



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Dumping and Subsidizing

ORDER AND REASONS

Expiry No. LE-2006-001

Waterproof Rubber Footwear

*Order issued
Wednesday, January 31, 2007*

*Reasons issued
Thursday, February 15, 2007*

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IN THE MATTER OF a notice of expiry, pursuant to subsection 76.03(2) of the *Special Import Measures Act*, of the order made by the Canadian International Trade Tribunal on October 18, 2002, in Expiry Review No. RR-2001-005 (as amended by its order made on August 18, 2005, in Interim Review No. RD-2004-008), continuing, without amendment, its order made on October 20, 1997, in Review No. RR-97-001, continuing, with amendment, its order made on October 21, 1992, in Review No. RR-92-001, continuing, without amendment, the finding made by the Canadian Import Tribunal on October 22, 1987, in Review No. R-7-87, continuing, without amendment, the finding made by the Anti-dumping Tribunal on May 25, 1979, in Inquiry No. ADT-4-79, and the finding made by the Anti-dumping Tribunal on April 23, 1982, in Inquiry No. ADT-2-82, concerning:

**WATERPROOF RUBBER FOOTWEAR ORIGINATING IN OR EXPORTED
FROM THE PEOPLE'S REPUBLIC OF CHINA**

ORDER

On December 12, 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.

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James A. Ogilvy
Presiding Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Elaine Feldman
Elaine Feldman
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 December 12, 2006, the Canadian International Trade Tribunal (the Tribunal) gave notice that its order made on October 18, 2002, in Expiry Review No. RR-2001-005 (as amended by its order made on August 18, 2005, in Interim Review No. RD-2004-008) concerning waterproof rubber footwear¹ originating in or exported from the People's Republic of China (China) (the subject goods) was scheduled to expire on October 17, 2007.

2. At the time of Review No. RR-2001-005, the six members of The Shoe Manufacturers' Association of Canada (SMAC) in favour of a finding of injury were Baffin Technology, Genfoot Inc., Rallye Footwear Inc., Chaussures Yeti Inc., Acton International Inc. and Régence Inc. SMAC is now representing the first four of these domestic producers and Hichaud Inc. These five manufacturers account for at least 90 percent of Canadian production of waterproof rubber footwear (like goods).²

3. In response to its notice of expiry, the Tribunal received one submission from SMAC on December 29, 2006, requesting an expiry review. The Canadian Association of Importers and Exporters Inc. sent a letter on January 4, 2007, opposing the initiation of an expiry review, stating that the measures have been in place for over 20 years and contending that there is no evidence that any continued or resumed dumping will be materially injurious to the domestic industry. The Tribunal received no reply submissions.

4. 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. 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 continued or resumed 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 order were allowed to expire, having regard to the anticipated effects of a continuation or resumption of dumped imports on the industry's future performance;

1. The waterproof rubber footwear under review is constructed wholly or in part of rubber, including thermoplastic rubber, worn over the foot or shoe, with or without liners, linings, fasteners or safety features. This includes: *low rubbers* of light or heavy construction which may have such features as nylon vamp, net lining and stretchable rubber; *overshoes* 6 to 10 in. in height, which may include such design features as zippered fronts, straps, buckles, nylon tops, fleece or net lining; and *all-rubber boots* worn over the foot and constructed to various heights, such as red sole rubber boots, city boots, rainboots, hunting and fishing boots, and hip and chest waders.

Excluded from the footwear under review are waterproof footwear made of polyvinyl chloride; snowmobile boots; rubber-bottom, leather-top boots; "safety footwear" (defined as footwear that meets safety standards established by the Canadian Standards Association), all-rubber riding boots for equestrian purposes and steel-studded over-the-shoe rubbers.

2. SMAC's submission, 29 December 2006, at 1.

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

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

- any other developments affecting, or likely to affect, the performance of the domestic industry;
- changes in circumstances, domestically or internationally, including changes in the supply of or demand for the goods, and changes in trends in, and sources of, imports into Canada; and
- any other matter that is relevant.

5. The Tribunal's notice of expiry requested that parties present information regarding the above factors in their submissions. These factors constitute the basis upon which the Tribunal issues its order, as well as the fundamental elements that the parties requesting an expiry review need to address in order to satisfy the Tribunal that an expiry review is warranted.

6. Subsection 76.03(4) of *SIMA* 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]. In the Tribunal's view, there is an onus on the domestic industry to make a persuasive case, supported by substantive evidence and not mere allegations, to justify the continuation of an order.

ANALYSIS

Likelihood of Continued or Resumed Dumping

7. SMAC argued that the dumping of waterproof rubber footwear from China would resume if the order were allowed to expire. It contended that the propensity of the Chinese exporters to dump the subject goods is manifest, as was previously recognized by the Tribunal in RR-2004-008⁵ in respect of waterproof footwear and bottoms made of plastic or rubber. Moreover, SMAC stated that, in a recent review of normal values and export prices of waterproof footwear and bottoms exported from China,⁶ only a few Chinese exporters of both the subject goods and waterproof footwear and bottoms cooperated with the Canada Border Services Agency. According to SMAC, it is clear that Chinese footwear exporters have shown little interest in exporting footwear (including the subject goods) to Canada at undumped prices.

8. SMAC supported this allegation with evidence showing sales in Canada of goods that included the subject goods over the period since the last review. The Tribunal notes that these goods continued to enter the Canadian market at prices at or above normal values, given that the prices included anti-dumping duties, and that the goods were still priced competitively. In the Tribunal's view, the anticipated future behaviour of exporters will follow one of two patterns: they may revert to prices at dumped levels in order to maximize volumes, or they may price up to the market to maximize revenues and profits. In the Tribunal's view, SMAC has not made a persuasive argument on the basis of the evidence on the record that dumping is likely to continue if the order is allowed to expire.

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

6. Canada Border Services Agency, Customs Notice 661, "Waterproof Rubber Footwear From the People's Republic of China and Waterproof Footwear and Bottoms of Plastic or Rubber From the People's Republic of China" (13 December 2006) at paras. 6, 7.

Likely Volume and Price Ranges of Dumped Imports

9. Referring to the Tribunal's own wording in its 2005 decision concerning waterproof footwear and bottoms,⁷ SMAC argued that China had significant capacity to produce footwear for export and that, in the absence of the order, the subject goods were likely to enter Canada in large volumes and at low prices. SMAC submitted that the basis of the observations in that case is equally applicable to the current case.

10. SMAC submitted Statistics Canada import data for some Asian countries, including China, for the period from January 2003 to October 2006 inclusive.⁸ SMAC argued that, notwithstanding the order in place, the amount of anti-dumping duties collected during this period was significant.⁹ SMAC also argued that the volume of imports from China was significant between 2003 and 2006. The Tribunal notes that the volume of these imports was stable between 2003 and 2005, but increased significantly in 2006. At the same time, their average unit price increased year by year and was 25 percent higher in 2006 than in 2003. According to SMAC, this price increase reflects the fact that Chinese exporters are also competing at the higher price point segment of the Canadian market.

11. SMAC submitted that exports of footwear from China to the United States have surged over the past 10 years and account for almost all the consumption of footwear in that country. To support its statement, SMAC provided historical statistical data by import source and the total U.S. consumption for rubber and plastic protective footwear. These data show that imports from China captured a share of total U.S. consumption that grew from 25 percent to 51 percent between 1996 and 2004. SMAC argued that this growth was due, at least in part, to the absence of anti-dumping measures.

12. Finally, SMAC submitted that Chinese producers are very price-competitive in export markets and are in a position to undercut the prices of like goods. It argued that Chinese exporters are able to overcome customs and anti-dumping duties and still price the subject goods at levels necessary to capture significant market share in Canada. In support of this argument, SMAC provided a cost of production comparison between a pair of Chinese boots purchased at a Canadian retailer and a similar pair of boots made by a domestic producer.¹⁰ SMAC argued that this scenario is similar to the situation that existed five years ago when the Tribunal stated that the dumping of lower-priced imports would undoubtedly lead to a general decline in market prices, given the realities of the retail environment in Canada.

13. The Tribunal is of the opinion that SMAC failed to provide any convincing evidence to support its conclusions that the increased volume of imports of footwear from China into the United States was attributable to dumping. SMAC also failed to provide any supporting evidence for its statement that the annual increases in average unit prices were attributable to the dumped imports moving up-market or that the price per unit would decrease if the order were allowed to expire.

Domestic Industry's Recent Performance

14. An important step in considering whether injury is likely to result from a resumption of dumping is to assess the current performance of the domestic industry. In order to do this, the Tribunal requires information on performance indicators, such as trends in production, sales, market share, profits and other measures of the "health" and performance of the industry. In its submission, SMAC provided no

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

8. SMAC's submission, 29 December 2006, at 6.

9. *Ibid.* at 5, 6.

10. *Ibid.*, Tab 3.

information on its own recent performance and, therefore, failed to show how any developments, including the continuation or the rescission of the order, might affect that performance. SMAC, arguing for the continuation of the order, should have addressed these factors in its submission. Their omission leaves the Tribunal with no basis for drawing even tentative conclusions on the current or possible future impact on the domestic industry of any forces in the marketplace, should dumping continue or resume.

Likelihood of Injury to the Domestic Industry

15. With regard to the likelihood of injury to the domestic industry, SMAC argued that, absent a continuation of the order, it is likely that the volume of imports of the subject goods will increase and their unit price will decrease. It further argued that the prevailing and expected market conditions would likely injure domestic producers and put an end to most, if not all, of the production of like goods. SMAC submitted that the subject goods compete head to head with the like goods, particularly in the mass-market segment, and that, therefore, a rescission of the order would be disastrous for the domestic industry, given the intense competition among the mass merchandisers.

16. Despite the arguments that were presented in support of this position, the lack of evidence presented in relation to the domestic industry's recent performance did not allow the Tribunal to form any views on the likelihood of injury to the domestic industry that would satisfy it that an expiry review was warranted.

Other Developments

17. The Tribunal notes that SMAC did not bring forward any other developments affecting, or likely to affect, its performance.

Changes in Circumstances, Domestic or International

18. The Tribunal notes that SMAC's only submission on changed international or domestic circumstances was with respect to the alleged undervaluation of the renminbi. SMAC argued that this could influence the likelihood of resumed dumping and price levels of the subject goods and their impact on the production of like goods. According to the documents provided by SMAC, the average exchange rate of the renminbi is now allegedly undervalued by 20 to 40 percent against the U.S. dollar.¹¹ SMAC argued that China's refusal to realign its currency, despite international pressure, serves as cogent evidence of China's need to increase its export performance at any cost.

19. The Tribunal notes that SMAC provided some supporting documentation relative to this currency exchange rate issue. However, once again, in the absence of information on the recent performance of the domestic industry, this information is not particularly helpful to the Tribunal in reaching its determination.

Any Other Relevant Matter

20. The Tribunal did not receive information regarding any other relevant matter.

CONCLUSION

21. The Tribunal is of the view that the domestic industry has not met the onus on it to establish a persuasive link between the likelihood of continued or resumed dumping and any alleged injury suffered or anticipated by it as a result of the dumping.

11. *Ibid.* at 10-12, Tab 4.

22. Therefore, upon examination of all the arguments and evidence before it, 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.

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