicycle Canada, Inc.	Mike Hietpas Canadian Sales Manager Trek Bicycle Corporation
Khawar M. Ahmad Account Manager Cannondale Bicycle Corporation	Larry Koury Managing Director Specialized Canada Inc.
Allan Pontello Category Manager Bicycles and Fitness Equipment Canadian Tire Corporation, Limited	Janet O'Connell Executive Director Bicycle Trade Association of Canada

Robert Jones  
Editor  
Canadian Cyclist

Jacob Heilbron  
The Bicycle Group Inc. (Kona Canada)

Peter Lilly  
Owner  
Sweet Pete's Cyclepath

Adriana Diaz Ortiz  
Director of International Assistance  
Economics Secretariat—Mexico

Philip Stanimir  
President and Chief Executive Officer  
4269209 Canada Inc.

Sean Musson  
Director, Marketing and Product Development  
Bicycles and Action Sports  
Pride International Inc.

Mike Milo  
Senior Vice-President, Sales & Marketing  
Pride International Inc.

Reynold VanHerpe  
Reynold Cycle

Barry Near  
Sport Swap Inc.

Michael Theil  
Owner  
Bicycle Sports Pacific

Alejandro Trujillo Saca  
Deputy Trade Representative  
The NAFTA Office of Mexico in Canada – Embassy of Mexico

Pascal Motafferi  
President  
MMH & F International Inc.

George Milo  
CEO  
Pride International Inc.

Daniel Haziza  
Senior Product Manager  
Bicycles and Action Sports  
Pride International Inc.

## APPENDIX IV

### COMPANIES THAT RESPONDED TO THE VARIOUS TRIBUNAL QUESTIONNAIRES

#### **COMPANIES THAT RESPONDED TO THE DOMESTIC PRODUCERS' QUESTIONNAIRE**

Cycles Devinci Inc.	Norco Products Ltd.
Groupe Procycle Inc.	Raleigh Canada Limited

Note: Victoria Precision Inc., which ceased operations in May 2004, was not sent a domestic producers' questionnaire.

#### **COMPANIES THAT RESPONDED TO THE IMPORTERS' QUESTIONNAIRE**

##### **Importer/Assemblers**

Accessoires pour Vélo O.G.D. Ltée (dba Outdoor Gear Canada)	Cycles Argon 18 Inc.
Cervélo Cycles Inc.	Italcycle Inc.

##### **Importer**

.243 Racing Inc.	Louis Garneau Sports Inc.
998833 Ont. Ltd. o/a ACS Distributing	MacNeil Bikes Inc.
A. Mordo & Son Ltd.	Marin Mountain Bikes Canada Inc.
Asama Enterprise Corporation Ltd.	PCT Innovations Inc. (Banshee Bikes)
Canadian Tire Corporation, Limited	Pride International Inc.
Cannondale Bicycle Corporation	R.B. Inc.
CyberSport Ltd.	Santa Cruz Bicycle
Cycles Lambert Inc.	Sears Canada Inc.
Eurospek Inc.	Specialized Bicycle Components Canada, Inc.
Genesis Cycle Inc.	The Bicycle Group Inc. (Kona Canada)
Giant Bicycle Canada, Inc.	Trek Bicycle Corporation
Home Hardware Stores Limited	Wal-Mart Canada Corp.
Huffy Corporation	World Bicycle Sports Inc. dba Ten Pack Distribution
Iron Horse Bicycle Company, LLC	Zellers Inc.

#### **COMPANIES THAT RESPONDED TO THE FOREIGN PRODUCERS' QUESTIONNAIRE**

Acetrikes Bicycle (Taicang) Co. Ltd.	Kenstone Metal Co., Ltd.
Always Co., Ltd.*	Kenton Bicycle Co.
A-Pro Tech Co., Ltd.*	Liyang (Shen Zhen) Machinery Co., Ltd.
Asama Yuh Jium International Vietnam Co., Ltd.	Merida Industry Co. Ltd.*
Astro Engineering Vietnam Co., Ltd.*	Pacific Cycle Inc.*
Bangkok Cycle Industrial Company Limited	Pt. Wijaya Indonesia Makmur Bicycle Industries
Bev Int'l Corp.*	Santa Cruz Bicycle*
Bicicletas Mercurio, S.A. de C.V.	Taioku Manufacturing Co., Ltd.
Cannondale Bicycle Corporation*	Taiwan Hodaka Ind. Co., Ltd.*
Caribou Enterprise Co., Ltd.*	Trek Bicycle Corporation
Dragon Bicycles Vietnam Co. Ltd.	United Cycle Incorporated
Fairly Bike Manufacturing Co., Ltd.	United Engineering Corp.
Giant China Co. Ltd.	Vietnam Sheng Fa International Co., Ltd.
Giant Manufacturing Co., Ltd.*	Yong Qi (Changzhou) Industrial Co., Ltd.
Ideal Bike Corporation	

\* Companies reporting export sales to Canada of finished painted bicycle frames.

**COMPANIES THAT RESPONDED TO THE PURCHASERS' QUESTIONNAIRE****Mass Merchants**

Canadian Tire Corporation, Limited.  
 Costco Wholesale Canada Ltd.  
 Federated Co-operatives Limited  
 London Drugs Ltd.  
 The North West Company

Toys "R" Us Canada Ltd.  
 TruServ Canada  
 Wal-Mart Canada Corp.  
 Zellers Inc.

**General Sporting Goods Retailers**

9039-5922 Quebec Inc. o/a Bicycle St-Joseph  
 Boyd's Source for Sports  
 DM Cyclosport  
 La Cordée Plein Air Inc.  
 Sport Chek  
 Sport Mart Inc. (a subsidiary of the Forzani Group Ltd.)

Sport Olympe Inc.  
 Sports Distributors of Canada  
 Sports Excellence Saint-Bruno  
 Sports Rosemère Inc.  
 The Forzani Group Ltd.  
 Tuxedo Cycle & Sport Ltd.

**IBDs**

1088543 Ontario Ltd. o/a The Cyclepath  
 23156318 Quebec Inc. o/a Vélo-Cité Enr.  
 2327-0887 Quebec Inc. o/a Le Bicycle Brisé  
 600200 Ont. Inc. o/a Doug's Bicycle Sales & Service  
 630685 Ont. Inc. o/a Braun's Bicycle & Fitness  
 771417 Ab. Ltd. o/a Cast Away Sports  
 818188 Ontario Inc. o/a Cyclepath  
 9093-4175 Quebec Inc. o/a Centre du Bicycle Sainte-Foy  
 9150-8259 Quebec Inc. o/a RST VeloSports  
 A. Vincent  
 ABC Cycles & Sports Ltée  
 Ambleside Cycle Ltd.  
 Ancaster Cycle Ltd.  
 André Primeau Vélo Inc.  
 Articles de Sport Lacourse Inc.  
 Au-Bécycle Sport  
 Award Cycle & Sports Inc.  
 Bastion Cycle  
 Bayview Cycle Centre  
 Beausoleil Cycle Sport Inc.  
 Bert & Mac's Cycle Ltd.  
 Bicycle Café  
 Bicycle Sports Pacific (North Vancouver)  
 Bicycle Sports Pacific (Vancouver)  
 Bicycle Sports Pacific (West Vancouver)  
 Bicycle Works  
 Bicyclettes Montréal-Nord Inc.  
 Bike Sports  
 Bikefit Inc.  
 Boutique Le Pédalier Inc.  
 Bow Cycle & Sports Co. Ltd.  
 Brant Cycle  
 Canary Cycles  
 Centre du Vélo Mascouche  
 Centre du Vélo St-Eustache  
 Chain Reaction Bicycles Inc.  
 City Bikes

Griffin Sports Ltd.  
 Head Over Wheels Cycle & Sport  
 Inform Cycle Ltd.  
 J & J Cycle  
 J.H. Lamontagne  
 Jacob Bicycle Centre  
 Jolley's Alternative Wheels  
 Jubilee Cycle  
 Kamikaze Bikes  
 Krusty's Bicycles Ltd.  
 La Bicicletta  
 Laidlaw Holdings Inc./To Wheels  
 Les Sports Donald Gingras 1987  
 Lifesport-Calgary Ltd.  
 Macqueen's Bike Shop  
 Marseille Bicycle & Sport  
 Mountain Bike City  
 Neworld Cycle & Fitness  
 Northern Cycle  
 Pedalhead  
 Pedalsport  
 Performance Bicycles Ltd.  
 Poser Sports  
 Proform Cycle Inc.  
 Rebec & Kroes Cycle & Sport Inc.  
 Re-my Sport Inc.  
 Revolution Cycle  
 Reynold Cycle  
 Rider's Cycles Ltd.  
 Ridley's Cycle  
 River Valley Cycle & Sports Ltd.  
 Russ Hay's Bicycle Shop (1974) Ltd.  
 Sainte-Julie Cycles et Ski  
 Simon's Cycles Ltd.  
 Single Track Cycle  
 Skiis & Biikes  
 Spin Cycles Z

Coastal Cycle & Watersports Ltd.	Sport Dépôt
Cove Bike Shop Ltd.	Sport Swap Inc. (Barrie)
Cranky's Bike Shop	Sport Swap Inc. (Toronto)
Curbside Cycle	Sportfax Limited
Cycle & Ski du Village ENRG	Sporting Life Inc.
Cycle Cambridge	Sports G.T.H. Inc.
Cycle Solutions (Toronto)	Steed Cycles Inc.
Cycle Solutions Inc. (Corner Brook)	Steveston Bicycle Ltd.
Cycles Cadieux	St-Paul Bicycles Centre du Vélo Inc.
Cycles Performance	Straight Up Cycles Ltd.
Cycles Perigny	Sweet Pete's Cyclepath
Cyclesmith Inc.	Teal Sport Inc.
Cyclo Sportif G.M. Bertrand	The Bicycle Shop
D'Ornellas Bike Shop	The Bike Doctor
Dizzy Cycles Ltd. (North Vancouver)	The Bike Shop Ltd.
Dizzy Cycles Ltd. (Vancouver)	The Cyclepath (Brampton)
Down to Earth Adventure Outfitters	The Cyclepath (Calgary)
Duke's Cycle	The Cyclepath (Oakville)
Experience Cycling Ltd. (Duncan)	The Cyclepath (Toronto - Danforth)
Fort Street Cycle	Tommy and Lefebvre
Frasers Source for Sports	United Cycle
Freewheel Cycle Inc. (Dundas)	Vélo 2000 Inc.
Freewheel Cycle Ltd. (Jasper)	Walyn Management Inc. o/a The Cyclepath
Fresh Air Experience Inc.	Watson's Wheels Ltd. o/a The Cyclepath
Full Cycle Ltd.	Wentings Cycle & Mountain Shop
Gagné Vélo Ski	Western Cycle & Sporting Goods Co. Ltd.
Gears & Grills Ltd.	Westwood Cycle
Gears Bike & Ski Shop Limited	Woodsy's Ski & Sport
Gerick Cycle & Sport	X-Squeeze Me Corp. o/a Liberty! Bicycles
Goldstream Ave. Bicycles Ltd.	Ziggy's Cycle and Sport Ltd.

Note: The questionnaire responses for Pride International Inc. and Experience Cycling (Maple Ridge) Ltd. were not included in this list. Pride International Inc. does not sell bicycles and finished painted bicycle frames to consumers. Experience Cycling Ltd. provided two responses to the Purchasers' Questionnaire on Market Characteristics, one for each of the two different locations that it operates in the Vancouver area (i.e. Duncan and Maple Ridge). The store located in Maple Ridge was opened in 2005, and it did not have data for the period of inquiry.

**APPENDIX V**
**IMPORTS OF BICYCLES FROM DEVELOPING COUNTRIES**  
**(units)**

Country	2000	2001	2002	2003	2004	Total	Weighted Average Percent 2001-2004
						2001-2004	
Bangladesh	1	1	-	-	1	2	0.0
Brazil	-	-	-	-	1	1	0.0
Cambodia	-	-	1	-	-	1	0.0
Chad	-	-	-	1	-	1	0.0
Chile	15	-	-	-	-	-	-
China	237,090	355,647	482,765	392,823	395,146	1,626,381	45.3
Colombia	-	-	1	-	-	1	0.0
Costa Rica	1	-	-	-	-	-	-
India	4	2	142	8	38	190	0.0
Indonesia	55,030	19,269	3,820	15,493	11,015	49,596	1.4
Korea	1	-	479	6	-	485	0.0
Malaysia	1,974	6	1	-	-	7	0.0
Mexico	31,100	56,054	43,962	77,594	8,739	186,350	5.2
Pakistan	1	-	5	-	-	5	0.0
Panama	-	-	2	-	-	2	0.0
Philippines	12,837	89,629	60,366	64,279	77,848	292,121	8.1
Sierra Leone	-	2	-	-	-	2	0.0
South Africa	-	-	-	1	1	2	0.0
Thailand	64,339	56,696	69,625	64,147	30,969	221,437	6.2
Vietnam (nm)	7,936	14,430	48,356	141,062	330,917	534,765	14.9
<b>Total Developing Countries</b>	<b>410,329</b>	<b>591,735</b>	<b>709,526</b>	<b>755,413</b>	<b>854,676</b>	<b>2,911,350</b>	<b>81.0</b>
<b>Total Developing Countries with Less Than 3% Share</b>	<b>22,770</b>	<b>33,709</b>	<b>4,452</b>	<b>15,509</b>	<b>50,765</b>	<b>50,296</b>	<b>1.4</b>
<b>9% of Imports From All Countries</b>	<b>48,467</b>	<b>64,677</b>	<b>72,712</b>	<b>90,205</b>	<b>95,739</b>	<b>323,333</b>	<b>9.0</b>
<b>Total All Countries</b>	<b>538,523</b>	<b>718,631</b>	<b>807,907</b>	<b>1,002,279</b>	<b>1,063,768</b>	<b>3,592,586</b>	<b>100.0</b>

1. This table shows the volume of imports of bicycles at all retail price points.  
 2. "(nm)" means non-WTO member.  
 3. Includes WTO and non-WTO members.  
 4. Includes imports by domestic producers and importers.  
 5. "-" means zero.

Source: *Pre-hearing Staff Report*, Tribunal Exhibit GS-2004-001/002-07, Administrative Record, Vol. 1.1 at 43.

## APPENDIX VI

### TRIBUNAL STAFF

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