



Ottawa, Thursday, December 27, 2001

Inquiry No. NQ-2001-003

IN THE MATTER OF an inquiry, under section 42 of the *Special Import Measures Act*,
respecting:

**THE DUMPING OF 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**

FINDING

The Canadian International Trade Tribunal, under the provisions of section 42 of the *Special Import Measures Act*, has conducted an inquiry to determine whether the dumping in Canada of 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, has caused injury or retardation or is threatening to cause injury to the domestic industry.

This inquiry is pursuant to the issuance by the Commissioner of the Canada Customs and Revenue Agency of a preliminary determination dated August 29, 2001, and of a final determination dated November 27, 2001, that the aforementioned goods have been dumped and that the margins of dumping are not insignificant.

Pursuant to subsection 43(1) of the *Special Import Measures Act*, the Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods 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, has not caused, but is threatening to cause, material injury to the domestic industry, excluding:

- Athletic style and hiking style leather safety shoes of cement construction. For greater clarity, shoes are defined as footwear worn below the ankle, and cement construction refers to a process where the outsole is cemented to the bottom of a lasted upper.

- Leather boots with metal toe caps and rubber outsoles, for use in motorcycle riding, incorporating zippers or buckles and a commonly recognized motorcycle brand name affixed permanently.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Patricia M. Close
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Member

James A. Ogilvy
James A. Ogilvy
Member

Michel P. Granger
Michel P. Granger
Secretary

The statement of reasons will be issued within 15 days.

Place of Hearing: Ottawa, Ontario
Dates of Hearing: November 26 to 30, 2001
Date of Finding: December 27, 2001

Tribunal Members: Zdenek Kvarda, Presiding Member
Patricia M. Close, Member
James A. Ogilvy, Member

Director of Research: Réal Roy

Lead Researcher: John Gibberd

Researchers: Joël Joyal
Richard Cossette
Po-Yee Lee

Economists: Ihn Ho Uhm
Geneviève Chaloux

Statisticians: Lise Lacombe
Marie-Josée Monette
Julie Charlebois
Rhonda Heintzman

Counsel for the Tribunal: Marie-France Dagenais

Registrar Officers: Gillian E. Burnett
Natalie Lowe

Participants: G.P. (Patt) MacPherson
Naila Elfär
for The Shoe Manufacturers' Association of Canada

(Representing Domestic Producers)

Darrel H. Pearson
Ali Ehsassi
Peter Collins
Jessie I. Goldman
Laurier W. Beauchamp
for Retail Council of Canada

Gregory Kanargelidis
Robert Kreklewich
Glenn F. Leslie
for Canadian Association of Importers and Exporters Inc.
Kodiak Group Inc.
H.H. Brown Shoe Co. (Canada) Ltd.
Payless ShoeSource Canada Inc.

Wolverine Canada Inc.
A.M. Footwear Inc./Grand Imports Inc.
CanRun Shoes Imports Ltd.
ISECO Safety Shoes Co. Ltd.
Jones Fair Ltd.
Linear Canada Footwear Ltd.
M.B. Marketing

Richard A. Wagner
for Kodiak Group Inc.

Angela Kakridonis
Hush Puppies Canada Ltd.

(Importers/Others)

Ottawa, Friday, January 11, 2002

Inquiry No. NQ-2001-003

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IN INQUIRY NO. NQ-2000-004**

DECISION

The Canadian International Trade Tribunal hereby finds that the dumping of the aforementioned goods 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, has not caused, but is threatening to cause, material injury to the domestic industry, excluding:

- Athletic style and hiking style leather safety shoes of cement construction. For greater clarity, shoes are defined as footwear worn below the ankle, and cement construction refers to a process where the outsole is cemented to the bottom of a lasted upper.
- Leather boots with metal toe caps and rubber outsoles, for use in motorcycle riding, incorporating zippers or buckles and a commonly recognized motorcycle brand name affixed permanently.

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Richard A. Wagner
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Hush Puppies Canada Ltd.

(Importers/Others)

Witnesses:

Marc Gagnon
Chairman of the Board
STC Footwear

Michel Bisson
President
STC Footwear

Richer Morin
Vice-President, Finance
STC Footwear

Louis Boulet
Vice President, Sales
G.A. Boulet Inc.

Dezi Krajcir
President
Tatra Shoe Manufacturing Inc.

Robert Worrall
Senior Vice-President, Sales and Marketing
Terra Footwear

Joan M. Poulton
Sales Office
Terra Footwear

Ted Moorby
President
Canada West Shoe Manufacturing Inc.

Yves Royer
General Manager
L.P. Royer Inc.

Gaétane Roy
Manager, Administrative Services
L.P. Royer Inc.

Lou Coslovich
National Buyer – Footwear
Mark's Work Wearhouse

Rick Harrison
Senior Vice President, Merchandising
Mark's Work Wearhouse

Ron Iwamoto
Senior Buyer – Footwear
Mark's Work Wearhouse

Andrew Spencer
Merchandise Manager, Footwear
Work World

John Jobin
Lead Category Manager, Camping,
Footwear & Apparel
Sporting Goods
Canadian Tire Corporation, Limited

Murray Oliver
Buyer
Wal-Mart Canada Inc.

Brent Mather
Buyer - Men's Footwear
Sears Canada Inc.

Kevin Meloche
Senior Buyer - Footwear
Zellers Ltd.

Paul Brennan
President
H.H. Brown Shoe Co. (Canada) Ltd.

Frank J. McFarlane
Manager, Import Development & Sourcing
H.H. Brown Shoe Co. (Canada) Ltd.

Kevin Huckle
President and CEO
Kodiak Group Inc.

Bob Livermore
U.S. Sales Manager
Kodiak Group Inc.

Richard K. Hunt
President
Wolverine Canada Inc.

Angela Kakridonis
President
Hush Puppies Canada Ltd.

Toros Dimitian
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IN INQUIRY NO. NQ-2000-004**

TRIBUNAL: ZDENEK KVARDA, Presiding Member
PATRICIA M. CLOSE, Member
JAMES A. OGILVY, Member

STATEMENT OF REASONS

BACKGROUND

The Canadian International Trade Tribunal (the Tribunal), under the provisions of section 42 of the *Special Import Measures Act*,¹ has conducted an inquiry to determine whether the dumping of leather footwear with metal toe caps, 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-2000-004,² has caused material injury or retardation or is threatening to cause material injury to the domestic industry.

On June 15, 2001, the Commissioner of the Canada Customs and Revenue Agency (the Commissioner), following a complaint filed by The Shoe Manufacturers' Association of Canada (SMAC), initiated an investigation to determine whether imports of leather footwear with metal toe caps from China had been dumped. On June 18, 2001, pursuant to subsection 34(2) of SIMA, the Tribunal issued a notice advising interested parties that it had initiated a preliminary injury inquiry to determine whether the evidence disclosed a reasonable indication that the dumping had caused material injury or retardation or was threatening to cause material injury to the domestic industry. On August 14, 2001, pursuant to subsection 37.1(1) of SIMA, the Tribunal determined that the evidence disclosed a reasonable indication that the dumping of the aforementioned goods had caused injury to the domestic industry. The Tribunal also found that the question of whether there should be more than one class of goods merited further consideration. Therefore, the Tribunal requested that the Canada Customs and Revenue Agency (CCRA) collect information on the dumping of leather boots with metal toe caps (leather safety boots), leather shoes with metal toe caps (leather safety shoes), and leather safety boots and leather safety shoes combined (leather safety footwear).

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1. R.S.C. 1985, c. S-15 [hereinafter SIMA].
 2. *Waterproof Footwear and Bottoms of Plastic or Rubber* (8 December 2000) (CITT).

On August 29, 2001, the Commissioner issued a preliminary determination of dumping respecting the subject goods from China sold or released into Canada. The Commissioner was satisfied, as a result of this preliminary investigation, that these goods had been dumped, that the margins of dumping were not insignificant and that the volume of dumped goods was not negligible.³

On August 30, 2001, the Tribunal issued a notice of commencement of inquiry.⁴ As part of the inquiry, the Tribunal sent questionnaires to domestic producers, importers, purchasers and foreign producers. From the replies to the questionnaires and other sources, the Tribunal's research staff prepared public and protected pre-hearing staff reports.

On November 27, 2001, the Commissioner issued a final determination that the subject goods originating in or exported from China had been dumped and that the margins of dumping were not insignificant.⁵

Public and in camera hearings were held in Ottawa, Ontario, from November 26 to 30, 2001. SMAC and six of its member producers of leather safety footwear made submissions and were represented by counsel at the hearing. Certain retailers testifying for the Retail Council of Canada (RCC) were represented by counsel at the hearing. The Canadian Association of Importers and Exporters Inc. (CAIE) and other parties were also represented by counsel at the hearing. One party not represented by counsel, Hush Puppies Canada Ltd. (Hush Puppies), an importer, also gave evidence at the hearing.

The record of this inquiry consists of all Tribunal exhibits, including the public and protected replies to questionnaires, requests for information and replies thereto, all briefs, witness statements and all exhibits filed by the parties throughout the inquiry, as well as the transcript of the hearing. All public exhibits were made available to the parties. Protected exhibits were made available only to counsel who had filed a declaration and confidentiality undertaking with the Tribunal in respect of confidential information.

The Tribunal issued its finding on December 27, 2001.

RESULTS OF THE COMMISSIONER'S INVESTIGATION

The Commissioner's investigation into this matter covered imports of leather safety footwear originating in or exported from China during the period from June 1, 2000, to May 31, 2001.

In the absence of sufficient information to enable the determination of normal values pursuant to section 20 of SIMA, normal values were determined pursuant to a ministerial specification under section 29 of SIMA. The margins of dumping of the goods ranged from 0.01 to 720.7 percent, expressed as a percentage of the export price.

3. Canada Customs and Revenue Agency, *Preliminary Determination of Dumping*, 29 August 2001, Tribunal Exhibit NQ-20001-003-01, Administrative Record, Vol. 1 at 28.

4. C. Gaz. 2001.I.3366.

5. Canada Customs and Revenue Agency, *Final Determination of Dumping*, 27 November 2001, Tribunal Exhibit NQ-2001-003-04, Administrative Record, Vol. 1 at 88.14.

The percentages of goods dumped and the margins of dumping for imports from China are set out in the following table.

Goods	Volume of Imports (pairs)	Volume Dumped (pairs)	Percentage of Goods Dumped (%)	Weighted Average Margin of Dumping¹ (%)
Leather Safety Boots	1,038,207	964,057	92.9	44.0
Leather Safety Shoes	576,329	503,987	87.4	29.1
Leather Safety Footwear	1,614,536	1,468,044	90.9	39.4

Note 1. The weighted average margin of dumping is expressed as a percentage of the export price.
Source: Canada Customs and Revenue Agency, *Final Determination of Dumping and Statement of Reasons*, 27 November 2001, Tribunal Exhibit NQ-2001-003-04, Administrative Record, Vol. 1 at 88.23-88.24, 88.47.

PRODUCT

Product Definition and Description

The subject goods are defined as leather footwear with metal toe caps, excluding waterproof footwear subject to the finding made by the Tribunal in Inquiry No. NQ-2000-004. These goods are commonly known as leather safety footwear.

Leather safety footwear refers to footwear incorporating metal toe caps to protect the foot from falling objects, in which the material of the upper is principally leather. The upper is defined as that part of the footwear above the sole. Where the upper is composed of more than one material, classification is determined by the constituent material that has the greatest external surface area, excluding accessories and reinforcements such as eyelets and hooks. Leather safety footwear is available either as boots or shoes, the difference being that boots cover the ankle, while shoes do not.

The soles of leather safety footwear are made predominantly of polyvinyl chloride (PVC), polyurethane (PU) or rubber, but may be made of other materials or combinations of materials. The scope of the leather safety footwear subject to this investigation is unrestricted in respect of the materials of the sole.

In addition to metal toe caps, the subject goods may be equipped with steel sole plates and/or other protective components that provide, for example, metatarsal protection, the capability to resist electric shocks and the capability to dissipate static electricity.

Generally, federal and provincial regulations require that workers who are exposed to the hazard of foot injury wear appropriate foot protection. In some cases, the regulations specify that the footwear must meet the requirements of the CSA International standard CAN/CSA-Z195-M92, *Protective Footwear*. This standard applies to both domestically produced and imported leather safety footwear.

Production Process

In general terms, the production of leather safety footwear can be divided into three main steps: the production of the upper; the lasting of the upper to the insole; and the attachment of the lasted upper to the sole.

The production of the upper involves cutting the various leather pieces to make up an upper from an animal hide. This work is done by skilled cutters who place patterns or dies on the hide and then use a press to exert force on the die to cut the desired pieces. It is also necessary to cut other materials that are included in the upper, such as the lining, foam backing and insulation.

The next step is the stitching together of the various pieces of leather that form the upper. The upper must also be closed by sewing together its two edges. These two operations may be done either by sewing machine operators or by automated computerized sewing machines. Other steps in the production of the upper include attaching the lining to the upper and inserting hardware items such as eyelets, rings and hooks.

In the lasting operation, a composite counter heel piece is cemented to the upper and the upper is then placed over a plastic or wooden last that is in the shape of a foot. The metal toe cap is then inserted between the leather toe of the upper and the last. Next, the upper is formed around the last and attached to the insole by cementing and tacking.

The sole is then added to the lasted upper to complete the footwear through the use of unit soles, vulcanizing or injection moulding. Before the sole is added to the upper, the bottom edges of the upper need to be roughed to provide for adhesion of the sole.

A unit sole can be attached to an upper in a number of ways. These methods include cementing (the sole is attached to the upper using an adhesive) and true welting.⁶

A sole can also be placed on the upper by vulcanizing. In this process, a raw piece of rubber in the rough shape of a sole is heated. The heated piece of rubber is then placed in a mould and a precemented upper is then positioned on top of the raw piece of rubber. Heat and pressure are then applied. In addition to curing the rubber, this process attaches the sole to the footwear, and the raw rubber sole takes the patterned shape of the mould.

Injection moulding, the predominant production method used in Canada, involves injecting PVC, PU or molten rubber into a mould, which is fitted to the lasted upper. PVC is used in low-priced boots. PU soles can be injected to form single- or double-density soles. The production of double-density soles involves the injection of two densities of PU. The denser PU is injected first to form the outer sole and then the less dense PU is injected to form a softer midsole. Also, some producers manufacture leather safety footwear with double-density PU soles that have rubber or thermoplastic inserts in their outer soles. This is accomplished by placing metal inserts in the injection moulds to provide space into which the rubber or thermoplastic inserts can be placed. Once the leather safety footwear is removed from the mould, excess injection material is trimmed from the sole area, and the footwear is sent for finishing and packing.

A recent trend is the use of PU to rubber soles. This involves the use of a rubber outsole and the injection of PU between the outsole and the insole. Both double-density PU soles and PU to rubber soles are used in high-end, more expensive leather safety footwear.

6. Described as follows: "A special insole with a rib (or wall) is used. The upper is in-lasting to this rib by means of wires and staples or by adhesion. The welt is sewn to the upper and rib by means of a chain stitch. Then the sole is attached to the welt by adhesion and lockstitch to either the midsole or the outsole." Importer's and Other Parties' Exhibit B-108, Administrative Record, Vol. 13.

DOMESTIC INDUSTRY

The complainants are six producers of leather safety footwear in Canada; all are members of SMAC. They are: G.A. Boulet Inc. (Boulet) of St-Tite, Quebec; Canada West Shoe Manufacturing Inc. (Canada West) of Winnipeg, Manitoba; L.P. Royer Inc. (Royer) of Lac-Drolet, Quebec; STC Footwear (STC) of Ville d'Anjou, Quebec; Tatra Shoe Manufacturing Inc. (Tatra) of Dunnville, Ontario; and Terra Footwear (Terra) of Markdale, Ontario, and of Harbour Grace, Newfoundland (the six producers).

In addition to the above producers, other producers of leather safety footwear include: Dayton Shoe Co. Ltd. of Vancouver, British Columbia; Hichaud Inc. of Québec, Quebec; Mellow Walk Footwear Inc. (Mellow Walk) of Toronto, Ontario, which also supports SMAC's position; Chaussures Vercorp Inc. of St. Bernard, Quebec; and Viberg Boot Manufacturing Ltd. of Victoria, British Columbia (the other mostly smaller producers). The Tribunal heard evidence⁷ that there was another manufacturer, Valthane Inc., of Hamilton, Ontario.

The following three producers ceased production of leather safety footwear during the period of inquiry: H.H. Brown Shoe Co. (Canada) Ltd. (Brown) of Richmond, Quebec, which stopped producing the goods in March 2001; Greb International – Kodiak Division (Greb) of Acton Vale, Quebec, which declared bankruptcy in 2000; and William H. Kaufman Inc. (Kaufman) of Kitchener, Ontario, which declared bankruptcy in July 2000. All these producers were previously members of SMAC.

IMPORTERS AND EXPORTERS

The CCRA identified 45 importers of the subject goods during its period of investigation. The Tribunal sent questionnaires to importers that accounted for well over 90 percent of imports from China, as reported by Statistics Canada. Responses to the Tribunal's questionnaires indicate that the top 10 importers of the subject goods from China, in 2000, accounted for over 90 percent of all leather safety footwear imported from that country. The top 5 importers were: Brown; Canadian Tire Corporation, Limited (Canadian Tire); Mark's Work Wearhouse (Mark's); Wal-Mart Canada Inc.; and Zellers Ltd. (Zellers).

The CCRA identified 73 companies that export the subject goods to Canada. The Tribunal sent questionnaires to foreign producers in China, the Republic of Korea, Chinese Taipei and the United States. Questionnaire responses were provided by the following companies: Kingo Shoes (Hong Kong) Ltd.; Iron Age Corporation; New Tradewell Corporation; Kingfield International; and China Cobblers Corp./Rest Assured Group Ltd. While some information was provided on plant capacity, production, sales, exports and inventories of leather safety footwear, responses were generally incomplete.

MARKETING AND DISTRIBUTION

Leather safety footwear is sold to end users through a number of different types of stores, including the following: major national retail chains; stores that specialize in safety equipment or safety footwear, including mobile distribution services (i.e. trucks); retail shoe chains; and independent shoe stores. Leather safety footwear is also sold to corporate or institutional buyers that then supply the footwear to their employees.

Domestic producers sell their products to retail stores and corporate or institutional buyers. Also, producers manufacture leather safety footwear for private label brands of retail stores, and they supply

7. *Transcript of Public Hearing*, Vol. 4, 29 November 2001, at 780.

brand-name leather safety footwear to distributors. An example of the former would be Zellers' Workgard brand, while an example of the latter would be the Kodiak brand.

Importers include major retail chains, producers and wholesalers/distributors. Included in the latter are distributors that import brand-name leather safety footwear, such as the Caterpillar brand.

POSITION OF PARTIES

Party in Favour of an Injury Finding

SMAC

On the issue of which producers constitute the domestic industry, SMAC argued that all the producers that were active, in part or throughout the period from 1998 to the present, including the three departed producers, should be considered as forming part of the domestic industry.

Turning to the issue of classes of goods, SMAC submitted that, because of the similarities between boots and shoes, there is a single class of goods in this inquiry, which is leather safety footwear.

SMAC submitted that the dumping of the subject goods from China has caused and is likely to cause material injury to the production of like goods in Canada. SMAC argued that the entire impact of the increased imports from China has been borne by the domestic industry.

In addressing the issue of injury, SMAC submitted that the material injury to the industry is evidenced by the departure of three major producers in the Canadian market. Furthermore, with their departure, a large volume of domestic production was "up for grabs", and the remaining domestic producers should have benefited from that opportunity. To the contrary, SMAC argued, a very high proportion of that business for which new suppliers had to be found went to China. SMAC further argued that the massive shift of production from Canada to China was caused by price and not by factors such as product design, construction, quality, customer service or any other non-price factor. According to SMAC, the individual producers' evidence, considered collectively, indicates that the pervasiveness of imports from China existed throughout the price spectrum. It further argued that imports from China are strongly represented not only in retail promotions and low, regular price points but also in the upper strata of the market.

With respect to the issue of causation, SMAC submitted that the causal link between the dumping and the injury, in this case, is exceptionally clear because the imports are dominated so completely by China and there are no significant third parties. SMAC argued that, during the period of inquiry, China's gain was the domestic industry's loss.

Turning to the threat of injury, SMAC submitted that imports from China show no sign of abating and that, if the dumped subject goods continue to be imported into Canada, price levels will remain low, and this will result in greater losses for the domestic industry.

Regarding the requested exclusions, SMAC opposed the granting of any exclusion, as these goods compete with and are substitutable for domestically produced like goods. However, with regard to the request filed by Hush Puppies, the Tribunal notes that counsel for SMAC was of the view that imports of Harley Davidson motorcycle boots with metal toe caps would not cause injury to the domestic industry if they were excluded on the basis suggested by Hush Puppies and if the volumes remained at present levels.

Parties Opposing an Injury Finding and/or Parties Requesting Exclusions

RCC

At the outset, the RCC argued that the dumping of Chinese goods was neither a cause of material injury to the existing or remaining producers, nor was it likely to be a cause of material injury to the remaining producers. The fact that the remaining producers would have liked more of the existing producers' volumes is insufficient to establish a case of material injury.

On the issue of which domestic producers constitute the domestic industry, the RCC submitted that the domestic industry should be limited to the six producers that participated in the inquiry on the basis that they filed the complaint with the Commissioner and that the former producers, which have become importers, filed uncontroverted evidence that their departure from domestic production was not influenced by the dumping.

Turning to the issue of classes of goods, the RCC argued that the evidence showed that boots and shoes have different heights, weights and designs in the case of uppers, midsoles and outer soles, have different applications, do not resemble one another and are easily distinguishable. As such, the RCC submitted that boots and shoes should be treated as separate classes of goods.

In addressing injury, the RCC argued that the domestic producers gained volume and market share and increased their profits, their production of leather safety footwear and their sales volume more rapidly than was expected from the overall growth of the market. It argued that there is no evidence of price suppression or price erosion. To the contrary, the RCC submitted, prices for all domestic products rose more rapidly than the rate of the market and that all price increases effected by the domestic producers held during this period. These price increases more than covered costs, as is evidenced by an examination of the profitability of the industry, which earned a collective 8 percent net profit on sales in 2000. Finally, the RCC argued that the dumping was not an impediment to investment for the domestic producers and that it did not adversely affect their financial performance.

The RCC submitted that there is no causal link between the dumping found in respect of the subject goods and the alleged injury suffered by the domestic industry. The RCC submitted that the pricing of imports from China played no role in the determination of pricing by the domestic industry.

The RCC further argued that the alleged injury suffered by the domestic industry must be attributed to a number of non-dumping factors. The RCC pointed to the domestic producers' lack of development and promotion of recognizable brands, with the exception of Terra and, in a limited way, Canada West; their inability to develop products in line with the athletic and hiking trend; the decline in the western boot market; the domestic industry's lack of effort to build business relationships; the competition among the domestic producers due to insufficient differentiation, service and client relations; the lack of product development to reflect changes in demand in the marketplace; and the fact that the domestic industry did not produce leather safety footwear of cement construction.

The RCC argued that there is no threat of injury from imports of the subject goods from China as there are no demonstrable trends in trade, adverse to the domestic industry, that might continue, or no clearly foreseen adverse events that could occur. Among those trends referred to by the RCC are industry pricing, volumes, production, employment, investment and financial performance, all of which are going upward and none of which have been affected by increased imports from China.

Turning to the requests for exclusions, the RCC argued that exclusions in respect of all leather safety footwear of cement construction and of true welt construction should be granted, since there is insufficient available capacity in the domestic industry to meet the demand in the marketplace. In the

alternative, the RCC requested an exclusion for all leather safety footwear of welt and cement construction that is lasted and sized for women, based on the domestic producers' inability to offer a sufficient number of lasts in a range of sizes. Finally, the RCC also requested an exclusion for all leather safety footwear with a visible air cell incorporated in the outsole, midsole or forefoot and all leather safety footwear incorporating waterproof breathable barriers other than Gore-Tex waterproof breathable barriers, on the basis that the domestic industry does not produce such items.

CAIE

On the issue of which producers make up the domestic industry, the CAIE submitted that the departed producers do not fall within the definition of "domestic industry". The CAIE argued that the Tribunal should exercise its discretion and exclude the departed producers from that definition, on the basis of their import volumes.

On the issue of whether there is more than one class of goods, the CAIE argued that it is clear that leather safety boots are not identical in all aspects to leather safety shoes. As a result, the CAIE argued that the Tribunal should consider both the use and other characteristics of both imported and domestically produced goods. It follows that leather safety boots and leather safety shoes are fundamentally different in physical characteristics and are clearly separate classes of goods.

In addressing the issue of injury, the CAIE stated that there is no indication of injury to the Canadian industry. The CAIE argued that, in looking at the domestic producers' financial performance, they do not appear to have suffered injury in the face of dumped imports. The domestic producers' market share, their volume of sales and their value of net sales all increased over the period from 1998 to 2000. The CAIE further argued that, while it is true that the share of imports increased over that period, it was clearly not at the expense of the Canadian producers. It also submitted that the modest decline in these producers' capacity utilization can be explained by various limiting factors, including the following: the recent investments in new machinery by two producers, which, in the short term, could not achieve a corresponding increase in sales; their difficulty in finding skilled labour; and the numerous types of construction used in producing leather footwear, which often preclude a producer from using all its machinery to its full capacity at the same time.

Among factors other than dumping, the CAIE pointed to the domestic producers' inability to adapt quickly enough to fashion changes, their lack of interest or aggressiveness in attempting to get more of the retailing business and the fierce competition among themselves.

On the issue of injury allegations, the CAIE argued that the Tribunal should either disregard this evidence or give it no weight, as they were proven to be unfounded and unsubstantiated.

With respect to exclusions, the CAIE requested that the Tribunal consider an exclusion for brand-name high-value safety footwear. It argued that the exclusion should be granted on the basis that the domestic producers' case is against the low-priced imports from China rather than the high-value, high-end leather safety footwear offerings.

Hush Puppies

In the event of an injury finding, Hush Puppies requested exclusion for the metal-toe Harley-Davidson-branded footwear. It stated that, unlike the subject leather safety footwear, Harley-Davidson boots are principally used for leisure and motorcycle riding purposes. Hush Puppies further stated that these products are designed and marketed for the enthusiast and the bike rider niche market, offer certain product specifications, such as heavy rubber lug outsoles, higher height, buckles and zippers, as well as the Harley-Davidson bar and shield logo, and are sold at a premium price. As such, Hush Puppies argued

that the Harley-Davidson subject goods are not causing injury to the Canadian producers and should be excluded from the finding.

ANALYSIS

Like goods and classes of goods

The Tribunal must determine which domestically produced goods are like goods to the leather safety footwear from the named importers.

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

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

In considering the issue of like goods, the Tribunal typically looks at a number of factors, including the physical characteristics of the goods, such as appearance, their method of manufacture, their market characteristics, such as substitutability, pricing and distribution, and whether the goods fulfil the same customer needs.

The subject goods are defined by the Commissioner as leather footwear with metal toe caps.

The evidence shows that domestically produced leather footwear with metal toe caps, defined in the same manner as the subject footwear, is generally similar in terms of physical characteristics, end uses and substitutability to the subject footwear. As such, for the purpose of this inquiry, the Tribunal finds that leather footwear with metal toe caps produced by the domestic industry constitutes like goods to the subject footwear.

The question of how many classes of like goods are involved arose in this inquiry. During the preliminary injury inquiry, the RCC and the CAIE submitted that boots and shoes constituted separate classes of goods. The Tribunal concluded that it was unable, at that time, to come to a conclusion that there were two classes of goods on the basis of the existing record. Nevertheless, the Tribunal was of the view that the question merited further consideration. As a consequence, the Tribunal requested the CCRA to collect information on the dumping of leather boots with metal toe caps, leather shoes with metal toe caps and leather boots and leather shoes with metal toe caps combined. Similarly, the Tribunal collected information on the same basis for its injury analysis.

At the hearing, SMAC submitted that, because of their similarities, boots and shoes should be treated as a single class of goods, which is leather safety footwear. The RCC and the CAIE argued that the uses and physical characteristics of both imported and domestically produced boots and shoes are fundamentally different and, as such, clearly indicate separate classes of goods.

In addressing whether there is more than one class of goods, the Tribunal must determine whether the alleged separate classes of goods constitute “like goods” to each other. Consequently, in determining whether there is more than one class of goods, the Tribunal will look at factors similar to the ones that have been mentioned above in connection with the issue of like goods.⁸ If the alleged separate classes of goods constitute “like goods” to each other, they will be regarded as comprising a single class of goods.⁹

8. See, for example, *Certain Hot-rolled Carbon Steel Plate* (27 June 2000), Inquiry No. NQ-99-004 (CITT) at 18.

9. *Thermal Insulated Board* (11 April 1997), Inquiry No. NQ-96-003 (CITT).

Looking first at the physical characteristics, the Tribunal is of the view that boots and shoes share similar characteristics and closely resemble one another. In terms of raw materials, the Tribunal finds that all leather safety footwear is made of substantially the same materials and components and is manufactured using the same methods of construction. Regarding market characteristics, boots and shoes are sold by the same retailers and meet similar safety requirements. Moreover, testimony heard during the hearing illustrated the difficulty in determining whether hiking style footwear, at certain ankle heights, is a boot or a shoe.¹⁰ Traditionally, hiking style footwear has an above-the-ankle height. However, the evidence indicates that it can also be below or at the ankle and can, therefore, be either a boot or a shoe depending only on the height.

While some specific uses of boots and shoes may differ, the Tribunal is of the view that all leather safety footwear has essentially the same functional end use, namely, to protect the foot from injury in the workplace. Moreover, the Tribunal notes that, for certain applications, such as working in light industries, boots and shoes are highly substitutable.

The Tribunal, therefore, finds that this inquiry relates to a single class of goods. Consequently, the Tribunal must determine whether the dumping of the subject goods, taken as a whole, has caused material injury or is likely to cause material injury to the domestic industry.

Domestic Industry

In conducting an inquiry under section 42 of SIMA, the Tribunal must determine whether the dumping has caused or is threatening to cause “material injury to a domestic industry”. The term “domestic industry” is defined in subsection 2(1) as follows:

“domestic industry” means, other than for the purposes of section 31 and subject to subsection (1.1), the domestic producers as a whole of the like goods or those domestic producers whose collective production of the like goods constitutes a major proportion of the total domestic production of the like goods except that, where a domestic producer is related to an exporter or importer of dumped or subsidized goods, or is an importer of such goods, “domestic industry” may be interpreted as meaning the rest of those domestic producers.

The first issue that the Tribunal has to address is whether Brown, Greb and Kaufman, the three former producers, should be considered as part of the domestic industry.

The Tribunal is of the view that the domestic industry consists of the six producers that filed the complaint with the CCRA and the other mostly smaller producers, but not the three producers that exited the market. The Tribunal notes that, while the three former producers still accounted for 25 percent of the production of leather safety footwear in 2000, they were in the process of exiting the Canadian market as producers of like goods and instead becoming, in the case of two of the firms, companies focused on marketing their products that are produced elsewhere.

In 2001, the six producers and the other mostly smaller producers (of which the largest, Mellow Walk, also supported the complaint) are expected to account for well over 90 percent¹¹ of Canadian production. The Tribunal thus finds that, for the purposes of this inquiry, the producers that filed the complaint and the other mostly smaller producers together constitute the domestic industry.

10. For example, when asked about a physical exhibit that had been identified by a producer as a brown hiking boot, the witness for Zellers indicated that, to him, it looked to be right at the ankle and would thus be a shoe. *Transcript of Public Hearing*, Vol. 4, 29 November 2001, at 655-58, 686-87.

11. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2001-003-07 (protected), Administrative Record, Vol. 2.1 at 27.

Injury

Subsection 37.1(1) of the *Special Import Measures Regulations*¹² prescribes certain factors that the Tribunal may consider in determining whether the dumping of goods has caused material injury to the domestic industry. These factors include the volume of dumped goods and their effect on prices in the domestic market for like goods and the impact of the dumped goods on a number of relevant economic factors and indices. In the present case, the relevant factors include actual or potential declines in domestic production and sales, market share, financial performance, employment, capacity utilization and investment. Subsection 37.1(3) also requires the Tribunal to consider other factors not related to the dumping to ensure that any injury caused by those other factors is not attributed to the dumped imports.

As was discussed earlier, the Tribunal has determined that the domestic industry consists of the six producers that filed the complaint with the CCRA and the other mostly smaller producers, but not the three producers that exited the market. In its injury determination, however, the Tribunal focused on the six producers that filed the complaint. First, these six producers account for a very large proportion of production and sales of the domestic industry. Second, production, sales, financial performance, employment, investment and capacity utilization data were available for each of these six producers, while this was not the case for the other mostly smaller producers. Finally, only the six producers appeared at the hearing, gave evidence and were subject to cross-examination.

Table 2 provides a summary of the key economic indicators for the period of inquiry. The volume of leather safety footwear produced by the six producers grew by 7.2 percent from 1998 to 2000. Four of the six producers reported growth. These four producers accounted for almost 95 percent of the output of the six producers over the three years. The volume of production also grew between the first six months of 2000 and the first six months of 2001 by 8.8 percent, with five of the six producers recording an increase in production.

Between 1998 and 2000, the overall market grew from 2.85 million pairs to 3.06 million pairs. This represents an increase of 7.2 percent. The six producers increased sales at a faster rate than the total apparent market, registering growth of 9.7 percent over the three years. As a consequence, the market share of the six producers increased slightly, from 31 percent to 32 percent over the period. The market registered a small decrease in sales of 0.1 percent between the first six months of 2000 and the first six months of 2001. In contrast, the six producers reported an increase of 6.2 percent in sales, with the result that their market share increased from 26 percent to 28 percent between the two periods. This growth came, in part, from the declining sales of the exiting producers. Tatra and STC indicated that they have made sales to the Kodiak Group,¹³ which purchased the sales and marketing assets and certain intellectual property of Greb International, and Royer and Terra indicated that their sales volumes had benefited from the departure of Kaufman.¹⁴ The Tribunal also notes that the increase in the sales of the six producers was not attributable to the fashion trend, during those years, of athletic style or hiking style leather safety footwear having cement construction, as the six producers indicated that they did not manufacture these types of leather safety footwear.¹⁵

12. S.O.R./84-927 [hereinafter Regulations].

13. *Transcript of Public Hearing*, Vol. 1, 26 November 2001, at 16-18, Vol. 2, 27 November 2001, at 193-94; Tribunal Exhibit NQ-2001-003-15.10, Administrative Record, Vol. 5G at 219.

14. Manufacturer's Exhibits AC-01A, para. 16, AF-01, para. 21, Administrative Record, Vol. 11.

15. Tribunal Exhibits NQ-2001-003-RI-01A, -RI-01C, -RI-01E, -RI-01G, -RI-01I, -RI-01K (protected), Administrative Record, Vol. 10, question 3.

TABLE 2					
SUMMARY OF KEY ECONOMIC INDICATORS LEATHER SAFETY FOOTWEAR					
	1998	1999	2000	<u>January to June</u>	
				2000	2001
Domestic Production (index)					
Six Producers	100.0	97.4	107.2	100.0	108.8
Apparent Market (pairs)					
Six Producers	2,854,774	2,830,781	3,061,693	1,641,149	1,638,996
Subject Country – China	881,479	891,200	967,272	432,967	459,703
	1,240,468	1,273,521	1,639,462	884,421	1,032,416
Market Share (%)					
Six Producers	31	31	32	26	28
Subject Country – China	43	45	54	54	63
Average Market Prices (\$/pair)					
Six Producers	54.38	56.68	57.30	56.18	56.40
Subject Country – China	63.42	66.09	67.39	68.72	71.76
	42.10	45.49	47.03	44.35	46.73
Financial (domestic sales - % of net sales)					
Gross Margin	21	21	24	N/A	N/A
Operating Income	3	4	8	N/A	N/A
Employment (direct and indirect) (index)					
Six Producers					
Employees	100.0	103.5	111.8	100.0	112.2
Hours (000)	100.0	103.3	117.0	100.0	107.2
Capacity (index)					
Six Producers					
Practical Capacity	100.0	107.2	116.6	100.0	106.1
Percentage Point Change in Utilization Rate		(5)	1		1
Actual					
	<u>1998</u>	<u>1999</u>	<u>2000</u>	Projected	
				<u>2001</u>	<u>2002</u>
				<u>2003</u>	
Investment (\$ million)					
Six Producers	←————— 7.5 —————→			←—— 9.5 ———→	
<p>Note: N/A indicates not available as it was not considered appropriate to present aggregated data as the length of the interim period varied significantly from company to company.</p> <p>Source: <i>Pre-hearing Staff Report</i>, dated October 22, 2001, and revised November 4, 2001, Tribunal Exhibits NQ-2001-003-06 and NQ-2001-003-06A, Administrative Record, Vol. 1.1 at 1-346.</p>					

The volume of sales of leather safety footwear from China increased 32.2 percent from 1998 to 2000, growing from 1.24 million pairs to 1.64 million pairs. Consequently, the market share of the subject goods increased from 43 percent to 54 percent over the period. In the first six months of 2001, imports from China increased 16.7 percent over the first six months of 2000, resulting in their market share increasing from 54 percent to 63 percent. A review of import data and responses to requests for information addressed to importers, however, indicates that a significant portion of the growth in imports was due to an increase in

the combined sales of imported athletic style and hiking style leather safety footwear.¹⁶ As already noted, these are goods not manufactured by the Canadian producers. In addition, the data also indicate that a significant percentage of the imports consist of leather safety footwear of welt construction.¹⁷ Boulet and Canada West produce leather safety footwear of this type of construction. The Tribunal notes that the volume of their sales was relatively small over the period of inquiry.

The average price for sales of imports from China increased 11.0 percent, from \$42.10 to \$46.73, during the period from 1998 to the end of June 2001. At the same time, the average price received by the six producers increased 13.2 percent, from \$63.42 to \$71.76. The Tribunal also heard from individual producers about specific, often annual, price increases and learned that the price increases, for the most part, had been accepted by purchasers.¹⁸ The Tribunal notes that the producers were able to increase sales at a faster rate than total market sales while they were increasing prices. In testimony, the producers suggested that prices were increased only to cover increases in costs.¹⁹ The Tribunal reviewed the combined income statement for the six producers and found that, over the years from 1998 to 2000, the gross margin and operating income per pair of leather safety footwear increased. This indicates to the Tribunal that the increases in price more than covered increases in both the cost of goods sold and the general, selling, administrative and financial expenses.

The producers also argued that the dumped goods had forced them to move upscale in the types of leather safety footwear that they sold.²⁰ They claimed that this change in product mix was the cause of the increase in average prices.²¹ A further examination of the combined income statement for the six producers indicates to the Tribunal that the percentage increase in the net sales value per pair of footwear was more than double the percentage increase in the cost of goods sold.²² The Tribunal is of the view that, had the change in mix of goods been totally, or mostly, responsible for the increase in average prices, then the percentage increase in the average cost of goods sold per pair of leather safety footwear would have been much closer to the percentage increase in the net sales value per pair than it was.

In assessing the financial performance of the six producers in total, the Tribunal first looked at their performance in terms of gross margins earned. The Tribunal found that the combined gross margin of the six producers grew from 21 percent of net sales in 1998 to 24 percent of net sales in 2000. With regard to the trend in the producers' operating income, the Tribunal found that their combined operating income increased from 3 percent of net sales in 1998 to 8 percent of net sales in 2000.

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16. Tribunal Exhibits NQ-2001-003-RI-02C, -RI-02M, -RI-02O, -RI-03A, -RI-04A, -RI-07A, -RI-08A (protected), Administrative Record, Vol. 10, question 5; *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2001-003-06, Administrative Record, Vol. 1.1 at 29.
 17. Tribunal Exhibit NQ-2001-003-44A (protected), Administrative Record, Vol. 2 at 117-23; Tribunal Exhibits NQ-2001-003-RI-02E, -RI-02I, -RI-02O, -RI-02P, -RI-02Q, -RI-02R, -RI-03A, -RI-04B, -RI-06A, -RI-07A, -RI-08A, -RI-09 (protected), Administrative Record, Vol. 10, questions 3, 4.
 18. *Transcript of Public Hearing*, Vol. 1, 26 November 2001, at 37, Vol. 2, 27 November 2001, at 359-60, Vol. 4, 29 November 2001, at 639-40; *Transcript of In Camera Hearing*, Vol. 2, 27 November 2001, at 143-45, Vol. 3, 28 November 2001, at 231-32, 274, Vol. 4, 29 November 2001, at 479-80, 483-84.
 19. *Transcript of Public Hearing*, Vol. 2, 27 November 2001, at 378; *Transcript of In Camera Hearing*, Vol. 3, 28 November 2001, at 231, 233.
 20. Manufacturer's Exhibit AD-02 (protected), Administrative Record, Vol. 12, paras. 25-27; *Transcript of Public Hearing*, Vol. 1, 26 November 2001, at 114, Vol. 2, 27 November 2001, at 301; *Transcript of In Camera Hearing*, Vol. 2, 27 November 2001, at 222.
 21. *Transcript of Public Hearing*, Vol. 2, 27 November 2001, at 301, 378; *Transcript of In Camera Hearing*, Vol. 1, 26 November 2001, at 33.
 22. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2001-003-07A (protected), Administrative Record, Vol. 2.1 at 326.

In examining the financial performance of individual producers, the Tribunal found that, from 1998 to 2000, the gross margins and operating incomes for five of the producers either increased as a percentage of net sales or remained about the same.^{23, 24} When the financial performance of the producers in the six-month interim period that ended in June 2001 was compared to the interim period of a year earlier, the Tribunal found that five of the producers reported an increase in their gross margins as a percentage of net sales. Also, three producers reported that their operating incomes increased as a percentage of net sales, and one producer reported that its operating income did not change. Another producer reported that its operating loss decreased as a percentage of net sales.

The Tribunal notes that the one instance of deterioration of the financial performance of a producer in the 2001 interim period was not caused by dumping, as admitted by the producer in response to questions from the Tribunal and counsel.²⁵ The producer, instead, attributed the decline in its financial results to the problems that it encountered in producing and delivering orders for a particular customer.

A review of the data on employment for the six producers shows that the average number of persons directly and indirectly employed by them increased 11.8 percent from 1998 to 2000 and increased 12.2 percent from the first six months of 2000 to the first six months of 2001. The Tribunal observes that the number of hours worked by those employees went up by 17.0 percent between 1998 and 2000 and 7.2 percent between the first half of 2000 and the first half of 2001.

With regard to capacity utilization, the data show that the six producers combined had a decline of four percentage points in their capacity utilization rate between 1998 and 2000.²⁶ During the period, three producers, in the aggregate, made significant additions to practical capacity and, as a result, practical capacity for the six producers increased at a faster rate than production, and the utilization rate for the producers declined.²⁷ However, if these additions to capacity had not been made, the capacity utilization rate for the six producers would have increased rather than decreased.

Similarly, a comparison of the first six months of 2000 and the first six months of 2001 indicates that the combined utilization rate of the six producers increased by one percentage point and that the utilization rates for all but two producers increased. The utilization rate for one of the smaller producers declined by about one percentage point due to a decrease in production, and the utilization rate for one of the larger producers declined three percentage points.²⁸ A further examination of the figures for the latter producer indicates that its utilization rate would have increased in interim 2001 in the absence of capacity additions.

Turning to capital expenditures, the Tribunal notes that the six producers have made substantial investments in their operations in recent years and plan to invest even more in the near future. The producers reported in their questionnaire replies that they invested \$7.5 million in such things as moulds, dies, lasts and

23. The one major exception was one of the smaller producers that consistently reported poor financial results.

24. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2001-003-07 (protected), Administrative Record, Vol. 2.1 at 224, 226, 234, 244, 250, 258.

25. *Transcript of Public Hearing*, Vol. 1, 26 November 2001, at 18-19; and *Transcript of In Camera Hearing*, Vol. 1, 26 November 2001, at 99-100.

26. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2001-003-07 (protected), Administrative Record, Vol. 2.1 at 106.

27. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2001-003-07 (protected), Administrative Record, Vol. 2.1 at 287-92.

28. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2001-003-07 (protected), Administrative Record, Vol. 2.1 at 287-92.

injection machines between 1998 and 2000 and that they projected further investments of about \$9.5 million between 2001 and 2003.^{29, 30}

In summary, the Tribunal's examination of injury indicators provides a positive picture of the industry's performance from 1998 to mid-2001. The industry's volume of production grew to supply its sales, which increased at a faster rate than that of the market as a whole. This growth in sales resulted in an increased market share for the industry. At the same time as sales were growing, the producers were able to increase their prices at a faster rate than that of the market as a whole.³¹ The industry's price increases easily surpassed any increases in the producers' costs, and the evidence shows that changes in product mix likely played only a minor role in the price increases. The industry's financial performance improved over the period of inquiry, with gross margins and operating incomes increasing as a percentage of net sales. The number of persons employed by the industry and the hours worked by them also increased over the period of inquiry. The producers invested a substantial amount of capital in their operations from 1998 to 2000 and plan to invest even more between 2001 and 2003. While the rate of capacity utilization declined, this was due not to a drop in production, but instead to increases in capacity resulting from the investments made by the industry.

In addition to reviewing injury indicators from 1998 to the end of June 2001, the Tribunal also considered how the industry might have performed in the absence of dumped imports from China. To do this, the Tribunal analyzed two factors: (1) the volume of sales that the industry might reasonably have expected to gain in the absence of dumping; and (2) the price levels that would have prevailed had there been no dumping.

Regarding sales volumes, the Tribunal notes that the combined sales of cement construction athletic style and hiking style leather safety footwear increased from 410,000 pairs in 1998 to 590,000 pairs in 2000.³² It is noted that this increase is equivalent to 87 percent of the growth of the total market in the same period. Cement construction athletic style and hiking style leather safety footwear are products that the industry did not produce and likely would have had to produce in order to gain any significant proportion of this sales volume.³³ The Tribunal is of the view that, if these products had not been available from China, the retailers would have found alternative offshore sources.

The Tribunal also heard testimony indicating that most of the producers' sales efforts have been hampered by their having only a partial understanding of how the major national retailers market leather safety footwear and of the expectations of retailers in terms of program building and brand name products. For example, some producers failed to seek sales at the large retail chains because they thought that they could not compete at entry point price levels.³⁴ The retailers explained that entry price point products are

29. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2001-003-07 (protected), Administrative Record, Vol. 2.1 at 108.

30. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2001-003-07 (protected), Administrative Record, Vol. 2.1 at 296-98.

31. The average market price for a pair of leather safety footwear increased 3.7 percent, from \$54.38 in 1998 to \$56.40 at the end of June 2001.

32. This is a conservative estimate of the growth in sales of cement construction athletic style and hiking style leather safety footwear and is based solely on importers' responses to requests for information. Tribunal Exhibits NQ-2001-003-RI-02C, -RI-02M, -RI-02O, -RI-02S, -RI-03A, -RI-04B, -RI-06A, -RI-07A, -RI-08A (protected), Administrative Record, Vol. 10, question 5; *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2001-003-06, Administrative Record, Vol. 1.1 at 39.

33. Tribunal Exhibits NQ-2001-003-RI-01A, -RI-01C, -RI-01E, -RI-01G, -RI-01I, -RI-01K (protected), Administrative Record, Vol. 10, question 3.

34. *Transcript of Public Hearing*, Vol. 1, 26 November 2001, at 103, 144-45, 170, Vol. 2, 27 November 2001, at 191-92; *Transcript of In Camera Hearing*, Vol. 2, 27 November 2001, at 179.

only part of a “good, better and best” matrix of products offered at different price points in an attempt to satisfy the needs of a vast array of consumers.³⁵ An example given by one major retailer underlined the fact that not all producers completely understood the need to work with retailers to build an assortment of product offerings.³⁶ The retailers also described the importance of having national brands in their product selection and indicated that, with the exception of Terra, the industry is weak in offering brand-name footwear with national recognition.³⁷ In the Tribunal’s view, these are all serious impediments that would have prevented the industry from increasing its sales from production even if there had been no dumping of the subject goods.

The Tribunal also received evidence and heard testimony that the industry expected to gain significant sales when Greb, Brown and Kaufman ceased production in Canada.³⁸ The Tribunal is of the view that, while the domestic industry did obtain some Kodiak and Kaufman sales,³⁹ the producers’ expectation of gaining significant sales volume was unrealistic. Although they closed their factories in Canada, at least two of the producers’ share of the market was not, as SMAC described it, “up for grabs”. While Greb ceased production, the Kodiak Group purchased Greb’s branding, marketing and sales assets and continued to market Kodiak footwear in Canada.⁴⁰ Brown also continued to market its leather safety footwear after ceasing domestic production.⁴¹ As well, the marketing activities of both Kodiak and Brown were often in direct competition with the remaining producers. The Tribunal notes that, while it is not clear what volume of Kaufman’s sales was available to the six producers, it was certainly not much more than a small proportion. One producer reported that Kaufman’s Kingtread brand had been acquired by an importer of Chinese goods and was now being used on footwear made in China.⁴² There was also testimony that Kaufman’s Black Diamond brand had been purchased by a person in the United States and is now being produced by Valthane in Hamilton, Ontario.⁴³

Finally, it is the Tribunal’s view that it is quite unlikely that Terra would have achieved the increase in sales required to capture the 30 percent market share that it claimed was possible in the absence of dumped products.⁴⁴ As noted earlier, there was little opportunity for the domestic producers to capture sales of the exiting producers. In the case of Terra, there is the added consideration that Terra supplies the market with a national brand, and it seems unlikely that Terra would produce the brand name products of distributors such as Kodiak and Brown. This view is supported by the evidence of two retailers that indicated that a Canadian company that has its own brands will be reluctant to supply a retailer with

35. *Transcript of Public Hearing*, Vol. 3, 28 November 2001, at 521-22, 547-48, Vol. 4, 29 November 2001, at 586-87, 618-19, 661-63, 678; *Transcript of In Camera Hearing*, Vol. 4, 29 November 2001, at 389.

36. *Transcript of In Camera Hearing*, Vol. 4, 29 November 2001, at 415-16.

37. Importer’s and Other Parties’ Exhibits B-24, para. 21, B-90, paras. 19-21, Administrative Record, Vol. 13; *Transcript of Public Hearing*, Vol. 3, 28 November 2001, at 567, Vol. 4, 29 November 2001, at 593, 660-61, 693-94.

38. Manufacturer’s Exhibits A-01, para. 13, AE-01, para. 9, AF-01, para. 21, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 2, 27 November 2001, at 344.

39. *Transcript of Public Hearing*, Vol. 1, 26 November 2001, at 16-18, Vol. 2, November 27, 2001, at 193-94; Tribunal Exhibit NQ-2001-003-15.10, Administrative Record, Vol. 5G at 219; Manufacturer’s Exhibits AC-01A, para. 16, AF-01, para. 21, Administrative Record, Vol. 11.

40. Tribunal Exhibit NQ-2001-003-09.08, Administrative Record, Vol. 3C at 120; Importer’s and Other Parties’ Exhibit C-05, para. 17, Administrative Record, Vol. 13.

41. Importer’s and Other Parties’ Exhibit D-01, paras. 13, 15, Administrative Record, Vol. 13.

42. Manufacturer’s Exhibit AF-01, para. 23, Administrative Record, Vol. 11.

43. *Transcript of Public Hearing*, Vol. 4, 29 November, 2001, at 779-80.

44. *Transcript of Public Hearing*, Vol. 2, 27 November 2001, at 356-57.

products using the retailer's brand names.⁴⁵ Also, Terra could not share in the major growth area in the market, i.e. the sales of cement construction athletic style and hiking style leather safety footwear, as it did not produce these products. In addition, Terra's strategy on the management of its distribution, at the time, would not have allowed for such a large increase in sales.⁴⁶

With regard to price levels in the absence of dumping, the Tribunal heard testimony from one retailer that tests at increasing a retail price point had not met with success, and another retailer indicated that it works very hard to prevent price increases.⁴⁷ Retailers also testified that their gross margins and operating income on sales of leather safety footwear were relatively lower than on sales of other footwear.⁴⁸ Any attempt by the producers to increase prices any more than they did would likely have been met with severe resistance by the retailers. In the event of a significant increase, it is likely that the retailers would have searched for new sources of supply, as they testified that they have done so in the face of provisional anti-dumping duties.⁴⁹ The Tribunal notes that the price levels prevailing in the marketplace during the period ensured a reasonable profit level for the industry.

In summary, the Tribunal is of the opinion that, had there been no dumping, it is unlikely that the producers would have been able to significantly increase sales volumes or prices.

In light of the foregoing, the Tribunal concludes that the dumping of leather safety footwear has not caused material injury to the domestic industry.

Threat of Injury

Having found that the dumping of the subject goods has not caused material injury, the Tribunal must consider whether the dumping is threatening to cause material injury. The Tribunal is guided in this task by subsection 37.1(2) of the Regulations. This subsection prescribes factors that the Tribunal may take into account in making a threat of injury determination. This includes factors such as whether there has been a significant rate of increase of dumped imports of leather safety footwear, the actual and potential negative effects on existing development and production efforts and any other relevant factors. Moreover, the threat, if one exists, must be clearly foreseen and imminent.

In its consideration of threat, the Tribunal first considered the volume of subject goods sold in the Canadian market and how those sales have grown over the years and whether they are likely to continue to grow in the future. Imports of leather safety footwear began appearing on the Canadian market in the early 1990s.⁵⁰ Sales of the subject goods then grew dramatically from this starting point to capture 43 percent of the domestic market by 1998. Further growth was experienced through the years 1999

45. Importer's and Other Parties' Exhibit B-24, para. 21, Administrative Record, Vol. 13; *Transcript of In Camera Hearing*, Vol. 4, 29 November 2001, at 428.

46. *Transcript of Public Hearing*, Vol. 2, 27 November 2001, at 304-05, 312; *Transcript of In Camera Hearing*, Vol. 2, 27 November 2001, at 206-207, Tribunal Exhibit NQ-2001-003-10.15 (protected) Administrative Record, Vol. 4F at 56.

47. *Transcript of Public Hearing*, Vol. 4, 29 November 2001, at 692; *Transcript of In Camera Hearing*, Vol. 4, 29 November 2001, at 391.

48. *Transcript of In Camera Hearing*, Vol. 3, 28 November 2001, at 300-01, 339-40, Vol. 4, 29 November 2001, at 369-70, 398-99, 423-24.

49. Importer's and Other Parties' Exhibits B-01, para. 47, B-25, para. 46, B-44, paras. 20, 44, B-72, para. 33, B-91, para. 25 (protected), Administrative Record, Vol. 14; *Transcript of In Camera Hearing*, Vol. 3, 28 November 2001, at 298, 334-35, 359, Vol. 4, 29 November 2001, at 370, 396-98, 411, 425-27, 454.

50. *Transcript of Public Hearing*, Vol. 1, 26 November 2001, at 58, Vol. 2, 27 November 2001, at 308, Vol. 4, 29 November 2001, at 724.

and 2000, to increase the market share of the subject imports to 54 percent. A further sign of growth can be seen in the fact that, in the first six months of 2000, imports from China held 54 percent of the market, but, in the first six months of 2001, they held 63 percent. Statistics Canada import data strongly suggest that the volume of imports from China continued to grow in August and September 2001.⁵¹

The Tribunal also considered available evidence and testimony on China's capacity to produce and export footwear. China is the leading producer of footwear in the world, accounting for 51 percent of global production in 1999.⁵² Much of the growth in its production has come from growth in its exports of footwear.⁵³ In 1998, China exported approximately 3.1 billion pairs of footwear, and it is reported that exports increased by about 10 percent in 1999.⁵⁴ The Tribunal also heard evidence that China has the infrastructure to readily supply outsole moulds and materials required in the production of footwear and that this was because of the consolidation of production in China of footwear, in general, and, more particularly, athletic style and hiking style footwear.⁵⁵

The Tribunal heard convincing testimony from a number of witnesses that the quality of imports from China continues to improve.⁵⁶ Witnesses also indicated that imports from China have started to move into the high-end categories of products manufactured by the Canadian industry. They indicated that, in the last 15 to 18 months, they have seen PU injected, PU to rubber, dual density soles and metatarsal guard leather safety footwear from China beginning to appear for sale on the Canadian market.⁵⁷ Such high-end categories of products are the bread and butter of many of the Canadian producers.⁵⁸ The Tribunal is of the view that the industry will be materially injured by the continuance of the growth of Chinese imports of leather safety footwear, a growth that increasingly includes high-end leather safety footwear and imports of branded footwear that were formerly produced in Canada.

The Tribunal notes further that the average wholesale unit prices for imports were generally about \$20 less than those for the producers.⁵⁹ When these wholesale prices are translated into retail prices, the absolute gap widens further. The Tribunal has concluded that, with price gaps of this magnitude, combined with the continuing improvement in the quality of the subject imports and the introduction of more and more high-end Chinese products, consumers are going to increasingly question whether the price spreads are justified. The Tribunal notes the comments of one producer that said that the 8-in. PU injected boots from China had "flown off the shelf".⁶⁰ The 8-in. PU injected boots, along with 6-in. injected boots, are the benchmark products of the domestic industry. The Tribunal is of the view that, without anti-dumping measures, this core production is in peril and, with it, the very survival of the industry.

51. Manufacturer's Exhibits, A-01, A-01A, Administrative Record, Vol. 11.

52. Tribunal Exhibit NQ-2001-003-09.07, Administrative Record, Vol. 3C at 37.

53. Tribunal Exhibit NQ-2001-003-09.06, Administrative Record, Vol. 3A at 42.

54. Tribunal Exhibits NQ-2001-003-09.06, Administrative Record, Vol. 3A at 42, NQ-2001-003-09.07, Administrative Record, Vol. 3C at 39.

55. *Transcript of Public Hearing*, Vol. 4, 29 November 2001, at 729-30, 770-72.

56. *Transcript of Public Hearing*, Vol. 2, 27 November 2001, at 301, 369, Vol. 3, 28 November 2001, at 404-05; *Transcript of In Camera Hearing*, Vol. 3, 28 November 2001, at 354.

57. *Transcript of Public Hearing*, Vol. 2, 27 November 2001, at 223, 262, 362-63, Vol. 3, 28 November 2001, at 530; *Transcript of In Camera Hearing*, Vol. 2, 27 November 2001, at 114-15, 222-25, Vol. 3, 28 November 2001, at 306; Manufacturer's Exhibit AD-01, para. 7, Administrative Record, Vol. 11.

58. *Transcript of Public Hearing*, Vol. 1, 26 November 2001, at 129, Vol. 3, 28 November 2001, at 466; *Transcript of In Camera Hearing*, Vol. 2, 27 November 2001, at 223, Vol. 3, 28 November 2001, at 261-62; Tribunal Exhibit NQ-2001-003-43A (protected), Administrative Record, Vol. 2 at 114-15.

59. *Pre-hearing Staff Report*, Tribunal Exhibit NQ-2001-003-06A, Administrative Record, Vol. 1.1 at 314.

60. *Transcript of Public Hearing*, Vol. 2, 27 November 2001, at 363.

In addition to the injection moulded production of Terra, STC and Tatra being affected by imports of PU-injected boots from China, it is likely that Canada West and Boulet, which use welt construction in their products, will also be negatively affected by imports from China in the future. Canada West indicated that its main domestic competitor was and still is Brown, as did Boulet.⁶¹ The witness for Canada West indicated that, now that Brown has ceased domestic production, it has replaced some of that production with dumped imports from China and that these imports are a competitive problem.⁶² The witness also testified that the quality of the subject imports of welt construction has improved in the last two years.⁶³ The Tribunal is of the view that it is likely that domestic producers of welt construction leather safety footwear will be injured by the subject imports in the future, especially given the improved quality of the imports from China. The Tribunal believes that, without the protection of anti-dumping duties, the domestic production of welted leather safety footwear is in jeopardy.

The Tribunal takes seriously the industry's contention that, if the dumping is allowed to continue unabated, it will drive the domestic producers into becoming niche players manufacturing specialty leather safety footwear, whose volumes are not attractive to Chinese producers.⁶⁴ This, in turn, will result in producers' volumes declining to the point where they will no longer support overheads, and producers will exit the industry or become importers like Kodiak and Brown. The Tribunal notes that at least one current producer, Tatra, is considering importing leather safety footwear from Mexico in order to be more competitive in the marketplace.⁶⁵ One producer succinctly summarized its situation as being poised at the edge of a cliff and went on to state that, without the protection of anti-dumping duties, this cliff is going to be pretty high and sales are going to drop off quite dramatically.⁶⁶

This is not to say that there are not other factors that threaten the Canadian leather safety footwear industry, such as the length of time that it takes the industry to react to new designs and styles, its limited knowledge of the marketing needs of the major retailers and, with the exception of Terra, the lack of brand recognition. However, the Tribunal is of the view that even that portion of the Canadian industry that has already met most of these challenges would not be able to compete with the increasing volumes of the dumped upper-scale subject imports from China.

The Tribunal heard testimony that the volume of Chinese imports will decrease in the future, given that many of the retailers and some brand distributors are looking for alternative sources of supply, or have made commitments to purchase leather safety footwear from alternative sources, now that provisional anti-dumping duties have been imposed on imports from China.⁶⁷ While the volume of the subject imports may decline over the next several months,⁶⁸ the Tribunal has no doubt that the importers would recommence importing leather safety footwear from China in the absence of an injury finding. In coming to this conclusion, the Tribunal considered the supply relationships that the importers had built up with the

61. *Transcript of Public Hearing*, Vol. 1, 26 November 2001, at 153-54, Vol. 3, 28 November 2001, at 384.

62. *Transcript of Public Hearing*, Vol. 3, November 28, 2001, at 384-85.

63. *Transcript of Public Hearing*, Vol. 3, November 28, 2001, at 405.

64. Manufacturer's Exhibit AF-01, para. 25, Administrative Record, Vol. 11; *Transcript of Public Hearing*, Vol. 2, 27 November 2001, at 357-58.

65. *Transcript of Public Hearing*, Vol. 2, 27 November 2001, at 217-18; *Transcript of In Camera Hearing*, Vol. 2, 27 November 2001, at 128.

66. *Transcript of Public Hearing*, Vol. 3, 28 November 2001, at 474; *Transcript of In Camera Hearing*, Vol. 3, 28 November 2001, at 257.

67. Importer's and Other Parties' Exhibits B-01, para. 47, B-25, para. 46, B-44, paras. 20, 44, B-72, para. 33, B-91, para. 25 (protected), Administrative Record, Vol. 14; *Transcript of In Camera Hearing*, Vol. 3, 28 November 2001, at 298, 334-35, 359, Vol. 4, 29 November 2001, at 370, 396-98, 411, 425-27, 454.

68. *Transcript of In Camera Hearing*, Vol. 3, 28 November 2001, at 298.

Chinese sources and the testimony of the importers on their loyalty to their suppliers.⁶⁹ In this regard, the Tribunal also gave weight to the importance of China in the footwear business.

Finally, the Tribunal notes that the industry is likely to be more vulnerable to future dumping with the economy appearing to be in decline. The Tribunal heard evidence that sales in the industry depend on the health of the economy as a whole and, with the apparent downturn in the economy, there are likely to be fewer consumers wanting to buy leather safety footwear. Those that are buying are likely to be more price conscious.

Taking all of the foregoing considerations into account, the Tribunal concludes that, in the absence of anti-dumping duties, the domestic industry would face a clearly foreseen and imminent threat of material injury from dumped imports from China.

Exclusions

It is well established that the Tribunal has the discretion to grant exclusions under subsection 43(1) of SIMA.⁷⁰ The Tribunal has granted product exclusions in circumstances when, for instance, the domestic industry does not produce the particular product.⁷¹ The Tribunal also considers factors such as whether there is any domestic production of substitutable or competing goods,⁷² whether the domestic industry is an “active supplier” of the product or whether it normally produces the product.⁷³

With respect to the request for exclusion of all leather safety footwear of cement construction, the Tribunal notes that the above-the-ankle cement hiking style leather safety footwear competes directly with the 6-in. safety boot manufactured as one of the traditional mainstays of the Canadian industry. With respect to an exclusion for all leather safety footwear of true welt construction, as well as leather safety footwear which is lasted and sized for women, the Tribunal notes that certain domestic producers manufacture these products.⁷⁴ The Tribunal finds that there are substitutable products available from domestic production that compete with the subject goods and, therefore, these requests for exclusions are denied.

With respect to the request for exclusion of all leather safety footwear with a visible air cell incorporated in the outsole, midsole or forefoot, the domestic industry objected to the exclusion on the grounds that domestic producers are capable of manufacturing such soles. The Tribunal notes that two producers indicated that it would be possible to incorporate an air cell in an injected sole without damaging the air cell.⁷⁵ Furthermore, above-the-ankle leather safety footwear incorporating an air cell competes with

69. *Transcript of Public Hearing*, Vol. 3, 28 November 2001, at 523, 557; *Transcript of In Camera Hearing*, Vol. 4, 29 November 2001, at 370.

70. *Certain Cold-rolled Steel Sheet Originating in or Exported from the United States of America (Injury) (United States v. Canada)* (1994), CDA-93-1904-09 (Ch. 19 Panel) at 54. See, also, *Hetex Garn A.G. v. Anti-dumping Tribunal*, [1978] 2 F.C. 507 (F.C.A.).

71. See, for example, *Certain Flat Hot-rolled Carbon and Alloy Steel Sheet Products* (19 July 1999), Inquiry No. NQ-98-004 (CITT).

72. See, for example, *Stainless Steel Round Bar* (21 September 1998), Inquiry No. NQ-98-001 (CITT) [hereinafter *Round Bar*].

73. See *Round Bar*.

74. Tribunal Exhibit NQ-2001-003-09.03, Administrative Record, Vol. 3 at 140; Tribunal Exhibit NQ-2001-003-09.05, Administrative Record, Vol. 3A at 6; Tribunal Exhibit NQ-2001-003-09.06, Administrative Record, Vol. 3A at 14; Tribunal Exhibit NQ-20001-003-38A, Administrative Record, Vol. 1 at 165.20, 165.43, 165.44; Tribunal Exhibit NQ-2001-003-34.01, Administrative Record, Vol. 1 at 147, 148.

75. Tribunal Exhibit NQ-2001-003-38A, Administrative Record, Vol. 1 at 165.44; *Transcript of Public Hearing*, Vol. 2, 27 November 2001, at 184, 238.

domestically produced leather safety footwear without an air cell. Therefore, the Tribunal is not convinced that an exclusion for air cells incorporated in above-the-ankle leather safety footwear is warranted.

As for the request for an exclusion covering all leather safety footwear incorporating waterproof breathable barriers other than a Gore-Tex brand waterproof breathable barrier, the domestic industry submitted that, if this exclusion were granted, all imported leather safety footwear would be carrying waterproof breathable barriers in order to circumvent any injury finding. The Tribunal is of the view that there is some potential for an increased volume of products incorporating this feature for the purpose of circumventing anti-dumping duties. The Tribunal further notes that the domestic industry has testified that it was able to satisfy the limited requests that it got for this specific product.⁷⁶ The Tribunal is of the view that there is no reason to believe that the domestic producers will be unable to supply the market for these products in the future. Accordingly, this request for exclusion is also denied.

Regarding the CAIE's request for exclusion for brand-name high-value leather safety footwear, the evidence indicates that the domestic producers manufacture like goods to these subject goods and that the imported high-end leather safety footwear is not, in any meaningful way, different and distinguishable from the leather safety footwear produced in Canada. Furthermore, the evidence shows that much of the Canadian industry produces high-grade footwear and that competition from Chinese imports is moving into more upscale products, which is why the Tribunal foresees a threat of injury.⁷⁷ It would, therefore, be inconsistent for the Tribunal to grant this request for exclusion.

The Tribunal is, however, of the view that some exclusions are warranted. During the course of the inquiry, the Tribunal had the opportunity to examine a number of physical exhibits of athletic style and hiking style leather safety shoes of cement construction. The evidence indicates that there is no domestic production of such shoes, with the domestic industry specializing in injection moulding construction and, on a smaller scale, welt production. The Tribunal heard testimony that injection moulding results in a shoe that has a bulbous tip and is generally not as sleek in design as a shoe of cement construction.⁷⁸ Further testimony was heard to the effect that consumers have a strong preference for the athletic style and hiking style shoes when they are made with cemented soles.⁷⁹ Based upon an examination of shoes made with these two processes, the Tribunal finds that cement constructed shoes are, for the most part, quite distinguishable from the domestically produced shoes. The appearance of this leather safety footwear is different from welt or injection moulding construction. The domestic industry did not produce any physical exhibits or any other evidence demonstrating to the Tribunal that it produces leather safety shoes in these athletic styles or hiking styles incorporating cemented soles, nor is there evidence that these types of shoes will be available shortly from domestic production. In fact, this type of footwear is imported by at least one major domestic producer, Terra, to fill out its product line. Therefore, the Tribunal concludes that an exclusion for athletic style and hiking style leather safety shoes of cement construction is warranted.

76. Tribunal Exhibit NQ-2001-003-38A, Administrative Record, Vol. 1 at 165.6; *Transcript of Public Hearing*, Vol. 1, 26 November 2001, at 67-68.

77. *Transcript of Public Hearing*, Vol. 1, 26 November 2001, at 108, 129, Vol. 2, 27 November 2001, at 223, 362-63, Vol. 3, 28 November 2001, at 466, 530, *Transcript of In Camera Hearing*, Vol. 2, 27 November 2001, at 114-15, 222-25, Vol. 3, 28 November 2001, 261-62, 306; Tribunal Exhibit NQ-2001-003-43A (protected), Administrative Record, Vol. 2 at 114-15; Manufacturer's Exhibit AD-01, para. 7, Administrative Record, Vol. 11.

78. *Transcript of Public Hearing*, Vol. 4, 29 November 2001, at 599, 654-57.

79. *Transcript of Public Hearing*, Vol. 4, 29 November 2001, at 599, 654-59; Importer's and Other Parties' Exhibits B-43, paras. 20, 23, B-71, paras. 24, 30, B-90, para. 24, Administrative Record, Vol. 13.

Regarding Hush Puppies' request for exclusion of leather safety footwear sold under the Harley-Davidson brand name used for motorcycle riding, the Tribunal notes the uniqueness of the product in the market and the fact that the boots may not be appropriate for the workplace because of the hard rubber soles and the hardware on the boots. As well, the steel toe is not meant to protect the toes against falling objects, but rather against the hazards of the road, such as debris and accidents.⁸⁰ They are, in fact, designed not as work boots but as motorcycle riding boots. The Tribunal finds that these boots are special, sold to specific customers for specific reasons at a particular price point and are not easily substitutable for ordinary leather safety footwear. In light of the foregoing, the Tribunal excludes from the finding leather boots with metal toe caps and rubber outsoles for use in motorcycle riding, incorporating zippers or buckles and a commonly recognized motorcycle brand name affixed permanently.

CONCLUSION

For the foregoing reasons, the Tribunal hereby finds that the dumping of the aforementioned goods originating in or exported from China, excluding waterproof footwear subject to the finding made by the Tribunal in Inquiry No. NQ-2000-004, has not caused, but is threatening to cause, material injury to the domestic industry, excluding:

- Athletic style and hiking style leather safety shoes of cement construction. For greater clarity, shoes are defined as footwear worn below the ankle, and cement construction refers to a process where the outsole is cemented to the bottom of a lasted upper.
- Leather boots with metal toe caps and rubber outsoles, for use in motorcycle riding, incorporating zippers or buckles and a commonly recognized motorcycle brand name affixed permanently.

Zdenek Kvarda
Zdenek Kvarda
Presiding Member

Patricia M. Close
Patricia M. Close
Member

James A. Ogilvy
James A. Ogilvy
Member

80. *Transcript of Public Hearing*, Vol. 4, 29 November 2001, at 798.