



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry No. LE-2005-005

Leather Footwear

*Order issued
Wednesday, April 12, 2006*

*Reasons issued
Thursday, April 27, 2006*

TABLE OF CONTENTS

ORDER i

STATEMENT OF REASONS 1

 BACKGROUND 1

 ANALYSIS 2

 Likelihood of Continued or Resumed Dumping 2

 Likely Volume and Price Ranges of Dumped Imports 2

 Domestic’s Industry’s Recent Performance 3

 Likelihood of Injury to the Domestic Industry 4

 Other Developments 4

 Changes in Circumstances, Domestically or Internationally 4

 Any Other Relevant Matter 5

CONCLUSION 5

IN THE MATTER OF a notice of expiry, pursuant to subsection 76.03(2) of the *Special Import Measures Act*, of the finding made by the Canadian International Trade Tribunal on December 27, 2001, in Inquiry No. NQ-2001-003, concerning:

**LEATHER FOOTWEAR WITH METAL TOE CAPS ORIGINATING IN
OR EXPORTED FROM THE PEOPLE'S REPUBLIC OF CHINA,
EXCLUDING WATERPROOF FOOTWEAR SUBJECT TO THE
FINDING MADE BY THE CANADIAN INTERNATIONAL TRADE
TRIBUNAL IN INQUIRY NO. NQ-2000-004, CONTINUED IN EXPIRY
REVIEW NO. RR-2004-008**

ORDER

On February 21, 2006, the Canadian International Trade Tribunal issued a notice of expiry requesting submissions on whether it should initiate an expiry review in the above-mentioned matter. Upon examination of all arguments and evidence presented by parties that filed submissions, the Canadian International Trade Tribunal is not satisfied that an expiry review is warranted and, pursuant to subsection 76.03(5) of the *Special Import Measures Act*, has therefore decided not to initiate an expiry review.

James A. Ogilvy
James A. Ogilvy
Presiding Member

Elaine Feldman
Elaine Feldman
Member

Serge Fréchette
Serge Fréchette
Member

Hélène Nadeau
Hélène Nadeau
Secretary

The statement of reasons will be issued within 15 days.

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STATEMENT OF REASONS

BACKGROUND

1. On February 21, 2006, the Canadian International Trade Tribunal (the Tribunal) gave notice that its finding made on December 27, 2001, in Inquiry No. NQ-2001-003 (the 2001 finding) concerning the dumping of leather footwear with metal toe caps (leather safety footwear) originating in or exported from the People's Republic of China (China), excluding waterproof footwear subject to the finding made by the Tribunal in Inquiry No. NQ-2000-004,¹ and continued, without amendment, in Expiry Review No. RR-2004-008² (the subject goods), was scheduled to expire on December 26, 2006.

2. At the time of Inquiry No. NQ-2001-003, members of The Shoe Manufacturers' Association of Canada (SMAC) and five small producers accounted for 90 percent of the Canadian production of leather safety footwear. The six members of SMAC in favour of a finding of injury were G.A. Boulet Inc., Canada West Shoe Manufacturing Inc., L.P. Royer Inc., STC Footwear (STC), Tatra Shoe Manufacturing Inc. (Tatra) and Terra Footwear.

3. The five producers which, at the time of the inquiry, were not members of SMAC were Dayton Shoe Co. Ltd., Hichaud Inc., Mellow Walk Footwear Inc. (Mellow Walk), Chaussures Vercorp Inc. and Viberg Boot Manufacturing Ltd. Mellow Walk supported the position taken by the members of SMAC in favour of a finding of injury.

4. In response to its notice of expiry, the Tribunal received six submissions by March 17, 2006. SMAC, Mellow Walk and Tatra requested an expiry review, while the Retail Council of Canada (RCC), A.M. Footwear Inc. (A.M. Footwear) and Wolverine World Wide Canada opposed the initiation of an expiry review. The Tribunal received, by March 27, 2006, reply submissions from SMAC, Mellow Walk, Tatra, the RCC and A.M. Footwear.

5. Paragraph 76.03(3)(b) of the *Special Import Measures Act*³ provides in part that the Tribunal may initiate an expiry review of an order or finding at the request of any person. However, subsection 76.03(4) makes it clear that "[t]he Tribunal shall not initiate an expiry review at the request of any person or government *unless the person or government satisfies the Tribunal that a review is warranted*" [emphasis added]. Rule 73.2 of the *Canadian International Trade Tribunal Rules*⁴ lists the relevant factors that the Tribunal may request parties to address in deciding whether an expiry review is warranted. These factors are as follows:

- the likelihood of a continuation or resumption of dumping of the goods;
- the likely volume and price ranges of dumped imports if dumping were to continue or resume;
- the domestic industry's recent performance, including trends in production, sales, market share and profits;
- the likelihood of injury to the domestic industry if the finding were allowed to expire, having regard to anticipated effects of a continuation or resumption of dumped imports on the industry's future performance;
- any other developments affecting, or likely to affect, the performance of the domestic industry;

1. *Waterproof Footwear and Bottoms of Plastic or Rubber* (8 December 2000) (CITT).

2. *Waterproof Footwear and Bottoms* (7 December 2005) (CITT).

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

4. S.O.R./91-499.

- changes in circumstances, domestically or internationally, including changes in the supply or demand for the goods, and changes in trends in, and sources of, imports into Canada; and
- any other matter that is relevant to the review.

6. It is in this context that the Tribunal's notice of expiry requested information regarding the above factors, with which parties were asked to deal in their submissions. These factors constitute the basis upon which the Tribunal is issuing its order, as well as the fundamental elements that the parties requesting an expiry review needed to address in order to satisfy the Tribunal that an expiry review was warranted.

ANALYSIS

Likelihood of Continued or Resumed Dumping

7. SMAC argued that Chinese footwear manufacturers and exporters have shown, in the recent past, a propensity to dump footwear in Canada⁵ and other jurisdictions,⁶ as evidenced by various dumping determinations in Canada and elsewhere, and to dump safety shoes in the European Community, as evidenced by a current European Commission (EC) investigation⁷. SMAC contended that these determinations and investigation demonstrate a propensity by China to dump footwear and an ongoing interest in the Canadian footwear market. SMAC concluded that continued or resumed dumping of the subject goods was inevitable if the finding were allowed to expire.

8. The Tribunal is cognizant that there are a number of dumping determinations by various countries, including Canada, that relate to footwear from China. In the Tribunal's view, these determinations have little value in demonstrating the likelihood of continued or resumed dumping in Canada, as the products covered by these determinations are either very broadly defined or dissimilar to the subject goods. The Tribunal also notes that the EC investigation on safety shoes had not yet been completed at the time of the Tribunal's deliberations on this request for an expiry review.

Likely Volume and Price Ranges of Dumped Imports

9. SMAC submitted that Chinese footwear manufacturers possess unprecedented production capacity and are irrefutably export oriented. It further indicated that, in virtually all developed countries in which footwear imports from China are not restrained, and even in developing countries, import penetration of Chinese footwear has mushroomed, with sales made at even lower prices than in the past.

10. With respect to the likely volume of dumped imports, SMAC noted that China was the world's largest exporter of leather safety footwear, with volumes reaching 17.5 million pairs in 2004.⁸ Furthermore, SMAC indicated that, in the U.S. market, which does not have the benefit of anti-dumping protection, imports of Chinese leather safety footwear showed an increase in terms of volume from 2000 to 2005. These imports now account for 97.6 percent of imports of leather safety footwear into the United States.⁹ In SMAC's view, this overall trend demonstrates the likelihood of substantial volume increases of exports to Canada of the subject goods should the finding be allowed to expire.

5. *Waterproof Rubber Footwear* (18 October 2002), RR-2001-005 (CITT); *Waterproof Footwear and Waterproof Footwear Bottoms* (7 January 2003), NQ-2002-002 (CITT); *Women's Boots* (29 April 2005), RR-2004-002 (CITT); *Waterproof Footwear and Bottoms* (7 December 2005), RR-2004-008 (CITT).

6. Mexico (1997), Peru (2000), Venezuela (2000) and the European Union (2006).

7. Notice of Initiation (30 June 2005).

8. SMAC's submission, 17 March 2006, at 8.

9. *Ibid.* at 9.

11. SMAC submitted that the total value of the subject goods imported into Canada fell significantly and rapidly following the 2001 finding and the resulting imposition of a 39.4 percent anti-dumping duty. SMAC claimed that the production of leather safety footwear that was switched to other countries in 2002 would just as rapidly be transferred back to China if the finding were allowed to expire. It argued that the existing capacity in China is more than adequate for that country to resume production and export of leather safety footwear and that Canadian manufacturers would once again face large volumes of low-priced dumped subject goods.

12. The Tribunal notes that the evidence shows that the volume of imports of the subject goods dropped sharply after the imposition of the anti-dumping duty in 2001. From then until 2004, it followed an upward trend.¹⁰ The total value of these goods followed a similar trend, then underwent a slight decline in 2005.¹¹ This indicates that sales of the subject goods have continued with increasing success; however, these are sales of goods at undumped prices. Therefore, the Tribunal is of the opinion that this evidence does not indicate the likelihood of resumed dumping, but rather the ability of the subject goods to succeed in the Canadian market at undumped prices.

13. The Tribunal also considered SMAC's argument pertaining to the very large and increasing volume of leather safety footwear from China in the U.S. market. The Tribunal first notes that, in the absence of a dumping determination in the United States, there is no indication that the exports of leather safety footwear from China to that country are dumped. In addition, while the U.S. market may show an upward trend in volumes of imports, this situation does not constitute a persuasive indication of the likely volume of subject goods to enter Canada if the finding were allowed to expire.

14. In light of the dearth of evidence offered, the Tribunal is unable to form any views regarding either the likely volume or the likely price ranges of dumped goods in Canada if dumping were to resume.

Domestic's Industry's Recent Performance

15. SMAC submitted that the Canadian industry is in a very vulnerable position. It alleged that imports have taken significant sales volumes and market share from the domestic producers, while pressuring prices and gross margins down. It claimed that allowing the finding to expire would have a significant and serious effect on the financial health of the industry.

16. In assessing the minimal data provided in support of these claims, the Tribunal is of the view that SMAC provided only rudimentary information on production volume in Canada, showing a decline in 2002 and again in 2003. Moreover, SMAC's statistical update of the Canadian apparent market provided no data for recent years, and the limited data that were submitted pertained to "work-type footwear". This footwear category appears to cover a broader range of goods than those of the same description as the subject goods.

17. Further, the Tribunal notes that imports of leather safety footwear from non-subject countries have increased recently,¹² but there is no indication as to how these imports might have affected the performance of the domestic industry relative to the impact of the imports from China.

10. A.M. Footwear's submission, 16 March 2006, at 6.

11. SMAC's submission, 17 March 2006, Tab J.

12. A.M. Footwear's submission, 16 March 2006, at 6.

18. As for the other domestic producers, both Mellow Walk and Tatra¹³ supplied some confidential financial information pertaining to their operations. However, this information comes from producers whose significance in the domestic industry cannot be determined accurately. At the time of the 2001 finding, these producers accounted for a very small share of domestic production. There is nothing on the record to indicate that the situation is different now.

19. In order to assess the domestic industry's performance in more recent years, the Tribunal would have needed more information on the levels of production, sales, market shares and profits. Where the parties touched on any of these points, the submissions were so vague or anecdotal as to be of little assistance to the Tribunal. Further, these figures, where provided, were not tied to imports from China, and the decline in production took place despite the imposition of the anti-dumping duty on imports from China. Accordingly, the Tribunal is left with no indicators with which it can make a meaningful assessment of the recent performance of the domestic industry as a whole, so as to satisfy itself that an expiry review is warranted.

Likelihood of Injury to the Domestic Industry

20. In light of the lack of evidence presented in support of the domestic industry's recent performance, the Tribunal was unable to form any views on the likelihood of injury to the domestic industry that would satisfy it that an expiry review was warranted, despite the arguments that were presented in support of this position.

Other Developments

21. STC, a member of SMAC, provided figures on its investments regarding production and product development for the years 2001 to 2005. Furthermore, Mellow Walk indicated that, following the 2001 finding, it had invested in capital assets and in leased production equipment. Therefore, the Tribunal is of the opinion that some domestic producers have made efforts to either increase their capacity or improve their production processes. However, the Tribunal was given no information that would allow it to make an assessment of the impact of such investments.

Changes in Circumstances, Domestically or Internationally

22. The domestic industry submitted that, following the 2001 finding, the export from China of leather safety footwear to Canada was rapidly transferred to other countries, as importers were seeking cheaper alternative sources to offset the impact of the anti-dumping duty on the subject goods. Indeed, the evidence on the record suggests that, for the period from 2001 to 2004, there was a clear trend toward sourcing in countries other than China, as demonstrated by imports into Canada from Vietnam, Chinese Taipei, Mexico and Indonesia, among other source countries.¹⁴ Furthermore, SMAC claimed that the current and expanding¹⁵ capacity in China is more than adequate to resume the production of the subject goods that was rapidly transferred to other countries in 2002. It was alleged that exports from this production would dominate the Canadian market.

13. Tatra also provided anecdotal information on its experience selling to major retailers of leather safety footwear in Canada.

14. A.M. Footwear's submission, 16 March 2006, at 6-7.

15. The development of the Western China Shoe Industrial Park is expected to be completed by 2006.

23. Notwithstanding the domestic industry's submissions, there was little evidence, if any, to link these facts to a likelihood that the subject goods would be dumped and that this alleged dumping would likely result in injury to the domestic industry, should the finding be allowed to expire.

Any Other Relevant Matter

24. The Tribunal notes that the domestic industry did not bring forward any other relevant matter.

CONCLUSION

25. Upon examination of all arguments and evidence presented by the parties that filed submissions, the Tribunal is not satisfied that an expiry review is warranted and, pursuant to subsection 76.03(5) of *SIMA*, has therefore decided not to initiate an expiry review.

James A. Ogilvy
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